

## Metropolitan Parks and Open Space Committee

Meeting date: March 3, 2022

For the Community Development Committee meeting of March 21, 2022

For the Metropolitan Council meeting of April 13, 2022

**Subject:** Cleary Lake Regional Park Master Plan Amendment and Land Conversion, Three Rivers Park District, Review File No. 50227-3

**MPOSC District, Member:** District B, Robert Moeller

**Council District, Member:** District 16, Wendy Wulff

**Policy/Legal Reference:** Minnesota Statutes § 473.313; *2040 Regional Parks Policy Plan*: Chapter 6 – System Protection, Strategy 2 – Conversions; Chapter 4 – Siting and Acquisition, Strategy 1 – Priorities

**Staff Prepared/Presented:** Colin Kelly, Planning Analyst (651-602-1361)

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

### Proposed Action

That the Metropolitan Council:

1. Approve the Cleary Lake Regional Park Master Plan Amendment and Land Conversion.
2. Approve the permanent release of the restrictive covenant on 0.09 acres of land within Cleary Lake Regional Park in exchange for a channel stabilization project in the regional park approved by the Council in September 2021.

### Background

Cleary Lake Regional Park is located in the southwest portion of the Regional Parks System (Figure 1). The proposed land conversion and the majority of the regional park is located in Credit River Township in the eastern part of Scott County (Figure 2). The westernmost portion of the regional park is located in Spring Lake Township and borders the City of Prior Lake.

Cleary Lake Regional Park is owned by Three Rivers Park District (TRPD) and operated in partnership with Scott County. The master plan for this regional park was approved in 1998.

In August 2021, TRPD requested the Council release restrictive covenants from a portion of Cleary Lake Regional Park and allow the Scott County Highway Department an easement to make improvements to the County State Aid Highway (CSAH) 27 corridor.

The proposed land exchange would allow Scott County to hold a permanent easement of 2.21 acres (2.12 acres of highway easement and 0.9 acre of drainage and utility easement) in Cleary Lake Regional Park for a permanent road right-of-way and a temporary easement of 1.41 acres during reconstruction of the roadway.

In exchange for the land removal, TRPD proposed a channel stabilization project within the regional park that would address channel erosion, reduce excess sediment being carried to Cleary Lake, and address flooding that was impacting park infrastructure. The project would stabilize a section of 560 linear feet of channel using check dams, vegetated class II riprap, and vegetated buffer improvement, and stabilize an additional 150 linear feet by re-establishing

the channel grade. The project was proposed as an equally valuable land-for-facility exchange.

That land conversion and associated master plan amendment were approved by the Council on September 22, 2021. [Business Item No. 2021-221](#) and [Council minutes for September 22, 2021](#) are linked for reference.

TRPD is now requesting the Council release an additional 0.09 acre of land in Cleary Lake Regional Park for a drainage and utility easement to address a drainage design error associated with the CSAH 27 improvement project. The revised design solution will allow for the drainage to meet the Minnesota Pollution Control Agency's rate control and water quality requirements, and is considered critical for the storm water infiltration system to function properly.

This request would increase the total amount of permanent easement to be held by Scott County from 2.21 acres to 2.30 acres.

Because the appraised value of the 0.09 acre of land is relatively small, TRPD proposes using the same channel stabilization project as an equally valuable land-for-facility exchange.

As with September 2021 Council-approved land conversion and master plan amendment, this land conversion is proposed in the northeast portion of the regional park, near the intersection of CSAH 27 (Texas Avenue) and CSAH 21 (Eagle Creek Avenue). The proposed channel stabilization project is also in the northeast portion of the park, located southwest of the CSAH 27 improvement project (Figure 3).

### **Rationale**

The Cleary Lake Regional Park Master Plan Amendment and Land Conversion is consistent with the requirements of the *2040 Regional Parks Policy Plan* (RPPP) including Chapter 6, Strategy 2 and Chapter 4, Strategy 1.

### **Thrive Lens Analysis**

The master plan amendment and land conversion advances the Thrive outcome of stewardship by responsibly managing the region's natural resources and investing in natural resource restoration.

### **Funding**

The 0.09 acre of regional park land identified for permanent removal was acquired with Metropolitan Council funds. When Council funds are used, an agreement and restrictive covenant is recorded on the purchased property that provides a higher level of protection to ensure regional recreational open space use in perpetuity. Approval of this amendment would remove the Council agreement and restrictive covenant on the identified land and transfer easement rights to Scott County.

In preparation for the reconstruction of the roadway and associated drainage systems, an appraisal was completed to better understand the impact to the park and place a value on the loss of land and the impact to amenities.

Along with an appraisal for the loss of land (\$1,000), an independent evaluation of the tree loss impacts was conducted (\$620). The total settlement amount agreed upon between Three Rivers and Scott County is \$1,620.

Because the value is small and the previously proposed mitigation project is estimated to cost slightly more than the amount identified in the previous mitigation proposal, it is proposed that this amount be applied to the same channel stabilization project as was previously approved.

**Known Support / Opposition**

On February 17, 2022, the TRPD Board of Commissioners formally approved a Memorandum of Understanding Amendment with Scott County for the conveyance of a drainage and utility easement at Cleary Lake Regional Park relating to the reconstruction of County State Aid Highway 27, contingent on obtaining consent of the Council and Minnesota Management and Budget (Attachment 1).

Figure 1: Cleary Lake Regional Park location in the Regional Parks System

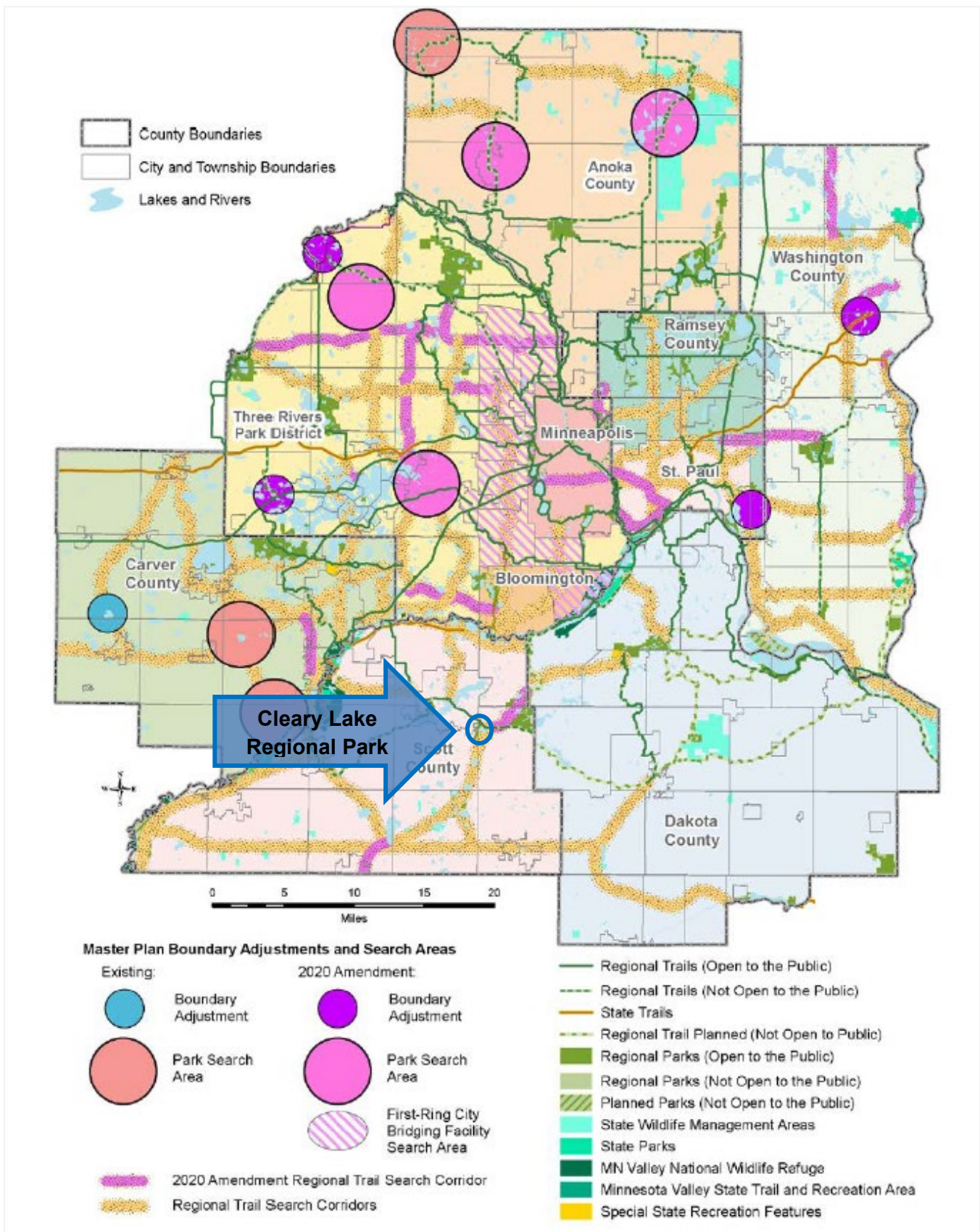


Figure 2: Cleary Lake Regional Park location in Scott County

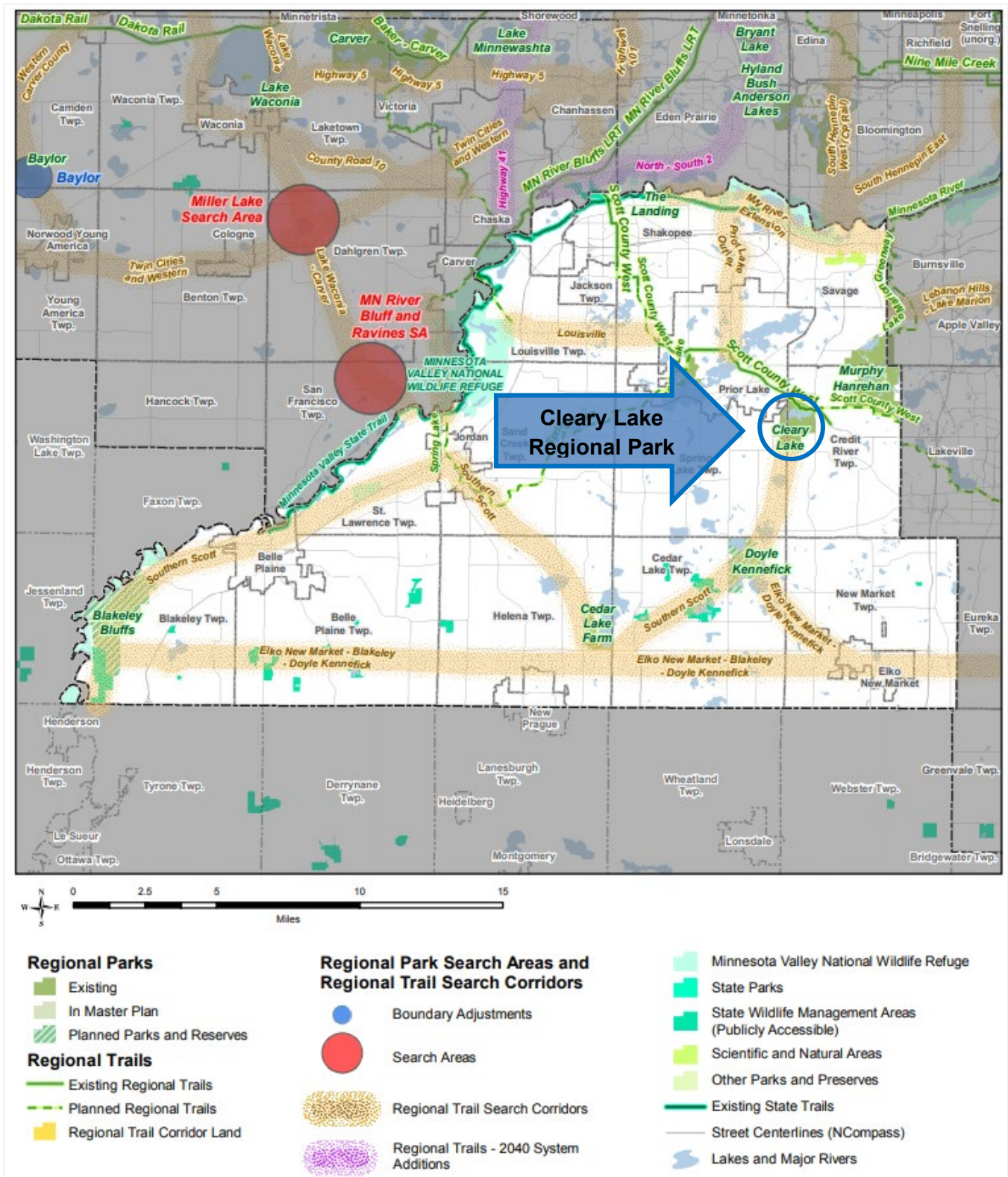
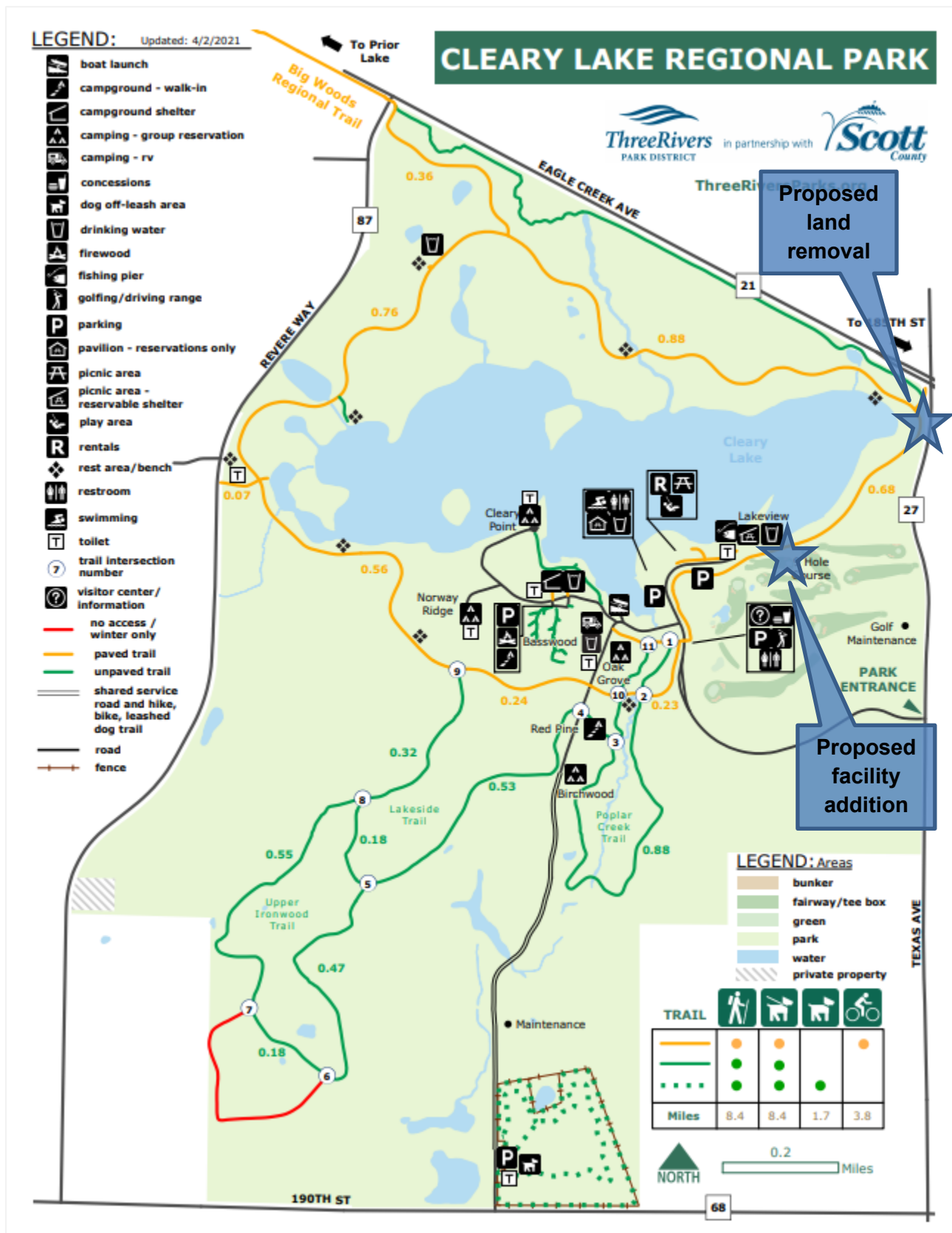


Figure 3: General locations of proposed land removal and facility addition within Cleary Lake Regional Park



## Analysis

This Cleary Lake Regional Park Master Plan Amendment includes the removal of land and the addition of a facility – in the form of a channel stabilization project – to the park (Table 1). The RPPP guides for land conversions in Chapter 6, Strategy 2.

Table 1: Land conversion appraised value and cost estimates

Land Conversion	Appraised Value, Cost Estimates
Removal Land	\$1,620
Facility Additions	\$1,620

## Land Conversion

Chapter 6, Strategy 2 of the RPPP 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.

The RPPP defines an “equally valuable facility” as “an exchange of land for facilities when recreational benefits and/or natural resource benefits are increased as a result of the exchange.”

The Council considers conversion of regional park land to other uses only if the conversion will not harm the Regional Parks System. The following section evaluates the proposal against criteria outlined in the RPPP to determine whether regional parks system lands may be exchanged for other land or a facility.

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

#### **1. Whether the regional park system unit can continue to function as originally planned, meeting 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)**

This change will allow the park to continue to operate as originally planned. The proposed change to the existing easement is in an area that is not accessed by park guests.

According to the RPPP Chapter 4, Strategy 1, regional parks must:

- Draw visitors from across the region
- Provide for geographic balance
- Conserve a diversity of high-quality natural resources, either naturally occurring or human built, that support outdoor recreation activities
- Be at least 100 acres; typically, 200-500 acres
- Accommodate a variety of outdoor recreation activities

The proposed project will not impact the ability of Cleary Lake Regional Park to continue to meet Council standards for a regional park. The small area required for positive drainage would have negligible impacts on recreational facilities and the environment. There would be no increase to the amount of water conveyed to Cleary Lake than was originally planned. This solution is intended to resolve a design error and allow the system to function as originally intended (Figure 4).

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

The drainage was designed in a way to avoid impact to the most established trees and facilitate drainage from the roadway. If this is not approved, the outlet of the drainage would be buried below ground and result in storm water backups and unpredictable erosion. This project will

ensure the storm water is able to complete its path through the infiltration system and into Cleary Lake as originally intended. Based on the amount of new impervious land cover associated with the road construction project (9.4 net acres), 0.8 acre-feet of water quality volume (acre-feet) is required. The project provides for 0.92 water quality volume – in other words, the amount of water treated through this system exceeds the required amount by 15 percent.

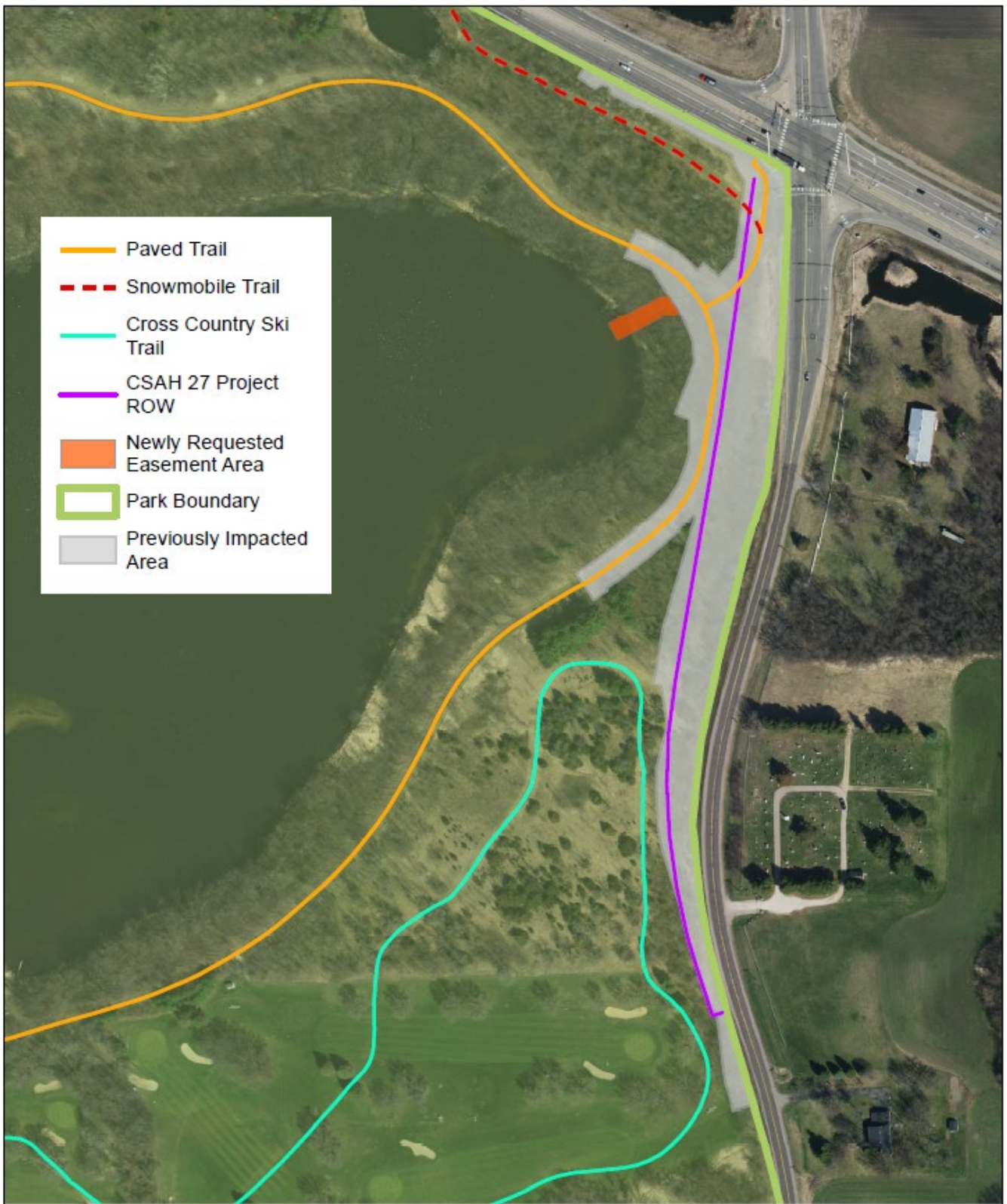
Additionally, though chloride levels in road runoff are generally directly related to the amount applied to road surfaces, a small amount of chlorides would be retained within the soils during the filtration process and removed during annual maintenance of the infiltration basin.

**3. 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**

This option was considered at the time of previous request and no opportunities existed for a land exchange. As this expanded area is so small, Three Rivers Park District staff are proposing that the exchange supports the previous channel stabilization project.



Figure 4: Affected Area of Cleary Lake Regional Park, including Newly Requested Easement Area



*Issues with respect to the alternative use:*

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

The project proposes to stabilize 710 linear feet of channel and provide flood protection to an irrigation pump house associated with the regional park's non-enterprise golf course facility (Figure 5).

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

Cleary Lake is listed on the state impaired waters list for excessive nutrients. The channel identified for stabilization receives runoff from a 98-acre watershed before discharging into the southeast corner of Cleary Lake. A recent analysis indicated that the existing channel delivers approximately 12 tons of total suspended solids and 2.41 pounds of phosphorus into the lake annually.

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

The channel stabilization project will allow the regional park to function as planned, and will enhance conservation of natural resources and enhance a variety of outdoor recreation activities, consistent with RPPP Chapter 4, Strategy 1. Removal of the land is consistent with RPPP Chapter 6, Strategy 2 and other policies as discussed in this report.

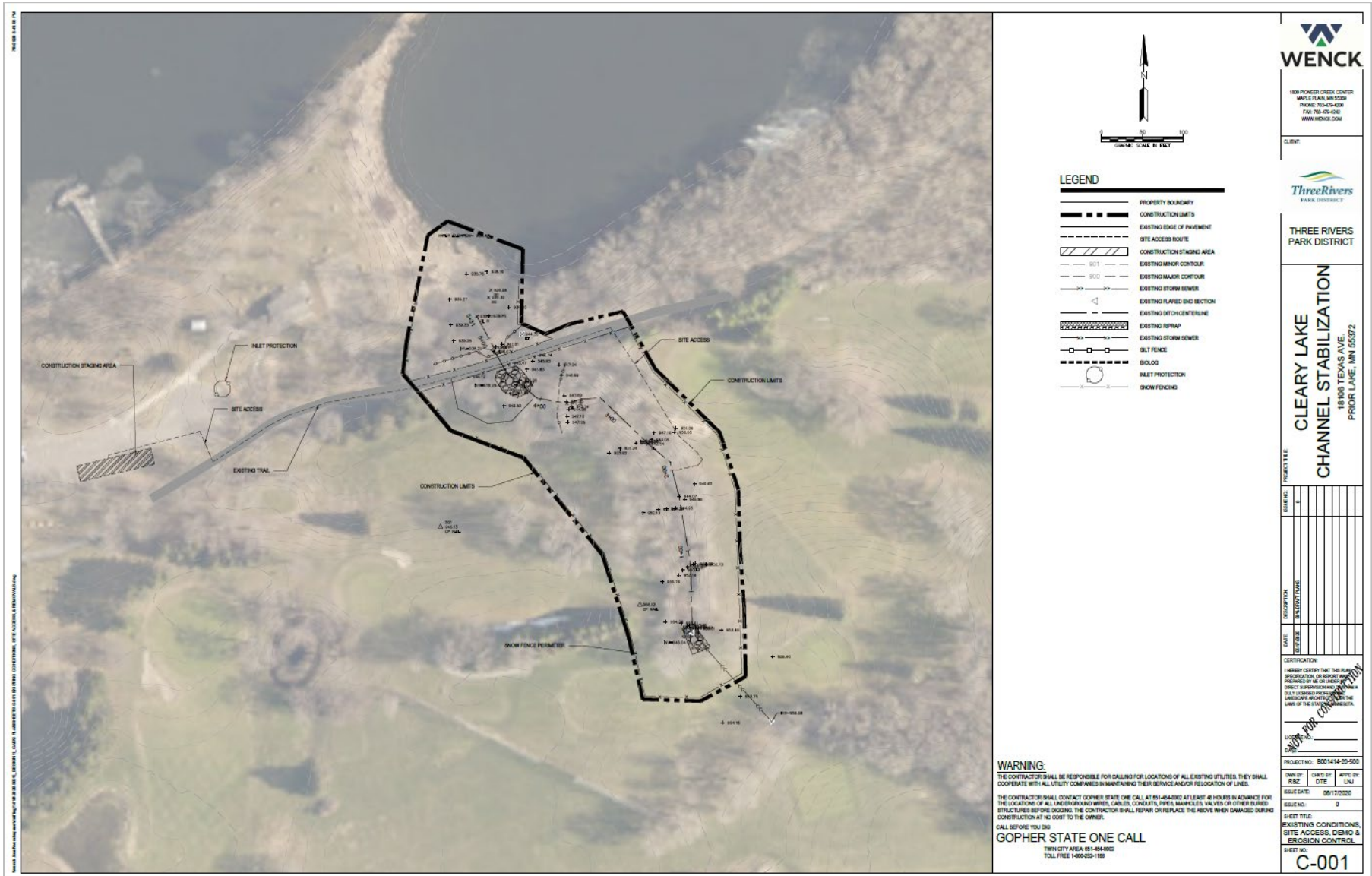
**4. Whether the proposed project is of greater benefit to the region than having the regional park system unit remain in place**

This project is of benefit to the region since it would improve the water quality of Cleary Lake, support recreational activities on the lake, and support stewardship of natural resources in the park and the watershed.

Without the channel stabilization project, erosion of sediment and nutrients into Cleary Lake would continue and potentially compromise the future operations of the irrigation pump house.

The channel stabilization project would reduce sediment loading by an estimated 360 tons and phosphorus loading by 63 pounds for the 30-year life expectancy of the project.

Figure 5: Preliminary site construction plans for Cleary Lake Channel Stabilization



## Consistency with Other Council Policies and Systems

Council staff have reviewed the proposed master plan amendment and land conversion for consistency with *Thrive MSP 2040* and other Council plans and policies. Additional review comments are included below.

**Community Development – Natural Resources** (Eric Wojchik 651-602-1330) – This land conversion and associated master plan amendment is complete and consistent with *Thrive MSP 2040* policy regarding natural resources preservation.

**Environmental Services – Sewers** (Roger Janzig, 651-602-1119) – There are no Metropolitan Council Environmental Services facilities in the vicinity of Cleary Lake or Cleary Lake Regional Park; therefore, there is no impact.

**Environmental Services – Water** (Joe Mulcahy 651-602-1104) – I have reviewed Three Rivers Park District /Scott County's request for additional release from restrictive covenants for Cleary Lake Regional Park for Water Resources. The request appears to be accurate and complete, and potential water resource impacts appear to be addressed.

**Reference 5F-3**

**MEMORANDUM OF UNDERSTANDING AMENDMENT**

SAP 070-627-032 (CP 27-16)  
Parcel No. 2

THIS AGREEMENT entitled "Memorandum of Understanding Amendment" made and entered into by and between Three Rivers Park District, a public corporation and political subdivision of the State of Minnesota, successors and assigns (hereinafter referred to as "Owner"), and the County of Scott, a body politic and corporate under the laws of the State of Minnesota, successors and assigns (hereinafter referred to as "County").

**RECITALS:**

WHEREAS, the Owner and the County entered into a Memorandum of Agreement on June 17, 2021 in which the Owner agreed to convey a Drainage and Utility Easement to County as part of the reconstruction of a segment of County Highway 27, Highway Project SAP 070-627-032 (CP 27-16) (hereinafter referred to as the "Project"); and

WHEREAS, during the initial construction phase of the Project, the storm water system was determined to include a design flaw that would not allow for the infiltration system to function properly without a swale corridor, requiring additional easement area, and resulting in additional minor tree loss; and

WHEREAS, the Owner and County desire to enter into this Agreement amending the original Memorandum of Understanding to include additional easement area through the new Drainage and Utility Easement, and to account for additional tree loss; and

WHEREAS, the Owner and County have agreed upon a settlement on a voluntary basis by mutual agreement for granting of a new Drainage and Utility Easement to include the additional swale corridor.

NOW THEREFORE, in consideration of the promises and of the payments and mutual covenants contained herein, the parties hereto agree, as follows:

**1. Effect of Amendment**

Except as herein provided, the terms, conditions, and provisions of the Memorandum of Understanding shall apply to and govern the provisions of this Amendment and the Project. The payments specified herein represent additional compensation above and beyond the compensation amounts set forth in the Memorandum of Understanding for the additional Drainage and Utility Easement area and tree loss.

**2. Easement for Drainage and Utility Purposes**

In and for consideration of One Thousand and No/100 (\$1,000.00) Dollars, Owner agrees to grant a new easement for drainage and utility purposes over, under and across its property as denoted in the attached Drainage and Utility Easement, which Owner agrees to execute and deliver contemporaneously with this Agreement.

Upon execution and delivery by Owner to the County of an original instrument entitled "Drainage and Utility Easement" in compliance with Minnesota recording statutes, the County agrees to pay the above-referenced consideration to Owner subject to satisfactory evidence of marketable title including clearing claims, liens and interests of other parties.

Upon receipt of the above-recited consideration, Owner releases the County for and from any and all claims, damages, demands, causes of action, losses and expense on the property associated with or resulting from the easement for drainage and utility purposes.

### **3. Damage to Trees**

In and for the payment in the sum of Six Hundred Twenty and No/100 (\$620.00) Dollars, Owner agrees to settle with the County for and from any and all claims damages, demands, causes of action for damages to and on the property for and to trees on the property, which damages are associated with or resulting from within the Easement and the Project ("Tree Damages").

Upon the execution by Owner and the County of this Agreement and delivery to the County, the County agrees to pay the above-recited payment to Owner for the Tree Damages subject to satisfactory evidence of marketable title including clearing claims, liens and interests of other parties.

Upon receipt of the above-recited payment, Owner releases the County for and from any and all claims, damages, demands, causes of action, losses, expenses and liability on and to the property for said Tree Damages associated with and resulting from within the Easement and the Project.

### **4. Counterparts**

This Agreement may be executed in one or more counterparts or in multiple originals, either one of which is as valid as the other and when taken together shall constitute one agreement.

### **5. Binding Effect**

The terms and conditions hereof shall be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the parties hereto.

EXECUTED as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

THREE RIVERS PARK DISTRICT

By: \_\_\_\_\_  
John Gunyou  
Its: Board Chair

By: \_\_\_\_\_  
Boe R. Carlson  
Its: Superintendent and Secretary to the Board

COUNTY OF SCOTT

By: \_\_\_\_\_  
Tony Winiecki  
Its: County Engineer