

Elm Creek Watershed Management Commission

Rules and Standards

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Record of Rules Revisions

October 14, 2015:

Minor housekeeping revisions concurrent with the adoption of the Third Generation Watershed Management Plan

May 11, 2022:

- Added definitions for Fully Reconstructed Impervious Surface, Linear Projects, and Low Opening
- Added a stepwise process in Rule D.3.b.i.7 to determine how the minimum Low Floor Elevation would be determined for each project
- Revised Rule D.3.c to add a new requirement for and specify how runoff abstraction volume would be calculated for linear projects
- Other minor housekeeping revisions
- Low floor elevation revisions effective June 1, 2022 and linear project rules revisions effective November 30, 2022.

**ELM CREEK
WATERSHED MANAGEMENT COMMISSION
RULES AND STANDARDS**

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POLICY STATEMENT

The Elm Creek Watershed Management Commission is a Joint Powers Association of the State under the Minnesota Watershed Act, and a watershed management organization as defined in the Metropolitan Surface Water Management Act. These acts provide the Commission with power to accomplish its statutory purpose: the conservation, protection, and management of water resources in the boundaries of the watershed through sound scientific principles. The Commission has adopted a water resources management plan pursuant to the Acts. These Rules implement the plan's principles and objectives.

Land alteration and utilization can affect the rate and volume and degrade the quality of surface water runoff. Sedimentation from ongoing erosion and construction activities can reduce hydraulic capacity of waterbodies and degrade water quality. Water quality problems already exist in many waterbodies in the watershed. Most of these waterbodies have been designated by the State of Minnesota as Impaired Waters, and do not meet state water quality standards.

Activities that increase the rate or volume of stormwater runoff will aggravate existing flooding problems and contribute to new ones. Activities that degrade runoff quality will cause quality problems in receiving water. Activities that fill floodplain or wetland areas will reduce flood storage and hydraulic capacity of waterbodies, and will degrade water quality by eliminating the filtering capacity of such areas.

These Rules and Standards protect the public health, welfare, and natural resources of the watershed by regulating the alteration of land and waters in the watershed to 1) reduce the severity and frequency of high water, 2) preserve floodplain and wetland storage capacity, 3) improve the chemical and physical quality of surface waters, 4) reduce sedimentation, 5) preserve the hydraulic and navigational capacities of waterbodies, 6) promote and preserve natural infiltration areas, and 7) preserve natural shoreline features. In addition to protecting natural resources, these Rules and Standards are intended to minimize future public expenditures on problems caused by land and water alterations.

RELATIONSHIP WITH MUNICIPALITIES AND COUNTY

The Commission recognizes that the control and determination of appropriate land use is the responsibility of the municipalities. The Commission will review projects involving land-disturbing activities in accordance with these Rules and Standards. The Commission intends to be active in the regulatory process to ensure that water resources are managed in accordance with its goals and policies.

The Commission desires to provide technical advice to the municipalities in the preparation of local stormwater management plans and the review of projects that may affect water resources prior to investment of significant public or private funds.

RULE A. DEFINITIONS

For the purposes of these Rules, unless the context otherwise requires, the following words and terms shall have the meanings set forth below. References in these Rules to specific sections of the Minnesota Statutes or Rules include amendments, revisions or recodifications of such sections. The words “shall” and “must” are mandatory; the word “may” is permissive.

100 Year Event. The rainfall depth with a 1 percent chance of occurring in a given year.

Abstraction. Removal of stormwater from runoff, by such methods as infiltration, evaporation, transpiration by vegetation, and capture and reuse, such as capturing runoff for use as irrigation water.

Agricultural Activity. The use of land for the production of agronomic, horticultural or silvicultural crops, including dairy animals, food animals, nursery stock, sod, fruits, vegetables, flowers, cover crops, grains, Christmas trees, and for grazing.

Alteration or Alter. When used in connection with public waters or wetlands, any activity that will change or diminish the course, current, or cross-section of public waters or wetlands.

Applicant. Any person or political subdivision that submits an application to the Commission for a project review under these Rules.

Best Management Practices (BMPs). Techniques proven to be effective in controlling runoff, erosion and sedimentation including those documented in the Minnesota Construction Site Erosion and Sediment Control Planning Handbook (BWSR 1988), Protecting Water Quality in Urban Areas (MPCA 2000), and the Minnesota Stormwater Manual (MPCA 2005) as revised.

Biofiltration. Using living material to capture and/or biologically degrade or process pollutants prior to discharging stormwater, such as directing runoff through a vegetated buffer or to a rain garden or vegetated basin with an underdrain.

Bioretention. A terrestrial-based (upland, as opposed to wetland) water quality and water quantity control process. Bioretention employs a simplistic, site-integrated design that provides opportunity for runoff infiltration, filtration, storage and water uptake by vegetation.

Buffer Strip. An area of natural, unmaintained, vegetated ground cover abutting or surrounding a watercourse or wetland.

BWSR. The Minnesota Board of Water and Soil Resources.

Commission. The Elm Creek Watershed Management Commission.

Commissioners. The Board of Commissioners of the Elm Creek Watershed Management Commission.

Compensatory Storage. Excavated volume of material below the floodplain elevation required to offset floodplain fill.

County. Hennepin County, Minnesota.

Dead Storage. The permanent pool volume of a water basin or the volume below the runout elevation of a water basin.

Detention Basin. Any natural or manmade depression for the temporary storage of runoff.

Development. Any proposal to subdivide land, any land-disturbing activity or creation of impervious surface.

Directly Connected Impervious Surface. Any hard surface (rooftop, driveway, sidewalk, roadway, etc.) from which runoff is not subject to loss beyond initial abstraction before being routed to the downstream collection and conveyance system.

Disturbance. See Land Disturbing Activity.

Drain or Drainage. Any method for removing or diverting water from waterbodies, including excavation of an open ditch, installation of subsurface drainage tile, filling, diking, or pumping.

Erosion. The wearing away of the ground surface as a result of wind, flowing water, ice movement, or land disturbing activities.

Erosion and Sediment Control Plan. A plan of BMPs or equivalent measures designed to control runoff and erosion and to retain or control sediment on land during the period of land disturbing activities in accordance with the standards set forth in these Rules.

Excavation. The artificial removal of soil or other earth material.

Fill. The deposit of soil or other material by artificial means.

Filtration. A process by which stormwater runoff is captured, temporarily stored, and routed through a filter bed to improve water quality and slow down stormwater runoff.

Floodplain. The area adjacent to a waterbody that is inundated during a 1% chance (100-year) flood as defined by the FEMA Flood Insurance Study for the member city or the Commission's flood study.

Fully reconstructed impervious surface. Areas where impervious surfaces have been removed down to the underlying soils. Activities such as structure renovation, mill and overlay projects, and other pavement rehabilitation projects that do not expose the underlying soils beneath the structure, pavement, or activity are not considered fully reconstructed. Maintenance activities such as catch basin repair/replacement, utility repair/replacement, pipe repair/replacement, lighting, and pedestrian ramp improvements are not considered fully reconstructed.

Impaired Water. A waterbody that does not meet state water quality standards and that has been included on the MPCA Section 303(d) list of Impaired Waters of the state.

Impervious Surface. A surface compacted or covered with material so as to be highly resistant to infiltration by runoff. Impervious surface shall include roads, driveways and parking areas, whether or not paved, sidewalks greater than 3 feet wide, patios, tennis and basketball courts, swimming pools, covered decks and other structures. Open decks with joints at least ¼ inch wide, areas beneath overhangs less than 2 feet wide, and sidewalks 3 feet or less wide shall not constitute impervious surfaces under these Rules.

Infiltration. The passage of water into the ground through the soil.

Infiltration Area. Natural or constructed depression located in permeable soils that capture, store and infiltrate the volume of stormwater runoff associated with a particular design event.

Interested Party. A person or political subdivision with an interest in the pending subject matter.

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.

Landlocked Basin. A basin that is 1 acre or more in size and does not have a natural outlet at or below the 1% chance (100-year) flood elevation as determined by the 1% chance (100-year), 10-day runoff event.

Linear project. Linear projects are projects with construction of new or fully reconstructed roads, trails, sidewalks, or rail lines that are not part of a common plan of development or sale.

Low Floor. The finished surface of the lowest floor of a structure.

Low Opening. The low opening is the lowest elevation of an enclosed area, such as a basement, that allows surface water to into the enclosed area. Examples of low openings, include but are not limited to doors and windows. Foundation wall cracks, drainage seepage through drain tile, and sewer backup elevations are not low openings.

Member City. Any city wholly or partly within the Commission's boundary that has executed the Joint Powers Agreement.

MnDOT. The Minnesota Department of Transportation.

MPCA. The Minnesota Pollution Control Agency.

Municipality. Any city wholly or partly within the Commission's boundary.

NPDES. National Pollutant Discharge Elimination System.

NURP. The Nationwide Urban Runoff Program developed by the Environmental Protection Agency to study stormwater runoff from urban development.

Ordinary High Water Level (OHW). The elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the OHW level is the elevation of the top of the bank of the channel. An OHW established for a waterbody by the Minnesota Department of Natural Resources will constitute the OHW under this definition.

Owner. The owner of a parcel of land or the purchaser under a contract for deed.

Parcel. A parcel of land designated by plat, metes, and bounds, registered land survey, auditor's subdivision, or other accepted means and separated from other parcels or portions by its designation.

Person. Any individual, trustee, partnership, unincorporated association, limited liability company or corporation.

Political Subdivision. A municipality, county or other political division, agency or subdivision of the state.

Project. A space, parcel, or parcels of real property owned by one or more than one person which is being or is capable of being developed or redeveloped as a single project.

Public Health and General Welfare. Defined in Minnesota Statutes, Section 103D.011, Subdivisions 23 and 24.

Public Waters. Any waters as defined in Minnesota Statutes, Section 103G.005, Subdivision 15.

Public Waters Wetland. Any wetland as defined in Minnesota Statutes, Section 103G.005, Subdivision 15a.

Redevelopment. Any proposal to re-subdivide land, or any land-disturbing activity or addition of impervious surface to a developed site.

Runoff. Rainfall, snowmelt or irrigation water flowing over the ground surface.

Sediment. Soil or other surficial material transported by surface water as a product of erosion.

Sedimentation. The process or action of depositing sediment.

Shoreland Protection Zone. Land located within a floodplain or within 1,000 feet of the OHW of a public water or public waters wetland or 300 feet of a public waters watercourse.

Site. A space, parcel, or parcels of real property owned by one or more than one person which is being or is capable of being developed or redeveloped as a single project.

Standard. A required level of quantity, quality, or value.

Stormwater Management Plan. A plan for the permanent management and control of runoff prepared and implemented in accordance with the standards set forth in these Rules.

Structure. Anything manufactured, constructed or erected which is normally attached to or positioned on land, including portable structures, earthen structures, walls, roads, water and storage systems, drainage facilities and parking lots.

Subdivision or Subdivide. The separation of a parcel of land into two or more parcels.

TMDL. A Total Maximum Daily Load is the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards. "TMDL" can also refer to a study that calculates that load, or to the allocation of that allowable load to its various sources. An Implementation Plan may be part of the TMDL study or it may be a separate document that sets forth the steps that will be taken to achieve the TMDL.

Volume Management. The retention and abstraction of a certain volume of stormwater runoff onsite through techniques such as infiltration, evapotranspiration, and capture and reuse.

Water Basin. An enclosed natural depression with definable banks capable of containing water that may be partly filled with public waters.

Waterbody. All water basins, watercourses and wetlands as defined in these Rules.

Watercourse. Any natural or improved stream, river, creek, ditch, channel, culvert, drain, gully, swale, or wash in which waters flow continuously or intermittently in a definite direction.

Water Resources Management Plan. The watershed management plan for the Commission adopted and implemented in accordance with Minnesota Statutes, Section 103B.231.

Watershed. Region draining to a specific watercourse or water basin.

Wetland. Land transitional between terrestrial and aquatic systems as defined in Minnesota Statutes, Section 103G.005, Subdivision 19.

Wetland Conservation Act (WCA). Minnesota Wetland Conservation Act of 1991 as amended.

RULE B. PROCEDURAL REQUIREMENTS

- 1. APPLICATION REQUIRED.** Any person or political subdivision undertaking an activity for which a project review is required by these Rules shall first submit to the Commission a project review application, design data, plans, specifications, fees, and such other information and exhibits as may be required by these Rules. Applications shall be signed by the owner, or the owner's authorized agent, except for activities of a political subdivision which may be signed by either the owner or the general contractor. All project review applications must be authorized by the municipality where the proposed project is located.
- 2. FORMS.** Project review applications shall be submitted on forms provided by the Commission. Forms are available at the Commission office or Web site.
- 3. ACTION BY COMMISSION.** The Commission shall act within 60 days after receipt of a complete application, including all required information, exhibits and fees. If a state or federal law or court order requires a process to occur before the Commission acts on an application, or if an application requires prior approval of a state or federal agency, the deadline for the Commission to act is extended to 60 days after completion of the required process or the required prior approval is granted. The Commission may extend the initial 60-day period by providing written notice of the extension to the applicant. The extension may not exceed 60 days unless approved by the applicant.
- 4. SUBMITTAL.** A complete project review application with all required information and exhibits shall be filed with the Commission at least 14 calendar days prior to the scheduled meeting date of the Commission. Late or incomplete submittals will be scheduled to a subsequent meeting date.
- 5. CONDITIONS.** A project review may be approved subject to reasonable conditions to assure compliance with these Rules. The conditions may include a requirement that the applicant and owner enter into an agreement with the member city in a form acceptable to the Commission to a) specify responsibility for the construction and future maintenance of approved structures or facilities, b) document other continuing obligations of the applicant or owner, c) grant reasonable access to the proper authorities for inspection, monitoring and enforcement purposes, d) affirm that the Commission or other political subdivisions can require or perform necessary repairs or reconstruction of such structures or facilities, e) require indemnification of the Commission for claims arising from issuance of the approved project review or construction and use of the approved structures or facilities, and f) reimburse the reasonable costs incurred to enforce the agreement. Project reviews and agreements may be filed for record to provide notice of the conditions and continuing obligations.
- 6. ISSUANCE OF PROJECT REVIEWS.** The Commission will issue a project review approval only after the applicant has satisfied all requirements of these Rules and paid all required fees.

7. **VALIDITY.** Issuance of a project review approval based on plans, specifications, or other data shall not prevent the Commission from thereafter requiring the correction of errors in the approved plans, specifications and data, or from preventing any activity being carried on thereunder in violation of these Rules.
8. **MODIFICATIONS.** The applicant shall not modify the approved activity or plans and specifications on file with the Commission without the prior approval of the Commission.
9. **INSPECTION AND MONITORING.** With permission of the property owner and under the authority of the member city, the Commission may perform such field inspections and monitoring of the approved activity as the Commission deems necessary to determine compliance with the conditions of the project review and these Rules. Any portion of the activity not in compliance shall be promptly corrected. In applying for a project review, the applicant consents to entry upon the land for field inspections and monitoring, or for performing any work necessary to bring the activity into compliance.
10. **SUSPENSION OR REVOCATION.** The Commission may suspend or revoke a project review approved under these Rules whenever the project review approval is issued in error or on the basis of incorrect information supplied, or in violation of any provision of these Rules, or if the preliminary and final project approvals received from the municipality or county are not consistent with the conditions of the approved project review.
11. **EXPIRATION OF COMMISSION APPROVALS.** An approved project review shall expire and become null and void if the approved activity is not commenced within one year from date of approval, or if the approved activity is suspended or abandoned for a period of one year from the date the activity originally commenced. With the approval of the affected member city, applicants may apply for an extension of that period if the city review process is extended beyond the usual review period. Before an activity delayed for one year or more can recommence, the project approval must be renewed. Any applicant may apply for an extension of time to commence the approved activity under an unexpired project review approval.

An application for renewal or extension must be in writing, and state the reasons for the renewal or extension. Any plan changes and required fees must be included with the application. There must be no unpaid fees or other outstanding violations of the approval being renewed or extended. An application for extension must be received by the Commission at least 30 days prior to the approval's expiration. The Commission shall consider the application for renewal or extension on the basis of the Rules in effect on the date the application is being considered. The Commission may extend the time for commencing the approved activity for a period not exceeding one year upon finding that circumstances beyond the control of the applicant have prevented action from being taken.

- 12. SEVERABILITY.** If any provision of these Rules is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these Rules shall not be affected thereby.

RULE C. GENERAL STANDARDS

- 1. POLICY.** It is the policy of the Commission to protect the water resources of the watershed by requiring that all activities within the watershed comply with minimum standards for the protection of water quality and the environment.
- 2. REGULATION.**
- a) All land disturbing activities, whether requiring a project review under these Rules or otherwise, shall be undertaken in conformance with BMPs.
 - b) Project reviews are required of any land disturbing activity meeting the review thresholds set forth in Rule D Section 2.
 - c) In areas that drain to Impaired Waters, TMDL Implementation Plans may include site-specific requirements for any land-disturbing activities that are in addition to these rules and standards.
 - d) No person shall conduct land-disturbing activities without protecting adjacent property and waterbodies from erosion, sedimentation, flooding, or other damage.
 - e) Development shall be planned and conducted to minimize the extent of disturbed area, runoff velocities, and erosion potential, and to reduce and delay runoff volumes. Disturbed areas shall be stabilized and protected as soon as possible and facilities or methods used to retain sediment on-site.
 - f) Existing natural watercourses and vegetated soil surfaces shall be used to convey, store, filter, and retain runoff before discharge into public waters or a stormwater conveyance system.
 - g) Runoff from roof gutter systems shall discharge onto lawns or other pervious surfaces to promote infiltration where possible.
 - h) Use of fertilizers and pesticides in the shoreland protection zone shall be so done as to minimize runoff into public waters by the use of earth material, vegetation, or both. No phosphorus fertilizer shall be used unless a soil nutrient analysis shows a need for phosphorus or in the establishment of new turf.
 - i) When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used. The Commission encourages designs using surface drainage, vegetation and infiltration rather than buried pipes and man-made materials and facilities.

- j) Whenever the Commission determines that any land disturbing activity has become a hazard to any person or endangers the property of another, adversely affects water quality or any waterbody, increases flooding, or otherwise violates these Rules, the Commission shall notify the member city where the problem occurs and the member city shall require the owner of the land upon which the land disturbing activity is located, or other person or agent in control of such land, to repair or eliminate such condition within the time period specified therein. The owner of the land upon which a land disturbing activity is located shall be responsible for the cleanup and any damages from sediment that has eroded from such land. The Commission may require the owner to submit a project review application under these Rules before undertaking any repairs or restoration.

RULE D. STORMWATER MANAGEMENT

1. **POLICY.** It is the policy of the Commission to control excessive rates and volumes of runoff by:
 - a) Requiring that peak runoff rates not exceed existing conditions or the capacity of downstream conveyance facilities or contribute to flooding or streambank erosion.
 - b) Managing subwatershed discharge rates and flood storage volumes to be consistent with the goals of the Commission's water resources management plan and the local water resources management plans.
 - c) Controlling runoff rates by the use of on-site or if feasible regional detention or infiltration facilities.
 - d) Reviewing stormwater management structures based on the 1% (100-year) critical storm event for the drainage area.
 - e) Routing runoff to water treatment ponds or other acceptable facilities before discharging into waterbodies.
 - f) Promoting the use of natural resources for storing runoff and improving water quality and other amenities where appropriate.
 - g) Promoting natural infiltration of runoff.
2. **REGULATION.** No person or political subdivision shall commence a land disturbing activity or the development or redevelopment of land for the following types of projects without first submitting to and obtaining approval of a project review from the Commission that incorporates a stormwater management plan for the activity, development or redevelopment. This review must be coordinate though the city in which the project is located.
 - a) Plans of any land development or site development that disturbs more than 1 acre of land.

- b) Plans of any land development or individual site development adjacent to or containing a lake, wetland, or a natural or altered watercourse as listed in the Hennepin County wetland inventory or the final inventory of Protected Waters and Wetlands for Hennepin County, as prepared by the DNR.
- c) Any culvert installation or replacement, bridge construction, stream cross-section alteration, or activity requiring a DNR Waters Permit on Elm, Rush, North Fork Rush, or Diamond Creeks or their tributaries.
- d) Plans for any land development or site development within the 1% chance (100-year) floodplain as defined by the Flood Insurance Study for the member city or the Commission's flood study.
- e) Plans of any land development or site development regardless of size, if such review is requested by a member city.
- f) Land disturbing activity that drains to more than one watershed, for that portion of the site draining into the Elm Creek Watershed.

3. CRITERIA. Stormwater management plans shall comply with the following criteria regarding runoff rate restrictions, volume control requirements, and water quality requirements.

- a) A hydrograph method based on sound hydrologic theory will be used to analyze runoff for the design or analysis of flows, volumes, water quality, and water levels.
- b) *Runoff rates* for the proposed activity shall not exceed existing runoff rates for the 2-year, 10-year, and 100-year critical storm events and rainfall distribution for the project location as set forth in NOAA Atlas 14 Volume 8, published June 2013, or its successor, using the online NOAA Precipitation Frequency Data Server or a similar data source. Applicant must document the location and event depths used. If an approved local water management plan requires more restrictive rate control, then the more restrictive rate shall govern. Runoff rates may be restricted to less than the existing rates when necessary for the public health and general welfare of the watershed.
 - i) If detention basins are used to control rate of runoff they shall be designed to provide:
 - (1) An outlet structure to control the 2-year, 10-year, and 100-year critical storm events to predevelopment runoff rates. Said outlet structure will be required to control critical storm events to less than predevelopment runoff rates if downstream facilities have insufficient capacity to handle the increased flow.
 - (2) Alternative to (1), runoff may be directed to a downstream facility within the same hydrologic subwatershed that has sufficient capacity to provide the required rate control. This means that no rate control may be required for an individual development provided there is a regional facility designed and constructed to accommodate the flow from this property.

- (3) An identified overflow spillway sufficiently stabilized to convey a 1% (100-year) critical storm event.
- (4) A normal water elevation above the OHW of adjacent waterbodies.
- (5) Access for future maintenance.
- (6) An outlet skimmer to prevent migration of floatables and oils for at least the two year storm event.
- (7) Structures shall be elevated according to the following criteria based on the flooding source:
 - (a) Structures that are within the closed basin of naturally landlocked waterbodies and outside of the effective Federal Emergency Management Agency floodplain as shown on the Flood Insurance Rate Map and outside of the Commission's floodplain shall meet the following criteria:
 - (i) The low floor must be at minimum one foot above the normal water level and
 - (ii) The low floor must be at least two feet above the back-to-back 100-year 24-hour flood elevation.
 - (b) Structures within the proposed Federal Emergency Management Agency and/or within the Commission's floodplain (excluding FEMA Zone A areas) shall meet the following criteria:
 - (i) The low floor must be at minimum two feet above the 100-year flood elevation and at least one foot above the emergency overflow
 - (c) Structures that are within the closed basin of naturally landlocked waterbodies and the Federal Emergency Management Agency and/or Commission's floodplain shall have a low floor elevation at whichever elevation highest elevation calculated from the following:
 - (i) The low floor must be at minimum one foot above the normal water level and
 - (ii) The low floor must be at least two feet above the back-to-back 100-year 24-hour flood elevation.
 - (iii) The low floor must be at minimum two feet above the 100-year flood elevation.
 - (d) Structures near the maximum inundation extents caused during the high-water level of nearby stormwater ponds and/or waterbodies that are outside of a naturally landlocked waterbody basin, Federal Emergency Management Agency floodplain, and the Commission's floodplain shall meet the following criteria:
 - (i) The low floor must be at minimum one foot above the normal water level of hydraulically or hydrologically connected waterbodies (as determined by paragraph d. below) and

- (ii) The low opening must be at least two feet above the 100-year flood elevation and
 - (iii) The low opening should be at least one foot above the emergency overflow and
 - (iv) Hydrogeological analyses demonstrating a structure is outside of the lateral transmissivity zone of groundwater flow mounding caused by the 100-year event on hydraulically or hydrologically connected waterbodies and based on the duration of the flood hydrograph in those hydraulically or hydrologically connected waterbodies, to the satisfaction of the Commission's engineer, may be used to exempt structures from the above rules.
 - (v) Structures located greater than 200-feet away from the high- water level inundation of hydraulically or hydrologically connected waterbodies (as determined by paragraph d. above) are exempt from the above rules.
 - (vi) The emergency overflow should be an overland flow section, where possible, but piped outlets with appropriate conveyance capacity that are designed to limit clogging may be used as determined by the Commission's Engineer
- (e) Structures adjacent to localized depressions use to route stormwater to waterbodies and stormwater ponds are exempt from these requirements.
- ii) Regional detention basins may be used to manage peak flow rates and meet water quality objectives when feasible.
 - iii) Analysis of flood levels, storage volumes and flow rates for waterbodies and detention basins shall be based on the range of rainfall and snow melt duration producing the critical flood levels and discharges, whichever is most critical.
 - iv) Landlocked water basins may be provided with outlets that:
 - (1) Retain a hydrologic regime complying with floodplain and wetland alterations.
 - (2) Provide sufficient storage below the outlet run-out elevation to retain back-to-back 100-year, 24-hour rainfalls and runoff above the highest anticipated groundwater elevation and prevent damage to property adjacent to the basin.
 - (3) Do not create adverse downstream flooding or water quality conditions.
 - c) Stormwater runoff volume must be *infiltrated/abstracted* onsite. For non-linear projects, stormwater runoff volume must be *infiltrated/abstracted* onsite in the amount equivalent to 1.1 inch of runoff from the sum of the new or fully reconstructed impervious surfaces.

Linear projects that create one acre or more of new or fully reconstructed impervious surfaces must meet all Commission requirements for 1.1 inches of runoff from the new impervious surface or 0.55-inches from the combination of new and fully reconstructed

impervious surfaces, whichever is greater. When this volume cannot be treated within the existing right-of-way, a reasonable attempt to obtain additional right-of-way, easement, or other permission to treat the stormwater during the project planning process must be made. Volume reduction practices must be considered first. Volume reduction practices are not required if the practices cannot be provided cost effectively. If additional right-of-way, easements, or other permission cannot be obtained, owners of construction activity must maximize the treatment of the water quality volume.

- i) Applicant must minimize the creation of new impervious surface, reduce existing impervious surfaces where possible, and minimize the amount of directly connected impervious surface.
- ii) When using infiltration for volume reduction, runoff must be infiltrated within 48 hours. Infiltration volumes and facility sizes shall be calculated based on the measured infiltration rate determined by a double-ring infiltrometer test(s) conducted to the requirements of ASTM Standard D3385 at the proposed bottom elevation of the infiltration area. Other testing methods may be used with the approval of the Commission's Engineer. The measured infiltration rate shall be divided by the appropriate correction factor selected from the Minnesota Stormwater Manual. This site investigation must be conducted by a licensed soil scientist or engineer.
- iii) A post-construction percolation test must be performed on each infiltration practice and must demonstrate that the constructed infiltration rate meets or exceeds the design infiltration rate prior to project acceptance by the city.
- iv) Infiltration areas will be limited to the horizontal areas subject to prolonged wetting.
- v) Areas of permanent pools tend to lose infiltration capacity over time and will not be accepted as an infiltration practice.
- vi) Stormwater runoff must be pretreated to remove solids before discharging to infiltration areas to maintain the long term viability of the infiltration areas.
- vii) Design and placement of infiltration BMPs shall be done in accordance with the Minnesota Department of Health guidance "Evaluating Proposed Stormwater Infiltration Projects in Vulnerable Wellhead Protection Areas," as amended.
- viii) Constructed bioretention and infiltration practices such as rain gardens, infiltration trenches, and infiltration benches shall not be used in:
 - (1) Fueling and vehicle maintenance areas;
 - (2) Areas with less than 3 feet separation from the bottom of the infiltration system to the elevation of seasonal high groundwater;
 - (3) Areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than 5 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater;

- (4) Areas within 400 feet of a community water well, within 100 feet of a private well, or within a delineated 1-year time of travel zone in a wellhead protection area;
 - (5) Sites documented to contain contaminated soils or groundwater.
- ix) Credit towards compliance with the abstraction requirement in (c) may be achieved by:
- (1) Meeting post construction soil quality and amendment depth requirements. Areas that will be subjected to clearing, grading, or compaction that will not be covered by impervious surface, incorporated into a drainage facility, or engineered as structural fill or slope may be included in the credit calculation if they meet post construction soil quality and amendment depth requirements. Soil amendment areas become part of the site's storm drainage system, and must be protected by a utility and drainage easement and be included in the site's utility maintenance agreement. The applicant may compute a credit of 0.5 inches over the soil amendment area and apply that toward the abstraction volume requirement.
 - (a) A minimum 8-inch depth of compost amended soil or imported topsoil shall be placed in all areas of the project site being considered for the abstraction credit. Before the soil is placed, the subsoil must be scarified (loosened) at least 4 inches deep, with some incorporation of the amended soil into the existing subsoil to avoid stratified layers.
 - (b) Soil amendment may be achieved by either mixing 2 inches of approved compost into the 8 inches of soil depth, or by mixing a custom-calculated amount of compost to achieve 8 inches of uncompacted soil depth with a minimum organic content of five percent.
 - (c) The amended areas must pass a 12-inch probe test during the site final inspection, in accordance with the Commission's testing procedure. Once amended, soil areas must be protected from recompaction.
 - (2) Preserving undisturbed forest or grassland conservation areas. Conservation areas must remain undisturbed during construction and must be protected by a permanent conservation easement prescribing allowable uses and activities on the parcel and preventing future development. A long-term vegetation management plan describing methods of maintaining the conservation area in a natural vegetative condition must be submitted with the stormwater management plan. The applicant may compute a credit of 0.5 inches over the conservation area and apply that toward the abstraction volume requirement.
 - (3) Providing wetland buffers in excess of minimum requirements. Areas eligible for credit must meet all wetland buffer requirements, must be monumented and shown on the construction plans. The applicant may compute a credit of 0.5 inches over the excess buffer area and apply that toward the abstraction volume requirement.

- (4) Disconnecting impervious surface by redirecting runoff across a pervious surface or into an engineered bioinfiltration facility. Impervious disconnection must be designed to prevent any reconnection of runoff with the storm drain system. The applicant may subtract the disconnected impervious surface area from the total impervious surface area used to compute the required abstraction volume.
- x) Alternative to (c), runoff may be directed to a downstream facility within the same hydrologic subwatershed that has sufficient capacity to provide the required volume management. This means that no volume management may be required for an individual development provided there is a regional facility designed and constructed to accommodate the volume from this property.
- b) Where infiltration is not advisable or infeasible due to site conditions, *biofiltration* must be provided for that part of the abstraction volume that is not abstracted by other BMPs. Where biofiltration is infeasible, at a minimum filtration through a medium that incorporates organic material, iron fillings, or other material to reduce soluble phosphorus must be provided.
- c) There shall be *no net increase in total phosphorus (TP) or total suspended solids (TSS)* from pre-development land cover to post-development land cover. Pre-development land cover is defined as the predominant land cover over the previous 10 years. The TP and TSS export coefficients to be used to calculate predevelopment and post-development land use loadings are set forth in Commission project review guidance.
- i) Full infiltration of one point one (1.1) inches of runoff from all impervious surface will satisfy (e).
- ii) If it is not feasible to achieve the full 1.1 inch infiltration requirement, a combination of BMPs may be used to achieve the no-net-increase requirement.
- iii) If permanent sedimentation and water quality ponds are used they shall be designed to the Wet Pond Design Standards set forth on Appendix A to these Rules and provide:
- (1) Water quality features consistent with NURP criteria and best management practices.
- (2) A permanent wet pool with dead storage of at least the runoff from a 2.5-inch storm event.
- iv) Alternative to (e), runoff may be directed to a downstream facility within the same hydrologic subwatershed that has sufficient capacity to provide the required treatment. This means that no treatment may be required for an individual development provided there is a regional facility designed and constructed to accommodate the flow from this property.

4. WAIVERS.

- a) The Commission may waive the on-site runoff rate, volume and water quality control design criteria as noted above, if a municipality has an off-site stormwater facility that provides equivalent control and treatment of runoff that conforms to Commission standards.
 - b) The design criteria for infiltration may be waived for sites with total impervious surface of less than one acre if infiltration BMPs have been incorporated to the maximum extent possible.
- 5. EXHIBITS.** The following exhibits shall accompany the project review application (one set full size, one set reduced to a maximum size of 11" x 17", and one electronic set in pdf format). All plans must be signed by a licensed professional engineer registered in Minnesota.
- a) Property lines and delineation of lands under ownership of the applicant.
 - b) Delineation of the subwatershed contributing runoff from off-site, proposed and existing subwatersheds on-site, emergency overflows and watercourses.
 - c) Proposed and existing stormwater facilities location, alignment and elevation.
 - d) Delineation of existing on-site wetland, marsh, shoreland and floodplain areas.
 - e) Where infiltration or filtration is used as a stormwater management practice, identification, description, results of double-ring infiltrometer tests, and permeability and approximate delineation of site soils and seasonal high groundwater elevation in both existing and proposed as-developed condition.
 - f) Existing and proposed ordinary high and 1% chance (100-year) water elevations on-site.
 - g) Existing and proposed site contour elevations at 2-foot intervals, referenced to NAVD (1988 datum). If NAVD 1988 is not used, applicant must specify the datum used and the appropriate conversion factor.
 - h) Construction plans and specifications of all proposed stormwater management facilities, including design details for outlet controls.
 - i) Runoff volume and rate analysis for the 2-year, 10-year, and 100-year critical storm events, existing and proposed.
 - j) Pre-construction and post-construction annual runoff volume (ac-ft), annual total phosphorus (lbs/yr), and annual total suspended solids (lb/yr).
 - k) All hydrologic, water quality and hydraulic computations made in designing the proposed stormwater management facilities.
 - l) A narrative describing the pre-and post-construction drainage conditions and the post-construction BMPs incorporated in the plans.
 - m) Applications requesting a soil management credit must include a Soil Management Plan (SMP) that shall include an 11" x 17" or larger site map indicating areas where soils will be amended, and calculations for soil volumes to be stockpiled and amounts and

specifications of amendment or topsoil to be imported to achieve specified minimum organic matter content.

n) Delineation of any ponding, flowage or drainage easements, or other property interests, to be dedicated for stormwater management purposes.

6. MAINTENANCE. All stormwater management structures and facilities shall be maintained in perpetuity to assure that the structures and facilities function as originally designed. The owner of any water quality treatment device if not a governmental unit shall provide to the member city, in a form acceptable to the Commission, a recordable agreement detailing an operations and maintenance plan that assures that the structure(s) will be operated and maintained as designed.

7. EASEMENTS. The member city shall obtain from the applicant, in form acceptable to the Commission, recordable temporary and perpetual easements for ponding, flowage and drainage purposes over hydrologic features such as waterbodies, wetlands, buffers, floodplain, and stormwater basins and other permanent BMPs. The easements shall include the right of reasonable access for inspection, monitoring, maintenance and enforcement purposes.

8. COVENANTS. The Commission may require as a condition of project review approval that the member city shall require that the land be subjected to restrictive covenants or a conservation easement, in form acceptable to the Commission, to prevent the future expansion of impervious surface and the loss of infiltration capacity.

RULE E. EROSION AND SEDIMENT CONTROL

1. POLICY. It is the policy of the Commission to control runoff and erosion and to retain or control sediment on land during land disturbing activities by requiring the preparation and implementation of erosion and sediment control plans.

2. REGULATION. No person or political subdivision shall commence a land disturbing activity or the development or redevelopment of land for which a project review is required under Rule D without first submitting to and obtaining approval of a project review from the Commission that incorporates an erosion and sediment control plan for the activity, development or redevelopment.

3. CRITERIA. Erosion and sediment control plans shall comply with the following criteria:

a) Erosion and sediment control measures shall be consistent with best management practices as demonstrated in the most current version of the MPCA manual "Protecting Water Quality in Urban Areas," and shall be sufficient to retain sediment on-site.

b) Erosion and sediment controls shall meet the standards for the General Permit Authorization to Discharge Storm Water Associated with Construction Activity Under the National Pollutant Discharge Elimination System/State Disposal System Permit

Program Permit MN R100001 (NPDES General Construction Permit) issued by the Minnesota Pollution Control Agency, except where more specific requirements are required.

- c) All erosion and sediment controls shall be installed before commencing the land disturbing activity, and shall not be removed until completion.
 - d) The activity shall be phased when possible to minimize disturbed areas subject to erosion at any one time.
- 4. EXHIBITS.** The following exhibits shall accompany the project review application (one set full size, one set reduced to a maximum size of 11" x 17", and one electronic set in pdf format). Erosion and sediment control plans must be prepared by a qualified professional.
- a) An existing and proposed topographic map showing contours on and adjacent to the land, property lines, all hydrologic features, the proposed land disturbing activities, and the locations of all runoff, erosion and sediment controls and soil stabilization measures.
 - b) Plans and specifications for all proposed runoff, erosion and sediment controls, and temporary and permanent soil stabilization measures.
 - c) Detailed schedules for implementation of the land disturbing activity, the erosion and sediment controls, and soil stabilization measures.
 - d) Detailed description of the methods to be employed for monitoring, maintaining and removing the erosion and sediment controls, and soil stabilization measures.
 - e) Soil borings if requested by the Commission.
- 5. MAINTENANCE.** The project review applicant shall be responsible for proper operation and maintenance of all erosion and sediment controls and soil stabilization measures, in conformance with best management practices and the NPDES permit. The project review applicant shall, at a minimum, inspect and maintain all erosion and sediment controls and soil stabilization measures daily during construction, weekly thereafter, and after every rainfall event exceeding 0.5 inches, until vegetative cover is established.

RULE F. FLOODPLAIN ALTERATION

- 1. POLICY.** It is the policy of the Commission to prevent and control flooding damage by:
- a) Preserving existing water storage capacity below the 100-year critical flood elevation on all waterbodies in the watershed to minimize the frequency and severity of high water.
 - b) Minimizing development in the floodplain that will unduly restrict flood flows or aggravate known high water problems.
 - c) Requiring compensatory storage for floodplain fill.

2. REGULATION. No person or political subdivision shall alter or fill land below the 100-year critical flood elevation of any public waters watercourse, public waters wetland, or other wetland without first obtaining an approved project review from the Commission.

3. CRITERIA.

- a) Floodplain alteration or filling shall not cause a net decrease in flood storage capacity below the projected 1% (100-year) critical flood elevation or alter the timing of flooding unless it is shown that the proposed alteration or filling, together with the alteration or filling of all other land on the affected reach of the waterbody to the same degree of encroachment as proposed by the applicant, will not cause high water or aggravate flooding on other land and will not unduly restrict flood flows.
- b) Structures shall be elevated to reduce flood risk as specified in Rule D.3.b.i.7.

4. EXHIBITS. The following exhibits shall accompany the project review` application (one set full size, one set reduced to a maximum size of 11" x 17", and one electronic set in pdf format):

- a) Site plan showing boundary lines, delineation and existing elevation contours of the work area, ordinary high water level, and 1% (100-year) critical flood elevation. All elevations shall be referenced to the NAVD 1988 datum. If NAVD 1988 is not used, applicant must specify the datum used and the appropriate conversion factor.
- b) Grading plan showing any proposed elevation changes.
- c) Preliminary plat of any proposed subdivision.
- d) Determination by a registered professional engineer of the 100-year critical flood elevation before and after the proposed activity.
- e) Computation of the change in flood storage capacity as a result of the proposed alteration or fill.
- f) Erosion and sediment control plan which complies with these Rules.
- g) Soil boring logs and report if available.

5. EXCEPTIONS. If a municipality has adopted a floodplain ordinance that prescribes an allowable degree of floodplain encroachment, the applicable ordinance shall govern the allowable degree of encroachment and no project review will be required under this Floodplain Alteration Rule.

RULE G. WETLAND ALTERATION

1. POLICY. It is the policy of the Commission to preserve and protect wetlands for their water quality, stormwater storage, habitat, aesthetic, and other attributes by:

- a) Achieving no net loss in the quantity, quality and biological diversity of wetlands in the watershed.
- b) Increasing the quantity, quality and biological diversity of wetlands in the watershed by restoring or enhancing diminished or drained wetlands.
- c) Enforcing mitigation of direct or indirect impacts from activities that destroy or diminish the quantity, quality and biological diversity of watershed wetlands.
- d) Replacing affected wetlands where sequencing demonstrates that avoidance is not feasible.

2. REGULATION. No person or political subdivision shall drain, fill, excavate or otherwise alter a wetland without first obtaining the approval of a wetland replacement plan from the local government unit with jurisdiction over the activity. Mitigation of wetland impacts will be considered in the following sequence: 1) mitigated by enhancing the impacted wetland; 2) mitigated within the subcatchment of the impacted wetland; 3) mitigated in the drainage area of the impacted wetland; 4) mitigated in the watershed of the impacted wetland; 5) mitigated through purchase of wetland bank credits.

3. CRITERIA.

- a) Any drainage, filling, excavation or other alteration of a wetland shall be conducted in compliance with Minnesota Statutes, section 103G.245, the Wetland Conservation Act, and regulations adopted thereunder.
- b) A wetland may be used for stormwater storage and treatment only if pre-treatment is provided and the use will not adversely affect the function and public value of the wetland as determined by the local government unit.
- c) Other activities which would change the character of a wetland shall not diminish the quantity, quality or biological diversity of the wetland.

4. LOCAL GOVERNMENT UNIT. The Commission will serve as the local government unit (LGU) for administration of the Wetland Conservation Act (WCA) for those cities that have designated the Commission to serve in that capacity. If a member city has not designated the Commission as the LGU for the administration of the WCA, they shall be responsible for administering the WCA. MnDOT serves as the LGU on its right of way.

RULE H. BRIDGE AND CULVERT CROSSINGS

1. POLICY. It is the policy of the Commission to maintain channel profile stability and conveyance capacity by regulating crossings of watercourses for driveways, roads and utilities.

2. **REGULATION.** No person or political subdivision shall construct or improve a road, driveway or utility crossing across any public waters watercourse or county ditch without first submitting to the Commission and receiving approval of a project review.
3. **CRITERIA.** Crossings shall:
 - a) Retain adequate hydraulic capacity to pass the 100-year flow and maintain the 100-year flow profile, if available.
 - b) Mimic the existing base flow (1-year, 2-year) conditions.
 - c) Not adversely affect water quality.
 - d) Represent the "minimal impact" solution to a specific need with respect to all reasonable alternatives.
 - e) Allow for future erosion, scour, and sedimentation maintenance considerations.
 - f) If the project proposes changing the FEMA FIS profile, a FEMA map revision must be obtained.
 - g) If the project requires a DNR Work in Public Waters permit, the conditions of that permit must be satisfied.
4. **EXHIBITS.** The following exhibits shall accompany the project review application (one set full size, one set reduced to a maximum size of 11" x 17", and one electronic set in pdf format):
 - a) Construction plans and specifications.
 - b) Analysis prepared by a registered professional engineer showing the effect of the project on hydraulic capacity and water quality.
 - c) An erosion and sediment control plan that complies with these Rules.
5. **MAINTENANCE.**
 - a) The maintenance, reconstruction and stabilization of any public crossing shall be the responsibility of the political subdivision with jurisdiction over the crossing.
 - b) The maintenance, reconstruction and stabilization of any private crossing shall be the responsibility of the owner of the crossing.
 - c) If a crossing over any public waters watercourse is determined by the Commission to be causing significant erosion, the Commission may notify the member city where said crossing is located and the member city may order the owner of the crossing to make necessary repairs or modifications to the crossing and outlet channel.

RULE I. BUFFER STRIPS

1. **POLICY.** It is the policy of the Commission to maintain the water quality and ecological functions provided by watercourses, lakes and wetlands by requiring the development of vegetated buffers around watercourses, lakes and wetlands where development and redevelopment occurs, and to encourage the installation of vegetated buffers around all watercourses and wetlands. Vegetative buffers reduce the impact of surrounding development and land use on watercourse, lake and wetland functions by stabilizing soil to prevent erosion, filtering sediment from runoff, and moderating water level fluctuations during storms. Buffers provide essential habitat for wildlife. Requiring buffers recognizes that watercourse, lake and wetland quality and function are related to the surrounding upland.
2. **REGULATION.** No person or political subdivision shall commence a land disturbing activity or the development or redevelopment of land for which a project review is required under Rule D on land that contains or is adjacent to a watercourse, lake or wetland without first submitting to and obtaining approval of a project review from the Commission that incorporates a vegetated buffer strip between the development or redevelopment and the watercourse or wetland.
3. **GENERAL PROVISIONS.**
 - a) This Rule shall apply to all lands containing or abutting watercourses, lakes or wetlands that are subject to a project review under these Rules. Watercourses, lakes and wetlands shall be subject to the requirements established herein, and other applicable federal, state and local ordinances and regulations. If a municipality has a buffer strip requirement that has been reviewed and approved by the Commission, the municipal regulation shall have precedence over the Commission's Rules.
 - b) An applicant shall determine whether any watercourse, lake or wetland exists, and shall delineate the boundary for any wetland on the land. An applicant shall not be required to delineate wetlands on adjacent property, but must review available information to estimate the wetland boundary.
 - c) Documentation identifying the presence of any watercourse, lake or wetland on the applicant's land, including wetland delineation and buffer strip vegetation evaluation, must be provided to the Commission with a project review application.
 - d) Wetland and buffer strip identifications and delineations shall be prepared in accordance with state and federal regulations.
4. **CRITERIA.** The following standards apply to all lands that contain or abut a watercourse, lake or wetland:
 - a) BMPs shall be followed to avoid erosion and sedimentation during land disturbing activities.
 - b) When a buffer strip is required the applicant shall, as a condition to issuance of an approved project review:

- i) Submit to the member city, in a form acceptable to the Commission, a recordable conservation easement for protection of approved buffer strips. The easement shall describe the boundaries of the watercourse or wetland and buffer strips, identify the monuments and monument locations, and prohibit any of the alterations set forth in Paragraph 5(e) below and the removal of the buffer strip monuments within the buffer strip or the watercourse or wetland.
 - ii) Submit to the member city, in a form acceptable to the Commission, an executed buffer maintenance plan and agreement for the first two growing seasons following establishment, and providing an escrow or an alternate surety to assure successful vegetation establishment.
 - iii) Install the wetland monumentation required by Paragraph 7 below.
- c) All open areas within the buffer strip shall be seeded or planted in accordance with Paragraph 8 below. All seeding or planting shall be completed prior to removal of any erosion and sediment control measures. If construction is completed after the end of the growing season, erosion and sediment control measures shall be left in place and all disturbed areas shall be mulched for protection over the winter season.

5. BUFFER STRIPS.

- a) A buffer strip shall be maintained around the perimeter of all watercourses, lakes or wetlands. The buffer strip provisions of this Rule shall not apply to any parcel of record as of the date of this Rule until such parcel is developed or redeveloped or unless required by a previous project review. The Commission does, however, strongly encourage the installation of buffer strips on all parcels in the watershed.
- b) Buffer strips on Elm Creek, Rush Creek, North Fork Rush Creek, and Diamond Creek shall be an average of 50 feet wide and a minimum of 25 feet wide, measured from the top of bank. Buffer strips on other watercourses, lakes, and wetlands shall be an average 25 feet wide and a minimum of 10 feet wide. It is recommended that all structures have a minimum 15 foot setback from the buffer strip.
- c) Buffer strips shall apply whether or not the watercourse or wetland is on the same parcel as a proposed development.
- d) Buffer areas disturbed by grading operations must be finish graded to a slope of 6:1 or less or an increase in width of five (5) feet for each one (1) foot decrease in horizontal width (i.e., a 25 required foot buffer width at a 5:1 slope must be 30 feet wide, 4:1 must be 35 feet wide, and 3:1 must be 40 feet wide.)
- e) Buffer strip vegetation shall be established and maintained in accordance with Paragraph 8 below. Buffer strips shall be identified within each parcel by permanent monumentation in accordance with Paragraph 7 below.
- f) Subject to Paragraph 5(g) below, alterations including building, storage, paving, mowing, plowing, introduction of noxious vegetation, cutting, dredging, filling, mining, dumping,

grazing livestock, agricultural production, yard waste disposal or fertilizer application, are prohibited within any buffer strip. Noxious vegetation shall be removed to meet state standards. Alterations would not include plantings that enhance the natural vegetation or selective clearing or pruning of trees or vegetation that are dead, diseased or pose similar hazards.

- g) The following activities shall be permitted within any buffer strip, and shall not constitute prohibited alterations under Paragraph 5(f) above:
 - i) Use and maintenance of an unimproved access strip through the buffer, not more than 20 feet in width, for recreational access to the watercourse, lake or wetland and the exercise of riparian rights.
 - ii) Placement, maintenance, repair or replacement of utility and drainage systems that exist on creation of the buffer strip or are required to comply with any subdivision approval or building permit obtained from the municipality or county, so long as any adverse impacts of utility or drainage systems on the function of the buffer strip have been avoided or minimized to the extent possible.
 - iii) Construction, maintenance, repair, reconstruction, or replacement of existing and future public roads crossing the buffer strip, so long as any adverse impacts of the road on the function of the buffer strip have been avoided or minimized to the extent possible.

6. ALTERNATE WETLAND PROTECTION METHODS.

- a) Should application of the buffer standards in Paragraph 5 above render a parcel of record as of the date of this Rule unbuildable based on current city ordinances, the Watershed engineer may allow alternative methods to protect the wetland. Such methods must include a buffer strip no less than ten feet wide, supplemented by redirection of drainage to a wider area of buffer, or to a Best Management Practice such as a rain garden or vegetated swale.
- b) The use of alternative wetland protection methods will be evaluated as part of the review of a stormwater management plan under these Rules. Alternative wetland protection methods must be in keeping with the spirit and intent of this Rule.

7. MONUMENTATION. A monument shall be required at each parcel line where it crosses a buffer strip and shall have a maximum spacing of 200 feet along the edge of the buffer strip. Additional monuments shall be placed as necessary to accurately define the edge of the buffer strip. A monument shall consist of a post and a buffer strip sign meeting Commission standards. The signs shall include warnings about mowing, disturbing or developing the buffer strip.

8. VEGETATION.

- a) Where acceptable natural vegetation exists in buffer strip areas, the retention of such vegetation in an undisturbed state is required unless an applicant receives approval to replace such vegetation. A buffer strip has acceptable natural vegetation if it:
 - i) Has a continuous, dense layer of native vegetation that has been uncultivated or unbroken for at least 5 consecutive years; or
 - ii) Has an overstory of native trees and/or shrubs that has been uncultivated or unbroken for at least 5 consecutive years; or
 - iii) Contains a mixture of the plant communities described in Subparagraphs 8(a)(i) and (ii) above that has been uncultivated or unbroken for at least 5 years.
- b) Notwithstanding the performance standards set forth in Paragraph 8(a), the Commission may determine existing buffer strip vegetation to be unacceptable if:
 - i) It contains undesirable plant species including but not limited to common buckthorn, reed canary grass, or species on the Minnesota State Noxious Weeds List; or
 - ii) It has topography that tends to channelize the flow of runoff; or
 - iii) For some other reason it is unlikely to retain nutrients and sediment.
 - iv) Where buffer strips are not vegetated or have been cultivated or otherwise disturbed within 5 years of the project review application, such areas shall be replanted and maintained with native vegetation. The buffer strip plantings must be identified on the project review application. Acceptable buffer strip design and planting methods are detailed in the reference document “Restoring and Managing Native Wetland and Upland Vegetation” (Jacobson 2006, prepared for BWSR and MnDOT).
- c) Buffer strip vegetation shall be established and maintained in accordance with the requirements found in this Paragraph. During the first two full growing seasons, the owner must replant any buffer strip vegetation that does not survive. The owner shall be responsible for reseeding and/or replanting if the buffer strip changes at any time through human intervention or activities. At a minimum the buffer strip must be maintained as a “no mow” area.

9. ENCROACHMENT.

- a) Buffer strips must be kept free of all materials, equipment and structures, including fences and play equipment. Buffer strips must not be grazed, cropped, logged or mown except as approved by the Commission. The topography of the buffer strips shall not be altered by any means, including paving, plowing, cutting, dredging, filling, mining, or dumping.
- b) Variances.
 - i) Only variances meeting the standards and criteria set forth in Rule K shall be granted.

- ii) Variances shall not be granted that would circumvent the intent and purposes of this Rule.

RULE J. FEES

1. **POLICY.** The Commission finds that it is in the public interest to require applicants to pay the cost of administering and reviewing project review applications, and inspecting approved activities to assure compliance with these Rules, rather than using the Commission's annual administrative levy for such purposes. The Commission shall by resolution establish a schedule of fees that may be amended from time to time to reflect the cost of providing each service.
2. **APPLICATION.** Each application for the issuance, transfer or renewal of a project review recommendation under these Rules shall be accompanied by an application fee to defray the cost of processing the application.
3. **REVIEW.** A project review applicant under these Rules shall pay a fee for the cost of the review and analysis of the proposed activity, including services of engineering, legal, and other consultants. The review fee shall be payable upon the submission of the project review application.
4. **WETLAND MITIGATION PLAN.** A project review applicant under these rules shall pay a fee for the cost of the review and analysis of a proposed activity involving a wetland mitigation plan in a municipality where the Commission is the LGU. The fee is to cover the costs of engineering, legal, and other consultants, and shall be payable upon the submission of the project review application. Should the cost of said wetland mitigation plan review exceed the review fee, the application shall deposit such additional sums as are needed to pay such costs. Failure to pay such costs is grounds to deny the application or suspend review.
5. **WETLAND MITIGATION PLAN MONITORING.** A project review applicant under these rules in a municipality where the Commission is the LGU shall deposit an escrow to cover the cost of Commission monitoring and annual monitoring plan review for the five-year period. If the escrow amount is insufficient to cover the costs the Commission may require additional funds from the applicant.
6. **WETLAND MITIGATION SECURITY DEPOSIT.** A project review applicant under these rules in a municipality where the Commission is the LGU shall provide a security to assure that the replacement plan is followed. The amount of the security shall be calculated on a case-by-case basis based on the estimated cost of construction, follow up and contingency. The security may also include an amount determined by the Commission to be sufficient to protect the public in the event the replacement plan does not succeed.
7. **DEPOSITS.** The Commission will maintain an accounting for all deposits made under this Rule. No interest will be paid to applicants for funds held in deposit.

RULE K. VARIANCES

- 1. WHEN AUTHORIZED.** The Commission may grant variances from the literal provisions of these Rules. A variance shall only be granted when in harmony with the general purpose and intent of the Rules in cases where strict enforcement of the Rules will cause practical difficulties or particular hardship, and when the terms of the variance are consistent with the Commission's water resources management plan and Minnesota Statutes, chapter 103D.
- 2. HARDSHIP.** "Hardship" as used in connection with the granting of a variance means the land in question cannot be put to a reasonable use if used under the conditions allowed by these Rules; the plight of the applicant is due to circumstances unique to the land and not created by the applicant; and the variance, if granted, will not adversely affect the essential character of the locality and other adjacent land. Economic considerations alone shall not constitute a hardship if a reasonable use for the land exists under the terms of these Rules. Conditions may be imposed in the granting of a variance to insure compliance and to protect adjacent land and the public health and general welfare of the Commission.
- 3. PROCEDURE.** An application for a variance shall describe the practical difficulty or particular hardship claimed as the basis for the variance. The application shall be accompanied with such surveys, plans, data and other information as may be required by the Commission to consider the application.
- 4. VIOLATION.** A violation of any condition imposed in the granting of a variance shall be a violation of these Rules and shall automatically terminate the variance.

RULE L. ENFORCEMENT

- 1. ADMINISTRATION.** These Rules shall be administered by the Commission. The Commission shall consider applications required under these Rules and determine whether such applications should be approved, approved with conditions, or denied. Such determination shall be communicated to the member city in which the project lies and to the applicant.
- 2. IMPLEMENTATION BY MEMBER CITIES.** It shall be the duty of each city to enforce and implement such determinations by the Commission under the various permitting processes and regulations of the city. Each city shall make such amendments to its official controls, regulations, and permitting processes as are necessary to provide it with the authority to enforce and implement the determinations of the Commission.
- 3. FAILURE BY CITY TO IMPLEMENT.** Upon a determination by the Commission that a city has not enforced or implemented a decision of the Commission in the administration of these Rules, the Commission shall notify the city of such determination and direct that

appropriate action be taken by the city. If the city does not take such action, the Commission may take such legal steps as are available to it to effect such enforcement or implementation.

RULE M. AMENDMENT OF THESE RULES

- 1. AMENDMENT.** These rules may be amended from time to time by the Commission. Proposed amendments shall be reviewed by the member cities prior to adoption unless the Commission determines that said amendment is of a minor or technical nature. Minor or technical amendments include recodifying or streamlining the rules, clarifying policies, or other actions that do not adversely affect a member city or impact the Commission's or member cities' ability to meet their water management plan goals.
- 2. PROCEDURE.** Proposed major amendments to these rules shall be first considered by the Commission and then forwarded to the member cities for a 45-day comment period. Following that comment period, the Commission shall consider the proposed amendment and the comments received for approval. All amendments shall be made by resolution.

**ELM CREEK WATERSHED MANAGEMENT COMMISSION
RULES APPENDIX A
WET POND DESIGN STANDARDS**

Permanent Pool Depth	Average 4', maximum 10'
Permanent Pond Surface Area	Greater of 2% of watershed's impervious area and 1% of the watershed
Permanent Pool Length to Width Ratio	3:1 or greater with an irregularly shaped shoreline
Side Slopes	10:1 for 10-foot bench centered on the normal water elevation and between 3:1 and 20:1 elsewhere
Side Slope Stabilization	Native seed with mix 33-261 (MnDOT 310), 34-271 (BWSR W2) or equivalent between NWL and HWL, provide 10' buffer where possible with mix 35-221 (MnDOT 330 (dry)) or mix 35-241 (MnDOT 350 (mesic))
Floatable Removal	Skimming device discharging at no greater than 0.5 fps during the 2-year event or a submerged outlet with a minimum 0.5 feet from the normal water level to the crown of the outlet pipe
Sediment Accumulation Area	Provide maintenance pads to remove sediment deltas at inlets
Permanent Pool Volume	A 4-foot mean depth and equal to 2.5-inch rain over the watershed
Source	Protecting Water Quality in Urban Areas (MPCA 2000)

SUMMARY

Elm Creek Watershed Management Commission Management Rules and Standards*

	Standard	Purpose	Applicability
Project Reviews Required	A Stormwater Management Plan consistent with all applicable management rules and standards* must be reviewed and approved prior to commencement of land disturbing activities.	To control excessive rates and volumes of runoff; manage subwatershed discharge rates and flood storage volumes; improve water quality; protect water resources; and promote natural infiltration of runoff.	All development or redevelopment projects of the following types: <ul style="list-style-type: none"> • Projects disturbing more than one acre of land • Projects within the 100-year floodplain • Projects adjacent to or within a lake, wetland, or watercourse • Any land disturbing activity requested by a member city to be reviewed regardless of project size • Linear projects creating more than one acre of new impervious surface
Rate Control	Peak runoff rates may not exceed existing rates for the 2-year, 10-year, and 100-year critical storm event; or the capacity of downstream conveyance facilities; or contribute to flooding	To control excessive rates and volumes of runoff; manage subwatershed discharge rates and flood storage volumes	All projects disturbing more than one acre of land. Redevelopment projects disturbing less than 50 percent of the site must meet the requirement only for the disturbed area.
Volume Management	Non-linear projects: 1.1 inch of impervious surface runoff must be abstracted on site within 48 hours Linear projects: abstract the greater of 1.1 inch from new impervious or 0.55 inches from new and/or fully reconstructed impervious	To control excessive rates and volumes of runoff; manage discharge rates and flood storage volumes; protect stream channels from erosion; and promote natural infiltration of runoff.	All projects disturbing more than one acre of land. Redevelopment projects disturbing less than 50 percent of the site must meet the requirement only for the disturbed area.
Erosion and Sediment Control	Erosion control plan using Best Management Practices (BMPs) and consistent with the NPDES General Construction Permit is required	To control erosion and sediment so as to protect conveyance systems and water quality	All projects requiring a project review
Floodplain Alteration	Compensating storage is required to mitigate floodplain fill	To prevent and control flooding damage	All development or redevelopment projects within the 100-year floodplain regardless of project size
Water Quality	No net increase in total phosphorus and total suspended sediment annual load	To protect water quality	All projects disturbing more than one acre of land. Redevelopment projects disturbing less than 50 percent of the site must meet the requirement only for the disturbed area.
Buffer Strips	Vegetated buffer strips average 50 foot, minimum 25 foot wide adjacent to Elm, Diamond, Rush, and North Fork Rush Creeks; average 25 foot, minimum 10 foot wide adjacent to lakes, wetlands and other watercourses	To protect water quality; reduce erosion and sedimentation; reduce pollutants from runoff and debris; and provide habitat	All projects requiring a project review that contain or abut a wetland or watercourse
Wetland	Wetlands may not be drained, filled, excavated, or otherwise altered without an approved wetland replacement plan from the local government unit (LGU) with jurisdiction	To preserve and protect wetlands for their water quality, stormwater storage, habitat, aesthetic, and other attributes	All land disturbing activity impacting a wetland as defined by the Wetland Conservation Act (WCA)

*Important Note: Approved TMDL Implementation Plans may have additional site-specific requirements.