



September 20, 2017

Ms. Linda Loomis
Administrator, Lower Minnesota River Watershed District
Naiad Consulting, LLC
6677 Olson Memorial Highway
Golden Valley, MN 55427

Transmitted via email only to:
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Dear Ms. Loomis:

Bloomington appreciates the Lower Minnesota River Watershed District's (the District) active role in protecting the Minnesota River and adjacent bluffs from environmental degradation. Understanding the District recently amended its current Watershed Management Plan (the Plan) in 2015; the City appreciates the District's effort to amend the Plan again in order to align the Plan with water governance documents in the municipalities within the District and adjacent watershed management organizations. The City commends the District in identifying the High Resources Value Areas within the District and working to protect their unique value to the District, the surrounding communities, and the State. The City shares those interests and generally supports the District in its efforts to work with LGUs to manage and protect the Minnesota River, lakes, streams, wetlands, and groundwater. With great success, Bloomington has adopted multiple official controls over the years to protect the river and the bluff, while balancing environmental protection with property rights. The City of Bloomington respectfully submits the comments below for consideration as the District continues the process of amending its Watershed Management Plan.

1. General Comments:

- a) *Lack of Notice.* The District represents that it has complied with the requirements of MS 103D.341 regarding providing notice. However given the significant impact, particularly with the proposed Bluff Standards, the City believes the District should have also mailed notice to landowners regarding the proposed significant changes. Instead, the City of Bloomington, at its great expense, provided the mailed notice that the District should have done. The City of Bloomington requests the District provide full mailed notice, with sufficient time to review the standards and provide written comment, to all impacted landowners within the watershed district for these amendments and for any future amendments.

- b) *More Time Needed for Review.* Given that the District did not provide mailed notice to landowners, and that those impacted landowners that are aware of the changes were only

recently informed due to the efforts of a few cities, impacted landowners have not had sufficient time to review and understand the proposed standards. The City of Bloomington requests that The District provide impacted landowners with 60 days to review and comment on the proposed standards after the receipt of a mailed notice and also post information on existing and proposed standards on the District website.

2. **Appendix K; Page 8; line 4** –Spell out HVRA prior to using the acronym.
3. **Appendix K; Page 11; lines 1-12 – Definition of Bluff.** The District is proposing to significantly expand the area considered as a bluff to include areas that are well away from the Minnesota River bluff and away from any shoreline areas completely. Most bluff areas border a river, beach, or other shoreline area; in fact a bluff line often defines the outer limits of a river’s floodplain or is synonymous with other terms such as valley wall. Under the proposed definition the District is actually creating a steep slope standard across all areas of the District rather than a bluff standard. The City of Bloomington requests the District revise its bluff definition to be more consistent with the State definition that requires part or all of the feature to be located in a shoreland area.
4. **Appendix K; Page 11; line 9 – Figure 1.** Figure 1 indicates that the structure setback ranges from 40 – 100 feet. The City of Bloomington understands the proposed setback is 40 from top of bluff. Therefore the setback range of 40-100 feet indicated in Figure 1 is confusing and should be removed.
5. **Appendix K; Page 11; lines 13-15 – Definition of Structure.** The proposed bluff standards require all structures to be set back a minimum of 40 feet from the top of bluff. The proposed District definition of “structure” is too expansive. As written, it would include many “manufactured” items “normally positioned on land”, such as dog houses, tents, fire pits, and rain barrels. Arguably it includes such common household features as folding chairs and garden hoses. The City of Bloomington requests the District revise the definition of structure to be more specific and also to include only significant features such as large buildings.
6. **Appendix K; Page 11; line 16** – Remove “or” from Subsurface Sewage Treatment System (SSTS)
7. **Appendix K; Page 17 – Variances**
 - a) *Avoid Variances Where Possible.* District staff has offered the variance process as a mechanism for landowners to find relief from the proposed standards. However, the variance process is expensive and time consuming for landowners and for the cities or watershed districts that must process those variances. The City of Bloomington requests that the District review the many scenarios that may result in variances that could be supported and then revise the proposed standards to allow those certain common circumstances that would not require a variance, and thereby reduce the number of variances that would be requested by land owners
 - b) *Strict Variance Findings.* The District proposes using an “undue hardship” variance findings that will result in little practical ability to issue variances. As proposed, a variance cannot be issued if the property in question can be put to a reasonable use without the variance. . In 2011, following the *Krummenacher* case, the Minnesota State Legislature amended the required

variance findings for city-issued variances to replace the “undue hardship” test with the “practical difficulty” test. Many Minnesota cities, including Bloomington, amended their respective City Codes to conform to this standard. Bloomington requests that the District revise the required variance findings to match the findings set forth in State law and city codes. Conflicting legal standards will cause confusion and increase the potential for lawsuits.

8. Appendix K; Page 17 – Enforcement.

- a) *Indemnification.* The proposed standards are likely to trigger legal challenges from impacted landowners. The burden of defending against those challenges should fall on the District and not on individual cities that in many cases may not agree with the standards they are required to enforce. Any shifting of the burden to cities to enforce and legally defend the standards must come with a corresponding indemnification for cities from the District.
- b) *Unfunded Mandate.* As proposed, the District requires all review and enforcement of the proposed standards to be performed by cities. Such enforcement will place new financial burdens on cities and on landowners, especially to process the many variance requests the standards will likely trigger on an ongoing, going forward basis. If standards are adopted over the objections of locally elected officials, city staff, and landowners, it should be incumbent upon the District to develop a permitting program and assume the responsibility of reviewing and enforcing its proposed standards.

9. Appendix K; Page 18 – Bluff Standard

- a) *Predominantly developed bluff.* Unlike some areas within the District’s jurisdiction, Bloomington’s bluff land is predominantly developed. Under the proposed definition of structure there are over 1,000 existing structures in Bloomington on over 650 parcels that are impacted by the proposed regulations. Bluff side development issues in Bloomington relate less to new subdivisions and more to smaller property improvements that are customarily incidental to existing homes and reasonable home improvement projects. In numerous cases, the proposed standards will prohibit decks, patios, sheds and additions that would today be allowed and that the City views as fully reasonable, even in a bluff side context. While well intentioned, the proposed District standards do not adequately recognize and protect the property rights of landowners.
- b) *Lack of Comparative Information.* The District is proposing to significantly change the definition of “bluff”. Among other changes, the slope threshold to qualify as a bluff has been reduced from 30% to 18%. While the District has provided a map of the area that meets the 18% definition, it has not provided a map of the area that meets the 30% definition. We believe the proposed 18% threshold significantly expands the reach of the standards, but without a map of the previous “bluff”, we have no way to verify or to quantify the impact. Bloomington requests that the District prepare a map of the “bluff” using the current 30% definition, post it on their website and provide a shapefile to cities. Please also provide a combined comparison graphic that visually depicts the two “bluff” designations overlaid on one another along with metadata that compares the impacted area by acre in each community for the existing and proposed standard.

- c) *Need for Exemptions.* As discussed in a recent meeting between City and District staff, much of Bloomington should be exempt from the proposed bluff standards due to either the success of existing standards or the nature of steep slope areas far away from the river bluff. Full discussion of any exemptions should occur prior to adoption of the standards.
- d) *Survey Requirement Onerous.* The proposed bluff standards require a topographic survey for “any land disturbing activity, vegetation removal, development or redevelopment” of land in a bluff overlay district (Appendix K, Page 19). Such a survey will be expensive for the landowner and will be time consuming to obtain. The City of Bloomington requests that the District reevaluate where and for what activities a survey is truly needed and revise the survey requirements to reduce the financial impact on landowners to a reasonable and necessary level.
- e) *Standards Must Better Respect Property Rights.* The City of Bloomington has adopted several standards over the years that protect the bluff while presenting less negative impacts on the property rights of landowners. These standards include bluff overlay zoning districts, limitations on grading and tree removal, prohibitions on increasing over the bluff water discharge, and reducing impervious surface allowances as slopes increase. Our experience is that the City’s standards have been effective while allowing landowners reasonable opportunities to use and improve homes that often predated the standards. Bloomington requests that the District adopt standards similar to Bloomington’s to apply in developed communities and consider stricter standards only in communities that are largely yet to be developed and therefore better able to be flexible in meeting the standards while not negatively impacting existing property rights.
- f) *Vegetation Management.* The proposed bluff standard prohibits removal of vegetation within the Bluff Impact Zone (BIZ). In Bloomington there are many cases where the BIZ incorporates entire private parcels and the standard has no exceptions for landowners to manage vegetation and landscaping. Arguably a landowner would be in violation of the standard by replacing existing turf grass or ornamental shrubbery around their house. The City of Bloomington requests the District reconsider the impact of the proposed bluff standard and revise the standards to provide landowners a reasonable ability to manage vegetation.
- g) *No Review for small structures.* The City of Bloomington does not require permits or plan review for small structures such as patios or retaining walls under 4 feet as long as the disturbance is less than 5,000 square feet or 50 cubic yards of material. The City of Bloomington requests the District revise the definition of structure to include only significant features such as significant features such as large buildings.
- 10. Appendix K; Page 26; Line 22 – Stormwater Management Standard.** The regulated activity indicates that it includes roads. It is unclear whether this means mean linear projects. Is a trail a road? The City of Bloomington requests the District define what is considered a road.
- 11. Appendix K; Page 33; Lines 8-10 – Water Appropriations Standard.** In Bloomington the majority of bluff properties have been connected to sewer and water service. Many of the properties that remain are limited by various constraints preventing a connection to the municipal system without

significant infrastructure investment or a desire for redevelopment. This requirement seems duplicative to the existing Minnesota Rule. The City of Bloomington requests the District delete this requirement in deference to the existing Minnesota Rule and the City's Wellhead Protection Plan that was approved in 2014 that already adequately addresses this.

- 12. Legally Non-conforming parcels.** The proposed Standards will create hundreds of legally nonconforming lots. The City requests that District revise its proposed rules to address the certain typical, regular landowner activities would not increase the non-conformity or otherwise expressly grant such authority to cities to address in their official controls.

The City of Bloomington appreciates the opportunity to provide comment on the plan amendment and participate on the Technical Advisory Committee. The City continues to have significant concerns regarding the proposed Bluff Standard and requests the opportunity to work further with the District to modify the proposed standards in a manner that better balances environmental protection with the preservation of property rights in a fully built out community that has time-tested, established regulations with essentially the same policy objectives.

If you have any questions or wish to discuss any of the comments in more detail please contact Bryan Gruidl, Sr. Water Resources Manager at 952.563.4557 or bgruidl@bloomingtonmn.gov.

Sincerely,



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City Manager

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