

**NINE MILE CREEK
WATERSHED
DISTRICT

PROPOSED
AMENDED RULES**

(January 9, 2008, Draft)

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Certification of Rules

I, Robert Kojetin, Secretary of the Nine Mile Creek Watershed District Board of Managers, certify that the attached is a true and correct copy of the Rules of the Nine Mile Creek Watershed District, having been properly adopted by the Board of Managers of the Nine Mile Creek Watershed District on [DATE] .

Robert Kojetin

Definitions and Acronyms

The following definitions and acronyms apply to the District rules and accompanying guidance materials.

Definitions

Back-to-Back storm events: Distinct rainfall events occurring within 24 hours of each other.

Best management practices: Various structural and nonstructural measures taken to minimize negative effects on water resources and systems, such as ponding, street sweeping, filtration through a rain garden and infiltration, as documented in the Minnesota Pollution Control Agency's *Protecting Water Quality in Urban Areas* and the *Minnesota Stormwater Manual*.

Better Site Design: A set of development or redevelopment site-design principles and nonstructural techniques, designed to be applied early in the development- or redevelopment-design process, that seek to mimic natural conditions by allowing water to infiltrate into the ground close to where it falls, reduce impervious cover, conserve natural areas, and use pervious areas to reduce the volume of and more effectively treat stormwater runoff. The goal of Better Site Design is to reduce runoff volume and mitigate site impacts when decisions are being made about the layout of a parcel. (See the *Minnesota Stormwater Manual*, ch. 4).

Existing conditions: Site conditions at the time of consideration of a permit application by the District, before any of the work for which a permit is sought has commenced.

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

Governmental project: Land development or redevelopment or other land-disturbing activities for which a District permit is required that is conducted or sponsored by a federal, state or local governmental entity.

Impervious surface: Any exposed area that has been compacted or covered with a layer of material, or is likely to become compacted from expected use, such that it is highly resistant to infiltration of rainwater and snowmelt.

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

Linear project: Construction or reconstruction of a public road, sidewalk or trail for vehicle or pedestrian traffic.

Land-disturbing activity: Any alteration of the ground surface that could result,

through the action of wind and/or water, in soil erosion, substantial compaction, or the movement of sediment into waters, wetlands, storm sewers, or adjacent property. Land-disturbing activity includes but is not limited to demolition of a structure or surface, soil stripping, clearing, grubbing, grading, excavating, filling and the storage of soil or earth materials.

Low floor: The lowest elevation of a floor or opening of any structure, habitable or not.

Low Impact Development: a land-use project design approach that strives to mimic natural conditions by managing rainfall at the source by including small, cost-effective landscape features at the lot level – systems that infiltrate, filter, store, evaporate, and detain runoff close to its source. Low Impact Development employs a variety of natural and built features that reduce the rate of runoff, filter out pollutants, and facilitate the infiltration of water into the ground. By reducing water pollution and increasing groundwater recharge, Low Impact Development helps to improve the quality of receiving surface waters and stabilize the flow rates of nearby streams.

NURP standard: The design criteria developed pursuant to the Environmental Protection Agency's Nationwide Urban Runoff Program and documented in the Minnesota Pollution Control Agency's *Protecting Water Quality in Urban Areas*.

100-year flood elevation: The highest water elevation of a water body reached during a 24-hour precipitation event with a recurrence interval of 100 years, as determined by the District for specific basins and watercourses and established in the District's flood profile.

Parcel: A contiguous area of land designated and described in official public records and separated from other lands by its designation.

Public waters: Water bodies designated pursuant to Minnesota Statutes section 103G.005, subdivision 15.

Public waters wetland: Wetlands designated pursuant to Minnesota Statutes section 103G.005, subdivision 15a.

Receiving water: The first of the following encountered by stormwater or snow melt flow from a site: Nine Mile Creek or a water body designated as a public water pursuant to Minnesota Statutes section 103G.005, subdivision 15.

Reconstruction: changes, including normal maintenance and repair, addition or other improvement to building within any consecutive 365-day period, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement.

Redevelopment: Any land-disturbing activity on an already-developed parcel or any substantial change to existing structures on a parcel.

Retention: The capacity to indefinitely or continuously keep runoff from escaping a parcel or site as surface flow.

Right-of-way: Parcels of land on which a linear project is located, including adjacent area necessary for safe operation of the road, sidewalk or trail and dedicated to such use by fee ownership or easement.

Seven-county metropolitan area: The area comprised by Hennepin, Ramsey, Washington, Dakota, Anoka, Scott and Carver counties.

Site: The location of activities that are the subject of a District permit and are under the control of the permittee.

Steep slope: Land with an average slope of 3:1 (H:V) or steeper.

Structures: Any impervious thing that is constructed or placed on the ground and that is, or is intended, to remain in place for longer than a temporary period.

Subwatershed: The drainage area of the receiving water for a particular site, encompassed with a watershed.

Water body: A watercourse or water basin.

Water basin: An enclosed natural depression with definable banks, capable of retaining water.

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

Acronyms

BMP – best management practice

BWSR – Board of Water and Soil Resources

LGU – local government unit

MnRAM – Minnesota Routine Assessment Methodology for Evaluating Wetland Functions

MPCA – Minnesota Pollution Control Agency

MS4 – Municipal Separate Storm Sewer System

NMCWD – Nine Mile Creek Watershed District

NURP – Nationwide Urban Runoff Program

NGVD – national geodetic vertical datum

OHW – ordinary high water level

WCA – Wetlands Conservation Act

1.0 Procedural Requirements

1.1 Policy

Any person undertaking an activity for which a permit is required by these rules must obtain the required permit prior to commencing the activity that is regulated by the District.

1.2 Application

An application must be submitted to the District to obtain a permit under these rules. It is recommended that applicants contact the District and/or submit preliminary plans early in the project development process for nonbinding informal review for conformity with District policies and rules.

- 1.2.1 Each substantive District rule includes specific application and exhibit specifications that, along with this rule, apply to the submission of applications to the District, and will be utilized to make determinations of completeness under this rule. All permit applications must be signed by the property owner.
- 1.2.2 The District will not take formal action on an application involving land development unless the project has received approval from the relevant city planning commission and preliminary (first reading) approval by the city council, and the Wetland Conservation Act process, when not administered by the District, has been completed. If plat approval is not required, an application will be reviewed when the applicant provides a written statement from a responsible local official that the project appears to meet local approval requirements.
- 1.2.3 The District will act within sixty (60) days of receipt of a complete permit application. A complete permit application includes all required information, exhibits and fees. The District will notify an applicant if his or her application is incomplete within fifteen (15) days of receipt of the application.
- 1.2.4 Application forms and guidance materials may be obtained from the District office or downloaded from the District web site at

www.ninemilecreek.org/index.html.

1.3 Conditional approval

The District may conditionally approve an application, but the permit will not be issued until all conditions to the approval are satisfied. All conditions must be satisfied within twelve (12) months of the date of conditional approval, and failure to satisfy all conditions will result in expiration of approval. An applicant wishing to continue to pursue a project for which permit approval has expired must reapply for a permit from the District and pay applicable fees.

1.4 Permit assignment and renewal

A permit is valid for one year from the date the permit is approved unless specified otherwise or the permit is suspended or revoked. To renew or transfer a permit, the permittee must notify the District in writing prior to the permit expiration date and provide an explanation for the renewal or transfer request. The District may impose different or additional conditions on a renewal or deny the renewal in the event of a material change in circumstances other than a change in District rules. A permittee may assign a permit to another party only upon approval of the District, which will be granted if:

- a the proposed assignee agrees in writing to assume responsibility for compliance with all terms, conditions and obligations of the permit as issued;
- b there are no pending violations of the permit or conditions of approval; and
- c the proposed assignee has provided any required surety necessary to secure performance of the permit.

The District may impose different or additional conditions on the transfer of a permit or deny the transfer if it finds that the proposed transferee has not demonstrated the ability to perform the work under the terms of the permit as issued. Permit transfer does not extend the permit term.

1.5 Suspension or revocation

The District may suspend or revoke a permit issued under these rules wherever the permit is issued in error or on the basis of incorrect information supplied to the District, or is in violation of any provision of

these rules, or if the preliminary and final subdivision approval received from a municipality or county is not consistent with the conditions of the permit.

2.0 Floodplain Management and Drainage Alterations

2.1 Policy

It is the policy of the Board of Managers to ensure the preservation of the natural function of floodplains as floodwater storage areas and to maintain no net loss of floodplain storage in order to accommodate 100-year flood storage volumes. The District will seek to maximize upstream storage and infiltration of floodwaters.

2.2 Regulation

A permit shall be required for:

- 2.2.1 Any alteration or filling of land below the District's 100-year flood elevation of Nine Mile Creek or another water body in the watershed.
- 2.2.2 Any alteration of surface water flows below the 100-year flood elevation by changing land contours, diverting or obstructing surface or channel flow, or creating a basin outlet.

2.3 Criteria for floodplain and drainage alterations

- 2.3.1 The low floor elevation of all new and reconstructed structures shall be constructed at a minimum of two feet above the 100-year flood elevation for the creek or water body. Within landlocked basins, the low floor elevation of all new and reconstructed structures shall be constructed at an elevation one foot above the surface overflow elevation or the calculated high water level from back-to-back 100-year, 24-hour storm events or the 100-year, 10-day snowmelt, whichever is higher. Low floor elevations must also comply with Stormwater Rule 4.4.2.
- 2.3.2 Placement of fill below the 100-year flood elevation is prohibited unless fully compensatory storage at the same elevation (+/- 1 foot) and within the floodplain of the same water body is provided. Creation of floodplain storage capacity to offset fill must occur within the original permit term. If offsetting storage capacity will be provided off site, it shall be created before any floodplain filling for the project will be allowed.
- 2.3.3 The District shall issue a permit to alter surface flows only if it finds that the alteration will not have an adverse impact on any

upstream or downstream landowner and will not adversely affect flood risk, basin or channel stability, groundwater hydrology, stream base flow, water quality or aquatic or riparian habitat.

- 2.3.4 No structure may be placed, constructed or reconstructed and no surface may be paved within 50 feet of the centerline of any water course.

2.4 Required information and exhibits

The following exhibits shall accompany the permit application; one full-size set (22 inches by 34 inches), one set reduced to a maximum of 11 inches by 17 inches, and one set as electronic files in a format acceptable to the District:

- 2.4.1 Site plan showing property lines, delineation of the work area, existing elevation contours of the work area, ordinary high water level or normal water elevation and 100-year flood elevation. All elevations must be reduced to NGVD (1929 datum).
- 2.4.2 Grading plan showing any proposed elevation changes.
- 2.4.3 Preliminary plat of any proposed land development.
- 2.4.4 Determination by a licensed civil engineer or registered qualified hydrologist of the 100-year flood elevation for the parcel before and after the project.
- 2.4.5 Computation by a professional engineer of cut, fill and change in water storage capacity resulting from proposed grading.
- 2.4.6 Erosion-control plan.
- 2.4.7 Soil boring results, if requested by the District engineer.
- 2.4.8 Documentation that drainage and flowage easements over all land below the 100-year flood elevation have been conveyed to the municipality with jurisdiction and recorded.

2.5 Exceptions

No floodplain and drainage permit from the District is required:

- 2.5.1 For construction or reconstruction of a single-family home, unless any portion of the parcel is
- a Within 300 feet of the centerline of Nine Mile Creek;
 - b Within 500 feet of the ordinary high water level of any other water body; or
 - c Below the 100-year flood elevation.

- 2.5.2 If all of the following conditions exist:
- a The 100-year flood elevation of a waterbasin is entirely within a municipality;
 - b the waterbasin is landlocked;
 - c the municipality has adopted a floodplain ordinance regulating floodplain encroachment; and
 - d the proposed project is entirely within the drainage area of the waterbasin.

3.0 Wetlands Management

3.1 Policy

It is the policy of the Board of Managers to ensure the preservation of the natural resources, habitat, water treatment and water storage functions of wetlands. This rule is intended to:

- 3.1.1 Achieve no net loss in the extent, quality and ecological diversity of existing wetlands in the watershed.
- 3.1.2 Require buffers around wetlands affected by land-altering activities regulated by the District.
- 3.1.3 Prevent direct and indirect impacts to wetlands and require replacement of wetlands affected by land-altering activities regulated by the District.
- 3.1.4 Maintain wetland integrity and prevent fragmentation of wetlands.

3.2 Regulation

- 3.2.1 Where the District is the local government unit implementing the Wetland Conservation Act, a permit from the District is required for any activity that results in the draining, excavation, or filling of a wetland. The Wetland Conservation Act, as amended, and its implementing rules, as amended, are incorporated into these rules.
- 3.2.2 The buffer provisions of section 3.4 of this rule and the stormwater-treatment provisions of section 3.5 of this rule apply to any project requiring a permit from the District. In cases where the District is not the responsible local government unit for the Wetland Conservation Act, section 3.4 and section 3.5 nevertheless apply, pursuant to the District's watershed authority.
 - a Section 3.4 and section 3.5 do not apply to wetlands, the filling or draining of which is exempted from regulation under the incidental or de minimus exemptions of the Wetlands Conservation Act, as amended.

3.3 Replacement wetlands

3.3.1 When required under the conditions of a permit issued by the District, replacement wetlands must be sited in the following order of priority:

- a On site;
- b Within the same subwatershed;
- c In the Nine Mile Creek watershed;
- d In the seven-county metropolitan area of the Minnesota River–Shakopee major surface water watershed (No. 33) (*see* Map, Appendix 3a);
- e In the Minnesota River–Shakopee major surface water watershed (No. 33), but replacement wetlands of at least equal size to the affected wetland area must be sited within the seven-county metropolitan area of the Minnesota River–Shakopee major surface water watershed (No. 33).

3.3.2 Replacement wetlands, where permitted by the District, must be sized at a ratio to the affected wetland of:

- a two-and-one-quarter-to-one (2.25:1) within the seven-county metropolitan area of the Minnesota River–Shakopee major surface water watershed (No. 33);
- b three-to-one (3:1) outside of the seven-county metropolitan area of the Minnesota River–Shakopee major surface water watershed (No.33), with at least one-to-one replacement within the seven-county metropolitan area of the Minnesota River–Shakopee major surface water watershed (No. 33);
- c nine-to-one (9:1), if the affected wetland is a high quality wetland (*see* wetlands definitions in Appendix 3b), with at least one-to-one replacement within the seven-county metropolitan area of the Minnesota River–Shakopee major surface water watershed (No. 33).

3.4 Wetland buffers

Any activity for which a permit is required under any District rule(s) must provide buffer meeting the following criteria:

3.4.1 Subject to section 3.4.2, buffers must extend:

- a Average 60 feet from the edge of high value wetlands, minimum 30 feet;

- b Average 40 feet from the edge of medium value wetlands, minimum 20 feet;
 - c Average 20 feet from the edge of low value wetlands, minimum 10 feet.
- 3.4.2 Where a buffer encompasses all or part of a slope averaging 12 percent or greater over a distance of 50 feet or more upgradient of the wetland, calculated using a reasonably precise topographic surface model, the buffer shall extend to the extent specified under section 3.4.1 or to the top of the slope, whichever is greater. An existing contour alteration or artificial structure on a slope constitutes a break in slope only if it will indefinitely dissipate upgradient velocity and trap upgradient pollutant loadings.
- 3.4.3 The buffer is required:
 - a Adjacent to any wetlands on property that is the subject of a District permit; and
 - b Around each altered wetland.
- 3.4.4 A buffer shall be indicated by permanent, free-standing markers at the buffer's upland edge, with a design and text approved by the District in writing. A marker shall be placed along each lot line, with additional markers at an interval of no more than 200 feet. If a District permit is sought for a subdivision, the monumentation requirement will apply to each lot of record to be created. On public land or right-of-way, the monumentation requirement may be satisfied by the use of a marker flush to the ground or breakaway markers of durable material.
- 3.4.5 Wetland buffer areas created in compliance with this rule must be planted with native vegetation and maintained to retain natural resources and ecological value. Existing wetland buffer areas preserved in compliance with this rule must be managed in a naturalized condition to encourage growth of native vegetation and eliminate invasive species. Buffer vegetation shall not be cultivated, cropped, pastured, mowed, fertilized, subject to the placement of mulch or yard waste, or otherwise disturbed, except for periodic cutting or burning that promotes the health of the

buffer, actions to address disease or invasive species, mowing for purposes of public safety, temporary disturbance for placement or repair of buried utilities, or other actions to maintain or improve buffer quality, each as approved by the District in advance in writing or when implemented pursuant to a written agreement executed with the District. Pesticides and herbicides may be used in accordance with Minnesota Department of Agriculture rules and guidelines. No new structure or hard surface shall be placed within a buffer. No fill, debris or other material shall be excavated from or placed within a buffer. Boardwalks and trails designed for nonmotorized use and stormwater management facilities may be located within a buffer area upon approval of the District.

- 3.4.6 A buffer shall be documented by a declaration or other document approved by the District and recorded in the office of the county recorder or registrar before activity under the permit commences. A buffer on public land or right-of-way may be documented in a written agreement executed with the District in lieu of a recorded document; the agreement shall state that if the land containing the buffer is conveyed, the public body shall require the buyer to comply with this subsection.

3.5 Stormwater treatment

Use of an existing or created wetland for stormwater treatment as part of a proposed development, redevelopment or other land-altering project regulated under District rules must comply with the following criteria:

- 3.3.1 Stormwater must be treated before discharge to a wetland.
- a High value wetlands cannot be used for stormwater management where another alternative is feasible; when permitted, any discharge to a high value wetland must be treated to at least sixty percent (60%) removal efficiency for phosphorus and at least ninety percent (90%) removal efficiency for total suspended solids prior to discharge to the wetland.

3.6 Required information and exhibits

The following exhibits shall accompany the permit application; one set full-size (22 inches by 34 inches), one set reduced to a maximum of 11

inches by 17 inches) and one set as electronic files in a format acceptable to the District:

3.6.1 A wetland delineation, type determination and function and values assessment of pre- and post-disturbance wetland and replacement wetland using a methodology authorized under the Wetland Conservation Act. The delineation must be conducted by a wetland professional and supported by the following documentation:

- a Identification of the delineation method used;
- b Identification of presence or absence of normal circumstances or problem conditions;
- c Basin classification using a Wetlands Conservation Act-acceptable methodology;
- d Wetland data sheets, or a report, for each sample site, referenced to the location shown on the delineation map. In each data sheet/report applicant must provide the reasoning for satisfying, or not satisfying each of the technical criteria and why the area is or is not a wetland;
- e A delineation map showing the size, locations, configuration and boundaries of wetlands in relation to identifiable physical characteristics, such as roads, fence lines, waterways or other identifiable features;
- f The location of all sample sites and stakes/flags must be accurately shown on the delineation map. Delineations submitted by applicants will normally be field-verified by District staff. Applicants must leave stakes in the field to aid review of the site. Wetland delineations should be performed during the normal growing season for this area of the State of Minnesota (April 15 – October 15). Delineations performed outside this time frame may or may not be permitted, depending on potential wetland impact in relation to the entire development or project.

3.6.2 Site plan showing:

- a Property lines and corners and delineation of lands under ownership of the applicant.
- b Existing and proposed elevation contours, including the existing runoff elevation and flow capacity of the wetland

outlet, and spoil disposal areas.

- c Area of the wetland portion to be filled, drained, excavated or otherwise altered.

3.6.3 A replacement plan, if required, outlining the steps followed for the sequencing process and including documentation supporting the proposed mitigation plan.

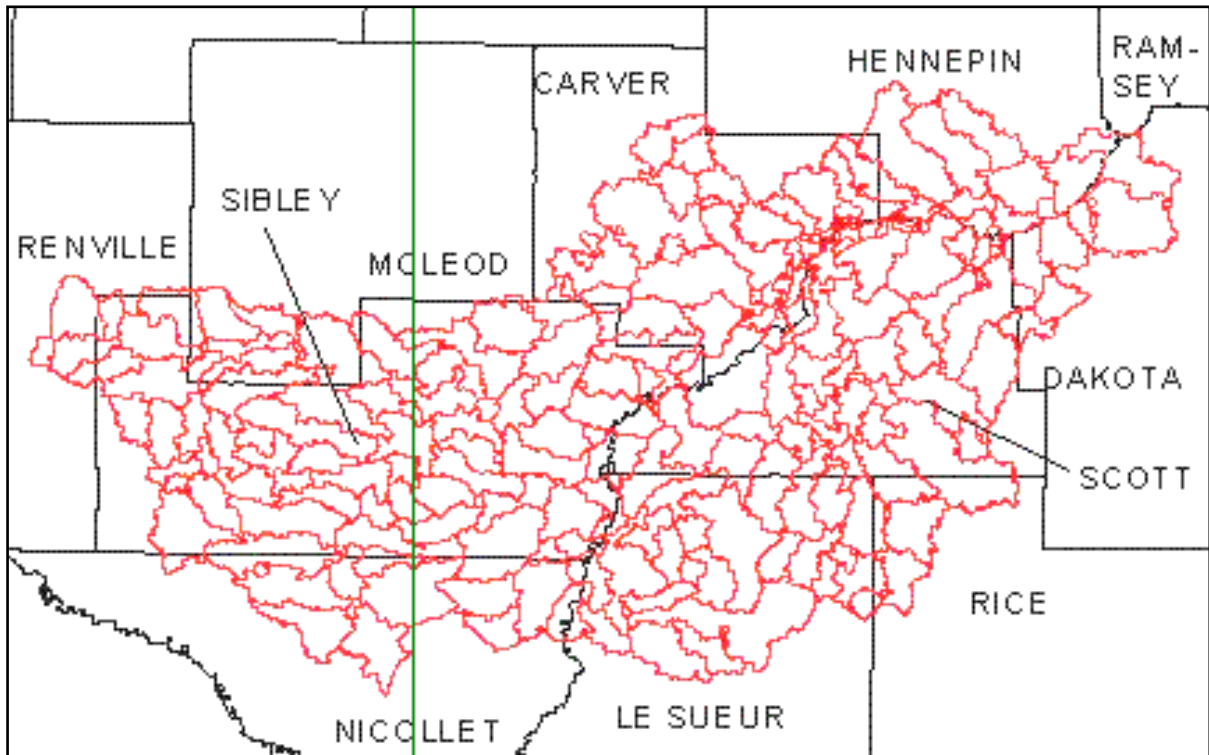
3.6.4 An erosion control plan complying with District Rule 4.0

3.7 Exceptions

A District wetlands–management permit is not required:

- 3.7.1 To create, restore or improve a wetland and/or buffer pursuant to a District–approved natural resources restoration management plan;
- 3.7.2 To plant native wetland or buffer vegetation;
- 3.7.3 To selectively remove or prune trees or vegetation that is diseased, noxious, invasive or otherwise hazardous.
- 3.7.4 To selectively prune trees to maintain health.

Appendix 3a: Minnesota River–Shakopee Major Surface Water Watershed (No. 33)



Appendix 3b: Wetlands definitions

“High value wetlands” are those meeting one or more of the following rating levels pursuant to the Minnesota Routine Assessment Method (MnRAM) 3.0 or other method approved by the District:

Function or Value	Rating
Vegetative Diversity	Exceptional/High
Wildlife Habitat	Exceptional/High
Fish Habitat	Exceptional/High
Aesthetics/education/recreation/cultural AND Wildlife Habitat	Exceptional/High High/Medium
Stormwater Sensitivity AND Vegetative Diversity	Exceptional/High Medium or greater
Vegetative Diversity AND Maintenance of hydrologic regime	High/Medium High or greater

“Medium value wetlands” are those that do not qualify as high value wetlands but that meet one or more of the following rating levels pursuant to the Minnesota Routine Assessment Method (MnRAM) 3.0 or other method approved by the District:

Function or Value	Rating
Vegetative Diversity	Medium
Wildlife Habitat	Medium
Fish Habitat	Medium
Aesthetics/education/recreation/cultural AND Wildlife Habitat	Medium Low
Stormwater Sensitivity AND Vegetative Diversity	Medium Low
Vegetative Diversity AND Maintenance of Hydrologic Regime	Low Medium

“Low value wetlands” are those do not qualify as a “high” or “medium” wetlands.

4.0 Stormwater Management

4.1 Policy

It is the policy of the District to regulate the management of stormwater runoff to:

4.1.1 Require that onsite retention and regional water quality treatment systems operate together to provide complete and effective runoff management, through the following principles:

- a Manage peak runoff rates to achieve rates equal to or below existing rates;
- b Manage runoff volume to achieve a net reduction from existing conditions;
- c Provide effective water quality treatment to remove sediment, pollutants and nutrients from stormwater and snowmelt before discharge to surface water bodies and wetlands; and
- d Provide for nondegradation of surface water bodies in the watershed.

4.1.2 Encourage the use of Better Site Design, Low Impact Development and other techniques that minimize impervious surfaces or incorporate volume-control practices, such as infiltration, to limit runoff volumes.

4.1.3 Maximize opportunities to improve stormwater and snowmelt management presented by redevelopment of land.

4.2 Regulation

A permit from the District, incorporating an approved stormwater management plan, is required under this rule prior to the commencement of any activities to which this rule applies. The District may review a stormwater management plan at any point in the development of a regulated project and encourages project proposers to seek early review of plans by the District.

4.2.1 The requirements of this rule apply to:

- a Land-alteration activities that will disturb 50 cubic yards or more of earth,
- b Land-alteration activities that will disturb 5,000 square feet or more of vegetation, or
- c Subdivision of a parcel into three or more residential lots.

4.2.2 Notwithstanding the provisions of section 4.2.1, the requirements of this rule do not apply to:

- a Construction or reconstruction of a single-family home, unless any portion of the parcel is:
 - 1 Within 300 feet of the centerline of Nine Mile Creek,
 - 2 Within 500 feet of the ordinary high water level of any other public water or protected wetland, or
 - 3 Below the 100-year flood elevation.
- b Construction or reconstruction of a single-family home consistent with a subdivision, development or redevelopment plan that is subject to an active District permit.

4.2.3 **Redevelopment.** If a proposed activity will disturb more than 50 percent of the existing impervious surface on the parcel or will increase the imperviousness of the entire parcel by more than 50 percent, the criteria of section 4.4 will apply to the entire project parcel. Otherwise, the criteria of section 4.4 will apply only to the net additional impervious surface on the project parcel.

4.2.4 **Linear projects.** Notwithstanding section 4.2.3, a permit under this rule is not required for a linear project if the project entails construction or reconstruction, including mill and overlay or other maintenance, creating less than 1 acre of new or additional impervious surface.

4.3 Criteria

4.3.1 An applicant for a permit under this rule must demonstrate, using a model acceptable to the District, that the implementation of its stormwater management plan will:

- a Provide for the retention onsite of one inch of runoff from all impervious surface of the parcel;
- b Limit peak runoff flow rates to that from existing conditions for the 2-, 10- and 100-year storm events for all points where stormwater discharge leaves a parcel; and
- c Provide for all runoff from the 2.5-inch storm event to be treated, through onsite or offsite detention, to at least sixty

percent (60%) removal efficiency for phosphorus, and at least ninety percent (90%) removal efficiency for total suspended solids. The onsite retention of runoff may be included in demonstrating compliance with the total suspended solids and phosphorus removal requirements.

4.3.2 **Low floor elevation:** No structure may be constructed or reconstructed such that its lowest floor elevation is less than 2 feet above the 100-year event flood elevation.

a All structures riparian to inundation areas or constructed or natural stormwater management facilities must be located and elevations must be set according to Appendix 4a, "Suggested Low Floor Guidance."

b **Landlocked basins:** Any new or reconstructed structure wholly or partially within a landlocked basin must be constructed such that its lowest floor elevation is:

- 1 1 ft above the surface overflow of the basin, or
- 2 2 ft above the elevation resulting from two concurrent 100-year single rainfall events in a 24-hour period or a 100-year, 10-day snowmelt, whichever is higher.
- 3 The starting elevation of the basin prior to the runoff event shall be established by one of the following:
 - A Existing ordinary high water elevation established by the Minnesota Department of Natural Resources;
 - B Annual water balance calculation approved by the District;
 - C Local observation well records, as approved by the District; or
 - D Mottled soil.

4.3.3 **Maintenance:** All stormwater management structures and facilities must be designed for maintenance access and properly maintained in perpetuity to assure that they continue to function as designed. Permit applicants must provide a maintenance plan that identifies and protects the design, capacity and functionality of onsite and offsite stormwater management facilities; specifies the methods, schedule and responsible parties for maintenance; provides for the maintenance in perpetuity of the facility; and contains at a minimum the requirements in the District's standard maintenance declaration. The plan will be recorded on the deed in a form

acceptable to the District. A municipality assuming the maintenance obligation may do so by filing with the District a document signed by an official with authority.

4.4 Volume banking

The District has established and will maintain a bank of available runoff retention Volume Credits.

4.4.1 Volume reduction or runoff retention achieved onsite in excess of the requirement of Section 4.4.1 may be credited into the District's bank for use on other projects within the District that are unable fully to meet this requirement on parcel.

4.4.2 Stormwater management facilities or practices relied upon to create Volume Credits must be included in the recorded permanent maintenance plan specified in Section 4.4.3.

4.4.3 Volume Credits may be utilized by permit applicants to meet the requirement of Section 4.4.1a only after the applicant has demonstrated to the District that:

- a One-half inch of runoff from all impervious surface of the parcel will be retained on the parcel;
- b Soil conditions and/or other site constraints prevent retention of additional runoff onsite.

4.4.4 The District will maintain an inventory of all qualified Volume Credits accumulated and sold. Permit applicants are responsible for contacting a seller of Volume Credits and arranging the sale on terms established by the interested parties. The District will certify the sale through a form established by the District and completed by the buyer and seller of the Volume Credits.

4.4.5 If a project qualifies for use of volume banking credits but applicable credits are not available in the bank for the volume reduction required, the applicant shall pay into the District's Stormwater Facilities Fund to cover the cost of implementing offsetting volume-reduction projects elsewhere in the watershed. The required contribution rate shall be set by the Board annually.

- a Funds contributed to the Stormwater Facilities Fund from a local government unit shall be spent within that local government unit's jurisdiction to the extent possible.
- b Funds contributed to the Stormwater Facilities Fund shall be allocated to volume reduction projects by the District

according to the Stormwater Facilities Fund Implementation Plan as approved by the Board.

4.5 Required exhibits

The following exhibits shall accompany the permit application; one set full size (22 inches by 34 inches); one set reduced to maximum size of 11 inches by 17 inches, and one set as electronic files in a format acceptable to the District:

- 4.5.1 A narrative explaining Better Site Design/Low Impact Development techniques that were evaluated during the development of the design for the project, the results of the evaluation of each and, for any techniques that were deemed infeasible, the reasoning for the determination.
- 4.5.2 Stormwater management system modeling in a form acceptable to the District.
- 4.5.3 A site plan showing:
 - a Property lines and delineation of lands under ownership of the applicant.
 - b Existing and proposed elevation contours.
 - c Identification of existing and proposed normal, and ordinary high and 100-year water elevations onsite.
- 4.5.4 A stormwater pollution prevention plan including, at a minimum,
 - a Proposed and existing stormwater facilities' location, alignment and elevation.
 - b Delineation of existing wetlands, marshes, shoreland and/or floodplain areas onsite or to which any portion of the project parcel drains.
 - c Geotechnical analysis including soil borings at all proposed stormwater management facility locations.
 - d Construction plans and specifications for all proposed stormwater management facilities, including design details for outlet control structures.
 - e Stormwater runoff volume and rate analyses for the 24-hour, 2-, 10- and 100-year critical events, existing and proposed conditions.
 - f All hydrologic, water quality, and hydraulic computations completed to design the proposed stormwater management

facilities.

- g Narrative addressing incorporation of retention BMPs.
 - h Platting or easement documents showing sufficient drainage and ponding/flowage easements over hydrologic features such as floodplains, storm sewers, ponds, ditches, swales, wetlands and waterways.
 - i Documentation as to the status of the project's National Pollutant Discharge Elimination System stormwater permit, if applicable.
- 4.5.5 An erosion control plan complying with District rule 5.0.
- 4.5.6 Upon completion of site work, a permittee must submit as-built drawings demonstrating that at the time of final stabilization, stormwater facilities conform to design specifications as approved by the District.

Appendix 4a: "Suggested Low Floor Guidance."

5.0 Erosion and Sediment Control

5.1 Policy

It is the policy of the District to ensure management of land disturbances to:

- 5.1.1 Minimize erosion.
- 5.1.2 Alleviate identified erosion problems.
- 5.1.3 Minimize the duration and intensity of soil and cover disturbances.
- 5.1.4 Require local governments and developers to manage runoff effectively to minimize water quality impacts from new development, redevelopment and other land-disturbing activities.
- 5.1.5 Encourage Low Impact Development techniques and approaches.
- 5.1.6 Minimize compaction of soil from land-disturbing activities and encourage decompaction of soil compacted by land-disturbing activities.

5.2 Regulation

- 5.2.1 An erosion and sediment control permit must be obtained for any land-alteration activities that will disturb
 - a 50 cubic yards or more of earth, or
 - b 5,000 square feet or more of surface soil or vegetation.

5.3 Criteria

- 5.3.1 Permit approval requires preparation of an erosion and sediment control plan that provides:
 - a protection of natural topography and soil conditions;
 - b temporary erosion and sediment control practices such as silt fencing, fiber logs, rock construction entrances, temporary seeding, erosion control blanketing, mulching, floatation silt curtains and other practices as specified by the District and consistent with the Minnesota Pollution Control Agency's "Protecting Water Quality in Urban Areas," as amended or updated, and the "Minnesota Stormwater Manual," as amended or updated;
 - c minimization of the disturbance intensity and duration, including phasing of site disturbance to minimize quantity of

- disturbed area at any one time;
 - d additional measures, such as hydraulic mulching and other practices as specified by the District, on slopes of 3:1 (H:V) or steeper to provide adequate stabilization;
 - e protection of stormwater facilities during construction;
 - f permanent, final site stabilization measures.
- 5.3.2 All construction site waste, such as discarded building materials, concrete truck washout, chemicals, litter and sanitary waste at the construction site will be properly managed and disposed of so they will not have an adverse affect on water quality.
- 5.3.3 Site stabilization
- a All temporary erosion and sediment control BMPs must be maintained until completion of construction and vegetation is established sufficiently to ensure stability of the site, as determined by the District.
 - b All temporary erosion and sediment control BMPs must be removed upon permanent stabilization.
 - c Soil surfaces disturbed or compacted during construction and remaining pervious upon completion of construction must be decompacted through soil amendment and/or ripping to a depth of 18 inches while taking care to avoid utilities, tree roots and other existing vegetation prior to final revegetation or other stabilization.
 - d All disturbed areas must be permanently stabilized within 14 days of completion of land alteration.
- 5.3.4 Inspection and maintenance. The permit holder will be responsible for the inspection, maintenance and effectiveness of all erosion and sediment control facilities, features and techniques until final site stabilization. The permittee must, at a minimum, inspect, maintain and repair all disturbed surfaces and all erosion and sediment control facilities and soil stabilization measures every day work is performed on the site and at least weekly until land-disturbing activity has ceased. Thereafter, the permittee must perform these responsibilities at least weekly until permanent vegetative cover is established. The permittee shall maintain a log

of activities under this section for inspection by the District on request. Between November 15 and snowmelt, and if site work ceases before completion for more than 14 consecutive days, the weekly inspection requirement of section 5.3.4 may be reduced to monthly if the site is managed such that:

- a Exposed soils are stabilized with established vegetation, straw or mulch, matting, rock or other approved product such as rolled erosion control product. Seeding is encouraged, but is not alone sufficient.
- b Temporary and permanent ponds and sediment traps are graded to capacity before spring snowmelt. This does not include infiltration/filtration facilities, which must be kept free of sediment until the site is fully stabilized.
- c Sediment barriers are properly installed at necessary perimeter and sensitive locations.
- d Slopes and grades are properly stabilized with approved methods. Rolled erosion control products must be used on steep slopes and where erosion conditions dictate.
- e Stockpiled soils and other materials subject to erosion are protected by established vegetation, anchored straw or mulch, rolled erosion control product or other durable covering; a barrier prevents movement of eroded materials from the location.
- f All construction entrances are properly stabilized.
- g Snow management protects erosion and sediment control measures.

5.4 Required information and exhibits

The following exhibits shall accompany the permit application; one set full-size (22 inches by 34 inches), one set reduced to a maximum of 11 inches by 17 inches) and one set as electronic files in a format acceptable to the District:

5.4.1 An application including:

- a the name, address and telephone number(s) of all property owners;
- b the name, address and telephone number(s) for all contractors undertaking land-disturbing activities as part of the proposed

- project;
 - c the signature of the property owner(s);
 - d a statement granting the District and its authorized representatives access to the site for inspection purposes;
 - e designation of an individual who will remain liable to the District for performance under this rule from the time the permitted activities commence until vegetative cover is established and the District has certified satisfaction with erosion and sediment control requirements.
- 5.4.2 An erosion and sediment-control plan including:
- a topographic maps of existing and proposed conditions that clearly indicate all hydrologic features and areas where grading will expose soils to erosive conditions, as well as the flow direction of all runoff;
 - 1 single-family home construction or remodeling projects may comply with this provision by providing satellite imagery or an oblique map acceptable to the District;
 - b for all projects except construction or remodeling of a single-family home, tabulation of the construction implementation schedule;
 - c name, address and phone number of the individual responsible for maintenance of all erosion and sediment control measures;
 - d clear identification of all temporary erosion and sediment control measures that will remain in place until permanent vegetation is established;
 - e clear identification of all permanent erosion control measures and their locations;
 - f clear identification of staging areas, as applicable;
 - g delineation of any floodplain and/or wetland area changes.
 - h documentation as to the status of the project's National Pollutant Discharge Elimination System stormwater permit, if applicable.

5.5 Surety

The District may require the applicant to file a surety in accordance with Rule 8.0. The surety will be maintained until:

- 5.5.1 Final site stabilization and removal of erosion and sedimentation controls, as determined by the District, and the payment of all fees due to the District;
- 5.5.2 Forty-five (45) days after written notification to the District by the applicant that all temporary erosion and sedimentation controls have been removed from the site; or
- 5.5.3 Such earlier time as the District may advise the applicant in writing.

6.0 Variances and Exceptions

6.1 Variances

The Board of Managers may consider requests for variances from strict compliance with the requirements of a District rule. To grant a variance, the Board of Managers must find, based on demonstration by the applicant:

- 6.1.1 That because of unique conditions inherent to the subject property, which do not apply generally to other land or structures in the District, undue hardship on the applicant, not mere inconvenience, will result from strict application of the rule;
- 6.1.2 that the hardship was not created by the landowner, the landowner's agent or representative, or a contractor, and is unique to the property. Economic hardship alone may not serve as grounds for issuing a variance if any reasonable use of the property exists under the terms of the District rules;
- 6.1.3 that the activity for which the variance is sought will not materially adversely affect water resources, flood levels, drainage or the general welfare in the District; and
- 6.1.4 that there is no feasible and prudent alternative to the proposed activity requiring a variance.

6.2 Exceptions

The Board of Managers may approve an exception from a provision of the rules requiring a particular treatment or management strategy, or setting forth a design specification, if an applicant demonstrates that better natural resource protection or enhancement can be achieved by the project as proposed, with such further conditions as the Board of Managers may impose, than would strict compliance with the provision.

6.3 Violation

A violation of any condition of a permit approved with a variance constitutes grounds for termination of the variance.

7.0 Permit Fees

7.1 Policy

It is the determination of the Board of Managers that

- 7.1.1 charging a minimal permit application fee will increase public awareness of and compliance with District permitting requirements, and will reduce enforcement and inspection costs,
- 7.1.2 the public interest will benefit from inspection by District staff of certain large-scale projects in locations presenting particular risk to water resources to provide the Board of Managers with sufficient information to evaluate compliance with District rules and applicable law, and the District's annual tax levy should not be used to pay such costs, and
- 7.1.3 from time to time persons perform work requiring a permit from the District without a permit, and persons perform work in violation of an issued District permit. The Board of Managers determines that its costs of inspection and analysis in such cases will exceed such costs where the applicant has complied with District requirements. The Board of Managers further concludes that its annual tax levy should not be used to pay costs incurred because of a failure to meet District requirements but rather such costs should be recovered from the responsible parties.

7.2 Requirement

The District will charge applicants permit fees in accordance with a schedule that will be maintained and revised from time to time by resolution of the Board of Managers to ensure that permit fees cover the District's actual costs of administering and enforcing permits and the actual costs related to field inspections of permitted projects, such as investigation of the area affected by the proposed activity, analysis of the proposed activity, services of a consultant and any required subsequent monitoring of the proposed activity. Costs of monitoring an activity authorized by permit may be charged and collected as necessary after issuance of the permit. The fee schedule may be obtained from the District office or the District's web site at <http://www.ninemilecreek.org/index.html>. A permit applicant must submit the required permit fee to the District at the time it submits the

relevant permit application. The fee provided for in this Rule shall not be charged to any agency of the United States or of any governmental unit or political subdivision of the State of Minnesota.

8.0 Sureties

8.1 Policy

It is the policy of the District to protect and conserve the water resources of the District by requiring a bond or other surety with a permit application to ensure adequate performance of the authorized activities and compliance with the District Rules.

8.2 Requirement

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 performance surety will not be required of any agency of the United States or of any governmental unit or political subdivision of the State of Minnesota.

8.3 Criteria

Sureties required pursuant to this rule must be issued in compliance with the following criteria:

- 8.3.1 The surety shall be a performance bond or letter of credit or other form acceptable to the District, and a commercial surety shall be from an issuer licensed and doing business in Minnesota. Surety templates may be obtained from the District web site at www.ninemilecreek.org/general/index.html and also are available from the District office.
- 8.3.2 The surety shall be issued in favor of the District and conditioned upon the applicant's performance of the activities authorized in the permit in compliance with the terms and conditions of the permit and all applicable laws, including the District's rules, 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. In the event that the District makes a claim against a surety, the full amount of the surety required must be restored within 45 days.
- 8.3.3 The surety must be effective for at least three years from the date of issuance and shall contain a provision that it may not be

canceled without at least thirty (30) days prior written notice to the District.

- 8.3.4 The surety shall be submitted by the permit applicant, but the surety principal may be either the landowner or the individual or entity undertaking the proposed activity.
- 8.3.5 No surety will be released except pursuant to the terms of section 8.4.
- 8.3.6 No interest will be paid on sureties held by the District.
- 8.3.7 The types and amounts of sureties required by the District will be set by the Board of Managers by resolution. The schedule of surety amounts and types will be maintained on the District website at www.ninemilecreek.org/general/index.html and also will be available from the District office. Surety amounts will be set as necessary to cover the following potential liabilities to the District:
- a field inspection, monitoring and related fees authorized under Minn. Stat. § 103D.345;
 - b the cost of maintaining and implementing erosion and sediment control and other protective measures required by the permit;
 - c the cost of remedying damage resulting from noncompliance with the permit or for which the permittee is otherwise responsible.

8.4 Surety Release

On written notification of completion of a project, the District will inspect the project to determine if the project has been 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 permit fees, the District will release the surety. Final inspection compliance includes, but is not limited to, confirmation that the site has been permanently vegetated and stabilized to prevent erosion and sedimentation (per Rule 5, section 5.3.3) and stormwater management features have been constructed or installed and are functioning as designed. The District may return a portion of the surety if it finds that the entire surety amount is no longer required to ensure compliance with the permit conditions and District rules. 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 writing releasing the surety if needed to meet the issuer's requirements.