

GENERAL INFORMATION

Applicant: City of Bloomington

Request: Consider recommendation of two ordinances (zoning text amendment and zoning map amendment) to incorporate the Lower Minnesota River Watershed District (LMRWD) steep slope standards into the Bluff Protection Overlay Zoning District.

CHRONOLOGY

Planning Commission:	05/09/19 Study Meeting
Sustainability Commission:	05/14/19 Study Meeting
City Council:	07/08/19 Study Meeting
Public Information Meetings	01/21/20, 01/22/20, 01/29/20
Sustainability Commission:	02/11/20 Regular Meeting
Planning Commission:	02/20/20 Public Hearing
Future City Council:	03/16/20 Public Hearing (tentative)

DEADLINE FOR AGENCY ACTION

Application Date:	12/30/2019
Applicable Deadline:	Agency Action Deadline Waived
Newspaper Notification:	Confirmed – (02/06/2020 Sun Current – 10 day notice)
Direct Mail Notification:	Confirmed – (10 day notice)

STAFF CONTACT

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APPLICABLE REGULATIONS

Chapter 19 – Zoning
Chapter 21 – Zoning and Land Development

PURPOSE

The proposed zoning text amendment and zoning map amendment ordinances aim to incorporate the Lower Minnesota River Watershed District's (LMRWD) steep slope standard, as required by M.S. §103B.235 (attached), into the City Code.

Consistent with direction received at the study meetings, staff recommends incorporating the Lower Minnesota River Watershed District's (LMRWD) steep slopes standard into the City's existing Bluff Protection (BP-1) and Bluff Development (BP-2) Overlay Zoning Districts. This approach provides the opportunity to clarify standards and combine the BP-1, BP-2, and steep slopes areas into a single Bluff Protection (BP) Overlay Zoning District as outlined in the attached draft ordinance. It also involves reconfiguring the Bluff Protection Districts by adding areas that have steep slopes. As defined by the LMRWD, steep slopes are those areas having average slopes of 18 percent or greater measured over a horizontal distance of 25 feet or more.

The value of the river bluffs as natural open space and the need to preserve them has long been recognized by the City. Among other issues, increased development and more impactful precipitation events have created greater need to apply best practices in order to prevent soil erosion, enhance water quality, and improve natural habitat. The LMRWD and City standards are intended to minimize the risk of landslides, property damage, and degraded waters.

UPDATES

Since the 2019 study meetings, two provisions in the LMRWD standards have been removed given concerns raised by Bloomington. Changes to the LMRWD standards include:

Removal of parcels in the Heritage Hills area from the steep slopes overlay district, as documented in the attached letter from the LMRWD. These parcels are distant from the bluff and are not in the existing BP Districts. The LMRWD approved this change at its August 2019 meeting (minutes attached).

Modification of the trout waters tributary location that the LMRWD provided in its maps and standards for High Value Resource Areas (HVRA). One LMRWD map incorrectly represented a tributary of Ike's Creek as a trout stream, which would have prohibited development within 100 feet of the tributary. As documented in the attached letter from the LMRWD and its September 2019 meeting minutes, this tributary has since been removed from the HVRA map in order to be consistent with maps provided by the Minnesota Department of Natural Resources.

PREVIOUS STUDY MEETINGS

At previous study meetings, staff recommended incorporating the LMRWD steep slope standard into the existing BP Districts rather than create a separate code section specific to steep slopes. This approach would align like standards, create the most transparency, and ensure effective implementation of the standards.

The Sustainability Commission, the Planning Commission, and the City Council supported this recommendation. They also supported applying the steep slopes standard to properties along the bluff within the Nine Mile Creek and Riley Purgatory Bluff Creek Watershed Districts, and updating the BP Districts to create clarity and consistency. These recommendations are provided in greater detail in the *Analysis* section of this report.

While the Sustainability Commission recommended moving forward with the staff recommendations, the Commission desired to go further than simply updating the bluff standards. They generally supported the staff's recommendations as reasonable approaches but wanted more clarity about the context and a more robust assessment of the impacts (benefit) of the proposed regulations. They expressed concerns about recommending regulations without better understanding their effectiveness or environmental impact (positive or negative).

At the time of the 2019 study meetings, the LMRWD had not formally adopted Rules to apply the subject standards. The City Council suggested delaying the public informational meetings and consideration of the ordinance until early 2020 so that any potential changes by the LMRWD would be included in the ordinance.

BACKGROUND

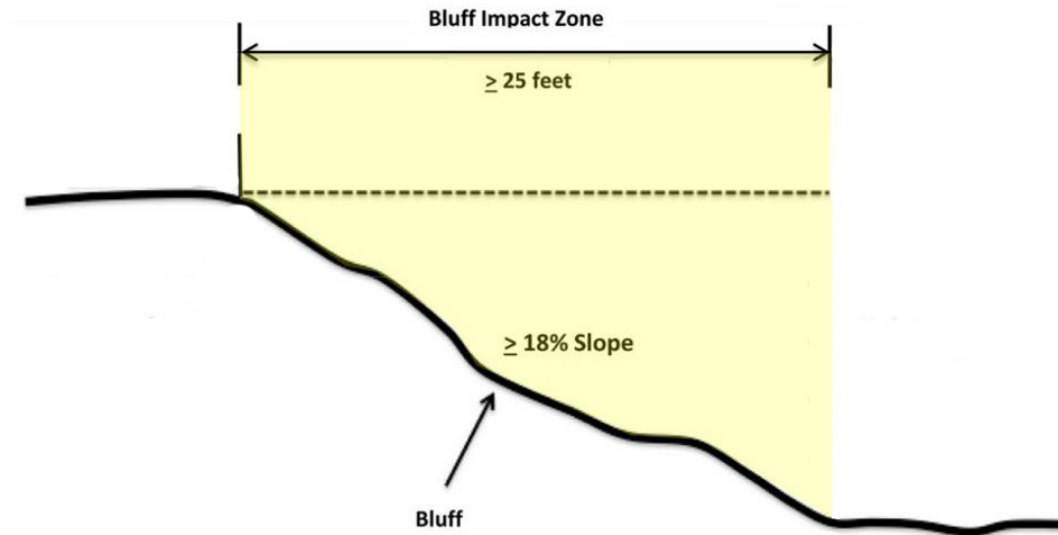
In 2018, the Lower Minnesota River Watershed District (LMRWD) revised and updated their standards for stormwater management and bluff protection. By State Statute (M.S. §103B.235), this update occurs every 10 years and the City must amend its official controls to implement the standards within 18 months (by April 2020).

The update to the LMRWD's Watershed Management Plan ("Plan") began in October 2016, and underwent significant revisions in response to feedback from local governments and public outreach. The City of Bloomington took an active role in the review process by notifying residents, sending comment letters, meeting with LMRWD staff, hosting an open house and testifying at public hearings.

Based on input received during the review process, much of which came from the City of Bloomington and its residents, the standards were substantially amended. The adopted LMRWD standards only apply to the Bluff Impact Zone highlighted area in the image below. Development is allowed within the Bluff Impact Zone provided an engineer signs off on the development meeting various objectives to protect the bluff. Driveway widenings that drain to

the street where runoff is managed by the City's storm sewer system and some small projects that are subject to City permits are exempt from the requirement to have an engineer's sign off. The adopted LMRWD Steep Slopes Standards are attached.

Figure 1: Bluff Impact Zone



ANALYSIS

The City is required to amend its controls to implement the LMRWD standards. In addition to steep slopes, the LMRWD Plan includes other standards (listed below) that are intended to protect, preserve, and manage surface water and groundwater resources.

- Erosion and Sediment Control
- Floodplain and Drainage Alteration
- Stormwater Management
- Shoreline and Streambank Alteration
- Water Appropriations
- Water Crossing

The City has existing regulations that meet or exceed many of the LMRWD's standards for these items, however the Code must be amended to incorporate the new steep slopes standard. The City has long strived to balance environmental protections of the bluff with property development rights through use of multiple tools, including: the Bluff Protection and Bluff Development (BP-1 and BP-2) Overlay Zoning Districts, a steep slopes ordinance, stormwater management provisions, and grading and erosion control permits. The proposed ordinance addresses the LMRWD steep slope standard by incorporating it into the BP Overlay Zoning Districts.

Summary of City Council and Commission Input

During study meetings last summer, the City Council, Planning Commission, and Sustainability Commission discussed various approaches to incorporate the LMRWD steep slope standards into the City Code. The proposed code amendment ordinance reflects direction provided to staff at those meetings as summarized below.

1. Add the LMRWD steep slope standards to the City's Bluff Protection Overlay Districts

Many of the City's existing BP District standards and the LMRWD's standards are aligned in their intention to protect the integrity of the bluff. However, while the LMRWD's standards focus on protection of steep slopes, the BP Districts contain additional standards related to maintaining the visual and natural character of the bluffs area, such as height limitations. Combining these standards provides a more comprehensive set of standards to regulate development adjacent to the bluff. Locating them together in the City Code also makes for less confusion and greater transparency.

It is noted that in the draft ordinance the LMRWD standard requiring an engineer's certification only applies to properties with steep slopes rather than all properties within the BP District; many of which have areas on their lots with slopes less than 18%. As stated above, the new LMRWD standards have similar intentions as the City's existing standards. Many of the City's existing standards already meet or exceed LMRWD's standards. Within steep slope areas, the LMRWD requires that activities needing a municipal permit or exceeding a certain size (≥ 50 cubic yards or $\geq 5,000$ square feet) must have a registered engineer or qualified professional in the state of Minnesota certify their suitability. The draft ordinance includes a list of exceptions to this standard as shown in Table 1 attached to the staff report.

2. Combine the BP-1 and BP-2 districts into a single BP District

It was agreed that combining the BP-1 and BP-2 Districts into a single BP District would reduce unnecessary redundancy and confusion about differences between the existing districts, and would help ensure consistency among the standards. Standards that only apply to residential or non-residential properties are clearly enumerated in the proposed code amendment.

3. Amend the BP Overlay District Boundary

Based on City Council and Commission direction, the following changes are proposed to the BP Overlay District boundary:

- *Add Steep Slope Areas to BP District* - While there is significant overlap between the areas subject to the LMRWD steep slope standard and the City's BP Districts, the exact coverages are different. The City BP Districts apply to areas along the river bluff between 722 feet and 800 feet elevation above sea level regardless of slope. The LMRWD only regulates areas with steep slopes regardless of elevation. Some areas in

the existing BP District boundary have slopes less than 18% and some areas with steep slopes are not within the existing BP District. Expanding the BP District boundary to add the LMRWD steep slope areas increases the geographic boundaries of the BP Districts, adding 58 properties to the BP Overlay District.

- *Remove Certain Parcels from BP District* - To minimize the number of properties impacted by the rezoning, the proposed ordinance would remove properties that are located across the street from the bluff and fully drain into the City's storm sewer system (32 properties) from the BP Overlay District boundary. These properties fall with the existing BP District because they are located below the 800 foot elevation. However, they contain no steep slopes, and do not have a direct impact on the environmental integrity of the bluff. Their original inclusion in the BP-1 district was due to using the 800 foot elevation to delineate the district's topmost boundary. When the BP-1 and BP-2 Districts were first mapped in 1982, technology did not allow an easy way to map slope across the entire bluff. The 800 foot elevation was determined to represent the average top-of-bluff, but it also included some properties that are not contiguous to the bluff.
- *Apply Steep Slope Standard to Entire Bluff Across the City* - The minimum requirement to align the City and LMRWD standards regarding steep slopes is to only apply the LMRWD's steep slope standard to the areas within their jurisdiction. However, there are areas within the existing BP Overlay District boundary with steep slopes that are located in the Nine Mile Creek and Riley Purgatory Bluff Creek watershed district jurisdictions. The draft ordinance proposes applying the same standards to all properties within the BP District to create greater consistency and clarity. This approach is consistent with the intent of the BP Districts, which apply to the entire bluff face as a whole across the City, irrespective of watershed district boundaries. Applying the new steep slope standards to all properties currently in the BP District subjects an additional 84 private properties to the new steep slope standards.
- *Align Bluff Protection and Flood Hazard District Boundaries* - There is a narrow strip of land in some areas of the river valley that lies between the existing BP Districts and the Flood Hazard (FH) District. While most of this area is public property, some is private and the owner could theoretically desire to perform tree removal or place an accessory building in the area. The draft ordinance would extend the bottom elevation of the BP District to meet the boundary of the FH District. This would create regulatory clarity and consistency by closing the gap between the two Overlay Districts.

Changing the BP Districts' boundaries requires rezoning many of the BP properties (over 700 properties), as illustrated in the attached zoning map amendment ordinance. Additionally, combining the BP-1 and BP-2 districts results in the need to rezone to change the zoning district name to "BP District" and remove reference to BP-1 and BP-2. While rezoning can be burdensome, it allows for transparency by notifying property owners about the adopted LMRWD standards and providing information on how the new regulations might affect them.

4. *Improve Clarity and Add Reference to Best Practices*

The BP Districts were drafted in the 1980s and remain mostly unchanged. Staff believes that many of the existing BP standards remain relevant and should be retained. However, a side setback standard that only applies to structures in the BP-2 District is not retained in the draft ordinance. This standard was created for aesthetic purposes to allow for spacing and trees between buildings along the bluff. The standard currently applies an additional side setback based on a calculation of a structure's bluff facing height and façade area. In some cases, the additional setback requirement would result in over a 200 foot side setback, making some sites nearly undevelopable. This standard is especially limiting in the South Loop District, which already has a more urban character with buildings that are visible over the tree line. In the proposed ordinance, the extra side setback standard is removed so that development and redevelopment of commercial sites adjacent to the bluff is feasible.

A few additional updates are also included in the draft ordinance to improve organization and clarity of the standards to make them more user-friendly and up-to-date. While these are not required as part of the LMRWD standards, they are intended to create consistency in the Code and reflect today's best practices.

The *Minnesota River Valley Natural and Cultural Systems Plan* (2018) (MNRV-NCS Plan) recommended several improvements to the BP Districts to enhance the ecological function of the bluff and river valley. The plan recognized a mosaic of habitats along the bluff, some of which may require tree felling in order to foster the oak savanna natural community. The following additional standards are included in the draft ordinance in accordance with recommendations from the MNRV-NCS Plan:

- (A) *Prohibit dumping of yard waste.* The MNRV-NCS Plan recognizes dumping of yard waste as a source of undesirable nutrients that contribute to the growth and spread of invasive species. Piling of yard waste is not currently permitted on a property. However, this can be difficult to identify and enforce in the bluffs due to its wooded character and topography. A related section of the Code (Section 10.38) identifies brush piles as a nuisance subject to regulations. However, brush that has fallen in natural wooded areas is considered exempt. The draft ordinance references Section 10.38 and encourages greater education about best practices along the bluff.
- (B) *Prohibit the creation of concentrated points of water discharge* (ie, gutters aimed down the bluff). To protect water quality and the integrity of the bluff, hydrology and patterns of water flow should not be channelized. Most development requires grading and erosion control permits, and would be subject to the proposed standards in the draft ordinance. However, minor home improvements, such as installing gutters, would not be subject to city permits, but could drastically alter hydrology along the bluff. The draft ordinance would not prohibit gutters and similar water flow structures, but would require best

management practices to disperse, filter, and slow the rate of stormwater runoff before reaching steep slope areas of the bluff. Staff would take steps to educate homeowners about best practices, rather than impose immediate enforcement action. Including the proposed standard in ordinance would allow the City to enforce the Code through fines for blatant violations and repeat offenders.

(C) *Update tree planting density and species requirements* in accordance with the intentions of the MNRV-NCS Plan. In zoning districts other than single-family, existing provisions in the BP-2 District require planting of 20 trees per acre and provide a list of six species from which to choose. The MNRV-NCS Plan recommends updated best practices in order to achieve the plan objectives, such as the restoration of Oak Savanna habitats along the bluff, which would result in fewer than 20 trees per acre. The MNRV-NCS Plan also recommends a broader list of permitted species, including, but not limited to, tree species and prairie grasses. The draft ordinance would remove the 20 trees per acre provision, and instead require consistency with the MNRV-NCS Plan with approval by the City Forester.

(D) *Reference a set of recommended best practices* to enhance environmental integrity and minimize negative impacts on bluff adjacent properties. The draft ordinance makes several references to best management practices. The draft ordinance lists examples of relevant best practices and describes their intent. These best management practices are intended for reference only.

OUTREACH

To ensure broad awareness and understanding of the proposed regulatory changes and to provide a forum for property owners to provide input, the following outreach methods are used:

A **project webpage** (www.blm.mn/bluffupdate) is available and includes information about the existing and new standards, upcoming public meetings, and links to LMRWD's website and Plan. The project webpage also displays an interactive map in which viewers can view the boundaries of the existing BP Districts, the extents of the new LMRWD standards, and are able to zoom in and search by property to understand the full extent of potential impacts.

Within the project webpage is an option to receive **e-subscribe updates**. Emails have been sent periodically to inform subscribers about the standards, upcoming informational meetings, and public hearing dates.

An article in the **June Briefing** provided information about the LMRWD's updated standards, why they are needed, and the City's obligation to update our standards to achieve consistency. It also included the link to the project webpage.

Letters were sent to 756 property owners affected by the proposed standards and rezoning. Initial letters provided brief information about the standards and invited property owners to a series of informational meetings. These property owners also received a separate letter notifying them of the proposed rezoning and public hearing.

Three **Informational meetings** were provided at the end of January 2020 with daytime and evening options. At these identical meetings, staff provided an overview of the proposed code amendments to align the City and LMRWD standards. Staff from the Planning Division, the Engineering Division, and the LMRWD were also available to answer questions and address concerns about individual properties. These meetings were held at Civic Plaza, and included a presentation from staff with time for questions. Around 75 total attendees were present at the meetings, and staff met or spoke with at least 15 other individuals on separate occasions since the summer of 2019.

SUSTAINABILITY COMMISSION MEETING

At its February 11, 2020 meeting, the Sustainability Commission recommended approval of the ordinance with several suggestions.

1. Consistent with the Commission's stance when the LMRWD standards were first proposed in 2017, the Commission suggested that there be a standard addressing a buffer from a steep slope. Details about regulations and distance for the proposed buffer standard were not specified in their recommendation. However, the intent of the buffer would be to further protect environmental concerns, such as erosion and water infiltration, along the bluff. Staff notes that a buffer standard was originally proposed by the LMRWD and was subsequently removed due to broad opposition, including opposition from the City of Bloomington (see the attached City Council resolution from 2017). It would also be inconsistent with information previously provided to property owners.
2. The Commission also suggested including a definition for bluff impact zone as shown on page 4 of this report. Staff recommends not including this definition since the term is not used in the proposed ordinance or in LMRWD's Watershed Management Plan. Including a definition for bluff impact zone as portrayed on page 4 might cause confusion with how the BP Overlay District is delineated.
3. Last, the Commission recommended adding one best management practice (bmp) to Section 21.208.02(f) that promotes infiltration of stormwater above steep slopes to capture runoff and reduce the amount of over-the-bluff discharge. While staff agrees with this general approach, staff also notes that the LMRWD prohibits soil saturation features such as swales and raingardens on steep slopes. Typically, soil saturation features should not occur on or immediately adjacent to steep slopes. Staff is concerned that a bmp encouraging stormwater infiltration above steep slopes would create confusion about where this type of infiltration

should occur. Staff also notes that this section of the ordinance is intended to identify bmps, and is not a list of regulatory measures. Given potential confusion by adding a bmp related to stormwater infiltration along the bluff, staff recommends not to include this bmp.

RECOMMENDATION

Staff recommends approval via the following motion:

In Case PL2019-237, I move to recommend approval of the Zoning Text Amendment and Zoning Map Amendment Ordinances as attached to the staff report relating to the Bluff Protection Overlay District, and rezoning of 770 parcels to modify the location of the Bluff Protection Overlay District.