

		<b>Comments and Responses on 2022 Proposed Rule Revisions</b>		
		<i>Comment Period October 24, 2023 through December 11, 2023</i>		
	<b>Rule Reference</b>	<b>Commenter/Affiliation</b>	<b>Comment</b>	<b>Response</b>
1	Section 4.3.3	Patrick Sejkora, City of Eden Prairie	Section 4.3.3 incorporates language regarding "reasonable attempt to obtain additional right-of-way" and "Volume retention is not required if the necessary management facilities cannot be provided cost effectively." While this language is consistent with the Minnesota Pollution Control Agency's (MPCA) Municipal Separate Storm Sewer System (MS4) permit language for linear projects, the City has some concerns that incorporating this language into the Nine Mile Creek Watershed District rules may affect its own authority to make determinations on what is "reasonable" and "cost effective" as a MS4 Permittee, the MPCA does not define "reasonable" or "cost effective" in the MS4 Permit. Instead these determinations are largely at the discretion of the Permittee, as projects vary in size and scope, Permittees have varying financial resources, and Permittees may have differing policies on right-of-way acquisition. Permittees' decisions on these effort may then be evaluated by the MPA at the time of an audit. While the City does not see a viable alternative to incorporating the proposed language regarding "reasonable" and "cost effectively" in the Nine Mile Creek Watershed District rules for linear projects, it is our hope that the District allows municipal Permittees flexibility and authority in making determinations on what is "reasonable" and "cost effective" for a given linear project.	NMCWD understands that a determination on whether an application includes "reasonable" efforts to acquire property for stormwater treatment or whether a particular treatment option is "cost effective" is necessarily subjective and not entirely technical or engineering. NMCWD has no intention to impose onerous analyses on road authorities. As stated in the memo accompanying the proposed rule change, NMCWD's principal goal is to review the circumstances of road projects triggering the rule, and applicants' analyses of land-acquisition efforts and stormwater-management design. NMCWD does not reason that constraining the process with specific definitions of "reasonable" or "cost effectively" is warranted or will be productive, especially given lack of experience with the smaller road projects covered by the rule.
2	Section 4.3.3	Sarah Schweiger, City of Minnetonka	Add clarification to rule 4.3.3 Linear Projects- if an existing stormwater BMP already provides water quality treatment to the project area and the applicant can provide documentation that the design capacity of the existing BMP is greater than or equal to the volume requirement, addition treatment is not required.	If it otherwise qualifies under the rules, the applicant has the necessary rights to use it, and the applicant can demonstrate available treatment capacity, an existing practice or facility may be utilized to meet NMCWD stormwater-management criteria. The proposed changes do not affect this framework.
3	Section 4.3.3	Sarah Schweiger, City of Minnetonka	Add language to rule 4.3.3 Linear Projects to clarify that condemnation is not considered "reasonable" or "cost effective"	NMCWD does not intend to categorically rule out condemnation to acquire land for stormwater management facilities, but acknowledges that condemnation is a costly and cumbersome tool under most circumstances.
4	Section 4.3.3	Sarah Schweiger, City of Minnetonka	Add language to rule 4.3.3 Linear Projects to clarify who and how it will be determined what a "reasonable attempt" is and what is "cost effective". Consider defining this as an administrative process and to be determined by the District Engineer	NMCWD will follow the established process of basing permit decision on the NMCWD engineer and staff's analysis of an application, along with a recommendation on approval. No change in the existing delegation of permit-approval authority to the administrator is planned, but NMCWD staff may bring a linear-specific delegation to the managers for consideration in coming months. To retain flexibility to best manage the permitting process, NMCWD will not hard-wire approval authority into rule text.
5	Section 4.3.3	Sarah Schweiger, City of Minnetonka	Please consider adding language to clarify that for linear projects creating less than 1 acre of new impervious that investigating regional treatment is not required.	The regional provisions in the rule represent an option an applicant may use for stormwater treatment. An applicant is not obligated to investigate or use a regional treatment plan.

6	Section 4.2.4	Bryan Gruidl, City of Bloomington	The city often reconstructs roads and other linear projects in discrete areas of the city. It is common for the city to package multiple discrete project areas into a common plan of development and construct the projects during the same construction season under a common plan of development. The City of Bloomington requests that discrete linear projects being constructed within a larger common plan of development are treated as separate projects if the area between the project sites is not being disturbed. This approach is consistent with the Minnesota Pollution Agency's Common Plan of Development.	If projects are not contemporaneous <u>and</u> geographically connected, then they will not be considered a common plan of development. Assessment will be made on a case-by-case basis and will follow practical and reasonable analysis of the terms "contemporaneous" and "connected."
7	Section 4.3.3	Eric Klingbeil, City of Hopkins	Add clarification to explain that impervious surface that is already receiving treatment will not require additional treatment to be added if/when that same impervious surface is reconstructed. "If the required volume is retained by an existing stormwater BMP, no additional volume retention shall be required, so long as the applicant can demonstrate the design capacity of the existing BMP is greater to or equal to the volume requirement"	Existing stormwater BMPs may be used provided they conform to the rules as pertains to regulated impervious surfaces and have remaining capacity. Existing impervious that is fully reconstructed may be subject to stormwater treatment requirements; each project will be assessed against the thresholds in revised subsection 4.2.4 to determine whether the stormwater-management criteria in subsection 4.3.3 apply.
8	Section 4.3.3	Eric Klingbeil, City of Hopkins	Add language to clarify that condemnation is not considered "reasonable " or "cost effective". "Although condemnation can be considered, it will not be recognized as "reasonable" and/or "cost effective".	Please see the response to comment 3.
9	Section 4.3.3	Eric Klingbeil, City of Hopkins	Add clarification on who will determine/how it will be determined what is a "reasonable attempt" and/or "cost effective" Will these be administrative decisions? "for review by the NMCWD engineer"	Please see the response to comment 4.
10	Section 4.3.7	Eric Klingbeil, City of Hopkins	Will it be required to investigate regional treatment as a "reasonable attempt" for treating linear projects creating less than 1 acre of new impervious.	Please see the response to comment 5.
11	Section 4	Jeffrey Berg, Minnesota Department of Agriculture	MDA has no comments	Thank you for reviewing.
12	Section 4	Joe Mulcahy, Metropolitan Council of Environmental Services	The Metropolitan Council has no comments on the proposed revisions to the District's Rules.	Thank you for reviewing.