

WATER MANAGEMENT RULES RULES OF PELICAN RIVER WATERSHED DISTRICT

TO PROTECT AND ENHANCE THE QUALITY OF WATERS WITHIN ITS JURISDICTION; TO ENSURE THAT WISE DECISIONS ARE MADE CONCERNING THE MANAGEMENT OF STREAMS, WETLANDS, LAKES, GROUNDWATER AND RELATED LAND RESOURCES WHICH IMPACT THESE WATERS; AND TO ACCOMPLISH THE PURPOSES FOR WHICH A WATERSHED DISTRICT IS ESTABLISHED.

Section 1.0 Introduction

1.1 Statutory Authority to Adopt Rules

According to Minnesota Statutes (M.S.) Section 103D.341, subdivision 1, the managers must adopt rules to accomplish the purposes of this chapter and to implement the powers of the managers.

1.3 Short Title

These rules shall be known and may be cited as the "Pelican River Watershed District Rules."

1.4 Inconsistent Provisions

If any rule or rules herein contained are inconsistent with the provisions of M.S. Chapter 103D or other applicable laws of the State of Minnesota, the provisions of Chapter 103D or other applicable law shall govern.

1.8 Severability

The provisions of these rules shall be severable and the invalidity of any section, subdivision or any other part thereof shall not make invalid any other section, subsection, paragraph, subparagraph, subdivision or any other part thereof.

Section 2.0 Policy Statement

2.1 General Policy

These rules shall be adopted by the Board of Managers of the Pelican River Watershed District to effectuate the purposes of M.S. Chapter 103D and the powers of the Board of Managers therein prescribed. It is the intention of the Board of Managers that its rules conform to the legislative policy of M.S. Chapter 103D.

It is the Managers' intention to use these rules as a tool to carry out the District's mission to enhance the quality of water in the lakes within its jurisdiction. It is understood that to accomplish this, the District must ensure that wise decisions are made concerning the management of streams, wetlands, lakes, groundwater, and related land resources which directly affect these lakes. The Managers' further intent is to accomplish this mission in a manner that is most beneficial to the general welfare of present and future residents of the District and to minimize adverse environmental impacts upon the water resources of the District.

Specifically, the District seeks to minimize increased discharges or nutrients to the waters of the District by exercising control over development and to regulate improvements by riparian property owners of the beaches, banks, and shores of lakes, streams, and wetlands for preservation and beneficial public use.

The rules stated below shall be followed by any persons, corporations, firms, state, county or municipal governments, and other government agencies undertaking revision of their existing rules, plans or statutes, or undertaking certain land use modification or land development activities within the District.

Section 3.0 Definitions

For the purposes of these Rules, certain words and terms are defined below. In the absence of a definition, the definitions established for the State of Minnesota by statute or by case law shall apply to these Rules unless clearly in conflict, clearly inapplicable, or unless the context makes such meaning repugnant thereto. Certain terms or words used herein shall be interpreted as follows: the word "shall" is mandatory, not permissive. All distances, unless otherwise specified, shall be measured horizontally.

ALTERATIONS TO LAND – grading, excavation, fill or movement of soil or vegetative material.

APPROPRIATE REGISTERED PROFESSIONAL OR REGISTERED PROFESSIONAL – a professional registered 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 registered professionals may include professional engineers, professional landscape architects, professional geologists, and professional soil engineers who have the referenced skills.

BLUFF - a topographic feature such as hill, cliff, or embankment located in a shoreland area and draining to a water body, having a slope rising at least 25 feet above the ordinary high water level of the water body, and where the grade of the slope from the toe of the bluff to any point 25 feet or more above the ordinary high water level averages 30 percent or greater.

BLUFF IMPACT ZONE- a bluff and land located within 20 feet from the top of the bluff.

BOARD OF MANAGERS shall mean the Managers of the Pelican River Watershed District.

BWSR – Minnesota Board of Water and Soil Resources

DETENTION SYSTEM – a structure or facility, which collects and stores runoff on a temporary basis with a subsequent gradual release of stormwater at a controlled rate. A detention basin may retain some water.

DE-WATERING – discharge of appropriated surface or ground water.

DISCHARGE – the disposal, conveyance, channeling of runoff or drainage of water or material, including, but not limited to stormwater and snow melt.

DISTRICT – shall mean the Pelican River Watershed District.

EROSION – the wearing away of soil by rainfall, surface water runoff, wind, or ice-movement.

FILL – soil, sand, gravel, clay or any other material which is placed on land or in waters of the state.

GROUNDWATER RECHARGE AREA - area in which surface water accumulates and is conveyed to groundwater aquifers.

ICE RIDGE shall mean the ridge, comprised of soil, sand and/or gravel, often found in the shore impact zone near the ordinary high-water mark of lakes, and caused by wind driven ice or ice expansion.

ICE RIDGE MODIFICATION – the removal, excavation, alteration, of material or vegetation on an ice-ridge.

IMPERVIOUS SURFACE shall mean a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include, but are not limited to, rooftops, sidewalks, patios, roads, streets, driveways, and parking lots constructed of concrete, asphalt, paving stones and bricks, or compacted soils (including “class 5”).

LATERAL means any constructed waterway or drain which conveys water to a public ditch.

LAND ALTERATION – any change in the surface of the land.

LOADS – a quantity of sediment or nutrients, expressed by weight, and carried by, or dissolved in, discharge.

MANAGERS – the Board of Managers of the Pelican River Watershed District.

MPCA – Minnesota Pollution Control Agency.

NATURAL VEGETATION DISBURBANCE – the removal or destruction of established vegetation species.

NRCS – U.S. Department of Agriculture Natural Resource Conservation Service Agency.

ON-SITE - within the contiguous confines of an ownership parcel.

ORDINARY HIGH WATER (OHW) – 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.

POINT DISCHARGE – discharge from a specific outlet, such as storm sewer, pipe, culvert, or ditch.

PROPERTY OWNER– means the party possessing the title of the land on which the activity will occur; or if the activity is for a lease holder, the party identified as the lease holder; or the contracting government agency responsible for the activity.

RECONSTRUCTION – includes, but is not limited to, changing drainage, re-grading, changing cross sections or vegetation removal; reconstruction does not include seal-coating or overlays of roads, streets, highways, driveways or parking lots, right-of-way maintenance, or road repairs resulting from maintenance or repair of sanitary or water supply system.

RETAINING WALL – a structure intended to maintain a grade differential of six inches or more.

RETENTION SYSTEM – a structure or facility which accumulates a specified amount of stormwater or runoff.

RUNOFF is water, including nutrients, pollutants and sediments carried by water, discharged from land surface.

SEDIMENT – mineral or organic particulate matter that has been carried from its point of origin by water or wind.

SHORE IMPACT ZONE means land located between the ordinary high water level of a public water and a line parallel to and 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 50 feet from the ordinary high water level.

SHORELAND (SHORELAND DISTRICT OR SHORELAND ZONE) means land located within 1000 feet of the ordinary high-water mark of a lake, pond, or 300 feet from a river or stream, as defined in the Becker County Zoning Ordinance.

SLOPE INSTABILITY – condition in which slope has exhibited sloughing or slumping or other failure to maintain natural grades or is determined by an appropriate registered professional to have the potential for failure.

STABILIZATION – covering an exposed ground surface by sod, erosion control blanket, rip rap or other material that prevents erosion. A surface is not considered stabilized by simply sowing grass seed.

STEEP SLOPE – steep slopes, that are not bluffs, are lands having average slopes more than 12 percent, as measured over distances of 50 feet measured on the ground.

STORM SEWER shall mean a system of pipe installed for the specific purpose of transporting surface and/or underground waters from one location to another and said system need not be continuously constructed only of pipe, but may include reaches of flumes, spillways, or open channels.

STORMWATER – precipitation runoff, snow melt runoff, or any other surface runoff and drainage.

STORMWATER INFRASTRUCTURE – constructed measures to collect, convey, or treat stormwater.

STORMWATER TREATMENT – facility designed to retain or detain stormwater, or to lower its sediment or nutrient content.

RELIEF – A modification or variation of the provisions of the Rules, as applied to a specific piece of property.

VEGETATION – brush, shrubs, grass, or trees.

WATERCOURSE - channel having definable beds and banks capable of conducting confined runoff from adjacent lands. During floods water may leave the confining beds and banks, but under low and normal flows water stays within the channel. A watercourse may be perennial or intermittent, natural or man-made. Ditches and streams are examples of watercourses.

WATERS OF THE STATE - means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

WATERSHED DISTRICT- shall mean the legally established agency named and referred to as the Pelican River Watershed District, when the word "District", it shall mean the land contained within the boundary of the Pelican River Watershed District.

WETLAND-shall mean all wetlands as defined in Minnesota Statutes.

4.0 Water Quality Protection and Enhancement

4.10 Thresholds for Permits. Permits are required for any of the following actions:

- a. alterations to land, impervious surface, or vegetation in Shore or Bluff Impact Zones, or on steep slopes in a Shoreland Zone;
- b. additions to impervious surface resulting in total impervious surface (new and existing) in excess of 25% of lot area, or 10,000 square feet in the shoreland zone, or 1 acre elsewhere for any property draining to waters of the state, or draining to an existing storm sewer or stormwater treatment facility;
- c. construction or re-construction of a private or public highway, road, street, parking lot, or public water access;
- d. subdivisions, plats, developments based upon certified surveys or planned unit development;
- e. changes to stormwater infrastructure, including streets and public parking, inlets to waters of the state, bridges, or culverts;
- f. de-watering of groundwater by discharges to Waters of the State;
- g. installation, repair, or replacement of rip-rap or beach sand blanket in the shore impact zone;
- h. installation, repair, or replacement of retaining walls in the shore or bluff impact zone.

4.11 Approval of Permits. Permits will be granted for actions in 4.0 which meet all of the following conditions:

- a. Actions will not result in increases in stormwater discharge rates to adjoining properties or to waters of the state for the 5-year, 25-year, and 100-year- 24-hour rainfall events.
- b. All actions must utilize standards and procedures for controlling runoff rates, nutrients, and sediments as described in the "Protecting Water Quality in Urban Areas" manual (MPCA, 2000) as revised. If a facility or measure is not addressed in that manual, other resources include "BWSR Minnesota Construction Site Erosion and Sediment Control Planning Handbook" as revised, the NRCS "Slope Protection for Dams and Lakeshores, Minnesota Technical Release 2" (October 1997) as revised, "Minnesota Urban Small Sites BMP Manual, Met Council, 2001", or "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, U.S. Environmental Protection Agency, 1992", as revised.
- c. Actions in Section 4.10 b, c, d, and e, must be accompanied by a stormwater management plan, and for areas that are changed incorporate retention of the stormwater runoff generated by the 5 year 24 hour rainfall event on site; an alternative standard would be to show a minimum of 90% removal of total suspended solids and a 50% or higher total phosphorus removal for a 5-year-24-hour rainfall event using Walker's Pond Net model. In either case, a maintenance schedule for the provisions must be provided.
- d. Actions involving ice ridges are allowed only for purposes of repairing existing shoreline damage; no ice ridge modifications which result in an increase of runoff to a lake or natural vegetation disturbance are allowed, except that a 4 foot wide walkway may be constructed upon an ice ridge.

- e. Actions involving the stabilization of shorelines or stream banks, or installation of beach sand blankets must use fill or material that is non-polluting under any foreseeable circumstances. For rip-rap, under normal conditions, no rip-rap or filler materials should be placed more than six feet waterward of the shoreline measured from the Ordinary High Water (OHW) level elevation. The encroachment into the water is the minimum amount necessary to provide protection and does not unduly interfere with the flow of water.
- f. Retaining walls in the shore impact zone are allowed only for the purposes of correcting existing slope instability or erosion; the base of such walls must be above the highest known water level. Retaining wall design plans must comply with accepted engineering principles and submit an analysis which shows that the wall will withstand expected ice and wave action, and earth pressure.

4.12 Permit Application Requirements

- a. No action, works, or use requiring a permit shall be commenced prior to issuance of the permit, except for emergency repairs necessitated by storms, floods, or water, electrical and sewage system failures. The District should be notified of such repairs as soon as practicable.
- b. Application forms and instructions will be available from the Pelican River Watershed District office, the City of Detroit Lakes, and the Becker County Zoning office. Permit applications must be complete in order to be considered by the District.
- c. Permits are valid for an eighteen- month period from the date of issuance unless otherwise suspended or revoked. To extend a permit, the property owner must apply to the District in writing stating the reasons for extension. Any plan changes, and related project documents must also be included in the extension application. The District must receive this application at least thirty days prior to the permit's expiration date.
- d. Permit applications involving land alterations of a bluff or steep slope, or involving the construction, repair, or replacement of a retaining wall in the shore impact zone *are* required to include a site evaluation and construction plan designed and signed by an appropriate registered professional.
- e. Nothing in these Rules shall limit the District from requiring a design certification by a registered professional when deemed necessary and appropriate by the Managers or their designee in order to ensure compliance with the Rules.

4.13 Fees

- a. A permit fee will be required for permit applications as established on an annual basis by the Board of Managers.
- b. A field inspection fee, based upon the actual hourly rates of District staff or consultants will be charged in order to cover actual costs related to investigation of the area affected by the proposed activity, analysis of the proposed activity, services of a consultant, and any required subsequent monitoring of the proposed activity.
- c. Governmental agencies are exempt from fees.

4.14 Sureties

- a. The District may require a performance bond, letter of credit or other surety in a form approved by the District for an activity regulated under these Rules. A commercial surety shall be from an issuer licensed and doing business in Minnesota. The surety shall be submitted by the property owner, but the surety principal may be either the property owner or the individual or entity undertaking the proposed activity.
- b. The surety shall be in favor of the District and conditioned on the applicant's performance of the activities authorized in the permit in compliance with all applicable laws, including the District's Rules, the terms and conditions of the permit and payment when due of any fees or other charges authorized by law, including the District's Rules. The surety shall state that in the event the conditions of the surety are not met, the District may make a claim against it.

c. The surety must be valid and in force for at least an eighteen (18) month period and shall contain a provision that it may not be canceled or released except pursuant to the terms in 4.14 e herein.

d. The amount of the surety shall be set by the Board of Managers by resolution as the amount the Board deems necessary to cover the following potential liabilities to the District:

- (1) Application, field inspection, monitoring and related fees authorized under Minnesota Statute § 103D.345;
- (2) The cost of maintaining and implementing protective measures set forth in or incorporated into the permit; and
- (3) The cost of remedying damage resulting from permit noncompliance or for which the property owner otherwise is responsible.

e. On written notification of completion of a project, the District will inspect the project to determine if the project is constructed in accordance with the terms of the permit and District Rules. If the project is completed in accordance with the terms of the permit and District Rules and there is no outstanding balance for unpaid inspection fees, the District will release the surety if one was required in Section 4.14a. If the District has not inspected the project and made a determination about the project's compliance with the above criteria within 45 days of District receipt of written notification of project completion, the surety is deemed released. In this event, the District will provide a written release of the surety if needed to meet the issuer's requirements.

f. Governmental agencies are exempt from surety requirements.

4.15 Relief

Any request for a relief from a requirement of these Rules must be decided by the Pelican River Watershed District Board of Managers under the following conditions:

a. Relief Authorized – The Board of Managers may hear requests for appeals of staff interpretation of these Rules or relief from the literal provisions of these Rules 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 relief where it is demonstrated that such action will be in keeping with the spirit and intent of these Rules. Requests for relief must be in writing.

b. Standard – In order to grant a relief, 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 rules was carried out. A hardship cannot be created by the landowner or their contractor. Economic hardship is not grounds for issuing a relief.
3. The proposed activity for which the relief is sought will not adversely affect the public health, safety, welfare; will not create extraordinary public expense; will not adversely affect water quality, water control, drainage in the District.
4. The intent of the District's Rules is met.

c. Term - A relief will become void after eighteen (18) months after it is granted if not used.

d. Violation - A violation of any condition set forth in a relief is a violation of the District's Rules and will automatically terminate the permit.

4.2 Upgrade of Existing Stormwater Discharges.

The Managers may require a person or government to provide a treatment plan for point discharges of stormwater containing annual loads in excess of 10 pounds of phosphorus or 2000 pounds of sediment to waters of the state. Such a plan must be implemented within 2 years of notification by the District.

4.3 Maintenance of Stormwater Treatment Devices.

The owner of property on which a stormwater treatment device has been constructed must maintain that device so that its function is not diminished.

Section 5.0 Governmental Responsibilities

5.1 All township, municipal, county and state governments must work to reduce sediment and nutrient loadings to waters of the state with designs described in Protecting Water Quality in Urban Areas (MPCA, 2000) as revised.

5.2 Notification and Review

All township, municipal, county and state governments shall provide copies of plans or documents for proposed actions which may impact the waters of the state to the legal address of the District at least 10 calendar days before the first public hearing date for review and comment, or before rendering a decision on the proposed action ,whichever is earlier. The Board of Managers shall review such changes in light of the foregoing Water Quality Protection and Enhancement Rules (Section 4.0) to ensure that such changes contain provisions for maintaining or enhancing water quality. The following are specific cases in which such notification and review are required:

- a. Proposed ordinances involving land use, storm water, or wetlands;
- b. Proposed public works including modifications of existing roadway, storm collection or treatment systems, sewage collection and treatment systems, or plans for such projects;
- c. Requests for zoning changes, divisions of riparian lots, subdivisions, plats, variances, conditional use permits, and planned unit developments, to be authorized under county or municipal zoning ordinances;
- d. Requests for permits involving construction or other modifications in a shoreland zone.

6.0 Ditch Authority

6.1 Policy Statement

The Managers understand their responsibility to maintain Ditches 11-12, 13 and 14 in accordance with M.S. Chapter 103E and relevant case law. The District also intends to maintain and further develop the ditches in such a way as to minimize their past, present and future downstream impacts on the District's lakes.

6.2 Notification and Review

In addition to any obligations or restrictions described in preceding sections in these Rules copies of a proposal or plan which involves any modification of the Public Ditch systems, or any waterways that impact the discharge or the nutrient loads of those systems, must be provided to the Managers at least 10 days prior to the commencement of work. This notification is specifically required for, but is not limited to...

- a. dredging, filling, or diking of watercourses, wetlands or lakes
- b. culvert and bridge replacements or modifications
- c. variance and conditional use for feedlots within 1000 feet of a waterway
- d. streambank stabilization, including the placement of rip rap
- e. channelization of watercourses
- f. construction of laterals
- g. repair of laterals
- h. removal of grass, shrubs or trees within 16.5 feet of a watercourse
- i. increased discharge to a lateral or ditch as a result of increases in impervious surface
- j. storage of snow within 50 feet of a ditch or a lateral.

The notification must contain sufficient information to allow Managers to make an informed judgment on the conformance with provisions of M.S. Chapter 103E, the District Rules, and other applicable rules, statutes and ordinances.

6.3 Compliance with District Rules

All District Rules will apply to the management of Ditch systems.

Section 7.0 Enforcement Powers of Board of Managers

7.1 Stop Work Order

District staff shall issue an order to immediately stop or prevent any violation or threatened violation of these rules or other applicable statutes, rules or regulations affecting water quality within the District.

7.2 Enforcement

These Rules, other applicable statutes, rules or regulations affecting water quality within the District and any stop work order issued by District staff shall be enforced by all appropriate legal action, including, but not limited to temporary restraining orders, injunctions, actions to compel compliance with these rules, restoration, abatement, costs and damages. Costs, fees and expenses incurred by the District in enforcing these rules, including but not limited to engineering and attorneys fees, shall be assessed against and paid by any person, entity, contractor or governmental subdivision found to be in violation of these rules.

7.2 Contractor's Liability

Any individual, firm, corporation, partnership, association or other entity contracting to perform services regulated by these Rules shall be responsible for ascertaining that all permits have been obtained and that the work performed complies with all requirements of these Rules. Contractors and landowners in violation of these Rules may be separately subject to all methods of enforcement as provided above.

Section 8.0 Adoption or Amendment

These Rules of the Pelican River Watershed District shall be adopted or amended in accordance with M.S. Chapter 103D.

Section 9.0 Effective Date

Upon adoption, Rules and Amendments of the Rules previously approved by the Board of Managers are hereby rescinded. These Rules are effective upon adoption in accordance with M.S. Chapter 103D.

BOARD OF MANAGERS

PELICAN RIVER WATERSHED DISTRICT

By David Brainard, Secretary

Adopted April 1, 2003; Published in Detroit Lakes Tribune on April 20, 2003.