

# **NINE MILE CREEK WATERSHED DISTRICT**

## **RULES**

*August 26, 2015*

**NINE MILE CREEK WATERSHED DISTRICT  
BOARD OF MANAGERS**

I, Louise Segreto, secretary of the Nine Mile Creek Watershed District Board of Managers, certify that the attached are true and correct copies of the rules of the Nine Mile Creek Watershed District, which were properly adopted by the Board of Managers August 26, 2015.

----- Date: -----  
Louise Segreto

[Notary acknowledgement]

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## 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).

**Bioengineering:** Various shoreline and streambank stabilization techniques using aquatic vegetation and native upland plants, along with techniques such as willow wattling, brush layering and willow-posts.

**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, except that when impervious surfaces have been fully or partially removed from a previously developed parcel but no intervening use has been legally or practically established, "existing conditions" denotes the previously established developed use and condition of the parcel.

**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.

**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.

**Linear project:** Construction or reconstruction of a public road, sidewalk or trail, or construction, repair or reconstruction of a utility or utilities that is not a component of a larger contemporaneous development or redevelopment project.

**Low floor:** The lowest elevation of any floor 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*.

**Nondegradation:** For purposes of these rules, nondegradation refers to the regulatory policy stated in Minnesota Rules 7050.0185, as it may be amended.

**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.

**Rehabilitation:** A maintenance project that disturbs or replaces only the existing impervious surface, does not disturb native soils or result in a change in the direction, peak rate, volume or water quality of runoff flows from the parcel, and does not include the addition of new impervious surface. Mill and overlay of paved surfaces is rehabilitation.

**Retaining wall:** Vertical or nearly vertical structures constructed of mortar-rubble masonry, handlaid rock or stone, vertical timber pilings, horizontal timber planks with piling supports, sheet pilings, poured concrete, concrete blocks, or other durable materials and constructed approximately parallel to the shoreline.

**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.

**Shoreline:** The lateral measurement along the contour of the ordinary high water mark of waterbodies other than watercourses, and the top of the bank of the channel of watercourses, and the area waterward thereof.

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

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

**Structure:** 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** – Wetland 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 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 replacement plan review and approval process 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) business 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](http://www.ninemilecreek.org).

### 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.

#### **1.4 Permit assignment and renewal**

A permit is valid for one year from the date the permit is approved, with or without conditions, 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, except that on the first renewal, a permit will not be subject to additional or different requirements solely because of a change in District rules. New or revised rule requirements will not be imposed on renewal of a permit where the permittee has made substantial progress toward completion of the permitted work. If the activities subject to the permit have not substantially commenced, no more than one renewal may be granted. 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.

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 financial assurance 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 on the basis of incorrect information supplied to the District

by the applicant, 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 4.3.2.
- 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, except that this provision does not apply to:
- a Bridges, culverts and other structures and associated impervious surface regulated under Rule 6.0;
  - b Trails 10 feet wide or less, designed primarily for nonmotorized use.

## 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. For public entities, this requirement may be satisfied by a written agreement executed with the District in lieu of a recorded document; the agreement shall state that if the land within the 100-year floodplain is conveyed, the public body shall require the buyer to comply with this subsection.

## 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**

- 1.1 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 regulated by the Wetland Conservation Act. 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 under rules 2.0 through 8.0. In cases where the District is not the responsible wetlands regulatory authority, sections 3.4 and 3.5 nevertheless apply, pursuant to the District's watershed authority.
  - a Sections 3.4 and 3.5 do not apply to incidental wetlands or to wetlands, the filling or draining of which is exempt from regulation under the de minimus exemption of the Wetland Conservation Act, as amended, or that are subject to a no-loss determination from the relevant LGU.

#### **3.3 Replacement wetlands**

- 3.3.1 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 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).
- 3.3.3 Where more restrictive than sections 3.3.1 or 3.3.2, state rules shall apply.
- 3.3.4 Minnesota Rule 8420.0544, as amended, when applicable, shall supersede sections 3.3.1 and 3.3.2, for public transportation projects.

### 3.4 Wetland buffers

Any activity for which a permit is required under any District rule(s) must provide buffer on all wetlands disturbed by the activity and on all wetlands downgradient from the activity, in accordance with 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.

Buffer width averaging calculation will exclude any part of the buffer exceeding 200 percent of the Applied Buffer Width.

- 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 **Existing single-family residential properties:** Subsections 3.4.1 and 3.4.2 do not apply, and the exhibit requirements of section 3.6 do not apply, except that documentation of the extent and location of wetlands on the subject property must be submitted. When required on an existing single-family home property, buffer must extend an average of 20 feet from the delineated edge of a wetland, minimum 10 feet. The buffer width averaging calculation will exclude any part of the buffer exceeding 200 percent of the Applied Buffer Width.
  - a Where the District has documentation indicating the presence of wetland on a subject property, an applicant must substantiate the nonexistence of wetland via a determination of a qualified third-party or the District.
- 3.4.4 The buffer is only required on property that is the subject of the District permit, and is required where the wetland is either on or adjacent to the subject property.
- 3.4.5 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.
- 3.4.6 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.

- 3.4.7 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 the permit will be issued. 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:

- 3.5.1 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%) annual removal efficiency for phosphorus and at least ninety percent (90%) annual 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 Wetland 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 runout elevation and flow capacity of the wetland outlet, and spoil disposal areas.
  - c Area of the wetland to be filled, drained or excavated.
- 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 5.0

### 3.7 Exceptions

A District wetlands–management permit is not required:

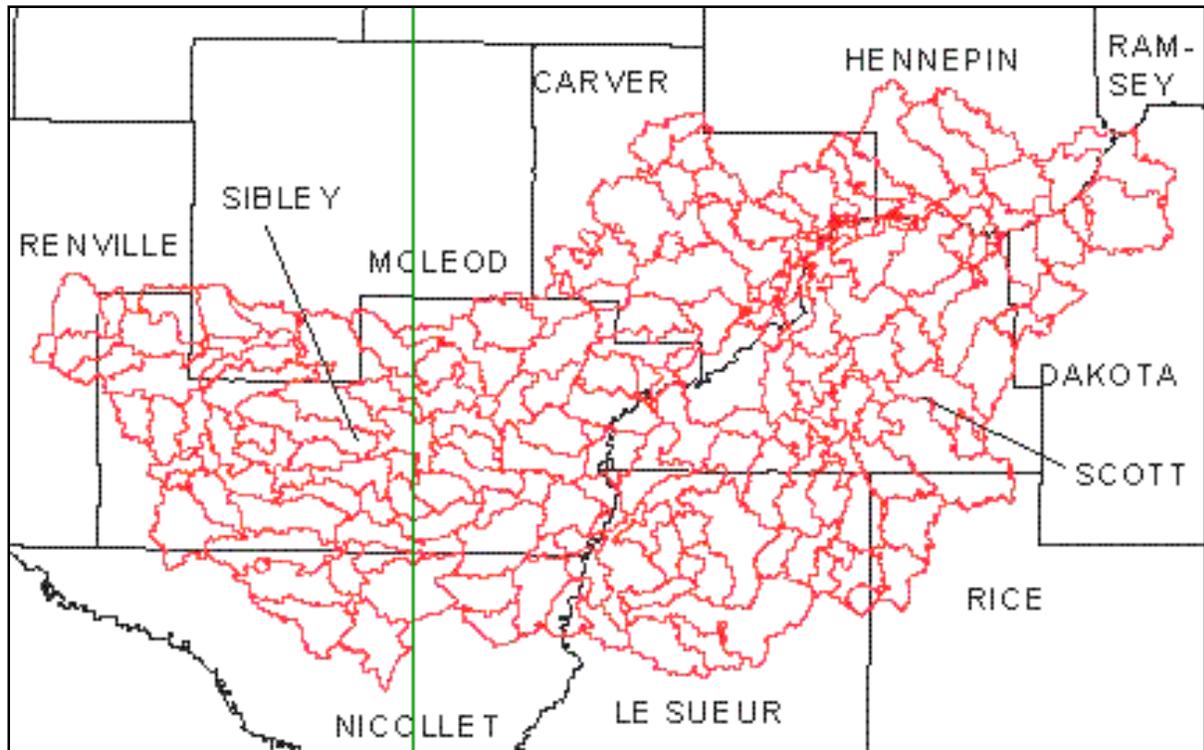
3.7.1 To create, restore or improve a wetland and/or buffer pursuant to a District–approved natural resources restoration management plan;

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, as determined by application of the current edition of the Minnesota Routine Assessment Method (MnRAM) or another wetlands–assessment method approved by the District. A wetland will not be rated a high value wetland for purposes of application of Rule 3.0;Wetlands Management merely because the wetland receives or is proposed to receive stormwater or snowmelt runoff.

<b>Function or Value</b>	<b>Rating</b>
Vegetative Diversity	Exceptional/High
Wildlife Habitat	Exceptional/High
Fish Habitat	Exceptional/High
Aesthetics/education/recreation/cultural	Exceptional/High
AND Wildlife Habitat	High/Medium
Stormwater Sensitivity	Exceptional/High
AND Vegetative Diversity	Medium or greater
Vegetative Diversity	High/Medium
AND Maintenance of hydrologic regime	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, as determined by application of the current edition of the Minnesota Routine Assessment Method (MnRAM) or another wetlands–assessment method approved by the District.

<b>Function or Value</b>	<b>Rating</b>
Vegetative Diversity	Medium
Wildlife Habitat	Medium
Fish Habitat	Medium
Aesthetics/education/recreation/cultural	Medium
AND Wildlife Habitat	Low
Stormwater Sensitivity	Medium
AND Vegetative Diversity	Low
Vegetative Diversity	Low
AND Maintenance of Hydrologic Regime	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-disturbing activities that will disturb 50 cubic yards or more of earth,
  - b Land-disturbing activities that will disturb 5,000 square feet or more of surface area or 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 on a single-family home site, unless any

portion of the parcel is:

- 1 Within 300 feet of the centerline of and tributary to Nine Mile Creek,
  - 2 Within 500 feet of the ordinary high water level of and tributary to any other public water or protected wetland, or
  - 3 Below the 100-year flood elevation.
- b Construction or reconstruction on a single-family home site consistent with a subdivision, development or redevelopment plan that is subject to an active District permit.
- c Rehabilitation, including mill and overlay, of paved surfaces.
- 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 4.3 will apply to the entire project parcel. Otherwise, the criteria of section 4.3 will apply only to the disturbed areas and additional impervious surface on the project parcel. For purposes of this paragraph, disturbed areas are those where underlying soils are exposed in the course of redevelopment.
- 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. For linear projects creating more than 1 acre of new or additional impervious surface, the criteria of section 4.3 will apply only to the net new or additional impervious surface.
- 4.2.5 **Common scheme of development.** Activity subject to this rule on a parcel or adjacent parcels under common or related ownership will be considered in the aggregate, and the requirements applicable to the activity under this rule will be determined with respect to all development that has occurred on the site or on adjacent sites under common or related ownership since the date this rule took effect (March 2008).
- a For development or redevelopment under common or related ownership, compliance with the criteria of section 4.3 may be achieved through a shared stormwater management facility or facilities as long as the criteria are met on for each contributing drainage area within the common or related ownership.

### 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;
  - i Where below-ground infiltration facilities, practices or systems are proposed, pretreatment of runoff must be provided.
- 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 parcel from the 2.5-inch storm event to be treated, through onsite or offsite detention, to at least sixty percent (60%) annual removal efficiency for phosphorus, and at least ninety percent (90%) annual 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 and inspection 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 inspection and maintenance; provides for the inspection and maintenance in perpetuity of the facility, with documentation retained onsite and available to the District upon reasonable notice; 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 public entity 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 and water quality Volume Credits.

- 4.4.1 Volume reduction or runoff retention achieved onsite in excess of the requirement of Section 4.3.1 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 4.3.3.
- 4.4.3 Volume Credits may be utilized by permit applicants to meet the requirements of Section 4.3.1 a and 4.3.1 c 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; and
  - 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 and water-quality projects elsewhere in the watershed. The required contribution rate shall be set by the Board annually based on the cost of creation of the required retention capacity.
- 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 management 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, except that where a project will not alter or change the hydrology of a wetland,

- the wetland need only be identified on the plan.
- c Geotechnical analysis including soil borings at all proposed stormwater management facility locations.
  - d If infiltration of runoff is proposed, the District engineer may require submission of a phase I environmental site assessment and/or other documentation to facilitate analysis by the District of the suitability of soils for infiltration.
  - e Construction plans and specifications for all proposed stormwater management facilities, including design details for outlet control structures.
  - f Stormwater runoff volume and rate analyses for the 24-hour, 2-, 10- and 100-year critical events, existing and proposed conditions.
  - g All hydrologic, water quality, and hydraulic computations completed to design the proposed stormwater management facilities.
  - h Narrative addressing incorporation of retention BMPs.
  - i 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.
  - j 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: Low Floor Elevation Guidance.

See p. 51.

## 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-disturbing activities that will involve:
  - a excavation of 50 cubic yards or more of earth, or
  - b alteration or removal of 5,000 square feet or more of surface area 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 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 effect 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 final 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 finally 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 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 reconstruction 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 reconstruction 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 vegetation is established;
- e clear identification of all final 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.

## 6.0 Waterbody Crossings and Structures

### 6.1 Policy

It is the policy of the Board of Managers to discourage the use of beds and banks of waterbodies for the placement of bridges, utilities or other structures, and to protect the hydraulic capacity and floodplain of streams and drainage systems.

### 6.2 Regulation

No person shall construct, improve, repair or remove a crossing in contact with or under the bed or bank of any waterbody within the District, or remove a structure from the bed or bank of any waterbody, without first securing a permit from the District.

### 6.3 Criteria

6.3.1 Construction, improvement, repair or removal of a waterbody crossing in contact with the bed or bank of a waterbody:

- a Shall retain adequate hydraulic capacity and assure no net increase in the flood stage of the pertinent waterbody;
- b Shall retain adequate navigational capacity pursuant to any requirements of the waterbody's classification by the District;
- c Shall not adversely affect water quality, change the existing flowline/gradient, or cause increased scour, erosion or sedimentation;
- d Shall preserve existing wildlife passage along each bank and riparian area by means that:
  - 1 account for wildlife that are native to the area or may be present;
  - 2 are approved by a qualified wildlife biologist; and
  - 3 conform to any requirements imposed by the District's classification of the waterbody by the District; and
- e Shall represent the 'minimal impact' solution to a specific need with respect to all other reasonable alternatives.

6.3.2 Projects involving horizontal drilling shall provide for minimum clearance of 3 feet below the bed of a waterbody and a minimum setback of 50 feet from any stream bank for pilot, entrance and exit holes.

6.3.3 Removal of structures or other waterway obstructions:

- a Shall maintain the original cross-section and bed conditions to the greatest extent practicable;

- b Shall achieve complete removal of the structure, including any footings or pilings that impede navigation; and
- c Shall not involve the removal of a water-level control device.

6.3.4 No activity affecting the bed of a protected water may be conducted between March 15 and June 15 on watercourses, or between April 1 and June 30 on all other public water waterbodies, to minimize impacts on fish spawning and migration.

**6.4 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:

- 6.4.1 Construction plans and specifications, certified by registered professional engineer.
- 6.4.2 An analysis prepared by a professional engineer or qualified hydrologist showing the effect of the project on hydraulic capacity and water quality.
- 6.4.3 An erosion control and site restoration plan.

**6.5 Maintenance**

Crossings in contact with the bed or bank of a waterbody shall be maintained in good repair at all times to ensure continuing adequate hydraulic and navigational capacity; to assure no net increase in the flood stage; to prevent adverse effects to water quality, changes to the existing flowline/gradient, and increased scour, erosion or sedimentation; and to minimize the potential for obstruction of the waterbody. A declaration or other recordable document stating terms for maintenance of a crossing and approved by the District shall be recorded before activity under a permit issued under this rule commences. In lieu of recordation, a public permittee or a permittee without a property interest sufficient for recordation may assume the maintenance obligation by means of a written agreement with the District. The agreement shall state that if the ownership of the structure is transferred, the public body shall require the transferee to comply with this subsection.

## **7.0 Shoreline and Streambank Improvements**

### **7.1 Policy**

It is the policy of the Board of Managers to prevent erosion of shorelines and streambanks, and to foster the use of natural materials and bioengineering for the maintenance and restoration of shorelines.

### **7.2 Regulation**

No person shall install a shoreline or streambank improvement, including but not limited to riprap, a bioengineered installation or a retaining wall, on a public water without first securing a permit from the District. Planting of vegetation not intended to provide deep soil structure stability does not require a permit under this rule.

### **7.3 Criteria**

7.3.1 An applicant for a shoreline alteration permit must demonstrate a need to prevent shoreline erosion or restore eroded shoreline.

7.3.2 An applicant must first consider maintenance or restoration of shoreline using bioengineering. If bioengineering cannot provide a stable shoreline, a combination of riprap and bioengineering may be used to restore or maintain shoreline. If a combination of riprap and bioengineering cannot provide a stable shoreline within a reasonable period, riprap may be used to restore or maintain shoreline.

a Live plantings incorporated in shoreline bioengineering must be native aquatic vegetation and/or native upland plants.

b Riprap to be used in shoreline erosion protection must be sized appropriately in relation to the erosion potential of the wave or current action of the particular water body, but in no case shall the riprap rock average less than six inches in diameter or more than 30 inches in diameter. Riprap shall be durable, natural stone and of a gradation that will result in a stable shoreline embankment. Stone, granular filter and geotextile material shall conform to standard Minnesota Department of Transportation specifications, except that neither limestone nor dolomite shall be used for shoreline or stream bank riprap, but may be used at stormwater outfalls. All materials used must be free from organic material, soil, clay, debris, trash or any other material that may cause siltation or pollution.

- c Riprap shall be placed to conform to the natural alignment of the shoreline.
  - d A transitional layer consisting of graded gravel, at least six inches deep, and an appropriate geotextile filter fabric shall be placed between the existing shoreline and any riprap. The thickness of riprap layers should be at least 1.25 times the maximum stone diameter. Toe boulders, if used, must be at least 50 percent buried.
  - e Riprap must not cover emergent vegetation, unless authorized by a Department of Natural Resources permit.
  - f Riprap shall extend no higher than the top of bank or two feet above the 100-year high water elevation, whichever is lower.
- 7.3.3 The finished slope of any shoreline shall not be steeper than 3:1 (horizontal to vertical).
- 7.3.4 Horizontal encroachment from a shoreline shall be the minimal amount necessary to permanently stabilize the shoreline and shall not unduly interfere with water flow or navigation. No riprap or filter material shall be placed more than six feet waterward of the OHW. Streambank riprap shall not reduce the cross-sectional area of the channel or result in a stage increase of more than 0.01 feet at or upstream of the treatment.
- 7.3.5 The design of any shoreline erosion protection shall reflect the engineering properties of the underlying soils and any soil corrections or reinforcements necessary. The design shall conform to engineering principles for dispersion of wave energy and resistance to deformation from ice pressures and movement, considering prevailing winds, fetch and other factors that induce wave energy.
- 7.3.6 For projects on public water basins or wetlands, the total length of shoreline affected must not exceed 200 feet. For projects on Nine Mile Creek, the total length of streambank affected must not exceed five times the width of the creek measured at bankful conditions.
- 7.3.7 Placement of riprap for merely cosmetic purposes is prohibited.
- 7.3.8 Retaining walls extending below the OHW of a water body are prohibited, except where:
- a there is a demonstrable need for a retaining wall in a public improvement project, and
  - b the design of the retaining wall has been certified by a registered engineer.

#### 7.4 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:

##### 7.4.1 A site plan, showing:

- a Conditions establishing, to the satisfaction of the District, existing erosion or the potential for erosion;
- b a survey locating the existing OHW contour, existing shoreline or streambank, floodplain elevation and location of property lines;
- c elevation contours of the upland within 15 feet of the OHW and referenced to accepted datum; and
- d plan view of locations and lineal footage of the proposed riprap.

The plan must show the location of an upland baseline parallel to the shoreline with stationing. The baseline shall be staked in the field by the applicant and maintained in place until project completion. Baseline origin and terminus each must be referenced to three fixed features measured to the closest 0.05 foot, with measurements shown and described on the plan. Perpendicular offsets from the baseline to the OHW must be measured and distances shown on the plan at 20-foot stations. The plan shall be certified by a registered engineer or surveyor.

##### 7.4.2 A construction plan and specifications, showing:

- a A sequencing analysis in compliance with section 7.3.2;
- b materials to be used, including the size(s) of any riprap to be used;
- c cross section detailing the proposed riprap, if any, drawn to scale, with the horizontal and vertical scales noted on the drawing. The detail should show the finished riprap slope, transitional layer design and placement, distance lakeward of the riprap placement and OHW.
- d Description of the underlying soil materials.
- e Material specifications for stone, filter material and geotextile fabric.

##### 7.4.3 For sites involving aquatic plantings, a separate Aquatic Plant Management permit shall be obtained from the Department of Natural Resources.

- a This provision does not apply to slope protection projects using woody species such as willow and dogwood.

##### 7.4.4 An erosion control and site restoration plan.

## **8.0 Sediment Removal**

### **8.1 Policy**

It is the policy of the Board of Managers to regulate the removal of sediment from public waters to mitigate the impacts of stormwater sediment transport and deposition.

### **8.2 Regulation**

No person shall remove sediment from the beds, banks or shores of any public water by any means without first securing a permit from the District.

### **8.3 Criteria**

Sediment removal from the beds, banks or shores of any public water for navigation purposes shall be demonstrated to be the minimal impact solution to achieve reasonable navigational access. Removal of accumulated sediment at stormwater outfalls may be permitted upon submittal of an application meeting the following criteria:

- 8.3.1 Removal of sediment must not alter the original alignment, slope or cross-section of the beds, banks or shores of any public water.
- 8.3.2 Any excavated materials storage or disposal sites must be identified and shown to be:
  - a Not below the OHW of a public water, public water wetland or wetland subject to the Wetland Conservation Act;
  - b Not in the floodplain; or
  - c Not subject to erosion or likely to cause redeposition of the sediment to an adjacent water body, stormwater facility or storm sewer.
- 8.3.3 Degradation or erosion of the banks or bed of the subject water body by entry of equipment must be avoided.
- 8.3.4 Where determined necessary by the District to protect water quality, a floatation silt curtain shall be placed around the sediment-removal site and maintained for the duration of the project.
- 8.3.5 No activity affecting the bed of a protected water may be conducted between March 15 and June 15 on watercourses, or between April 1 and June 30 on all other public water waterbodies, to minimize impacts on fish spawning and migration.

#### 8.4 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:

8.4.1 A site plan, showing:

- a Delineation of the work area;
- b Property lines;
- c Ordinary high water elevation; and
- d 100-year flood elevation.

8.4.2 Profile, cross sections and/or topographic contours (at intervals of no more than 1 foot) showing existing and proposed elevations and proposed side slopes in the work area.

8.4.3 In the case of projects using hydraulic means of sediment removal and onsite spoil containment, the applicant shall provide:

- a Cross-section of the proposed dike;
- b Stage/storage volume relationship for the proposed spoil containment area;
- c Detail of any proposed outlet structure, showing size, description and invert elevation;
- d Stage/discharge relationship for any proposed outlet structure from the spoil containment area; and
- e Site plan showing the locations of any proposed outlet structure and emergency overflow from the spoil containment area.

8.4.4 A site plan showing the proposed location of floating silt curtain(s).

8.4.5 Supporting data:

- a Description and volume computation of material to be removed;
- b Description of equipment to be used;
- c Construction schedule;
- d Location map of spoil containment area;
- e Erosion control plan for containment area;
- f Restoration plan for any proposed permanent on-site spoil containment site showing final grades, removal of control structure, and a description of how and when the site will be restored, covered or revegetated after construction.
- g Detail of any proposed floating silt curtain including specifications.

## **9.0 Appropriation of Public Surface Waters**

### **9.1 Policy**

It is the policy of the Board of Managers to regulate the appropriation of public waters.

### **9.2 Regulation**

A permit from the District is required to appropriate up to 10,000 gallons per day and up to 1,000,000 per year of water for a nonessential use from:

- 9.2.1 A public water basin or wetland within the District that is less than 500 acres in surface size; or
- 9.2.2 A protected watercourse that has a drainage area of less than 50 square miles.

### **9.3 Criteria**

An appropriation of public water permitted under this rule must not lower the water level in the basin or watercourse to an extent that would deprive the public and riparian property owners of reasonable use of and access to the water. In addition, the appropriation must:

- 9.3.1 Be reasonable and practical with regard to alternative sources of water or methods available, including use of water appropriated during high flows and levels and stored for later use and the use of ground water, to attain the appropriate objective;
- 9.3.2 Include the utilization of water storage and reuse and conservation practices;
- 9.3.3 Be subject to restriction, at any time, to meet instream flow needs or protect basin water levels.

### **9.4 Exhibits**

An applicant for a permit under this rule must provide:

- 9.4.1 Written evidence of ownership, control of, or a license to use the land abutting the surface water source from which water will be appropriated.
- 9.4.2 A completed application showing:
  - a Applicant address;
  - b Applicant email address;
  - c Purpose of the requested appropriation;
  - d Source of water;

- e Amount of water to be appropriated on a maximum daily, monthly and annual basis;
- f Means, methods, and techniques of appropriation;
- g Proposed pumping schedule, including rates, times and duration;
- h Alternative sources of water considered and reasons why the particular alternative proposed was selected;
- i Analysis of the hydraulic and hydrological effect of the proposed appropriation on levels and flows and anticipated impacts, if any, on instream flow or lake level conditions to the extent that such facts are not already available to the District;
- j Information on any water storage facilities and capabilities and any proposed reuse and conservation practices;
- k A contingency plan or an agreement to accept no appropriation in the event of restrictions; and
- l For an appropriation from a basin, proof that the applicant has notified all riparian landowners of the proposed appropriation and signed statements from as many riparian landowners as the applicant is able to obtain stating support of the proposed appropriation, along with an accounting of number of signatures of riparian owners the applicant is unable to obtain.

An appropriation application form may be obtained from the District offices.

## **10.0 Variances and Exceptions**

### **10.1 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:

- 10.1.1 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;
- 10.1.2 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;
- 10.1.3 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
- 10.1.4 That there is no feasible and prudent alternative to the proposed activity requiring a variance.

### **10.2 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.

### **10.3 Violation**

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

## 11.0 Permit Fees

### 11.1 Policy

It is the determination of the Board of Managers that

- 11.1.1 Charging a minimal permit application fee will increase public awareness of and compliance with District permitting requirements, and will reduce enforcement and inspection costs;
- 11.1.2 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
- 11.1.3 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.

### 11.2 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 administrating 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>. 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.

## 12.0 Financial Assurances

### 12.1 Policy

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

### 12.2 Requirement

The District may require a performance bond, letter of credit or other financial assurance in a form approved by the District for an activity regulated under these Rules. A performance financial assurance will not be required of any agency of the United States or of any governmental unit or political subdivision of the State of Minnesota.

### 12.3 Criteria

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

- 12.3.1 The financial assurance shall be a performance bond, letter of credit, cash deposit or other form acceptable to the District, and a commercial financial assurance shall be from an issuer licensed and doing business in Minnesota. Financial assurance templates may be obtained from the District web site ([www.ninemilecreek.org](http://www.ninemilecreek.org)) and also are available from the District office.
- 12.3.2 The financial assurance 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 financial assurance shall state that in the event the conditions of the financial assurance are not met, the District may make a claim against it. In the event that the District makes a claim against a financial assurance, the full amount of the financial assurance required must be restored within 45 days.
- 12.3.3 The financial assurance 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.

- 12.3.4 The financial assurance shall be submitted by the permit applicant, but the financial assurance principal may be either the landowner or the individual or entity undertaking the proposed activity.
- 12.3.5 No financial assurance will be released except pursuant to the terms of section 12.4.
- 12.3.6 No interest will be paid on financial assurances held by the District.
- 12.3.7 The amounts of financial assurances required by the District will be set by the Board of Managers by resolution. The schedule of financial assurance amounts will be maintained on the District website ([www.ninemilecreek.org](http://www.ninemilecreek.org)) and also will be available from the District office. Financial assurance 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.
- 12.3.8 When a cash escrow is to be provided to fulfill a District financial assurance requirement, the permittee/escrow provider will be required as a condition of permit issuance, transfer or renewal to enter into a cash escrow agreement with the District. Permit approval may be revoked for failure to comply with this requirement. A cash escrow agreement template will be maintained on the District website ([www.ninemilecreek.org](http://www.ninemilecreek.org)) and also will be available from the District office.

## 12.4 Financial Assurance 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 financial assurance.

12.4.1 Final inspection compliance constituting grounds for financial assurance release includes, but is not limited to:

- a demonstration by the permittee and confirmation by the District that the site has been vegetated and stabilized to prevent erosion

- and sedimentation per subsection 5.3.3 and that erosion and sedimentation controls have been removed;
- b demonstration and confirmation that stormwater management features have been constructed or installed and are functioning as designed and permitted;
- c payment of all outstanding fees to the District.

The District may return a portion of the financial assurance if it finds that the entire 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 financial assurance is deemed released unless the District notifies the permittee that final inspection compliance matters remain outstanding. In the event that a financial assurance is released through expiration of the time for confirmation of final inspection compliance, the District will provide a writing releasing the financial assurance if needed to meet the issuer's requirements.

**Appendix 4a: Low Floor Elevation Guidance.**

## Appendix 4a: Low Floor Elevation Guidance.

### Overview of Lowest Floor Issue

There seems to be two reasons for establishing a minimum lowest floor elevation in the vicinity of a pond – to prevent flooding of the structure by surface water and to prevent seepage or damage from uplift pressures that could result from a rise in the water table elevation. The first reason (direct flooding) can easily be established with knowledge of the maximum flood elevation of a pond (or the 100-year elevation, if this is used) and ground surface topography. The second reason (a rise in the water table due to increased pond elevations) is not so straight forward. This second area is the subject of this memo.

When a formerly dry pond becomes wet (or when a wet pond's water elevation increases) due to a storm event, downward seepage of the ponded water begins. The rate of seepage through the bottom of the pond is dependent upon:

- 1) The elevation of the water surface above the pond bottom
- 2) The soil type at the bottom of the pond (i.e. the pond bottom's thickness and permeability)
- 3) The type of soil underneath the pond (e.g., clay, silt, sand, gravel)
- 4) The degree of saturation of the soils beneath the pond
- 5) The depth to the water table

In general, higher seepage through the bottom of the pond will occur when the water surface elevation is high, the pond's bottom sediments are thin and/or sandy, the soils underneath the pond are permeable (such as sand or gravel), the soils underneath the pond have a high moisture content (i.e. they are at field capacity or higher), and the water table is well below the bottom of the pond (i.e. the soils are freely draining).

Higher seepage rates through the bottom of the pond will cause the water table elevation to rise by creating a "mounding condition" below the pond. How high and how widespread the water table mound becomes are contributing factors to whether or not basements will be affected. *However, the single most important factor that will determine if seepage from a pond will cause wet basement problems is the depth to the water table, below the basement.*

The magnitude and extent of the groundwater mounding conditions is also contingent upon the aquifer's transmissivity (aquifer permeability multiplied by aquifer thickness), the specific yield of the aquifer materials, and the duration of the high water levels in

the pond. In general, thicker aquifers with higher permeability will experience less mounding than thinner aquifers of lower permeability. Perched aquifers (i.e. groundwater zones less than about 10 feet that overlie extensive clay layers) typically experience the greatest amount of mounding.

### **Overview of Variance Evaluation Method**

All of the combinations of settings, pond configurations, aquifer parameters, and distances from ponds cannot be anticipated before hand in coming up with a method to quickly evaluate whether or not a variance to the minimum floor elevation ordinance should be considered. However, by making some generalities, the most commonly encountered situations can be evaluated. This is the approach taken here.

A groundwater flow model of a “typical” pond and aquifer setting was developed. Aquifer parameters and pond elevations were varied and the resulting water table mounding conditions were simulated. The following conditions were evaluated:

1. Pond elevation increases of 2 feet, 4 feet, and 6 feet above normal or dry conditions
2. Depth to the water table (before flooding) of 3 feet (to represent conditions of 3 feet or less) and 10 feet (to represent conditions where the depth to the water table is greater than 3 feet). The purpose of simulating these two conditions is that with shallow water tables, the rate of infiltration is substantially reduced as the groundwater mound rises into the pond. For deeper aquifer conditions, the pond bottom is always above the water table and the depth to the water table has no bearing on the seepage rate.
3. Three aquifer conditions: clay or perched aquifers (transmissivities of 7 ft<sup>2</sup>/day and specific yield values of 0.1); silt aquifers (transmissivity of 70 ft<sup>2</sup>/day and specific yield values of 0.2) and sand and gravel aquifers (transmissivities of 2000 ft<sup>2</sup>/day and specific yield values of 0.2).
4. Pond bottom sediment thickness of 1 foot and bottom sediment hydraulic conductivity of 1 ft/day.
5. Instantaneous occurrence of a flood condition in the pond, which lasts for 25 days, followed by instantaneous reduction to normal conditions. The purpose of

using this condition is that the effects of aquifer storage (specific yield) are taken into account. A duration of 25 days was selected as being a reasonable time period of flood conditions.

6. Increases in the water table elevation were recorded at several distances between 5 feet and 200 feet from the pond. The maximum rise during the modeled period was selected for plotting.

The U.S. Geological Survey's groundwater modeling code, MODFLOW, was used for this analysis.

### **How to Determine if a Variance is Warranted**

In order to determine if a proposed lowest floor elevation is acceptable, the following need to be known:

1. Depth to the water table and an estimation of the water table's seasonally high elevation.
2. Type of aquifer materials - e.g., clay, silt, sand, gravel
3. Information as to whether or not the water table is perched or is part of a deeper, thicker aquifer system.
4. An estimate of the flood elevation of the pond.
5. The distance of the proposed floor to the pond.

Depth to the water table and the type of aquifer material needs to be determined through the installation of soil borings. The other information should be estimated from other sources.

Once this information is obtained, the minimum depth to the water table from the bottom of the proposed floor slab can be determined from one of six plots, attached to this memorandum. Which of the six plots to use depends on the depth of the water table with respect to the pond's bottom and the type of aquifer material (e.g., clay, silt, sand, gravel). The following steps should be used:

1. Determine the closest distance of the proposed floor to the pond (if the pond size increases during flooding, the distance should be from the flooded perimeter of the pond to the proposed floor).

2. Using Plot 1, determine the minimum permissible depth to the water table for the specified distance from the pond. If the actual depth to the water table (see discussion below for determining this) is greater than the value on Plot 1, no further evaluation is necessary – the floor is sufficiently high with respect to the water table that the water table will not reach the bottom of the slab, regardless of the soil type or transmissivity. If the depth to the water table is less than the value from Plot 1, further evaluation is necessary.
3. If the soil type of the aquifer, below the water table, is mostly clay OR if the aquifer is perched (a continuous clay layer is less than 5 feet below the water table), Plot 2 must be used. The appropriate pond level increase (2, 4, or 6 feet) for flood conditions must be used in Plot 2 to find the minimum permissible depth to the water table. If the depth to the water table from Plot 2 is less than the actual depth to the water table, the proposed floor elevation is too low and must be raised to equal the value from Plot 2.
4. If the soil type of the aquifer is mostly silt AND the pond bottom is 3 feet or less above the water table, Plot 3 should be used.
5. If the soil type of the aquifer is mostly sand or gravel AND the pond bottom is 3 feet or less above the water table, Plot 4 should be used.
6. If the soil type of the aquifer is mostly silt AND the pond bottom is 3 feet or more above the water table, Plot 5 should be used.
7. If the soil type of the aquifer is mostly sand or gravel AND the pond bottom is 3 feet or more above the water table, Plot 5 should be used.

The values from the plots are guidelines, based on typical conditions. If the plots indicate the proposed floor elevation is too low, additional analyses and data collection could be pursued by the applicant. These additional analyses could include additional soil borings, long-term monitoring of piezometers, or more sophisticated modeling.

## Determining Depth to the Water Table

If a variance to a lowest floor elevation ordinance is to be considered, the depth to the water table at the location in question must be known. Without this knowledge, there cannot be a technical basis for approving a variance. Furthermore, the applicant should demonstrate that the measured water-table elevation is both representative of conditions over the entire floor area and is representative of values typical for seasonally high conditions (e.g. spring conditions). A suggested requirement for collecting this information is the following:

- 1) A minimum of two soil borings shall be installed at or near the perimeter of the lowest floor. At least one of these borings shall be where the floor is closest to the nearest pond.
- 2) Soil borings shall extend to a depth of at least 7 feet below the water table. The borings shall be left open for a time sufficient to determine the stabilized water level in the borehole. The water level shall be measured with reference to a known bench mark that can relate the water table elevation to the proposed floor elevation. Soils at or immediately below the water table shall be sampled and texturally classified using an approved classification method.

Water levels measured during dry summer months or during the winter may be lower than water levels during the spring. The applicant should be required to make an effort to determine the likely amount of seasonal fluctuation in the water table in the area. Water level records from wells completed in the area could be used. If information is unavailable, the applicant should be required to add a value to the measured water table elevation. One suggestion would be to assume 25% of the total annual precipitation (29 inches), divided by the average effective porosity for non-cohesive soils (0.3), which is:

$$(29 \text{ inches}/4) \times (1 \text{ foot}/12 \text{ inches})/0.3 = 2 \text{ feet}$$

If the seasonally adjusted maximum water-table elevation is eight (8) feet or below the bottom of the slab of the lowest floor, it is unlikely that temporary flood conditions in the pond will cause the water table to rise to the level of the floor.<sup>1</sup>

## Determining Soil Type at the Water Table

The textural classification from the soil borings will be necessary for determining the

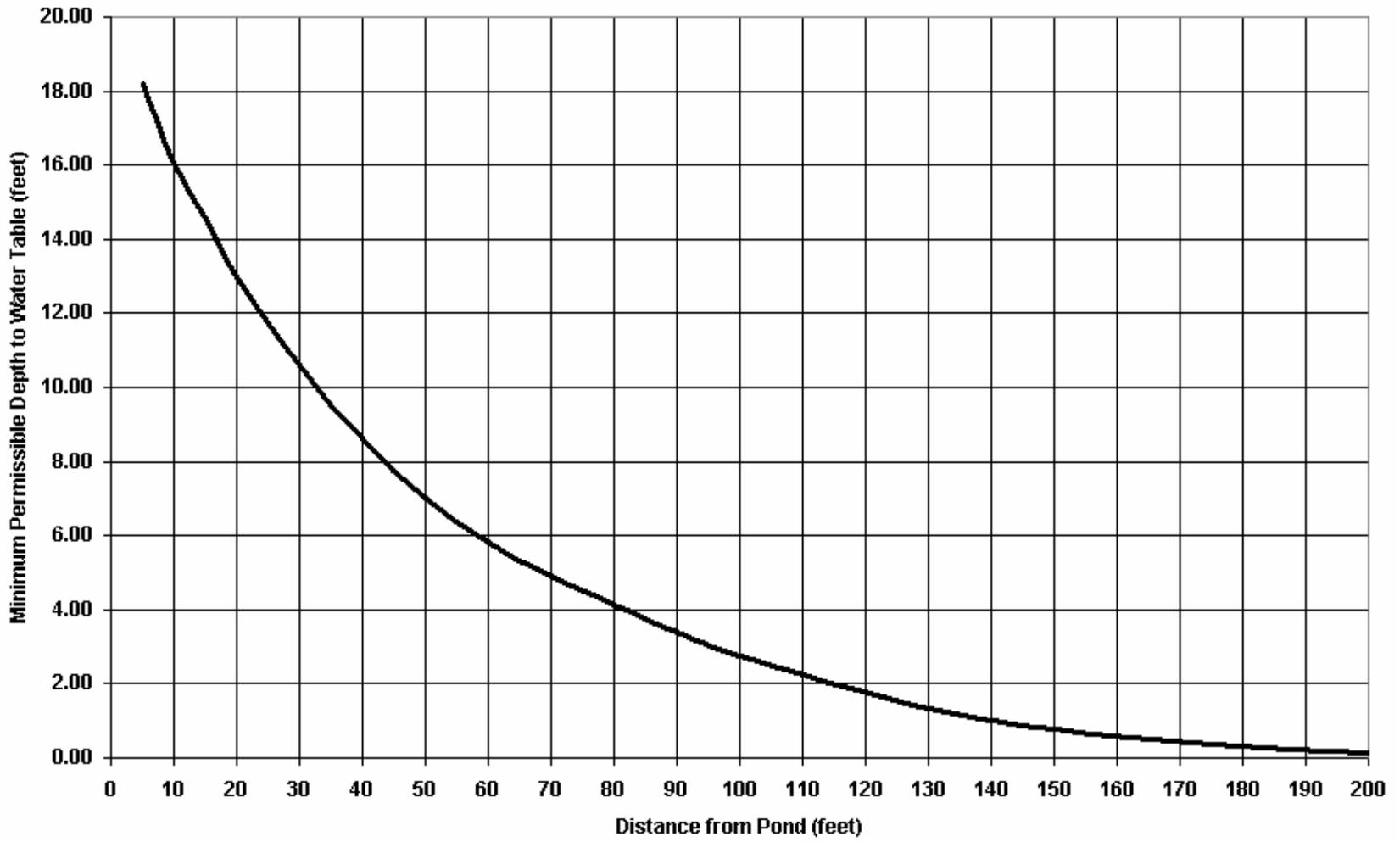
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<sup>1</sup> This assumes that the pond level begins to return to normal within about 30 days and the pond level's increase is not greater than 6 feet.

expected rise in the water table caused by an increase in pond elevation. At a minimum, the soil should be classified as one of the following:

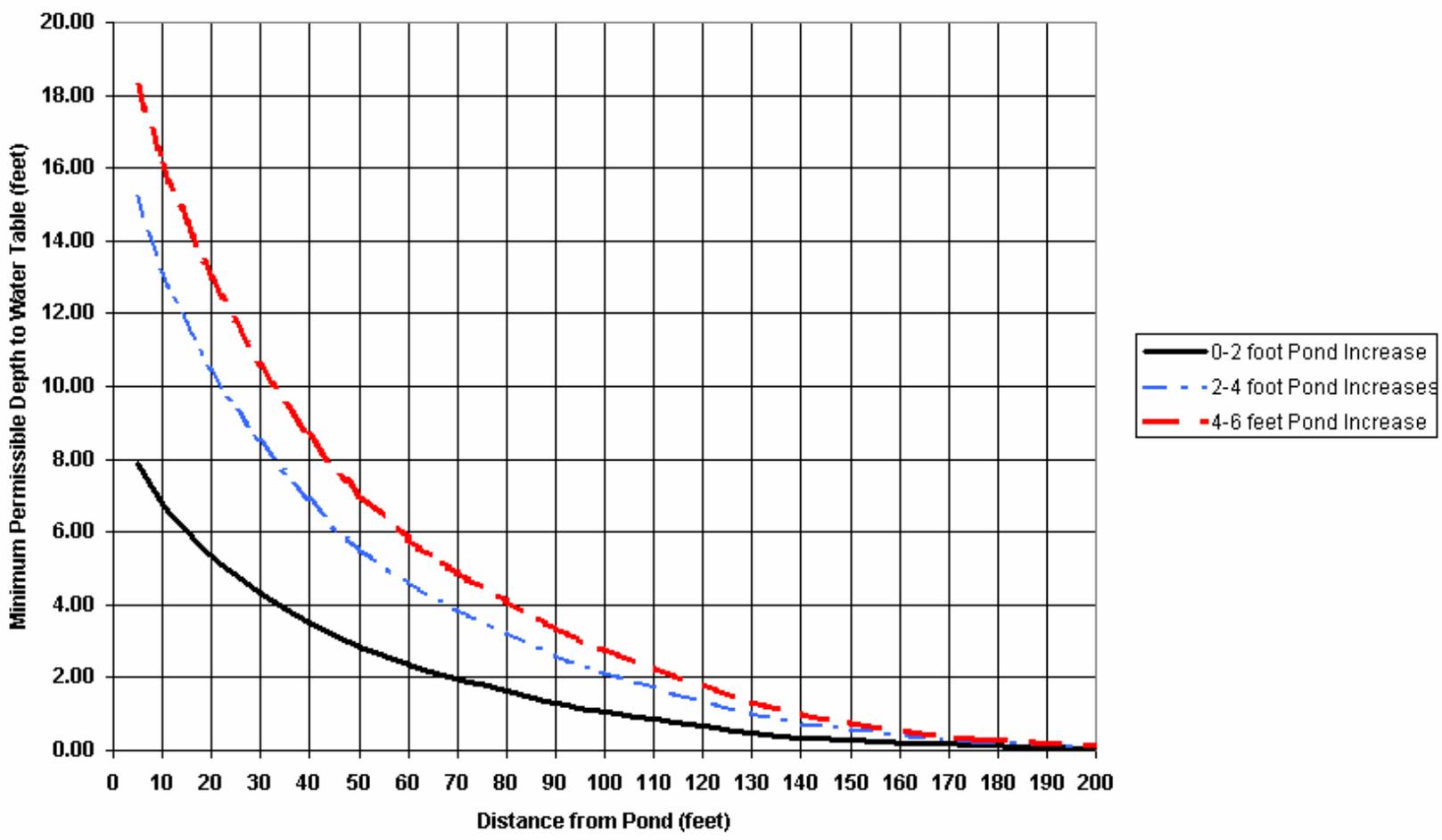
- 1) Sandy or gravelly soils – consisting of predominantly sand or gravel, with minor amounts of silt and clay
- 2) Silty soils – consisting predominantly of silt
- 3) Clayey soils – consisting predominantly of clay

**PLOT 1: Minimum Depth to Water Table for No Further Evaluation**

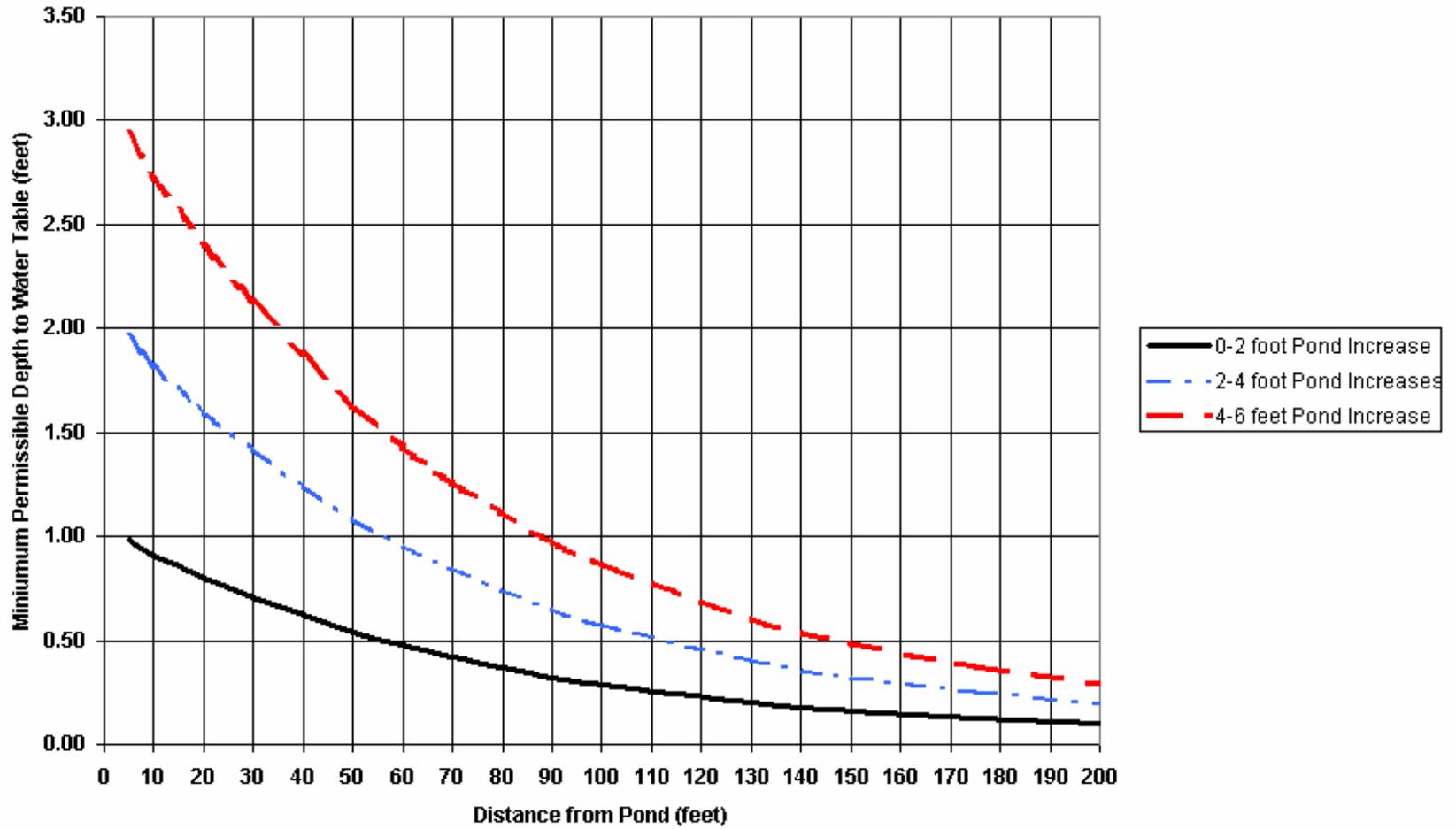


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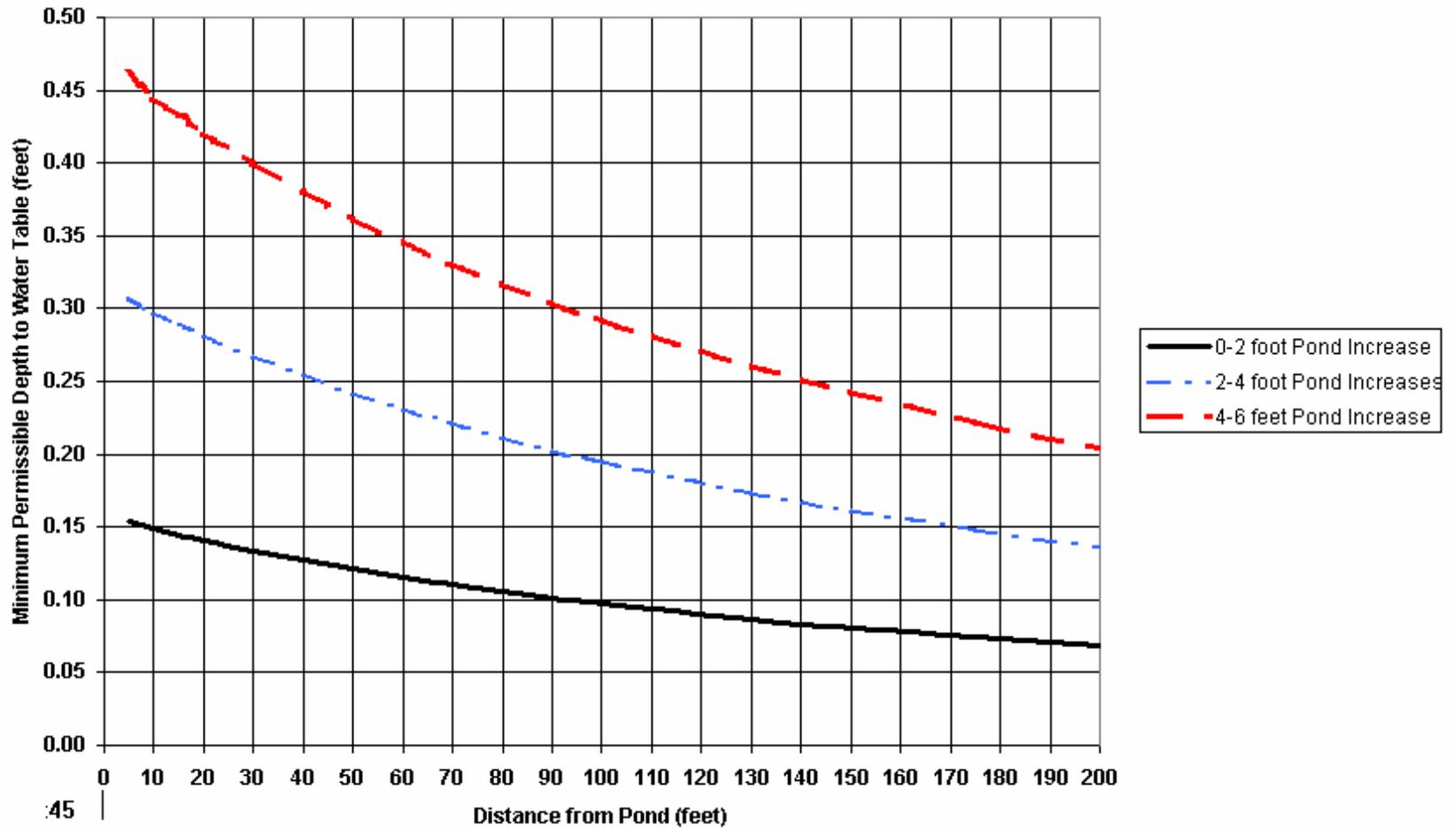
**PLOT 2: Minimum Permissible Depth to Water Table - Clay or Perched Conditions  
(Perched Conditions = Water Table <5 feet above a continuous clay layer)**



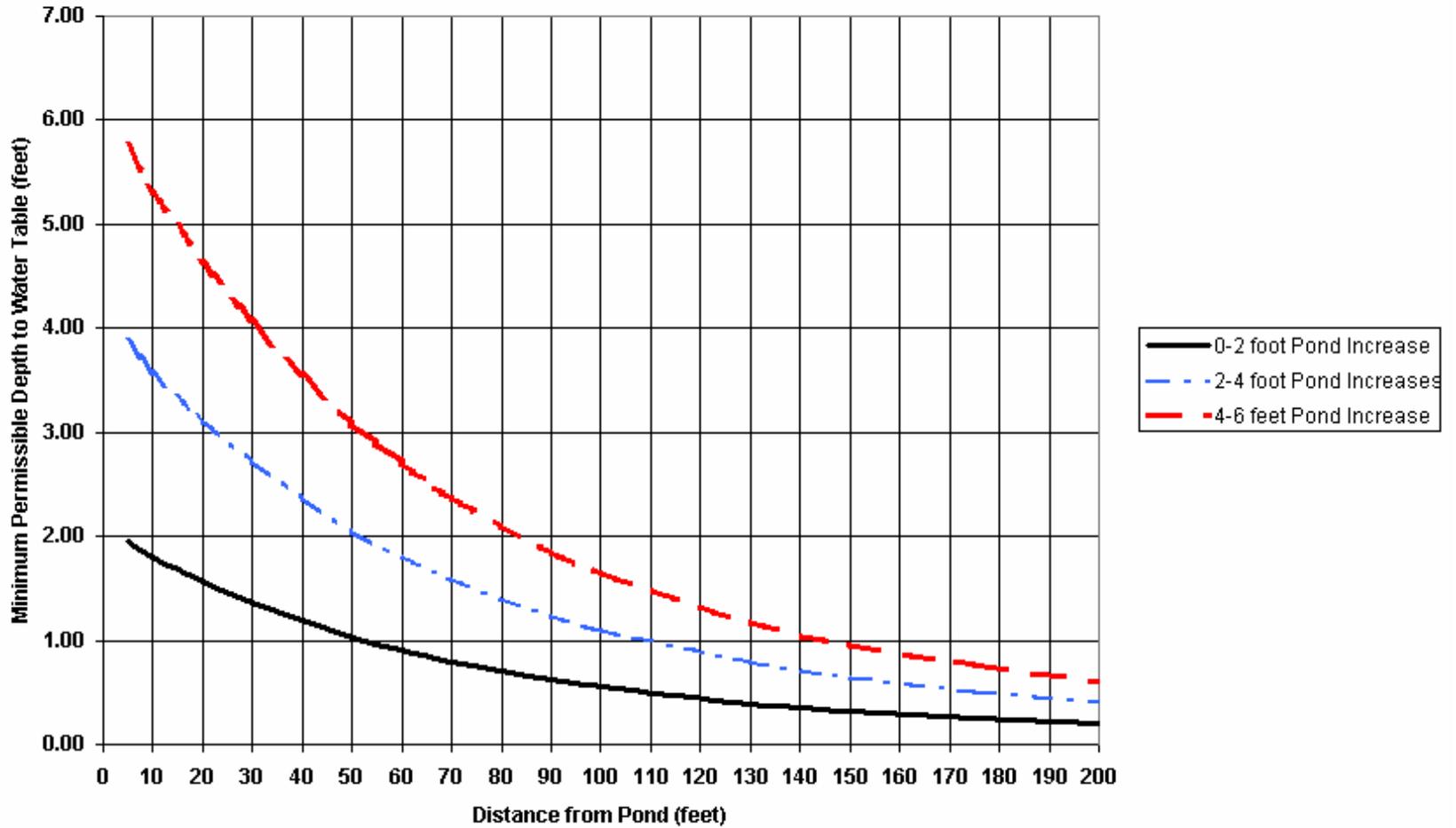
**PLOT 3: Minimum Permissible Depth to Water Table - Silt - Pond Bottom <3 feet above  
Ambient Water Table**



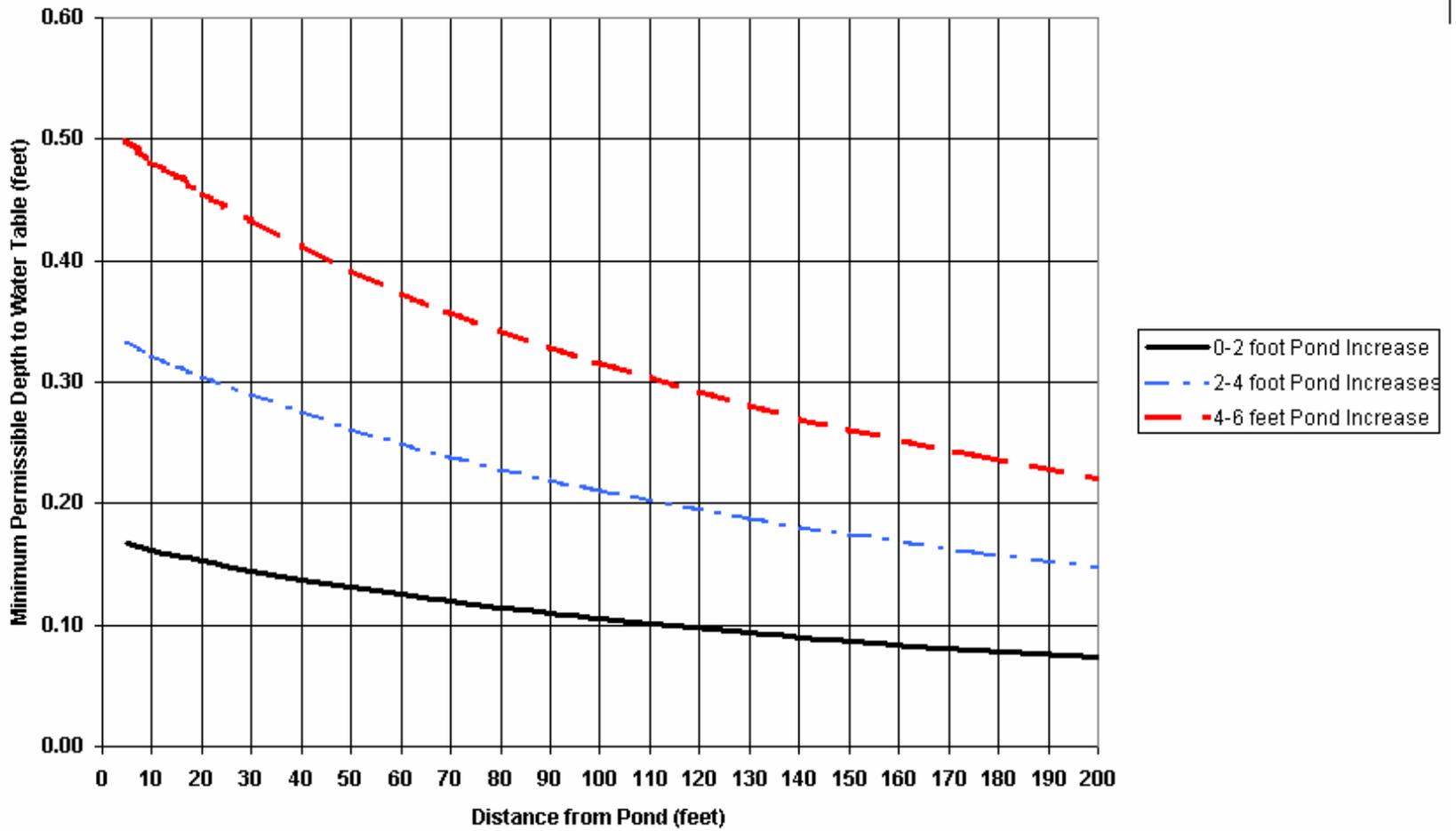
**PLOT 4: Minimum Permissible Depth to Water Table - Sand & Gravel - Pond Bottom <3 feet above Ambient Water Table**



**PLOT 5: Minimum Permissible Depth to Water Table - Silt - Pond Bottom >3 feet above  
Ambient Water Table**



**PLOT 6: Minimum Permissible Depth to Water Table - Sand & Gravel - Pond Bottom >3 feet above Ambient Water Table**



## **Nine Mile Creek Watershed District Rules Schedule A – Permit Fees**

The Nine Mile Creek Watershed District (NMCWD) Board adopted Resolution 2008-02, establishing a permit fee schedule on March 19, 2008. This permit fee schedule for Nine Mile Creek Watershed District permits is established by the Board of Managers pursuant to 103D.345 and the NMCWD Rule 11.0, which directs the District to apply a permit fee to cover actual costs related to permitting, including site inspections, analysis of the proposed activities, services of consultants and compliance assurance.

In accordance with Resolution 2008-02, the following permit fees will be charged to permit applicants:

**For single-family residential projects:**

<b>Rule 4.0 – Stormwater Management</b>	<b>\$250</b>
<b>Rule 5.0 – Erosion and Sediment Control</b>	<b>\$50</b>

**For subdivision of land and all other projects, Rules 2.0-6.0:**

<b>0 – 4.99 acres</b>	<b>\$750</b>
<b>5 – 9.99 acres</b>	<b>\$1,000</b>
<b>Larger than 10 acres</b>	<b>\$1,500</b>

**For work in public waters permitting under Rules 6.0-9.0:**

Permit fees will be charged in accordance with the Department of Natural Resources' Water Permit Application Schedule, except that no fee under these rules will be charged when the applicant pays a fee for a permit under rules 2.0-5.0 for the same project.

**For Wetland Conservation Act permitting:**

When the District serves as the Local Government Unit, actual costs associated with District regulatory activities will be billed to the applicant.

<b>For transfer or extension of an unexpired issued permit:</b>	<b>\$40</b>
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**Nine Mile Creek Watershed District Rules  
Schedule B – Surety Rates**

**Performance Surety**

Pursuant to Resolution 2008-03, the Nine Mile Creek Watershed District Board of Managers establishes the following surety amounts. The surety will be used to ensure the performance and completion of work in accordance with a permit. The surety for issuance of a Nine Mile Creek Watershed District permit, when required, is pursuant to Minnesota Statute 103D.345 and District Rule 12.0 and shall be as follows:

<b><u>Rule</u></b>	<b><u>Performance Surety Amount</u></b>
Wetlands Management (Rule 3.0)	\$5,000 + \$1,000/acre over 10 acres
Stormwater Management facilities (Rule 4.0)	<ul style="list-style-type: none"><li>• Infiltration basins: \$6/sq ft</li><li>• Rain gardens: \$6/sq ft</li><li>• Underground storage: \$980/acre impervious treated</li><li>• All other facilities: 125 percent of construction and maintenance costs</li></ul>
Erosion and Sediment Control (Rule 5.0)	\$2,500/acre disturbed, plus \$2.50/linear foot of erosion control required
Shoreline or Streambank Improvements (Rule 7.0)	\$5,000 or the total number of feet of shoreline or streambank affected times \$100
Sediment Removal (Rule 8.0)	Cost of project

**SURETY MUST INCLUDE 10 PERCENT CONTINGENCY AND 30 PERCENT ADMINISTRATIVE COSTS IN ADDITION TO AMOUNTS CALCULATED ACCORDING TO SCHEDULE ABOVE**

**MINIMUM SURETY AMOUNT (WHEN REQUIRED): \$5,000**

## **Nine Mile Creek Watershed District Rules Schedule C – Stormwater Facilities Fund**

Pursuant to Resolution 2008-04, project applicants who qualify to do so shall contribute an amount equal to **\$40,000 per acre** of impervious surface of a parcel for any unsatisfied portion of the volume retention requirement of District Rule 4.0 to the Stormwater Facilities Fund.