

METROPOLITAN COUNCIL
390 North Robert Street, St. Paul, MN 55101
Phone (651) 602-1000 TDD (651) 291-0904

DATE: May 25, 2007

TO: Metropolitan Parks and Open Space Commission

FROM: Arne Stefferud, Planning Analyst-Parks (651) 602-1360

SUBJECT: (2007-198) Request for reimbursement consideration of Dakota County share of funding for Lebanon Hills Regional Park water surface management capital costs

INTRODUCTION

Dakota County has submitted a request for the Metropolitan Council to consider reimbursing the County up to \$906,325 in a future regional parks capital improvement program for storm water management capital costs at Lebanon Hills Regional Park. This project will resolve decades of flooding and ecologic degradation to Lebanon Hills Regional Park. (See **Attachment 1**, a letter from Steve Sullivan and related attachments).

This memorandum contains a review of the request for reimbursement consideration under applicable terms in Strategy 2(f) of the *2030 Regional Parks Policy Plan* and recommends approval of the reimbursement request.

AUTHORITY TO REVIEW

Minnesota Statute Section 473.315 authorizes the “Metropolitan Council with the advice of the Metropolitan Parks and Open Space Commission to make grants from any funds available to it for recreation open space purposes to any municipality, park district or county located wholly or partially within the metropolitan area to cover the cost, or any portion of the cost, of acquiring or developing regional recreation open space in accordance with the [*Regional Recreation Open Space*] *Policy Plan*”.

BACKGROUND

In August 2001, the Metropolitan Council approved an updated Lebanon Hills Regional Park master plan (Referral No. 18558-1). In the Council’s review of that master plan, the Council noted the following:

“Water resource management issues within the park including localized flooding and its context within the watershed is analyzed. A draft water resources management plan was used to prepare the park’s master plan. Estimated storm and surface water management costs range from \$800,000 to \$2 million. This includes restoring ecological systems damaged from the higher water levels, trail relocation, tree removal, and the “land value costs” for using the park for management of off-site storm water. Whatever evolves from the continued work on the water resources management plan, an ecological approach to water management will be pursued to reduce costs for building water control structures. Furthermore, cost sharing with those adjacent landowners that benefit from the water resource management plan will be pursued.”

When the Council approved the park’s master plan, it also “urge[d] Dakota County to work cooperatively with applicable cities in the park’s watershed to complete a final version of a water resources management

plan for the park and implement high priority aspects of that plan inside and outside the park.” (Agenda item 2001-298)

In response to this Council directive, a final version of a water resource management plan has been prepared. The cities of Apple Valley, Rosemount and Eagan along with Dakota County have negotiated their share of the costs to implement the plan. Details of the costs, which total \$3,615,980, and who is responsible for paying those costs are shown in Attachment G “Funding Summary—Project 905R”. Maps illustrating the project area and which agency is responsible for components of the project are shown in Attachments A, B and C. A schedule for project implementation is shown in Attachment D.

In 2006, the Metropolitan Council approved a \$460,000 grant from its 2006-07 regional parks CIP to Dakota County to partially finance the storm water plan project (Grant SG-2006-130). The Minnesota Department of Natural Resources (MDNR) has also provided a \$500,000 flood mitigation grant for this project.

A Joint Powers Agreement (JPA) between the cities and Dakota County must be executed by June 30, 2007 to retain the \$500,000 MDNR flood mitigation grant for this project. A contingency of the JPA is the Metropolitan Council’s approval for reimbursement consideration of Dakota County’s cost share of Project 905R in future regional parks capital improvement programs. The premise for the County’s request is that since this project benefits Lebanon Hills Regional Park and is consistent with the Council approved master plan for the park, the cost of implementing that portion of Project 905R should be borne by the region. Draft terms of the JPA are shown in Attachment F.

REIMBURSEMENT REQUEST ANALYSIS

Dakota County has requested that \$906,325 of expenses related to Project 905R that are financed with County funds as shown below as a Funding Gap be declared eligible for reimbursement consideration in a future regional parks CIP.

Dakota County Costs and Revenue Sources for Project 905R

Costs

Core Improvements shown on Attachment G	\$ 1,474,900
Apple Valley's share of Core Improvements in return for Apple Valley not charging Dakota County for stormwater charges in the future as requested in Attachment E and shown on Attachment G	\$ 82,518
Pond 40 Diversion shown on Attachment G	\$ 40,540
Total Costs	\$ 1,597,958

Revenues

DNR grant for Dakota County and Apple Valley portion of project shown on Attachment G	\$ 231,633
Metro Council grant 2006-130 awarded in 2006 as a match to the DNR grant in the Metro Council's 2006-07 Parks CIP for this project.	\$ 460,000
Subtotal	\$ 691,633

Funding Gap to be initially financed by Dakota County. This is the amount Dakota County requests to be eligible for reimbursement consideration by the Metropolitan Council in future regional parks CIPs	\$ 906,325
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Strategy 2(f) of the *2030 Regional Parks Policy Plan* states:

Strategy 2(f): Reimbursement

Reimbursement will be considered for development provided the project in question is consistent in timing, scale, type and cost with an approved master plan, that all information required for a development grant is submitted to the Council prior to the regional park implementing agency undertaking the project and that the Council approves the project.

This project is consistent with the terms of Strategy 2(f) for the following reasons:

1. The timing, scale and cost of this project are consistent with the development master plan approved by the Metropolitan Council in August 2001 (Referral No. 18558-1).
2. Enough information has been submitted in this request regarding what would be financed with a Council grant to meet the requirements of Strategy 2(f) which are shown in **Attachment 1** and referenced attachments to it.
3. The County is requesting Metropolitan Council approval of the project prior to undertaking the project.

CONCLUSIONS

The *2030 Regional Parks Policy Plan* requires that requests for CIP reimbursement consideration are consistent with the terms of Strategy 2(f). This review concludes that the reimbursement consideration request for the storm water management capital costs at Lebanon Hills Regional Park (Project 905R) is consistent with the terms of Strategy 2(f) of the *2030 Regional Parks Policy Plan*. Approval to consider reimbursing Dakota County up to \$906,325 in future regional parks capital improvement programs for

Project 905R does not commit the Council to finance this project. The timing of when the County is reimbursed is dependent on when this project is funded in a capital improvement program. However, the Council does not under any circumstances represent or guarantee that reimbursement will be granted, and expenditure of local funds never entitles a park agency to reimbursement.

Since the implementation of Project 905R is also dependent on the execution of a Joint Powers Agreement as described in Attachment F, the Council's action to consider reimbursing Dakota County a portion of the costs to implement the agreement should also be contingent on successful execution and implementation of the agreement.

RECOMMENDATION

That the Metropolitan Council approve the request to consider reimbursing Dakota County up to \$906,325 for storm water management capital costs of project 905R at Lebanon Hills Regional Park in a future regional parks capital improvement program. This approval is contingent on successful execution and implementation of a joint powers agreement between Dakota County and the cities of Apple Valley, Eagan and Rosemount for project 905R as described in Attachment F. However, the Council does not under any circumstances represent or guarantee that reimbursement will be granted, and expenditure of local funds never entitles a park agency to reimbursement.

Attachment 1: Electronic copy. Original on file at Metropolitan Council office

Physical Development Division
Gregory J. Konat, Director



Dakota County
Western Service Center
14955 Galaxie Avenue
Apple Valley, MN 55124

952-891-7000
Fax 952-891-7031
www.dakotacounty.us

May 10, 2007

Environmental Mgmt Dept
Farmland & Natural Areas Program
Office of GIS
Parks Department
Office of Planning
Surveyor's Office
Transit Office
Transportation Department
Water Resources Office

Arne Stefferud
Planning Analyst - Parks
Metropolitan Council
390 N Roberts Street
St. Paul, MN 55101

Dear Arne:

Dakota County (DC) requests Metropolitan Council consideration for future eligibility for reimbursement for the DC cost share of project 905R which provides storm water improvements in the Lebanon Hills Regional Park (LHRP) watershed. This improvement is the phase one core improvement to resolve decades of flooding and ecologic degradation to Lebanon Hills Regional Park.

LHRP Master Plan:

As recommended in the approved LHRP Master Plan, on December 20, 2005, the County Board adopted the LHRP Storm Water Management Plan, an ecologic solution that resolves flooding, enhances water quality, and maintains groundwater recharge (Resolution No. 05-668).

Project Proposal Approach:

A team comprised of staff from the County, cities and watersheds within the hydrologic boundary, have established a project proposal that establishes responsibilities and cost share to implement the plan (Attachment A: Hydrologic Boundaries). The proposal includes a trunk storm water improvement, from Marsh Lake to a new outlet connected to Eagan's storm sewer system. The project would be implemented by the City of Eagan as a public improvement project. DC and all cities within the hydrologic boundary would share costs. Lateral improvements on secondary tributaries, can be phased later and would be the responsibility of the agency in which the improvement is located (Attachment B: Agency Responsibilities Map).

City of Eagan Public Trunk Storm Water Improvement - Project 905R:

The City of Eagan has prepared a draft feasibility study to construct phase storm water improvements, which includes connection fees, improved outlets at

both Marsh and McDonough Lakes, infiltration improvements for Wetland -121, connection to Pond LP-51 and municipal lift station improvements, at an estimated cost of \$3,391,860. Two lateral improvements are also being constructed, including an outlet to Pond LP-23 and an outlet and diversion to Jensen Lake, at an estimated cost of \$224,120 (Attachment C: Storm Water Improvements). The shared project cost total is estimated at \$3,615,980. Subject to execution of a joint powers agreement, construction would start in fall 2007 and be complete in summer 2008 (Attachment D: Project Schedule).

Joint Power Agreement(s):

A JPA is required to establish responsibilities and cost share associated with Project 905R and future phased lateral improvements. In a letter from the City of Apple Valley, dated May 3, 2007 (Attachment E), it requests that Dakota County assume Apple Valleys drainage to LHRP and pay for its proposed Project 905R local cost share of \$82,518, in exchange for DC not being subject to a future city connection and water quality charges for equivalent acres draining from LHRP into the Apple Valley storm sewer system. The Dakota County Attorneys Office is evaluating whether one or two JPA's are necessary. Draft terms for the JPA are provided in Attachment F.

The JPA must be executed by June 30, 2007 to maintain a \$500,000 MDNR Flood Mitigation Grant for this project. A contingency of the JPA is the Metropolitan Council's approval of eligibility for future reimbursement of DC's cost share related to LHRP.

Funding:

DC's total estimated cost share for phase one trunk and lateral improvements, connection charges and the City of Apple Valley's exchange is \$1,612,141. Existing revenues from MDNR grant (\$217,450 Dakota County and \$14,183 Apple Valley for a total of \$231,633) and Metropolitan Council grant balance (\$437,591) totals \$669,224, leaving an unfunded shortfall of \$942,917 (Attachment G: Funding Summary).

DC's payment is due to the City of Eagan at the end of construction in spring of 2008. This allows the County Board to approve the shortfall as part of the 2008 Capital Improvement Program Budget. Potential revenue sources may include balance within the DC General Fund, Environmental Fund or Park Fund. The project could also be paid to the City of Eagan over a 15-year period with interest.

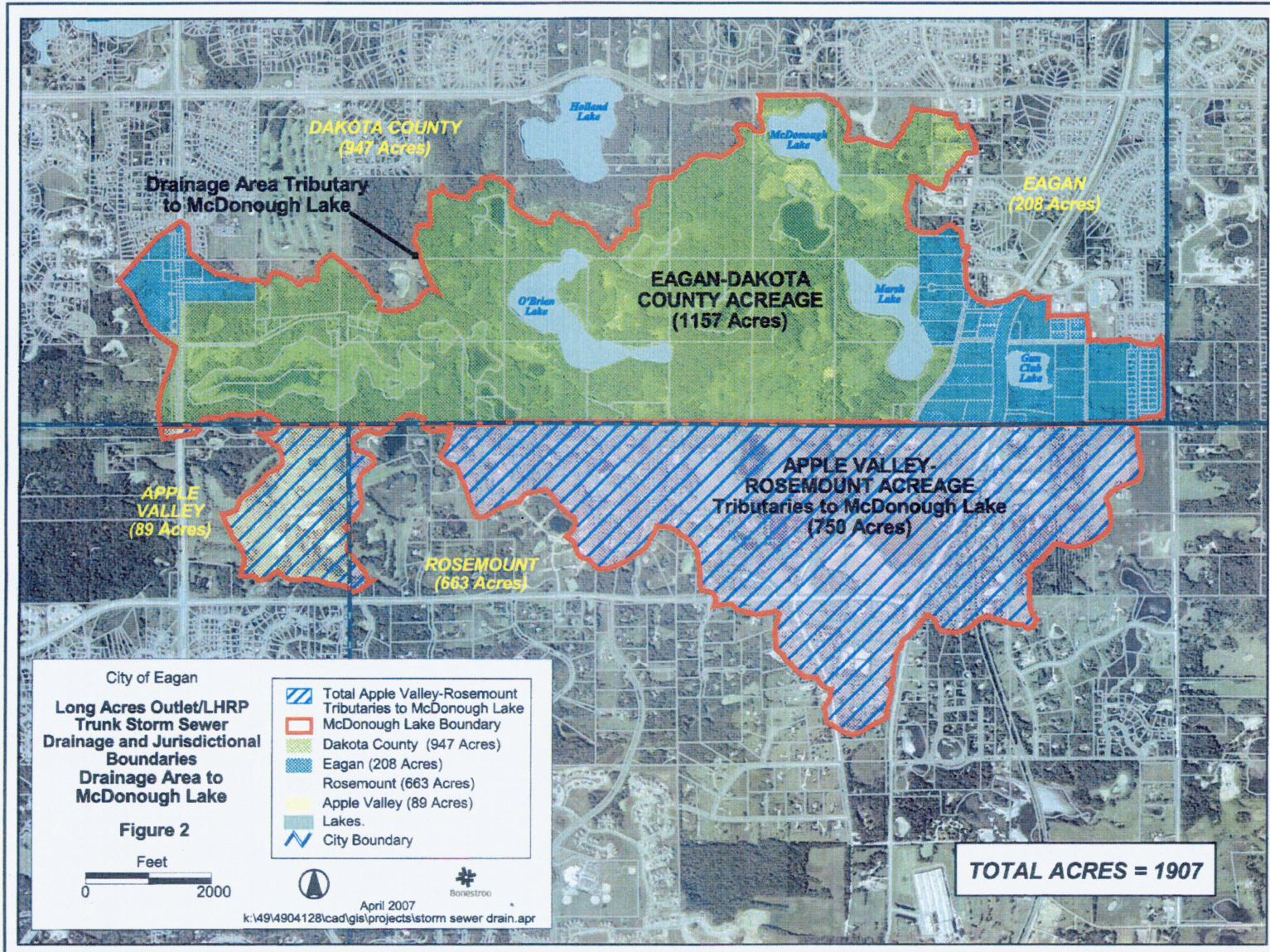
Remaining lateral improvements within LHRP would be funded in the future as part of the Parks Capital Improvement Program.

Thank you for consideration to this request.

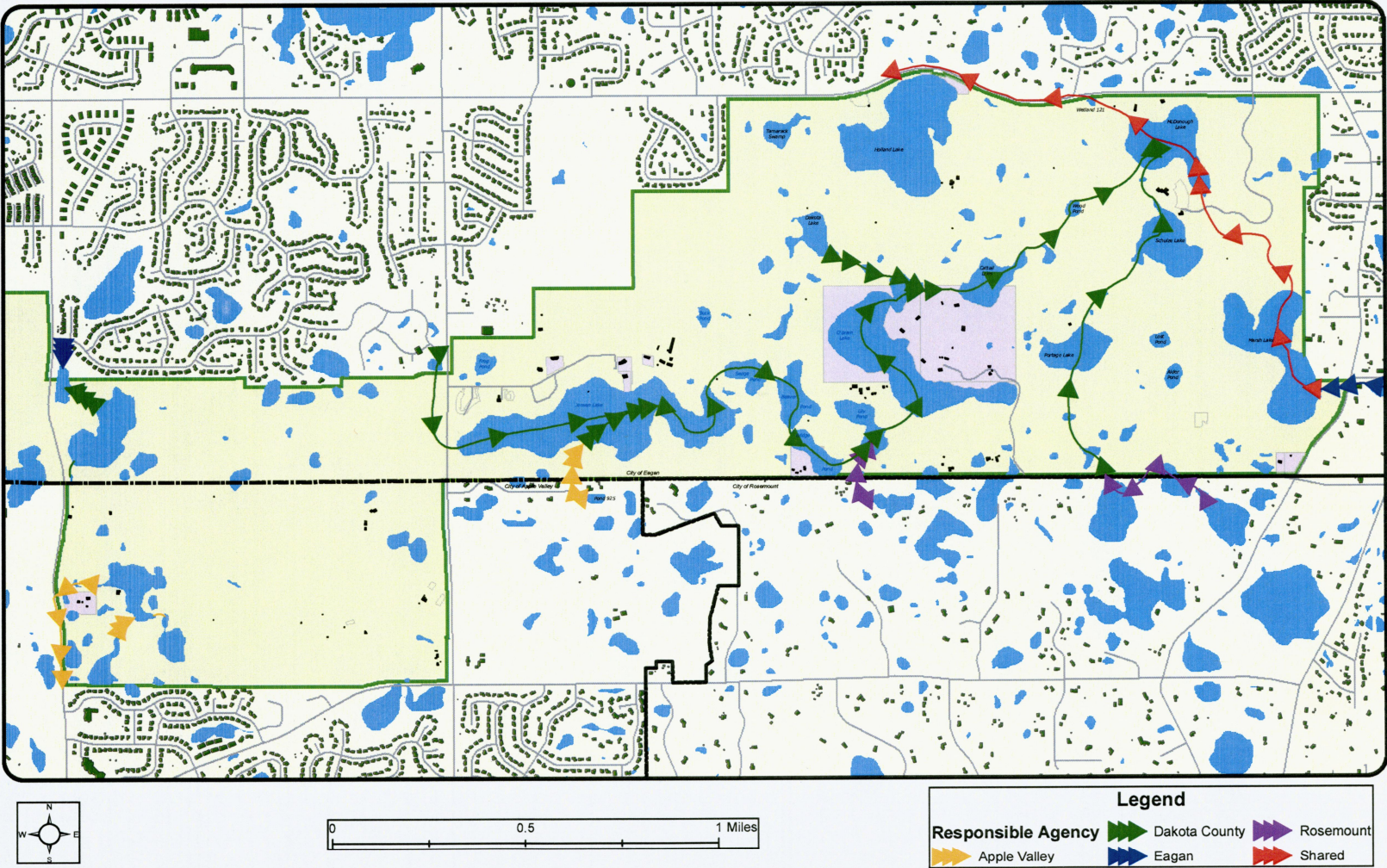


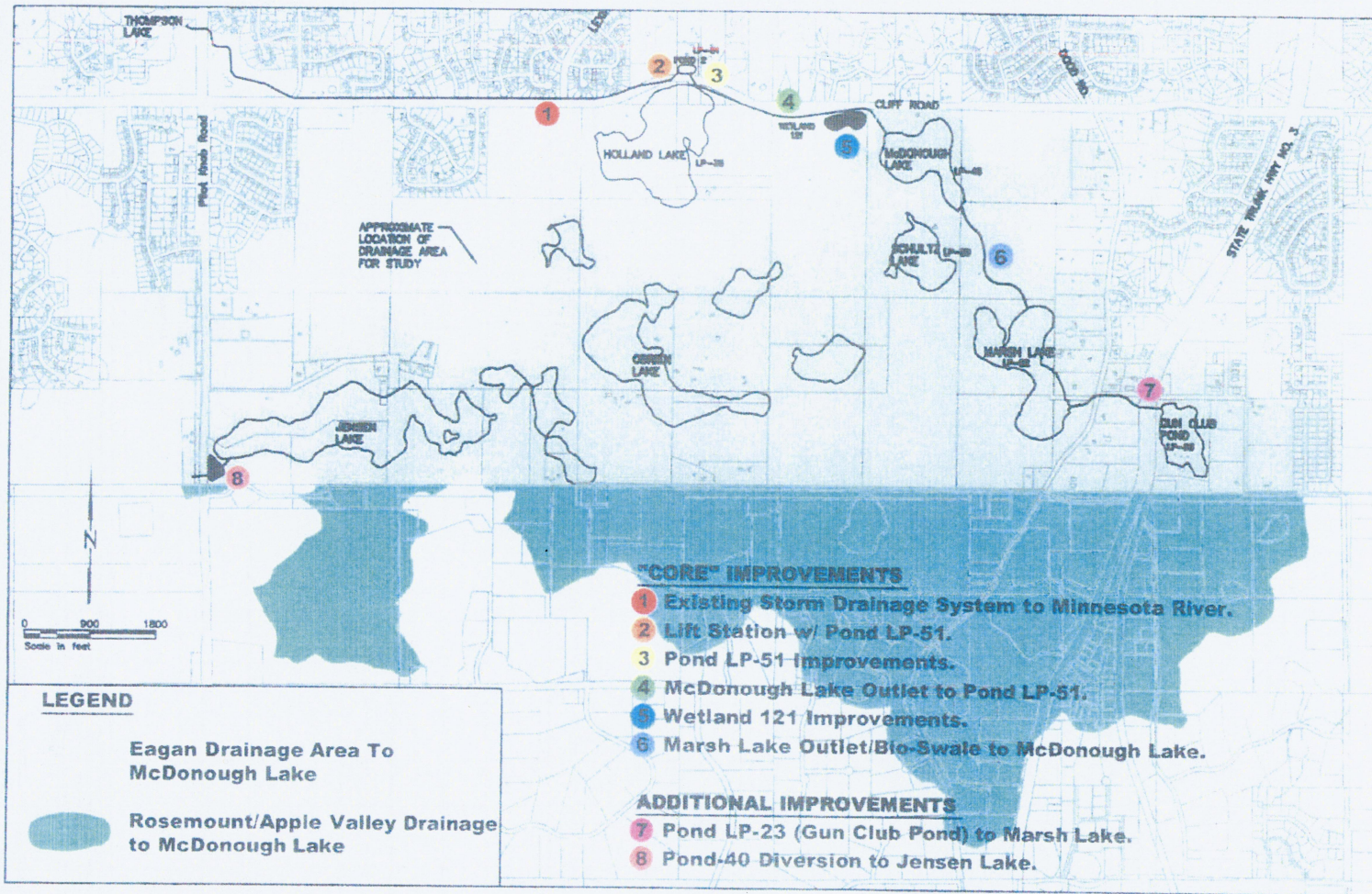
Steve Sullivan, Director
Dakota County Parks Department

C: Greg Konat, Physical Development Director
Kathy Scott, Assistant County Attorney



Water Management Agency Responsibilities





Long Acres/Lebanon Hills Park Trunk Storm Sewer Outlet

Location Plan
 Eagan, Minnesota – City Project #905R

FIGURE 1

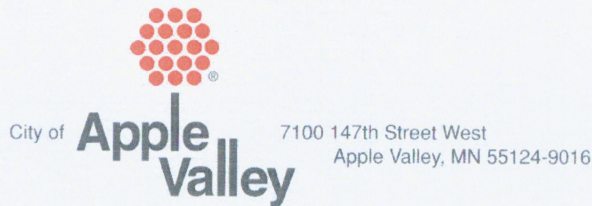
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**PROJECT SCHEDULE
PROJECT 905R**

Present Feasibility Report	April 5, 2007
Public Information Meeting	April 23, 2007
Public Hearing	May 1, 2007
Approve Plans and Specifications	July 17, 2007
Bid Opening	August 16, 2007
Receive Bids/Award Contract	August 21, 2007
Substantial Completion	March 31, 2008
Final Completion	June 1, 2008



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May 3, 2007

Mr. Steve Sullivan
Dakota County Parks Director
Western Service Center
14955 Galaxie Avenue
Apple Valley, MN 55124

Dear Mr. Sullivan:

Re: Lebanon Hills Regional Park Area Surface Water Management

The LHRP Stormwater Management Plan addresses concerns related to two watersheds (McDonough Lake and Gerhardt Lake-Wheaton Pond). This letter is to help clarify Apple Valley's position related to the McDonough Lake portion of the LHRP Stormwater Management Plan.

It is Apple Valley's position that LHRP stormwater issues which impact the Farquar Lake Watershed need to be addressed within the proposed Joint Powers Agreement.

McDonough Lake and Farquar Lake Watershed Issues

There is approximately 100 acres of land within Apple Valley which may contribute stormwater to the McDonough Lake Watershed. This land consists of a portion of the Valleywood Golf Course and the Beckman Subdivision (120th Street). Conversely, there is approximately 100 acres of land within the LHRP which contributes stormwater to the Farquar Lake Watershed. The following outlines the recommendation I made to the Apple Valley City Council:

The City of Apple Valley shall upgrade storm sewer (Figure Z of the LHRP Stormwater Plan) to Apple Valley's standards and restore the site. Dakota County shall accept stormwater from Apple Valley and address downstream issues with the City of Eagan.

Dakota County shall construct to Apple Valley standards storm sewer improvements necessary to capture stormwater which flows from Camp Sacajawea and impacts private property and County Road 38. The City of Apple Valley shall accept the stormwater from Camp Sacajawea (LHRP) and address downstream issues.

The joint powers agreement should take into account conditions as they exist on the date the agreement is signed. Should future development/redevelopment of the area take

Home of the Minnesota Zoological Garden

place which increases stormwater flow, that party shall inform the other and take steps to reasonably address impacts.

Capital Improvements recommended by the LHRP Stormwater Management Plan for construction within the City of Apple Valley's municipal boundary are classified as "non-core" projects. It has been my recommendation these improvements be completed in a timely manner.

Please feel free to contact me at 952-953-2412 or nheuer@ci.apple-valley.mn.us with questions or concerns.

Sincerely,

CITY OF APPLE VALLEY

Neal W. Heuer
Public Works Director

NWH

c: Mayor and City Council
Tom Lawell

DRAFT MAIN TERMS

JPA – Lebanon Hills Stormwater Management Plan

Overview:

The Lebanon Hills Storm water Management Plan (Plan) recommends 22 improvement projects to resolve storm water drainage issues within the hydrologic watershed in which Lebanon Hills Regional Park (LHRP) is located. Eagan Project 905R (storm drainage improvements) would implement seven of the Plan's improvements. Eagan, Dakota County, Rosemount and Apple Valley are contributing various amounts toward the cost of Project 905R. By the end of 2008, Apple Valley and Dakota County have agreed to complete other improvement projects consistent with the Plan.

Parties:

- City of Apple Valley*
- City of Eagan
- City of Rosemount
- County of Dakota

*The terms of an agreement between the County and Apple Valley concerning some of the improvements recommended in the Plan are included in this summary but may be accomplished through a separate JPA.

Main Terms:

- Approval of Plan. Parties agree that the implementation of the Lebanon Hills Storm water Management Plan (Plan) recommendations is a means to resolve flooding issues within the watershed. Additional negotiation is needed to determine funding source for recommended improvements that are not part of Eagan Project 905R or otherwise provided in the JPA.
- Eagan Project 905R Improvements (Project 905R)
 - Eagan will engineer and construct all Project 905R improvements.
 - Dakota County will review and approve construction plans prior to Eagan's release for bids. Dakota County will approve construction limits and clear and grub limits prior to construction.
 - Parties agree to a cost share formula for Eagan Project 905R to implement five trunk improvements and two lateral improvements that substantially meet Plan recommended improvements. See, Attachment G – Funding Summary Project 905R.
 - Contributions toward Trunk Improvements. Dakota County and Eagan's contribution to trunk (core) improvements is calculated in accordance with Eagan's trunk storm water connection fee policy. The Cities of Rosemount and Apple Valley's contribution to Eagan Project 905R is based on the remaining unfunded difference, which is proportionately allocated based on each city's respective drainage area that contributes storm water to LHRP.
 - Contributions toward Lateral Improvements. Eagan and Dakota County agree to a 50/50 sharing of the costs to construct the "Pond 40 Diversion to Jensen Lake"

lateral improvement. Eagan will pay all costs to construct the Pond LP-23 (Gun Club Pond) to Marsh Lake lateral improvement.

- Eagan will own, operate, and maintain the trunk improvement's pipes and related appurtenances, except Dakota County will own and maintain the bioswale downstream of Marsh Lake.
- Dakota County will own and provide routine maintenance on the trunk improvement berm on McDonough Lake. Eagan and the County will equally share in the costs to maintain the structural integrity and preservation of the berm.
- Eagan will own and maintain the Pond 40 Diversion to Jensen Lake's pipes and appurtenances.
- The County, Apple Valley & Rosemount will not be required or obligated to pay any future fees for the operation and maintenance of Eagan's storm water system, including ongoing storm water utility or water quality dedication fees.
- Apple Valley and Dakota County Lateral Improvements.
 - Apple Valley will pay all costs to restore channel erosion from Pond 925 to Jensen Lake (Plan Figure Z) by the end of 2007 and will own and maintain the same.
 - Dakota County will pay all costs to provide an outlet in Camp Sacajawea that diverts storm water running over Co. Road 38 (not a listed improvement in the Plan, which has a rough estimated cost of \$25,000) by the end of 2007 and will own and maintain the same.
 - Apple Valley will pay all costs to engineer and construct the Wheaton Pond Lift Station and Forcemain by the end of 2008 and will own, operate and maintain the same (Plan Figure EE). This will be completed in accordance with a previously executed JPA dated 12/13/95 between Apple Valley and Dakota County.
 - Dakota County agrees to pay Apple Valley's cost contribution on Project 905R. However, by doing so, Dakota County does not assume any responsibility for Apple Valley storm water flow through the hydrologic watershed.
 - Apple Valley agrees Dakota County will not be required or obligated to pay any future connection fees to Apple Valley's storm water system or for the operation and maintenance of Apple Valley's storm water system, including ongoing storm water utility or water quality dedication fees.
- Right to Enter/Easements. The parties will grant each the right to enter their properties to construct improvements contemplated in the Plan or as otherwise agreed in the JPA. Specifically:
 - Dakota County agrees to issue special use permits to Eagan, Apple Valley and Rosemount to enter and construct, operate or maintain improvements located on county park property for purpose of implementation of the improvements contemplated by the Plan.
 - The County will grant all parties at its sole option either a perpetual license to convey water through LHRP as described to the satisfaction of all parties in the JPA or by granting flowage easements related to the Project 905R and other Plan improvements. Dakota County agrees to pay all costs associated with preparing and filing such easements if it elects to memorialize the rights granted through easements.

- The right to convey water or easements will be limited to storage of water up to predetermined surface water elevations of:
 - 882.4 feet above sea level for McDonough Lake;
 - 906.2 feet above sea level for Marsh Lake;
 - 878.7 feet above sea level for Wetland 121; and
 - Remaining improvements as set out in the Plan.
- Regulatory Requirements. The party constructing a project improvement will meet all regulatory requirements of the WCA, DNR, Army Corp of Engineers, MPCA NPDES Phase II permits, unless otherwise agreed in writing by the parties.
- Local Storm water Plans. The parties agree to comply with their respective storm water management plans and to obtain written consent from the other parties to amend their respective plans in the event such changes increase or impair storm water flow through LHRP watershed.
- DNR Grant. Dakota County agrees to share its anticipated \$500,000 DNR grant funds on Project 905R, contingent upon obtaining grant funds, with the other parties based upon the formula set out in the Project 905R Funding Summary (Attachment G).
- Liability. Liability and indemnification language as approved by attorneys and risk managers.
- Remaining Plan Improvements. The parties understand that until such time that all Plan improvements are completed, flooding during a 100-year flood event may occur at Cliff Road or other locations. Parties agree to work cooperatively to timely fund and complete remaining Plan improvements and to amend this JPA as needed to complete the remaining Plan improvements to implement a 100-year flood prevention plan for the hydrologic watershed.

JPA contingent upon:

- Any required approvals from Met Council related to connection fees, license to convey water or easements, or restrictive covenants on park property that would prohibit the intended improvements.
- Receive DNR grant funds.
- JPA with Apple Valley executed.
- Capacity of Eagan's storm water system to convey LHRP storm water is adequate.

Exhibits (include but not limited to)

- Plan
- Project 905R report
- Table reflecting cost share related to Project 905R
- Map of trunk & lateral improvements
- Eagan Storm water Management System
- Rosemount Storm water Management System
- Apple Valley Storm water Management System

- DNR grant

FUNDING SUMMARY PROJECT 905R

PROJECT COSTS & REVENUE SUMMARY

Project Costs

“Core” Improvements

Connection Fee (Equivalent for existing outlet to Mn River)	\$1,112,750
Holland Lake Lift Station expansion/upgrades	\$1,157,560
Pond LP-51 Improvements	\$ 49,800
McDonough Lake Outlet to Pond LP-51	\$ 676,180
Wetland 121 Improvements	\$ 332,710
Marsh Lake Outlet (Bioswale)	<u>\$ 62,860</u>
Subtotal	\$3,391,860

Additional Improvements

Pond LP-23 (Gun Club) to Marsh Lake	\$ 143,040
Pond 40 Diversion to Jensen Lake	<u>\$ 81,080</u>
Subtotal	\$ 224,120

TOTAL COST

\$3,615,980

Revenue

“Core” Improvements

	Local Share	DNR Grant	Total
Dakota County Contribution	\$1,257,450	\$ 217,450	\$1,474,900
Rosemount Contribution (651 Acres)	\$ 544,829	\$ 94,217	\$ 639,046
Apple Valley Contribution (98 Acres)	\$ 82,518	\$ 14,183	\$ 96,701
Eagan Share	<u>\$1,007,063</u>	<u>\$ 174,150</u>	<u>\$1,181,213</u>
TOTAL “Core” Improvements	\$2,891,860	\$ 500,000	\$3,391,860

Additional Improvements

Dakota County Responsibility	\$ 40,540		
Pond 40 Diversion			\$ 40,540
Eagan Responsibility	\$ 183,580		
Pond 40 Diversion			\$ 40,540
Pond LP-23 to Marsh Lake			<u>\$ 143,040</u>
Subtotal	<u>\$ 224,120</u>		\$ 224,120
TOTAL Revenue Sources	\$3,115,980	\$ 500,000	\$3,615,980

