



## MEMORANDUM

**To:** Operations and Programs Committee  
**From:** Tom Dietrich, Permit Program Manager  
**Date:** March 14, 2019  
**Re:** Permitting Program Alignment

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### **Purpose:**

To initiate discussions with the OPC on Permitting Program (Program) Alignment through reviewing and receiving input on the goals, scope, and process.

### **Background:**

The 2017 Watershed Management Plan (Plan) solidified the District's Balanced Urban Ecology (BUE) policy as the underlying philosophy for the organization. This policy emphasizes the District's belief that social and economic value are created when the built and natural systems work in harmony. The organizational pursuit of these benefits are most effective when sought through public-private partnerships, and through the integration of the District's watershed work with land-use planning. To accomplish its organizational mission in conjunction with the BUE policy, the District's strategic priorities are to:

1. Build high impact capital projects; and
2. Influence policy to integrate land use and water.

As a component of the strategic planning effort, a new Program purpose statement was developed to reflect the BUE. The Program's purpose was redefined 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.

The realignment of the Program around this new purpose is one of the priority activities highlighted in the 2019 work plan and the strategic action plan. These plans identify improvement of MCWD's regulatory process and rules through collaboration with public and private partners in effort to streamline and simplify requirements and create incentives for partnership, while maintaining natural resource protections.

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## Goals:

To achieve this new purpose, staff identified the following goals in realigning the Program:

1. Promote early coordination and partnership to identify opportunities to achieve greater natural resource benefits;
2. Improve efficiency of baseline regulation to:
  - Align staff time with natural resource risk and/or partnership opportunities; and,
  - Improve customer service

This effort is being undertaken to appropriately utilize staff time commensurate to natural resource risk; to revise rules to make them less complex and easier to understand; and, streamlining standards and process for a more affordable and user friendly experience. As a result of these improvements and efficiencies, staff capacity will be expanded, providing additional time and resources toward building and executing partnership projects.

## Scope:

To accomplish these goals, staff has worked with the Citizen's Advisory Committee (CAC) to develop the scope of work for the program alignment. The scope of work includes the: rule language; administrative process; compliance program; and, the partnership framework.

Each of these components underwent staff analysis to identify issues and opportunities for improvement, which was then vetted through the CAC. Feedback was gathered, synthesized, and used to further refine categorical issues and solidify direction. A tabular summary of the scope of work has been outlined in Table 1, attached at the end of this memo. More detailed briefings of the discussion topics have been attached as an appendix to this memo.

The majority of this work will advance at a staff level with periodic Board updates. However, staff has identified two primary areas within the scope that will require more direct engagement from the Board for policy direction. These elements include:

1. Regulatory scope and standards, including:
  - Simplifying and streamlining standards;
  - Assessing alternative means of processing low natural-resource risk applications;
  - Compliance with MS4 standards;
  - Assessment of overlap amongst regulators, determining the possibility of consolidation;

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## 2. Partnership framework:

- Investigate incentives for partnering with the District (Environmental PUD, Variance and Exception Language, etc.);
- Develop policy and framework for exploring partnership opportunities.

### **Process:**

To execute this scope of work, staff intends to follow the process outlined in Figure 1 at the end of this memo, and further detailed below.

August 2018 - June 2019 – Internal Vetting - CAC and OPC review; build consensus on direction; develop communication plan.

August 2019 – Fall 2019 – External Vetting – technical advisory committee (TAC), policy advisory committee (PAC), and other external stakeholders.

Winter 2019 – Spring 2020 – Drafting – building the solutions outlined in internal and external vetting.

Summer 2020 – Internal and External Committee Review (CAC, OPC, TAC, & PAC) – review drafted solutions.

Fall 2020 – Winter 2020 – 45-Day Comment and Board Adoption.

### **March 14<sup>th</sup>, 2019 OPC Meeting:**

The objective of this meeting is to summarize the scope of work discussed with the CAC for the OPC, and gather feedback. Additionally, staff will be outlining the major initiatives identified thus far, with the goal of gathering feedback on the scope and approach. From staff's perspective, the major initiatives consist of:

1. Regulatory Scope
2. Simplifying and streamlining standards; and,
3. The Partnership Framework;

All feedback will be synthesized and used to further refine the direction of the Program realignment.

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| Program Component      | Categorical Issue   | Identified Direction   |
|------------------------|---|--|
| Rules Language         | <u>Clarity</u> – rules are complex and confusing.   | Revise text for clarity, plain language, and incorporate guidance materials.<br>Simplify and streamline standards  |
|                        | <u>Land Use Synchronization</u> – rules are disconnected from municipal processes   | Construct rules to incentivize early coordination and allow for staged submittals.   |
|                        | <u>Universal Technical Submittals</u> – prescriptive submittal requirements across all rules.   | Construct rules to focus on standards with submittal requirements moved to guidance documents.   |
|                        | <u>Regulatory Scope</u> – rules duplicate efforts of other agencies, capture a large volume of low-risk projects, and are out of sync with state requirements   | Assess alternative means of processing applications that constitute a low natural resources risk.<br>Assess compliance with state standards (MS4)<br>Assess regulatory overlap and investigate opportunities for municipal partnerships. |
| Administrative Process | <u>Cycle Time</u> – the review ‘cycle’ is too time consuming and inefficient.   | Simplify and streamline the administrative process.  |
|                        | <u>Number of Cycles</u> – applications are repeating the cycle too many times due to incomplete submittals.   | Identify and pursue IT improvements (as part of a District-wide plan).   |
| Compliance Program     | <u>Ineffectual Deterrents</u> – the District has limited actionable measures in place to discourage non-compliance  | Refine the escalation process for crispness and clarity.<br>Explore the range of actions at the Board’s discretion.<br>Update financial assurance protocols and amounts.<br>Develop state and municipal compliance partnerships.         |
|                        | <u>Insufficient Field Capacity</u> – given the size (area) of the District and the number of active permits, staff cannot inspect all construction sites.   | Refine the prioritization framework to dial in site selection effectiveness.   |
| Partnership Framework  | <u>Timing</u> – the disconnection with the land use process causes applications to come to the District late in the process, where there is little opportunity to assess or pursue greater natural resource benefits. | Develop educational, guidance, and marketing materials.<br>Develop external trainings for municipal staff and process documentation.   |
|                        | <u>Process Memorialization</u> – past opportunities have been advanced using an anecdotal process based upon institutional knowledge.   | Develop a framework and process based upon past success, to provide internal and external clarity.   |
|                        |   | Investigate options for incentivizing partnership with the District (through scope of services available, environmental PUD, etc.)<br>Develop municipal partnerships to assist with opportunity identification.                          |

Table 1: Program Alignment Scope

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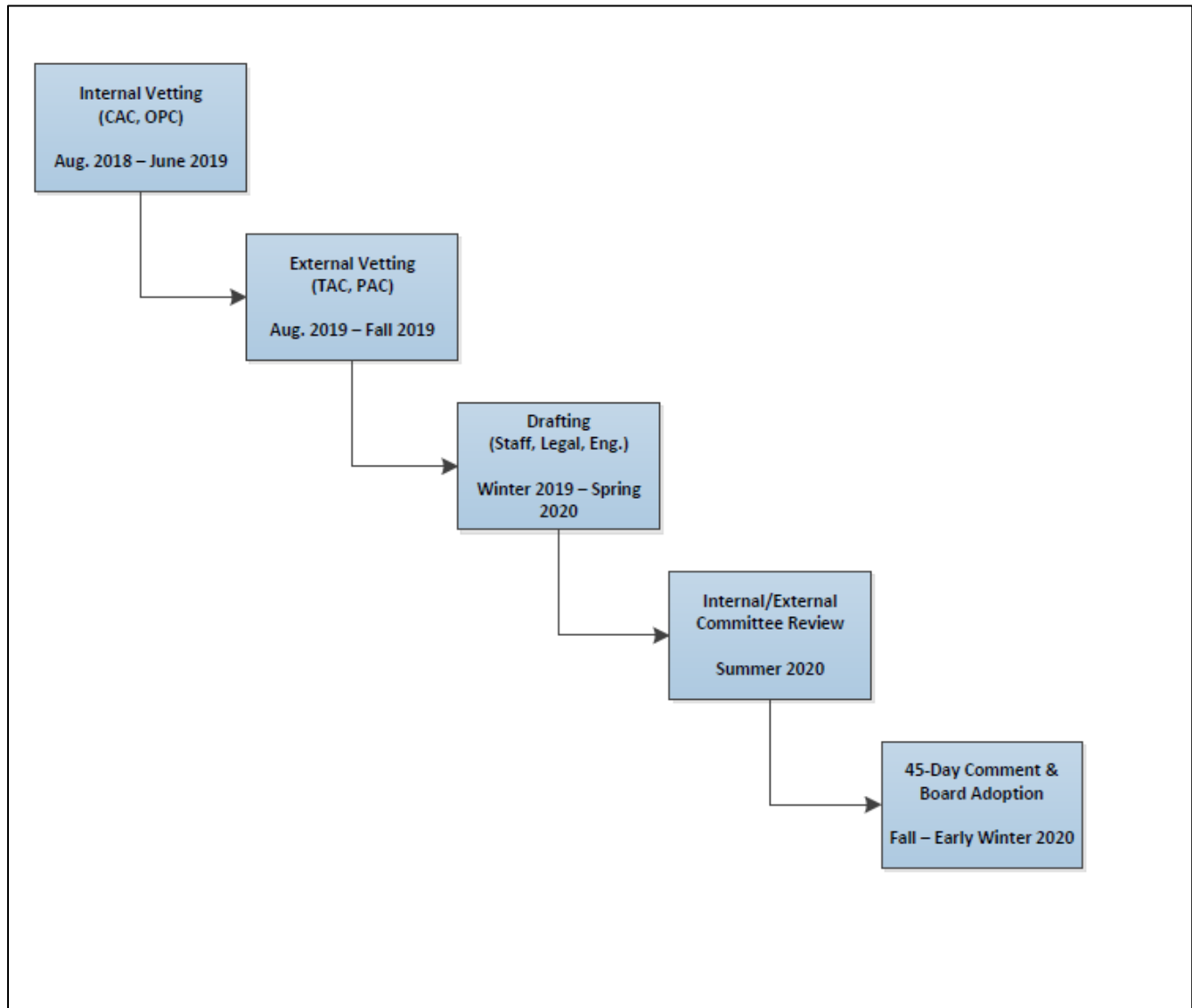


Figure 1: Program Alignment Schedule

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## **Rules:**

To cohesively realign the Program, the rule language must support the goals. Staff and the CAC critically examined the rule text, scanning for impediments to these goals. Through this analysis, four primary categorical issues emerged. Each of these issues are described below, along with the potential solutions considered and discussed by the CAC, and the direction staff is recommending.

### *Clarity*

The structure, organization, language, and intended audience of the District's rules is unclear from staff's or a customer's perspective. As a result, the rules present an inaccessibility to users, create a frustratingly opaque regulatory process, and cost applicants and the District additional time and money.

To provide clarity within the rules, staff intends to:

- Revise language to simplify, consolidate, or eliminate: legal jargon, unclear phrasing, and superfluous detail;
  - Tailor messaging to intended audiences and users to communicate standards in an understandable, approachable manner; and,
- Reorganize rule language to provide clear action steps, logical structure, and eliminate nested references.

### *Synchronization with Land-Use*

In order to effectively screen permits for potential opportunities, and be involved in key land use decisions early, the rules must be synchronized with local land use planning processes. The current rules are disconnected from local land use process. As a result, the District's regulatory process is often considered toward the end of the municipal land use process, leaving little opportunity for cooperative planning. Early coordination through municipal land use process is key in order to efficiently administer permits and encourage partnership opportunities.

To address these issues, staff intends to:

- Align with local land use processes to promote early coordination;
  - Reflect the level of coordination we desire from potential partners in our rules;
- Provide for staged submittals.

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## *Universal Technical Submittals*

The current rules, require a near universal set of submittals for nearly every project. This prescriptive approach outlines both standards, and specific means in which to meet them. Often, additional submittals are required to meet the rule conditions, however, the submittal often has no value in assessing compliance. This is regardless of other, potentially more appropriate, methods of demonstrating rule standard compliance.

To address these issues, staff intends to:

- Revise rule language to:
  - Remove submittal requirements from rule text, instead focusing on standards;
  - Refine and provide guidance on the materials and submittals required to adequately assess compliance.

## *Rule Authority Scope*

While the issues outlined above present a barrier to realizing program efficiency, they may be exacerbated an unfocused regulatory scope. If the ultimate goal of the program is to be efficient and encourage partnerships, the applications and work must be aligned with priorities based on risk posed to natural resources. If staff is spending the majority of their time administratively processing proposals that constitute a low natural resource risk, time is disproportionately being placed on projects unlikely to yield potential partnership opportunities, and by extension, greater natural resource benefits.

Separately, the evolving understanding of water resource science has promulgated new regulatory requirements from regional and state agencies. As part of these new and anticipated requirements, the Program intends to assess compliance with and overlap of state and District rules, and determine appropriate action steps. These steps may include revisions to standards, or consolidation of duplicative authorities.

To address these issues, staff intends to:

- Assess the merit of alternate means of approving proposals posing low natural resource risk;
- Eliminate any redundancy or overlap with the regulatory scope of other agencies; and,
- Incorporate any additional state mandates or regulatory requirements.

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## Administrative Process:

The purpose of the administrative process is to provide a roadmap that guides review and staff actions taken through the life cycle of a permit. The process ensures that proper documentation occurs, relevant land use data is gathered, statutory deadlines are met, and public notice requirements are completed.

### *Reducing Cycle Time*

One of the principle issues facing the Program is the length and complexity of the administrative process. The process in place relies on hardcopy application submissions, analog and digital record retention, manual data entry, hardcopy application status updates, and numerous internal coordination steps. Many of the steps currently utilized are obsolete, redundant, or dated approaches, resulting in a significant time investment, and lengthening the review process.

### *Reducing the Number of Cycles*

An additional issue facing the Program's administrative process is the number of times a given application must cycle through it. As noted in the rule text discussion, the lack of clarity and requirement of universal submittals, often results in incomplete applications. Incomplete applications must then restart the administrative process, significantly increasing staff's time investment and delaying the customer's permit delivery date.

### *Scope*

As noted in the 'Rules' section, there is a limit toward the amount of achievable efficiency. Most notably, efficiency within the process is limited by the quantity of permits processed within a given year. The vast majority of these permits consist of small-scale single-family home projects, in which the bulk of staff time is spent administratively processing paperwork.

To address these issues, staff intends to:

- Simplify and streamline the administrative process;
- Integrate IT updates (as part of a District-wide plan).

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## **Compliance Framework:**

The purpose of the compliance program is to ensure that ongoing and/or completed work has appropriate permits, is built utilizing appropriate methods, and is built per specifications outlined in approved plans. Two issues continually pervade the compliance program: the ‘lack of teeth’ within the District’s range of corrective actions (i.e., ineffectual deterrents), and a limited field capacity. The District has a suite of tools to address these issues, however, improvements are needed to increase their effectiveness.

### *Limited Field Capacity*

Because the District cannot reasonably have complete inspection coverage due to limited staff, expanse of the watershed, and number of sites, the prioritization framework selects those sites that pose higher natural resource risk. The prioritization framework is a selection tool for site inspections that weighs characteristics influencing natural resource risk, and produces a score corresponding to its priority.

The prioritization framework was first put into use in March of 2018. Prior to this, various approaches had been inconsistently utilized, with limited success. Because the tool was so recently introduced, the long term success of its approach is contingent on consistent operation with measures to holistically judge its effectiveness. While no substantive changes will be made until the tool’s performance can be more comprehensively assessed, smaller efficiencies will be pursued in the interim.

To increase the efficiency of this tool, staff intends to:

- Continue to monitor performance and refine site selection effectiveness through the establishment of measurable targets;

### *Ineffectual Deterrents*

The compliance program is built upon the ability to discourage and correct non-compliance events associated with both active and post-construction sites. The overarching issue of limited corrective actions at the District’s disposal has been broken into two sections: ‘escalation and disincentives’, characterizing issues within the current process, and ‘partnerships’ to detail how they are typically addressed.

### Escalation & Disincentives:

The purpose of the escalation process and disincentives is to ensure that non-compliant sites are brought into compliance and/or are dissuaded from having sites in non-compliance in the future. Ultimately, outside of Board ordered compliance actions, the District is extremely limited in what, organizationally, can be done to remedy non-compliance, both for active and post-construction sites.

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The escalation process utilizes a series of metered steps to deal with instances of continued non-compliance. However, the process relies on multiple rounds of inspection and documentation, to provide information sufficient for a Board action. When the best interest of the natural resource is often immediate action, the District has a limited capacity to react in a timely fashion. While it is certainly a primary focus of staff to make this process more efficient, it must simultaneously balance property rights and due process with natural resource protection.

In post-construction scenarios, the District requires financial assurances prior to issuing a permit to ensure that facilities are built per plan and specification. Should specifics of the approved permit be neglected, the Board has authority to order work to correct outstanding issues, utilizing the project's financial assurance to reimburse costs incurred. While this is an effective disincentive for non-compliance, the dollar amounts for financial assurances have not been updated in nearly 20 years.

### Partnerships:

The District relies on informal partnerships with its member cities and other agencies to achieve interim compliance rather than continually using the full escalation process. The importance of partnership in these matters is underscored by the District's inability to issue fines or enforce punitive measures (as outlined in statute). However, a distinct weakness of the current system is the informality of the partnerships, which often rely on an understanding built with an individual member of municipal or agency staff. As turnover occurs, these informal partnerships often dissolve and must be completely rebuilt with their replacements.

To address these issues, staff intends to:

- Establish clear and concise protocols and procedures to operate the process as efficiently as possible;
- Clarify the range of actions that are within the District's authority to take in matters of compliance;
- Adjust financial assurance amounts according to current construction costs;
  - Investigate means to utilize financial assurances as incentive to comply with District rules to correct issues during active construction;
- Memorialize roles, responsibilities, and expectations with partner cities and external agencies;
- Develop a joint response framework, and assess the ability of partners to investigate non-compliance on the District's behalf;
  - Investigate the efficacy of a jointly approved contractor list with partner cities.

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## **Partnership Framework:**

The partnership framework serves as the embodiment of the organization's guiding documents, and successes of cooperative ventures within the Permitting Program. While the approach has been successful, it has never been memorialized, and has existed as inherited institutional knowledge rather than a written framework. To that end, staff established basic tenants distilled from past success and lessons learned to serve as the framework's foundation. These items are outlined below.

### *Timing*

One of the most pressing difficulties in implementing the partnership approach is synchronizing the District's process with that of local land use authorities. While the District has been vocal regarding early coordination with both public and private partners, the approach has not been reflected in the rules or incentivized in formal literature that is widely distributed. Because of this, only a narrow audience is aware of the unique way the District does business.

This issue has been reflected in many of the opportunities the District has capitalized on in the past. Several of the District's flagship partnership endeavors were realized at permit approval, one of the final steps in the land use approval process. Because these projects are flagged at such a late stage in the development process, costs are incurred in pivoting site plans, agreements must be hastily assembled, and the likelihood of failure increases.

### *Process Memorialization*

In the past, opportunities have been advanced using an anecdotal process based upon institutional knowledge. Staff has identified three high level steps that encompass the necessary considerations to identify and advance potential opportunities.

### Screening:

The screening process is a series of considerations and steps that are intended to actively scan for potential partnership opportunities through permit applications or related inquiries. The goal of screening is to establish criteria through a layered analysis to determine whether a potential opportunity is present and is worth pursuit. From this initial screening, staff looks to quantify the difference between what is required and what is possible, considering the needs of the downstream resources.

The most significant barrier to realizing partnership opportunities has been the lack of a standardized, repeatable, and consistent process. Because the screening process has never been memorialized, staff has been reinventing this process from scratch every time a potential opportunity surfaces. From a potential partner's perspective, the lack of a written process or framework presents a number of unknowns and makes a potential agreement seem unnecessarily risky.

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The screening process is further complicated through the lack of incentives within the District's rule structure. The Variance and Exception rules are commonly applicable in scenarios where opportunities are presented. The vague nature of the rule structure and content creates inconsistent legal perspective in their application, specifically what constitutes acceptable alternatives and how they are quantified. In turn, staff is not readily able to anticipate how their own rule may apply to a given project, creating a lack of confidence with the developer. Avenues must be available through the rules to encourage partnerships while still maintaining natural resource protection.

### Feasibility:

If an opportunity has been identified through screening, and there has been consensus built regarding the potential for the site to do more, a potential project may move to feasibility. The main objective of feasibility is to solidify roles and responsibilities, outline preliminary costs and scheduling, and quantify the difference between the regulatory requirements and opportunities to locally/regionally enhance resources. Similar to the issues outlined in 'Screening', the largest hurdle to overcome is establishing a standardized, repeatable process outlining when and how feasibility occurs. Because the process has not been documented and there are not specific guidelines as to when feasibility is appropriate or necessary, there is confusion both internally and externally as to the order of operations.

### Project Agreement and Approval:

The project agreement phase of the partnership framework involves solidifying roles and responsibilities and formally committing to going beyond the regulatory requirements. This portion of the process is approved at the discretion of the Board. While this phase is fairly straightforward and self-explanatory, it provides an opportunity that has not been actively capitalized on in the past.

To create a more cohesive partnership framework, staff intends to:

- Modify the rule language and administrative process in order to synchronize with municipal land use processes;
- Investigate marketing strategies to communicate our unique way of doing business to potential public and private partners;
  - This may include creation of in-person training modules, web content, and distributable hardcopy education materials
- Institutionalize the methodology that has been successful based upon past experience;
- Investigate incentives for encouraging partnership with the District;
- Develop municipal partnerships to further assist with opportunity identification.
  - Create guidelines and process that integrate with internal and external parties;
  - Clearly communicate the action steps and provide clarity within the process.
- Develop an evaluation system for assessing the success of the partnership framework to continually identify areas for process improvement.

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