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MEMO

TO: Rule reviewers
FROM: NMCWD staff
DATE: 12-21-2022
RE: NMCWD Rule Revisions

Purpose

The purpose of this memo is to review and discuss several draft rule revisions and the factors and analysis behind them. Staff has prepared draft changes which include:

- Simpler “housekeeping” clarifications
- Change to the application of stormwater requirements to single-family home projects
- Narrowing scope of application of low-floor requirement, codifying NMCWD resolution 22-02 policy

Attachments

The following documents associated with the proposed rule changes are attached with this memo:

- Matrix of changes
- Rules with draft tracked changes

Background

At several board meetings, staff and the managers have discussed proposed revisions to the District’s rules, (including the District’s stormwater management rule as it pertains to single-family home projects). At the board’s June 2, 2022, workshop, it was the consensus of the managers that a change to the District’s stormwater management rule for single family homes may be needed and that staff should analyze the three years of single family home permit data since the May 2018 rule revision, and draft proposed revisions to bring back to the managers and present to the District’s Technical Advisory Committee (TAC).

Staff presented the proposed rule revisions at an August 30, 2022 TAC meeting where the main comments received during and after the meeting were:

- To make sure that the District’s rules are not in conflict the cities’ MS4 General Permits
- Suggested five-year time frame for cumulative tracking of houses’ Stormwater Management-triggering activities.

As part of the TAC meeting, staff did present the following draft stormwater management rule revision and data analysis for single family homes.

Single family residential stormwater

1. NMCWD's rules most recently updated in 2018 and 2021
 - a. 2021 update did not make a policy change to stormwater management as it applies to single family residences
2. 2018 update added stormwater treatment requirements for single family residential as follows:
 - a. New homes treat whole site
 - b. Redeveloped homes proposing <25% increase in impervious square footage do not require treatment
 - c. Redeveloped homes proposing 25+% increase in impervious square footage and disturb less than 50% of existing impervious surface require treatment of added, disturbed, and reconstructed impervious surface
 - d. Redeveloped homes proposing 25+% increase in impervious square footage and disturb 50+% of existing impervious surface require treatment of whole site
 - e. Stormwater management requirements apply based on cumulative permit-triggering activities on the site dating back to May 21, 2018

May 2018 through July 2022 Stormwater Data Analysis

NMCWD has issued 620 permits between the adoption of its amended rules in May of 2018 and the end of July, 2022. Of those, 169 have triggered the District's stormwater management rule. The breakdown of those 169 permits and modeled metrics submitted as part of the approved permit application are shown below.

Non-Single-Family Permits	Single-Family Residential Permits
75 permits	94 permits
1,148 lbs phosphorous removed	23.8 lbs phosphorous removed
225,175 lbs total suspended solids removed	5,544 lbs total suspended solids removed
824,759 cubic feet volume retention	115,076 cubic feet volume retention



Proposal: Single family residential stormwater

Analysis of three years of 2018 rules indicates that adjustment of the triggers and requirements is needed to ensure an effective, efficient balance of regulatory burden against resource protection and flood-damage prevention benefits.

Generally, stormwater management would be required for these home projects:

- Demolitions with rebuild proposed
- Large additions that disturb at least half existing impervious surface square footage
- New homes (unaffected by rule change)

Stormwater management will no longer be required for most additions

Policy change: stormwater requirements will no longer be tracked cumulatively on a property

The proposed draft revised stormwater rule language for single family home (rule 4.2.3 found on page 20 of the attached draft rule revisions) is:

Redevelopment of single-family home properties. For single-family home properties: If the proposed activity will increase total impervious surface by less than 50 percent or disturb less than 50 percent existing impervious areas, no demonstration of compliance with the criteria is required.

If the proposed activity will increase total impervious surface by 50 percent or more and will disturb 50 percent or more of the existing impervious surface on the site, the stormwater criteria will apply to the entire site

Rule	Section	Description of Change [Housekeeping changes in gray]	Comments
Definitions	"Reconstruction"	Reconstruction definition – adjust to remove "the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement."	NMCWD proposes to remove definition. It is rarely implicated, but serves to allow projects to avoid the low-floor requirement where compliance would be protective. The thresholds on application of the floodplain rule serve to prevent overapplication of the requirement.
2.0	2.3.1	Subsection 2.3.1 – add in language from resolution 22-02 regarding low floor applicable to building, bridges, boardwalks.	The changes here implement a policy decision made by the NMCWD board removing the requirement that parking lots comply with the low-floor (freeboard) standard, and make it clear that the freeboard standards in subsection 4.3.3 apply to buildings, bridges and boardwalks when Rule 2.0 is triggered.
3.0	3.4	Subsection 3.4 wetland buffers – revise the following language for clarity: "must provide buffer on around the entirety of wetlands disturbed by the activity and on the portion of a wetland downgradient from the activity"	Text changes clarify that when a wetland is disturbed by project work, the entire wetland must be buffered. When there is no wetland disturbance (or such disturbance is exempt under circumstances stated in the rule), buffer is required only on the edge of the wetland that is downgradient from the disturbance. NMCWD also has created a graphics to illustrate the operation of the buffer requirement in various scenarios. The illustration will not be operative rule information, but just explanatory. NMCWD

			will make the illustration available as guidance on its website.
	3.4.7	“A buffer must be documented by a declaration or other document approved by the District, and recorded in the office of the county recorder or registrar <u>before</u> the permit will be issued.” Remove “before” to allow recordation as a closeout stipulation. This change would be consistent with the requirement in rule 4.0.	NMCWD proposes to remove “before” – giving staff and applicants flexibility to require the documentation as a condition or stipulation of approval.
4.0	4.2.2, 4.2.4, 4.3.3	Clarify by removing “notwithstanding” from subsections 4.2.2, 4.2.4, 4.3.3.	Housekeeping.
	4.2.3	Revise operation of stormwater requirements for single-family home redevelopment project.	Explanation provided in accompanying memo.
	4.2.4	Linear projects. In reviewing an early draft of the proposed amendments, the NMCWD Technical Advisory Committee noted disparity between NMCWD’s framework for stormwater management on linear (road) projects and that required by the state’s general permit for Municipal Separate Storm Sewer Systems (i.e., cities).	NMCWD staff have begun analyzing options for harmonizing the NMCWD requirements for road projects with the state’s requirements. Staff will take the time necessary to draft effective changes for proposal in a subsequent amendment while proceeding with the other changes already drafted and reviewed by the Technical Advisory Committee.
	4.2.5	Remove Common Scheme of Development requirement for single-family home projects.	See the attached memo, please.
	4.3.1	Clarify operation of subsection 4.3.1 reference to “receiving waterbody.”	Added text to underscore that treatment-in-lieu applies only onsite.
	4.3.3	Changes to scope of applicability of low-floor standard.	The change here allows for the implementation, in subsection 2.3.1, of the policy decision on applicability of low-floor requirements to buildings, bridges and boardwalks when the floodplain rule is

			triggered, but limits the application of the freeboard standards in this section to buildings when Rule 4.0 is triggered but Rule 2.0 is not – i.e., when there is no alteration or filling in a floodplain.
	4.3.3	4.3.3 has two sets of a, b, c, subsections	Housekeeping
	4.3.5	Clarify agreement by public entities.	Housekeeping
6	6.5	Remove timing requirement pertinent to recording of maintenance declaration.	NMCWD proposes to give staff and applicants flexibility to require recordation as a condition or stipulation of approval.
7.0	7.3.3	Second 7.3.3 should be 7.3.4	Housekeeping
9.0	9.4	9.4 should be "Required information and exhibits" for consistency with other rules' wording	Housekeeping