City of Afton

**Natural Resources and Groundwater Committee (NRGC)**

**Agenda**
**Tuesday, November 1, 2016**
**5:00 PM**

1. **Call to Order**

2. **Roll Call**

3. **Approval of Agenda**

4. **Approval of Minutes from October 19, 2016**

5. **Business**
   - **A.** Minimal Impact Design Standards (MIDS) discussion and recommendation
   - **B.** Well testing update
   - **C.** Update on Council and Planning Commission Business - Mayor
   - **D.** Natural Resources and Groundwater Management Organizations updates

6. **Adjournment**

**Natural Resources Groundwater Committee**
Afton City Hall
*10/19/16*

**Members in attendance:**
Keith Hoffman
Susan Winsor
Jill Chezik
Jack Kollmer
Richard Bend
Mark Have

**Mae Bend** – Recent applicant for NRGC. Recently returned resident of Afton. Nutrition coach for Lifetime. Looking into food sourcing, learning from Grandparents.

Additional items to add to agenda?

Last meeting we had was in July due to lack of quorum in past two scheduled meetings.
Susan attended a meeting with MN USGS Atlas Findings to identify vulnerable water quality areas in Afton. Is there a need, is it a valuable tool?
Jack made motion to approve new agenda with above, Mark seconded it.

1. Business:
   a. Proposal to change NRGC meeting date and time to just before the City Council meeting. Keith proposed the first Tuesday of the month, at 5:00. That follows the Planning Commission and just before the Council meeting. Keith proposed motion; Jack seconded it. Annie proposed to limit to no more than 90 minutes. Accepted as a friendly amendment. Called to question – all in favor; no opposed. Jill will contact Kim to let her know.
   b. Meeting quorum requirements. Kim presented to the Council and approved. Now changed from 5 members, to a majority of active members. So, next meeting will be November 1.
   c. Update from Richard Bend. Update from MIDS; Planning Commission voted against the approval of the newly proposed MIDS recommendation. Only one voted to approve adoption. Ron Morse is to forward MIDS packet and info to the NRGC members for review. This needs to take place prior to City Council reviewing MIDS. Jill will request he send this info to us.
   d. Well testing project – Keith: 90 people called for testing. Drop off is October 25 at City Hall.
   e. Comprehensive Plan update: Environmental Resources Plan section – follow up on this? Richard gave update, nothing has been happening on this. This is an opportunity for committees to tweak the Com Plan according to the new requirements. The Met Council updated requirements to include two new aspects; addressing Sustainability and Resiliency. Annie – look at current comp plan, review specifically with an eye to resiliency and sustainability and how it compares with our special areas noted in the conservation overlay district (18% slope, marsh areas, significant ecological attribute and/or fragile) areas, our natural landscapes, etc. Conservation Overlay District. Need specific standards, requiring

# Memo

**Project Name** | MIDS Community Assistance Package

**Date** | September 26, 2016

**To** | City of Afton Planning Commission
Mike Isensee, MSCWMO

**From** | Jay Michels, EOR
Spencer Peck, EOR

**Regarding** | Integrating MIDS into City of Afton Municipal Code

## Introduction

This memorandum presents a narrative description of why the City of Afton should update its existing stormwater management ordinances. At the direction of Afton City Council (please see resolution 2015-19 passed by the City of Afton City Council on February 17, 2015), staff at Emmons & Olivier Resources (EOR) thoroughly reviewed the existing City Code looking for opportunities to incorporate standards and policies from the Minimal Impact Design Standards Model Stormwater Ordinance (MIDS or Model Ordinance). The goal of the review and recommendations is to improve the effectiveness, consistency, and transparency of the City's ordinances and to continue protecting the community's water resources. The Middle St. Croix Watershed Management Organization (MSCWMO), EOR and City Staff considered the findings of the initial review at joint working session on April 22, 2015. Based on City Staff feedback the draft ordinance was completed and is now presented to the Planning Commission.

## Minimal Impact Design Standards (MIDS) History

This section briefly reviews the state-wide importance of water resources, the evolution of stormwater management generally, and how the Minimal Impact Design Standards (MIDS) Model Stormwater Ordinance were designed to protect these valuable, fragile resources.

Water is one of the most important natural resources in Minnesota. It is important to local economies, crucial for wildlife, and a critical component of Minnesotans' lifestyles and recreational pursuits. Clean, abundant water is a key issue all across the state: from the beautiful north shore of Lake Superior, to the game fishing and water recreation on the numerous in-land lakes, to the agricultural heartland of the south and west. The pervasive importance of water is the fundamental rationale for protecting and restoring the State's highly valued water resources. One crucial component in protecting and restoring Minnesota's water resources is effective stormwater management.

Stormwater management has evolved substantially during the past 20 years. Historically, stormwater management solutions concentrated on directing stormwater off-site quickly and reducing flooding concerns. The main tool to achieve these goals was collecting runoff in stormwater ponds and other detention facilities. The shortcomings of these approaches can be seen in the extensive water pollution in Minnesota, including huge number of impaired waters. Unfortunately, water resources in and around the City of Afton have not avoided damage or degradation from the failures of outdated stormwater management. A more modern and effective method of protecting waterbodies is to retain the raindrop where it falls through the use of

retention methods. This minimizes runoff, reduces pollution, and increases infiltration and groundwater recharge. Stormwater retention, as opposed to detention, is the overarching concern of the Minimal Impact Design Standards (MIDS).

The MIDS performance standards and Model Ordinance was developed over the course of four years (October 2009 – June 2013) with the help of the Minnesota Pollution Control Agency (MPCA) and a diverse group of stakeholders and experts. The foundation of MIDS is Low Impact Development (LID) standards, which use technologies and best management practices (BMP) to mimic a site's natural hydrology as the landscape is developed. The standards and procedures in MIDS are a set of effective, flexible, and adaptable tools designed to retain stormwater where it falls. In fact, these tools go beyond just managing stormwater, but also provide solutions for numerous issues associated with utility and infrastructure projects such as requiring financial securities, codifying fair and effective enforcement procedures, and ensuring facility inspection and maintenance.

**Basic Principles of MIDS**

The Minimal Impact Design Standards represent the next generation of stormwater management in Minnesota. Using Low Impact Development (LID) principles, MIDS emphasizes keeping the raindrop where it falls in order to minimize stormwater runoff and pollution. Low Impact Development is an internationally recognized approach to stormwater management that mimics a site's natural hydrology as the landscape is developed. The LID approach preserves and protects environmentally-sensitive sites and natural features, including riparian buffers, wetlands, steep slopes, valuable trees, floodplains, woodlands, and highly permeable soils. MIDS incorporates these concepts to achieve more effective stormwater management with four main components:

1. Strong, consistent performance standards for the full range of constructions projects.
2. Flexible Treatment Alternatives designed to achieve high water quality standards despite site constraints such as high water tables, karst geology, or soil issues.
3. A MIDS Design Sequence Flow Chart to assist all stakeholders, from the most experienced developer to a first-time home builder, navigate, understand, and effectively apply the performance standards to specific projects.
4. A new calculator and credit calculations that standardize the use of a range of innovative structural stormwater practices and facilities.

**Performance Standards**

Stormwater performance standards do not exist in Afton's current code. The current version of section 12-409 "Stormwater Management" lists both general and specific standards. These standards amount to only six sentences. The only objective standard imposed by these sections is a maximum amount of impervious surface coverage (10 percent). Although a "qualified

individual" must "document" that stormwater facilities are properly designed and installed, this standard fails to specify the required qualifications. The other standards provide only vague and unquantifiable standards. For instance, development must "minimize the extent of disturbed area" and be stabilized "as soon as possible." Finally, the practices suggested as methods of stormwater management do not include modern technology, but instead focus on simply diverting runoff away from the site, or using stormwater ponds. Adopting MIDS offers the City of Afton the opportunity to implement performance standards to protect the community's valuable water and land resources.

The MIDS Model Ordinance ensures consistent and effective management of a range of stormwater issues, including reducing the velocity at which stormwater leaves a particular property (rate), reducing the amount of water generated by the impervious surfaces on that property (volume), and removing sediment, nutrients, and other pollutants contained in the stormwater (water quality). These factors have important impacts on the body of water receiving stormwater—if not properly managed, each can damage, or even destroy a body of water. Performance standards differ depending on the severity of the storm (e.g. the 1-year, 2-year, 10-year, and 100-year, 24-hour storm events). Generally under MIDS, new development and redevelopment projects must capture, and retain on-site, up to 1.1 inches of runoff from all impervious surfaces on the site.1 Linear development (e.g. road construction).

These strong performance standards provide enhanced protection for Minnesota's water resources without placing unreasonable or unnecessary burdens on developers or landowners. When adopted, MIDS can help communities achieve both water quality and regulatory goals. For instance, MIDS can be used to meet anti-degradation requirements; achieve rate and volume controls, actively reduce several pollutant loads; and achieve waste load reductions as specified in a Total Maximum Daily Load (TMDL) standards. The clear, concise, and quantifiable standards provided by MIDS also prevent anyone in the community from avoiding, exploiting, or neglecting the requirements of the ordinance. Simply put, the standards cannot be flouted or abused. Finally, MIDS is an approved approach for satisfying the requirements for new development and redevelopment outlined in Minimum Control Measure (MCM) 5 of the General Permit for small Municipal Separate Storm Sewers (MS4 Permits).

**Flexible Treatment Alternatives**

Many developers and land owners fear updates to development policies. They believe new regulations may result in impracticable requirements for a previously undeveloped site. These beliefs are often especially strong in communities where development policies are less stringent or are applied infrequently. The MIDS development group foresaw these obstacles, and purposely integrated measures of flexibility in the Model Ordinance and its performance

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[1] Long-Form MIDS Stormwater Ordinance, § 6(d)

standards. If an applicant is unable to achieve the full MIDS performance goals due to site restrictions as documented by the applicant and attested by the local authority, the development project may instead follow one of three Flexible Treatment Alternatives.

The first alternative is to retain a smaller volume of runoff, remove a large percentage of the total phosphorous load from the discharged runoff, and attempt to address constraints by relocating project elements. If the first alternative is unfeasible, the second alternative reduces the volume standards to a "maximum extent practicable" level, further decreases the percentage of total phosphorous that must be removed, and analyses the effect of relocation of project elements. Finally, if the first two alternatives are unattainable, the third alternative allows off-site mitigation equivalent to the full volume reduction performance goal. These alternatives are intended to be used in sequence. Each step of the sequence must be documented, reviewed, and approved by the local authorities.

**MIDS Calculator**

One of the greatest aspects of MIDS is that it standardizes the benefits of non-structural and technological stormwater practices. The MIDS Best Management Practice (BMP) calculator is a Microsoft Excel-based tool used to determine stormwater runoff volume and pollutant reduction capabilities of various low impact development (LID) BMPs. The MIDS calculator estimates the stormwater runoff volume reductions for various BMPs based on the MIDS performance goal (1.1 inches of runoff off impervious surfaces) and annual pollutant load reductions for total phosphorus (including a breakdown between particulate and dissolved phosphorus) and total suspended solids (TSS).

Standardization of stormwater Best Management Practices (BMPs) not only simplifies the development process, but also supports decision-makers in determining which design aspects will satisfy a community's goals. All the BMPs recommended by the MIDS system have been reviewed and approved by a host of stormwater professionals, including the Minnesota Pollution Control Agency (MPCA). The MIDS Calculator also helps communities quantify load reductions in applications for grants and other funding opportunities. In short, the MIDS Calculator reduces workloads for developers and City Staff, and clarifies the stormwater management possibilities to even the most unsophisticated user.

**Overlapping Authority and MIDS**

MIDS is especially effective in Minnesota because it is typically implemented by several overlapping authorities, including watershed districts (WDs), watershed management organizations (WMO), counties, and municipalities. In fact, nearly every level of water governance has adopted the MIDS approach. The MIDS development process and state wide application is codified in state statute (Minn. Stat. 115.03 Subd. 5c(c)). The Minnesota Department of Natural Resources, a state-level agency, incorporated the MIDS performance

goals into its Stormwater and Shoreline Best Management Practices for Public Water Accesses.[1] Further, the Minnesota Pollution Control Agency (MPCA), the state agency responsible for issuing permits and overseeing many pollution prevention and water quality programs, was heavily involved in the development of MIDS, and has approved MIDS as a method for achieving the regulatory requirements for several state-wide programs.

At the watershed level, a significant number of Watershed Districts, Water Management Organizations, Lake Improvement Districts, Soil and Conservation Districts, and municipalities have adopted, or are actively preparing to adopt MIDS standards, including several of Afton's immediate neighbors.[2] These organizations have a critical role in achieving the water quality and resource conservation goals set at the state and local level. Since MIDS was released in 2013, five watershed districts, two water management organization, and six cities have adopted MIDS. The Middle St. Croix Watershed Management Organization was awarded a Clean Water grant in 2014 to implement the MIDS Community Assistance Package. The watershed management organization will work with up to 13 communities in the St. Croix Basin to adopt ordinance and code revisions to incorporate MIDS stormwater quality and volume standards for new development and redevelopment. Among these communities, two (Lakeland Shores and Lakeland) have already adopted the MIDS approach.

**Consistency and the MIDS Approach**

MIDS also ensures a community's stormwater management ordinance is internally consistent and easy to use. The existing code uses multiple terms (i.e. drainage, stormwater, runoff, etc) which could cause a developer or landowner significant confusion. More problematic is the current cumbersome and disorganized structure. The relevant terms and standards are scattered throughout the code with no organization or consistency. Most appear in Chapter 12, but this Chapter is over 200 pages long and has several dozen subchapters, sections and subsections. For instance, to determine the exact stormwater management requirements for a particular project, at least thirteen (13) separate provisions must be consulted. These provisions are spread from page 10 to page 211, and only one provision even contains the term "stormwater management." Creating a stormwater pollution prevention plan for a project is thus a major undertaking requiring frequent contact with City staff, long hours reviewing the City Code, and possibly even hiring professional help.

Adopting MIDS offers an easy alternative. First, the new provisions would simply be slotted into the existing code. Using the reserved Chapter 13, MIDS could be integrated into the existing code as a standalone chapter titled "Stormwater Management." No major rewrite is required, beyond deleting conflicting or supplemented sections. Second, and most importantly, are the benefits of a stand-alone chapter. A single, organized stormwater management chapter would save developers and City staff enormous amounts of time and money. Instead of searching through a 200-page document, both Staff and developers would need to look at only one chapter

of the code to determine what stormwater management standards must be met. Moreover, even first time builders, or developers new to Afton could easily integrate the performance standards, and use the simple tools in the MIDS ordinance to develop a state-of-the-art stormwater management system.

In summary, Afton will greatly benefit from adopting the MIDS performance standards as recommended by the MSCWMO and EOR review. The MIDS updates provide clear and effective performance standards, which the current code lacks. The new ordinance does not place an unreasonable burden on landowners or developers. Thanks to the Flexible Treatment Alternative, the updates may open sites to development that were previously unavailable as a result of site constraints. The recommended updates bring Afton to the state-of-the-art stormwater management and seamlessly integrate their approach with neighboring communities and other overlapping layers of authority. Finally, the updates improve the effectiveness and consistency of the code with a new stand-alone stormwater management chapter. All water resources in and around Afton will greatly benefit from the reduced runoff volumes and rates, and decrease pollution loads once MIDS is adopted and implemented.

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[1] Minnesota Dept. of Nat. Resources, Stormwater and Shoreline Best Management Practices for Public Water Accesses

[2] See "Minnesota Stormwater Manual - Communities that Adopted MIDS," at http://stormwater.pca.state.mn.us/index.php/Community_Assistance_Package.

To: Afton City Council and Community Members
From: Spencer J Peck, Emmons & Olivier Resources
Date: May 5, 2016
Re: Summary of Updates to Chapter 12

**Memorandum**

This memorandum briefly summarizes the changes made to Chapter 12 – Zoning, of the City of Afton Code of Ordinances. These changes were required as part of the City's efforts to adopt a new ordinance regulating stormwater management and erosion and sediment control. The new ordinance is contained in a new Chapter 13 – Stormwater Management and Erosion and Sediment Control.

The changes to Chapter 12 are very small in scope and serve to ensure consistency within and among the various City ordinances. Modified Chapter 12 provisions are also designed to alert community members and developers that new stormwater management and erosion control provisions are codified in Chapter 13. The changes are listed in the bullet points below.

- **Sec. 12-55. Definitions.**
  - Several new definitions were added to ensure new terms are clear and understandable. Some of the new terms are not necessarily contained in Chapter 12, but are included in Chapter 13.

- **Sec. 12-132(C)(1). Minimum requirements.**
  - This section lists and describes "additional engineering and design guidelines" for use within the "agricultural zone."
  - This provision might have been unintentionally overlooked in previous conversations regarding adopting Chapter 13. It might be useful for City Staff to review this provision and decide if anything needs to happen. In its current state, this may be duplicative of the plans and documents required for the SWPP/ESCP permitting process.

- **Sec. 12-215. Land reclamation and land grading.**
  - Updated terms for consistency with new Chapter 13. Specifically, replaced old terms, such as "drainage" with "stormwater management."
  - Added new criteria for the Zoning Administrator to consider when determining whether to require a stormwater pollution prevention plan or erosion and sediment control plan. The old list was outdated, and inadequate to protect water resources from the full range of causes of pollution.
  - Added language ensuring SWPPs and ESCPs meet the standards of Chapter 13.

- **Sec. 12-217. Drainage.**
  - Updated language to apply provisions to sites "with the potential to cause unreasonable flooding" as a result of stormwater runoff.
  - Modified language to direct stormwater run-off to "stormwater management facilities that are consistent" with Chapter 13. Removed conflicting, outdated stormwater management practices.
  - Added a clause requiring any increases in stormwater runoff rates or volumes to comply with Chapter 13

- **Sec. 12-409. Stormwater Management.**
  - This section formerly contained general and specific goals for stormwater management.

- Deleted all old provisions, and replaced with new provisions requiring all building permits and land disturbing activity to obtain a SWPP or ESCP as required by Chapter 13.

- **Sec. 12-1474. Financial Guarantee**
  - Updated language and terms for financial guarantees for Grading and ESCP plans.
  - Added a clause requiring financial guarantees for SWPPs.

Chapter 12
Updated October 2, 2014

**LAND USE**[1]

## Table of Contents


ARTICLE I. IN GENERAL ..... 9
Secs. 12-1--12-50. Reserved. ..... 9
ARTICLE II. ZONING ..... 9
DIVISION 1. GENERALLY ..... 9
Sec. 12-51. Short title. ..... 9
Sec. 12-52. General purposes. ..... 9
Sec. 12-53. Specific purposes. ..... 9
Sec. 12-54. Interpretation and construction. ..... 10
Sec. 12-55. Definitions ..... 10
Sec. 12-56. Application of article. ..... 24
Sec. 12-57. Nonconforming uses, buildings and structures. ..... 24
Sec. 12-58. Interpretation of conflicting provisions. ..... 26
Sec. 12-59. Enforcement. ..... 26
Sec. 12-60. Supremacy ..... 26
Secs. 12-61 – 12-75. Reserved. ..... 27
DIVISION 2. ADMINISTRATION. ..... 26
Sec. 12-76. Duties of the Zoning Administrator ..... 26
Sec. 12-77. Appeals and variances; Board of Adjustments and Appeals. ..... 29
Sec. 12-78. Conditional Use Permits. ..... 32
Sec. 12-79. Administrative Permit ..... 34
Sec. 12-80. Amendments and rezonings. ..... 36
Sec. 12-81. Building permits and the building code. ..... 38
Sec. 12-82. Moving permits and relocated structures. ..... 39
Sec. 12-83. Septic permits. ..... 39
Sec. 12-84. Driveway access permits and standards. ..... 39
Sec. 12-85. Grading permits. ..... 42
Sec. 12-86. Farm site plan permits. ..... 42
Sec. 12-87. Certificate of occupancy. ..... 42
Sec. 12-88. Fees. ..... 43
Sec. 12-89. Environmental assessment worksheets (EAW) and environmental impact statements (EIS) ..... 43
Secs. 12-90--12-130. Reserved. ..... 44
DIVISION 3. DISTRICTS ..... 45
Sec. 12-131. Districts generally ..... 45
Sec. 12-132. Minimum requirements. ..... 45
Sec. 12-133. Zoning district map ..... 50
Sec. 12-134. Uses. ..... 51
Sec. 12-135. Floodplain overlay district. ..... 56
Sec. 12-136. Shoreland management overlay district. ..... 56
Sec. 12-137. Conservancy overlay district. ..... 56
Sec. 12-138. St. Croix River overlay district. ..... 57
Sec. 12-139. Agricultural preserves (AP) overlay district. ..... 57
Sec. 12-140. Agricultural (A) zoning district. ..... 61
Sec. 12-141. Rural residential (RR) zoning district. ..... 62
Sec. 12-142. Village historic site, residential (VHS-R) and commercial (VHS-C) zoning districts. ..... 63
Sec. 12-143. Light Industrial (I-1A), Light Industrial (I-1B), and Light Industrial (I-1C). ..... 64
Sec. 12-144. Marine Services (MS) zoning district. ..... 66
Sec. 12-145. Preservation and Land Conservation Development (PLCD). ..... 66
Secs. 12-146-12-184. Reserved ..... 66
DIVISION 4. DESIGN AND PERFORMANCE STANDARDS ..... 66
Sec. 12-185. Performance standards ..... 66


**Commented [SP1]:** This section has a provision requiring a description of all LID activities. Not sure what to do with it, as I doubt it was discussed at meetings.

[1] **Cross references** – Planning Commission, § 2-141 et seq.; natural resources and groundwater commission, § 2- 186 et seq.; utilities, Ch. 24.

Sec. 12-186. Principal building. 67
Sec. 12-187. Types of accessory buildings. 67
Sec. 12-188. Livestock. 70
Sec. 12-189. Agricultural operations. 72
Sec. 12-190. Fences. 73
Sec. 12-191. Screening. 73
Sec. 12-192. Landscaping. 74
Sec. 12-193. Reasonable maintenance required 74
Sec. 12-194. Exterior storage. 74
Sec. 12-195. Lighting, lighting fixtures and glare. 75
Sec. 12-196. Parking. 75
Sec. 12-197. Off-street loading areas. 78
Sec. 12-198. Traffic control. 78
Sec. 12-199. Fallout shelters. 79
Sec. 12-200. Guesthouses. 79
Sec. 12-201. Dwelling units in commercial and I zoning districts. 79
Sec. 12-202. Radiation and electrical interference prohibited 79
Sec. 12-203. Storage of hazardous materials. 79
Sec. 12-204. Explosives. 79
Sec. 12-205. Environmental pollution 80
Sec. 12-206. Environmental nuisances. 80
Sec. 12-207. Miscellaneous nuisances. 80
Sec. 12-208. Noise. 81
Sec. 12-209. Visual standards. 84
Sec. 12-210. Signs 84
Sec. 12-212. Sign Permit chart. 91
Sec. 12-213. Manufactured homes. 92
Sec. 12-214. Mining 94
Sec. 12-215. Land reclamation and land grading 94
Sec. 12-216. Soil conservation plans. 95
Sec. 12-217. Drainage. 95
Sec. 12-218. Vegetative cutting 96
Sec. 12-219. Swimming pools. 96
Sec. 12-220. Tennis courts. 97
Sec. 12-221. Private kennels. 98
Sec. 12-222. Bed and breakfast facilities 98
Sec. 12-223. Hotels. 99
Sec. 12-224. Marinas. 100
Sec. 12-225. Coin-operated machines. 100
Sec. 12-226. Studio, art or crafts. 100
Sec. 12-227. Garage sales. 100
Sec. 12-228. Home occupations. 101
Sec. 12-229. Wind Energy Systems. 101
Sec. 12-230. Keeping Chickens on Parcels Less Than 5 Acres. 103
Secs. 12-231--12-275. Reserved. 104
ARTICLE III. SHORELAND MANAGEMENT 104
DIVISION 1. GENERALLY 104
Sec. 12-276. Statutory authorization. 104
Sec. 12-277. Policy 105
Sec. 12-278. Jurisdiction. 105
Sec. 12-279. Compliance. 105
Sec. 12-280. Enforcement. 105
Sec. 12-281. Interpretation. 105
Sec. 12-282. Abrogation and greater restrictions. 105
Sec. 12-283. Definitions 105
Secs. 12-284--12-325. Reserved 109
DIVISION 2. ADMINISTRATION 109
Sec. 12-326. Permits required 109
Sec. 12-327. Certificate of zoning compliance. 109
Sec. 12-328. Variances. 109
Sec. 12-329. Notifications to the department of natural resources. 109
Secs. 12-330--12-360. Reserved 110

**Commented [SP2]:** 12-215 & 12-217 include minor language updates pointing to Ch. 13 for consistency.

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**Commented [SP3]:** 12-216: please review with the community. Keep, modify, delete?

DIVISION 3. CLASSIFICATION SYSTEMS ..... 110
Sec. 12-361. Basis of classification. ..... 110
Sec. 12-362. Criteria for designation. ..... 110
Sec. 12-363. Land use district descriptions. ..... 111
Sec. 12-364. Use, upgrading of inconsistent land use districts. ..... 112
Secs. 12-365--12-400. Reserved ..... 112
DIVISION 4. ZONING AND WATER SUPPLY SANITARY REQUIREMENTS ..... 112
Sec. 12-401. Lot area and width standards. ..... 112
Sec. 12-402. Placement of structures on lots. ..... 113
Sec. 12-403. Design criteria for structures. ..... 113
Sec. 12-404. Height of structures. ..... 114
Sec. 12-405. Shoreland alterations. ..... 114
Sec. 12-406. Vegetation alterations. ..... 115
Sec. 12-407. Topographic alterations; grading and filling ..... 115
Sec. 12-408. Placement and design of roads, driveways, and parking areas ..... 116
Sec. 12-409. Stormwater management. ..... 116
Sec. 12-410. Agricultural use standards. ..... 117
Sec. 12-411. Special uses. ..... 117
Sec. 12-412. Water supply ..... 118
Sec. 12-413. Sewage treatment ..... 118
Secs. 12-414--12-475. Reserved ..... 118
DIVISION 5. NONCONFORMITIES ..... 118
Sec. 12-476. Non-conforming uses. ..... 118
Sec. 12-477. Construction on nonconforming lots of record ..... 119
Sec. 12-478. Additions/expansions to nonconforming structures. ..... 119
Secs. 12-479--12-500. Reserved ..... 119
DIVISION 6. SUBDIVISION REQUIREMENTS ..... 119
Sec. 12-501. Land suitability ..... 120
Sec. 12-502. Consistency with other controls. ..... 120
Sec. 12-503. Information requirements. ..... 120
Sec. 12-504. Dedications ..... 121
Sec. 12-505. Platting. ..... 121
Sec. 12-506. Controlled access or recreational lots. ..... 121
Secs. 12-507--12-575. Reserved ..... 121
ARTICLE IV. ..... 121
LOWER ST. CROIX RIVER BLUFFLAND AND SHORELAND MANAGEMENT ..... 121
DIVISION 1. GENERALLY ..... 121
Sec. 12-576. Short title. ..... 121
Sec. 12-577. Intent and purpose. ..... 121
Sec. 12-578. Existing codes. ..... 122
Sec. 12-579. Definitions ..... 123
Sec. 12-580. Substandard structures. ..... 124
Sec. 12-581. Substandard lots. ..... 125
Sec. 12-582. Color of structures. ..... 125
Sec. 12-583. Marinas. ..... 125
Sec. 12-584. Alterations in public waters. ..... 126
Sec. 12-585. Transmission services. ..... 126
Sec. 12-586. Public roads. ..... 126
Sec. 12-587. Requirements for sewage disposal. ..... 126
Sec. 12-588. Conflicting provisions. ..... 126
Sec. 12-589. Measurement of distances. ..... 126
Secs. 12-590--12-635. Reserved ..... 126
DIVISION 2. DISTRICTS ..... 126
Sec. 12-636. Designation of districts. ..... 126
Sec. 12-637. Minimum district dimensional requirements. ..... 127
Secs. 12-638--12-700. Reserved ..... 128
DIVISION 3. USES ..... 128
Sec. 12-701. Purpose. ..... 128
Sec. 12-702. Permitted uses. ..... 128
Sec. 12-703. Site preservation. ..... 128
Sec. 12-704. Vegetative cutting ..... 128
Sec. 12-705. Grading and filling ..... 129

**Commented [SP4]:** Deleted old language. Inserted new provision requiring SWPP/ESCP for all building permits and land disturbance activity that meet reqs of Ch. 13.

Sec. 12-1019. Permits, Certification Requirements and Record Keeping ..... 145
Sec. 12-1020. Appeals and Variances/Duties of the Board of Adjustment ..... 145
Sec. 12-1021. Conditional Uses-Standards and Elevation Procedures. ..... 147
Sec. 12-1022 – 12-1250. Reserved ..... 148
ARTICLE VI. SUBDIVISIONS ..... 148
DIVISION 1. GENERALLY ..... 148
Sec. 12-1251. Purpose of article. ..... 148
Sec. 12-1252. Basis of need ..... 148
Sec. 12-1253. Basic procedures ..... 149
Sec. 12-1254. Purpose. ..... 149
Sec. 12-1255. Scope ..... 150
Sec. 12-1256. Definitions ..... 150
Sec. 12-1257. Protection of natural features. ..... 153
Sec. 12-1258. Solar access planning. ..... 154
Sec. 12-1259. Public sites and open spaces. ..... 154
Sec. 12-1260. Minor subdivision. ..... 154
Sec. 12-1261. Simple subdivision. ..... 155
Sec. 12-1262. Land division. ..... 155
Sec. 12-1263. Registered land surveys ..... 156
Sec. 12-1264. Metes and bounds. ..... 156
Sec. 12-1265. Unapproved subdivisions. ..... 156
Sec. 12-1266. Variances. ..... 156
Sec. 12-1267. Security interest. ..... 157
Sec. 12-1268. Building permits. ..... 157
Sec. 12-1269. Violation and penalties. ..... 157
Sec. 12-1270. Park and open space dedication ..... 157
Sec. 12-1271. Conflicting provisions. ..... 160
Secs. 12-1272.--12-1325. Reserved. ..... 160
DIVISION 2. PLATTING PROCEDURE ..... 160
Sec. 12-1326. Sketch plan. ..... 160
Sec. 12-1327. Preparing and submitting the preliminary plat. ..... 161
Sec. 12-1328. Data required for preliminary plat. ..... 161
Sec. 12-1329. Review of the preliminary plat ..... 163
Sec. 12-1330. Preparing and submitting the final plat. ..... 164
Sec. 12-1331. Data required for final plat. ..... 164
Sec. 12-1332. Review of the final plat. ..... 164
Secs. 12-1333--12-1375. Reserved ..... 165
DIVISION 3. MINIMUM DESIGN STANDARDS ..... 165
Sec. 12-1376. Conformity with comprehensive development plan. ..... 165
Sec. 12-1377. Land requirements. ..... 165
Sec. 12-1378. Street plan ..... 165
Sec. 12-1379. Cul-de-sac streets ..... 166
Sec. 12-1380. Street design. ..... 166
Sec. 12-1381. Private streets. ..... 168
Sec. 12-1382. Alley design ..... 168
Sec. 12-1383. Drainage. ..... 168
Sec. 12-1384. Easements. ..... 168
Sec. 12-1385. Street names. ..... 169
Sec. 12-1386. Block design ..... 169
Sec. 12-1387. Lot requirements. ..... 169
Secs. 12-1388--12-1425. Reserved ..... 170
DIVISION 4. ENGINEERING STANDARDS ..... 170
Sec. 12-1426. Streets. ..... 170
Sec. 12-1427. Utilities. ..... 171
Sec. 12-1428. Sanitation, sewer and water rural areas. ..... 171
Sec. 12-1429. Stormwater drainage. ..... 172
Sec. 12-1430. Street signs. ..... 172
Sec. 12-1431. Inspection. ..... 172
Secs. 12-1432--12-1470. Reserved ..... 172
DIVISION 5. IMPROVEMENTS ..... 172
Sec. 12-1471. Required ..... 172
Sec. 12-1472. Payment for installation ..... 173

Sec. 12-1473. Agreement providing for the installation. 173
Sec. 12-1474. Financial guarantee. 174
Sec. 12-1475. Construction plans and inspections. 174
Sec. 12-1476. Completion prior to approval of plat. 174
Secs. 12-1477--12-1479. Reserved 174
DIVISION 6. PROTECTIVE COVENANTS REQUIRED FOR ALL MAJOR SUBDIVISIONS 174
Sec. 12-1480. Covenants required. 175
Sec. 12-1481. Covenant regulations. 175
Secs. 12-1481 – 12-1495. Reserved. 175
DIVISION 7. REQUIREMENTS FOR THE LOWER ST. CROIX RIVER 175
SHORELAND MANAGEMENT 175
Sec. 12-1496. Land suitability 175
Sec. 12-1497. Planned cluster developments. 175
Secs. 12-1498--12-1525. Reserved 175
ARTICLE VII. HERITAGE PRESERVATION 176
DIVISION 1. GENERALLY 176
Sec. 12-1526. Public policy and purpose. 176
Sec. 12-1527. Definitions 176
Sec. 12-1528. Review of activities. 176
Sec. 12-1529. Enforcement. 177
Secs. 12-1530--12-1620. Reserved 177
DIVISION 2. DESIGN REVIEW GUIDELINES 177
Subdivision I. General Provisions 177
Sec. 12-1621. Purpose and intent. 177
Sec. 12-1622. General principles. 178
Secs. 12-1623--12-1665. Reserved 178
Subdivision II. Restoration and Rehabilitation 178
Sec. 12-1666. Masonry walls and foundations. 178
Sec. 12-1667. Walls; wood sided 179
Sec. 12-1668. Roofs and chimneys 179
Sec. 12-1669. Windows 180
Sec. 12-1670. Entries. 180
Sec. 12-1671. Porches and steps 181
Sec. 12-1672. Exterior trim and architectural features. 181
Sec. 12-1673. Commercial buildings; rehabilitation and restoration. 182
Secs. 12-1674--12-1710. Reserved 182
Subdivision III. New Constructions and Additions 182
Sec. 12-1711. General guidelines 182
Sec. 12-1712. New construction. 183
Sec. 12-1713. Additions to principal buildings 183
Sec. 12-1714. Accessory buildings 184
Sec. 12-1715. Site considerations. 184
Sec. 12-1716. Public improvements. 184
Sec. 12-1717. Signs 184
Secs. 12-1718--12-1770. Reserved 184
ARTICLE VIII. BUILDINGS AND BUILDING REGULATIONS 185
DIVISION 1. GENERALLY 185
Secs. 12-1771--12-1800. Reserved 185
DIVISION 2. BUILDING CODE 185
Sec. 12-1801. Adopted. 185
Sec. 12-1802. Administration required 185
Sec. 12-1803. Application, administration and enforcement. 185
Sec. 12-1804. Permits, inspections and fees. 185
Sec. 12-1805. Violations and penalties 185
Secs. 12-1806--12-1850. Reserved 186
DIVISION 3. FIRE PREVENTION AND LIFE SAFETY CODE 186
Sec. 12-1851. Adopted. 186
Sec. 12-1852. Establishment, duties of bureau of fire prevention. 186
Sec. 12-1853. Definition. 186
Sec. 12-1854. New construction and renovation. 186
Sec. 12-1855. Appeals. 186
Sec. 12-1856. Open burning prohibited 187

Sec. 12-1857. Rules adopted by reference.....187
Secs. 12-1858--12-1900. Reserved.....187
ARTICLE IX. SEWAGE.....187
DIVISION 1. GENERALLY.....187
Secs. 12-1901--12-1950. Reserved.....187
DIVISION 2. SEWER USE.....187
Subdivision I. Generally.....187
Sec. 12-1951. Purpose.....187
Sec. 12-1952. Definitions.....187
Sec. 12-1953. Applicability.....189
Sec. 12-1954. Enforcement.....189
Sec. 12-1955. Appeals and variance requests.....189
Sec. 12-1956. Inspections.....189
Sec. 12-1957. Violations and penalties.....190
Secs. 12-1958--12-1980. Reserved.....190
Subdivision II. Use of Public Sewage Treatment Systems.....190
Sec. 12-1981. Unlawful surface discharge.....190
Sec. 12-1982. Unlawful connection to public sewage treatment system, permit.....190
Sec. 12-1983. Lawful connections to public sewers.....190
Sec. 12-1984. Unlawful discharge to public sewers.....191
Sec. 12-1985. Pretreatment, control and refusal of extraordinary wastes.....193
Secs. 12-1986--12-2005. Reserved.....194
Subdivision III. Use of Individual Sewage Treatment Systems.....194
Sec. 12-2006. Reserved.....194
Secs. 12-2007--12-2040. Reserved.....194
Subdivision IV. Maintenance.....194
Secs. 12-2041 – 12-2044. Reserved.....194
Secs. 12-2045 -- 12-2075. Reserved.....194
DIVISION 3. SEWAGE TREATMENT.....194
Secs. 12-2076 -- 12-2200. Reserved.....194
DIVISION 4. WASTEWATER SERVICE CHARGE SYSTEM.....194
Subdivision I. Charge Established.....194
Sec. 12-2201. User Categories.....194
Sec. 12-2202. Equivalent Residential Units.....194
Sec. 12-2203. Annual User Charge Rates.....195
Sec. 12-2204. Records.....195
Secs. 12-2205-12-2210. Reserved.....195
Subdivision II. Determination of Charges.....195
Sec. 12-2211. Recovery of Costs.....195
Sec. 12-2212. Determination of User Charge.....195
Sec. 12-2213. Annual Fees and Payments.....195
Sec. 12-2214. Septic Tank Effluent Pumping Surcharge.....196
Sec. 12-2215. Fees for Unusual Wastes.....196
Sec. 12-2216. Toxic or Incompatible Waste Clean-Up.....196
Sec. 12-2217. Establishment of Special Accounts.....196
Secs. 12-2218 – 12-2225. Reserved.....196
Subdivision III. Administration.....196
Sec. 12-2226. Applicability.....196
Sec. 12-2227. Enforcement.....196
Sec. 12-2228. Appeals and Variances.....196
Secs. 12-2229 – 12-2235. Reserved.....197
Subdivision IV. Enforcement.....197
Sec. 12-2236. Violations and Penalties.....197
Sec. 12-2237. Interest on Unpaid Balances.....197
Sec. 12-2238. Permit Revocation and Service Disconnection.....197
Sec. 12-2239. Effective Date.....197
Sec. 12-2240 – 12-2300. Reserved.....197
ARTICLE X. MINING.....197
DIVISION 1. GENERALLY.....197
Sec. 12-2301. Purpose.....198
Sec. 12-2302. Definitions.....198
Sec. 12-2303. Nuisance abatement.....198

Sec. 12-2304. Existing codes. ..... 198
Sec. 12-2305. Violation, penalties. ..... 198
Secs. 12-2306--12-2320. Reserved. ..... 199
DIVISION 2. PERMIT ..... 199
Sec. 12-2321. Required ..... 199
Sec. 12-2322. Termination. ..... 199
Sec. 12-2323. Application. ..... 199
Sec. 12-2324. Operating and land rehabilitation practices. ..... 200
Sec. 12-2325. Operating conditions. ..... 201
Secs. 12-2326--12-2350. Reserved ..... 202
ARTICLE XI. PERSONAL WIRELESS COMMUNCIATIONS ANTENNAS AND TOWERS. ..... 202
Section 12-2351. Intent and Purpose. ..... 202
Sec. 12-2352. Definitions ..... 203
Sec. 12-2353. Permit and Location Requirements. ..... 203
Sec. 12-2354. Permit Application Requirements for Conditional Use Permits for New and Modified Towers and Administrative Permits for Additional Antennas on Existing Mounts. ..... 204
Sec. 12-2355. Conditional Use Permits. ..... 206
Secs. 12-2356 – 12-2370. Reserved. ..... 207
ARTICLE XII. PRESERVATION AND LAND CONSERVATION DEVELOPMENTS. ..... 207
Sec. 12-2371. Scope ..... 207
Sec. 12-2372. General provisions. ..... 207
Sec. 12-2373. Purpose. ..... 207
Sec. 12-2374. Permitted uses. ..... 207
Sec. 12-2375. General standards for approval. ..... 207
Sec. 12-2376. Density, Frontage on a Public Street and Length of Cul-de-sac requirements. ..... 208
Sec. 12-2377. Coordination with subdivision regulations. ..... 208
Sec. 12-2378. Pre-application meeting. ..... 208
Sec. 12-2379. General development plan. ..... 208
Sec. 12-2380. Final development plan. ..... 209
Sec. 12-2381. Enforcement of development schedule. ..... 210
Sec. 12-2382. Conveyance and maintenance of undeveloped parcel. ..... 210
Sec. 12-2383. Standards for undeveloped parcel. ..... 210
Sec. 12-2384. Review and amendments. ..... 211

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shall be required to meet architectural standards required in this Code and City ordinances.

E. Proper and healthful disposal of animal waste and dead animals shall be required.
F. Lighting, fencing, screening, berming, etc., may be required by the City.
G. Other conditions as may be deemed reasonable by the City.

*Animal unit* means a unit of measure used to compare differences in the production of animal wastes which has a standard as the amount of waste produced on a regular basis by a slaughter steer or heifer.

*Animals, domestic farm* means cattle, hogs, horses, bees, sheep, goats, chickens and other animals commonly kept for commercial food producing purposes.

*Animals, domestic pets* means dogs, cats, birds and similar animals commonly kept in a residence. Animals considered wild, exotic or non-domestic such as bears, lions, wolves, ocelots and similar animals shall not be considered domestic pets.

*Apartment* means a room or suite of rooms with cooking facilities designed to be occupied as a residency by a single family.

*Applicant*, means the owner of land submitting an application under the provisions of this ordinance for a Stormwater Management Permit (SWMP) and/or Erosion and Sediment Control Plan (ESC Plan) to be issued by the community.

*Area, net developable*, means those lands within a development parcel remaining after the deletion of floodplains, wetlands, slopes greater than 13 percent and unbuildable easements or rights-of-way.

*Automobile repair* means the replacement of any part or repair of any part which does not require the removal of the engine head or pan, engine, transmission or differential; incidental body and fender work, minor painting and upholstering service when such service above stated is applied to passenger automobiles and trucks not in excess of 7,000 pounds gross vehicle weight.

*Automobile service station (gas station)* means a place where gasoline, kerosene, or any other motor fuel, lubricating oil, or grease for operating motor vehicles is offered for sale to the public and deliveries are made directly into motor vehicles. This definition includes greasing and oiling and the sale of automobile accessories on the premises. This definition also includes minor repairs, incidental body and fender work, painting or upholstering, replacement of parts and motor services to passenger automobiles and trucks not exceeding 1½ tons capacity. This definition shall not include major repair, rebuilding or reconditioning of engines, motor vehicles, or trailers; collision service, including body, frame or fender straightening or repair; overhaul, painting, or paint job; vehicle steam cleaning; or automatic car or vehicle washing devices.

*Automobile service uses* means those uses catering to the travelling public. These include auto and truck laundry, drive-in business, service station, repair garage, public garage, motel, hotel, seasonal produce sales, motor vehicle sales, trailer sales and rental, boat sales, rental services and restaurants.

*Basement* means that portion of a building that is partly or completely below grade (see "Story Above Grade").[9]

*Bed and breakfast* means a residence at which at most two rooms may be rented to a maximum of four persons to whom breakfast but no other meal may be served.

*Best Management Practices (BMPs)* means the most effective and practicable means of erosion prevention and sediment control, and water quality management practices that are the most effective and practicable means to control, prevent, and minimize degradation of surface water, including avoidance of impacts, construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, pollution prevention through good housekeeping, and other management practices published by state or designated area-wide planning agencies.

*Bluff* means a topographic feature such as a hill, cliff or embankment, except as provided in the Lower St. Croix bluffland and shoreland district, having the following characteristics:

A. A slope of 18 percent or greater as measured over horizontal distances of 50 feet or more.

[9] Ord 02-2011, 7/19/2011

*Commercial.* See Section 12-134 for permitted uses.

*Commercial recreation* means a bowling alley, cart track, pool hall, vehicle racing or amusement, dancehall, skiing, skating, firearms range, golf driving ranges, miniature golf or putting courses, golf training facilities and similar uses.

*Commercial school* means a nonpublic school, charging a fee for instruction, serving a maximum of 25 students per day with adequate on-site sewage treatment and off-street parking for such students.

*Common Plan of Development or Sale,* means a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

*Comprehensive plan* means the policies, statements, goals and interrelated plans for private and public land and water use, transportation and community facilities, including recommendations for planned execution, documented in texts, ordinance and maps which constitute the guide for the future development of the community or any portion of the community.

*Conditionally Permitted Use* means the uses specifically designated in each zoning use district, which for their respective conduct, exercise or performance may require reasonable, unique or extraordinary conditions in such use district for the promotion or preservation of the general public welfare, health, convenience or safety therein and in the City, and therefore may be permitted only by a Conditional Use Permit.

*Construction Activity,* includes construction activity as defined in 40 CFR pt. 122.26(b)(14)(x) and small construction activity as defined in 40 CFR pt. 122.26(b)(15) and construction activity as defined by Minn. R. 709.0080, subp. 4. This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling, and excavating. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) acre or more. Construction activity does not include a disturbance to the land of less than five (5) acres for the purpose of routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. (NOTE – The community may wish to change this to a smaller disturbance area. A smaller area is more restrictive than the state/federal requirements, so it would be allowable for a local government.)

*Council* means the governing body of the City.

*Curb level* means the grade elevation established by the building official of the curb in front of the center of the building. Where no curb level has been established, the City shall determine a curb level or its equivalent for the purpose of this article.

*Decibel* means the unit of sound measured on the "A" weighing scale of a sound level meter, set on slow response, the weighing characteristics of which are specified in the latest revision of `Standards on Sound Level Meters of the USA Standards Institute'.

*Disposal area, sewage* means that ground within the confines of the lot that does not contain buildings and has an elevation at least 80 inches above the highest known or calculated water table or bedrock formation and does not slope in excess of 13 percent.

*Dredging* means the process by which soils or other surface materials normally transported by surface water erosion into a body of water, are removed for the purpose of deepening the body of water.

*Drive-in* means any use where products and/or services are provided to the customer under conditions where the customer does not have to leave the car or where fast service to the automobile occupants is a service offered regardless of whether service is also provided within a building. A drive-in shall also include any restaurant, cafe, or other food and drink business which offers take home prepared food or food which can be carried outside of the building for human consumption; any and all restaurants commonly known as fast-food operations.

*Dwelling* means a building or one or more portions thereof occupied or intended to be occupied exclusively for human habitation, but not including rooms in motels, hotels, nursing homes, boardinghouses, nor trailers, tents, cabins, or trailer coaches.

*Frontage* means that boundary of a lot which abuts an existing and improved public right-of-way.

*Garage, private* means a detached one-story accessory building, or portion of the principal building, including a carport, which is used primarily for the storing of passenger vehicles, trailers or farm trucks.

*Garage, repair* means a building or space for the commercial repair or maintenance of motor vehicles, but not including factory assembly of such vehicles, auto wrecking establishments, or junk yards.

*Garage sale* means an offering of goods to the public on a temporary basis by a person or organization at a sale site which is not principally used for the purpose of retail sales and where no other license or permit has been issued by the City authorizing such sales. As used in this article, the term "garage sale" encompasses yard sales, estate sales, moving sales, block sales, rummage sales, boutiques and related sales where secondhand or other goods are sold or displayed to members of the public on a temporary basis. "Garage sale" as used in this article does not include estate sales or auction sales, provided the number of sales in any calendar year does not exceed the limitations imposed by this article, and further provided that such sale is conducted by a licensed auctioneer.

*Garage, storage* means any premises, except those described as a private or public garage, used exclusively for the storage of power driven vehicles.

*Golf course.* A golf course, as permitted by this article, shall have a minimum parcel size of 40 acres for a nine-hole par three course and 100 acres for a regulation 18-hole course. Golf course does not include miniature golf or putting courses, driving ranges, golf training facilities or practice areas, except as an accessory to a golf course.

*Governing body* means the City Council.

*Grade Plane* means a reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet (1829 mm) from the building, between the building and a point 6 feet (1829 mm) from the building.[12]

*Height, Building* means the vertical distance from grade plane to the average height of the highest roof surface.[13]

*Home occupation* means an activity conducted in a dwelling unit for gain, profit or financial support by persons living in the dwelling unit.

*Hotel* means a building containing more than two guest rooms which lodging is provided with or without meals for compensation, and which is open to transient guests, and where no provision is made for cooking in any guest room, and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge during all times when any of the rooms are rented.

*Impervious Surface*, means 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.

*Institutional housing see Facilities for Institutionalized Persons*

*Junkyard* means an area where discarded or salvaged materials are bought, sold, exchanged, stored, baled, cleaned, packed, disassembled, or handled, including but not limited to scrap iron and other metals, paper, rags, rubber products, bottles, and used building materials.
Storage of such material in conjunction with a permitted manufacturing process when within an enclosed area or building shall not be included. Such use shall not include organic waste or material.

*Kennel, commercial* means anyplace where four or more dogs over six months of age are boarded, bred, trained or offered for sale.

*Kennel, private* means anyplace where four or more dogs over six months of age are owned by any member or

[12] Ord 02-2011, 7/19/2011
[13] Ord 02-2011, 7/19/2011

members of the household.

*Land alteration* means the excavation or grading of land involving movement of earth and materials in excess of 50 cubic yards.

*Land Disturbance,* means any activity that result in a change or alteration in the existing ground cover (both vegetative and nonvegetative) 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. Routine vegetation management, and mill and overlay/resurfacing activities that do not alter the soil material beneath the pavement base, are not considered land disturbance. In addition, other maintenance activities such as catch basin and pipe repair/replacement, lighting, and pedestrian ramp improvements shall not be considered land disturbance for the purposes of determining permanent stormwater management requirements.

[14]*Land reclamation and land grading* means changing the grade of the land by depositing, removing, or moving material. Depositing, removing, or moving a total of 50 cubic yards or more and/or the disturbance of land area of 1,000 square feet or more of material per lot, either by hauling in and/or out or moving materials in, out, or within the lot, shall constitute land reclamation and land grading.

*Landscaping* means planting of trees, shrubs and ground covers.

[15]*Lean-to* means a structural element on a building that is open on three sides and has a roof that is attached to and supported by the building on one side and by posts on the other side.

*Loading space* means a space, accessible from a street, alley or way, in or outside of a building, for the use of trucks while loading and unloading merchandise or materials.

*Lodging room* means a room rented as sleeping and living quarters, but without cooking facilities. In a suite of rooms, without cooking facilities, each room which provides sleeping accommodations shall be counted as one lodging room. (See Boardinghouse.)

*Lot* means a parcel of land designated by metes and bounds, registered land survey, plat or other means, and which description is either recorded in the office of the county recorder or registrar of titles or used by the county treasurer or county assessor to separate such parcel from other lands for tax purposes.

*Lot area* means the area of a horizontal plane within the lot lines.

*Lot, buildable* means a lot which meets or exceeds all requirements of the City Land Use and Development Ordinances without the necessity of variances.

*Lot, corner* means a lot situated at the junction of, and abutting on, two or more intersecting streets; or a lot at the point of deflection in alignment of a single street, the interior angle of which does not exceed 135 degrees.

*Lot depth* means the horizontal distance between the frontage right-of-way line and rear lot line. On a corner lot, the side with the largest frontage is its depth, and the side with the lesser frontage is its width.

*Lot line* means the property line bounding a lot except when any portion of a lot extends into a public right-of-way or a proposed public right-of-way line of such public right-of-way shall be the lot line.

*Lot line, front* means that boundary of a lot which abuts an existing improved public right-of-way or an approved private road. In the case of a corner lot, it shall be the shortest dimension along a public street. If the dimensions of a corner lot are equal, the front lot line shall be designated by the owner and filed with the Zoning Administrator. In the case of a corner lot in a nonresidential area, the lot shall be deemed to have frontage on both streets.

*Lot line, rear* means that boundary of a lot which is opposite the front lot line. If the rear lot line is less than ten feet in length, or if the lot forms a point at the rear, the rear lot line shall be a line ten feet in length within the lot, parallel to, and at the maximum distance from the front lot line.

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[14] Ord 8-2005, 5/17/2005
[15] Ord 05-2013, 3/19/2013

*Lot line, side* means any boundary of a lot which is not a front lot line or a rear lot line.

*Lot of record* means a platted lot or metes and bounds parcel which has been recorded in the office of the county register of deeds or registrar of titles prior to the adoption of the ordinance from which this article was derived.

*Lot, through* means any lot other than a corner lot which abuts more than one street. On a through lot, all the street lines shall be considered the front lines for applying this article.

*Lot width* means the horizontal distance between the side lot lines of a lot measured at the setback line.

*Major Subdivision,* means all subdivisions not classified as minor subdivisions including, but not limited to, subdivisions of four (4) or more lots, or any size subdivision requiring any new street or extension of an existing street.

[16]*Manufactured home* means a structure transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein; except that the term includes any structure which meets all the requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary and complies with the standards established under M.S.A. § 327.32. *Manufactured home* excludes prefabricated homes and modular homes. No manufactured dwelling shall be moved in the City that does not meet the manufactured home building code as defined in M.S.A. § 327.32.

*Manufacturing and industrial, light,* includes the compounding, processing, packaging, treatment, or assembly of products and materials provided such use will not generate offensive odors, glare, smoke, dust, noise, vibrations, or other effects which would be damaging to the environment. Such uses include but are not limited to the following:

> Lumberyards, machine shops, products assembly, sheet metal shops, non-retail food and beverages, printing, publishing, fabricated metal parts, appliances, clothing, textiles, medical or dental devices, wholesale greenhouse or nursery, truck terminals. No retail sales shall be permitted.

*Manufacturing, heavy* means all manufacturing, compounding, processing, packaging, treatment, or assembly of products and materials that may emit objectionable and offensive noise, odor or pollution beyond the lot on which the use is located. Such uses include but are not limited to the following: Sawmill, refineries, commercial feed lots, acid, cement, explosives, flour, feed and grain milling or storage, meat packing, slaughterhouses, coal or tar asphalt distillation, rendering of fat, grease, lard or tallow, alcoholic beverages, poisons, exterminating agents, glue or size, lime, gypsum, plaster of paris, tanneries, automobile parts, paper and paper products, glass, chemicals, crude oil and petroleum products including storage, electric power generation facilities, vinegar works, junkyard, auto reduction yard, foundry, forge, casting of metal products, rock, stone and cement products.

*Manure* means any solid or liquid containing animal excreta.

*Marina* means an area of concentrated small craft mooring, where ancillary facilities may be provided for some or all of such services as the sale, storage and repair of boats, fueling, sewage pumpout, boat launching, boat repair and boat storage; except that marina does not mean temporary docks associated with riparian residential development if the mooring area is of a size not to exceed the resource limitations of the site and the needs of the residents of the development.

*Mean flow level* means the average flow elevation of a stream or river computed as the midpoint between extreme low and extreme high water.

*Medical uses* means those uses concerned with the diagnosis, treatment, and care of human beings. These include, hospitals, dental services, medical services or clinic, nursing or convalescent home, orphans' home, rest home, sanitarium.

*Mezzanine* shall be considered a portion of the story below and shall not exceed one-third of the floor area of that room or space in which they are located. A mezzanine shall be open and unobstructed to the room in which such

[16] Ord 05-2013, 3/19/2013

mezzanine is located except for walls not more than 42 inches (1067 mm) high, columns and posts.[17]

*Mining* means the extraction of sand, gravel, rock, soil, or other material from the land and the removal thereof from the site. For the purposes of this article, mining shall not include: The removal of materials associated with the construction of a building, the removal of excess materials in accordance with approved plats or utility and highway construction, minor agricultural and conservation items, and sod removal, except as further regulated herein. (See the City mining ordinance, article X of this chapter.)

*Minor Subdivision,* means any subdivision containing three (3) or less lots fronting on an existing street, not part of a common plan of development nor involving any new street or road or the extension of municipal facilities.

*Mobile home* means a single-family detached dwelling unit designed for year round occupancy, constructed at a factory or assembly plant and drawn to the site on a permanently attached undercarriage and wheels. "Mobile home" shall not include "trailer" as herein defined, nor shall it include manufactured homes which meet or exceed the requirements of the state manufactured home building code.

*Mobile home lot* means a parcel of land for the placement of a single mobile home for the exclusive use of the occupants of such mobile home.

*Mobile home park* means any site, lot, field, or tract of land under single ownership designed, maintained, or intended for the placement of two or more occupied mobile homes. "Mobile home park" shall include any building, structure, vehicle, or enclosure intended for use as part of the equipment of such mobile home park.

*Motor courts or motel* means a building or group of buildings, other than a hotel, used primarily as a temporary residence of a motorist.

*Motor freight terminal* means a building or area in which freight brought by motor truck is transferred and/or stored for movement by motor truck.

*Municipality* means the City of Afton.

*National Pollutant Discharge Elimination System (NPDES),* means the program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Clean Water Act (Sections 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, Sections 1317, 1328, 1342, and 1345.

*Noise* means one, or a group of loud, harsh, non-harmonious sounds or vibrations that are unpleasant and irritating to the ear.

*Noise, ambient,* means the all-encompassing noise associated with a given environment, being either a composite of sounds transmitted by any means from many sources near and far, or a single predominant source.

*Nominal Parcel* means a parcel not reduced by more than ten percent (10%) of its lot area due to right-of-way dedication or a perturbation in the rectangular survey system.

*Nonconforming use* means any lawful use of land or any lawful use of a building or structure existing on the effective date of the ordinance from which this article is derived, or any amendment thereto, which use does not conform with the regulations for the district in which it is located after the effective date of the ordinance from which this article is derived or amendment thereto.

*Noxious matter* means material which is capable of causing injury or is in any way harmful to living organisms or is capable of causing detrimental effect upon the health, the psychological, social or economic well being of human beings.

*Nursery, day* means a use where care is provided for three or more children under kindergarten age for periods of four hours or more per day for pay.

*Nursery, landscape* means a business growing and selling trees, flowering and decorative plants, and shrubs, and which may be conducted within a building or without, for the purpose of landscape construction.

*Nursing home* means a building with facilities for the care of children, the aged, infirm, or place of rest for those suffering bodily disorder. Such nursing home shall be licensed by the state board of health as provided for in M.S.A. § 144.50.

*Office uses* means those commercial activities that take place in office buildings, where goods are not produced, sold, or repaired. These include: banks, general offices, governmental office, insurance office, real estate office, travel agency or transportation ticket office, telephone exchange, utility office, radio broadcasting, and similar uses.

*Official control* means legislatively defined and enacted policies, standards, precise detailed maps, and other criteria, all of which control the physical development of the City, or any part thereof, or any detail thereof, and the means of translating into ordinances all or any part of the general objectives of the comprehensive plan. Such official controls may include, but are not limited to ordinances establishing zoning, subdivision controls, site plan regulations, sanitary codes, building codes, housing codes and official maps.

*Old village* means the area originally platted as the Village of Afton.

*Open sales lot* means land devoted to the display of goods for sale, rent, lease, or trade where such goods are not enclosed within a building.

*Open storage* means storage of any material outside of a building.

*Other Specially Permitted Use* means a land use or development allowed with appropriate conditions as determined by the Zoning Administrator and as specifically set forth in each article of this chapter.
*Owner* includes all persons interested in a property as fee simple owner, life estate holder, encumbrancer or otherwise.

*Owner,* means the person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease, easement, or mineral rights license holder, the party or individual identified as the lease, easement or mineral rights license holder; or the contracting government agency responsible for the construction activity.

*Parking space* means a suitably surfaced and permanently maintained area on privately owned property either within or outside of a building of sufficient size.

*Performance standards* means the minimum development standards as adopted by the City Council and on file in the office of the Zoning Administrator. Such standards shall also be filed with the City Clerk.

*Permittee,* means a person or persons, firm, or governmental agency or other entity that signs the application submitted to the Town and is responsible for compliance with the terms and conditions of the permit.

*Person* means an individual, political and corporate bodies, and partnerships and other unincorporated associations.

*Places of Worship* means a building, together with its accessory buildings and uses, where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.[17]

*Planning Commission* means the duly appointed planning and zoning commission of the City.

*Predevelopment State,* means the rate and volume of stormwater is unchanged. The calculation of predevelopment is based on native soils and vegetation.

*Principal structure* or use means one which determines the predominant use as contrasted to accessory use or structure.

*Private street* means a street serving as vehicular access to two or more parcels of land which is not dedicated to the public but which is owned by one or more private parties.

*Property line* means the legal boundaries of a parcel of property which may also coincide with a right-of-way line of a road, cartway, and the like.

*Protective covenant* means a contract entered into between private parties which constitutes a restriction of the use of a particular parcel of property.

*Public land* means land owned and/or operated by a governmental unit including school districts.

[17] Ord 02-2011, 7/19/2011

*Publication* means an official notice as prescribed by state statute.

*Public Waters* means all water basins and watercourses that are described in Minn. Stat. § 103G.005 subd. 15.

*Race track* means any area where two or more animals or power driven vehicles are raced for profit or pleasure.

*Recreation equipment (in residential districts)* means play apparatus such as swing sets and slides; sandboxes; poles for nets; unoccupied boats, recreational vehicles and trailers not exceeding 25 feet in length; picnic tables, lawn chairs, barbecue stands, and similar equipment or structures; but not including tree houses, swimming pools, playhouses exceeding 25 square feet of floor area, or sheds utilized for storage of equipment.

*Recreation vehicle* means any vehicle or structure designed and used for temporary, seasonal human living quarters which meets all of the following qualifications:

A. Is not used as the permanent residence of the owner or occupant;
B. Is used for temporary living quarters by the owner or occupant while engaged in recreation or vacation activities;
C. Is towed or self-propelled on public streets or highways incidental to such recreation or vacation activities;
D. Examples of such vehicles include van campers, tent camping trailers, self-contained travel trailers, pick-up campers, camping buses, and self-contained, self-propelled truck chassis mounted vehicles providing living accommodations.

*Recreation vehicle parks* means a park, court, campsite, lot, parcel, or tract of land designed, maintained, or intended for the purpose of supplying the location or accommodations for any recreation vehicles as defined herein, and upon which such recreation vehicles are parked. The term "recreation vehicle park" shall include all buildings used or intended for use as part of the equipment thereof, whether or not a charge is made for the use of the park and its facilities.

*Redevelopment,* means any development that is not considered new development.

*Reduction yard* means a lot or yard where one or more unlicensed motor vehicles, or the remains thereof, are kept for the purpose of dismantling, wrecking, crushing, repairing, rebuilding, sale of parts, sale as scrap, storage, or abandonment. (See: Junkyard.)

*Registered land survey* means a survey map of registered land designed to simplify a complicated metes and bounds description, designating the same into a tract or tracts of a Registered Land Survey Number. See M.S.A. § 508.47. A registered land survey shall not be used as a means to subdivide property.

*Research* means medical, chemical, electrical, metallurgical, or other similar research and quality control, conducted in accordance with the provisions of this article.

*Residence, attached dwelling* means a dwelling which is joined to another dwelling at one or more sides by a party wall or walls.

*Residence, detached dwelling* means a dwelling which is entirely surrounded by open space on the same lot.

*Residence, duplex* means a residential building containing two dwelling units.

*Residence, multiple dwelling* means a residential building, or portion of a building, containing three or more dwelling units served by a common entrance.

*Residence, single-family dwelling* means a residential building containing one detached dwelling unit.

*Residence, townhouse* means a residential building containing two or more attached dwelling units, each unit so oriented as to have all exits directly to the outside.

*Residential district*. See Section 12-134 for permitted uses.

*Resort* means any structure or group of structures containing more than two dwelling units or separate living quarters designed or intended to serve as seasonal or temporary dwellings on a rental or lease basis for profit with the primary purpose of such structures being recreational in nature. Uses may include a grocery for guests only,

fish cleaning house, marine service, boat landing and rental, recreational area and equipment, and similar uses normally associated with a resort operation.

*Restaurant* means any establishment having appropriate facilities for the serving of food to the general public.

*Restrictive covenant.* See Protective covenant.

*Retail business uses* means stores and shops selling personal services or goods for final consumption.

*Retain,* means manage stormwater on site using a low-impact development approach so that the rate and volume of predevelopment stormwater reaching receiving waters is unchanged.

*Riding stable* means the training and riding of horses for private or public use on lots of 20 or more acres that require indoor riding structures of appropriate size. This may also include boarding of horses, training of horses and riders, and similar uses and activities.

*Roadside sales stand* means a structure used only for the display and sale of products with no space for customers within the structure, on a seasonal basis.

*Safeguard* means a facility or device or any disposal system or combination thereof designed to prevent the escape or movement of any manure, or solution thereof, or other waste such as uneaten food, without limitation, from the place of deposit or keeping thereof under such conditions that pollution of any waters of the state otherwise might result therefrom.

*Sales, Seasonal Agricultural.* A business selling agricultural goods of a temporary or seasonal nature. Such a business is limited to agricultural goods actually raised on land owned or leased by the business operator. Such sales activities are[18] limited to the following period: Saturdays from 7:00 a.m. to noon, from May 15th to November 1st. Such sales activities shall be located only in the VHS-C District on private property with permission of the landowner or upon public property with the permission of the City, or both.[19]

*Saturated Soil,* means the highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. Saturated soil is evidenced by the presence of redoximorphic features or other information.

*Sediment Control,* means methods employed to prevent sediment from leaving the site. Sediment control practices include: silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, bio rolls, rock logs, compost logs, storm drain inlet protection, and temporary or permanent sedimentation basins.

*Scenic easement* means an interest in land, less than fee title, that limits the use of the land for the purpose of protecting the scenic, recreational and natural characteristics. Unless otherwise expressly and specifically provided by mutual agreement of the parties, the easement shall be: Perpetually held for the benefit of the public; binding on the holder of the servient estate, his heirs, successors or assigns. Unless specifically provided by the parties, no such easement shall give the holder or any beneficiary the right to enter on the land except for enforcement of the easement.

*Screening* means and includes earth mounds, berms or ground forms; fences and walls; landscaping (plant materials) or landscaped fixtures, such as timbers; used in combination or singularly, so as to block direct visual access to an object throughout the year. In article IV of this chapter, screening does not include fences and walls.

*Setback* means the minimum horizontal distance between a structure, sewage treatment system, or other facility and a street right-of-way, ordinary high water level mark, sewage treatment system, bluffline, road, highway, property line or other facility.

*Shelter, fallout or blast* means a structure or portion of a structure intended to provide protection to human life during periods of danger from nuclear fallout, blasts, air raids, storms, or other emergencies.

*Shopping center* means any grouping of two or more principal retail uses whether on a single lot or on abutting lots under multiple or single ownership.

[18] Ordinance 5-2005, 4/19/2005
[19] Amendment 02-2009, 4/21/2009

*Sign* means a notice which directs attention to a product, place, activity, person, institution, organization, or business for public view.[20]

*Slope* means rise or fall in land surface, expressed as the ratio h:v in which 'h' is horizontal distance and 'v' is vertical rise or fall of the land surface. Equivalently, slope may be expressed as a percentage, calculated to be 100 times 'v' divided by 'h'.[21]

*Small Construction Activity*, means as defined in 40 CFR part 122.26(b)(15). Small construction activities include clearing, grading and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five (5) acres.

*St. Croix Riverway*, means all lands and public waters within the riverway boundary subject to the standards and criteria for the Lower Saint Croix National Scenic Riverway in Minnesota.

*Stabilized* means exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, erosion control blanket, mats or other material that prevents erosion from occurring. Grass, agricultural crop or other seeding alone is not stabilization. Mulch materials must achieve approximately 90 percent ground coverage (typically 2 ton/acre).

*Stormwater* means as defined under Minn. R. 7077.0105, subp. 41(b), and includes precipitation runoff, stormwater runoff, snowmelt runoff, and any other surface runoff and drainage.

*Stormwater Facility*, means a stationary and permanent BMP that is designed, constructed and operated to prevent or reduce the discharge of pollutants in stormwater.

*Stormwater Pollution Prevention Plan (SWPPP)*, means a plan for stormwater discharge that includes erosion prevention BMPs, sediment control BMPs and permanent stormwater management systems that, when implemented, will decrease soil erosion on a parcel of land and decrease off-site nonpoint pollution.

*Story* means that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. A basement shall be counted as a story. A mezzanine shall not be counted as a story.[22]

*Story Above Grade* means any story having its finished floor surface entirely above grade plane, except that a basement shall be considered as a story above grade plane where the finished surface of the floor above the basement is:

1. More than 6 feet (1829 mm) above grade plane.
2. More than 6 feet (1829 mm) above the finished ground level for more than 50 percent of the total building perimeter.
3. More than 12 feet (3658 mm) above the finished ground level at any point.[23]

*Storage site* means any tract or parcel of land, including any constructed storage platform, tank, or other artificial or natural area or containment facility where manure is stored or kept and which is so located that the escape or movement of the manure or a solution thereof from the storage site into the underlying ground might result in pollution of any waters.

*Street* means a public right-of-way which affords a primary means of access to abutting property, and shall also include avenue, highway, road, or way.

*Street, collector* means a street which serves or is designed to serve as a trafficway for a neighborhood or as a feeder to a major road.

*Street, intermediate or minor arterial* means a street which serves or is designed to serve heavy flows of traffic and

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[20] Ord 1997-12, 8/22/98
[21] Repealed Ord 02-2008; Ord 01-2014, 5/20/2014
[22] Ord 02-2011, 7/19/2011
[23] Ord 02-2011, 7/19/2011

which is used primarily as a route for traffic between communities and/or other heavy traffic generating areas.

*Street, local* means a street intended to serve primarily as an access to abutting properties.

*Street pavement* means the wearing of exposed surface of the roadway, used by vehicular traffic.

*Street width* means the width of the right-of-way, measured at right angles to the centerline of the street.

*Structural alteration* means any change, other than incidental repairs, which would affect the supporting members of a building, such as bearing walls, columns, beams, girders, or foundations.

*Structure* means anything constructed or erected on the ground, or attached to something having a location on the ground.

*Subdivision* means the division of a parcel of land into two or more lots or parcels, for the purpose of transfer of ownership or building development. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

*Substandard building, structure or lot* means any building, structure or lot lawfully existing on the effective date of the ordinance from which this article is derived or any amendment thereto which building, structure or lot does not conform with the regulations, including dimensional standards, for the district in which it is located after the effective date of the ordinance from which this article is derived or amendment thereto.

*Supper club* means a building with facilities for the preparation and serving of meals and where meals are regularly served at tables to the general public. The building must be of sufficient size and design to permit the serving of meals to not less than 50 guests at one time. Intoxicating liquors may be sold on-sale and live entertainment and/or dancing shall be permitted.

*Surface Water(s),* means all streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses, and irrigation systems whether natural or artificial, public or private, except that surface waters do not include treatment basins or ponds that were constructed from upland.

*Tavern or bar* means a building with facilities for the serving of 3.2 beer, wine, set-ups and short order foods.

*Temporary Erosion Protection,* means methods employed to prevent erosion during construction activities. Examples of temporary erosion protection include; straw, wood fiber blanket, wood chips, vegetation, mulch and rolled erosion control products.

*Trailer* means any vehicle or structure designed and used for human living quarters which meets all of the following qualifications:

1. Is not used as the residence of the owner or occupant;
2. Is used for temporary living quarters by the owner or occupant while engaged in recreational or vacation activities;
3. Is towed or otherwise transported, by its own or by other motive power, on the public streets or highways incidental to such recreational or vacation activities.
4. *The term "trailer"* shall not include "mobile home." The term "trailer" shall include, but not be limited to campers, camper tents, house trailers, camping trailers, travel trailers, tent trailers, pick-up campers, camping buses, and any other self-propelled vehicle constructed to provide living accommodations.

*Trailer park* means a park, court, campsite, lot, parcel, or tract of land designed, maintained, or intended for the purpose of supplying the temporary location or accommodations for any trailers, as defined herein, and upon which such trailers are parked. The term "trailer park" shall include all buildings used or intended for use as part of the equipment thereof whether or not a charge is made for the use of the park and its facilities.

*Transportation terminal* means truck, taxi, air, train, bus, and mass transit terminal and storage area, including minor freight (solid and liquid) terminal, but only if accessory to a principal use permitted in industrial zoning districts.

*Truck stop* means a motor fuel station devoted principally to the needs of tractor trailer units and trucks and which may include eating and/or sleeping facilities.

*Underground Waters (Groundwater),* means water contained below the surface of the earth in the saturated zone

including, without limitation, all waters whether under confined, unconfined, or perched conditions, in near surface unconsolidated sediment or regolith, or in rock formations deeper underground. The term groundwater shall be synonymous with underground water.

*Use* means the purpose or activity for which the land or building thereon is designated, arranged, or intended, or for which it is occupied, utilized, or maintained.

*Use, accessory* means a use subordinate to and serving the principal use or structure on the same lot and customarily incidental thereto.

*Use, nonconforming* means use of land, buildings, or structures legally existing at the time of adoption of the ordinance from which this article was derived that does not comply with all the regulations of this article or any amendments hereto governing the zoning district in which such use is located. See Section 12-57.

*Use, open* means the use of a lot without a building or including a building incidental to the open use.

*Use, permitted* means a public or private use which of itself conforms with the purposes, objectives, requirements, regulations and performance standards of a particular district.

*Use, principal* means the main use of land or buildings as distinguished from subordinate or accessory uses. A "principal use" may be either permitted, conditional, or special.

*Variance* means a modification or variation of the strict provisions of this article as applied to a specific piece of property in order to provide relief for a property owner because of practical difficulties imposed upon the property by this article. A variance shall normally be limited to height, bulk, density and yard requirements. A modification in the allowable uses within a district shall not be considered a variance. (See Section 12-77)

*Vehicle repair* means general repair, rebuilding or reconditioning of engines, motor vehicles or trailers, including body work, framework, welding, and major painting services.

*Veterinary* means those uses concerned with the diagnosis, treatment, and medical care of animals, including animal or pet hospitals.

*Warehousing* means the storage of materials or equipment within an enclosed building as a principal use, including packing and crating.

*Waterfront uses, residential* means boat docks and storage, fish house, fish cleaning, water recreation equipment, and other uses normally incidental to a lakeshore residence provided such uses are for the exclusive use of the occupants and nonpaying guests.

*Wetlands* means those lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. A wetland has one or more of the following attributes:

1. At least periodically, the land supports predominantly wetland vegetation. Wetland vegetation is listed in the National List of Plant Species that Occur in Wetlands: North Central (Region 3), Fish and Wildlife Service, May, 1988, or later revisions.
2. The substrata is predominantly undrained hydric soil. Hydric soils are those which have been exposed to water for long enough periods of time to experience oxygen depletion. Hydric soils are listed in Hydric Soils in the United States, Soil Conservation Service, October, 1985, or later revisions.
3. Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.[24]

*Wetlands* in this City are identified in the Afton Water Resources Inventory, Washington County Soil and Water Conservation District, January 1983, or later revisions.

*Wholesaling* means the selling of goods, equipment, and materials by bulk to another business that in turn sells to

[24] Ord 02-2011, 7/24/2011

**Sec. 12-214. Mining.**[224]

All mining and related uses of land, including but not limited to the excavation, removal or storage of sand, gravel, rock, clay and other natural deposits, are subject to the adopted standards, codes, ordinances and regulations of the City related to such activities and all regulations in the mining ordinance, article X of this chapter.[225]

**Sec. 12-215. Land reclamation and land grading.**[226]

A. Within this article, land reclamation and land grading is the depositing, removing, and/or moving of material so as to alter the topography of a lot.

1. Land reclamation and land grading shall be permitted only by a Conditional Use Permit in all zoning districts.

2. The depositing, moving and/or removing of more than 50 cubic yards and/or the disturbance of land area of 1,000 square feet or more of material per lot, either by hauling in and/or out or regrading[227] of an area shall constitute land reclamation and land grading.

3. Land reclamation and land grading in floodplains shall be in accordance with the floodplain ordinance, Article V of this chapter.

4. The permit shall include as a condition thereof a finished grading plan that will not adversely affect the adjacent land and as conditions thereof shall regulate the type of material permitted, program for rodent control, plan for fire control, and general maintenance of the site, controls of vehicular ingress and egress, drainage and control of material disbursed from wind or hauling of material to or from the site, and erosion control and stabilization plans for the deposited material or excavated area..

5. In addition to a finished grading plan, a ~~drainage~~ stormwater pollution prevention plan (SWPP), and an erosion and sediment control plan (ESCP) may be required, if in the judgment[228] of the Zoning Administrator, significant soil erosion, vegetation destruction, ~~or~~ drainage damage, or pollution from stormwater may occur during, or after the land alteration process. These plans shall achieve at least the minimum standards described in Chapter 13.

6. The finished grading plan and ~~drainage~~ stormwater pollution prevention and erosion control plans shall be reviewed by the City Engineer and may be reviewed, as deemed necessary by the Zoning Administrator or the City Council, by the Minnesota Department of Natural Resources, the Washington County Soil and Water Conservation District, and the appropriate Watershed Management Organization and/or district.

7. The Zoning Administrator may require the applicant to post a bond or other financial guarantee to ensure compliance with the permit.

vegetation cover that would be either destroyed or disturbed by the construction process, the Zoning Administrator may require the owner or contractor on such project to request the soil conservation district to prepare a soil conservation plan to protect the soil from erosion or sheet run-off for the duration of the construction project and/or over the long term occupancy of the site.

B. The Zoning Administrator may require a soil conservation plan on projects that disturb less than one acre of soil, drainage patterns or vegetation cover if, in the judgment of the Zoning Administrator, significant soil erosion, vegetation destruction or drainage damage may occur during the construction process.

C. A soil conservation plan shall consist of specific written recommendations on how to protect the soil, vegetation and drainage patterns during the construction process. The Zoning Administrator may require construction fencing along the edges of the construction area.

D. Where construction of a structure is proposed on slopes of 13 percent to 18 percent, the Zoning Administrator shall require the applicant to provide a grading and erosion control plan and to obtain an Administrative Permit.

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[224] Code 1982, § 301.729, **Cross reference(s)--**Mining, § 12-2301 et seq.
[225] Ord 08-2005, 5/17/2005
[226] Code 1982, § 301.730
[227] Amendment 02-2009, 4/21/2009

**Sec. 12-217. Drainage.**[230]

A. No land shall be developed or altered and no use shall be permitted that results in surface or stormwater run-off causing or with the potential to cause unreasonable flooding, erosion or deposit of matinerials on adjacent properties or water bodies. Such run-off shall be properly channeled into a stormwater management facility that are ~~drain, a natural watercourse or drainageway, a ponding area or other facility. To the extent feasible~~consistent with the stormwater management and erosion and sediment control requirements of Chapter 13. ~~, through ponding or other means, a~~Any increase in run-off rate or volume as a result of the developed portion of a property shall achieve at least the minimum requirements of Chapter 13. ~~shall be retained on the property.~~

B. The Zoning Administrator, upon inspection of any site that has created drainage problems, or could create drainage problems with proposed new development, may require the owner of such site or the contractor of such development to complete a grading plan and apply for a grading permit.

C. The owner or contractor of any natural drainage improvement or alteration may be required by the Zoning Administrator to obtain recommendations from the state department of natural resources, the county soil conservation district, the affected watershed district and/or the City Engineer, as well as obtaining a grading permit.

D. On any slope in excess of 13 percent where, in the opinion of the Zoning Administrator, the natural drainage pattern may be disturbed or altered, the Zoning Administrator may require the applicant to submit both a grading plan and a soil conservation plan prior to applying for a building permit.

**Sec. 12-218. Vegetative cutting.**[231]

A. For purposes of this article, the following definitions are made:

1. *Clear cutting* means the removal of all live vegetation in excess of six inches in diameter at breast height on any area of 20,000 square feet or more in size.
2. *Selective cutting* means the removal of single scattered live trees or shrubs in excess of six inches in diameter at breast height.

B. Clear cutting of any site shall require a Conditional Use Permit, except as regulated by Subsection (E) of this section. A reclamation, soil conservation or revegetation plan may be required by the Zoning Administrator as part of the Conditional Use Permit application.

Unless otherwise exempted by this ordinance, a Stormwater Pollution Prevention Plan (SWPP) and an Erosion and Sediment Control Plan (ESCP) shall be required as part of any building permit or land disturbing activity that meets the criteria Chapter 13 of this ordinance. All such plans shall at achieve at least the minimum standards of Chapter 13.

~~The following general and specific standards shall apply:~~

~~1. Existing natural drainageways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.~~

~~Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.~~

~~2. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds must be used.~~

~~A. *Specific standards:*~~

~~2. Impervious surface coverage of lots must not exceed ten percent of the lot area or one-half acre, whichever is greater.~~

~~2. When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts and all plans must be approved by that agency.~~

~~2. New constructed stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.~~

**Sec. 12-410. Agricultural use standards.**[273]

General cultivation farming, grazing, nurseries, horticulture, truck farming, and wild crop harvesting are permitted provided they do not occur on slopes greater than 12 percent and do not intrude on the bluff impact zones and provided the shore and impact zones are maintained in a permanent vegetative condition. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high water level.

**Sec. 12-411. Special uses.**[274]

Special uses allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of special uses established community-wide. The following additional evaluation criteria and conditions apply within shoreland areas:

A. *Evaluation criteria.* A thorough evaluation of the waterbody and the topographic, vegetation, and soils conditions on the site must be made to ensure:

1. The prevention of soil erosion or other possible pollution of public waters as well as the runoff of landscape chemicals including fertilizers, herbicides and pesticides both during and after construction;
2. The visibility of structures and other facilities as viewed from public waters is limited;
3. The site is adequate for water supply and onsite sewage treatment; and
4. The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercrafts.

B. *Conditions attached to Conditional Use Permits.* The Planning Commission, upon consideration of the criteria listed above and the purposes of this article, shall recommend to the City Council such conditions to the issuance of the Conditional Use Permits as it deems necessary to fulfill the purposes of this article. Such conditions may include, but are not limited to, the following:

1. Increased setbacks from the ordinary high water level;

[277] Code 1982, § 303.6.0

B. No subdivider shall be permitted to start work on any other subdivision without special approval of the City Council if he has previously defaulted on work or commitments.

**Sec. 12-1474. Financial guarantee.**[377]

The financial guarantee shall be required as part of the division agreement for the following actions and similar construction activities:

A. *Grading and ~~e~~Erosion and Sediment ~~c~~Control ~~p~~Plan.* The City Council may require the applicant to post a financial guarantee to ensure the orderly completion of the grading and erosion and sediment control plans by a specific date.

B. *Stormwater Pollution Prevention Plan.* The City Council may require the applicant to post a financial guarantee to ensure the orderly completion of the stormwater pollution prevention plan and adequate function of any stormwater management facilities by a specific date.

~~B.~~C. *Septic system.* When an existing nonconforming septic system is required to be upgraded according to Section 12-83(C), the new on-site sewage treatment system shall be installed prior to the issuance of a building permit unless a financial guarantee equal to 125 percent of the cost of installing such a system and is valid for one year is issued to the City.

~~C.~~D. *Driveway permit.* To assure compliance with this article and the conditions of any driveway permit, the Zoning Administrator may require a financial guarantee from each applicant. The financial guarantee may be in the form of a performance bond, irrevocable letter of credit or escrow deposit as regulated in other sections of this article. The amount of the financial guarantee shall be equal to 125 percent of the estimated cost of the construction of the driveway, or an amount determined by the Zoning Administrator. A financial guarantee shall be released to the applicant upon satisfactory completion of the driveway installation according to this article and any conditions of the driveway permit.

~~D.~~E. *Escrow deposit.* A cash escrow deposit may be made with the City Administrator. The City shall be entitled to reimburse itself out of such deposit for any cost or expense incurred by the City for completion of the work in case of default of the breach thereof.

~~E.~~F. *Letter of credit.* The subdivider may deposit with the City, from a bank or other reputable institution or individual subject to the approval of the City Council, an irrevocable letter of credit which shall certify that:

1. The creditor does guarantee funds in the required amount.
2. In the case of failure on the part of the subdivider to complete the specified improvements within the required time period, the creditor shall pay to the City immediately, and without further action, such funds as are necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.
3. This letter of credit may not be withdrawn, or reduced in amount, until released by the City Council.

~~F.~~G. *Release.* Financial securities shall not be released until all permitted and remedial work is completed.

~~G.~~H. *Community indemnity.* This security shall save the community free and harmless from all suits or claims for damages resulting from the negligent grading, removal, placement or storage of rock, sand, gravel, soil or other like material within the community.

~~H.~~I. *Maintaining the financial security.* If at any time during the course of the work the amount falls below 50% of the required deposit, the applicant shall make another deposit in the amount necessary to restore the cash deposit to the required amount. If the applicant does not bring the financial security back up to the required amount within seven (7) days after notification by the community that the amount has fallen below 50% of the required amount the community may:

1. Withhold inspections - Withhold the scheduling of inspections and/or the issuance of a Certificate of Occupancy.
2. Revoke permits - Revoke any permit issued by the community to the applicant for the site in question or any other of the applicant's sites within the community's jurisdiction.

~~I.~~J. *Action against the financial security.* The community may access financial security for remediation actions if any of the conditions listed below exist. The community shall use the security to finance remedial work undertaken by the community, or a private contractor under contract to the community, to reimburse the community for all direct costs incurred in the process of remedial work including, but not limited to, staff time and attorney's fees.

1. Abandonment - The applicant ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.
2. Failure to implement the SWPPP or ESC Plan - The applicant fails to conform to the grading plan

Afton Code

# Chapter 13

# Stormwater Management and Erosion Control

## Table of Contents


Article I. In General ..... 3
Secs. 13-1 – 13-49. Reserved. ..... 3
Article II – Stormwater Management and Erosion Control ..... 3
Division 1. Generally. ..... 3
Sec 13-50. Statutory Authorization. ..... 3
Sec. 13-51. General Purposes. ..... 3
Sec. 13-52. Specific Purposes. ..... 3
Sec. 13-53. Scope ..... 4
Sec. 13-54. Greater restrictions ..... 4
Sec. 13-55. Severability ..... 4
Secs. 13-56 – 13.89. Reserved. ..... 4
Division 2. Applicability. ..... 4
Sec. 13.90. Stormwater management permit ..... 4
Sec. 13.91. Erosion and sediment control plan ..... 5
Sec. 13.92. Buffers ..... 5
Sec. 13.93. Exemptions ..... 5
Sec. 13.94. Definitions ..... 5
Secs. 13.96 – 13.119. Reserved. ..... 10
Division 3. Permit Review Process. ..... 10
Sec. 13.120. Pre- application meeting ..... 10
Sec. 13.121. Application completeness review. ..... 10
Sec. 13.122. Application review. ..... 10
Sec. 13.123. Permit authorization. ..... 10
Sec. 13-124. Permit denial. ..... 10
Sec. 13-125. Plan information requirements ..... 10
Sec. 13-126. Modification of permitted plans. ..... 10
Sec. 13-127. Permit completion. ..... 11
Secs. 13-128 – 13-139. Reserved. ..... 11
Division 4. Site Design and MIDS Calculator. ..... 11
Sec. 13-140. Better Site Design. ..... 11
Sec. 13-141. MIDS calculator ..... 11

Sec. 13-142. Buffer requirement. 11
Secs. 13-143 – 13-59. Reserved. 11
Division 5. Performance Standards. 11
Sec. 13-160. Stormwater Volume Reduction Performance Standards 11
Sec. 13-161. Flexible treatment alternatives for sites with restrictions. 12
Sec. 13-162. Stormwater Management Rate Control. 13
Sec. 13-163. Other Design Standards. 13
Secs. 13-164 – 13-179. Reserved. 14
Division 6. Inspections, Maintenance, and Enforcement. 14
Sec. 13-180. Inspections and record keeping. 14
Sec. 13-181. Right of entry and inspection. 14
Sec. 13-182. Fees. 14
Sec. 13-183. Enforcement tools/stop work orders. 15
Sec. 13.184. Long term inspection and maintenance of private stormwater facilities. 15
Sec. 13-185. Long term inspection and maintenance of public stormwater facilities. 16
Sec. 13-186. Financial Securities. 16
Sec. 13-187. Enforcement Actions. 17
Sec. 13-188. Misdemeanor. 18

## Article I. In General

**Secs. 13-1 – 13-49. Reserved.**

## Article II – Stormwater Management and Erosion Control

### Division 1. Generally.

**Sec 13-50. Statutory Authorization**

This ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes §§ 103B, 103D, and 462; Minnesota Rules, Parts 6120.2500- 6120.3900; and Minnesota Rules Chapters 8410 and 8420.

This ordinance is intended to meet the construction site erosion and sediment control and post-construction stormwater management regulatory requirements for construction activity and small construction activity (NPDES Permit) as defined in 40 CFR 122.26(b)(14)(x) and (b)(15), respectively.

This ordinance is intended to meet the Minimal Impact Design Standards (MIDS) developed under Minnesota Statutes § 115.03 subd. 5c.

**Sec. 13-51. General Purposes.**

The purpose of this ordinance is to establish regulatory requirements for land development and land disturbing activities aimed at minimizing the threats to public health, safety, public and private property and natural resources within the City from construction site erosion and post-construction stormwater runoff.

**Sec. 13-52. Specific Purposes.**

It is hereby determined by the City Council that in order to accomplish the general purposes of this article as set forth in Section 13-52, it is necessary and proper to establish and enforce the regulations contained in this article for the following specific reasons:

A. Meet MIDS performance standards;

B. Assist in meeting NPDES/SDS Construction Stormwater General Permit requirements;

C. Assist in meeting Total Maximum Daily Load (TMDL) plan waste load allocations for impaired waters through quantification of load reductions;

D. Assist in meeting policies and performance standards of the Middle St. Croix Water Management Organization (MSCWMO) and Valley Branch Watershed District (VBWD);

E. Protect life and property from dangers associated with flooding;

F. Protect public and private property and natural resources from damage resulting from stormwater runoff and erosion;

G. Ensure site design minimizes the generation of stormwater runoff and maximizes pervious areas for stormwater treatment within the context of the allowable use;

H. Provide a single, consistent set of performance goals that apply to all developments;

I. Protect water quality from pollutant loadings of sediment, suspended solids, nutrients, heavy metals, toxics, debris, bacteria, pathogens, biological impairments, thermal stress and other pollutants;

J. Promote infiltration and groundwater recharge;

K. Provide vegetated corridors (buffers) to protect water resources from development;

L. Protect functional values of all types of natural waterbodies (e.g., rivers, streams, wetlands, lakes, seasonal ponds); and

M. Sustain or enhance biodiversity (native plant and animal habitat) and support riparian ecosystems.

**Sec. 13-53. Scope**

Land shall not be developed for any use without providing stormwater management measures and erosion and sediment control measures that control or manage stormwater runoff from such developments.

**Sec. 13-54. Greater restrictions**

A. Relationship to WD/WMO Requirements - All stormwater management and erosion and sediment control activities shall comply with all applicable requirements of the relevant Watershed Management Organization or Watershed District. In the case of conflict between provisions of this ordinance and other stormwater regulations, the strictest provisions shall apply to land development and/or land disturbing activities.

B. Relationship to Existing Easements, Covenants, and Deed Restrictions – The provisions of this ordinance are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions the provisions of this ordinance shall prevail.

**Sec. 13-55. Severability**

The provisions of this ordinance are severable, and if any provision of this ordinance, or application of any provision of this ordinance to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this ordinance must not be affected thereby.

**Secs. 13-56 – 13.89. Reserved.**

**Division 2. Applicability.**

**Sec. 13.90. Stormwater management permit**

Unless otherwise exempted by Section 3, an approved Stormwater Management Permit shall be required prior to any proposed land development activity that meets any of the criteria in 1. through 5. immediately below. All stormwater management permits shall include an Erosion and Sediment Control Plan (ESC Plan) or a Stormwater Pollution Prevention Plan (SWPPP)

A. Any project that creates or fully reconstruct 6,000 square feet or more of impervious surface.

B. All major subdivisions or minor subdivisions that are part of a common plan of development.

C. Projects within the St. Croix Riverway that add 500 square feet or greater of additional impervious surface.

D. Any project requiring a variance from the current local impervious surface zoning requirements for the property.

E. Any land development activity, regardless of size, that the City determines is likely to cause an adverse impact to an environmentally sensitive area or other property.

**Sec. 13.91. Erosion and sediment control plan**

Unless otherwise exempted by this ordinance in Section 3, an Erosion and Sediment Control Plan shall be required as part of any Grading and Filling Permit or Building Permit which proposes any land disturbing activity that meets any of the criteria in 1. through 3. below.

A. Any project undertaking grading, filling, or other land alteration activities which involve movement of 100 cubic yards of earth or removal of vegetation on greater than 6,000 square feet of land.

B. Any project with wetland impacts, grading within public waters, grading within buffers or within 40-feet of the bluff line.

C. A land disturbing activity, regardless of size, that the City determines is likely to cause an adverse impact to an environmentally sensitive area or other property, or may violate any other erosion and sediment control standard set forth in this ordinance.

**Sec. 13.92. Buffers**

A buffer of unmowed natural vegetation shall be required upslope of wetlands, lakes and streams prior to the approval of any proposed land development requiring a subdivision, lot split, rezoning, special use permit or variance, unless otherwise exempted in this ordinance in Section 13-94.

**Sec. 13.93. Exemptions**

The following activities shall be exempt from all of the requirements of this ordinance:

A. Emergency work necessary to protect life, limb, or property.

B. Routine agricultural activity such as tilling, planting, harvesting, and associated activities. Other agricultural activities are not exempt including activities such as construction of structures.

C. Silvicultural/forestry activity.

**Sec. 13.94. Definitions**

Words or phrases used in this ordinance shall have the meanings as defined by Appendix B of the Minnesota Construction Stormwater Permit No: MN R100001 (Construction Permit)[1]

If not defined in the Construction Permit, then words or phrases shall be interpreted to have the meaning they have in common usage.

[1] Available at http://www.pca.state.mn.us/wfhya5b

Words or phrases shall be interpreted so as to give this ordinance its most reasonable application.

For the purpose of this ordinance, the words "must", "shall", and "will" are mandatory and not permissive.`

A. **Applicant.** The owner of land submitting an application under the provisions of this ordinance for a Stormwater Management Permit (SWMP) and/or Erosion and Sediment Control Plan (ESC Plan) to be issued by the community.

B. **Best Management Practices (BMPs).** The most effective and practicable means of erosion prevention and sediment control, and water quality management practices that are the most effective and practicable means to control, prevent, and minimize degradation of surface water, including avoidance of impacts, construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, pollution prevention through good housekeeping, and other management practices published by state or designated area-wide planning agencies.

C. **Better Site Design.** The control and management of stormwater quantity and quality through the application of Better Site Design Techniques as outlined in the current version of the Minnesota Stormwater Manual. Better Site Design includes: preservation of natural areas; site reforestation; stream and shoreland buffers; open space design; disconnection of impervious cover; rooftop disconnection; grass channels; stormwater landscaping; compost and amended soils; impervious surface reduction; and trout stream protection.

D. **Common Plan of Development or Sale.** A contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

E. **Construction Activity.** Includes construction activity as defined in 40 CFR pt. 122.26(b)(14)(x) and small construction activity as defined in 40 CFR pt. 122.26(b)(15) and construction activity as defined by Minn. R. 709.0080, subp. 4. This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling, and excavating. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) acre or more. Construction activity does not include a disturbance to the land of less than five (5) acres for the purpose of routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. (NOTE – The community may wish to change this to a smaller disturbance area. A smaller area is more restrictive than the state/federal requirements, so it would be allowable for a local government.)

F. **Development, New.** Any development that results in the conversion of land that is currently prairie, agriculture, forest, or meadow and has less than 15% impervious surface. Land that

was previously developed, but now razed and vacant, will not be considered new development.

G. **Erosion and Sediment Control Plan (ESC Plan).** A plan for projects disturbing less than one acre that is in compliance with the minimum requirements of the MSCWMO and VBWD. The plan identifies erosion prevention and sediment control practices, location and timelines for installation. The plan also includes responsible parties and timelines for inspection and maintenance.

H. **Erosion Prevention.** Measures employed to prevent erosion. Examples include but not limited to: soil stabilization practices, limited grading, mulch, temporary erosion protection or permanent cover, and construction phasing.

I. **Fully Reconstructed Impervious Surface.** Areas where impervious surfaces have been removed down to the underlying soils. Activities such as structure renovation, mill and overlay projects, and pavement rehabilitation projects that do not alter underlying soil material beneath the structure, pavement, or activity are not considered fully reconstructed impervious surfaces. Reusing the entire existing building foundation and re-roofing of an existing building are not considered fully reconstructed.

J. **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.

K. **Land Disturbance.** Any activity that result in a change or alteration in the existing ground cover (both vegetative and nonvegetative) 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. Routine vegetation management, and mill and overlay/resurfacing activities that do not alter the soil material beneath the pavement base, are not considered land disturbance. In addition, other maintenance activities such as catch basin and pipe repair/replacement, lighting, and pedestrian ramp improvements shall not be considered land disturbance for the purposes of determining permanent stormwater management requirements.

L. **Linear Project.** Construction or reconstruction of roads, trails, sidewalks, and rail lines that are not part of a common plan of development or sale. Mill, overlay and other resurfacing projects are not considered to be reconstruction.

M. **Major Subdivision.** All subdivisions not classified as minor subdivisions including, but not limited to, subdivisions of four (4) or more lots, or any size subdivision requiring any new street or extension of an existing street.

N. **Minor Subdivision.** Any subdivision containing three (3) or less lots fronting on an existing street, not part of a common plan of development nor involving any new street or road or the extension of municipal facilities.

O. **National Pollutant Discharge Elimination System (NPDES).** The program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the

Clean Water Act (Sections 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, Sections 1317, 1328, 1342, and 1345.

P. **Owner.** The person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease, easement, or mineral rights license holder, the party or individual identified as the lease, easement or mineral rights license holder; or the contracting government agency responsible for the construction activity.

Q. **Permanent Cover**. Surface types that will prevent soil failure under erosive conditions. Examples include: gravel, asphalt, concrete, rip rap, roof tops, perennial cover, or other landscaped material that will permanently arrest soil erosion. A uniform perennial vegetative cover (e.g., evenly distributed, without large bare areas) with a density of 70% of the native background vegetative cover for the area must be established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures. Permanent cover does not include the practices listed under temporary erosion protection.

R. **Permittee**. A person or persons, firm, or governmental agency or other entity that signs the application submitted to the City and is responsible for compliance with the terms and conditions of the permit.

S. **Predevelopment State**. The rate and volume of stormwater is unchanged. The calculation of predevelopment is based on native soils and vegetation.

T. **Public Waters.** All water basins and watercourses that are described in Minn. Stat. § 103G.005 subd. 15.

U. **Redevelopment.** Any development that is not considered new development.

V. **Retain**. Manage stormwater on site using a low-impact development approach so that the rate and volume of predevelopment stormwater reaching receiving waters is unchanged.

W. **St. Croix Riverway.** All lands and public waters within the riverway boundary subject to the standards and criteria for the Lower Saint Croix National Scenic Riverway in Minnesota.

X. **Saturated Soil.** The highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. Saturated soil is evidenced by the presence of redoximorphic features or other information.

Y. **Sediment Control.** Methods employed to prevent sediment from leaving the site. Sediment control practices include: silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, bio rolls, rock logs, compost logs, storm drain inlet protection, and temporary or permanent sedimentation basins.

Z. **Stormwater Facility.** A stationary and permanent BMP that is designed, constructed and operated to prevent or reduce the discharge of pollutants in stormwater.

AA. **Small Construction Activity.** As defined in 40 CFR part 122.26(b)(15). Small construction activities include clearing, grading and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of

development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five (5) acres.

BB. **Stabilized.** Exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, erosion control blanket, mats or other material that prevents erosion from occurring. Grass, agricultural crop or other seeding alone is not stabilization. Mulch materials must achieve approximately 90 percent ground coverage (typically 2 ton/acre).

CC. **Stormwater.** As defined under Minn. R. 7077.0105, subp. 41(b), and includes precipitation runoff, stormwater runoff, snowmelt runoff, and any other surface runoff and drainage.

DD. **Stormwater Pollution Prevention Plan (SWPPP).** A plan for stormwater discharge that includes erosion prevention BMPs, sediment control BMPs and permanent stormwater management systems that, when implemented, will decrease soil erosion on a parcel of land and decrease off-site nonpoint pollution.

EE. **Surface Water(s).** All streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses, and irrigation systems whether natural or artificial, public or private, except that surface waters do not include treatment basins or ponds that were constructed from upland.

FF. **Temporary Erosion Protection.** Methods employed to prevent erosion during construction activities. Examples of temporary erosion protection include; straw, wood fiber blanket, wood chips, vegetation, mulch and rolled erosion control products.

GG. **Underground Waters (Groundwater).** Water contained below the surface of the earth in the saturated zone including, without limitation, all waters whether under confined, unconfined, or perched conditions, in near surface unconsolidated sediment or regolith, or in rock formations deeper underground. The term groundwater shall be synonymous with underground water.

HH. **Wetland(s).** As defined in Minn. R. 7050.0130, subp. F and includes those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Constructed wetlands designed for wastewater treatment are not waters of the state. Wetlands must have the following attributes:

1. A predominance of hydric soils.
2. Inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition.
3. Under normal circumstances support a prevalence of such vegetation.

**Secs. 13.96 – 13.119. Reserved.**

## Division 3. Permit Review Process.

### Sec. 13.120. Pre- application meeting

At the discretion of the Zoning Administrator, the City shall facilitate a pre-application meeting with the applicant, City staff (or their authorized representative), and staff of relevant partner agencies (e.g. WCD, MSCWMO, VBWD, MDNR, etc.). The purposes of the meeting are to understand the general parameters of the proposed project and to convey the requirements of meeting the provisions of the ordinance.

### Sec. 13.121. Application completeness review.

The City shall make a determination regarding the completeness of a permit application and notify the applicant in writing if the application is not complete including the reasons the application was deemed incomplete.

### Sec. 13.122. Application review.

The applicant shall not commence any construction activity subject to this ordinance until a permit has been authorized by the City.

### Sec. 13.123. Permit authorization.

If the City determines that the application meets the requirements of this ordinance, the City may issue approval authorizing the project or activity. The approval shall be valid for one year.

### Sec. 13-124. Permit denial.

If the City determines the application does not meet the requirements of this ordinance the application must be denied. If the application is denied, the applicant will be notified of the denial in writing including reasons for the denial. Once denied, a new application must be resubmitted for approval before any activity may begin.

### Sec. 13-125. Plan information requirements.

The minimum information requirements of the application shall be consistent with the requirements in the most recent version of the NPDES/SDS Construction Stormwater General Permit and Middle St. Croix WMO or Valley Branch Watershed District performance standards. The application information must also include permanent treatment information showing the proposed project meets the MSCWMO or VBWD performance goals.

### Sec. 13-126. Modification of permitted plans.

If any of the following instances occur to a site with an approved ESC Plan or SWMP, the Applicant shall apply for an amendment to the associated permit(s), submitting all updated materials, reflecting the needed changes; the review of the amended materials shall use the same process as a new submittal, as designated in this ordinance:

A. There is a change in design, construction, operation, maintenance, weather or seasonal conditions that has a significant effect on the discharge of pollutants to surface water or underground water.

B. Inspections or investigations by site operators, local, state or federal officials indicate the plans are not effective in eliminating or significantly minimizing the discharge of pollutants to surface water or underground water or that the discharges are causing water quality standard exceedances.

C. The plan is not achieving the general objectives of minimizing pollutants in stormwater discharges associated with construction activity.

**Sec. 13-127. Permit completion.**

Before work under the permit is deemed complete, the permittee must submit as-builts, a long term maintenance plan and information demonstrating that the stormwater facilities conform to design specifications.

**Secs. 13-128 – 13-139. Reserved.**

## Division 4. Site Design and MIDS Calculator.

**Sec. 13-140. Better Site Design.**

Whenever possible, development projects shall be designed using the Better Site Design Techniques of the current version of the Minnesota Stormwater Manual.[2]

**Sec. 13-141. MIDS calculator.**

Final site design and choice of permanent stormwater volume reduction practices shall be based on outcomes of the MIDS Calculator (or other model that shows the performance goal can be met) and shall meet the performance standards in Division 5 of this ordinance.

**Sec. 13-142. Buffer requirement.**

Buffer locations and widths must comply with the State of Minnesota, Minnesota Pollution Control Agency, and Middle St. Croix Watershed Management Organization or Valley Branch Watershed District standards.

**Secs. 13-143 – 13-59. Reserved.**

## Division 5. Performance Standards.

**Sec. 13-160. Stormwater Volume Reduction Performance Standards**

Any applicant for a Stormwater Management Permit as defined in Section 2 of this ordinance must meet all of the following performance standards:

A. **New development volume control.** For new, nonlinear developments on sites without restrictions, stormwater runoff volumes will be controlled and the post-construction runoff volume shall be retained on site for 1.1 inches of runoff from all impervious surfaces on the site.

B. **Redevelopment volume control**. Nonlinear redevelopment projects on sites without restrictions that create or fully reconstruct impervious surfaces shall capture and retain on site 1.1 inches of runoff from the new and/or fully reconstructed impervious surfaces.

[2] Available at http://stormwater.pca.state.mn.us/index.php/Better_site_design.

C. **Linear development volume control.** Linear projects on sites without restrictions that create new and/or fully reconstructed impervious surfaces, shall capture and retain the larger of the following:

1. 0.55 inches of runoff from the new and fully reconstructed impervious surfaces on the site
2. 1.1 inches of runoff from the net increase in impervious area on the site.

   Mill and overlay and other resurfacing activities are not considered fully reconstructed.

**Sec. 13-161. Flexible treatment alternatives for sites with restrictions.**

Applicant shall attempt to comply fully with the appropriate performance standards described above. Alternatives considered and presented shall examine the merits of relocating project elements to address, varying soil conditions and other constraints across the site. If full compliance is not possible due to any of the factors listed below, the applicant must document the reason. If site constraints or restrictions limit the full treatment goal, the following flexible treatment alternatives shall be used:

Applicant shall document the flexible treatment alternatives sequence starting with Alternative #1. If Alternative #1 cannot be met, then Alternative #2 shall be analyzed. Applicants must document the specific reasons why Alternative #1 cannot be met based on the factors listed below. If Alternative #2 cannot be met then Alternative #3 shall be met. Applicants must document the specific reasons why Alternative #2 cannot be met based on the factors listed below. When all of the conditions are fulfilled within an alternative, this sequence is completed.

Volume reduction techniques considered shall include infiltration, reuse & rainwater harvesting, and canopy interception & evapotranspiration and/or additional techniques included in the MIDS calculator and the Minnesota Stormwater Manual.

Higher priority shall be given to BMPs that include volume reduction. Secondary preference is to employ filtration techniques, followed by rate control BMPs.

Factors to be considered for each alternative will include:

- Karst geology
- Shallow bedrock
- High groundwater
- Hotspots or contaminated soils
- Drinking Water Source Management Areas or within 200 feet of drinking water well
- Zoning, setbacks or other land use requirements
- Poor soils (infiltration rates that are too low or too high, problematic urban soils)

A. **Alternative #1**: Applicant attempts to comply with the following conditions:

1. Achieve at least 0.55" volume reduction from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment or linear development site.
2. Remove 75% of the annual TP load from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment site.

3. Options considered and presented shall examine the merits of relocating project elements to address, varying soil conditions and other constraints across the site.

B. **Alternative #2**: Applicant attempts to comply with the following conditions:

1. Achieve volume reduction to the maximum extent practicable.
2. Remove 60% of the annual TP load from all impervious surfaces if the site is new development or from the new and/or fully reconstructed impervious surfaces for a redevelopment site.
3. Options considered and presented shall examine the merits of relocating project elements to address, varying soil conditions and other constraints across the site.

C. **Alternative #3: Off-site Treatment.** Mitigation equivalent to the performance of 1.1 inches of volume reduction for new development, linear development or redevelopment as described above in this section, (including banking or cash) can be performed off-site to protect the receiving water body. Off-site treatment shall be achieved in areas selected in the following order of preference:

1. Locations that yield benefits to the same receiving water that receives runoff from the original construction activity.
2. Locations within the same Department of Natural Resource (DNR) catchment area (Hydrologic Unit 08) as the original construction activity.
3. Locations within the next adjacent DNR catchment area upstream.
4. Locations anywhere within the City's jurisdiction.
5. The MIDS Design Sequence Flowchart can be found in the Minnesota Stormwater Manual.[3]

**Sec. 13-162. Stormwater Management Rate Control.**

For new development, redevelopment and linear development sites the site design shall provide on-site treatment during construction and post-construction to ensure no increase from existing conditions in offsite peak discharge for the 1-year, 2-year, 10- year, and 100-year, 24-hour storm events based on the standards defined by the MSCWMO or VBWD. For single family residential building lots not part of a common plan of development site rate control requirements do not apply.

**Sec. 13-163. Other Design Standards.**

A. Minnesota Stormwater Manual. All volume control for water quality and quantity and site design specifications shall conform to the current version of the Minnesota Stormwater Manual.

B. NPDES/SDS Construction Stormwater General Permit. All volume control and water quality and quantity Best Management Practice design specifications shall conform to the current version of the NPDES/SDS Construction Stormwater General Permit.

[3] Available at http://stormwater.pca.state.mn.us/index.php/Flexible_treatment_options

C. Site erosion and sediment control requirements. All erosion and sediment control requirements shall conform to the current requirements of NPDES/SDS Construction Stormwater General Permit.

D. Watershed District/WMO requirements. All stormwater management and erosion and sediment control activities shall comply with all applicable requirements of the Watershed Districts or Watershed Management Organizations in which the project is located. In case provisions in this ordinance and requirements of watershed district or watershed management organizations overlap or conflict, the strictest provisions shall apply to the activities.

E. Where applicable, a minimum of 20' shall be provided on all sides of all publicly owned stormwater facilities for facility maintenance.

**Secs. 13-164 – 13-179. Reserved.**

## Division 6. Inspections, Maintenance, and Enforcement.

**Sec. 13-180. Inspections and record keeping.**

A. **Applicant responsibilities**. The applicant is responsible for inspections and record keeping during and after construction for all privately-owned stormwater treatment practices on the site.

B. **City inspections.** The City reserves the right to conduct inspections on a regular basis to ensure that both temporary and permanent stormwater management and erosion and sediment control measures are properly installed and maintained prior to construction, during construction, and at the completion of the project.

**Sec. 13-181. Right of entry and inspection.**

The issuance of a permit constitutes a right-of-entry for the City or its authorized representative to enter upon the construction site. The applicant shall allow the City and its authorized representatives, upon presentation of credentials, to:

A. Enter upon the permitted site for the purpose of obtaining information, examining records, and conducting investigations or surveys;

B. Bring such equipment upon the permitted development as is necessary to conduct such surveys and investigations;

C. Examine and copy any books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of the permit;

D. Inspect the stormwater pollution control measures;

E. Sample and monitor any items or activities pertaining to stormwater pollution control measures; and

F. Correct deficiencies in stormwater and erosion and sediment control measures.

**Sec. 13-182. Fees.**

Fees will be applied per City Fee Schedule

**Sec. 13-183. Enforcement tools/stop work orders.**

The City reserves the right to issue construction stop work orders when cooperation with inspections is withheld or when a violation has been identified that needs immediate attention to protect human health and/or the environment.

A. **Construction stop work order**. The City may issue construction stop work orders until stormwater management measures meet specifications and the applicant repairs any damage caused by stormwater runoff. An inspection by the City must follow before the construction project work can resume.

B. **Other actions to ensure compliance.** The City can take any combination of the following actions in the event of a failure by applicant to meet the terms of this ordinance:

1. Withhold inspections or issuance of certificates or approvals.
2. Revoke any permit issued by the City to the applicant.
3. Conduct remedial or corrective action on the development site or adjacent site affected by the failure.
4. Charge applicant for all costs associated with correcting the failure or remediating damage from the failure; if payment is not made within thirty days, payment will be made from the applicant's financial securities.
5. Bring other actions against the applicant to recover costs of remediation or meeting the terms of this ordinance.
6. Any person, firm or corporation failing to comply with or violating any of these regulation, shall be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both. Each day that a separate violation exists shall constitute a separate offense.

**Sec. 13.184. Long term inspection and maintenance of private stormwater facilities.**

A. **Maintenance Plan Required.** No private stormwater facilities may be approved unless a maintenance agreement is provided that defines who will conduct the maintenance, the type of maintenance necessary to ensure effective performance, and the maintenance intervals. All private stormwater facilities shall be inspected by the property owner and maintained in proper condition by the owner consistent with the performance goals for which they were originally designed.

B. **Facility Access**. The applicant shall obtain all necessary easements or other property interests to allow access to the facilities for inspection or maintenance for both the responsible party and the City or authorized representative.

C. **Removal of Settled Materials**. All settled materials including settled solids, shall be removed from ponds, sumps, grit chambers, and other devices as necessary and disposed of properly.

D. **Inspections**. All stormwater facilities within the City shall be inspected by the property owner at a frequency consistent with the maintenance plan. Inspection reports shall be provided to the City upon request.

**Sec. 13-185. Long term inspection and maintenance of public stormwater facilities.**

A. **Acceptance of Publicly Owned Facilities.** Before work under the permit is deemed complete; the permittee must submit as-builts and a Maintenance Plan demonstrating at the time of final stabilization that the stormwater facilities conform to design specifications. A final inspection shall be required before the City accepts ownership of the stormwater facilities.

B. **Maintenance.** The City shall perform maintenance of publicly owned stormwater facilities in accordance with their comprehensive stormwater management plan and other regulatory requirements.

**Sec. 13-186. Financial Securities.**

A. **Amount**. At the discretion of the City, the City may require a Financial Security from the Applicant in an amount sufficient to cover the entirety of the estimated costs of permitted and remedial work based on the final design as established in a set financial security schedule determined by the City.

B. **Release**. The Financial Security shall not be released until all permitted and remedial work is completed.

C. **Use by City**. The Financial Security may be used by the City to complete work not completed by the Applicant.

D. **Form of security**. The form of the Financial Security shall be one or a combination of the following to be determined by the City:

1. **Cash deposit -** A Financial Security for erosion and sediment control, as determined by the City, shall be by cash deposit to the City. The cash will be held by City in a separate account.

2. **Security deposit -** Deposit, either with the City, a responsible escrow agent, or trust company, at the option of the City, either:

   a. An irrevocable letter of credit, negotiable bonds of the kind approved for securing deposits of public money, or other instruments of credit from one or more financial institutions, subject to regulation by the state and federal government wherein said financial institution pledges funds are on deposit and guaranteed for payment.

   b. Cash in U.S. currency.

   c. Other forms and securities (e.g., disbursing agreement) as approved by the City.

E. **City indemnity**. This Financial Security shall hold the City free and harmless from all suits or claims for damages resulting from the negligent grading, removal, placement or storage of rock, sand, gravel, soil or other like material within the City.

F. **Maintaining the financial security**. If at any time during the course of the work the balance of the Financial Security falls below 50% of the total required deposit, the Applicant shall make another deposit in the amount necessary to restore the cash deposit to the required amount. If the Applicant does not bring the financial security back up to the required amount

within seven (7) days after notification by the City that the amount has fallen below 50% of the required amount the City may:

1. **Withhold inspections** - Withhold the scheduling of inspections and/or the issuance of a Certificate of Occupancy.

2. **Revoke permits** - Revoke any permit issued by the City to the Applicant for the site in question or any other of the Applicant's sites within the City's jurisdiction.

G. **Action against the financial security.** The City may access the Financial Security for remediation actions if any of the conditions listed below exist. The City shall use the Financial Security to pay for remedial work undertaken by the City, or a private contractor under contract with the City, or to reimburse the City for all costs incurred in the process of remedial work including, but not limited to, staff time and attorney's fees.

1. **Abandonment** - The Applicant ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.

2. **Failure to implement the SWPPP or ESC Plan** - The Applicant fails to conform to the grading plan and/or the SWPPP as approved by the City.

3. **Failure to perform** - The BMPs utilized on the project fail within one year of installation.

4. **Failure to reimburse City** - The Applicant fails to reimburse the City for corrective action taken.

H. **Proportional reduction of the financial security.** When more than one-third of the applicant's maximum exposed soil area achieves final stabilization, the City can reduce the total required amount of the financial security by one-third. When more than two-thirds of the applicant's maximum exposed soil area achieves final stabilization, the City can reduce the total required amount of the financial security to two-thirds of the initial amount. This reduction in financial security will be determined by the City.

I. **Returning the financial security.** The security deposited with the City for faithful performance of the SWPPP or the ESC Plan and any related remedial work shall be released one full year after the completion of the installation of all stormwater pollution control measures, including vegetation establishment, as shown on the SWPPP or ESC Plan.

J. **Emergency action.** If circumstances exist such that noncompliance with this ordinance poses an immediate danger to the public health, safety and welfare, as determined by the City, the City may take emergency preventative action. The City shall also take every reasonable action possible to contact and direct the applicant to take any necessary action. Any cost to the City for emergency action may be recovered from the applicant's financial security.

**Sec. 13-187. Enforcement Actions.**

A. **Notification of Failure of the Permit:** The City shall notify the permit holder of the failure of the permit's measures.

B. **Initial Contact**. The initial contact will be to the party or parties listed on the application and/or the SWPPP as contacts. Except during an emergency action, forty-eight (48) hours after notification by the City or seventy-two (72) hours after the failure of erosion and sediment control measures, whichever is less, the City at its discretion, may begin corrective

work. Such notification should be in writing, but if it is verbal, a written notification should follow as quickly as practical. If after making a good faith effort to notify the responsible party or parties, the City has been unable to establish contact, the City may proceed with corrective work. There are conditions when time is of the essence in controlling erosion. During such a condition the City may take immediate action, and then notify the applicant as soon as possible.

C. **Erosion Off-site**. If erosion breaches the perimeter of the site, the applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-entry from the adjoining property owner, and implement the cleanup and restoration plan within forty-eight (48) hours of obtaining the adjoining property owner's permission. In no case, unless written approval is received from the City, may more than seven (7) calendar days go by without corrective action being taken. If in the discretion of the City, the permit holder does not repair the damage caused by the erosion, the City may do the remedial work required. When restoration to wetlands and other resources are required, the applicant shall be required to work with the appropriate agencies to ensure that the work is done properly.

D. **Erosion into Streets, Wetlands or Water Bodies**. If eroded soils (including tracked soils from construction activities) enter or appear likely to enter streets, wetlands, or other water bodies, cleanup and repair shall be immediate. The applicant shall provide all traffic control and flagging required to protect the traveling public during the cleanup operations.

E. **Failure to do Corrective Work**. When an applicant fails to conform to any provision of this policy within the time stipulated, the City may take the following actions.

1. Stop Work Order. Issue a stop work order, withhold the scheduling of inspections, and/or withhold the issuance of a Certificate of Occupancy.
2. Permit Revocation. Revoke any permit issued by the City to the applicant for the site in question or any other of the applicant's sites within the City's jurisdiction.
3. Correction by City. Correct the deficiency or hire a contractor to correct the deficiency.

F. The applicant will be required to reimburse the City for all costs incurred in correcting stormwater pollution control deficiencies. If payment is not made within thirty (30) days after costs are incurred by the City, payment will be made from the applicant's financial securities as described in Section 8 above.

G. If there is an insufficient financial amount in the applicant's financial securities as described in Section 8above, the City may assess the remaining amount against the property. As a condition of the permit, the owner shall waive notice of any assessment hearing to be conducted by the City, concur that the benefit to the property exceeds the amount of the proposed assessment, and waive all rights by virtue of Minnesota Statute 429.081 to challenge the amount or validity of assessment.

**Sec. 13-188. Misdemeanor.**

Any person, firm or corporation failing to comply with, or violating any of these regulations, shall be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both.

A. All land use and building permits may be suspended until the applicant has corrected the violation.

B. Each day that a separate violation exists shall constitute a separate offense.

C.