

MEETING DATE: May 25, 2017

TITLE: Authorization to Execute a Land Acquisition Agreement with Three Rivers Park District, 3910 and 3940 Farmhill Circle, City of Minnetrista

RESOLUTION NUMBER: 17-038

PREPARED BY: Anna Brown

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REVIEWED BY: Administrator Counsel Program Mgr. (Name): Board Committee
 Engineer Other

WORKSHOP ACTION:

<input type="checkbox"/> Advance to Board mtg. Consent Agenda.	<input type="checkbox"/> Advance to Board meeting for discussion prior to action.
<input type="checkbox"/> Refer to a future workshop (date): _____	<input type="checkbox"/> Refer to taskforce or committee (date): _____
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input checked="" type="checkbox"/> Other (specify): Approval at May 25, 2017 Board Meeting	

PURPOSE or ACTION REQUESTED:

Execution of agreement with Three Rivers Park District providing for the acquisition of property on Six Mile Marsh

PROJECT/PROGRAM LOCATION:

3910 and 3940 Farmhill Circle, City of Minnetrista, Hennepin County

PROJECT TIMELINE:

Closing no sooner than January 31, 2018

PROJECT/PROGRAM COST:

The financing plan and final acquisition costs will be brought to the Board in advance of closing

PAST BOARD ACTIONS:

May 11, 2017: Closed session discussion of acquisition opportunity

Background:

In 2014, the Minnehaha Creek Watershed District adopted the Six Mile-Halsted Bay subwatershed as a priority focal geography due to its abundant natural resources, growth and development pressure, and connection to Halsted Bay. The Six Mile-Halsted Bay Subwatershed partnership has convened over the course of the last year to identify opportunities to address the complex natural resource issues while adding value to non-water public initiatives such as parks and open space and economic development. The Subwatershed Partnership has established the following to be principal water resources management strategies:

- Manage carp below aquatic resource damaging thresholds
- Restore wetland and landscape system for water quality and biodiversity benefit
- Apply alum treatment in shallow lake ecosystems to reduce phosphorus loading

Halsted Bay is impaired for nutrients and requires the largest phosphorus load reduction of any waterbody in the District. In 2013, the District completed a feasibility study to evaluate the drivers of phosphorus pollution in Halsted Bay and identify potential implementation activities. The feasibility study found that approximately half of the phosphorus load in Halsted comes from the upstream shallow lake system, Parley and Mud Lakes. These lakes export particulate bound phosphorus, which as it moves through Six Mile Marsh, is transformed into dissolved phosphorus, which is more challenging to remove. The study identified an opportunity to implement an alum treatment facility to remove dissolved phosphorus before it enters Halsted Bay. The facility could operate for 20-30 years concurrent with upstream shallow lake strategies to reduce upstream watershed loading.

Partnership Opportunity

In April of this year, Three Rivers Park District (TRPD) presented the District with an opportunity to partner on the acquisition of land on Six Mile Marsh located at 3910 and 3940 Farmhill Circle, which could potentially site the alum treatment system for Halsted Bay. TRPD has executed a purchase agreement for the property to facilitate a regional trail corridor master planned in 2015 to connect Carver and Baker Parks. TRPD is interested in working with the District to subdivide the parcel so that they retain a portion for regional trail and the District acquires a portion for the potential siting of an alum treatment facility.

The fee schedule for the property will be based on the final subdivision line. At present, the District is planning to hold title to approximately 1.25 upland acres and 3.9 wetland acres for an approximate value of \$415,000 to \$430,000. Financing will be through the District's land conservation program or the Hennepin County master loan agreement. Staff will return to the Board with the final acreage and financing proposal before closing.

TRPD will close with the current owners in mid-August. TRPD and the District will coordinate on final subdivision. Closing between TRPD and the District will occur no sooner than January 31, 2018.

RESOLUTION

RESOLUTION NUMBER: 17-038

TITLE: **Authorization to Execute a Land Acquisition Agreement With Three Rivers Park District, 3910 and 3940 Farmhill Circle, City of Minnetrista.**

WHEREAS, pursuant to Minnesota Statutes §103B.231, the Minnehaha Creek Watershed District (“District”) has adopted and implements a watershed management plan (WMP) that contains a Land Conservation Program to acquire fee and easement interests in key locations for the advancement of water resource goals, and to work with local units of government to implement conservation, water quality, recreation and other initiatives of public benefit on lands subject to the District’s acquired interests;

WHEREAS, the District Board of Managers (“Board”) has adopted a balanced urban ecology policy that recognizes the multi-sector value of integrating natural systems and land use planning;

WHEREAS, this approach incorporates geographic focus, facilitating a greater understanding of the threats and opportunities within a system and allowing the District to develop relationships with municipalities and other partners;

WHEREAS, on February 9, 2017, the Board of Managers approved the District’s strategic direction and alignment report, stating its principal organizational strategy of:

- Developing high impact capital projects integrated with non-water initiatives through multijurisdictional partnership;
- Changing the land-use water policy environment to increase early value added partnership with private development, public infrastructure, and public policy and planning;

WHEREAS, pursuant to Resolution 14-047 the Board has identified the Six Mile Creek subwatershed as a priority area for focusing District planning activities and coordination efforts with subwatershed partners;

WHEREAS, the District is engaged in a planning process for the Six Mile-Halsted Bay subwatershed that will identify implementation strategies to achieve the District’s goals of protecting and improving water quality, water quantity, ecological integrity, and thriving communities through land use and water integration;

WHEREAS, Halsted Bay of Lake Minnetonka has a Total Maximum Daily Load that requires a substantial decrease in both internal and external loadings of phosphorus and the WMP identifies Six Mile Creek as a significant source of external phosphorus loading to Halsted Bay, as outlined in the 2007 Comprehensive Plan and 2013 Six Mile Diagnostic study;

WHEREAS, in 2013 Wenck Associates completed a Halsted Bay Feasibility Study that assessed an off-line alum treatment facility near the outlet of Six Mile marsh, and determined that such a facility may be cost-effective and substantially reduce the external nutrient loading to Halsted Bay;

- WHEREAS, The Three Rivers Park District (TRPD) has executed a purchase agreement to acquire six contiguous tax parcels riparian to Six Mile marsh for the purpose of constructing a regional trail corridor;
- WHEREAS, The TRPD has offered to enter into an agreement with the District by which the TRPD would subdivide the acquired land and convey a portion to the District (the "Property"), at the same price per square foot of upland and wetland as it is paying, as a potential site for an alum treatment facility;
- WHEREAS, The District engineer has reviewed the Property and found it to be a favorable location to site an alum treatment facility;
- WHEREAS, the District and TRPD have developed a land acquisition agreement, setting forth the rights and obligations of the parties, which agreement the Board has reviewed and finds reasonable;
- WHEREAS, The District has retained an appraiser to advise the Board, on the basis of a review of the TRPD appraisal and its own knowledge of value in the subject area, as to the value of the Property and its value in the event of resale;
- WHEREAS, the District's Land Conservation Technical Advisory Team convened on December 13, 2016, and reviewed the potential land acquisition and project framework pursuant to the District's Land Conservation procedures;
- WHEREAS, On May 15, 2017, the Minnetrista City Council resolved unanimously to support the District's transaction with TRPD and the siting of an alum treatment facility on the property;
- WHEREAS, pursuant to Minnesota Statutes §103B.251 and due notice as specified therein, the District held a public hearing on May 25, 2017 to receive public comment, at which time all interested parties had an opportunity to address the Board on the question of the acquisition of the property as proposed by the TRPD;
- WHEREAS, the Board has considered that an alum treatment facility has not yet been programmed, and that it has not yet determined whether such a facility is technically and financially justified or should be constructed, but finds that because the facility potentially is an important one, there does not appear to be an equally suitable site, and the District can substantially recover the amount paid on resale if it does not proceed to build the facility, it is not imprudent to enter into an agreement to acquire the property at this time; and
- WHEREAS, the Board of Managers finds that the acquisition of the Property is conducive to public health and will promote the general welfare, and is in compliance with Minnesota Statutes §§103B.205 to 103B.255 and the WMP;
- NOW, THEREFORE, BE IT RESOLVED that pursuant to Minnesota Statutes §103B.251 and the WMP, the acquisition of the Property is ordered;
- BE IT FURTHER RESOLVED that the Board authorizes its President to execute the land acquisition agreement with any further non-substantive changes and on advice of counsel;
- BE IT FURTHER RESOLVED that the District Administrator is to provide for the District's performance of its rights and obligations under the land acquisition agreement, and is authorized to spend such

sums as in his judgment are appropriate for that purpose and to sign all documents, on advice of counsel, to effect the conveyance pursuant to the agreement; and

BE IT FINALLY RESOLVED that the District Administrator, however, is to evaluate options for the District to finance its acquisition and, prior to closing, report to the Board on same, and obtain from the Board a decision as to whether and how to finance the acquisition and the required delegation of authority to effect that decision.

Resolution Number 17-038 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____

**Minnehaha Creek Watershed District
and
Three Rivers Park District**

**Farmhill Circle
Land Acquisition Agreement**

This agreement (the "Agreement") is made and entered into by and between the Three Rivers Park District ("Park District"), and the Minnehaha Creek Watershed District ("Watershed District"), each a body corporate and politic and a political subdivision of the State of Minnesota (Park District and Watershed District each referred to as "Party"; collectively, "Parties").

WHEREAS, Park District is a political subdivision of the State of Minnesota authorized by statute to acquire, establish, operate, and maintain park facilities and regional trail systems;

WHEREAS, Park District envisions locating the Baker-Carver Regional Trail ("Regional Trail") from Carver Park Reserve in the City of Victoria to Baker Park Reserve in the City of Medina;

WHEREAS, the Regional Trail is envisioned to be scenic in nature and incorporate adjacent lands of natural resource and recreation value and to cross Six Mile Marsh near Farmhill Drive;

WHEREAS, Watershed District is a political subdivision of the State of Minnesota authorized to acquire land for purposes including water quality improvement and protection;

WHEREAS, Watershed District has identified an alum-injection facility as a potentially cost-effective method to improve the water quality of Halsted Bay on Lake Minnetonka, has identified the area adjacent to Six Mile Marsh and Farmhill Drive as a desirable location to locate such a facility, and has evaluated its ability to recover its acquisition cost if, after full review and legal process, it does not proceed to construct such a facility; and

WHEREAS, Park District and Watershed District desire to acquire a Farmhill Circle property ("Property") located between Farmhill Circle and Six Mile Marsh for securing land for the Regional Trail and alum-injection facility.

NOW THEREFORE, in consideration of the mutual covenants herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Watershed District and Park District agree as follows:

A. Acquisition by the Park District. Park District shall make every reasonable effort to secure fee title ownership of Property (legally described at "Exhibit A"). Park District shall be responsible for all associated work items including appraisals, negotiations, closing work, and similar. If the Park District is unable to secure fee title ownership of the Property due to purchase price, inability for seller to provide a clean title, environmental concerns, inability to obtain local municipal consent, inability to obtain partial funding from Metropolitan Council, or similar, this Agreement shall be null and void.

B. Watershed District Due Diligence. Within ten (10) business days after execution of this Agreement, or within three (3) business days of Park District receipt, if after the execution of this Agreement, the Park District will provide the Watershed District with the following documents related to the Park District's acquisition of the Property: (i) its title commitment, together with copies of all recorded documents evidencing the exceptions to

title that are described in Schedule B of the title commitment; and (ii) an ALTA survey. Within ten (10) business days after execution of this Agreement, the Park District also will provide the Watershed District with such other documents, reports, and information that the Park District has in its possession relative to the Property. The Parties will cooperate to endeavor to cure or address any objection the Watershed District may have. The Park District will assist the Watershed District to enter the Property for inspection, test or investigation. The Watershed District, at its cost, will repair or restore the Property with respect to any damage caused by Watershed District entry. At any time prior to June 15, 2017, or within 10 business days after receiving the documents referenced at B.(i) and (ii) above, whichever later, on the basis of any good faith objection, the Watershed District, by written notice to Park District, may elect not to proceed with its acquisition under this Agreement.

C. Subdivision of the Property. The Property shall be divided into two parcels as conceptually shown on Exhibit B, with the Watershed District ultimately owning the western portion and Park District retaining ownership of the eastern portion. The subdivision is subject to approval by the Park District Superintendent or his/her designee and the Watershed District Administrator, not to be unreasonably withheld. On mutual approval, the Park District, at its cost, shall be responsible to complete all work necessary to subdivide the Property. The parties will share equally the cost of any technical consultants that the Park District retains to complete the subdivision, with prior consultation as to the need for and scope of assistance.

D. Costs. Watershed District shall pay the Park District the actual cost of acquiring the Property that will be transferred to the Watershed District in accordance with the Square Foot Cost Schedule below as well as half of subdivision and survey costs and half of all closing costs customarily paid by buyer. The Park District will bear the cost of appraisals, title commitment and title insurance that it already has incurred. The Watershed District shall pay its appraisal, title commitment and title insurance costs for the acquisition of that portion of the Property set forth in Paragraph E below.

Square Foot Cost Schedule:

	Upland	Wetland
Unencumbered (No easements)	\$6.41 Sq FT	\$0.34 Sq FT
Encumbered (Utility Easement)	N/A	\$0.17 Sq FT

E. Property Transfer to the Watershed District. The Parties will cooperate to structure and schedule a closing on the transaction. Upon completion of Park District acquisition and subdivision, the Park District will transfer the western portion of the Property, as defined in accordance with Section C, above, to Watershed District via a limited warranty deed in conjunction with the Watershed District's payment of the purchase price, and its share of closing costs under the terms of this Agreement. At closing on the transaction, the Park District shall execute a standard Seller's Affidavit form. The Watershed District will pay the purchase price at closing, which the Park District agrees will not occur before January 31, 2018.

F. Future Coordination. Both parties agree to collaborate on the conceptual design, subdivision, and development of the Property including granting minor temporary construction easements that do not significantly alter or negatively affect the Property or natural resources, designing and locating future improvements to minimize impacts on each other, and evaluating opportunities to share potential public improvements such as parking that benefit both parties and the public.

Park District agrees to provide a utility easement between the Watershed District property and the City of Minnetrista utility provided each of the following conditions are met to the Park District's satisfaction:

1. The Watershed District compensates the Park District for the easement. Compensation will be based on the parties' reasonable assessment of the loss of value to the TRPD land in its intended linear recreational use;
2. The Watershed District designs and locates the easement to minimize any impact on Park District land, resources, and improvements;
3. The Watershed District requests and receives approval from the Metropolitan Council and Legislative Citizens Commission on Minnesota Resources which will hold deed restrictions on the Property; and
4. The Watershed District makes every reasonable effort to repair any damage or disturbance caused by its work within the easement area.

G. Assessments. Watershed District hereby agrees to not assess the Park District for any improvements made on its portion of the Property as allowed by Minn. Stat. ch. 429.

H. Indemnification. Each Party is responsible for its own acts and omissions and the results thereof to the extent authorized and limited by law. Minnesota Statutes Chapter 466 and other applicable law govern the Parties' liability. To the full extent permitted by law, for the purpose of liability pursuant to Minnesota Statutes §471.59, subdivision 1a, the acquisition and conveyance of the Property under this Agreement is intended to be and shall be construed as a "cooperative activity" and it is the intent of the Parties that they shall be deemed a "single governmental unit"; provided further that for purposes of that statute, each Party to this Agreement expressly declines responsibility for the acts or omissions of the other Party. In addition to the foregoing, nothing herein shall be construed to waive or limit any immunity from, defense to, or limitation on liability available to either Party, whether set forth in Minnesota Statutes, Chapter 466 or otherwise, with respect to each other or any third party.

I. Successor and Assigns. The Agreement shall be binding upon the Parties hereto and their respective successors and assigns, provided, however, that neither Watershed District nor Park District shall have the right to assign its rights, obligations and interests in or under this Agreement to any other Party without the prior written consent of the other Party. Notwithstanding the foregoing, if the Watershed District acquires a part of the Property pursuant to this Agreement, this Agreement will not bind or benefit any successor to the Watershed District's interest in that property.

J. Amendment, Modification or Waiver. No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing and signed by the Party or Parties to be bound, or its duly authorized representative. Any waiver by either Party shall be effective only with respect to the subject matter thereof and the particular occurrence described therein, and shall not affect the rights of either Party with respect to any similar or dissimilar occurrences in the future.

K. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and no right or remedy at law or in equity which either Party hereto might otherwise have by virtue of a default under this Agreement nor the exercise of any such right or remedy by either Party will impair such Party's standing to exercise any other right or remedy.

L. No Agency. Nothing contained herein and no action by either Party hereto will be deemed or construed by such Parties or by any third person to create the relationship of principal and agent or a partnership or a joint venture or any other association between or among the Parties hereto.

M. Termination. This Agreement may be terminated by Park District or Watershed District by mutual agreement or as otherwise provided in this Agreement. This Agreement shall be terminable by either Party upon a material breach by the other Party in accordance with Minnesota contract law.

The provisions of Section H survive termination with respect to claims that arise from actions or occurrences that occurred prior to termination.

N. Governing Laws. This Agreement will be construed in accordance with the laws of the State of Minnesota.

O. Time is of the Essence. Time is of the essence under this Agreement.

P. Notices. Any notice given under this Agreement shall be deemed given on the first business day following the date the same is deposited in the United States Mail (registered or certified) postage prepaid, addressed as follows:

If to the Park District:

Superintendent
Three Rivers Park District
c/c Legal Counsel
3000 Xenium Lane North
Plymouth, MN 55441

If to Watershed District:

District Administrator
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka, MN 55345

With Copy to:

Smith Partners P.L.L.P.
Suite 1200
400 Second Avenue South
Minneapolis, MN 55401
Re: MCWD

IN WITNESS WHEREOF, Park District and Watershed District have entered into this Agreement as of the date of full execution by the Parties below.

Three Rivers Park District, a public corporation and political subdivision of the State of Minnesota

Dated: _____

By: _____
Its Chair – Board of Commissioners

Dated: _____

By: _____
Its Superintendent
And Secretary to the Board

Approved for Form & Execution

MCWD Counsel

Minnehaha Creek Watershed District, a Minnesota municipal corporation

Dated: _____

By: _____
Its President

EXHIBIT A

Legal Description of Subject Property

Lots 2 and 3, Block 2, That Part Of Outlot L Lying In Sec 27 T 117 R 24, That Part Of Outlot L Lying In Sec 28 T 117 R 24, That Part Of Outlot M Lying In Sec 27 T 117 R 24, That Part Of Outlot M Lying In Sec 28 T 117 R 24, Farmhill 2nd Addition, Hennepin County,

MN PIDs:

28-117-24-44-0008

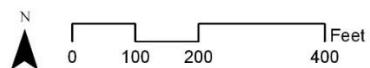
28-117-24-44-0009

28-117-24-44-0016

28-117-24-44-0017

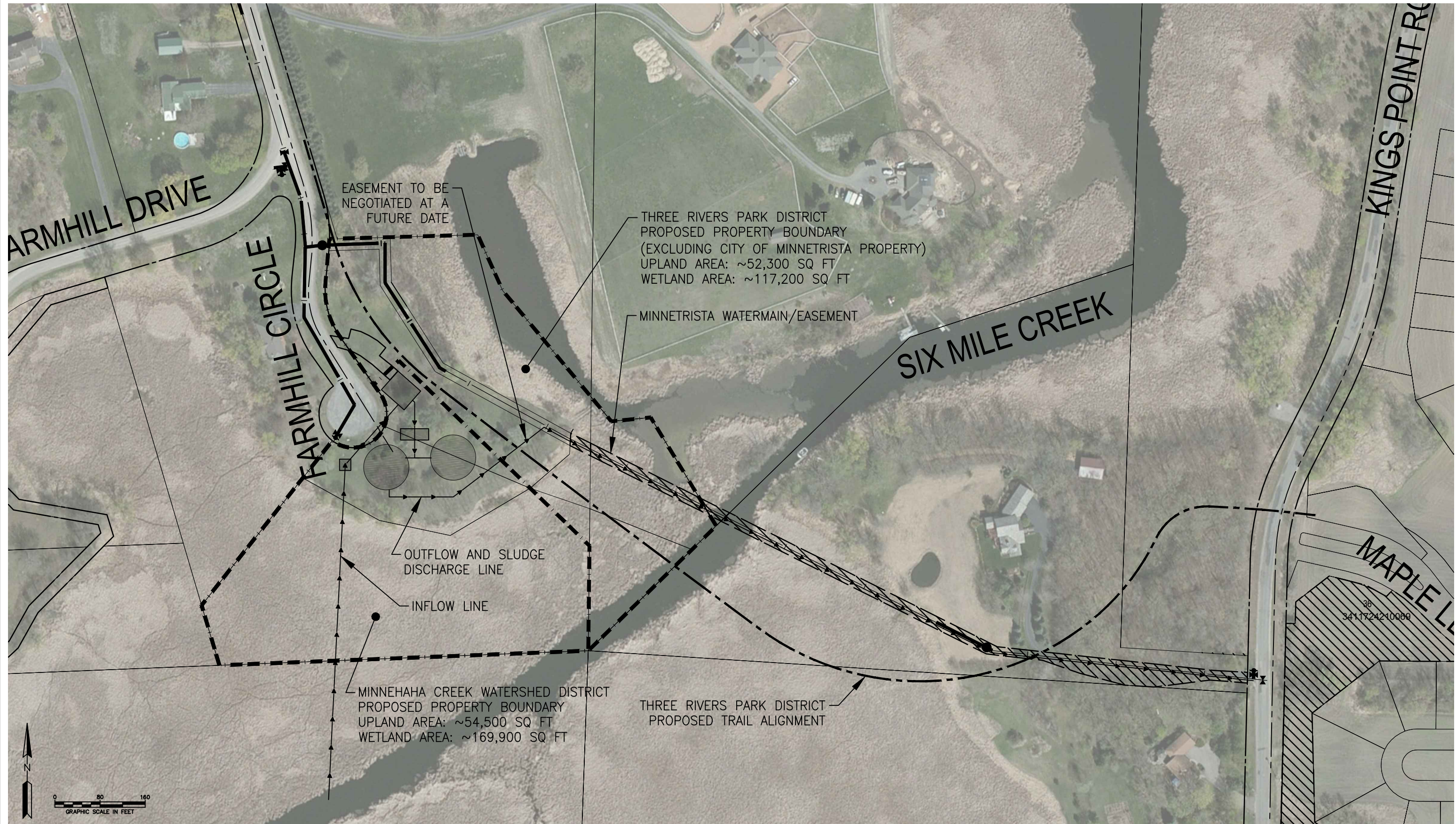
28-117-24-33-0007

28-117-24-33-0008



Kucher Property





REV	REVISION DESCRIPTION	DWN	APP	REV DATE
0	DRAFT	SJB	CJM	05/18/17

SEAL

SUB CONSULTANT

PRIME CONSULTANT



Responsive partner. Exceptional outcomes.

7500 OLSEN MEMORIAL HIGHWAY 763-252-6800
GOLDEN VALLEY MN 55427 952-831-1268

PROJECT TITLE
SIX MILE CREEK ALUM TREATMENT FACILITY

MINNEHAHA CREEK WATERSHED DISTRICT

SHEET TITLE			
EXHIBIT B			
DWN BY	CHK'D	APP'D	DWG DATE
SJB	CJM	CJM	5/18/17
PROJECT NO.		SCALE	
0185-0062		AS SHOWN	
SHEET NO.		REV NO.	
C-101		0	