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MEMORANDUM

TO: Central Corridor Stormwater and Green Infrastructure SAC

FROM: Charles LeFevre

DATE: May 3, 2012

RE: **Central Corridor Stormwater and Green Infrastructure Plan: Governmental Authority Relating to Stormwater Infrastructure**

I. MEMORANDUM PURPOSE AND INTENT

The purpose of this memorandum is to describe the statutory framework that provides authority for the governmental units primarily involved with stormwater management: to construct, operate and maintain stormwater infrastructure; to impose regulatory requirements that developers and others install and maintain stormwater infrastructure in connection with activities that affect stormwater; to raise revenues by taxation, assessments and charges to fund stormwater infrastructure improvements; and to borrow money for stormwater management projects.

These are the basic tools in the toolbox of these governmental units to cause stormwater management infrastructure to be constructed, operated and maintained. Not all of the various means of providing for such stormwater management are currently being used. But having a understanding of all of these tools should help to identify the most appropriate governmental unit to exercise its authority, the most appropriate balance of public and private involvement and the most appropriate means of paying for projects.

It is not within the scope of this memorandum to identify all regulations that could affect the ability to construct any stormwater management structure. A stormwater management project, particularly if it is combined with other (stacked) elements such as art, plantings, fountains, or parking facilities, may have to comply with relevant zoning codes, plumbing codes, building codes, health codes, limitations on use of public right-of-way, land covenants and restrictions, and the like. It is not reasonably possible to identify and address all of the legal requirements that could apply to a stacked/green

infrastructure project. Those constraints will have to be identified as individual projects are selected and designed.

In general, the local regulatory requirements for stormwater management are found: for the City of Minneapolis, at Minneapolis Code, Title 3, Chapter 54; for the City of St. Paul, at St. Paul Code, Part II, Title VI, Chapter 52; for Capital Region Watershed, at Capital Region Watershed District Rule, Adopted 9/06/06 – Effective 10/01/06 – Revised 11/03/10; and for the Mississippi WMO, at the MWMO Watershed Management Plan 2011-2021, Appendix. F.

II. GOVERNMENTAL FRAMEWORK

A. Local Governmental Units Authority to Construct, Operate and Maintain

1. Watershed District.

a. Watershed districts in the metropolitan area have the authority of a watershed management organization (WMO) to construct and maintain drainage systems under Minn. Stat., Secs. 103B.211, subd. 1 and 103D.335, subd. 23. Additionally, watershed districts have the authority to construct, operate, maintain and repair ditches, drains, watercourses, dams, and reservoirs. Minn. Stat., Sec. 103D.335. The procedures to be followed to exercise these powers depend on the nature of the project and the source of funding. See, e.g., Minn. Stat., Secs. 103D.601-.625, 103D.701-725.

2. Joint Powers Watershed Management Organizations.

a. Joint Powers WMOs are authorized to construct and maintain drainage systems under Minn. Stat., Sec. 103B.211, subd. 1(4). This power is included in the Joint and Cooperative Agreement for the Mississippi WMO.

3. Cities.

a. Cities are authorized to construct, operate and maintain storm sewer systems under Minn. Stat., Sec. 444.075. See also St. Paul Charter Secs. 1.03, 13.01, 13.02, 15.01.

4. Interagency authority. Because different agencies have different authority and areas of interest, some projects – particularly those meeting different public purpose objectives – may require joint or cooperative efforts. There is broad authority for cities and WMOs to exercise their powers jointly or cooperatively.

- a. Minn. Stat., Sec. 471.59 provides general authority for governmental units to act jointly or cooperatively in the exercise of their powers.
 - b. Joint power WMOs are authorized to enter into contracts with persons or governmental agencies. Minn. Stat., Sec. 103B.211, subd. 1(8).
 - c. The Joint and Cooperative Agreement of the Mississippi WMO authorizes the organization to contract with any government unit, private or nonprofit association to accomplish the purposes for which the WMO is organized.
 - d. Watershed districts are authorized by Minn. Stat., Sec. 103D.355, subds. 2 and 21 to cooperate and contract with other agencies and to be included in joint powers organizations under Minn. Stat., Sec. 471.59.
5. Eminent Domain.
- a. The authority to acquire property for storm sewer systems by eminent domain is available to watershed districts under Minn. Stat., Sec. 103D.335, subd. 11, and to cities under Minn. Stat., Sec. 444.075. The Mississippi WMO does not have independent authority to exercise this power but could indirectly acquire property for a project by eminent domain through a member city. See also St. Paul Charter, Sec. 13.01; Minneapolis Charter Chapter 4, Section 15 and Chapter 8, Section 10.
- B. Local Governmental Units Authority to Regulate
- 1. Watershed District.
 - a. Watershed districts are authorized under Minn. Stat., Secs. 103D.341, 103D.545 and 103D.551 to adopt and enforce rules (subject to the limitations of Minn. Stat., Sec. 103B.211, subd. 1, as provided in Minn. Stat., Sec. 103D.335, subd. 23(b)). In addition, watershed districts in the metropolitan area can impose regulations as a WMO (See II.B.2., below).
 - 2. Joint Powers Watershed Management Organization
 - a. Joint power WMOs can have the authority of a watershed district to regulate the use and development of land under limited circumstances, under Minn. Stat., Sec. 103B.211, subd. 1(3).
 - b. Generally WMOs impose regulatory requirements indirectly, through member cities. The WMO's watershed management plan is required to include an implementation program, which includes a CIP and standards and schedules for amending the comprehensive plan and official controls of local government units to bring about conformance

- to the WMO's watershed plan. Minn. Stat., Sec. 103B.231, subd. 6(8). Cities, in turn, are required to adopt local watershed management plans that conform to the WMO's plan. The law requires cities to include in their local plans an implementation program, including a description of official controls (such as zoning, subdivision and building regulations). Minn. Stat., Sec. 103B.235, subd. 2. Cities are then required, after approval by the WMO of their local plans, to adopt and implement the local plan within 120 days and to amend their official controls accordingly within 180 days. Minn. Stat., Sec. 103B.235, subd. 4.
3. Cities.
- a. Cities generally exercise regulatory control over activities involving stormwater management through their general police powers or their authority to adopt official controls under Minn. Stat., Ch. 462 (land use, zoning, subdivision and building regulations).

III. FUNDING AND FINANCING OF PUBLIC EXPENSES

A. Revenue Raising Measures

1. Stormwater Utilities

- a. Cities are authorized to operate storm sewer utilities under Minn. Stat., Ch. 444. Cities have latitude in allocating costs to users as long as charges are "just and equitable." Charges can be imposed for use, availability and connection. The statute authorizes charges to be based on area and runoff, types of premises, the nature of the runoff or any other equitable method. See also St. Paul Charter, Sec. 15.02. The Minneapolis Stormwater Utility is provided for in City Code Title 19, Chapter 510. The St. Paul Storm System charge is provided for in St. Paul Code Part II, Title X, Chapter 81.
- b. Joint powers WMOs can be granted the power to operate a utility if so delegated by member cities through the joint powers agreement. This has been done in the Vadnais Lakes Area WMO, but the Mississippi WMO does not have this authority in its Joint and Cooperative Agreement.
- c. Under Minn. Stat., Sec. 444.075, subd. 2a, watershed districts can collect charges established under Minn. Stat., Sec. 103D.729 for projects under Minn. Stat., Sec. 103D.730.
- d. Stormwater utilities features and advantages.
 - i. Flexibility in allocation of charges
 - ii. No need to prove special benefit

- iii. Possible to build incentives into fee structure
- 2. Jurisdiction-Wide Ad Valorem Taxes
 - a. Cities
 - i. Cities can pay for public projects with general ad valorem tax funds.
 - b. Watershed District
 - i. Watershed districts can levy a tax throughout the watershed, or in a sub-watershed unit, to pay the costs of maintenance of capital projects funded in part by county payments under Minn. Stat., Sec. 102B.251. Minn. Stat., Sec. 103B.251, subd. 9.
 - ii. Watershed districts are authorized to levy a tax for their general fund, which can also be used for construction or implementation and maintenance of projects. Minn. Stat., Sec. 103D. 905, subd 3.
 - iii. Watershed districts in the metropolitan area are authorized to levy a tax under Minn. Stat., Sec. 103B.241 to implement projects in their plans.
 - c. Joint Powers WMO
 - i. By special law, codified at Minn. Stat., Sec. 275.066, the Mississippi WMO was made a special taxing district, thereby allowing it to receive taxes levied under the authority of Minn. Stat., Ch. 103B, including levies against property in the watershed for projects in the WMO’s plan under Minn. Stat., Sec. 103B.241, subd. 1.
- 3. Special District Ad Valorem Taxes or Charges
 - a. Special Assessments
 - i. First class cities are authorized to construct and maintain storm sewer systems funded by special assessments against benefited properties under charter and Minn. Stat., Secs. 435.17 - .195 Minneapolis Charter, Chapter 8, Section 10.
 - ii. Watershed districts are authorized to levy special assessments for projects under Minn. Stat., Sec. 103D.901. See also Minn. Stat., Secs. 103D.701-.725

- b. Special Service Districts
 - i. Cities are authorized to establish special service districts to provide services not ordinarily provided by general fund revenues, under Minn. Stat., Secs. 428A.01-428A.101. Charges may only be imposed on commercial, industrial or vacant land and may be based on service directly provided, a reasonable classification of the types of premises or any other equitable basis. Because of petition and veto requirements, this authority requires substantial support from the businesses affected.
 - ii. Cities are authorized to establish Housing Improvement Areas under Minn. Stat., Secs. 428A.11-428A.21 for improvement to housing areas, including common areas of condominiums. As in the case of special service districts described above, there is flexibility in the allocation of charges among property owners, but substantial support from affected residents is required.
- c. Ad valorem taxing district.
 - i. Cities are authorized to establish storm sewer improvement districts within the city and levy ad valorem taxes for storm water management projects within the district under Minn. Stat., Secs. 444.16-444.20.
 - ii. Ad valorem taxes (or changes based on tax capacity and collected with taxes) can be collected for projects in special service districts and Housing Improvement Areas under Minn. Stat., Ch. 428A (see III.A.3.b, above).
 - iii. Cities are authorized to levy a tax within the watershed for costs of watershed management plan preparation and for projects in an approved plan. Minn. Stat., Sec. 103B.241.
 - iv. The Mississippi WMO is authorized to levy a tax within the watershed for costs of watershed management plan preparation and for projects in an approved plan. Minn. Stat., Secs. 103B.241, 275.066.
 - v. Cities are authorized to establish a watershed management tax district to pay the costs of planning and may establish such a district, which may be a sub-watershed unit, to levy taxes for the cost of construction and maintenance of water management facilities in the city’s local plan CIP. Minn. Stat., Sec. 103B.245.

- vi. Counties are authorized to levy taxes within a watershed to pay the costs of WMO capital projects paid by the County under Minn. Stat., Sec. 103B.251.
 - vii. Watershed districts are authorized to establish a water management district or districts for the purpose of collecting revenues and paying the costs of projects initiated under Minn. Stat., Secs. 103B.231, 103D.601, 103D.605, 103D.611 or 103D.730. Minn. Stat., Sec. 103D.729.
4. County Funding for WMO capital projects. WMOs are authorized to certify to the county, for county payment, the costs of capital projects in the CIP of an approved watershed managed plan, under Minn. Stat., Sec. 103B.251.
 5. Incentives and Assistance through Economic Development and Redevelopment Projects.
 - a. Cities and their economic development and redevelopment partners (port authorities, economic development authorities, housing and redeveloped authorities) have development tools that could be used, in part, to pay costs of stormwater infrastructure. These include tax increment, land cost write-downs, and construction of public improvements, among others, for qualifying projects. When such funding is available in connection with a qualifying project in which there are opportunities for stormwater management infrastructure, funds could be used directly for a public improvement or indirectly, requiring the developer to include such infrastructure as a condition of development assistance. Minn. Stat., Ch. 469.

B. Borrowing

1. Watershed District
 - a. Watershed districts are authorized to borrow funds under Minn. Stat., Sec. 103D.335, subd. 17 (up to \$2,000,000) and to issue certificates, warrants and bonds under Minn. Stat., Sec. 103D.335, Subd.1(4).
2. Joint Powers Watershed Management Organization
 - a. The Mississippi WMO does not have independent authority to borrow money.
3. Cities
 - a. Cities are authorized to issue bonds under Minn. Stat., Sec. 429.091 for projects funded by special assessments.

- b. Cities are authorized to issue bonds under Minn. Stat., Sec. 444.19 for projects funded with a storm sewer improvement district tax.
 - c. Cities are authorized to issue bonds under Minn. Stat., Secs. 428A.06 and 428A.16 for projects in special service districts, and housing improvement areas, respectively.
 - d. Cities are authorized to issue bonds under Minn. Stat., Sec. 444.075, subd. 2 for utility projects funded with utility charges.
 - e. Cities are authorized to issue bonds for projects funded with a tax in a watershed management tax district under Minn. Stat., Sec. 103B.245.
4. Counties
 - a. Counties are authorized to issue bonds to pay for WMO capital projects funded by the county under Minn. Stat., Sec. 103B.251

IV. CONCLUSIONS

Cities, watershed districts and joint powers WMOs have the authority to require stormwater management measures to be taken as a condition of subdivision or building activities. These governmental entities also have broad authority to acquire land and to construct, operate and maintain stormwater management infrastructure, either individually or in cooperation with other governmental units. These governmental units also have a broad array of options for funding such public improvements by raising funds from appropriate parties. These options range from utility charges and assessments against targeted or benefited properties to ad valorem tax levies over the entire taxing jurisdiction or an appropriate subdistrict.