

Tonka Bay City Council Agenda Item
Executive Summary

Title of Item: **SIMPLE SUBDIVISION AND LOT COMBINATION**

REQUESTS:

Two applications from Michael and Karen Maney requesting simple subdivisions and lot combination to create three (3) lots where there are currently two (2) on the properties located at 89 Wildhurst Road and 90 Wildhurst Road

Report Date: **10-8-2014**

Meeting Date: **10-14-2014**

*60 Day Review
deadline:* **60 day period ends 11-10-2014**

Staff/Guest Reporting: Kelsey Johnson, AICP – City Planner
Justin Messner, PE – City Engineer

Summary: The Applicant is seeking approval to perform simple lot subdivisions and lot combination to create a total of three (3) lots where there are currently two (2) lots on the properties located at 89 Wildhurst Road and 90 Wildhurst Road.

The Applicant is requesting to shave a portion along the south side of 90 Wildhurst Road (the eastern portion of the lot) and combine it with the property to the south located at 89 Wildhurst Road. The Maney's currently own the property at 89 Wildhurst Road as well.

Although the property located at 90 Wildhurst Road appears to be two (2) separate lots (one lot on the west side of Wildhurst Road which currently houses an existing single family home; and one lot on the east side of Wildhurst Road which currently houses a tennis court) this property is currently one lot as currently recorded with Hennepin County.

The applicant is requesting to split the property at 90 Wildhurst Road into two (2) formalized lots (one on the west side of Wildhurst Road and one on the east side of Wildhurst Road).

Staff is required to bring these applications to the attention of the City Council for its review if the conditions described in Section 1030, subdivision Ordinance, General Provisions, Subd. F apply.

City of Tonka Bay
Simple Lot Subdivision and Lot Combination Report

To: City Council

From: Kelsey Johnson, AICP –City Planner
 Justin Messner, PE – City Engineer

Meeting Date: October 14, 2014

Applicant/Owner Michael and Karen Maney

Location: 89 and 90 Wildhurst Road

Zoning: R-1A

Introductory Information	
Proposed Project:	The applicant is seeking approval to perform two simple lot subdivisions and a lot combination to create a total of three (3) lots where there are currently two (2) lots on the properties located at 89 Wildhurst Road and 90 Wildhurst Road.
Findings	
Site Data:	Existing Lot Sizes – 90 Wildhurst Road– 119,736 sf; 89 Wildhurst Road – 30,763 sf Existing Use – Single Family Homes with Accessory Uses Existing Zoning – R-1A Property Identification Numbers (PID):28-117-23-24-0038 & 28-117-23-24-0039
Comp Plan Guidance:	<ul style="list-style-type: none"> ▪ The comprehensive plan guides these lots for single family use. The corresponding zoning assigned to this property (R-1A) allows for single family homes.
Lot Area and Lot Width:	<ul style="list-style-type: none"> ▪ The lot area requirement in the R-1A District is 20,000 square feet. The proposed three (3) new lots will all exceed this minimum area. <ul style="list-style-type: none"> ○ West Parcel – 40,6023 sf ○ Northeast Parcel – 66,480 sf ○ Southeast Parcel – 44,505 sf ▪ The lot width requirement in the R-1A District is 75 feet. The proposed three (3) new lots will meet and exceed this requirement. <ul style="list-style-type: none"> ○ West Parcel – 150 feet ○ Northeast Parcel – 141 feet ○ Southeast Parcel – 75 feet
Accessory Use:	With the proposed simple subdivisions and lot combination, the existing tennis courts along the east side of Wildhurst Road will traverse both properties as proposed. No accessory building or structure (i.e. a tennis court) can be located on a property prior to the construction of a principal structure, and cannot traverse a property line, and therefore violates the City Code. Staff

recommends removal of the tennis court no later than November 1, 2015.

Park Dedication: Since this request is an exception to the platting requirements of the subdivision ordinance, and all lots are improved lots, no park dedication is required.

Application Review:

**Applicable Code
Definitions:**

Accessory Building or Use. A subordinate building or use which is located on the same lot on which the main building or use is situated and which is reasonably necessary and incidental to the conduct of the primary use of such building or main use.

Density, Residential. A number expressing the relationship of the number of dwellings to an acre of land as established in the Comprehensive Municipal Plan.

Easement. A grant by an owner of land for a specific use by persons other than the owner.

Frontage. That boundary of a lot which abuts an existing or dedicated public street, watercourse or similar barrier.

Lot. A parcel or portion of land of at least sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved street.

Lot (of Record). A parcel of land, whether subdivided or otherwise legally described, as of the effective date of this Ordinance, or approved by the City as a lot subsequent to such date and which is occupied by or intended for occupancy by one (1) principal building, or principal use together with any accessory buildings and such open spaces as required by this Ordinance and having its principal frontage on a street, or a proposed street approved by the Council.

Lot Area. The total land area of a horizontal plane within the lot lines.

Lot Depth. The distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rear most points of the side lot lines in the rear.

Lot, Width. The shortest horizontal distance between the side lot lines measured at right angles to the lot depth at the minimum required building setback line. If not setback line is established, the distance between the side lot lines measured along the public right-of-way.

Street. A public right of way for vehicular traffic, whether designated as a highway, thoroughfare, arterial, parkway, collector, through-way, road, avenue, boulevard, lane, place, drive, court or otherwise designated which has been dedicated or deeded to the public for public use and which affords principal means of access to abutting property.

Applicable Codes:

1011.04, Subd. 2. Time of Construction (Accessory Buildings, Structures, Uses, and Equipment). No accessory building or structure shall be constructed on any lot prior to the time of construction of a principal building to which it is accessory.

1017.06 Lot Area and Setback Requirements; subdivision (1) and (2). Lots in the R-1A Zoning District shall have a lot area of not less than twenty thousand (20,000) square feet and lot width of not less than seventy-five (75) feet.

1030, Section 1, Subd. F. Exceptions. When requesting a subdivision, if the following conditions exist, the City Clerk shall bring the request to the attention of the City Council, whereupon the said request shall be reviewed and the City Council may exempt the subdivider from complying with any procedural requirements of this Ordinance that are deemed appropriate.

1. Simple Subdivision. In the case of a request to divide a lot where the division is to permit the adding of a parcel of land to an abutting lot or to create two lots and the remaining portion of the lot or any structure to be in violation with this Ordinance or the Zoning Ordinance.
2. In the case of a request to divide a base lot upon which a two-family dwelling or a quadraminium which is a part of a recorded plat where the division is to permit individual private ownership of a single dwelling unit within such a structure and the newly created property line will not cause any of the unit lots or the structure to be in violation of this Ordinance or the Zoning Ordinance.

1030, Section 7, Subd. B, 5. Frontage (Lots). Every lot as required in the Tonka Bay Zoning Ordinance must have the minimum frontage on a public street other than an alley. Lakeshore lots must have the minimum lot width on the rear lot line.

1030, Section 7, Subd. D, 1. Width and Location (Easements). An easement for utilities and drainage at least eight (8) feet wide shall be provided along each side and rear line of each lot, and an easement ten (10) feet wide shall be provided adjacent to street right-of-way. If necessary for the extension of water or sewer lines or similar utilities, easements of greater width may be required along lot lines or across lots.

1030, Section 10, Subd. A. Non-Platted Subdivision, Registered Land Surveys. Subdivision by registered land survey shall only be allowed for Torrens property and shall meet the requirements of Section 508.47, Minnesota Statutes. The provisions of this ordinance shall apply to all registered land surveys within the City of Tonka Bay, and the standards, regulations and procedures hereof shall govern the subdivision of land by registered land survey. Unless approval has been obtained from the City Council in accordance with the standards set forth in this Ordinance, building permits will be withheld for buildings on tracts which have been so subdivided by registered land surveys and the City may refuse to take over tracts as streets or roads or to improve, repair or maintain any such tracts unless so approved.

Engineering Reports:

Utilities. The existing homes located at 89 Wildhurst Road and 90 Wildhurst Road are currently connected to municipal utilities. If approved, the newly created lot on the east side of Wildhurst Road (north of 89 Wildhurst Road) will need to connect to municipal utilities. Plans showing the proposed location of these utilities must be reviewed and approved by the City Engineer prior to the issuance of a Building Permit.

Easements. Chapter 1030, Subd. 7.D.1. requires eight (8) foot easements for utilities and drainage along each side and rear line of each lot, and an easement ten (10) feet wide adjacent to street-right-of way. Easements for each of the proposed three (3) lots will need to be shown on an updated certificate of survey and legal descriptions for the easements on each lot will need to be provided to recording the documents at Hennepin County.

Wetlands. Section 1050.03 of the City Code defines the “Wetland Conservation Area” within the City of Tonka Bay, as shown upon the “wetlands map” kept on file in the office of the City Clerk. The “wetlands map” did not identify a wetland on either of the applicant’s properties, however the applicant did perform a Wetland Delineation Report dated September 22, 2014 as prepared by Kjolhaug Environmental Services Company, Inc. The Wetland Delineation Report did identify a wetland along the southeastern portion of 89 Wildhurst. Additionally, the National Wetland Inventory (NWI) Database also identifies the location of a wetland in this area.

Given the evidence as shown on the NWI Database and through the Wetland Delineation Report as prepared and submitted by the applicants, staff recommends that the certificate of survey is updated to place an easement over the delineated wetland and a legal description of this area is provided prior to recording of the documents at Hennepin County.

Additionally, per Chapter 1050, a 16.5 buffer around the wetland edge must be shown on the updated certificate of survey. Activities such as mowing, yard waste disposal, and fertilizer application shall not occur within the buffer zone.

All other wetland regulations must conform to the rules of the Local Government Unit (Minnehaha Watershed District).

Conclusion

Council Options:

The City Council has the following options:

- A) DIRECT STAFF TO PREPARE TWO RESOLUTIONS APPROVING THE REQUESTS (based on the applicant’s submittals and findings of fact).
- B) DIRECT STAFF TO PREPARE TWO RESOLUTIONS DENYING THE REQUESTS (based on the applicant’s submittals and findings of fact).
- C) TABLE THE ITEMS and request additional information.

The 60-day review period for this application expires on 11-10-14. An extension letter may be sent to the applicant and the home owners. A final decision MUST be made prior to 01-09-15.

***Template Denial
Motion:
(Not Recommended)***

I move that we direct staff to prepare two resolutions of denial for the requested simple lot subdivisions and lot combination based on the following findings of fact:"

- (Provide findings to support conclusion)

***Template Approval
Motion:
(Recommended)***

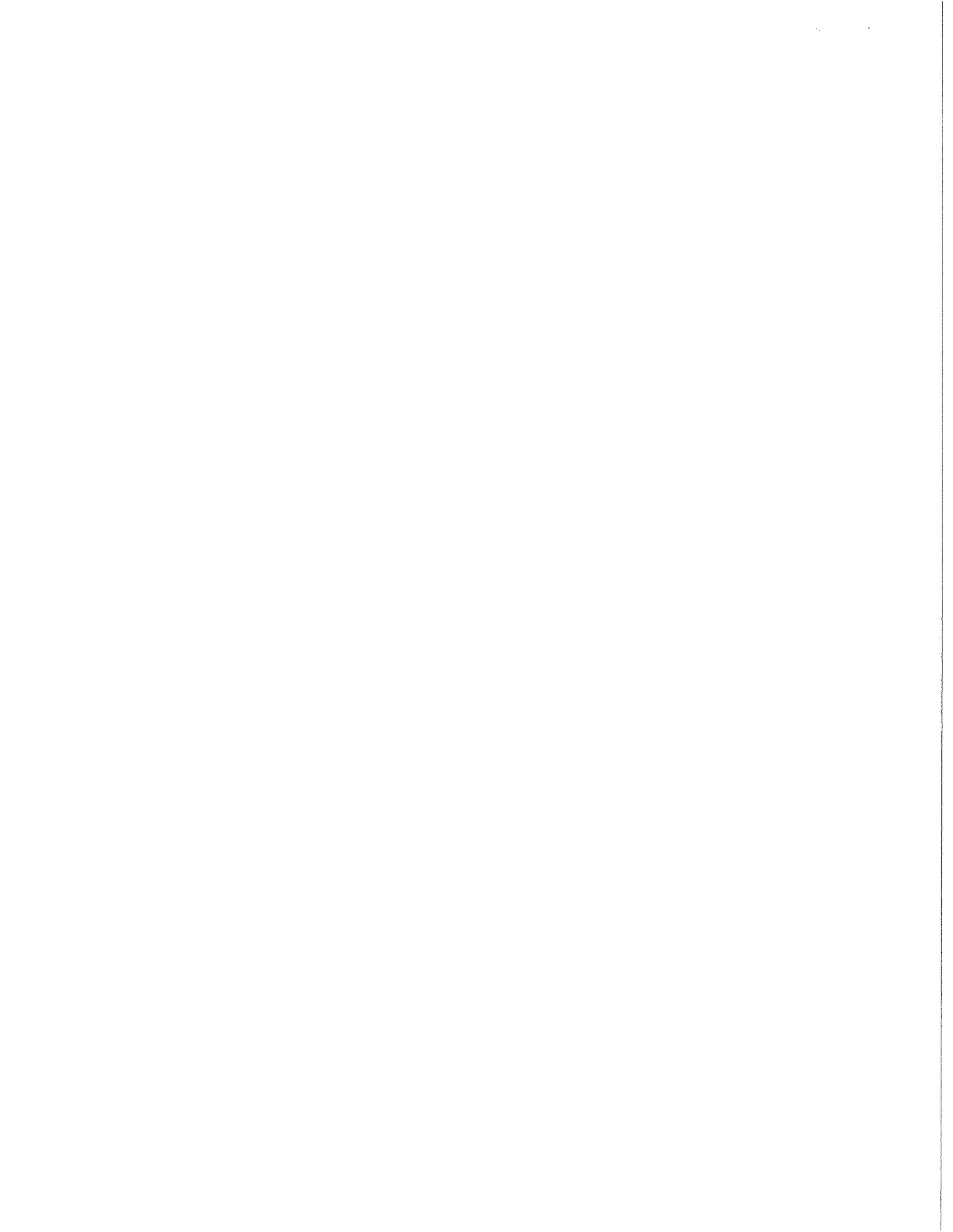
"I move that we direct staff to prepare two resolutions of approval for the requested simple lot subdivisions and lot combination based on the findings of fact listed in the report. Furthermore, the approval shall include the conditions listed within the staff report as may have been amended here tonight".

- a. The proposed simple lot subdivision and lot combination to allow an additional single-family residential lot is consistent with the City's Comprehensive Plan which guides this property for single-family land use.
- b. The simple lot subdivision and lot combination will not result in the creation of more than three (3) lots;
- c. The lots to be divided and combined are in locations where conditions are well defined;
- d. The proposed simple lot subdivision and lot combination was prepared by a registered land surveyor;
- e. The proposed simple lot subdivision and lot combination is consistent with the City's Subdivision Regulations and Zoning Ordinance for property in the R-1A Shoreland District.
- f. Granting the simple lot subdivision and lot combination will not alter the essential character of the locality. The property located at 90 Wildhurst Road already visually appears to be two (2) separate lots (one on the west side of the road and one on the east side of the road). This will not change with the proposed simple lot subdivision and lot combination.

***Recommended
Conditions:***

1. The applicant shall obtain all necessary permits and approvals from the City of Tonka Bay and other applicable entities with jurisdiction prior to any construction on any of the lots.
2. Eight (8) foot easements for utilities and drainage along each side and rear line of each lot, and an easement ten (10) feet wide adjacent to street-right-of way shall be shown on the certificate of survey and a legal description of these areas must be provided prior to the recording of the document at Hennepin County.
3. Future building of structures shall not occur within any existing or proposed easements on the property.
4. The certificate of survey is updated to place an easement over the delineated wetland and a legal description of this area is provided prior to recording of the documents at Hennepin County.
5. The tennis court on the proposed NORTHEAST PARCEL AND THE proposed SOUTHEAST PARCEL shall be removed and grounds restored by not later than November 1, 2015. In the event the tennis

court is not removed by November 1, 2015, the City shall have the authority to enter upon the property, remove the tennis court and charge and assess the owner for all costs, including reasonable attorney's fees, incurred by the City for said removal.



PART ONE: Applicant Information

If applicant is an entity (company, government entity, partnership, etc.), an authorized contact person must be identified. If the applicant is using an agent (consultant, lawyer, or other third party) and has authorized them to act on their behalf, the agent's contact information must also be provided.

Applicant/Landowner Name: Michael Maney - Ryan Companies

Mailing Address: 90 Wildhurst Road Tonka Bay, MN 55331

Phone: (612)-716-2506

E-mail Address: Mike.Maney@RyanCompanies.com

Authorized Contact (do not complete if same as above):

Mailing Address:

Phone:

E-mail Address:

Agent Name: Melissa Lauterbach-Barrett - Kjolhaug Environmental Services

Mailing Address: 26105 Wild Rose Lane Shorewood, MN 55331

Phone: (952)-401-8757

E-mail Address: Melissa@kjolhaugenv.com

PART TWO: Site Location Information

County: Hennepin

City/Township: Tonka Bay

Parcel ID and/or Address: 90 Wildhurst Road

Legal Description (Section, Township, Range): S28 T117N R23W

Lat/Long (decimal degrees):

Attach a map showing the location of the site in relation to local streets, roads, highways.

Approximate size of site (acres) or if a linear project, length (feet): 3.5 acres

If you know that your proposal will require an individual Permit from the U.S. Army Corps of Engineers, you must provide the names and addresses of all property owners adjacent to the project site. This information may be provided by attaching a list to your application or by using block 25 of the Application for Department of the Army permit which can be obtained at:

http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/engform_4345_2012oct.pdf

PART THREE: General Project/Site Information

If this application is related to a delineation approval, exemption determination, jurisdictional determination, or other correspondence submitted *prior to* this application then describe that here and provide the Corps of Engineers project number.

Describe the project that is being proposed, the project purpose and need, and schedule for implementation and completion. The project description must fully describe the nature and scope of the proposed activity including a description of all project elements that effect aquatic resources (wetland, lake, tributary, etc.) and must also include plans and cross section or profile drawings showing the location, character, and dimensions of all proposed activities and aquatic resource impacts.

PART FOUR: Aquatic Resource Impact¹ Summary

If your proposed project involves a direct or indirect impact to an aquatic resource (wetland, lake, tributary, etc.) identify each impact in the table below. Include all anticipated impacts, including those expected to be temporary. Attach an overhead view map, aerial photo, and/or drawing showing all of the aquatic resources in the project area and the location(s) of the proposed impacts. Label each aquatic resource on the map with a reference number or letter and identify the impacts in the following table.

Aquatic Resource ID (as noted on overhead view)	Aquatic Resource Type (wetland, lake, tributary etc.)	Type of Impact (fill, excavate, drain, or remove vegetation)	Duration of Impact Permanent (P) or Temporary (T) ¹	Size of Impact ²	Overall Size of Aquatic Resource ³	Existing Plant Community Type(s) in Impact Area ⁴	County, Major Watershed #, and Bank Service Area # of Impact Area ⁵

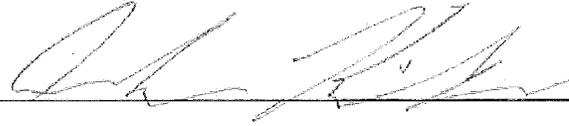
¹If impacts are temporary; enter the duration of the impacts in days next to the "T". For example, a project with a temporary access fill that would be removed after 220 days would be entered "T (220)".
²Impacts less than 0.01 acre should be reported in square feet. Impacts 0.01 acre or greater should be reported as acres and rounded to the nearest 0.01 acre. Tributary impacts must be reported in linear feet of impact and an area of impact by indicating first the linear feet of impact along the flowline of the stream followed by the area impact in parentheses). For example, a project that impacts 50 feet of a stream that is 6 feet wide would be reported as 50 ft (300 square feet).
³This is generally only applicable if you are applying for a de minimis exemption under MN Rules 8420.0420 Subp. 8, otherwise enter "N/A".
⁴Use *Wetland Plants and Plant Community Types of Minnesota and Wisconsin* 3rd Ed. as modified in MN Rules 8420.0405 Subp. 2.
⁵Refer to Major Watershed and Bank Service Area maps in MN Rules 8420.0522 Subp. 7.

If any of the above identified impacts have already occurred, identify which impacts they are and the circumstances associated with each:

PART FIVE: Applicant Signature

Check here if you are requesting a pre-application consultation with the Corps and LGU based on the information you have provided. Regulatory entities will not initiate a formal application review if this box is checked.

By signature below, I attest that the information in this application is complete and accurate. I further attest that I possess the authority to undertake the work described herein.

Signature:  Date: 9/23/14

I hereby authorize _____ to act on my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this application.

¹ The term "impact" as used in this joint application form is a generic term used for disclosure purposes to identify activities that may require approval from one or more regulatory agencies. For purposes of this form it is not meant to indicate whether or not those activities may require mitigation/replacement.

Attachment A

Request for Delineation Review, Wetland Type Determination, or Jurisdictional Determination

By submission of the enclosed wetland delineation report, I am requesting that the U.S. Army Corps of Engineers, St. Paul District (Corps) and/or the Wetland Conservation Act Local Government Unit (LGU) provide me with the following (check all that apply):

Wetland Type Confirmation

Delineation Concurrence. Concurrence with a delineation is a written notification from the Corps and a decision from the LGU concurring, not concurring, or commenting on the boundaries of the aquatic resources delineated on the property. Delineation concurrences are generally valid for five years unless site conditions change. Under this request alone, the Corps will not address the jurisdictional status of the aquatic resources on the property, only the boundaries of the resources within the review area (including wetlands, tributaries, lakes, etc.).

Preliminary Jurisdictional Determination. A preliminary jurisdictional determination (PJD) is a non-binding written indication from the Corps that waters, including wetlands, identified on a parcel may be waters of the United States. For purposes of computation of impacts and compensatory mitigation requirements, a permit decision made on the basis of a PJD will treat all waters and wetlands in the review area as if they are jurisdictional waters of the U.S. PJDs are advisory in nature and may not be appealed.

Approved Jurisdictional Determination. An approved jurisdictional determination (AJD) is an official Corps determination that jurisdictional waters of the United States are either present or absent on the property. AJDs can generally be relied upon by the affected party for five years. An AJD may be appealed through the Corps administrative appeal process.

In order for the Corps and LGU to process your request, the wetland delineation must be prepared in accordance with the 1987 Corps of Engineers Wetland Delineation Manual, any approved Regional Supplements to the 1987 Manual, and the *Guidelines for Submitting Wetland Delineations in Minnesota* (2013).

<http://www.mvp.usace.army.mil/Missions/Regulatory/DelineationJDGuidance.aspx>