

WATER RESOURCE PERMIT APPLICATION FORM

Use this form to notify/apply to the Minnehaha Creek Watershed District (MCWD) of a proposed project or work which may fall within their jurisdiction. Fill out this form completely and submit with your site plan, maps, etc. to the MCWD at:
15320 Minnetonka Blvd. Minnetonka, MN 55345.

Keep a copy for your records.

YOU MUST OBTAIN ALL REQUIRED AUTHORIZATIONS BEFORE BEGINNING WORK.

1. Name of each property owner: Darin Ellingson, PE

Mailing Address: 14600 Minnetonka Boulevard City: Minnetonka State: MN Zip: 55345

Email Address: dellingson@eminnetonka.com Phone: 952-988-8414 Fax: _____

2. Property Owner Representative Information (not required) (licensed contractor, architect, engineer, etc...)

Business Name: _____ Representative Name: _____

Business Address: _____ City: _____ State: _____ Zip: _____

Email Address: _____ Phone: _____ Fax: _____

3. Project Address: 14600 Minnetonka Boulevard

City: Minnetonka

State: MN Zip: 55345 Qtr Section(s): NE,NW Section(s): 15,16 Township(s): 117 Range(s): 22

Lot: _____ Block: _____ Subdivision: _____ PID: 1611722410001

4. Size of project parcel (square feet or acres): 57.3 total acres over 6 parcels

Area of disturbance (square feet): 1.49 Volume of excavation/fill (cubic yards): 0.11 net cut

Area of existing impervious surface: 0.03 Area of proposed impervious surface: 0.59

Length of shoreline affected (feet): 0 Waterbody (& bay if applicable): _____

5. Type of permit being applied for (Check all that apply):

EROSION CONTROL

FLOODPLAIN ALTERATION

WETLAND PROTECTION

DREDGING

SHORELINE/STREAMBANK STABILIZATION

WATERBODY CROSSINGS/STRUCTURES

STORMWATER MANAGEMENT

APPROPRIATIONS

ILLICIT DISCHARGE

6. Project purpose (Check all that apply):

SINGLE FAMILY HOME

ROAD CONSTRUCTION

UTILITIES

DREDGING

SHORELINE/STREAMBANK STABILIZATION

MULTI FAMILY RESIDENTIAL (apartments)

COMMERCIAL or INSTITUTIONAL

SUBDIVISIONS (include number of lots)

LANDSCAPING (pools, berms, etc.)

OTHER (DESCRIBE): Boardwalk and trail construction

7. NPDES/SDS General Stormwater Permit Number (if applicable): Not yet received

8. Waterbody receiving runoff from site: Minnehaha Creek

9. Project Timeline: Start Date: 2/2017

Completion Date: 4/2018

Permits have been applied for: City County MN Pollution Control Agency DNR COE

Permits have been received: City County MN Pollution Control Agency DNR COE

By signing below, I hereby request a permit to authorize the activities described herein. I certify that I am familiar with MCWD Rules and that the proposed activity will be conducted in compliance with these Rules. I am familiar with the information contained in this application and, to the best of my knowledge and belief, all information is true, complete and accurate. I understand that proceeding with work before all required authorizations are obtained may be subject to federal, state and/or local administrative, civil and/or criminal penalties.

Darin Ellingson
Signature of Each Property Owner

12-9-16
Date



Hennepin County Natural Resources Map

Date: 2/6/2017

Legend



PID: 1611722410001
Address: 14500 MINNETONKA BLVD,
MINNETONKA
Owner Name: CITY OF MINNETONKA
Acres: 9.39








Comments:

1 inch = 400 feet

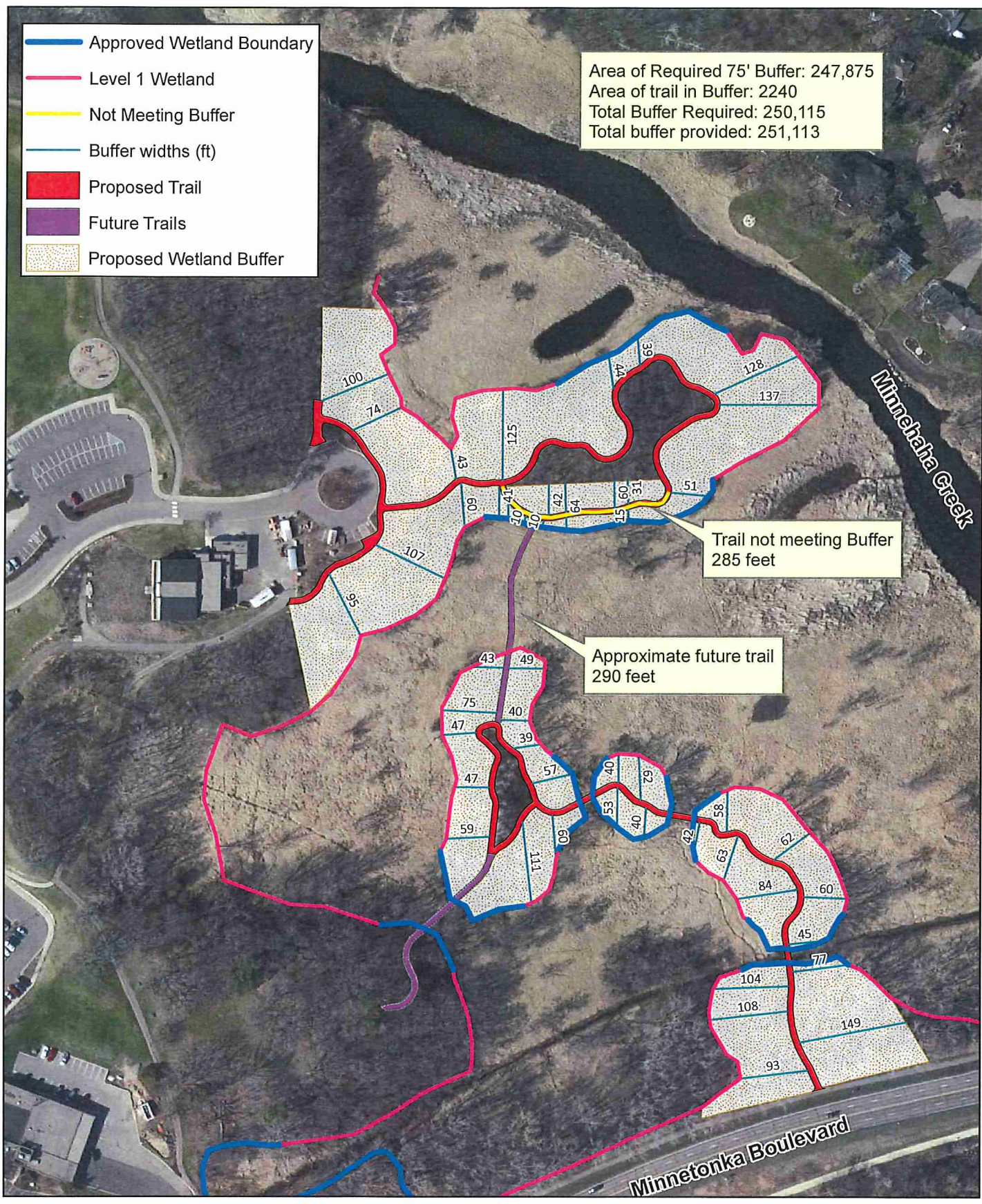


This data (i) is furnished 'AS IS' with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this data.

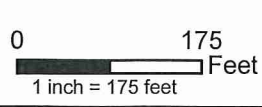
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-  Approved Wetland Boundary
-  Level 1 Wetland
-  Not Meeting Buffer
-  Buffer widths (ft)
-  Proposed Trail
-  Future Trails
-  Proposed Wetland Buffer

Area of Required 75' Buffer: 247,875
 Area of trail in Buffer: 2240
 Total Buffer Required: 250,115
 Total buffer provided: 251,113



Wetland Buffers
 Civic Center Park Trails
 City of Minnetonka



Minnesota Wetland Conservation Act

Notice of Application

Local Government Unit (LGU) City of Minnetonka	Address 11522 Minnetonka Blvd. Minnetonka, MN 55305
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1. PROJECT INFORMATION

Applicant Name	Project Name	Date of Application	Application Number
City of Minnetonka, Darin Ellingson Agent: WSB & Associates, Inc., Dustin Simonson	City of Minnetonka Civic Center Campus/north and east wetland area	October 21, 2016 Received via email October 21, 2016	City of Minnetonka Civic Center Campus/north and east wetland area - 2016

Type of Application (check all that apply):

<input checked="" type="checkbox"/> Wetland Boundary or Type	<input type="checkbox"/> No-Loss	<input type="checkbox"/> Exemption	<input type="checkbox"/> Sequencing
<input type="checkbox"/> Replacement Plan	<input type="checkbox"/> Banking Plan		

Summary and description of proposed project (attach additional sheets as necessary):

On October 21, 2016 the city of Minnetonka received a complete application for a Wetland Boundary and Type for a delineation at six locations on one wetland located at 14600 Minnetonka Blvd., Minnetonka, MN in the N ½ of the SW ¼ and the S ½ of the NW ¼ of Section 15 and the S ½ of the NE ¼ of Section 16, Township 117N, Range 22W, City of Minnetonka, Hennepin County, Minnesota.

According to the delineation report this wetland is DNR PWW 27-761w.

Please note that if other agencies want to field review the delineation the decision may result in an extension or a denial since the growing season may end prior to the agencies having an opportunity to do so. The City of Minnetonka is processing this application in case the city does not receive comments from other agencies.

2. APPLICATION REVIEW AND DECISION

Signing and mailing of this completed form to the appropriate recipients in accordance with 8420.0255, Subp. 3 provides notice that an application was made to the LGU under the Wetland Conservation Act as specified above. A copy of the application is attached. Comments can be submitted to:

Name and Title of LGU Contact Person Jo Colleran Natural Resources Manager	Comments must be received by (minimum 15 business-day comment period): December 2, 2016
Address (if different than LGU) Same as above	Date, time, and location of decision: Tentative December 5, 2016 10:00 am 11522 Minnetonka Blvd. Minnetonka, MN 55305
Phone Number and E-mail Address 952.988.8415 jcolleran@eminnetonka.com	Decision-maker for this application: <input checked="" type="checkbox"/> Staff <input type="checkbox"/> Governing Board or Council

Signature: _____

Date: 11/7/16

3. LIST OF ADDRESSEES

X SWCD TEP member:	Tony Brough, tony.brough@hennepin.us
X BWSR TEP member:	Ben Meyer, ben.meyer@state.mn.us
X LGU additional contact:	Aaron Schwartz, aschwartz@eminnetonka.com
X DNR TEP member:	Kate Drewry, kate.drewry@state.mn.us
X DNR Regional Office:	Rebecca Horton, becky.horton@state.mn.us
X WD:	Katherine Sylvia, ksylvia@minnehahacreek.org , Minnehaha Creek Watershed District
X Applicant:	City of Minnetonka, Darin Ellingson, dellingson@eminnetonka.com
	Agent: WSB & Associates, Inc., Dustin Simonson, dsimonson@wsbeng.com
Members of the public who requested notice: NONE	
X Corps of Engineers Project Manager:	Melissa Jenny, Melissa.M.Jenny@usace.army.mil
<input type="checkbox"/>	BWSR Wetland Bank Coordinator (wetland bank plan decisions only)

4. MAILING INFORMATION

- For a list of BWSR TEP representatives: www.bwsr.state.mn.us/contact/WCA_areas.pdf
- For a list of DNR TEP representatives: www.bwsr.state.mn.us/wetlands/wca/DNR_TEP_contacts.pdf
- Department of Natural Resources Regional Offices:

NW Region: Reg. Env. Assess. Ecol. Div. Ecol. Resources 2115 Birchmont Beach Rd. NE Bemidji, MN 56601	NE Region: Reg. Env. Assess. Ecol. Div. Ecol. Resources 1201 E. Hwy. 2 Grand Rapids, MN 55744	Central Region: Reg. Env. Assess. Ecol. Div. Ecol. Resources 1200 Warner Road St. Paul, MN 55106	Southern Region: Reg. Env. Assess. Ecol. Div. Ecol. Resources 261 Hwy. 15 South New Ulm, MN 56073
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For a map of DNR Administrative Regions, see: http://files.dnr.state.mn.us/aboutdnr/dnr_regions.pdf

- For a list of Corps of Project Managers: www.mvp.usace.army.mil/regulatory/default.asp?pageid=687
or send to:

US Army Corps of Engineers
St. Paul District, ATTN: OP-R
180 Fifth St. East, Suite 700
St. Paul, MN 55101-1678

- For Wetland Bank Plan applications, also send a copy of the application to:
Minnesota Board of Water and Soil Resources
Wetland Bank Coordinator
520 Lafayette Road North
St. Paul, MN 55155

5. ATTACHMENTS

In addition to the application, list any other attachments: X Delineation report dated October 10, 2016.



Memorandum

To: *Heidi Quinn, Minnehaha Creek Watershed District*

CC: *Joey Abramson, WSB & Associates, Inc.*
Steve Foss, WSB & associates, Inc.
Darin Ellingson, City of Minnetonka

From: *Dustin Simonson, WSB & associates, Inc.*

Date: *February 3, 2017*

Re: *Wetland Buffer Management*
Minnetonka Civic Center Boardwalks and Trail Project
WSB Project No. 01515-680

Please find enclosed the updated buffer figure and Variance request for the Minnetonka Civic Center Boardwalks and Trails project in the City of Minnetonka.

As a follow up to the ongoing buffer discussion, the City of Minnetonka (the City) and Minnehaha Creek Watershed District (MCWD) have an agreement with one another for the implementation and maintenance of wetland buffers associated with City projects. Along with this, the City has been actively resorting native ecosystems and has spent the past 15 years restoring the native habitat at the Civic Center Campus. Based on this agreement, the City will establish the buffer after construction activities have ended. The City will follow MCWD guidelines in restoring a native buffer. The soils will be de-compacted to a depth of 18 inches and organic matter will be incorporated into the soils before revegetation. Erosion control practices will remain in place until the buffer is established with vegetation from native seed mixes. The City will follow the agreement to maintain the buffer after it is established.

The City is asking for a Variance to the MCWD Buffer Rule as it has been deemed non-feasible to construct the trail network while maintaining the minimum buffer requirements.

Request for Variance And Statement of Hardship

The Board of Managers may hear requests for variances from the literal provisions of these rules in instances where their strict enforcement would cause undue hardship because of circumstances unique to the property under consideration. The Board of Managers may grant variances where it is demonstrated that such action will be keeping with the spirit and intent of these rules. An applicant granted a variance from full compliance with a requirement of the rules would be required to meet the requirement to the degree feasible short of full compliance.

In order to grant a variance, the Board of Managers shall determine that:

- the special conditions which apply to the structure or land in question do not apply generally to other land or structures in the District
- the granting of such variance will not merely serve as a convenience to the applicant,
- the variance will not impair or be contrary to the intent of these rules.

A hardship cannot be created by the landowner, the landowner's agent or representative, or a contractor, and must be unique to the property. Economic hardship are not grounds for issuing a variance.

A variance shall become void one year after it is granted if not used.

A violation of any condition set forth in a variance shall be a violation of the District rules and shall automatically terminate the variance.

Date 02/03/2017

Permit # 16-659

Applicant City of Minnetonka (Darin Ellingson)

Address 11522 Minnetonka Blvd. Minnetonka, MN 55305

Telephone number 952-988-8414

Property ID number 1511722230002

MCWD Rule (circle applicable rule(s)): **A B C D E F G J K M N**

Description of project:

This project entails construction of trails and boardwalks through Civic Center Park located west of Minnehaha Creek in the northwest quadrant of Minnetonka Boulevard and McGinty Rd. A map of the proposed improvements is shown on Figure 1, attached. This project is part of the Master Plan for the Civic Center Campus to create an encompassing trail network system for residents.

Requirements of rule(s)

Any activity for which a permit is required under the District Waterbody Crossings and Structure Rule requires that a buffer must be provided on that part of the wetland edge that is down gradient from the activity or construction and around each wetland that will be disturbed. The wetland onsite is a preserve wetland requiring a base buffer width of 75'. Buffer averaging allows a minimum buffer of 37.5' and a maximum buffer width of 150' as long as there is no loss in total buffer area.

Requested Variance

285 linear feet of trail do not meet the minimum required buffer width for this project. The trail comes within 10 feet of the wetland boundary. The City of Minnetonka requests a variance for these 285 feet of trail to be allowed within the minimum buffer area.

Statement of Hardship (include any mitigating circumstances).

The proposed project has existing site constraints that prevent the City from being in compliance with MCWD Buffer rules for this project along 285 linear feet of the trail. The project proposes to construct trails and boardwalk to connect upland islands surrounded by wetlands. The purpose of this is to encourage people to get active in the outdoor environment and to expose them to an up close look at nature. The City has selected the trail layout based on a limited amount of upland on the islands along with mature trees and steep topographic conditions preventing the trail from realigning further north to provide the necessary wetland buffer. The City has been able to design the trail to avoid wetland impacts through boardwalks and staying in the upland. Based on MCWD rules the project requires 250,115 square feet of buffer. The City has provided 251,113 square feet of buffer as part of this project through buffer averaging. The City has explored feasible alternatives to be compliant with the buffer rule. After reviewing these alternatives it has been determined that the City cannot build the trail and be in compliance with the rule. A variance is needed or the trail cannot be built.

How do you propose to meet the requirements of the applicable MCWD rules?

The rest of the project meets MCWD requirements.

Applicant name: Darin Ellingson Date: Feb 3, 2017

Applicant signature: 

Staff Recommendation (For staff use only) Approve

MAINTENANCE AGREEMENT
Waterbody Crossings and Wetland Buffers

Between the Minnehaha Creek Watershed District
and the City of Minnetonka

This Maintenance Agreement ("Agreement") is made by and between the Minnehaha Creek Watershed District, a watershed district with purposes and powers set forth at Minnesota Statutes Chapters 103B and 103D ("MCWD"), and the City of Minnetonka, an incorporated municipality and political subdivision of the State of Minnesota ("Minnetonka").

Recitals and Statement of Purpose

WHEREAS pursuant to Minnesota Statutes §103D.345, the MCWD has adopted and implements the Wetland Protection rule and the Waterbody Crossings & Structures rule;

WHEREAS under the Wetland Protection rule, certain land development activity triggers the landowner's requirement to record a declaration establishing the landowner's perpetual obligation to protected undisturbed buffer adjacent to wetland;

WHEREAS, under the Waterbody Crossings & Structures rule, certain land development activity requires a landowner to record a declaration establishing the landowner's perpetual obligation to inspect and maintain waterbody crossings and structures to ensure that the hydraulic and navigational capacity of the associated waterbody are maintained in accordance with approved plans;

WHEREAS in each case, a public landowner, as an alternative to a recorded instrument, may document its obligations in an unrecorded written agreement with the MCWD;

WHEREAS Minnetonka from time to time is subject to wetland buffer, and waterbody crossings and structures maintenance requirements pursuant to the terms of a MCWD permit;

WHEREAS the parties concur that it is clearer and procedurally more efficient for the MCWD and Minnetonka to agree at this time on the standard requirements for

wetland buffer protection and waterbody crossings and structures maintenance, so that this Agreement may be incorporated into future permits as applicable;

THEREFORE IT IS AGREED as follows:

1. Wetland buffers. The following buffer protection requirements will apply to Minnetonka, at its own cost, under any future permit that explicitly applies this Agreement to wetland buffer delineated or described in the permit:

a. The buffer will be maintained in perpetuity free from mowing or other vegetative disturbance; fertilizer application; yard or other waste disposal; the placement of structures; or any other alteration that impedes the function of the buffer in protecting water quality, shading the riparian edge, moderating flow into the wetland or providing habitat.

b. Selective removal of invasive species of plant material such as European buckthorn or periodic prescribed burning of native plantings is exempt from paragraph 1.a, above, provided the work is conducted as part of a written proposal or plan prepared by Minnetonka and approved by MCWD staff.

2. Waterbody Crossings & Structures. Waterbody crossings and structures in contact with the bed or bank of a waterbody will be inspected at least once a year and maintained in good repair at all times to ensure continuing adequate hydraulic and navigational capacity are retained in accordance with approved plans; to assure no net increase in the flood stage beyond that achieved by approved plans; to prevent adverse effects to water quality, changes to the existing flowline/gradient, and increased scour, erosion or sedimentation; and to minimize the potential for obstruction of the waterbody.

3. MCWD permits for specific projects may contain additional conditions for wetland buffer protection or waterbody crossings and structures in accordance with MCWD Rules as they may be amended from time to time.

5. If Minnetonka conveys into private ownership a fee interest in any property that has become subject to this Agreement, it shall require as a condition of sale, and enforce: (a) that the purchaser record a declaration on the property incorporating the buffer protection and stormwater management facility maintenance requirements of this Agreement; and (b) that recordation occur either before any encumbrance is recorded on the property or, if after, only as accompanied by a subordination and consent executed by the encumbrance holder ensuring that the declaration will run with the

land in perpetuity. If Minnetonka conveys into public ownership a fee interest in any property that has become subject to this Agreement, it shall require as a condition of the purchase and sale agreement that the purchaser accept an assignment of all obligations vested under this Agreement.

6. This Agreement may be amended only in a writing signed by the parties.

7. This Agreement is in force for five years from the date on which it has been fully executed and will renew automatically for five year terms unless terminated. Either party may terminate the Agreement on 30 days' written notice to the other. Any obligations vested in Minnetonka through incorporation into an issued permit before the effective date of termination will survive expiration.

8. The recitals are incorporated as a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

MINNEHAHA CREEK WATERSHED DISTRICT

By James B. Catkins Date: 8-15-13
President, Board of Managers

APPROVED AS TO FORM and EXECUTION
By [Signature] Date: _____
Its Attorney

CITY OF MINNETONKA

By: Isabel Brune Date: 8-28-2012
City Manager

APPROVED AS TO FORM and EXECUTION
By: [Signature] Date: 8-28-12
City Attorney

Permit Application No.: 16-659

Rules: Waterbody Crossings & Structures,
Wetland Protection, and Variance

Applicant: The City of Minnetonka

Project: Trails and Boardwalks at Minnetonka Civic Center

Location: 14600 Minnetonka Boulevard, Minnetonka

Received: 12-13-16

Complete: 12-22-16

Noticed: 12-23-16

& 1-13-17

Recommendation:

Approval of MCWD permit application.

Background:

The City of Minnetonka has applied for a Minnehaha Creek Watershed District (MCWD) permit for Wetland Protection, and Waterbody Crossings & Structures for proposed trails and boardwalks located within Civic Center Park adjacent to 14600 Minnetonka Boulevard in the City of Minnetonka (Attachment 2). The site ultimately drains to Minnehaha Creek.

The project proposes to install 2,586 linear feet of 8 foot wide trail and boardwalk through the upland islands surrounded by a large DNR public waters wetland (ID# 27-761w) complex. The District's Functional Assessment of Wetlands (FAW) has identified the DNR public water wetland complex onsite as a preserve wetland, requiring a 75 foot base buffer width. The proposed trails and boardwalks will result in an increase in impervious surface greater than 10,000 square feet on the 57.3 acre site. The increase in impervious cover is not subject to MCWD permitting requirements because the City of Minnetonka exercises sole regulatory authority for stormwater management, erosion and sediment control, and floodplain alteration.

The applicant has submitted all exhibits, plans, and materials necessary to analyze compliance with MCWD rules. This permit application is before the Board of Managers for determination because the applicant is seeking a variance from the minimum applied buffer width provision from section 6(c) of the Wetland Protection Rule. Under section 6(c), buffer width may vary based on site constraints, provided that a width that a width of at least 50% of the base buffer width is maintained at all points. Of the 2,586 linear feet of trail, 285 linear feet do not meet the 37.5 foot minimum buffer width, and is reduced to 10 feet at the narrowest segment.

During the public notice period there were several inquiries about the proposed project and one formal written request for the Board of Managers to consider approval of the permit application. On Monday January 30th, MCWD staff facilitated a meeting between concerned residents and two City of Minnetonka staff. Concluding the meeting, the written request was rescinded as there was an understanding that concerns were not within the purview of MCWD and should be addressed with the Minnetonka City Council.

District Rule Summary

Waterbody Crossings & Structures:

The District exercises regulatory authority for waterbody crossings & structures throughout the watershed. The Waterbody Crossings & Structures Rule is applicable to boardwalks that come into contact with the bed or bank of any waterbody. The project proposes a boardwalk to cross the wetland onsite at three locations and crosses an unnamed tributary which flows through the wetland to Minnehaha Creek.

For public waters (the wetland at issue here), section 3(a) of the rule requires that the applicant show that a proposed crossing provides a public benefit; for other waterbodies (the unnamed tributary here), the rule requires that the proposed crossing meets a demonstrated specific need. The project as a whole and crossings proposed provide a new trail system through the undeveloped natural area near Minnehaha Creek that benefits the public and meets a demonstrated specific need by providing recreational opportunities for those wishing to explore the natural area and implementing an element of the Master Plan for the Civic Center Campus that the City developed in 2003-2004.

Per section 3(c), the applicant must demonstrate that navigation capacity will be retained. The wetland and unnamed tributary are not navigable, therefore the criteria of the rule to maintain adequate navigational capacity is not

applicable to this application. The applicant has demonstrated that adequate aquatic and upland wildlife passage will be available per section 3(d)(1) by providing a one foot upland bank passage from the 100 year floodplain elevation to the lowest member of the boardwalk crossing (930.6'-931.7').

The applicant has shown that the proposed boardwalk sections will provide at least 3 feet of separation between the bottom of the boardwalk and the bed of the wetland/waterbody to provide clearance for bounce and vegetation. For the proposed boardwalk over an unnamed tributary to Minnehaha Creek, the applicant has provided hydraulic modeling to show that hydraulic capacity from the upstream crossing to Minnehaha Creek will be maintained. The provided analysis also shows that the upstream and downstream high water levels during a 100-year storm event will be unaffected by the proposed crossings and that there will be no adverse effect to water quality impacts to upstream or downstream waterbodies.

Per section 3(f) and 5(d) the applicant is required to analyze at least two design alternatives to ensure that the proposed plan minimizes or avoids impacts to natural resources. Two design alternatives were evaluated to ensure the project as proposed represents the minimal impact solution with respect to the project goal to provide a public benefit with trail access to natural resources with a connection to the existing sidewalk on Minnetonka Boulevard. One alternative is to not build the trails and boardwalks, this alternative will not meet the project goals. Secondly, alternative alignments were explored that would involve an increase of mature tree removal and require wetland impacts. This alternative was rejected as it does not align with the City's Master Restoration Plan for the Civic Center Campus.

The project as proposed meets the District's rules for Waterbody Crossings & Structures.

Wetland Protection & Variance:

The District exercises regulatory authority for wetland protection in the City of Minnetonka. This project does not propose draining or filling of the wetland; therefore no Wetland Conservation Act approvals are required. When work is subject to the District's Stormwater Management Rule and/or the Waterbody Crossings & Structure Rule, the vegetated buffer requirement under the District's Wetland Protection Rule applies and requires that a buffer be established around any disturbed wetland and along the wetland edge that is downgradient of land disturbance. The City of Minnetonka as the Local Unit of Government (LGU) for the Wetland Conservation Act (WCA) issued a Notice of Decision for Boundary & Type confirmation on December 16th, 2016 (Attachment 4). The District's FAQ has identified the DNR public water wetland complex onsite as a preserve wetland, requiring a 75 foot base buffer width.

Per section 6(c), buffer width may vary based on demonstrated site constraints, provided that a width of at least 50% of the applied buffer width is maintained at all points, there is no reductions in total buffer area, and the buffer provides wetland and habitat protection at least equivalent to a buffer of uniform applied buffer width. Buffer width averaging will exclude any part of the buffer that exceeds 200% of the applied buffer width. The area of any path or trail allowed within the buffer will be added to the total area required by the applied buffer width, except a trail or path no greater than 4 feet in width to provide riparian access will not increase the required buffer area.

The proposed project has approximately 285 linear feet of trail that is within the required minimum of 37.5 feet. The applicant has added the width of the trail to the applied buffer width and has provided an additional 998 square feet of buffer beyond the 251,115 square feet required, demonstrating that there is no loss in total required buffer area. The applicant is seeking a variance to maintaining the minimum required buffer of 37.5 feet at all points with the narrowest buffer at 10 feet. (Attachment 3).

Constructing the trail and boardwalk will disturb portions of the required buffer. A buffer re-establishment plan has been submitted (Attachment 5). MCWD and the City of Minnetonka have a valid maintenance agreement for Waterbody Crossings and Wetland Buffers that fulfills the buffer monumentation requirement, vegetation management requirement, wetland buffer monitoring requirement, and serves as a recordable instrument in the event that the land is sold into private ownership (Attachment 6).

The applicant has requested the variance from the minimum applied buffer width of a Preserve Wetland to 10-feet for approximately 285 linear feet. Under the District's variance rule, the applicant must demonstrate the following:

- a) Because of special conditions inherent to the property that do not apply generally to other land or structures in the District, strict compliance with the buffer width requirement will cause undue hardship to the applicant;
- b) The hardship was not created by the applicant, its owner or representative, or a contractor. Economic hardship is not grounds for issuing a variance;
- c) Granting the variance will not serve merely as a convenience to the applicant;
- d) There is no feasible and prudent alternative to the proposed activity; and
- e) Granting the variance will not impair or be contrary to the intent of the rules.

The applicant's variance narrative is attached (Attachment 5). The 290 linear feet of "future trail" is not planned with this phase of the permit application, but has been included to provide context for a future permit application. Staff concurs in the factual statements and technical justifications stated in the variance narrative as to the site constraint, lack of alternatives to meet the project goals, minimal impact design solution; tree preservation, proposed buffer to compensate for the buffer width shortfall in the indicated location, and proposed site conditions that will maintain the protective function of the remaining buffer. Accordingly, staff finds there is an adequate technical basis and justification to grant the requested variance.

Summary:

The City of Minnetonka is proposing trails and boardwalks adjacent to the Minnetonka Civic Center that will trigger the District's Waterbody Crossing & Structures and Wetland Protection rules. The project as proposed meets the applicable requirements under the Waterbody Crossings Structures Rule. Staff finds that there is an adequate justification to grant the requested variance to the Wetland Protection Rule.

Attachments:

1. Permit Application
2. Site Location
3. Wetland Buffer Plan
4. Boundary & Type Notice of Decision
5. Re-establishment Plan & Variance Request Form
6. Maintenance Agreement

Heidi Quinn

Date: 2/6/2017