



Title: Permitting Alignment Update

Prepared by: Name: Kayla Westerlund, Permitting Program Manager
Phone: 952-473-2855
Email: kwesterlund@minnehahacreek.org

Purpose:

To provide the Board of Managers an update of the Permitting Alignment Initiative and its progress to date, and to report on permitting metrics collected in 2022.

Background:

Over the past several years, the Minnehaha Creek Watershed District (MCWD or District) has been working to align the organization to support its vision of a Balanced Urban Ecology, where built and natural environments exist in balance to create value and enjoyment. The Balanced Urban Ecology policy laid the foundation for the Permitting Program's new purpose, as identified in the District's 2017 Watershed Management Plan:

"To protect natural resources against degradation associated with land-use development; and, partner with public and private parties to generate greater natural resource outcomes than those achieved through regulation alone."

In aligning the Permitting Program around this new purpose, the District moved forward from the traditional regulatory model, toward developing meaningful relationships with the land-use community, and together building projects that provide social, economic, and environmental benefits. In service of this goal, the Permitting Program sought to provide a heightened level of service to its applicants and communities by creating clear rules and process, aligning its efforts with other agencies, and creating greater efficiencies with its municipal partners.

The purpose was the foundation of a series of discussions with the Board of Managers and the Citizen's Action Committee (CAC) beginning in 2018. Within these discussions, the Permitting Program was evaluated for areas of improvement, and opportunities to strengthen relationships with municipal partners and the land-use community were identified. These discussions identified the following policy directives for the Permitting Alignment Initiative:

- **Rules Revisions & Compliance Framework**
 - Adjust regulatory scope and standards to align with other local and state agencies.
 - Simplify and streamline rule language, technical submittals, and procedural requirements to enhance clarity with plain language and create a more user-friendly experience.
 - Improve the Program to be more efficient by tailoring regulations to natural resource risk and project opportunity.
 - Formalize the compliance framework to be more efficient with inspections, focus on sites that pose a particular risk to water resources, and partner with Cities on enforcement.
- **Partnership Framework**
 - Explore formal partnerships with municipalities to improve coordination, reduce duplication of efforts, and leverage each other's capabilities.
 - Create clear processes for how the Program will identify and explore partnership opportunities with applicants.
- **Information Technology Initiative**
 - Increase administrative efficiency, user-friendly experience, and data gathering potential through technology investments.

At the [September 23rd, 2021 PPC Meeting](#), these policy directives were reviewed, and Staff began working toward these goals. Since setting these policy directives, the Permitting Program has made progress towards aligning with the 2017 strategic focus. The purpose of this memo is to provide an update on the progress of the Permitting Alignment Initiative, and to present the major accomplishments achieved in 2022. Staff invite the Board to provide feedback on the success and effectiveness of the Permitting Alignment Initiative thus far. Staff is also seeking the Board's feedback on the next steps and implementation plan for the Permitting Alignment Initiative, and their support for the direction of the initiative as well as the proposed timeline.

Rule Revisions and Compliance Framework Update

The Permitting Program's rule revisions and compliance framework formalization serve the ultimate purpose of improving efficiency and effectiveness, creating a more streamlined and user-friendly experience for applicants, and tailoring regulations and inspection prioritization to natural resource risk and project opportunity.

Rule Revisions Overview

In September of 2021, staff brought the main rule revision change areas to the Board and CAC for review and confirmation of the policy direction forward. A summary of the main proposed changes can be found below:

- Erosion Control
 - Addition of a "General Permit" track to allow erosion control permits to be autonomously issued for projects on <1 acre that only trigger this rule.
- Dredging
 - Permitting fast-track option and revising of the submittal requirements for routine dredging of sediment at outfalls and for repeat dredging to maintain navigational access.
- Waterbody Crossings and Structure
 - Fast-track option for routine replacement of culverts and outfalls with equivalent dimensions and comparable materials.
- Shoreline and Streambank Stabilization
 - Addition of requirement to consider both velocity and shear stress calculations when determining stabilization method for the streambank.
- Wetland Protection
 - Addition of buffer flexibility for large projects and for public projects with equivalent protective measures in place.
- Floodplain Alteration
 - Switching from fast-track permit to exemption for ordinary landscaping (i.e. sod placement).
- Stormwater Management
 - Treatment and sequencing standards are being revised to align with MS4 standards.
 - Rate control requirements are proposed to be switched from the 1-year event to the 2-year event to align with municipal requirements.
- Variances and Exceptions
 - Replace the "undue hardship" variance standard with the "practical difficulty" standard.

Compliance Framework Overview

The updated Compliance Framework allows staff to be more efficient with their inspections, focus on sites that pose a particular risk to the resource, and be a more trusted partner with the surrounding entities. The Compliance Framework consists of three policy drafts that seek to accomplish the goals of the 2017 Strategic Alignment Plan. See below for a short summary of each policy:

- Enforcement Policy
 - This policy outlines a graduated enforcement path for staff to increase escalation and consequences of non-compliance until compliance is achieved. The policy streamlines the compliance process by providing guidance and clarity to both permitting staff and the permittee. This supports the District's mission of protecting water resources and being a trusted partner in the community.

- Inspection and Site Prioritization Policy
 - This policy recognizes that Department staff will exercise judgment in setting inspection priorities and allocating resources to inspection activity. This policy sets forth a tool to set priorities among active permit sites with a point system. The updated site prioritization policy allows staff to focus their inspection efforts on sites with the greatest risk for a negative impact on a water resources.
- Financial Assurance Usage Policy
 - The MCWD Financial Assurances Rule requires a financial assurance to be submitted with a permit application to provide resources to ensure a permittee's conformance with terms of the MCWD permit and reimburse the MCWD for costs incurred to obtain that conformance. The policy includes a Financial Assurance Schedule which outlines the financial assurance required based on regulation and project type, and it has been updated to reflect current material and construction costs.

Progress Update

Currently, staff are in the process of presenting the rule drafts and compliance framework to the District's Technical Advisory Committee (TAC) for input and collection of other potential revision areas. The TAC engagement process is taking place over a series of eight meetings from October 2022 – May 2023. The following is a summary of key takeaways we have heard from the TAC so far:

- Scope of Program Improvements:
 - Generally, there is support for the Program direction and proposed improvements, and an emphasis placed on the need to continue to address staff retention because maintaining relationships is the foundation for successful partnership.
- Rule Revision Proposals:
 - Overall, there is general comfort around most changes that the District is proposing, because the changes are not seeking to increase standards but rather improve rule clarity, streamline permitting processes, and align with required state treatment standards.
 - Under both the Dredging rule and Waterbody Crossings and Structures rules, TAC members requested that the District assess options to further streamline the approval process for low-risk routine maintenance projects, like repeat non-native sediment removals at stormsewer outfalls and in-kind structure replacement.
 - TAC members have also raised questions and suggestions related to how the rules are used to manage flood risk. Staff have used these discussions to introduce the District's upcoming climate planning and engagement process, where these more significant policy changes will be considered. In the meantime, to help address TAC comments, staff are developing guidance to clarify how the District considers variance requests for floodplain fill.

Looking Forward

Questions and comments we have received are actively being considered by District staff for inclusion into this round of rule revisions. Following the final TAC meeting, staff will share a detailed report to the Policy and Planning Committee on the final set of proposed rule revisions so that Board members may provide ultimate direction on proposed revisions. Staff anticipate the rule revisions going live in quarter 1 of 2024. Prior to implementation, staff will engage the Board during the summer of 2023 to finalize the proposed revisions so that the 45-day comment period can be held over fall 2023. In addition to board engagement, staff will be working internally to finalize guidance, staff training, consultant training, and database updates over the fall to support going live in early 2024.

The updated compliance framework has garnered interest from the TAC and will be presented to them at Meeting 7 on April 20th. A goal of this meeting is to discuss how we will coordinate with our partners and share enforcement and compliance tools to maximize efficiency and minimize overlapping field presence. After the compliance framework is presented to the TAC, Staff will bring the drafts to the Board of Managers for their review. Staff anticipate having a trial period for the compliance framework during the spring 2023 inspection season, with the goal of tracking staff time and evaluating the new inspection processes for efficiency and effectiveness.

Partnership Framework Update

Overview

To support the overarching goal of improving integration of land-use and water planning, staff have been exploring opportunities to strengthen relationships and improve coordination with municipal partners. In addition to planning their own capital improvements, the cities guide private development and run regulatory processes that parallel the District's. Throughout these processes, there are multiple opportunities for strengthening coordination. By identifying the right points of connection and building processes to support coordination, the District and cities can be more effective in identifying risks and opportunities early in the planning process and collaborate to shape projects for greater natural resource and community benefit.

Progress Update

District staff have been discussing these opportunities for coordination with the TAC, and below is a summary of ideas discussed to date:

- Land use planning:
 - TAC members recommended that the District identify areas of priority and opportunity for water resource improvements and work with city planners and planning commissions to get them integrated into Comprehensive Plans/area plans so they can be factored into city zoning and development requirements.
 - District identification of opportunity areas could also support the development of regional projects and banking/credit systems for water quality, flood storage, and/or wetland restoration.
- Infrastructure planning:
 - The TAC has vetted the proposed Land & Water Partnership program and discussed its role in supporting City-led projects that provide significant, regional water resource benefit. The TAC has generally been comfortable with the proposed program scope, process, and schedule and expressed that it aligns well with municipal planning processes.
 - The TAC supports continuing the practice of annual meetings with the District and see this as a valuable venue for reviewing plans and identifying partnership opportunities.
- Private development review:
 - TAC members see value in early coordination between the city, applicant, and MCWD at the pre-application or sketch plan phase to provide the applicant with an understanding of the rules and potential impacts to the project upfront to help expedite the planning and permitting process. It can also be a way to identify partnership opportunities.
 - Members noted that many cities currently send all sketch plans/applications to MCWD, and it would be helpful to have a shared understanding of priority areas so city staff can be more targeted in making connections between MCWD and developers.
 - The TAC agreed that planning staff are a key conduit for building relationships and partnerships with private developers since they are typically the first to learn about development activity.
 - TAC members expressed that marketing to developers is still worthwhile and offered suggestions on how to engage this audience and incentivize participation.
- Water resource regulation:
 - The TAC agreed formalizing partnerships between the District and municipalities for the purpose of reducing redundancy would be beneficial. These partnerships would be in the form of a joint powers agreement including terms specific to how the actual functions in question will be performed.
 - The framework would formalize rule authority and compliance with MS4 (Municipal Separate Storm Sewer System) regulations. With these agreements in place, the District would be able to fulfill MS4 compliance for municipalities that have requested it through their MPCA (Minnesota Pollution Control Agency) audits.

Looking Forward

Staff will be taking the ideas from these TAC discussions and developing an action plan to implement improvements in coordination between the District and cities. Further engagement with the TAC will also take place via a survey in order to identify those interested in formalized partnerships for rule authority, permit administration, and enforcement. This information will be brought back to the Board and used to develop template agreements. By establishing these

partnerships, the District and municipalities will be able to work together more effectively and efficiently toward the goal of protecting water resources.

Information Technology Initiative Update

Overview

Each year hundreds of applications are submitted to MCWD to propose changes to the landscape. Annually, District staff engage in thousands of interactions with municipal officials, developers, engineers and architects, to evaluate projects and ensure they meet standards that protect the natural resources within the watershed. All of these projects represent data that, when aggregated, reveal insights about the land use and water trends within the watershed. These data can be mined to inform policy development, planning and communications.

One of the policy directives of the Permitting Program Initiative is to increase administrative efficiency, improve user experience, and expand data gathering potential through investment in technology. Following this direction, in 2019 District staff formed an Information Technology (IT) Team to align an IT update around the goals of the organization and the specific needs of each of MCWD's programs. Needs identified for Permitting included improving record keeping, enhancing customer service, and organizing the data needed to identify early coordination and partnership opportunities. Through a selection process, the IT Team chose the Elements XS system by Novotx as the best match for the functional requirements of the Permitting Program and technical requirements of the District. MCWD staff then brought the recommendation to invest in Elements XS by Novotx to the MCWD board under [Resolution #20-006](#) in January 2020.

IT Initiative Update

The Elements XS permitting portal went live in April 2021, and has been used since then for managing all of MCWD's permitting requests. 2022 was the first full year where all permitting was administered through Elements XS. At the Board Meeting this data will be presented through metrics and maps that show what is happening in the watershed, and highlight trends in development as well as quantify the impacts of MCWD's rules on our watershed.

As we continue to collect data in future years, insights can be drawn about the watershed and how it is evolving over time. The data gathered in 2022 highlight both the successes and areas that require improvement in the Permitting Program. By taking a closer look at the data and using it to inform our decision-making, we can accomplish the following:

- Highlight trends in development and permitting as well as quantifying the impacts of MCWD's rules on the landscape of our watershed.
- Highlight key stories of what our rules accomplished and how these results can inform the regulatory team's direction moving forward.
- Discuss how data collection will allow us to see trends and make policy decisions, and identify opportunities for land-water partnership.
- Discuss staff time allocation and capacity considerations, and forward-facing recommendations and strategies.
- Identify process improvements that streamline workflow and provide better customer service.

Looking Forward

The data gathered in 2022 provides insights and direction for the Permitting Program moving forward. For example, the metrics pulled from the pre-applications processed in 2022 shows room for improvement in achieving the degree of early coordination with developers envisioned in the Land & Water Partnership program. The trends and insights captured in the 2022 metrics serve as a preview of the powerful data that we will develop as we continue to utilize Elements XS. As we continue to compile permitting data, we are building a wealth of information that allows us to answer critical questions and reflect on the impact of our policies as well as explore and model how proposed policy changes could affect our watershed.

Next Steps

In conclusion, the update on the Permitting Alignment Initiative demonstrates the progress made toward implementing the new direction set in the 2017 Watershed Plan. We have made significant progress in our efforts to streamline the permitting process through rule revisions and compliance framework drafting, which will allow us to dedicate more time

to developing partnerships and identifying opportunities for collaboration with our stakeholders. Our collaboration and dedication have resulted in the development of a strong team that is committed to driving positive change and program improvements.

Moving forward, we plan to finish the TAC process in May 2023, use the TAC's feedback to finalize the rule revisions, compliance framework, and partnership framework; and then work toward implementation in 2023. Additionally, we will continue gathering data-driven insights through Elements XS and work to enhance our efficiency through process improvements that streamline workflow and provide better customer service.