

Lower Minnesota River Watershed District – October 2019 Draft Rules
Comment/Response Log

Commenting entity/resident	Section and page number	Comment	Response
Board of Water and Soil Resources	General	The Board of Water and Soil Resources (BWSR) received the Lower Minnesota River Watershed District's (District) draft rules. The rules were developed consistent with Minnesota Rule and Statute and BWSR's comments on these rules were provided during the District's Standards development process concurrent with the update of the Comprehensive Watershed Management Plan (Plan). The Plan provides justification for these rules and we feel that the District adopting rules provides greater consistency with Minnesota Statute 103D, where watershed districts are required to adopt rules to accomplish the conservation of natural resources of the State by land use planning, flood control, and other conservation projects.	Thank you for highlighting the justification for these rules and their uniformity with Minnesota State Administrative Rules and Statutes. We look forward to our continued partnership.
Metropolitan Council	General	The Metropolitan Council has no further comments on the final draft of the Rules. Thank you for the opportunity to review them.	Thank you, and we look forward to our continued partnership.
Minnesota Department of Transportation	Rule A: Administrative Section 1.2	Rule A: Administrative and Procedural Requirements Rule, section 1.2 Individual Permit, part 1.2.2 Application (c): Please make State agencies exempt from the permit fees as is done in other Watershed Districts in the Metro area.	See Section 1.2.10.2, page 1–9, lines 17–19 of the October 2019 Draft Rules.
Minnesota Department of Transportation	Rule C: Floodplain and Drainage Section 3.4	Rule C: Floodplain and Drainage Alteration Rule, Section 3.4 Criteria, part a says "Fill shall not cause a net decrease in storage capacity below the projected 100 - year high water elevation nor an increase in the 100-year elevation of a waterbody. Part b of this section says that "A professional engineer shall calculate the effects of the fill activities proposed on the waterbody to determine whether compensatory storage is needed and (i) a no rise certification by a professional engineer satisfies this requirement". Can part a be revised to say "Fill shall not cause a net decrease in storage capacity below the projected 100-year high water elevation unless there is not an increase in the 100-year elevation of a waterbody. Some fill may be allowed, as long as there is a no rise certification."	Sections 3.4.a and 3.4.b will be combined and revised as follows: "Placement of fill below the 100-year flood elevation is prohibited unless documentation prepared by a professional engineer shows that the proposed fill will not cause a rise in the 100-year flood elevation of the waterbody."
Minnesota Department of Transportation	High Value Resource Area Maps	Lower MN River WD High Value Resource Area Overlay District Map, Sheet 5: please label the roadways on this map.	Sheet 5, the High Value Resource Area map, will be updated as requested.
City of Savage	Rule A: Administrative Section 1.1.8 Page 1-3	<i>In Section 1.1.8 it states "It is the District's policy to allow LGUs to grant variances and issue conditional use permits according to processes for such actions contained in existing local controls, except for the professional certification requirement for steep slopes. At least thirty days before municipal consideration of a variance or conditional use permit request, the District shall be notified of the requested action and be allowed to provide comment on the requested action. Variances that would circumvent the intent and purposes of these rules shall not be granted.</i> Please provide clarification regarding the statement in bold above. It is the City's understanding that if a professional/professional engineer signs off on the plans and addresses the criteria of SEction 6.4.1 a variance would not be necessary. Is that the case?	Municipalities cannot issue or approve a variance request for noncompliance with the professional certification requirement (which can also be satisfied with an engineer's seal) for projects within the steep slopes overlay district.
City of Savage	Rule B: Erosion and Sediment Control Section 2.4.3 Page 2-2	In Section 2.4.3 it states "All soil surfaces that are compacted during construction and remain compacted upon construction completion must be decompact. Decompaction can be achieved through soil amendment and/or ripping to a depth of 18 inches. All decompaction measures should be completed before final stabilization." Implementation of this requirement is likely impractical for single family home lots or within the ROW. For this to be an effective tool for reducing runoff this would need to be done once the single family home construction is completed. Unfortunately once the home construction is completed the equipment needed to rip to this depth would not be feasible to use on a new single family home lot. For road projects there would be a concern with ripping to this depth and causing an impact to small utilities. Although required to be buried deeper than 18 inches small utilities are often found at a shallower depth. The City suggests the LMRWD either remove this requirement or explore practical avenues for a City to maintain compliance with this requirement.	The District appreciates the comment and welcomes the City of Savage's suggested practices that will yield equivalent or better erosion control and sediment management results.

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City of Savage	Rule B: Erosion and Sediment Control General Comment	The language or the intent of the language included in the erosion and sediment control rule appears to be similar or consistent to that of the MPCA Construction General Permit. To simplify things the City suggests the language in the MPCA Construction General Permit be referenced and only include specific language when the requirements differ.	This or a similar comment has been presented and discussed in the past. The District decided to include language from the current and immediate past versions of MPCA Construction General Permit instead of simply referencing that permit. This determination was made in large part because the language is subject to change during the renewal process, and the District would have no control over the new language.
City of Savage	Rule C: Floodplain and Drainage Alteration Section 3.2 Page 3-1	The regulation of Rule 3 (3.2) requires a permit for any wetland, public water, or landlocked subwatershed instead of FEMA flood Zones. The proposed rule extends stricter than FEMA regulation to waterbodies that otherwise have development flexibility that could still meet district Policy, but instead is anticipated to create conflict/undue hardship for development scenarios.	The District considered input from municipalities, including the City of Savage, to incorporate language to address perceived conflicts, such as “in accordance with state-approved floodplain management and shoreland ordinances” and Section 3.3 exceptions.
City of Savage	Rule C: Floodplain and Drainage Alteration Section 3.4.a Page 3-1	Specifically, requiring a no rise (3.4.a) on non-FEMA waterbodies is not necessarily preserving flood storage or mitigating development impacts. Where instead rate control, volume management and separation requirements can instead address the Districts Policy for mitigating development impacts for non-FEMA waterbodies. For a development scenario where the water body is entirely within the development, this requirement puts hardship on development and flexibility with proposed conditions that can still address the Districts Policy to provide flood protection and storage/capacity, etc. It is recommended that the District does not extend a no-rise to non-FEMA waterbodies.	Section 3.4.a has been revised as follows: “Placement of fill below the 100-year flood elevation is prohibited unless documentation prepared by a professional engineer shows that the proposed fill will not cause a rise in the 100-year flood elevation of the waterbody.” Rate control and volume management could be used to show no effect on downstream systems. However, for each incremental change in the watershed that does not trigger rules or municipal official controls, the cumulative effect could result in property damage and safety issues.
City of Savage	Rule C: Floodplain and Drainage Alteration Section 3.4.a Page 3-1	For example, another scenario is where this rule/regulation limits the ability to address flooding issues by altering/leveraging storage in existing upstream waterbodies, where feasible. This scenario may result in an increase in HWL of a waterbody without flooding issues, to address flooding issues in another waterbody. The District should consider the impact of the proposed rule and that their goal/policy can be achieved through less restrictive rules/regulation. Rate control, volume management, and separation requirements can achieve the Policy for non-FEMA Waterbodies.	We recognize for every scenario that demonstrates the need for this rule as presented, there may be a scenario that demonstrates the opposite need. If this scenario occurs, the District will work with the City on a variance justifying deviation from the rule as presented.
City of Savage	Rule C: Floodplain and Drainage Alteration Section 3.4.a and 3.4.b Page 3-1	It appears 3.4.a and 3.4.b are counterproductive criteria. 3.4.a Criteria indicates there shall be no net decrease in storage capacity below the 100-year HWL nor an increase in the 100-year elevation allowed of a waterbody. While 3.4.b says a professional engineer shall determine whether compensatory storage is needed. These criteria appear to be in conflict/counterproductive, and it is not clear how/if these are interpreted/applied independently or together. This should be clarified, and it is recommended that flexibility should be provided that gives applicants an opportunity to complete a higher-level analysis to determine if compensatory storage is necessary or not, instead of simply requiring compensatory storage (currently, it is not clear if the rules, as proposed, allow this).	Sections 3.4.a and 3.4.b will be combined and revised as follows: “Placement of fill below the 100-year flood elevation is prohibited unless documentation prepared by a professional engineer shows that the proposed fill will not cause a rise in the 100-year flood elevation of the waterbody.”
City of Savage	Rule D: Stormwater Management General Comment	The language or intent of the language included in the stormwater rule includes similarities to the requirements in the Minnesota Stormwater Manual, MPCA MS4 Permit and MPCA construction general permit. Where opportunities to simplify the rule exist and reference other entities the city would suggest doing so.	This or a similar comment has been presented and discussed in the past. The District decided to include language from the current and immediate past versions of Minnesota Stormwater Manual and the MPCA MS4 and Construction General Permits instead of simply referencing that permit. Where appropriate, references to the permits have been made.
City of Savage	Rule D: Stormwater Management General Comment	In Section 4.2 it references the LMRWD High Value Resources Overlay District Map. As a part of the update to the City's Water Resources Management Plan the subwatershed boundaries are being updated. The subwatershed boundaries will be submitted for review and approval. The plan is near completion and will be submitted to the agencies for review near the end of 2019.	In January 2020, we received the City's Water Resources Management Plan. However, the referenced subwatershed boundaries information was not included. Please provide the GIS shapefiles for review.

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City of Shakopee	Rule A: Administrative Section 1.1.8 Page 1-3	In Section 1.1.8 it states "It is the District's policy to allow LGUs to grant variances and issue conditional use permits according to processes for such actions contained in existing local controls, except for the professional certification requirement for steep slopes . At least thirty days before municipal consideration of a variance or conditional use permit request, the District shall be notified of the requested action and be allowed to provide comment on the requested action. Variances that would circumvent the intent and purposes of these rules shall not be granted." Please provide clarification regarding the statement in bold above. It is the City's understanding that if a professional/professional engineer signs off on the plans and addresses the criteria of Section 6.4.1 a variance would not be necessary. Is that the case?	Municipalities cannot issue or approve a variance request for noncompliance with the professional certification requirement (which can also be satisfied with an engineer's seal) for projects within the steep slopes overlay district.
City of Shakopee	Rule B: Erosion and Sediment Control Section 2.4.3 Page 2-2	In Section 2.4.3 it states "All soil surfaces that are compacted during construction and remain compacted upon construction completion must be decompacted. Decompaction can be achieved through soil amendment and/or ripping to a depth of 18 inches. All decompaction measures should be completed before final stabilization." Implementation of this requirement is likely impractical for single family home lots or within the ROW. For this to be an effective tool for reducing runoff this would need to be done once the single-family home construction is completed. Unfortunately, once the home construction is completed the equipment needed to rip to this depth would not be feasible to use on a new single-family home lot. For road projects there would be a concern with ripping to this depth and causing an impact to small utilities. Although required to be buried deeper than 18 inches small utilities are often found at a shallower depth. The City suggests the LMRWD either remove this requirement or explore practical avenues for a City to maintain compliance with this requirement.	The District appreciates the comment and welcomes the City of Shakopee's suggested practices that will yield equivalent or better erosion control and sediment management results.
City of Shakopee	Rule C: Floodplain and Drainage Alteration Section 3.4.a and 3.4.b Page 3-1	It appears 3.4.a and 3.4.b are counterproductive criteria. 3.4.a Criteria indicates there shall be no net decrease in storage capacity below the 100-year HWL nor an increase in the 100-year elevation allowed of a waterbody. While 3.4.b says a professional engineer shall determine whether compensatory storage is needed. These criteria appear to be in conflict/counterproductive, and it is not clear how/if these are interpreted/applied independently or together. This should be clarified, and it is recommended that flexibility should be provided that gives applicants an opportunity to complete a higher-level analysis to determine if compensatory storage is necessary or not, instead of simply requiring compensatory storage (currently, it is not clear if the rules, as proposed, allow this).	Sections 3.4.a and 3.4.b will be combined and revised as follows: "Placement of fill below the 100-year flood elevation is prohibited unless documentation prepared by a professional engineer shows that the proposed fill will not cause a rise in the 100-year flood elevation of the waterbody."
City of Shakopee	Rule C: Floodplain and Drainage Alteration Section 3.2 Page 3-1	The regulation of Rule 3 (3.2) requires a permit for any wetland, public water, or landlocked subwatershed instead of FEMA flood Zones. The proposed rule extends stricter than FEMA regulation to waterbodies that otherwise have development flexibility that could still meet district Policy, but instead is anticipated to create conflict/undue hardship for development scenarios.	The District considered input from municipalities, including the City of Savage, to incorporate language to address perceived conflicts, such as "in accordance with state-approved floodplain management and shoreland ordinances" and Section 3.3 exceptions.
City of Shakopee	Rule C: Floodplain and Drainage Alteration Section 3.4.a Page 3-1	Specifically, requiring a no rise (3.4.a) on non-FEMA waterbodies is not necessarily preserving flood storage or mitigating development impacts. Where instead rate control, volume management and separation requirements can instead address the Districts Policy for mitigating development impacts for non-FEMA waterbodies. For a development scenario where the water body is entirely within the development, this requirement puts hardship on development and flexibility with proposed conditions that can still address the Districts Policy to provide flood protection and storage/capacity, etc. It is recommended that the District does not extend a no-rise to non-FEMA waterbodies.	Section 3.4.a has been revised as follows: "Placement of fill below the 100-year flood elevation is prohibited unless documentation prepared by a professional engineer shows that the proposed fill will not cause a rise in the 100-year flood elevation of the waterbody." Rate control and volume management could be used to show no effect on downstream systems. However, for each incremental change in the watershed that does not trigger rules or municipal official controls, the cumulative effect could result in property damage and safety issues.
City of Shakopee	Rule C: Floodplain and Drainage Alteration Section 3.4.a Page 3-1	For example, another scenario is where this rule/regulation limits the ability to address flooding issues by altering/leveraging storage in existing upstream waterbodies, where feasible. This scenario may result in an increase in HWL of a waterbody without flooding issues, to address flooding issues in another waterbody. The District should consider the impact of the proposed rule and that their goal/policy can be achieved through less restrictive rules/regulation. Rate control, volume management, and separation requirements can achieve the Policy for non-FEMA Waterbodies.	We recognize for every scenario that demonstrates the need for this rule as presented, there may be a scenario that demonstrates the opposite need. If this second scenario occurs, the District will work with the City on a variance justifying deviation from the rule as presented.