

## Community Development Committee

Meeting date: March 18, 2019

For the Metropolitan Council meeting of March 27, 2019

**Subject:** Lebanon Hills Regional Park Utility Change Dakota County

**District, Member:** 15 - Phillip Sterner

**Policy/Legal Reference:** 2040 Regional Parks Policy Plan Chapter 6, System Protection, Strategy 6, Utilities; Chapter 6, System Protection, Strategy 2, Conversion of Regional Parks System Lands to Other Uses; Chapter 4, Siting and Acquisition Policy, Regional Parks: General Criteria

**Staff Prepared/Presented:** Tracey Kinney, Planner (651-602-1029), Regional Parks and Natural Resources

**Division/Department:** Community Development / Regional Planning

### Proposed Action

That the Metropolitan Council:

1. Consent to an easement to allow Dakota County to issue a 4.04-acre utility easement to Great River Energy to upgrade the existing 69-kV transmission line to a double circuit 115-kV transmission line.
2. Advise Dakota County that Minnesota Management and Budget must consent to Dakota County's easement described in recorded Declaration #3235301.

### Background

Lebanon Hills Regional Park is located in the southeast part of the Regional Parks System and centrally located within Dakota County. Lebanon Hills Regional Park has a 2015 Council-approved master plan ([Business Item 2015-196](#)) that includes just over 1,960 acres with close to 1,870 acres open to the public. The regional park is connected to the Regional Parks System by the existing North Creek Greenway Regional Trail and planned Mendota-Lebanon Hills Greenway, Rosemont Greenway Regional Trail, and Vermillion Highlands Greenway Regional Trail.

Dakota County is requesting the Council's consent to a utility easement. With the utility easement, Great River Energy will release the Xcel easement that bisects the park prohibiting ecological and human access (Figures 2 and 3), remove the above ground transmission infrastructure, and reimburse the County for its restoration. Restoring the Xcel easement area will produce more core habitat, reduce ecological edge, and provide additional acres of diverse natural communities, thereby increasing regional recreation opportunities. Additionally, the land within the new easement area along Cliff Road, located in the same area as the existing Great River Energy utility permit, will be restored to prairie.

Great River Energy has identified that the upgrade of the existing electric transmission lines is necessary to provide reliable service and accommodate future demand. Upgrading the transmission lines includes replacing the existing 69-kV transmission line with a double circuit 115-kV transmission line; thereby making the Xcel line obsolete. The proposed utility towers are taller and similarly spaced. As part of the agreement for a permanent easement, Great River Energy is including a payment of \$4,000 to Dakota County for a tree inventory, \$20,000 for prairie restoration of the new easement area, and \$20,000 to restore Xcel easement land (Table 1.0).

Table 1.0 Utility Change Summary

<b>Removals</b>			
	Land	Water	Total Acres
New Great River Energy Easement	(3.72)	(0.32)	(4.04)
<b>Total Removals</b>	<b>(3.72)</b>	<b>(0.32)</b>	<b>(4.04)</b>
<b>Additions</b>			
Xcel Easement – North Segment	2.48	0.45	2.93
Xcel Easement – South Segment	0.96	0.39	1.35
<b>Total Additions</b>	<b>3.44</b>	<b>0.84</b>	<b>4.28</b>
<b>Net Result</b>	<b>(0.28)</b>	<b>0.52</b>	<b>0.24</b>

### Rationale

The utility change is consistent with System Protection Strategy 6 as outlined in the *2040 Regional Parks Policy Plan (RPPP)* which states: “To distribute electricity, natural gas, oil, and drinking water, it may be necessary to place underground conduits/pipes or above ground transmission poles/towers on Regional Parks System land.” The RPPP encourages collaboration with the utility provider to minimize the impact to the Regional Park and provide guidance on the easement requirements and payment.

The utility change is also consistent with System Protection Strategy 2 as outlined in the *2040 Regional Parks Policy Plan* which requires an equally valuable land or facility exchange to be approved in order to convert Regional Parks System lands to another use.

### Thrive Lens Analysis

The request advances the Thrive outcomes of prosperity and sustainability through helping accommodate future utility needs and protection of natural resources while ensuring that the regional park is not negatively affected. Additionally, the Thrive principle of collaboration is supported through the Metropolitan Council, Dakota County, and Great River Energy working together to minimize impacts and restore natural resources in the regional park.

### Funding

The land identified for the utility change was funded with Metropolitan Council regional bonds for acquisition. A portion of the land identified for the utility change was funded by State Bonds for development. Figure 4 shows the real estate encumbrances that run with the property in perpetuity.

When Metropolitan Council funds are used, an agreement and restrictive covenant is recorded on the purchased property to provide a higher level of protection ensuring regional recreational open space use in perpetuity. Restrictive covenants require Council consent to easement to allow a use other than regional recreational open space purposes. Dakota County is requesting a utility easement for Great River Energy on land with a Council agreement and restrictive covenant; therefore, the action before the Council includes the consent to easement.

When State Bonds are used for development projects, a declaration is recorded on the property. Declarations require the property to be developed in accordance to the approved plan. Declarations of this nature require Minnesota Management and Budget consent to the easement to allow for a use other than what was planned in the original development project. Dakota County is requesting a utility

easement for Great River Energy on land with a Minnesota Management and Budget declaration; therefore, Minnesota Management and Budget consent to easement is required. Minnesota Management and Budget requires consent from the agency that granted the money prior to Minnesota Management and Budget consent; therefore, the action before the Council requires Minnesota Management and Budget consent prior to implementing the easement. The Council received confirmation from Minnesota Management and Budget that they will support the consent to easement and will consider it after Metropolitan Council approval.

### **Known Support / Opposition**

The Dakota County Board of Commissioners approved the terms of these actions through Resolution 18-632 on December 18, 2018. The County Board authorization is contingent on the Metropolitan Council's approval.

### **Summary of Discussion**

Tracey Kinney, Planner, presented the staff report to the Metropolitan Parks and Open Space Commission at its meeting on March 5, 2019. Kinney clarified that Lebanon Hills Regional Park has an internal connector trail that is separate from an external future, on-road greenway trail. Jeff Bransford, Senior Management Specialist for Dakota County Parks, and representatives from Great River Energy were also in attendance.

Commissioner Fleming requested information on the outcome of the utility change if the Council does not consent to the easement. Bransford responded that the utilities would remain the same. The current status includes the 50-foot wide Xcel easement cutting off access from the east to the west of the park. Additionally, Great River Energy would continue to maintain a permit with dated electric transmission towers that are inefficient and will not meet future projected demand.

Chair Yarusso asked for clarification on the location of the easement. Bransford replied that the easement will remain next to the road right-of-way. After the meeting, Council staff followed up with Dakota County to confirm the easement's location in relation to a future request to widen Cliff Road by 25-feet. Dakota County confirmed that the new easement is located 25-feet south of the current Cliff Road right-of-way in anticipation of a future request to the Metropolitan Council to consider safety improvements on Cliff Road. In the interim, Great River Energy will continue to use the current permit to access the new easement area.

Chair Yarusso requested clarification related to the release and maintenance of the Xcel easement. Bransford responded that the Xcel easement crosses Camp Butwin, a private inholding that is within the park. Great River Energy will release the Xcel easement and remove the infrastructure in the park and in Camp Butwin; however, the restoration and maintenance agreement will only pertain to the parkland. Great River Energy and Camp Butwin are separately negotiating the restoration and maintenance agreement. Kinney clarified that 3.44-acres represents the land included in the parkland agreement.

Commissioner Taylor asked if Camp Butwin's summer programming will be disrupted during the utility line removal project. The camp serves a significant role in summer programming. Bransford responded that summer programming at Camp Butwin is moving forward as planned.

The Metropolitan Parks and Open Space Commission approved the proposed action unanimously.

## Metropolitan Parks and Open Space Commission

Meeting date: March 5, 2019

For the Community Development Committee meeting of March 18, 2019

For the Metropolitan Council meeting of March 27, 2019

**Subject:** Lebanon Hills Regional Park Utility Change Dakota County

**District, Member:** H – Todd Kemery

**Policy/Legal Reference:** *2040 Regional Parks Policy Plan* Chapter 6, System Protection, Strategy 6, Utilities; Chapter 6, System Protection, Strategy 2, Conversion of Regional Parks System Lands to Other Uses; Chapter 4, Siting and Acquisition Policy, Regional Parks: General Criteria

**Staff Prepared/Presented:** Tracey Kinney, Planner (651-602-1029), Regional Parks and Natural Resources

**Division/Department:** Community Development / Regional Planning

### *Proposed Action*

That the Metropolitan Council:

1. Consent to an easement to allow Dakota County to issue a 4.04-acre utility easement to Great River Energy to upgrade the existing 69-kV transmission line to a double circuit 115-kV transmission line.
2. Advise Dakota County that Minnesota Management and Budget must consent to Dakota County's easement described in recorded Declaration #3235301.

### **Background**

Lebanon Hills Regional Park is located in the southeast part of the Regional Parks System and centrally located within Dakota County. Lebanon Hills Regional Park has a 2015 Council-approved master plan ([Business Item 2015-196](#)) that includes just over 1,960 acres with close to 1,870 acres open to the public. The regional park is connected to the Regional Parks System by Mendota-Lebanon Hills Greenway, Highway 62 Regional Trail, and North Creek Regional Trail.

Dakota County is requesting the Council's consent to a utility easement. With the utility easement, Great River Energy will release the Xcel easement that bisects the park prohibiting ecological and human access (Figures 2 and 3), remove the above ground transmission infrastructure, and reimburse the County for its restoration. Restoring the Xcel easement area will produce more core habitat, reduce ecological edge, and provide additional acres of diverse natural communities, thereby increasing regional recreation opportunities. Additionally, the land within the new easement area along Cliff Road, located in the same area as the existing Great River Energy utility permit, will be restored to prairie.

Great River Energy has identified that the upgrade of the existing electric transmission lines is necessary to provide reliable service and accommodate future demand. Upgrading the transmission lines includes replacing the existing 69-kV transmission line with a double circuit 115-kV transmission line; thereby making the Xcel line obsolete. The proposed utility towers are taller and similarly spaced. As part of the agreement for a permanent easement, Great River Energy is including a payment of \$4,000 to Dakota County for a tree inventory, \$20,000 for prairie restoration of the new easement area, and \$20,000 to restore Xcel easement land (Table 1.0).

Table 1.0 Utility Change Summary

<b>Removals</b>			
	Land	Water	Total Acres
New Great River Energy Easement	(3.72)	(0.32)	(4.04)
<b>Total Removals</b>	<b>(3.72)</b>	<b>(0.32)</b>	<b>(4.04)</b>
<b>Additions</b>			
Xcel Easement – North Segment	2.48	0.45	2.93
Xcel Easement – South Segment	0.96	0.39	1.35
<b>Total Additions</b>	<b>(0.28)</b>	<b>0.52</b>	<b>0.24</b>

### Rationale

The utility change is consistent with System Protection Strategy 6 as outlined in the *2040 Regional Parks Policy Plan* (RPPP) which states: “To distribute electricity, natural gas, oil, and drinking water, it may be necessary to place underground conduits/pipes or above ground transmission poles/towers on Regional Parks System land.” The RPPP encourages collaboration with the utility provider to minimize the impact to the Regional Park and provide guidance on the easement requirements and payment.

The utility change is also consistent with System Protection Strategy 2 as outlined in the *2040 Regional Parks Policy Plan* which requires an equally valuable land or facility exchange to be approved in order to convert Regional Parks System lands to another use.

### Thrive Lens Analysis

The request advances the Thrive outcomes of prosperity and sustainability through helping accommodate future utility needs and protection of natural resources while ensuring that the regional park is not negatively affected. Additionally, the Thrive principle of collaboration is supported through the Metropolitan Council, Dakota County, and Great River Energy working together to minimize impacts and restore natural resources in the regional park.

### Funding

The land identified for the utility change was funded with Metropolitan Council regional bonds for acquisition. A portion of the land identified for the utility change was funded by State Bonds for development. Figure 4 shows the real estate encumbrances that run with the property in perpetuity.

When Metropolitan Council funds are used, an agreement and restrictive covenant is recorded on the purchased property to provide a higher level of protection ensuring regional recreational open space use in perpetuity. Restrictive covenants require Council consent to easement to allow a use other than regional recreational open space purposes. Dakota County is requesting a utility easement for Great River Energy on land with a Council agreement and restrictive covenant; therefore, the action before the Council includes the consent to easement.

When State Bonds are used for development projects, a declaration is recorded on the property. Declarations require the property to be developed in accordance to the approved plan. Declarations of this nature require Minnesota Management and Budget consent to the easement to allow for a use other than what was planned in the original development project. Dakota County is requesting a utility easement for Great River Energy on land with a Minnesota Management and Budget declaration; therefore, Minnesota Management and Budget consent to easement is required. Minnesota

Management and Budget requires consent from the agency that granted the money prior to Minnesota Management and Budget consent; therefore, the action before the Council requires Minnesota Management and Budget consent prior to implementing the easement. The Council received confirmation from Minnesota Management and Budget that they will support the consent to easement and will consider it after Metropolitan Council approval.

### **Known Support / Opposition**

The Dakota County Board of Commissioners approved the terms of these actions through Resolution 18-632 on December 18, 2018. The County Board authorization is contingent on the Metropolitan Council's approval.

### **Analysis**

The recommendation for the utility change is guided by System Protection Strategy 6, Placement of utilities. When appropriate, this strategy encourages implementing agencies to collaborate with utility providers to minimize impacts on the Regional Parks System unit's natural resources and on recreation facilities, while providing reasonable access. The utility provider may have to pay for the easement or permit based on the benefit the utility provides to the Regional Parks System unit. After careful review, staff finds that Dakota County has met the policy intent of Strategy 6.

Additionally, the utility change is guided by System Protection Strategy 2 as outlined in the *2040 Regional Parks Policy Plan*, which requires an equally valuable land or facility exchange to be approved in order to convert Regional Parks System lands to another use.

System Protection Strategy 2, Conversion of Regional Parks System Lands to Other Uses of the *2040 Regional Parks Policy Plan* requires that lands in the Regional Parks System will only be converted to other uses if approved by the Metropolitan Council through an equally valuable land or facility exchange as defined below:

The *2040 Regional Parks Policy Plan* defines "equally valuable land" as land that:

- Is contiguous to the Regional Parks System unit containing the land proposed to be exchanged (within the same park/trail unit)
- Has comparable or better natural resource characteristics, and
- Could provide comparable or better recreation opportunities than the land being released from the covenant

The Council considers conversion of regional park land to other uses only if the conversion will not harm the Regional Parks System. Dakota County's utility change is permanently changing the use from regional recreation open space to utility use; therefore, it is subject to the following 10 criteria.

### *Issues with respect to the existing park system unit*

- 1. Whether the park system unit can continue to meet Council standards for sites and site attributes established for the particular type of park system unit (regional park, park reserve, trail greenway or special recreation feature)?**

Lebanon Hills Regional Park is designated as a regional park. The *2040 Regional Parks Policy Plan* requires that regional parks:

- Consist of natural or human built opportunities for nature-oriented outdoor recreation such as picnicking, boating, fishing, swimming, camping, and trail uses;
- Serve a regional audience (e.g., 3 - 5 communities);
- Range in size from approximately 200 - 500 acres (100 acres minimum);



- Have site attributes that are natural settings contiguous to water bodies or watercourses where possible.

The proposed utility change will not impact the ability of the Lebanon Hills Regional Park to meet the standards for a regional park. The Council-approved master plan will continue to accomplish its vision to balance recreational use of the park with natural resource stewardship by providing a diverse range of cultural and recreational needs and natural resource management while serving a regional audience.

The 4.04-acre Great River Energy easement including 3.72-acres of land and 0.32-acres of water is in the general location of the existing Great River Energy permit running east-west along Cliff Road (Figure 3).

Dakota County and Great River Energy has agreed to a permanent easement that represents the 35-foot minimum width and 4.04-acre footprint necessary for the transmission line in exchange for restoring and releasing the 4.28-acre Xcel easement (3.44-acres of land and 0.84 acres of water) centrally located within the park.

The new easement area currently contains degraded natural communities and suffers from high noise volume from the adjacent road. With the new easement, this area will be managed for prairie as part of a side agreement with Great River Energy.

## **2. Whether the park system unit will continue to function as originally planned?**

Lebanon Hills Regional Park will continue to function as planned in the 2015 Council-approved master plan. Within the 4.04-acre easement area, the master plan identifies 11-acres of rare woods (north of McDonough Lake), Connector Trail (Future Greenway), and invasive species management. Dakota County has addressed each in the following ways:

- While some tree removals will take place to accommodate the easement, none of the removals will impair the rare woods. A tree inventory was conducted for the easement area resulting in a removal/pruning plan is attached to the easement side agreement.
- Invasive species management will continue (ongoing) following the utility upgrade project.
- The Connector Trail (Future Greenway) does not yet exist. The County will undertake a feasibility study in 2021 to help determine the alignment.

## **3. Whether environmental features (wildlife habitat, water quality) will be adversely affected and can be protected with the new use?**

Dakota County conducted a tree inventory and finds that the 4.04-acre easement area generally contains degraded natural communities that suffer from high noise volume from the adjacent road. As part of the agreement, Great River Energy will fund Dakota County's tree removal of the area, on-going pruning, and prairie restoration.

Additionally, Dakota County Parks has reserved the right to cultivate, use, and occupy the easement area through the terms of the easement.

## **4. Whether the loss of site or function will be made up through acquisition of a site with comparable characteristics adjacent to or in the immediate area of the current location?**

Dakota County is proposing a 4.04-acre Great River Energy easement in exchange for adding 4.28-acres of existing Xcel easement area of similar land cover. The proposed 4.28-acre, existing Xcel easement replacement property includes a 2.93-acre north segment and a 1.35-acre south segment that is separated by Camp Butwin, a private-inholding. The Xcel easement will be vacated on both the regional park property and the Camp Butwin property. Likewise, Great River Energy will remove the utility infrastructure from both the park and Camp Butwin.

This land to be added is centrally located, bifurcating the park, and limiting human and ecological movement. With this land under Dakota County Park management, natural resources restoration will occur, and ecological function will be improved.

The terms of the County's agreement with Great River Energy for restoration and maintenance do not apply to Camp Butwin. The County's understanding is that Camp Butwin and Great River Energy, as private parties, will negotiate directly regarding an agreement for restoration/maintenance.

**5. Whether the park system unit benefits from a facility in exchange for the parkland?**

Land exchange is equally valuable land; therefore, there is no facility involved in this exchange.

**6. Whether the need for the conversion, as in the instance of transportation improvements, is generated by the recreational park system unit?**

The need for the utility change was required to upgrade the existing old transmission line that is inefficient, unreliable, and inadequate to meet future utility needs. When completed, the upgraded transmission line along Cliff Road will make the existing Xcel Energy transmission line running north-south within the park obsolete. The utility change is not generated by the Lebanon Hills Regional Park.

*Issues with respect to the alternative use*

**1. The land area needs of the proposed project?**

Dakota County negotiated, and Great River Energy agreed to, a permanent easement that represents the minimum width and footprint necessary for the transmission line project. The Great River Energy permanent easement will be 35 feet wide (Figure 5); for comparison, the existing Xcel easement (to be released) is 50 feet in width.

**2. Whether the specific site requirements for the proposed project are unique to the area proposed for conversion?**

When completed, the upgraded transmission line along Cliff Road will make the existing Xcel Energy transmission line running north-south within the park obsolete.

Dakota County and Great River Energy have agreed to a permanent easement that represents the 35-foot minimum width and 4.04-acre footprint necessary for the transmission line in exchange for restoring and releasing 4.28-acre Xcel easement centrally located within the park. A typical utility easement width of 75-feet was avoided by Great River Energy to access to the transmission lines through the road ROW.

**3. Whether the proposed project is consistent with Council policies?**

Dakota County's proposed easement and Xcel easement release land addition is consistent with Council policies including Thrive MSP 2040 outcomes of prosperity and sustainability through helping accommodate future utility needs and protecting natural resources while



ensuring that the regional park is not negatively affected. Additionally, the Thrive principle of collaboration is supported through the Metropolitan Council, Dakota County, and Great River Energy working together to minimize impacts and restore natural resources in the regional park.

**4. Whether the proposed project is of greater benefit to the region than having the regional parks system unit remain in place?**

The proposed project is of greater benefit to the region than having the regional park system unit remain in place. With the utility easement, Great River Energy will release the Xcel easement, that bisects the park prohibiting ecological and human access (Figure 2), remove the above ground transmission infrastructure, and reimburse the County for its restoration. Restoring the Xcel easement area will produce more core habitat, reduce ecological edge, and provide additional acres of diverse natural communities, thereby increasing regional recreation opportunities. Additionally, the land within the new easement, located in the same area as the existing Great River Energy utility permit along Cliff Road on the northeast periphery of the park, will be restored to prairie.

**Review by Other Council Divisions**

**Community Development – Environment and Surface Water Management** (Jim Larsen 651-602-1159) - Approximately 1/4th of the 3.44-acre N-S Xcel Energy Line easement area that is proposed to be vacated is currently on Camp Butwin property, a regional park inholding parcel. Council environmental staff encourages the inclusion of the portion of the easement on the Camp parcel to be included in the restoration and maintenance agreement with Dakota County for the obvious long-term wildlife benefits its restoration to prairie will provide to the surrounding RP area, if all parties involved agree.

**Community Development – Forecasts** (Todd Graham 651-602-1322) – No additional comments.

**Community Development – Housing** (Hilary Lovelace 651-602-1555) – No additional comments.

**Environmental Services – Sewer** (Roger Janzig 651-602-1119) – No additional comments.

**Metro Transit** (Steve Mahowald 612-349-7775) – No additional comments.

**Transportation Planning** (Russ Owen 651-602-1724) – No additional comments.

**Local Planning Assistance – Land Use** (Patrick Boylan 651-602-1438) – No additional comments.

Figure 1: Lebanon Hills Regional Park Within the Regional Park System

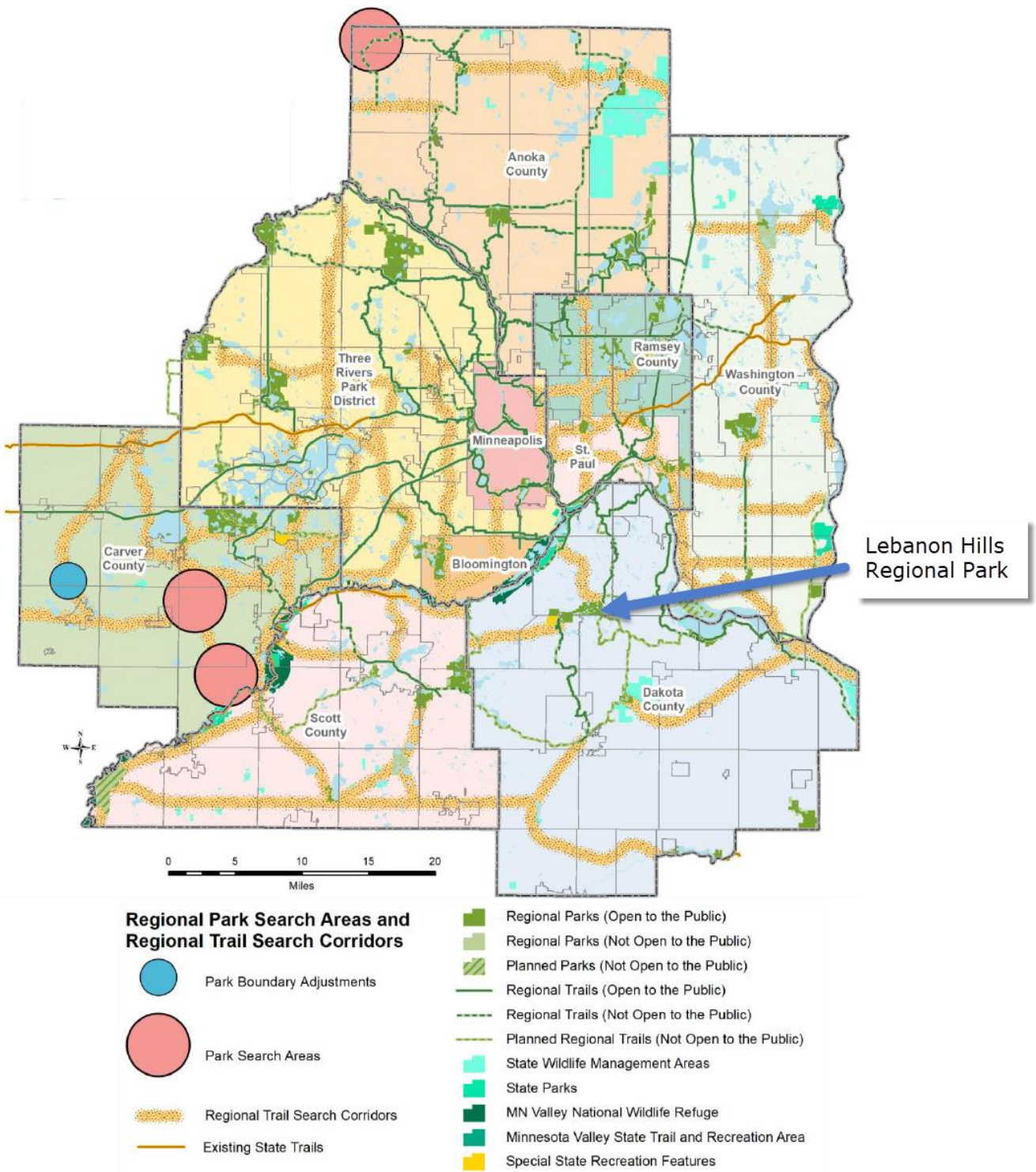




Figure 2: Utility Chang Location in Lebanon Hills Park

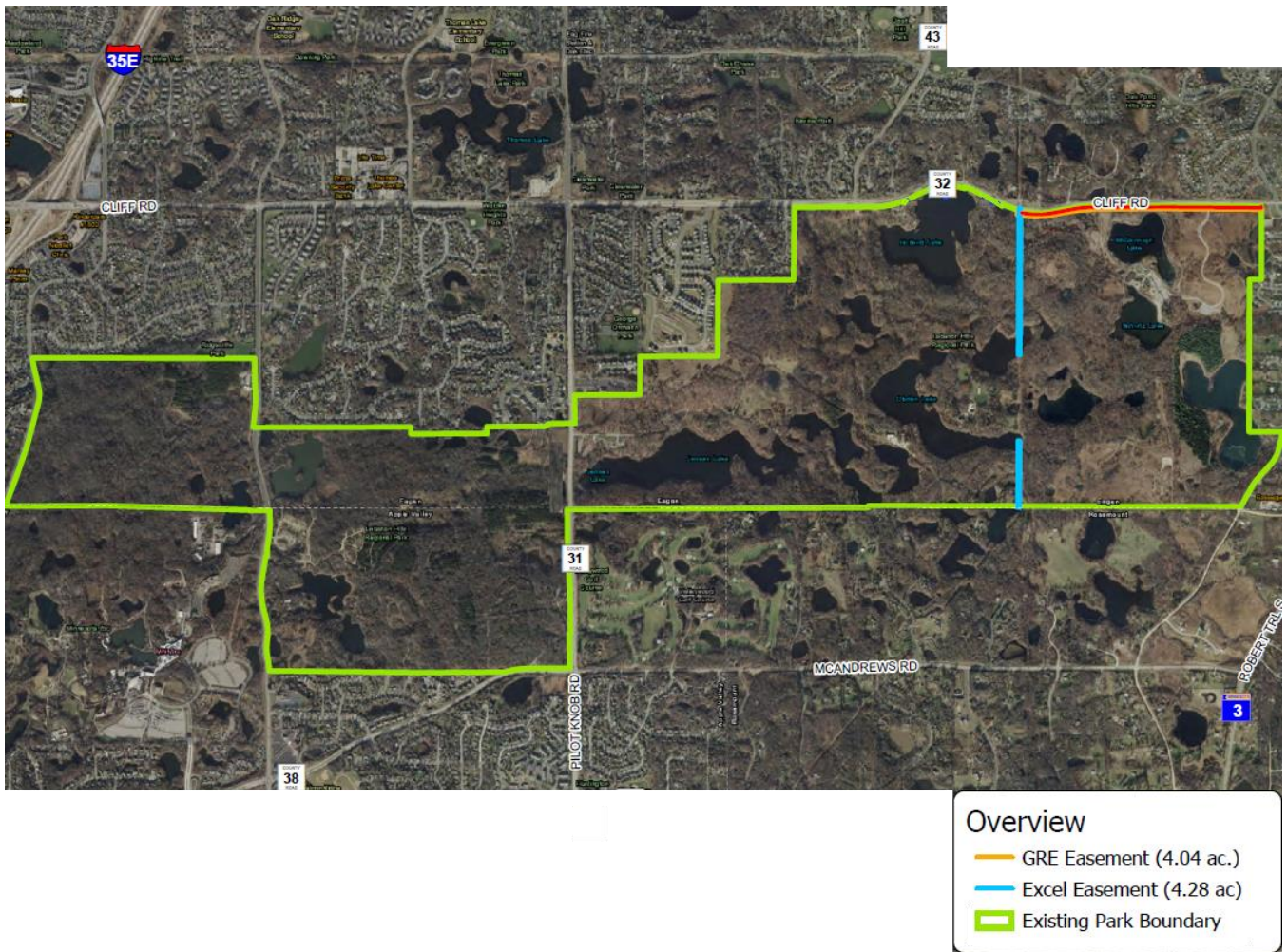


Figure 3: Utility Change Location

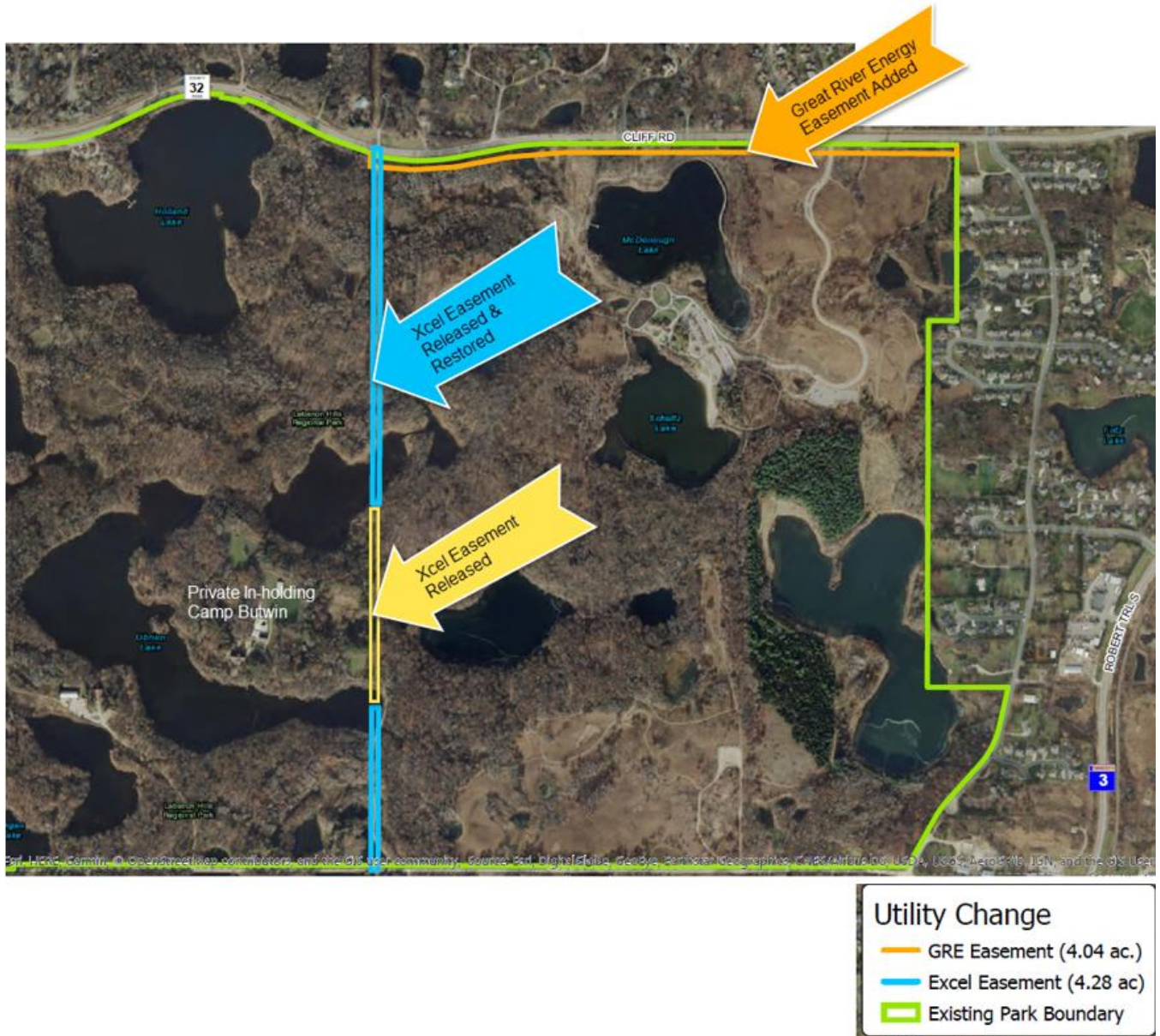




Figure 4: Encumbrances

