

**Environment and Natural Resources Trust Fund
2009 Phase 2 Request for Proposals (RFP)**

LCCMR ID: 066-B3

Project Title: Minnesota Drainage Law Analysis and Evaluation

Total Project Budget: \$ \$87,070

Proposed Project Time Period for the Funding Requested: 2 years, to June 2011

Other Non-State Funds: \$ \$0.00

Priority: B3. Minnesota Drainage Law Analysis and Evaluation

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Region:

County Name:

City / Township:

Statewide

Summary: Build on experience with Minnesota's leading examples integrating 103E drainage solutions, wetland protection/restoration, and sound land use planning to evaluate suburban, lakeshore, and agricultural scenarios and identify reforms.

Main Proposal: 1008-2-058-proposal-2009_main_proposal_template.doc

Project Budget: 1008-2-058-budget-Copy of RFP_2009_Project Budget.xls

Qualifications: 1008-2-058-qualifications-Project Manager Qualifications and Organization D

Map:

Letter of Resolution:

MAIN PROPOSAL

PROJECT TITLE: Minnesota Drainage Law Analysis and Evaluation

I. PROJECT STATEMENT

The Minnesota Drainage Code must be understood in the context of many water – related statutes. These different laws, adopted at different times, need to be analyzed and reconciled in contexts as different as urban expansion, lakeshore development and ongoing agricultural and silvicultural use at a time of heightened state and national water quality concerns. Water resource management is much different from and more complicated than when the Minnesota drainage code was enacted over a century ago, yet this law remains largely unchanged.

To effectively pursue the range of creative approaches to integrated water resource management, we may need to update and clarify drainage code procedures, decisionmaking standards and funding authorities and incorporate local land use authority in a way that meets modern needs while protecting property rights in drainage and enhancing beneficial economic use of land. For example, at both federal and state levels, there is strong movement toward integrated, area-based resource and development planning and regulation to restore critical wetlands, improve water quality and preserve aquatic habitats while also protecting and increasing economic value for landowners.

Any analysis of Minnesota drainage laws requires a deep appreciation of related laws protecting wetlands, public waters, and water quality. This proposal builds on unique experience with Minnesota's leading examples of Resource Management Plans that integrate drainage solutions under Chapter 103E with comprehensive wetland management under the Wetland Conservation Act and sound development planning that maximizes both resource protection/restoration with landowner rights and development value. By engaging critical stakeholders in this project, Minnesota will gain not only a current and comprehensive analysis of drainage law, but also stronger support for creative, integrated solutions to natural resource protection and land use development.

II. DESCRIPTION OF PROJECT RESULTS

Result 1: Legal Analysis

Budget: \$ 18,020

Provide an overview of the drainage code and related state and federal laws concerning wetland conservation, protection of public waters, and water quality. Identify and analyze critical legal and policy issues where the drainage code and potential conflicts with other laws create barriers to successful resource protection.

Deliverable

Completion Date

- | | |
|---|---------------|
| 1. Survey of drainage code and related laws | October 2009 |
| 2. Problem Statement and Critical Issues Identification | October 2009 |
| 3. Critical Issues Analysis (Preliminary) | March 2010 |
| 4. Critical Issues Analysis (Final) | November 2010 |

Result 2: Demonstration Scenarios

Budget: \$23,780

Drainage- resource protection conflicts arise in particular land use settings. We will identify three prototypical scenarios and analyze the economic impacts of various restoration/development/conservation alternatives to inform the critical issues analysis.

Deliverable

Completion Date

- | | |
|--|---------------|
| 1. Identify 3 scenarios with Advisory Committee, e.g. metro suburban, agricultural, and lakeshore development. | November 2009 |
| 2. Build case studies of 3 scenarios. | March 2010 |
| 3. Analyze development, resource conservation/restoration, costs and benefits. | June 2010 |
| 4. Analyze legal barriers, strategic alternatives in 3 scenarios. | August 2010 |

Result 3: Legislative Recommendations

Budget: \$11,250

Building on the critical issues analysis from the three demonstration scenarios, develop legislative recommendations.

Deliverable

Completion Date

- | | |
|--|------------------|
| 1. Initial draft of legislative recommendations for Advisory Committee review. | September 2010 |
| 2. Revised draft recommendations based on Advisory Committee review. | October 2010 |
| 3. Presentation of draft recommendations to 3 regional forums. | November 2010 |
| 4. Final recommendations. | Feb. – June 2011 |

Result 4: Advisory Committee Facilitation

Budget: \$19,980

Deliverables

Completion Date

- | | |
|--|-----------------------|
| 1. Identify key stakeholders and recruit advisory committee. | October 2009 |
| 2. Convene and facilitate six (6) meetings of Advisory Committee. | Oct. 2009 - June 2011 |
| 3. Present Draft Recommendations and report for Advisory Committee review and comment. | June 2011 |

III. PROJECT STRATEGY AND TIMELINE

A. Project Partners

Smith Partners attorneys (Louis Smith, Charles Holtman, Michael Welch) will provide the legal analysis, project management, and advisory committee facilitation, with support from the firm's planner and partnership manager, Faith Cable. Once the three demonstration scenarios are selected, land development specialists will be retained to analyze the costs and benefits if alternations.

B. Project Impact

This project has statewide impact, especially where there are existing drainage systems.

C. Time

The project can be completed in less than two years.

D. Long-Term Strategy (if applicable)

Long-Term Strategy (Not applicable)

Project Budget

INSTRUCTIONS AND TEMPLATE (1 PAGE LIMIT)

(One page limit, single-sided, 10 pt. font minimum Retain the bold text and remove all instructions typed in italics. Add or delete rows as is necessary. If a category is not applicable you may write "N/A", leave it blank, or delete the row.)

IV. TOTAL PROJECT REQUEST BUDGET

BUDGET ITEM <i>(See list of Eligible & Non-Eligible Costs, p. 17)</i>	AMOUNT	% FTE
Personnel: <i>Who is getting paid to do what and what is the % of full-time employment for each position? List out by position.</i>	\$ -	%
Smith Partners	\$ 63,070	< 10 %
	\$ -	%
Contracts: <i>With whom and for what? List out by item.</i>	\$ -	
Development Consultant(s) for evaluation of demonstration scenarios.	\$ 21,000	
	\$ -	
Equipment/Tools: <i>What? List general description of needs.</i>	\$ -	
Acquisition (Including Easements): <i>List # of acres and who will hold title (e.g., DNR, Non-profit)</i>	\$ -	
Restoration: <i>List # of acres.</i>	\$ -	
Other: <i>List by item and explain.</i>	\$ -	
Printing, copy, travel expenses	\$ 3,000	
TOTAL PROJECT BUDGET REQUEST TO LCCMR	\$ 87,070	

V. OTHER FUNDS

SOURCE OF FUNDS	AMOUNT	Status
Remaining \$ From Previous Trust Fund Appropriation (if applicable): <i>How much Trust Fund money remains not spent or legally obligated from any previous Trust Fund appropriation for any directly related project of the proposing project, project manager, or project organization? Specify the appropriation.</i>	0	Unspent or Not Legally Obligated
Other Non-State \$ Being Leveraged During Project Period: <i>What additional non-state cash \$ will be spent on the project during the funding period? For each individual sum, list out the source of the funds, the amount, and indicate whether the funds are secured or pending approval.</i>	0	Secured or Pending
Other State \$ Being Spent During Project Period: <i>What additional state cash \$ (e.g. bonding, other grants) will be spent on the project during the funding period? For each individual sum, list out the source of the funds, the amount, and indicate whether the funds are secured or pending approval.</i>	0	Secured or Pending
In-kind Services During Project Period: <i>What in-kind services will be provided during the funding period? List type of service(s) and estimated value. In-kind services listed should be specific to the project.</i>	0	
Past Spending: <i>List money spent or to be spent on this specific project, cash and/or in-kind, for 2-year timeframe prior to July 1, 2009</i>	0	

Project Manager Qualifications and Organization Description

Smith Partners PLLP www.smithpartners.com is a law firm counseling public and private clients on sustainable development. We represent watershed districts, other local governments and conservation organizations. We create and guide public private partnerships committed to revitalizing urban neighborhoods and guiding sustainable growth in regional transportation corridors.

Our firm has made an unparalleled commitment to water resources law. With more than 30 years of combined experience, our attorneys bring an array of legal and policy expertise in water resources and land use management. We are unique among law firms in Minnesota with experience in counseling integrated Resource Management Projects that have combined the legal requirements under the drainage code with comprehensive wetland management and water quality improvements. For more background, see:

www.waterlaws.com/commentary/bulletins/Innovative.html

Diverse expertise in water law is critical to a full understanding of Minnesota drainage issues. Our firm's expertise includes the following:

- Counsel for three generations of water resource management planning;
- Policy analysis and drafting of water resources legislation, with central involvement in watershed legislative issues for the past ten years;
- Expertise in wetland regulation and drainage system management under state and federal laws;
- Extensive experience in drafting permitting and enforcement rules for watershed regulation of erosion control, stormwater management, floodplain management, groundwater protection, shoreline alteration, dredging, structures in waterbodies, stream and lake buffers, and wetland protection;
- A careful understanding of roles and relations among watershed management organizations and other local units of government and strong, effective working relationships with key agency personnel in federal and state agencies;
- Extensive experience in drafting construction contracts and surety documents, preparing requests for bids, and acquiring land and easements for water resource restoration and infrastructure projects;
- Counsel for major lakes improvement, stream protection and wetland restoration projects, including the largest urban lake restoration project in the United States (recipient of five environmental awards, including the CF Industries National Watershed Award and the Minnesota Governor's Award for Excellence in Pollution Prevention), involving complex multiparty negotiations, development of cooperative agreements to structure relationships with stakeholders and partners, consultation through environmental review and federal and state agency permitting;
- Overwhelming success in water resources litigation in administrative and judicial proceedings;
- Publishers of WaterLaws.com, an electronic journal for watershed law and policy;
- Authors of the Watershed Rulemaking Handbook, published by the Minnesota Association of Watershed Districts.