

<b>Rule</b>	<b>Section</b>	<b>Description of Change<sup>1</sup></b>	<b>Comments</b>
<b>Table of Contents</b>	All	Updated to reflect all subsections, as amended.	<i>Housekeeping</i>
<b>Definitions and Acronyms</b>	“Better Site Design” & “Low-impact development”	Both definitions are deleted.	<i>Housekeeping</i> – the concepts underlying both definitions are adequately described in generic terms in the rules.
	“100-year flood elevation”	The definition is amended to state only the salient definitional terms and required data basis for calculating the elevation.	The change notwithstanding, NMCWD will continue to provide any data it has on 100-year flood elevations to applicants, and the NMCWD engineer will continue to make determinations as to the technical soundness of data and calculations provided to support applications (where NMCWD has no such data or calculations). Cities in the watershed, in many cases, have very reliable flood-elevation data.
	“Landlocked basin”	Revised to clarify a basins with either a constructed or a natural outlet is not a landlocked basin.	<i>Housekeeping</i> – NMCWD does not apply landlocked-basin requirement to basins that have constructed outlets that establish a 100-year flood elevation. The revision reflects this practice.
	“Parcel”	Definition of “parcel” is removed from the rule and all instances changed to “site.”	<i>Housekeeping</i> – clarification; no change in the operation of the rules is implemented by ensuring that the term “site” is used consistently throughout the rules.
	“Regulated impervious surface”	<i>No change</i> – a definition of “regulated impervious surface” is <u>not</u> proposed to be added to the rules.	<i>Housekeeping</i> – NMCWD contemplated clarifying that ‘regulated impervious surface’ is that portion of the impervious area on a site to which the stormwater-management volume requirement in Rule 4.0 applies. Subsections 4.2.1 and 4.2.3 provide for clear determination of the area to which the criteria apply, and NMCWD did not wish to cloud the matter by paraphrasing the operation of these sections in a definition. NMCWD will produce guidance that explains the operation of those subsections.
	“Rehabilitation”	Clarification of the definition.	<i>Housekeeping.</i>
	“Retention”	Clarification of the definition.	<i>Housekeeping.</i>

<sup>1</sup> Typographical and spelling corrections are not listed or discussed herein.

Rule	Section	Description of Change <sup>1</sup>	Comments
	“Shoreline” & “Streambank”	Clarification of the definitions.	<i>Housekeeping</i> – the definitions are separated to make them easier to find and clearer. No practical or regulatory change is proposed thereby.
	“Water basin”	Clarification of the definition.	<i>Housekeeping.</i>
	“OHWL”	Clarification of the acronym throughout the rules.	<i>Housekeeping.</i>
	1.3	Clarification.	<i>Housekeeping.</i>
<b>Rule 1</b>	2.1	<i>No change.</i>	No revision to the NMCWD floodplain regulatory policy is proposed. But NMCWD is learning, through updated modeling and analysis using Atlas 14 rainfall data, that maintenance of <i>existing</i> floodplain and flood-storage areas most likely will not be sufficient to prevent significant damage from flooding in the future. NMCWD does not now have the data or analysis necessary to require applicants to <i>increase</i> the amount of flood storage they provide. But while NMCWD is exploring the idea of capital projects in partnership with watershed cities to increase flood storage, NMCWD may find in the future that regulatory efforts are needed as well.
<b>Rule 2</b>	2.2.1	Exemptions from regulation added for routine public repair projects.	<i>Housekeeping</i> – the rule triggers in subsection 2.1 are proposed to be amended to allow minor repairs to public infrastructure to proceed without a permit – as long as no decrease in flood-storage volume results. The onus will be on city engineers to design and monitor such work to ensure no loss of floodplain capacity results, and plans should be submitted to NMCWD for concurrence in a determination that the design preserves flood-storage capacity.
	2.3.2	Clarify that only <u>flood</u> storage area must be replaced when proposed to be filled.	<i>Housekeeping</i> – the change clarifies that it is only <i>flood</i> storage that need be compensated for when there is filling below the 100-year flood elevation. Dead storage in a water resource need not be replaced.
	2.3.3	Modify narrative criteria to acknowledge that the risks and hazards described cannot reasonably be	Subsection 2.3.3 is one of several places in the rules where an absolute narrative standard – “will not adversely affect” – is replaced with the relative “not reasonably likely to” standard, making determinations less subject to unrealistic absolutes.

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		determined to have been eliminated.	
	2.3.4	Clarification.	<i>Housekeeping.</i>
	2.4	Change to require only electronic submission of exhibits.	<i>Housekeeping – applicants no longer need to submit hard-copy exhibits. This change is made in the exhibits section of each of NMCWD’s rules 2.o through 8.o.</i>
	2.4.8	Elimination of city agreement requirement for drainage and flowage.	<i>Housekeeping.</i>
<b>Rule 3</b>	3.1	Policy updates, reflecting experience in implementing the rules and state law.	The revisions to NMCWD’s wetlands policy statements reflect the realities that in some cases, replacement of Nine Mile watershed wetlands via banking produces a desirable improvement in overall wetland health in the state and that buffer areas should consist of native vegetation that is preserved wherever possible.
	3.2.2	Eliminate imposition of wetland-buffering and stormwater-treatment requirements when only NMCWD’s Erosion and Sediment Control Rule is triggered.	The requirements to meet a wetland buffer (including recording of a maintenance declaration with Hennepin County) are a similar burden to fulfilling Stormwater Management. As NMCWD rules have triggers for the Stormwater Management rule where applicants have to provide treatment consistent with 4.3.1, it is logical that there are also times where properties only needing to provide sediment/erosion control are not burdened with a wetland buffer when they are not burdened with stormwater requirements.
	3.2.2a	Add work that is a Wetland Conservation Act utility exemption determination as exempted from NMCWD’s buffer and stormwater-management requirements.	<i>Housekeeping.</i>
	3.3	Wetland-replacement requirements	Staff will review with the managers NMCWD’s beyond-WCA replacement requirements and discuss interest in and the need for adjustments to siting and ratio specifics.

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	3.3.1	Clarification of applicability of wetland-replacement requirements.	<i>Housekeeping</i> – NMCWD has recognized that its siting requirements are not applicable to purchases of banked credits. I.e., NMCWD did not intend to disallow wetland banking and this change manifests that intention.
	3.4	Clarification of applicability of buffer and stormwater provisions.	<i>Please see note at 3.2.2.</i>
	3.4.1	Footnote added.	<i>Housekeeping.</i>
	3.4.4a	Clarify that a project receiving WCA utility exemption is not subject to NMCWD's wetland buffer and stormwater-treatment requirements.	<i>Housekeeping</i> – the practical impact on the landscape of utility projects receiving a no-loss determination is the same as a project receiving an exemption determination. In both cases, NMCWD has determined that requiring wetland buffers is usually ineffective (because of typical site constraints) and unproductive (because of the time spent preparing for variance reviews).
	3.4.6	<i>No change.</i>	Staff proposes only the limited change to the wetland buffer provisions noted below. Here and generally, making the buffer requirements any more strict is a dubious proposition b/c we already seem to be getting pushed on buffer specifics very often. Could say no trails in minimum buffer width area but 1. what is the water-resource protection support for same? 2. that eliminates trails <u>to</u> wetlands, which were provided for initially b/c education, access to wetlands was thought to be a good thing.
	3.4.6	Explicit exemption for existing impervious surface added.	<i>Housekeeping</i> – the NMCWD managers have not required applicants to remove impervious surface in place at the time of an application so that it can be replaced by buffer to meet NMCWD requirements. The change codifies this judgment.
	3.6	Change to require only electronic submission of exhibits.	<i>Housekeeping</i> – please see explanation at 2.4.

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	Appendix 3a	Updated, higher-quality map.	<i>Housekeeping.</i>
<b>Rule 4</b>	4.1.2	Revise to eliminate references to terms of art.	<i>Housekeeping – please see comment on definitions of “Better Site Design” and “low-impact development.”</i>
	4.2.2d	Add exemption for resource-improvement and flood-damage reduction projects.	This provision compensates for the fact that some projects are undertaken to improve water resources – e.g., construction of a rain garden on a church property – on NMCWD’s or a watershed city’s initiative, or as a cost-share project. In such circumstances the property owner should not be required to provide <i>more</i> resource improvement – say, dedication of buffer area – to meet regulatory requirements. The NMCWD rules and permitting program are in place to require property owners to offset or mitigate for the impacts of their development or redevelopment project on water resources and flood storage; where there are no such impacts because a project is instead undertaken <i>solely</i> to effect such improvements, it is unreasonable for NMCWD to impose additional requirements just because the work triggers one or more NMCWD rule.
	4.2.3	Text revision.	<i>Housekeeping.</i>
	4.2.3a.ii	Add text clarifying operation of rule.	<i>Housekeeping.</i> The addition of “disturbed area and” clarifies that for analysis of stormwater quality, the engineer accounts for surface area that is disturbed by the proposed work, but will be pervious on completion of the permitted work.
	4.2.6	Addition of performance monitoring provision.	NMCWD is adding a provision here that allows – but does not require – the engineer to recommend approval of a permit that relies on an unproven technology or facility to meet stormwater-management criteria. Such a system may be supported by modeling that shows it will meet rule criteria – for, say, phosphorus removal from runoff – but not by field installations and extensive relevant data. The provision added here advises an applicant to rely on such

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			a design that subsequent nonperformance – i.e., a failure of the technology to live up to its bench data – could precipitate a required retrofit.
	4.3.1a	Language added to the NMCWD stormwater criteria section provides applicants with flexibility to treat stormwater from part of the site that will not be disturbed in lieu of treating stormwater from the area to be disturbed, when management of runoff from the area to be disturbed presents particular challenges that make it infeasible to treat runoff from the disturbed area, as long as the area to be treated will continue to be used as or more intensively than the disturbed area and will drain to the same resource(s).	<p>NMCWD is particularly interested in stakeholders’ analysis of and input on this innovative provision. It allows an applicant to place stormwater-treatment facilities at a location that facilitates a project design that does not allow for management of runoff from the new or reconstructed impervious area of the property. It allows an applicant to treat runoff from other impervious area on the site, as long as the area to be treated will be used as or more intensively than the area to be disturbed and will drain to the same receiving water(s) as the disturbed area. (Rate control (under subsection b) must <i>always</i> be achieved at the specific location(s) where runoff leaves a property.) NMCWD has received applications where the flexibility provided here would have been useful, and would have helped the applicant avoid the need to request a variance.</p> <p>This flexibility will be available <i>only</i> where the NMCWD engineer concurs that treatment of runoff from the disturbed area cannot be provided because of challenges presented by <i>existing</i> conditions. I.e., applicants will not be allowed to utilize this flexibility when they plan a site reconfiguration that creates the difficulty. NMCWD also will not allow applicants to use this provision to locate stormwater facilities on unsuitable soils (e.g., clay), then argue that the site qualifies as ‘restricted’ under 4.3.2, when other, better soils are available on site.</p>
	4.3.2	“Reasonably” is added.	<i>Housekeeping</i> – modifying the analysis here to impose a standard ‘reasonableness’ standard.
	4.3.4	In subdivisions, require chloride management plans for common areas only, not for individual property owner areas (e.g., driveways and sidewalks).	<i>Housekeeping</i> – adopting established NMCWD policy.

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	4.3.6b	Clarifying language added.	<i>Housekeeping</i> – added specifications make clear that in a region or subwatershed determined to qualify as ‘restricted’ – i.e., where inherent site conditions make infiltration impracticable – the runoff volume-retention standard is ‘maximum extent practicable,’ but rate control and water quality criteria must be achieved.
	4.5	Change to require only electronic submission of exhibits.	<i>Housekeeping</i> – please see explanation at 2.4.
	4.5.6, 4.5.7	Provisions deleted.	<i>Housekeeping.</i>
<b>Rule 5</b>	5.2.1	Clarification of rule threshold.	<i>Housekeeping</i> – clarifying that an applicant triggers the rule by undertaking land-disturbing activity that exceeds <u>either</u> of the thresholds stated here.
	5.3.1b	Add language mandating use of erosion-control blanketing with biodegradable materials and non-fixed joints.	This change was a request from NMCWD managers for consideration. Erosion blanket has netting, fill, and stitching. Oftentimes, netting is plastic and will not break down in the environment. Netting where matrix is loose-weave (not fixed or welded) allows wildlife to pass through without strangulation, etc. Erosion blanket that lasts in the environment can also create a trip hazard and hazards for lawn mowers. We’ve educated permit applicants since April 2020 that this change may become a rule eventually.
	5.4	Change to require only electronic submission of exhibits.	<i>Housekeeping</i> – please see explanation at 2.4.
Rule 6	6.2.1	Exemption added.	The goals and specifics of NMCWD’s work-in-waters rules (6.o, 7.o, 8.o) are achieved when an applicant obtains a permit from the state.
	6.3.1c, d, e	Remove unused criterion (6.3.1d.2) and unrealistic and unproductive criteria.	These provisions are among the several places in the rules where absolute narrative standards – “will not adversely affect” – are replaced with the relative “not reasonably likely to,” rendering unrealistic determinations on these points unnecessary without sacrificing the need for applicants to address the resource impact meant to be prevented or, at least, attenuated.
	6.3.4	Add clarification.	<i>Housekeeping.</i>

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	6.4	Change to require only electronic submission of exhibits.	<i>Housekeeping</i> – please see explanation at 2.4.
Rule 7	7.2.1 – 7.2.4	Exemptions added.	As to 7.2.1 (DNR permitting), the goals and specifics of NMCWD’s work-in-waters rules (6.o, 7.o, 8.o) are achieved when an applicant obtains a permit from the state. Additional exemptions recognize that minor public utilities maintenance work does not affect shoreline or streambank stability in a manner that warrants analysis under the rule or application of the criteria. (7.2.4 is simply relocated text.)
	7.3.1 – 7.3.3	With the exception of the addition to 7.3.3a (discussed below), changes are reorganization of provisions for clarification.	<i>Housekeeping.</i>
	7.3.3a	Flexible final-slope grade provision added.	The addition here recognizes that at some locations in the watershed, existing streambank and shoreline slopes are steeper than 3:1, and as long as the NMCWD engineer finds that the proposed work is designed such as to result in maintenance of stable conditions, such slopes can be approved. The change precludes applicants from excavating and grading shorelines and streambanks more than is necessary to maintain stability (i.e., undertake more water-side land disturbance than they would have otherwise), which is contrary to NMCWD goals and policy.
	7.4	Change to require only electronic submission of exhibits.	<i>Housekeeping</i> – please see explanation at 2.4.
	7.4.1b	Remove survey requirement.	The NMCWD engineer has determined that a survey is not necessary to establish the ordinary high-water level.
Rule 8	8.2.1	Exemption added.	The goals and specifics of NMCWD’s work-in-waters rules (6.o, 7.o, 8.o) are achieved when an applicant obtains a permit from the state.
	8.3.2	Clarification.	<i>Housekeeping</i> – change clarifies that excavation must comply with all criteria in this subsection.



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	8.3.5	Clarification.	<i>Housekeeping</i> – change clarifies that project technical plans must include spawning-period restriction.
	8.4	Change to require only electronic submission of exhibits.	<i>Housekeeping</i> – please see explanation at 2.4.
<b>Rule 9</b>	9.4.2h	Clarification.	<i>Housekeeping.</i>