

Excerpts from:**VERMILLION RIVER WATERSHED JOINT POWERS ORGANIZATION
STANDARDS****FORWARD**

The following document presents the Standards for the Vermillion River Watershed Joint Powers Organization (VRWJPO) as called for in the November 2005 Watershed Plan. These Standards form the basis for a Plan Amendment as called for by the Watershed Plan. The VRWJPO intends to convert these Standards into Rules. Standards typically are the desired outcome or objective, while Rules provide the regulatory and implementation framework for achieving the Standards. The VRWJPO estimates the Rules will be adopted in December 2006. The Standards below include much implementation detail beyond what would typically be considered for Standards. These implementation details are the start of the Rules. These details were included because some sense of how the Standards will be implemented was necessary to the complete informed discussions with the Vermillion River Watershed Technical Advisory Group and the Watershed Planning Commission in developing the Standards. It is anticipated that the process for developing Rules will:

- ❖ Convert each Standard to a Rule by including additional implementation detail and information such as required exhibits for permit applications
- ❖ Consider ways of implementing the Standards using “trading” approaches and “credits”
- ❖ Revisit and refine some of the criteria for the various Standards
- ❖ Expand the list of definitions
- ❖ Include additional Rules for:
 - ◆ Procedural Requirements
 - ◆ Security
 - ◆ Variances
 - ◆ Appeals
 - ◆ Enforcement
 - ◆ Fees

WETLAND ALTERATION STANDARDS

Policy

It is the policy, objective, or action of the VRWJPO to:

1. Work to achieve no net loss of wetlands in the Vermillion River Watershed.
2. Replace lost wetlands in the same subwatershed whenever possible.
3. Provide equal or greater functions and values for lost wetlands at the replacement ratios dictated by the Wetland Conservation Act.
4. Avoid direct or indirect wetland disturbance in accordance with State and Federal requirements and approved local wetland management plans.
5. Limit the use of high quality wetlands for stormwater management where other alternatives exist.
6. Avoid fragmentation of natural areas and corridors when feasible and mitigate when unavoidable.

Regulation

No person or political subdivision shall drain, fill, excavate, or otherwise alter a wetland or public waters wetland without first obtaining the approval of a wetland replacement plan from the Local Governmental Unit (LGU) with jurisdiction over the activity.

Criteria

1. Any drainage, filling, excavation, or other alteration of a public waters wetland or wetland shall be conducted in compliance with Minnesota Statutes, section 103G.245, the WCA Minnesota Rules 8420, and regulations adopted hereunder.
2. In order to preserve WCA exemption or no loss determination, projects involving excavation in Types 1, 2, 6, and 7 wetlands must demonstrate a beneficial purpose, such as habitat or water quality improvements, and minimize loss of wetland function as determined by the VRWJPO or LGU.
3. Wetlands on agricultural land enrolled in the Federal Farm Program retain the WCA exemption as long as wetlands are: a) not drained, excavated, or filled beyond that necessary to replace, maintain, or repair existing drainage infrastructure with a capacity not to exceed that which was originally constructed; or b) replaced at a ratio of 1:1 or greater under United States Department of Agriculture provisions as supported by documentation from the United States Department of Agriculture, which must be included as evidence to support this exemption.

4. Per the WCA, if the activity would result in loss of eligibility or conversion to non-agricultural land within 10 years, the landowner cannot qualify for the exemption.
5. A high quality (or equivalent value) public waters wetland or wetland (as determined by methods acceptable to the VRWJPO for vegetative diversity) may not be used for stormwater management and treatment unless the use will not adversely affect the function and public value of the wetland and other alternatives do not exist.
6. Wetland replacement/mitigation siting must follow the priority order below:
 - a. Mitigation on-site
 - b. Mitigation within the same minor subwatershed as established by the Minnesota Department of Natural Resources for the “1979 Watershed Mapping Project” pursuant to Minnesota Laws 1977, chapter 455, section 33, subdivision 7, paragraph (a).
 - c. Mitigation within the JPO boundary
 - d. Mitigation within Dakota or Scott County
 - e. Mitigation within major watershed number 38: Mississippi & Lake Pepin, excluding minor subwatersheds 3800400, 3800500, 3800401, 3801700, 3800402, 3800200, 3800302, 3800600 3800800, 3800301, 3800300, 3800700, 3801601, 3800100, 3801800, 3801200, 3801100, 3801000, and 3800900, which are located in Goodhue County and are tributary to the Mississippi River instead of the Vermillion River.
7. Transportation projects shall pursue wetland mitigation projects to the extent practical using the criteria above. However, this does not preclude the use of the BWSR Replacement Program.

BUFFER STANDARDS

Policy

It is the policy, objective, or action of the VRWJPO to:

1. Require buffers, acting as filter strips around every wetland based on its management classification.
2. Avoid fragmentation of natural areas and corridors when feasible and mitigate when unavoidable.
3. To protect wetlands from chemical, physical, biological, or hydrological changes so as to prevent significant adverse impacts.

As a means of implementing these policies, the following Objective/Action was also adopted in the VRWJPO Watershed Plan:

Surface Water Quality Objective 3: Action 5 – Implement a program to establish buffers along major waterways, wetland and other water bodies, part 4: Implement the buffer program through cost sharing with other voluntary programs and through requirement of local ordinances that mandate creation of buffers as part of approval of developments and land-disturbing activities.

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

Regulation

For any lot created after the effective date of the VRWJPO Rules, a buffer shall be maintained around the perimeter of all wetlands, major waterways, and public waters wetlands. The buffer provisions shall not apply to any lot of record as of the date of published VRWJPO Rules until such lot is subdivided, and as long as the lots created are eligible for Green Acres or Agricultural Preserve. Buffer strips shall apply whether or not the major waterway, wetland, or public waters wetland is on the same lot as a proposed development.

Criteria

1. Where acceptable natural vegetation exists in buffer areas, the retention of such vegetation in an undisturbed state is required unless approval to replace such vegetation is received. A buffer has acceptable vegetation if it:
 - a. Has a continuous, dense layer of perennial grasses that has been uncultivated or unbroken for at least 5 consecutive years; or,
 - b. Has an overstory of trees and/or shrubs that has been uncultivated or unbroken for at least 5 consecutive years; or,
 - c. Contains a mixture of the plant communities in 1 and 2 above that has been uncultivated or unbroken for at least 5 years.
2. Buffers shall be staked and protected in the field prior to construction unless the vegetation and the condition of the buffer are considered inadequate. Existing conditions vegetation will be considered unacceptable if:
 - a. Topography or sparse vegetation tends to channelize the flow of surface water

- b. Some other reason the vegetation is unlikely to retain nutrients and sediment
3. Where buffer vegetation and conditions are unacceptable, or where approval has been obtained to replant, buffers shall be replanted and maintained according to the following Standards:
 - a. Buffers shall be planted with a native seed mix approved by MnDOT, BWSR, NRCS or the Dakota or Scott SWCD, with the exception of a one-time planting with an annual nurse or cover crop. Plantings of native forbs and grasses may be substituted for seeding. All substitutions must be approved by the LGU. Groupings/clusters of native trees and shrubs, of species and at densities appropriate to site conditions, shall also be planted throughout the buffer area.
 - b. The seed mix and planting shall be broadcast/installed according to MnDOT, BWSR, NRCS or Dakota or Scott SWCD specifications. The selected seed mixes and plantings for permanent cover shall be appropriate for the soil site conditions and free of invasive species.
 - c. Buffer vegetation (both natural and created) shall be protected by erosion and sediment control measures during construction.
 - d. During the first five full growing seasons, except where the LGU has determined vegetation establishment is acceptable, the owner or applicant must replant buffer vegetation where the vegetative cover is less than 90%. The owner or applicant must assure reseeding/or replanting if the buffer changes at any time through human intervention or activities.
4. Where a buffer is required, the LGU shall require the protection of the buffer under a conservation easement, or include the buffer in a dedicated outlot as part of platting and subdivision approval, except where the buffer is located in a public transportation right-of-way.. Buffer shall also be monumented to clearly designate the boundaries of all new buffers within new residential subdivisions. A monument shall consist of a post and a buffer strip sign approved by the LGU.
5. Alterations, including building, storage, paving, routine mowing, burning, plowing, introduction of noxious vegetation, cutting, dredging, filing, mining, dumping, grazing livestock, agricultural production, yard waste disposal, or fertilizer application are prohibited within any buffer. Periodic mowing or burning, or the use of fertilizers and pesticides for the purpose of managing and maintaining native vegetation is allowed. Noxious weeds may be removed and mechanical or spot herbicide treatments may be used to control noxious weeds, but aerial or broadcast spraying is not acceptable. Prohibited alterations would not include plantings that enhance the

natural vegetation or selective clearing or pruning of trees or vegetation that are dead, diseased or pose similar hazards, or as otherwise clarified in Criteria 6.

6. The following activities shall be permitted within any buffer, and shall not constitute prohibited alterations:
 - a. The following activities are allowed within both the minimum and average buffer width areas:
 - Use and maintenance of an unimproved access strip through the buffer, not more than 10 feet in width, for recreational access to the major waterway or wetland and the exercise of riparian rights;
 - Structures that exist when the buffer is created:
 - Placement, maintenance, repair, or replacement of public roads and utility and drainage systems that exist on creation of the buffer or are required to comply with any subdivision approval or building permit obtained from the municipality or county, so long as any adverse impacts of public road, utility, or drainage systems on the function of the buffer have been avoided or minimized to the extent practical;
 - Clearing, grading, and seeding is allowed if part of an approved Wetland Replacement Plan, or approved Stream Restoration Plan.
 - Construction of a multipurpose trail, including boardwalks and pedestrian bridges, provided it is constructed to minimize erosion and new impervious surface, and has an undisturbed area of vegetative buffer at least ten (10) feet in width between the trail and the wetland or public waters wetland edge, or the bank of the major waterway; or where needed to cross the major waterway, the minimum impact alignment is used.
 - The construction of underground utilities such as water, stormwater, and sanitary sewers and pipelines provided the minimum impact alignment is used, the area is stabilized in accordance with Criteria 2 above, and setbacks established in the Floodplain Alterations Standard Criteria 4 are met.
 - b. The following activities are allowed within those portions of the average buffer width that exceed the minimum buffer width:
 - Stormwater management facilities, provided the land areas are stabilized in accordance with Criteria 2 above, and alterations prohibited in Criteria 5 above are upheld.

- The area of shallow vegetated infiltration and biofiltration facilities, and water quality ponds not to exceed 50 percent of the pond area, adjacent to wetlands and major waterways may be included in buffer averaging provided the facilities do not encroach into the minimum buffer width, and the land areas are stabilized in accordance with Criteria 2 above, and alterations prohibited in Criteria 5 above are upheld.
7. A wetlands functional assessment for vegetative diversity will be completed with each wetland and public waters wetland, delineated for a project and buffers established according to the management classification in the following table.

Buffer Requirement	Exceptional Quality Wetland	High Quality Wetland	Medium Quality Wetland	Low Quality Wetland
Average Buffer Width	50 feet	40 feet	30 feet	25 feet
Minimum Buffer Width	30 feet	30 feet	25 feet	16.5 feet

Buffers shall be established adjacent to major waterways as shown and classified on Map 1 attached to these Standards, and as described for the various classifications below.

Classification	Buffer Width Standard
Conservation Corridor	Lower Reach (Vermillion River downstream of Biscayne Avenue) – 150-foot average, 100-foot minimum measured from the edge of the meander belt of the river. Upper Reach (Vermillion River upstream of Biscayne Avenue and South Branch Vermillion River) – 150 foot average, 100-foot minimum .measured from the edge of the meander belt of the river.
Aquatic Corridor – Principal Connector	Required buffer width 100-foot average, 65-foot minimum measured from the edge of the meander belt of the river.
Aquatic Corridor – Principal Connector with Trout Stream Designation	100 foot, no averaging, as required by the General Permit Authorization to Discharge Storm Water Associated With Construction Activity Under the National Pollutant Discharge Elimination System/State Disposal System Permit Program Permit MN R100001 (NPDES General Construction Permit) issued by the Minnesota Pollutant Control Agency, August 1, 2003.
Aquatic Corridor – Tributary Connector	50-foot average, 35-foot minimum: plus 2 feet for every 1 percent of slope .measured from the edge of the meander belt of the tributary.
Water Quality Corridor	30-foot average, 20-foot minimum where there is a flow path for concentrated surface runoff measured from the center line of the flow path.

Exceptions

1. The Buffer Standards do not apply to any wetland or public waters wetland with a surface area equal to or less than the area of wetland impact allowed without replacement as de minimus under the Wetland Conservation Act (WCA), and to those portions of wetlands that will be filled under approved wetland replacement plans per the Wetland Conservation Act (WCA).
2. If a municipality or county has adopted a BWSR or VRWJPO approved Comprehensive Wetland Management Plan (prior to the adoption of VRWJPO Rules), which prescribes required buffer widths for public waters wetlands, wetlands, and major waterways; the applicable ordinance shall govern buffer widths, restrictions, allowable uses, and monumentation until such time as the VRWJPO completes second generation Watershed Plan in 2015. With the 2015 Plans the LGUs need to include standards equivalent to the VRWJPO Buffer Standards, or have updated plans approved by BWSR or VRWJPO.
3. The Buffer Standards for Water Quality Corridors do not apply to lots of record as of the date of the published VRWJPO Rules that are less than 1 acre in size.
4. The Buffer Standards do not apply to existing outlots that received preliminary plat approval in the two year period preceding the date of the published VRWJPO Rules (unless extended by the LGU).
5. Where a stream meandering project has been completed, the buffer width shall be established by the LGU and shall be no less than the minimum.

Trading

The VRWJPO anticipates developing a trading system for stream temperature. For buffers this may include consideration of “trading” re-vegetation of streamside areas with inadequate shading or inadequate stabilization for smaller buffer widths, or trading reduced buffer widths in one area for establishing buffers in identified critical areas.