

SECTION 5: VERMILLION RIVER WATERSHED JOINT POWERS ORGANIZATION (VRWJPO) GOVERNANCE AND ADMINISTRATIVE AUTHORITY

5.0 INTRODUCTION

Dakota and Scott Counties' watershed management authority is provided for in Minn. Stat. § 103B.231, Subd. 3(b). The Counties' groundwater management authority is derived from Minn. Stat. § 103B.255. Dakota and Scott Counties became responsible for managing the Vermillion River Watershed when the former watershed management organization failed to sign a new Joint Powers Agreement in August 2000. After evaluating various watershed management structures, Dakota and Scott Counties signed a Joint Powers Agreement in September 2002 that established the Vermillion River Watershed Joint Powers Organization.

5.1. STRUCTURE OF THE VRWJPO

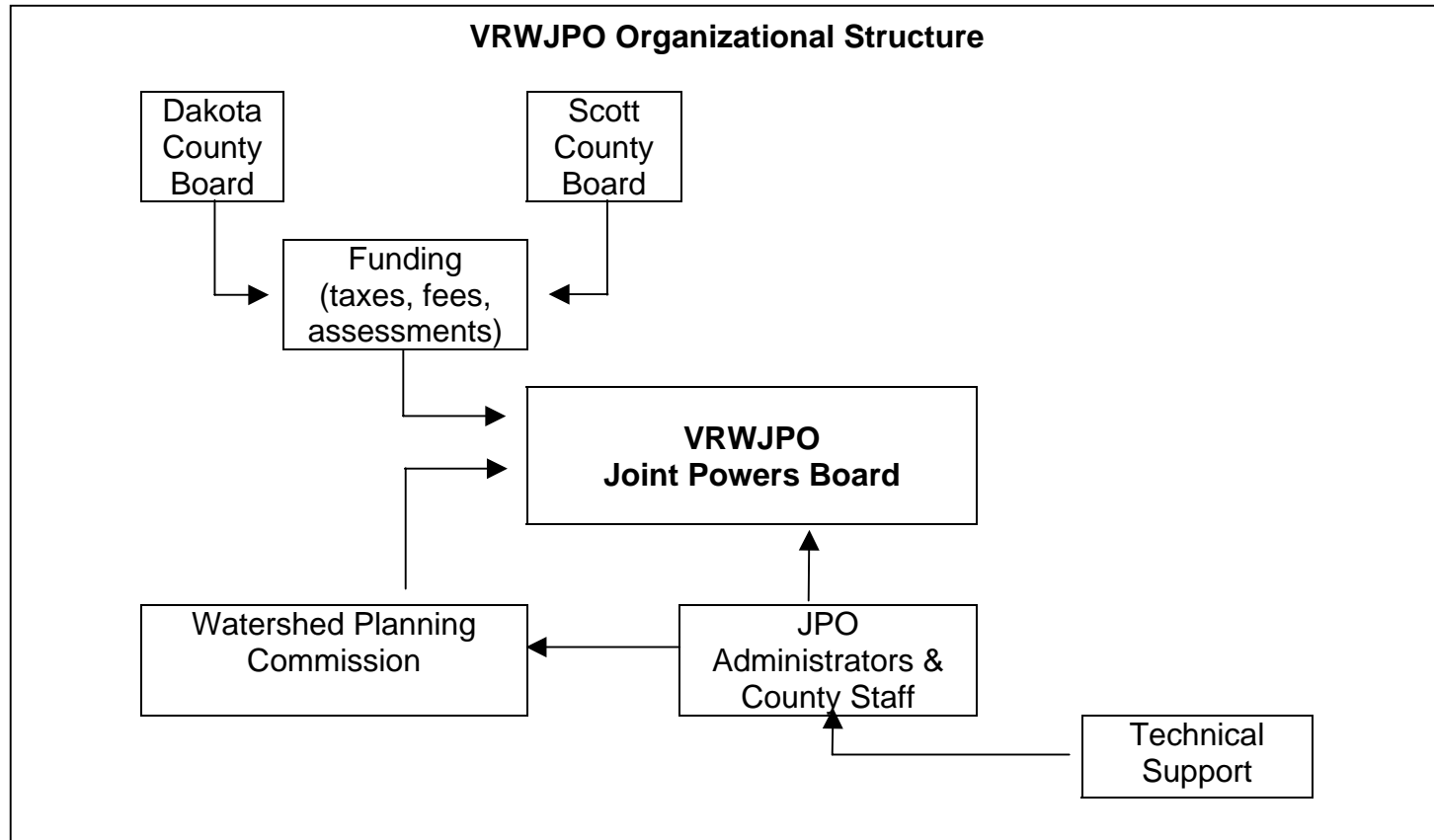
The VRWJPO Joint Powers Agreement (JPA) establishes a three-member Joint Powers Board consisting of two Dakota County Commissioners and one Scott County Commissioner (the JPA is included in Appendix E). The Joint Powers Board provides the direction to plan for the management and protection of water resources throughout the Vermillion River Watershed (Watershed).

The Joint Powers Board is supported by a nine-member, advisory Watershed Planning Commission (WPC), consisting of eight members from the Dakota County portion of the Watershed, and one member from the Scott County portion of the Watershed. As stated in the JPA, the general duties of the WPC are to advise the Joint Powers Board regarding its duties under the JPA, including the responsibility to:

- Review, comment and recommend on the proposed watershed management plan;
- Review, comment and recommend on the proposed annual work plan and budget; and
- Recommend action regarding disputes pursuant to the Joint Powers Agreement.

The VRWJPO is administered by Dakota County staff, through its Physical Development Division, and by Scott County staff, through its Community Development Division. Technical assistance regarding Watershed issues is provided through a combination of County staff and outside consulting services.

Figure 5.1: VRWJPO Organizational Structure



5.2 REGULATORY CONTROLS

Various units of government are involved in regulating water resource related activities, as described in the following paragraphs and summarized in Table 5.1.

Minnesota Department of Natural Resources (MDNR). The MDNR administers the Public Waters Work Permit Program, the water appropriation permit program, the dam safety permit program, and the riprap shore protection permit program. The MDNR is involved in enforcement of the Wetland Conservation Act and is responsible for identifying, protecting and managing calcareous fens. The MDNR also has model shoreland ordinances that cities and counties can adopt.

The MDNR's Public Waters Work Permit Program (Minnesota Statutes 103G) requires a MDNR protected waters permit for any work below the Ordinary High Water elevation (OHW) or any work that will alter or diminish the course, current, or cross-section of any protected water, including lakes, wetlands and streams. For lakes and wetlands, the MDNR's jurisdiction extends to designated U.S. Fish and Wildlife Service Circular #39 Types 3, 4, and 5 wetlands, which are 10 acres or more in size in unincorporated areas, or 2.5 acres or more in size in incorporated areas. The program prohibits most filling of protected waters and wetlands for the purpose of creating upland areas. The Public Waters Work Permit program was amended in 2000 to minimize overlapping jurisdiction with the WCA.

Questions concerning the MDNR's role in water resource management should be directed to the MDNR Division of Waters, Metro Region, 1200 Warner Road, St. Paul, MN 55106 (651-772-7910).

Minnesota Board of Water and Soil Resources (BWSR). The BWSR oversees the State's watershed management organizations (joint powers and watershed district organizations), oversees the State's Soil and Water Conservation Districts, and administers the rules for the Wetland Conservation Act and Metropolitan Area watershed management. Questions concerning the BWSR's role in water resource management should be directed to the Minnesota Board of Water and Soil Resources, , 520 Lafayette Road, St. Paul, MN 55155 (651-296-3767).

Minnesota Pollution Control Agency (MPCA). The MPCA administers the State Discharge System/National Pollutant Discharge Elimination System (NPDES) Permit program (point source discharges of wastewater), the NPDES General Permit for Construction Activities program, the NPDES General Stormwater Permit for Industrial Activities program, the NPDES MS4 Storm Water Permit program, Section 401 of the Clean Water Act Water Quality Certification program, and the individual sewage treatment system regulations (7080 Rules). The MPCA also reports the State's "impaired waters" to the U.S. Environmental Protection Agency. Spills should be reported directly to the MPCA. Questions concerning the MPCA's role in water resource management should be directed to the Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, MN 55155-4194 (651-296-6300).

Minnesota Department of Health (MDH). The MDH administers the Well Management Program, the Wellhead Protection Program, and the Safe Drinking Water Act rules. See the Background part of the Groundwater section for more information about these programs. Questions concerning the MDH's role in water resource management should be directed to the Minnesota Department of Health, P.O. Box 64975, St. Paul, MN (651-215-5800).

Minnesota Environmental Quality Board (EQB). The EQB administers the State's environmental review program, including Environmental Assessment Worksheets (EAW) and Environmental Impact Statements (EIS). Questions concerning the EQB's role in water resource management should be directed to the Minnesota Environmental Quality Board, 658 Cedar Street, St. Paul, MN 55155 (651-296-3985).

U.S. Army Corps of Engineers (COE). The COE administers Section 10 of the Rivers and Harbors Act permit program, and the Section 404 permit program. See Section 8.3 for more information about these programs. Questions concerning the COE's role in water resource management should be directed to the U.S. Army Corps of Engineers, St. Paul District, Army Corps of Engineers Centre, 190 East 5th Street, St. Paul, MN 55101-1638 (651-290-5200).

The Metropolitan Council. The Metropolitan Council provides regional planning and wastewater services (collection and treatment) for the seven-county Metropolitan Area. The Metropolitan Council's adopted "Interim Strategy to Reduce Nonpoint Source Pollution to All Metropolitan Water Bodies" requires local governments to 1) adopt design standards for new stormwater ponds; 2) follow the best management practices given in the MPCA's *Protecting Water Quality in Urban Areas* (2000), or an equivalent set of standards; and 3) adopt the DNR's shoreland regulations. Questions concerning the Metropolitan Council's role in water resource management should be directed to the Metropolitan Council, Mears Park Center, 230 East 5th Street, St. Paul, MN 55101 (651-602-1000).

Table 5.1 lists State agency involvement using a matrix showing watershed components and the corresponding regulatory agency. Table 5.2 lists the current regulatory controls applied by the cities and townships. Most of the local controls are in the form of city ordinances.

Dakota and Scott Counties. Dakota County townships have had municipal powers since the 1970s, when they became responsible for their own land use and zoning. The exception being that Dakota County has zoning authority in the shoreland and floodplain areas of the townships. Dakota County administers Ordinances No. 50 (Shoreland and Floodplain Management) and No. 113 (Individual Sewage Treatment Systems) in these areas. In Scott County, the County provides the land use and zoning function for townships. This Plan does not override the land use or zoning authority of either County in rural township areas.

The Vermillion River Watershed Joint Powers Organization. The VRWJPO does not currently operate a regulatory program and would prefer that the cities and townships continue to operate their regulatory programs in the future, rather than the VRWJPO. The local governments are to adopt the VRWJPO's goals, policies, and standards into their local water management plans and ordinances. The VRWJPO will take a leadership role in a process improvement effort to clarify expectations and opportunities for watershed management plans and local water management plans, and how these plans can be coordinated with the requirements of other programs (e.g., NPDES Phase II MS4 permit requirements). The VRWJPO goals are to: 1) achieve greater alignment among water-related planning requirements for local governments to avoid unnecessary duplication with other programs/requirements, 2) emphasize development and implementation of ordinances, and 3) use the local watershed plans to fill in gaps and address issues that cannot or do not need to be addressed through ordinances. Cities and townships must obtain approval of their local water management plans from the VRWJPO. When a plan is received by the VRWJPO, it will be reviewed for consistency with this Plan (see Section 7 for more information about local watershed management plans).

As specified in Section 4 of this Plan, the VRWJPO will set standards for water resource management that local governments within the Watershed will use to develop and implement their individual local water management plans and ordinances. These standards will be developed as a minor plan amendment to this Plan (Section 6.3.1 presents information about the minor plan amendment process). Following VRWJPO adoption of the minor plan amendment (estimated to be in early 2006), the VRWJPO will begin a rule-making process to implement the standards. During the rule-making process, the VRWJPO will:

1. Review existing local government ordinances to check for gaps between local standards and VRWJPO standards.
2. Require that local governments submit proposed land alteration plans to the VRWJPO for review and comment, if the plans include any of the following conditions:
 - Variances from the local government's ordinances that affect surface water or impact surface water/groundwater interactions

- Diversions
- Intercommunity flows (to or from)
- Project site size of 40 acres or more.

The VRWJPO estimates the VRWJPO rules will be adopted in December 2006, per the requirements of Minn. Stat. 103B.235, Subd. 4, which states that local governments will adopt and implement their plans within 120 days and will amend their official controls accordingly within 180 days. During the interim period between VRWJPO rule adoption and local government adoption of ordinances and controls (estimated to be between December 2006 and December 2007), the VRWJPO will:

1. Work with local governments to revise/adopt their ordinances and other controls to incorporate the VRWJPO standards.
2. Assist the townships in developing a model ordinance that incorporates the VRWJPO standards.
3. Require that the local governments submit proposed land alteration plans to the VRWJPO for review and comment, if the plans includes any of the following conditions:
 - Variances from the local government's ordinances that affect surface water or impact surface water/groundwater interactions
 - Diversions
 - Intercommunity flows (to or from)
 - Project site size of 40 acres or more
 - Other proposed activities, as identified in the VRWJPO rules.

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

Category 1. VRWJPO responsible for permitting.

Category 2. Local governments responsible for permitting of certain proposed projects

Category 3. Local governments responsible for permitting, with VRWJPO permitting required under certain circumstances.

Following VRWJPO rule adoption, the VRWJPO will evaluate local government ordinances to determine if they match the VRWJPO rules. If a local government's ordinances are found to be insufficient (i.e., do not meet the VRWJPO rules), the VRWJPO will implement a permitting program in that community (Category 1).

If a local government incorporates the VRWJPO rules into its ordinances and controls, and demonstrates compliance with the VRWJPO rules, that local government will be responsible for all permitting (Category 2). However, the VRWJPO will require local governments responsible for permitting to submit proposed land alteration plans to the VRWJPO for review and approval or waiver or denial (VRWJPO permitting, Category 3), if they include any of the following conditions:

- Variances from the local government's ordinances that affect surface water or impact surface water/groundwater interactions
- Diversions
- Intercommunity flows (to or from)
- Project site size of 40 acres or more
- Other proposed activities, as identified in the VRWJPO rules.

The submittal would be required prior to the community issuing a permit. The VRWJPO will enforce its permits and rules as allowed by Minnesota Statutes 103B and 103D. The VRWJPO may also evaluate local government permitting programs. If these evaluations show non-compliance with the VRWJPO's rules and/or the local government's ordinances, the VRWJPO will implement a permitting program in that local government.

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

5.3 VRWJPO'S FINANCIAL MECHANISMS

Dakota and Scott Counties jointly fund the administration and activities of the VRWJPO per the Joint Powers Agreement. Based on tax capacity, Dakota County contributes 96.5% and Scott County contributes 3.5% of total VRWJPO management costs (the percentages may change somewhat as tax capacities change). Dakota and Scott Counties established special tax districts within their respective portions of the Vermillion River Watershed to provide a mechanism for funding their shares of the organization's costs. The following is a list of the funding mechanisms available to watershed management organizations, including a county-managed organization, with Minnesota Statute references where appropriate.

- Contributions from general fund of member agencies. There are no statutory limits. Counties may levy a tax for planning or projects identified in an approved plan. Counties may also levy amounts necessary to pay the costs to soil and water conservation districts to administer and implement projects (103B.241).
- Creation of watershed management tax districts by ordinance. Notification of new tax districts must be given to the county auditor by July 1 to be effective for taxes payable in the following year. After adoption of a tax district, taxes may be levied annually on all taxable property in the district to fund watershed projects. The tax may not exceed 0.02418% of market value of property in rural towns, unless allowed by resolution of the "town electors" (103B.245, Subd. 1).
- Levy. Levy for taxes is in addition to any other money levied and distributed in the tax district (103B.245, Subd. 3).
- Bonds. The tax district may issue bonds necessary to cover project costs. Bonds are to be repaid from tax proceeds raised in the district by the WMO. No election is required. Obligation is not included in the net indebtedness of the local government unit (103B.245, Subd. 4).
- General obligation bonds. Counties may also issue general obligation bonds to cover part or all of the costs of a project certified to the county (103B.251, Subd. 7).
- Grants. Grants may be pursued for certain qualifying projects.

Table 5.1: Regulatory Framework

Agency	Type of Approval	Description
Federal		
Environmental Protection Agency (EPA)	Clean Water Act	Works with other agencies to develop and enforce regulations under existing environmental laws, researches and sets national standards; delegates responsibility for permitting, monitoring and enforcing compliance to states and tribes; issues sanctions where national standards are not met.
U.S. Army Corps of Engineers (COE)	Section 10 of the Rivers and Harbors Act	Applies to placement of structures and/or work in, or affecting, navigable waters of the United States.
	Section 404 Permit	Applies to the discharge of dredged or fill material into waters of the United States. There are two types of Section 404 permits: regional and nationwide general permits, and individual permits.
State		
Minnesota Department of Natural Resources (MDNR)	Protected Waters and Wetlands Permit	Applies to any work that will alter the course, current or cross-section of any DNR-protected lake, wetland or watercourse; also applies to any work below the ordinary high water mark of DNR-protected waters.
	Water Appropriation Permit	Applies to suppliers of domestic water to more than 25 people or for any use that exceeds 10,000 gallons per day or 1,000,000 gallons per year.
	Fisheries	Manages the State's fisheries; responsible for trout stream designations.
	Dam Safety Permit	Applies to impoundments that pose a potential threat to public safety or property. Dams 6 feet high or less and dams that impound 15 acre-feet of water or less are exempt from the rules. Dams less than 25 feet high that impound less than 50 acre-feet of water are also exempt unless there is a potential for loss of life.
	Riprap Shore Protection Permit	Applies to the placement of riprap shore protection or placement of fill to recover shoreland lost to erosion.
Minnesota Environmental Quality Board (EQB)	EAWs, EISs, AUARs	Broad environmental assessment required for certain proposed developments and other activities.

Table 5.1: Regulatory Framework

Agency	Type of Approval	Description
Minnesota Pollution Control Agency (MPCA)	State Discharge System/National Pollutant Discharge Elimination System (NPDES) Permit	Applies to all discrete sources of wastewater discharge to surface waters, including sanitary wastewater, process wastewater, etc.
	NPDES General Stormwater Permit for Construction Activities	Applies to construction activities that disturb 1 or more acres of land. Requires preparation of a stormwater pollution prevention plan with appropriate BMPs for erosion and sediment control, and stormwater management.
	NPDES General Industrial Stormwater Permit	Applies to certain industrial/ commercial activities that come into contact with stormwater. Requires preparation of stormwater pollution prevention plan.
	NPDES Phase II MS4 Storm Water Permit	Applies to municipal separate storm sewer systems (MS4s) serving populations under 100,000 located in urbanized areas. Requires cities to develop and implement a stormwater pollution prevention program (SWPPP). The SWPPP must cover the following six minimum control measures: <ul style="list-style-type: none"> • Public education and outreach • Public participation/involvement • Illicit discharge, detection and elimination • Construction site runoff control • Post-construction site runoff control • Pollution prevention/good housekeeping
	Section 401 of the Clean Water Act Water Quality Certification	Applies to activities that require either a Corps of Engineers Section 10, Corps of Engineers Section 404 or Federal Energy Regulatory Commission permit. These activities must first obtain Section 401 water quality certification.
	Feedlots	The MPCA issues permits for feedlots over 1,000 animal units and provides enforcement action for violations under Minn. Rules Chapter 7020.
Minnesota Department of Agriculture (MDA)	Pesticides and fertilizers	Lead on all pesticide and fertilizer regulatory functions, develops guidelines for soil amendments and nutrient management.

Table 5.1: Regulatory Framework

Agency	Type of Approval	Description
Minnesota Department of Health (MDH)	Well Management Program	Applies to drilling of new water wells and sealing of abandoned water wells.
	Safe Drinking Water Act	Applies to construction of new water wells and other public water supply systems.
Minnesota Board of Water and Soil Resources (BWSR)	Watershed Plans	The BWSR reviews and approves county groundwater protection plans, watershed plans and county comprehensive water plans; administers the rules for the MN Wetland Conservation Act (WCA); oversees watershed organizations and Soil and Water Conservation Districts.
<i>Regional</i>		
Metropolitan Council	Wastewater	Collects and treats wastewater; operates 4 wastewater treatment plants in Dakota County; is working with another plant in Scott County.
<i>Local Government Units [Counties (Dakota and Scott), Townships, and Cities]</i>		
Local Government Units	Wetland Conservation Act Rules Administration	Regulates draining and filling of wetlands larger than 2,000 square feet. Requires 2:1 replacement of drained and filled wetlands. (See also Table 5.2.) Scott County Zoning Ordinance Chapter 6 addresses stormwater management, erosion control and wetlands.
Counties	Feedlots	The Counties are MPCA delegated feedlot permitting counties and issue permits for feedlots up to 1,000 animal units. The Counties also register feedlots and are responsible for other feedlot permitting and inspection duties under Minn. Rules Chapter 7020.1600. Scott County Zoning Ordinance Chapter 9 addresses feedlots
Counties and Cities	Shoreland and Floodplain	The Counties administer shoreland and floodplain regulations in unincorporated areas (Dakota County Ordinance No. 50, Scott County Zoning Ordinance Chapters 70 and 71); the cities administer their own regulations.
Cities	Overall water management	For the most part, every city develops and enforces ordinances addressing erosion and sediment control, floodplain protection and easements, shoreland protection, and wetland management programs.
Counties	ISTS	Dakota County administers County ISTS regulatory Ordinance No. 113. Scott County administers ISTS Ordinance No. 4.

Table 5.1: Regulatory Framework

Agency	Type of Approval	Description
Counties	Wells	Dakota County administers County well and water supply Ordinance No. 114 that sets standards and establishes guidelines and regulations for wells and water supplies; County authority is delegated by the State. Dakota County administers the County's groundwater model.

Table 5.2: Local Regulatory Controls (as of June 2005)

Cities and Townships	Erosion and Sediment Control	Floodplain Regulations			Stormwater Rate and Water Quality				Shoreland Protection	Local SWMP	Wetland Conservation Act			Street Standards
		Freeboard	Floodway Protection	Easements	Rate Control	NURP Ponding	Pond Maintenance Agreements	Easements	DNR+ Approved Ordinance	VRWMC Approved	Wetland Management Program (BWSR)	Wetland Classification	LGU	Street Width Ordinance
Apple Valley*									Yes (old)					
Burnsville	Yes	Yes-1 ft	Yes	No	Yes	Yes	No	Yes	Yes (new)	Yes	Yes	Yes	City	Yes
Castle Rock Twp	See Dakota County													
Coates														
<i>Dakota County</i>	No	Yes-1 ft	Yes	No	No	No	No	No	Yes (new)	--	No	No	Townships	No ¹
Douglas Twp	See Dakota County													
Elko*	Yes	Yes ²	No ³	Yes	Yes	Yes	Yes ⁴	Yes	No	No	No	Yes	City	Yes
Empire Twp	See Dakota County													
Eureka Twp	See Dakota County													
Farmington	Yes	Yes-1ft	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	City	Yes ⁵
Hampton														
Hastings		Yes-1 ft	Yes						Yes (old)					
Lakeville	Yes	Yes-1 ft	Yes	Yes	Yes	Yes	Yes	Yes	Yes (new)	Yes	Yes	Yes	City	No ⁶
Marshan Twp	See Dakota County													
New Market*	Yes	Yes ²	No ³	Yes	Yes	Yes	Yes ⁴	Yes	No	No	No	Yes	City	Yes
Nininger Twp	See Dakota County													
Ravenna Twp	See Dakota County													
Rosemount	Yes	Yes-1 ft	Yes	Yes	Yes	Yes	Yes	Yes	Yes (old)	Yes	Yes	Yes	City	No ⁷
<i>Scott County</i>	Yes	Yes-1 ft	Yes	Yes	Yes	Yes	Yes	Yes	Yes (new)	--	No	No	Twp	Twp
Vermillion														
Vermillion Twp	See Dakota County													

NA Not available
 NURP Nationwide Urban Runoff Program
 SWMP Surface Water Management Plan
 BWSR Board of Water and Soil Resources
 LGU Local Governmental Unit

* Apple Valley, Elko, and New Market do not participate in the National Flood Insurance Program (NFIP). No flood insurance study has been performed in these communities and no regulatory flood plain exists.
+ “Old” is original shoreland regulations circa 1972 while “new” reflects adoption and state approval of revised shoreland rules from 1989.

¹ Dakota County has access and spacing guidelines along County roads.

² One foot is required, but will request 2 feet when possible.

³ No delineated floodway within this city.

⁴ City is responsible once project is approved (usually when project is near completion, 1-2 years), until then developer is responsible.

⁵ Ordinance is inconsistent; will be looking to improve consistency. City will consider smaller streets on a case-by-case basis.

⁶ Street widths are regulated by a City ordinance that is set up according to road type. City will consider smaller streets if warranted.

⁷ There is no ordinance regarding street widths; however, typical guidelines are set forth in an official specification book published by the City. The City will also consider smaller street width under special circumstances.