

**POSTING NOTICE**  
**EUREKA TOWNSHIP**  
*Dakota County, State of Minnesota*

**AGENDA**  
**SPECIAL TOWN BOARD AND PLANNING COMMISSION MEETING**  
**May 20, 2025 – 7:00 p.m.**

- I. Call to Order and Pledge of Allegiance
- II. The purpose of the meeting is to discuss and possible action on round table topics.
- III. Round Table
  - A. Round Table meeting protocol
  - B. Vermillion River Watershed Joint Powers Organization- Jeff Dunn
  - C. 220<sup>th</sup> Farmington Road Agreement
  - D. Review of Open Meeting Law
  - E. Roles and Responsibilities
    - 1. Town Board
    - 2. Planning Commission
  - F. Expectations and Responsibility of Liaisons
    - 1. 2025-2026 Liaisons
    - 2. NCRWO
    - 3. Airport
    - 4. Monthly Summary Report
  - G. Communication
    - 1. Channel via Clerks
    - 2. Communication around deadlines and meetings
    - 3. Representing the Township
    - 4. Between Board, PC and Staff
  - H. Attorney contact/ process for attorney engagement
  - I. Zoom attendance for Supervisors and PC
  - J. Administrative Process for Public Hearings
    - 1. Possible Meeting Night change
  - K. Public Hearing for May 27, 2025-Amendments to Comprehensive Plan
  - L. Clerk Matters
    - 1. Training Opportunities
    - 2. Smell Sensitivities
- IV. Adjournment

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Liz Atwater, Clerk  
Eureka Township  
Posting Date: 5.15.2025



March 9, 2025

RE: Proposed Revisions to the Vermillion River Watershed Joint Powers Organization (VRWJPO) Standards

Dear Eureka Township Planning Commission and Board of Supervisors,

On March 13, 2025, Vermillion River Watershed Joint Powers Organization (VRWJPO) staff met with our Technical Advisory Committee (TAC) to discuss proposed revisions to the Watershed Standards, which are the VRWJPO regulations. As a result of those discussions, the TAC agreed with our proposed revisions.

If the proposed changes are approved by the Vermillion River Watershed Joint Powers Board in early 2026, the threshold of land disturbance area where erosion and sediment control plan review and permitting by the VRWJPO will match not only the State's thresholds but will also be consistent with the North Cannon Watershed Management Organization's (NCWMO) regulations of which Eureka Township is also tributary to.

Please note that the proposed Standard revisions entail:

1. Removal of plan review and any associated permitting requirements by the VRWJPO for sites that disturb less than one acre of land.
2. The proposed revisions do not change other jurisdictional permitting requirements for development within the floodplain or in wetlands.

Eureka Township is the one community in the Vermillion River Watershed where the VRWJPO implements a permitting program. The bulk of those permits are for land disturbances less than one acre that require erosion and sediment control. As a result of the proposed changes to the Standards, the VRWJPO would like to know if Eureka Township would consider rescinding their resolution granting the VRWJPO the ability to implement a permitting and enforcement program.

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Vermillion River Watershed Joint Powers Organization

4100 220<sup>th</sup> Street West, Suite 103, Farmington, Minnesota 55024 | 952.891.7000 | Fax 952.891.7588

Attached is a matrix of current and proposed permitting guidelines as they relate to Sections 7 and 8 of the Standards, an exhibit which defines the watershed boundaries in Eureka Township for both the VRWJPO and the NCWMO, and the proposed Standard Revisions to provide context.

Staff looks forward to meeting with the Eureka Township Planning Commission and Board of Supervisors on May 20<sup>th</sup> to discuss these changes. Please feel free to contact Jeff Dunn at [jeff.dunn@co.dakota.mn.us](mailto:jeff.dunn@co.dakota.mn.us) or 952.891.7140 if you have any questions or comments.

Sincerely,

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

Jeff Dunn  
VRWJPO Water Resources Engineer

## Section 7: Erosion and Sediment Control Standards (During Construction)

More than 1 Acre Disturbed	Less than 1 Acre Disturbed
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Existing VRW Standards	VRW Permit Required	VRW Permit Required
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Proposed VRW Standards	NPDES Permit Required	No Permit Required
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NCRWMO Standards	NPDES Permit Required	No Permit Required
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## Section 8: Stormwater Management Standards (After Construction is Complete)

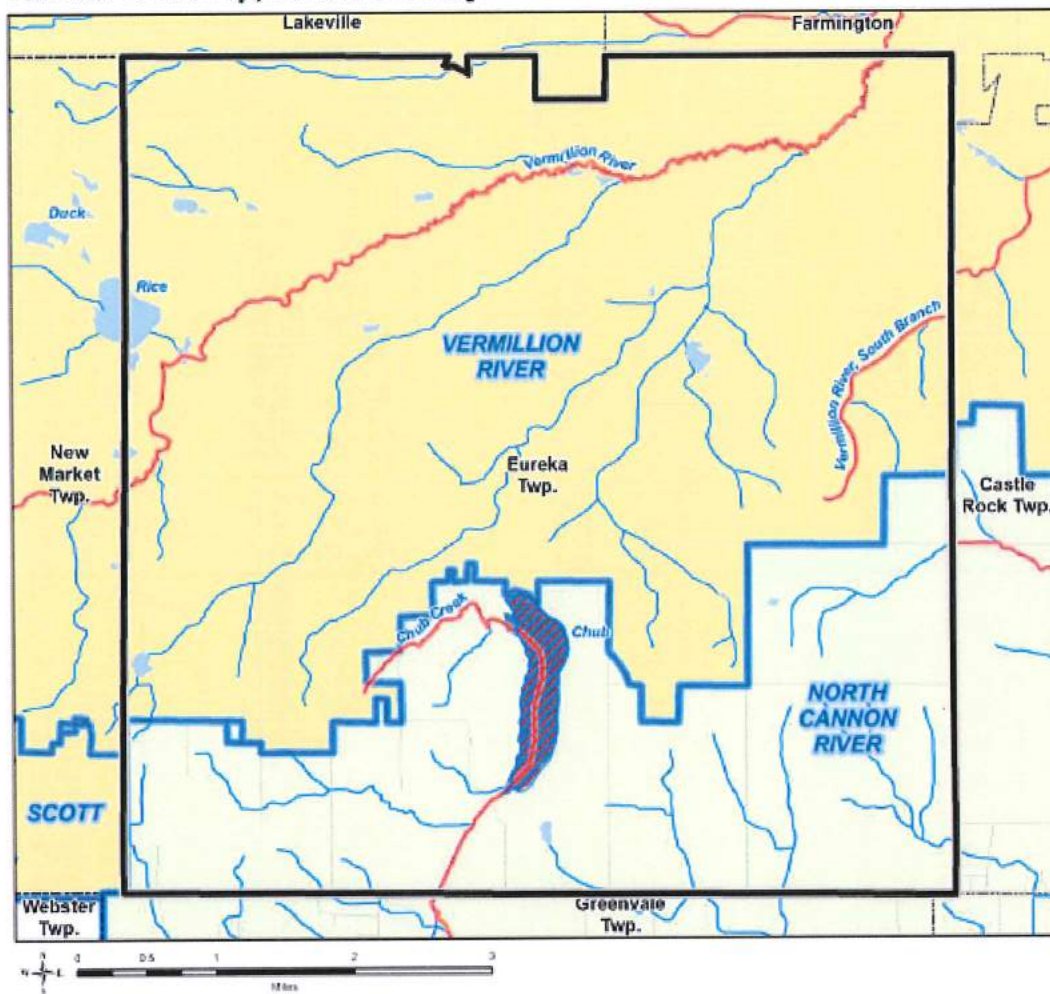
More than 1 Acre of New Impervious	Less than 1 Acre of New Impervious
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Existing VRW Standards	VRW Permit Required	No Permit Required
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Proposed VRW Standards	NPDES and TWP Required	No Permit Required
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NCRWMO Standards	NPDES Permit Required	No Permit Required
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## Eureka Township, Dakota County



Watershed Management Organization Boundaries

### Watershed Management Organization Type

County

Watershed District

Watershed Management Organization

Impaired Lakes (2014 Draft MPCA 303(d) List)

Impaired Rivers & Streams (2014 Draft MPCA 303(d) List)

2014 Priority Lakes

County Boundaries

City and Township Boundaries

Other Lakes and Major Rivers

Other Streams

NCompass Street Centerlines

# Standards for the Vermillion River Watershed Joint Powers Organization

## Forward

The following document presents the Standards for the Vermillion River Watershed Joint Powers Organization (VRWJPO).

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Last Updated: September 25, 2019

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## SECTION 1: POLICY STATEMENT

The Vermillion River Watershed Joint Powers Organization (VRWJPO) is a watershed management organization as defined in the Metropolitan Surface Water Management Act (Minn. Statutes Chapter 103B). This Act provides the VRWJPO with the [power authority](#) to accomplish its statutory purpose – to protect, preserve and manage surface and groundwater systems within the Vermillion River Watershed (Watershed).

The VRWJPO has adopted a Watershed [Management Plan \(Plan\)](#) pursuant to the Act and Minn. Rules Chapter 8410. [As defined by Minn. Rules 8410.0105, the Plan must incorporate controls or performance standards relating to, at minimum, wetland management, management of stormwater runoff, flooding impacts, and a classification system for the management of waterbodies.](#)

The ~~Watershed~~ Plan provides the management goals, objectives, and actions that the VRWJPO will use to protect, improve, preserve, and manage water resources in the Watershed, and the need and reasonableness for standards, rules, and ordinances to enforce the [goals, objectives, and actions](#) of the plan. [Many of these Standards are intended to mitigate the potential for impacts to water resources in the Watershed from land development and other actions, essentially acting as a tool to protect, preserve, and manage water resources. In this way,](#) ~~the~~ following Standards implement the plan's goals, objectives, and actions.

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~~Many of the issues identified in the Plan are interrelated. The most notable interrelationship is the hydrology of the Vermillion River (River) and the potential for change associated with various land uses and their management, especially those anticipated with urban development and agriculture. The challenge is in accurately assessing the causes of the effects to the hydrology of the River and related water quality factors. In the future, additional development is expected in the watershed, both the transition from agricultural to urban/suburban uses and additional drainage and irrigation of agricultural lands, while wastewater discharges from the Empire and Elko/New Market wastewater treatment plants have been diverted from the river. These changes have the potential to further impact flows, water quality, and sensitive resources including wetlands and groundwater.~~

~~Water quality is an important amenity in the Watershed—both in terms of surface water and groundwater. Stormwater can carry a variety of pollutants, which can affect downstream areas as well as groundwater through infiltration. Water bodies assessed in terms of water quality and found to be impaired will appear on the Minnesota Pollution Control Agency (MPCA) 303(d) list of impaired waters. For each of these impairments, a total maximum daily load (TMDL) study is required. TMDLs are a process by which the sources of the pollutant are studied, and allowable loads are calculated and allocated to each source so that the waterbody will meet its intended use without impairment. Additional pollutants in runoff from land use change and land management cannot only affect the TMDLs and the ability to address existing impairments, but impairments, but could create or expand other water quality threats such as temperature effects on aquatic life, particularly trout, which is an important local issue.~~

~~The 1999 Vermillion River Assessment found numerous streambank and channel stability problems, and that the stream types along the~~



Main Stem are very sensitive to disturbance, providing high sediment supplies and having a very high potential for streambank erosion.

~~Subsequent assessments~~Watershed studies have ~~also~~ documented streambank erosion ~~on the Main Stem, primarily in reaches downstream of Farmington,~~ where changes in land use and land management throughout the watershed have resulted in increased flow volume, intensity, and duration, combined with poor quality riparian vegetation, leading to bank instability. ~~There are also economic implications due to increased volumes and flow of stormwater. In addition to flooding,~~Unstable stream channels ~~over time have the ability to might can~~ depress land values, damage property, ~~and~~ endanger high value structures ~~and render prime building locations unbuildable, directly impacting the health, safety and welfare of the Watershed.~~ Accelerated streambank erosion can also increase the rate and severity of stream channel migration and ~~which could result in~~ property loss. In addition, unstable channels undermine bridges, clog culverts, and can otherwise damage infrastructure, requiring costly repairs and ensuring legal issues for both public agencies and private individuals.

A number of sensitive habitats and communities exist in the watershed including designated trout stream~~s~~ areas, natural communities, rare ~~and endangered~~ species, and wetlands. Trout and their habitats may be threatened by development without appropriate stormwater management or appropriate land management on agricultural lands. Other sensitive resources, such as natural communities, rare species, and wetlands have been ~~largely~~ depleted or have been ~~substantially~~ altered throughout the Watershed. This has increased the value of remaining natural communities and resources. Wetlands can be impacted directly by development and land disturbing activities; and indirectly by hydrologic and water quality changes ~~that are sometimes~~ associated with development and other land disturbing activities. Wetlands provide a variety of functions and values, which are important to the overall character and function of the Watershed.

Cities and residents throughout the Watershed derive their drinking water from groundwater. High nitrates have been documented in groundwater and wells in the eastern portions of the Watershed ~~near the City of Hastings.~~ The nitrates have largely been linked to agricultural activities. Future activities without better management or adequate controls may further impact groundwater quality. Impacts to groundwater and water resources from agricultural resources are no longer addressed by these Standards, as the previous version of the Standards (2016) did not provide any tools for regulation or enforcement. The VRWJPO intends to work with partner agencies that are regulating agricultural activities to avoid overlapping requirements and ~~also to work with partner agencies on proactive projects to improve land management and stewardship.~~

These Standards address the issues identified in the ~~VRWJPO Watershed Plan~~ ~~to~~and protect the public health, safety, welfare and natural resources of the VRWJPO by regulating the improvement or alteration of land and waters within the Watershed to reduce the severity and frequency of high water, to preserve floodplain and wetland storage capacity, to improve the chemical and physical quality of surface waters, to reduce sedimentation, to preserve the hydraulic and navigational capacities of waterbodies, to preserve and protect channels and drainageways, to promote and preserve natural infiltration areas, protect groundwater, and to preserve natural shoreline features. In addition to protecting natural resources, these Standards are intended to minimize future public expenditures and liability on issues caused by the improvement or alteration of land and waters.

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The following Standards each begin with a subsection on Policy. The policies listed in these subsections are either paraphrased or copied from the goals, objectives, or actions of the approved VRWJPO Watershed Plan. These policies provide the rationale for the Standards as well as other activities and programs of the VRWJPO. The articulated policies support why the Standards are written the way they are, but it is not the intent of the VRWJPO to accomplish these policies solely through regulatory Standards.

## SECTION 2: RELATIONSHIP WITH LOCAL GOVERNMENT UNITS MUNICIPALITIES AND COUNTIES

The VRWJPO recognizes that the control and determination of appropriate land use is the responsibility of the Local Governmental Units (LGUs; i.e., cities, municipalities, townships, and counties). ~~In March 2007, the VRWJPO can adopted Rules consistent with these Standards in the event it acquires the authority of a watershed district under Minn. Stat. § 103B.211, Subd. 1(a)(3). These Rules were updated again in 2017 after a township in the watershed requested that the VRWJPO apply its Standards within the Township.~~

LGUs are responsible for adopting Local Water Plans (LWPs) ~~and Ordinances~~ that implement the ~~VRWJPO Watershed Plan~~. Pursuant to Minn. Stat. § 103B.235, ~~the LGUs must complete Local Plans within a time period specified in the Watershed Plan. The Vermillion River Watershed Joint Powers Board must approve LWP's local water plans. The standards in the LWP's local plans must meet or exceed the VRWJPO's Standards, and local controls must implement the Standards. After approval of the Local Plans the LGUs have 120 days to begin implementing the plans and 180 days to amend their official controls which implement the Watershed Standards. LGUs may elect to adopt the VRWJPO Plan by reference, though this option still requires creation of a local ordinance to meet these Standards.~~

~~The VRWJPO may conduct selected project reviews in order to evaluate the implementation of LGU official controls.~~

~~In Dakota County, the cities are the LGUs within their corporate limits. The Townships are the planning and zoning authority in the unincorporated areas in Dakota County. Dakota County maintains permitting authority over development impacting Shoreland and Floodplain and may be the permitting authority for Individual Sewage Treatment Systems (depending on the Township or location within Shoreland and Floodplain), while Dakota County maintains permitting authority for Shorelands, Floodplain, and Individual Sewage Treatment Systems in unincorporated areas; both the County and Townships are considered LGUs for unincorporated areas in Dakota County. Dakota County will have permitting authority over Floodplain, Individual Sewage Treatment Systems, and general Shoreland regulations in Shoreland areas.~~ In Scott County, the County is the planning and zoning authority in addition to maintaining permitting authority over Shorelands and Floodplain and Individual Sewage Treatment Systems in unincorporated areas. Thus, in the Scott County portions of the Watershed, cities are the LGUs in incorporated areas and Scott County is the LGU in unincorporated areas.

~~The VRWJPO envisions two categories of permitting responsibility following adoption of the VRWJPO rules:~~

- ~~≈ Category 1 – VRWJPO assumes responsibility for all permitting;~~
- ~~≈ Category 2 – LGUs assume responsibility for all permitting;~~

~~Following VRWJPO rule adoption, I~~the VRWJPO will evaluate local government official controls to determine if they match the VRWJPO Standards. If a local government's official controls are found to be insufficient (i.e., do not meet the VRWJPO Standards), the VRWJPO will implement a permitting program in that community ~~(Category 4)~~.

If an LGU incorporates the VRWJPO Standards into its official controls, and demonstrates compliance with the VRWJPO Standards, that LGU will be responsible for permitting ~~activities (Category 2)~~. The VRWJPO will require LGUs responsible for permitting to submit some proposed ~~land alteration~~ plans to the VRWJPO for review and comment ~~on an as-needed basis each year through a VRWJPO evaluation program~~. LGUs may also request assistance from the VRWJPO with the review of development plans or clarifications on Standards being implemented through local ordinances. ~~P~~~~Land alteration~~ plans with the following conditions are particularly important to the VRWJPO for review ~~and/or comment~~:

- ≈ Diversions which negatively affect downstream water courses
- ≈ Intercommunity flows (upon request from adjoining communities)
- ≈ Project site size of 40 acres or more
- ≈ Projects that are adjacent to or appear to impact watercourses or unique natural resources

All land alteration plans that require an amendment to, or a variance from, the adopted local water plan must be submitted to the VRWJPO for review and approval, or denial, as prescribed by Minn. Stat. § 103B.211.

The VRWJPO can enforce ~~these its permits and Standards or Rules (if Rules are implemented)~~ Rules as allowed by Minn. Stat. § Chs. 103B and 103D ~~(Category 4)~~. ~~and~~The VRWJPO may ~~also~~ evaluate LGU ~~local government~~ enforcement of Standards at any time ~~permitting programs~~. If these evaluations ~~reveals~~ show non-compliance with the VRWJPO's Standards ~~and/or the local government's official controls~~, the VRWJPO will implement a permitting program ~~for all applicable Standards that fall under the VRWJPO's direct enforcement authority~~ ~~ever~~ in that community. ~~In the event of implementing a permitting program, t~~The VRWJPO will collect permit fees from applicants to offset the costs of implementing a permitting program.

~~The VRWJPO may establish special subtaxing districts to collect funds to cover its cost to implement the permitting program in communities where the VRWJPO has permitting authority. As an alternative to setting up special subtaxing districts, the VRWJPO will consider collecting permit fees to offset the costs of implementing a permitting program.~~

These ~~following Standards~~ presents the VRWJPO's interpretation of how the goals, objectives, and actions in the ~~Watershed~~ Plan should be translated into Standards. LGUs may adopt more restrictive standards. ~~In addition, I~~the VRWJPO recognizes that LGUs have different authorities and different ways of implementing programs that will necessitate variation in language and approaches from those presented in the ~~following~~ Standards. However, ordinances and official controls implementing the VRWJPO Standards must ultimately show compliance.

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## SECTION 3: DEFINITIONS

Unless the context clearly indicates otherwise, the following words and phrases shall have the meanings ascribed to them in this section. Unless specifically defined herein, terms used in these Standards shall have the same definition as provided in Minn. Stat. § Chs. 103B and 103D and Minn. R. Ch. 8410 as may be amended, and if not defined there, shall have common usage meaning. For purposes of these Standards, the words “must” and “shall” are mandatory and the word “may” is permissive.

**3-1 Agricultural Activity** – The use of land for growing and/or production and wholesale distribution of field crops, livestock, and livestock products for the production of income or own use, including but not limited to the following:

- A. Field crops, including but not limited to, hemp, wheat, wheatgrass, barley, beans, corn, hay, oats, potatoes, rye, peas, sorghum, and sunflowers
- B. Livestock, including but not limited to, dairy and beef cattle, goats, sheep, hogs, horses, poultry, game birds and other animals, including deer, rabbits, elk, alpaca, llama, and mink
- C. Livestock products, including but not limited to, milk, butter cheese, eggs, meat, fur, and honey
- D. Trees, shrubs, bushes, and plants for wholesale distribution
- E. Sod farming
- F. Orchards

**3-2 Agricultural Preserve** – A land area created and restricted according to Minn. Stat. § 473H.05 to remain in agricultural use.

**3-3 Alteration or Alter** – When used in conjunction with public waters or wetlands, any activity that will change or diminish the course, current or cross-section of public waters, public waters wetlands, or wetlands.

**3-4 Bankfull Channel Width** – The channel width of a stream, creek, or river at bankfull stage.

**3-5 Bankfull Stage** – The water level in a stream channel, creek, or river where the flow just begins to leave the main channel and enter the connected floodplain.

**Base Flood Elevation** – The computed elevation to which floodwater is anticipated to rise during a 100-year flood (a flood that has a 1% chance of occurring in any given year). It is determined by the Federal Emergency Management Association (FEMA) and used in floodplain management, insurance, and building regulations to establish safe construction practices.

The elevation of surface water resulting from a flood that has a one-percent chance of equaling or exceeding that level in any given year.

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### 3-6

**Best Management Practices or BMPs** – Techniques proven to be effective in controlling runoff, erosion and sedimentation, including those documented in the Minnesota Construction Site Erosion and Sediment Control Planning Handbook (BWSR, 1988); Protecting Water Quality in Urban Areas (MPCA, 2000); the Minnesota Small Sites BMPs Manual (Metropolitan Council, 2001); The Minnesota Stormwater Manual (MPCA 2005); and, other sources as approved by the VRWJPO: as such documents may be amended, revised or supplemented.

3-7 **BWSR** – The Minnesota Board of Water and Soil Resources.

3-8 **Buffer** – An area of natural, minimally maintained, vegetated ground cover abutting or surrounding a watercourse, public waters wetland, or wetland.

3-9 **Commercial Use Development** – The development of property for use as a commercial business or office.

3-10 **Compensatory Storage** – Excavated volume of material below the floodplain elevation required to offset floodplain fill.

3-11 **Dakota SWCD** – The Dakota County Soil and Water Conservation District.

3-12 **Dead Storage** – The volume of space located below the overflow point of a basin, pond or landlocked basin.

3-13 **Drain or Drainage** – Any method for removing or diverting water from water bodies, including excavation of an open ditch, installation of subsurface drainage tile, filling, diking or pumping.

3-14 **Erosion** – The wearing away of the ground surface as a result of wind, flowing water, ice movement or land disturbing activities.

3-15 **Erosion and Sediment Control Plan** – A plan of BMPs or equivalent measures designed to control runoff and erosion and to retain or control sediment on land during the period of land-disturbing activities using with standards. ~~Erosion and Sediment Control Plans are intended to be simpler plans illustrating or describing the placement of erosion and sediment control BMPs that do not require the detail of SWPPPs that are required adopted by the under jurisdictional authority State permits.~~

3-16 **Excavation** – The artificial removal of soil or other earth material.

3-17 **Fill** – ~~The deposit of soil or other earth materials by artificial means.~~ The process of adding soil, gravel, or other materials to raise the ground level or create a stable foundation. Fill is used to build up low areas, level uneven terrain, or provide a base for construction projects such as roads, building pads, or embankments.

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~~3-18~~ **Filtration** – A process by which stormwater runoff is captured, temporarily stored, and routed through a filter, vegetated strip, underdrain,<sup>2</sup> or buffer to improve water quality, ~~and slow down stormwater runoff.~~

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~~3-19~~ **Floodplain** – ~~The area adjacent to a water body that is inundated during a 100-year flood. Any land area susceptible to being inundated by floodwaters from any source. More specifically, FEMA's Special Flood Hazard Area (SFHA) refers to the area that has a 1% annual chance of flooding (also called the 100-year floodplain). Floodplains are categorized on Flood Insurance Rate Maps (FIRMs), which indicate flood risk and are used for insurance, building regulations, and disaster preparedness.~~

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~~3-20~~ **Floodplain Storage** – The volume of space available for flood water volumes within the floodplain.

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~~3-21~~ **Fragmentation** – The breaking up of an organism's habitat into discontinuous ~~chunks~~ components.

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~~3-22~~ **Grassed Waterway** – A natural or constructed channel that is shaped or graded to required dimensions and established in suitable vegetation for the stable conveyance of runoff. ~~(Minnesota NRCS Conservation Practice Standard Code 412, November 2006)~~

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~~3-23~~ **Green Acres** – Real property or real estate that qualifies as agricultural property having agricultural use under the Minnesota Agricultural Property Tax Law, Minn. Stat. § 273.111.

~~3-24~~ **Industrial Use Development** – The development of property for industrial use as identified by the Standard Industrial Classification (SIC) codes or the North American Industry Classification System (NAICS code).

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~~3-25~~ **Infiltration** – ~~A process by which stormwater runoff is captured, temporarily stored, and routed through a filter, vegetated strip, or buffer to improve water quality while~~ A stormwater retention method for the purpose of reducing the volume of stormwater runoff by transmitting runoff into the ground. ~~water into the ground through the earth's surface.~~

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~~3-26~~ **Impervious Surface** – A constructed hard surface that either prevents or 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 development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.

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~~3-27~~ **Infrastructure** – The system of public works for a county, state, or LGU, including, but not limited to, structures, roads, bridges, culverts, sidewalks, stormwater management facilities, conveyance systems and pipes, pump stations, sanitary sewers and interceptors, hydraulic structures, permanent erosion control and stream bank protection measures, water lines, gas lines, or electrical lines and associated facilities, and ~~communication~~ phone lines and supporting facilities.

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**Land Disturbing Activity** – Any activity on property that results in a change or alteration in the existing ground cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, stockpiling, excavation, and borrow pits. The use of land for new and continuing agricultural activities and routine vegetation management activities shall not constitute a land disturbing activity under these Standards. ~~For example, clearing of trees for agricultural field crops or pasture, management of trees on woodlands or wooded lots, and natural area restoration activities would not constitute a land disturbing activity under these Standards.~~

**3-28 Landlocked Basin** – A basin that is one acre or more in size and does not have a natural outlet at or below the existing 100-year flood elevation as determined by the 100-year, ~~40-day snowmelt~~ runoff event.

**3-29 Local Governmental Unit or LGU and/or Jurisdictional Authority** – ~~Any~~ federal, state, city~~ies~~, county~~ies~~, and township~~s~~ lying in whole or part within the Vermillion River Watershed ~~having the authority to review and approve items related to development, redevelopment, improvement, or modification of the natural landscape.~~

**3-30 Lot** – A parcel of land designated by metes and bounds, ~~subdivision plats, platted property, registered land survey,~~ or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease, or separation thereof, as designated by Scott or Dakota County.

**3-31 Lot of Record** – Any lot that legally existed prior to ~~the current adoption date of these Standards~~ ~~March 22, 2007, as designated by Scott or Dakota County.~~

**3-32 Meander** – A sinuous bend of a river, stream, or creek.

**3-33 Meander Belt** – The area between lines drawn tangential to the extreme limits of fully developed meanders.

**3-34 Minimum Impact Alignment** – The alignment for a proposed road, street, utility, path or access that creates the smallest area of impact to a buffer, watercourse, or floodplain. For activities that cross a buffer, watercourse, or floodplain the minimum impact alignment is one that crosses perpendicular, or near perpendicular, to the longitudinal orientation of the buffer, watercourse, or floodplain as reasonable to serve the intended purpose of the improvement.

**MPCA** – The Minnesota Pollution Control Agency.

**3-35 MS4** – ~~A municipal separate storm sewer system (MS4) is a conveyance or system of conveyances (roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, storm drains, etc.) that is also owned or operated by a public entity (which can include cities, townships, counties, military bases, hospitals, prison complexes, highway departments, universities, sewer~~

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districts, etc.), designed or used for collecting or conveying stormwater, not a combined sewer, and not part of a publicly owned treatment works.

**3-36 Native Vegetation** – Plant species that are indigenous to Minnesota, or that expand their range into Minnesota without being intentionally or unintentionally introduced by human activity, and are classified as native in the Minnesota Plant Database (~~Minnesota DNR, 2002~~).

**3-37 Natural Retention or Detention** – Retention or detention storage of rainwater and runoff that occurs due to the natural landscape and is not artificially constructed.

**3-38 New Development** - The construction of any public or private improvement project, infrastructure, structure, street or road that creates more than 1 acre of new or additional impervious surface or, the subdivision of land.

**3-39 Noxious Weeds** – Any plant listed as a prohibited ~~or~~, restricted or secondary weed ~~under Minn. R. Ch. 1505 according to the Minnesota Department of Agriculture's Minnesota Noxious Weed List.~~

**3-40 NPDES** – National Pollutant Discharge Elimination System.

**3-41 NRCS** – United States Department of Agriculture Natural Resources Conservation Service.

**3-42 Ordinary High Water (OHW) Level** – The boundary of water basins, watercourses, public waters, and public waters wetlands ~~pursuant to as set by the Minnesota Statutes 103G.005, subd. 14. Department of Natural Resources.~~

**3-43 Outlot** – A parcel of land shown on a subdivision plat as an outlot, as designated by Scott or Dakota County, and designated alphanumerically, (for example – Outlot A.). Outlots are used to designate one of the following: Land that is part of the subdivision but is to be subdivided into lots and blocks at a later date; land that is to be used for a specific purpose as designated in a developer's agreement or other agreement between the Local Governmental Unit and the developer; or for a public purpose that may have restricted uses such as a buffer.

**3-44 Plat** – The drawing or map of a subdivision prepared for filing of record pursuant to Minn. Stat. § Ch. 505.

**3-45 Pre-development Condition** – The land use on a site that existed ~~in 2005, in 2005.~~

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**3-46 Public Waters Wetland** – Any public waters wetland as defined in Minn. Stat. § 103G.005, subd. 15a.

**3-47 Recreational Use Development** – Any development of land for recreational use, including but not limited to, parklands, sporting facilities, golf courses, and other commercial or public facilities designed and used to provide recreational opportunities to the public.

**3-48 Redevelopment** – The rebuilding, repair, or alteration of a structure, land surface, road or street, or facility that creates less than 1 acre of new impervious surface, and disturbs, replaces, or alters more than 1 acre of existing impervious surface. ~~Note: for the purposes of these Standards, if an activity creates more than 1 acre of new or additional impervious surface, the activity is considered new development and exceptions in these Standards for redevelopment do not apply to the increased (new) impervious surface exceeding 1 acre.~~

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~~3-49~~ **Right-Of-Way** – A strip of land occupied or intended to be occupied by a street, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or another special use, and dedicated to public use by the recording of the plat on which such right-of-way is established.

~~3-50~~ **Runoff** – Rainfall, snowmelt or irrigation water flowing over the ground surface.

~~3-51~~ **Rural Preserves** – Class 2a or 2b property that had been assessed under Minnesota Stat. § 2006, section 273.111, or that is part of an agricultural homestead under Minnesota Stat. § 2006, section 273.13, subdivision 23, paragraph (a).

~~3-52~~ **Scott SWCD** – The Scott ~~County~~ Soil and Water Conservation District.

~~3-53~~ **Sediment** – Soil or other surficial material transported by surface water ~~as a product of erosion~~.

~~3-54~~ **Sedimentation** – The process or action of depositing sediment.

~~3-55~~ **Sinuuous** – The curving patterns of a river, stream, or creek.

~~3-56~~ **Stewardship Plan** – A conservation plan completed for agricultural land and activities accepted by the Dakota SWCD, the Scott SWCD, or the VRWJPO.

~~3-57~~ **Stream Type** – One of numerous stream types based on morphology defined by Rosgen D., *Applied River Morphology*, 1996.

~~3-58~~ **Stormwater Pollution Prevention Plan or SWPPP** – A plan for stormwater discharge that includes erosion prevention measures and sediment controls that, when implemented, will decrease soil erosion on a parcel of land and decrease off-site nonpoint pollution.

~~3-59~~ **Structure** – Anything manufactured, constructed or erected which is normally attached to or positioned on land, including portable structures, earthen structures, water and storage systems, drainage facilities and parking lots.

~~3-60~~ **Subdivision** – The separation of an area, lot, or tract of land under single ownership into two or more parcels, tracts, or lots.

~~3-61~~ **USDA** – United States Department of Agriculture.

~~3-62~~ **VRWJPO** – Vermillion River Watershed Joint Powers Organization.

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~~3.63~~ Watercourse – Intermittent and perennial streams identified on Map 1 attached to these Standards.

~~3.64~~ Wetland – Any wetland as defined in Minn. Stat. § 103G.005, subd. 19.

Wetland Conservation Act or WCA – The Minnesota Wetland Conservation Act of 1991, as amended.

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## SECTION 4: FLOODPLAIN ALTERATION STANDARDS

### SUMMARY OF PURPOSE AND JURISDICTION GUIDANCE

Floodplain alteration involves land disturbing activities and projects that may impact the floodplain, or the area around waterbodies that is inundated during heavy rainfall or snowmelt events. ~~(i.e., the 100-year flood)~~. Regulations exist for land disturbing activities and projects in floodplain areas to maintain floodplain storage, to minimize changes to upstream and downstream property and stream reaches, and to protect property and structures.

In Dakota County, cities are the LGUs in the incorporated areas that regulate floodplain activities and must be contacted for appropriate permits. ~~while Dakota County administers Shoreland and Floodplain requirements through its Ordinance 50 in the unincorporated townships and must be contacted for appropriate permits for activities within the floodplain, as needed.~~ In Scott County, cities are the LGUs for incorporated areas while Scott County requires permits for the unincorporated areas that regulate floodplain activities and must be contacted for appropriate permits. ~~The VRWJPO does not have a direct role in the implementation or oversight of floodplain activities as that is the direct role of the jurisdictional authority.~~

### 4.1 Policy

It is the policy of the VRWJPO to:

- A. Protect the natural function of the Federal Emergency Management Agency (FEMA)-designated floodplain storage areas from encroachment.
- B. Maintain storage volumes in FEMA-designated floodplains.
- C. Require Local Plans to include a provision that restricts construction of new structures in FEMA-designated floodplains.
- D. Require Local Governments to adopt floodplain ordinances that are consistent with Dakota and Scott County water resources plans and ordinances.

- E. Require floodplain alterations result in “no net loss” of floodplain storage, including the preservation, restoration, and management of floodplain wetlands.
- F. Encourage local governments gain compensatory storage above direct replacement for new developments within the floodplain.

#### 4.2 Regulation

No person or political subdivision shall ~~obstruct flood flows, increase flood elevations, fill, excavate, or store of materials or equipment, alter or fill land, or build a structure or infrastructure~~ below the Base Flood Elevation of any watercourse, public waters, public waters wetland, or other wetland without first obtaining a permit from the appropriate LGU.

#### 4.3 Criteria

~~A. Development within the floodplain is regulated by the jurisdictional authority.~~

~~A. Floodplain alteration or filling shall not cause a net decrease in flood storage capacity below the projected 100-year critical flood elevation unless it is shown that the proposed alteration or filling, together with the alteration or filling of all other land on the affected reach of the waterbody to the same degree of encroachment as proposed by the applicant, will not cause high water or aggravate flooding on other land and will not unduly restrict flood flows.~~

~~B. Where Base Flood Elevations have been established, all new structures shall be constructed with the low floor consistent with the minimum elevations as specified in State of Minn. R. Ch. 6120: Shoreland and Floodplain Management; Dakota County Ordinance No. 50: Shoreland and Floodplain Ordinance; or Scott County Zoning Ordinance 71: FP, Floodplain District; as applicable.~~

~~C. Projects involving development, redevelopment, or the subdivision of land, shall establish flood storage, flowage, and drainage easements over areas below the Base Flood Elevation of any public water, public waters wetland, or wetland.~~

~~D. Setbacks for floodplain alterations, fill, and new underground utilities; such as water, sanitary, storm sewers and interceptors, gas lines, phone lines, and pipelines; shall be established and used along watercourses. These setbacks shall be established as follows. The exception is for utilities that need to reach or cross the watercourse, provided the minimum impact alignment is used.~~

~~1. Where a watercourse has a sinuous flow pattern and a meander belt can be identified, the setback for new underground utilities shall be setback 15 feet from the outer edge of the meander belt.~~

~~2. Where a sinuous flow pattern and meander belt are not readily identifiable because of past channel alterations and/or the geomorphology of the channel, the setback established for new underground utilities shall provide for the potential for restoration and a sinuous flow pattern as follows.~~

3. Where there are existing encroachments that limit full restoration of the stream to the meander widths appropriate for the stream type, the setback shall be 15 feet from the reasonably achievable restoration width for the meander belt given the existing encroachments.
  4. Where full restoration is possible, the setback shall be 15 feet from a meander belt width established along the stream reach that has a width 10 times the bankfull channel width. An assessment of the stream type may be completed, and meander belt widths established according to the stream type, in place of using the above 10x formula. Note: the 1999 Vermillion River Assessment Report, or amendments thereto, provide assessment of stream type for many reaches of the Vermillion River and is available at the Dakota SWCD or the Dakota County offices of the VRWJPO.
  5. Where buffers are required, above-ground encroachments, alterations, and fill shall be consistent with the prohibited and allowed uses and widths specified in the Buffer Standard.
- E. Projects that alter floodplain boundaries, such as bridge crossings and regional ponds that increase upstream high water levels are allowed provided that:
1. The applicant submits easements or other documentation in a form acceptable to the LGU or the VRWJPO demonstrating and recording the consent of the owner of any land affected by the increased high water levels; and,
  2. The action is consistent with other portions of these Standards, and Local, State, and Federal Regulations; and,
  3. The upstream impacts, riparian impacts, and habitat impacts of the proposed action are analyzed and no detrimental impacts result, or adverse impacts are mitigated.

## SECTION 5: WETLAND ALTERATION STANDARDS

### SUMMARY OF PURPOSE AND JURISDICTION GUIDANCE

Wetlands are areas that collect and filter water and are defined by their soils, vegetation, and hydrology (the way water is held by, and flows through them). Wetlands are critical resources for storage and treatment of surface water runoff and extremely valuable to the watershed. LGUs are required to enforce the Wetland Conservation Act (WCA) in Minnesota. As a result, the VRWJPO does not have a direct role in the implementation or oversight of WCA as that is the direct role of the jurisdictional authority.

In Dakota County, cities and townships are the LGUs for WCA and require wetland delineations and permit approvals if wetland impacts cannot be avoided. The Dakota County Soil and Water Conservation District (SWCD) is contracted to do wetland reviews for many of the townships and some cities in Dakota County. In Scott County, cities are the LGUs for incorporated areas while Scott County reviews delineations and approvals for the unincorporated areas.

### 5.1 Policy

It is the policy of the VRWJPO to:

- A. Work to achieve no net loss of wetlands in the Watershed.
- B. Replace lost wetlands in the same subwatershed whenever possible.
- C. Provide equal or greater functions and values for lost wetlands at the replacement ratios dictated by the WCA.
- D. Avoid direct or indirect wetland disturbance in accordance with State and Federal requirements and approved local wetland management plans.
- E. Limit the use of high quality wetlands for stormwater management where other alternatives exist.
- F. Avoid fragmentation of natural areas and corridors when feasible and mitigate when unavoidable.



## 5.2 Regulation

No person or political subdivision shall drain, fill, excavate, or otherwise alter a wetland or public waters wetland without first submitting a wetland application and obtaining the approval from the LGU with jurisdiction over the activity.

## 5.3 Criteria

- ~~A. Any drainage, filling, excavation, or other alteration of a public waters wetland or wetland shall be conducted in compliance with Minn. Stat. § 103G.245, the WCA, Minn. R. Ch. 8420, Minn. R. Ch. 7050.0186, and regulations adopted hereunder.~~
- ~~B. In order to preserve WCA exemption or no loss determination, projects involving excavation in Types 1, 2, 6, and 7 wetlands must demonstrate a beneficial purpose, such as habitat or water quality improvements, and minimize loss of wetland function as determined by the VRWJPO or LGU.~~
- ~~C. A high quality (or equivalent value) public waters wetland or wetland, as determined using the Minnesota Routine Assessment Method (MNRAM 3.0 as amended) or other state accepted functional assessment method for vegetative diversity, may not be used for stormwater management and treatment unless the use will not adversely affect the function and public value of the wetland and other alternatives do not exist.~~

~~D.~~ A. Wetland replacement/mitigation siting must follow the priority order below:

- ~~1. Mitigation on site~~
- ~~2. Mitigation within the same minor subwatershed as established by the Minnesota Department of Natural Resources for the “1979 Watershed Mapping Project” pursuant to Minnesota Laws 1977, chapter 455, section 33, subdivision 7, paragraph (a).~~

- 1. Mitigation within the VRW-JPO boundary
  - 3. On site if approved by the WCA Jurisdictional Authority

- 2. Mitigation within Dakota or Scott County
- 3. Within BWSR Wetland Bank Service Area 8
- 4. Within any other BWSR Wetland Bank Service Area
- ~~4. if~~

~~E. Transportation projects shall pursue wetland mitigation projects to the extent practical using the criteria above. However, this does not preclude the use of the BWSR Replacement Program.~~

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## SECTION 6: BUFFER STANDARDS

### SUMMARY OF PURPOSE AND JURISDICTION GUIDANCE

Buffers are areas of perennial vegetation surrounding watercourses, public waters wetlands, and wetlands that help protect water resources by limiting erosion and filtering runoff. These VRWJPO Buffer Standards will ensure placement of buffers upon development to protect watercourses and wetlands.

In Dakota County, cities and townships ensure that ~~B~~buffer ~~Standards are enforced~~~~requirements are met~~ through the platting, subdivision, and permitting process. In Scott County, cities ~~ensures Buffer Standards are enforced~~~~oversee buffers~~ through the platting, subdivision, and permitting process, while Scott County ensures buffer ~~standards are enforced~~~~requirements are met~~ for subdivisions in the unincorporated areas. ~~Under 6.4c below, the buffer requirements do not apply to areas with agricultural zoning, but the VRWJPO recommends that the buffer be applied as a building setback distance through local building permits because 1) buffer areas likely have periodic flowing water that may impact structures, and 2) buffers can be installed later upon further development.~~

### 6.1 Policy

It is the policy of the VRWJPO to:

- A. Work to establish buffers, acting as filter strips, around every wetland and watercourse based on its management classification.
- B. Avoid fragmentation of natural areas and corridors when feasible and mitigate when unavoidable.
- C. Protect wetlands and watercourses from chemical, physical, biological, or hydrological changes so as to prevent significant adverse impacts.

Based on program evaluation, water quality monitoring, and research, the VRWJPO may, in the future, modify standards to vary by subwatershed or require buffers on lands in addition to developing land ~~in order~~ to meet water quality management objectives.

### 6.2 Regulation

For any lot created after March 22, 2007 or the adoption of local ordinances implementing the VRWJPO standards, a buffer shall be maintained around the perimeter of all wetlands, watercourses, and public waters wetlands. ~~The buffer provisions shall not apply to any~~

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~~lot of record as of March 22, 2007 until such lot is subdivided.~~ Buffer strip establishment shall apply to all lots of the proposed subdivision as a whole, regardless of whether or not the watercourse, wetland, or public waters wetland is on a specific lot within a proposed development.

~~In areas where land use is zoned agricultural with one building eligibility per every quarter of a quarter section (40 acres) of property, the buffer requirement will not be exercised until such time as the land use zoning is changed to an alternate use zoning or a higher density of residential building eligibilities. At that time, the buffer requirement will be fully implemented.~~

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The Buffer Standards do not apply to:

- ~~A. Lots created that are enrolled in Green Acres, Rural Preserves, Agricultural Preserves, or similar agricultural or rural preservation programs controlling or limiting the potential for future lot subdivision or development, as part of the subdivision process.~~
- ~~B. A lot of record as of March 22, 2007 until such lot is subdivided.~~
- ~~C. The Buffer Standards do not apply to any Wetland or public waters wetland with an applicable exemption listed under the WCA, and to those portions of wetlands that will be filled under approved wetland replacement plans per the WCA. LGU Comprehensive Wetland Management Plans which prescribe required buffer widths shall be compliant with standards set by the VRWJPO; applicable ordinances governing widths, restrictions, allowable uses, and monumentation must meet or exceed the requirements set by the VRWJPO.~~  
~~In areas where land use zoning provides for agricultural zoning with one building eligibility per every quarter of a quarter section (40 acres) of property, the buffer requirement will not be exercised until such time as the land use zoning is changed to an alternate use zoning or a higher density of residential building eligibilities. At that time, the buffer requirement will be fully implemented. For all properties seeking a permit where this exemption would apply, the permit will require that setbacks are met which allow the future implementation of the buffer requirement with no impact to permanent structural elements. This exemption does not include transfer of building eligibilities for purposes of clustering.~~
- ~~D. The Buffer Standards do not apply to existing outlots that received preliminary plat approval in the two year period preceding March 22, 2007. Buffer standards in effect at the time of LGU approval of a development agreement shall remain in effect throughout the term of the agreement or for a ten year period from the date of approval, whichever is less.~~  
~~Where a stream meandering project has been completed, the buffer width shall be established by the LGU and shall be no less than the minimum.~~  
~~The Buffer Standards do not apply to lots created that are enrolled in Green Acres, Rural Preserves, Agricultural Preserves, or similar agricultural or rural preservation programs controlling or limiting the potential for future lot subdivision or development, as part of the subdivision process.~~

E.

### 6.3 Criteria

A. LGU Comprehensive Wetland Management Plans, which prescribe required buffer widths shall be compliant with standards set by the VRWJPO; applicable ordinances, governing widths, restrictions, allowable uses, and monumentation must meet or exceed the requirements set by the VRWJPO.

B. Where a stream meandering project has been completed, the buffer width shall be established by the LGU.

A.C. Where acceptable natural vegetation exists in buffer areas, the retention of such vegetation in an undisturbed state is required unless approval to replace such vegetation is received. A buffer has acceptable vegetation if it:

1. Has a continuous, dense layer of ~~non-invasive~~ perennial grasses and forbs that has been uncultivated or unbroken for at least 5 consecutive years; or
2. Has an overstory of ~~non-invasive~~ trees and/or shrubs that has been uncultivated or unbroken for at least 5 consecutive years; or
3. Contains a mixture of the plant communities in 1 and 2 above that has been uncultivated or unbroken for at least 5 years.

B.D. Buffers shall be staked and protected in the field prior to construction unless the vegetation and the condition of the buffer are considered inadequate by the jurisdictional authority. Existing conditions vegetation will be considered unacceptable if:

1. Physical condition of the buffer tends to channelize the flow of surface water.
2. Vegetative cover is less than 90%.

C.E. Where buffer vegetation and conditions are unacceptable, or where approval has been obtained to replant, buffers shall be replanted and maintained according to the following Standards:

1. Buffers shall be planted with a native seed mix approved by the State of Minnesota, ~~NRCS or the Dakota or Scott SWCD~~, with the exception of a one-time planting with an annual nurse or cover crop. Plantings of native forbs and grasses may be substituted for seeding. All substitutions must be approved by the LGU. Groupings/clusters of native trees and shrubs, of species and at densities appropriate to site conditions, can also be planted throughout the buffer area.

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2. The seed mix and planting shall be broadcast/installed according to the State of Minnesota, ~~NRCS or Dakota or Scott SWCD~~ specifications. The selected seed mixes and plantings for permanent cover shall be appropriate for the soil site conditions and free of invasive species.
3. Buffer vegetation (both natural and created) shall be protected by erosion and sediment control measures during construction.
4. During the first five full growing seasons, except where the LGU has determined vegetation establishment is acceptable, the owner or applicant must replant buffer vegetation where the vegetative cover is less than 90%. The owner or applicant must assure reseeding/or replanting if the buffer changes at any time through human intervention or activities.

~~D.F.~~ ~~Where a buffer is required, the LGU shall require the protection of t~~The buffer ~~shall be protected~~ under a conservation easement, acceptable to the LGU, or include the buffer in a dedicated outlot as part of platting and subdivision approval, except where the buffer is located in a public transportation right-of-way. Buffers shall also be monumented to clearly designate the boundaries of all new buffers within new residential subdivisions. A monument shall consist of a post and a buffer strip sign approved by the LGU.

~~E.G.~~ Alterations, including building, storage, paving, routine mowing, burning, plowing, introduction of noxious vegetation, cutting, dredging, filling, mining, dumping, grazing livestock, agricultural production, yard waste disposal, or fertilizer application are prohibited within any buffer. Periodic mowing or burning, or the use of fertilizers and pesticides for the purpose of managing and maintaining native vegetation is allowed with approval of the LGU. Noxious weeds may be removed and mechanical or spot herbicide treatments may be used to control noxious weeds, but aerial or broadcast spraying is not acceptable. Prohibited alterations would not include plantings that enhance the natural vegetation or selective clearing or pruning of trees or vegetation that are dead, diseased or pose similar hazards, or as otherwise clarified in Criteria F.

~~F.H.~~ The following activities shall be permitted within any buffer, and shall not constitute prohibited alterations:

1. The following activities are allowed within both the minimum and average buffer width areas:
  - a. Use and maintenance of an unimproved access strip through the buffer, not more than 10 feet in width, for recreational access to the watercourse or wetland and the exercise of riparian rights.
  - b. Structures that exist when the buffer is created.
  - c. Placement, maintenance, repair, or replacement of public roads and utility and drainage systems that exist on creation of the buffer or are required to comply with any subdivision approval or building permit obtained from the LGU or county, so long as any adverse impacts of public road, utility, or drainage systems on the function of the buffer have been avoided or minimized to the extent practical.
  - d. Clearing, grading, and seeding are allowed, if part of an approved Wetland Replacement Plan or approved Stream Restoration Plan.

- e. A multipurpose trail through an area protected by conservation easement or in a dedicated outlot, is allowed provided it is designed and constructed to minimize erosion and new impervious surfaces, and maintains an absolute minimum distance of at least fifteen feet as measured from the edge of the trail nearest the water resource to the wetland or public waters wetland edge, the bank of the watercourse, or the meander belt, and averages at least one-half the total VRWJPO identified buffer width. Where needed to cross the watercourse, the minimum impact alignment shall be used. The area between the trail and the water resource must be maintained in perennial vegetation in an undisturbed state excepting regular required maintenance of the buffer. Boardwalks and pedestrian bridges associated with a multipurpose trail must be approved by the LGU ~~or the VRWJPO.~~
  - f. The construction of underground utilities such as water, stormwater, and sanitary sewers and pipelines provided the minimum impact alignment is used, the area is stabilized in accordance with Criteria C above, ~~and setbacks established in the Floodplain Alterations Standard Criteria D are met.~~
2. The following activities are allowed within those portions of the average buffer width that exceed the minimum buffer width:
- a. Stormwater management facilities, provided the land areas are stabilized in accordance with Criteria C above, and alterations prohibited in Criteria E above are upheld.
  - b. The area of shallow vegetated infiltration and biofiltration facilities, and water quality ponds not to exceed 50 percent of the pond area, adjacent to wetlands and watercourses may be included in buffer averaging provided the facilities do not encroach into the minimum buffer width, and the land areas are stabilized in accordance with Criteria C above, and alterations prohibited in Criteria E above are upheld.

~~G.1.~~ A wetland functional assessment for vegetative diversity, using ~~the Minnesota Routine Assessment Method (MNRAM 3.0 as amended) or other a state accepted~~ functional assessment method ~~approved by the BWSR~~, will be completed with each wetland and public waters wetland, delineated for a project and buffers established according to the management classification in the following table.

Buffer Requirement	Exceptional Quality Wetland (Preserve)	High Quality Wetland (Manage 1)	Medium Quality Wetland (Manage 2)	Low Quality Wetland (Manage 3)
<b>Average Buffer Width</b>	50 feet	40 feet	30 feet	25 feet
<b>Minimum Buffer Width</b>	30 feet	30 feet	25 feet	16.5 feet

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LGU's may require more restrictive buffer widths for the protection of jurisdictional wetlands.

~~H.J. Watercourse~~ Buffers: ~~S~~shall be established adjacent to watercourses as shown and classified on Map 1 attached to these Standards, and as described for the various classifications below:

Classification	Buffer Width Standard
Conservation Corridor	Lower Reach (Vermillion River downstream of Biscayne Avenue) – 150-foot average, 100-foot minimum measured from the edge of the meander belt of the river. Upper Reach (Vermillion River upstream of Biscayne Avenue and South Branch Vermillion River) – 150 foot average, 100-foot minimum measured from the edge of the meander belt of the river. <u>If meander belt isn't present, buffer shall be measured from edge of streambank</u>
Aquatic Corridor – Principal Connector	Required buffer width 100-foot average, 65-foot minimum measured from the edge of the meander belt of the river. <u>If meander belt isn't present, buffer shall be measured from edge of streambank</u>
Aquatic Corridor – Principal Connector with Trout Stream Designation	100 foot, no averaging, as required by <del>the General Permit Authorization to Discharge Storm Water Associated With Construction Activity Under the National Pollutant Discharge Elimination System/State Disposal System Permit Program Permit</del> MN R100001 (NPDES General Construction Permit) issued by the Minnesota Pollutant Control Agency, August 1, 2003 <u>or latest revision</u> .
Aquatic Corridor – Tributary Connector	50-foot average, 35-foot minimum; <u>plus 2 feet for every 1 percent of slope</u> measured from the edge of the meander belt of the tributary. <u>If meander belt isn't present, buffer shall be measured from edge of streambank.</u>
Water Quality Corridor	30-foot average, 20-foot minimum where there is a flow path for concentrated surface runoff measured from the center line of the flow path.

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#### ~~6.4~~ Exceptions

~~A. The Buffer Standards do not apply to any wetland or public waters wetland with an applicable exemption listed under the WCA, and to those portions of wetlands that will be filled under approved wetland replacement plans per the WCA.~~

~~B.A. LGU Comprehensive Wetland Management Plans which prescribe required buffer widths shall be compliant with standards set by the VRWJPO; applicable ordinances governing widths, restrictions, allowable uses, and monumentation must meet or exceed the requirements set by the VRWJPO.~~

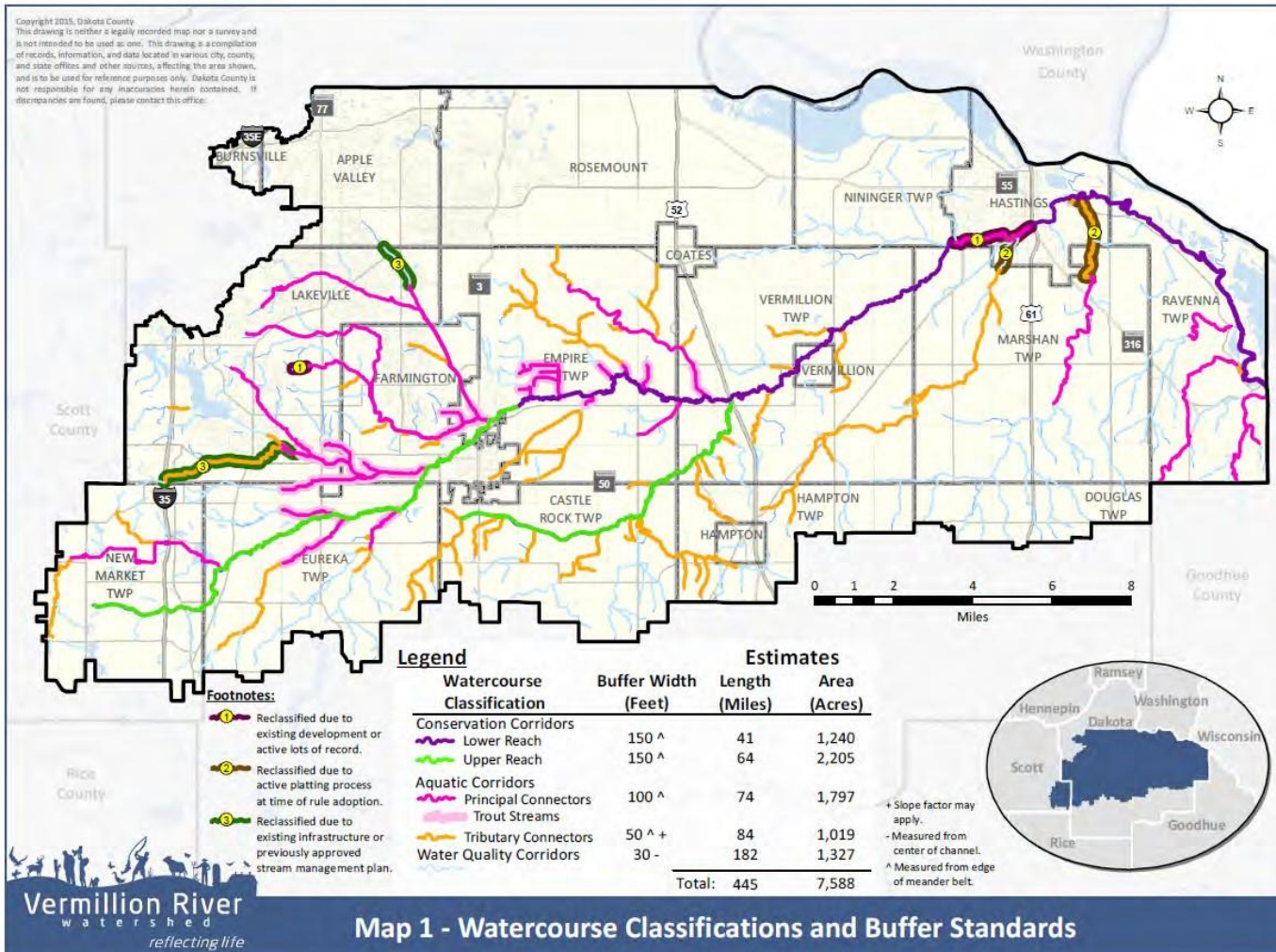
~~C.A. In areas where land use zoning provides for agricultural zoning with one building eligibility per every quarter of a quarter section (40 acres) of property, the buffer requirement will not be exercised until such time as the land use zoning is changed to an alternate use zoning or a higher density of residential building eligibilities. At that time, the buffer requirement will be fully implemented. For all properties seeking a permit where this exemption would apply, the permit will require that setbacks are met which allow the future implementation of the buffer requirement with no impact to permanent structural elements. This exemption does not include transfer of building eligibilities for purposes of clustering.~~

~~D.A. The Buffer Standards do not apply to existing outlots that received preliminary plat approval in the two year period preceding March 22, 2007. Buffer standards in effect at the time of LGU approval of a development agreement shall remain in effect throughout the term of the agreement or for a ten year period from the date of approval, whichever is less.~~

~~E.A. Where a stream meandering project has been completed, the buffer width shall be established by the LGU and shall be no less than the minimum.~~

~~F.A. The Buffer Standards do not apply to lots created that are enrolled in Green Acres, Rural Preserves, Agricultural Preserves, or similar agricultural or rural preservation programs controlling or limiting the potential for future lot subdivision or development as part of the subdivision process.~~





## SECTION 7: EROSION AND SEDIMENT CONTROL STANDARDS

### SUMMARY OF PURPOSE AND JURISDICTION GUIDANCE

Land disturbing activities, like building construction projects, expose soils to rainfall and runoff which can cause erosion of soil and deposition of sediment onto neighboring properties or in waterbodies and watercourses. Erosion and sediment control measures (e.g., a silt fence) keep soil on site during construction and help ensure soil does not permanently wash away.

In Dakota County, cities and townships are generally the LGUs for oversight of erosion and sediment control. Erosion and sediment control requirements are often incorporated into requirements for building, agricultural building, grading, or other local permits. In Scott County, cities are the LGUs for oversight of erosion and sediment control in incorporated areas while Scott County requires erosion and sediment control measures for the unincorporated areas.

### 7.1 Policy

It is the policy of the VRWJPO to:

- A. Minimize the movement of soil within the landscape of the watershed.
- B. Reduce or mitigate the mechanisms that are the cause of soil movement to the extent practicable.
- C. Capture soil that does move as close to its point of origination as possible.
- D. Reduce the delivery of sediment to natural water bodies due to land disturbing activities to the extent practicable.

### 7.2 Regulation

No person or political subdivision shall commence a land disturbing activity ~~encompassing one acre or more acre of land meeting or exceeding the thresholds provided below,~~ without first obtaining a land disturbing activity permit consistent with the National Pollution Discharge Elimination System (NPDES) General Construction Permit (MNR 100001) requirements. ~~permit from a LGU and/or the VRWJPO that incorporates and approves a SWPPP or erosion and sediment control plan. The LGU shall adopt an ordinance or procedure requiring erosion prevention and sediment control BMPs with issuance of permits.~~

~~MS-4 permitted LGU's may have stricter requirements for erosion and sediment control either by election or by other permitting requirements. Local permits must be obtained when required by the LGU.~~

~~Non MS-4 permitted LGU's must ensure implementation as required by NPDES.~~

Land disturbing activities meeting or exceeding the following thresholds require erosion and sediment controls:

- A. Land disturbing activities encompassing one acre or more acre of land, consistent with the Minnesota General Permit Authorization to Discharge Storm Water Associated With Construction Activity Under the National Pollutant Discharge Elimination System/State Disposal System Permit Program Permit MN R100001 (NPDES General Construction Permit) issued by the Minnesota Pollution Control Agency (MPCA). Activities meeting this threshold must develop a SWPPP, consistent with the NPDES General Construction Permit.
- B. Land disturbing activities encompassing less than one acre of land if any one of the following thresholds are met or exceeded. Activities meeting or exceeding these thresholds may develop an erosion and sediment control plan in place of the formal SWPPP.
  - a. Land disturbing activities on slopes greater than six percent.
  - b. Greater than 100 cubic yards of imported or stockpiled material.
  - c. New public or private roads or driveways greater than 125 feet in length.
  - d. Land disturbing activities greater than 10,000 square feet of land if commercial, industrial, or recreational use development.
  - e. Filling, draining, or altering of natural or artificial stormwater storage, retention, or watercourses.
  - f. Land disturbing activities located within 150 feet of wetlands identified on or adjacent to the land disturbing activities.
  - g. Land disturbing activities that could reasonably be expected to deliver sediment to adjacent properties, wetlands, or water resources.
- C. Note that land disturbing activities located within the Shoreland area (i.e., within a regulated distance of public waters) may require erosion and sediment controls through the Shoreland permit administered by the applicable LGU (i.e., the city, Dakota County, or Scott County) regardless of the thresholds provided herein.

### 7.3 Criteria

- A. Land disturbing activities encompassing one acre or more acre of land or if a project is part of a common plan of development or sale that ultimately will disturb more than an acre are regulated under the MN R100001 (NPDES General Construction Permit).
- B. Jurisdictional authorities must be provided a copy of an NPDES General Construction Permit associated with activities.
- A. Erosion and sediment control measures shall be consistent with Best Management Practices (BMPs), and shall be sufficient to retain sediment on site.
- B. All temporary erosion and sediment controls shall be installed on all down gradient perimeters before commencing the land disturbing activity, and left in place and maintained as needed until removed per LGU approval after the site had been stabilized. All permanent erosion control measures shall be installed and operational per the design and as required by the LGU.
- C. Erosion and sediment controls shall meet the standards for the NPDES General Construction Permit issued by the PCA, August 1, 2018, as amended, for projects disturbing more than 1 acre.
- D. Permanent cover of the site must be completed in accordance with the NPDES General Construction Permit requirements.
- E. All on-site stormwater conveyance channels shall be designed and constructed to withstand the expected velocity of flow from a 10-year frequency storm without erosion.

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~~F. If the activity creates more than 1 acre of disturbed area, and the activity is taking place on a site where soils are currently disturbed (e.g., a tilled agricultural site that is being developed), areas that will not be graded as part of the development and areas that will not be stabilized according to the timeframes specified in the NPDES General Construction Permit, shall be seeded with a temporary or permanent cover before commencing the proposed land disturbing activity.~~

#### **7.4 Exceptions**

The following land disturbing activities are exempt from Erosion and Sediment Control Standards and do not require a SWPPP or erosion and sediment control plan:

- ~~A. Minor land disturbing activities such as home gardens, repairs and maintenance work.~~
- ~~B. Construction, installation, and maintenance of individual sewage treatment systems other than those on steep slopes (e.g., 6 percent or greater), or on riparian lots within a Shoreland District.~~
- ~~C. Construction, installation, and maintenance of public utility lines or individual service connections unless the land disturbing activity affects more than 1 acre, in which case the Standards apply.~~
- ~~D. Installation of any fence, sign, telephone or electric poles, or other kinds of posts or poles.~~
- ~~E. Emergency activity necessary to protect life or prevent substantial harm to persons or property.~~
- ~~F. All maintenance, repair, resurfacing and reconditioning activities on impervious surfaces, which do not involve land disturbing activities outside of the existing impervious surfaces.~~
- ~~G. Construction of any structure on an individual lot in a subdivision with an approved SWPPP, so long as any land disturbing and stormwater management activity complies with the approved plan.~~

## SECTION 8: STORMWATER MANAGEMENT STANDARDS

### SUMMARY OF PURPOSE AND JURISDICTION GUIDANCE

When development and construction projects create new impervious surfaces like roofs and parking lots, they increase the amount of water and the speed of water that can leave the site as runoff. Stormwater management addresses the rate and volume of stormwater leaving sites through long-term practices like stormwater ponds and infiltration basins.

In Dakota County, cities and townships are generally the LGUs responsible for oversight of stormwater management requirements. Stormwater management requirements are often incorporated into requirements for building, agricultural building, grading, or other local permits. In Scott County, cities are the LGUs responsible for oversight of stormwater management in incorporated areas while Scott County ensures stormwater management requirements are met in the unincorporated areas.

### 8.1 Policy

It is the policy of the VRWJPO to:

- A. Manage stormwater to minimize erosion.
- B. Require land disturbing activities to address impacts on water resources, including cumulative impacts.
- C. Require development plans to consider impacts on local natural resources and corresponding receiving waters.
- D. Minimize impacts of runoff from land disturbing activities and preserve in-stream conditions supportive of a viable trout fishery by developing stormwater rate and volume control techniques.

E. Develop standards that include requirements for controlling stormwater runoff by minimizing impervious surfaces, maximizing infiltration, requirements for cities and townships to control stormwater rates crossing municipal boundaries, and creating stormwater storage that addresses not only peak flows for extreme events, but takes into account the cumulative effects of runoff volume, and will include stormwater rate control requirements.

~~F. Mitigate and reduce impacts of past increases in stormwater discharge on downstream conveyance systems.~~

~~G.F. Improve the condition Prevent further degradation~~ of waterbodies in the watershed included on the MPCA impaired waters [303(d)] list so that these waterbodies can be removed from the list.

~~H.G.~~ Encourage the use of existing natural retention and detention areas for stormwater management to maintain or improve existing water quality.

~~I.H.~~ Minimize water quality impacts (including thermal impacts) from land disturbing activities.

~~J.I.~~ Ensure stormwater management systems are maintained. ~~by establishing Stormwater Management System Maintenance Standards for cities and townships within the watershed.~~

## 8.2 Regulation

No person or political subdivision shall commence a land disturbing activity for “new development” or “redevelopment” (per Section 3: Definitions), ~~3.40 or 3.50), unless specifically exempted below,~~ without first obtaining a permit from an LGU, ~~or the VRWJPO that incorporates and approves a SWPPP and the stormwater management requirements below.~~

## 8.3 Criteria

~~Stormwater management criteria are presented separately below for post construction water quality, runoff temperature control, peak runoff rate control, and runoff volume control.~~

### ~~A. Post Construction Water Quality Criteria~~

- ~~1. Post construction stormwater runoff quality measures shall meet the standard for the General Permit Authorization to Discharge Storm Water Associated with Construction Activity under the NPDES General Construction Permit issued by the Minnesota Pollution Control Agency, June 25, 2013, as amended; except where more specific requirements are provided in paragraphs 2, 3, 4, and 5 below.~~
- ~~2. Infiltration/filtration options described under Runoff Volume Control Criteria are the preferred approach to satisfying the water quality treatment requirements of the NPDES General Construction Permit in areas that drain to the trout stream portions of the Vermillion River and its tributaries where such areas do not first drain to a waterbody with 10 or more acres of open water.~~
- ~~3. Ponds with permanent wet pools are allowed in areas tributary to the trout stream portions of the Vermillion River and its tributaries where such areas do not first drain to a waterbody with 10 or more acres of open water, if the applicant demonstrates:~~
  - ~~a. No net increase in the temperature of the discharge for the 2-year 24 hour event with the use of alternative technologies and has met the Volume Control requirements of these Standards; or~~

- b. That the wet pond is designed for zero discharge for the 2 year, 24 hour storm; or
- c. That the Volume Control requirements of these Standards are met and the following measures are used to the extent practical in order of decreasing preference:
  - i. The wet pond is designed with a combination of measures such as shading, filtered bottom withdrawal, vegetated swale discharges, or constructed wetland treatment cells that will limit temperature increases.
  - ii. Additional volume control measures and credits are used beyond that required to meet the Runoff Volume Standards as a means of limiting the frequency and duration of discharges from the pond.
- 4. The water quality control volumes necessary to meet the NPDES General Construction Permit that are satisfied using infiltration or filtration technologies (filtration only on Type C and D soils) can count toward the Volume Control requirements of these Standards.
- 5. Ponds with overflows or outlets located below the seasonally high water table are allowed only where it can be demonstrated that there is a reasonable need for such an outlet to control seepage damage to existing structures.
- 6. Redevelopment (see definitions) projects are required to incorporate water quality BMPs to the maximum extent practicable.

#### B. Runoff Temperature Control Criteria

Post construction runoff criteria for controlling temperature increases relies on the establishment of buffers as specified in the Buffer Standard; the prioritization of temperature sensitive BMPs such as infiltration and filtration, and the designation of temperature sensitive wet pond design approaches in the Post Construction Water Criteria above; and the control of runoff volume increases with the Runoff Volume Control Criteria below. No additional specific temperature criteria are incorporated since these other areas of the Standards emphasize approaches sensitive to runoff temperature. However, since these other areas of the Standards allow flexibility, and in some cases waivers, permit applications involving the creation of one or more acres of new impervious surface in the trout stream portions of the Vermillion River and its tributaries where such areas do not first drain to a waterbody with 10 or more acres of open water:

- 1. Must include a narrative description of the temperature sensitive practices incorporated; and
- 2. The LGU or the VRWJPO may limit or deny waivers, or may require additional runoff temperature BMPs, if the LGU or the VRWJPO finds that the site design does not minimize the potential for runoff temperature increases.

#### C. Peak Runoff Rate Control Criteria

- 1. A hydrograph method based on sound hydrologic theory will be used to analyze runoff for the design or analysis of flows and water levels.
- 2. Runoff rates for proposed activities, and development shall:
  - a. Apply land cover conditions existing in 2005 as the baseline for existing conditions in runoff calculations.
  - b. Not exceed existing runoff rates for the 1 year, 10 year, and 100 year critical duration storm events.
  - c. Be implemented by LGUs such that peak runoff rate controls keep future peak flood flows for the Vermillion River 100 year, 4 day event from increasing above existing conditions peak flows.
  - d. Numerical flow standards must be adopted at intercommunity boundaries as identified in the VRWJPO Hydrologic Model (2009



as amended) for the communities of Burnsville, Apple Valley, Rosemount, Lakeville, Farmington, Hastings, and Elko New Market. Those communities must apply the VRWJPO Hydrologic Model values in the calibration of their own local hydrologic models.

- 3.— Detention basins with permanent wet pools are allowed in areas tributary to the trout stream portions of the Vermillion River provided Post Construction Water Quality Criteria 3 above is met.

#### **D.— ~~Runoff Volume Control Criteria~~**

- 1.— ~~New development must incorporate volume control practices into the design sufficient to prevent an increase in the runoff volume for the 2-year 24-hour storm above 2005 conditions unless waived in accordance with Runoff Volume Control Criteria 6.— Determination of the necessary control volume to achieve this Standard can be completed by the LGU on a regional basis and included in an approved Local Water Plan, or calculated on a site-by-site basis for each individual proposal. Runoff volume reducing practices in site design are the preferred method for meeting volume control requirements and shall be considered prior to the design of required infiltration or filtration facilities. Practices applying the Minnesota Minimal Impact Design Standards (MIDS) are allowed. Applicants must identify specific practices and provide documentation of the application of the MIDS calculator (or functionally equivalent program) in practice selection and site design. Stormwater volume reducing BMPs other than those identified by MIDS, and their associated credits, must be approved by the VRWJPO. Final crediting must be approved by the LGU or VRWJPO before application to final design of site stormwater volume control facility requirements.~~
- 2.— ~~The water quality control volumes necessary to meet the NPDES General Construction Permit that are satisfied using infiltration or filtration technologies (filtration only on Type C and D soils) can count toward the Volume Control requirements of these Standards.~~
- 3.— ~~When using infiltration for volume control, infiltration volumes and facility sizes shall be calculated using appropriate site information and applying design criteria from the Minnesota Stormwater Manual.~~
- 4.— ~~Constructed infiltration facilities, such as infiltration basins and trenches:~~
  - a.— ~~Can only be used if there is pretreatment of stormwater runoff designed to protect the infiltration system from clogging with sediment and to protect groundwater quality;~~
  - b.— ~~Cannot be used within 400 feet of a municipal or other community supply well or within 100 feet of a private well unless specifically allowed by an approved wellhead protection plan;~~
  - c.— ~~Cannot be used for runoff from fueling and vehicle maintenance areas and industrial areas with exposed significant materials;~~
  - d.— ~~Cannot be used on areas with less than 3 feet vertical separation from the bottom of the infiltration system and the seasonal high water table; and~~
  - e.— ~~Cannot be used in Type C and D soils.~~



5. Infiltration areas must be fenced or otherwise protected from disturbance before the land disturbing activity starts.
6. Volume control amounts may be waived by the LGU or the VRWJPO for sites with predominately Type C and D soils, or where a shallow water table prevents construction of infiltration systems, provided the following are met in order of decreasing preference:
  - a. BMPs and site design practices to minimize the creation of connected impervious surfaces are used to the maximum extent practicable.
  - b. Underdrains are used to promote filtration instead of infiltration.
7. Vegetation used in conjunction with infiltration systems must be tolerant of urban pollutants, and the range of soil moisture conditions anticipated.

Stormwater management criteria are presented separately below for Runoff Volume Control, Peak Runoff Rate Control, and Water Quality Criteria:

#### A. Runoff Volume Control Criteria

1. New development or redevelopment must incorporate volume control practices into the design sufficient to prevent an increase in the runoff volume from the 2-year, 24-hour storm for site conditions prior to development. Determination of the necessary control volume to achieve this Standard is calculated on a site-by-site basis for each activity.
2. Runoff volume reducing practices in site design are the preferred method for meeting volume control requirements and shall be considered prior to the design of the required practices. Practices applying the Minnesota Minimal Impact Design Standards (MIDS) are allowed. Applicants must identify specific practices and provide documentation of the application of the MIDS calculator (or equivalent) in practice selection and site design. Stormwater volume reducing BMPs other than those identified by MIDS, and their associated credits, must be approved by the LGU. Final crediting must be approved by the LGU before application to final design of site stormwater volume control facility requirements.
3. The water quality control volumes that meet NPDES General Construction Permit criteria using infiltration or filtration technologies can count toward the Volume Control requirements of these Standards.
4. Infiltration volumes and facility sizes shall be calculated using design criteria from the Minnesota Stormwater Manual.
5. Infiltration areas must be protected from disturbance before the land disturbing activity starts.
6. For sites with predominately Type C and D soils, or where a shallow water table prevents construction of infiltration systems, the following additional criteria must be met in order of decreasing preference:
  - a. Minimize connected impervious surfaces to the maximum extent practicable.
  - b. Underdrains are used.
  - c. Wet ponds are designed for zero discharge for the 2-year, 24-hour storm.
7. Ponds with overflows or outlets located below the seasonally high water table are allowed only where it can be demonstrated that there is a reasonable need for such an outlet to control seepage damage to existing structures.

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#### B. Peak Runoff Rate Control Criteria

1. A hydrograph method based on sound hydrologic theory will be used to analyze runoff for the design or analysis of flows and water levels.
2. Numerical flow standards must be adopted at intercommunity boundaries as identified in the VRWJPO Hydrologic Model (2009 as amended) for the communities of Burnsville, Apple Valley, Rosemount, Lakeville, Farmington, Hastings, and Elko-New Market. Those communities must apply the VRWJPO Hydrologic Model values in the calibration of their own local hydrologic models.
3. Runoff rates for proposed activities shall apply land cover conditions existing prior to development and shall not exceed existing runoff rates for the 1-year, 10-year, and 100-year 24-hour duration storm event.

#### C. Water Quality Criteria

1. Post construction stormwater runoff quality measures shall meet the standards of the General Permit Authorization to Discharge Storm Water Associated with Construction Activity under the NPDES General Construction Permit (MNR10001) issued by the Minnesota Pollution Control Agency, August 1, 2023, as amended; except where more specific requirements which are intended to address an increase in runoff temperature:
  - a. Infiltration or other volume reduction practices are the preferred approach to minimize any increase in temperature in areas that drain to the trout stream portions of the Vermillion River and its tributaries from the 2-year 24-hour precipitation event where such areas do not first drain to a waterbody with 10 or more acres of open water.
  - b. Vegetation used in conjunction with infiltration systems must be tolerant of urban pollutants, and the range of soil moisture conditions anticipated.
  - c. Ponds with permanent wet pools are allowed in areas tributary to the trout stream portions of the Vermillion River and its tributaries where such areas do not first drain to a waterbody with 10 or more acres of open water provided no net increase in the temperature of the discharge for the 2-year 24-hour precipitation event.
  - d. Plans and reports must include a narrative description of the temperature sensitive practices incorporated

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### 8.4 Maintenance

All stormwater management ~~structures and facilities~~infrastructure shall be maintained in perpetuity to assure ~~that the structures and facilities~~function as originally designed. The responsibility for maintenance shall be assumed either by the city, township, or county with jurisdiction over the ~~structures and facilities~~infrastructure; or by the applicant, their successors, or assigns entering into a maintenance agreement with the LGU.

### 8.5 Easements

The applicant ~~may be required to~~shall establish, in a form acceptable to the LGU, temporary and perpetual easements, or dedicated outlots, for ponding, flowage, and drainage purposes over hydrologic features such as waterbodies and stormwater basins. The easements, or outlots, shall

include the right of reasonable access for inspection, monitoring, maintenance, and enforcement purposes.

#### **8.6 Covenants**

The LGU may require that the land be subjected to restrictive covenants, a conservation easement, or easement in form acceptable to the LGU, to prevent the future expansion of impervious surfaces and the loss of infiltration capacity.

#### **~~8.7 Waivers~~**

~~The VRWJPO or applicable LGU may waive on-site runoff rate, water quality, and runoff volume criteria if an LGU has an approved local water plan that provides for off-site stormwater facilities capable of meeting the Standards.~~

#### **~~8.8 Trading~~**

~~The VRWJPO allows off-site pollutant trading on a case-by-case basis. Any proposed trade must document conditions whereby the proposed off-site facility or practice provides a benefit that directly offsets any potential pollutant increase to the stream resulting from the proposed~~

development. The responsibility for maintenance shall be addressed according to Section 8.4 of these standards. Any proposed off-site trade must be approved by the VRWJPO before implementation. Cash in Lieu to LGU?

### 8.9 — Exceptions

The exceptions included in section 7.4 for the Erosion and Sediment Control Standards also apply for these Stormwater Management Standards.

## SECTION 9: DRAINAGE ALTERATION STANDARDS

### SUMMARY OF PURPOSE AND JURISDICTION GUIDANCE

The intent of these drainage alteration standards is to provide a means for permitting significant drainage changes within the watershed that may have negative impacts for water resources.

There is no specific LGU that oversees drainage alteration permits, but ~~LGU's local communities~~ should review proposed drainage alterations as part of subdivision reviews, building permits, grading permits, or other local controls. ~~LGU's local communities~~ should provide land alteration plans to the VRWJPO for projects with proposed drainage alterations and are encouraged to contact the VRWJPO staff for assistance with drainage alteration concerns.

### 9.1 Policy

It is the policy of the VRWJPO to:

- A. Use existing natural retention and detention areas for stormwater management to maintain or improve existing water quality.
- B. Manage stormwater to minimize erosion.
- C. Allow outlets from landlocked basins, provided such outlets are consistent with State and Federal regulations, and the downstream impacts, floodway elevation impacts, riparian impacts, and habitat impacts of such outlets have been analyzed and no detrimental impacts result.
- D. Mitigate and reduce the impact of past increase in stormwater discharge on downstream conveyance systems.
- E. Address known flooding/erosion problems that cross jurisdictional boundaries and address other boundary issues and the diversion/alteration of watershed flows in local water plans.
- F. Address gully erosion problems in the watershed.
- G. Maximize upstream floodwater storage.

### 9.2 Regulation

No person or political subdivision shall artificially drain surface water, or obstruct or divert the natural flow of runoff so as to affect a drainage system, or harm the public health, safety, or general welfare of the VRWJPO, without first obtaining a ~~authorization permit~~ from the LGU or the VRWJPO.

### 9.3 Criteria

- A. Outlets from landlocked basins with a tributary drainage area of 100 acres or more will be allowed, provided such outlets are consistent with other portions of these Standards, State and Federal regulations, and the downstream impacts, ~~floodplain elevation impacts,~~ riparian impacts, and habitat impacts of such outlets have been analyzed and no detrimental impacts result. The analysis and determination ~~of detrimental impacts~~ shall:
1. Use a hydrograph method based on sound hydrologic theory to analyze runoff for the design or analysis of flows and water levels;
  2. Ensure a hydrologic regime consistent with the Peak Runoff Rate Control Criteria and the Runoff Volume Control Criteria of these Standards;
  3. Ensure the outlet does not create adverse downstream flooding or water quality conditions, or materially affect ~~the~~ stability of downstream watercourses;
  4. Maintain dead storage within the basin to the ~~maximum~~ extent ~~practicable~~~~possible while preventing damage to property adjacent to the basin;~~
  - ~~5. Ensure that the low floors of new structures adjacent to the basin are set consistent with the Floodplain Alterations Standards; and~~
  - ~~6.5. Ensure that proposed development tributary to the land-locked basin has incorporated runoff volume control practices to the~~ ~~maximum~~ extent practicable.
- B. Artificial drainage, flow obstruction, and diversions involving watercourses, public waters, public waters wetlands, ~~and~~ wetlands with drainage areas of 640 acres or more, will be allowed provided such alterations or diversions are consistent with other portions of these Standards, State and Federal regulations, and the downstream impacts, riparian impacts, ~~floodplain elevation impacts,~~ and habitat impacts of such alterations or diversions have been analyzed and no detrimental impacts result. Proposals for drainage alterations and diversions shall demonstrate that:
1. There is a reasonable necessity for such drainage alteration or diversion to improve or protect human health and safety, or to improve or protect aquatic resources;
  2. Reasonable considerations have been made and actions taken to avoid unnecessary injury to upstream and downstream land and water resources;
  - ~~3. The utility or benefit accruing to the land on which the drainage will be altered outweighs the harm resulting to the land receiving the burden; and~~
  - ~~4.3. The drainage alteration or diversion is being accomplished by improving and aiding the normal and natural system of drainage according to its natural carrying capacity, or, in the absence of a practicable natural drain, a reasonable and feasible artificial drainage system that does not create adverse impacts is being implemented.~~
- C. Drainage alterations, diversions, and landlocked basin outlets shall be provided with stable ~~outfalls and channels designed to withstand erosion during the 10-year, 24-hour precipitation event.~~ ~~channels and outfall.~~

#### 9.4 Exceptions

- A. No ~~authorization permit~~ shall be required where it is demonstrated that the proposed drainage alteration or diversion does not cause off-site erosion, sedimentation, flooding, or other damage.
- B. The LGU ~~or the VRWJPO~~ may waive the requirements regarding upstream and downstream flooding impacts if the applicant submits easements or other documentation in form acceptable to the LGU ~~or the VRWJPO~~ demonstrating and recording the consent of the owner of any land burdened by the proposed alteration.

### SECTION 10: AGRICULTURAL STANDARDS

#### SUMMARY OF PURPOSE AND JURISDICTION GUIDANCE

~~The intent of these agricultural standards is to increase awareness for voluntary implementation of Best Management Practices to affect improvements in water quality and retain water in the landscape.~~

~~The VRWJPO approach to Agricultural Standards is voluntary at this time and is based on:~~

- ~~A. Requiring a Stewardship Management Plan as part of being eligible to receive cost share for incentive practices sponsored by the VRWJPO; and~~
- ~~B. Implementation of the Minnesota Nitrogen Fertilizer Management Plan of 2015 and the Pesticide Management Plan of 2005.~~

~~The VRWJPO recognizes that the Minnesota Department of Agriculture (MDA) is the lead state agency for most pesticide and fertilizer environmental and regulatory functions (Minn. Statute Ch. 18B and 18C). In accordance with the 1989 Groundwater Protection Act, the MDA has developed a strategy for addressing groundwater contamination from agricultural sources. This strategy focuses on promoting new or updated voluntary BMPs. A regulatory approach may be taken, if the implementation of voluntary BMPs is ineffective and BMPs are not widely adopted given a reasonable timeframe for implementation.~~



# Chapter Seven

## ***Running Town Meetings Complying with the Open Meeting Law and Other Notice Requirements***

### **§ 7-1. Overview**

The past few chapters have described the powers and the decision-making process for town boards. Despite the complex nature of town governance, some boards fall into a routine. This can be an efficient way of handling normal town business. However, routines should not lull the board into a sense of complacency when handling the mechanics of town meetings. Failing to pay attention to the details of the publishing, posting, record keeping and the Open Meeting law can be fatal to the town board's decision and could even expose the officers to criminal liability.

The Open Meeting Law and statutes governing townships can sometimes provide an obstacle course for the unwary because they each have certain requirements towns must meet. This chapter discusses the best practices for preparing and running town meetings and meeting the obligations required by law.

### **§ 7-2. Open Meeting Law**

Few laws impact the operation of local government as directly as the Open Meeting law. Minn. Stat. Chapter 13D. All town officers need to develop and then maintain a working knowledge of the requirements of the open meeting law. Born from the idea that public business should be conducted in public, the Open Meeting law requires local governments to do its work at properly noticed public meetings. This relatively simple concept can be very difficult to apply in a given situation.

#### **A. Complying with the Open Meeting Law**

The Legislature drafted the Open Meeting law very broadly. ***It applies to the governing body of local governments and any committee, subcommittee, board, or department established by the local government.*** This means the town board, town planning commis-

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sion, board of appeals and adjustment, joint powers board, park board, and any other board or committee the town board formally establishes must comply with the Open Meeting law.

### B. Open Meeting Elements

There are five elements to consider when applying the Open Meeting Law:

1. **Quorum of the public body.** Two supervisors constitute a quorum of a three-supervisor board and three supervisors constitute a quorum of a five-supervisor board. Minn. Stat. § 366.01, subd. 1. For other committees or boards, a majority of the voting members usually constitutes a quorum; however, the bylaws of the group should always be referenced to see if quorum was expressly defined for the group.
2. **Voting members of a public body.** The concern is that those with the power to make decisions affecting the public do not discuss public business among themselves in private. This concern does not reach discussions with or among those who do not have the power to make the decision. As such, while a quorum of supervisors may not discuss public business outside of a meeting, a supervisor can usually discuss town business with the clerk or treasurer without implicating the Open Meeting law.
3. **Gathering requirement.** This may seem like a minor point, but it has raised questions over whether discussions via electronic communications such as on the telephone, by e-mail, or through social media are covered by the Open Meeting law. When interpreting the Open Meeting law, courts often turn to the law's purpose. When one considers that many of the evils the Open Meeting law is intended to guard against can be committed through electronic communications, it becomes clear that such communications between supervisors must be avoided. In other words, do not hit "Reply all" when responding to an email relating to town business.
4. **"Discuss, decide, or receive information."** A common misunderstanding of the Open Meeting law is that it only applies if a decision is made at the gathering. That is not true. Not only does the Open Meeting law apply to pure discussions among public officers, it can even be interpreted as applying to the passive act of receiving information.
5. **Must relate to the business of the public body.** The Open Meeting law would apply to two supervisors discussing the proposed adoption of a town zoning ordinance, but not to discussions of the weather or the local football team.

### C. Limited Exception for On-Site Inspections

Because most towns do not have staff, the Legislature created a limited exception for towns, allowing a quorum or more of supervisors to perform an on-site inspection for the town. Minn. Stat. § 366.01, subd. 11. This exception is only available when the town has no employees or other staff able to perform the inspection and the town board acts in a staff capacity. If a news medium has filed a written request for notice of on-site inspections, the board must make a good faith effort to inform the news medium before the inspection.

*This is a very valuable exception for town boards, but the challenge is to always remember that substantive business is not to be conducted during the inspection.* If the board needs to conduct an on-site inspection to gather information that will be used to make a substantive decision, then the on-site inspection can be conducted but the board must wait for a board meeting open to the public to discuss and decide the issues related to the on-site inspection.

## § 7-3. Requirements of Open Meeting Law

The Open Meeting law requires:

- Notice of meetings;
- That meetings be held in public;
- That the public be able to view written materials available to the board during the meeting, with some exceptions ; and
- That meetings not be closed to the public except as the statute allows.

## § 7-4. Notice of Meetings

Minn. Stat. § 13D.04, subd. 1 outlines the requirement for notices.

- **Regular board meetings:** Usually a town board will establish a schedule of regular meetings held at pre-established dates, times, and places (e.g., 7:00 p.m. on the second Tuesday of the month at the town hall). A schedule of the meetings must be produced and kept on file at the board's primary office.
- **Special Meetings:** If a board meeting is held at a different date, time, or place than indicated on the regular meeting schedule, the meeting is treated as a special board meeting. **For special board meetings, notice of the date, time, place, and purpose of the meeting must be posted on the town's bulletin board at least three days before the day of the meeting.** Minn. Stat. § 13D.04, subd. 2. However, MAT recommends towns post notices of special meetings with at least 5 days notice, counting the day of posting and the day of the meeting. This is because the statute says the day of the meeting is not counted and another statute says a day is to be added when a statute provides less than 7 days to

### Pervasiveness of the law

Consider a quorum or more of the town board attending a meeting of another public body such as the county planning commission meeting. If town business is discussed at the meeting, it may be argued the Open Meeting law required the town board to provide its own notice of the supervisor's attendance at the county meeting. While it's not certain the supervisors violated the Open Meeting Law merely by attending the county's meeting and hearing information, a person can argue it. Given that uncertainty, towns may take the cautious approach of posting those kinds of events.

perform an act. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day must be omitted from the computation. Minn. Stat. § 645.15. If anyone has filed a written request for notice of special meetings with the public body, the public body must mail or otherwise deliver notice to them at least three days before the meeting.

- **Emergency Meetings:** Town boards may meet without notice when responding to an emergency. An emergency exists only if the board finds a condition that threatens public health or safety. Minn. Stat. § 13D.04, subd. 3. The emergency must involve circumstances that, in the judgment of the town board, require immediate consideration by the board to protect the public. It is possible for the press to make a written request to receive notice by telephone or email of emergency meetings.
- **Publishing is NOT Required:** There is no requirement to publish notices of regular or special board meetings under the Open Meeting Law. Other statutes may require publication for the use of certain powers.

The Minnesota Department of Administration Data Practices Division provides assistance on Minnesota's Data Practices and Open Meeting laws. Its website, <https://mn.gov/admin/data-practices/> includes information and opinions giving guidance on complying with the Open Meeting law. Anyone may seek an opinion from the Department of Administration regarding the Open Meeting law. However, opinions are not binding and may offer a different interpretation than one provided by your township attorney or MAT.

## A. Posting Notices

The Open Meeting Law requires posted notice of meetings, but does not require published notice of meetings.

The town board must designate one or more places in the town as public places where legal notices will be posted. Minn. Stat. § 366.01, subd. 8. Posting notices remains as one of the primary methods for informing the public of meetings and board actions and is a way to comply with the Open Meeting law.

When designating a posting place, the board must be sure the place is accessible after regular business hours. Having a posting place on an inside hallway bulletin board has been determined not to be appropriate as an official post-

ing place for public notices.

Facilities for posting notices at the designated locations must also be provided (i.e., a bulletin board). A board may waive the posted notice requirements of any law, but must then publish the notice once each week for two successive weeks in a newspaper of general circulation in the town. Minn. Stat. § 366.01, subd. 8.

At least one of the posting places should be on the building where the board holds its meetings. Keep in mind that the proper method of noticing a special board meeting is to post the notice on the town's principal bulletin board, or if the town has no principal bulletin board, on the door of its usual meeting room.

## B. Publishing Notices

Publication of notices may be required by statutes other than the Open Meeting Law. Therefore, the town board must select an official newspaper for publishing notices. Minn. Stat. § 331A.04, subd. 1. Consider making the designation annually at the reorganization meeting. When designating an official newspaper, the town board must consider the following:

1. The official newspaper must be a qualified newspaper. "A newspaper that is not qualified must inform a public body that presents a public notice for publication that it is not qualified." Minn. Stat. § 331A.02, subd. 1.
2. If a qualified newspaper has its known office of issue in the town, that newspaper shall be designated. Minn. Stat. § 331A.04, subd. 2.
3. If no qualified newspaper has its known office of issue in the town, then the town must designate the qualified newspaper

that has a secondary office in the town. Minn. Stat. § 331A.04, subd. 3.

4. If no qualified newspaper has its offices in the town, then a qualified newspaper of general circulation in the town shall be designated. Minn. Stat. § 331A.04, subd. 4.

An exception to the normal priority set out to designate an official newspaper is available, but is complex and rarely used. Minn. Stat. § 331A.04, subd. 6.

The newspaper must give the town an affidavit of publication setting forth certain information before the paper may be compensated for the publication. Minn. Stat. § 331A.07.

The maximum rate a newspaper may charge for publication of a public notice is controlled by statute. Minn. Stat. § 331A.06, subd. 1.

Statutes typically control when and how often a notice must be published.

- **When:** The statute will use some form of the word "publish" to indicate when a no-

**Official Newspapers:** The Secretary of State has a list of 300 legal newspapers currently registered with the Minnesota Secretary of State's office. Legal newspapers are officially designated publications in which citizens and governmental units advertise notices required by law.

<http://www.sos.state.mn.us/business-liens/start-a-business/legal-newspapers/>

tice must be placed in the town's official newspaper. Published notice is most often required when the board is conducting a hearing, taking an action that affects someone's property, or for the annual town meeting.

- **Frequency:** A notice shall be published once unless the statute provides otherwise. Minn. Stat. § 331A.05, subd. 2(a). If a certain number of "weeks" of notice is required, the notice must be published once each week for the number of weeks specified. Minn. Stat. § 645.11. When the statute requires "successive weeks" of notice, "[t]he publication upon any day of such weeks shall be sufficient publication for that week, but at least five days shall elapse between each publication. At least the number of weeks specified in 'successive weeks' shall elapse between the first publication and the day for the happening of the event for which the publication is made." Minn. Stat. § 645.13. Town boards may provide for additional notice by publishing more frequently than required or by publishing additional notices in non-qualified newspapers. Minn. Stat. § 331A.05, subd. 5.
- **Timing:** Occasionally, the statute will specify a certain number of days that must elapse between the last publication and the happening of the event. For instance, publications for road bids must be published for

"two successive weeks" with "the last publication to be made at least ten days before the time fixed for receiving and letting the contract." Minn. Stat. § 160.17, subd. 2. If the statute does not specify a certain time, then for notices intending "to inform the public about a future event, the last publication shall occur not more than 30 days and not less than seven days before the event." Minn. Stat. § 331A.05, subd. 2(b). For notices intending "to inform the public about a past action or event, the last publication shall occur not more than 45 days after occurrence of the action or event." Minn. Stat. § 331A.05, subd. 2(c).

An error in the publication caused by the publisher does not invalidate the actions taken at a meeting. Minn. Stat. § 331A.05, subd. 7 ("If through no fault of the local public corporation, an error occurs in the publication of a public notice, the error shall have no effect on the validity of the event, action, or proceeding to which the public notice relates.") To take advantage of this protection, town clerks should at least keep a copy of all notices presented to the paper for publication. A copy of the posted notice, supported by an affidavit of posting, corresponding to the published notice will serve as a record of what was presented to the paper.

The general publication requirements for town ordinances are contained in Minn. Stat. § 365.125.

## § 7-5. Meetings Must be Held in Public

"All meetings, including executive sessions, must be open to the public . . . ." Minn. Stat. § 13D.01, subd. 1. This is the first line of the Open Meeting law and is the cornerstone of its primary purpose. The statute does not attempt to detail what it means to have meetings open to the public, but there are certain implications

that inevitably flow from the requirement. For instance, the room in which the meeting occurs should be large enough to accommodate the expected number of attendees. Officers should not whisper among themselves, pass notes, or exchange text messages while conducting a meeting.

## § 7-6. Interactive Technology

The Open Meeting Law allows public bodies to conduct meetings by interactive television if specific conditions are met. They include:

- 1) all members of the body participating in the

meeting can hear and see one another and can hear and see all discussion and testimony presented at any location at which at least one member is present;

- 2) members of the public at the regular meeting location of the body can hear and see all discussion, testimony, and votes of the body;
- 3) at least one member of the body is physically present at the regular meeting location;
- 4) all votes are conducted by roll call; and
- 5) each location at which a member of the body is present is open and accessible to the public.

Minn. Stat. § 13D.02, subd. 1.

A public body using interactive television to conduct a regular, special, or emergency meeting must provide notice of the regular meeting location, and notice of any site where a member of the public body will be participating. The timing and method of providing the notice must follow the requirements associated with the particular type of

meeting. Minn. Stat. § 13D.02, subd. 4.

Each member of the public body that participates in the meeting is considered present for determining a quorum and participation. Minn. Stat. § 13D.02, subd. 2. When interactive television is used, the public body must allow, to the extent practicable, others to monitor the meeting electronically from a remote location. The public body may require the person to pay the additional costs for the connection if they can be documented. Minn. Stat. § 13D.02, subd. 3.

These procedures are also incorporated into Open Meeting Law provisions that apply during a pandemic illness or emergency that makes gathering unsafe. *See* Minn. Stat. 13D.021. But, the use of that power has additional duties to the public. Town boards are urged to review that section if the powers are ever needed.

## § 7-7. Record Keeping and Disclosure

All votes taken at a meeting under the Open Meeting Law must be recorded in the board's minutes. Minn. Stat. § 13D.01, *subd. 4(a)*. The "vote of each member must be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute." Minn. Stat. § 13D.01, subd. 4 (b).

The journal must be open to the public during all normal business hours where records of the town are kept. Minn. Stat. § 13D.01, subd. 5. Because many towns do not hold regular office hours, towns should provide other reasonable access to the journal. The means of access is usually worked out between the clerk and the requestor. Towns may refer to Document Number **TM7000** for a sample policy addressing requests for information.

Public bodies must make available to the public at least one copy of any printed materials relating to an agenda item of a public meeting prepared or distributed by or at the

direction of the governing body or its employees if the information was distributed to all members before the meeting, at the meeting, or made available to the members in the meeting room. Minn. Stat. § 13D.01, subd. 6 (a). This requirement does not apply to materials relating to agenda items of a properly closed meeting. Minn. Stat. § 13D.01, subd. 6(b).

Towns in the seven-county metropolitan area exercising powers under Minn. Stat. § 368.01 (often referred to as urban powers) must comply with the Data Practices Act (DPA). These towns must develop, implement, and annually review a policy for complying with DPA. Minn. Stat. § 13.02, subd. 11. Towns in this category have had to act very quickly to become familiar with a very complicated area of the law.

Refer to Document Number **TM5000** for additional information on the DPA.

## A. Minutes

Minutes serve as the official record of the town's meetings. It is the duty of the town clerk to keep in the clerk's office a true record of all of the board's proceedings and "to have custody of the records, books, and papers of the town and file and safely keep all papers required by law to be filed in the clerk's office ...." Minn. Stat. § 367.11 (1) & (2). All public officers are required to "make and preserve all records necessary to a full and accurate knowledge of their official activities. All government records shall be made on a physical medium of a quality to insure permanent records." Minn. Stat. § 15.17, subd. 1.

## B. Minute Contents

Meeting minutes should include a record of what was done at the meeting. Minutes should not be a transcription of the statements of those present and should never reflect the author's opinion, favorable or otherwise, on anything said or done. In discussing the record-keeping requirements under Minn. Stat. § 15.17, the Minnesota Supreme Court said to record official actions "all that need be kept of record is information pertaining to an official decision, and not information relating to the process by which such a decision was reached." *Kottschade v. Lundberg*, 160 N.W.2d 135, 138 (Minn. 1968). The court recognized that trying to articulate the basis for every action would be extremely time consuming and "virtually impossible."

Despite this general rule, sometimes it is appropriate to include in the minutes the findings of fact and reasoning behind a decision. If the only record of a potentially controversial decision is the minutes (versus a resolution for instance), the board should include the key points it used to decide the issue.

The purpose behind this recommendation is to ward off claims the board's decision was "arbitrary and capricious." If the only record of the board's response to a request is their decision to deny the request, it would be difficult for a reviewing court to decide whether the

Items that should normally be in the minutes of board meetings include:

1. the kind of meeting (e.g., regular town board meeting);
2. name of the governing body;
3. date, time, and place of the meeting;
4. full name of all the town officers, present or absent;
5. reading and approval of previous meeting minutes;
6. reading and approval of the financial report;
7. the individual items of business raised and the full name of the officers making and seconding the motion;
8. the votes of the supervisors on any action taken in the meeting, including the vote of each supervisor on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute; Minn. Stat. § 13D.01, subd. 4(b);
9. adjournment and time of adjournment; and
10. signature by the clerk and chair upon approval.

board acted reasonably. The issue would likely be reopened with new testimony and the board trying to prove it acted on legitimate reasoning. If, however, the basic reasoning is set out in the minutes, a court may find a sufficient basis for the decision exists in the record without re-examining the issue.

Refer to Document Number **TP4000** for additional information on findings of fact.

The clerk is "to record minutes of the proceedings of every town meeting in the book of town records and enter in them at length every order or direction and all rules and regulations made by the town meeting ...." Minn. Stat. § 367.11(3). The language referring to entering "at length" seems to suggest a fairly detailed set of minutes. However, the repeated reference to the "town meeting" also suggests the Legislature was only referring to annual and special town meetings rather than to board meetings. As such, clerks should take note of this requirement with respect to the listed items occurring at annual and special town meetings.

## C. Changing and Approving Minutes

While typically the clerk takes the minutes, the power to decide the content and level of detail of the minutes is vested in the board of supervisors. Op. Atty. Gen. 851-C, March 5, 1992. When the board reviews the previous meeting

minutes, it may change the content of the minutes to more accurately represent the content of the meeting. The board can also adopt a policy regarding the level of detail to be reflected in the minutes.

## § 7-8. Retaining Minutes

All officers and agencies of the state, counties, cities, towns, school districts, municipal subdivisions or corporation, or other public authorities or political entities within the state...shall make and preserve all records necessary to a full and accurate knowledge of their official activities. Minn. Stat. § 15.17. The responsibility for any given agency's records lies with the chief administrative officer, which is the Town Clerk. Town boards need to provide the clerk adequate means to keep and preserve the town's records.

Minutes must be permanently retained, unless they are transferred to the state archives. This transfer is done by adopting a document retention resolution.

Government entities must establish ongoing records management programs, keep record inventories, and create records retention schedules specifying retention periods and disposition by record type. Minn. Stat. § 138.17 subd. 7 and § 138.19,

Document number **RR2000** in the MAT Information Library contains a sample resolution adopting the Minnesota Township General Records Retention Schedule for the management

The State Archives provides general guidance to government entities on records management topics. *Preserving and Disposing of Government Records*, a document they produce, details the records management responsibilities of government entities, the process for creating/adopting/amending a records retention schedule, and other important aspects of records management.

and destruction of the records in the town's possession.

Once a retention resolution has been adopted, a notice must be sent to the Minnesota Historical Society Government Records Archivist for their signature. No records can be destroyed before the Minnesota Historical Society have signed it. The notification form is found on in the Information Library on the MAT website.

## § 7-9. Recording Meetings

A town board can audio record its meetings. In these cases, the board must decide whether the recording is intended only to assist the clerk to take accurate minutes, or if the tape will be made a part of the official record of the meeting.

Recordings made part of the official record must be preserved and protected like the minute book. Boards should announce at the beginning of the meeting that they are recording the meeting.

**Towns must audio record closed meetings, except those closed under the attorney-client privilege, and preserve the recording for at least three years.** Minn. Stat. § 13D.05, subd. 1(d). It may be helpful for boards to develop a policy regarding access to its records that can address a range of issues including the amount the town will charge for copies.

## §7-10. Releasing and Publishing Minutes

The town's journal or minute book, must be open to the public during all normal business hours where such records are kept. Minn. Stat. § 13D.01, subd. 4(a). This requirement is separate from any requirement of the Data Practices Act, so all towns are subject to the requirement.

Towns exercising urban town powers within the seven-county metropolitan area are subject to the requirements of the Data Practices Act found in Minn. Stat. Chap. 13. They may have additional requirements related to the release of information.

All town boards must provide reasonable access to its meeting minutes. Op. Atty. Gen. 436-F, March 17, 1941. What is reasonable access for those towns not bound by the data

practices act will depend upon the particular situation of the town, but these towns must strive to provide such access. Town boards may develop a policy regarding access to its records that can address a range of issues including the amount the town will charge for copies.

Because of the need to preserve the town's official records, the clerk should not release original records. Instead, the clerk should ensure copies are provided to data requestors to maintain the safety of the town's data.

Towns are not required to publish their minutes, but the board may publish its minutes or other information in its official newspaper, a newsletter, webpage, or any other medium.

## § 7-11. Closed Meetings

In a few instances, towns may close a meeting to the public. Before closing any meeting, certain procedures must be followed. Most important, **the board must identify the statute that allows closure of a meeting before the meeting can be closed.** Closed meetings, except those closed to protect the attorney-client privilege, must be audio recorded and retained for the time required in statute.

The notice requirements of the Open Meeting law apply to closed meetings, so all meetings begin as open meetings. Minn. Stat. § 13D.04, subd. 5. Before closing a meeting, the board must announce the meeting will be closed, state the statute that authorizes the closure, generally describe the subject to be discussed, and record the statute and announcement in the board minutes. Minn. Stat. § 13D.01, subd. 3.

Closed meetings are still subject to the notice requirements of the Open Meeting Law. A closed session that is to be held within a regular meeting does not need additional posted notice for the closed session. A closed session that will be held in a special meeting must comply with the special meeting notice requirements of the law. The more conservative approach and the one we recommend. See Minn. Stat. § 13D.04, subd. 5.

### A. When Meetings May be Closed

There are a limited number of instances when a meeting may be closed to the public. The following are the more common situations in which a board may close a meeting.

- **To evaluate the performance of an individual who is subject to the board's authority.** Minn. Stat. § 13D.05, subd. 3(a). Before closing

the meeting, the board must identify the individual to be evaluated and at the next Open Meeting the board must summarize its conclusions regarding the evaluation. The review must be in an open meeting if requested by the employee. Elected officials are not subject to the board's authority, so meetings cannot be closed to evaluate the performance of an elected officer.



- **Attorney-client privilege.** Minn. Stat. § 13D.05, subd. 3(b). In general, towns may close a meeting to confer with an attorney if they have been sued or believe they are about to be sued and are discussing litigation strategy. This is limited exception so towns should rely on the advice of counsel before closing for this purpose. See *Prior Lake America v. Mader*, 642 N.W.2d 729 (Minn. 2002) and *Minneapolis Star & Tribune Co. v. House & Redev. Auth.*, 251 N.W.2d 620 (Minn. 1976). It appears a town may only close a meeting with its attorney under this exception when: *the balance of competing public policies in the particular situation dictates the need for “absolute confidentiality”; the need for absolute confidentiality relates specifically to litigation strategy; and the board has already made a substantive decision on the underlying matter.*
- **To determine the asking price for real or personal property to be sold by the town.** Minn. Stat. § 13D.05, subd. 3(c) states that a town may close a meeting to determine asking price, review appraisal data, and develop or consider offers or counteroffers for real or personal property. Various conditions apply to meetings closed for one of these reasons including having to announce the particular property involved, audio record the closed meeting, develop a list of everyone who attended the meeting, and making the recording and list available to the public after the meeting.

#### **B. When Meetings Must be Closed**

A meeting must be closed if expressly required by

law. The Open Meeting law lists two situations in which a meeting must be closed. The first is if the meeting would include discussion of:

1. data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults;
2. data that concerns an investigation of law enforcement personnel; or
3. data that concerns education data, health data, medical data, welfare data, or mental health data that is not public data. Minn. Stat. § 13D.05, subd. 2(a). Meetings may not otherwise be closed to discuss data that is not public data. Minn. Stat. § 13D.05, subd. 1. Even though most towns were intentionally excluded from the definition of government entities covered by the Data Practices Act, boards must remain aware of this restriction and if, in the unlikely event, they find themselves in a situation of having to discuss the above information, it will likely need to close the meeting. In such a situation it is recommended the board contact an attorney for assistance.

The second type of meeting that must be closed is one in which the board will give preliminary consideration to allegations or charges against an individual subject to the board’s authority. Minn. Stat. § 13D.05, subd. 2(b). If the board concludes that discipline of any nature may be warranted, further meetings or hearings relating to those specific charges or allegations must be open. The meeting must also be opened at the request of the individual who is the subject of the meeting.

## **§ 7-12. Penalties for Violating the Open Meeting Law**

***A town officer found to have intentionally violated the Open Meeting law is personally subject to civil liability for up to \$300 for a single occurrence.*** Minn. Stat. § 13D.06, subd. 1. The town may not pay the fine for the officer. A court may also award a party to the suit up to \$13,000 in costs and attorney fees. Minn. Stat. § 13D.06, subd. 4. Violation of this law is a civil matter, not a crime, so suits alleging such violations are brought by private parties, not prosecutors.

If the board is found to have violated the Open Meeting law in a way that is directly related to an opinion previously issued it by the Department of Administration, the court must award the plaintiff its attorney’s fees up to \$13,000. If multiple plaintiffs bring the Open Meeting law violation suit, each of them could be awarded up to \$13,000 in attorney fees even though they are suing over the same alleged violations. *Brown*, 723 N.W.2d at 46. The town may pay such costs and attorney fees if they are levied against a town officer. No monetary penalties

or attorney fees may be awarded against a member of a public body unless the court finds there was intent to violate the Open Meeting law. *Minn. Stat. § 13D.06, subd. 4(d)*. There is no “specific intent” requirement that must be found before a court imposes this penalty. This means that the court does not need to find a specific purpose for violation Open Meeting law. Instead, all the court needs to find is that Open Meeting law was knowingly or voluntarily violated.

If an officer is found to have intentionally violated the Open Meeting law in three or more actions involving the same governing body, the officer forfeits any further right to serve in any capacity with the governing body for a period of time equal to the term of office the person was then serving. *Minn. Stat. § 13D.06, subd. 3*.

In order to remove an officer, each violation must be adjudicated separately. This allows the officer to be made aware of the violation and to bring their conduct into compliance. If separate adjudications were not required,

someone could simply sit back, wait for multiple violations to occur, and then bring them all at the same time with the goal of unseating the officer.

One of the more unsettling developments concerning the Open Meeting law is the court’s willingness to hold that officers can be found to have violated the Open Meeting law for meetings they do not attend. In *Brown v. Cannon Falls Tp.*, 723 N.W.2d 31, 48 (Minn. App. 2006), the court held that if an officer is instrumental in arranging a meeting that violated the Open Meeting law, the person can be found to have intentionally violated the law even though he or she did not actually attend the meeting. It is not clear how this holding will be applied in other cases, but it does create another level of uncertainty for town officers.

Any person may bring suit alleging an officer violated the requirements of the Open Meeting law. *Minn. Stat. § 13D.06, subd. 2*. Allegations of Open Meeting law violations are common but Findings that a government official actually violated the Open Meeting Law are uncommon.

## § 7-13 Meeting Chart: Regular, Special, Emergency, Recessed & Closed

Type	Reasons	Notice	Agenda	Minutes
<b>Regular Meeting</b>	To conduct the business of the township	Towns are required to keep a schedule of all regular meetings on file in its primary office. <i>Minn. Stat. § 13D.04 sub 1.</i> It is also recommended that notice be posted on the designated facilities for posting notice. Note: if the regular meeting place changes, the meeting must be noticed as a Special Meeting.	No agenda is required to be posted ahead of time, but there should be one at the meeting that people can view.	Yes. Summary of what happened at the meeting. It must contain a record of the votes of the Town Board. <i>Minn. Stat. § 15.17 sub 1.</i> Every appropriation must be voted on, except for payments of judgments, claims or amounts fixed by statute. <i>Minn. Stat. § 13D.01 sub 4</i>
<b>Special Meeting</b>	To conduct business outside the regular meeting.	Yes, it <b>must include date, time, place</b> on the principal bulletin board of public body or if none, on its meeting door. Notice must be posted at least three days (not counting first and last day, so really five days) before the meeting. Notice <b>must</b> also be delivered to anyone who has requested a notice of special meetings. It <b>may</b> publish notice at least 3 days before the meeting in the official newspaper. <i>Minn. Stat. § 13D.04 subd 2.</i>	Yes, it must be posted. Special meetings can only cover items listed as the purpose of the meeting.	Yes, taken like regular meeting minutes.
<b>Emergency Meeting</b>	Immediate consideration to protect the public body: Safety concerns like a road or bridge washout and something must be done to maintain safe travel. <i>Minn. Stat. § 13D-04 sub 3 (e)</i>	No. This is an exception to the Open Meetings Law. The only requirement is a good faith effort must be made to notify news media if they have filed a written request for notice.	No. However, the Town Board may conduct an emergency inspection, if it does not have staff. <i>Minn. Stat. § 366.01</i>	Yes. Minutes must be kept similar to other meetings. Include the circumstances that led the Board to call an emergency meeting.
<b>Recessed or Continued Meeting</b>	To continue discussion not completed at a meeting or hearing	The time and place for reconvening the meeting is established during the earlier meeting and recorded in the minutes. No further published or mailed notice is required. <i>Minn. Stat. § 13D.04 sub 4(a).</i> However, there is no language on posted or personal service notice.	From previous meeting	Yes, like regular meeting.
<b>Closed Meeting</b>	Limited purposes: 1) Atty client privilege to discuss litigation; 2) Review employee performance, however employee must be given option of having meeting open; 3) Purchase and sale of property. <i>Minn. Stat. §§ 13D.05 &amp; 13.44</i>	Treat like a Special Meeting. Often the closed meeting will be after an open meeting. Both should be noticed separately. At the open meeting, the board should move, on the record, to close the meeting. A public statement can be made at the open meeting as to the reasons for closure. <i>Minn. Stat. § 13D.01 sub 3.</i>	Same as special meeting. It is important to list the reasons for a closed meeting.	Ask your town attorney. They will advise you whether minutes should be taken. Some closed meetings must be recorded and retained.

# Liaison Policy

The Liaison assignments were established to provide the Town Board with an opportunity to discuss and stay abreast of various Township concerns. The Town Board shall appoint a specific Supervisor, Commissioner or Staff to serve as liaison to the following entities or services from April to March.

Primary Liaison is the main point of contact for all inquiries from the entity or service. Some of the responsibilities include:

- Coordinating meetings, as needed
- Attend meetings and provide a report to the Town Board
- Facilitate communication and collaboration between organizations.
- Contact the Secondary Liaison if unavailable to complete the current task or request
- Seek assistance from the Secondary Liaison as needed
- All communications to with the Attorney and Professional Services should originate with the Clerk. The Clerk will copy the liaison on all communication with the Attorney and Professional Services.

Secondary Liaison shall assist or fill in for the Primary Liaison when requested or during an absence.

**Airlake Airport (ALLAC):** Eureka Township appoints two members and two alternates to the ALAAC for two-year terms.

Members: Dave Wheeler – Term ends 12/2025  
1<sup>st</sup> Alternate: Tim Pope

Donovan Palmquist- Term ends 12/2025  
2<sup>nd</sup> Alternate: Allen Novacek

**North Cannon River Watershed:** Eureka Township has one NCRWMO Manager to represent Township.      Manager: Melanie Storlie      Alternate: Brian Storlie

	<b><u>Primary</u></b>	<b><u>Secondary</u></b>
<b>Building Inspector:</b>	Clerks	Allen Novacek
<b>City of Farmington:</b>	Clerks	Pete Storlie
<b>Farmington Fire:</b>	Clerks	Pete Storlie
<b>City of Lakeville:</b>	Clerks	Pete Storlie
<b>Lakeville Fire:</b>	Clerks	Pete Storlie/Dan Ames
<b>Compliance Official/Data Practices:</b>	Clerks	Dan Ames
<b>Dakota County Sheriff:</b>	Clerks	Allen Novacek/Dan Ames
<b>IT Consultant:</b>	Clerks	Dan Ames
<b>Town Hall:</b>	Clerks	Tim Pope
<b>Vermillion Watershed:</b>	Clerks	
<b>Progressive Rail:</b>	Clerks	Allen Novacek
<b>Attorney:</b>	Mark Ceminsky	Pete Storlie
<b>Professional Services:</b>	Pete Storlie	Mark Ceminsky
<b>Roads:</b>	Mark Ceminsky	Allen Novacek
<b>Road Committee:</b>	Mark Ceminsky	Clerks
<b>Weed Inspector:</b>	Tim Pope	Allen Novacek
<b>Wetlands/DNR:</b>	Tim Pope	

# Eureka Township

## **Attorney Engagement Policy**

### Attorney Engagement Purpose

Township officers are frequently forced to make tough decisions on how to properly assess and resolve business brought before them. Drafting and enforcing Ordinances, drafting findings-of-fact, annexation issues, right-of-way disputes, open meeting law questions, conflicts of interest, and permit requests are just a few of the many issues that the Township faces on a regular basis where using the services of a qualified attorney is of significant assistance. It is, therefore, important for Eureka Township to establish a relationship with an attorney who can serve as the Township's attorney. This policy is intended to guide the appointment, use/engagement and evaluation of attorney services for the Township.

Legal services are costly, but they are an important part of doing Township work correctly and efficiently. Establishing a relationship with an attorney or group of attorneys will pay off for the Township overall.

### Township Attorney Contact Appointment

1. During the Reorganization meeting, an attorney contact shall be appointed to facilitate and ensure adherence to this attorney engagement policy.
2. In an effort to maintain consistency in communication with the attorney, a secondary attorney contact shall be assigned to perform any and all responsibilities of the attorney contact should the primary contact be unavailable. The secondary contact shall be the Chair, or Vice-Chair should the Chair be designated the primary contact. It shall be the sole responsibility of the primary and secondary contacts to be in communication of communications with the attorney. Communications must be done in a manner consistent with the open meeting law. The secondary contact shall be available should the primary contact be unavailable or unable to address an attorney request.
3. It shall be the sole responsibility of the attorney contact to:
  - a. Communicate attorney assistance requests in specific matters with the appointed attorney and provide needed information with the assistance of the Clerk.
  - b. Ensure all communications with appointed attorneys are copied to the Clerk and the Town Board as appropriate. The Planning Commission may be copied as appropriate.

- c. Report to the Board on a monthly, or as-needed basis, the status of all currently pending attorney and legal matters currently engaged with the appointed attorney or any other counsel engaged on the Board's behalf. This includes counsel appointed by Township insurance for legal action brought on the Township.
- d. Initiate special meetings as required for current legal action or when immediate action is required outside of actions provided in this policy.
- e. Engage appointed attorneys as provided by this policy.

### Attorney Appointment

1. Attorney appointments should be made and/or reviewed on an annual basis. Appointments (engagements) should be made to coincide with the elected term of the Board that will engage the attorney. The current Board terms start April 1<sup>st</sup>. Appointments should be made, and engagement letters accepted within the first month of service of the elected Board.
1. If the current retained attorney will not be renewed; the Clerk, with the assistance of the appointed attorney contact should work with the current firm and newly appointed firm to ensure the transfer of Township records.
2. Possible firms should be solicited based on prior experience, recommendations from surrounding communities (consider conflicts of interest) or from the Minnesota Association of Townships (MAT). The solicitation process should be assigned to no more than two Supervisors to make general inquiries and present general information to the Board.
3. The Board shall determine which firms are of interest and schedule an interview. When considering an attorney, the following factors should be considered to determine whether or not an attorney is right to hire.
  - a. Experience and Legal Skills:
    - i. Has the attorney ever represented a municipal client?
    - ii. Does the Township have any pending projects or special goals it hopes to achieve?
    - iii. Can references be obtained?
    - iv. If representation in court may be necessary, what experience does the attorney have, and what is his/her philosophy regarding settling a case vs. litigating it?
    - v. What type of access does the attorney have to legal resources?
  - b. Accessibility:
    - i. Where is the attorney located?
    - ii. How, and when, can the attorney be reached?
    - iii. How many other clients does the attorney have?

- c. Billing:
  - i. What is the hourly billing rate?
  - ii. What triggers a billable event?
  - iii. Is there a separate charge for the work of paralegals or others assisting the attorney?
  - iv. What “extra” fees are involved?
  - v. Would a retainer make sense?
  - vi. What cost saving techniques does the attorney use?
- d. Miscellaneous:
  - i. What kind of personality does your Board work best with?
  - ii. What role does the Town Board really want the attorney to play?
  - iii. What potential conflicts of interest exist, and how does the attorney identify and deal with potential or actual conflicts?
  - iv. Does the Town Board have any strong feelings about a larger firm, a smaller firm, or a sole practitioner?
  - v. Pose a hypothetical to the attorney and see how it is dealt with. This is an excellent way to gauge the attorney’s approach and interaction with the Town Board.

### Engagement Letter

1. An engagement letter must be obtained to clearly define the legal relationship (or engagement) between the attorney and the Township. This letter must state the terms and conditions of the engagement, principally addressing the scope of the engagement and the terms of compensation for the attorney.
2. Most engagement letters follow a standard format. The following sections are a representation of items which should be outlined in the engagement letter.
  - a. Terms of service.
  - b. Limitations on liability.
  - c. Ownership, use of materials, and attorney work product.
  - d. Billing and retainers.
  - e. Termination of service.
  - f. Issues of independence and conflicts of interest.
  - g. Dispute resolution provisions.
  - h. Other practical guidance.
3. The engagement letter or attachment to the engagement letter should include a defined interval for attorney evaluation. This may be driven by completion of a particular matter, periodic evaluation or at a minimum, a yearly evaluation.

## General / Working Engagement Policies

1. General policy for working with an attorney:
  - a. Involve the attorney early on in the process. The earlier an attorney becomes involved in an issue, the easier it will be for him/her to help guide the Township down the best path to avoid legal trouble after the fact. Further, seeking advice early can save both the embarrassment and legal difficulties of discovering a problem and trying to undo what has already been done. This can also be a cost-saving factor as the Township will not have to pay the attorney to be brought up to speed on an issue or to undo what was already done.
  - b. Keep the attorney informed. As the Town Board makes its decisions, and as new facts emerge or conditions change, the attorney needs to be informed so that he/she can provide the best advice possible based on the most current information.
  - c. Share all information in an honest and neutral manner. The attorney's advice can only be as good as the information it is based upon.
  - d. Give the attorney time to do needed research. Demanding "on-the-spot" answers can be embarrassing and lead to bad advice. Similarly, waiting until the last minute can result in incomplete research and only a partial answer being available.
  - e. Do not overwork the attorney. While it is better to be safe than sorry, not all questions need to be posed to the attorney and not all documents need to be read by the attorney. Calling the attorney with every minute issue will result in excessive costs for the Township and frustration on behalf of the attorney.
  - f. Remember you are not the attorney's only client. While a township should expect its attorney to be responsive, it is unrealistic to expect him/her to be sitting at his/her desk just waiting for your call, or that he/she will be able to stop working on another file to provide the Township with an immediate reply.
  - g. Keep the attorney informed of general goals and objectives, as well as things that occur or are about to occur in the community. This is particularly helpful for attorneys that reside outside of the Township.
  - h. Address concerns or problems about the services being provided before they get out of control. Misunderstandings about expectations, billings, etc. can be a source of frustration to both the Township and the attorney; however, if both parties discuss such issues as they arise, solutions are easier to find.
  - i. All communications to the Attorney should originate with the Clerk. The Clerk will copy the liaison on all communication with the Attorney.



2. Policy for engaging an attorney:

a. Agenda engagement.

- i. Upon review of a published agenda, the attorney contact, at their discretion, can request the presence of the appointed attorney to appear at the associated meeting to represent the Township in the matter.
- ii. These matters should be items that are: unclear based on the information provided in the matter, contentious in nature, or have a reasonable expectation that the decision will be legally challenged.
- iii. A request for attorney representation for a specific matter may come at the written request of a Board Supervisor, Planning Commission member or Clerk. All requests must be evaluated by the attorney contact as to meeting the needs of attorney presence. If the Town Board or Planning Commission feels that attorney presence is required and has not been requested by the attorney contact, it may determine to table the matter and seek attorney presence through Board action.
- iv. After determining the need for attorney presence, the attorney contact shall notify the Clerk to inform the Town Board and Planning Commission that attorney presence has been requested for the specific meeting.

b. Board-directed engagement.

- i. The Town Board, by majority, may determine to engage the appointed attorney in any matter deemed appropriate by the Board's action.
- ii. The matter should be clearly communicated so the attorney contact can refer the matter to the appointed attorney.

c. Litigation engagement.

- i. Should the Township be served legal notification requiring legal representation, the attorney contact shall be notified and forward the matter to the insurance provider and make the appointed attorney aware of the action. The Town Board shall be copied on any such matter in compliance with attorney-client privilege.
- ii. The attorney contact, based on the feedback of the insurance provider as to coverage in the matter shall engage the insurance-appointed attorney or engage the Township-appointed attorney if coverage is not provided. The Town Board shall be copied on the determination of coverage.
- iii. The attorney contact shall work with the assigned attorney in the matter to establish communication and initiate meetings as required.

### Attorney Evaluation

1. After the completion of a particular project, or at set intervals as defined (minimum of an annual evaluation), the Township should consider the following evaluation points:
  - a. Are we getting the service we expect?
  - b. Are we satisfied with what we are paying?
  - c. Are there any issues that need to be addressed?
2. Annual evaluations should be made prior to the completion of the elected year so that the evaluation can be made by the acting Board that has had experience with the currently engaged attorney.
3. Review of the questions used during the appointment process should serve as a starting place for evaluating satisfaction with the legal services the Township is receiving.
4. After completing the evaluation, feedback should be given in written form along with a verbal discussion with the attorney. This review of the evaluation should be completed by the attorney contact or full Town Board as determined during the evaluation.

the sign, it doesn't matter. I make a motion to rescind the decision to move forward with that. Supervisor Pope seconded the motion. Chair Storlie asked if there was any discussion. When the vote was called for the motion, it was stated the motion was to "rescind the ordinance." Roll Call vote: Allen Novacek – Aye; Tim Pope – Aye; Pete Storlie – Aye; Mark Ceminsky- Aye; Lu Barfknecht- Nay. *Motion carried 4-1.*

#### Round Table Meeting

The Board decided to change the date of the Round Table meeting with the Planning Commission to Tuesday, May 21, 2024, at 5:00 pm.

Town Board members need to have suggestions for the agenda emailed to the Clerk or bring to the next meeting.

#### Closed meeting with Attorney

Clerk Atwater will reach out to Troy Gilchrist to coordinate a meeting with the Town Board.

#### **New Business**

##### Closed meeting for Employee Reviews

Reviews will take place on Tuesday, May 14<sup>th</sup> at 6:00 pm.

##### Pay frequency for Employees

The Town Board discussed the option of changing the payroll dates for employees to once a month instead of semi-monthly. The Town Board decided to keep the semi-monthly pay, and Supervisors can stop in to sign payroll between meetings.

##### PC Liaison Ordinance

The Town Board wants this added to the Round Table for discussion.

##### Squatter Ordinance

Vice Chair Ceminsky recommended the Planning Commission investigate a squatter ordinance. Discuss at the Round Table meeting.

##### Quote for Trimming Trees

The Town Board agreed to have Vice Chair Ceminsky investigate the work that needs to be completed and bring that information back to the Board.

##### Zoom Meetings

*Motion:* Chair Storlie moved that we don't allow zoom meetings for Town Board Supervisors or Planning Commission members. Vice Chair Ceminsky seconded the motion. Vote: Allen Novacek – Aye; Tim Pope – Aye; Pete Storlie – Aye; Mark Ceminsky- Aye; Lu Barfknecht- Nay. *Motion carried 4-1.*

#### **Adjournment**

*Motion:* Chair Storlie moved to adjourn the meeting. Supervisor Pope seconded the motion. *Motion carried 5-0.*