

MEETING DATE: August 27, 2015

TITLE: Authorization to execute a cooperative agreement with Three Rivers Park District and the City of Minnetrista for construction cooperation on ravine stabilization within Minnetonka Regional Park.

RESOLUTION NUMBER: 15-074

PREPARED BY: Renae Clark

E-MAIL: rclark@minnehahacreek.org

TELEPHONE: 952-641-4510

REVIEWED BY: Administrator Counsel Program Mgr. James Wisker
 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: FINAL ACTION August 27, 2015	

PURPOSE or ACTION REQUESTED:

Authorization to execute a cooperative agreement with Three Rivers Park District and the City of Minnetrista for cooperation on ravine stabilization projects within Minnetonka Regional Park.

PROJECT/PROGRAM LOCATION:

See attached location maps.

PROJECT TIMELINE:

Final Design Summer 2015
Construction Fall 2015

PROJECT/PROGRAM COST:

Fund name and number: N/A
Current budget: N/A
Expenditures to date: N/A
Requested amount of funding: N/A
Is a budget amendment requested? N/A
Is additional staff requested? N/A

PAST BOARD ACTION:

September 25, 2014, Resolution 14-079: Board authorization to execute a cooperative agreement between Three Rivers Park District, the City of Minnetrista and the Minnehaha Creek Watershed District to partner on the design of a ravine stabilization solution within Minnetonka Regional Park and adjacent private property

SUMMARY:

Several ravines exist, primarily on Three Rivers Park District (TRPD) property, in 292 acre Minnetonka Regional Park, with portions extending onto adjacent private property. Excessive erosion within these ravines contributes sediment and nutrient loads to Halsted Bay and Stone Lake, and has undermined City of Minnetrista sanitary infrastructure crossing TRPD property, resulting in septic seepage and exacerbating the risk of complete failure.

Both Stone Lake and Halsted Bay were listed on the Minnesota Pollution Control Agency's 2012 Impaired Waters List for excessive nutrients. The Upper Watershed Total Maximum Daily Load Study, including these lakes, was approved by the Environmental Protection Agency in June 2014.

In 2014 Three Rivers Park District, the City of Minnetrista and the Minnehaha Creek Watershed District outlined plans to advance a design to stabilize the ravines in question. All parties saw advantage in collaborating to jointly advance a design solution, and therefore executed a cooperative agreement to memorialize the proposed level of interagency coordination.

The cooperative agreement effectively memorialized the intention of the parties to collaborate in the design of ravine stabilization. While TRPD agreed to fully fund the design of this project, the City of Minnetrista and the MCWD provided technical expertise and a proactive regulatory review, to ensure the design is advanced as efficiently as possible while meeting regulations and project goals of protecting sanitary infrastructure, reducing sediment and nutrient loads, improving riparian habitat, and demonstrating innovative stabilization and restoration techniques.

The proposed Cooperative Agreement memorializes the roles of the parties and the identification of funding for the construction and long term maintenance of the project. Per the proposed agreement TRPD and the City of Minnetrista will share the funding of construction and share in the long term maintenance of the project according to a management plan which will be cooperatively prepared and adopted by the TRPD, City and MCWD.

RECOMMENDATION:

The proposed agreement is a continuation of the established partnership with the Three Rivers Park District and City of Minnetrista. It is an opportunity to partner, through the District's permitting program, to provide technical expertise for the construction and long term maintenance plan of a ravine stabilization within Minnetonka Regional Park. Given the Park District's and City's commitment to fully fund the construction and long term maintenance, and building on the *Balanced Urban Ecology* principles of partnership and interagency coordination of natural resource management with infrastructure investment, staff is recommending the Board authorize execution of the cooperative agreement between Three Rivers Park District, the City of Minnetrista and the Minnehaha Creek Watershed District.

ATTACHMENTS:

- Attachment 1 – Project location maps
- Attachment 2 – Draft cooperative agreement

RESOLUTION

**DRAFT for discussion purposes only and subject to Board approval and the availability of funds.
Resolutions are not final until approved by the Board and signed by the Board Secretary.**

RESOLUTION NUMBER: 15-074

TITLE: Authorization to execute a cooperative agreement with Three Rivers Park District and the City of Minnetrista for construction cooperation on ravine stabilization within Minnetonka Regional Park.

WHEREAS, several ravines exist primarily within Minnetonka Regional Park, owned and operated by Three Rivers Park District, that have jeopardized sanitary sewer infrastructure and contribute sediment and nutrient loads to Halsted Bay and Stone Lake; and

WHEREAS, Stone Lake and Halsted Bay are listed as impaired and subject to the approved June 2014 Total Maximum Daily Load (TMDL);

WHEREAS, the sanitary sewer infrastructure threatened by erosion is owned by the City of Minnetrista; and

WHEREAS, portions of the eroded ravine extend onto adjacent private property;

WHEREAS, Three Rivers Park District has proposed to fully fund the design and construction of a stabilization solution for these ravines;

WHEREAS, the parties executed a cooperative agreement that memorialized their intent to integrate a proactive regulatory review and coordinate with private parties on a solution that protects sanitary infrastructure, reduces sediment and nutrient loads, improves riparian habitat, and demonstrates innovative stabilization and restoration techniques;

WHEREAS, the parties wish to continue their collaboration for the construction phase of the project and have drafted a cooperative agreement that memorializes their intent proactively to coordinate regulatory review and provide technical assistance for the development of construction documents;

WHEREAS, the TRPD and the City of Minnetrista will assume the cost of ravine stabilization construction and maintenance;

WHEREAS, under the cooperative agreement the District commits to a proactive and cooperative approach to permit review for the ravine stabilization work and technical review of the construction documents while preserving the District's role to ensure that the proposed design meets the standards of the District's rules and its judgment in applying those standards;

WHEREAS the cooperative agreement provides that the District will apply for Clean Water Legacy grant funds to offset the cost of the work, however the TRPD and City of Minnetrista have determined to proceed with the work on a schedule that precludes the use of grant funds and therefore there is mutual understanding that the District will not seek such funds;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the MCWD Board President to execute a cooperative agreement among Three Rivers Park District, the City of Minnetrista and the Minnehaha Creek Watershed District to continue the partnership for the construction of a ravine stabilization solution within Minnetonka Regional Park and adjacent private property.

Resolution Number 15-074 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

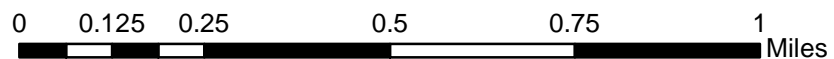
Secretary Date: _____

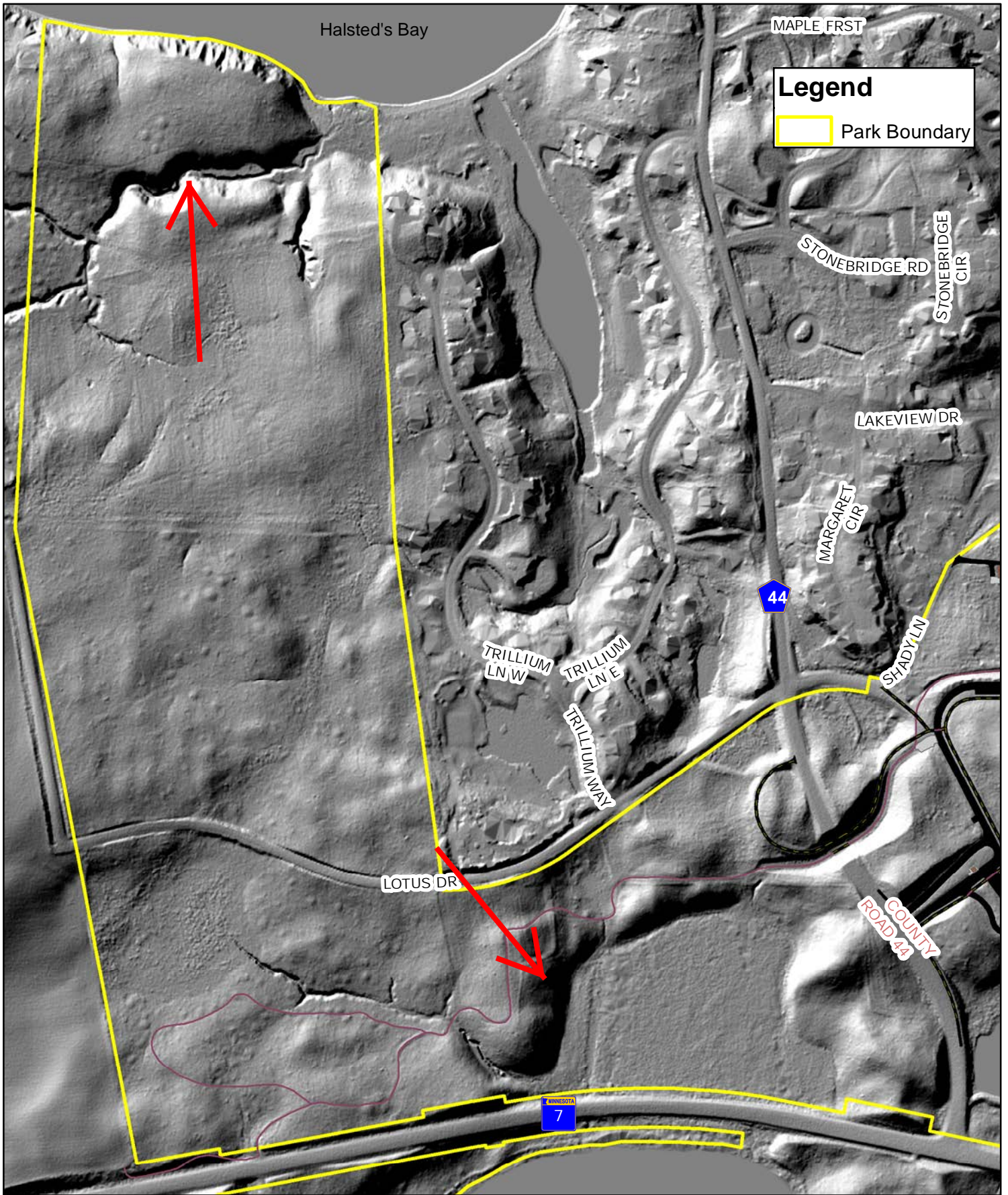
Proposed Project Location Map



Legend

- | | |
|---------------------|--------|
| — Con_5_ft | Type 3 |
| FAW_wetlands | Type 4 |
| DOM_TYPE | Type 5 |
| Type 1 | Type 6 |
| Type 2 | Type 7 |
| | Type 8 |





Legend
 Park Boundary

0 250 500 1,000 Feet

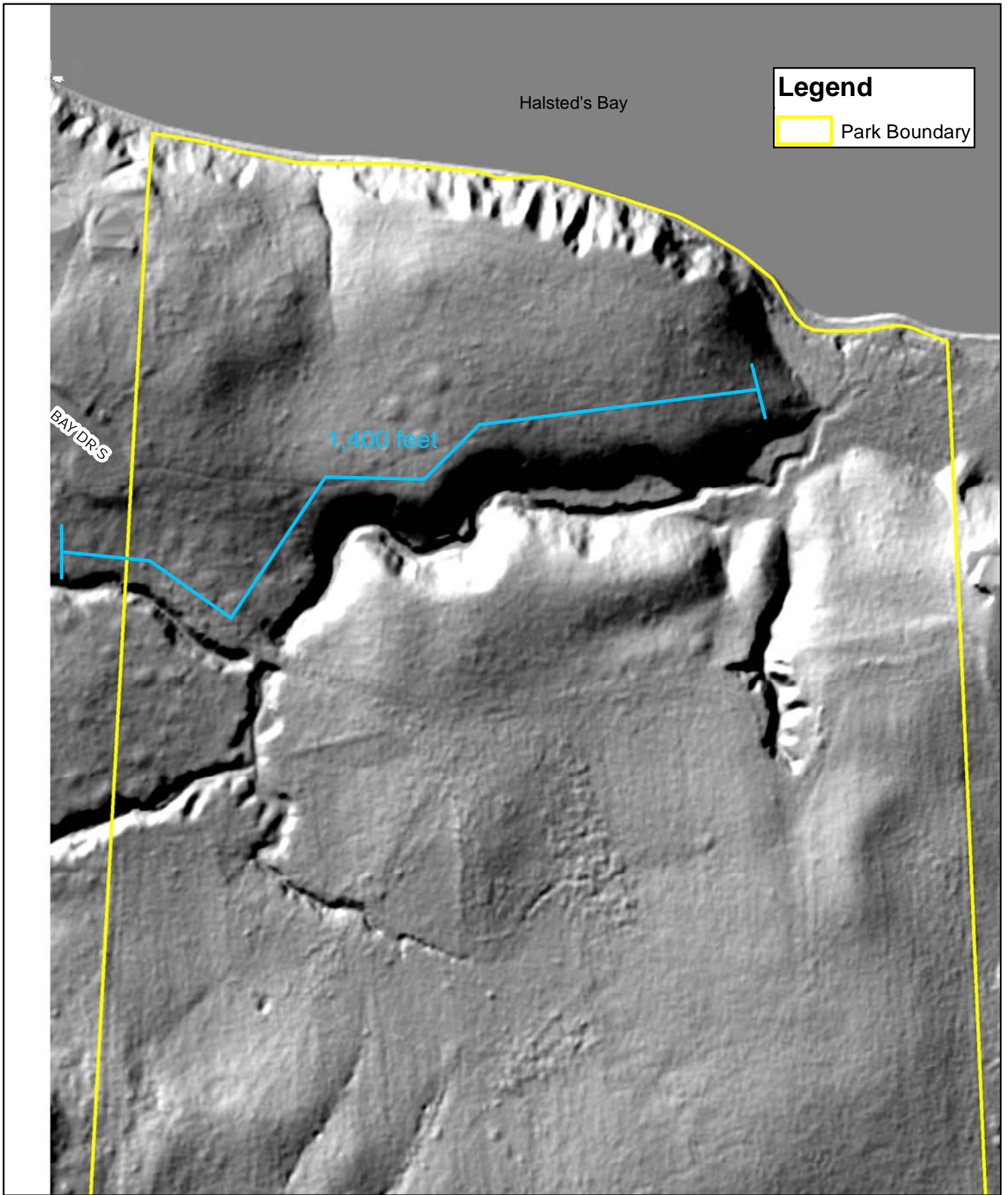
This map is a compilation of data from various sources and is provided "as is" without warranty of any representation of accuracy, timeliness, or completeness. The user acknowledges and accepts the limitations of the Data, including the fact that the Data is dynamic and in a constant state of maintenance, correction, and update.



Department of: NRM
 Created by: DPC
 Map Created: 9/19/2014

Lake Minnetonka Regional Park Digital Elevation Model





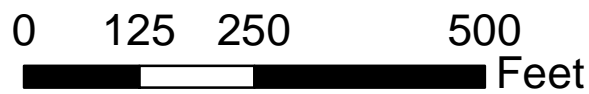
Halsted's Bay

Legend

Park Boundary

BAYDRS

1,400 feet



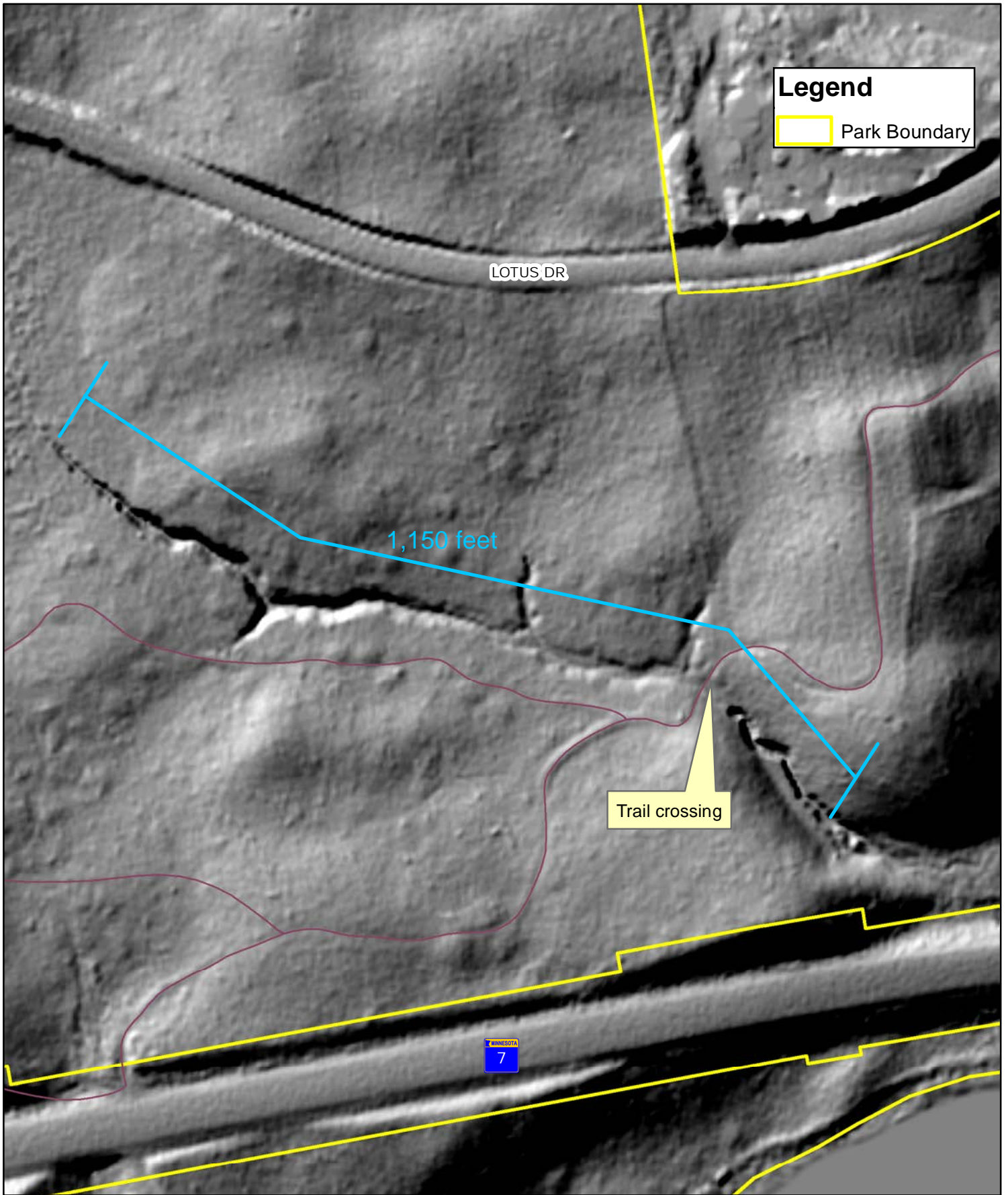
Department of: NRM
 Created by: DPC
 Map Created: 9/19/2014

Lake Minnetonka Regional Park

Northern Stream Channel

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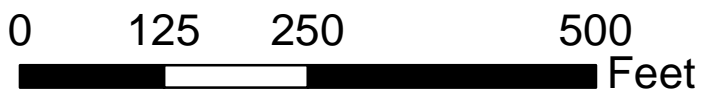


Legend
 Park Boundary

LOTUS DR

1,150 feet

Trail crossing



Department of: NRM
 Created by: DPC
 Map Created: 9/19/2014

Lake Minnetonka Regional Park
Southern Stream Channel

This map is a compilation of data from various sources and is provided "as is" without warranty of any representation of accuracy, timeliness, or completeness. The user acknowledges and accepts the limitations of the Data, including the fact that the Data is dynamic and in a constant state of maintenance, correction, and update.



COOPERATIVE AGREEMENT

Minnehaha Creek Watershed District, Three Rivers Park District, and the City of Minnetrista

Lake Minnetonka Regional Park Ravine Stabilization

The parties to this Agreement are the Minnehaha Creek Watershed District (MCWD), a political subdivision of the State of Minnesota with powers as provided at Minnesota Statutes chapters 103B and 103D, the Three Rivers Park District (TRPD), a body corporate and a political subdivision of the State of Minnesota with powers pursuant to Minnesota Statutes chapter 398 (TRPD), and the City of Minnetrista, ("City") a municipal corporation under the laws on Minnesota (together, "Parties"). The purpose of this Agreement is to provide for the implementation and maintenance of structural, bioengineering and vegetative improvements to stabilize eroding drainage channels in Lake Minnetonka Regional Park and adjacent private property within the City of Minnetrista ("Project").

Recitals

1. Lake Minnetonka Regional Park is a substantially undeveloped 292-acre park adjacent to Lake Minnetonka with a diversity of significant natural resource features.
2. The TRPD owns and manages the park, which contains several channels that convey runoff from adjacent agricultural and developed areas to Lake Minnetonka and Stone Lake.
3. These channels have eroded significantly over the past 10 years, resulting in a significant sediment load to Lake Minnetonka and Stone Lake. The erosion also has undermined a City sanitary sewer pipe crossing the TRPD property, resulting in leakage of septic discharge toward Lake Minnetonka.
4. The TRPD, the City and the MCWD wish to collaborate in the TRPD's construction of the Project in order to stabilize these channels to convey existing and future storm water flow, reduce sediment discharge into Lake Minnetonka, protect City of Minnetrista sanitary sewer infrastructure, improve riparian habitat, and demonstrate innovative channel stabilization and restoration techniques.
5. The City and the MCWD each have regulatory authority over the Project. The Parties wish to collaborate in the construction and maintenance process so that the completed project will achieve the goals of each agency regarding protection of lake water quality, protection of sanitary sewer infrastructure and improving riparian habitat.

Terms

THEREFORE the Parties commit to the following, intending to be legally bound:

1. Design
The TRPD has retained a consultant to design the Project and will provide the design plans to the City and MCWD for formal review and approval of required permits.
2. Construction
 - (a) The TRPD will procure a contractor to construct the Project and will serve as Project Owner for the purpose of administering the contract. The TRPD will obtain all

approvals and permits for the work and will provide for the work to conform to local, state and federal requirements. The TRPD will have the authority to make all decisions necessary in administering the contract and may adjust the work during construction based on field conditions or other design considerations as in its judgment will better achieve the Project purposes. The TRPD will assume all costs for project administration as further described in this section.

- (b) The City and MCWD will cooperate in the TRPD's preparation of contract documents and construction by timely facilitating approvals and resolution of questions regarding construction access and limits, work scheduling and conditions, and other matters within its authority. The MCWD will cooperate in the TRPD's obtaining any permits for the Project and will waive fees and costs related to any permit or approval it requires. The TRPD will give the MCWD and City reasonable notice of pre-construction and construction meetings concerning the Project. The TRPD, MCWD and City and its authorized representatives may attend these meetings, inspect the Project, and review all related documentation except as limited by law. The MCWD and City may not exercise control over Project construction or direct the contractor.
- (c) The TRPD's construction contract will state that the contractor must maintain general liability insurance in an amount of at least \$1.5 million that names the City as an additional insured with primary, non-contributory coverage.
- (d) The construction contract will include a two-year vegetation establishment period ("Establishment Period") and a contractor warranty for that period.

3. Funding

The TRPD will be responsible for payments to its designer and contractor in Project design and construction for the South Channel. The TRPD will bear 76% of the cost of the North Channel, and the City will bear 24% of the cost of the North Channel construction. The construction cost of the North Channel is estimated at \$100,000, not including price adjustments to which the designer or contractor may be entitled as the result of work directives, change orders or claims. The TRPD may invoice the City for reimbursement no more frequently than monthly and the City will pay invoices promptly. The TRPD will not sign a work directive or change order increasing the contract price by more than 10 percent or invoice the City for more than 24% of the North Channel construction costs, estimated at \$24,000, without prior City approval, except to the extent necessitated by circumstances not within the TRPD's control. Otherwise, each party will bear its own costs of performing its obligations under this Agreement.

The MCWD will submit grant applications to the Clean Water Legacy fund to off-set the cost of the project to the TRPD and City. The MCWD will provide these funds to the TRPD and City through a separate cost-share agreement in the event grants are awarded to the Watershed District.

4. Maintenance

- (a) Before the end of the Vegetative Establishment Period, the TRPD, the City and the MCWD will prepare and adopt a management plan. Beginning at the end of the Vegetative Establishment Period and for the duration of this Agreement, the TRPD and the City will maintain the Project in accordance with the management plan. The management plan will be modified to address any changed circumstance.
- (b) During the Vegetative Establishment Period, the TRPD and the City may revise or reconstruct any component of the Project to improve its function and effectiveness

for the purposes of the Project, with contract costs for such work included as construction costs for the purpose of section 3, above. At the end of the Vegetative Establishment Period, if the Parties agree that a component of the Project has not been established by the contractor in a manner that will achieve the stated purposes of the Project, maintenance obligations will not vest in the TRPD for that component until such time as the component is established by the contractor.

(c) If the Project or a part thereof fails due to a storm event at any time while this Agreement is in effect, neither party will be obligated to reconstruct, replace or remove the Project or any component thereof, or restore the Property. The Parties will cooperate to determine appropriate action.

(d) The City shall be responsible for negotiations with the owner of the adjacent Hugh property for the benefit of the project.

5. Property Management

The TRPD retains all authority and responsibility as owner and manager of the Park District Property, including but not limited to responsibility for public use and safety; maintenance of property and liability insurance as it deems appropriate; and routine maintenance such as trash removal and repair of fences, lights, and other appurtenances, if any, throughout the term of this Agreement. Notwithstanding, the maintenance plan will prescribe means of controlling disturbance to the Project as the result of TRPD activity or public use of the Property.

4. Independent Relationship

No employee, representative, contractor or consultant of a party to this Agreement acts in any respect as the agent or representative of another party. No party agrees to be responsible for the acts or omissions of another within the meaning of Minnesota Statutes §471.59, subdivision 1a.

5. Effective Date and Termination

(a) This Agreement is effective on the date that it is fully executed by the Parties and will remain in force for three years thereafter unless earlier terminated by mutual agreement of the Parties.

(b) A party may terminate this Agreement on 30 days' written notice to the other parties if it determines that a party is not fulfilling its obligations under this Agreement. Before exercising its right of termination, it will inform and seek to convene the Parties in good faith to address its concerns.

6. Compliance with Laws

Each party will comply with the laws and requirements of all federal, state, local and other governmental units in performing its responsibilities under this Agreement.

7. Party Representatives

The following representatives will be points of contact for any informal or formal matters under this Agreement. A party may change its representative or its representative's contact information by notifying the other parties in writing:

THREE RIVERS PARK DISTRICT

Tom McDowell, Associate Superintendent
Three Rivers Park District
3000 Xenium Lane

Plymouth, MN 55441

Email address: tmcdowell@threeriversparkdistrict.org

CITY:

Mike Barone, Interim City Administrator
City of Minnetrista
7701 County Road 110W
Minnetrista, MN 55364

Email address: mbarone@ci.minnetrista.mn.us

MCWD:

James Wisker
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka MN 55345

Email address: JWisker@minnehahacreek.org

8. Good Faith

In exercising its rights and fulfilling its responsibilities under this Agreement, and wherever this Agreement provides for an exercise of discretion, each party will do so in good faith and consistent with shared goals and interests in the Project.

9. Recitals

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

IN WITNESS WHEREOF, the Parties hereto execute and deliver this Agreement.

THREE RIVERS PARK DISTRICT:

By: Boe R. Carlson
Boe R. Carlson,
Superintendent and Secretary to the Board

Date: 07/16/15

MINNEHAHA CREEK WATERSHED DISTRICT:

By: _____
President, Board of Managers

Date: _____

APPROVED AS TO FORM and EXECUTION:

By: _____
Its Attorney

Date: _____

CITY of MINNETRISTA

By: _____
Its _____

Date: _____

