

Memorandum Supporting and Providing Explanation of Proposed Revisions of the Coon Creek Watershed District Rules

September 13, 2022

Background

This memorandum presents background on and explanation of amendments being proposed to the Coon Creek Watershed District (District, CCWD) Rules last modified in 2015. The proposed amendments pertain to the following:

1. Introduction and General Purpose
2. Groundwater
3. Stormwater Management and Water Quality
4. Soils and Erosion Control
5. Floodplain
6. Drainage, Bridges, Culverts, and Utility Crossings
7. Buffers
8. Definitions and Appendices
9. Wildlife

This memo supports the District's judgement that the proposed changes will improve capacity of the Watershed Development program to protect water resources and provide better service to the public in the Coon Creek watershed jurisdictional boundary and aligns with the District's current Watershed Management Plan. It establishes the basis for the District's determination that the effectiveness of the rules reasonably supports the compliance burden imposed on property development and other land-altering activities in the District by the rules as amended.

When the proposed amendments were released on May 16, 2022, the District invited applicable State agencies, Transportation Authorities, CCWD Technical Advisory Committee and the CCWD Citizen Advisory Committee to submit written comments on the proposed changes by June 30, 2022, in compliance with the 45-day period for receipt of written comments required by Minnesota Statutes section 103D.341.

The District's responses to these comments, which include detailed explanations of how the draft rules were revised as a result, can be found in a separate document.

Generally, changes to the proposed rules will not be explained here when the proposed change is e administrative in nature (i.e., eliminates unnecessary language, corrects grammatical errors and formatting, or provides minor clarification to existing language) which accounts for a large portion of the updates. While the rules appear to have changed very significantly, most of these changes come from rearranging existing language and grouping related sections together for ease of use by District staff and the regulated public.

Substantive Rule Changes

Proposed changes that have a substantive effect on the operation of the rules are discussed and explained below.

Introduction and General Purpose

- Subsection 1.4 Relation to Groundwater was added to this section. In the current rules (adopted 3/9/2009), Groundwater has a separate rule which implies, in addition to other provisions for groundwater protections, that a permit is required for any appropriation of groundwater within the District. Groundwater appropriations are not regulated by the District as a standalone requirement. If a project requiring a District permit under any other rule requires dewatering, the District ensures that any required permits are obtained from the MN Department of Natural Resources (DNR). Verifying permits obtained from another agency does not warrant a separate rule. Although the Groundwater section was removed, the Relation to Groundwater subsection was added to the introduction. This was in response to one of the comments from Metropolitan Council which expressed that more attention to be brought to the issue of groundwater in the Rules, although it was acknowledged that there are several standards relating to groundwater within other rules. To bring that attention to groundwater, while still avoiding the confusion of a separate groundwater rule, the Relation to Groundwater subsection summarizes and references the rules that relate to groundwater.
- Scope and Applicability was removed as it has caused issues with implementing the rules in the past. The current rules contain this overall scope and applicability section in addition to scope and applicability subsections for each rule. Particularly due to the broad nature of some of the applicability criteria, there were instances where a proposed project would meet the criteria for a permit under the overall Scope and Applicability section but not meet applicability criteria for any specific rule. The District also wanted to make clear that proposed projects will only need to meet the standards for the rules that apply to the project. To accomplish this and avoid further confusion, this section has been removed.
- "in accordance with an annually established schedule" has replaced "by noon, at least twelve and one half (12 ½) calendar days" in order to provide the flexibility to revise the permit review schedule as needed. With increased development in the District, this may be necessary as demand for permits increases.
- Additional language outlining closeout requirements (as-builts, infiltration testing, documentation of floodplain mitigation) has been added to codify existing program practices. It is the hope of the District that further explanation of these items in the rules will provide more opportunity for applicants to prepare and budget for these requirements upfront.
- For Clarity, the Requirements section was removed and included as appropriate in the applicable rule sections

Stormwater Management

- This section represents the largest substantive technical change to both reflect updated stormwater requirements and recommendations and to provide more specific requirements in order to assist applicants through the design process. Most changes proposed here merely bring the rule provisions into harmony with policy decisions the District staff and engineers have been implementing and providing clarification. The current rules allowed for a range of interpretation which had the potential to overburden the review process for District staff, engineers and applicants.
- Scope and Applicability of the stormwater rule has changed to include size thresholds based on the amount of impervious surface. The current rule thresholds are based only on the size of disturbed area and proximity to water resources. Not all projects that involve land disturbing activity result in enough new or reconstructed impervious surface to warrant a stormwater requirement.
- Specific applicability criteria and stormwater standards have been established for public linear projects. The intent of this revision is to provide more flexibility

regarding stormwater treatment for public linear projects as construction is often performed for public safety not for financial gains, and it is difficult to provide stormwater management on linear projects due to space limitations and conflicting Utilities.

- The volume management requirement has changed from 1" to 1.1" of runoff over the area of impervious surface required to be treated. The intent is to align the volume management requirement with the MIDS communities that are within the District and neighboring watershed district and management organizations to simplify the design process for applicants that work in multiple communities and watersheds. The difference in rules among watershed districts, particularly for something as technical as stormwater management has been brought up to staff as a source of frustration from applicants.
- The current rule regarding treatment of impervious area does not state if reconstructed impervious is included and was, therefore, a source of confusion for applicants. This requirement has been clarified to "new and reconstructed impervious surfaces" which aligns with how the rule is currently implemented by staff.
- If a project (except a public linear project) proposes to reconstruct or disturb more than 50% of the site, all impervious on site will need to be treated. The intent in this is to get previously untreated impervious surface to be treated without being overly burdensome, while achieving improved water quality to meet TMDL requirements.
- Phosphorus conversion factors have been added in order to target phosphorus reduction with the same intent as the current volume reduction requirement. The current rules identify volume reduction to the maximum extent practicable. Because the District has barriers to infiltration such as high groundwater in many areas, this requirement can be insufficient in terms of the phosphorus removal that infiltration, and therefore volume reduction, is intended to provide. Applicants will be able to do a simple calculation to determine the required water quality volume based on the type of stormwater management practice that is proposed in the plan.
- A low floor freeboard requirement has been added to the stormwater section which requires that habitable structures be constructed such that the lowest floor elevations are at least 2 feet above the 100-year high water level and 1 foot above the emergency overflow. This was previously alluded to in the Floodplain section but functionally staff have been deferring to the cities on this. The District has received a comment that the City of Ham Lake is opposed to this requirement because there has not been any problem with its ordinance (1 foot above unsuitable soils) in the past. Based on trends in precipitation and the ever-changing landscape of the District, staff has not revised the proposed requirement in response to this comment. The District feels that it is prudent to provide greater protections against flooding into the future for the structures that are currently being constructed.

Soils and Erosion Control

- Scope and Applicability has changed to better clarify the thresholds, particularly the size of soil disturbance, which will require a permit.
- The standards have been revised to reference MPCA requirements and manuals and specific requirements have changed to align with State requirements. The exceptions to this is that stabilization must be completed in 7 days instead of 14 days, and soils with an erodibility factor of 0.15 or greater must be stabilized within 24 hours. This is a clarification of the current stabilization requirements.
- Several items have been added to the submittal requirements for soils and erosion control. The completely new submittal requirements are as follows: 1) the submittal of NPDES application documentation and the associated SWPPP (required by the District's MS4 permit), 2) contact information for parties responsible for erosion and

sediment control, and 3) identification of staging areas on the erosion and sediment control plan. Items 2 and 3 will provide staff with valuable information, which will allow the inspection process to go more smoothly.

Floodplain

- A provision has been added to allow a one-time deposition of floodplain fill without providing compensatory storage when less than 50 cubic yards per parcel. For linear projects, this will be applied on a per project, per floodplain basis. The current rule states that all fill within the floodplain must provide compensatory storage at a 1:1 ratio. This can be overly burdensome for small projects where the floodplain fill is negligible, not just in providing the storage itself but also in the need to provide cut/fill calculations.
- The proposed rules specifically call out that the District will regulate to the District flood XPSWMM flood model and maps. Under current rules, it is unclear if the District is referring to the District floodplain or FEMA floodplain.

Drainage, Bridges, Culverts, and Utility Crossings

- Scope and Applicability has changed slightly. The current rule applies to all public and private ditches in the District. This has been revised to apply to specific activities related to public ditches and to private ditches which extend across 2 or more parcels not under common ownership AND have a drainage area of 200 acres or greater. The addition of this specificity is to ensure that the District is only regulating projects that have the potential to affect others. Additionally, no permit will be required for a government entity to repair or replace a structure that they own on a private conveyance system when the hydraulic capacity will stay the same. These are small projects with a low risk of causing harm particularly when they are overseen by another government entity. The District hopes to simplify the permitting process for other public entities and avoid redundant permitting practices.
- A requirement was added for bridges and culvert crossings to provide for biota passage consistent with MnDOT guidance.

Buffers

- Buffers is a new section which has not been previously required. The current rules have a reference to buffers being recommended and *may* be required. A full Buffer section has now been added which requires buffers along public waters, public ditches proposed to be improved, "additional" waters determined under M.S. 103F.48, high or outstanding ecological value waters, and impaired waters. The buffers will be required to be perennially rooted vegetation with no additional vegetation requirements. The required buffer area may also be averaged to provide some flexibility for site design. This section has been limited to only the extent to which the District is currently authorized to regulate this based on legislation and the District's current Watershed Management Plan.

Definitions and Appendices

- Appendices B, C, D, and E have all been added to provide further clarification of elements within the rules.
- Definitions have been added to Appendix A which relate to new language in the proposed rules.
- The current rule is not consistent in using the terms "100-year floodplain", "100-year flood elevation", and "flood profile". Staff has attempted to clarify this by changing all references to "floodplain" and providing one consistent definition.
- Modifications have been made to the definition of "Land Disturbing Activity." The intent has not changed, but the added language provides some examples of what is not considered Land Disturbing Activity to provide further clarifications.

- A definition has been added for “Fully Reconstructed Impervious Surface.” The District has provided a definition that is clear and provides several examples of activities that would not be considered Fully Reconstructed Impervious Surface. This definition has been the subject of multiple debates among City and County partners and the District feels that the resulting definition is practical and accomplishes the intended purpose. The District acknowledges that this definition will not satisfy all parties, but is very close.
- The definition of “adjacent” has been modified to better fit the intent of the rules that it is included in and provide additional clarification.

Wildlife

- The Wildlife section was removed from the proposed rules. The District’s role in regulating listed Threatened and Endangered Species comes from the MN Wetland Conservation Act and is therefore covered by reference under the Wetland section.