

MEETING DATE: August 28, 2014

TITLE: Authorization to execute Memorandum of Understanding (MOU) with the Mader Family Trust and the City of Minnetrista.

RESOLUTION NUMBER: 14-068

PREPARED BY: Courtney Hall

E-MAIL: Chall@minnehahacreek.org

TELEPHONE: 952-473-2855

REVIEWED BY: Administrator Counsel Program Mgr: James Wisker
 Board Committee Engineer Other

WORKSHOP ACTION:

<input type="checkbox"/> Advance to Board mtg. Consent Agenda	<input type="checkbox"/> Advance to Board mtg. Consent Agenda with changes
<input type="checkbox"/> Advance to Board mtg. for more discussion	<input type="checkbox"/> Refer to a future workshop (date): _____
<input type="checkbox"/> Return to staff for additional work	<input type="checkbox"/> Refer to taskforce or committee (date): _____
<input type="checkbox"/> No further action requested.	<input checked="" type="checkbox"/> Other: Final Action on August 28, 2014

PURPOSE or ACTION REQUESTED:

Authorize execution of a Memorandum of Understanding (MOU) between MCWD, the Mader Family Trust and the City of Minnetrista.

SUMMARY:

Background:

The Mader Family Trust and District staff met to discuss opportunities for wetland restoration and wetland banking creation at 8000 County Highway 110 W in the City of Minnetrista (see attached maps). A 27 acre wetland is located on the 77.5 acre property. The wetland in question has been ditched, tilled and has a cropping history.

While the MCWD is not the local government unit (LGU) for the Wetland Conservation Act (WCA) in Minnetrista, District staff met with the Mader family to offer basic technical information related to wetland restoration techniques and processes pursuant to MN Rules 8420. During these meetings the two parties discussed the possibility of restoring the on-site wetlands as a wetland bank, under the WCA. Currently, District rules prioritize wetland mitigation within the Minnehaha Creek watershed, however no wetland bank sites exist within the MCWD. Consequently, wetland impacts within the District eligible for replacement via wetland bank credits draw from wetland banks outside of the MCWD. Under this scenario, there is a net loss of wetland area within the District.

Therefore, in addition to restoring function and value to the 27 acre wetland located on site, enrolling any ensuing project as a wetland bank would also serve to offset future impacts within the District that would otherwise draw from bank credits not located within the Minnehaha Creek watershed.

Based on discussions to date, the Mader Family Trust and the City of Minnetrista are interested in entering into a Memorandum of Understanding (MOU) to align interests and expertise in the joint pursuit of a wetland restoration project, and possible wetland bank at 8000 County Road 110 W.

Mader – Minnetrista – MCWD Memorandum of Understanding:

District staff have coordinated with the City of Minnetrista, the Maders and MCWD Legal Counsel to develop a Memorandum of Understanding (attached) that details a framework to collaboratively advance wetland restoration and banking opportunities at 8000 County Road 110.

This framework includes agreement between the parties to:

- Investigate the technical feasibility and cost of creating wetland bank credits through wetland restoration;
- Outline the process to establish a wetland bank pursuant to the WCA as well as other relevant programs;
- Evaluate the effect of wetland restoration and bank credit creation on the development of the property and its subsequent economic value;
- Consider how zoning, subdivision, building and related codes may apply to the property in support of mutual goals of the parties;
- Coordinate and facilitate communications with the U.S. Army Corps of Engineers, Board of Water and Soil Resources, the WCA Technical Evaluation Panel, and others as needed.

Recommendation:

Staff is recommending the Board authorize execution of this MOU between the Mader Family Trust, the City of Minnetrista and the MCWD, memorializing a mutual interest in pursuing a wetland restoration and wetland banking project at 8000 County Road 110 W, Minnetrista.

Attachments:

1. Site Location Map
2. Site Wetland Map
3. Minnetrista Letter of Support
4. Draft Memorandum of Understanding

RESOLUTION

RESOLUTION NUMBER: 14-068

TITLE: Authorization to execute Memorandum of Understanding (MOU) with the City of Edina

WHEREAS, the Mader Family Trust owns property located at 8000 County Road 110 W, Minnetrista, which includes approximately 27 acres of drained and historically cropped wetland;

WHEREAS, the Mader Family Trust has expressed an interest in partnering with the MCWD and City of Minnetrista to explore the feasibility of wetland restoration and wetland banking at this location;

WHEREAS, no wetland banks currently exist within the Minnehaha Creek Watershed;

WHEREAS the Minnehaha Creek Watershed District Board of Managers has established policy:

- To increase the quantity, quality and biological diversity of wetlands by restoring or enhancing diminished or drained wetlands;
- To compensate for wetland impact by replacing or providing substitute wetland resources;
- To promote competent administration of the Wetland Conservation Act (WCA) within the watershed;

WHEREAS, the MCWD wishes to work collaboratively with private and public partners to advance its mission of water resource management;

WHEREAS, the City of Minnetrista has expressed written support for a partnership with the District and the Mader Family Trust;

WHEREAS, the attached Memorandum of Understanding outlines a framework for the District, Mader Family Trust and the City of Minnetrista to collaboratively advance investigation of wetland restoration and wetland banking opportunities at 8000 County Road 110 W;

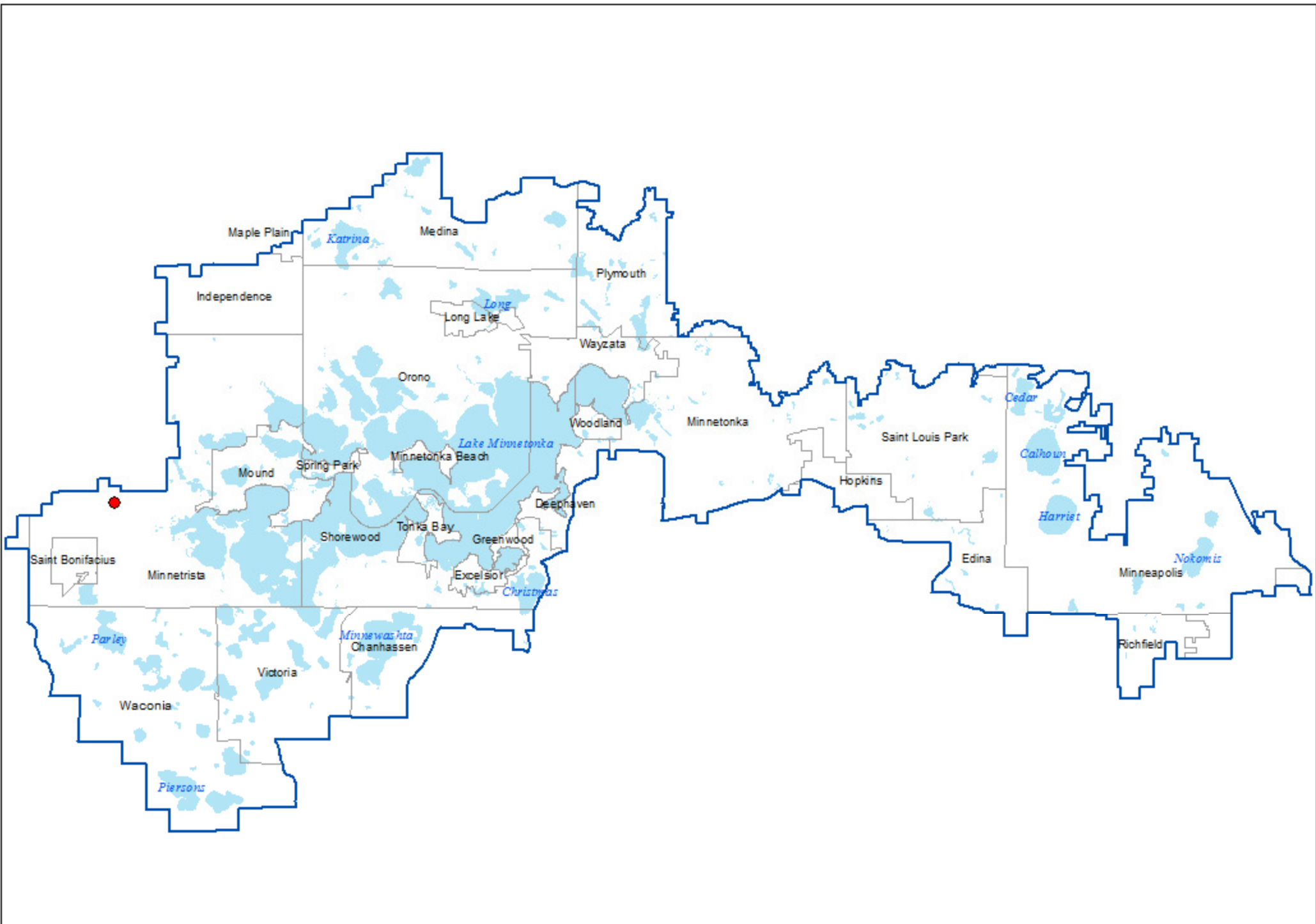
NOW, THEREFORE, BE IT RESOLVED, that the MCWD Board of Managers hereby authorizes staff, on the advice of legal counsel and the Board President, to make minor adjustments to the Memorandum of Understanding based on potential modifications proposed by the Minnetrista City Council;

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the MCWD Board of Managers hereby authorizes the Board President to execute the Memorandum of Understanding in its final form between MCWD, the Mader Family Trust and the City of Minnetrista.

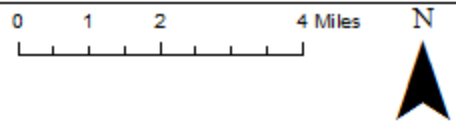
Resolution Number 14-068 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary

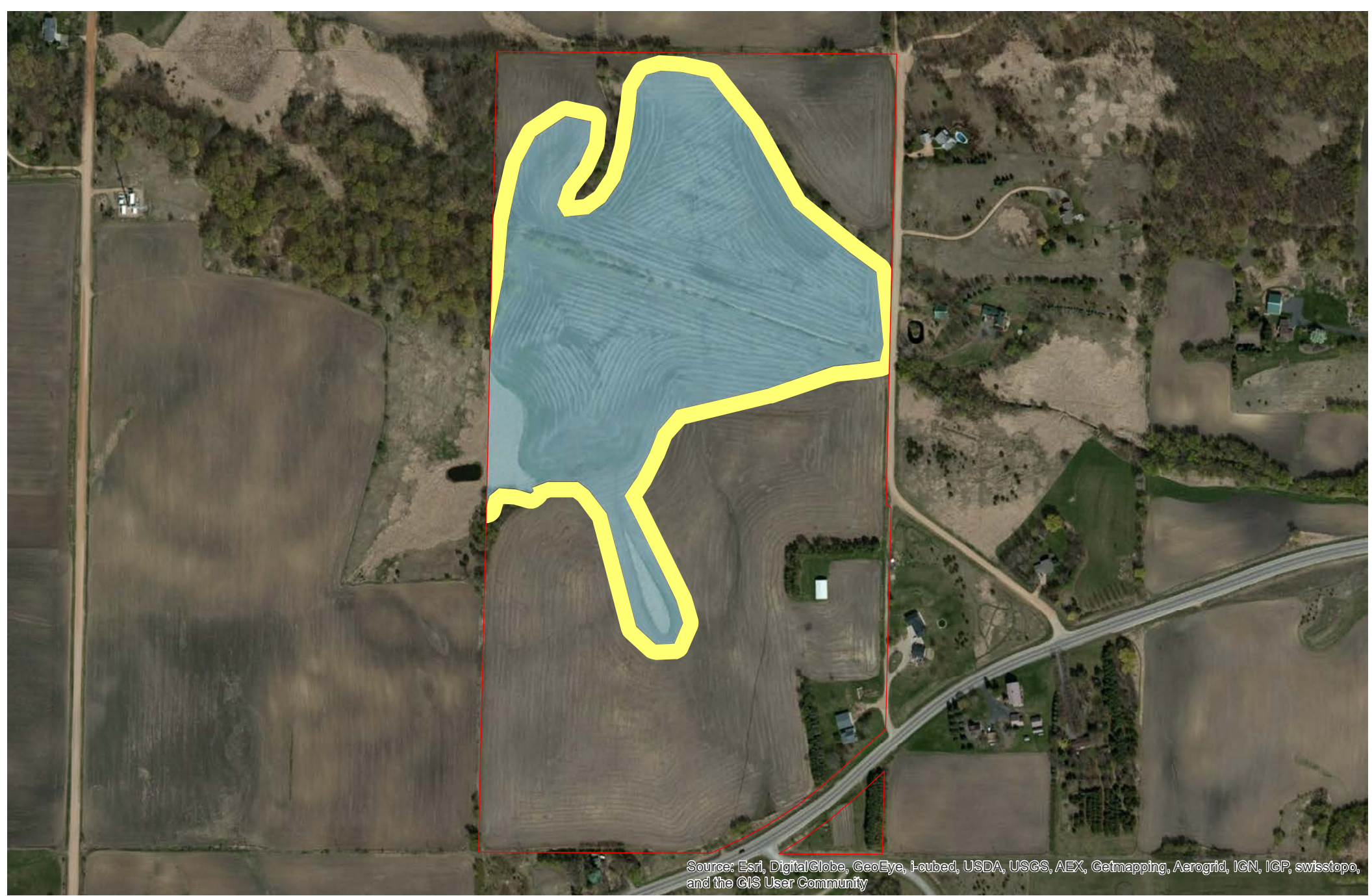
Date: _____



Proposed Bank Location






- Legend**
- MCWD Legal Boundary
 - Cities
 - Proposed Wetland Bank
 - Lakes



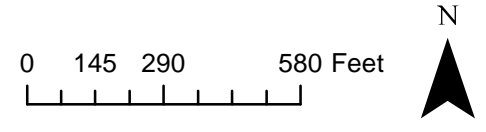
Source: Esri, DigitalGlobe, GeoEye, I-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Legend

-  Parcel Boundary
-  Averaged 50' Wetland Buffer
-  Approximate Wetland

8000 Co Rd 110 W Wetland and Buffer

Wetland area: 26.69 acres
50' buffer area: 7.40 acres





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

August 22, 2014

Minnehaha Creek Watershed District
Attn: James Wisker
15320 Minnetonka Blvd.
Minnetonka, MN 55345

**Re: Memorandum of Understanding (MOU) for Wetland Restoration & Banking Plan at
8000 County Road 110W**

Dear Mr. Wisker,

Thank you for the opportunity to partner with the district on this exciting project. Minnetrista City staff has reviewed the proposed MOU and is in favor of the arrangement. We believe the document is well written and very clear in its purpose. City staff intends on presenting this document to the City Council at their September 2, 2014 meeting for their consideration.

Feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "David Abel". The signature is written in a cursive, slightly slanted style.

David Abel
Community Development Director

cc: Mike Barone, Interim City Administrator

MEMORANDUM of UNDERSTANDING

Minnehaha Creek Watershed District, City of Minnetrista and Mader Family Trust

Wetland Restoration and Banking Plan 8000 County Highway 110 W, Minnetrista

This Memorandum of Understanding (MOU) is made among the Minnehaha Creek Watershed District ("District") and the City of Minnetrista ("City"), political subdivisions of the State of Minnesota, and the Mader Family Trust ("Trust"), owner of an 80-acre tract at 8000 County Highway 110 W, Minnetrista (the "Property").

Statement of Purpose

A. The District and City are responsible to manage natural resources within the City and have an interest in the restoration of wetland areas for public flood management, water quality and ecological benefits. The City implements the Minnesota Wetland Conservation Act (WCA) and the District implements its own wetland management rules governing impacts to wetlands.

B. WCA and the District's rules both require that impacts to wetlands be mitigated by creating or restoring other wetland resources within the same hydrologic system as the impact. The preferred way to do this is by restoring wetland resources on a larger, ecologically meaningful scale and placing restoration credits in a "bank" approved by the Minnesota Board of Water and Soil Resources (BWSR) for sale to those causing wetland impacts. However, presently there are no wetland "banks" within the District that may be used to mitigate local wetland impacts.

C. The Property offers the potential to restore 27 acres, more or less, of largely drained and degraded wetland in an otherwise ecologically functional setting both to provide local flooding, water quality and ecologic benefits and to produce banked wetland credits that third parties may use to comply with WCA and District rules.

D. The Trust wishes to preserve and enhance the Property and its ecologic resources while at the same time preserving or enhancing the economic value of the Property.

E. The parties acknowledge that their ability to achieve these objectives depends on their working cooperatively in accordance with the terms of this MOU.

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

Agreement

1. The District will assist the Trust in assessing the feasibility and potential cost of creating bank credits through wetland restoration. For this purpose the District and its technical advisors may enter the Property at reasonable times to inspect and survey, and may engage in limited

disturbance of the Property, but will restore any disturbance materially to its preexisting condition. This paragraph does not give the District any authority to enter any building or structure. If the District finds that the restoration may require the cooperation of a neighboring landowner, the District and the Trust will consult as to the best way to engage the landowner.

2. The District and the City will assist the Trust in evaluating the effect of wetland restoration and bank credit creation on the development potential of the Property and its economic value. As a part of this assistance, the City will work with the Trust to consider how its zoning, subdivision, building and related codes apply to the Property and may be applied so as to support the mutual goals of the parties.

3. The District and the City also will assist the Trust in understanding the process to establish a wetland bank under WCA as well as the relevant programs and rules of other agencies such as the U.S. Army Corps of Engineers. The District and the City will facilitate communications between the Trust and BWSR, the WCA Technical Evaluation Panel, and any other regulatory entities involved in wetland bank creation.

4. The Trust will provide the District and City with any information about the Property that may help the District in assessing feasibility and cost, except for information that the Trust considers private. The Trust recognizes that data and information in the District's or City's possession is subject to the Minnesota Data Practices Act. Where the Trust believes that certain data or information is sensitive, it will advise the District and City and the parties will cooperate to determine whether and how the data or information can be protected from public availability. The Trust will provide title records for the Property for review to be sure there are no third-party encumbrances or other interests in the Property that would obstruct performance of a restoration and banking plan.

5. The parties will work together in good faith and communicate in a timely fashion to advance the goals of this MOU. The Trust recognizes that assistance provided by the District and the City under this MOU is informal and without any warranty or duty of care whatsoever. The Trust recognizes that if the collaboration proceeds successfully, it will be appropriate and necessary at a certain time for the Trust to engage its own engineering and legal services.

6. The parties may find that a wetland restoration and bank creation is feasible but that the Trust does not wish to assume the responsibility to develop and implement the banking plan. In such an instance the parties will explore other means of partnering to achieve the end result, which may include the District or the City taking a more active role or a more formal responsibility in the restoration work. In such a case, the roles and responsibilities of the parties would be documented in a legally binding project agreement.

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

District

[]
MCWD
15320 Minnetonka Boulevard

Minnetonka MN 55345
City

[]

Trust

George Mader
1501 Broadway St.
Little Rock, AR 72202

gfxmader@hotmail.com

702-202-7109

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

8. It is understood that the Trust contact cannot legally bind the Trust and that the position of the Trust on any specific matter may not be established or may not be unanimous among the Trust representatives. The Trust contact, and anyone else who speaks on behalf of the Trust under this MOU, represents only that he or she is communicating diligently with other Trust representatives and is exercising his or her best judgment as to the position and interests of the Trust.

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

MINNEHAHA CREEK WATERSHED DISTRICT

Sherry White, President

Date:

Approved for Form and Execution:

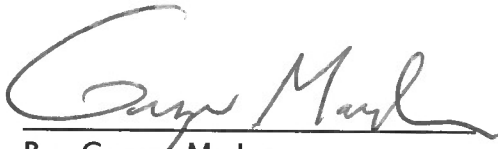
MCWD Counsel

CITY of MINNETRISTA

[etc]

Date:

MADER FAMILY TRUST

A handwritten signature in cursive script, appearing to read "George Mader", written over a horizontal line.

By: George Mader
Its: GM

Date: 8/20/2014