



**MOORHEAD CITY COUNCIL MEETING AGENDA**  
**June 07, 2010 - 5:30 PM**  
**City Hall Council Chambers**

**Adjourned City Council Meeting**

1. Resolution to Approve Delegation of Authority for Administration of the Minnesota Wetland Conservation Act to the Clay Soil and Water Conservation District \_\_\_\_\_
2. Resolution to Approve Plans & Specifications and Authorize Advertisement for Bids for the 34th St/I-94 Interchange Project, Phase 2 (Intersection & Traffic Signal Improvements) Eng. No. 04-2-1B \_\_\_\_\_
3. Resolution to Approve Revised Property Acquisition Agreement with Martin Properties, LLC for the SE Main Ave/20th St/21st St Railroad Grade Separation Project Eng. No. 02-2-2 \_\_\_\_\_
4. Resolution to Approve Request for Medical Leave of Absence \_\_\_\_\_

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June 07, 2010

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**SUBJECT:** Resolution to Approve Delegation of Authority for Administration of the Minnesota Wetland Conservation Act to the Clay Soil and Water Conservation District

**RECOMMENDATION:** It is respectfully requested that the Mayor and City Council approve a resolution delegating the authority and administrative responsibility to implement the Minnesota Wetland Conservation Act (WCA) within City limits to the Clay Soil and Water Conservation District (SWCD).

**BACKGROUND:** The Minnesota WCA was passed into law in 1991 and has been amended several times since adoption; most recently in 2008. The purpose of the WCA is to increase the quantity, quality, and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands; avoiding direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of wetlands; and replacing wetland values where avoidance of activities is not feasible and prudent.

The WCA requires persons proposing to impact a wetland by draining, excavating, or filling to first, attempt to avoid the impact; second, attempt to minimize the impact; and finally, replace any impacted area with another wetland of equal function and value.

The WCA is administered by Local Government Units (LGUs) with oversight provided by the Board of Water and Soil Resources. Minnesota Rules, Chapter 8420 governs implementation of the WCA (excerpts attached). Under this rule, the City is the LGU for WCA administration within City limits.

**KEY ISSUES:** The duties of LGUs are outlined in Minnesota Rules 8420.0200, Subpart 2 (see attached). Among many requirements, in order to properly administer the rules, the City must provide knowledgeable and trained staff with expertise in water resource management; particularly, in wetland soils, plants, and hydrology. At the present time, the City does not employ staff with these qualifications, and therefore, would need to invest in training for existing staff or hire additional staff to meet the WCA requirements. Minnesota Rules 8420.0200, Subpart 3 outlines the consequences associated with an LGUs failure to apply the WCA law.

Over the past decade, staff is aware of only three projects involving potential WCA issues; one residential subdivision, the 34<sup>th</sup> St/I-94 interchange, and the proposed 27<sup>th</sup> Ave N flood mitigation (levee) project.

By rule, the City may delegate implementation of the WCA within City limits to the Clay SWCD which retains qualified, full-time staff responsible for implementation of the WCA. Because wetland issues, and administration of the WCA, are relatively infrequent occurrences within the City, staff recommends that the City Council adopt a resolution to delegate authority for administration of the WCA to the Clay SWCD. All other LGUs within Clay County, except one, have delegated WCA authority to the Clay SWCD. If approved, the Clay SWCD Board will consider a resolution to accept delegation on June 10, 2010.



**POLICY CONSIDERATIONS:** There is no policy consideration associated with the proposed action.

**FINANCIAL CONSIDERATIONS:** There are no costs associated with delegation of authority to the Clay SWCD. Given the current State budget situation, the Clay SWCD Board has discussed adoption of a fee schedule for the permit application process but has not yet adopted fees. The cost to the City to train or hire staff to administer the WCA would be significant; much greater than permit fees for the few times a wetland permit would be needed by the City.

**LEGAL CONSIDERATIONS:** Administration of the WCA is governed by State statute and Minnesota Rules, Chapter 8420. The proposed action is consistent with all legal requirements and will ensure that the City remains compliant with the applicable statute and rules.

Respectfully Submitted:



Michael J. Redlinger  
City Manager

**Department/Response Person: Engineering/Robert A. Zimmerman, City Engineer**

**Attachments: Draft Resolution & Excerpts of Minnesota Rules, Chapter 8420**

**Agenda Item No. 1.**



## REQUEST FOR COUNCIL ACTION

<b>AGENDA SECTION:</b> Engineering - Wastewater Treatment	<b>ORIGINATING DEPT.</b> Engineering	<b>MEETING DATE:</b> 6/7/2010
<b>ITEM NO. 1.</b>	<b>ITEM DESCRIPTION:</b> Resolution to Approve Delegation of Authority for Administration of the Minnesota Wetland Conservation Act to the Clay Soil and Water Conservation District	<b>PREPARED BY:</b> Zimmerman

### DRAFT RESOLUTION

WHEREAS, the Minnesota Wetland Conservation Act of 1991 (WCA) requires local government units (LGUs) to implement the rules and regulations promulgated by the Board of Water and Soil Resources (BWSR) pertaining to wetland draining, filling and excavation; and

WHEREAS, Minnesota Rules, Chapter 8420 have been adopted by BWSR in accordance with the rulemaking provisions of Minnesota Statutes, chapter 14, for the purpose of implementing WCA; and

WHEREAS, Minnesota Rules 8420.0200, Subpart 1, Item E allows a county, city, or town to delegate implementation of Chapter 8420 and the act to another governmental entity by the passage of resolutions by both parties; and

WHEREAS, both parties must provide notice to BWSR, the Department of Natural Resources, and the Soil and Water Conservation District of the delegation, including a copy of the resolution and a description of the applicable geographic area, within 15 business days of adoption of the resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of City of Moorhead that the authority and administrative responsibility to implement WCA as the LGU within the legal boundaries of the City of Moorhead is delegated to the Clay Soil and Water Conservation District as of June 7, 2010 in accordance with Minnesota Rules, Chapter 8420.

PASSED by the City Council of the City of Moorhead this 7<sup>th</sup> day of June 2010.

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### CERTIFICATION

State of Minnesota  
County of Clay

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Council of the City of Moorhead at an authorized meeting held on the 7<sup>th</sup> day of June, 2010, as show by the minutes of the meeting in my possession.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or Print Name)

\_\_\_\_\_  
(Title)

**8420.0100 PURPOSE.**

Subpart 1. **Purpose.** This chapter implements the regulatory provisions of the Wetland Conservation Act of 1991, Laws 1991, chapter 354, as amended by Laws 1993, chapter 175; Laws 1994, chapter 627; Laws 1996, chapter 462; Laws 2000, chapter 382; Laws 2001, chapter 146; Laws 2002, chapter 220; Laws 2003, chapter 128; Laws 2004, chapters 221 and 255; Laws 2007, chapters 57 and 131; and Laws 2008, chapter 368. This chapter shall be interpreted to implement the purpose of the act, which is to:

- A. achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;
- B. increase the quantity, quality, and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;
- C. avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of wetlands; and
- D. replace wetland values where avoidance of activity is not feasible and prudent.

Subp. 2. **Method.** The regulatory provisions of the Wetland Conservation Act advance the purpose in this part by requiring persons proposing to impact a wetland to first, attempt to avoid the impact; second, attempt to minimize the impact; and finally, replace any impacted area with another wetland of at least equal function and value. As specified in greater detail in part 8420.0420, certain projects are exempt from the requirement for a replacement plan under the Wetland Conservation Act.

Subp. 3. **Administration.** The Wetland Conservation Act is administered by local government units with oversight provided by the Board of Water and Soil Resources. Enforcement of the act is provided by Department of Natural Resources conservation officers and other peace officers. The Wetland Conservation Act became effective on January 1, 1992, and this chapter and portions of Minnesota Statutes, chapters 103A, 103B, 103E, 103F, and 103G, govern its implementation. Persons seeking general information on wetlands and the interpretation of this chapter may contact their local government unit or soil and water conservation district.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355; 103G.2242*

**History:** *18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135; 34 SR 145*

**Posted:** *August 26, 2009*

**8420.0105 SCOPE.**

Subpart 1. **Scope; generally.** Wetlands must not be impacted unless replaced by restoring or creating wetland areas of at least equal public value. This chapter regulates the draining or filling of wetlands, wholly or partially, and excavation in the permanently and semipermanently flooded areas of type 3, 4, or 5 wetlands, and in all wetland types if the excavation results in filling, draining, or conversion to nonwetland.

**Subp. 2. Applicability.**

A. This chapter does not prevent the use of the bed of wetlands for pasture or cropland during dry periods if dikes, ditches, tile lines, or buildings are not constructed or improved and the agricultural use does not impact the wetlands.

B. This chapter does not regulate normal farming practices in a wetland. "Normal farming practices" means ranching, silvicultural, grazing, and farming activities such as plowing, seeding, cultivating, and harvesting for the production of feed, food, and fiber products, but does not include activities that result in the draining of wetlands.

C. This chapter does not prevent control of noxious weeds if the control does not impact the wetland.

D. This chapter does not regulate impacts to incidental wetlands. "Incidental wetlands" are wetland areas that the landowner can demonstrate, to the satisfaction of the local government unit, were created in nonwetland areas solely by actions, the purpose of which was not to create the wetland. Incidental wetlands include drainage ditches, impoundments, or excavations constructed in nonwetlands solely for the purpose of effluent treatment, containment of waste material, storm water retention or detention, drainage, soil and water conservation practices, and water quality improvements and not as part of a wetland replacement process that may, over time, take on wetland characteristics.

E. This chapter does not apply to the public waters and public waters wetlands as defined in Minnesota Statutes, section 103G.005, subdivisions 15 and 15a, which have been inventoried by the commissioner according to Minnesota Statutes, section 103G.201, except that:

(1) for projects affecting public waters wetlands, and for public transportation projects affecting the wetland areas of public waters, when the commissioner waives the requirement for a public waters work permit consistent with chapter 6115, the local government unit must make replacement, banking, wetland boundary, wetland type, no-loss, public road project notification, or exemption decisions; or

(2) for projects affecting both public waters and wetlands, the local government unit may, by written agreement with the commissioner, waive the requirement for a replacement plan, no-loss, or exemption decision if a public waters work permit is

required and the commissioner includes the provisions of this chapter in the public waters work permit.

F. This chapter is in addition to other regulations including those of the United States Army Corps of Engineers, United States Department of Agriculture, Minnesota state agencies, watershed districts, and local governments.

G. This chapter does not apply to peat mining as defined in Minnesota Statutes, section 93.461, which is subject to the permit to mine and reclamation requirements of Minnesota Statutes, sections 93.44 to 93.51, and the rules of the commissioner adopted under those sections.

H. This chapter does not require state agencies to obtain local government unit approvals. However, the state agencies must follow the procedures and standards prescribed by this chapter.

I. In addition to the provisions of this chapter, governmental decisions on impacting wetlands are subject to Minnesota Statutes, chapters 116B and 116D, which provide that an action which is likely to have material adverse effects on natural resources must not be allowed if there is a feasible and prudent alternative consistent with the requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its natural resources. Economic considerations alone do not justify adversely effective actions.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355; 103G.2242*

**History:** *18 SR 274; L 1996 c 462 s 43; 22 SR 1877; 25 SR 152; 27 SR 135; 34 SR 145*

**Posted:** *August 26, 2009*

**8420.0200 DETERMINING LOCAL GOVERNMENT UNIT; DUTIES.**

Subpart 1. **Determining local government unit.** The local government unit responsible for making decisions must be determined according to items A to J.

A. Outside the seven-county metropolitan area, the local government unit is the county or city in which the activity is located, or its delegate.

B. In the seven-county metropolitan area, the local government unit is the city, town, or water management organization regulating surface-water-related matters in the area in which the activity is located, or its delegate. The watershed management plan adopted under Minnesota Statutes, section 103B.231, and related board rules will normally indicate the appropriate local government unit. Lacking an indication, the local government unit must be the city, town, or its delegate.

C. For activities on state land, the local government unit is the state agency, or the agency's designee, with administrative responsibility for that land. However, state agencies must coordinate with local government units that would otherwise have jurisdiction, according to items A and B, when conducting or making decisions on activities in wetlands.

D. Notwithstanding items A to G, the Department of Natural Resources is the approving authority for activities associated with projects requiring permits to mine under Minnesota Statutes, section 93.481, and for projects affecting calcareous fens.

E. Implementation of this chapter and the act may be delegated from a county, city, or town, as applicable according to item A or B, to a soil and water conservation district or other governmental entity by the passage of resolutions by both parties. The delegation becomes effective when resolutions have been passed by both parties, or on the date specified in the resolutions, whichever is later. Both parties must provide notice to the board, the commissioner, and the soil and water conservation district within 15 business days of adoption of the resolution. The notice must include a copy of the resolution and a description of the applicable geographic area.

F. If the activity is located in two jurisdictions, the local government unit is the one exercising zoning authority over the project or, if both have zoning authority, the one in which most of the wetland impacts will occur. If no zoning permits are required, the local government unit is the one in which most of the wetland impacts will occur. If an activity will affect wetlands in more than one local government unit, the board may coordinate the project review to ensure consistency and consensus among the local government units involved. Local government units may maintain separate jurisdiction if mutually agreed upon.

G. For a replacement site located in more than one jurisdiction, the local government unit is the one in which most of the replacement wetland area occurs.

H. For replacement plans where the project-specific replacement will occur in a different local government unit than the impact, approval of all local government units involved or as specified in items A to G constitutes final approval of the replacement plan and is required before the project may proceed. The local government unit with jurisdiction for the impact site must approve all components of the replacement plan, following the procedures required by this chapter. The local government unit with jurisdiction for the replacement site must limit the review to evaluation of the replacement site and make a decision accordingly. As part of the approval of the replacement plan, the local government unit with jurisdiction for the replacement site assumes responsibility for ensuring compliance with monitoring provisions according to parts 8420.0800 to 8420.0820. The local government unit with jurisdiction for the replacement site may enter into joint powers agreements with a local government unit with jurisdiction for the impact site, assess fees, or develop other procedures considered necessary to facilitate the process.

I. For instances where the activity or replacement occurs in multiple jurisdictions, the local government unit with decision-making authority must coordinate with the other local government units.

J. The board shall resolve all questions as to which government entity is the responsible authority, applying the guidelines in items A to I.

**Subp. 2. Local government unit duties.**

A. Local government units are responsible for making decisions on applications made under this chapter. Each local government unit of the state, except tribal lands and state agencies, must send a written acknowledgment, including a copy of the adopting resolution, to the board that it is assuming its responsibilities under this chapter and the act.

B. A local government unit must provide knowledgeable and trained staff with expertise in water resource management to manage the program or secure a qualified delegate. Otherwise, the board may declare a moratorium as prescribed in subpart 3 or take other appropriate legal action to ensure proper implementation and compliance with this chapter. The board may establish standards and requirements for training, experience, and certification.

C. The local government unit may, through resolution, rule, or ordinance, place decision-making authority with staff according to procedures it establishes. For final decisions made by staff, the local government unit must establish a local appeal process that includes an evidentiary public hearing before appointed or elected officials.

D. As provided for in part 8420.0240, technical questions concerning the public value, location, size, and type of wetland must be submitted to the technical evaluation panel. The local government unit may use a technical evaluation panel to predetermine

public value, location, size, or type of wetlands under its jurisdiction and use this determination in administering this chapter and the act.

E. An application must not be approved unless entitlement thereto is established by a fair preponderance of the evidence. For each finding of fact and recommendation included in a written technical evaluation panel report that is not adopted by the local government unit, the local government unit must provide detailed reasons for rejecting the finding of fact or recommendation in its record of decision; otherwise, the local government unit has not sufficiently considered the technical evaluation panel report.

F. In the absence of an application, the local government unit may evaluate information related to a potential activity upon the request of a landowner. The evaluation provided does not constitute a decision for the purposes of parts 8420.0100 to 8420.0935.

G. The local government unit must retain a record of all decisions for a minimum of ten years after all applicable requirements and conditions pertaining to the project are fulfilled.

H. The local government unit and soil and water conservation district may charge processing fees in amounts not greater than are necessary to cover the reasonable costs of implementing this chapter and for technical and administrative assistance to landowners in processing other applications for projects affecting wetlands.

I. The local government unit must annually report information to the board regarding implementation of this chapter in a format and time period prescribed by the board. Failure to comply with the board's reporting requirements may subject the local government to a penalty under subpart 3.

**Subp. 3. Failure to apply law.**

A. If a local government unit fails to acknowledge in writing its responsibilities under this chapter and the act, as required in subpart 2, the board must impose, in the local government unit's jurisdiction, a 60-day moratorium on making decisions and implementing this chapter and the act. The board must notify the local government unit in writing of the start and end dates of the moratorium. The board must end the moratorium within the 60 days upon written agreement by the local government unit that it will assume, and is currently capable of implementing, its duties under this chapter and the act. If at the end of the initial 60-day moratorium a written agreement has not been made for the local government unit to apply the law, the board may extend the moratorium until the local government unit agrees to apply the law.

B. If the board has information that a local government unit is not following this chapter or the act in making decisions; if the local government unit does not have knowledgeable and trained staff with experience in water resource management; or if the local government unit fails to comply with the board's reporting requirements, the board

must notify the local government unit in writing of its concerns. The local government unit must respond in writing within 60 days of being notified by the board. If not satisfied with the local government unit's written response, or none is received, the board must ask the local government unit to appear at a hearing before the board to discuss the matter. The board may invite comments from other local governments or state and federal agencies. If the board determines at the hearing that corrective action is necessary, the board must write the local government unit directing specific corrective action to occur within 60 days of receiving the board's decision. The notice must explain the reason for the action. If, after the 60-day period, the local government unit has not corrected the problem to the satisfaction of the board, the board must declare a moratorium as prescribed in item A or take other appropriate legal action to ensure compliance.

C. When a moratorium is declared as prescribed in item A or B, a decision cannot be made on an application because a local government unit authorized to implement this chapter does not exist while the moratorium is in effect. An application pending a local government unit decision when a moratorium is declared must be returned by the local government unit to the applicant within 15 business days of the moratorium being placed in effect. An application submitted while a moratorium is in effect must be returned by the local government unit to the applicant with an explanation and within 15 business days of the local government unit's receipt of the application.

**Statutory Authority:** *MS s 14.06; 14.386; 103B.101; 103B.3355; 103G.2242*

**History:** *18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135; 32 SR 281; 34 SR 145*

**Posted:** *August 26, 2009*

**8420.0233 OTHER LOCAL GOVERNMENT UNIT WETLAND RULES AND ORDINANCES.**

This chapter and the act provide minimum standards. Local government units may require more procedures and more wetland protection, but not less.

**Statutory Authority:** *MS s 103G.2242*

**History:** *34 SR 145*

**Posted:** *August 26, 2009*

**8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.**

A. For each local government unit, there is a technical evaluation panel. Panel membership consists of: a technical professional employee of the board, a technical professional employee of the soil and water conservation district of the county in which the activity is occurring, and a technical professional with expertise in water resource management appointed by the local government unit. For projects affecting public waters, public waters wetlands, or wetlands within the shoreland protection zone, the panel also includes a technical professional employee of the Department of Natural Resources. The local government unit must coordinate the panel.

B. Two members of the technical evaluation panel must be knowledgeable and trained in applying methodologies of the United States Army Corps of Engineers Wetland Delineation Manual (January 1987), Wetland Plants and Plant Communities of Minnesota & Wisconsin (S. Eggers and D. Reed 1997), Wetlands of the United States (United States Fish and Wildlife Service Circular 39, 1971 edition), and Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979 edition), including updates and supplements, and any modifications or guidance provided by the board. The panel must also be knowledgeable and trained in evaluation of wetland functions and the resulting public value. The panel may seek advice and assistance from others with additional expertise to help the panel in its work.

C. The technical evaluation panel, if requested to do so by the local government unit, the landowner, or a member of the panel, must make technical findings and recommendations regarding applications, the scope of this chapter and the act, the applicability of exemption and no-loss standards, wetland functions and the resulting public value, direct and indirect impacts, possible violations of this chapter and the act, enforcement matters under part 8420.0900, comprehensive wetland protection and management plans and implementing rules and ordinances, and other technical issues related to implementation of this chapter. The panel must review applications for replacement of public road projects submitted according to part 8420.0544, banking projects according to parts 8420.0700 to 8420.0755, and replacement wetland monitoring as provided in parts 8420.0800 to 8420.0820. The panel must provide its findings to the local government unit for consideration. For violations of this chapter that may result in the issuance of an enforcement order, the panel must consult with the enforcement authority.

D. The panel's recommendation to the local government unit may recommend approval, approval with changes or conditions, or denial of an application. When a technical evaluation panel assembles findings or makes a recommendation, the local government unit must consider the findings or recommendation of the panel in its approval or denial of an application. The panel shall make no findings or recommendations without at least one member having made an on-site inspection. Panel findings and

recommendations must be documented and endorsed by a majority of the members. If the local government unit does not agree with the panel's findings and recommendation, the detailed reasons for the disagreement must be part of the local government unit's record of decision.

E. Applicants must cooperate in providing local government unit staff and members of the technical evaluation panel and their designated experts with access to proposed project sites for investigation. Investigations must be preceded by notice to the landowner or designated agent, unless prior approval has been granted. If an applicant refuses to allow access, the local government unit may deny an application.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355; 103G.2242*

**History:** *18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135; 34 SR 145*

**Posted:** *August 26, 2009*

## **8420.0255 LOCAL GOVERNMENT UNIT APPLICATION AND DECISION PROCEDURES.**

Subpart 1. **General.** Notices and local government unit decisions made under this chapter must be in compliance with Minnesota Statutes, section 15.99.

Subp. 2. **Determination of complete application.** The local government unit must determine that an application is complete based on parts 8420.0305 to 8420.0330. For incomplete applications, the local government unit must notify the applicant within 15 business days of receipt of the application and list in writing what items or information is missing.

### Subp. 3. **Notice of application.**

A. Within 15 business days of receipt of a complete application, the local government unit must send a copy of the application and a notice of application on a form provided by the board to members of the technical evaluation panel; the watershed district or water management organization, if there is one; the commissioner; and individual members of the public who request a copy. The notice must identify the type of application, the date the comment period ends, and where to submit comments. Individual members of the public who request a copy must be sent a summary of the application that includes information to identify the applicant and the location and scope of the project. The comment period must be at least 15 business days from the date the notice of application is sent. Revisions of an approved and valid replacement plan must be noticed according to this subpart by sending a summary of the proposed revisions if:

- (1) the wetland area to be impacted under the revised replacement plan is:
  - (a) increased by more than ten percent;
  - (b) a different type;
  - (c) part of a different wetland; or
  - (d) more than 500 feet from the location of the previously approved wetland impact; or
- (2) the replacement is:
  - (a) a different type;
  - (b) more than 500 feet from the location of the previously approved replacement; or
  - (c) a different action eligible for credit.

B. This subpart does not apply to exemption or no-loss applications. However, a local government unit may issue a notice for an exemption or no-loss application following the requirements in this part when the local government unit believes that input

from those required to receive notice will be useful in determining whether an exemption or no-loss applies.

Subp. 4. **Decision.** The local government unit's decision must be based on the standards and procedures required by this chapter and on the technical evaluation panel's findings and recommendation, when provided. The local government unit must consider and include in its record of decision the technical evaluation panel's recommendation, when provided, to approve, modify, or deny the application. The local government unit must also consider any comments received from those required to receive notice. The local government unit's decision must be made in compliance with the time period prescribed by Minnesota Statutes, section 15.99, which, on the effective date of this part, generally requires a decision in 60 days. The local government unit may make on-site exemption and no-loss decisions if the decisions are noticed according to subpart 5 and project details are provided sufficient to document eligibility. The local government unit's decision is valid for three years or as otherwise specified in the local government unit's decision when the technical evaluation panel advises that a longer period is justified in accordance with the standards in parts 8420.0100 to 8420.0935.

Subp. 5. **Notice of decision.** The local government unit's decision must be mailed to the landowner within ten business days of the decision. A summary of the local government unit's decision, in a format prescribed by the board, must be sent within ten business days of the decision to those required to receive notice of the application. The notice of decision must include information on the process and time period to appeal the decision of the local government unit.

Subp. 6. **Decisions and notice for replacement via banking.** For replacement plan applications proposing the use of banking credits, the local government unit must verify, before approving the application, that the credits to be withdrawn are available and the applicant has a purchase agreement with the seller. For an approval of a replacement plan using banking credits as replacement, the local government unit must notify the board's banking administrator of the approval. The notification must be sent concurrent with the notice of decision and must include the bank account, the user of credits, and the amount of credit approved for withdrawal.

**Statutory Authority:** *MS s 103G.2242*

**History:** *34 SR 145*

**Posted:** *August 26, 2009*

**8420.0820 LOCAL GOVERNMENT UNIT MONITORING RESPONSIBILITIES.****Subpart 1. Monitoring oversight.**

A. The local government unit must evaluate all monitoring reports for compliance with report requirements and must determine if the goals of the approved plan can be met within the specified monitoring period based on the current condition of the replacement wetland and the applicant's proposed management activities for the following growing season.

B. For project-specific replacement, if the local government unit determines that the goals of the approved replacement plan will not be met, it must take one or more of the following actions:

- (1) order specific corrective actions on the replacement wetlands;
- (2) order the applicant to prepare and implement a new or revised replacement plan;
- (3) request the enforcement authority to issue a cease and desist order on the wetland impact activity if it has not been completed;
- (4) request the local soil and water conservation district and enforcement authority to order restoration of the impacted wetland;
- (5) use any financial assurance collected from the applicant to replace the lost wetland function and value;
- (6) pursue a district court order requiring the applicant to fulfill the replacement plan; or
- (7) other actions that the local government unit determines necessary to achieve the goals of the replacement plan.

C. If the landowner fails to submit the annual report associated with a project-specific replacement plan in accordance with part 8420.0810, the local government unit responsible for monitoring oversight must either pursue enforcement actions under item B or prepare the annual report for the applicant. The local government unit may charge fees for preparing the report or use any financial assurance the applicant had provided to complete monitoring requirements.

**Subp. 2. Certification of successful replacement and completion of monitoring.** Upon completion of the minimum monitoring period, the applicant may request a field review by the local government unit and technical evaluation panel of the success of the replacement wetland. If the replacement is determined successful, the local government unit must provide written notification to the applicant that the replacement has been certified and the monitoring requirements have been fulfilled.

**Statutory Authority:** *MS s 103G.2242*

**History:** *34 SR 145*

**Posted:** *August 26, 2009*

**8420.0910 COMPENSATION CLAIMS AGAINST LOCAL GOVERNMENT UNITS.**

Subpart 1. **Intervention.** At the request of a local government unit against which a compensation action is brought based at least in part on the local government unit's application of Minnesota Statutes, section 103G.222, 103G.2241, 103G.2242, 103G.237, or 103G.2372, or rules adopted by the board to implement these sections, the state, through the attorney general, must intervene in the action on behalf of the local government unit and is thereafter considered a defendant in the action. A local government unit making a request under this subpart must provide the attorney general with a copy of the complaint as soon as possible after being served. If requested by the attorney general, the court must grant additional time to file an answer equal to the time between service of the complaint on the local government unit and receipt of the complaint by the attorney general.

Subp. 2. **Liability of state for certain costs.** The state is liable for costs, damages, fees, and compensation awarded in the action based on the local government unit's adoption or implementation of standards that are required by state law, as determined by the court. The local government unit is liable for costs, damages, fees, and compensation awarded in the action based on local standards that are more restrictive than state law and rules.

Subp. 3. **Definition.** For purposes of this part, "compensation action" means an action in which the plaintiff seeks compensation for taking private property under the state or federal constitution.

**Statutory Authority:** *MS s 103G.2242*

**History:** *34 SR 145*

**Posted:** *August 26, 2009*

June 7, 2010

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**SUBJECT:** Resolution to Approve Plans & Specifications and Authorize Advertisement for Bids for the 34th St/I-94 Interchange Project, Phase 2 (Intersection & Traffic Signal Improvements). Eng. No. 04-2-1B

**RECOMMENDATION:** It is respectfully requested that the Mayor and Council consider a resolution to approve plans and specifications and authorize advertisement for bids for the above-referenced project.

**BACKGROUND:** The 34<sup>th</sup> St/I-94 Interchange Project includes street and traffic signal improvements adjacent to three Otter Tail Valley Railroad (OTVRR) crossings; the existing 34<sup>th</sup> St/SE Main Ave intersection (to be removed), the existing 30<sup>th</sup> Ave S/CSAH 52/Village Green Boulevard intersection (to be modified/reconstructed), and the 24<sup>th</sup> Ave S/SE Main Ave intersection (new). In order to construct these improvements, a Construction & Maintenance Agreement with OTVRR and an Easement Agreement with The BNSF Railway (BNSF) were required. Due to unforeseen delays in processing those agreements, it was necessary to separate the intersection and railroad crossing work from the balance of the interchange project.

In order to complete the project as originally planned, a separate plan set and contract for the intersection and railroad crossing work has been prepared. The plans were prepared by SRF Consulting Group and submitted to Mn/DOT for authorization to proceed to bidding. Pending notification from Mn/DOT that the City is authorized to proceed to bidding, staff recommends Council approval of plans and specifications and authorization for advertisement for bids. If Mn/DOT approval is not received prior to tonight's Council Meeting, this item will be removed from the agenda.

**KEY ISSUES:**

- Plans and specifications for the improvements have been prepared by SRF Consulting Group.
- City staff recommends that the Mayor and Council approve the plans and specifications and authorize the advertisement for bids.
- The total construction cost for the project is currently estimated at \$1,053,100, and will be financed through a combination of Federal, MSA, and local funds.

**POLICY CONSIDERATIONS:** The proposed project is consistent with the City's Comprehensive Rail Safety Program, Comprehensive Plan, and South and East Growth Area Plan.

**FINANCIAL CONSIDERATIONS:** The total construction cost for this project is currently estimated at \$1,053,100. The project will be funded through a combination of Federal funds (approximately 80% or \$842,480) and MSA or local funds (approximately 20% or \$210,620).



**LEGAL CONSIDERATIONS:** In accordance with State Statutes, Mn/DOT procedures, Federal Aid requirements, the project must be advertised for a minimum of 3 consecutive weeks plus 10 days (a total of 25 days) prior to bid opening.

Respectfully Submitted:



Michael J. Redlinger  
City Manager

**Department/Response Person: Engineering/Thomas E. Trowbridge, Asst. City Engineer**

**Attachments: Draft Resolution**

**Agenda Item No. 2.**



## REQUEST FOR COUNCIL ACTION

<b>AGENDA SECTION:</b> Engineering - Wastewater Treatment		<b>ORIGINATING DEPT.</b> Engineering	<b>MEETING DATE:</b> 6/7/2010
<b>ITEM NO. 2.</b>	<b>ITEM DESCRIPTION:</b> Resolution to Approve Plans & Specifications and Authorize Advertisement for Bids for the 34 <sup>th</sup> St/I-94 Interchange Project, Phase 2 (Intersection & Traffic Signal Improvements) Eng. No. 04-2-1B		<b>PREPARED BY:</b> Trowbridge

### DRAFT RESOLUTION

WHEREAS, on February 22, 2010 the City Council passed a resolution approving an amended Engineering Services Agreement with SRF Consulting Group for the preparation of plans and specifications for the 34<sup>th</sup> St/I-94 Interchange Project, Phase 2 (Intersection & Traffic Signal Improvements) Eng. No. 04-2-1B; and

WHEREAS, SRF Consulting Group has prepared the plans in accordance with the applicable standards, the plans have been reviewed and approved by the Minnesota Department of Transportation and the City Engineering Department, and a copy of the plans are available for review in the Engineering Department;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Moorhead as follows:

1. Such plans and specifications, a copy of which is on file in the office the City Engineer, are hereby approved.
2. The City Clerk shall prepare and cause to be inserted in the legal paper an advertisement for bids for the making of such improvements under such approved plans and specifications. The advertisement shall be published three consecutive weeks with the first advertisement appearing a minimum of 25 days before the scheduled bid opening, and the advertisement will state the time and place that bids will be opened. The ad shall also state that no bids will be considered unless sealed and filed with the City Clerk and accompanied by a cash deposit, cashier's check, bid bond, or certified check payable to the Clerk for ten percent (10%) of the amount of such bid. In accordance with State Statutes, Mn/DOT procedures, and Federal Aid requirements, the project will be advertised for a minimum of 3 consecutive weeks plus 10 days (a total of 25 days) prior to bid opening.

PASSED by the City Council of the City of Moorhead this 7<sup>th</sup> day of June 2010.



June 7, 2010

Page 1 of 2

**SUBJECT:** Resolution to Approve Revised Property Acquisition Agreement with Martin Properties, LLC for the SE Main Ave/20th St/21st St Railroad Grade Separation Project Eng. No. 02-2-2

**RECOMMENDATION:** It is respectfully requested that the Mayor and Council adopt a resolution authorizing a revision to the property acquisition agreement with Martin Properties, LLC for the above-referenced project.

**BACKGROUND:** On January 12, 2009, the Mayor and Council approved the acquisition of property from Martin Properties, LLC for the SE Main Ave/20<sup>th</sup> St/21<sup>st</sup> St Railroad Grade Separation Project in the amount of \$204,000. As part of the acquisition, the property owner was compensated to complete the demolition of storage units on the property (exclusive of the structure foundation). The property owner has requested that he be allowed to remove the concrete slab that supported the storage units previously demolished and be compensated for the removal. The concrete slab is causing drainage problems, and a City contract to remove the slab is not anticipated to be awarded until late summer.

SRF Consulting Group, under contract with the City, is providing right-of-way acquisition and relocation services for the project.

**KEY ISSUES:**

- The proposed revised acquisition is necessary to construct the SE Main Ave/20<sup>th</sup> St/21<sup>st</sup> St Railroad Grade Separation Project.
- The property owner has accepted the City's revised acquisition offer.
- The total cost for the revised acquisition contemplated at tonight's meeting is approximately \$3,950.
- The proposed acquisition complies with all Federal, State, and local requirements to secure Federal reimbursement for 80% of the cost.

**POLICY CONSIDERATIONS:** The SE Main Ave/20<sup>th</sup> St/21<sup>st</sup> St Railroad Grade Separation Project is one element of the City's Comprehensive Rail Safety Program endorsed by the Mayor and Council.

**FINANCIAL CONSIDERATIONS:** Agency Agreement No. 90014, as amended, authorizes Federal funding in the amount of \$2,880,000 and requires a local match of 20% (or \$720,000) for right-of-acquisition and other related expenditures for the project. The local match will be paid with Municipal State Aid funds.

For the proposed revised acquisition, purchase information is summarized below:

OWNER	NO.	AMOUNT	ACTION
Martin Properties, LLC.	22	\$3,950	Removal of Concrete Slab



**LEGAL CONSIDERATIONS:** The proposed acquisition complies with all Federal, State, and local requirements necessary to secure Federal reimbursement. The Mayor and Council have the authority to approve the proposed acquisition.

Respectfully Submitted:



Michael J. Redlinger  
City Manager

**Department/Response Person: Engineering/Robert A. Zimmerman, City Engineer**

**Attachments: Draf Resolution**

**Agenda Item No. 3.**



## REQUEST FOR COUNCIL ACTION

<b>AGENDA SECTION:</b> Engineering - Wastewater Treatment		<b>ORIGINATING DEPT.</b> Engineering	<b>MEETING DATE:</b> 6/7/2010
<b>ITEM NO. 3.</b>	<b>ITEM DESCRIPTION:</b> Resolution to Approve Revised Property Acquisition Agreement with Martin Properties, LLC for the SE Main Ave/20th St/21st St Railroad Grade Separation Project Eng. No. 02-2-2		<b>PREPARED BY:</b> Zimmerman

### DRAFT RESOLUTION

WHEREAS, it is necessary to revise the property acquisition agreement with Martin Properties, LLC for the SE Main Ave/20<sup>th</sup> St/21<sup>st</sup> St Railroad Grade Separation Project (Eng. No. 02-2-2); and

WHEREAS, the cost for the proposed revision is approximately \$3,950, to be paid from Federal and Municipal State Aid funds; and

WHEREAS, an agreement has been prepared detailing the terms of the revised acquisition.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Moorhead that the City Council does hereby authorize the revised acquisition agreement with Martin Properties, LLC for the SE Main Ave/20<sup>th</sup> St/21<sup>st</sup> St Railroad Grade Separation Project (Eng. No. 02-2-2).

PASSED by the City Council of the City of Moorhead this 7<sup>th</sup> day of June 2010.



June 07, 2010

Page 1 of 2

**SUBJECT:** Resolution to Approve Request for Medical Leave of Absence

**RECOMMENDATION:** It is respectfully requested that the Mayor and Council consider a resolution to approve a request from David Danielson, Wastewater Treatment Plant, for a medical leave of absence to recuperate from a serious illness.

**BACKGROUND:** Mr. Danielson, a Waste Water employee with the City of Moorhead, has requested approval of a medical leave of absence to recover from a serious illness. Mr. Danielson has utilized the 12-week family medical leave, per the requirements of the Federal Family and Medical Leave Act (FMLA) and finds it necessary to request an extended leave of absence to continue to improve his health condition.

**KEY ISSUES:**

- Federal law (FMLA) and the City of Moorhead Employee Policies and Procedures provides the opportunity for an employee to request a medical leave of absence for a period of twelve (12) weeks during a 12-month period to recuperate from a serious illness.
- In accordance with the FMLA and City policy, an employee taking authorized medical leave and returning within the prescribed time period will be restored to his or her previous position or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.
- An employee requesting such authorization must use all accrued paid leave (including sick leave and vacation) simultaneously with the FMLA leave before requesting any unpaid medical leave of absence.
- David Danielson, a Waste Water employee, requested a leave of absence under the FMLA, during which time period he utilized accrued vacation and sick leave. However, the 12-week period is soon to expire and the need continues for his medical care. Mr. Danielson intends to utilize the remaining balance of his accrued vacation and sick leave before commencing with an unpaid leave of absence.

**POLICY CONSIDERATIONS:** In accordance with Federal law and the City of Moorhead Employee Policies and Procedures, employees may request a medical leave of absence for a period of twelve (12) weeks to recover from a serious illness. The request received from Mr. Danielson is within the framework of the law. However, the length of time required to receive medical care is uncertain and will exceed the 12-week period.

**FINANCIAL CONSIDERATIONS:** The employee will continue to utilize accrued vacation and sick leave until exhausted. The costs for such are included within the appropriate departmental



budget. In the likelihood the leave exceeds the accrued vacation and sick leave, the request is for an unpaid leave of absence, for which there is no cost to the City of Moorhead.

**LEGAL CONSIDERATIONS:** In accordance with Federal law and City of Moorhead policies, the Mayor and Council possess the legal authority to approve the requested medical leave of absence.

Respectfully Submitted:



Michael J. Redlinger  
City Manager

**Department/Response Person: Human Resources**

**Attachments: Draft Resolution**

**Agenda Item No. 4.**



## REQUEST FOR COUNCIL ACTION

<b>AGENDA SECTION:</b>		<b>ORIGINATING DEPT.</b> Human Resources	<b>MEETING DATE:</b> 6/7/2010
<b>ITEM NO. 4.</b>	<b>ITEM DESCRIPTION:</b> Resolution to Approve Request for Medical Leave of Absence		<b>PREPARED BY:</b> Thompson

### DRAFT RESOLUTION

WHEREAS, David Danielson, a Waste Water Maintenance Mechanic has completed his 12-weeks Family Medical Leave as of May 28, 2010, Moorhead Wastewater Treatment Plant, due to a major illness, has need for time off for recuperation; and

WHEREAS, with the onset of the illness, Mr. Danielson has requested a leave commencing February 28, 2010 through May 28, 2010, and also a two week leave of absence per the AFSCME bargaining contract during which time it is his intention to utilize any remaining accrued sick leave hours and vacation hours ; and

WHEREAS, after depletion of all vacation, sick leave, and 2 weeks leave of absence in the AFSCME bargaining contract, Mr. Danielson is requesting an unpaid, extended leave of absence for a period of 26 weeks (6 months) to facilitate his recuperation; and

WHEREAS, the Moorhead City Council finds there is no additional cost to the City of Moorhead, other than vacation and sick leave, as Mr. Danielson would be responsible for payment to the City to maintain health and dental insurance coverage along with any organization membership dues during the leave.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Moorhead that the City Council does hereby grant Mr. Danielson's request for an extended leave of absence (130 days), without pay.

PASSED by the City Council of the City of Moorhead this 7th day of June 2010.

