

MEETING DATE: October 23, 2014

TITLE: Authorization to execute a Cooperative Agreement with the City of Minnetrista

RES. NUMBER: 14-088

PREPARED BY: James Wisker

E-MAIL: Jwisker@minnehahacreek.org **TELEPHONE:** 952-641-4509

REVIEWED BY: Administrator Counsel Program Mgr.
 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 October 23, 2014	

PURPOSE or ACTION REQUESTED:

Authorization to execute a cooperative agreement with the City of Minnetrista for purposes of:

- Establishing the intent of the City of Minnetrista to collaborate in good faith to effect a transfer of the fee interest in 3.26 acres of land to MCWD, for purposes of floodplain mitigation, fulfilling the District's regulatory obligation under permit 13-460 Bushaway Road;
- Establishing, in the event property transfer is infeasible, the District's right to access the property for design, construction and permanent maintenance purposes;
- Establishing, in consideration for conveyance, the District's commitment to incorporate into its design, to the extent feasible, additional floodplain storage for the City of Minnetrista to use in replacing fill for the potential Enchanted Land Improvement.
- Establishing the City of Minnetrista's commitment to reimburse construction costs, for any incremental floodplain storage created to offset fill associated with the City's Enchanted Lane Project

PROJECT/PROGRAM LOCATION:

Location Map (Attached Map)

SUMMARY:

Background:

In January 2014, Hennepin County (County) as a co-applicant with the Minnehaha Creek Watershed District (MCWD) applied, and was issued, a permit for the linear reconstruction of CSAH 101 between Minnetonka Boulevard and Wayzata Boulevard.

Through a cooperative agreement between Hennepin County and MCWD, the County provided for the District to implement a shoreline restoration project within the corridor, following road construction. As part of this planned work to stabilize Lake Minnetonka shoreline with vegetated reinforced soil slopes (VRSS), similar to those used on Big Island, the District expected the project to fill some of the 100 year floodplain.

Consequently, as a condition of District permit 13-460, MCWD obligated itself to provide “compensatory storage for floodplain fill along the causeway due to vegetative slope construction.”

While the shoreline stabilization project has not yet been formally ordered, the District engineer performed preliminary floodplain fill calculations based on concepts advanced at the time the permit and cooperative agreement were approved, in January 2014. Based on those calculations, Wenck Associates has estimated approximately 2,000 cubic yards of fill may be placed within the 100 year floodplain of Lake Minnetonka (Wenck, 10-17-14 Technical Memo).

Following permit issuance, District staff began evaluating parcels connected to Lake Minnetonka that were suitable to provide the necessary floodplain mitigation. The 3.26 acre Sun Valley Tax Forfeit property was preliminarily found to meet the District’s floodplain mitigation needs.

Following several discussions with City of Minnetrista Staff, an August 11, 2014 letter of support from the city administrator for the District’s CIP restated the August 4, 2014 City Council vote to “explore the possibility of transferring 3.26 acres of tax forfeited land to the District for purposes of floodplain and wetland restoration.” Subsequently, the property was investigated in more detail. Following a preliminary wetlands investigation, Wenck reaffirmed the feasibility of creating floodplain storage at this location.

Staff, working with Smith Partners, then began investigating the process for property transfer, since it was known that the City acquired the property classified as “conservation” tax-forfeit land under governing MN Statutes 282.01 and 282.018. Under this structure, the City owns the project parcel in fee with the title reverting to the state if the property ceases to be used “for the preservation of wetlands and wildlife” (unless the Hennepin County Board should approve another use).

At the request of District staff, Smith Partners coordinated with the Hennepin County administrative manager of the Property Tax Division to determine the most efficient process for conveyance from the City of Minnetrista to the District. After providing the necessary information, Hennepin County staff coordinated with a State Program Administrator for the Minnesota Department of Revenue. Through these discussions, it was determined that no authorities existed to allow Minnetrista to directly grant an easement or further convey the subject property without legislative approval. It was suggested by Hennepin County that legislative approval could be facilitated through incorporation into the DNR Lands Bill for consideration in the 2015 legislative session, following Hennepin County approval.

The City of Minnetrista supports this option. Smith Partners recommended that a Cooperative Agreement be drafted that both memorializes the intent of the City to transfer title of the property via this mechanism, while establishing the legal right for access to construct and maintain the flood storage, should approval of title conveyance not materialize.

The City of Minnetrista is also contemplating a transportation project, reconstructing Enchanted Lane, which may result in filling of the Lake Minnetonka floodplain. As consideration for the property conveyance, the City has requested that the District provide design services by seeking to incorporate required flood volume replacement for Enchanted Lane into its own floodplain mitigation design and, if including such additional

replacement is feasible, incorporating that additional replacement into the work. Under this proposal, the District would bear any additional design costs, construction oversight cost and long term maintenance costs, all of which are expected to be nominal when combined with the District's existing obligation. The City of Minnetrista would bear the incremental construction costs associated with this proposal (excavation, hauling, vegetation).

Based on analysis conducted by Wenck, shown in Figure 3 of the October 17 Technical Memorandum, MCWD's floodplain mitigation obligations are estimated to occupy 29,000 square feet of the site. Minnetrista's potential fill of Enchanted Lane would require 9,000 square feet of this parcel for floodplain mitigation.

Table 1 in the Technical Memorandum breaks down the allocation of respective costs, with MCWD's commitment under permit 13-460 costing approximately \$175,000, and Minnetrista's floodplain mitigation costing \$25,000.

Attached is a cooperative agreement drafted by MCWD legal counsel, reviewed and approved by Minnetrista staff and legal counsel, scheduled for City Council consideration on October 20, 2014.

Recommendation:

District Staff recommends the Board authorize execution of the cooperative agreement with the City of Minnetrista. This recommendation rests on: (a) the site constituting an available and favorable location for the District to meet its flood volume replacement requirement, and further on (b) staff's judgment that the additional cost assumed under the cooperative agreement to design for and incorporate the City's flood volume replacement needs is limited and no more than the value of the real property rights that the District would acquire. The agreement also represents a favorable collaboration with the City on mutual water resource goals. The agreement would provide as follows:

- The District and the City will collaborate in good faith to work with Hennepin County, the Mn Department of Natural Resources and the legislature to effect a transfer of the fee interest in 3.26 acres of land to MCWD, for purposes of flood volume replacement and wetland restoration, fulfilling the District's regulatory obligation under permit 13-460 Bushaway Road;
- If the property transfer cannot reasonably be accomplished within the timeframe required by the District, the District will have the right to access the property for design, construction and perpetual maintenance;
- In exchange, the District will examine the ability to incorporate flood volume replacement for the Enchanted Lane improvement into its design, and will incorporate that replacement to the extent feasible; in addition, the District will assume site maintenance for the entire integrated restoration;
- The City will reimburse the District for construction costs for the incremental floodplain storage created to offset fill associated with the City's Enchanted Lane project.
- If feasibility or cost issues arise during design, the District may choose not to proceed or the City may choose not to have its portion of flood storage volume replacement included in the work. In the latter case, the District still may proceed with the work for its purposes.

Attachments:

- Attachment 1 – Location Map
- Attachment 2 – 10-17-14 Wenck Technical Memorandum
- Attachment 3 – Draft Cooperative Agreement

RESOLUTION

RESOLUTION NUMBER: 14-088

TITLE: **Authorization to execute a Cooperative Agreement with the City of Minnetrista**

WHEREAS, in January 2014 the District issued Permit 13-460 to Hennepin County (“County”) and the District, as co-applicants, for the linear reconstruction of CSAH 101 between Minnetonka Boulevard and Wayzata Boulevard;

WHEREAS, the District is a co-applicant because of its intent, through a cooperative agreement with the County, to construct a shoreline restoration project along CSAH 101 using vegetated reinforced soil slopes for stabilization and naturalization;

WHEREAS, the shoreline work will constitute floodplain fill and therefore Permit 13-460 requires that the District provide compensatory flood volume storage on Lake Minnetonka;

WHEREAS, District staff, working with City of Minnetrista (“City”) staff, have identified a 3.26-acre parcel of degraded floodplain wetland riparian to the northwestern corner of Jennings Bay that the City owns as tax-forfeit conservation property and that appears suitable for the creation of flood volume storage to meet the District’s obligation in a manner that also would restore wetland functions and values;

WHEREAS, the City is willing to convey the parcel to the District for the construction and perpetual maintenance of the work, but the parcel’s status requires that the County, Minnesota Department of Natural Resources and Minnesota legislature concur in the conveyance;

WHEREAS, County staff have offered to assist the District and City in the process of advancing the conveyance to the legislative process for legislative approval in the 2015 session;

WHEREAS, the City is considering an improvement to Enchanted Lane to protect the roadway against Lake Minnetonka high-water conditions, which improvement would likely be subject to a District permit that, in turn, would require flood volume replacement for expected floodplain fill;

WHEREAS, District and City staff have developed a cooperative agreement under which the parties would cooperate to obtain legislative approval of a fee transfer to the District, absent which the District would be granted the right to construct and perpetually maintain the work on the City parcel, in exchange for which the District will explore including additional flood volume storage in the design to meet the City’s requirement for the Enchanted Lane improvement and will incorporate such storage as feasible, with an allocation of costs as stated in the agreement;

WHEREAS, on October 20, 2014, the Minnetrista City Council considered and authorized execution of the cooperative agreement;

WHEREAS, the Board of Managers (“Board”), on the basis of the District engineer’s preliminary feasibility analysis, finds that the proposed site is a feasible and favorable location for the District’s flood volume replacement, and finds further that the land rights that the District will obtain, whether the fee or the contractual right to construct and maintain the work, are at least equal in value to the cost of the services it will provide to the City under the proposed agreement;

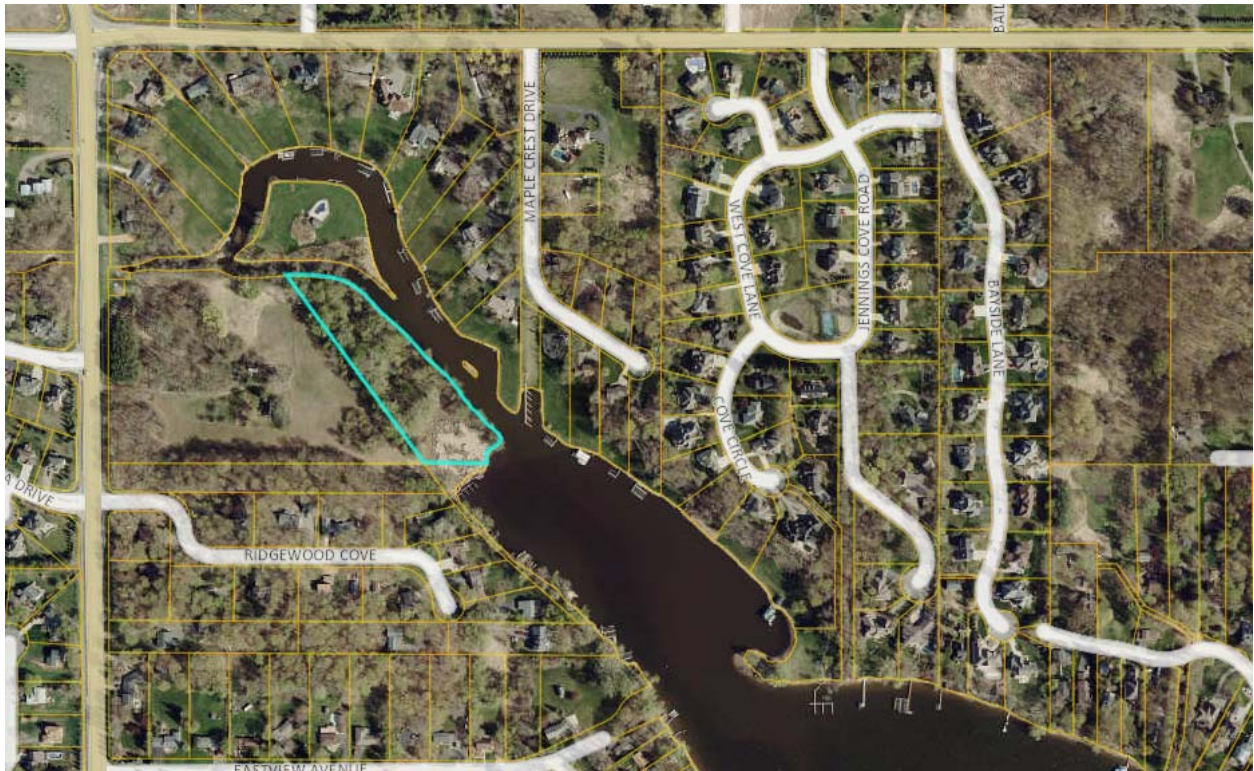
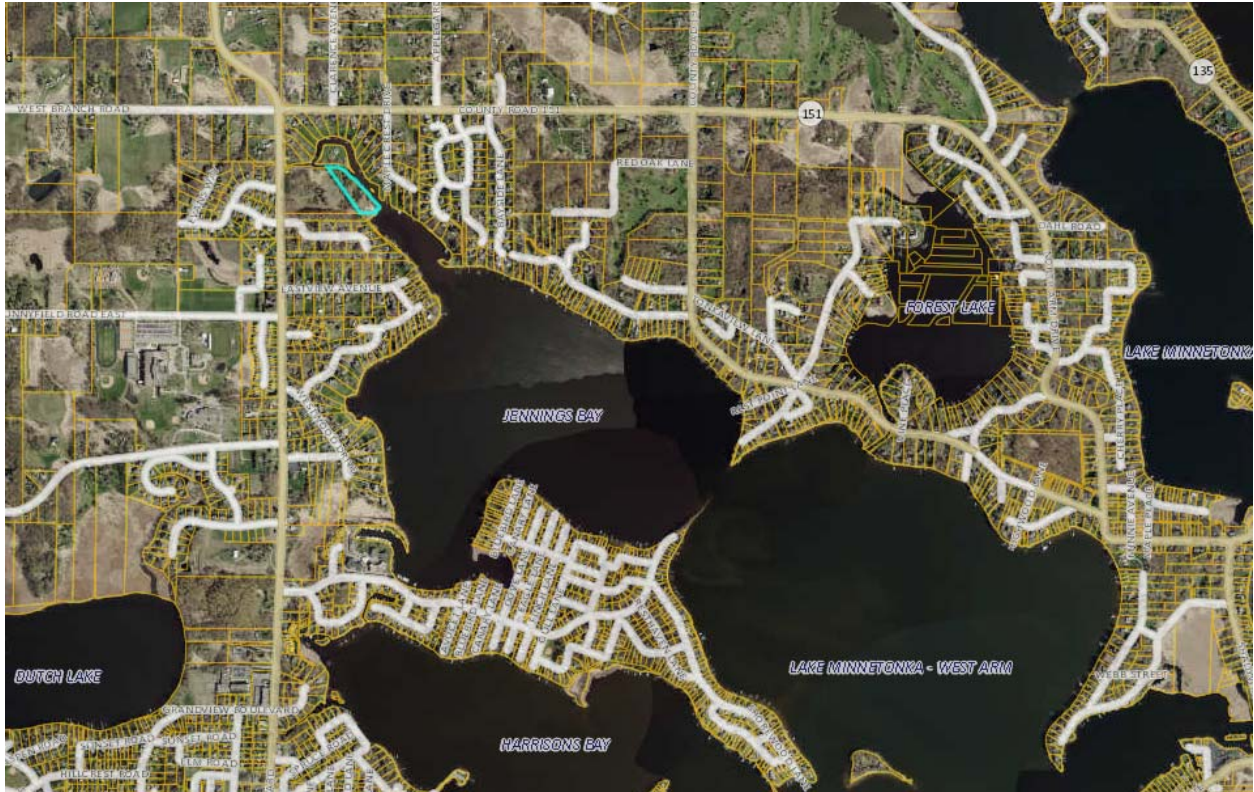
NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the Board President, with such further non-material changes as she may elect and on advice of counsel, to execute the proposed cooperative agreement; and

BE IT FURTHER RESOLVED that the District administrator is authorized to take all appropriate steps to secure the assistance and approval of the City, Hennepin County, the Minnesota Department of Natural Resources and the Minnesota legislature in the parcel transfer in accordance with the cooperative agreement, and to advise the Board as appropriate on the progress of those efforts.

Resolution Number 14-088 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____

Location Map



TECHNIAL MEMORANDUM

TO: James Wisker, Director of Planning, Projects & Land Conservation
Minnehaha Creek Watershed District
Tiffany Schaufler, Natural Resource Technician
Minnehaha Creek Watershed District

FROM: Chris Meehan

DATE: October 17, 2014

SUBJECT: Lake Minnetonka Floodplain Mitigation Site

PROJECT OBJECTIVE

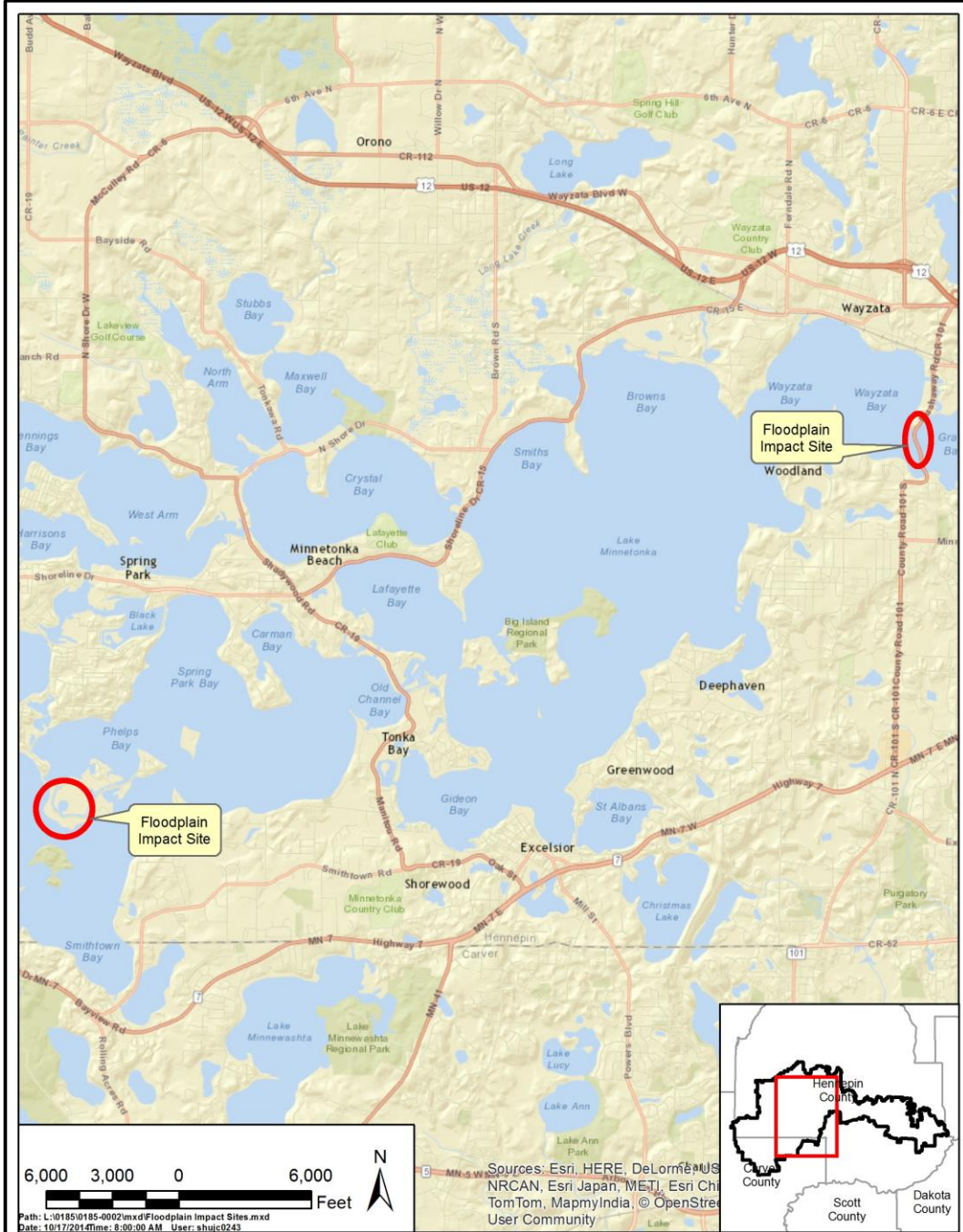
The purpose of this memo is to evaluate the preliminary feasibility of utilizing the Sun Valley Tax forfeited land on Jennings Bay of Lake Minnetonka, to provide floodplain mitigation for the Minnehaha Creek Watershed District (MCWD) CSAH 101 Shoreline Enhancement along with the City of Minnetrista Enchanted Lane road raising project.

PROJECT NEED


CSAH 101 is in the process of being reconstructed from Wayzata Bay Boulevard to Minnetonka Boulevard. As part of the reconstruction MCWD will be completing a shoreline enhancement project which will encroach into the floodplain of Lake Minnetonka (Figure 1). Floodplain on Lake Minnetonka is defined by the MCWD as the volume between elevations 929.4ft and 931.5ft.

A condition of the permit approval was that the MCWD would be responsible for providing compensatory floodplain storage for any fill associated with the CSAH 101 shoreline enhancement on Lake Minnetonka. The project will require approximately 1,000 CY of floodplain storage assuming only the Wayzata Bay portion of the project is constructed. If the Gray's Bay portion of the project is constructed an additional approximately 1,000 CY of additional storage would be required.

The City of Minnetrista raised the road elevation of Enchanted Lane due to the high-water levels on Lake Minnetonka the spring/summer of 2014 to allow resident access. As a result of the road raising the City placed fill (approximately 286 CY) into the Lake Minnetonka floodplain (Figure 1).



MCWD
Floodplain Impact Sites


Wenck
 Engineers - Scientists
 Business Professionals
 www.wenck.com
 1800 Pioneer Creek Center
 Maple Plain, MN 55359-0429
 1-800-472-2232

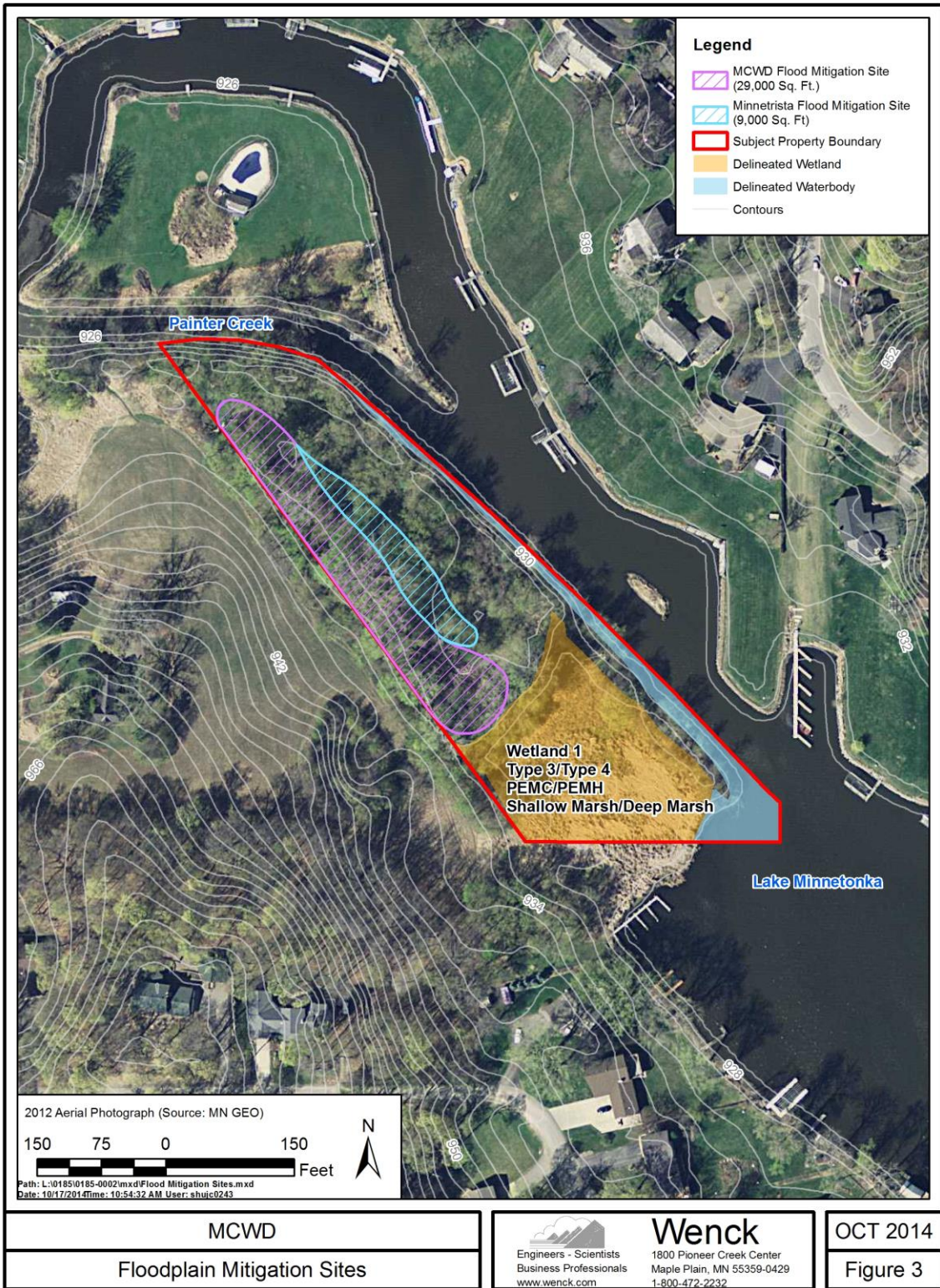
OCT 2014
Figure 1

PROJECT SITE

MCWD staff identified the Sun Valley Tax Forfeited land (Figure 2) as a potential floodplain mitigation site on Lake Minnetonka which could be further investigated to provide compensatory storage for the CSAH 101 and Enchanted Lane projects. The City currently owns this Tax Forfeited land which is designated to remain in a natural state or as a wetland. The parcel is 3.26 acres and is located at the confluence of Painter Creek and Jennings Bay of Lake Minnetonka (Figure 2).

Initial site visit and wetland delineation was completed on August 12, 2014 for the parcel to assess available land which could be used for floodplain mitigation. The results of the visit and delineation determined there is a Type 3/4 wetland on-site and the site had low habitat diversity which is typical of degraded sites. The site contained species such as garlic mustard, buckthorn and ground ivy indicative of degraded sites. Through creation of the floodplain mitigation, the project will look to enhance existing vegetation and habitat by planting native species and removing buckthorn and non-native species. Desirable tree species, such as hackberry, American elm, and slippery elm were found along the north and eastern boundary of the site and will be left in place to provide screening.

Potential floodplain mitigation areas for the two projects are shown in Figure 3. The site provides sufficient floodplain storage needed to mitigate both projects. The floodplain mitigation footprint for each project is noted in the figure and overall has average depth of excavation of 2ft. It is assumed additional grading footprint would be needed to incorporate the necessary floodplain storage volume into the existing topography on-site.



PROJECT COSTS

Preliminary implementation costs were developed for the project which includes design, permitting, construction, oversight and vegetative maintenance. Project costs assumed MCWD would be responsible for all costs except excavation, disposal and revegetation costs necessary for the City of Minnetrista floodplain storage. Table 1 provides a breakdown of the estimated costs broken out between MCWD and the City of Minnetrista.

Table 1 – Project Cost Breakdown

Bid Item	Description	Total Cost	Cost Breakdown	
			MCWD	Minnetrista
1	MOBILIZATION & DEMOBILIZATION	\$6,600.00	\$6,600.00	\$0.00
2	TRAFFIC CONTROL	\$2,500.00	\$2,500.00	\$0.00
3	CLEARING AND GRUBBING	\$10,000.00	\$10,000.00	\$0.00
4	SALVAGE AND RESPREAD TOPSOIL	\$10,000.00	\$7,500.00	\$2,500.00
5	COMMON EXCAVATION - OFFSITE	\$50,000.00	\$40,000.00	\$10,000.00
6	EROSION CONTROL	\$10,000.00	\$7,500.00	\$2,500.00
7	ACCESS ROAD	\$15,000.00	\$15,000.00	\$0.00
8	WETLAND ENHANCEMENT	\$23,375.00	\$17,375.00	\$6,000.00
9	VEGETATION MAINTENANCE (3 YEAR)	\$10,000.00	\$10,000.00	\$0.00
	<i>SUBTOTAL</i>	<i>\$138,000.00</i>	<i>\$117,000.00</i>	<i>\$21,000.00</i>
	<i>20% CONTINGENCY</i>	<i>\$28,000.00</i>	<i>\$24,000.00</i>	<i>\$4,000.00</i>
	ESTIMATED CONSTRUCTION COST	\$166,000.00	\$141,000.00	\$25,000.00
	<i>15% DESIGN AND PERMITS</i>	<i>\$25,000.00</i>	<i>\$25,000.00</i>	<i>\$0.00</i>
	<i>5% CONSTRUCTION ADMINISTRATION</i>	<i>\$9,000.00</i>	<i>\$9,000.00</i>	<i>\$0.00</i>
	ESTIMATED TOTAL PROJECT COST	\$200,000.00	\$175,000.00	\$25,000.00

SUMMARY

The results of the analysis indicate the project can address identified floodplain mitigation needs while also enhancing habitat.

The estimated cost of the project is \$200,000 of which the City Minnetrista is responsible for \$25,000.

COOPERATIVE AGREEMENT
City of Minnetrista and Minnehaha Creek Watershed District

JENNING'S BAY WETLAND and FLOODPLAIN RESTORATION PROJECT

This Cooperative Agreement ("Agreement") is made by and between the Minnehaha Creek Watershed District, a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D ("District"), and the City of Minnetrista, a statutory city, a municipal corporation under the laws of the State of Minnesota ("City").

Recitals

A. By a 2005 public use deed from the State of Minnesota, filed for record on August 11, 2005, as Document No. 8632032, the City owns in fee a parcel of 3.26 acres located within the City of Minnetrista, with PIN 053-1211724220019 (the "Property"). The Property is at the northwestern end of Jennings Bay on Lake Minnetonka, just east of 950 County Road 110 North.

B. The Property is conservation land to be held "exclusively for the preservation of wetlands and wildlife area" and subject to reverter if the land ceases to be so held and used. It was a site for the deposit of dredged spoils and consists of degraded uplands and wetlands dominated by invasive species.

C. The District wishes to restore wetland resources on the Property for ecological purposes and to create additional flood storage volume on Lake Minnetonka (the "Project") to offset proposed floodplain fill associated with the District's bioengineering improvements of the Gray's Bay causeway slope. The intended design approach would be to lower the grade across interior portions of the parcel by means of excavation and soil scraping and to revegetate with native species to reestablish a healthy shallow marsh wetland.

D. The City wishes to support the District's ecological restoration and flood storage purposes and reduce its ownership responsibilities through a transfer of the Property. In addition, the City may be obligated to replace flood storage volume lost by an improvement of Enchanted Lane that the City currently is evaluating. The Project may create additional flood storage volume for this purpose.

E. The purpose of this Agreement is to coordinate efforts and clarify roles and responsibilities of the City and District in seeking a transfer of the Property to the District and implementing the Project.

THEREFORE the City and the District agree as follows:

1.0 PROPERTY TRANSFER

1.1 The City and District will collaborate in good faith to effect a transfer of the fee interest in the Property, with or without reverter, to the District, including working with Hennepin County, the Minnesota Department of Natural Resources, the Minnesota Legislature and all other persons and bodies whose efforts may be necessary or useful to

achieve the transfer. The District will take the lead in this effort but the City as property owner and project partner will support the transfer and take such informal and formal steps as are necessary or useful to achieve it.

1.2 The parties intend to achieve necessary approvals of the Legislature and other public bodies by July 2015. However, if this timing goal is not achieved, for the duration of this Agreement at the District's request the parties will continue efforts to gain such approvals and effect the Property transfer.

1.3 In conveying the Property, the City will make no warranty as to title or matters outside of its actual knowledge. Consideration for the conveyance or, if the conveyance is not effected, for allowing the District to construct and maintain the Project pursuant to sections 3.0 and 4.0, below, will be the District's cost to incorporate additional flood storage into the design for the City's use in replacing floodplain fill for the Enchanted Lane improvement, to the extent such storage can be reasonably accommodated, and to provide construction management for the City's portion of storage pursuant to the terms of this Agreement.

1.4 In conjunction with the transfer of the City's fee interest in the Property, or its providing access rights pursuant to sections 3.0 and 4.0, below, the City also will cooperate to assign or otherwise transfer to the District, exclusively or otherwise as may be appropriate, all appurtenant or other easement rights it holds on private property that afford access to the Property.

2.0 DESIGN

2.1 The District, through its engineering consultant, will design plans and specifications for the Project (the "Plans"). The District may enter the site for site investigation and design and may engage in minor disturbance in doing so. The District will repair any damage to the Property caused by its entry.

2.2 The District will provide the City copies of the 30 percent and 90 percent Plans for review and comment. The District and City will consult on the Plans as either may request.

2.3 During the design process of subsections 2.1 and 2.2, the City will timely advise the District of any required and requested conditions of Project construction with respect to site occupation, traffic control, road use and other matters within the City's jurisdiction. Notwithstanding paragraph 3.3(c), the City will provide the District all information it possesses as to subsurface utilities and other hidden features of the Property that may affect Project design or construction.

2.4 The Plans will quantify the flood storage volume that will be created. The excess flood storage beyond that which the District requires to mitigate Gray's Bay causeway floodplain fill will be credited to the City, up to the volume required as replacement under any permit to which the City's Enchanted Lane improvement is subject.

2.5 The City will cooperate in timely identifying and processing any permits or approvals it requires for the Project. No permit fee or financial assurance will be required of the District.

The City also will cooperate in the District's securing the right to cross private property as necessary or convenient for the design, construction and maintenance of the Project. This includes but is not limited to establishing through non-exclusive assignment or other reasonable means that the District may use applicable easement rights that the City holds.

2.6 The District will bear all design costs, except that the City will bear its own administrative and consultant costs for its design and regulatory review.

3.0 CONSTRUCTION

3.1 Until construction, demobilization and site stabilization are complete, the District may enter and occupy the Property for all purposes necessary or convenient to construct the Project, including but not limited to labor; movement, operation and staging of equipment; materials stockpiling; the placement and maintenance of erosion control and similar construction-phase site measures; and construction activities including excavation and grading, vegetation removal and planting, and other acts in conformance with the Plans. At the close of active work, the District will stabilize exposed soils and ensure all trash, debris and excess materials are removed. The District will give the City advance notice of all formal pre-construction and construction meetings, which the City may attend.

3.2 The District may enter into a construction contract for the Project. The City's share of contract cost will be the cost for excavation, spoils disposition and site stabilization/vegetation attributable to flood storage replacement for the City's improvement, which will be determined on the basis of unit price. The District will bear mobilization cost. The City administrator will be afforded a due opportunity to review bids and will advise the District in writing promptly as to whether the City's part of the work should or should not be retained in the contract.

3.3 The District's contract will require that:

- (a) The contractor name the City as an additional insured for general liability on a primary basis for work in progress;
- (b) The contractor will indemnify the City for the contractor's negligent acts and those of its subcontractors.
- (c) The contractor will be responsible to determine the location of and protect all utilities;
- (d) The contractor will provide a performance bond for the completion of the Project;
- (e) The contractor will comply with local requirements for traffic and site control; and
- (f) The contractor will restore or repair any damage to the City's lands, equipment or facilities resulting from the contractor's activities.

3.4 The District in its judgment may alter the work by means of field directive, work change directive or change order. The District will promptly inform the City of all such work

changes. The District will consult with the City in advance before approving any work change that would materially reduce the flood storage volume created by or increased by the City's cost for the Project.

3.5 On substantial completion of the work, the City shall reimburse the District for its share of cost pursuant to subsection 3.2, above.

3.6 The District or the City may install and maintain informational signage on the Property. The parties will cooperate as to signage location, size and content. In the event the Project is subject to a state grant agreement, the parties will cooperate to meet any signage requirements of that agreement.

4.0 MAINTENANCE

4.1 The District may enter and occupy the Property as necessary or convenient to maintain the Project, and will bear all costs therefor. Neither the City nor any party acting pursuant to City authorization will engage in activity on the Property that would alter the Project.

4.2 As the fee owner of the underlying municipal land, the City will be responsible for day-to-day inspection and maintenance of the Property with respect to all matters other than Project maintenance including, but not limited to, sanitation, hazards, inappropriate or unlawful use, and law enforcement.

5.0 GENERAL TERMS

5.1 Sections 3.0 and 4.0 will become inoperative if and at such time as the District takes fee title to the Property, except for subsections 3.2 and 3.5.

5.2 Each party is responsible for the cost of performing its roles and responsibilities under this Agreement.

5.3 Each party agrees to hold harmless, defend and indemnify the other party from and against that portion of any and all liability, loss, claim, damage or expense (including reasonable attorney fees, costs and disbursements) that the indemnified party may incur as a result of the performance of this Agreement due to any negligent act or omission of the indemnifying party or any other act or omission that subjects it to liability in law or equity. Notwithstanding, this Agreement creates no right in and waives no immunity, defense or liability limit with respect to any third party or the other party to this Agreement. This Agreement is not a joint powers agreement under Minnesota Statutes §471.59 and nothing herein constitutes either party's agreement to be responsible for the acts or omissions of the other party pursuant to subdivision 1(a) of that statute.

5.4 Only contractual remedies are available for the failure of a party to fulfill the terms of this Agreement.

5.5 Each communication under this Agreement will be made to the following representatives:

MCWD:

Project Manager
Jennings Bay Wetland and Floodplain Restoration Project
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka MN 55345-1503

City:

City of Minnetrista (Planning Department)
7701 County Road 110W
Minnetrista, MN 55364

Contact information will be kept current. A party may change its contact by written notice to the other party.

5.6 This Agreement is effective on execution by both parties and will remain in effect for five years. Subject to subsection 5.1, subsections 3.6, 4.1, 4.2, 5.3 and 5.4 will survive termination and remain in effect indefinitely unless this is altered by the parties in a writing signed by both.

5.7 This Agreement incorporates all terms and understandings of the parties concerning the Project. An amendment to this Agreement must be in writing and executed by the parties.

5.8 The above Recitals are incorporated into this Agreement.

IN WITNESS WHEREOF the parties execute this Agreement by their authorized officers.

CITY OF MINNETRISTA

By _____ Date:
Its Mayor

By _____ Date:
Its City Clerk

MINNEHAHA CREEK WATERSHED DISTRICT

By _____ Date:
Its President

Approved for form and execution:

MCWD Counsel

