

Vermillion River Watershed Joint Powers Organization Rules

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SECTION 1.00 AUTHORITY AND SCOPE

These Rules are adopted pursuant to Minn. Stat. chs. 103B and 103D. These Rules shall apply if the VRWJPO has authority under the conditions set forth in Minn. Stat. § 103B.211, Subd. 1(a)(3):

- A. The LGU exercising planning and zoning authority over the land under Minn. Stat. §§ 366.10 to 366.19, 394.21 to 394.37 or 462.351 to 462.364, does not have a local water management plan approved and adopted in accordance with the requirements of Minn. Stat. § 103B.235 or has not adopted the implementation program described in the plan;
- B. An application to the LGU for a permit for the use and development of land requires an amendment to or variance from the adopted local water management plan or implementation program of the LGU; or
- C. The LGU has authorized the VRWJPO to require permits for the use and development of land.

SECTION 2.00 POLICY STATEMENT

The Policy Statement as set forth in the VRWJPO Watershed Plan Standards may be amended, as adopted herein by reference.

SECTION 3.00 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, barley, beans, corn, hay, oats, potatoes, rye, 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 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.
- 3.6 **Base Flood Elevation** – 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.
- 3.7 **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.
- 3.8 **BWSR** – The Minnesota Board of Water and Soil Resources.
- 3.9 **Buffer** – An area of natural, minimally maintained, vegetated ground cover abutting or surrounding a watercourse, public waters wetland, or wetland.
- 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 with standards.
- 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.
- 3.18 **Filtration** – A process by which stormwater runoff is captured, temporarily stored, and routed through a filter, vegetated strip, or buffer to improve water quality and slow down stormwater runoff.
- 3.19 **Floodplain** – The area adjacent to a water body that is inundated during a 100-year flood.
- 3.20 **Floodplain Storage** – The volume of space available for flood waters within the floodplain.
- 3.21 **Fragmentation** – The breaking up of an organism's habitat into discontinuous chunks.
- 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)
- 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 **Infiltration** – A stormwater retention method for the purpose of reducing the volume of stormwater runoff by transmitting water into the ground through the earth's surface.
- 3.25 **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.
- 3.26 **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, electrical lines and associated facilities, and phone lines and supporting facilities.
- 3.27 **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.

- 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, 10-day snowmelt runoff event.
- 3.29 **Local Governmental Unit or LGU** – All cities, counties, and townships lying in whole or part within the Vermillion River Watershed.
- 3.30 **Lot** – A parcel of land designated by metes and bounds, 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 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.
- 3.35 **MPCA** – The Minnesota Pollution Control Agency.
- 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, restricted or secondary weed under Minn. R. Ch. 1505.
- 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 as set by the Minnesota Department of Natural Resources.
- 3.43 **Out-lot** – A parcel of land shown on a subdivision plat as an out-lot, as designated by Scott or Dakota County, and designated alphanumerically, (for example – Out-lot A.). Out-lots 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.
- 3.46 **Public Waters Wetland** – Any public waters wetland as defined in Minn. Stat. § 103G.005, subd. 15a.
- 3.47 **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.
- 3.48 **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.
- 3.49 **Runoff** – Rainfall, snowmelt or irrigation water flowing over the ground surface.
- 3.50 **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).
- 3.51 **Scott SWCD** – The Scott County Soil and Water Conservation District.
- 3.52 **Sediment** – Soil or other surficial material transported by surface water as a product of erosion.

- 3.53 **Sedimentation** – The process or action of depositing sediment.
- 3.54 **Sinuuous** – The curving patterns of a river, stream, or creek.
- 3.55 **Stewardship Plan** – A conservation plan completed for agricultural land and activities accepted by the Dakota SWCD, the Scott SWCD, or the VRWJPO.
- 3.56 **Stream Type** – One of numerous stream types based on morphology defined by Rosgen D., *Applied River Morphology*, 1996.
- 3.57 **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.
- 3.58 **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.
- 3.59 **Subdivision** – The separation of an area, lot, or tract of land under single ownership into two or more parcels, tracts, or lots.
- 3.60 **USDA** – United States Department of Agriculture.
- 3.61 **VRWJPO** – Vermillion River Watershed Joint Powers Organization.
- 3.62 **Watercourse** – Intermittent and perennial streams identified on Map 1 attached to these Standards.
- 3.63 **Wetland** – Any wetland as defined in Minn. Stat. § 103G.005, subd. 19.
- 3.64 **Wetland Conservation Act or WCA** – The Minnesota Wetland Conservation Act of 1991, as amended.

SECTION 4.00 PROCEDURAL REQUIREMENTS

4.01 Permit Required

- A. It is unlawful for any person to undertake any activity governed by these Rules without the appropriate permit from the VRWJPO.
- B. Any person undertaking an activity for which a permit is required by these Rules shall submit a permit application to the VRWJPO on forms provided by the VRWJPO. Applicants shall provide all information as required, including: (1) the permit application; (2) design data; (3) plans; (4) specifications; and (5) such other information and exhibits as may be required by the VRWJPO.

4.02 Action by the VRWJPO

The VRWJPO shall review a permit application and supporting documents to determine whether the application is complete. The VRWJPO shall approve or deny an application containing all required information, exhibits and fees in accordance with Minn. Stat. § 15.99.

4.03 Conformity with Subdivision Plan

The VRWJPO may consider the criteria for subdivisions in these Rules before preliminary approval is received from the municipality or county. The preliminary and final subdivision approval obtained from the municipality and county shall be consistent with the conditions of the approved permit.

4.04 Notification

No formal notification will be provided by the VRWJPO to nearby landowners for permit applications within VRWJPO jurisdiction. In the case of variances or development greater than 40 acres in size, the VRWJPO shall mail notice of the permit application to the owners of land within a distance specified by the VRWJPO of the described activity, at least 14 days prior to the scheduled meeting date of the VRWJPO at which the application will be considered. The names and addresses of the owners to be notified shall be furnished to the VRWJPO with the permit application. Neither the failure to give mailed notice to any owner nor any defect in the notice shall invalidate an action by the VRWJPO on a permit application.

4.05 Conditions

A permit may be approved subject to reasonable conditions to assure compliance with these Rules. The conditions include, but are not limited to, a requirement that the permittee and owner, including any mortgagee, enter into an agreement with and in a form acceptable to the VRWJPO to: (a) specify responsibility for the construction and future maintenance of approved structures; (b) document other continuing obligations of the permittee or owner; (c) grant reasonable access to the proper authorities for inspection, monitoring, and enforcement purposes; (d) affirm that the VRWJPO or other political subdivisions can require or perform necessary repairs or reconstruction of such structures; (e) require indemnification of the VRWJPO for claims arising from issuance of the permit or construction and use of the approved structures; and (f) reimburse the reasonable costs incurred to enforce the agreement. Permits and agreements may be filed for record to provide notice of the conditions and continuing obligations.

4.06 Issuance of Permits

The VRWJPO will issue a permit only after the applicant has: (a) satisfied all requirements of these Rules; (b) paid all required fees; and (c) provided any required security. No activity governed by these Rules may be initiated until the VRWJPO grants the permit. When the VRWJPO issues a permit where plans are required, the VRWJPO shall endorse in writing or stamp the plans and specifications

as “approved.” All activity under the permit shall be done in accordance with the approved plans and specifications, one set of which shall be kept on the site of the activity at all times while the authorized work is in progress.

4.07 Expiration

A permit shall expire and become null and void if the approved activity is not commenced within one year from date of approval by the VRWJPO, or if the approved activity is suspended or abandoned for a period of one year from the date the activity originally commenced. Before an activity delayed for one year or longer can recommence, the permit must be renewed. An application for renewal of a permit must be in writing and state the reasons for the renewal. Any plan changes and required fees must be included with the renewed application. No permit will be renewed until all unpaid fees and correction of any outstanding violations. The VRWJPO shall consider the application for renewal on the basis of the Rules in effect on the date the application is being considered for renewal.

Any permittee may apply for an extension of time to commence the approved activity under an unexpired permit when the permittee is unable to commence the activity within the time required by these Rules. An application for an extension of a permit must be in writing and state the reasons for the extension. Any plan changes and required fees must be included with the application. No extension will be considered until all unpaid fees and correction of any outstanding violation. The application for an extension must be received by the VRWJPO at least 60 days prior to the permit’s expiration. The VRWJPO shall consider the application for an extension on the basis of the Rules in effect on the date the application is being considered. The VRWJPO may extend the time for commencing the approved activity for a period not exceeding one year upon demonstration of good cause for the delay.

4.08 Validity

Issuance of a permit based on plans, specifications, or other data, shall not prevent the VRWJPO from thereafter requiring the correction of errors in the approved plans, specifications, or other data, or from preventing any activity being carried on thereunder in violation of these Rules.

4.09 Modifications

The permittee shall not modify the approved activity, plans, specifications, or other data on file with the VRWJPO without the prior written approval of the VRWJPO.

4.10 Inspection and Monitoring

After issuance of a permit, the VRWJPO may perform such field inspections and monitoring of the approved activity as the VRWJPO deems necessary to determine compliance with the conditions of the permit and these Rules. Any portion of the activity not in compliance shall be promptly corrected by the permittee. In applying for a permit, the applicant consents to entry upon the land for field

inspections and monitoring, or for performing any work necessary to bring the activity into compliance at the permittee's expense. The cost to the VRWJPO for field inspections and monitoring, including services of consultants, shall be payable by the permittee as provided in section 16.00 below.

4.11 Certificate of Completion

The VRWJPO shall authorize the release of any required security upon the VRWJPO verifying completion of the activity in accordance with the approved plans and conditions of the permit. As-built plans of final grades and public infrastructure, and copies of documents, with evidence of recording where appropriate, that establish easements, or provide for maintenance of structures, required by the permit shall be filed with the VRWJPO before completion can be certified and any security released. All temporary synthetic and structural erosion prevention and sediment control BMPs (such as silt fence) must be removed following approval of the certificate of completion before the final balance of securities can be released. Certification will not occur until all fees are paid and any outstanding violations are corrected. If the VRWJPO fails to issue a certificate of completion within 60 days following submission that the forgoing conditions have been met, the activity shall be deemed complete and any surety shall be released.

4.12 Permit Transfers

A permit issued pursuant to these Rules shall not be transferable to a new owner. The new owner must apply for a permit in accordance with these Rules.

4.13 Other Permits

- A. The applicant shall secure all environmental permits and approvals required by other governmental entities and meet all requirements therein.
- B. Issuance of a permit required by these Rules shall not be deemed to exclude the necessity of obtaining other required permits or approvals. Compliance with the provisions of these Rules shall not relieve any person of the need to comply with any other applicable rules, regulations, or laws.

4.14 Duty to Comply with Permit Conditions

The permittee shall comply with all conditions stated in any permit issued by the VRWJPO under these Rules. Failure of the permittee to comply is a violation of these Rules and is subject to the penalties provided in these Rules.

4.15 Denial and Right to Appeal

If the VRWJPO denies a permit to an applicant, the applicant shall be notified of such denial in writing. The VRWJPO shall serve the denial by personal service or by certified mail to the address

designated in the permit application. Service by certified mail shall be deemed to be complete upon mailing. The applicant may appeal the permit denial by filing a request for a hearing. The hearing request shall be in writing stating the grounds for the appeal and served on the VRWJPB by personal service or certified mail within 10 VRWJPO working days of the service of the permit denial, exclusive of the day of service. Following timely service of a request for a hearing, the VRWJPB shall set a time and place for the hearing pursuant to section 15.00.

4.16 Administration of Rules

The VRWJPO Administrator(s) shall administer and enforce these Rules under the direction and control of, and subject to, the powers expressly reserved to the VRWJPB. The VRWJPO shall review, revise, and update these Rules as necessary.

SECTION 5.00 FLOODPLAIN ALTERATION RULE

5.01 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. Manage storage volumes in FEMA-designated floodplains.
- C. Require local water plans to include a provision that restricts construction of new structures in FEMA-designated floodplains.
- E. Require LGUs to adopt floodplain ordinances that are consistent with Dakota and Scott County water resources plans and ordinances.
- F. Require floodplain alterations to obtain “no net loss” of floodplain storage, including the preservation, restoration, and management of floodplain wetlands.
- G. Ensure that LGUs gain compensatory storage above direct replacement for new developments within the floodplain.

5.02 Regulation

No person shall 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 VRWJPO.

5.03 Required Exhibits

The following exhibits shall accompany the permit application (one set, minimum size of 11" x 17"):

- A. Site plan showing boundary lines, delineation and existing elevation contours of the work area, ordinary high water level, and 100-year critical flood elevation. All elevations shall be referenced to NGVD, 1929 datum, or shall be corrected to reference said datum.
- B. Grading plan showing any proposed elevation changes.
- C. Draft preliminary plat of any proposed subdivision.
- D. Determination by a registered professional engineer of the 100-year critical flood elevation before and after the proposed activity.
- E. Computation of the change in flood storage capacity as a result of the proposed alteration or fill.
- F. Erosion control and sediment plan, or SWPPP, which complies with section 8.00 below.
- G. Soil boring results if available.

5.04 Criteria

- 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 Minn. R. ch. 6120, Shoreland and Floodplain Management; Dakota County Ordinance No. 50, Shoreland and Floodplain Management Ordinance; or Scott County Zoning Ordinance 71, 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 and 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 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 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.
 - a. 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 “10 times the bankfull channel width” formula. Note: the 1999 Vermillion River Assessment Report, or amendments thereto, provides assessment of stream type for many reaches of the Vermillion River and is available at the Dakota SWCD or the VRWJPO office.
 - b. 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.
 3. Where buffers are required, aboveground encroachments, alterations, or 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 VRWJPO demonstrating and recording the consent of the owner of any land affected by the increased high water levels;
 2. The action is consistent with other portions of these Rules, 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 6.00 WETLAND ALTERATION RULE

6.01 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.

6.02 Regulation

No person shall drain, fill, excavate, or otherwise alter, a wetland or public waters wetland without first submitting a wetland application and obtaining approval from the VRWJPO.

6.03 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. 7050.0186, and regulations adopted hereunder.
- B. 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.
- C. A high quality (or equivalent value) public waters wetland or wetland, as determined by 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 no other alternatives exist.
- D. 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).
 3. Mitigation within the Watershed.
 4. Mitigation within Dakota or Scott County.
- 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.

SECTION 7.00 BUFFER RULE

7.01 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. To protect wetlands from chemical, physical, biological, or hydrological, changes to prevent significant adverse impacts.

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

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

7.03 Required Exhibits

The following exhibits shall accompany the permit application (one set, minimum size of 11" x 17"):

- A. Construction plans and specifications showing the delineated wetland edge, buffer strip location(s), the location of buffer monuments and the location of any temporary fencing required.
- B. A narrative description of each buffer strip identifying its current condition.
- C. A legal description and drawing of each buffer strip, signed forms for conservation easements, or record of an administrative land split, preliminary plat or final plat demonstrating that the buffer area is contained in a dedicated out-lot.
- D. A landscaping and vegetation management plan according to section 7.04(C) below, including a compliance monitoring and certification plan and a cost estimate for buffer strips with unacceptable vegetation, as defined by section 7.04(B) below, or where grading in a buffer strip is proposed.

7.04 Criteria

- A. 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;
 - 2. Has an overstory of non-invasive trees, shrubs, or both 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. Buffers shall be staked and protected in the field prior to construction unless the vegetation and the condition of the buffer are considered inadequate. The existing vegetation conditions will be considered unacceptable if:
 - 1. Physical condition of the buffer tends to channelize the flow of surface water; or
 - 2. Vegetative cover is less than 90%.
- C. 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 VRWJPO. Groupings/clusters of native trees and shrubs, of species and at densities appropriate to site conditions, can also be planted throughout the buffer area.

2. The seed mix and planting shall be broadcast/installed according to the State of Minnesota, NRCS, or Dakota or Scott SWCD, specifications, as applicable. 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 VRWJPO 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. Where a buffer is required, the VRWJPO shall require the protection of the buffer under a conservation easement acceptable to the LGU, or include the buffer in a dedicated out-lot 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 VRWJPO.
- E. 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 written approval of the VRWJPO. Routine actions including mowing can be approved under a single written approval. Noxious weeds may be removed and mechanical or spot herbicide treatments may be used to control noxious weeds, but aerial or broadcast spraying is prohibited. Prohibited alterations do 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 section 7.04(F) below.
- F. The following activities are permitted within any buffer, and do 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 at the time of 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 out-lot, 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, or sanitary sewers and pipelines, provided the minimum impact alignment is used, the area is stabilized in accordance with section 7.04(C) above, and setbacks established in section 5.04(D) above 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 section 7.04(C) above, and alterations prohibited in section 7.04(E) above are upheld.
 - b. The area of shallow vegetated infiltration and biofiltration facilities, and water quality ponds not to exceed 50% 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 section 7.04(B) above, and alterations prohibited in section 7.04(E) above are upheld.
- G. A wetland functional assessment for vegetative diversity, using the Minnesota Routine Assessment Method (MNRAM 3.0 as amended) or other state accepted functional assessment method, must 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)
Average Buffer Width	50 feet	40 feet	30 feet	25 feet
Minimum Buffer Width	30 feet	30 feet	25 feet	16.5 feet

- H. Buffers shall be established adjacent to watercourses as shown and classified on Map 1 attached to these Rules, 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.
Aquatic Corridor – Principal Connector	Required buffer width 100-foot average, 65-foot minimum measured from the edge of the meander belt of the river.

Aquatic Corridor – Principal Connector with Trout Stream Designation	100 foot, no averaging, as required by the General Permit Authorization to Discharge Storm Water Associated With Construction Activity Under the National Pollutant Discharge Elimination System/State Disposal System Permit Program Permit MN R100001 (NPDES General Construction Permit) issued by the Minnesota Pollutant Control Agency, August 1, 2003.
Aquatic Corridor – Tributary Connector	50-foot average, 35-foot minimum, plus 2 feet for every 1 percent of slope measured from the edge of the meander belt of the tributary.
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.

7.05 Exceptions

- A. The Buffer Rules 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 under the WCA.
- B. 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. 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 applies, the permit requires that setbacks are met which allow for 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 Rules do not apply to existing out-lots 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. 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. The Buffer Rules 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 8.00 EROSION AND SEDIMENT CONTROL RULE

8.01 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.

8.02 Regulation

No person or political subdivision shall commence a land disturbing activity or create new impervious surface, unless specifically exempted below, without first obtaining a permit from the VRWJPO that incorporates and approves a SWPPP for the activity, development, or redevelopment. For sites disturbing less than one acre and not requiring stormwater facilities on site, an alternative consisting of an Erosion and Sediment Control Plan shall be used.

8.03 Required Exhibits

The following exhibits shall accompany the permit application (one set, minimum size of 11" x 17"):

- A. Property lines and delineation of lands under ownership of the applicant.
- B. General grading plans or topographic map with elevation data (contours).
- C. Plans for all proposed runoff, erosion and sediment controls, and temporary and permanent soil stabilization measures, and any applicable specifications for erosion and sediment control materials (i.e., Erosion and Sediment Control Plan or plan sheets).
- D. Detailed schedules for implementation of the land disturbing activity, the erosion and sediment controls, and soil stabilization measures, as well as schedules for

monitoring, maintaining, and removing the erosion and sediment controls and soil stabilization measures (i.e., a SWPPP).

8.04 Criteria

- 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 with VRWJPO approval after the site has been stabilized. All permanent erosion control measures shall be installed and operational per the design and as required by the VRWJPO.
- C. Erosion and sediment controls shall meet the standards for the General Permit Authorization to Discharge Storm Water Associated With Construction Activity Under the National Pollutant Discharge Elimination System/State Disposal System Permit Program Permit MN R100001 (NPDES General Construction Permit) issued by the Minnesota Pollution Control Agency, June 25, 2013, as amended, for projects disturbing more than 1 acre.
- D. Final stabilization 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.
- 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 Part IV.B. 2, shall be seeded with a temporary or permanent cover before commencing the proposed land disturbing activity.

8.05 Exceptions

Land disturbances meeting the following criteria may be exempted if there is no direct threat to a water resource from the activity:

- 1. cover less than five thousand square feet in area, or
- 2. involve less than thirty cubic yards of soil, or
- 3. do not change existing contours or drainage.

SECTION 9.00 STORMWATER MANAGEMENT RULE

9.01 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 cold-water 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 peak flows for extreme events, the cumulative effects of runoff volume, and includes stormwater rate control requirements.
- F. Mitigate and reduce impacts of past increases in stormwater discharge on downstream conveyance systems.
- G. Improve the condition of waterbodies in the watershed included on the MPCA impaired waters [303(d)] list with the goal for these waterbodies to be removed from the list.
- H. Encourage the use of existing natural retention and detention areas for stormwater management to maintain or improve existing water quality.
- I. Minimize water quality impacts (including thermal impacts) from land disturbing activities.
- J. Ensure stormwater management systems are maintained by establishing Stormwater Management System Maintenance standards for cities and townships within the watershed.

9.02 Regulation

No person or political subdivision shall commence a land disturbing activity or create new impervious surfaces, unless specifically exempted below, without first obtaining a permit from the VRWJPO that incorporates and approves a SWPPP for the activity, development, or redevelopment.

9.03 Required Exhibits

The following exhibits shall accompany the permit application (one set, minimum size of 11" x 17"):

- A. Property lines and delineation of lands under ownership of the applicant.
- B. Delineation of the subwatershed contributing runoff from off-site, proposed, and existing subwatersheds on-site, emergency overflows, and watercourses.
- C. Proposed and existing stormwater facilities location, alignment, and elevation.
- D. Delineation of existing on-site wetlands, marsh, buffer, shoreland, and floodplain areas.
- E. For applications proposing infiltration as a volume control BMP stormwater management practice, identification, description, permeability, and approximate delineation of site soils, at the location of the proposed infiltration area in both existing and proposed as-developed condition. Soil boring log information, if available, shall also be provided upon request.
- F. Existing and proposed ordinary high and 100-year water elevations on-site.
- G. Existing and proposed site contour elevations at 2 foot intervals, referenced to vertical datum NGVD, 1929 datum or D North American 1983/NGVD88 datum with reference made to the datum used in the plans.
- H. Construction plans and specifications of all proposed stormwater management facilities, including design details for outlet controls.
- I. Vegetation plans, including planting and maintenance details, for all vegetated BMPs.
- J. Runoff rate analysis for the 1-year, 10-year, and 100-year critical storm events, existing and proposed.
- K. Runoff volume analysis for the 2-year 24-hour storm event, existing and proposed.
- L. All hydrologic, water quality, and hydraulic, computations made in designing the proposed stormwater management facilities (or copies of hydrologic and hydraulic modeling output files).
- M. Narrative addressing incorporation of temperature control BMPs into the site design when required as part of criteria in section 8.04(C) below.
- N. Delineation of any ponding, flowage or drainage easements, or other property interests, to be dedicated for stormwater management purposes.

- O. Legal description and drawing of any conservation easements proposed to be dedicated for stormwater management purposes, such as natural area credit for volume control.
- P. An existing and proposed topographic map showing contours on and adjacent to the land, property lines, all hydrologic features, the proposed land disturbing activities, and the locations of all runoff, erosion and sediment controls, and soil stabilization measures.

9.04 Criteria

Stormwater management criteria are presented separately below for post-construction stormwater 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 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, and credits described under Runoff Volume Control Criteria below 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 Rules;
 - 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 Rules are met and the following measures are used to the extent practical in order of decreasing preference:

- (1) 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.
 - (2) Additional volume control measures and credits are used beyond that required to meet the Runoff Volume Criteria below 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 satisfy the Volume Control requirements of these Rules.
5. Ponds with overflows or outlets located below the seasonally high water table are allowed only where it is demonstrated there is a reasonable need for such an outlet to control seepage damage to existing structures.
6. Redevelopment (see definition) projects are required to incorporate water quality BMPs to the 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 Rule; 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 as provided in the Runoff Volume Control Criteria below. No additional specific temperature criteria are incorporated because these other areas of the Rules emphasize approaches sensitive to runoff temperature. Because the Rules 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 VRWJPO may limit or deny waivers, or may require additional runoff temperature BMPs, if the VRWJPO determines 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, and 10-year critical duration storm events.
 - c. Be implemented so 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. These 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 above are met.

D. Runoff Volume Control Criteria.

1. Development that creates one or more acres of new impervious surface 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 Rule 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 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 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 satisfy the Volume Control Requirements of these Rules.
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 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.

9.05 Maintenance

All stormwater management structures and facilities 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, or by the applicant, their successors, or assigns entering into a maintenance agreement with the VRWJPO.

9.06 Easements

The applicant shall establish, in a form acceptable to the VRWJPO, temporary and perpetual easements, or dedicated out-lots, for ponding, flowage, and drainage purposes over hydrologic features such as waterbodies and stormwater basins. The easements or out-lots, shall include the right of reasonable access for inspection, monitoring, maintenance, and enforcement purposes.

9.07 Covenants

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

9.08 Waivers

The VRWJPO 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 Rules.

9.09 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 Rules. Any proposed off-site trade must be approved by the VRWJPO before implementation.

9.10 Exceptions

No permit, SWPPP, or erosion control plan shall be required for the following land disturbing activities:

- 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 (i.e., 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 activity disturbs more than 1 acre of impervious surface, in which case the Rules apply.
- D. Installation of any fence, sign, telephone or electric poles, or other kinds of posts or poles.
- F. Emergency activity necessary to protect life, or prevent substantial harm to persons or property.
- G. Minor wetland impacts that have received a “certificate of exemption or no loss” determination by the LGU administering the Wetland Conservation Act, as amended.
- H. All maintenance, repair, resurfacing, or reconditioning activities, on impervious surfaces which do not involve land disturbing activities outside of the existing surfaces.
- I. 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.
- J. Land disturbance of less than five thousand square feet in area, involving less than thirty cubic yards of soil, or that do not change existing contours or drainage, may be exempted if no direct threat to a water resource from the activity exists.

SECTION 10.00 DRAINAGE ALTERATION RULE

10.01 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, riparian impacts, and habitat impacts, of such outlets have been analyzed and no detrimental impacts result.

- D. Mitigate and reduce the impact of past increases 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.

10.02 Regulation

No person 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 Vermillion River Watershed, without first obtaining a permit from the VRWJPO.

10.03 Required Exhibits

The following exhibits shall accompany the permit application (one set, minimum size of 11" x 17"):

- A. Map showing location of proposed alteration and tributary area.
- B. Existing and proposed cross sections and profile of affected drainage area.
- C. Description of bridges or culverts required.
- D. Narrative and calculations verifying compliance with the following criteria.

10.04 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 provisions of these Rules and state and federal regulations, and the downstream 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 Rules;
 - 3. Ensure the outlet does not create adverse downstream flooding or water quality conditions, or materially affect stability of downstream watercourses;

4. Maintain dead storage within the basin to the extent 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 Rules; and
 6. Ensure that proposed development tributary to the land-locked basin has incorporated runoff volume control practices to the extent practicable.
- B. Artificial drainage, flow obstruction, and diversions involving watercourses, public waters, public waters wetlands, wetlands with drainage areas of 640 acres or more, will be allowed provided such alterations or diversions are consistent with other portions of these Rules and state and federal regulations, and the downstream impacts, riparian impacts and habitat impacts of such alterations or diversions, have been analyzed and no detrimental impacts result. Proposals for drainage alterations and diversions must 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 reasonably outweighs the gravity of the harm resulting to the land receiving the burden; and
 4. 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 channels and outfalls.

10.05 Exceptions

- A. No 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 VRWJPO may waive the requirements regarding upstream and downstream flooding impacts if the applicant submits easements or other documentation in forms

acceptable to the VRWJPO demonstrating and recording the consent of the owner of any burdened land to the proposed alteration.

SECTION 11.00 AGRICULTURAL RULE

The VRWJPO approach to Agricultural Rules is currently voluntary 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.

SECTION 12.00 SECURITY

12.01 Policy

It is the policy of the VRWJPO to protect and conserve water resources by requiring financial security to assure compliance with these Rules.

12.02 Requirement

The VRWJPO may require security as a condition to the issuance of a permit under these Rules.

12.03 Amount

A rate schedule of security amounts shall be set annually by the VRWJPB in the amounts the VRWJPB deems necessary to cover the following potential liabilities to the resources of the VRWJPO:

- A. Post permit field inspection, monitoring, and related fees;
- B. The cost of maintaining and implementing erosion and sediment control required by the permit;
- C. The cost of completing buffer strip landscaping in accordance with section 7.00; and

- D. The cost of remedying damage resulting from noncompliance with the permit, these Rules, or for which the permittee is otherwise responsible.

12.04 Form and Conditions

- A. The applicant shall provide security through one of the following mechanisms:
 - 1. Single Access Cash Account. A single access cash account at a financial institution acceptable to the VRWJPO and the VRWJPO's attorney.
 - 2. Letter of Credit. An irrevocable letter of credit from a financial institution acceptable to the VRWJPO and the VRWJPO's attorney.
- B. The security shall be in favor of the VRWJPO and conditioned upon the applicant's performance of the authorized activity in compliance with the permit and applicable laws, these Rules, and the payment when due of any fees or other charges authorized or required by the permit, and these Rules.
- C. The security shall be issued for a minimum term of 1 year. Security with a shorter term may be deposited with the VRWJPO provided it is replaced at least 30 days before its expiration.
- D. The VRWJPO is authorized to make a claim or draw against the security after any default by the applicant under the permit or these Rules, or if the applicant fails to replace any security at least 30 days before its expiration. The VRWJPO shall notify the applicant in writing when security funds are being withdrawn and shall state the reasons for such withdrawal.

12.05 Release

Any security required by these Rules shall be released by the VRWJPO upon receipt of the certificate of completion as required by section 4.12 above.

SECTION 13.00 VARIANCES

13.01 Variances Allowed

The VRWJPO may grant variances from the literal provisions of these Rules. A variance shall only be granted when in harmony with the general purpose and intent of the Rules in cases where strict enforcement of the Rules will cause undue hardship, and when the terms of the variance are consistent with the VRWJPO Watershed Plan and Minn. Stat. ch. 103B.

13.02 Procedure for Requesting Variance

- A. Application for Variance. A variance application shall be submitted by the property owner to the VRWJPO on forms provided by the VRWJPO. Applicants shall provide all information as required for the administration of these Rules.
- B. Notification. Written notice of the variance application shall be sent to property owners of record within 500 feet of the affected property, the town board of the township wherein the variance is proposed, and the governing body of any city of which the incorporated limits lie within two miles of the proposed variance. The written notice shall be given not less than 14 days prior to the date of the meeting at which the variance application will be considered by the VRWJPB. The failure of any person to receive such notification shall not invalidate the proceedings.
- C. Factors Required for Approval. A variance may be granted provided that:
 - 1. The conditions causing the demonstrated hardship are unique to the property and were not caused by the action of the applicant;
 - 2. The granting of the variance will not be contrary to the public interest or damaging to the rights of other persons or to property values in the vicinity; and
 - 3. The property owner would have no reasonable use of the land without the variance. Economic considerations alone shall not constitute a hardship if a reasonable use for the land exists under the terms of these Rules.
- D. Conditions. The VRWJPB may impose conditions in granting the variance to ensure compliance and to protect the public health, safety, or welfare. Each violation of any condition set forth in the variance shall be a separate violation of these Rules subject to enforcement and shall be sufficient grounds for terminating the variance.
- E. Term. A variance shall expire and become null and void if the approved activity is not commenced within one year from date of approval by the VRWJPB, or if the approved activity is suspended or abandoned for a period of one year from the date the activity originally commenced.
- F. Denial of Variance. No application for a variance, which has been denied wholly or in part, shall be resubmitted for a period of 6 months from the date of said denial, except on the grounds of relevant new evidence or proof of a significant change of conditions.
- G. Appeal. Any person aggrieved by the decision of the VRWJPB may appeal the decision to any court with competent jurisdiction.

SECTION 14.00 VIOLATIONS

For violations of these Rules, the VRWJPO may take the following actions: issuance of a warning notice; issuance of a notice of violation; issuance of a citation or complaint; issuance of a cease and desist order; suspension, summary suspension, or revocation of a permit issued under these Rules; execution of a stipulation agreement; or commencement of other civil proceedings.

14.01 Warning Notice

The VRWJPO may issue a warning notice to any person alleged to have committed a violation of these Rules. A warning notice shall serve to place the person on notice that compliance with specified Rule requirements must occur to avoid additional enforcement actions. Service of the warning notice shall be made by first class mail or by personal service. The warning notice shall contain:

- A. A list of violations, including the Rule(s) violated, the factual basis for the violations and the date(s) of the violations.
- B. The specific actions required to be taken by the person to correct the violations and the timeframes within which the corrections are required to be made.
- C. A general description of the additional administrative and judicial enforcement actions that could be pursued by the VRWJPO if the alleged violations are not satisfactorily corrected.

14.02 Notice of Violation

The VRWJPO may issue a notice of violation (NOV) to any person alleged to have committed a violation of these Rules. A NOV shall serve to place the person on notice that compliance with specified Rule requirements must occur to avoid additional enforcement actions. Service of the NOV shall be made by certified mail or by personal service. The NOV shall contain:

- A. Findings of fact with corresponding conclusions of law which describe the alleged violations and the corresponding Rules which are allegedly violated.
- B. Orders for corrective actions, which describe specifically how each alleged violation must be corrected and the timeframes within which the corrections are required to be made.
- C. Notice of further action, which describes in general terms, the additional administrative and judicial enforcement actions that could be pursued by the VRWJPO if the alleged violations are not satisfactorily corrected.

14.03 Citation

Any person who fails to comply with the provisions of these Rules is guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

An authorized representative of the VRWJPO shall have the power to issue citations for violations of this ordinance, but shall not be permitted to physically arrest or take into custody any violator.

- A. ISSUANCE OF THE CITATION. Citations shall be issued to the person alleged to have committed the violation (alleged violator) either by personal service or by certified mail. In the case of a public, private, or municipal corporation, the citation shall be issued to any officer or agent with express or implied authorization to accept such issuance.
- B. NOTICE OF CITATION. Citations shall be made out in quadruplicate (4). One copy shall be issued to the alleged violator; one copy shall be filed with the VRWJPO; one copy shall be filed with the Dakota County Attorney's Office; and one copy shall be filed with the Dakota County District Court, First Judicial District.
- C. FORM OF CITATION. Citations shall be on such form(s) as approved by the VRWJPO and shall contain at least the following:
 - 1. The name and address of the alleged violator and when known, the owner or person in charge of the premises at which the violation occurred;
 - 2. The date, time (if known) and place of violation;
 - 3. A short description of the violation followed by reference to the section of this ordinance violated;
 - 4. The name of the person issuing the citation;
 - 5. The date, time, and place at which the alleged violator shall appear in court and notice that if such person does not appear, a warrant may be issued for such person's arrest; and
- D. COURT APPEARANCE. The alleged violator shall appear at the place and on the date and time specified in the citation and either:
 - 1. Plead guilty to the citation and meet the requirements of the sentence imposed by the court; or
 - 2. Plead not guilty to the citation and schedule a court date for further hearing or trial.

- E. FAILURE TO APPEAR ON THE CITATION. If the alleged violator does not appear at the place and on the date and time specified on the citation, the court may issue a warrant for the person's arrest.
- F. COMPLAINT. A complaint may be issued in lieu of a citation as determined by the Dakota County Attorney's Office.
- G. AIDING AND ABETTING. As set forth in Minn. Stat. § 609.05, a person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime. A person liable for such crime is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended. A person who intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit a crime and thereafter abandons that purpose and makes a reasonable effort to prevent the commission of the crime prior to its commission is not liable if the crime is thereafter committed.

A person liable under this section may be charged with and convicted of the crime although the person who directly committed the crime has not been convicted, or has been convicted of some other degree of the crime or of some other crime based on the same act, or if the person is a juvenile who has not been found delinquent for the act. For purposes of this section, a crime also includes an act committed by a juvenile that would be a crime if committed by an adult.

14.04 Cease and Desist Orders

Cease and desist orders may be issued when the VRWJPO has probable cause that an activity regulated by these Rules is being or has been conducted without a permit or in violation of a permit. When work has been stopped by a cease and desist order, it shall not be resumed until the reason for the work stoppage has been completely satisfied, any administrative fees paid, and the cease and desist order lifted.

14.05 Suspension or Revocation of Permit

The VRWJPO may suspend or revoke a permit issued under these Rules in accordance with section 15.00 below: (1) if the permit was issued in error or on the basis of incorrect or inaccurate information supplied; (2) for violations of these Rules; or (3) if the preliminary and final subdivision approval received from the municipality or county is not consistent with the conditions of a permit. The VRWJPO may issue a summary suspension of a permit for violations of these Rules in accordance with section 14.02 above.

14.06 Stipulation Agreement

The VRWJPO and a person alleged to have violated provisions of these Rules may voluntarily enter into a stipulation agreement whereby the parties to the agreement: identify conditions on the property that require corrective action; agree on the corrective actions that must be performed by the person; and agree on the timeframes in which the corrective actions must be completed. If the person fails to fulfill the requirements of the agreement, the VRWJPO may seek compliance with the terms of the agreement through a court of competent jurisdiction or pursue other enforcement action allowed by these Rules.

14.07 Commencement of Civil Action

In the event of a violation or threat of violation of these Rules, the VRWJPO may institute appropriate civil actions or proceedings in any court of competent jurisdiction requesting injunctive relief to prevent, restrain, correct, or abate, such violations, or threatened violations. The VRWJPO may recover all costs, including reasonable attorney's fees, incurred for enforcement of these Rules.

SECTION 15.00 PERMIT SUSPENSION AND REVOCATION

15.01 Suspension

- A. Any permit required by these Rules may be suspended by the VRWJPO for violation of any provision of these Rules. Upon written notice to the permittee, said permit may be suspended by the VRWJPO for a period not longer than 60 days or until the violation is corrected, whichever is shorter.
- B. Such suspension shall not occur earlier than 10 VRWJPO working days after written notice of suspension has been served on the permittee, or if a hearing is requested, until written notice of the VRWJPB action has been served on the permittee. Notice to the permittee shall be made by personal service or by certified mail to the address designated in the permit application. Service by certified mail shall be deemed complete upon mailing. Such written notice of suspension shall contain the effective date of the suspension, the nature of the violation(s) constituting the basis for the suspension, the facts which support the conclusion that the violation(s) occurred, and a statement that if the permittee desires to appeal, the permittee must file a written request for an appeal hearing with the VRWJPB within 10 VRWJPO working days of the service of the suspension notice, exclusive of the day of service. The appeal hearing request shall be in writing stating the grounds for appeal and served on the VRWJPB by personal service or certified mail within 10 VRWJPO working days of service of the suspension notice, exclusive of the day of service. Following timely service of a request for hearing, the VRWJPB shall set a time and place for the hearing pursuant to section 15.00.

- C. If said suspension is upheld and the permittee has not demonstrated within the 60 day time period that the provisions of these Rules have been complied with, the VRWJPO may serve notice of continued suspension for up to an additional 60 days or initiate revocation procedures.

15.02 Summary Suspension

- A. If the VRWJPO finds that an imminent threat to the environment or to public health, safety or welfare requires emergency action and incorporates a finding to that effect in its order, summary suspension of a permit may be ordered by the VRWJPO upon notification to the VRWJPO attorney. Written notice of such summary suspension shall be made by personal service or by certified mail on the permittee at the address designated in the permit application. Service by certified mail shall be deemed complete upon mailing. Alternatively, the VRWJPO may post copies of the notice of summary suspension of the permit on the property for which the permit was issued. Said posting shall constitute the notice required under this section.
- B. The written notice shall state the effective date of the summary suspension, the nature of the violation(s) requiring emergency action, the facts which support the conclusion that the violation(s) occurred and a statement that if the permittee desires to appeal, the permittee must file a request for an appeal hearing with the VRWJPB within 10 VRWJPO working days of service or posting of the suspension notice, exclusive of the day of service. The appeal hearing request shall be in writing stating the grounds for appeal and served on the VRWJPB by personal service or by certified mail within 10 VRWJPO working days of service or posting of the suspension notice, exclusive of the day of service. Following timely service of a request for a hearing, the VRWJPB shall set a time and place for the hearing pursuant to section 15.00.
- C. The summary suspension shall not be stayed pending an appeal to the VRWJPB, but shall be subject to dismissal upon a favorable re-inspection by the VRWJPO or favorable appeal to the VRWJPB.

15.03 Suspension Re-inspections

Upon written notification from the permittee that all violations for which a suspension or summary suspension was invoked have been corrected, the VRWJPO shall re-inspect the site or activity within a reasonable length of time, but in no case more than three VRWJPO working days after receipt of the notice from the permittee. If the VRWJPO finds upon re-inspection that the violations constituting the grounds for the suspension have been corrected or removed, the VRWJPO shall immediately dismiss the suspension by written notice to the permittee, served personally or by certified mail on the permittee at the address designated in the permit application, with a copy to the VRWJPO attorney.

15.04 Revocation

- A. Any permit granted pursuant to these Rules may be revoked by the VRWJPO for violation of any provision of these Rules.
- B. Revocation shall not occur earlier than 10 VRWJPO working days from the time that written notice of revocation from the VRWJPO is served on the permittee, or if a hearing is requested, until written notice of the VRWJPB's action has been served on the permittee. The notice of revocation to the permittee shall be made by personal service or by certified mail to the address designated in the permit application. Service by certified mail shall be deemed complete upon mailing. Such written notice of revocation shall contain the effective date of the revocation, the nature of the violation(s) constituting the basis for the revocation, the facts which support the conclusion that the violation(s) occurred and a statement that if the permittee desires to appeal, the permittee must file a request for an appeal hearing with the VRWJPB within 10 VRWJPO working days of service of the revocation notice, exclusive of the day of service. The appeal hearing request shall be in writing stating the grounds for appeal and served on the VRWJPB by personal service or by certified mail within 10 VRWJPO working days of service of the revocation notice, exclusive of the day of service. Following timely service of a request for a hearing, the VRWJPB shall set a time and a place for the hearing to be held pursuant to section 15.00.

SECTION 16.00 HEARINGS

Hearings requested under these Rules shall be held before the VRWJPB, or a hearing examiner as provided below, and shall be open to the public.

- A. **Timeframe for Hearing.** Unless an extension of time is requested by the appellant directed to the chair of the VRWJPB and is granted, the hearing will be held no later than 45 calendar days after the date of service of request for a hearing, exclusive of the date of such service. In any event, such hearing shall be held no later than 90 calendar days after the date of service of request for a hearing, exclusive of the date of such service.
- B. **Notice of Hearing.** The VRWJPB shall mail notice of the hearing to the appellant at least 15 VRWJPO working days prior to the hearing. Such notice shall include:
 - 1. A statement of time, place, and nature of the hearing.
 - 2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
 - 3. A reference to the particular section of the Rules involved.

- C. Hearing Examiner. By resolution, the VRWJPB may appoint an individual, to be known as the hearing examiner, to conduct the hearing and to make findings of fact, conclusions and recommendations to the VRWJPB. The hearing examiner shall submit the findings of fact, conclusions, and recommendations to the VRWJPB in a written report and the VRWJPO may adopt, modify, or reject the report.
- D. Conduct of the Hearing. The appellant and that VRWJPO may be represented by counsel. The VRWJPO, the appellant and additional parties, as determined by the VRWJPB or hearing examiner, in that order, shall present evidence. All testimony shall be sworn under oath. All parties shall have full opportunity to respond to and present evidence, cross-examine witnesses, and present argument. The VRWJPB or hearing examiner may also examine witnesses.
- E. Burden of Proof. The VRWJPO shall have the burden of proving its position by a preponderance of the evidence, unless a different burden is provided by substantive law, and all findings of fact, conclusions, and decisions by the VRWJPB shall be based on evidence presented and matters officially noticed.
- F. Admission of Evidence. All evidence that possesses probative value, including hearsay, may be admitted if it is the type of evidence on which prudent persons are accustomed to rely in the conduct of their serious affairs. Evidence that is incompetent, irrelevant, immaterial, or unduly repetitious may be excluded. The hearing shall be confined to matters raised in the VRWJPO's written notice of suspension, summary suspension, revocation, or denial of a permit, or in the written request for a hearing.
- G. Pre-Hearing Conference. At the written request of any party, or upon motion of the VRWJPB or hearing examiner, a pre-hearing conference shall be held. The pre-hearing conference shall be conducted by the hearing examiner, if the VRWJPB has chosen to use one, or by a designated representative of the VRWJPB. The pre-hearing conference shall be held no later than five VRWJPO working days before the hearing. The purpose of the pre-hearing conference is to:
 - 1. Clarify the issues to be determined at the hearing.
 - 2. Provide an opportunity for discovery of all relevant documentary, photographic or other demonstrative evidence in the possession of each party. The hearing examiner or VRWJPB's representative may require each party to supply a reasonable number of copies of relevant evidence capable of reproduction.
 - 3. Provide an opportunity for discovery of the full name and address of all witnesses who will be called at the hearing and a brief description of the facts and opinions to which each is expected to testify. If the names and addresses

are not known, the party shall describe them thoroughly by job duties and involvement with the facts at issue.

4. If a pre-hearing conference is held, evidence not divulged as provided above shall be excluded at the hearing unless the party advancing the evidence took all reasonable steps to divulge it to the adverse party prior to the hearing and:
 - a. The evidence was not known to the party at the time of the pre-hearing conference; or
 - b. The evidence is in rebuttal to matters raised for the first time at or subsequent to the pre-hearing conference.
- H. Failure to Appear. If the appellant fails to appear at the hearing, appellant shall forfeit any right to a hearing before the VRWJPB or hearing examiner. Appellant's failure to appear shall also be deemed as a waiver of appellant's right to appeal the VRWJPO decision and the VRWJPO's decision shall stand.
- I. Appeal of VRWJPB Decision. Any appellant aggrieved by the decision of the VRWJPB may appeal that decision to any court with appropriate jurisdiction.

SECTION 17.00 FEES

17.01 Policy

The VRWJPO finds that it is in the public interest to require applicants to pay the cost of administering and reviewing project applications and inspecting approved activities to assure compliance with these Rules, rather than using the VRWJPO's annual administrative levy for such purpose. The VRWJPO will establish a schedule of fees that may be amended from time to time to reflect the cost of providing each service.

17.02 Application Fee

A person applying for a permit required by these Rules must pay an application fee as established by the VRWJPB.

17.03 Review, Inspection, and Monitoring Fees

The VRWJPO shall require the payment of a fee for its costs related to the following:

- A. The review and analysis of the proposed activity, including services of engineering, legal, and other consultants. The VRWJPO may require a deposit to cover the cost of

review at the time the application is filed.. In some cases the review fee may be payable before a permit may be issued.

- B. The field inspection and subsequent monitoring of the permitted activity, including services of engineering, legal, and other consultants. The VRWJPO may require a deposit to cover the cost to inspect and monitor a proposed activity at the time the application is filed. Additional field inspection fees may be payable after issuance of a statement if continued inspection and monitoring of the activity is required. A permit may be revoked, or a certificate of completion withheld, if the field inspection fee is not fully paid.

The VRWJPO will provide a statement of any applicable costs incurred for completion of the above activities at the time of permit closeout or, if necessary, at the time of a request for more escrow dollars.

17.04 Fee Exemption

The federal government, the state, and political subdivisions are exempt from paying the fees set forth in sections 16.02 and 16.03 above.

17.05 Failure to Obtain Permit

Any person performing any activity for which a permit is required under these Rules without having first obtained a permit from the VRWJPO shall pay, in addition to such fines, court costs or other amounts as may be payable by law as a result of such violation, a field inspection fee equal to the actual cost for field inspections, monitoring and investigation of such activity, including services of engineering, legal and other consultants. The inspection fee shall be payable following the issuance of a statement by the VRWJPO. No permit shall be issued for the activity if there are any unpaid field inspection fees or other outstanding violations of these Rules.

17.06 Recovery

The fees provided for in these Rules may be recovered by the VRWJPO in any legal proceeding authorized by law.

SECTION 18.00 SEVERABILITY

If any court of competent jurisdiction shall adjudge any provision of these Rules to be invalid, such judgment shall not affect any other provisions of these Rules not specifically included in said judgment.

SECTION 19.00 REMEDIES CUMULATIVE

No remedy set forth in these Rules is intended to be exclusive but each such remedy shall be cumulative and in addition to other remedies now or hereafter existing at law or in equity. No delay in the exercise of any remedy for violation of these Rules shall later impair or waive any such right or power of the VRWJPO.

SECTION 20.00 EFFECTIVE DATE

These Rules, and any amendments thereto, shall be in full force and effect from and after their passage and publication according to law.

HISTORY

Passed by the VRWJPB on March 22, 2007.

Amended by the VRWJPB on October 28, 2010.

Amended by the VRWJPB on October 26, 2017.