

MEMORANDUM

To: MCWD Board of Managers
From: Tiffany Schaufler
CC: James Wisker
Date: February 23, 2015
Re: Public Hearing for the Highway 101 Causeway Reconstruction Project

Purpose:

Pursuant to MN Statutes 103B.251, a public hearing will held at the February 26, 2015 Board of Managers Meeting, to obtain public input on the Highway 101 Causeway Reconstruction Project and associated Jennings Bay wetland creation project in the cities of Wayzata and Minnetrista. No action will be required at February 23, 2015 meeting.

Background:

Following review of Hennepin County's proposed improvement to CSAH 101, at the October 24, 2013 Board Meeting, the Board of Managers resolved to express support for working with Hennepin County to develop a vegetated solution to the Grays/Wayzata Bay Causeway shoreline, including a project budget and plan to finance.

The Board of Managers reinforced its support for developing a partnership with Hennepin County at the December 12, 2013 Board Meeting. At this meeting the Board resolved to communicate its commitment to identify enhancements to the project beyond current regulatory requirements. Pursuant to Board resolution, District staff worked closely with the District Engineer and Legal Counsel to engage with Hennepin County in exploration of feasible enhancements to the Grays/Wayzata Bay shoreline.

The District and the County developed a cooperative agreement that allows the District to install and maintain vegetated reinforced soil slopes and related bioengineering and vegetation features along the Grays/Wayzata Bay causeway, with a \$30,000 reimbursement from Hennepin County. The District's bioengineering element brought the design into conformance with the requirements of the District's shoreline rule and allowed the District to approve the work without the need to consider a variance. For that reason, staff's recommended conditions on the permit included a condition requiring that the County enter into an agreement with the District affording the District the ability to do the bioengineering work.

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

Through the 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. This planned work to stabilize Lake Minnetonka shoreline with vegetated reinforced soil slopes (VRSS) (see the preliminary concept plan in Attachment A), similar to those used on Big Island, will 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.”

The District engineer performed preliminary floodplain fill calculations based on concepts advanced at the time the permit and Hennepin County 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 District permit 13-460 issuance, District staff began evaluating parcels connected to Lake Minnetonka that would be suitable to provide the necessary floodplain mitigation. The 3.26 acre Sun Valley Tax Forfeit property located in Minnetrista 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, the District engineer, Wenck Associates, reaffirmed the feasibility of creating floodplain storage at this location primarily through site grading and soil scraping that would create a wetland and a restore an existing degraded wetland and the natural hydrologic connection of the riparian land to the lake.

Based on analysis conducted by Wenck Associates, shown in Figure 3 of the 10-17-14 Technical Memo, 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 (see the preliminary concept plan in Attachment B). 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.

In October 2014, MCWD and the City of Minnetrista executed a cooperative agreement under which the parties will cooperate to obtain legislative approval of a fee transfer to the District. In the event property transfer is infeasible, the City would grant the District the right to construct and perpetually maintain the work on the City parcel. In exchange, 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.

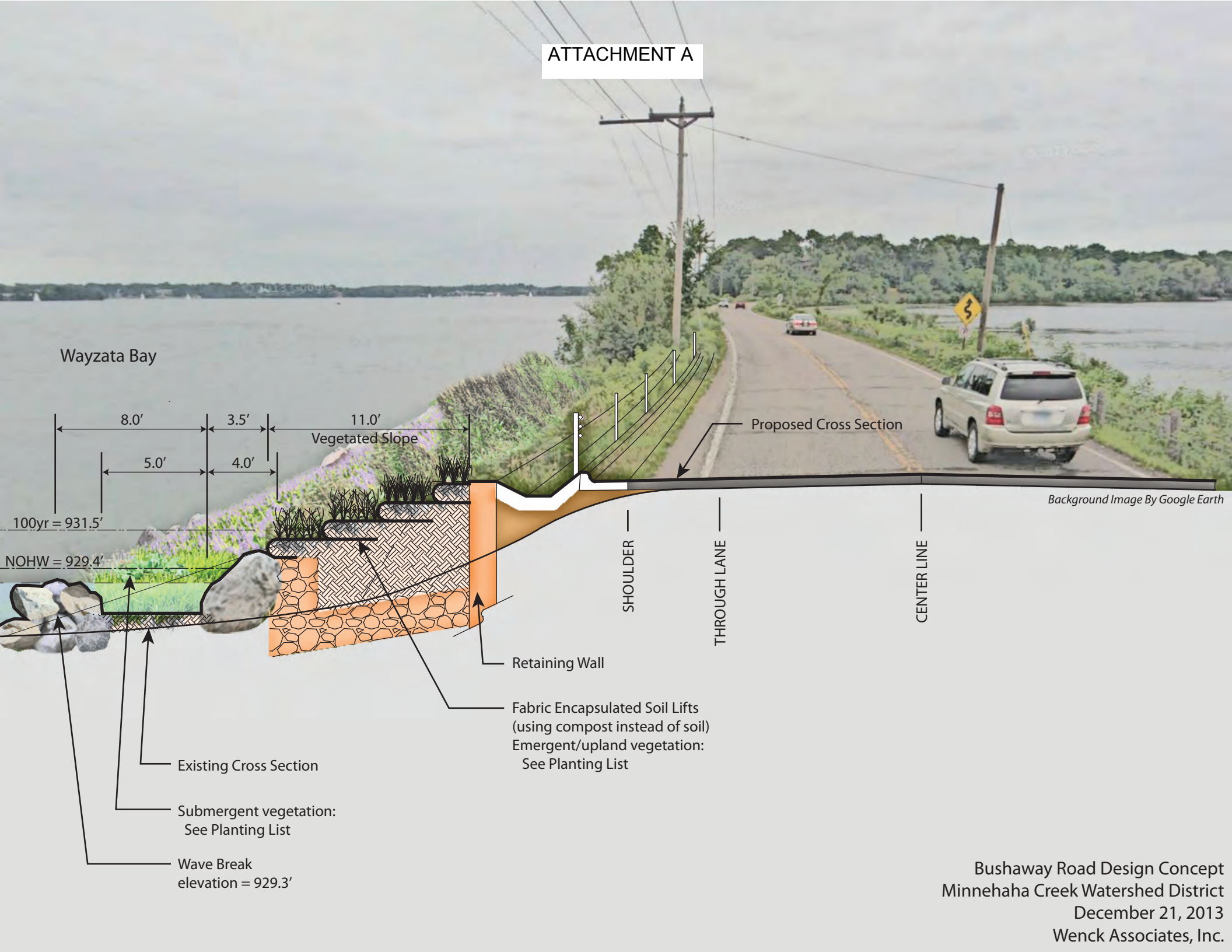
Next Steps:

A public information meeting will be held on February 23rd for the Jennings Bay wetland restoration part of the project. A summary of the project costs and benefits, results from the informational meeting and other public input will be presented during a formal public hearing at the February 26th Board Meeting.

Following Board consideration of public comment at the February 26th Board Meeting, staff anticipates bringing the project back at the March 12th Workshop for a Board decision on project ordering (see draft RBA titled, "Ordering of Highway 101 Causeway Reconstruction Project" in Attachment C).

If there are questions in advance of the meeting, please contact: Tiffany Schaufler at 952-641-4513 or tschaufler@minnehahacreek.org.

ATTACHMENT A



Wayzata Bay

8.0' 3.5' 11.0'
Vegetated Slope

100yr = 931.5'

NOHW = 929.4'

Proposed Cross Section

Background Image By Google Earth

SHOULDER

THROUGH LANE

CENTER LINE

Retaining Wall

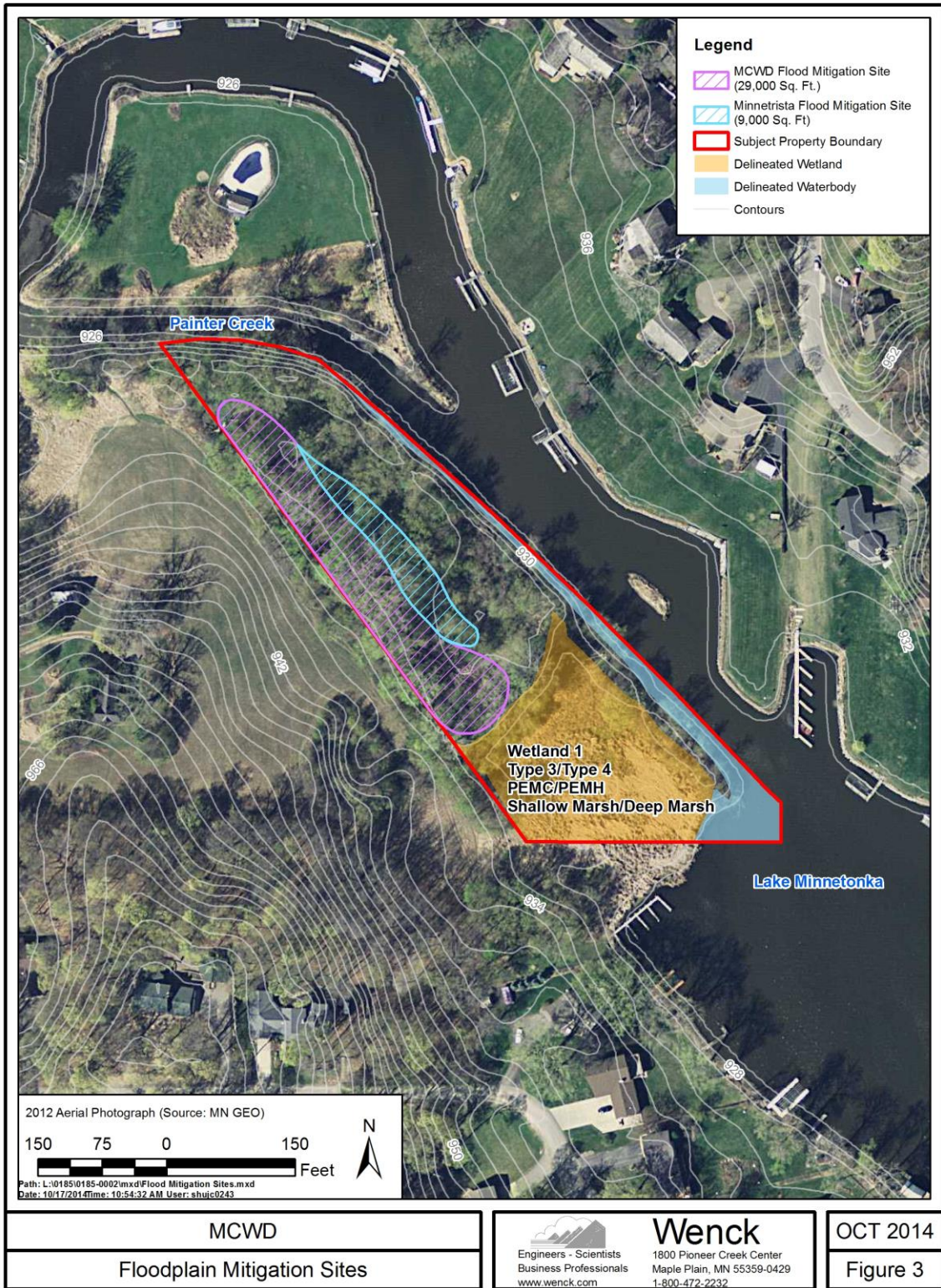
Fabric Encapsulated Soil Lifts
(using compost instead of soil)
Emergent/upland vegetation:
See Planting List

Existing Cross Section

Submergent vegetation:
See Planting List

Wave Break
elevation = 929.3'

ATTACHMENT B



Minnehaha Creek Watershed District

REQUEST FOR BOARD ACTION

MEETING DATE: March 12, 2015

TITLE: Ordering of Highway 101 Causeway Reconstruction Project

RESOLUTION NUMBER: 15-XXX

PREPARED BY: Tiffany Schaufler

E-MAIL: tschaufler@minnehahacreek.org

TELEPHONE: 952-641-4513

REVIEWED BY: Administrator Counsel Program Director: 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): No Worskshop action	

PURPOSE or ACTION REQUESTED:

MCWD staff requests Board action on the following:

1. Formal ordering of the Highway 101 Causeway Reconstruction Project
2. Authorization to engineering and construction oversight services for project implementation

PROJECT/PROGRAM LOCATION:

Wayzata/Gray's Bay causeway in the City of Wayzata and a parcel located east of Orchard Cove Road along Jennings Cove in the City of Minnetrista

PROJECT TIMELINE:

- February 23, 2015: Community Meeting
- February 26, 2015: Public Hearing
- March 12, 2015: Project ordering and authorization to solicit proposals for design services
- Summer 2015: Award design services
- Summer 2015-Winter 2016: Design
- Fall 2016-Spring 2017: Construction

PROJECT/PROGRAM COST:

Fund name and number: Highway 101 Causeway Reconstruction, # TBD
Total estimated project cost: \$1,604,308

**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.**

PAST BOARD ACTIONS:

- October 24, 2013 – Resolution to express support for working with Hennepin County on a plan for vegetated reinforced soil slopes in the Grays Bay causeway, and direct the staff to prepare a plan in consultation with the County, along with a project budget and cost share resolution.
- December 12, 2103 – Resolution to direct staff to:
 1. Communicate its commitment to reviewing the Bushaway Road Project for compliance with all MCWD rules, recommending enhancements to the Project as submitted by Hennepin County beyond current regulatory requirements for which the MCWD would take financial responsibility;
 2. These enhancements would include the design, construction and maintenance of the Wayzata Bay Restoration Shoreline Project, to be installed after the County has completed seawall construction and with a County funding contribution equal to the cost of the riprap design presented on October 24, 2013;
 3. The MCWD enhancements also would include improvements to stormwater management facilities, and the MCWD will be responsible for enhancements to the Project beyond those presented by the County on October 24, 2013 that exceed MCWD requirements for the entire project within the City of Wayzata.
- January 23, 2014
 - Approval of MCWD Permit 13-460
 - Resolution 14-008: Authorization to executed a Cooperative Agreement with Hennepin County for CSAH 101
- October 23, 2014 – Resolution 14-088: Authorization to execute a Cooperative Agreement with the City of Minnetrista to effect a transfer of the fee title interest in 3.26 acres of land to MCWD, for purposes of floodplain mitigation to fulfill the District’s regulatory obligation under permit 13-460 Bushaway Road.
- February 26, 2015 – Public Hearing for Highway 101 Causeway Reconstruction Project

SUMMARY:

Background

Following review of Hennepin County’s proposed improvement to CSAH 101, at the October 24, 2013 Board Meeting, the Board of Managers resolved to express support for working with Hennepin County to develop a vegetated solution to the Grays/Wayzata Bay Causeway shoreline, including a project budget and plan to finance.

The Board of Managers reinforced its support for developing a partnership with Hennepin County at the December 12, 2013 Board Meeting. At this meeting the Board resolved to communicate its commitment to identify enhancements to the project beyond current regulatory requirements. Pursuant to Board resolution, District staff worked closely with the District Engineer and Legal Counsel to engage with Hennepin County in exploration of feasible enhancements to the Grays/Wayzata Bay shoreline.

The District and the County developed a cooperative agreement (Attachment 1) that allows the District to install and maintain vegetated reinforced soil slopes and related bioengineering and vegetation features along the Grays/Wayzata Bay causeway, with a \$30,000 reimbursement from Hennepin County. The District's bioengineering element brought the design into conformance with the requirements of the District's shoreline rule and allowed the District to approve the work without the need to consider a variance. For that reason, staff's recommended conditions on the permit included a condition requiring that the County enter into an agreement with the District affording the District the ability to do the bioengineering work.

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

Through the 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. This planned work to stabilize Lake Minnetonka shoreline with vegetated reinforced soil slopes (VRSS), similar to those used on Big Island, will 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."

The District engineer performed preliminary floodplain fill calculations based on concepts advanced at the time the permit and Hennepin County 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, Attachment 2).

Following District permit 13-460 issuance, District staff began evaluating parcels connected to Lake Minnetonka that would be suitable to provide the necessary floodplain mitigation. The 3.26 acre Sun Valley Tax Forfeit property located in Minnetrista 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 (Attachment 3) 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, the District engineer, Wenck Associates, reaffirmed the feasibility of creating floodplain storage at this location primarily through site grading and soil scraping that would create a wetland and restore an existing degraded wetland and the natural hydrologic connection of the riparian land to the lake.

Based on analysis conducted by Wenck Associates, shown in Figure 3 of the 10-17-14 Technical Memo, 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.

In October 2014, MCWD and the City of Minnetrista executed a cooperative agreement (Attachment 4) under which the parties will cooperate to obtain legislative approval of a fee transfer to the District. In the event property transfer is infeasible, the City would grant the District the right to construct and perpetually maintain the work on the City parcel. In exchange, 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.

Project Ordering

The MCWD Comprehensive Plan identifies a lakeshore bioengineering restoration project (5.8.8 in the Lake Minnetonka Subwatershed Plan) in the amount of \$1,656,100 along Lake Minnetonka. The Highway 101 Causeway Reconstruction Project will include a vegetated reinforced soil slope (VRSS) (Attachment 5) soil bioengineering element along the Highway 101 causeway adjacent to Lake Minnetonka. The proposed VRSS project along Highway 101 would result in floodplain fill which will need to be offset. Therefore the project will also include creation of a wetland along Jennings Bay in Minnetrista to comply with the condition of Permit 13-460 by creating flood volume replacement for the Highway 101 VRSS project.

Several public meetings have been held for Wayzata residents throughout the development of the Highway 101 reconstruction planning. A public meeting for the wetland creation project in Minnetrista was held on February 23, 2015. A public hearing for the project as a whole was held on February 26, 2015. At their February 17, 2015 meeting, the Wayzata City Council adopted a resolution of support for the design and construction of the Highway 101 Causeway Reconstruction Project. The Minnetrista City Council in the October 2014 cooperative agreement has expressed its support for the wetland restoration/flood volume replacement work on the tax forfeit property.

Working with Wenck Associates, the City of Wayzata and the City of Minnetrista, District staff has developed conceptual plans, cost estimates and due diligence for the Highway 101 Causeway Reconstruction Project and Jennings Bay wetland creation. The draft concept plans and preliminary cost estimates are attached for Board review. The District engineer finds both the causeway reconstruction work and the flood volume mitigation to be feasible. A brief summary of these materials will be provided at the March 12, 2015 Board Meeting.

ATTACHMENTS:

- Attachment 1: Hennepin County Cooperative Agreement
- Attachment 2: Wenck Associates Technical Memo, 10-17-14
- Attachment 3: City of Minnetrista Letter of Support
- Attachment 4: Minnetrista Cooperative Agreement
- Attachment 5: Highway 101 Causeway preliminary concept
- Attachment 6: City of Wayzata Resolution of Support

RESOLUTION

RESOLUTION NUMBER: 15-XXX

TITLE: **Ordering of Highway 101 Causeway Reconstruction Project**

- WHEREAS, the Minnehaha Creek Watershed District (MCWD) has adopted a watershed management plan (WMP) in accordance with Minnesota Statutes §103B.231; and
- WHEREAS, the WMP identifies the Highway 101 Causeway Reconstruction Project (“Project”) as a capital improvement project for the purpose of water quality and ecological benefits through the promotion of bioengineering techniques within the Lake Minnetonka subwatershed; and
- 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; and
- 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; and
- 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; and
- WHEREAS, District staff, working with City of Minnetrista staff, have identified a 3.26-acre parcel of degraded floodplain wetland riparian to the northwestern corner of Jennings Bay that the City of Minnetrista owns as tax-forfeit conservation property and has preliminarily been found 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; and
- WHEREAS, an August 11, 2014 letter of support from the City of Minnetrista 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 forfeit land to the District for purposes of floodplain and wetland restoration”; and
- WHEREAS, District and City of Minnetrista 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; and
- WHEREAS, on October 20, 2014, the Minnetrista City Council considered and authorized execution of the cooperative agreement and expressed its support for the wetland restoration/flood volume replacement work on the tax forfeit property; and
- WHEREAS, on October 23, 2014, the MCWD Board of Managers authorized execution of the cooperative agreement with the City of Minnetrista; and
- WHEREAS, on February 17, 2015, the City of Wayzata adopted a resolution of support for the design and construction of the Highway 101 Causeway Reconstruction Project; and

WHEREAS, in accordance with Minnesota Statutes § 103B.251, subdivision 3, the MCWD held a duly noticed public hearing on ordering of the Project on February 26, 2015, at which time all interested parties had the opportunity to speak for and against the Project; and

WHEREAS, the MCWD consulting engineer has prepared and submitted a feasibility analysis of the Project, including its technical elements and its cost-effectiveness, and estimates the cost (including design, construction and construction oversight) at \$1,604,308, and the analysis has been fully considered by the MCWD Board of Managers; and

WHEREAS, the Board of Managers finds that the Project will be conducive to public health and promote the general welfare, and is in compliance with Minnesota Statutes §§103B.205 to 103B.255 and the MCWD's WMP adopted pursuant to §103B.231; and

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Minnesota Statutes § 103B.251 and the WMP, the MCWD Board of Managers orders the Project, with a total estimated cost (including design, construction, and construction oversight) of \$1,604,308 and authorizes the solicitation of engineering and construction oversight services for the Highway 101 Causeway Reconstruction Project and Jennings Bay wetland creation.

DRAFT

Resolution Number 15-0XX was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____

**Agreement No. PW 59-66-13
 County State Aid Highway 101
 County Project No. 9931
 Minnehaha Creek Watershed District
 County of Hennepin**

**COOPERATIVE AGREEMENT FOR SHORELINE
 AND STORMWATER MANAGEMENT ENHANCEMENTS**

THIS AGREEMENT, Made and entered into this _____ day of _____, 2014, by and between the **County of Hennepin**, a body politic and corporate under the laws of the State of Minnesota, hereinafter referred to as the "County", and **Minnehaha Creek Watershed District**, a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D, hereinafter referred to as the "District."

WITNESSETH:

WHEREAS, the County is reconstructing County State Aid Highway (CSAH) 101 within the City of Wayzata and adjacent communities. The project includes reconstruction of the causeway over Lake Minnetonka between Wayzata Bay and Grays Bay as well as the installation of stormwater management facilities to meet permit requirements with respect to stormwater runoff from the road surfaces to be constructed. For several years, the County has worked with the City of Wayzata and citizens' groups to refine the project design. The District has participated in this effort; and

WHEREAS, the County has proposed to support and stabilize the Wayzata Bay causeway face by driving a sheet-pile retaining wall with a surface installation of sloped structural riprap. The District's 10-year watershed management plan (WMP), adopted in 2007, contains a capital improvement program that includes collaboration with the County to redesign the causeway in order to use vegetated reinforced soil slopes in place of an armored shoreline design (District project 5.8.8). This bioengineering technique would dissipate wave energy, control erosion, manage runoff, enhance shoreline and littoral habitat, and naturalize shoreline appearance; and

WHEREAS, on October 24, 2013, the County presented project plans including stormwater management facilities proposed to meet requirements of District and other permits. The District's WMP also establishes programs to fund enhancement of public stormwater management facilities beyond what is legally required, including the Low Impact Re/Development program; and

WHEREAS, the District and the County share the goal of improving the water quality outcomes of the project where consistent with the project's basic transportation purposes. The District proposes to design, install and maintain a bioengineered slope on one or both sides of the causeway ("Shoreline Work") and to identify stormwater facility enhancements for incorporation into the County plans and specifications. The District and the County agree that the District will fund that part of the cost of the Shoreline Work on Wayzata Bay that exceeds the estimated cost of the County's proposed riprap, and the District will fund the incremental cost of the stormwater management facility enhancements, all as further provided herein; and

Agreement No. PW 59-66-13
CSAH 101; C.P. 9931

WHEREAS, it is contemplated that said work be carried out by the parties hereto under the provisions of Minnesota Statutes, Section 471.59 and other applicable authorities.

NOW THEREFORE, IT IS HEREBY AGREED:

I

SHORELINE ENHANCEMENT

1.1 The Shoreline Work consists of the installation of vegetated reinforced soil slopes and other bioengineered shoreline protection features, littoral and emergent vegetation, and other incidental structural and non-structural elements as denoted in Attachment A hereto. Attachment A, incorporated herein, consists of concept design documents including typical cross sections and a site plan delineating Construction Limits and the Improvement Area.

1.2 Upon completion of the afore referenced reconstruction of the CSAH 101 roadway in the area of the proposed Shoreline Work by the County's contractor as shown in the construction plans for County Project No. 9931, and after the District Board of Managers has ordered the work pursuant to Minnesota Statutes §103B.251, the District may enter within the Construction Limits and, at its cost, perform the Shoreline Work. It is understood by the parties that the District shall inform the County of its intent to begin its work a minimum of 14 calendar days prior to start of said Shoreline Work. Before beginning its work, it will obtain all required permits and approvals. The County will cooperate as landowner, will apply for the District permit as a co-applicant, and will not apply any fees to permits or approvals that it requires. The County also will timely provide the District with all information that it possesses relating to surface and subsurface conditions and otherwise relevant to design and construction. The District will manage the construction contract, but will give the County advance notice of all formal pre-construction and construction meetings, which the County may attend.

1.3 For the purpose of the Shoreline Work, and until construction, demobilization and site stabilization are complete, the District and its employees, agents, contractors and subcontractors may use the area within the Construction Limits delineated on Attachment A for construction purposes, including ingress and egress; equipment staging and use; materials stockpiling; the installation and maintenance of erosion and sediment control measures; and the performance of work including grading, excavating, installation, revegetation of disturbed areas and other actions as necessary or convenient for the work. The District will restore all disturbed areas materially to preexisting condition except for the improvements.

1.4 The District's contract for the Shoreline Work will require that:

(a) The contractor name the County as an additional insured for general liability on a primary basis and for both ongoing work and completed operations;

ATTACHMENT 1

Agreement No. PW 59-66-13
CSAH 101; C.P. 9931

- (b) The contractor will indemnify the County 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 Shoreline Work;
- (e) The contractor will comply with all applicable requirements for traffic and site control; and
- (f) The contractor will restore or repair any damage to the County's lands, equipment or facilities resulting from the contractor's activities.

1.5 The plans and specifications for the shoreline work present typical alignment and cross-section, reflecting the nature of the work and the District's intent to conform the Shoreline Work to site conditions and avoid unnecessary impacts to the surrounding environment. The District may make adjustments to the Shoreline Work, with or without field directive, or by work change directive or change order, provided that the final installation does not extend beyond the area delineated in Attachment A as the "Improvement Area."

1.6 When the District engineer has certified substantial completion of the Shoreline Work and on receipt of District invoice, the County will pay the District the amount of \$30,000.00 to defray the cost of the work on Wayzata Bay and will execute an easement materially identical to Attachment B hereto, incorporated herein, protecting and establishing the District's right to maintain the improvements in perpetuity, all consistent with sections 1.7 through 1.9, following. The District, at its cost, may record and re-record the easement.

1.7 On completion of installation, the improvements will be an attribute of the real property on which they are situated. Notwithstanding:

- (a) It is understood by the parties hereto that upon completion of the Shoreline Work proposed herein, all improvements included in the Shoreline Work shall become the property of the District and all maintenance, restoration, repair or replacement that the District thereafter performs shall be at no expense to the County. The District will coordinate its work with the County to minimize interference with transportation use of the right-of-way and any other County interests. The County may place reasonable conditions on the District's occupation of the right-of-way for maintenance or reconstruction purposes.
- (b) If the Shoreline Work fails due to subsided or unstable soils, the District will be responsible to stabilize the affected area
- (c) If the County wishes to perform maintenance or reconstruction on the CSAH 101 roadway, it will give the District 30 days' written notice of its intent and the parties will consult. The County thereafter may perform the maintenance or reconstruction. The District in writing may specify conditions for the

ATTACHMENT 1

Agreement No. PW 59-66-13
CSAH 101; C.P. 9931

work in order to avoid damage to the improvements. The County will incorporate such conditions into the work to the extent it determines it reasonably can do so. Irrespective of whether the District communicates such conditions, the County will take reasonable steps to ensure that the improvements are not damaged and that the stability and ecologic function of the improvements are sustained. The County will bear the cost of its own maintenance and reconstruction activity.

(d) The County will not compromise or disturb the vegetation or otherwise disturb the improvements within the "Improvement Area" as delineated on Attachment A, except as paragraph 1.7(c) may permit. The County will inform any County highway maintenance crew or County contractor that may be in a position to damage said improvements of the County's obligation to take reasonable precautions to protect the improvements. The County will repair any disturbance of the improvements materially to the preexisting condition.

1.8 The County will retain day-to-day responsibility for the right-of-way that it owns, including right-of-way on which the Shoreline Work is located. This includes but is not limited to matters related to trash, dumping, public use and public safety.

1.9 The District or the County may install informational signage within the Shoreline Work area. The County may place reasonable restrictions on signage location, size and content. Any signage will identify both parties as contributing partners to the work.

1.10 If the District determines that the Shoreline Work is infeasible, the County will be responsible to complete the shoreline installation in a manner that meets all applicable permit requirements.

II

STORMWATER MANAGEMENT ENHANCEMENT

2.1 The District, by its engineering consultant, is evaluating opportunities to enhance the County's stormwater management system design in order to obtain further cost-effective water quality benefits beyond the October 24, 2013 stormwater management facility plans and beyond what applicable permits require.

2.2 The District will use its best efforts to develop conceptual plans for potential enhancements at the earliest time while adhering to the County's roadway construction schedule. The County diligently will apprise the District of its timing needs to incorporate any enhancements into the design documents.

2.3 On the District's request, the County will consult with the District promptly to consider the potential enhancements. The County will identify any enhancement that should be excluded from consideration or modified due to interference of the enhancement or its maintenance with right-of-way uses or other County right-of-way management interests. In making these judgments, the County will act in good faith and in accordance with a preference to improve water quality treatment where possible, consistent with maintaining public safety.

ATTACHMENT 1

Agreement No. PW 59-66-13
CSAH 101; C.P. 9931

2.4 The District Board of Managers thereafter may select enhancements from those that the County has agreed are acceptable. The District will transmit to the County drawings or plans adequate for the County to incorporate the enhancements into its project plans and specifications. The County will forward 90 percent plans and specifications for the affected stormwater management facilities consistent with the District's submitted drawings or plans to the District and will prepare final plans and incorporate the enhancements into the project.

2.5 With District consultation, the County will use its best efforts to structure the bid form so that the incremental cost of the enhancements may be determined to the satisfaction of the parties. Before the notice to proceed is issued, the County will document to the District the incremental cost of each enhancement. If the incremental cost of a specific enhancement exceeds \$7,500, the District must concur in proceeding with the enhancement.

2.6 On substantial completion of each enhancement in accordance with the plans and specifications, the District shall reimburse the County the incremental cost of the enhancement.

III

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.

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

IV

This Agreement is effective on execution by both parties and expires six years thereafter, unless sooner terminated by the parties by written amendment. The mutual representations and protections of Article III will survive expiration.

A party to this Agreement may not assign or transfer any right or obligation under this Agreement except by means of an assignment agreement executed by both parties. Notwithstanding, if while this Agreement is in effect the County transfers any part of the Improvement Area or any right to engage in activities therein, as a term of that transfer it will require the transferee to be bound to all obligations hereunder and will name the District as a beneficiary of those obligations.

ATTACHMENT 1

Agreement No. PW 59-66-13
CSAH 101; C.P. 9931

V

All records kept by the District and the County with respect to each party's respective project shall be subject to examination by the representatives of each party hereto.

VI

Each party agrees that it will be responsible for its own acts and the results thereof, to the extent authorized by the law, and shall not be responsible for the acts of the other party and the results thereof. The County's and the District's liability are governed by the provisions of Minnesota Statutes, Chapter 466.

The County and the District each warrant that they are able to comply with the aforementioned indemnity requirements through an insurance or self-insurance program.

VII

It is further agreed that any and all employees of the District and all other persons engaged by the District in the performance of any work or services required or provided for herein to be performed by the District shall not be considered employees of the County, and that any and all claims that may or might arise under the Worker's Compensation Act or the Minnesota Economic Security Law on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees while so engaged on any of the work or services provided to be rendered herein shall in no way be the obligation or responsibility of the County.

Also, any and all employees of the County and all other persons engaged by the County in the performance of any work or services required or provided for herein to be performed by the County shall not be considered employees of the District, and that any and all claims that may or might arise under the Worker's Compensation Act or the Minnesota Economic Security Law on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees while so engaged on any of the work or services provided to be rendered herein shall in no way be the obligation or responsibility of the District.

VIII

In order to coordinate the services of the District with the activities of the County so as to accomplish the purpose of this Agreement, the County Highway Engineer or a designated representative shall manage this Agreement on behalf of the County and shall serve as liaison between the County and the District.

In order to coordinate the services of the County with the activities of the District so as to accomplish the purpose of this Agreement, the District's Project Manager or a designated representative shall manage this Agreement on behalf of the District and shall serve as liaison between

ATTACHMENT 1

Agreement No. PW 59-66-13
CSAH 101; C.P. 9931

the District and the County.

Each communication under this Agreement will be made to each party's designated representative at the following:

County Highway Engineer
Hennepin County Public Works
Transportation Department
1600 Prairie Drive
Medina, MN 55340-5421

Project Manager, County Road 101 Project
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka, MN 55345-1503

IX

It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.

This Agreement incorporates all terms and understandings of the parties concerning collaboration and District funding on the Shoreline Work and the stormwater management facility enhancements.

Any alterations, variations, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties hereto.

A party's failure to enforce a provision of this Agreement does not waive the provision or that party's right to enforce it subsequently.

X

The provisions of Minnesota Statutes 181.59 and of any applicable local ordinance relating to civil rights and discrimination and the Affirmative Action Policy statement of Hennepin County shall be considered a part of this Agreement as though fully set forth herein.

ATTACHMENT 1

Agreement No. PW 59-66-13
CSAH 101; C.P. 9931

XI

The matters set forth in the "whereas" clauses at the beginning of this Agreement are incorporated into and made a part hereof by this reference.

(this space left intentionally blank)

Agreement No. PW 59-66-13
CSAH 101; C.P. 9931

IN TESTIMONY WHEREOF, The parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

MINNEHAHA CREEK WATERSHED DISTRICT

(Seal)

By: Sherry Davis White
Its President

Date: May 22, 2014

Approved for form and execution:

And: [Signature]
MCWD Counsel

Date: May 22, 2014

COUNTY OF HENNEPIN

ATTEST:

By: [Signature]
Deputy/Clerk of the County Board

Date: 8.6.14

By: Mike Cat
Chair of its County Board

Date: 8.5.14

APPROVED AS TO FORM:

By: Julie Bonman
Assistant County Attorney

Date: 7/16/14

And: [Signature]
Assistant/Deputy/County Administrator

Date: 8/1/14

And: Dep R Beise
Assistant County Administrator, Public Works

Date: 7/31/2014

APPROVED AS TO EXECUTION:

By: Julie Bonman
Assistant County Attorney

Date: 8/13/14

RECOMMENDED FOR APPROVAL

By: James J. Shuler
Director, Transportation Department
and County Highway Engineer

Date: 5/28/14

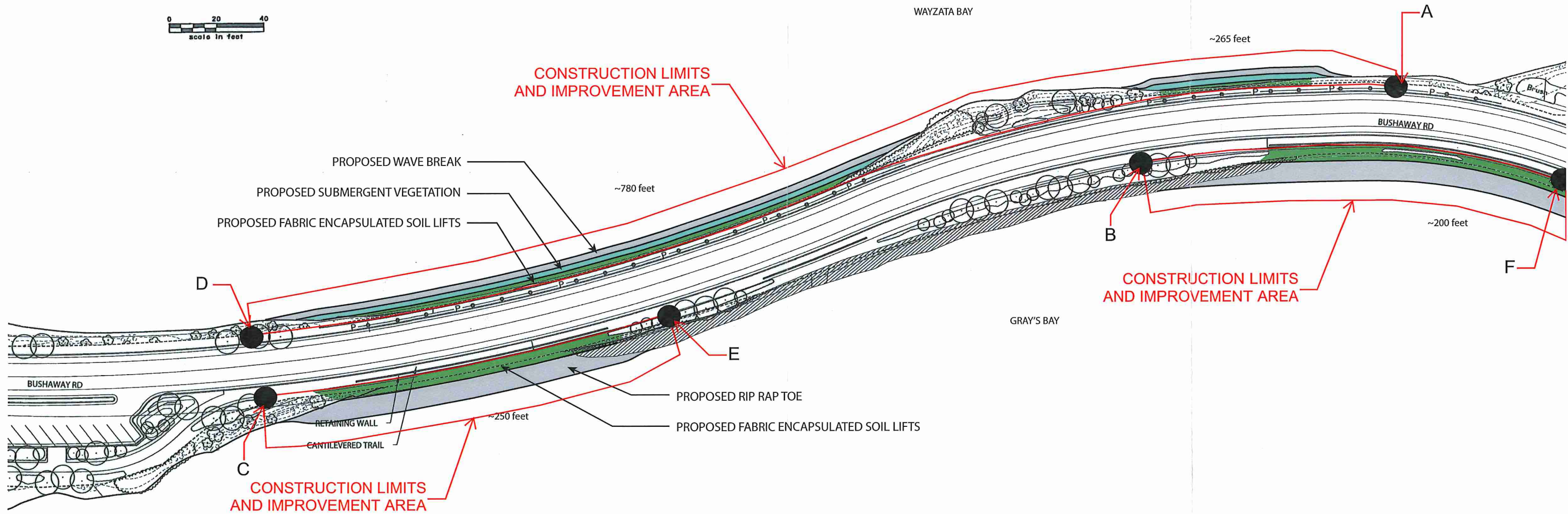
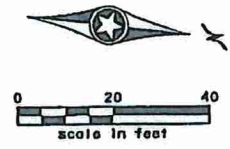
ATTACHMENT 1

ATTACHMENT A

W

FIGURE 2

● EASEMENT AXIAL TERMINUS POINT

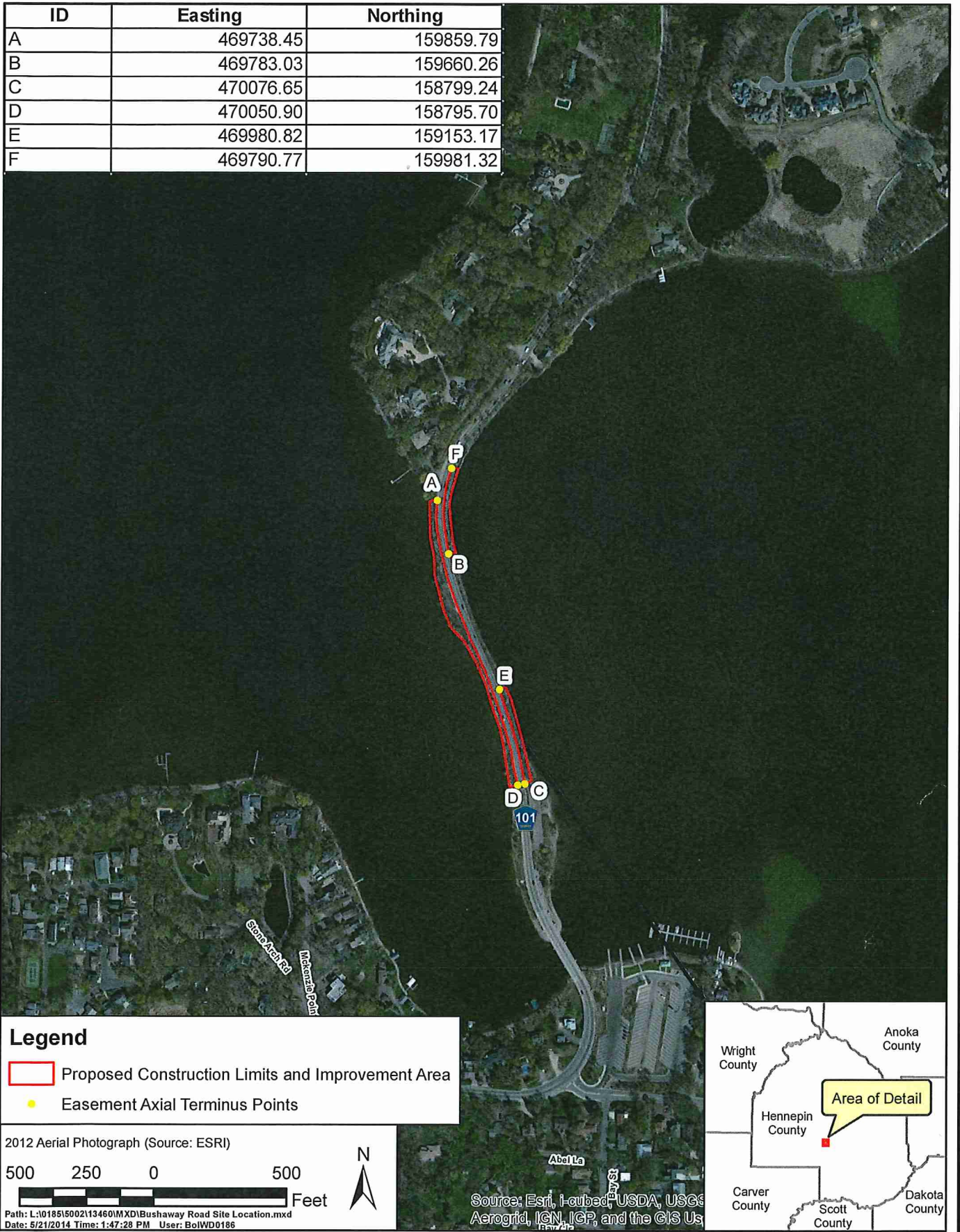


BUSHAWAY ROAD DESIGN CONCEPT PLAN
MINNEHAHA CREEK WATERSHED DISTRICT
JANUARY 22, 2014
WENCK ASSOCIATES, INC.



ATTACHMENT 1

ID	Easting	Northing
A	469738.45	159859.79
B	469783.03	159660.26
C	470076.65	158799.24
D	470050.90	158795.70
E	469980.82	159153.17
F	469790.77	159981.32



Legend

- Proposed Construction Limits and Improvement Area
- Easement Axial Terminus Points

2012 Aerial Photograph (Source: ESRI)

500 250 0 500 Feet

Path: L:\018515002\134601MXD\Bushaway Road Site Location.mxd
 Date: 5/21/2014 Time: 1:47:28 PM User: BolW0186



MINNEHAHA CREEK WATERSHED DISTRICT

Site Location Map

Wenck
 Engineers - Scientists
 Business Professionals
 www.wenck.com

1800 Pioneer Creek Center
 Maple Plain, MN 55359-0429
 1-800-472-2232

MAY 2014

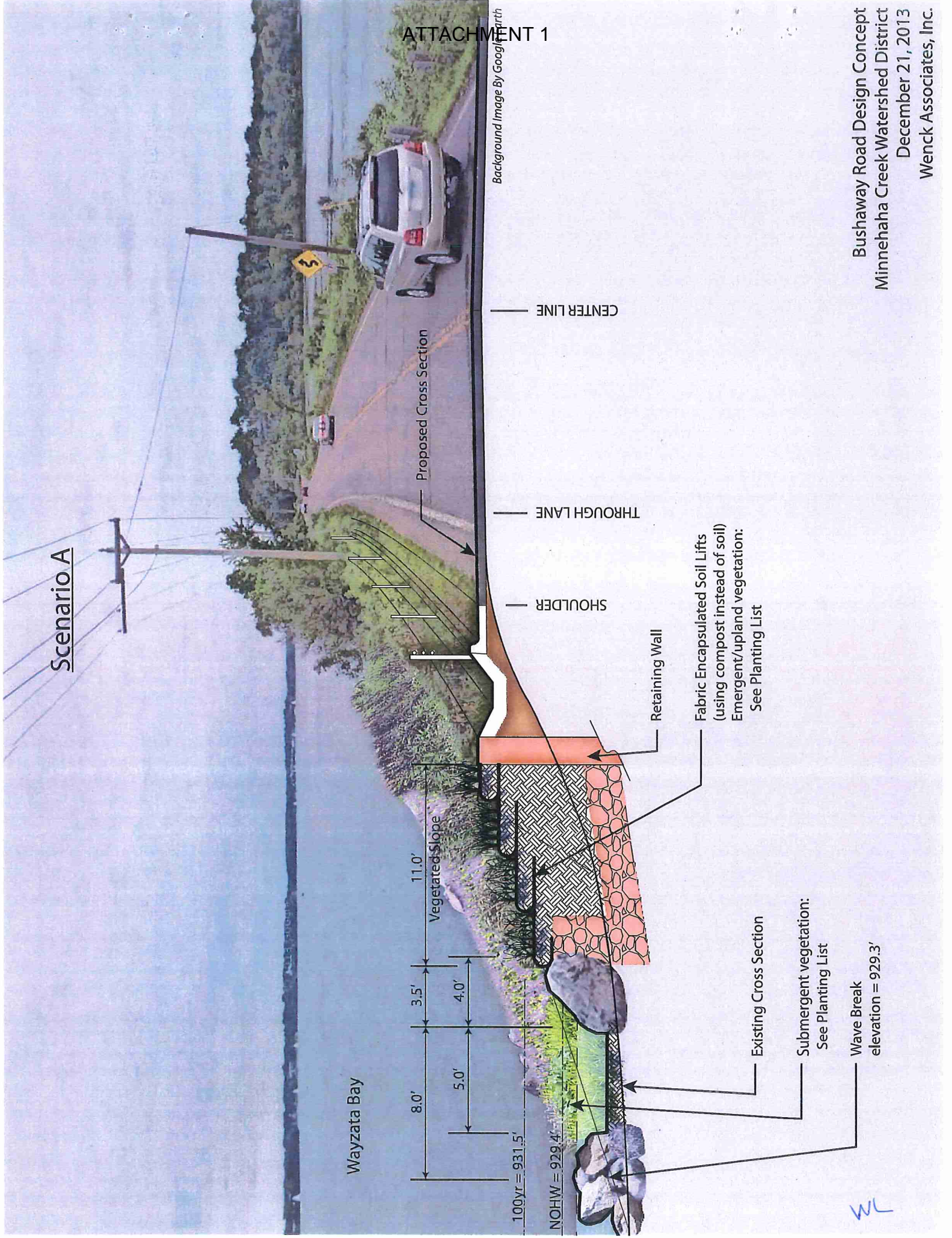
Figure 1

WL

Scenario A

ATTACHMENT 1

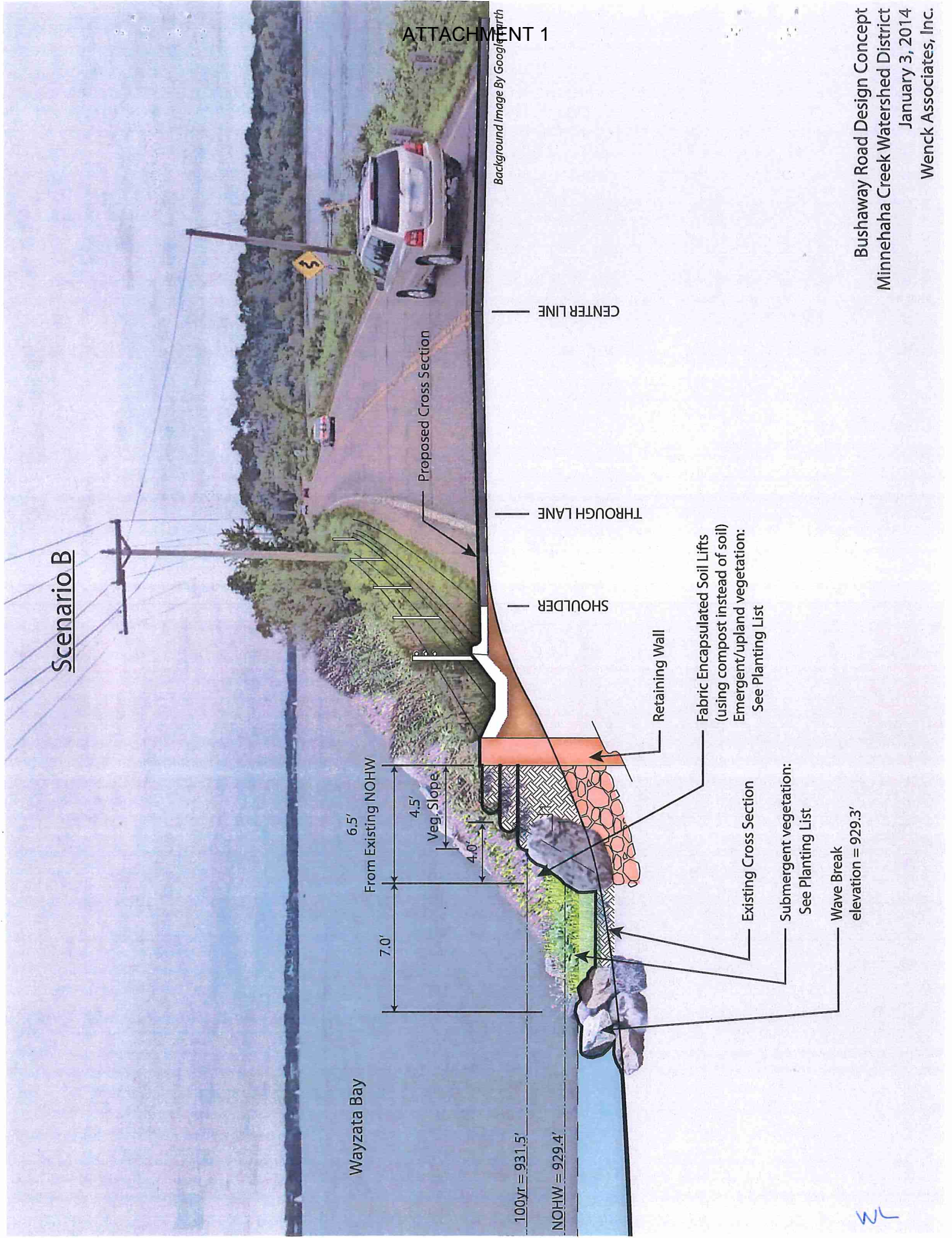
Background Image By Google Earth



W

Scenario B

ATTACHMENT 1



Background Image By Google Earth

Wayzata Bay

100yr = 931.5'

NOHW = 929.4'

From Existing NOHW

7.0'

6.5'

4.5'

Veg. Slope

4.0'

CENTER LINE

THROUGH LANE

SHOULDER

Retaining Wall

Fabric Encapsulated Soil Lifts
(using compost instead of soil)
Emergent/upland vegetation:
See Planting List

Existing Cross Section

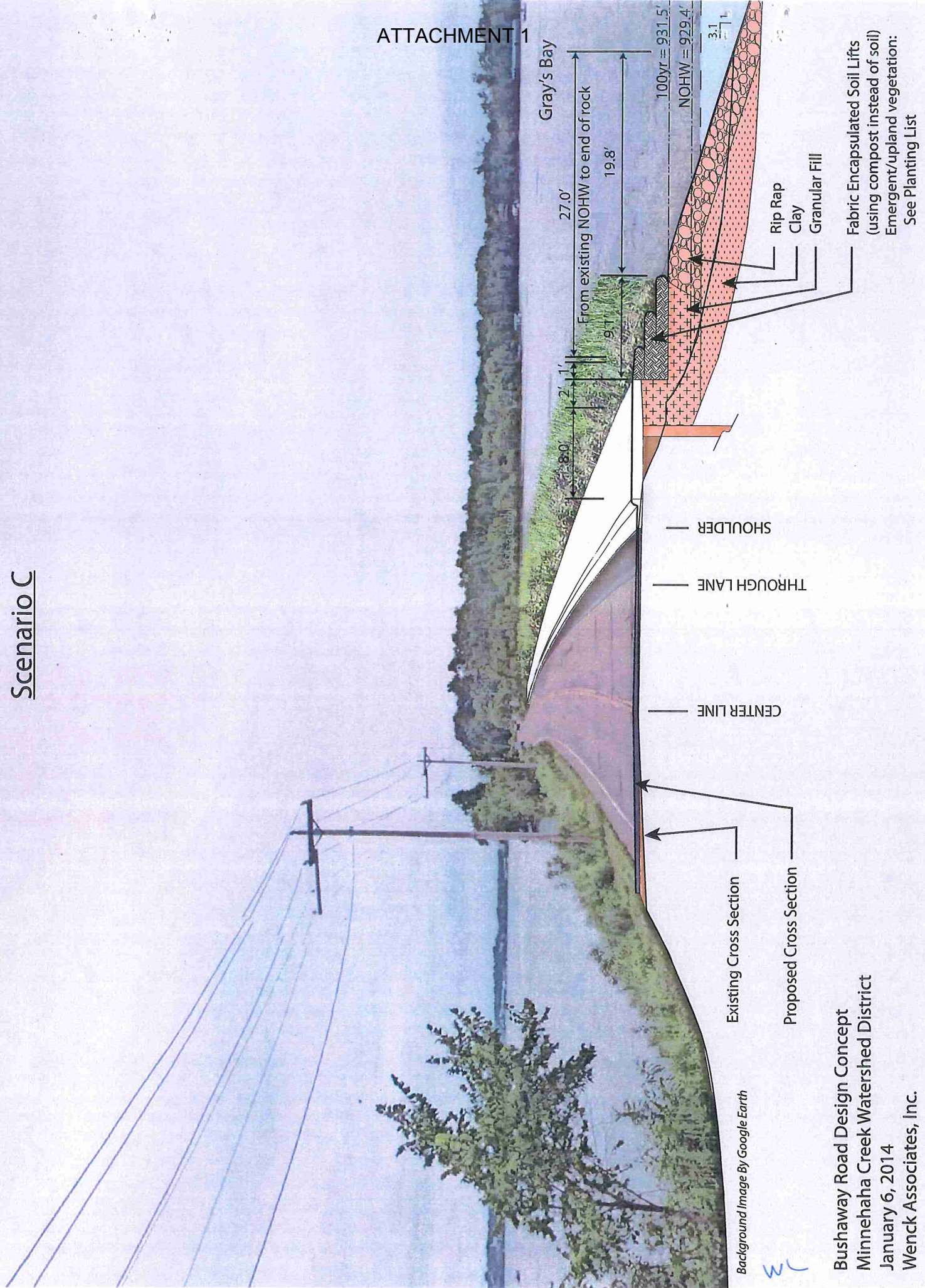
Submergent vegetation:
See Planting List

Wave Break
elevation = 929.3'

3

Scenario C

ATTACHMENT 1



Bushaway Road Design Concept
 Minnehaha Creek Watershed District
 January 6, 2014
 Wenck Associates, Inc.

ATTACHMENT B

EASEMENT

County State-Aid Highway 101 Causeway,
City of Wayzata, Hennepin County, Minnesota

Legal description of Property: Exhibit A
[include both PID 0811722320001 and ROW]

THIS EASEMENT is entered into by and between Hennepin County, a body politic and corporate under the laws of the State of Minnesota (“County”), and the Minnehaha Creek Watershed District, a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D (“District”).

A. The County owns and manages certain real property that serves as a causeway and right-of-way for County State-Aid Highway (CSAH) 101 over Lake Minnetonka between Wayzata Bay and Grays Bay (the “Property”).

B. Pursuant to a cooperative agreement between the parties, the District has installed shoreline improvements in the form of bioengineered shoreline protection features, vegetation and related elements to dissipate wave energy, control erosion, manage runoff, enhance shoreline and littoral habitat, and naturalize shoreline appearance.

C. The cooperative agreement provides that for consideration, the County will convey to the District an easement allowing the District to maintain the improvements in perpetuity. For the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth and referenced herein, the receipt and sufficiency of which hereby are acknowledged, the County conveys to the District and the District accepts a perpetual easement on the Property, as set forth herein.

EASEMENT TERMS

1. Easement Description. The easement is on and under that part of the Property delineated as “Construction Limits” on the site map attached hereto as Exhibit B and incorporated herein (“Easement Area”). The easement is perpetual in nature and appurtenant to Lake Minnetonka, property subject to the authority of the District to manage for beneficial public water resource uses.

2. District Rights. At its own cost, the District may temporarily occupy the Easement Area to inspect, maintain and reconstruct the improvements. This may

WL

ATTACHMENT 1

include equipment staging and use; materials stockpiling; the installation and maintenance of erosion and sediment control measures; and the performance of work including grading, excavating, vegetation management and other actions as necessary or convenient for the work. The District may not extend the improvements themselves beyond the area delineated as "Improvement Area" on Exhibit B.

The District may not exercise its rights under this easement to obstruct the transportation use of CSAH 101 outside of the Easement Area. The District will give 30 days' notice and consult with the County before exercising its rights under this easement in a way that may disrupt the transportation use of CSAH 101 or the lawful activity of the County or any utility easement holder on or adjacent to the Easement Area. The County may specify reasonable conditions to address potential disruption.

3. County's Limitations and Reserved Rights. The County will give the District 30 days' notice before any maintenance or reconstruction of CSAH 101. The District may request consultation and may in writing specify conditions for the work in order to avoid damage to the improvements. The County will incorporate such conditions into its work to the extent it determines it reasonably can do so. Whether or not the District communicates such conditions, the County will take reasonable steps to ensure that the improvements are not damaged and that their stability and ecologic function are sustained. Otherwise, the County will not disturb the vegetation, or otherwise disturb the improvements, within the Improvement Area, and will repair any disturbance materially to the preexisting condition.

The County reserves all rights, privileges and obligations associated with ownership of the Property except as specifically provided in this easement. Notwithstanding, the County is not responsible to maintain the Project.

4. Use and Assignment. The rights conveyed to the District under this easement are extended and limited to authorized District representatives, agents, contractors and subcontractors. The District may assign this easement and any rights hereunder only to another public body and only for the purposes stated herein.

5. County's Representations. The County does not warrant title and otherwise makes no representations as to its rights in or the condition of the Property. The County, without warranty, will cooperate with the District in sharing information it may have as to subsurface rights and conditions and as otherwise may be relevant to the District's activity under this easement.

6. Indemnification. Each party holds the other harmless, and agrees to defend and indemnify the other, from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages arising out of that party's action or inaction on the Property, to the extent that the action or inaction subjects the indemnitor to liability in law or equity. Nothing in this easement creates a right in any third party or affects any immunity, defense or liability limit the District or the County enjoys under law.

ATTACHMENT 1

7. Insurance. The County and the District each remains solely responsible to maintain liability and other insurance for its own uses of and authority over the Property.

8. Miscellaneous. All recitations are a part of this easement. The terms of this easement bind and benefit the parties and their respective successors, assigns and all others who exercise any right by or through them and run in perpetuity with the Property. The District bears the cost of recording and rerecording this easement in the Hennepin County land records.

9. Extinguishment and Abandonment. All questions of extinguishment or abandonment of this easement will be determined by principles of Minnesota law.

HENNEPIN COUNTY

Date:

[etc.]

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me this ___ day of _____, 201___, by _____ as _____, County of Hennepin.

Notary Public

MINNEHAHA CREEK WATERSHED DISTRICT

Date:

President

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me this ___ day of _____, 201___, by _____ as President, Minnehaha Creek Watershed District.

Notary Public

WL

ATTACHMENT 1

This document prepared by:
Smith Partners P.L.L.P.
Old Republic Title Building
400 Second Avenue South – Suite 1200
Minneapolis MN 55401
(612) 344-1400

EXHIBIT A

LEGAL DESCRIPTION of BURDENED PROPERTY

ATTACHMENT 1

EXHIBIT B

DELINEATION of EASEMENT AREA and IMPROVEMENT AREA



Mike Panzer, PE, PG
Vice President
Wenck Associates, Inc.
1800 Pioneer Creek Ctr.
P.O. Box 249
Maple Plain, MN 55359-0249

(763) 479-4207
Fax (763) 479-4242
E-mail: mike.panzer@wenck.com

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).

ATTACHMENT 2

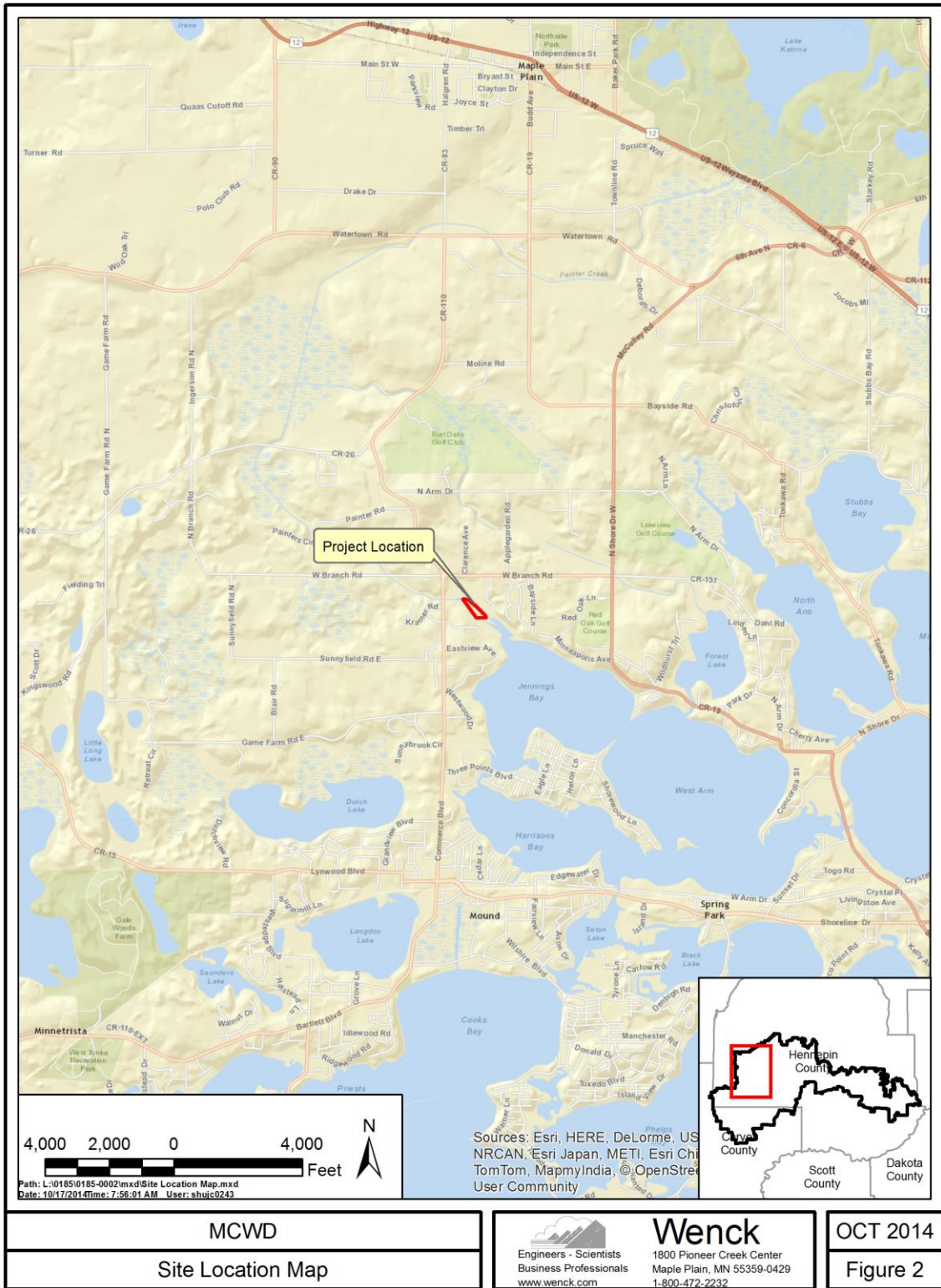
PROJECT SITE

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).

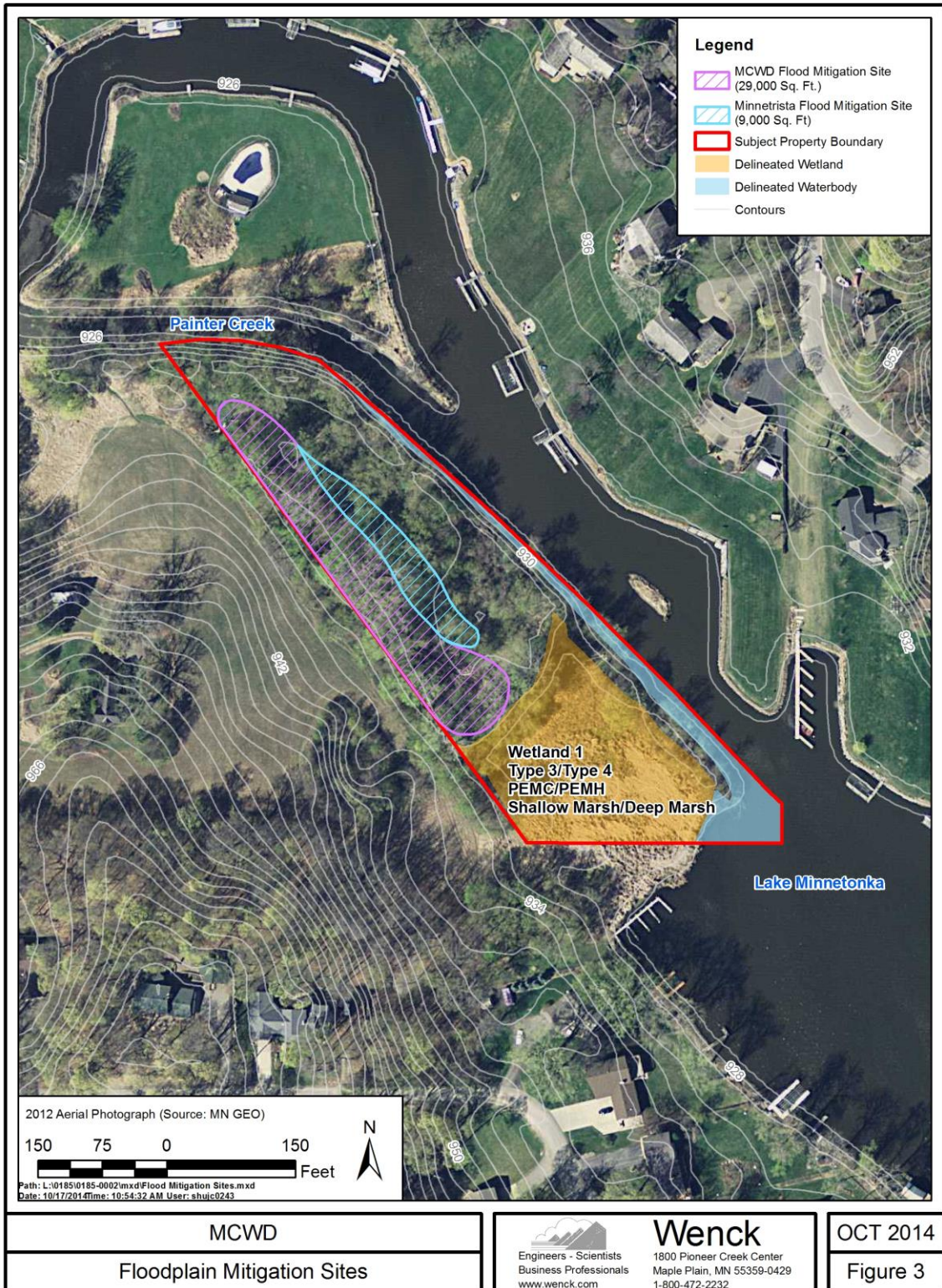
Initial site visit and wetland delineation was completed on August 12, 2014 for the parcel to assess available land which could be used for floodplain mitigation. The results of the visit and delineation determined there is a Type 3/4 wetland on-site and the site had low habitat diversity which is typical 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.

ATTACHMENT 2



ATTACHMENT 2



ATTACHMENT 2

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.

ATTACHMENT 3



Municipal Offices
7701 County Road 110 West
Minnetrista, MN 55364-9552
email: minnetrista@ci.minnetrista.mn.us

August 11, 2014

Ms. Becky Houdek
15320 Minnetonka Blvd.
Minnetonka, MN

RE: MCWD Capital Improvement Program

Dear Becky:

The City of Minnetrista would like to provide this letter of support for the recently released draft Capital Improvement Program.

The City and the District have enjoyed a close working relationship over the last several years through the implementation of the Six Mile Marsh Prairie Restoration, and other initiatives. At this juncture, the City of Minnetrista is please to support a partnership to improve water quality in Halsted Bay, opportunities for which are memorialized in the CIP.

Beyond the CIP, the City also recognizes opportunity to collaborate with the District as a technical resource and possible partner on the development and implementation of plans several ravine stabilization projects within the city, which threaten infrastructure and water quality. The District's ability, through programs, grants and technical support, to remain responsive is greatly appreciated.

Furthering our mutual interest in interagency collaboration, as you know, the City Council recently voted to support exploring the possibility of transferring 3.26 acres of tax forfeited land to the District for purposes of floodplain and wetland restoration. We look forward to continuing to work closely together on this project.

In addition to partnership possibilities through the CIP and on an opportunity basis, the City understands the development of the District's next 10 year Comprehensive Plan will provide a framework to integrate the City's own Comprehensive Plan goals with the MCWD's. The District's established philosophy of partnership and integration with public and private sector objectives is one the City of Minnetrista readily endorses.

Thank you for the chance to comment. I look forward to continuing our work together.

Sincerely,

A handwritten signature in black ink that reads "Michael Barone".

Michael Barone
Interim City Administrator

cc: City Council

ATTACHMENT 4

RESOLUTION NO. 156-14

**RESOLUTION APPROVING A COOPERATIVE AGREEMENT WITH
MINNEHAHA CREEK WATERSHED DISTRICT AND THE CITY OF
MINNETRISTA FOR THE JENNINGS BAY WETLAND AND FLOODPLAIN
RESTORATION PROJECT**

WHEREAS, The 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”); and

WHEREAS, 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 in 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; and

WHEREAS, 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; and

WHEREAS, 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; and

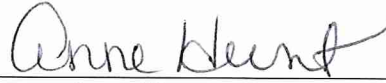
WHEREAS, The purpose of this Agreement is to coordinate efforts and clarify roles and responsibilities of the City and District in seeking a transfer of the Property to the District and implementing the Project.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Minnetrista, Minnesota that the mayor and city clerk are authorized and directed to execute the Cooperative Agreement with the Minnehaha Creek Watershed District and the City of Minnetrista for the Jennings Bay Wetland and Floodplain Restoration Project in the general form attached hereto on behalf of the City.

ATTACHMENT 4

This resolution was adopted by the City Council of the City of Minnetrista on the 20th day of October, 2014 by a vote of 4 Ayes and 0 Nays.

Christians Absent



Mayor, Anne Hunt

ATTEST:



Terri Haarstad, City Clerk

(SEAL)



ATTACHMENT 4

EXHIBIT A

Form of Cooperative Agreement

[to be attached]

ATTACHMENT 4

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

ATTACHMENT 4

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.

ATTACHMENT 4

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

ATTACHMENT 4

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 increase 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:

ATTACHMENT 4

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 Anne Idrent
Its Mayor

Date: 10/20/14

By Jeri Haasfad
Its City Clerk

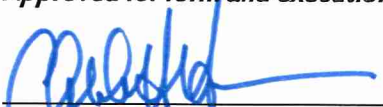
Date: 10/20/14

MINNEHAHA CREEK WATERSHED DISTRICT

By Sherry Davis White
Its President

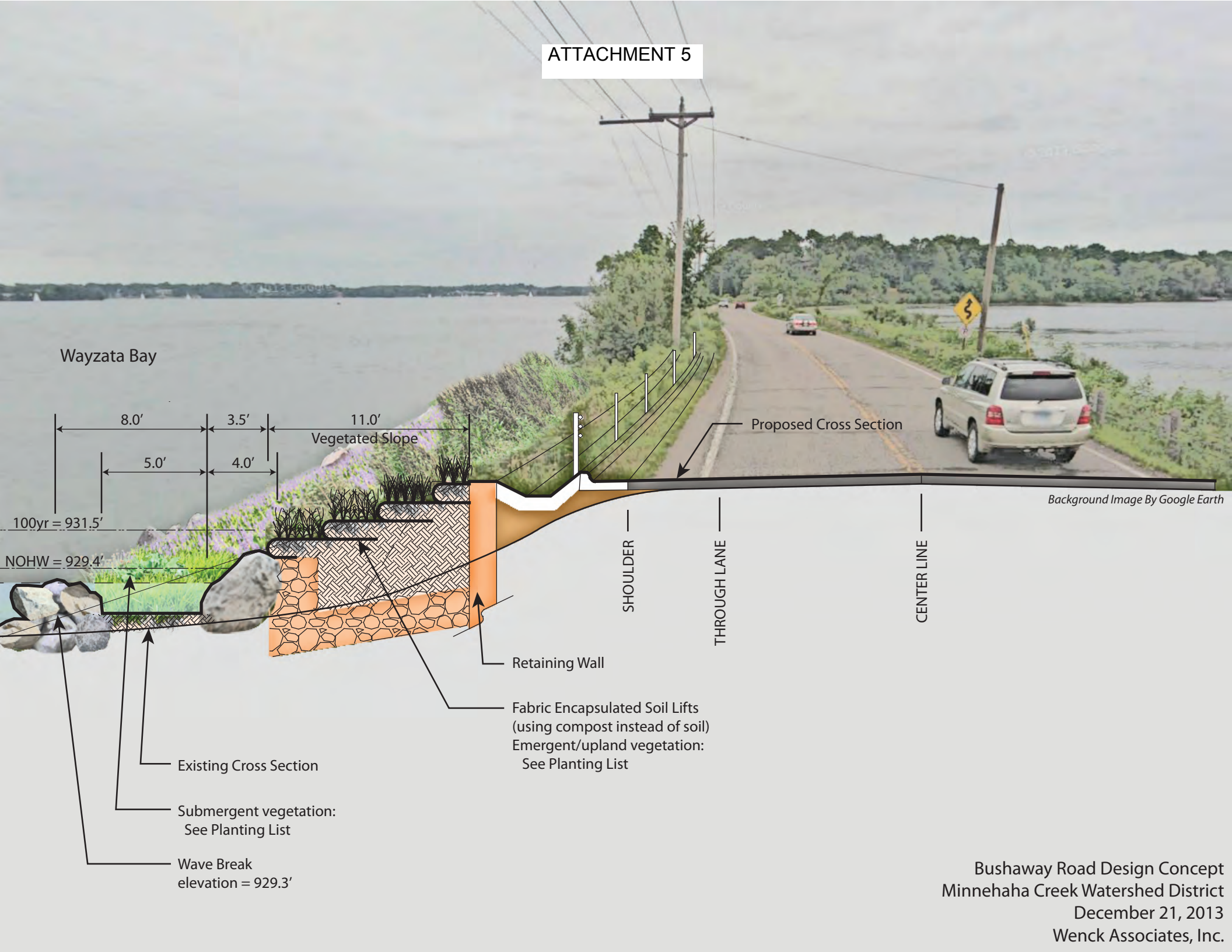
Date: 11/13/2017

Approved for form and execution:



MCWD Counsel

ATTACHMENT 5



Wayzata Bay

8.0'

3.5'

11.0'

Vegetated Slope

5.0'

4.0'

Proposed Cross Section

Background Image By Google Earth

SHOULDER

THROUGH LANE

CENTER LINE

Retaining Wall

Fabric Encapsulated Soil Lifts
(using compost instead of soil)
Emergent/upland vegetation:
See Planting List

Existing Cross Section

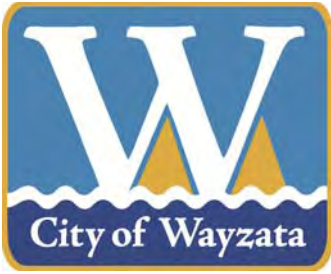
Submergent vegetation:
See Planting List

Wave Break
elevation = 929.3'

100yr = 931.5'

NOHW = 929.4'

Bushaway Road Design Concept
Minnehaha Creek Watershed District
December 21, 2013
Wenck Associates, Inc.



City of Wayzata Public Works
299 Wayzata Blvd. W
Wayzata, MN 55391

Director of Public Service
David Dudinsky

City Engineer/Asst. Public Works Director
Mike Kelly

Public Works Superintendent
Jim Eibensteiner

Public Works Secretary/Utility Billing Clerk
Rebecca Jones

To: City Council
From: Mike Kelly, City Engineer
Date: 2/12/2015
Re: Resolution of Support for MCWD Causeway project

On February 26, 2015, the Minnehaha Creek Watershed District (MCWD) will hold a public hearing regarding a project along the causeway, in Wayzata, as part of the overall CSAH 101/Bushaway Road reconstruction. The project proposes to construct vegetated soil slopes along both the Wayzata Bay and Grays Bay side of the causeway. This public hearing is a required step in "ordering" a project, both by statute and by MCWD's Comprehensive Plan.

As stipulated in its Comprehensive Plan, prior to ordering capital projects in excess of \$300,000 the MCWD will seek resolutions of support from the local government unit in which the project is located. This causeway project will exceed \$300,000 for each side of the causeway, and will involve in addition the cost to construct compensatory flood volume to replace the fill within the floodplain that the soil slopes will require.

Vegetated soil slopes have been discussed as part of the Bushaway corridor for almost 15 years and were included as a condition in the Hennepin County project approval, in 2014.

Attached, please find draft resolution 12-2015, supporting the MCWD design and construction of vegetated soil slopes along the causeway portion of CSAH 101 in Wayzata.

CITY OF WAYZATA

RESOLUTION NO. 12-2015

RESOLUTION SUPPORTING THE MINNEHAHA CREEK WATERSHED DISTRICT DESIGN AND CONSTRUCTION OF VEGETATED SOIL SLOPES ALONG THE CAUSEWAY PORTION OF CSAH 101 IN WAYZATA

WHEREAS, the City of Wayzata and the Minnehaha Creek Watershed District have a history of successful partnerships, collaborating to align planning and investment across infrastructure, land development and natural resources; and

WHEREAS, in 2001 through collaboration during pre-project development, the City of Wayzata, City of Minnetonka and the Minnehaha Creek Watershed District identified the potential to integrate vegetated reinforced soil slopes into the future reconstruction of County State Aid Highway (CSAH) 101 (Bushaway Road); and

WHEREAS, Hennepin County initiated preliminary project development for Bushaway Road in 2005; and

WHEREAS, the Minnehaha Creek Watershed District's 2007 Comprehensive Plan includes in its capital improvement plan a project titled Grays Bay Highway 101 Causeway Reconstruction, described as a collaborative project with Hennepin County and the cities of Wayzata and Minnetonka to redesign the Highway 101 Grays Bay causeway using vegetated reinforced soil slopes; and

WHEREAS, the City of Wayzata approved resolution 45-2012 on September 4, 2012, approving preliminary plans and requesting the integration of a project arborist into the project development team/Bushaway Road Task Force; and

WHEREAS, on December 12, 2013 the Minnehaha Creek Watershed District Board of Managers directed staff by resolution to communicate an organizational commitment to reviewing the Bushaway Road project for regulatory compliance and recommending enhancements for which the MCWD would take financial responsibility, including enhancements to the proposed shoreline treatment; and

WHEREAS, the City of Wayzata approved resolution 04-2014 on January 7, 2014, requiring Hennepin County to enter into a cooperative agreement with the Minnehaha Creek Watershed District to develop concepts to implement a vegetated shoreline stabilization in conjunction with the road reconstruction; and

WHEREAS, on January 23, 2014 the Minnehaha Creek Watershed District Board of Managers approved permit 13-460 for the reconstruction of County State Aid Highway 101, stipulating that a cooperative agreement must be completed between Hennepin County and the Minnehaha Creek Watershed District for the completion of vegetated reinforced soil slopes along the Wayzata Bay portion of the project, necessary to meet regulatory requirements; and

WHEREAS, on January 23, 2014 the Minnehaha Creek Watershed District Board of Managers approved resolution 14-008 authorizing the execution of a cooperative agreement preserving

ATTACHMENT 6

the ability to design and implement vegetated reinforced shoreline on both sides of the causeway; and

WHEREAS, a cooperative agreement was executed between Hennepin County and the Minnehaha Creek Watershed District in August 2014, outlining agency roles and responsibilities with regards to implementing vegetated reinforced shoreline improvements; and

WHEREAS, as stipulated in its Comprehensive Plan, prior to ordering capital projects in excess of \$300,000 the Minnehaha Creek Watershed District will seek resolutions of support from the local government unit in which the project is located; and

WHEREAS, the cost to construct vegetated reinforced soil slopes for Wayzata Bay and Grays Bay will exceed \$300,000 for each side of the causeway, and will involve in addition the cost to construct compensatory flood volume to replace the fill within the floodplain that the soil slopes will require.

NOW THEREFORE BE IT RESOLVED, the Wayzata City Council hereby states its support for the Minnehaha Creek Watershed District and Hennepin County partnership to implement vegetated reinforced soil slopes along the Wayzata Bay side of the causeway, to the extent feasible and practicable;

BE IT FURTHER RESOLVED, the Wayzata City Council hereby states its support for the Minnehaha Creek Watershed District and Hennepin County's partnership to implement vegetative improvements along the Gray's Bay side of the causeway, to the extent feasible and practicable.

ADOPTED BY THE WAYZATA CITY COUNCIL ON FEBRUARY 17, 2015.

Mayor Ken Willcox

ATTEST:

City Manager Heidi Nelson

ACTION ON THIS RESOLUTION:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution:

I hereby certify that the foregoing is a true and correct copy of Resolution No. 12-2015 adopted by the City Council of the City of Wayzata, Minnesota, at a duly authorized meeting held on February 17, 2015.

Becky Malone, Deputy City Clerk

SEAL