

elm creek Watershed Management Commission

ADMINISTRATIVE OFFICE
3235 Fernbrook Lane • Plymouth, MN 55447
PH: 763.553.1144 • email: judie@jass.biz
www.elmcreekwatershed.org

October 4, 2023

Representatives **and** Members
Elm Creek Watershed Management
Commission Hennepin County, MN

*The meeting packets for these meetings may
be found on the Commission's website:*
[http://www.elmcreekwatershed.org/minutes--
meeting-packets.html](http://www.elmcreekwatershed.org/minutes--meeting-packets.html)

A regular meeting of the Elm Creek Watershed Management Commission will be held on
Wednesday, October 11, 2023, at 11:30 a.m. in the Plymouth Community Center, 14800 34th
Avenue North, Plymouth MN.

The Technical Advisory Committee will meet at **10:00 a.m.**, prior to the regular meeting.

Please email me at judie@jass.biz to confirm whether you or your Alternate will be attending the
regular meeting.

Thank you.



Judie A. Anderson
Administrator
JAA:tim

Encls: Meeting Packet

cc:	Alternates	Erik Megow	Rebecca Carlson	James Kujawa	Ed Matthiesen
	TAC Members	Karen Galles	Kris Guentzel	Kevin Ellis	Diane Spector
	City Clerks	Brian Vlach	Grace Barcelow	Met Council	Grace Barcelow
	Official Newspaper	DNR	MPCA		

Z:\Elm Creek\Meetings\Meetings 2023\10 Meeting Notice.docx

elm creek Watershed Management Commission

ADMINISTRATIVE OFFICE
3235 Fernbrook Lane • Plymouth, MN 55447
PH: 763.553.1144 • email: judie@jass.biz
www.elmcreekwatershed.org

AGENDA Technical Advisory Committee October 11, 2023 | 10:00 a.m.

1. Call to Order.
 - a. Approve agenda.*
 - b. Approve minutes of last meeting.*
2. Rules Clarification – small redevelopment projects.*
3. South Fork Rush Creek SWA.* [South Fork Rush Creek - SWA \(arcgis.com\)](https://arcgis.com)
4. WMWA Educator Special Project Follow-up.*
5. Other Business.
6. Next TAC meeting – _____.
7. Adjournment.

Z:\Elm Creek\TAC\2023\October 11 2023 agenda.docx

*in meeting packet
**available at meeting

elm creek Watershed Management Commission

ADMINISTRATIVE OFFICE
3235 Fernbrook Lane • Plymouth, MN 55447
PH: 763.553.1144 • email: judie@jass.biz
www.elmcreekwatershed.org

Technical Advisory Committee Meeting Minutes | July 12, 2023

I. A meeting of the **Technical Advisory Committee (TAC)** of the Elm Creek Watershed Management Commission was called to order at 10:02 a.m., Wednesday, July 12, 2023, in the Plymouth Community Center, 14800 34th Avenue North, Plymouth, MN, by Chair Derek Asche.

Present: Heather Nelson, Champlin; Kent Torve, Stantec, Corcoran; Derek Asche, Maple Grove; Rebecca Haug, WSB, Medina; Ben Scharenbroich, Plymouth; Andrew Simmons, Rogers; Diane Spector and Erik Megow, Stantec; James Kujawa, Surface Water Solutions; Kevin Ellis, Hennepin County Environment and Energy (HCEE); Brian Vlach, Three Rivers Park District (TRPD); and Judie Anderson, JASS.

Not represented: Dayton.

Also present: Mike Payne, Plymouth, and Stephanie Thulien and Chadd Larson, Kimley-Horn, for item VIII.

II. Motion by Scharenbroich, second by Simmons to approve the **Agenda** as presented. *Motion carried unanimously.*

III. Motion by Scharenbroich, second by Simmons to approve the **Minutes** of the June 14, 2023, meeting. *Motion carried unanimously.*

IV. **CAPITAL IMPROVEMENT PROGRAM (CIP).** Revisions to the Commission's CIP have been discussed by the TAC at the last few meetings. In June, the Rush Creek Stabilization-Rush Hollow project was approved for addition to the 2024 CIP. At that same meeting, members expressed concern that the description for a second project, the **Downtown Rogers Pond Expansion and Reuse project**, did not address a number of issues, specifically rate and volume control and water quality "above and beyond" the Commission's requirements, ownership and future maintenance of the facility, impacts to the wetland, and drought mitigation. Simmons provided some of the missing information to the members at their meeting today. The TAC asked that Megow review the stormwater management plan and calculations to see if they meet Commission Rules. This project will be presented to the Commission as project review 2023-016 and recommended for approval at the August 2023 Commission Meeting.

V. **PROJECT REVIEW FEES.*** At the June 2023 TAC and Commission meetings, Staff discussed the results of their internal review of the adequacy of the project review fees to not only recover the costs of performing the project reviews, but also the administrative and other tasks associated with the program. At that time Staff concluded that:

A. The nonrefundable admin fee was not recovering the cost of admin time, which was more extensive than anticipated at the time of the programmatic switch from a flat fee to an actual-cost fee.

B. The nonrefundable tech fee is adequately recovering costs. While both the non-billable admin and tech costs are tracked separately, currently the Treasurer's Report lumps the technical costs in with other engineering costs on the line item "Technical Other," and should be shown separately.

C. More than half the project reviews incurred costs that exceeded the base fee, requiring staff to invoice applicants for additional escrow funds and causing what was sometimes a several month gap between when the review expense was incurred and when the fee was recovered. Staff recommended increasing the base review fees.

Table 1 shows the estimated and actual costs of performing project reviews and undertaking admin and technical tasks related to project reviews but not associated with a formal project review.

Table 1. Budgeted revenues compared to actual expenses.

Category	2021		2022		2023
	Budget	Actual	Budget	Actual	Budget
Review fees (incl conting)- revenue	\$155,758	\$181,987	\$169,720	\$188,032	\$184,000
Admin fee – expense	13,750	27,806	13,100	22,703	16,000
Tech Fee - expense	20,265	12,448	19,650	14,634	17,000
# reviews		56		49	

The TAC recommended adjusting both the base fees and the nonrefundable admin and tech fees to reduce some of the administrative and financial burden and better align with actual costs. It was the TAC's thought that refunds, rather than tracking down payments from developments that may have ultimately been cancelled or changed ownership, would reduce administrative costs. Based on Table 1, given the historical number of project reviews reasonable revenue goals for each would be:

1. review fees: \$180,000-200,000
2. admin fees: 18,000 - 20,000
3. tech fees: \$16,000 -18,000

Table 2 shows the estimated fees collected from a hypothetical 50 project reviews: 50 requiring erosion control review, 45 stormwater management and 15 buffer reviews. The TAC initially supported doubling the review fees. Scenario 1 shows the impact of just doubling the fee, while Scenario 2 shows doubling the review base fee but also reducing the contingency and nonrefundable fees, which are a percentage of the total review fee.

Scenario 3 takes a slightly different approach. It doubles the review fee while eliminating the 10% contingency; charges a flat \$250 administrative fee per application plus 5% of the total review fee; and reduces the tech nonrefundable fee to 8% of the total fee. The advantage of a flat amount plus a percent of the total is that for project reviews such as a grading plan for erosion control only, even doubling the fee from \$500 to \$1,000 means a 10% multiplier would yield only a \$100 admin fee, which would not cover costs.

Table 2. Project review fee scenarios.

Scenario	Fees	Contingency	Total Eng	Admin	Tech
Current fee structure (10%/10%/15%)*	\$127,500	\$12,750	\$140,250	\$12,750	\$19,125
1-double fees (10%/10%/15%)*	255,000	25,500	280,500	25,500	38,250
2-double fees, reduce NRF (5%/8%/8%)	255,000	12,750	267,750	21,420	21,420
3-double fees, elim contingency, add flat application fee, reduce NRF (5%/8%)	255,000	0	255,000	25,250	20,400

*10% contingency, 10% nonrefundable (NRF) admin fee, 15% nonrefundable tech fee, etc.

D. Staff believes either approach would bring the Commission closer to its desired revenue goals and by reducing the number of project reviews requiring invoicing and chasing after additional escrow, would be more administratively cost-effective. Discussion can be had regarding the appropriate nonrefundable fee percentages based on desired revenue goals.

Project review fees should be reviewed annually to determine if they are adequately recovering costs and adjusted as necessary on a regular basis as part of the annual budget/audit process.

Motion by Scharenbroich, second by Haug to recommend to the Commission Scenario 3 with additional recommendations that the fee schedule be reviewed annually and that the new rates would become effective August 1, 2023. *Motion carried unanimously.*

VI. TMDL 10-YEAR REVIEW UPDATE. A few months ago, the Commission and TAC discussed undertaking a progress review of the Elm Creek Watershed TMDL. Staff's July 5, 2023, memo* is a progress report on the development of a scope of work to undertake that review.

The TMDL was completed in phases over several years, starting with additional monitoring and data gathering in 2009-2010, analysis and development of the TMDL in 2012-2014, and then final completion of the TMDL document and accompanying Watershed Restoration and Protection Strategies document (WRAPS) in 2015. This TMDL covers seven nutrient-impaired lakes, and multiple impairments (dissolved oxygen, nutrient, sediment, bacteria) on Elm, Diamond, and North and South Forks Rush Creek.

The final reports were approved by the MPCA and EPA in 2016. While the final TMDL has been in place for seven years, much of the underlying data about watershed conditions goes back to 2010 and one area to 2006. Since those "baseline years" there have been numerous Best Management Practices and improvement projects implemented, and it is timely to compile that information to determine how much progress has been made toward meeting the required pollutant load reductions and whether any measurable improvement in water quality has occurred.

In previous discussions staff has met to review how best to approach this analysis and, as previously discussed, has developed a multi-phase approach: 1) compile BMP and water quality data; 2) fill water quality monitoring gaps; and 3) finalize TMDL review. This will take 2-4 years to complete, depending on the amount of supplemental monitoring that is desired. The intent is to set this up as a "living analysis" that can be added to every year as more data is available.

Staff met recently and have developed a division of labor that seems workable. Stantec will take the lead on gathering and analyzing BMP and project data and will develop an interactive GIS application to track progress. Three Rivers Park District will take the lead on analyzing lake water quality data, and Stantec will lead analyzing stream water quality data. Staff still have some work to do to estimate the level of effort for the BMP collection. They assume some, but not all, cities have some BMP removals computed for their NPDES reporting and GIS location data. In addition, older project reviews will have to be reviewed to estimate removals and added manually to the GIS coverages. That will allow Staff to partition the load reductions by drainage area.

Staff will meet separately with the cities and county to better understand existing data so they can prepare a final Scope of Work for consideration at the August meeting. They expect that will require a supplemental contract with Three Rivers and an additional Work Order for Stantec.

Vlach also suggested that, as was completed for the original TMDL, an animal count be included as part of the update.

VII. CLEAN WATER FUND GRANTS.* The Board of Water and Soil Resources (BWSR) opened the annual solicitation for Clean Water Fund Grants on June 29, 2023. Grant applications are due by August 24. The program is similar to the grant solicitation in past years with a few exceptions:

This \$8.5 million is funding from the ongoing Legacy Amendment and is one of the primary funding sources for surface water improvements in Minnesota. Up to 20% of that amount may be reserved by BWSR for focus on projects that protect or improve drinking water sources.

Projects must be identified in a watershed management plan that has been state approved and locally adopted or an approved total maximum daily load study (TMDL), Watershed Restoration and Protection Strategy (WRAPS), Groundwater Restoration and Protection Strategy (GRAPS), surface water intake plan, or well head protection plan. Unlike previous years, the required match has been reduced from 25% to 10%.

These are very competitive funds, so well-thought-out, targeted projects with local consensus and significant cost-effective removals will compete best. The Commission does have a few projects on its CIP for the next few years that cities might consider for application but, again, the funds are extremely competitive, and the pool of available funds is growing smaller each year.

No recommendations were made by the members.

VIII. PROJECT REVIEW 2023-01 CHANKAHDA TRAIL PHASE 2 RECONSTRUCTION.* Included in the meeting packet was correspondence from Kimley-Horn and Associates, engineers for this project. The project was approved at the Commission's April 12, 2023, meeting with three conditions. Those conditions were: (1) reconciliation of the escrow fee balance, (2) receipt of an operation and maintenance plan approved by the City of Plymouth, and (3) receipt of an updated compensatory storage plan that is separated from groundwater and hydraulically connected to the floodplain.

In their June 30, 2023, memo, Kimley-Horn and the City of Plymouth are requesting the TAC's review and input regarding the Commission's Rule F. Floodplain Alteration. Included with their memo is a Compensatory Storage Summary Letter dated June 15, 2023, providing project background as well as a discussion regarding the required compensatory storage for project impacts in the Elm Creek watershed and how this project meets Rule F. Their primary issue is related to the bottom of the compensatory storage basin elevation of 918.25 relative to the fluctuating groundwater elevations noted in attachments to their letter. The discussion is intended to focus on the current Floodplain Alteration rule and how the basin design meets the rules as written.

The parties agreed to meet via e-conference to continue this discussion.

IX. The **next meeting** of the Technical Advisory Committee is tentatively scheduled for 10:00 a.m., Wednesday, August 9, 2023, preceding the Commission's regular meeting.

There being no further business, the meeting was adjourned at 11:42 a.m.

Respectfully submitted,



Judie A. Anderson
Recording Secretary
JAA:tim

Z:\Elm Creek\TAC\2023\July 12, 2023 EC TAC meeting minutes.docxx

To: Elm Creek TAC

From: Erik Megow, PE
Diane Spector

Date: October 4, 2023

Subject: Rules Clarification for Small Redevelopment Projects

Recommended TAC Action

Review and discuss and provide direction as requested.
--

We would like to discuss how we review small redevelopment projects and interpret our current definition of 'land disturbing activity.' Recent small redevelopment projects prompted this discussion when Commission staff and City staff interpreted the rules in slightly different ways. Staff requests review and clarification so we are all consistent in interpretation, Commission intent, and consistent with the Minnesota Pollution Control Agency's (MPCA) municipal separate storm sewer system (MS4) General Permit requirements.

Background

The Commission's Stormwater Rule is triggered when there is "any land development or site development that disturbs more than 1 acre of land."

The Commission's current definition of Land Disturbing Activity is:

Land Disturbing Activity. Any change of the land surface to include removing vegetative cover, excavation, fill, grading, and the construction of any structure that may cause or contribute to erosion or the movement of sediment into waterbodies. The use of land for agricultural activities, or improvements such as mill and overlay or concrete rehabilitation projects that do not disturb the underlying soil shall not constitute a land disturbing activity under these Rules.

The Commission's definition closely follows the Minnesota Pollution Control Agency's definition of construction activity. Per MPCA and MS4 guidelines, MS4 programs, "must address construction activity with land disturbance of greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, within the permittee's jurisdiction and that discharge to the permittee's MS4."

The MPCA defines construction activity as follows:

Construction Activity means activities including clearing, grading, and excavating, that result in land disturbance of equal to or greater than one acre, including the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre. This includes a disturbance to the land that results in a change in the topography, existing soil cover, both vegetative and nonvegetative, or the existing soil topography that may result in accelerated stormwater runoff that may lead to soil erosion and movement of sediment.

We have had two recent projects in the watershed where the interpretation of the Commission's definition of land disturbing activity has come into question:

- Dunkirk Square (Project Review 2032-020)
- Redevelopment for Childcare Site (PIDs 3411922120019 and 3411922120011)

For both sites/projects, the applicant was redeveloping sites currently used as parking areas and although the Project Area exceeded 1 acre, there was less than 1 acre of land disturbing activity under the current definition, and additional stormwater practices were not required.

- For the Dunkirk Site (2023-020), the project did not result in an increase of impervious surface and there is no degradation to downstream waterbodies.
- For the future Childcare site, the project would likely increase pollutant loads (TP and TSS) due to an increase in impervious surface. However, future development/redevelopment of the adjacent parcel would likely trigger both parcels requiring stormwater treatment.

The difficulty in interpreting the Land Disturbing Activity definition came when Commission and City Staff were trying to interpret the **level of grading, fill, and excavation that constitutes a land disturbing activity and what activities fall under concrete rehabilitation projects**. Therefore, we would like to discuss these two projects and decide if we would like to:

1. Continue our current interpretation of land disturbing activity and keep the current definition,
2. Update our current definition of land disturbing activity, or
3. Add additional language to ensure these small redevelopment projects are incorporating stormwater BMPs.

To: Elm Creek TAC

From: Erik Megow, PE
Tom Beneke
Aaron Hyams

Date: October 3, 2023

Subject: South Fork Rush Creek SWA Update

Recommended TAC Action

Review and discuss and provide direction as requested.
--

We have completed a draft [interactive map](#) of the South Fork Rush Creek subwatershed assessment for initial review. This map was created based on:

- inventory, acquisition, and formatting of pertinent geospatial data products at state, county, and city levels as identified during the project kick-off meeting.
- development of required custom inputs for the Agricultural Conservation Planning Framework (ACPF) tool.
- generation of optimal Best Management Practice (BMP) locations identified using the ACPF tool. Note that these BMPs have not yet been ground-truthed, so there may be some that are eliminated based on development subsequent to the base map data or simply based on lack of suitability.
- total phosphorus and total suspended solids delivery estimates by sub-catchment, developed using the PTMApp.

We will review this draft interactive map with the TAC at the October 11, 2023 meeting, and seek TAC input on:

- the practicality/suitability of BMP locations *and* BMP types.
- suggestions for additional data layers and/or map functionality.
- the identification of particular parcels or sub-catchments of interest.
- any general feedback you have.

As time allows, please review the draft map prior to the October 11, 2023

To: Elm Creek WMO Commissioners
Elm Creek TAC

From: Erik Megow, PE
Diane Spector

Date: October 3, 2023

Subject: WMWA Educator Special Project-Follow-up

**Recommended
Commission Action**

Discuss and provide guidance.

At last month's meeting we briefly introduced some ideas for an initial discussion regarding development of potential outreach ideas with the joint WMWA coordinator. The Watershed-Based Implementation Funding grant workplan supporting the shared coordinator calls for implementing at least four "special projects" across the five participating WMOs. Examples cited in the work plan were workshops for residents/property owners/business owners, perhaps with follow-up small grants and/or onsite consultation; or multi-family housing equitable engagement projects, likely in partnership with Metro Blooms, similar to projects undertaken in Shingle Creek at multi-family housing sites that include updated stormwater management as well as other site improvements.

The shared coordinator has asked each WMO to express a *preference* for what type of special project might be a good fit for their watershed. We are not aware of potential multi-family projects currently, so we are focused on workshop ideas. Regardless of which option the Commission prefers, it is likely that implementation would not occur until spring 2024.

Some ideas from staff include:

1. Customizing the existing Blue Thumb Resilient Yards workshop ([Workshops & Events – Blue Thumb](#)), offering free on-site consultation and planting stipends to participants.
2. As suggested by Corcoran, developing a new workshop and online resource targeted to HOA members regarding strategies for maintaining their green spaces and understanding how to manage and maintain their on-site BMPs.
3. Develop a new workshop based on other ideas the Commissioners might have. This may require an additional financial commitment from the Commission depending on how much customization or workshop development would be required.

Based on staff's discussions with Grace the Hennepin County outreach coordinator, we're inclined to recommend idea #2, for the following reasons.

1. The Elm Creek Watershed TMDL identified land use change as an important component of the TMDL implementation plan. In the upper watershed, 50-70% of the land was expected to experience land use change over the life of the TMDL. Adopting more stringent development rules, which the Commission did with the Third Generation Plan, is a key factor in meeting the required load reductions as land converts from untreated uses to uses with infiltration and treatment BMPs. Proper and timely maintenance is required to maintain those load reductions, and many HOAs who are now responsible for that work are not prepared for that burden. *Educating and assisting the HOAs with this work prevents the cities from having to construct additional BMPs to make up for that loss of effectiveness.*

2. Nearly all the available online education and training resources are targeted toward MS4s and their permit obligations. There are a few guides nationally targeted toward HOAs ([City of Boulder](#), [Hampton Roads, VA](#), and [San Diego County](#) are some examples), but they are still more technical and intimidating with detail than the average layperson is used to working with. [WMWA developed a booklet](#) years ago, and while it is more user-friendly, it is still a bit overwhelming. This would be an opportunity to fill an information gap and reach out to a growing population.
3. Technology makes it easier to present information than the traditional booklet or flier. Putting together an interactive website with a variety of tools, graphics, videos, and in-person training provides plenty of opportunities for users to learn at their own pace and on their own time and go back and refer to information to refresh their memories. This makes it much more likely that the tools and resources will be used.

This is presented for more discussion, and we are especially interested in hearing more from cities about the types of conversations they have with HOAs and staff perceptions of education and outreach needs. Should you wish to go forward with this option, part of the planning process prior to developing the tools and workshops would be more extended meetings with city staff to better define the needs, objectives, and desired outcomes.

Should you wish to pursue a different type of workshop or outreach topic, staff will work with Grace to develop, again, needs, objectives, and desired outcomes before formally developing work product.