



# **PELICAN RIVER WATERSHED DISTRICT**

## **2025 REVISED RULES**

**Adopted: March 28, 2025**



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## **CHAPTER 1. GENERAL POLICY STATEMENT AND INTRODUCTION**

The Pelican River Watershed District (the "District") is a political subdivision of the State of Minnesota, established under Minn. Stat. Chapter 103D, cited as the "Watershed Law." Under the Watershed Law, the District exercises a series of powers to accomplish its statutory purposes. Under Chapter 103D the District's general statutory purpose is to conserve natural resources through development planning, sediment and erosion control, and other conservation projects, based upon sound scientific principles. In order to accomplish its statutory purpose, the governing body of the District, the Board of Managers, is required to adopt a series of rules, cited as the 2024 Revised Rules of the PRWD (the "Rules").

The District, as part of the Otter Tail River One Watershed One Plan process, has adopted a Comprehensive Watershed Management Plan (the "Plan"), which contains the framework and guiding principles for the District in carrying out its statutory purposes. It is the District's intent to implement the Plan's principles and objectives in the Rules.

Land alteration affects the volume, and quality of surface water runoff which ultimately must be accommodated by the existing surface water systems within the District. The District was established in 1966 in response to concerns about regional lake health. Lake health and contributing factors continue to be the primary focus of the District.

Land alteration and utilization also can degrade the quality of runoff entering the streams and waterbodies of the District due to non-point source pollution. Lake and stream sedimentation from ongoing erosion processes and construction activities reduces the hydraulic capacity of waterbodies and degrades water quality. Water quality problems already exist in many of the lakes and streams throughout the District.

Projects which increase the rate or volume of stormwater runoff can decrease downstream hydraulic capacity. Projects which degrade runoff quality can aggravate existing water quality problems and contribute to new ones. Projects which fill floodplain or wetland areas can aggravate existing flooding by reducing flood storage and hydraulic capacity of waterbodies and can degrade water quality by eliminating the filtering capacity of those areas.

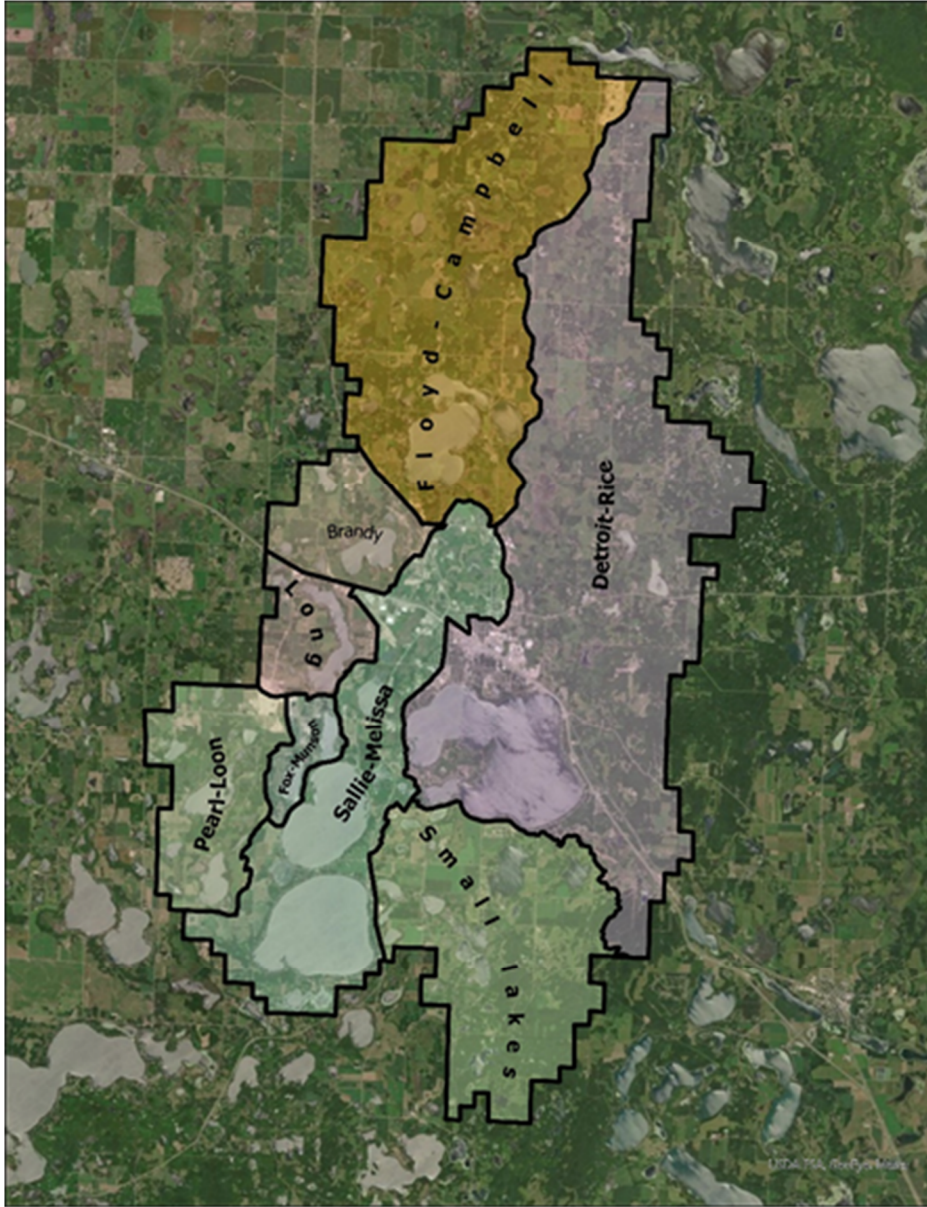
Under the Rules, the District seeks to protect the public health and welfare and the natural resources of the District by providing reasonable regulation of the modification or alteration of the District's lands and waters to reduce the severity and frequency of flooding and high water; to preserve floodplain and wetland storage capacity; to improve the chemical, physical, and biological quality of surface water; to reduce sedimentation; to preserve waterbodies' hydraulic and navigational capacity; to preserve natural wetland and shoreland features; and to minimize public expenditures to avoid or correct these problems in the future.

## **CHAPTER 2. RELATIONSHIP OF WATERSHED DISTRICT TO BECKER COUNTY AND CITY OF DETROIT LAKES**

The District recognizes that the primary control and determination of appropriate land uses is the responsibility of Becker County (the “County”) and the City of Detroit Lakes (the “City”). Accordingly, the District will coordinate permit application reviews involving land development only after it is first demonstrated that the application has been submitted to the County or the City, where the land is located.

It is the intention of the managers to ensure that development of land within the District proceeds in conformity with the Rules, in addition to conforming with the development guides and plans adopted by the County and the City. The District will exercise control over development by its permit program described in the Rules to ensure the maintenance of stormwater management features; protect public waters, wetlands, and groundwater; and protect existing natural topography and vegetative features in order to preserve them for present and future beneficial uses. The District will review and permit projects sponsored or undertaken by other governmental units, and will require permits in accordance with the Rules for governmental projects which have an impact on water resources of the District. These projects include but are not limited to, land development and road, trail, and utility construction. The District desires to serve as technical advisors to the municipal officials in the preparation of local surface water management plans and the review of individual development proposals prior to investment of significant public or private funds.

To promote a coordinated review process between the District and local governments, the District encourages these entities to involve the District early in the planning process. The District's comments do not eliminate the need for permit review and approval if otherwise required under the Rules. The District intends to coordinate with each local government to ensure that property owners and other permit applicants are aware of the permit requirements of both bodies. By coordinating, the District and local governments also can avoid duplication, conflicting requirements, and unnecessary costs for permit applicants and taxpayers.



### CHAPTER 3. GENERAL PROVISIONS AND CITATION

- 3.1 **Statutory Policy.** The 2024 Revised Rules of the Pelican River Watershed District (the "Rules"), as provided by Minn. Stat. § 103D.341, subd. 1, and as amended from time to time, are to effectuate the purposes of Minn. Stat. Chapters 103D and 103E and the authority of the Managers therein described. The Rules are deemed necessary to implement and make more specific the law administered by the Pelican River Watershed District (the "District"). Each rule adopted by the District shall have the full force and effect of law.
- 3.2 **General Policy; Other Rules Superseded.** It is the intention of the Managers with the implementation of the Rules to promote the use of the waters and related resources within the District in a provident and orderly manner so as to improve the general welfare and public health for the benefit of present and future residents. The Rules shall supersede all previous rules adopted by the District.
- 3.3 **Short Title.** The Rules shall be known and may be cited as the "Pelican River Watershed District Rules".
- 3.4 **Jurisdiction.** The jurisdiction of the Rules includes all of the area, incorporated and unincorporated, including both land and water, within the territory of the District.
- 3.5 **Adoption or Amendment of Rules.** Changes to the Rules may be made by the Managers on their own prompting or following the petition of any interested person according to the procedure set forth in Minn. Stat. § 103D.341, subd. 2, as may be amended from time to time. An amendment or rule shall be adopted by a majority vote of the Managers.
- 3.6 **Inconsistent or More Restrictive Provisions.** If any rule is inconsistent with or less restrictive than the provisions of Minn. Stat. Chapters 103D or 103E, or other applicable law, the provisions of Minn. Stat. Chapters 103D or 103E, or other applicable law, shall govern.
- 3.7 **Severability.** The provisions of the Rules are severable, and invalidity of any section, paragraph, subdivision, or any other part thereof, does not make invalid any other section, paragraph, subdivision, or any part thereof.
- 3.8 **Due Process of Law.** A person shall not be deprived or divested of any previously established beneficial use or right, by any rule of the District, without due process of law, and all rules of the District shall be construed accordingly.
- 3.9 **Cooperation with Other Agencies or Governing Bodies.** The Managers accept the responsibility with which they are charged as a governing body and will cooperate to the fullest extent with persons, groups, state and federal agencies, and other governing bodies, while acting in accordance with their own statutory authority and responsibilities.
- 3.10 **Appeals.** Any person aggrieved by the adoption or enforcement of the Rules or any action of the District arising out of or pursuant to the adoption or enforcement of a rule may appeal from the Rules or any action taken thereon in accordance with the appellate procedure and review provided in Minn. Stat. §§ 103D.535 and 103D.537, as amended from time to time.

## CHAPTER 4. DEFINITIONS AND INTERPRETATION

- 4.1 **Definitions.** For the purposes of the Rules, certain words and terms are defined as follows. In the absence of a definition hereinafter, the definitions established for the State of Minnesota by statute or by case law apply to the Rules unless clearly in conflict, clearly inapplicable, or unless the content makes such meaning contrary thereto. Additionally, if words or phrases are not defined therein, they shall be interpreted to give them the same meaning they have in common usage and to give the Rules their most reasonable application.

**Alteration:** Activity that results in disturbance to a site's underlying soils or established vegetation that's not part of routine maintenance.

**Best Management Practices (BMP):** Measures taken to minimize negative effects on the environment including those documented in the Minnesota Stormwater Manual, as amended.

**Bluff:** A topographic feature such as a hill, cliff, or embankment having the following characteristics:

- A. Part or all of the feature is located in a shoreland area;
- B. The slope must drain toward the waterbody;
- C. The slope rises at least twenty-five feet (25') above the ordinary high water level; and
- D. The grade of the slope, from the toe of the bluff to a point twenty-five feet (25') or more above the ordinary high water level, averages thirty percent (30%) or greater (see Figure 1), except that an area with an average slope of less than eighteen percent (18%) over a distance of at least fifty feet (50') shall not be considered part of the bluff (see Figure 2).

Figure 1. Illustration of Bluff

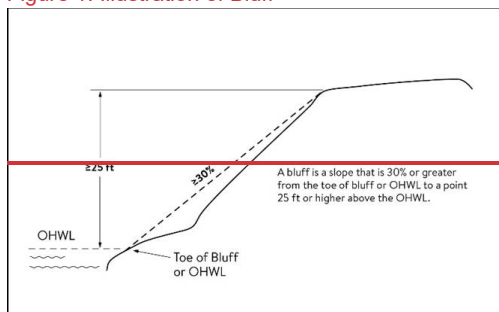
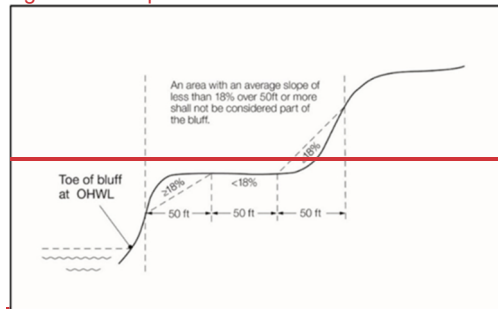
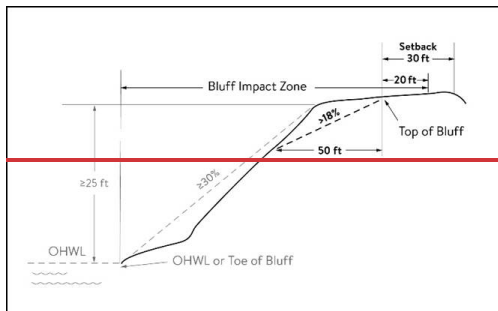


Figure 2. Exception to Bluff



Bluff impact zone: A bluff and land located within twenty feet (20') of the top of a bluff (see Figure 3).

Figure 3. Bluff Impact Zone and Top of Bluff



Bluff, Toe of: The lower point of a fifty foot (50') segment with an average slope exceeding eighteen percent (18%) or the ordinary high water level, whichever is higher.

Bluff, Top of: For the purposes of measuring setbacks, bluff impact zone, and administering vegetation management standards, the highest point of a fifty foot (50') segment with an average slope exceeding eighteen percent (18%). See Figure 3.

Board of Managers (Board and/or Managers): The governing body of the Pelican River Watershed District.

Buffer: An area consisting of perennial vegetation, excluding invasive plants and noxious weeds.

Buffer Law: Minn. Stat. § 103F.48, as amended.

BWSR: Board of Water and Soil Resources of Minnesota.

Commissioner: Commissioner of the Minnesota Department of Natural Resources.

Conditional Uses: Traditionally non-approved practices that may be allowed, with written approval from the District, to best meet the intent of the rule.

DNR: The Minnesota Department of Natural Resources.

Direct Watershed: Region draining to a specific lake, stream, or river.

District: The Pelican River Watershed District established under the Minnesota Watershed Law, Minn. Stat. Chapter 103D.

Drainage Authority: The public body having jurisdiction over a drainage system under Minn. Stat. Chapter 103E.

Emergency Overflow (EOF): A primary overflow to pass flows above the design capacity around the principal outlet safely downstream without causing flooding.

~~Emergent Vegetation: Aquatic plants that are rooted in the water but have leaves, stems, or flowers that extend above the water's surface.~~

~~Ice Pressure Ridges: The ridge, comprised of soil, sand and/or gravel, often found in the Shore Impact Zone near the Ordinary High Water Level of lakes, and caused by wind driven ice or ice expansion.~~

Impervious Surface: Constructed hard surface (gravel, concrete, asphalt, pavers, etc.) 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 prior to development.

~~Intensive Vegetation Clearing: The removal of all or a majority of the trees or shrubs in a contiguous patch, strip, row, or block.~~

Landowner: The holder of the fee title or the holder's agents or assigns.

Linear Project: A road, trail, or sidewalk project that is not part of a common plan of development.

Low Floor Elevation (LFE): The elevation of the lowest floor of a habitable or uninhabitable structure, which is often the elevation of the basement floor or walk-out level.

Licensed Professional: A professional licensed in the State of Minnesota with the necessary expertise in the fields of hydrology, drainage, flood control, erosion and sediment control, and stormwater pollution control to design and certify stormwater management devices and plans, erosion prevention and sediment control plans, and shoreland alterations including retaining walls. Examples of licensed professionals may include professional engineers, professional landscape architects, professional geologists, professional soil engineers, SWCD staff with Job Approval Authority, and licensed contractors who have the referenced skills.

MPCA: The Minnesota Pollution Control Agency.

Minnesota Stormwater Manual: The MPCA's online manual for stormwater management including design guidance and referenced regulations.

~~Natural Rock Riprap: Natural uncut course stone, non-angular, non-concrete, free of debris that may cause siltation or pollution. Stones must average more than six inches (6") but less than thirty inches (30") in diameter.~~

New Development Areas: Surface construction activity that is not defined as redevelopment and areas where new impervious surface is being created.

NPDES General Construction Stormwater Permit: The current Minnesota Pollution Control Agency General Permit to Discharge Stormwater Associated with Construction Activity Under the National Pollution Discharge Elimination System State Disposal System Program (NPDES/SDS).

NRCS: Natural Resource Conservation Service of the U.S. Department of Agriculture.

Ordinary High Water Level (OHWL): The boundary of public waters and wetlands which is an elevation delineating the highest water level which has been 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 predominately terrestrial. For watercourses, the ordinary high-water level is the elevation of the top of the bank of the channel.

Parcel: A unit of real property that has been given a tax identification number maintained by a County.

Person: An individual, firm, partnership, association, corporation, or limited liability company, but does not include public corporations or governmental subdivisions.

Pretreatment: Devices or practices installed upstream of a stormwater BMP that are designed to capture trash, debris, and/or coarse sediment to reduce the risk of clogging the primary BMP. Pretreatment option includes but is not limited to vegetated filter strips, sumped manholes, and forebays.

Public Drainage System: A network of open channel ditches, drain tile, or a combination used to drain property that were established by a drainage authority under MN Chapter 103E.

Public Water: As defined in Minn. Stat. § 103G.005, subd. 15, as amended, and included within the public waters inventory as provided in Minn. Stat. § 103G.201, as amended.

Redevelopment Areas: Construction activity where, prior to the start of construction, the areas to be disturbed have fifteen percent (15%) or more of existing impervious surface(s).

Reconstruction: A project that is repairing or rebuilding existing infrastructure where the underlying soil is disturbed; the definition does not include mill & overlay projects or full-depth reclamation projects where the underlying soils are undisturbed.

Regional Conveyance: A surface or subsurface drainage path conveying concentrated flow that drains two hundred (200) acres or more not including piped, public conveyance (i.e. storm sewer).

Responsible Party: A party other than a landowner that directly or indirectly controls the condition of riparian land subject to a Buffer under the Rules.

~~Retaining Wall: A wall constructed of stone or rock with a height greater than twelve inches (12").~~

Riparian Lot: Private or public property that is abuts a waterbody, such as a river, stream, lake, or wetland.

Riparian Protection: A water quality outcome for the adjacent waterbody equivalent to that which would be provided by the otherwise mandated buffer, from a facility or practice

owned or operated by a municipal separate storm sewer system (MS4) permittee or subject to a maintenance commitment in favor of that permittee at least as stringent as that required by the MS4 general permit in effect.

Seasonal High-Water Table: The highest known seasonal elevation of groundwater as indicated by redoximorphic features such as mottling within the soil.

Shore Impact Zone (SIZ): Land located between the ordinary high water level of a public water and a line parallel to and half (1/2) the setback from it (as defined by applicable county or municipal zoning ordinances), except that on property used for agricultural purposes the shore impact zone boundary is a line parallel to and fifty feet (50') from the Ordinary High Water Level.

Shoreland District: Area within one thousand feet (1,000') of the OHWL of water bodies and three hundred feet (300') from rivers or the outer extent of the floodplain.

Shoreland Standards: Local shoreland standards as approved by the Commissioner or, absent such standards, the shoreland model standards and criteria adopted pursuant to Minn. Stat. § 103F.211, as amended.

~~Steep Slopes: A natural topographic feature with an average slope of twelve (12) to eighteen percent (18%), measured over a horizontal distance equal to or greater than fifty feet (50'), and any slopes greater than eighteen percent (18%) that are not bluffs.~~

Stormwater Pollution Prevention Plan (SWPPP): A comprehensive plan developed to manage and reduce the discharge of pollutants in stormwater.

Structure: An above ground building or other improvement that has substantial manmade features other than a surface.

SWCDs: Soil and Water Conservation Districts: political subdivisions of the State of Minnesota.

Trail: A linear, non-motorized vehicle path not exceeding ten feet (10') in width.

Wetland: Area identified as wetland under Minn. Stat. § 103G.005, subd. 19, as amended.

#### 4.2 Interpretation.

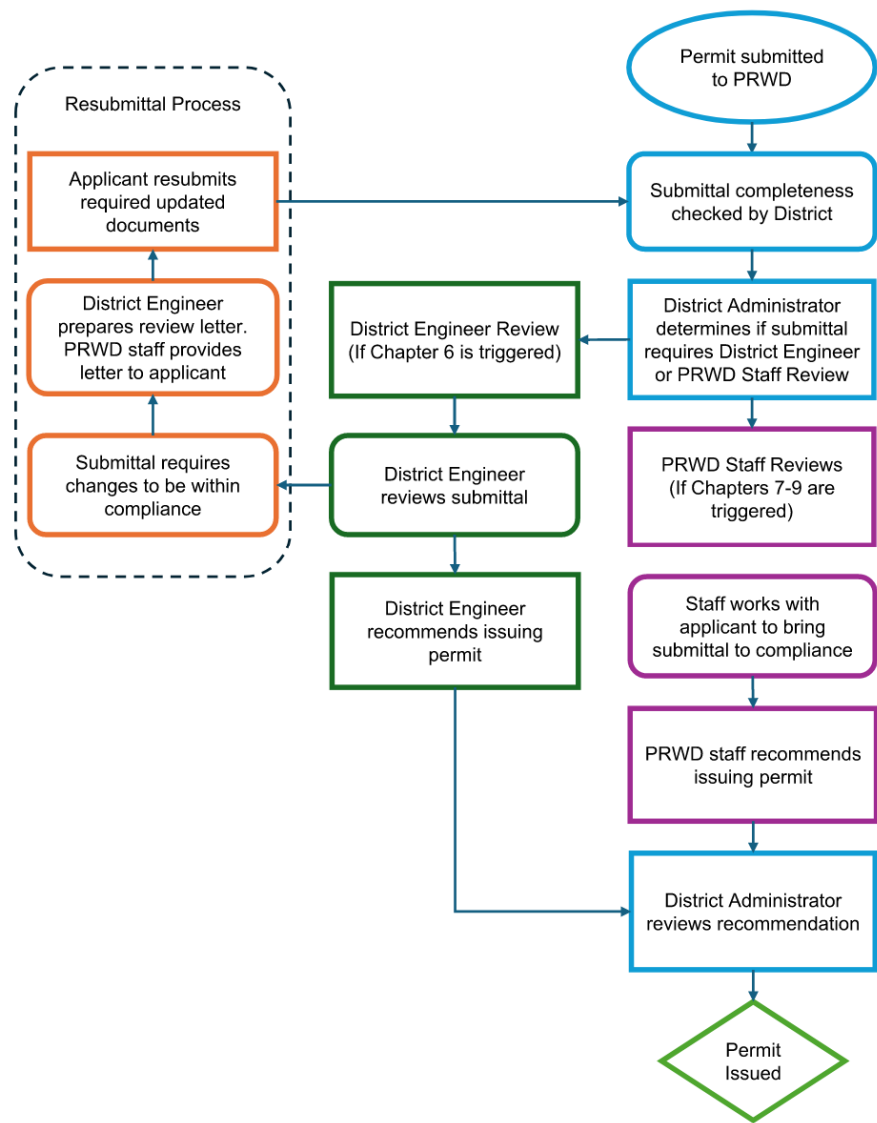
- A. The headings of articles and sections are provided for convenience of reference only and will not affect the construction, meaning, or interpretation of the Rules.
- B. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined.
- C. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms.
- D. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation."
- E. The word "will" shall be construed to have the same meaning and effect as the word "shall." Both terms shall be construed to indicate a mandatory state or condition.

- F. The word “may” shall be construed to indicate a permissive state or condition.
- G. The words “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed to refer to the Rules in its entirety and not to any particular provision hereof.
- H. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” mean “to and including.”
- I. All distances, unless otherwise specified, shall be measured horizontally.

## CHAPTER 5. PERMIT REQUIREMENTS

- 5.1 **Application Required.** A person undertaking an activity for which a permit is required by the Rules must obtain the required permit prior to commencing the activity that is subject to District regulation. Applications for permits must be submitted to the District in accordance with the procedures described herein. Required exhibits are specified for each substantive rule below. Applicants are encouraged to contact District staff before submission of an application to review and discuss application requirements and the applicability of specific rules to a proposed project. When the Rules require a criterion to be met, or a technical or other finding to be made, the District makes the determination except where the rule explicitly states otherwise. The landowner or, in the District's judgment, easement holder, must sign the permit application and will be the permittee or a co-permittee. Pre-application meetings are highly recommended for all applications. A pre-application meeting request form is available on the District website and can be submitted in person or via email.
- 5.2 **Forms.** A District permit application, and District checklist of permit submittal requirements, must be submitted on the forms provided by the District. Applicants may obtain forms from the District office or website at <http://www.prwd.org/permits>.
- 5.3 **Action by District.** The District will act on complete applications in accordance with timing requirements established under Minn. Stat. § 15.99, as amended. A complete permit application includes all required information, exhibits, and fees. An application will not be considered unless all substantial technical questions have been addressed and all substantial plan revisions resulting from staff and consultant review have been completed. Permit decisions will be made by the District Administrator, or a designated representative, unless Board action is deemed necessary.
- A. The District's permitting process is summarized in the chart on the following page (*Figure 5-1*).

Figure 5-1



- 5.4 **Issuance of Permits.** The permit will be issued after the applicant has satisfied all requirements for the permit and has paid all required District fees.
- 5.5 **Permit Term.** Permits are valid for twelve (12) months from the date of issuance unless otherwise stated within the permit, or due to it being suspended or revoked. To extend a permit, the permittee must apply to the District in writing, stating the reasons for the extension. Plan changes, and related project documents, must be included in the extension application. The District must receive this application at least thirty (30) days prior to the permit expiration date. The District may impose different or additional conditions on a renewal or deny the renewal in the event of a material change in circumstances. On the first renewal, a permit will not be subject to change because of a change in the Rules.
- 5.6 **Permit Assignment.** If title to the property is transferred during the term of the permit, a permittee must be assigned. The District will act on a permit assignment when the following conditions have been met:
- A. The proposed assignee agrees, in writing, to assume the terms, conditions, and obligations of the permit;
  - B. The proposed assignee has the ability to satisfy the terms and conditions of the permit;
  - C. The proposed assignee is not changing the project;
  - D. There are no violations of the permit conditions; and
  - E. The District has received from the proposed assignee a substitute surety, if required, to secure performance of the assigned permit.
- Until the assignment is approved, the permittee of record, as well as the current title owner, will be responsible for permit compliance.
- 5.7 **Permit Fees.** The District will charge applicants permit fees in accordance with a schedule that will be maintained and revised from time to time by the Board of Managers to ensure that permit fees cover the District's actual costs of administering, inspecting, and enforcing permits. The current fee schedule may be obtained from the District office or the District website at <http://www.prwd.org/permits>. An applicant must submit the required permit fee to the District at the time it submits its permit application. Permit fees will not be charged to the federal government, the State of Minnesota, or a political subdivision of the State of Minnesota.
- 5.8 **Permit Variance.** Requests for a variance from a requirement of this chapter must be decided by the Board of Managers under the following conditions:
- A. **Variance Authorized.** The Board of Managers may hear requests for a variance from the literal provisions of this chapter in instances where their strict enforcement would cause undue hardship because of circumstances unique to the property under consideration. The Board of Managers may grant a variance where it is demonstrated that such action will be in keeping with the spirit and intent of this chapter. Requests for variances must be in writing.

- B. Standard. In order to grant a variance, the Board of Managers will determine that:
- (1) Special conditions apply to the structure or land under consideration that do not generally apply to other land or structures in the District.
  - (2) Because of the unique conditions of the property involved, undue hardship to the applicant would result, as distinguished from mere inconvenience, if the strict letter of the chapter was carried out. A hardship cannot be created by the landowner or their contractor. Economic hardship is not grounds for issuing a variance.
  - (3) The proposed activity for which the variance is sought will not adversely affect the public health, safety, or welfare; will not create extraordinary public expense; and will not adversely affect water quality, water control, or drainage in the District.
  - (4) The intent of the chapter is met.
- C. Term. A variance will become void twelve (12) months after it is granted if not used.
- D. Violation. A violation of any condition set forth in a permit variance is a violation of this chapter and will be addressed through the process detailed in Chapter 11, Enforcement.

## CHAPTER 6. STORM WATER MANAGEMENT

- 6.1 **Policy.** It is the policy of the District to manage, through permitting, stormwater and snowmelt runoff on a local, regional, and watershed basis to promote natural infiltration of runoff throughout the District to enhance water quality and minimize adverse natural resource impacts through the following principles:

- A. Reduce adverse water quality impacts.
- B. Preserve vegetation.
- C. Decrease runoff volume and promote infiltration where suitable.
- D. Prevent soil erosion and sedimentation.
- E. Maintain existing flow patterns.
- F. Store stormwater runoff on-site.
- G. Avoid channel erosion.

- 6.2 **Applicability (Thresholds).** Permits are required for the following activities:

- A. Non-Linear Projects. Construction or reconstruction of impervious surface resulting in total impervious surface lot coverage (new and existing) of:
  - (1) More than twenty-five percent (25%) on riparian lots.
  - (2) More than seven thousand (7,000) square feet of lot coverage of riparian lots.
  - (3) Equal or greater than one (1) acre of impervious surface coverage.
  - (4) Projects requiring a variance from, or use of allowable mitigation within, the local shoreland zoning ordinance.
- B. Residential subdivision or development of four (4) or more lots.
- C. Construction or reconstruction of a private or public paved trail greater than two hundred (200) linear feet in length.
- D. Projects or common plans of development or sale disturbing fifty (50) acres or more within one (1) mile of, and flow to, a special water or impaired water. A complete application and SWPPP must be submitted to the MPCA at least thirty (30) days prior to the start of construction activity.
- E. Linear Projects. Projects that create or fully reconstruct more than one (1) acre of impervious surface as part of the same project.

- 6.3 **Exemptions.**

- A. Exemptions from stormwater management permitting:
  - (1) Mill and overlay or full-depth reclamation projects where underlying soils are not disturbed.
  - (2) Areas that have a documented Local Stormwater Management Plan, that has been approved by the District.

6.4 **Criteria (Standards).**

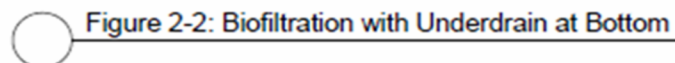
A. **Water Quality (Volume).**

- (1) The Water Quality Volume (WQV) is determined as follows:
  - (a) New Development Areas: Capture and retain on site 1.1 inches of runoff from all impervious surfaces on the site.
  - (b) Redevelopment Areas: Capture and retain on site 1.1 inches of runoff from the new and/or reconstructed impervious surfaces on the site.
  - (c) Linear projects: Capture and retain the larger of the following:
    - i. 0.55 inches of runoff from the new and fully reconstructed impervious surfaces on the site; or
    - ii. 1.1 inches of runoff from the net increase impervious area on the site.
- (2) Infiltration must be used, if feasible:
  - (a) Treatment volume within infiltration basins is measured from the bottom of the basin to the lowest outlet.
  - (b) Infiltration areas will be designed to drain within forty-eight (48) hours. Infiltration rates follow the current version of the MPCA Stormwater Manual. Field measured infiltration rates will be divided by two (2) for design infiltration rates.
  - (c) Soils with infiltration rates higher than 8.3 inches/hour must be amended if infiltration is to be used, otherwise see Section 6.4(A)(4) below for non-infiltration BMP options.
  - (d) Runoff entering an infiltration BMP must be pretreated.
  - (e) At least one (1) soil boring or test pit completed by a licensed professional is required within the footprint of each proposed infiltration BMP.
  - (f) The basin bottom elevation must have three (3) feet of separation above the season high water table.
  - (g) Design and placement of infiltration BMPs must follow any and all additional NPDES General Construction Stormwater Permit and MPCA Construction Stormwater Permits, as applicable.
- (3) Infiltration will be considered infeasible if infiltration is prohibited by MPCA requirement. Common factors prohibiting infiltration include but are not limit to the following:
  - (a) Bedrock within three (3) vertical feet of the bottom of the infiltration basin.
  - (b) Seasonal High-Water Levels within three (3) vertical feet of the bottom of the infiltration basin.
  - (c) Site has predominantly Hydrological Soil Group D (clay) soils.
  - (d) Contaminated soils on site.

- (e) Drinking Water Source Management Areas or within two hundred feet (200') of public drinking water well.
- (f) Documentation, such as soil borings and or well maps are required upon permit submittal stating why infiltration is infeasible. Final feasibility to be confirmed by District Engineer.

If infiltration is infeasible a non-infiltrating BMP must be implemented.

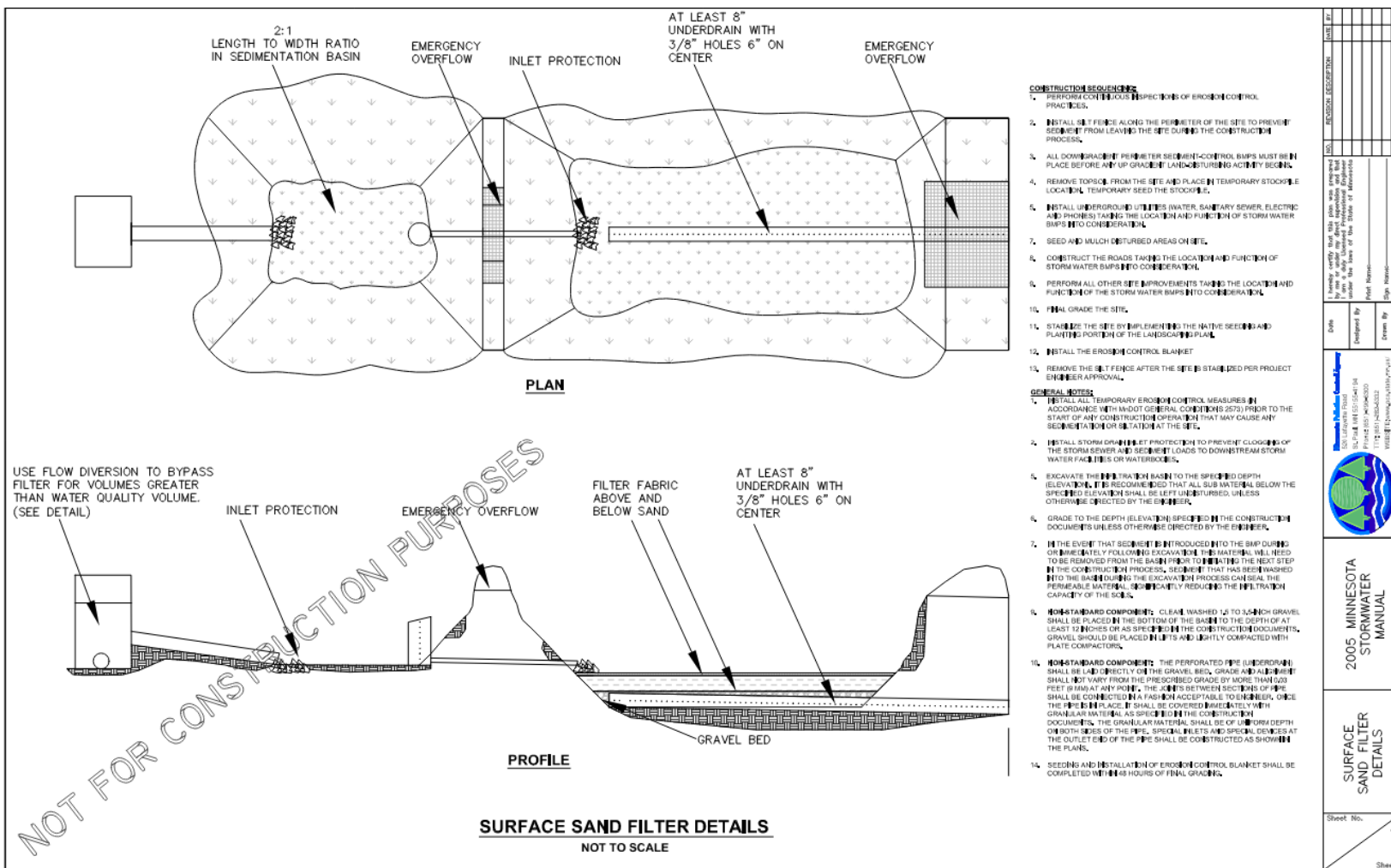
 A small amount of the runoff that flows into the basin and does not overflow into an overflow structure is abstracted from the stormsewer system through infiltration or evapotranspiration; the remainder is filtered by the growing medium but then leaves via an underdrain.



Not To Scale

**NOT FOR CONSTRUCTION PURPOSES**

[illegible]



- (g) Wet Ponds as necessary: ~~Water Quality Volume multiplied by two (2):~~
- i. Permanent pool volume below the pond's runout elevation must have a minimum volume of one thousand eight hundred (1,800) cubic feet per contributing acre or equivalent to the volume produced by a 2.5-inch storm event over the pond's contributing area.
  - ii. Ponds must be designed with a minimum three-to-one (3:1) length-to-width ratio to prevent short-circuiting. Inlets must be a minimum of seventy-five feet (75') from the pond's outlet.
  - iii. The WQV is measured from the top of the permanent pool elevation to the emergency overflow elevation.
- (h) MIDS Flexible Treatment Options (FTO) can also be used but follow the sequencing before with:
- i. FTO #1:
    - a. Achieve at least 0.55 inch volume reduction goal.
    - b. Remove seventy-five percent (75%) of the annual total phosphorus load.
    - c. Options considered and presented shall examine the merits of relocating project elements to address varying soil conditions and other constraints across the site.
  - ii. FTO #2:
    - a. Achieve volume reduction to the maximum extent practicable, as determined by the District.
    - b. Remove sixty percent (60%) of the annual total phosphorus load.
    - c. Options considered and presented shall examine the merits of relocating project elements to address varying soil conditions and other constraints across the site.
  - iii. FTO #3:
    - a. Off-site mitigation (including banking or cash or treatment on another project, as determined by the District) equivalent to the volume reduction performance goal can be used in areas selected by the District.
- (i) Pretreatment must be provided for all filtration practices but is not necessary for wet ponds.
- (j) Design and placement of stormwater BMPs must be done in accordance with MPCA requirements and are recommended to follow guidance from the Minnesota Stormwater Manual.

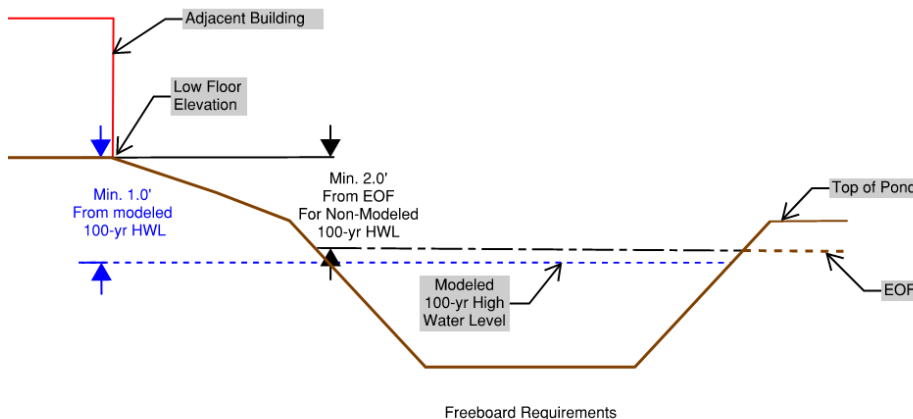
(4) **Exceptions:**

- (a) Single-family or twin home construction or modification on lots outside of the Shoreland District are exempt from providing permanent water quality treatment.
- (b) Trails that provide a five-foot (5') vegetated buffer prior to reaching a conveyance (i.e. swale, ditch, or curb and gutter) are exempt from providing permanent water quality treatment.

6.5 **BMP High-Water Level Management.**

- A. Where one hundred (100) year high water levels are driven by local, onsite drainage, rather than a FEMA floodplain not related to development, the following criteria must be met:
- (1) Low floor: at least one foot (1') above the modeled one hundred (100) year high water level of the basin.
  - (a) Alternatively, the low floor elevation may be two feet (2') above the EOF of the basin to demonstrate compliance where modeling is not available.
  - (2) Applicants must use precipitation depths from Atlas 14 using MSE-3 storm distribution in quantifying the one hundred (100) year high water level in the basin.

Figure 6-1



6.6 **Erosion Control.**

- A. Natural project site topography and soil conditions must be specifically addressed to reduce erosion and sedimentation during construction and after project completion.

- B. Site erosion and sediment control practices must be consistent with MPCA requirements.
- C. The project must be phased to minimize disturbed areas and removal of existing vegetation, until it is necessary for project progress.
- D. The District may require additional erosion and sediment control measures on areas with a slope to a sensitive, impaired, or special waterbody, stream, public drainage system, or Wetland to assure retention of sediment on-site.
- E. Erosion control must include features adequate to protect facilities to be used for post- construction stormwater infiltration.
- F. Required erosion control BMPs must be in-place prior to any site disturbance.
- G. Erosion prevention must be done in accordance with the following:
  - (1) Stabilize all exposed soil areas (including stockpiles) with temporary erosion control (seed and mulch or blanket) within fourteen (14) days (or seven (7) days for all projects within one (1) mile of an impaired water) after construction activities in the area have permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding fourteen (14) calendar days.
  - (2) Exposed soil areas within the Shoreland Impact Zone must be stabilized within forty-eight (48) hours of work having suspended for more than seventy-two (72) hours or when work has permanently ceased.
  - (3) For projects that increase the drainage area to a point of discharge at the site boundary by more than ten percent (10%) and the runoff does not drain to an onsite, permitted BMP prior to leaving the site, the applicant must demonstrate that site runoff will not adversely impact the capacity, stability, or function of the receiving lands or conveyance.
- H. Sediment control must be done in accordance with the following:
  - (1) Sediment control practices will be placed down-gradient before up-gradient land disturbing activities begin.
  - (2) Vehicle tracking practices must be in place to minimize track out of sediment from the construction site. Streets must be cleaned if tracking practices are not adequate to prevent sediment from being tracked onto the street.
- I. Dewatering must be done in accordance with the following:
  - (1) Dewatering turbid or sediment laden water to surface waters (Wetlands, streams, or lakes) and stormwater conveyances (gutters, catch basins, or ditches) is prohibited.
- J. Inspections and maintenance must be done in accordance with the following:

- (1) Applicant must inspect all erosion prevention and sediment control practices to ensure integrity and effectiveness. Nonfunctional practices must be repaired, replaced, or enhanced the next business day after discovery.
- (2) Erosion control plans must include contact information including email and a phone number of the person responsible for inspection and compliance with erosion and sediment control.

K. Pollution prevention must be done in accordance with the following:

- (1) Solid waste must be stored, collected, and disposed of in accordance with state law.
- (2) Provide effective containment for all liquid and solid wastes generated by washout operations (concrete, stucco, paint, form release oils, curing compounds).
- (3) Hazardous materials that have potential to leach pollutants must be under cover to minimize contact with stormwater.

L. Final stabilization must be done in accordance with the following:

- (1) For residential construction only, individual lots are considered final stabilized if the structures are finished and temporary erosion protection and downgradient sediment control has been completed.
- (2) Grading and landscape plans must include soil tillage and soil bed preparation methods that are employed prior to landscape installation to a minimum depth of eight inches (8") and incorporate amendments to meet the Minnesota Stormwater Manual predevelopment soil type bulk densities.

6.7 **Maintenance.**

- A. Long-term maintenance agreements between the District and the landowner are required for all permanent stormwater BMPs.
- B. The maintenance agreement shall be submitted prior to permit issuance. It is recommended that a draft maintenance agreement be submitted with application materials.
- C. Upon issuance of the permit, the District will record the maintenance agreement on the parcel containing the BMP.

6.8 **Required Exhibits.**

- A. Applicants of permits required under Chapter 6 will be required to submit the following:
  - (1) A permit application form as detailed in the Rules.
  - (2) Site plans signed by a Minnesota licensed professional. Site plans must contain sheets that at a minimum address the following:

- (a) Property lines and delineation of lands under ownership of the applicant.
  - (b) Existing and proposed elevation contours, maximum two-foot (2') interval.
  - (c) Identification of normal and ordinary high-water elevations of waterbodies and stormwater features shown in the plans.
  - (d) Proposed and existing stormwater facilities' location, alignment, and elevation.
  - (e) Depiction of on-site Wetlands, shoreland, and floodplain areas.
  - (f) Construction plans and specifications of all proposed stormwater BMPs.
  - (g) Details will be required for all outlet control structures, Emergency Overflows, graded swales, and pond/basin cross sections.
  - (h) Details must show all elevation for pipe, weirs, orifices, or any other control devices.
  - (i) SWPPP identifying location, type, and quantity of temporary erosion prevention and sediment control practices. SWPPP that at a minimum meets the requirements of the NPDES construction permit.
  - (j) Site drawing showing the type, location, and dimensions of all permanent and temporary erosion control BMPs.
- (3) Drainage narrative including: project summary, existing and proposed impervious area, existing and proposed drainage patterns including direction and routing of roof drainage, and stormwater model reports as required in relevant sections.
- (a) Acceptable computer modeling software must be based on NRCS Technical Release #20 (TR-20), as required in relevant sections.
  - (b) Model output for both existing and proposed conditions is required. The District Engineer may require a copy of the electronic model to be submitted if the software used does not provide easily reviewed output reports.
- (4) Soil boring report or test pit documentation identifying location of the boring or test pit, Seasonal High Water Level, and depth of each soil type found as required in Section 6.4(A)(2)(e). Soil borings and test pits must be completed to a minimum depth of five feet (5') below the bottom of the proposed BMP.

(5) If infiltration is not being used, justification must be provided.

CHAPTER 7. RESERVED FOR FUTURE RULES

## **CHAPTER 7. CHAPTER 8. REGIONAL CONVEYANCE SYSTEMS**

**7-48.1 Policy.** It is the policy of the Board of Managers to preserve regional conveyance systems within the District, including its natural streams and watercourses, and artificial channels and piped systems. Chapter 8 applies to surface water conveyance systems other than public drainage systems. The purpose of this chapter is to maintain regional conveyance capacity, prevent flooding, preserve water quality and ecological condition, and provide an outlet for drainage for the beneficial use of the public as a whole now and into the future. Chapter 8 does not apply to public drainage systems, as defined in the Rules, which the District manages and maintains through the exercise of its authority under the drainage code (Minn. Stat. Chapter 103E) and the application of Chapter 9. It is not the intent of this chapter to decide drainage rights or resolve drainage disputes between private landowners.

**7-28.2 Regulation.** A person may not construct, improve, repair, or alter the hydraulic characteristics of a regional conveyance system that extends across two (2) or more parcels of record not under common ownership, including by placing or altering a utility, bridge, or culvert structure within or under such a system, without first obtaining a permit from the District. Permits are not required to repair or replace an element of a regional conveyance system owned by a government entity when the hydraulic capacity of the system will not change.

**7-38.3 Criteria.** The conveyance system owner is responsible for maintenance. In addition, modification of the conveyance system must:

- A. Preserve existing hydraulic capacity.
- B. Retain existing navigational use.
- C. Not adversely affect water quality or downstream flooding characteristics.
- D. Be designed to allow for future erosion, scour, and sedimentation considerations.
- E. Be designed for maintenance access and be maintained in perpetuity to continue to meet the criteria of this Section 8.3. The maintenance responsibility must be memorialized in a document executed by the property owner in a form acceptable to the District and filed for record on the deed. Alternatively, a public permittee may meet its perpetual maintenance obligation by executing a programmatic or project-specific maintenance agreement with the District.

**7-48.4 Subsurface Utility Crossings.** A crossing beneath a regional conveyance system must maintain adequate vertical separation from the bed of the conveyance system. The District will determine adequate separation by reference to applicable guidance and in view of relevant considerations such as soil condition, the potential for upward migration of the utility, and the likelihood that the bed elevation may decrease due to natural processes or human activities. The District will also consider the feasibility of providing separation and the risks if cover diminishes. Nothing in this section diminishes the crossing owner's

responsibility under Section 8.3, above. The applicant must submit a record drawing of the installed utility.

**7-58.5 Required Exhibits.** The following exhibits must accompany the permit application:

- A. Construction details showing:
  - (1) Size and description of conveyance system modification including existing and proposed flow line (invert) elevations. Elevations must be provided in NAVD 88 datum.
  - (2) Existing and proposed elevations of utility, bridge, culvert, or other structure.
  - (3) End details with flared end sections or other appropriate energy dissipaters.
  - (4) Emergency overflow elevation and route.
- B. Narrative describing construction methods and schedule.
- C. Erosion and sediment control plan in accordance with Chapter 6.
- D. Computations of watershed area, peak flow rates and elevations, and discussion of potential effects on water levels above and below the project site.

**7-68.6 Exception.** Criterion 8.3(A) may be waived if the applicant can demonstrate with supporting hydrologic calculations the need for an increase in discharge rate in order to provide for reasonable surface water management in the upstream area, and that the downstream impacts of the increased discharge rate can be reasonably accommodated and will not exceed the existing rate at the conveyance outfall.

## **CHAPTER 8-CHAPTER 9. PUBLIC DRAINAGE SYSTEMS**

**8-49.1 Policy.** Chapter 9 applies to work within public drainage systems, as that term is defined in the Rules. The District regulates work in surface water conveyance systems other than public drainage systems through the application of Chapter 9. It is the policy of the Board of Managers to regulate work within the right-of-way of a public drainage system that has the potential to affect the capacity or function of the public drainage system, or ability to inspect and maintain the system. The purpose of this chapter is to protect the integrity and capacity of public drainage systems consistent with Minn. Stat. Chapter 103E to prevent regional or localized flooding, preserve water quality, and maintain an outlet for drainage for the beneficial use of the public and benefitted lands now and into the future.

### **8-29.2 Regulation.**

- A. Temporary or permanent work in or over a public drainage system, including any modification of the system, including installation or replacement of crossings, requires a permit from the District. The permit is in addition to any formal procedures or District approvals that may be required under Minn. Stat. Chapter 103E or other drainage law.
- B. A utility may not be placed under a public drainage system without a permit from the District. The design must provide at least five feet (5') of separation between the utility and the as constructed and subsequently improved grade of the public drainage system, unless the District determines that a separation of less than five feet (5') is adequate to protect and manage the system at that location. The applicant must submit a record drawing of the installed utility. The crossing owner will remain responsible should the crossing be found to be an obstruction or subject to future modification or replacement under the Drainage Law.
- C. A pumped dewatering operation must not outlet within two hundred feet (200') of a public drainage system without a permit from the District. A permit application must include a dewatering plan indicating discharge location, maximum flow rates, and outlet stabilization practices.

**8-39.3 Criteria.** A project constructed subject to Section 9.2(A) must:

- A. Comply with applicable orders or findings of the District.
- B. Comply with all federal, state, and District Wetland protection rules and regulations.
- C. Demonstrate that such activity will not adversely impact the capacity, stability, or function of the public drainage system, or ability to inspect and maintain the public drainage system.
- D. Not create or establish Wetlands within the public drainage system right of way without an order to impound the public drainage system under Minn. Stat. § 103E.227, as amended.

- E. Provide conveyance at the grade of the ACSIC<sup>1</sup> where work is being completed. If the ACSIC has not been determined, the applicant may request that the District duly determine the ACSIC before acting on the application, or may accept conditions that the District determines are adequate to limit the risk that the applicant's work will not be an obstruction, within the meaning of Minn. Stat. Chapter 103E, when the ACSIC is determined. An applicant that proceeds without determination of the ACSIC bears the risk that the work later is determined to be an obstruction.
- F. Maintain hydraulic capacity and grade under interim project conditions, except where the District, in its judgement, determines that potential interim impacts are adequately mitigated.
- G. Where the open channel is being realigned, provide an access corridor that the District deems adequate at the top of bank of the drainage system, with the following characteristics:
  - (1) A minimum of twenty feet (20') in width.
  - (2) Cross-slope (perpendicular to direction of flow) no more than five percent (5%) grade.
  - (3) Longitudinal slope (parallel to the direction of flow) no more than one-to-five (1:5) (vertical to horizontal).
- H. Provide adequate supporting soils to facilitate equipment access for inspection and maintenance. Provide stable channel and outfall.
- I. Be designed for maintenance access and be maintained in perpetuity to avoid constituting an obstruction and otherwise to continue to meet the criteria of this section. The maintenance responsibility must be memorialized in a document executed by the property owner in a form acceptable to the District and filed for record on the deed. Alternatively, a public permittee may meet its perpetual maintenance obligation by executing a programmatic or project-specific maintenance agreement with the District. Public Linear Projects are exempt from the public drainage system easement requirement of this section.
- J. Identify proposed temporary obstruction or crossings of the public drainage system and specify operational controls to enable unobstructed conveyance of a rainfall or flow condition.

**8-49.4 Required Exhibits.** The following exhibits must accompany the permit application. Elevations must be provided in NAVD 88 datum.

- A. Map showing location of project, tributary area, and location and name of the public drainage system branches within the project area.
- B. Existing and proposed cross sections and profile of affected area.
- C. Description of bridges or culverts proposed.

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<sup>1</sup> The "As Constructed and Subsequently Improved Condition" (ACSIC) of a public drainage system must be determined to understand if proposed work may be considered "repair" and what regulations are applicable. Determination of the ACSIC is discussed in more detail within Section VII, B of the Minnesota Public Drainage Manual.

- D. Location and sizes of proposed connections to the public drainage system.
- E. Narrative and calculations describing effects on water levels above and below the project site.
- F. Erosion and sediment control plan.
- G. Hydrologic and hydraulic analysis of the proposed project.
- H. Local benchmark in NAVD 88 datum.

## **CHAPTER 9.CHAPTER 10. BUFFERS**

### **9.410.1** **Policy.** It is the policy of the District to:

- A. Provide public drainage system ditches with vegetated Buffers and water quality practices to achieve the following purposes:
  - (1) Protect state water resources from erosion and runoff pollution.
  - (2) Stabilize soils and banks.
- B. Coordinate closely with the District's landowners, soil and water conservation districts and counties, and utilize local knowledge and data, to achieve the stated purposes in a collaborative, effective, and cost-efficient manner.
- C. Integrate District authorities under Minn. Stat. §§ 103D.341, 103E.021, and 103F.48, as amended, to provide for clear procedures to achieve the purposes of this chapter.
- D. The District will implement and enforce Buffers through the use of Drainage Law (Minn. Stat. §§ 103E.021, 103E.351, 103D.545, and 103D.551, as amended), and when that cannot be accomplished, the District will use its Administrative Penalty Order (APO) powers granted by Minn. Stat. § 103F.48, as amended.

### **9.210.2** **Data Sharing/Management.**

- A. The District may enter into arrangements with an SWCD, a county, BWSR, and other parties with respect to the creation and maintenance of, and access to, data concerning Buffers and alternative practices under this chapter.
- B. The District will manage all such data in accordance with the Minnesota Data Practices Act and any other applicable laws.

### **9.310.3** **Vegetated Buffer Requirement.**

- A. Except as applicable under Minn. Stat. § 103F.48, subds. 3 and 5, a landowner must maintain a Buffer on land that is adjacent to a public drainage system ditch identified and mapped on the buffer protection map established and maintained by the Commissioner pursuant to the Buffer Law.
  - (1) The Buffer must be a minimum width of sixteen and one half feet (16.5'). This section does not apply to the portion of public drainage systems consisting of tile.
  - (2) The Buffer is measured from the top or crown of bank. Where there is no defined bank, measurement will be from the normal water level. The District will determine normal water level in accordance with BWSR guidance. The District will determine top or crown of bank in the same manner as measuring the perennially vegetated strip under Minn. Stat. § 103E.021.
- B. The requirements under Minn. Stat. § 103F.48 applies to all public drainage ditches within the legal boundary for which the District is the drainage authority.

- C. The requirements under Minn. Stat. § 103F.48, subd. 3 do not apply to land that is:
- (1) Enrolled in the federal Conservation Reserve Program.
  - (2) Used as a public or private water access or recreational use area including stairways, landings, picnic areas, access paths, beach, and watercraft access areas, provided the area in such use is limited to what is permitted under shoreland standards or, if no specific standard is prescribed, what is reasonably necessary.
  - (3) Used as the site of a water-oriented structure in conformance with shoreland standards or, if no specific standard is prescribed, what is reasonably necessary.
  - (4) Covered by a road, trail, building, or other structure.
  - (5) Regulated by a national pollutant discharge elimination system/state disposal system (NPDES/SDS) municipal separate storm sewer system, construction or industrial permit under Minnesota Rules, Chapter 7090, and the adjacent waterbody is provided riparian protection.
  - (6) Part of a water-inundation cropping system.
  - (7) In a temporary non-vegetated condition due to drainage tile installation and maintenance, alfalfa or other perennial crop or plant seeding, or a construction or conservation project authorized by a federal, state, or local government unit.

**9.410.4 Drainage System Acquisition and Compensation for Buffer.**

- A. In accordance with Minn. Stat. § 103F.48, subd. 10(b), a landowner owning land within the benefited area of and adjacent to a public drainage ditch may request that the District, as the drainage authority, acquire and provide compensation for the Buffer strip required under this rule.
- B. The request may be made to use Minn. Stat. § 103E.021, subd. 6, or by petition pursuant to Minn. Stat. § 103E.715, subd. 1.
- C. The decision on the request is within the judgment and discretion of the District, unless the request concerns a Buffer strip mandated by Minn. Stat. § 103E.021.
- D. If the request is granted or the petition proceeds, the requirements of the Buffer strip and the compensation to be paid for its incorporation into the drainage system will be determined in accordance with the statutes referenced in Minn. Stat. § 103F.48 and associated procedures. When the order establishing or incorporating the Buffer strip is final, the Buffer strip will become a part of the drainage system and thereafter be managed by the District in accordance with the drainage code.
- E. On a public drainage ditch that also is a public water subject to a fifty-foot (50') average Buffer, the drainage system will be required to acquire only the first sixteen and one half feet (16.5') of the Buffer.

- F. The District, on its own initiative pursuant to Minn. Stat. §§ 103F.48 and 103E.021, may acquire and provide compensation for Buffer strips required under this chapter on individual or multiple properties along a public drainage system. The Board of Managers findings and order will be delivered or transmitted to the landowner.
- G. This section does not displace the terms of Minn. Stat. Chapter 103E requiring or providing for drainage system establishment and acquisition of vegetated Buffer strips along public ditches.

**9-510.5 Action For Noncompliance.**

- A. When the District observes potential noncompliance or receives a third-party complaint from a private individual or entity, or from another public agency (such as the SWCD), it will determine the appropriate course of action to confirm compliance status. This may include communication with the landowner or his/her agents or operators, communication with the shoreland management authority, inspection, or other appropriate steps necessary to verify the compliance status of the parcel. On the basis of this coordination, the SWCD may issue a notification of noncompliance to the District. If the SWCD does not transmit such a notification, the District will not pursue a compliance or enforcement action under Minn. Stat. § 103F.48, but may pursue such an action under the authority of Minn. Stat. §§ 103E.021 and 103D.341 and Section 10.6 of this chapter.
- B. On receipt of an SWCD notification of noncompliance, or if acting solely under authority of Minn. Stat. § 103E.021 or 103D.341, the District will determine first whether sufficient public drainage system easement exists to establish the required vegetative Buffer. If a sufficient easement does not exist, the District will attempt to acquire the necessary easements through incremental Buffer establishment provided in Minn. Stat. § 103E.021, subd. 6 or through a redetermination of benefits provided in Minn. Stat. § 103E.351 to establish the required Buffers. The establishment of the required Buffers will occur within twelve (12) months of the determination that inadequate easement exists, and no more than eighteen (18) months from the receipt of an SWCD notification of noncompliance or the District decision to establish the required Buffers.
- C. If the District is unable to acquire the necessary easements through incremental Buffer establishment provided in § 103E.021, subd. 6, or through a redetermination of benefits, or if sufficient easement does exist and an established Buffer has been adversely altered, the District will issue a corrective action notice and practical schedule for compliance to the landowner or responsible party. The District may inspect the property and will consult with the SWCD, review available information, and exercise its technical judgment to determine appropriate and sufficient corrective action and a practical schedule for such action. The District will maintain a record establishing the basis for the corrective action that it requires.
  - (1) The District will issue the corrective action notice and schedule to the landowner of record. The landowner may be the subject of enforcement liabilities under Section 10.6. The District may deliver or transmit the notice and schedule by any means reasonably determined to reach the landowner, and will document receipt. However, a failure to document receipt will not preclude the District from demonstrating receipt or knowledge in an enforcement proceeding under Section 10.6.

- (2) The corrective action notice and schedule will identify the parcel of record to which it pertains and the portion of that parcel that is alleged to be noncompliant. It will describe corrective actions to be taken, a schedule of intermediate or final dates for correction, a compliance standard against which it will judge the corrective action, and a statement that failure to respond to this notice and schedule will result in an enforcement action. The District will provide a copy of the notice and schedule to BWSR.
- (3) At any time, a landowner or responsible party may supply information in support of a request to modify a corrective action or the schedule for its performance. On the basis of any such submittal or at its own discretion, the District may modify the corrective action notice or schedule, and deliver or transmit the modified notice and schedule in accordance with Section 10.5(C)(1), or may advise the landowner in writing that it is not pursuing further compliance action.
- (4) At any time after the District has issued the notice and schedule, a landowner, or authorized agent or operator of a landowner or responsible party, may request that the SWCD issue a validation of compliance with respect to property for which the notice and schedule has been issued. On District receipt of the validation, the notice and schedule will be deemed withdrawn, and the subject property will not be subject to enforcement.
- (5) A corrective action notice and schedule is not considered a final decision subject to appeal. An objection to a finding of noncompliance, or to any specified corrective action or its schedule, is reserved to the landowner or responsible party and may be addressed in an enforcement proceeding under Section 10.6.

#### 9-610.6 **Enforcement.**

- A. Under authority of Minn. Stat. §§ 103E.021, 103D.545, and 103D.551, the District may seek remedies for noncompliance with this chapter against any landowner or responsible party including but not limited to: (a) reimbursement of District compliance costs under Minn. Stat. § 103D.345 and 103E.021 and/or an escrow, surety, performance bond, or a letter of credit for same; (b) administrative compliance order (ACO); (c) district court remedy including injunction, restoration, or abatement order, authorization for District entry, and/or order for cost recovery; and (d) referral to the District attorney for criminal misdemeanor prosecution.
- B. In instances where existing vegetation on the ditch Buffer easement has been adversely altered and has not been restored, the District may collect compliance expenses in accordance with Minn. Stat. § 103E.021 from a landowner for noncompliance with the corrective action notice and schedule. The District will restore any adversely altered Buffer and charge the landowner for the cost of the restoration if the landowner does not complete the requirements of the corrective action notice and schedule.
- C. In instances where a ditch Buffer easement area cannot be established in a timely manner, the District may issue an administrative order imposing a monetary penalty against a landowner or responsible party for noncompliance with the corrective action notice and schedule. The penalty will continue to accrue until the

noncompliance is corrected as provided in the corrective action notice and schedule.

- (1) The penalty for a landowner on a single parcel that previously has not received an administrative penalty order issued by the District shall be the following:
  - (a) \$0 for 11 months after issuance of the corrective action notice and schedule.
  - (b) \$50 per parcel per month for the first six (6) months (180 days) following the time period in Section 10.6(C)(1)(a).
  - (c) \$200 per parcel per month after six (6) months (180 days) following the time period in Section 10.6(C)(1)(b).
- (2) The penalty for a landowner on a single parcel that previously has received an administrative penalty order issued by the District shall be:
  - (a) \$50 per parcel per day for 180 days after issuance of the corrective action notice and schedule
  - (b) \$200 per parcel per day for after 180 days following the time period in Section 10.6(C)(1)(a).

D. The administrative order will state the following:

- (1) The facts constituting a violation of the Buffer requirements.
- (2) The statute and/or rule that has been violated.
- (3) Prior efforts to work with the landowner to resolve the violation.
- (4) For an administrative penalty order, the amount of the penalty to be imposed, the date the penalty will begin to accrue, and the date when payment of the penalty is due.
- (5) The right of the landowner or responsible party to appeal the order. A copy of the APO must be sent to the SWCD and BWSR.

E. An administrative order will be issued after a compliance hearing before the District Board of Managers. The landowner and any other responsible parties will receive written notice at least two (2) weeks in advance of the hearing with a statement of the facts alleged to constitute noncompliance and a copy or link to the written record on which District staff intends to rely, which may be supplemented at the hearing. A landowner or responsible party may be represented by counsel, may present and question witnesses, and may present evidence and testimony to the Board of Managers. The District will make a record of the hearing.

F. After a hearing noticed and held for consideration of an administrative penalty or other administrative order, the Board of Managers may issue findings and an order imposing any authorized remedy or remedies.

- (1) The amount of an administrative penalty will be based on considerations including the extent, gravity, and willfulness of the noncompliance; its economic benefit to the landowner or responsible party; the extent of the landowner or responsible party's diligence in addressing it; any noncompliance history; the public costs incurred to address the noncompliance; and other factors as justice may require.
  - (2) The Board of Managers' findings and order will be delivered or transmitted to the landowner and other responsible parties. An administrative penalty order may be appealed to BWSR in accordance with Minn. Stat. § 103F.48, subdivision 9, and will become final as provided therein. The District may enforce the order in accordance with Minn. Stat. § 116.072, subd. 9. Other remedies imposed by administrative order may be appealed in accordance with Minn. Stat. § 103D.537.
  - (3) The Board of Managers may forgive an administrative penalty, or any part thereof, on the basis of diligent correction of noncompliance following issuance of the findings and order and such other factors as the Board finds relevant.
- G. Absent a timely appeal, an administrative penalty is due and payable to the District as specified in the administrative penalty order.
- H. Nothing within this Buffer Rule diminishes or otherwise alters the District's authority under Minn. Stat. Chapter 103E with respect to any public drainage system for which it is the drainage authority, or any Buffer strip that is an element of that system.

9-710.7 **Effect of Rule.**

- A. If any section, provision, or portion of this Buffer Rule is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Buffer Rule is not affected thereby.
- B. Any provision of this Buffer Rule, and any amendment to it, that concerns District authority under Minn. Stat. § 103F.48 is not effective until an adequacy determination has been issued by BWSR. Authority exercised under Minn. Stat. Chs. 103D and 103E does not require a BWSR adequacy determination.

## ~~CHAPTER 40.~~CHAPTER 11. ENFORCEMENT

- ~~40.411.1~~ **Matter of Enforcement.** In the event of a violation, or potential violation, of a District Rule, permit, order or stipulation, or a provision of Minn. Stat. Chapters 103D or 103E, the District may take action to prevent, correct, or remedy the violation or any harm to water resources resulting from it. Enforcement action includes but is not limited to, injunction, action to compel performance, abatement, or restoration, and prosecution as a criminal misdemeanor in accordance with Minn. Stat. §§ 103D.545 and 103D.551.
- ~~40.211.2~~ **Investigation of Noncompliance.** The District's Board of Managers, staff, or designated consultants may enter and inspect property in the District related to investigation of permit activities to determine the existence of a violation or potential violation as described in the preceding section.
- ~~40.311.3~~ **Preliminary Administrative Compliance Order.** The District, including staff and legal consultants, may issue a preliminary administrative compliance order without notice or hearing when it finds a violation or potential violation, and that the violation or potential violation presents a threat to the public health, welfare, and safety, or an adverse effect on water resources. A preliminary administrative compliance order may require that the landowner or responsible contractor cease the land-disturbing activity; apply for an after-the-fact permit; and take corrective or restorative action.
- ~~40.411.4~~ **Board Hearing – Administrative Compliance Order.** If a landowner or their agent fails to comply with the preliminary ACO, the Board of Managers may hold a hearing with the alleged violator to discuss the violation. After due notice and a hearing at which evidence may be presented, the Board shall make findings. If the Board of Managers finds a violation, it may issue an administrative compliance order that may require the landowner or responsible contractor to cease land-disturbing activity; apply for an after-the-fact permit; take corrective or restorative action; reimburse the District for costs under Minn. Stat. § 103D.545, subd. 2; and/or be subject to any other remedy within the District's authority. An administrative compliance order may supersede a preliminary administrative compliance order or may be issued without a prior preliminary administrative compliance order.
- ~~40.511.5~~ **Liability for Enforcement Costs.** To the extent provided for by Minn. Stat. § 103D.545, subd. 2, a landowner, contractor, or equipment operator is liable for investigation and response costs incurred by the District under the Rules, including but not limited to the costs to inspect and monitor compliance, engineering and other technical analysis costs, legal fees and costs, and administrative expenses.
- ~~40.611.6~~ **Contractor Liability.** An individual, firm, corporation, partnership, association, or other legal entity contracting to perform work subject to one (1) or more projects will be responsible to ascertain that the necessary permit has been obtained and that the work complies with the permit, the Rules, regulations, statutes, and any applicable District orders or stipulations. A contractor that, itself or through a subcontractor, engages in an activity constituting a violation or potential violation is not a "responsible contractor", as defined in Minn. Stat. § 16C.285, for purposes of the District.

**BOARD OF MANAGERS**

**PELICAN RIVER WATERSHED DISTRICT**

By Chris Jasken, Secretary

*Adopted\_\_\_\_\_; Published in the Detroit Lakes Tribune on\_\_\_\_\_.*