

0 750 Feet

Scale: 1:9,000



Project Area

Project Layout

Other Developed Area

Quarter Sections

Buildings

Pavement

PROJECT LOCATION
(USGS TOPOGRAPHY)

Figure 1



0 750 Feet

Scale: 1:9,000



Project Area

Project Layout

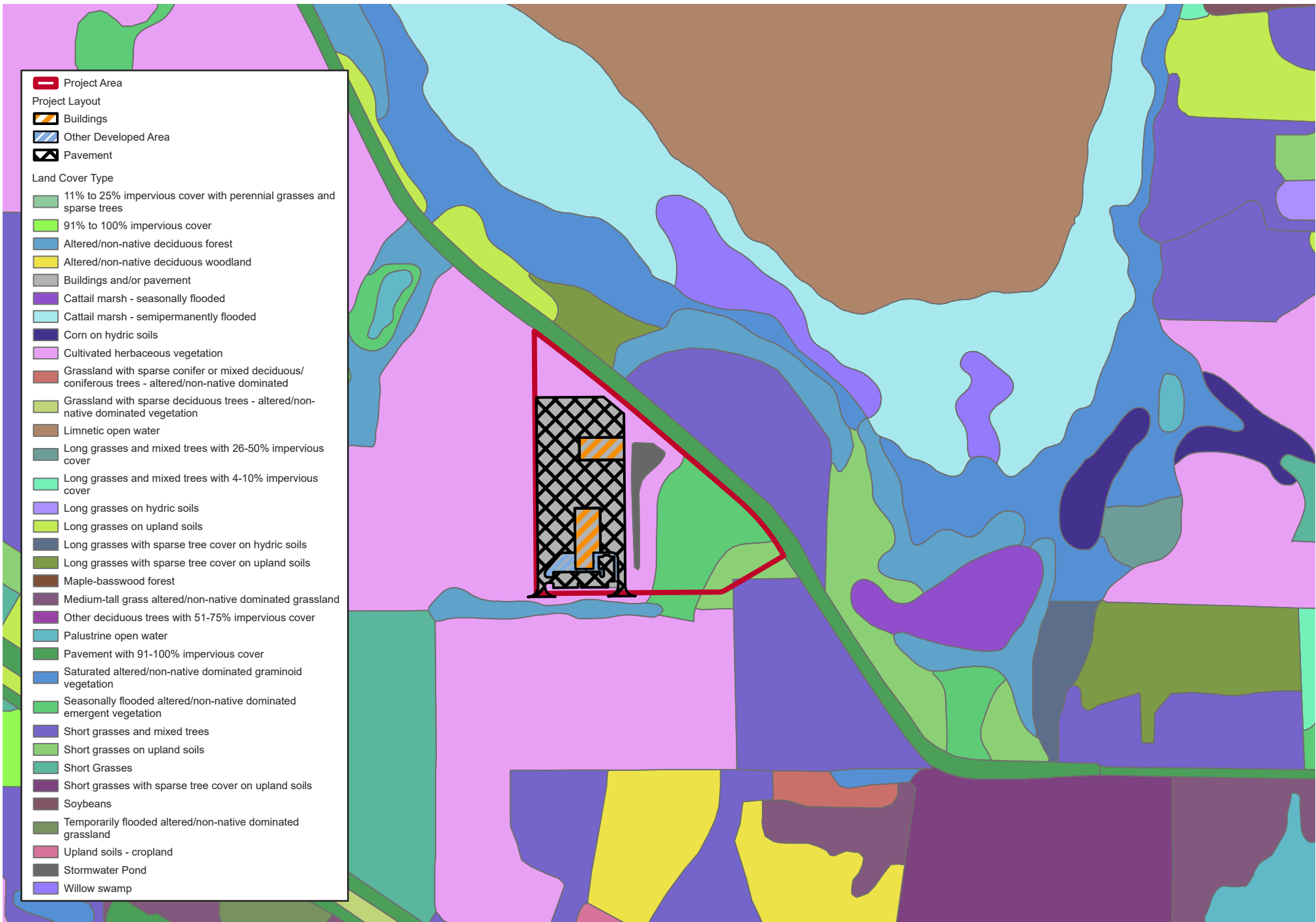
Other Developed Area

Buildings

Pavement

PROJECT LOCATION (AERIAL)

Figure 2



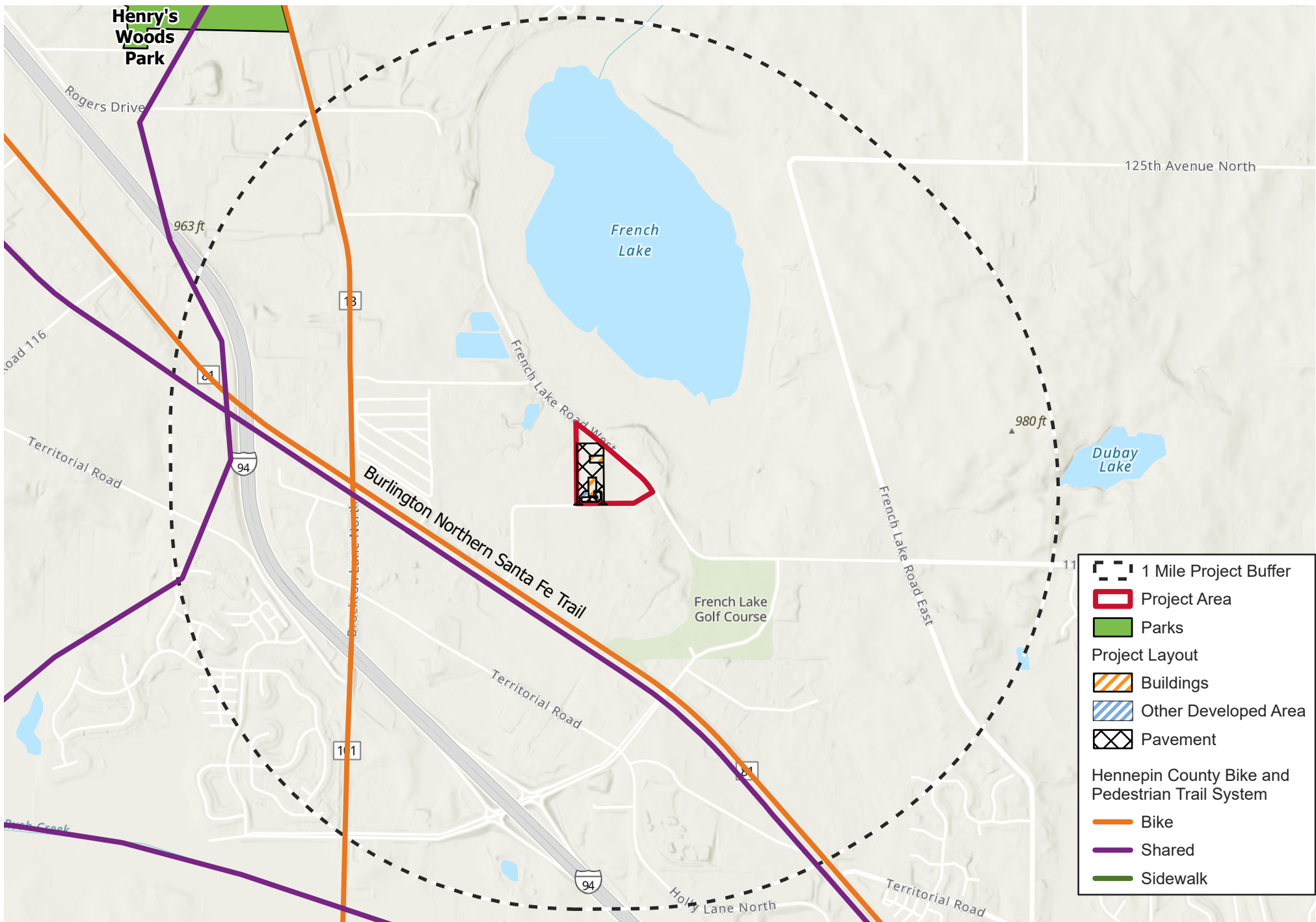
0 500 Feet

Scale: 1:6,000



EXISTING LAND COVER

Figure 3



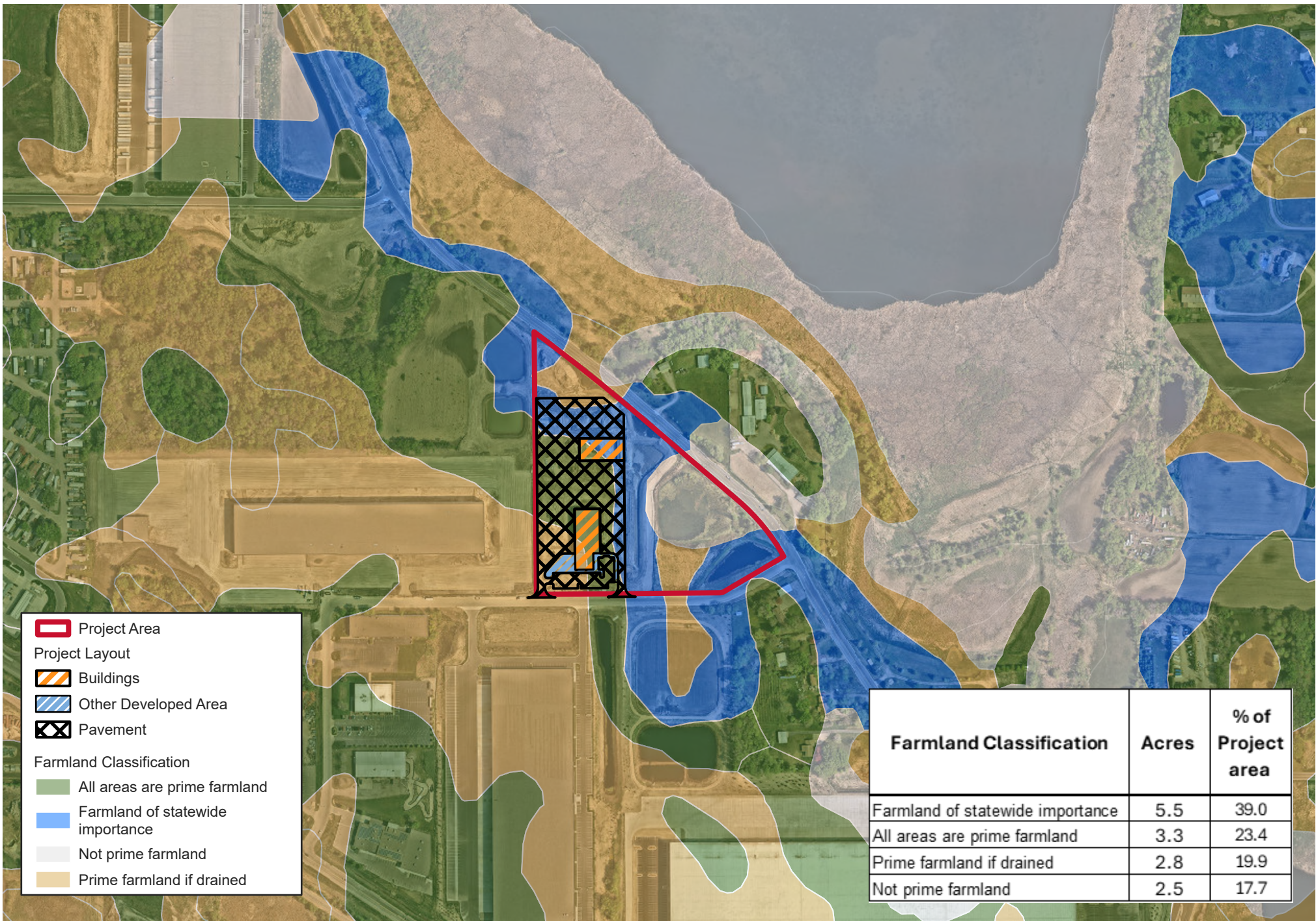
	1 Mile Project Buffer
	Project Area
	Parks
Project Layout	
	Buildings
	Other Developed Area
	Pavement
Hennepin County Bike and Pedestrian Trail System	
	Bike
	Shared
	Sidewalk



Scale: 1:19,500

PARKS AND TRAILS

Figure 4



0 500 Feet

Scale: 1:6,000



FARMLAND CLASSIFICATION

Figure 5

DAYTON TRANSFER STATION EAW



Project Area

Project Layout

- Buildings
- Other Developed Area
- Pavement

Dayton Zoning

- PUD
- A-1 Agricultural District
- B-3 General Business District
- I-1 Light Industrial District
- R-MH Mobile Home District



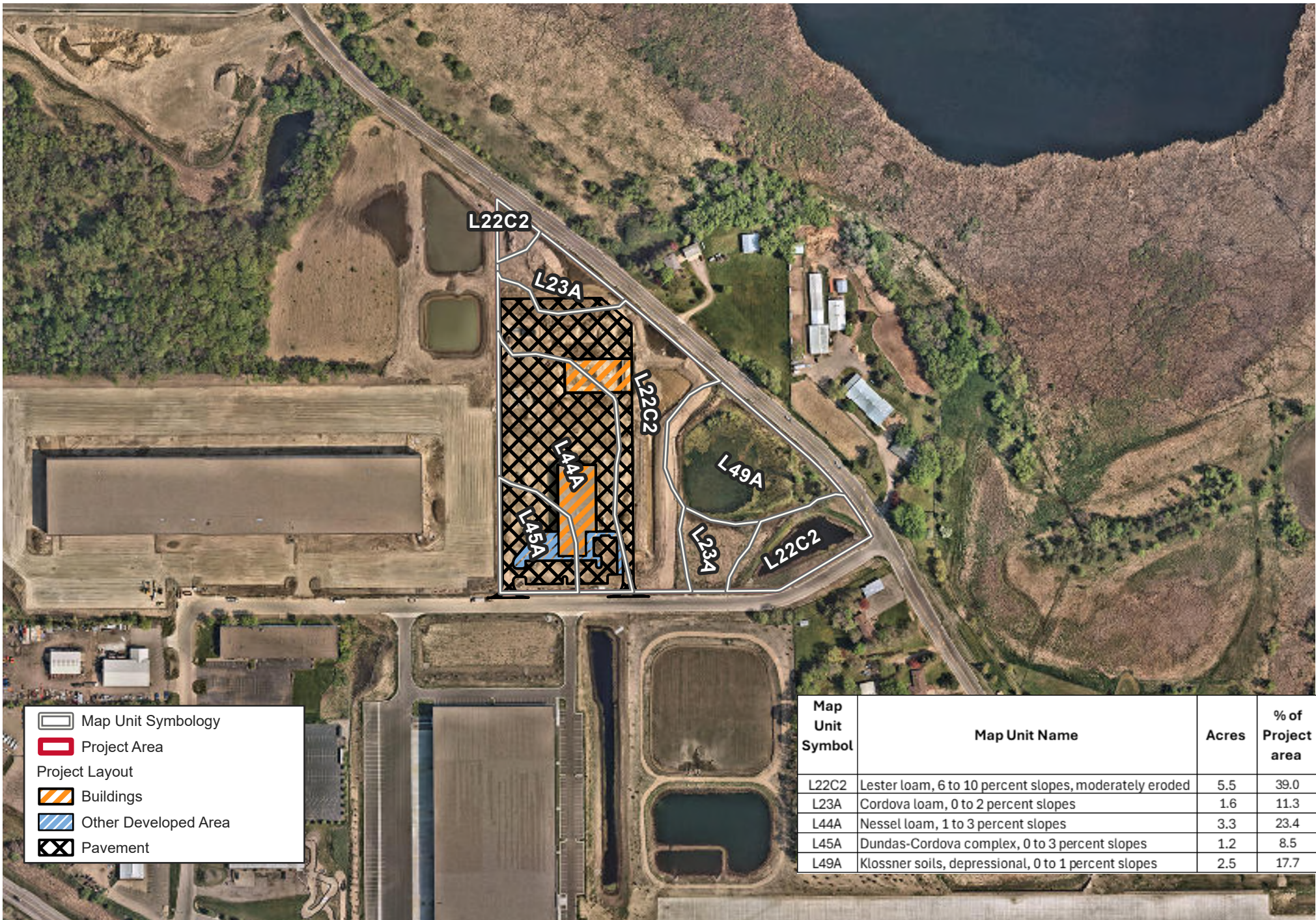
0 500 Feet

Scale: 1:6,000



ZONING

Figure 6



Map Unit Symbology
 Project Area
 Project Layout
 Buildings
 Other Developed Area
 Pavement

Map Unit Symbol	Map Unit Name	Acres	% of Project area
L22C2	Lester loam, 6 to 10 percent slopes, moderately eroded	5.5	39.0
L23A	Cordova loam, 0 to 2 percent slopes	1.6	11.3
L44A	Nessel loam, 1 to 3 percent slopes	3.3	23.4
L45A	Dundas-Cordova complex, 0 to 3 percent slopes	1.2	8.5
L49A	Klossner soils, depressional, 0 to 1 percent slopes	2.5	17.7

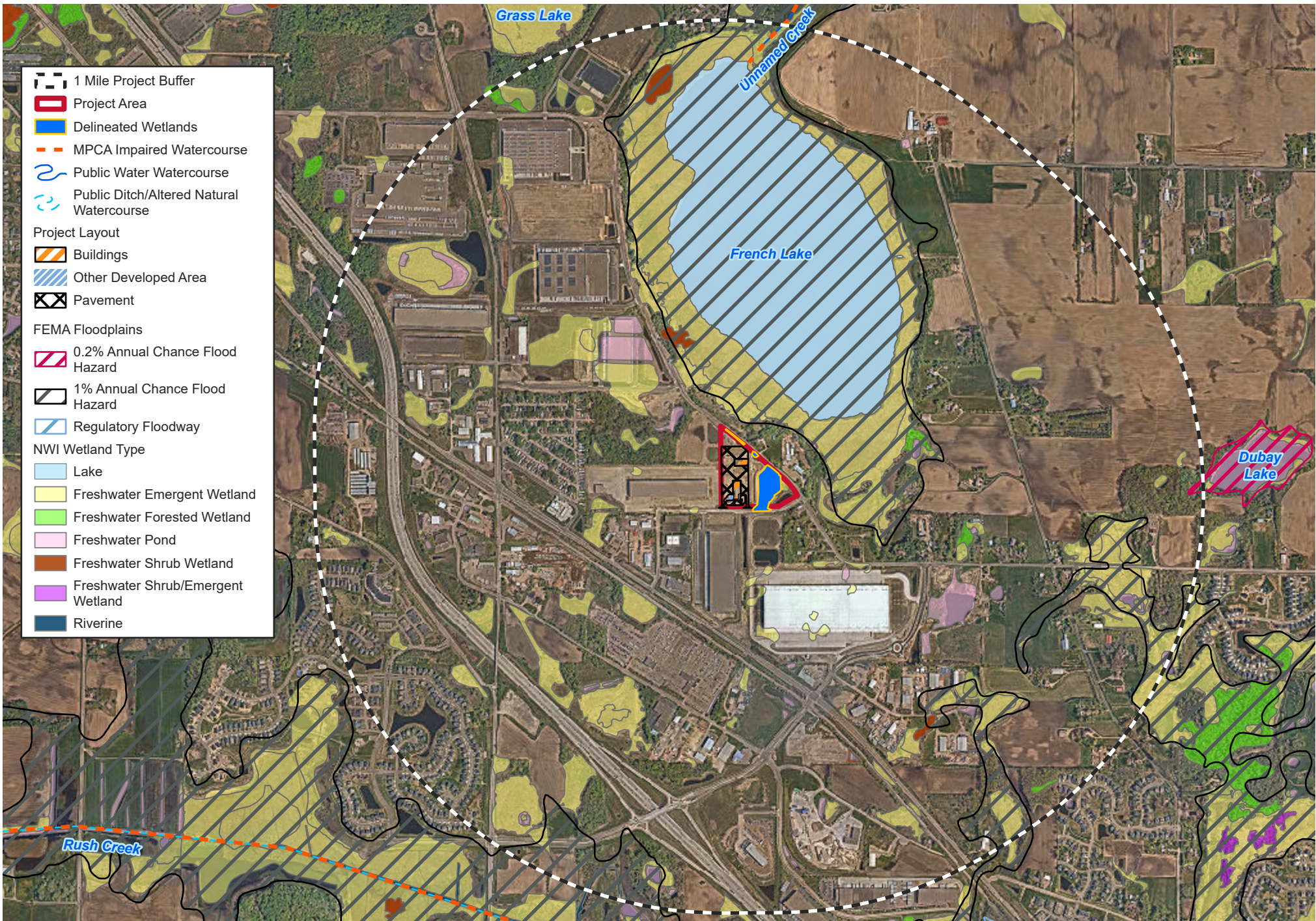


0 300 Feet

Scale: 1:4,000



SOILS
Figure 7



0 1,500 Feet

Scale: 1:19,500



SURFICIAL HYDROLOGICAL RESOURCES

Figure 8

DAYTON TRANSFER STATION EAW



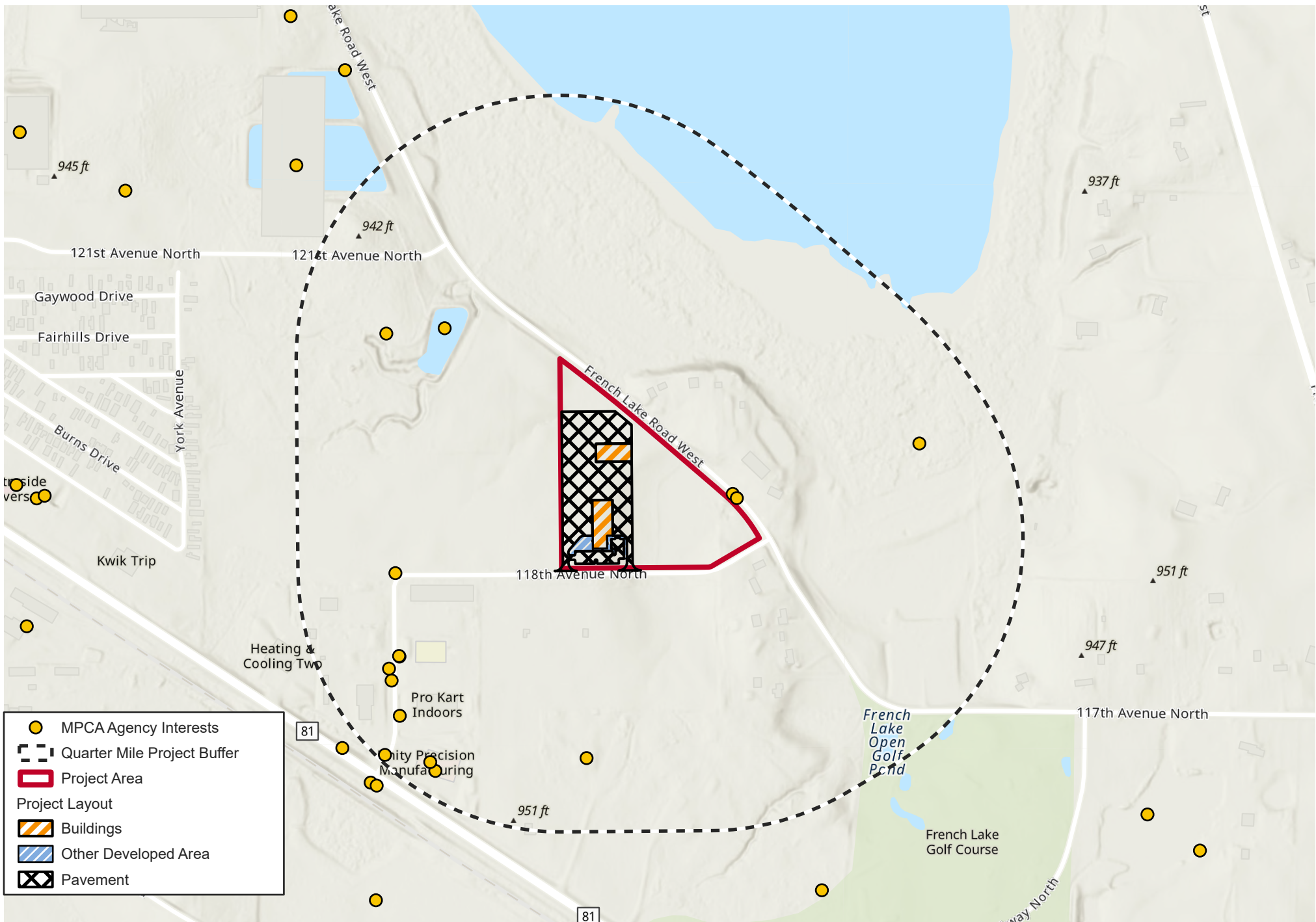
- Minnesota Well Index (MWI) water well
- Quarter Mile Project Buffer
- Project Area
- Project Layout
- Buildings
- Other Developed Area
- Pavement



0 650 Feet

Scale: 1:7,500





- MPCA Agency Interests
- Quarter Mile Project Buffer
- Project Area

Project Layout

- Buildings
- Other Developed Area
- Pavement

0 650 Feet

Scale: 1:7,500

MPCA POTENTIALLY CONTAMINATED SITES

Figure 10

**CITY OF DAYTON
COUNTIES OF HENNEPIN AND WRIGHT
STATE OF MINNESOTA**

**RESOLUTION NO. 79-2022
GRANTING DEVELOPMENT APPROVAL OF AN INDUSTRIALLY GUIDED
PROPERTY INCLUDING ELEVEN APPLICATION REQUESTS FOR MASTER
FAMILY INVESTMENTS**

WHEREAS, Master Family Investments, (hereinafter referred to as the “Applicant”) has made multiple applications for:

1. a rezoning from A-1 to L-1,
2. a zoning text amendment to Section 1001.063, Subd. 1 allowing for residential/commercial yard waste transfer stations in the Light Industrial zoning district (L-1),
3. a preliminary plat to be known as MTL addition,
4. a site plan approval,
5. a conditional use permit (CUP) for an industrial use in the French Lake Shoreland Overlay District,
6. a CUP for outdoor storage of semi-trailers on Lot 1,
7. a CUP for outdoor storage of dumpsters, vats, containers, roll offs and other storage bins on two acres of impervious surface on Lot 2,
8. a CUP for a detached industrial accessory building on Lot 1,
9. a CUP for a detached industrial accessory building on Lot 2,
10. a CUP or IUP for a residential/commercial yard waste transfer station on Lot 2 and
11. a CUP for a Motor Freight Terminal and maintenance garage in the I-1 zoning district.

(Hereinafter referred to as the “Applications”) for the development of four industrial buildings on property legally described on attached Exhibit 1 (hereinafter referred to as the “Property”).

WHEREAS, the City staff studied the matter, reports were issued and information was provided to the Planning Commission regarding the Applications; and

WHEREAS, the Planning Commission at its November 3, 2022, meeting recommended approval of all 11 Application requests to the City Council; and

WHEREAS, the City staff organized the Planning Commission comments and actions into a report, the report was issued and information was provided to the City Council regarding the Applications; and

WHEREAS, the City Council at its November 22, 2022, meeting approved the Applications as recommended by staff and the Planning Commission; and

NOW, THEREFORE, based upon the testimony elicited and information received, the City Council for the City of Dayton makes the following:

FINDINGS

- A. The applicant presented a concept plan to the City in 2020 and again late in 2021 and the Planning Commission and City council provided favorable and constructive comments, and the Applications significantly reflect the concept review comments.
- B. The rezoning application brings the property into conformance with the adopted 2040 Comprehensive plan.
- C. The community has recognized that the Property is located in an area of the community that that with develop with similar industrial uses.
- D. The surrounding transportation network was identified as being sufficient to support the development proposed in the applications.
- E. The surrounding public utilities are adequate to serve the approved uses.
- F. The requested Conditional use permit requests for outdoor storage on both lots is in conformance with the recently deliberated and adopted ordinance amendments related to outdoor storage in industrial districts.
- G. The approved residential and commercial yard waste transfer station will provide a desired and beneficial service to the residential and business facets of the community.
- H. The Applications in combination allow the Applicant to consolidate current business operations within one site within the City of Dayton instead of in other neighboring communities within the region.
- I. The Applications in their combination will provide a positive tax benefit to the community.
- J. Minn. Stat. §462.358, grants the City, for the purpose of protecting and promoting the public health, safety and general welfare, the authority to adopt subdivision regulations providing for the orderly, economic and safe development of land within the City.
- K. The City Council has adopted Subdivision Regulations for the orderly, economic and safe development of land within the City.

- L. Dayton City Code §1002.02 states that “no land shall be subdivided without complying with the provisions of [Chapter 1002]”.
- M. The proposed subdivision of the Property is governed by Dayton City Code Chapter 1002.
- N. The preliminary plat as approved provides additional public road right-of-way and drainage and utility easements that will serve to better the interests of the residential and business facets of the community.
- O. The Final Plans are governed by Dayton City Code 1001.10.
- P. The Applicant has submitted the Development Plans for the City’s review and approval.
- Q. The Preliminary Plat meets the City Code requirements, and the approved Civil Plans meet the City Code requirements, provided they are subject to and satisfies the conditions set forth in this Resolution and final review by City Engineers and City Planner.
- R. The Park dedication requirement was found to be appropriate based the employees of the site having access to a sound park and open space system that promotes health and well being. Furthermore, a portion of the property is located in the French Lake Shoreland Overlay district, and the City has public park and open space improvements planned within the overlay.

DECISION

NOW, THEREFORE, and based upon the information received and the above Findings it is resolved by the City Council of the City of Dayton as follows:

1. Rezoning

The request to rezone parcel number 3012022340001 from A1 to L1 is hereby approved, subject to the following conditions:

- 1. The development agreement must be signed by the property owner and approved by the City prior to the publication of the rezoning approval.

2. Zoning Text Amendment

The zoning text amendment to Section 1001.063 Subd 1 allowing for residential/commercial yard waste transfer stations as a conditional use permit (CUP) in the Light Industrial zoning district (L-1) is hereby approved, subject to the following conditions:

1. The property shall be a minimum of 15 acres.
2. Yard waste is prohibited from remaining on the site overnight.
3. All vats, dumpsters or other storage containers and trucks shall be routinely cleaned, sanitized and kept in good repair.
4. All vats, dumpsters or other storage containers and trucks shall be stored or parked in an orderly fashion.
5. There shall be no noticeable and continuous noxious odors associated with the use.
6. Outside storage of yard waste shall only be permitted in areas as defined on the approved site plan.
7. Outside storage of yard waste within vats, dumpsters, or other storage containers not queued for transfer during normal business hours is prohibited.
8. Any notifications by the city for violations of the conditions approved with this CUP shall be immediately corrected. In accordance with section 1001.23 Subd.1(5) of the Zoning Ordinance. The failure to comply with the city correction notifications will be cause for the CUP to be reviewed by the City Council and be subject to potential revocation.
9. If the transfer station use is discontinued for a period of at least 6 months, any further use of the property shall conform to the requirements of Section 1001.63 Subd 6. The discontinued conditional use shall not begin operations again without first obtaining approval of a new conditional use permit as required in section 1001.23 Subd. 1 (4) b of the Zoning Ordinance.

3. Preliminary Plat

The preliminary plat is hereby approved, subject to the following conditions.

1. All required drainage and utility easements and public right of way shall be identified on the final plat.
2. The plat shall be revised to include both central stormwater basins in Lot 1
3. A 30-foot wide public drainage and utility easement needs to be platted between lots 1 and two over the sewer line.
4. A 60-foot ROW, along the south property boundary, should be appropriate – essentially an extension of the ROW dedicated for the Troy Lane extension (to the west property line).

5. Prior to recording the final plat, the applicant shall supply park/trail dedication as cash-in-lieu of land in the amount required in the City's annual fee schedule current at the time of development.
6. Prior to the recording the final plat, the applicant shall enter into a development agreement and shall pay Park Dedication fees for the platted Lot and all applicable sanitary sewer, water, and stormwater development fees prior to grading the site.
7. Upon approval of the preliminary plat, the applicant may obtain an early grading permit with the submittal of signed grading and erosion control plans, required stormwater management permits and a surety.
8. A stormwater management agreement is required between the city and the owners of Lot 1 and 2. This agreement must be signed and recorded with Hennepin County prior to the release of final plat for recording.
9. For drainage and utility purposes on all lot lines, over ponds, wetlands and other utilities, as required by the City Engineer.
10. Proposed Troy Lane extension.
11. Access for temporary traffic features as necessary.
12. Any road right-of-way or trail easements requested by any governmental agency and/or those shown on the Final Plat; and
13. Any public trails shall be dedicated to the City.

4. Site Plan Lots 1 and 2

The site plan for Lot 1 and 2 is hereby approved, subject to the following conditions.

1. The applicant shall provide revised landscape plans:
 - a. Perimeter screening of the outdoor storage area shall be a minimum of eight feet and may be achieved through a combination of fencing, landscaping, berming and building placement.
 - b. Grade level view sections of the landscaping shall also be provided.

2. The plans need to reflect the construction of a 24-inch trunk sanitary sewer between Lots 1 and 2 for their entire depth.
3. The City of Dayton's detail sheets shall be utilized on all construction documents.
4. All required parking areas shall contain exterior and interior landscaping per Section 1001.24.
5. Extended truck idling is prohibited on Lots 1 and 2.
6. The identified passenger vehicular parking area striping shall be annually maintained
7. The total permitted semi trailer parking/storage permitted on Lot 1 is 360 spaces. This includes 111 of those spaces per the ordinance calculation formula shown as blue on the parking detail exhibit, 127 spaces per the CUP calculation formula shown as red on the parking detail exhibit and 122 operational stalls at the truck dock areas shown as pink on the parking detail exhibit.
8. Trailers located at the truck docking areas would be permitted to be connected to fleet semi tractors for extended periods of time.
9. Trailers located in the CUP Outdoor storage area are prohibited from being connected to fleet semi tractors for extended periods of time.
10. All required vehicular and truck parking spots shall be initially striped during site improvements and maintained annually thereafter.
11. All trash, recyclable materials, and trash and recyclable materials handling equipment shall be stored within the principal structure; 100% screened from public view by the principal building; or stored within an accessory structure constructed of building materials compatible with the principal structure enclosed by a roof, and overhead door on tracks. Compactors shall be 100% screened from eye level view from public streets and adjacent properties. The plans shall be updated to show compliance.
12. All Mechanical equipment shall be screened in accordance with section 1001.62 Subd. 1 (5) of the code.

13. A financial guarantee in the amount of 150 percent of the cost estimate for the landscaping is required to be submitted with the first building permit. The surety will be retained by the City for one year after notification on the installation of the landscaping to ensure the planting and survival of the required landscaping. The surety may be reduced by 50 percent after the required materials are planted, and the City is notified in writing.
14. All pole mounted lighting on the property shall be limited to 20 feet in height and the fixtures shall be hooded and downcast. A lighting metrics study is required to be included with the building permit application.
15. The applicant/developer shall meet all engineering conditions and make all plan changes as noted in the engineering memos prior to approval of the final plat. All construction and engineering plans (grading, erosion control, stormwater, street, utility, etc.) shall be reviewed and approved by the City Engineer, Planner, and Public Works director, prior to issuance of grading/building permits.
16. The final fence construction material shall be approved by the Zoning Administrator.
17. A sign permit shall be reviewed and permitted prior to installation and shall meet zoning code requirements and/or the deviations approved within this Resolution.
18. The routine hours of operation shall be limited to 7 am to 7 pm weekdays.
19. The corners of building 2 between the Dock parking areas should be landscaped and irrigated.

5. CUP 1 – Shoreland Overlay Development

A CUP for the construction of an industrial use in the French Lake Shoreland Overlay district is hereby approved, subject to the following conditions.

1. There shall be no expansion into the shoreland district without a CUP amendment.
2. Any identified negative impacts to the shoreland overlay shall be mitigated upon written notice from the City.

6. CUP 2- Outdoor storage Lot 1

A CUP for outdoor storage of 127 trailers on two acres is hereby approved, subject to the following conditions.

1. The outdoor storage use shall be permitted for the life of the building.
2. The outside storage is maintained in a neat and orderly manner in the designated storage spaces.
3. Outside storage of materials other than approved storage items is not permitted.
4. The approved storage items must be maintained in a good and workmanship like manner at all times.
5. From all property lines, there shall be no noticeable and continuous noxious odors associated with the use. All vats, dumpsters or other storage containers and trucks shall be routinely cleaned, sanitized and kept in good repair.
6. Provide elevation profile details of the exterior storage area from all adjacent public roads.

7. CUP 3- Outdoor storage Lot 2

A CUP for outdoor storage of dumpsters, vats, containers, roll offs and other storage bins on the identified two acres of impervious surface on Lot 2 is hereby approved, subject to the following conditions.

1. The outdoor storage use shall be permitted for the life of the building.
2. The outside storage is maintained in a neat and orderly manner.
3. Outside storage of materials other than dumpsters, vats, containers, roll offs and other storage bins is not permitted.
4. The trailers must be organized neatly and maintained properly.
5. Provide elevation profile details of the exterior storage area from all adjacent public roads.

8. CUP 4 – Detached accessory Building Lot 1

A CUP for the construction of a detached accessory structure on Lot 1 is hereby approved, subject to the following conditions.

1. The exterior design of the detached accessory structure shall match the principal structure in design and the same color palette.
2. Revised building elevations and colored renderings shall be submitted with the building permit to ensure compliance with the approval conditions.
3. The structure is prohibited from being occupied and utilized with a use not related to the principal use on the lot.
4. The routine hours of operation in the building shall be limited to 7 am to 7pm weekdays.
5. All site plan approval conditions must be met.

9. CUP 5 – Detached accessory Building Lot 2

A CUP for the construction of a detached accessory structure on Lot 2 is hereby approved, subject to the following conditions.

1. The exterior design of the detached accessory structure shall match the principal structure in design and the same color palette.
2. Revised building elevations and colored renderings reflecting condition 1 above shall be submitted with the building permit.
3. The structure is prohibited from being occupied and utilized with a use not related to the principal use on the lot.
4. The routine hours of operation in the building shall be limited to 7 am to 7pm weekdays.
5. All site plan approval conditions must be met.

10. CUP 6- Transfer Station

A CUP for the operation of a residential/commercial yard waste transfer station on Lot 2, is hereby approved, subject to the following conditions.

1. Yard waste is prohibited from remaining on the site overnight.
2. All vats, dumpsters or other storage containers and trucks shall be routinely cleaned, sanitized and kept in good repair.

3. All vats, dumpsters or other storage containers and trucks shall be stored or parked in an orderly fashion.
4. There shall be no noticeable and continuous noxious odors associated with the use.
5. Outside storage of vats, dumpsters or other storage containers and trucks shall only be permitted in the outdoor storage area as defined on the approved site plan.
6. Outside storage of yard waste within vats, dumpsters, or other storage containers not queued for transfer during normal business hours is prohibited.
7. Any notifications by the city for violations of the conditions approved with this CUP shall be immediately corrected. In accordance with section 1001.23 Subd.1(5) of the Zoning Ordinance. The failure to comply with the city correction notifications will be cause for the CUP to be reviewed by the City Council and be subject to potential revocation.
8. If the transfer station use is discontinued for a period of at least 12 months, any further use of the property shall conform to the requirements of Section 1001.63 Subd 6. The discontinued conditional use shall not begin operations again without first obtaining approval of a new conditional use permit as required in section 1001.23 Subd. 1 (4) b of the Zoning Ordinance.
9. The applicant shall provide a revised architectural plan:
 - a. Confirm the height of the building.
 - b. Material colors shall be provided.
 - c. Compliance with the required design elements.
 - d. The location of trash and recyclable material storage and related equipment.

11. CUP 7 Motor freight terminal and maintenance garage

CUP 7 for a Motor Freight Terminal and maintenance garage residential/commercial yard waste transfer station on Lot 2, is hereby approved, subject to the following conditions.

1. The only motor freight vehicles permitted to be operated, stored and repaired are those owned by or leased by the property owner and are utilized in conjunction with the permitted use.
2. All major vehicle repair shall be conducted within the building except for incidental small service tasks.
3. Engine racing or other loud continuous noise is prohibited. No exterior storage of mechanical vehicle parts or tires is permitted.
4. The site exterior must be maintained in a neat and orderly fashion.
5. Maintenance activities outside the building shall be limited to the hours of 7 am to 10 pm.
6. Maintenance activities inside the building with the doors open shall be prohibited between the hours of 7 pm to 7 am.

NOW, THEREFORE BE IT FURTHER RESOLVED, The Developer shall comply with, to the satisfaction of the City Engineer and City Planner, the following:

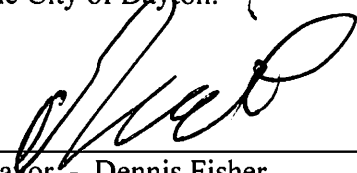
- a. Any and all permits required by any governmental subdivision or agency having jurisdiction over the development of the Property shall be obtained by Developer.
- b. A lighting plan shall be submitted, subject to review and approval by the City, prior to installation.
- c. All proposed building elevations shall be submitted, subject to review and approval by City Staff, prior to issuance of a building permit.
- d. As a condition of obtaining and maintaining a certificate of occupancy for a buildable lot, the buildable lot must be connected to sanitary sewer and municipal water.
- e. The Property shall, at all times shall be subject to the conditional use permit Approvals in this resolution. Failure on any part of this condition can be cause for the conditional use permits to be brought before the city Council for review and appropriate action, including termination.
- f. Developer shall comply, to the satisfaction of the City Engineer, with all requirements and recommendations in the Memorandums from Stantec, the City's Consulting Engineer and subsequent engineering memos. Revised plans shall be submitted and approved by the City Engineers prior to the pre-construction meeting.

- g. Applicant/developer shall ensure sidewalks, and screening are added to plans per the preliminary plat approval conditions.
- h. Construction, use and maintenance of the Property shall comply with, at all times, this Resolution, further approvals of the City Council, the Plans, and federal, state and local rules and regulations.
- i. The Developer's cash obligation for park dedication shall be cash in lieu of land dedication development, based on the finding that employees of this development shall benefit from the parks and trails in the City of Dayton, and based on the property being partially located within the French River Shoreland Overlay District and the City has established plans to improve public access within this overlay district.
- j. The park dedication fee as set forth above shall be paid prior to the Final Plat being released for filing at the Hennepin County Government Center.
- k. Developer shall make payment, prior to release of the Final Plat, at the rate applicable at the time of development and as identified in the development agreement.
- l. The Developer shall provide, before the Final Plat will be released, an updated and certified Abstract of Title and/or Registered Property Abstract as required by Minn. Stat. §505.03, or in the alternative, the Developer may provide a Commitment for a Title Insurance Policy for the Property naming the City as the proposed insured and with the amount of coverage for this policy being equal to \$100,000.00 per acre dedicated to the City (including but not limited to streets, rights-of-way, and drainage and utility easements). \$100,000.00 per dedicated acre represents the coverage amount formula approved by the City for the year 2022. If the Final Plat is not released for filing in the year 2022, the above-referenced policy coverage amount shall be adjusted based upon the formula approved by City for the year in which the Final Plat is actually released for filing with the Hennepin County Recorder. The above-mentioned evidence of title shall be subject to the review and approval of the City Attorney to determine what entities must execute the Final Plat and other documents to be recorded against the Property. In the event the Developer provides the City with a Commitment for a Title Insurance Policy, the Developer shall cause a Title Insurance Policy to be issued consistent with the Commitment for a Title Insurance Policy provided by the Developer and the requirements of the City Attorney and with an effective date on which the Final Plat is recorded (the City will not issue any certificate of occupancies until it is provided with said Title Insurance Policy). Further, Developer shall provide the City with evidence, which sufficiency shall be determined by the City, that all documents required to be recorded pursuant to this Resolution and by the

City Attorney are recorded and all conditions for release of the Final Plat has been met prior to the City processing or approving any building permits or other permits applicable to the development of the Property with the exception of a grading permit, which may be issued upon submittal of adequate surety.

- m. The Developer shall pay at time of final plat an escrow deposit in an amount of 3% of the remaining estimated Construction Costs as determined by the City and City Fee Schedule. This escrow shall be used for all reasonable expenses, related to review, analysis, processing, monitoring, administration and approvals as determined by the City, that the City incurs in relation to this development and City Resolutions. Said expenses shall include, but are not limited to, staff time, including, but not limited to, hourly wage, overhead and benefits, engineering, legal and other consulting fees incurred in relation to the development and its construction activities. Should the escrow deposit be exhausted, the Developer shall submit additional deposits of 3% of the remaining work for the phase as determined by the City Engineer(s).

Adopted this 22nd day of November 2022, by the City of Dayton.



Mayor - Dennis Fisher



City Clerk Amy Benting

Motion by Councilmember Gustafson, Second by Councilmember Salonek.

**DEVELOPER’S AGREEMENT FOR MTL ADDITION,
CITY OF DAYTON, COUNTY OF HENNEPIN AND WRIGHT, STATE OF MINNESOTA**

THIS AGREEMENT made and entered into the 28th day of March, 2023 by and between the City of Dayton, a Minnesota municipal corporation, 12260 S. Diamond Lake Road, Hennepin and Wright Counties, State of Minnesota (hereinafter referred to as the “City”), and Master Real Estate 2, L.L.C., 7211 Winnetka Avenue North, Brooklyn Park MN, 55428, (hereinafter referred to as the “Developer”).

RECITALS:

WHEREAS, Developer is the fee owner and developer of a parcel or parcels of land lying within the City and legally described in Exhibit 1 and which property is proposed to be developed as an Industrially guided subdivision in the City (hereinafter referred to as the “Property”); and

WHEREAS, The City Council, on November 22, 2022, passed Resolution No. 79-2022 Conditionally approving the preliminary plat (hereinafter referred to as the “Preliminary Plat”); and

WHEREAS, The City Council, on February 28, 2023, passed Resolution No. 06-2023 conditionally approving the MTL ADDITION final plat drafted by DEMARC Land surveying and Engineering which is on file with the City (hereinafter referred to as the “Final Plat”); and

WHEREAS, The City Council, on February 28, 2023, passed Resolution No. 60-2023 Conditionally approving the civil development plans prepared by DEMARC Land surveying and Engineering and dated December 8, 2022 (hereinafter referred to as the “Plans”) subject to conditions; and

WHEREAS, This Agreement is entered into for the purpose of setting forth and memorializing for the parties and subsequent owners the understandings and agreements of the parties concerning the development of the Property.

NOW, THEREFORE, it is hereby agreed by and between the City and the Developer as follows:

1. **INCORPORATION**. The above Recitals, all attached Exhibits and City Resolution Nos. 79-2022 (Preliminary Plat), 60-2023 (Final Plat), (hereinafter referred to as “City Resolutions”) are a material part of this Agreement and are incorporated herein.
2. **CONSTRUCTION**. Construction on the Property shall be completed in accordance with the Plans and any amendments thereto approved by City Staff, the Preliminary Plat, the Final Plat, the City Resolutions, all applicable local, state and federal rules and regulations (including, but not limited to, Dayton City Code §1001.05, subd. 1(6)) and this Agreement. The Preliminary Plat is being developed in a single phase. The **Final Plat** consists of 2 buildable industrial lots, public drainage and utility easements and Public Right-of-way for

Troy Lane. Public and private utility infrastructure will be constructed on the **Property** in accordance with the **Plans**.

3. FINANCIAL SECURITY Financial security escrows will be required as a component of this Agreement as required in section 15 of this Agreement to ensure the construction and acceptance of landscaping, infrastructure and utility improvements depicted in the **Plans**.
4. REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER. The Developer hereby represents, warrants and covenants to the City as follows:
 - a) Authorization. The Developer is a duly organized limited liability company under the laws of the State of Minnesota and is in good standing and authorized to do business in the State of Minnesota and is under no restriction to enter into this Agreement. The Developer has full authority to enter into this Agreement and make it binding on itself and its successors and assigns, and to make this Agreement, and the covenants herein, binding upon and running with the Property.
 - b) Ownership. The Developer has a fee ownership interest or is the developer of the parcels within the Property. Developer shall provide evidence of such ownership to the City upon request. This Agreement shall not become effective until executed by the City and the Developer. The Developer further represents, warrants and covenants that any lien holder, lender or other individual or entity with an interest in the Property has consented to this Agreement.
 - c) Transfer of Ownership. The Developer shall include in any transfer or assignment documents related to this Agreement including, but not limited to, any deeds executed to transfer parcels located in the Development and assignments of the Developer's interest in this Agreement, a covenant, which shall run with the land, requiring the transferee or assign: (1) to keep the Development, or the transferred parcel thereof, in compliance with the Wetland Conservation Act; (2) to maintain all stormwater ponds, surrounding vegetations, and irrigation systems in the Development, or the transferred parcel thereof; and (3) to keep the Development, or the transferred parcel thereof, in compliance with all local, state, and federal environmental laws, regulations or review procedures, which would give any person a valid claim under the Minnesota Environmental Rights Act.
 - d) Execution No Violation. The execution, delivery and performance of this Agreement does not and will not result in any breach of, or constitute a default under, any indenture, mortgage, contract, agreement or instrument to which the Developer is a party or by which it, or the Property, is bound.

- e) Litigation. There are no pending or, to the knowledge of the Developer, threatened actions or proceedings before any court or administrative agency which will adversely affect the financial condition, business or operation of the Developer or the ability of the Developer to perform its obligations under this Agreement.
- f) Compliance. The Developer will comply with and promptly perform all of the Developer's obligations under this Agreement and all related documents and instruments as set forth in Resolution 79-2022 and Resolution 06-2023.
- g) Developer's Engineer. The Developer hereby warrants that it has engaged, at its own expense, a duly registered professional civil engineer authorized to practice within the State of Minnesota to prepare the Plans and that said engineer has warranted that the Plans satisfy the City's standard specifications for the complete installation of all Improvements as defined in Paragraph 5(a).
- h) Wetlands. As of the date of the execution of this Agreement, the development of the Property complies with the Wetland Conservation Act. Developer further agrees that the development of the Property shall at all times be in compliance with the Wetland Conservation Act. Wetland buffer signs must be installed prior to any building permits being issued. The wetland buffer signs shall be placed as shown on the final plans or at a minimum at every property line and at all horizontal intersections unless otherwise approved by the City.
- i) Stormwater Ponds: All Stormwater ponds and surrounding vegetation, unless specifically identified, shall be owned and maintained by the Developer. The Developer shall be responsible for the maintenance of all landscaping, vegetation and irrigation systems within the Property for so long as they are owned and maintained by Developer, including but not limited to the mowing and weed control within these areas.
- j) Environmental Laws. To the best of the Developer's knowledge, as of the date of the execution of this Agreement, Developer is not in violation of any local, state or federal environmental law, regulation or review procedure, which would give any person a valid claim under the Minnesota Environmental Rights Act with respect to the Property. Developer further agrees that the development of the Property shall at all times be in compliance with any local, state or federal environmental law, regulation or review procedure, which would give any person a valid claim under the Minnesota Environmental Rights Act.

5. INSTALLATION OF IMPROVEMENTS.

- a) Developer to Install. The Developer shall install the public improvements (hereinafter referred to as the "**Public Improvements**") and private improvements (hereinafter

referred to as the “**Private Improvements**”) and collectively with the Public Improvements, the “**Improvements**”) as set forth and described in Exhibit 2 attached hereto. Such installation shall be performed in a workmanlike manner. Such installation shall further be performed in strict conformance with the Plans, Final Plat, City Code, and this Agreement unless approved in writing by the City Engineer.

- b) Plans shall incorporate “latest” City of Dayton Details Plates.
- c) City Engineer. City Engineer shall approve all final construction plans prior to the start of construction of site improvements. The City Engineer approval shall be constituted as the City providing approval to begin construction and that the Plans are found to be in substantial compliance with City Standards. A notice to proceed shall be issued prior to a pre-construction meeting. If at any time during construction, Plan omissions or discrepancies are found to exist between City Standards, as they exist on the date of this Agreement, and the Plans, the City Standards shall control..
- d) Permits. It shall be the responsibility of the Developer to determine and obtain prior to construction all the necessary approvals, permits, and licenses required for this development from any regulatory or jurisdictional agency affected by or having jurisdiction over the Improvements required for this development. Any design requirements of such agencies shall be determined prior to completion and shall be incorporated into the Plans. All costs incurred to obtain said approvals, permits, and licenses and also all fines or penalties levied by any agency due to the failure of the Developer to obtain or comply with the conditions of such approvals, permits, and licenses shall be the sole responsibility of the Developer. The Developer agrees to defend and hold the City, its officers, employees and agents harmless from any action initiated by a regulatory agency as a result of Developer’s failure to comply with this provision.
- e) Time of Performance. The Developer shall install all Improvements to the satisfaction of the City. The City shall be deemed to be satisfied with the Improvements upon inspection and approval by the City Engineer and City Building Inspector as set forth in Paragraph 5(k), below. All Public Improvements identified in the Plans shall be completed November 10, 2023 (hereinafter referred to as the “**Performance Date**”). The Developer may request an extension of time from the City. If an extension is granted, in the discretion of the City, the City may, by Council action, impose reasonable conditions, which may include updating the security posted by the Developer to reflect necessary cost increases.
- f) Records. Copies of all documents and information relating to the construction of the Improvements, including, but not limited to, all bids, changes orders, suppliers,

subcontractors shall be provided to the City Engineer.

Approval of Contractors. Any contractor selected by the Developer to construct and install the Public Improvements may be subject to the review and approval of the City. The City shall be provided, upon request, evidence of competency and adequate financial strength of any contractor selected by the Developer, which evidence shall be subject to the review and approval of the City. If the City conducts such a review, it must complete the review in a timely manner so as not to substantially delay completion of the Development. If the City's review of a contractor selected by the Developer cannot be completed in a timely manner and completion of the Development is substantially delayed, the Developer may request an extension of the Performance Date from the City, which shall not be unreasonably withheld.

- g) Additional Work or Materials. The installation of the Improvements and all work to be completed by the Developer under this Agreement shall be done at no expense to the City except as otherwise provided in Section 8 and 9 hereof. The Developer shall not do any work or furnish any materials not covered by the Plans and this Agreement, for which reimbursement is expected for the City, unless such work is first ordered and reimbursement is approved by the City Council, prior to the commencement of any such work. Any such work or materials which may be done or furnished by the Developer or its contractor without prior written order are furnished at the Developer's or its contractor's own risk, cost and expense, and the Developer agrees that it will make no claim for compensation for work or materials so done or furnished.
- h) Paving. Prior to commencing paving as detailed in the Plans, the Developer shall give the City seven days (7) written notice of its intention to pave. If, in the sole determination of the City, weather conditions are unsuitable for paving said streets, the City shall, within forty-eight (48) hours of receiving Developer's notice, notify the Developer that it cannot proceed with said paving. The final lift of pavement shall only be commenced after the base course has been subjected to a complete freeze/thaw cycle. However, if utilities have been completed by the end of the 2023 calendar year, but the base course has not yet been completed, the final lift of pavement may be commenced prior to the completion of the next complete freeze/thaw cycle. Failure of the City to give Developer notification shall not constitute a warranty that conditions are suitable for paving of surfaces identified in the plans.
- i) License. The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City in conjunction with the development of the Property.

- j) Inspection. The Developer shall instruct its engineer to provide the number of field personnel required to ensure that all construction work meets City Standards. In addition, the City may, at the City's reasonable discretion and at the Developer's expense, have one or more City inspectors and a soil engineer inspect the work as necessary. The Developer, its contractors and subcontractors, shall follow all instructions received from the City's inspectors. The Developer's engineer shall provide for on-site project management. The Developer or its engineer shall schedule a pre-construction meeting with City Staff at a mutually agreeable time to review the program for the construction work. All erosion control measures identified in the Plans shall be installed on the Property and inspected prior to the commencement of grading activity.
- k) Final Inspection/Acceptance. All Improvements are subject to the inspection and approval of the City Engineer and City Building Inspector which shall be granted so long as the Improvements conform with the Plans, this Agreement, and applicable governmental regulations in place at the time of this Agreement. The Developer shall promptly correct any Improvements done, as required by the City Engineer and City Building Inspector, to conform to the Plans, this Agreement and applicable governmental regulations in place at the time of this Agreement. The Developer agrees that the City shall have the final right of inspection to determine if all conditions of approval for development of the Property and this Agreement are completed to the satisfaction of the City Building Inspector and the City Engineer. Upon completion of the work and construction required by this Agreement, the Developer shall provide written request to the City and a final inspection shall occur within a reasonable time thereafter by the City. Prior to acceptance of the Public Improvements, the Public Improvements shall be within easements granted to the City, which form and content shall be subject to the review and approval of the City which shall not be unreasonably withheld. Upon acceptance by the City, the Public Improvements lying within public easements shall become City property.
- l) As-built Plans. Upon completion of the Improvements and all work to be completed by the Developer under this Agreement, Developer shall provide the City with two full sets of as-built plans and an electronic version of the same, certified by the Developer's engineer that the Improvements are completed and in accordance with the Plans.
- m) Indemnification. Any and all claims that arise or may arise against the Developer, its agents, servants, or employees related to the development of the Property, shall in no way be the obligation of the City. Furthermore, the Developer shall indemnify, hold harmless, and defend the City, its officers, employees, consultants and agents against any and all liability, loss, costs, damages, expenses, claims, actions, or judgments, including attorneys' fees which the City, its officers, employees, consultants and agents may

hereafter sustain, incur, or be required to pay, arising out of or connected in any manner to the development of the Property, the activities contemplated by this Agreement, or by reason of any act or failure to act by the Developer, its agents, servants and/or employees.

- n) Landscaping. A landscape plan has been approved as part of the Plans. Plant types, sizes and quantities presented are consistent with the landscape code (City Code Section 1001.24). All landscaping shall be installed and maintained according to the approved Plans.
- o) All Plantings shall be subject to a full two-year warranty beginning upon final written acceptance of the total project by the City. Contractor shall provide written request of city inspection upon completion of planting work to begin the warranty period.
- p) At the conclusion of the warranty period, an inspection of plantings will be made to determine the condition of trees, shrubs, ground cover, and other landscaping elements. All material not evidencing new growth and sound health, as determined in good faith by the City will be noted. This material shall be removed promptly, and new materials shall be supplied and planted within the first 30 days during the current growing season or at the very latest within the first thirty days of the next growing season if close to the end of the growing season when the inspection takes place. All replaced plants will then start a new two-year warranty period for those plants.
- q) If any portion of the above landscaping does not survive the two (2) year warranty period, the City shall be entitled to retain a proportional amount of the landscaping escrow and, if so elected, shall have the right to enter the Property to complete all remaining landscaping or replace that portion of the landscaping that does not survive said two (2) years from installation and the Developer agrees to waive any claim of trespass against the City, its officers, employees and agents. In that event, the City shall complete or replace the landscaping, the City may reimburse itself for all costs and expenses, including, but not limited to legal and consulting fees, from the retained landscaping escrow. Any landscaping completed by the City pursuant to this Section shall not be warranted or guaranteed by the Developer. The Developer shall indemnify, hold harmless, and defend the City, its officers, employees, agents and insurers against any and all liability, loss, costs, damages, expenses, claims, actions, or judgments, including attorneys' fees which the City, its officers, employees, agents and insurers may hereafter sustain, incur, or be required to pay, arising out of the City's exercise of its power as set forth in this provision. .
- r) Insurance. The Developer shall furnish proof of insurance, subject to the review and approval of the City, covering any public liability or property damage by reason of operation of the contractor's equipment, laborers and hazard caused by the Improvements

at minimum policy amounts of \$2,000,000.00. Stantec Consulting Services, Inc. shall be named as additional insured. The contractor shall keep the insurance in force at all times that construction of the development is in progress. The insurance must name the City as an additional insured and must provide that the insurer will give the City not less than 30 days written notice prior to cancellation or termination of the insurance policy.

- s) Warranty. The Developer agrees to guarantee all work performed and all materials supplied for the construction of the Improvements referenced in the Plans for a period of two (2) years from final acceptance by the City and to promptly repair or replace any portion of the improvements found to be not in compliance with the Plans or this Agreement.
6. WETLANDS. Wetland buffer signs must be installed prior to any building permits being issued. The wetland buffer signs shall be placed at 50-foot intervals around the buffer as identified in the Plans unless otherwise approved by the City.
7. EASEMENTS. The Developer shall, prior to release of the Final Plat, cause the following easements to be displayed on the Final Plat (unless expressly stated otherwise), subject to the review and approval of the City:
- Drainage and utility on all lot lines, over ponds, wetlands and other utilities, as required by the City Engineer; and proposed streets; and Any road right-of-way, access, or trail easements requested by any governmental agency and/or those shown on the Preliminary Plat.
- If for any reason, the required easements cannot be shown on the final plat, the Developer shall provide the City with exhibits and descriptions of additional easements to be provided in favor of the City after the final plat has been filed. Developer must provide to the City, prior to release of the Final Plat, any such easements required as a condition of Final Plat approval and not displayed on the Final Plat, in recordable form, as reviewed and approved by the City
8. PAYMENT OF SEWER AND WATER CONNECTIONS. Developer shall pay or cause to be paid, prior to the issuance of a building permit for an individual lot, the then current rate, as determined by the City, for connection of the said lot to the City sewer and water system.
9. PAYMENT OF DEVELOPMENT UTILITY FEES. Prior to release of the Final Plat the Developer shall pay to the City the utility fees for the Property in the amount as detailed on Exhibit 3 of, which include utility fees for Trunk Sanitary Sewer, Trunk Water Main, Storm Trunk for the remainder of the development. The properties contained within the final plat that were previously assessed, therefore, no utility fees are due for this addition. All development fees are itemized on Exhibit 3. Upon request, the City shall provide to the Developer the data and calculations used to determine the amount of the fees detailed in Exhibit 3.
10. RESTRICTIVE COVENANTS. Developer shall record restrictive covenants, subject to the review and approval of the City, against the Property not allowing, among other things, outside

storage of any unlicensed vehicles and allowing only, at a maximum, one camper or one recreational trailer or boat.

11. EROSION AND SEDIMENT CONTROL. City Code §1001.33 and other applicable provisions of City Code shall apply to the construction of this Development, including but not limited to storm water management regulations, best management principles and silt fencing requirements. Developer shall comply with City Code §1001.33 and other applicable provisions of City Code to the satisfaction of the City. The City shall perform MS4 inspection on your development in accordance with the City of Dayton code Title XV-Land Use, Chapter 151 Storm water Management, Section 151.11. The developer shall enter into a stormwater pond maintenance agreement with the city. Prior to the issuance of a building permit on Lot 1.

12. TRUNK SANITARY SEWER IMPROVEMENT The Plans identify the construction of a 24 inch PVC public trunk sanitary sewer pipe and 8 inch force main within the public drainage and utility easement located between lots 1 and 2 of the final plat. The Developer shall construct the pipe as detailed in the plans at their cost and to the approval by the City. In return for the construction of the pipe, and upon acceptance by the City, the Developer shall be reimbursed as identified in Exhibit 3 of this agreement.

13. STREET IMPROVEMENTS. The required street improvements include all work, materials and equipment to construct the roadways, utilities, walkways and associated features in accordance with the Final Plans, City of Dayton Standard Details and City Standards.

14. PARK DEDICATION. The Developer's cash obligation for park dedication shall be cash in lieu of land dedication which is based upon the formula approved by City for use in the year 2023, which is \$7,524 per net acre. If the Final Plat is released by the City in 2023 the total park dedication, shall be in the amount identified in Exhibit 3. The Park dedication fees will be utilized for trail, vegetation and park improvements within the French Lake Shoreland Overlay District. If Final Plat is released after the City Council has modified the rate, the above-referenced payment shall be adjusted based upon the computation formula approved by City for the year in which the Final Plat is actually released for filing with the Hennepin County Recorder. The park dedication fee as set forth above shall be paid prior to the Final Plat being released for filing at the Hennepin County Government Center. Upon request, the City shall provide to the Developer the data and calculations used to determine the amount of the cash obligation detailed in this Section.

15. SURETY. The Developer shall provide financial sureties as follows:

Establishment. Developer shall cause to be provided to the City on or before any grading is permitted on the Property or the release of the final plat, whichever occurs first, in the discretion of the Developer, an irrevocable letter of credit, with the form and providing institution subject to the review and approval of the City, or a cash escrow, with the escrow agreement being satisfactory to the City, in the amount of \$6,869,410 for landscaping and utility Improvements (hereinafter collectively referred to as the "**Improvements Surety**") to assure compliance with this Agreement guaranteeing

installation of all public and private Improvements detailed in the plans in a good and worker like manner and payment of all fees herein. In the event Developer fails to install the Improvements in accordance with the provisions of this Agreement or is otherwise in default of this Agreement, the City shall notify Developer in writing of such default. In the event Developer fails to cure the default required within thirty (30) days of receipt of the City's written notice the City may declare a default under the Agreement. Thereafter the City may draw upon the Improvements Surety in such amount as is reasonably adequate to cure the default. Said Improvements Surety shall be renewable on an annual basis and shall provide for the City to receive notice of renewal at least thirty (30) days prior to the date of renewal.

Release/Reduction of Improvements Surety. Developer may apply to City for release of all or a portion of the Improvements Surety as follows:

When another form of surety, acceptable to the City, is furnished to the City by Developer to replace the Improvements Surety;

When the Improvements are completed and accepted by the City pursuant to this Agreement;

All warranty periods have expired; or

The Improvements Surety may be reduced, as applicable, from time to time to an amount that is not less than One Hundred Twenty percent (120%) of the amount determined by the City for the costs of the remaining Improvements.

City's costs for processing said reduction or release request shall be billed to Developer at \$125.00 per hour with a minimum of one (1) hour per reduction or release, and shall be paid by Developer to the City within thirty (30) days of billing. Any request for reduction or release of the applicable Letters of Credit shall be either approved or denied within thirty (30) days of being made in writing to the City.

Failure to Perform. As it relates to those items covered by the Improvements Surety, it is further agreed that, should the Developer fail to perform any of the duties, conditions or terms of the City Resolutions or this Agreement in the time permitted herein, or in such extended time as may be granted in writing by the City Council, the City shall be entitled to draw on the Improvements Surety and shall have the right, but not the obligation, to enter the Property upon reasonable notice to complete all remaining Improvements. In that event, the City shall complete the performance, acquisition, project or work in accordance with this Agreement or the Plans set forth above, or in such other manner as is deemed reasonable by the City. In the event that City must defend against any claims pursuant to Paragraph 5(k), the City may reimburse itself for associated, reasonable costs and expenses, including, but not limited to reasonable legal, planning, and engineering fees, from Improvements Surety funds. Any Improvements completed by the City pursuant to this paragraph are not warranted or guaranteed. The Developer shall indemnify, hold harmless, and defend the City, its officers and employees against any and all liability, loss, costs, damages, expenses, claims, actions, or judgments, including attorneys' fees which the City, its officers or employees may hereafter sustain, incur, or be required to pay, arising out of or by reason of the City exercising its power under

this Paragraph. The City may reimburse itself for all costs and expenses, including, but not limited to reasonable legal and consulting fees, arising out of or related to curing the Developer's default from the Improvements Surety funds.

Deficiency. In the event the Improvements Surety is used by the City and found to be deficient in amount to pay or reimburse the City in total as required herein, Developer agrees that upon being billed by the City, Developer will pay said deficiency amount to City within thirty (30) days of receipt of said billings to Developer. If Developer fails to pay, the City may assess reasonable costs not to exceed \$112,394.00, including, but not limited to, staff time, engineering fees and legal fees against the Property. In the event the City does so specially assess the Property the Developer agrees that the Property has been benefited in an amount up to \$11,449,016.00. Any such assessments shall be for a period of one (1) year. Developer acknowledges that the City has the authority, pursuant to Minnesota Statutes Chapters 412 and 429, to specially assess property benefited by improvements. Developer also expressly waives all rights to hearings before the City afforded under Minn. Stat., Chapter 429, specifically including, but not limited to, hearings under Minn. Stat. §§ 429.031 429.061. In addition, with respect to the Property assessment, the Developer waives all rights to appeal in the Courts, any objection to any irregularity or noncompliance with statutory procedure, and any claim that the assessment of \$112,394.00 being levied against the Property, as provided above, is excessive, as the said rights therein granted relate to the said deficiency. Nevertheless, the amount of the special assessment shall not exceed the deficiency and above-mentioned costs. In the event that the Developer fails to pay the assessment amount within thirty (30) days of receipt of billings, the City may seek a civil judgment against the Developer for the deficiency amount demanded by the City. If there should be an overage in the amount of utilized security, the City will, upon making said determination, promptly refund to Developer any monies which City has in its possession which are in excess of the surety needed by City.

Expiration. In the event the Improvements Surety which by its terms will become null and void prior to the time at which all money or obligation of Developer is paid or completed pursuant to this Agreement, it is agreed that Developer shall provide City with surety, acceptable to City prior to the expiration of the said expiring Improvements Surety. If a new irrevocable letter of credit is not received as required above, City may declare a default in the terms of this Agreement and draw in part or in total, at City's discretion, upon the expiring Improvements Surety to avoid the loss of surety for the continued obligations.

16. ENGINEERING REQUIREMENTS. Prior to release of the Final Plat, the Developer shall comply, to the satisfaction of the City Engineer, with the requirements of the City Engineer as set forth in the City Resolutions.

17. ACCESS. Prior to the issuance of any permits, access, and temporary construction access, to the platted lots of the Property must be reviewed and is subject to approval of the Public Works Director, City Engineer and Fire Marshal.

18. ESCROW. The Developer shall pay to the City upon demand, direct expenses determined by the City that the City incurs in administering the City Resolutions, this Agreement and the construction contemplated herein and shall provide, upon demand by the City, an escrow deposit to the City in an amount to be reasonably determined by the City. Said expenses shall include, but are

not limited to, staff time, engineering, legal expenses and fees for inspection services. Upon demand, the City shall provide Developer with an accounting of the said costs.

19. PROTECTION OF WETLANDS WOODED AREAS AND STEEP SLOPES. During the development of the Property, Developer shall follow all measures to protect any delineated wetlands, wooded areas and steep slopes on the Property pursuant to the Plans.

20. NOTIFICATION INFORMATION. Any notice to the parties herein shall be deemed to have been given or delivered if sent by certified mail addressed as follows:

If to City:

City of Dayton
12260 S. Diamond Lake Road
Dayton MN 55327
Attn: City Administrator

If to Developer:

Winthrop & Weinstine, P.A.
Attn: Devon C. Holstad
225 South 6th St., Suite 3500
Minneapolis, MN 55042
dholstad@winthrop.com

Copy to:

Master Real Estate 2, L.L.C.
7211 Winnetka Avenue North,
Brooklyn Park MN, 55428,
ATTN: Mark Masters

21. LICENSE. The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City in conjunction with Final Plat development.

22. ABSTRACT OF TITLE. The Developer shall provide an updated and certified Abstract of Title and/or Registered Property Abstract as required by Minn. Stat. §505.03, or in the alternative, the Developer shall provide a Commitment for a Title Insurance Policy for the Property naming the City as the proposed insured and with the amount of coverage for this policy being equal to \$100,000.00 per acre dedicated to the City (including but not limited to streets, rights-of-way, park dedication, and drainage and utility easements). \$100,000.00 per dedicated acre represents the coverage amount formula approved by the City for the year 2023. If Final Plat is not released for filing in the year 2023, the above-referenced policy coverage amount shall be adjusted based upon

the formula approved by City for the year in which the Final Plat is actually released for filing with the Hennepin County Recorder. The above-mentioned evidence of title shall be subject to the review and approval of the City Attorney to determine what entities must execute the Final Plat and other documents to be recorded against the Property. In the event the Developer provides the City with a Commitment for a Title Insurance Policy, the Developer shall cause a Title Insurance Policy to be issued consistent with the Commitment for a Title Insurance Policy provided by the Developer and the requirements of the City Attorney and with an effective date on which the Final Plat is recorded (the City will not issue any certificate of occupancies until it is provided with said Title Insurance Policy). Further, Developer shall provide the City with evidence, which sufficiency shall be determined by the City, that all documents required to be recorded pursuant to this Agreement, the City Resolutions are recorded and all conditions for release of the Final Plat have been met prior to the City processing or approving any building permits or other permits applicable to the development of the Property.

23. BUILDING PERMITS. No building permits shall be issued until the plat legal description is approved by the City Attorney, the Final Plat is recorded, the Developer is not in default of this Agreement, this Agreement is executed and recorded, Stormwater maintenance agreements, park dedication fees paid and fees due as required herein or as due for City review and/or inspection of development have been paid as detailed in section 3 of this agreement. After building permits have been issued, Full access to the site must be maintained and available to the site for building inspections and emergency vehicles.

24. RESPONSIBILITY FOR DAMAGE TO PUBLIC PROPERTY. Developer agrees to assume full financial responsibility for any damage that may occur to public property when said damage occurs as a result of the development activity which takes place during the development of the Property. Developer further agrees to pay or cause to be paid all costs required to repair the streets and/or utility systems damaged or cluttered with debris when occurring as a direct or indirect result of the construction that takes place in or on the Property. In the event the Developer fails to maintain or repair the damaged public property referred to aforesaid, Developer agrees that City may, but is under no obligation to, undertake making and causing said damage or clutter to be repaired or cleaned. When City undertakes such repair, Developer shall reimburse the City for all of its expenses within ten (10) days of City's billing to Developer. Failure to make such timely payment shall be cause for default under this Agreement.

25. STREET CLEANING. During the development of the Property, Developer shall keep the streets adjoining its development free of dirt and debris caused by its development. In the event dirt and/or debris has accumulated on streets within or adjacent to the Property, City is hereby authorized to immediately commence street cleaning operation if streets are not cleaned by the Developer after twenty-four (24) hours of the notification of violation. Street cleaning shall be defined as the use of any equipment specifically designed for sweeping, necessary for cleaning dirt, mud and debris from the City right-of-way. If conditions are such that street cleaning

operation is immediately necessary, City may perform the necessary street cleaning. City will then bill Developer, as the delinquent party for all associated street cleaning costs. If the Developer fails to reimburse the City for street cleaning costs within thirty (30) days of such billing, the City shall be entitled to deduct the billed amount from the line of credit provided by the Developer in accordance with Paragraph 15 of this Agreement.

26. DUST CONTROL. During the development of the Property, Developer shall be responsible for ensuring that dust control is maintained within the development property and that no dust is present at project boundary. In the event that dust is determined to be present at the project boundary, City is hereby authorized to immediately commence dust control operation of not initiated by the Development after eight (8) hours of the notification of violation. If conditions are such that dust control measures are immediately necessary, City may perform the necessary operations. City will then bill Developer, as the delinquent party, for all associated costs. If the Developer fails to reimburse the City for dust control costs within thirty (30) days of such billing, the City shall be entitled to deduct the billed amount from the line of credit provided by the Developer in accordance with Paragraph 15 of this Agreement.

27. MISCELLANEOUS.

a. Runs with the Property. The terms and conditions of this Agreement shall be binding on the parties hereto, their respective successors and assigns and the benefits and burdens shall run with the Property.

b. Recording. This Agreement shall be recorded against the Property by the Developer. No building permits shall be issued until the City is provided with recording information. The terms and provisions of this Agreement shall not be binding upon the owners of the individual lots, and shall not be deemed to run with the title of the individual lots of the subdivision. This provision does not release any future developer or the developer's successors or assignees from the terms and provisions of this Agreement. In the event that the Developer believes it is necessary to file a record evidence that a particular lot is not bound by or is released from the terms of this Agreement, the City Administrator shall be authorized to execute the necessary documents to reflect this on behalf of the City.

c. Integration. This Agreement, any attached exhibits and any addenda or amendments signed by the parties shall constitute the entire agreement between the parties as it relates to the specific terms and obligations herein, and supersedes any other such written or oral agreements between the parties.

d. Warrant of Authority. Developer warrants and guarantees that it has the authority to enter into this Agreement and to make it a covenant on the Property binding all current and future owners.

e. Default. In the event the Developer, its successors or assigns violates any of the covenants and agreements herein contained, the City is hereby granted the right and privilege to immediately and without notice declare the Developer, its successors or assigns as the case may be, in default of

this Agreement subject to the notice and or provisions set forth herein. City may thence bring legal action against Developer, its successors or assigns as the case may be, as a result of the default, and may recover its costs and attorney's fees in said action.

g. Severability. In case any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

h. Data Practices Compliance. Developer will have access to data collected or maintained by the City to the extent necessary to perform Developer's obligations under this Agreement. Developer agrees to maintain all data obtained from the City in the same manner as the City is required under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 or other applicable law (hereinafter the "Act"). Developer will not release or disclose the contents of data classified as not public to any person except at the written direction of the City. Developer agrees to defend and indemnify the City from any claim, liability, damage or loss asserted against the City as a result of Developer's failure to comply with the requirements of the Act or this Paragraph. Upon termination and/or completion of this Agreement, Developer agrees to return all data to the City, as requested by the City.

i. Governing Law. It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Minnesota.

j. Time is of the Essence. Time is of the essence in the performance of the terms and obligations of this Agreement.

k. Modification. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party. It is understood that subsequent agreements may be necessary to complete the understandings of the parties relating to necessary improvements and uses of the Property.

l. Non-Waiver. The action or inaction of the City shall not constitute a waiver or amendment of the provisions of this Agreement. The waiver by or the failure of the City to enforce any particular section, portion or requirement of this Agreement at any particular time shall not in any way constitute a waiver of any other section, provision, requirement, time element, or the right to enforce such provision at a subsequent time. To be binding, any amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.

m. Cumulative Rights. Each right, power, or remedy herein conferred upon the City or Developer is cumulative and in addition to every other right, power, or remedy, express or implied, now or hereinafter arising, available to the City or Developer, at law or in equity, or under any other agreement, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient

by the City or Developer and will not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy.

[Insertion of Lender's Consent if required by the City or Developers Attorney after Title review]

[Other land owners consent if required by the City Or Developers Attorney after title review]

EXHIBIT 1

LEGAL DESCRIPTION

The North Half of the Southeast Quarter of the Southwest Quarter and that part of the North Half of the Southwest Quarter of the Southeast Quarter lying Southwesterly of Town Road (now known as French Lake Road West) also, that part of Government Lot 3 lying East of the West 261.95 feet thereof and Southwesterly of Town Road (now known as French Lake Road West) all in Section 30, Township 120, Range 22, Hennepin County, Minnesota.

Subject to easement and restrictions of record, if any.

AND

That part of Government Lot 4 in Section 30, Township 120, Range 22, Hennepin County, Minnesota described as follows:

Commencing at the southwest corner of said Government Lot 4; thence North 01 degrees 46 minutes 32 seconds West, assumed bearing, along the West line of said Government Lot 4 a distance of 524.7 feet to the actual point of beginning; thence continuing North 01 degrees 46 minutes 32 seconds West along the said West line to the centerline of French Lake Road; thence Southeasterly along said centerline to a point on a line bearing North 82 degrees 13 minutes 28 seconds East from the point of beginning; thence South 82 degrees 13 minutes 28 seconds West to the point of beginning.

Which lies Northwesterly of the following described line:

Commencing at the southwest corner of said Government Lot 4; thence North 01 degrees 46 minutes 32 seconds West, assumed bearing, along the West line of said Government Lot 4 a distance of 673.14 feet to the point of beginning of the line to be described; thence North 59 degrees 15 minutes 27 seconds East 306.59 feet to the centerline of said French Lake Road and said line there terminating. Subject to 40 foot right of way for French Lake Road per Warranty Deed Doc. No. 11118161.

EXHIBIT 2

IMPROVEMENTS AND COST

The Public Improvements and Private Improvements are the following improvements: (i) those Improvements that are in the Plans; and (ii) Improvements that are not in the Plans but are required by City Code. A summary table of the Improvements costs that is calculated in determining the Improvements Surety in Section 15 of this Agreement are as follows:

Engineers Cost Estimate Summary		
Schedule	Item Description	Estimate
Schedule A	Subgrade Construction	\$4,282,980.60
Schedule B	Erosion Control	\$77,884.80
Schedule C	Storm Sewer	\$611,701.00
Schedule D	Sanitary Sewer	\$19,227.00
Schedule E	Water Main	\$343,353.00
Schedule F	Sanitary Sewer Main (City)	\$93,662.00
Schedule G	Landscaping	\$295,700
Total		\$5,724,508

EXHIBIT 3

CITY DEVELOPMENT FEES

CURRENT PROJECT FEE SCHEDULE					
		Lots	2		
		Gross acres	41.57		
		Net acres	32.49		
<u>FEE</u>	<u>PER</u>	<u>RATE</u>	<u>FEE CALCULATION</u>	<u>CREDIT ELIGIBLE 2020</u>	<u>ADJUSTED FEE TOTAL</u>
Storm	Net Acre	\$8,653	\$281,136	\$0	\$281,136
Sanitary	Gross Acre	\$6,658	\$276,773	\$276,773	\$-0*
Water	Gross Acre	\$9,627	\$400,194	\$400,194	\$-0*
Park Dedication	Net Acre	\$7,524	244,455	\$0	\$244,455
Trail Dedication	Net Acre	\$0	N/A	N/A	N/A
TOTAL FEES					\$ 525,591

*Previously Assessed

