



RICE CREEK WATERSHED DISTRICT

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To Whom It May Concern:

The Rice Creek Watershed District (RCWD) has been developing a Comprehensive Wetland Management Plan (CWMP) for an area of approximately 1,300 acres in Blaine, Minnesota over the past 18 months. The attached draft rule, Rule “M”, has been approved by the RCWD board for distribution and comments.

This rule will apply only to the geographic area in the City of Blaine encompassed by the CWMP that, on November 12, 2003, the RCWD Board of Managers approved for submission to the Minnesota Board of Water and Soil Resources (BWSR). If approved by BWSR and formally adopted by the RCWD Board, the CWMP would govern impacts from wetland filling, excavation and draining within the identified geographic area in place of the general provisions of the Minnesota Wetland Conservation Act.

The law authorizing CWMPs requires that they be implemented through an adopted rule. The enclosed proposed rule would serve this purpose.

The permitting process described in the rule would replace individual permitting under existing RCWD Rules C (stormwater management), D (erosion control) and F (wetland alteration). A single application would be submitted in which all erosion, stormwater and wetland impacts would be considered and addressed. Largely, the same requirement presently contained in RCWD Rules C, D and F would apply to development within the CWMP area. However, some different and, in some cases, stricter requirements would apply as well. This is because implementation of the CWMP will reestablish a large, contiguous wetland complex providing substantial water resource benefits that merits careful protection. By implementing the CWMP, the RCWD at the same time is creating the opportunity for landowners to establish large contiguous areas of upland for use and development that would not otherwise be available. Requiring special attention to water resource protection in several reasonable respects is a fair consequence of the landowner benefit created.

A Rule M permit will be required in three instances:

- When a landowner will do work in, or do work that drains, a wetland within the CWMP area.
- When 10,000 square feet of hard surface will be created within the CWMP area; or

- When grading with motorized equipment will alter the rate or volume of surface runoff into a wetland within the CWMP area.

Erosion Control. For any work meeting one of these triggers, the existing erosion control requirements of RCWD Rule D will apply. Rule D does not apply to development on sites less than 2.5 or five acres, depending on the activity. The proposed rule would not recognize this exception, but would apply equally to small and large sites within the CWMP area, if land cover is being disturbed.

Stormwater Management. The existing requirements of RCWD Rule C will apply, with these differences:

- Similar to the erosion control requirements, exceptions in Rule C for work on lots smaller than 2.5 or five acres, depending on activity, and for single-family house construction, would not apply.
- A property owner would be required to use sound site design principles to limit hard surface, preserve infiltration capacity, and control peak flows and pollutant transport from the property.
- Under Rule C as it presently is applied, activity creating hard surface of less than an acre is not subject to the requirement to maintain pre-development peak runoff rates for the one-year, two-year and 100-year storm events. Under the proposed rule, a property owner would need to meet this standard. The owner would not be required to install any other specific technology, but could use any number of approaches to meet the standard, including site design and natural site features.
- Rule C requires use of Best Management Practices so that the site will retain the capacity to infiltrate a 0.34-inch rainfall within 72 hours and, in some cases, requires stormwater facilities to provide water quality treatment meeting the Nationwide Urban Runoff Program (NURP) standard of 50 percent phosphorus removal and 85% percent solids removal. Under the proposed rule, a different approach would apply combining infiltration and water quality treatment requirements.
- In areas with soils suited to infiltration and low groundwater, infiltration of at least 80 percent of the two-year storm event will be required. The remaining 20 percent of the two-year storm event volume may be provided via pretreatment for infiltration features, provided that pre-development peak flow rates are not increased.
- In areas not so suited, the rule would require that 20 percent of the two-year storm event be bio-filtrated, and the remaining 80 percent would be discharged after treatment consistent with NURP standards and peak flow rate controls.
- Under the proposed rule, wetlands within the CWMP area will be characterized with respect to their sensitivity to water level fluctuations due to storm events and to the time

it takes for water level to decline after an event. Development must not cause specified “bounce” and inundation period limits to be exceeded in any downgradient wetland.

- Soil amendment, excavation and filling during development must avoid impeding groundwater flow. Once development is completed, phosphorus-containing fertilizer must be avoided and plowed snow must be stored so that it does not drain to wetlands without pretreatment. These commitments would be memorialized in a declaration recorded on the developed property.

Vegetated Buffers. The declaration just mentioned also would establish a vegetated buffer around the contiguous wetland complex. Vegetated buffer, a strip of land bordering a waterbody in which primarily native or restored vegetation is maintained largely undisturbed, serves a critical role in protecting water resources. Buffers stabilize the wetland edge; prevent erosion; filter nutrients, sediments and other pollutants from storm flows; moderate peak flows into and within the wetland; regulate temperatures; preserve aquatic and terrestrial habitat; protect scenic resources, and maintain property values.

The buffer would average 50 feet in width and be at least 25 feet at all points on the property. It would be identified by monuments at least every 200 feet. Monumentation alternatives are proposed for public land or right-of-way.

Within the buffer, a property owner generally would not be permitted to mow vegetation, engage in cultivation or pasturing, apply fertilizer or engage in similar disturbances. However, a property owner could engage in periodic cutting, remove diseased and invasive species, and otherwise manage the buffer in accordance with a written plan approved by RCWD staff. Structures and hard surface would be prohibited within the buffer, as would filling and excavating. The proposed rule contains limited exceptions for suspended structures, public utilities, stormwater management features and trails for non-motorized use.

The proposed rule also would allow a buffer to be regraded pursuant to listed conditions. These include rigorous erosion control; preservation of wooded buffer and canopy trees; a design that when implemented enhances sheet flow and improves buffer function; a revegetation plan establishing primarily native vegetation; and a three-year maintenance obligation.

Wetland Replacement. On each property, wetland that is disturbed by filling, excavation or draining, partial or total, must be replaced on an acre-for-acre basis. Approved wetland filling or draining, and wetland replacement, will be located consistent with the CWMP plan to create aggregated upland areas and contiguous wetland. The CWMP is based on the approximate identification of wetland types and boundaries. Specific replacement requirements will be determined during permitting on the basis of a wetland delineation submitted by the property owner.

The CWMP sets forth criteria to guide the wetland impact and replacement decision that are reproduced in the proposed rule. These include avoiding impacts to highest-quality wetlands and protecting certain high-quality uplands from excavation for wetland replacement. The rule identifies those provisions of the Wetland Conservation Act that will be replaced by the CWMP and those that will continue to apply.

Easement. It is the RCWD's intention, in conjunction with the City of Blaine and other interested public and private parties, to evaluate and undertake activities to improve and maintain the hydrology and vegetation within the wetland area and buffer. The RCWD will continue to exercise its authority over Anoka County Ditch (ACD) 53-62 to preserve its function as a ditch system for the benefit of property owners. Consistent with that, it will retain the ability to take actions to protect against flooding and enhance the area's wetland ecology.

Accordingly, the proposed rule provides for each property owner to convey to the RCWD an easement over the wetland area and buffer. The easement would allow the RCWD to enter, perform work and install structures for the purposes described above. Because the easement would apply only to undevelopable portions of properties within the CWMP, and because of the benefit that the CWMP will create for property owners, the RCWD believes that this requirement is fair and reasonable.

Partial Abandonment. The CWMP is designed, and will be implemented, in recognition of ACD 53-62 and the RCWD's responsibility to maintain the existing ditch system. The RCWD intends to exercise its authority to preserve, for benefited properties within and upgradient of the CWMP area, the hydraulic efficiency of ACD 53-62 as constructed. At the same time, the CWMP makes use of provisions in the drainage law that allow a ditch system to be realigned in order to protect and enhance wetlands.

Accordingly, in implementing the CWMP, there may be cases in which property development consistent with the CWMP calls for a portion of ACD 53-62 to be realigned. One means to do this involves construction of a new alignment in conjunction with abandonment of the old alignment, a process that by statute must be initiated by petition of the property owner. The rule therefore would direct a property owner to petition for partial abandonment when necessary to implement the CWMP. The partial abandonment would not compromise the rights that his property or any other property has to the maintenance of ACD 53-62.

Please review the attached rule language and submit any comments you might have to the RCWD by January 21, 2004.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Hobbs', with a horizontal line extending to the right.

Steve Hobbs
District Administrator