

Memo

To: Honorable Mayor and City Council
From: Joe Kohlmann, City Administrator
Date: July 23, 2013
Re: MCWD – Shoreline Restoration Sign

In 2009, the City allowed the MCWD to conduct a shoreline restoration project in Old Orchard, located adjacent to the Municipal Docks. The Agreement states:

Signage:

In accordance with reasonable city terms as to size, design, and location, the MCWD may install, maintain and remove informational signage about the project for the duration of this Agreement and of city maintenance obligations hereunder.

Attached is an email from the MCWD

Attached is the Agreement

Attached is the proposed signage language

Attached are pictures of pedestal sign and a sign affixed to a pier

Council Action Requested:

Discuss placement of the sign in the restoration area or affixed to the fishing pier.
Motion to approve installation of the sign.

blank

COOPERATIVE AGREEMENT

Lake Minnetonka Shoreline Stabilization Project In the City of Tonka Bay

The Parties to this Agreement are the Minnehaha Creek Watershed District (MCWD), a watershed district created pursuant to Minnesota Statutes Chapters 103B and 103D, and the City of Tonka Bay, a body corporate and politic and a statutory city pursuant to the Constitution of the State of Minnesota ("City") (together, "Parties"). The purpose of this Agreement is to provide for the implementation and maintenance of a project demonstrating bioengineered and other innovative strategies for shoreline stabilization and riparian area restoration on Lake Minnetonka at Old Orchard Park within the City ("Project").

WHEREAS the intensive public use of Lake Minnetonka as a regional resource and the ongoing effects of urban stormwater runoff have resulted in shoreline erosion and degradation of riparian areas, negatively affecting the water quality in the lake;

WHEREAS the MCWD's watershed management plan (2007) identifies Lake Minnetonka as a priority resource, and includes in its capital improvement program a Lake Minnetonka shoreline stabilization project;

WHEREAS the MCWD wishes to demonstrate bioengineered and other innovative strategies for shoreline stabilization and riparian area restoration, enhance practical experience with the strategies, and develop model applications and data on appropriate conditions for use of the strategies;

WHEREAS the MCWD and the City have determined that Old Orchard Park in the City ("Property") is a favorable location to demonstrate bioengineering and other innovative shoreline stabilization and riparian area restoration strategies;

WHEREAS the Parties' collaborative effort to establish and maintain the Project is consistent with the plans and policies enumerated above;

THEREFORE the Parties commit to the following, intending to be legally bound:

1. Design and Implementation

Design plans and specifications for the Project are attached to and incorporated into this Agreement as Exhibit A. The MCWD will provide for and manage Project construction in accordance with Exhibit A. The MCWD may adjust the work during construction based on field conditions or other adaptive design considerations as in its judgment will better achieve the Project purposes. Design adjustments will be documented by work change orders or, if they do not affect work price or time, by written memoranda. Adjustments will not interfere with docks lawfully appurtenant to the Property, with boat access to those docks, or with any recreational trail maintained on the site by the Three Rivers Park District or its successor.

The MCWD will notify the City in writing when construction is substantially complete, after which the City has 30 days to notify the MCWD in writing if it believes that the Project does not conform to Exhibit A and subsequent adjustments. If the City so notifies the MCWD, the Parties will meet within five business days of the MCWD's receipt of the City's written notice, or at such other time as they may agree, to determine any measures necessary to achieve conformity. If the Parties do not agree, they jointly will appoint and share the cost of a qualified independent expert for a binding determination as to whether the Project conforms to Exhibit A and subsequent adjustments and, if not, the measures that will most cost-effectively achieve Project goals of a naturalized, structurally stable and low-maintenance shoreline. The MCWD must implement these measures before City maintenance obligations under section 3 will vest and the Establishment Period will commence.

2. Project Monitoring

The MCWD will give the City reasonable notice of pre-construction and construction meetings concerning the Project. The City and its authorized representatives may attend these meetings, inspect the Project at reasonable times, and review all related documentation except as limited by law. The City may not exercise control over Project construction or direct the MCWD or its contractor(s).

3. Establishment and Maintenance

Within 30 days of the effective date of this Agreement, the City will execute and record the maintenance declaration attached to and incorporated into this Agreement as Exhibit B or a materially identical instrument.

The MCWD will ensure the establishment and health of the bioengineering and vegetation features of the Project and maintain the Project for three years from the City's concurrence in the completion of construction ("Establishment Period"). During the Establishment Period, the MCWD, at its cost, may revise or reconstruct any component of the Project to improve its function and effectiveness for the purposes of the Project stated above, or elect to have any or all components of the Project removed and the Property or relevant portion thereof restored to substantially the pre-Project condition. If the MCWD elects to remove the Project or a component thereof and restore the Property, this Agreement will terminate as to that component of the Project on the MCWD's completion of restoration.

At the end of the Establishment Period, the City will assume responsibility to maintain the Project in accordance with Exhibit B. If the Parties agree that a component of the Project has not been established in a manner that will achieve the stated purposes of the Project, maintenance obligations will not vest in the City for that component until such time as the component is established. If the Parties do not agree, a binding determination from a qualified independent expert will be obtained in the same manner as in section 1, above. The City will maintain the Project in accordance with Exhibit B through the thirtieth year after the date of the City's concurrence in construction.

If the Project or a part thereof fails due to a storm event less likely than a 100-year event at any time during the effective period of this Agreement or the City's maintenance, neither Party will be obligated to reconstruct, replace or remove the Project or any component thereof, or restore the Property. The Parties will cooperate in determining appropriate action.

The City retains all authority and responsibility as owner and manager of the Property, including but not limited to responsibility for public use and safety; maintenance of property and liability insurance as it deems appropriate; and

routine maintenance such as trash removal and repair of fences, lights, and other appurtenances, if any, throughout the term of this Agreement.

If the Project or a part thereof will not be completed under this Agreement or is removed or damaged and will not be replaced, the Parties will cooperate to vacate the maintenance declaration or amend it to conform to the Project as constructed and to be maintained.

4. Signage

In accordance with reasonable city terms as to size, design and location, the MCWD may install, maintain and remove informational signage about the Project for the duration of this Agreement and of city maintenance obligations hereunder.

5. Right of Entry

The City authorizes the MCWD and its agents and contractors to enter the Property at reasonable times to perform the MCWD's roles and responsibilities under this Agreement, including but not limited to Project design, construction and maintenance (including signage), replacement of Project components, and Property restoration. The MCWD may enter the Property at reasonable times throughout the term of this Agreement to pursue the research, demonstration, education and related goals of the Project, including but not limited to data collection; inspection, testing and monitoring of Project components; and tours and presentations.

The City will provide access and staging area adequate for the MCWD's performance of its obligations hereunder.

6. Permits

The City will cooperate in the MCWD's obtaining any permits for the Project. The City will waive fees and costs related to any city permits or approvals.

7. Costs

Each Party will bear its costs of performance under this Agreement.

8. Independent Relationship

No employee, representative, contractor or consultant of either Party to this Agreement acts in any respect as the agent or representative of the other Party. This Agreement is not a joint powers agreement under Minnesota Statutes §471.59. Any right to review or approve a design, work in progress or Project element under this Agreement by the City or its agent, representative or consultant is solely for the City's own purpose of accounting for the use of the Property.

9. No Waiver of Defenses, Immunities or Liability Limitations

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 attorneys' fees and disbursements) that the other Party may incur as a result of any act or omission of the first Party in its performance under this Agreement that subjects the first Party to liability. No action or inaction of the MCWD or the City under this Agreement creates a duty of care on the part of the MCWD or the City for the benefit of any third Party. This Agreement creates no rights in and waives no immunity, defense or liability limitation with respect to any third Party or a Party to this Agreement.

10. Term and Termination; Survival of Obligations

The effective date of this Agreement is the date that it is fully executed by the Parties. The Agreement will remain in force for five years, and will renew automatically for five additional five-year terms unless terminated by mutual agreement of the Parties or otherwise in accordance with the terms of this Agreement. Any responsibility or obligation that has come into being before

expiration, specifically including obligations under sections 3, 4, 5 and 9 above, shall survive termination.

11. Acknowledgment

Any publicly distributed or displayed printed or electronic documents, other text display or public presentation concerning the Project will properly acknowledge the contribution and support of the MCWD and the City.

12. Compliance with Laws

The Parties will comply with the laws and requirements of all federal, state, local and other governmental units in implementing the Project, and will procure all licenses, permits and other rights necessary to implement the Project.

13. Notices

Any written communication required under this Agreement shall be addressed to the other Party as follows, except that any Party may change its address for notice by so notifying the other Party in writing:

To MCWD:

Administrator
Minnehaha Creek Watershed District
18202 Minnetonka Boulevard
Deephaven, MN 55391

Email address:

To City:

Email address:

13. Waiver

A Party's failure to insist on the strict performance of any obligation under this Agreement, or to exercise any option, remedy or right herein, will not waive or relinquish that Party's right in the future to insist on strict performance of that or any other obligation. A Party's waiver of a breach of an obligation of this Agreement will not be construed as a waiver of any subsequent breach of that or any other obligation. A waiver must be in writing and signed by the Party.

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereto execute and deliver this Agreement.

MINNEHAHA CREEK WATERSHED DISTRICT

By: James B. Collins
President, Board of Managers

Date: 12-18-08

APPROVED AS TO FORM and EXECUTION

By: [Signature]
Its Attorney

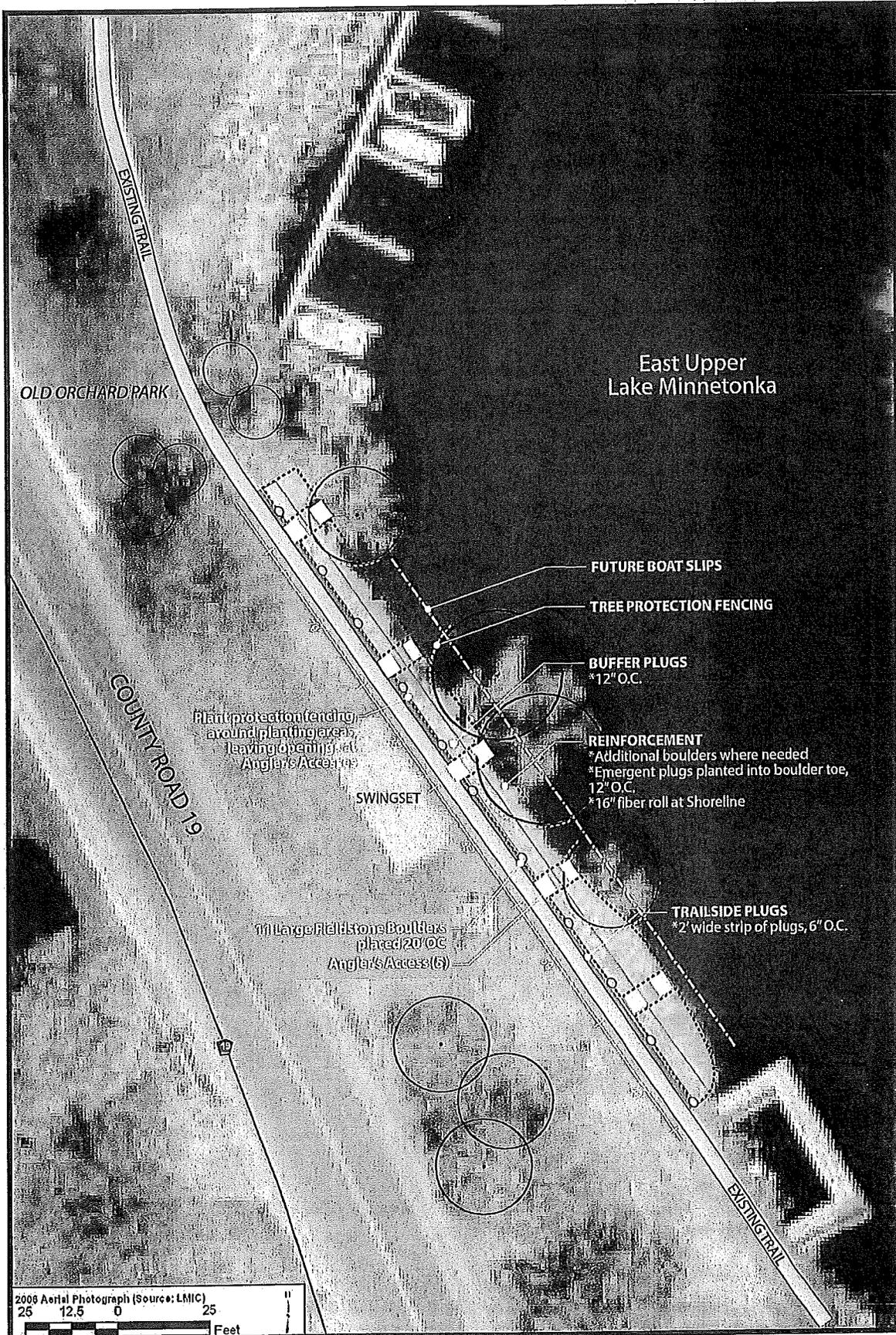
CITY OF Tonka Bay

By: [Signature]
Its Mayor

Date: 1/13/09

APPROVED AS TO FORM and EXECUTION

By: Jessica Jettis
Its Attorney Administrator



A SITE PLAN

EXHIBIT B

THIS DECLARATION ("Declaration") is made this 30th day of August, 2012, by the City of Tonka Bay, a body corporate and politic and a statutory City of the State of Minnesota ("Declarant").

RECITALS

WHEREAS Declarant is the owner of real property within the City of Tonka Bay, Hennepin County, Minnesota, platted and legally described as:

PID #28-117-23-42-0001. Commencing at the intersection of centerline of Manitou Avenue with north line of Government Lot 2 thence east 183 feet thence at right angles south 100 feet thence west parallel with north line of Lot 2 to centerline of Manitou Avenue thence northwesterly to beginning of existing Manitou Avenue.

PID #28-117-23-42-0002: Commencing at Northwest corner of Auditor's Subdivision No. 274, thence westerly to a point 183 feet east of the centerline of Manitou Avenue, thence southerly 100 feet, thence westerly to centerline of said avenue, thence southerly along centerline of said avenue to a line parallel with and 579 feet north of south line of Government Lot 2, thence east to east line of said lot thence northerly along east line of said lot to southeast corner of Auditor's Subdivision No. 274, thence west to southwest corner thereof, thence northerly to beginning of existing Manitou Avenue.

(the "Property") and no one other than Declarant has any right, title or interest in the Property; and

WHEREAS Declarant and the Minnehaha Creek Watershed District (MCWD) have executed a cooperative agreement for the construction and maintenance of shoreline stabilization and riparian area restoration on the Property to demonstrate bioengineered and related strategies to stabilize shoreline and restore riparian area on Lake Minnetonka (the "Project"); and

WHEREAS Declarant assumes the obligations hereunder to induce MCWD construction of the Project and other MCWD expenditures, and agrees that there is valuable consideration for its obligations, and that this instrument is legally binding;

NOW THEREFORE Declarant makes this Declaration for the benefit of the MCWD and hereby declares that this Declaration shall constitute covenants to run with the Property for a period of thirty (30) years from the date stated above, and further declares that the Property shall be owned, used, occupied and conveyed subject to the covenants, obligations and restrictions set forth in this Declaration, all of which shall be binding on all persons owning or acquiring any right, title or interest in the Property, and their heirs, successors, personal representatives and assigns.

1. Shoreline stabilization systems and restored riparian areas of the Property, constituting the Project area and delineated on the site plan for the Property attached to and incorporated into this document as Attachment A, will be maintained to ensure their continued effectiveness for the Project purposes of maintaining naturalized, ecologically healthy shoreline that is structurally stable and resistant to erosion.
2. Stabilized shoreline and restored riparian areas as delineated in Attachment A will be maintained to preserve their ecological integrity, free from disturbance of vegetation or soils, fertilizer application, yard or other waste disposal, the placement of any structures, surfaces or appurtenances not shown in Attachment A or any other alteration that impedes their function in stabilizing shoreline, protecting water quality, buffering stormwater flows and enhancing riparian habitat. These restrictions do not apply to boat docks and appurtenances not within the area identified as "Project area" in Attachment A. The use of a path or trail shown in Attachment A may be changed to accommodate docks and appurtenances, provided it is not realigned or expanded, or its surface changed.

3. For three years following Project construction, the Project will be inspected six times annually during the spring, summer and fall. As feasible, upland plantings will be subject to annual controlled burning to eliminate invasive species; where burning is not feasible, upland plantings will be mowed to control invasive species. Otherwise, invasive vegetation will be destroyed by spot treatment; weeds will be eliminated from structures shown in Attachment A; herbaceous vegetation 10 inches tall or more will be mowed to a height of 8 inches; upland and shoreline plantings will be replaced and seeded areas will be reseeded as necessary to maintain ecological health and function.
4. For the period from three to five years following Project construction, the Project will be inspected four times annually during the spring, summer and fall. As feasible, upland plantings will be subject to annual controlled burning to eliminate invasive species; where burning is not feasible, upland plantings will be mowed to control invasive species. Otherwise, invasive vegetation will be destroyed by spot treatment; herbaceous vegetation 24 inches tall or more will be mowed to a height of 16 inches; upland and shoreline plantings will be replaced and seeded areas will be reseeded as necessary to maintain ecological health and function.
5. Beginning five years following Project construction, the Project will be inspected twice annually during the spring, summer or fall. As feasible, upland plantings will be subject to annual controlled burning to eliminate invasive species; where burning is not feasible, upland plantings will be mowed to control invasive species. Invasive vegetation will be destroyed by spot treatment; herbaceous vegetation 24 inches tall or more will be mowed to a height of 16 inches; upland and shoreline plantings will be replaced and seeded areas will be reseeded as necessary to maintain ecological health and function.
6. Every three years, utility grade wood chip mulch will be replaced in locations indicated in Attachment A to a settled depth of 3 inches and not mounded against tree trunks or woody shrubs.

7. Every three years, willow and dogwood woody vegetation will be trimmed.
8. Paths and trails as shown in Attachment A as within the Project area may be maintained without expansion or change in surface area and will be inspected annually. Paving stones will be inspected and reset or replaced as necessary to maintain stability. Paths and trails outside of the Project area may be maintained and expanded, and the surface altered, provided they do not encroach within the Project area.
9. The property owner's responsibilities under this Declaration will be performed in accordance with the maintenance plan attached hereto and incorporated herein as Attachment B.
10. The property owner will submit to the MCWD annually a brief written report that describes the maintenance activities performed under this Declaration, including dates, locations of inspections and the maintenance activities performed.
11. The responsibilities of Declarant and the MCWD for Project construction are addressed in a January 13, 2009 cooperative agreement that states that the MCWD is responsible for Project maintenance for three years after construction is completed and until Project elements are established. The terms of the cooperative agreement limiting the property owner's maintenance responsibility during the Project establishment period take precedence over any provision of this Declaration. Declarant and the MCWD agree that the executed agreement is incorporated herein, and relevant and admissible evidence, solely for the purpose of resolving any dispute concerning the property owner's maintenance obligation during the Project establishment period.
12. During the initial three years of MCWD responsibility, the MCWD will give Declarant one week's written notice of planned inspection or maintenance activity that the MCWD determines will offer a useful opportunity for Declarant to become more familiar with

maintenance needs and techniques for the Project. Declarant will attend at least two such activities each year.

- 13. No amendment or vacation of this Declaration will be valid without the signature of authorized representatives of the MCWD and Declarant.

The recitals set forth above are expressly incorporated herein.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year first set forth.

DECLARANT:

City of Tonka Bay, a statutory city of the State of Minnesota

By: Joseph Kohlmann

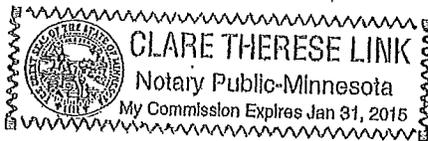
Name: Joseph Kohlmann

Its: City Administrator

STATE OF MINNESOTA)

COUNTY OF Dakota) ss.

The foregoing instrument was acknowledged before me this 30th day of August, 2012 by Clare Therese Link, the Admin Assistant of City of Tonka Bay, by and on behalf of said city.



Clare Therese Link

Notary Public

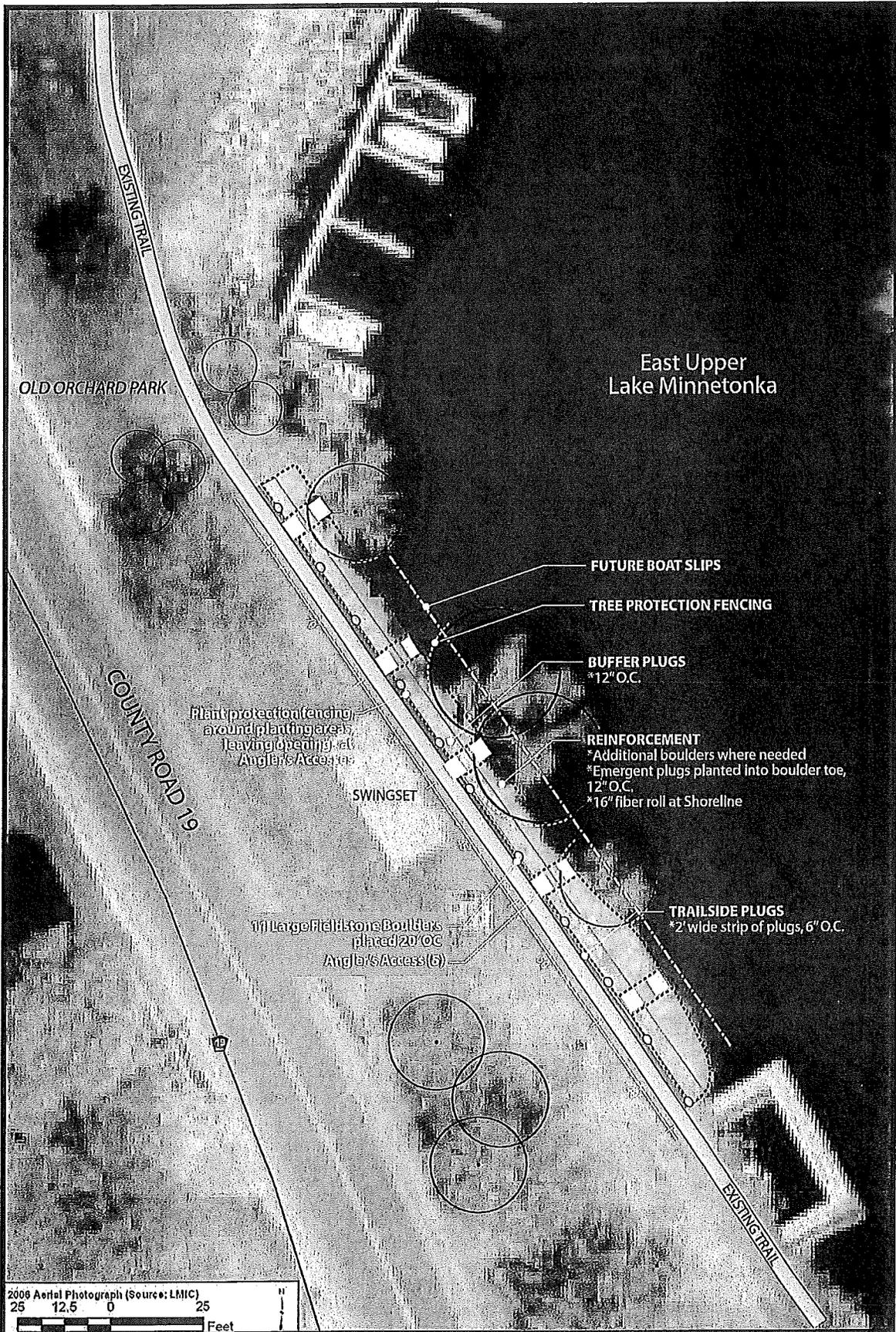
ACCEPTED BY:

[Signature]

Administrator

Minnehaha Creek Watershed District

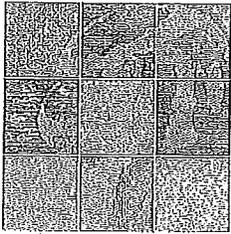
ATTACHMENT A
SITE PLAN



2006 Aerial Photograph (Source: LMIC)
 25 12.5 0 25
 Feet

A SITE PLAN

**ATTACHMENT B
MAINTENANCE PLAN**



The Kestrel Design Group, Inc.

The green + blue infrastructure companySM

Green Roofs + Living Walls

Urban Trees + Stormwater

Natural Landscapes + Shorelines

Lake Minnetonka Shoreline Long-Term Maintenance OLD ORCHARD PARK

- Years 1-3: 6 times annually inspect and spot treat invasive vegetation: 4-6 hours each application (varies by year); part of base bid installation contract.
- Years 4-5: 4 times annually inspect and spot treat invasive vegetation: 4-6 hours each application (varies by year).
- Years 6 and forward: 2 times annually inspect for and spot treat invasive vegetation: 4-6 hours each application. Once in late spring, once in late summer.
- Annually, and as needed, check angler's access paving stones for stability and reset as needed: 1-2 hours.
- Every 3 years, and as needed, add wood chip (utility grade) mulch where initially installed to settled depth of 3"; 2-6 hours. Do not mound against tree trunks or woody shrubs.
- Annually and as needed, check condition of interpretive signs for damage. Replace as needed. Expected life span is 15 - 20 years.
- Remove goose exclusion /plant protection fence: after 2 complete growing seasons: 6-10 hours; part of base bid installation contract.
- Check for erosion around fiber roll and repair as needed: 2-4 hours if needed - most years this will not be needed.
- Mow or burn once annually. Mow no lower than 16". One hour each mow. Approximately 1-3 hours per burn.
- Re-plant desirable vegetation in all areas >4 s.f. devoid of planted species - time needed will vary - generally will not be needed if invasive species are controlled regularly so that they do not crowd out planted species.

Note: for details of trimming, mowing, burning, invasive species control, refer to Section 329816.00, NATURAL AREAS MANAGEMENT, of the Technical Specifications of the Project Construction Documents.

The Kestrel Design Group, Inc. 7101 Ohms Lane, Minneapolis, Minnesota 55439

(952) 928-9600 Fax (952) 224-9860 www.kestreldesigngroup.com

Printed on 30% post-consumer waste

Joe Kohlmann

From: Tiffany Forner [TForner@minnehahacreek.org]
Sent: Monday, July 08, 2013 2:25 PM
To: Joe Kohlmann
Subject: RE: sign for Old Orchard lakeshore
Follow Up Flag: Follow up
Flag Status: Red
Attachments: dock sign.jpg; dock sign 2.jpg; pedestal sign.JPG; example sign.jpg

Joe,

I have attached 4 photos. There are 2 photos of a sign attached to a dock and 1 photo of the Excelsior Point shoreline restoration sign on a pedestal. I have also attached a photo of what the Excelsior shoreline signs looks like—the sign for the Old Orchard Park site will be similar to this but will be specific to the site. Unfortunately I am unable to send the exact language of the sign as the person who is working on it is out of the office—I will send it once I have access to it.

Please let me know if I can provide anything else. Thanks.

Tiffany Forner
Natural Resource Technician
952-641-4513

New address:
15320 Minnetonka Blvd
Minnetonka, MN 55345

www.minnehahacreek.org

From: Joe Kohlmann [mailto:jkohlmann@cityoftonkabay.net]
Sent: Monday, July 01, 2013 12:31 PM
To: Tiffany Forner
Subject: RE: sign for Old Orchard lakeshore

Hi Tiffany,

Thanks for the update. Is there any chance you have photos of examples that I could look at? It would be nice to know what the different approaches would potentially look like. Then I can prepare a resolution for the City Council to approve placing the sign. Also, what is the exact language that will be on the sign?

Thanks,

Joe Kohlmann
City Administrator

7/18/2013

City of Tonka Bay
4901 Manitou Road
Tonka Bay, MN 55331
(952) 474-7994
jkohlmann@cityoftonkabay.net

From: Tiffany Forner [<mailto:TForner@minnehahacreek.org>]
Sent: Monday, June 24, 2013 11:52 AM
To: jkohlmann@cityoftonkabay.net
Subject: sign for Old Orchard lakeshore

Joe,

Last summer I met with you and Greg Kluver to discuss the ongoing maintenance at the lakeshore restoration in Old Orchard Park. At that time, the City asked about the status of the sign that was to be installed. The sign is almost finalized and I need to know how the City would like the sign installed—on a pedestal or attached to the fishing dock. Please let me know at your earliest convenience.

Thank you,

Tiffany Forner
Natural Resource Technician

18202 Minnetonka Blvd
Deephaven, MN 55391
New address on July 1:
15320 Minnetonka Blvd
Minnetonka, MN 55345

Direct: 952-641-4513
Office: 952-471-0590
Fax: 952-471-0682
www.minnehahacreek.org



**MINNEHAHA CREEK
WATERSHED DISTRICT**

Shoreline Restoration Area

The Minnehaha Creek Watershed District has stabilized this shoreline using a lake-friendly approach. In this demonstration project, we see the utility of simple, natural methods in reducing lake pollution.

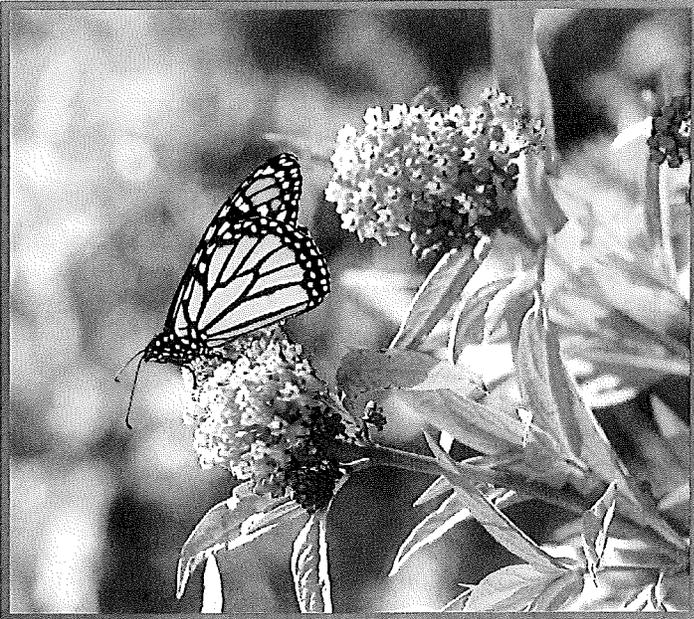


The shoreline: Before (inset) and After

How Was It Done?

Sod was removed. Existing field-stone boulders were used to strengthen banks. Fiber rolls further stabilized the shore until native vegetation was established. This formed a living mat that absorbs water and anchors soils.

Next, a variety of native flora was planted on the upland. These plants grow easily here so maintenance is minimal. Flagstone paths were installed to provide access for fishing anglers while keeping traffic off planted areas.



Cristi Engheta



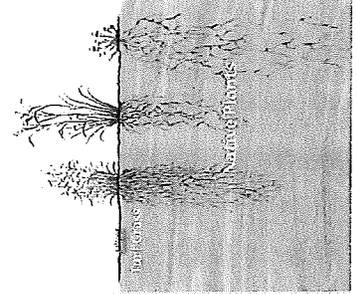
Vegetation slows runoff, allowing precipitation to soak into the ground

Why Does It Matter?

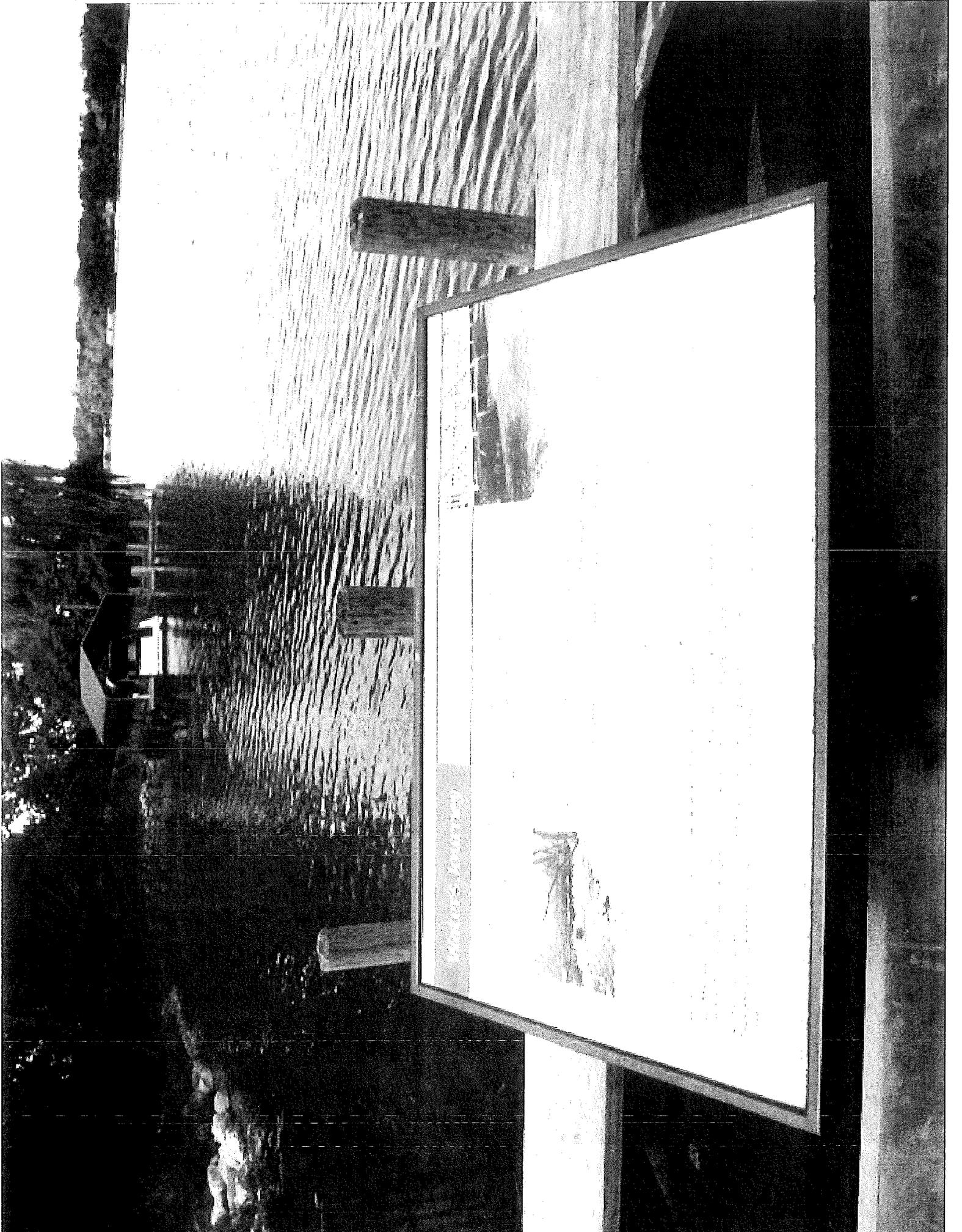
Three reasons: Beauty, wildlife and water ... Rocks at the waterline break waves as they roll ashore; thick vegetation slows stormwater runoff while deep root systems hold soil in place. Together these landscape elements stop sediment erosion into the lake.

The result: A cleaner Lake Minnetonka.

The stunning array of native wildflowers and grasses also provides habitat for songbirds, butterflies and other animals. Moreover, tall plants act as a barrier to nuisance geese.



Native plants with deep roots prevent erosion



Montezuma's Mystery

Montezuma's Mystery is a prehistoric archaeological site located in Montezuma, Colorado. It is a large, circular structure made of adobe, built by the Anasazi people around 900 AD. The structure is known for its unique design, which includes a central tower and a series of smaller rooms. The site is believed to have been used as a ceremonial or religious structure. The name "Montezuma's Mystery" was given to the site by a Spanish explorer in the 16th century, who was convinced that the structure was the residence of the legendary Montezuma. The site is now a National Historic Landmark and is open to the public for viewing.



