

**Minnehaha Creek Watershed District
Land & Water Partnership Initiative
Technical Advisory Committee**

Meeting #4
January 19, 2023
1:00 – 3:00 PM

MCWD Office – 15320 Minnetonka Blvd, Minnetonka
Board Room - Lower Level

Agenda

- 1:00-1:05 **Welcome and Recap of Meeting 3**
- 1:05-1:35 **Optimizing the MCWD Permitting Experience**
Review of Batch 1 rules
Overview of proposed streamlining options
- 1:35-1:55 **Discussion of Proposed Rule Revisions and Streamlining Options**
- 1:55-2:05 **Break**
- 2:05-2:20 **Overview of Municipal Partnership Framework**
- 2:20-2:50 **Discussion of Framework**
- 2:50-3:00 **Preview of Meeting 5 and Wrap-up**
Meeting 4 Topics and Homework
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Attachments:

- Meeting 4 Pre-Read Memo
- Meeting 3 Summary



Title: TAC Meeting 4 Pre-Read: Batch 1 Rules and Municipal Partnership Framework

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Meeting Purpose:

Meeting 4 will be broken up into two sections. First, the District will provide the Technical Advisory Committee (TAC) with an overview of the input received on the Erosion Control, Shoreline and Streambank Stabilization, Dredging, and Waterbody Crossings and Structures rules, and facilitate discussion to gain further input on key areas flagged by the TAC. Second, an introduction to the Municipal Partnership Framework will be given so that the District can get feedback on how and when we might enter into partnership agreements.

Part 1: Rule Revisions – Erosion Control, Shoreline and Streambank, Dredging, Waterbody Crossings and Structures

Background:

At the December 8, 2022 TAC meeting, the District presented an overview of the Permitting Program's (Program) proposed improvements and rule revisions. The Program's direction and rule revisions are focused on promoting partnership and improving customer service by aligning with state standards, simplifying and streamlining rule language and processes, and tailoring regulations to natural resource risk and project opportunity.

Since the last TAC meeting, the TAC reviewed the first batch of draft rules and completed a survey to respond to specific questions regarding the proposed changes and identify any additional recommended changes. At Meeting 4, District staff will provide an overview of the TAC comments and facilitate discussion on key areas flagged by the TAC. Comments that are not discussed at the TAC meeting will be carefully reviewed and responded to individually, and the full list of comments and responses will be shared with the TAC.

One of the more substantive changes and areas of TAC feedback was the addition of permitting Fast-Tracks under the Dredging and Waterbody Crossings and Structures (WBX) rules for maintenance projects:

- WBX: Culvert/outfall replacements that match prior approved plans or projects that do not increase impact to waterbody bank and maintain hydraulic capacity;
- Dredging: Dredging projects that meet prior approved plans and repeat projects such as non-native sediment removal at outfalls and for channels/moorings that have been previously dredged.

In order to tailor our regulations to the low-risk nature of these types of projects, we have proposed the following to streamline the permitting process:

- WBX: The public notice period and minimal impact criteria are not required for replacement of a culvert/control structure with equal hydraulic and navigational capacity by a public entity.
- Dredging: The public notice period is removed, and submittal requirements are reduced for non-native sediment removal at outfalls by public entities. An applicant would have the choice to submit as-built data, plans from a prior approved dredging, or core samples as their application materials; this reduces required submittals from six to one.

We received feedback at the December 8, 2022 meeting and through the survey that further streamlining improvements should be considered for routine maintenance work. The District has started to assess additional streamlining improvements, which are outlined below:

- Fast-Track Permit: Further reduce submittal requirements under the proposed Fast-Track permits.
- General Permit: Instead of going through the formal permitting process, agencies will notify the District in advance of work (through the online portal) and agree to meet a set of design standards.
- Programmatic Maintenance Agreements: Individual programmatic maintenance agreements for municipalities for routine maintenance work that outline standard requirements in place of individual permits.
- Rule Exemptions: Add in additional rule specific exemptions for certain maintenance projects.

TAC Discussion Questions:

Please come prepared to speak to the following discussion questions:

1. What are the challenges with the proposed Fast-Track options?
2. How does your city/organization plan for this type of maintenance work?
3. Which streamlining improvements do you prefer? Why? Are there examples from other permitting programs that should be considered?
4. What risks are created for waterbody protections by limiting the review and permitting process?

Next Steps:

The District will use the feedback from the survey and Meeting 4 discussions to further revise the rules and provide a progress update at TAC meeting 6 or 7. The District welcomes additional comments on the draft rules through February 28, 2023 via email or through individual meetings, as desired.

Part 2: Municipal Partnership Framework

Introduction:

Watershed districts are required by law to adopt and implement rules and permit programs to achieve their water resource goals (Minn. Stat. §103D.341). Cities also regulate for the purpose of water resource protection, and we have received feedback from our municipal partners that greater collaboration is desired to reduce redundancy, increase efficiency, and better leverage each other's capabilities.

Developing a municipal partnership framework would allow better collaboration between the Minnehaha Creek Watershed District and our municipal partners on regulatory work such as permit review and issuance, site monitoring and inspection, and enforcement and compliance action. The municipal partnership framework would consist of agreements between the District and the cooperating City formalizing partnership and including terms specific to how the actual functions in question will be performed.

Regulatory Context:

There are several key features of the regulatory environment that provide context for how District/City partnership could occur:

- The watershed law mandates that the District regulate in erosion and sediment control, stormwater management, floodplain protection, and wetland management. At the request of a city, the District will not regulate in that city if the District formally finds the city ordinances to be adequate. To date, most cities in the District have elected that the District retain its regulatory authority alongside city regulation. In 24 cities and townships, the District is the authority for all rules. In five cities and townships, the municipality chooses to regulate for one to five of the rules.
- The federal Clean Water Act (NPDES MS4 program) requires that the District and its cities each regulate in the realms of disturbed site management; stormwater management; and prevention of non-stormwater discharges into stormwater and surface water systems. The District may assume responsibility for a city's obligation, or vice versa; however, this should be formally done as the assuming party also assumes federal liability if it doesn't fulfill its obligations.

- Under the Minnesota Wetland Conservation Act (WCA), at a city's election, either the city or the District serves as the implementing authority within the city boundaries. Most cities (17 of 29) elect to have the District serve this role, but 12 do not. Separately, the District and most cities find it important to require vegetated wetland buffer and other wetland standards apart from WCA, whether or not they are the WCA implementing authority.
- Cities must implement ordinances protecting floodplain under the Federal Flood Insurance Program and state law, and regulate construction adjacent to floodplain for building code compliance. The District long has found it fundamental to its mission to regulate floodplain fill for regional flood storage purposes.
- The Minnesota Department of Natural Resources (DNR) regulates alterations to shorelines and streambanks, and within adjacent public waters. Because the District also exercises permitting authority over this work, the DNR exempts regulated parties from an extensive DNR permitting process. If the District ceased to implement its rules, property owners would be subject to the more extensive DNR permit process. State law requires cities, as well, to regulate riparian disturbance.

Collaboration Options:

Within the above regulatory context, there are several options where a District/City partnership may occur:

- Regulatory Work
 - o Partner on permit review and issuance to limit public expense and avoid unnecessary burden on property owners, developers, and partners.
 - o Rely on District regulations to meet MS4 requirements to reduce duplication of effort.
 - o Coordination on site monitoring and inspection to increase field presence amongst partners and reduce redundancy.
 - o Coordination on compliance action to share enforcement tools and proactively find solutions.
- Coordination
 - o Early engagement with the District on proposed development review to allow screening of partnership opportunities and to make permitting process more efficient.
 - o Regular cadence of coordination meetings to discuss upcoming projects.
- Data Pipeline
 - o Sharing of data on zoning, land-use change, infrastructure, and water quality to identify trends, inform policy and decision making, and assess health of the watershed.
- Technical Assistance
 - o Pre-application process for early engagement and technical review to better detect potential opportunities and streamline the permitting process.
 - o Training on MCWD regulations and permitting process for City staff to facilitate better partnership.

Implementation:

The above options for collaboration would be implemented by means of an agreement between the District and the cooperating city. This would be a joint powers agreement that involves a sharing of the powers of each body. The agreements would be in the form of templates that include terms specific to how the actual functions in question will be performed, and how the responsibilities and liabilities attending those functions will be allocated.

TAC Discussion Questions:

Please come prepared to speak to the following discussion questions:

- Why might your organization be interested in participating in a formalized partnership agreement?
- What areas of regulatory work – permit review and issuance, site monitoring and inspection, enforcement and compliance – might your city be interested in partnering on? For which rules – erosion control, floodplain, wetlands, dredging, shoreline, waterbody crossings, stormwater, WCA?

Next Steps:

Following this initial discussion, the District will send a survey to gather additional input from TAC members on the level of interest, and areas of work, for these partnership agreements.