TO: Mayor, Council Members, Administration

FROM: Barb Huberty,
Regulatory and Environmental Affairs Coordinator

DATE: October 2, 2003

SUBJECT: **Private Storm Water Ponds Serving Residential Areas**

As you will recall, a representative of the Diamond Ridge Homeowners' Association spoke at the September 27th Public Hearing on the proposed Storm Water Utility Fee (Fee). Diamond Ridge homeowners will be required to pay the monthly Storm Water Utility Residential Fee in addition to their own Homeowners' Association monthly pond maintenance charge. As such, they felt that they should be eligible for Fee Credit, particularly since they felt there were few residential developments in this situation.

In the proposed Storm Water Utility Fee Credit Manual, only Non-Residential Customers are eligible for Fee Credit. This is because the Residential Fee represents the minimum fair share payment from developed parcels to fund the City's storm water management activities. According to the Storm Water Utility Ordinance, the minimum per parcel Fee for non-residential developed parcels is equal to the Residential Fee. Additionally, Fee Credits are not allowed to reduce the Fee for any non-residential parcel below the Residential Fee amount.

Public Works staff members have conducted an assessment of the status of storm water ponds in the City and have researched options to address their concerns. As you can see in the table below, the Diamond Ridge situation is not unique. (In fact, in this specific instance, the City encouraged the Diamond Ridge developer to construct a single larger pond instead of two smaller ponds, but the developer opted to not follow the City's advice.) There are 28 residential developments with private ponds and 4 additional private ponds that serve both residential and non-residential developments.

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the quality of our water resources. Assets such as Silver Lake and the Zumbro River help make Rochester one of the nation's most livable communities. Keeping our water resources clean and usable is in everyone's interest. StormWater MANAGEMENT

City of Rochester
201 4th Street SE
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Pond Serves:	CITY	STATE	PRIVATE	To Be Transferred to the City*	TOTAL
Residential	55	0	28**	3	86
Non-Residential	11	2	42	2	57
Both R & N-R	5	0	4	2	11
Flood Control Project	2	0	0	0	2
TOTAL	73	2	74	7	**156**

*Ponds that are in the process of being transferred to the City for a variety of reasons, including tax forfeiture, public benefit, and due to pending Development Agreement obligations.
**Not all of these ponds manage both storm water quantity and water quality.
Data correct as of 9/11/03.

Before further discussion on the possibility of how to equitably deal with private residential ponds, it is helpful to remember that the City's goal in developing the Storm Water Management Plan in the late-1990's was to create a regional storm water pond network. This approach was designed to maximize community-wide storm water quality benefits while minimizing the number of ponds and their ensuing maintenance obligations. After the completion of the Storm Water Management Plan, the City Council opted to move forward with a voluntary, interim program (until such time as a Storm Water Utility was adopted), whereby developers had three primary options:

1. Pay a Storm Water Management Plan Area Charge (Charge) into a fund for the construction of public regional storm water management ponds, or
2. Construct an on-site public regional storm water management pond (for areas draining 50 acres or more), or
3. Construct an on-site private storm water management pond (for areas draining less than 50 acres).

As you can see by the table, some developers opted to construct private ponds in lieu of paying a Charge, fully understanding they had a permanent obligation to maintain and repair the pond to insure provision of the storm water management benefits of their pond. (In a few cases, developers did not have the option of paying a Charge in lieu of building the pond because the property drained outside the City limits or there were not options for downstream regional ponds.) Had the developers not opted to build private, development-specific ponds in lieu of paying the SWMP Charge when the Charge was feasible, the City could have built larger ponds resulting in a smaller number of ponds than are present today.

There are several reasons why it is rational for the City to now adopt policies and procedures to take ownership of private residential ponds or to provide the maintenance for those ponds (which option is selected depends on site-specific conditions outlined later in this memo).

1. With the adoption of the Storm Water Utility, owners of private, non-residential ponds are in a position to receive Fee Credit for the maintenance they perform that provide a financial value to the City's overall storm water management program and objectives. Due to restrictions in the structure of the Utility, owners of residential ponds are not eligible for Fee Credit. This creates an inequity between customers.
2. Ponds built to serve every development provide a public water quality and quantity management benefit, regardless of who paid to construct it or who maintains it. The

transfer of a constructed pond to the City as a completed asset equates to the contribution of SWMP Charges to the regional pond construction account. Both cases require an outlay of funds by the developer to meet their initial obligation to provide an integrated and functional storm water management system. Since the City is obligated to maintain public ponds built with SWMP Charges, a parallel argument could be made that the City should also maintain private ponds built with private funds since the water quality benefits accrue to the entire City under the new storm water permit.

3. With the adoption of the Storm Water Utility, private storm water management ponds serving residential developments will not be an option, except under extenuating circumstances, such as proximity to a waterway or drainage outside City limits.
4. Under the new Storm Water Permit, the City is going to face a cost burden to inspect private residential and non-residential ponds (regardless of who maintains them). It's unclear what level of staff effort will be needed to get private pond owners to follow-through on their maintenance obligations, but the potential loss of Fee Credit should be an incentive to non-residential customers. There is no similar financial incentive for residential customers to maintain their ponds. If grading plan erosion and sediment control requirements are any indication, it may take a considerable amount of staff time and ultimately Council action to get some Owners to uphold their obligations. This may be especially difficult when working with multiple Owners (i.e., Home Owner's Associations).
5. Where the City is responsible for maintenance, the regular inspection program will lead to preventive maintenance work that, as is true for all infrastructure assets, ultimately results in lower life cycle costs than emergency repairs caused by neglect.

Based on the evaluation of the City's past and present storm water management policies and practices and the current status of the pond network, Public Works staff members make the following recommendations:

1. **Private Residential Ponds - Transfer to City.** Private residential storm water ponds that meet current design and construction standards inherently have no additional liability to the City than its public storm water ponds. Owners of these ponds may make application for transfer to the Public Works Department to demonstrate that the pond meets current design and construction standards (as of the effective date of the Storm Water Utility Ordinance). These ponds will be considered for transfer to the City if the following criteria are met by the Owner or the Owner's Consultant:
    a. The pond is located on a separate parcel of property with clear title that can be conveyed to the City, along with access easements for ongoing maintenance.
    b. As-built construction drawings prepared by a licensed professional, at the cost of the Owner, are provided that show site contours (at 2-foot intervals) indicating the underwater elevations of the pond and the elevations of the land surface surrounding the pond.
    c. Documentation that sediment was removed to restore the original design capacity of the pond after development construction was completed or prior to transfer to the City.
    d. Post-construction pond maintenance has been provided according to all standard and customary maintenance requirements as defined by the City (typically

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contained in executed Maintenance and Ownership Agreements, as outlined in Attachment 1). The Owner must provide documentation of all maintenance and repair activities to the City.

e. Documentation that the pond does not degrade the quality of any nearby wetlands, fens, waterways, as it relates to water quality, hydrologic recharge capacity, or habitat support. Ponds that have been constructed to address shoreland and floodplain requirements are not eligible for transfer as storm water management ponds.
f. Field verification confirms the condition and functionality of the pond as described in the documentation provided to the City by the Owner.

2. **Private Residential Ponds - Maintenance by City.** Private ponds serving only residential developments that do not meet current design standards have a higher liability risk for the City due to safety considerations and will remain private. However, Owners of these ponds may make application to the Public Works Department to be considered for ongoing maintenance by the City after the following criteria provided by the Owner or Owner's Consultant are evaluated by City staff:
   a. An assessment of the pond condition and functionality will be made using the Grading Plan Checklist to identify deficiencies. Depending on their severity, some deficiencies may preclude the Owner from being eligible for City maintenance. Owners have the option of correcting deficiencies at Owner's expense. If Owners wish to correct all deficiencies, they can then be eligible for pond transfer consideration, as outlined in #2, above. In this case, the Owners have the option of paying directly for upgrades or of being charged a Special Assessment over a period of 10 years to pay for the cost of upgrades completed by the City.
   b. The Owner indicates a willingness to grant permanent a Public Drainage or Drainage and Utility easement for the pond and an Access Easement for its maintenance access corridor.
   c. The assessment of pond condition and functionality provides a storm water quantity, storm water quality, or safety benefit.
   d. The pond receives storm water run-off from a public street.
   e. The pond storage capacity can accommodate a 10-year, 24-hour storm event for the area that drains to it.
   f. The location and parcel size are adequate to provide a pond upgrade to provide increased future benefit that represents a downstream cost avoidance for the City.
   g. The Owner agrees to a Maintenance Agreement that includes a hold harmless clause for site safety.
   h. Field verification confirms the condition and functionality of the pond as described in the documentation provided to the City by the Owner.

Private residential ponds evaluated by City staff for the criteria listed above will be rated as either Acceptable or Not Acceptable. The basis for rating each pond will be established by the City Engineer for review and approval by the City Council.

3. **Private Residential Ponds – No Change.** Private ponds serving only residential developments that do not meet current design standards and that cannot meet the maintenance eligibility criteria listed above will not be eligible for transfer to the City or for ongoing maintenance by the City. They will remain private with the Owner's obligation to provide ongoing maintenance. Additionally, residential customers with private ponds will NOT be eligible to receive Fee Credit when the Storm Water Utility is adopted.

The annualized average cost to maintain a pond is $2,000/year. For 28 private residential ponds, if they all meet the criteria for transfer and/or maintenance, this would translate to $56,000 per year or 2.3% of the annual storm water utility budget derived from SWU Fees.
Addressing the maintenance and transfer of private ponds serving residential customers can happen subsequent to the adoption of the Storm Water Utility Ordinance and the approval of the resolution that adopts the Fee Credit Manual. If the City Council agrees with the private residential pond policies and procedures described above, Public Works staff members will prepare a resolution to allow their adoption at the 10/20/03 City Council meeting.

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ATTACHMENT 1

For the purposes of this Agreement, the term maintenance for the storm water facilities and wetlands shall mean:

a) The operational performance of the ponds shall be consistent with the storm water quantity (volume) and quality (detention time) parameters established by the original pond design as approved by the City, and
b) The appearance of the pond shall be in compliance with applicable City Ordinances related to the control of weeds and grasses and the removal of debris and litter.
c) The recommended intervals for regular maintenance shall be:
   i) Semi-Annual mowing
   ii) Annual inspection of soil berms and structures
   iii) Repairs as necessary
   iv) Remove sediment from storm sewer inlets and outlets every 2-5 years
   v) Remove sediment from pond to maintain storage volumes every 5-10 years
   vi) Litter removal, noxious weed and brush removal, and rodent control on an ongoing basis
d) Each of the above items shall also be consistent with the requirements under the Wetland Conservation Act for the wetland corridors.