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MEMO

TO: Nine Mile Creek Watershed District Board of Managers
FROM: Randy Anhorn
DATE: December 19, 2018
RE: City of Hopkins Surface Water Management Plan

Background

In accordance with Minnesota Statutes section 103B.235, subdivision 3, Nine Mile Creek Watershed District staff have reviewed the City of Hopkins's draft Surface Water Management Plan¹ (SWMP) for consistency with NMCWD's adopted fifth-generation 2017-2027 Water Management Plan (NMCWD Plan). The SWMP is a compact document, which is not inconsistent with the reality that the water resources within Hopkins are limited: no lakes and few wetlands. However, the headwaters of the north fork of Nine Mile Creek is in Hopkins.

This memo presents staff's findings on the SWMP. Notes on issues of particular significance are provided first, followed by comments and notes on specific text, tables and figures in the SWMP. The memo identifies changes that must be made to the SWMP (which are underlined), and issues and observations the city should consider in finalizing the SWMP. NMCWD received the Metropolitan Council's October 26, 2018, comments on the SWMP and generally concurs in its suggestions and directions for improvements to the SWMP. NMCWD considered Met Council's note in its review of the SWMP and development of these findings.

General Notes

1. *Compliance with state rule.* The SWMP briefly touches on the basic requirements of Minnesota Rules 8410.016, but needs to be expanded in several areas; this memo describes both required and suggested additions, revisions and clarifications to will be needed for the SWMP to comply with the state rule and achieve consistency with the NMCWD Plan. The SWMP is short on details, and addresses several requirements in a very minimalistic manner, and would be improved by the addition of detail on several points noted below. Performance standards and, areas and elevations for stormwater storage adequate to meet them are needed. (Indeed,

¹ Note that while the city's water plan cover page carries the title "Surface Water Management Plan," the rest of the document refers to "Cultivate Hopkins | Water Resources Management Plan."

the SWMP lacks performance standards throughout.) Drainage areas and volume, rates and paths of stormwater have not been defined; the SWMP notes² that the city has been delineated into roughly 60 subwatersheds, but no map or figure showing these areas or description of their features is provided. Water quality protection methods adequate to meet performance standards are not identified.

NMCWD finds that while the SWMP's goal and policy statement are generally consistent with the NMCWD Plan (with certain specific changes noted below), the city should consider referencing and/or incorporating policies and goals from relevant watershed district plans, including the NMCWD Plan, to bolster the scope and comprehensiveness of the city's goals and policies. Further, the city can significantly improve the comprehensiveness and implementation effectiveness of the SWMP by clarifying its deference to the exercise of regulatory authority by NMCWD for the portion of the city within the Nine Mile Creek watershed, as discussed in more detail below.

2. *Mechanical, typographical specifics.* A table of contents and section numbering would make the SWMP more readily navigated and would facilitate future reference by city staff and partners in water-resources protection and flood-mitigation efforts. In light of the lack of such reference points in the draft SWMP, NMCWD supplements the significant issues identified in this memo with comments and suggested (Roman text) or required (underlined) revisions as notes in the attached Adobe Acrobat file.
 - Also, the SWMP as presented in draft form has confusing and seemingly disconnected references and cross-references to tables and figures (e.g., there is a reference on page 16 to "Table 1.0," but it appears that instead, perhaps, the reference should be to Table WR-4; there are references to Figure SW-01 in a few places in the draft plan but no such figure is readily found).
 - The SWMP notes that because the city is effectively completely developed, "future land[-]use changes will be a result of redevelopment activities,"³ which strikes NMCWD as a sound statement of an important background fact. From here, though, the SWMP often incongruously refers to how "development" will affect stormwater and flood-flow management. The SWMP should generally address water resource issues in redevelopment, consistent with the characterization of future land-use early in the SWMP.
3. *Baseline data update needed. The City should consider undertaking the necessary hydrologic modeling to comply with the District's regulatory requirements. to undertake*
4. *Regulatory Authority.* There are references in the SWMP to application of NMCWD regulatory criteria,⁴ but the SWMP also appears to rely on

² P. 5. General Drainage Patterns.

³ P. 2 "Future Land Use."

⁴ P. 8 (referencing NMCWD rate-control requirements); p. 9 (policy 1.1 statement);

implementation of unspecified city ordinances to protect water resources and mitigate flood risk. The draft SWMP includes a reference to updating city ordinances “to stay compliant with the NPDES and MS4 permits,”⁵ but otherwise, the draft SWMP observes that the city, watershed districts, state agencies, Hennepin County and the U.S. Corps of Engineers “hav[e] some level of administration responsibility.”⁶ At the same time, under the heading “Permitting,” the draft SWMP incorrectly summarizes the existing relationship between NMCWD and the city with regard to exercise of regulatory authority, stating that NMCWD serves to advise the city as to regulation. (NMCWD recognizes the SWMP’s clear affirmation, in the Goal 4: Wetlands section, that NMCWD will continue to serve as the Wetland Conservation Act Local Government Unit for that portion of the city within NMCWD’s jurisdiction.)

Other than with regard to the exercise of WCA jurisdiction, the SWMP does not include a clear statement of the city’s intent with regard to exercise of regulatory jurisdiction to protect water resources and mitigate flood risk, as required to ensure consistency with section 6.2 of the NMCWD Plan. Further, if the city intends to exercise sole regulatory authority itself, the draft SWMP lacks the detailed, specific updates to the city’s ordinances that would be necessary for NMCWD to find that the city will protect water resources and prevent flooding to the same degree that the NMCWD rules do. At a minimum, the SWMP must be revised to include a clear statement of the city’s intent with regard to the exercise of regulatory jurisdiction to protect water resources from degradation and mitigate flood risk. (See Minnesota Rules 8410.0160, subpart 3(4), and the NMCWD Plan, subsection 6.2.1.)

In making revisions to clarify its intent, the city needs to consider subsection 6.2.1 of the NMCWD Plan, which provides a very specific framework to ensure implementation of a cohesive and protective regulatory program, as well as specifics on local-water-plan elements needed for NMCWD approval, if the city intends to exercise sole regulatory authority. The SWMP must not only commit to submitting ordinances for a determination by NMCWD that they are at least as protective as NMCWD rules, but also that they will be amended within six months of notice of amendment of the NMCWD rules. The SWMP would also have to note that the plan and ordinances would have to provide that variances from standards adopted to achieve consistency with watershed organization rules will be provided to NMCWD for review (when applicable to land within NMCWD’s jurisdiction). (Minnesota Statutes section 103B.211, subdivision 1(a)(3)(ii).) Alternatively, if the city intends to re-authorize NMCWD to continue to exercise regulatory authority, the SWMP should specify how the city will direct potentially regulated parties to NMCWD to proceed through the permitting process.

It is not for NMCWD to direct the city as to what its decision on this point should be. But the SWMP must be clear and complete on this point. NMCWD

⁵ Table WR-6.

⁶ P. 1.

recommends that the city revise the SWMP to state that NMCWD will continue to exercise regulatory authority in accordance with Minnesota Statutes section 103B.211, subd. 1(a)(3)(ii). Hopkins always has the option to amend the plan later and provide for exercise of sole regulatory jurisdiction by the city if it later determines that such an approach is best.

5. *Land-Use Planning Coordination.* Section 1.4 of the NMCWD Plan discusses NMCWD's interests in coordinating closely with not only city water-resource and public works staffs, but with individuals and departments focused on planning and economic development as well. The stated goal and continued intention is to ensure integration of water-resource management and protection into city redevelopment initiatives. The draft SWMP does not address this opportunity, but NMCWD encourages Hopkins to consider at least a general commitment in the SWMP that would reflect projects such as the effort to coordinate integration of stormwater-management features into the construction of and redevelopment along the Southwest Light Rail corridor.

SECTION-SPECIFIC FINDINGS

Water Resource Management Related Agreements

1. The draft SWMP includes no information on the Nine Mile Creek Bank Stabilization and Habitat Enhancement Project and the cooperative agreement between the city and NMCWD that provided the legal framework for its completion. The amended and restated agreement was fully executed by the parties on December 7, 2011. Most important, section 3.2.7 of the agreement makes Hopkins responsible for the ongoing ordinary maintenance of the project; this commitment should be reflected in this section and must be shown in Table WR-6 with designation of a funding source for the work.

Physical Environment and Land Use

1. NMCWD's flood-management elevations along the creek should be referenced.

Surface Water Resources

1. **Modeling & Studies.** A brief description of stormwater issues in the 13th Avenue area is presented. Other problem areas within the Hopkins, if any, should be identified and described here as well.
2. **Rain Gages.** The draft SWMP states that Hopkins has a precipitation gauge located at the city public works facility. It should be noted that this gauge is operated and maintained by NMCWD.

Establishment of Goals and Policies

1. The water-quality goal for the SWMP is stated, "Achieve water quality standards in lakes, creeks, and wetlands consistent with their intended use and established classification," which appears to be a reference to state-set goals. But the SWMP

should address how the city will work to achieve NMCWD standards for lakes, wetlands and the creek with the Nine Mile Creek watershed in the city.

2. *Goal 2: Water Quality.* Policy 2.7 states Hopkins' intent to adopt policies to minimize chloride contamination through attention to road-maintenance practices. The SWMP notes that Nine Mile Creek is impaired for chloride and that a Total Maximum Daily Load study has been approved for chloride reduction/management. No further discussion is provided for the implementation of chloride reduction in Hopkins. The language in the draft SWMP should be expanded to state awareness of NMCWD's chloride-management education and training efforts, as well as the chloride-reduction requirement added to NMCWD's rules in 2018.
3. *Goal 4: Wetlands.* The SWMP mentions that a protective buffer strip must be retained arounds wetlands. But no specific buffer-width requirements or standards are identified and no reference to the standards establish in NMCWD Rule 3.0: Wetland Management.
4. *Goal 5: Groundwater.* The Goal 5 section on groundwater management policies could be greatly improved by the specification of specific groundwater-conservation steps the city will take in implementing its new plan. (NMCWD Plan subsection 7.1.1.) This section also includes discussion of the city's continued implementation of its wellhead protection plan, though the most recent update is not included as an appendix to the plan as it should be. Also, in accordance with the relevant requirement in subsection 7.1.1 of the NMCWD Plan, the city needs to commit to providing NMCWD with any future updates of its wellhead protection plan.
5. *Goal 6: Floodplain Management.* As required to harmonize the SWMP with the NMCWD Plan (subsection 7.1.1), the city must commit to coordinating with NMCWD to develop floodplain information and set consistent flood elevations, as well as maintaining critical 100-year flood-storage volumes. The SWMP states that city ordinance will regulate development *adjacent* to the floodplain districts, but should reference regulation of land-uses allowed by the city to ensure no encroachment *in or into* the floodplain, to ensure no loss of floodplain storage, and to ensure no structures are built without adequate freeboard. (The policy statements *do* address these requirements.) This section of the draft SWMP does not reference or discuss NMCWD's floodplain-protection rule or the role of NMCWD in regulating to mitigate flood risk.

Implementation Program and Associated Costs

1. As noted above with regard to water resource management-related agreements, Hopkins' commitment to and funding for maintenance of the Nine Mile Creek Bank Stabilization and Habitat Enhancement Project must be shown in Table WR-6.
2. Table WR-6 must be revised to include prioritization of the city's implementation work, as required by Minnesota Rules 8410.0106, subpart 3E.

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