

# CEDAR RIVER WATERSHED DISTRICT RULES

[MAY 12, 2011 – AFTER BWSR COMMENTS]

## TABLE OF CONTENTS

RULE 1. INTRODUCTION AND DEFINITIONS .....	1.1
Subd. 1. Purpose .....	1.1
Subd. 2. General Policies .....	1.1
Subd. 3. Coordination with Other Units of Government .....	1.1
Subd. 4. Review of Local Ordinances .....	1.1
Subd. 5. Consistency with State and Federal Law .....	1.2
Subd. 6. Severability .....	1.2
Subd. 7. Rule Adoption.....	1.2
Subd. 8. Due Process of Law .....	1.3
Subd. 9. Definitions .....	1.3
RULE 2. PUBLIC MEETINGS, HEARINGS, AND RECORDS .....	2.1
Subd. 1. Meetings .....	2.1
Subd. 2. Hearings .....	2.1
Subd. 3. Records .....	2.1
Subd. 4. Appeals/Dispute Resolution .....	2.1
RULE 3. PERMIT REQUIREMENTS.....	3.1
Subd. 1. Application .....	3.1
Subd. 2. Administrative Review and Approval .....	3.2
Subd. 3. Board Approval .....	3.2
Subd. 4. Conditions.....	3.3
Subd. 5. Deadlines for Action.....	3.3
Subd. 6. Performance Surety .....	3.4
Subd. 7. Project Agreement .....	3.5
Subd. 8. Assignment and Transfer of District Permits .....	3.5
Subd. 9. Expiration of District Permits.....	3.5
Subd. 10. Phased or Multi-year projects.....	3.5
Subd. 11. Exception .....	3.5
Subd. 12. Coordination with Adjacent Jurisdictions .....	3.6
RULE 4. STORMWATER.....	4.1
Subd. 1. Purpose .....	4.1
Subd. 2. Permit Review Required for New Development .....	4.1
Subd. 3. Standards.....	4.1
RULE 5. DRAINAGE .....	5.1
Subd. 1. Purpose .....	5.1
Subd. 2. Permit Required for Drainage Work.....	5.1
Subd. 3. Standards.....	5.1
Subd. 4. Driveway Culverts .....	5.3

Subd. 5. No Obstructions .....	5.3
Subd. 6. No Illicit Discharges .....	5.3
<b>RULE 6. FLOODPLAIN .....</b>	<b>6.1</b>
Subd. 1. Purpose .....	6.1
Subd. 2. Permit and Plan Required for Floodplain Alteration or Construction Within the Floodplain .....	6.1
Subd. 3. Standards.....	6.1
Subd. 4. Activities in Floodplain Prohibited.....	6.2
Subd. 5. Snow Storage .....	6.2
<b>RULE 7. WATERBODY ALTERATIONS .....</b>	<b>7.1</b>
Subd. 1. Purpose .....	7.1
Subd. 2. Permit and Plan Required for Waterbody Alterations .....	7.1
Subd. 3. Standards.....	7.1
<b>RULE 8. EROSION CONTROL.....</b>	<b>8.1</b>
Subd. 1. Purpose .....	8.1
Subd. 2. Erosion Control Methods for Land Disturbing Activities Greater than One Acre .....	8.1
Subd. 3. Erosion Control Methods for Land Disturbing Activities Less than One Acre.....	8.1
Subd. 4. Agricultural Soil Erosion Control Methods.....	8.2
<b>RULE 9. ENFORCEMENT.....</b>	<b>9.1</b>
Subd. 1. Violation is a Misdemeanor.....	9.1
Subd. 2. Notification Regarding Violations.....	9.1
Subd. 3. Court Action .....	9.1
Subd. 4. Administrative Order .....	9.1
Subd. 5. Order to Show Cause .....	9.1
Subd. 6. Future Permits.....	9.1
Subd. 7. Contractor Liability .....	9.1
Subd. 8. Costs and Attorney Fees .....	9.1
Subd. 9. Fines.....	9.1

## **RULE 1. INTRODUCTION AND DEFINITIONS**

The Cedar River Watershed District was established under the authority of Minnesota Statutes, Chapter 103D, the Watershed Act, on April 25<sup>th</sup>, 2007. The District's goals and objectives are to protect and improve the quality of surface waters throughout the District and to reduce flooding and flood related problems in the District.

As required by Minnesota Statutes Chapter 103D, the District has adopted a watershed management plan. In its plan, the District established its goals for protecting and improving surface water quality; protecting groundwater quality; maintaining adequate surface and groundwater supplies for all users; protecting and restoring critical areas; promoting wise land use management; expanding knowledge and understanding of the watershed; engaging residents in water resource management; and providing effective and efficient administration of the District. The District's watershed management plan identifies objectives and initiatives necessary to address these issues, including the adoption of rules and a permitting program.

**Subd. 1. Purpose.** The District is required by Minnesota Statutes Chapter 103D to adopt rules. These rules are intended to accomplish the powers of the Managers under the Minnesota Watershed Act, Minnesota Statutes Chapter 103D. These rules shall have the force and effect of law. The District's watershed management plan identifies several areas where District rules are necessary to accomplish the District's purposes. These areas are flood control that includes drainage, erosion and sediment control, storm water management and wetland restorations.

**Subd. 2. General Policies.** It is the District's goal to provide wise management of the District's water resources. It is the mission of the Cedar River Watershed District (CRWD) to apply the statutory authorities in ways that protect and enhance safety commerce and natural resources for today and tomorrow.

The District strives to implement these rules by education first; notification second, and enforcement if necessary.

**Subd. 3. Coordination with Other Units of Government.** It is the intention of the Managers to coordinate the administration of their rules with all interested federal, state, and local governmental units and agencies having jurisdiction in the District. The District's rules are intended to fill gaps in existing federal, state, and local regulations. The District's rules are not intended to duplicate existing regulations.

**Subd. 4. Review of Local Ordinances.** The District requires all local units of government to submit proposed ordinances relating to drainage, flood plains, shoreland or any other water/land use topic to the District for review and comment. The District must receive the proposed ordinance at least 30 days prior to the local government units' first public hearing. If the local government unit adopts the ordinance, the final approved version must be submitted to the District within 30 days of its effective date.

**Subd. 5. Consistency with State and Federal Law.** If any District rule is inconsistent with state or federal law, the provisions of state and federal law shall govern. Nothing in these rules removes the requirements of other permits or authorizations from other local, state or federal agencies.

**Subd. 6. Severability.** If any part of these rules is declared invalid by a court of competent jurisdiction, such declaration shall not affect the validity of these rules as a whole, but only the part declared invalid.

**Subd. 7. Rule Adoption.** The following procedures shall apply to the adoption of new rules and rule amendments:

- a. Any District property owner, Manager, or the District Administrator may propose rules or rule amendments to the Board of Managers.
- b. A copy of the proposed rules or amendments shall be submitted to each Manager.
- c. The Board may direct District staff to conduct stakeholder meetings to solicit input from persons and political subdivisions likely to be affected by the proposed rules or amendments thereto.
- d. In accordance with Minnesota Statutes Chapter 103D, the District shall submit the proposed rules to the Board of Water and Soil Resources and all local government, units of government and all authorities within the watershed for comments 45 days before the Managers vote to accept the proposed rules.
- e. Before adopting any proposed rules or amendments, the Board shall hold a public hearing to take public testimony on the proposed rules or amendments. The time, date, and location of the public hearing shall be determined by the Board and notice shall be given by publication in a legal newspaper of general circulation in each county with territory in the District.
- f. The Managers shall accept or reject the proposed rules or amendments thereto based on a majority vote of the Board.
- g. After the public hearing, after a majority vote of the Board, and upon being signed by the District's President and Secretary, the proposed rules or amendments are deemed adopted. The adopted rules or amendments shall become effective and have the full force and effect of law after publication in a legal newspaper of general circulation in each county having territory in the District.

- h. A copy of adopted rules or amendments shall be forwarded to each of the following: the County Auditor and County Commissioners of each county having territory in the District; every Township Board Clerk, City Clerk, and Regional Development Commission Chair within the District; the Commissioner of the Department of Agriculture; the Commissioner of the Minnesota Department of Natural Resources, the Executive Director of the Board of Water and Soil Resources; the Commissioner of the Minnesota Pollution Control Agency; the Commissioner of the Minnesota Department of Health; Soil and Water Conservation Districts within the watershed; County Extension agents; all Zoning and Planning Boards in the District; and the Administrator of the Minnesota Environmental Quality Board; all public transportation authorities within the District; and other entities that the Board deems appropriate.

**Subd. 8. Due Process of Law.** No person shall, under these rules, be deprived or divested of any previously established beneficial uses or rights without due process of law.

**Subd. 9. Definitions.** For the purposes of these rules, certain words and terms are herein defined as follows. In the absence of a definition hereinafter, the definitions established for the State of Minnesota by statute or by case law shall apply to these rules unless clearly in conflict, clearly inapplicable.

**SHALL** and **MAY** as used in these rules, are to be construed to indicate a mandatory and a permissive state or condition, respectively.

**Agricultural Land:** any land that is actively cultivated, planted, grazed, or enrolled in an agricultural conservation program as part of an on going farming operation.

**Applicant:** An individual or entity submitting a permit application under Rule 3.

**BMPs (Best Management Practices):** practices to prevent or reduce the pollution of waterbodies and wetlands, including schedules of activities, prohibitions of practices, and other management practices.

**Board of Managers:** the Cedar River Watershed District Board of Managers.

**Board Meeting:** the District Board of Managers' regularly scheduled or special meeting.

**District:** the Cedar River Watershed District.

**District Administrator:** the Cedar River Watershed District Administrator.

**Drainage Facilities:** open ditches and other overland flow conveyance facilities, culverts, drain tile systems, storm sewers, collectively.

**Drainage Way:** any natural or artificial channel which provides a course for the flow of water, whether that flow is continuous or intermittent.

**Drain Tile System:** any public and privately owned underground conduit used to conduct the flow of water in order to drain agricultural lands.

**Floodplain:** the surficial area inundated by flood water resulting from runoff from the 100-year rainfall event or 100-year snowmelt condition, whichever is most severe for the area in question. (The 100-year event is also described as events that have a 1% chance of occurrence in any year.)

**Hydrologic Unit:** A Hydrologic Unit is a watershed area of land and water defined by a boundary such that all surface drainage within the boundary converges to a single point. This point of convergence is usually the exit point, where the collected waters leave the watershed.

**Impervious Surface:** means a constructed hard surface that either prevents or significantly retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to such construction. Examples include, but not limited to, rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete or asphalt roads.

**Improvement:** enlarging, extending, straightening or deepening of an existing Open Ditch or Public Drainage System.

**Land Disturbing Activity:** any disturbance to the ground surface that may result in soil erosion from water or wind and the movement of sediments into or upon waterbodies or wetlands within the watershed. Land Disturbing Activity includes but is not limited to the demolition of a structure or surface, soil stripping, clearing, grubbing, grading, excavating, filling and the storage of soil or earth materials. This includes a disturbance to the land that results in a change in the topography, existing soil cover, or vegetation that may result in accelerated storm water runoff which may lead to soil erosion and movement of sediment. The term does not include normal farming practices as part of an ongoing farming operation.

**MNDNR:** the Minnesota Department of Natural Resources

**MPCA:** the Minnesota Pollution Control Agency.

**NPDES:** National Pollutant Discharge Elimination System.

**Open Ditch:** any private or public open channel, not defined in Minnesota Statutes Chapter 103E used to conduct the flow of water.

**Person:** any individual, partnership, company, or corporation, but does not include any political subdivision.

**Plan:** Cedar River Watershed District Watershed Management Plan adopted October 21, 2009 and approved by the Minnesota Board of Water and Soil Resources on September 23, 2009, as such Plan may be amended or revised.

**Political subdivision:** any city, township, county, school district, or political subdivision of the State of Minnesota.

**Public Drainage System:** Any publicly administered or maintained open ditch, or Drainage Way subject to Minnesota Statutes Chapter 103E.

**Public Watercourse:** Those public waters of the state identified as natural and altered natural watercourses under Minnesota Statutes, section [103G.005](#), subdivision 15, clauses (9) and (10), or [103G.201](#), as shown on the public water inventory maps.

**Public water wetlands:** Those public waters of the state identified as public water wetlands under Minnesota Statutes, section [103G.005](#), subdivision 15a, or [103G.201](#), as shown on the public water inventory maps.

**Redevelopment:** any change in the use of a property or any permanent physical change to a property that alters the drainage pattern of the property or causes an increase in runoff volume, rate of runoff and/or pollutants in storm water runoff from the property.

**Repair:** restoring any Open Ditch or Public Drainage System, or any part thereof, as nearly as practicable to the same condition as when originally constructed or subsequently improved, including re-sloping of open ditches, leveling of spoil banks and removal of obstructions.

**Shoreland:** land located within the following distances from MDNR public waters: 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and 300 feet from a river or stream, or the landward extent of a floodplain designated by ordinance or a river or stream, whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances.

**Third party regulatory entity:** any political subdivision, Minnesota state agency, or federal agency.

**Undue Hardship:** means the property in question cannot be put to a reasonable use if used under conditions required by these rules. The Board may grant an exception in the rare circumstances where it is demonstrated that such action will be consistent with the spirit and intent of these rules. Economic considerations alone shall not constitute Undue Hardship if any reasonable use of the property exists under the terms of the District's rules.

**Waterbody:** any body of water including lakes, rivers, streams, watercourses, wetlands, water basins, Drainage Ways or Drainage Facilities.

**Water Control Structure:** Any structure that controls the flow of water or impedes/confines water to a certain area, including but not limited to berms, dikes, levees, dams and special outlet structures.

**Watershed:** means the boundaries of Cedar River Watershed District. See map in **Appendix A.**

**Wetland:** lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water and where hydric soils and hydrophytic vegetation are present under normal circumstances. This definition includes public waters wetlands as designated by the Minnesota Department of Natural Resources and wetlands under the jurisdiction of the Wetland Conservation Act.

Adopted on \_\_\_\_\_

## **RULE 2. PUBLIC MEETINGS, HEARINGS, AND RECORDS**

**Subd. 1. Meetings.** All meetings of the District, whether regular or special, shall be open to the public and shall be held at a time, date, and place, as determined from time to time by the Managers. The board may establish a special meeting on their own, however, special meetings may also be requested by Applicants. If the request is granted, the Applicant is responsible for paying all costs associated with the special meeting, including but not limited to per diems, notice costs, and consultant fees.

**Subd. 2. Hearings.** Notice of a public hearing shall be given as required by statute. Testimony given and received at all public hearings may be recorded, and witnesses may be sworn as required by statute or at the discretion of the Board.

**Subd. 3. Records.** The records of the District shall be public records, as required by state statute and shall be available to the public for inspection to the extent required. Request for records will follow the District's policy for records management and will work through the designated records manager for the District. It is the intention of the Board to cooperate with all persons, governmental subdivisions, and government agencies in the promotion of conservation of the natural resources of the District and to share information with the public for the common good.

**Subd. 4. Appeals/Dispute Resolution.** Any person aggrieved by the adoption or enforcement of these rules or the denial of a permit by the District may appeal under the appeal and dispute resolution procedures provided in Minnesota Statutes Sections 103D.537 and 103D.539 or successor statutes.

Adopted on \_\_\_\_\_

### **RULE 3. PERMIT REQUIREMENTS**

The Board of Managers finds that a permit program is needed to help ensure wise development and conservation of the District's water resources in accordance with the District's watershed management plan. Any permit required by these rules will be issued in accordance with the procedural process of this Rule. Work that requires a permit from the District may not be undertaken until a permit is issued. Obtaining a District permit does not relieve an Applicant from the responsibility of obtaining and complying with all other required federal, state, and local permits.

**Subd. 1. Application.** All applications for a District permit are subject to the following requirements:

- a. Prior to the submission of any application, the Applicant must meet with District Staff for a scoping meeting. This may be conducted in-person or over the telephone. The purpose of the meeting is to ensure the Applicant is aware of the scope of the District's rules, the application requirements, and the standards for approval of an application.
- b. All applications for a District permit must be submitted on an application form as approved by the Board of Managers.
- c. All applications must be accompanied by a fee as set by the Board of Managers (in compliance with state law) to offset the administrative costs of processing the permit, however as described elsewhere in the rules, other fees may be required. No permit fee shall be charged to the federal government, the State, or a political subdivision.
- d. Any application that requires review by the Board of Managers under Subd. 3 of this Rule, must be submitted, and deemed complete by the District Administrator, at least 10 business days prior to the next regularly scheduled Board Meeting in order to be on the agenda.
- e. Drawings or plans are required to be submitted with every permit application. The drawings or plans are not required to be prepared by an engineer unless required by these Rules or by Minnesota State Statutes Chapter 326. Plans must adequately depict the information required by the CRWD permit application. Plans need not be final. However, approval of a permit based on preliminary plans shall be conditional pending receipt of changes and/or final plans.
- f. An initial site inspection, in-progress site inspections, final site inspection and post-project monitoring inspections may be required as part of the provisions of a District-issued permit. A site inspection fee is charged to the Applicant and shall be equal to the District's costs with a minimum amount set by the Board of Managers. At the time of receiving an

application, a fee schedule will be given to the Applicant. The Board of Managers will adopt policies for calculating inspection costs. Such costs may include, but are not limited to engineering or legal consulting fees.

- g. Obtaining a District permit does not relieve the Applicant from the responsibility of obtaining any other necessary permits from other governmental units or agencies. The District will endeavor to inform the Applicant of permits which may be required. The District, however, will not be responsible if the Applicant fails to obtain any required permits.

**Subd. 2. Administrative Review and Approval.** It is administratively burdensome for the Board to review every District permit application. Therefore, the District may authorize certain permit applications to be reviewed by District staff and/or consultants and then approved administratively by the District Administrator.

- a. The District Administrator may work with consultants for a technical analysis on the administrative review of a permit. The District may assess the reasonable costs of such technical analysis to the Applicant and require payment of such costs before the District issues the respective permit.
- b. The District Administrator may add reasonable conditions or provisions to the approval of a permit to address site-specific or activity-specific concerns.
- c. If a permit meets the administrative approval requirements established by the Board of Managers, but the District Administrator determines that administrative approval is inappropriate due to an unusual circumstance, the permit shall be brought before the Board for approval.
- d. All administratively approved permits shall be deemed issued when signed by the District Administrator and all pre-issuance conditions or provisions of the permit have been satisfied including, but not limited to, required submittals, bonds, sureties, letters of credit and payment of all fees.
- e. The District Administrator shall provide reports to the Board of all administratively approved permits.
- f. The District Administrator may not deny a permit. The District Administrator must instead bring the permit application before the Board with a recommendation for denial of the permit application, including proposed written reasons for denial.
- g. No permit shall be issued until there has been consultation with one of the managers of the District.

**Subd. 3. Board Approval.** The Board of Managers shall review the Staff recommendations for all permit applications that are not administratively approved.

- a. The Board of Managers shall review permit applications at regularly scheduled meetings. A permit may be reviewed by the Board of Managers at a special meeting when requested by an Applicant, and at the Applicant's sole expense.
- b. The Applicant or a representative of the Applicant must be present at the respective meeting where the Board of Managers is to review the Applicant's application to answer questions about the permit application.
- c. The Board of Managers may add reasonable conditions to the approval of a permit to address site-specific or activity-specific concerns. These conditions must be recorded as part of the permit.
- d. If the Board of Managers denies an application, written reasons for the denial will be provided within 60 days.

**Subd. 4. Conditions.** A permit may be approved subject to reasonable conditions to assure compliance with the requirements and intent of these rules and address site-specific or activity-specific concerns. All conditions of the permit, to the extent possible, must be satisfied before the permit is discharged. Conditions requiring performance prior to initiation of work must be satisfied before the permit is deemed to be issued and the Applicant can begin work.

- a. Inspections, consistent with Rule 3, Subd. 1(f), may be required to ensure that the Applicant complies with the conditions of the permit. Inspection fees must be paid as a condition of all permits.
- b. By requesting and receiving a District permit, an Applicant affirmatively grants the District a right of entry onto the Applicant's property for the purpose of performing required site inspections, or completion of the Project in the event of default or other enforcement activities.

**Subd. 5. Deadlines for Action.** The District will seek to approve or deny a permit application within 60 days after receipt of a complete application, including all required submittals and full payment of fees.

- a. An application that requires a site inspection is not deemed complete until a site inspection is completed by District Staff or consultant. Within 15 business days of receiving an application, the District will notify the Applicant if the application is incomplete and whether the application requires a site inspection and is therefore incomplete until the site inspection is performed.
- b. The District will comply with Minnesota Statutes Section 15.99 where it is applicable. Failure to meet an approval deadline shall not authorize any

activity for which a permit cannot be granted because the activity is unlawful under applicable law.

- c. If a state or federal law or court order requires a process to occur before the District acts on an application, or if an application requires prior approval of a state or federal agency, any applicable deadline for the District to approve or deny is extended to 60 days after completion of the required process or the required prior approval is granted.
- d. Before the expiration of the initial 60 days, the District may extend any applicable initial 60-day period to 120 days by providing written notice of the extension to the Applicant.

**Subd. 6. Performance Surety.** In accordance with Minnesota Statutes, the Board may require a performance surety, such as an approved escrow deposit, a bond, or an irrevocable letter of credit, to secure performance of permit conditions and compliance with District rules. The federal government, State, and political subdivisions are exempt from the requirements of this subdivision.

- a. When the Board of Managers requires a performance surety, it shall be for an amount sufficient to cover the potential costs of restoration that may result from a violation of the permit. The District consulting engineers shall assist in determining this amount.
- b. The performance surety must be in a form acceptable to the District and from a surety company licensed to do business in Minnesota.
- c. The performance surety must be in favor of the District and be conditioned on the Applicant's compliance with the terms of the permit. The performance surety must allow the District to claim the performance surety if the conditions are not met and use the forfeited funds to complete the work. If the surety funds are insufficient to complete the work, the Applicant may be assessed for the balance. Unused funds shall be returned to the Applicant.
- d. The District shall release the performance surety in writing after the Board of Managers deems all work has been completed in compliance with the District permit and District rules. The District, in writing, may release a portion of the surety if the entire surety, in the District's sole discretion, is no longer necessary to secure compliance with the permit and District rules.
- e. When a permit is conditionally approved upon the Applicant providing a performance surety, the surety must be provided to the District before the permit is deemed to be issued and the Applicant can begin work.

**Subd. 7. Project Agreement.** The Board of Managers may require that an Applicant and owner, including any mortgagee, enter into an agreement with the District (a) to specify responsibility for the construction and future maintenance of approved structures; (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 District or other political subdivisions can require or perform necessary repairs or reconstruction of such structures; (e) require indemnification of the District for claims arising from issuance of the permit or construction and use of the approved structures; and (f) reimburse the reasonable costs incurred to enforce the agreement. Permits and agreements may be filed for recording with the County Recorder to provide notice of the conditions and continuing obligations. When a permit is conditionally approved upon the Applicant entering into an agreement with the District, the agreement must be executed before the permit is deemed to be issued and the Applicant can begin work.

**Subd. 8. Assignment and Transfer of District Permits.** An assignment or transfer of a District permit to another person or political subdivision without a change in the approved plans may be approved by the District Administrator or the Board, whoever approved the original permit. No assignment or transfer of a District permit is allowed where the approved plans are changed. A change in the approved plans requires a new permit application. No assignment or transfer, regardless of whether the assignment or transfer is approved by the District Administrator or the Board, shall relieve the original Applicant from liability for failure to comply with the original permit.

**Subd. 9. Expiration of District Permits.** Permits are valid for 12 months from the date they are issued. Expiration of a permit does not release the permit nor does it relieve the application of the permit conditions. Rather, expiration of a permit cancels the District's permission to perform the work. Permit extensions may be granted by the District Administrator or the Board, whomever approved the original permit. Extension requests must be made in writing at least 30 days before the expiration of the permit. Additional conditions may be added to the permit when an extension is requested.

**Subd. 10. Phased or Multi-year Projects.** For phased projects or projects to be implemented over a period of years, an Applicant may request and the District may grant approval of a permit to be valid for a period of greater than 12 months.

**Subd. 11. Exception.** The Board may hear requests for an exception from the provisions of these rules in the rare circumstances where strict enforcement would cause Undue Hardship because of conditions unique to the property under consideration and not created by the landowner. Such a request must be addressed to the Board as part of a permit application. In order to grant an exception, the Board must find that the request meets ALL of the following four standards:

- a. Special conditions apply to the Applicant's property that do not apply generally to other property within the District.

- b. Because of the unique conditions of the property involved, Undue Hardship to the Applicant will result, as distinguished from mere inconvenience, if the strict letter of the rules is carried out.
- c. The proposed activity for which the exception is sought will not adversely affect the public health, safety, and welfare; will not create extraordinary public expense; and will not adversely affect water quality, flood control, or drainage in the District.
- d. The intent of the District's rules is met.
- e. An exception expires when the permit it is associated with expires. A violation of any condition for a permit where an exception has been granted shall automatically terminate the exception.

**Subd. 12. Coordination with Adjacent Jurisdictions.** The Board of Managers may, by Joint Powers or other agreement, coordinate with an adjacent jurisdiction to allow single permitting of an activity lying in both jurisdictions. In evaluating the propriety of such an agreement, the Board of Managers shall evaluate the consistency of regulatory standards between the District and the adjacent jurisdiction, the efficiency of allowing a single permit, and the proportion of the total project lying within the boundary of the District as compared to that lying within the adjacent jurisdiction and whether that adjacent jurisdiction has the capability and desire to ensure the District's rules and permit conditions and provisions are met.

Adopted on \_\_\_\_\_

## **RULE 4. STORMWATER**

**Subd. 1. Purpose.** A Plan objective is to regulate stormwater runoff discharge on a watershed-wide basis to minimize flood problems, flood damages and the future costs of building and maintaining stormwater management systems; and to prevent structural damages during storms up through the critical 100-year precipitation event

**Subd. 2. Permit Review Required for New Development.** The District supports the Minnesota Pollution Control Agency (“MPCA”) in its administration of the National Pollutant Discharge Elimination System (“NPDES”). A review of the MPCA, NPDES Permit is required for any development of property or a series of projects in close proximity resulting in the creation of one acre or more of Impervious Surface (“Impervious Surface Property”).

**Subd. 3. Standards.** Any Impervious Surface Property under this Section must meet the following standards:

- a. The runoff rate from the Impervious Surface Property after development shall not exceed runoff rates for the 2-year, 10-year, and 100-year 24-hour rainfall events, and 6.7 inch 100-yr, 10-day snow melt runoff event for the predominant land use over the last 10 years.
- b. Within 5 days of submitting the MPCA, NPDES permit to the MPCA, the Applicant must submit a copy of the MPCA, NPDES application and permit to the District, together with a site plan for the Impervious Surface Project. The Applicant must submit runoff calculations for 2-year, 10-year, and 100-year critical storm events for pre-project and post-project conditions.

Adopted on \_\_\_\_\_

## **RULE 5. DRAINAGE**

**Subd. 1. Purpose.** A Plan objective is to establish rules regarding flood control and rate control and to not create flood conditions that are worse than currently exist. The District intends to maintain water conveyance capacity (“no net increase of peak discharge rates”) and improve water quality by regulating certain drainage facilities within the watershed.

**Subd. 2. Permit Required for Drainage Work.** A District permit is required for the following (“Drainage Project”):

- a. Any Repair, Improvement or new Open Ditch or Public Drainage System.
- b. The construction, reconstruction or laying of any bridge or culvert into or across any natural, legal or public Drainage Way.
- c. In the event of the destruction of an existing bridge or culvert as the result of a catastrophe, natural or otherwise, a road authority may replace such bridge or culvert if an emergency is presented without first obtaining a permit from the District, provided that such replacement structure is identical in water capacity as the original structure.

**Subd. 3. Standards.** A permit application under this Section must meet the following standards:

- a. The Drainage Project must provide for no net increase in peak discharge rates as the original structure or conditions. The Applicant must submit sufficient documentation that the Drainage Project will not increase downstream flooding.
- b. The Drainage Project must be constructed so as to reasonably minimize soil erosion, giving due consideration to the intended capacity of the Drainage Project, its depth, its grade, and the character of the soils through which the drain passes. The Drainage Project shall include the establishment of vegetated buffers to capture sediment. This buffer must be at least 16.5 feet in width or of such width as required by other agencies rules and/or ordinances (protected waters, shoreland, etc.) and shall be established within 12 months from the date of permit approval.
- c. Improvements shall not increase downstream flooding and the applicant shall submit sufficient documentation demonstrating that the Drainage Project does not increase peak discharge rates.
- d. Provide and maintain a stable and adequate outfall that minimizes erosion and downstream sedimentation in accordance with MPCA guidance documents.

- e. All trees and brush cut from the banks of Drainage Facilities and the rights of way of Public Drainage Systems shall be removed and disposed of properly and not piled alongside the Drainage Way.
- f. Submit sufficient documentation that the Drainage Project complies with all federal, state and local wetland regulations.
- g. Work in the right of way of the Public Drainage System must not impair the capacity or integrity of the Public Drainage System; must be performed in a manner that minimizes soil erosion and the introduction of sediments to any Drainage Way; and must not impede the maintenance and repair of the Public Drainage System.
- h. Maintenance of an existing Open Ditch is allowed if the Applicant submits sufficient documentation demonstrating that the proposed “Maintenance Activity” will return the Open Ditch to its original constructed conditions. The documentation must identify available original constructed ditch depth, grade and side slopes. A certificate of survey drawing must be completed that shows pre-project (existing) elevations and proposed final elevations. All plans, surveys and drawings must report the vertical datum used (based on sea level) and all elevations must be reported in reference to that datum (either NGVD 29, NAVD 88 or a comparable standard). The Applicant must also submit either (1) signed permission from the landowner(s) directly downstream of the “Maintenance Activity”, documenting their approval of the proposed project; or (2) sufficient engineering data demonstrating that the Maintenance Activity will not have a negative downstream impact.
- i. A proposed Improvement to an Open Ditch (“Ditch Improvement”) may be approved if the Applicant can demonstrate that the Ditch Improvement will not result in a negative downstream impact. The proposed Ditch Improvement must be analyzed with the District’s hydrologic and hydraulic model or demonstrated by calculations performed by a professional engineer registered in the State of Minnesota. Costs associated with this review are the responsibility of the Applicant.
- j. Upon the completion of Maintenance Activity or Ditch Improvement, an “as-built” certificate of survey must be submitted to the District to demonstrate that the work was completed to the approved permit standards. The certificate of survey must include ditch centerline elevations and ditch cross section descriptions every 500 feet. Once submitted to the District, the as-built certificate of survey will then serve as the baseline for future projects.
- k. A Maintenance Activity that does not exceed 250 linear feet of work is exempt from the standards in paragraphs (h) and (j) in this Subdivision.

- l. A permit application for any Drainage Project, Maintenance Activity or Open Ditch Improvement, with all required submittals, must be submitted and a permit approved by the District before any construction activity commences.
  
- m. Repairs of an emergency nature on a Public Drainage System by a public body may be undertaken without a permit; however, the District must be notified of the proposed work and a reason given for the emergency nature of the action before the work commences. Upon the completion of the project, an as-built certificate of survey must be submitted to the District to document final conditions if the grade and cross section of the Public Drainage System varies from that shown on existing as-built plans. The certificate of survey must include ditch centerline elevations and ditch cross section descriptions every 500 feet. Once submitted to the District, the as-built certificate of survey will then serve as the baseline for future projects. The certificate of survey shall also include the locations of any Drain Tile Systems revealed during the work.

**Subd. 4. Driveway Culverts.** Installation of culverts under driveways that cross municipal, township, county or state roadside ditches that are not designated as a Public Drainage System or are not designated as public waters must be installed in a manner that prevents downstream erosion and does not have any increase in water capacity from the conditions existing prior to the installation.

**Subd. 5. No Obstructions.** No fences or structures shall be constructed across any Drainage Facility that will reduce or restrict the flow of water without District approval.

**Subd. 6. No Illicit Discharges.** No illicit discharges shall be connected to any Drainage Facility including, but not limited to, wastewater treatment systems, untreated sewage, wash stations, manure management facilities and household drains and floor drains from any industrial or agricultural building.

Adopted on \_\_\_\_\_

## **RULE 6. FLOODPLAIN**

**Subd. 1. Purpose.** A Plan objective is to prohibit net filling in the floodplain and develop a “no net loss of floodplain” rule. The District intends to preserve existing water storage capacity below 100 year high water elevations on all Waterbodies or detention areas in the watershed to minimize the frequency and severity of high water. The District also intends to minimize development below projected 100 year high water elevation that will unduly restrict flood flows or aggravate known high water problems.

**Subd. 2. Permit and Plan Required for Floodplain Alteration or Construction Within the Floodplain:** A District permit is required for the following “Floodplain Project”:

- a. Alteration or filling of land below the projected 100 year high water elevation of a Waterbody or detention area.
- b. Construction of a structure with a low floor elevation lower than the adjacent 100 year floodplain.

### **Subd. 3. Standards**

- a. The proposed Floodplain Project shall not cause a net decrease in storage capacity below the District-established 100 year high water elevation (except as specifically permitted in this Rule). The “Impacts” of the proposed Floodplain Project shall be calculated for a) the floodplain storage volume, b) peak discharge rates, and c) water levels. The calculations shall be completed by a professional engineer who is registered in the State of Minnesota and who has training in hydrologic and hydraulic calculations, and shall be subject to review by the District Engineer.
- b. Minimum building elevations: The following minimum building elevations shall be met for all new structures located within the CRWD established 100-year floodplain (as may be amended from time to time by the District):
  - The lowest floor (including basement) must be at least 1 foot above the 100-year floodplain elevation; this requirement is equivalent but not limited to the regulatory flood protection elevation within FEMA-designated floodplains.
- c. If the proposed Floodplain Project has a negative Impact in excess of 250 cubic yards, the Applicant shall submit a “Mitigation Process” that assures that the Impacts are first avoided where possible or minimized to the greatest extent possible and replaced with similar benefits. The Mitigation Process shall meet the following standards and sequencing requirements:

- Applicants must demonstrate that any Impacts are needed to reasonably complete a project.
- Applicant must demonstrate that alternatives have been considered to avoid and minimize all Impacts.
- For any Impacts that are unavoidable, the Mitigation Process must complete on-site compensatory storage. If on-site compensatory storage is proposed, the Applicant must demonstrate that Impacts will be replaced at a ratio of 1:1 on-site. Creation of floodplain compensatory storage to offset any Impact shall occur within the permit term.
- In a case where any Impacts cannot be reasonably mitigated by on-site replacement, the Mitigation Process must complete off-site compensatory storage. Off-site compensatory storage must demonstrate that the Impacts will be replaced at a ratio of 1.5:1; and must not a) increase the peak discharge rates or b) increase 100 year flood elevations, as demonstrated by calculations performed by a professional engineer registered in the State of Minnesota, subject to review by the District Engineer.
- The Mitigation Process must also demonstrate mitigation of Impacts through a) acquisition of flood easements on impacted properties; and b) armoring and stabilization of areas exposed to increased flow velocities and/or elevations compared to pre-existing conditions, as demonstrated by calculations performed by a professional engineer registered in the State of Minnesota, subject to review by the District Engineer.

**Subd. 4. Activities in Floodplain Prohibited.** Storage piles or other floodplain impact shall be prohibited in the floodplain.

**Subd. 5. Snow Storage.** Snow storage from any off-site location is prohibited in the Shoreland area and within 300 feet of any Open Ditch or Public Drainage System. Snow storage from any off-site location is prohibited between 300 to 500 feet of any Shoreland area or any Open Ditch or Public Drainage System, unless such storage is performed utilizing District-approved Best Management Practices.

Adopted on \_\_\_\_\_

## **RULE 7. WATERBODY ALTERATIONS**

**Subd. 1. Purpose.** Plan objectives are to protect water resources in the District from land use impacts, maximize the water quality and quantity benefits of wetlands, and decrease the risk of flooding throughout the District. The District intends to regulate the intentional flooding of land, the creation or expansion of wetlands, and the alteration of waterbodies in order to improve water quality, maintain beneficial drainage capacity, and minimize the impacts of flooding.

**Subd. 2. Permit and Plan Required for Waterbody Alterations.** A District permit is required for the following (“Waterbody Project”):

- a. The intentional flooding of land or enlargement of a wetland or other Waterbody by means of diversion, detention, or impoundment within the District.
- b. The construction, installation or alteration of any Water Control Structure in any Waterbody within the District.
- c. The diversion of water into a different Hydrologic Unit.

**Subd. 3. Standards.** A permit application under this Section must meet the following standards:

- a. Unless for the purpose of water quality or floodplain management, the Waterbody Project shall not result in an increase in the 100-year flood level on any person’s property other than the Applicant’s property without first obtaining written approval from the owners of property that could be potentially impacted by such construction and shall be consistent with the District Engineer’s or consultant’s recommendations.
- b. All work shall be conducted so as to minimize increases in suspended solids and turbidity in run-off discharge or in receiving waters. Management practices such as the establishment of vegetated buffers to capture sediment shall be incorporated into plans.
- c. The intentional flooding of land or enlargement of a wetland or other Waterbody by means of diversion, detention, or impoundment and the construction, installation or alteration of any water control structure in any Waterbody or Drainage Way must not flood adjacent, nearby, upstream or downstream properties. The Applicant must demonstrate that adequate measures have been taken to protect adjacent, nearby, upstream and downstream properties from flooding or that necessary easements or other interests have been obtained.
- d. The Applicant must include with its application the maximum and average depth, and the 100-year flood and normal elevation of water in any

detention basin, impoundment, wetland, pond or slough affected by the Waterbody Project.

- e. The Applicant must include with its application the design elevation of all proposed dikes, dams, levees, berms, or any area filled higher than original ground level. The design of any proposed dikes, dams, levies, or berms must include a dedicated emergency overflow designed to not allow the flows to wash out the dike, dam, levee, or berm and to convey overflows without causing downstream erosion.
- f. The Applicant must include with its application computations regarding the capacity and design of any Waterbody Project.
- g. The Applicant must show, in relation to the elevation of any structures, detention basins, impoundments, wetlands, ponds or sloughs, the location, size and capacity of all outlets for water from the Waterbody Project;
- h. A site drawing must be submitted with the permit application in accordance with CRWD Permit Application.
- i. The Board may require an engineering study for any Waterbody Project where improper construction or failure could have a significant impact on water quality or could flood adjacent, nearby, upstream or downstream properties.
- j. The Applicant must consider on-site and adjacent peak flow reduction as part of the design.
- k. Upon completion of the project, the Applicant shall provide as-built engineering specifications and drawings for the project, and to include an operations and maintenance plan for the project.

Adopted on \_\_\_\_\_

## **RULE 8. EROSION CONTROL**

**Subd. 1. Purpose.** An objective of the Plan is to minimize erosion and its effects on water quality. The District intends to minimize erosion of land by regulating Land Disturbing Activities to minimize the impacts of land disturbance on downstream water quality. The District requires that erosion and sediment control measures or best management practices must be in place for all Land Disturbing Activities above specific thresholds. The erosion control measures must minimize erosion and deposition of sediment off-site and maximize on-site sediment removal to the greatest extent reasonably possible.

**Subd. 2. Erosion Control Methods For Land Disturbing Activities Greater than One Acre.** The following standards apply to any Land Disturbing Activity greater than one acre in area.

- a. All projects must provide for the prevention of erosion by wind and water both during and after construction.
- b. When applying for building permits, the person or government unit responsible for the work must submit copies of the permit applications, including erosion and storm water runoff control plans, to the District.
- c. Before any works begins, the District must have an opportunity to review and comment on the erosion and storm water runoff control plans. The District will review and comment on such plans within 10 working days of receiving complete permit applications and plans for erosion and storm water runoff control.
- d. Storm water runoff plans must include snow removal, dumping and retention methods.
- e. A work schedule and timetable for erosion and storm water control measures must accompany the time schedule for construction.

**Subd. 3. Erosion Control Methods For Land Disturbing Activities Less than One Acre.** All Land Disturbing Activities less than one acre of land and greater than 2500 square feet are considered “Small Construction Sites” and are required to have the following erosion and sediment control best management practices in place.

- a. Perimeter Control- Down gradient silt fence or other approved method as listed in the Minnesota Storm Water Manual.
- b. Vehicle Tracking Control- Rock or wood mulch construction entrance measuring at least 8’ wide and 20’ long. All construction access and egress shall be through this entrance.

- c. Stockpile Control- All stockpiles not being actively used shall be either covered with an impermeable sheet or protected by silt fence, no further than 3' from the base of the stockpile.
- d. Turf Establishment- Upon completion of final topsoil grading and seeding, the soil shall be covered with straw mulch (disked in), liquid tackifier, or erosion control blanket. Perimeter controls shall remain in place until this is completed.
- e. Good Housekeeping- Any sediment that is transported off site shall be cleaned up and replaced on site within 24-hours of discovery. This includes any sediment in the roadway or gutter.

Erosion and Sediment Control on Small Construction Sites is the joint responsibility of the Applicant and the general contractor for the site.

**Subd. 4. Agricultural Soil Erosion Control Methods.** The following standards apply to all Agricultural Land Disturbing Activities:

- a. All "Agricultural Land Disturbing Activities" shall comply with the following standards:
  - (i) Control erosion of Land Disturbing Activities associated with the agricultural use of land to rates no greater than soil loss tolerances.
  - (ii) Protect wetlands, lakes, streams, and ditches from excessive sedimentation resulting from Land Disturbing Activities associated with agricultural use of land;
  - (iii) Abate or minimize impacts of excessive sedimentation from agricultural use of land to adjoining lands; and
  - (iv) Ensure proper maintenance of agricultural erosion control practices.
- b. This Rule and the performance standards described herein shall apply to Agricultural Land within the District for the control of excessive erosion, excessive sedimentation, and their associated impacts. Land occupiers conducting Land Disturbing Activities on Agricultural Land are encouraged to seek technical assistance from the District or a conservation district and to apply necessary agricultural erosion control practices. Furthermore, alleged violation of this Rule may be addressed through any of the following procedures:
  - (i) Voluntary initiation by a land occupier who desires an agricultural erosion control plan to be prepared and implemented for any Agricultural Lands which are under his/her control; or

- (ii) Initiation of a complaint by any person; or
  - (iii) Notification of the District by any appointed or elected county, township, conservation district or District official suspecting a violation upon conducting routine official business; or
  - (iv) By notifying the District if an erosion assessment conducted by the conservation districts indicates that a potential violation is occurring. This erosion assessment may be conducted by the District, county or the conservation district as part of ongoing programs.
- c. Special Considerations. Erosion, sedimentation, or their associated impacts resulting on Agricultural Land shall be given special consideration regarding potential enforcement actions pursuant to this Rule if any of the following conditions existed during the alleged violation of this Rule:
- (i) "Excessive erosion" due to gully erosion resulting from a rainfall event of an intensity equal to or greater than a 10-year, 24-hour return Interval (4.4 inch rainfall); or
  - (ii) "Excessive sedimentation" due to sheet and/or rill erosion resulting from a rainfall event of an intensity equal to or greater than a 10-year, 24-hour return interval (4.4 inch rainfall); or
  - (iii) "Excessive sedimentation" due to gully erosion resulting from a rainfall event of an intensity equal to or greater than a 10-year, 24-hour return interval (4.4 inch rainfall); or
  - (iv) "Excessive sedimentation" due to wind erosion resulting from a wind event of an intensity or duration deemed by the District to be beyond the control of the alleged violator.
- d. Excessive Erosion and Excessive Sedimentation Prohibited. A land occupier may not cause, conduct, contract for, or authorize a Land Disturbing Activity on Agricultural Land that results in excessive erosion or excessive sedimentation.
- e. Complaints. Any person may initiate a verbal or written complaint to the District if conditions exist that would indicate any of the following:
- (i) Excessive erosion is occurring as the result of Agricultural Land Disturbing Activities, or
  - (ii) Excessive sedimentation is occurring as the result of Agricultural Land Disturbing Activities, or

- (iii) The results of either (a) or (b) have adversely affected another individual's welfare or safety or property.

Any complaint should include the following information:

- (ii) the name and address of the allegedly offending land occupier(s);
- (iii) the location of the tract of Agricultural Land upon or from which excessive erosion, excessive sedimentation, or their associated adverse effects are occurring or have resulted;
- (iv) the water or adjoining land that is affected by the alleged offending Agricultural Land Disturbing Activities; and
- (v) a description of the nature of those Land Disturbing Activities and the resulting adverse effects.

The District staff shall first review the complaint for substantiation within 30 calendar days of the receipt. When the complaint is field checked for substantiation, the district staff shall notify the land occupier in writing. If the district staff determines the complaint lacks substantiation, the complaint may be dismissed. If the complaint is dismissed, the District board shall notify the complainant, and the alleged offender(s) that the complaint has been dismissed within 75 calendar days of the receipt of the complaint.

If the District staff determines the complaint is legitimate, the District staff shall, within 30 calendar days of its receipt prepare a report on the Agricultural Land Disturbing Activity in question and the associated erosion or sedimentation or alleged adverse effects from the Land Disturbing Activity. The District shall also notify the complainant and the alleged offender(s) of these actions within 75 calendar days.

- f. Remediation Required. Whenever the Board of Managers has determined, based upon a report prepared by the District staff that any roadway, right-of-way, or drainage conveyance under the jurisdiction of the county or townships has been adversely affected by sedimentation resulting from Agricultural Land Disturbing Activities under the control of an offending land occupier, the District shall seek remediation of the adverse effects. Remediation shall consider, but not be limited to, any of the following actions or combinations of actions;

- (i) Requesting the District, County Engineer or township official to direct or oversee the excavation of the resultant sediment deposited due to Land Disturbing Activities from the land in question and under the control of the offending land occupier and adjacent to the adversely affected county or township roadway, right-of-way, or drainage conveyance;

- (ii) Requesting the District, County Engineer or township official to direct or oversee the restoration of the adversely affected county or township roadway, right-of-way, or drainage conveyance to its intended design specifications;
- (iii) Requesting the District, County Engineer or township official to direct or oversee the transport of the excavated sediment to a mutually agreed-to location on the offending land occupier(s) land; and/or
- (iv) Billing all costs for remediation directly to the offending land occupier with notification that costs are to be paid in full to the county or township treasurer within 180 calendar days.

If the offending land occupier does not remit full payment to the District, county or township treasurer within the specified time limit, the District, county or township shall determine the land so benefited and assess the land the cost of the remediation. Such assessments shall be made only against that portion of the tract of land on which the remediation order pertained and shall not be an amount so as to result in Undue Hardship.

Adopted on \_\_\_\_\_

## **RULE 9. ENFORCEMENT**

**Subd. 1. Violation is a Misdemeanor.** A violation of a District rule, or a permit issued under District rules, is a misdemeanor subject to the maximum penalty provided by Minnesota law.

**Subd. 2. Notification Regarding Violations.** The District, at its discretion, may file notification of a violation or threatened violation of any part of these rules, or other environmental rules or standards, by any person or political subdivision with any appropriate state or federal agency. Such notification shall not preclude any right of the District to prevent or continue to prevent any act not allowed or any action required to be performed by these rules, nor shall it prevent simultaneous actions to be taken against any violator by the District, an appropriate state or federal agency, the courts, or any other person or authority having jurisdictional powers or interest to take such action.

**Subd. 3. Court Action.** The District may exercise all powers conferred upon it by Minnesota Statutes Chapter 103D in enforcing these rules, including criminal prosecution, injunction, or an action to compel performance, restoration, or abatement.

**Subd. 4. Administrative Order.** The District may enforce its rules by issuing a cease and desist order when it finds that an activity violates any rule of the District.

**Subd. 5. Order to Show Cause.** The Board may require a person or political subdivision in violation of a District rule or permit to appear at a District meeting to show cause why the violation should be allowed to continue.

**Subd. 6. Future Permits.** No future permit shall be issued to an Applicant in violation of District rules or a previously issued District permit until the violation has been remedied to the sole satisfaction of the District.

**Subd. 7. Contractor Liability.** Any person or political subdivision contracting to perform services regulated by these rules shall perform all work in compliance with the conditions and specifications of the permit and the rules. Contractors in violation shall be subject to all sanctions or penalties, criminal or civil, imposed by these rules.

**Subd. 8. Costs and Attorney Fees.** All costs and attorney fees in pursuing an enforcement action pursuant to these Rules may be recovered by the District in a civil action of any court of competent jurisdiction, or at the discretion of the District may be certified to the County Auditor as a special tax or assessment against the real property at issue.

**Subd. 9. Fines.** Upon notice from the District that an individual or their property is in violation of these Rules, the District may impose a fine or fines until such violation is cured.

Adopted on \_\_\_\_\_