

**MEETING DATE:** October 22, 2015

**TITLE:** Authorization to Execute a Memorandum of Understanding with James R. and Jane Ann Hesse and Pentom Land Company

**RESOLUTION NUMBER:** 15-090

**PREPARED BY:** Anna Brown

**E-MAIL:** abrown@minnehahacreek.org

**TELEPHONE:** 952-641-4522

**REVIEWED BY:**  Administrator  Counsel  Program Mgr. (Name): 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 (specify): <b>FINAL ACTION on October 22, 2015</b>	

**PURPOSE or ACTION REQUESTED:**

Authorize execution of a Memorandum of Understanding with James R. and Jane Ann Hesse and Pentom Land Company to explore the potential for wetland restoration and preservation on a property owned by the Hesse's and provide for enhanced ecological corridors. This MOU provides an opportunity to coordinate public and private goals while meeting the interests of the property owners to maintain current land use practices, including present day agricultural use, and conceptually plan for future development scenarios.

**PROJECT TIMELINE:**

- Oct/Nov 2015: Wetland delineation by the District with permission from the Hesse's
- 2015/2016: Planning and coordination with Pentom on site land use plan and regulatory applications
- March/April 2016: Wetland restoration begins by Lennar with District oversight
- 2017: District wetland monitoring begins

**PAST BOARD ACTIONS:**

- August 27, 2015 Approval of permit 15-266 for Laketown 9<sup>th</sup> Development in Victoria and Authorization, through motion, to work with Lennar Corporation to develop a partnership for wetland restoration to meet replacement plan requirements for the development

## **SUMMARY:**

The District Board of Managers has recognized that management and improvement of water resources is most effective when the District focuses and coordinates its programs and capital investments on specific high-need areas. This approach gives the District the best opportunity to form and develop relationships with local partners that are essential to support the District's work and affords opportunities to integrate water resources into broader community goals to build sustainable, vibrant communities. Through partnership and coordination in the development process, the District can achieve greater outcomes than through regulation alone.

Lennar Corporation has begun construction on a 99 unit development east of Wassermann Lake in the City of Victoria. Lennar's development will impact .98 acre of wetland north of the Hesse property. As part of the Wetland Conservation Act (WCA) permitting process, wetland mitigation was proposed using off-site wetland banking credits outside the District. Wetland banking would result in a net loss of wetland acreage due to a lack of credits within the District. Through early coordination with the City of Victoria and Lennar, the District was able to identify an opportunity to meet WCA Wetland Replacement Plan requirements through project specific mitigation by restoring the adjacent public water wetland on the Hesse property, a project previously contemplated as a District capital project. Execution of the wetland restoration is contingent upon the District gaining an easement over the wetland and regulatory buffers on the Hesse property.

On August 27<sup>th</sup>, 2015, Beth Brown presented Lennar's permit application to the Board of Managers, and Anna Brown presented the mitigation proposal. The Board approved wetland sequencing, as well as District Erosion Control, and conditionally approved Floodplain Alteration, Waterbody Crossing & Structures, and Stormwater Management, pending the completion of a Wetland Conservation Act Replacement plan for either banking or project-specific replacement. The Board was encouraged by both the partnership with the private sector, including Lennar's willingness to work with the District, and the support from other regulatory agencies, expressed in letters of support from the US Army Corps of Engineers, the Board of Soil and Water Resources, the MN Department of Natural Resources, and the Carver County Soil and Water Conservation District.

For some time, the landowners and Pemtom Land Company have coordinated informally concerning the potential future development of the Hesse property. The District, Pemtom, and the landowners wish to coordinate to explore the potential for wetland restoration and preservation on the property consistent with agricultural use and future development, as outlined in the attached Memorandum of Understanding (MOU). The MOU will give District staff permission to access the property in order to complete a wetland delineation for the purposes of fulfilling a requirement of the WCA replacement plan. Pemtom will prepare development concepts and participate with the District and Owners to evaluate the compatibility of development, wetland restoration and buffer establishment. The District and Pemtom may assist in reviewing the regulatory context under WCA and District rules and in consulting with the City of Victoria with respect to city land use plans, ordinances and controls.

## RESOLUTION

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**RESOLUTION NUMBER: 15-090**

**TITLE: Authorization to Execute a Memorandum of Understanding with James R. & Jane Ann Hesse and Pentom Land Company**

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

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; and

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

WHEREAS, the District recognizes that, through partnership, the District can achieve outcomes greater than those achieved through regulatory compliance enforcement alone; and

WHEREAS, on March 26, 2015 the Board authorized the District to enter a Memorandum of Understanding with the City of Victoria, outlining opportunities to collaborate and integrate mutual efforts in the realms of coordinated planning of local water and land use plans, assessment of specific water management issues, and coordinated regulatory review of water and land development; and

WHEREAS, Lennar Corporation submitted an application for Wetland Conservation Act sequencing, as well as the District's Erosion Control, Floodplain Alteration, Waterbody Crossing & Structures, and Stormwater Management Rules, for a 99 unit residential development in the City of Victoria in Carver County that would impact 0.98 acres (42,461 sq ft) of one wetland in one location for the improvement of an existing farm road and installation of trunk sewer and water main utilities; and

WHEREAS, through advanced coordination between Lennar, the City of Victoria, and the District an alternative, preferred strategy to bank credit purchase was identified to meet USACE, MnDNR, WCA and MCWD wetland replacement requirements through a partnership with MCWD to restore degraded wetlands adjacent to the development, portions of which are on a property owned by James R. and Jane Ann Hesse (the Property); and

WHEREAS, on August 27, 2015, the Board approved sequencing, as well as District erosion and sediment control, and, the following day, issued a notice of conditional approval of the Floodplain Alteration, Waterbody Crossing & Structures, and Stormwater Management, pending the completion of a Wetland Conservation Act Replacement plan for either banking or project-specific replacement; and

WHEREAS, the District has received letters of support from the US Army Corps of Engineers, the Board of Soil and Water Resources, the MN Department of Natural Resources, and the Carver County Soil and Water Conservation District for the proposed partnership approach to mitigation; and

WHEREAS, Lennar Corporation and the District have been working in good faith to execute an agreement to complete the wetland restoration project as a project specific mitigation, which includes acquisition of necessary property rights through easement or fee-title acquisition of the wetland area and regulatory buffers on the Property; and

WHEREAS, James R. and Jane Ann Hesse (the Owners) of the Property have, for some time, coordinated informally with Pentom Land Company concerning the potential future development of their property; and

WHEREAS, the Owners and Pentom are interested in enhancing and preserving the ecological and hydrological condition of the wetland while also preserving use and economic value of the Property; and

WHEREAS, the District, Owners, and Pentom have developed a Memorandum of Understanding to explore the potential for wetland restoration and preservation on the Property consistent with present agricultural use and future development;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the Board President to execute a Memorandum of Understanding in its final form between the District, James R. & Jane Ann Hesse and Pentom Land Company; and

BE IT FURTHER RESOLVED, that the MCWD Board of Managers hereby authorizes minor non-substantive revisions to be made to the Memorandum of Understanding prior to execution, on advice of District counsel.

Resolution Number 15-090 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: \_\_\_\_\_.

\_\_\_\_\_  
Secretary Date: \_\_\_\_\_

**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.**

## **MEMORANDUM of UNDERSTANDING**

**Minnehaha Creek Watershed District,  
James and Jane Ann Hesse and Pemtom Land Co.**

**Wetland Restoration and Conservation  
City of Victoria, Carver County**

This Memorandum of Understanding (MOU) is made among the Minnehaha Creek Watershed District ("District"), a political subdivision of the State of Minnesota; James and Jane Ann Hesse, owners of property within the City of Victoria ("Owners"); and Pemtom Land Co., a land development company with headquarters in Eden Prairie, Minnesota ("Pemtom").

### **Statement of Purpose**

A. Under governing law and its adopted watershed management plan, the District is responsible to manage wetland and related surface water resources within its boundaries for public flood management, water quality and ecological benefits. In addition, the District implements the Minnesota Wetland Conservation Act (WCA) and District rules governing impacts to wetlands.

B. Owners own in fee a parcel of 59 acres, more or less, located within the City of Victoria and the Six Mile Creek subwatershed that contains about 23 acres of wetland (the "Property"). The District's Functional Assessment of Wetlands (FAW) rated the subject wetland with a "preserve" management classification, and it was later identified in the 2007 Comprehensive Plan as a capital project. The FAW rated the wetland "low" for vegetative diversity and integrity and moderate for wildlife habitat and suitability, demonstrating opportunities for enhancement and improvement.

C. The Property presently is subject to row-cropping. Owners intend to continue that use but, in the future, to use or convey the Property for development. For some time, Owners and Pemtom have coordinated informally concerning the potential future development of the Property. Owners and Pemtom are interested in enhancing and preserving the ecological and hydrological condition of the wetland while also preserving use and economic value of the Property.

D. In its planning work, the District has identified the wetland on the Property as a potentially valuable and cost-effective site for restoration. In addition, the District presently is working with the developer of an adjacent parcel to identify a location for site-specific wetland replacement within the subwatershed and avoid replacement through the purchase of wetland bank credits derived from wetlands outside District boundaries. If through this MOU and subsequent cooperation the parties establish a restoration project on the Property, the District may integrate into that project additional restoration to provide replacement credits for the adjacent development.

E. The parties wish to cooperate to explore the potential for wetland restoration and preservation on the Property consistent with present agricultural use and future development. The parties acknowledge that achieving this objective depends on their working cooperatively under the terms of this MOU.

**THEREFORE** this MOU does not state legally binding responsibilities or obligations but documents mutual goals and establishes a cooperative framework within which the potential for a beneficial collaboration may be explored.

### **Agreement**

1. The District, with Owners' cooperation, may enter the Property to perform a wetland boundary determination and to assess the hydrologic, hydraulic and ecological conditions of the wetland and adjacent floodplain and the potential for a beneficial project that may include wetland restoration and the establishment and preservation of native vegetated buffer adjacent to the wetland. For this purpose the District and its technical advisors may enter the Property at reasonable times to inspect and survey, and may engage in limited disturbance of those lands, but will restore any disturbance materially to its preexisting condition. This paragraph does not authorize the District to enter any building or structure. Owners also will cooperate in allowing entry by state and local conservation representatives in order to facilitate a wetland boundary determination.

2. The parties will cooperate to review the intentions of Owners as to the use and development of the Property. Pemtom will timely prepare development concepts and participate with the District and Owners to evaluate the compatibility of development, wetland restoration and buffer establishment. At Owners' request, the District and Pemtom may assist in reviewing the regulatory context under WCA and District rules and in consulting with the City of Victoria with respect to city land use plans, ordinances and controls.

3. The parties will cooperate to develop an easement that would allow the District to undertake and maintain a wetland restoration project on the Property. If Owners or Pemtom choose not to participate in a project, they will cooperate to evaluate an easement that would allow the District to undertake and maintain a project unilaterally, of similar scope or of a smaller scope to facilitate wetland replacement and buffer needs for the adjacent development. This MOU does not create any obligation for Owners to convey an easement. Any such obligation would be established in a subsequent legally binding agreement.

4. On request, Owners and Pemtom will provide the District with any information about the Property that may help the District in its work under this MOU, except for information that either considers private. Owners and Pemtom recognize that information in the District's possession is subject to the Minnesota Data Practices Act and therefore likely available for public review. Where Owners or Pemtom believe that certain information is sensitive, they will advise the District and the parties will cooperate to determine whether and how the information can be protected from public availability. On District request, Owners will provide lease and title records for review as to third-party encumbrances or other interests in the Property that might conflict with an easement for a wetland restoration and preservation project.

5. The parties will work together in good faith and communicate in a timely fashion to advance the goals of this MOU. The District may assist Owners in understanding any potential regulatory, valuation or other financial or legal consequences of wetland resource work. Notwithstanding, Owners and Pemtom recognize that assistance provided by the District under this MOU is informal and without any warranty or duty of care whatsoever. Owners and Pemtom recognize

that it will be appropriate and necessary to engage their own technical and legal representatives when and as appropriate.

6. Each party will bear the cost of carrying out its tasks and responsibilities under this MOU. Official contacts for all communications under this MOU are as follows:

Anna Brown, Planner-Project Manager  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

James R. and Jane Ann Hesse  
9020 County Road 43  
Chaska MN 55318-9314

Daniel J. Herbst  
Pentom Land Co.  
7697 Anagram Drive  
Eden Prairie MN 55344

A party may change its official contact by written notice to the other party.

7. This MOU is effective when fully executed by the parties and expires two years thereafter.

**MINNEHAHA CREEK WATERSHED DISTRICT**

*Approved for Form and Execution:*

\_\_\_\_\_  
MCWD Counsel

\_\_\_\_\_  
Sherry White, President

Date:

**OWNERS**

  
James R. Hesse

Date:

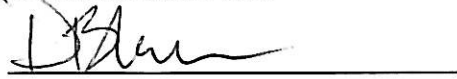
*Oct 16 / 15*

  
Jane Ann Hesse

Date:

*Oct. 16, 2015*

**PENTOM LAND CO.**

  
[name, title]  
*Dan Blake, Land Mgr*

Date:

*10-19-15*