

For The Permanent Record

Meeting Date: 2.11.2013

Agenda Item #: H.1.

Hills & Dales Area Street
Improvements
Project 09-15

To the City of Maplewood, on behalf of the owners of the below listed properties, as agent and attorney, objection is hereby given to the proposed special assessment against said properties because the proposed special assessment is greater than the benefit received – i.e. is greater than the increase in market value – resulting from the Hills and Dales Area Street Improvements, City Project 09-15.

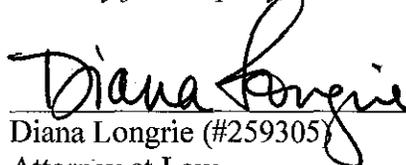
Further, these objecting owners were Plaintiffs in Ramsey County Court File No. 62-CV-10-6743 whereby the parties thereto entered into a stipulation to dismiss without prejudice. Under the terms of the agreement, the City, if it were to reassess, would reassess within a reasonable time period. The objecting owners assert that this reassessment is not within a reasonable time period. Project 09-15 has been finished for over a year, the fund account for 09-15 was de-funded and closed in December 2012 and it has been 10 months since the execution of the Stipulation. The City has not been diligent in enforcing its interests under the Stipulation and therefore should be foreclosed from now advancing such interests after inexcusable delay.

Affected properties for which objection is given this 11th day of February, 2013:

1. The property located at **2002 Duluth Street, Maplewood, MN 55109**, legally described as Lot 9, Block 8, and PT alley adj., Hills and Dales, Ramsey County, MN, PIN **162922140017** (the "Property1"). Property1 is owned by **Raymond R Decker**.
2. The property located at **2132 Atlantic Street No, Maplewood, MN 55109**, legally described as Lot 4, Block 3, Hills and Dales, subj to GL Pipe L easement, Ramsey County, MN, PIN **162922110075** (the "Property2"). Property2 is owned by **Joseph and Kerry Brabbit**.
3. The property located at **2117 Atlantic Street, Maplewood, MN 55109**, legally described as Lot 11, Block 2, Hills and Dales, Ramsey County, MN, PIN **162922110099** (the "Property3"). Property3 is owned by **Esther D. Olson**.
4. The property located at **1232 Shryer Avenue E, Maplewood, MN 55109**, legally described as Lot 4, Block 8, Hills and Dales, Ramsey County, MN, PIN **162922140012** (the "Property4"). Property4 is owned by **Arthur Moore and Megan Nelson**.
5. The property located at **2017 Duluth Street, Maplewood, MN 55109**, legally described as Lot 32, block 2, Hills and Dales, Ramsey County, MN, PIN **162922140045** (the "Property5"). Property5 is owned by **Kenneth G. Dufner and Therese A. Dufner**.

6. The property located at **1246 E. County Road B, Maplewood, MN 55109**, legally described as Lot 16 and Lot 17, Block 6 and the N ½ of vac alley adj, Clifton Addition, Ramsey County, MN, **PIN 092922440069** (the "Property6"). Property6 is owned by **Peggy J. Hartzell**.
7. The property located at **1237 Leland Road, Maplewood, MN 55109**, legally described as Lot 1 and the East 15 feet of Lot 2, Block 5, and S ½ of vac alley adj, Clifton Addition, Ramsey County, MN, **PIN 092922440076** (the "Property7"). Property7 is owned by and **Jay R. Gruett**.
8. The property located at **2210 Duluth Street, Maplewood, MN 55109**, legally described as Lot 16 and Lot 17, Block 5, Clifton Addition, subj to road the N ½ of vac alley adj, Ramsey County, MN, **PIN 092922440086** (the "Property8"). Property8 is owned by **Rebecca Gurrola**.
9. The property located at **1685 Howard Street, Maplewood, MN 55109**, legally described as Lot 10, Block 3, Except the N 135 feet, Hillcrest Gardens, Ramsey County, MN, **PIN 142922440047** (the "Property9"). Property9 is owned by **Phoenix Residence Inc.** a Minnesota non-profit corporation.
10. The property located at **1866 Furness Street, Maplewood, MN 55109**, legally described as Lot 13, Block 4, Except the N 50 feet, Hillcrest Gardens, Ramsey County, MN, **PIN 142922410048** (the "Property10"). Property10 is owned by **Phoenix Residence Inc.** a Minnesota non-profit corporation.
11. The property located at **1695 Howard Street, Maplewood, MN 55109**, legally described as N 135 ft of Lot 10, Block 3, Hillcrest Gardens, subj to easement, Ramsey County, MN, **PIN 142922440048** (the "Property11"). Property11 is owned by **Bob A. M. Serreyn, and Dominic J. Chiappetta**.

Attorney for Property Owners


Diana Longrie (#259305)

Attorney at Law
1321 Frost Avenue East
Maplewood, Minnesota 55109
(651) 793-6248 (Tele)

Dated: February 11, 2013

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Raymond R Decker, Connie Johnson,
Esther D. Olson, Arthur Moore, Megan Nelson,
Kenneth G. Dufner, Therese A. Dufner,
Peggy J. Hartzell, Jay R. Gruett,
Rebecca Gurrola, Phoenix Residence Inc.,
Bob A. M. Serreyn, and Dominic J. Chiappetta.
Plaintiffs,

Court File No. 62-CV-10-6743
Assigned to: Judge Dale B. Lindman

**STIPULATION FOR DISMISSAL
WITHOUT PREJUDICE**

vs.

City of Maplewood,
a Minnesota Municipal Corporation.
Defendant.

IT IS HEREBY STIPULATED AND AGREED, by and between the above named Plaintiffs and the Defendant, through their respective counsel, that Plaintiffs' claims against Defendant are dismissed without prejudice and without further costs to any of the parties hereto.

It is agreed that this Stipulation for Dismissal shall not be construed as an admission by Plaintiffs or the Defendant that valid claims or defenses exist on behalf of or against any of the Parties.

It is agreed that at this time there is no special assessment against the respective parcels of the Plaintiffs herein and that the Defendant may, at its discretion and within a reasonable time period, commence the special assessment process for the parcels, subject to this action, at a future time as related to Hills and Dales Area Street Improvements, City Project 09-15.

Plaintiffs and Defendant shall each bear their own attorneys' fees and costs.

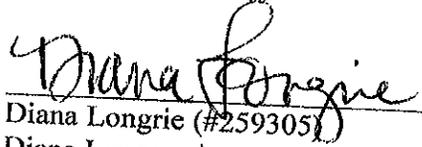
This Stipulation relates to the following parcels:

1. The property located at **2002 Duluth Street, Maplewood, MN 55109**, legally described as Lot 9, Block 8, and PT alley adj., Hills and Dales, Ramsey County, MN, PIN **162922140017** (the "Property1"). Property1 is owned by **Raymond R Decker**.

2. The property located at **2132 Atlantic Street No, Maplewood, MN 55109**, legally described as Lot 4, Block 3, Hills and Dales, subj to Gl. Pipe L. easement, Ramsey County, MN, PIN **162922110075** (the "Property2"). Property2 is owned by **Connie Johnson**.
3. The property located at **2117 Atlantic Street, Maplewood, MN 55109**, legally described as Lot 11, Block 2, Hills and Dales, Ramsey County, MN, PIN **162922110099** (the "Property3"). Property3 is owned by **Esther D. Olson**.
4. The property located at **1232 Shryer Avenue E, Maplewood, MN 55109**, legally described as Lot 4, Block 8, Hills and Dales, Ramsey County, MN, PIN **162922140012** (the "Property4"). Property4 is owned by **Arthur Moore and Megan Nelson**.
5. The property located at **2017 Duluth Street, Maplewood, MN 55109**, legally described as Lot 32, block 2, Hills and Dales, Ramsey County, MN, PIN **162922140045** (the "Property5"). Property5 is owned by **Kenneth G. Dufner and Therese A. Dufner**.
6. The property located at **1246 E. County Road B, Maplewood, MN 55109**, legally described as Lot 16 and Lot 17, Block 6 and the N ½ of vac alley adj, Clifton Addition, Ramsey County, MN, PIN **092922440069** (the "Property6"). Property6 is owned by **Peggy J. Hartzell**.
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Dated: April 10, 2012

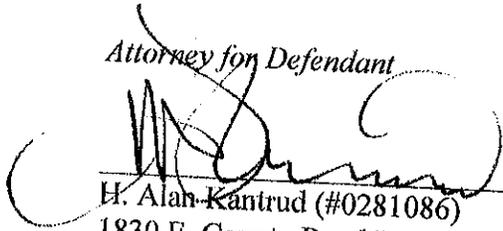
Attorney for Plaintiffs



Diana Longre (#259305)
Diana Longre, Attorney at Law
1321 Frost Avenue East
Maplewood, Minnesota 55109
(651) 793-6248 (Tele)

Dated: April 10, 2012

Attorney for Defendant



H. Alan Kantrud (#0281086)
1830 E. County Road B
Maplewood, MN 55109

AGENDA REPORT

TO: James Antonen, City Manager
FROM: Gayle Bauman, Finance Manager
SUBJECT: Approval of Transfers to Close Funds for Public Improvement Projects for 2012
DATE: November 27, 2012

INTRODUCTION

Financial transfers and budget adjustments are needed to close three funds for public improvement projects that have been completed.

DISCUSSION

Project 09-07, Rice & TH 36 Interchange, has been completed. There is a surplus balance in the project fund due to excess bond proceeds. Surplus funds of \$71,924.22 need to be transferred to project 08-13 (fund 504) which was also financed with the same bond issue and currently has a deficit balance.

Project 09-13, Holloway/Stanich Area Streets, has been completed. There is a surplus balance in the project fund (due to project expenditures being under budget). Surplus funds of \$642,769.53 need to be transferred to project 08-13 (fund 504) which was also financed with the same bond issue and currently has a deficit balance.

Project 09-15, Hills & Dales, has been completed. There is a surplus balance in the project fund (due to higher than expected revenues and project expenditures being under budget). Surplus funds of \$863,108.37 need to be transferred as follows:

- \$130,000 to project 08-13 (fund 504) which was also financed with the same bond issue and currently has a deficit balance.
- \$733,108.37 to project 02-07 (fund 533) by reallocating bond funds from the 2010A bond issue to cover unforeseen expenditures.

FINANCIAL IMPACT

There is no financial impact to the city as the proposal is to transfer money between funds.

RECOMMENDATION

It is recommended that the Council authorize the following:

- (1) A transfer of \$71,924.22 from fund 508 (09-07) to fund 504 (08-13),
- (2) A transfer of \$642,769.53 from fund 509 (09-13) to fund 504 (08-13),
- (3) A transfer of \$130,000.00 from fund 510 (09-15) to fund 504 (08-13),
- (4) A transfer of \$733,108.37 from fund 510 (09-15) to fund 533 (02-07),
- (5) The appropriate budget changes.

P:\finance\council files\2012\121 – close capital funds

To whom it may concern, City of Maplewood.

We are Joseph and Kerry Brabbit

we live at 2132 Atlantic St. Maplewood, MN 55109

We purchased the property from Connie Johnson
on July 1st 2012, 3 months prior to her passing.

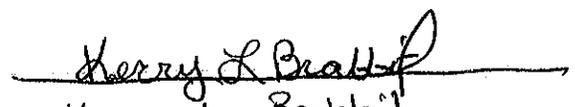
We are writing to object to the reassessment
of the property at 2132 Atlantic St. For excessive
reassessment period, As well as property loss due

to the sod that was replaced never took to
the ground and all dried up and died, leaving

me as the homeowner to re-sod / or re-plant,
plus the assessment is more than the increase in market value.

Thank You.


Joseph F Brabbit


Kerry L Brabbit

2-11-2013

Councilmember Juenemann moved to approve agenda items G1-G14.

Seconded by Councilmember Koppen Ayes – All

The motion passed.

1. Approval of Claims

Councilmember Juenemann moved to approve the Approval of Claims.

ACCOUNTS PAYABLE:

| | |
|-----------------|--|
| \$ 385,561.52 | Checks # 89069 thru # 89110 dated 01/18/13 thru 01/29/13 |
| \$ 412,019.06 | Disbursements via debits to checking account dated 01/22/13 thru 01/25/13 |
| \$ 324,640.63 | Checks # 89111 thru # 89147 dated 02/05/13 |
| \$ 6,348,960.56 | Disbursements via debits to checking account dated 01/28/13 thru 02/01/13 |
| <hr/> | |
| \$ 7,471,181.77 | Total Accounts Payable |

PAYROLL

| | |
|------------------------|--|
| \$ 547,562.75 | Payroll Checks and Direct Deposits dated 02/01/13 |
| \$ 763.00 | Payroll Deduction check # 9989114 thru # 9989115 dated 02/01/13 |
| <hr/> | |
| \$ 548,325.75 | Total Payroll |
| <hr/> | |
| <u>\$ 8,019,507.52</u> | <u>GRAND TOTAL</u> |

Seconded by Councilmember Koppen Ayes – All

The motion passed.

2. Approval of 2012 Budget Adjustment and Transfer for Taste of Maplewood

Councilmember Juenemann moved to authorize the transfer of \$14,685.77 for the Taste of Maplewood Fund and direct the Finance Manager to make the appropriate budget adjustment of (\$4,815).

Seconded by Councilmember Koppen Ayes – All

The motion passed.

3. Approval of 2012 Budget Carryovers

Councilmember Juenemann moved to approve the carry over requests and authorize the Finance Manager to reduce the 2013 budget as needed for any carry over amount that is not used for its specific purpose during the year.

Seconded by Councilmember Koppen Ayes – All

The motion passed.

4. Approval of Transfers from Tax Increment Funds for 2012

Councilmember Juenemann moved to authorize the appropriate 2012 budget adjustments and 2012 transfers totaling \$364,040.00 from the Tax Increment Funds to the Debt Service Funds.

Seconded by Councilmember Koppen Ayes – All

The motion passed.

5. Approval of a Temporary Gambling Permit Resolution and Waive Permit Fees for Carver Elementary School

Councilmember Juenemann moved to approve the Resolution for a temporary gambling permit for Carver Elementary School located at 2680 Upper Afton Road and waive the fees for a temporary food sales permit of \$55.00.

RESOLUTION 13-2-855

BE IT HEREBY RESOLVED, by the City Council of Maplewood, Minnesota, that the temporary premises permit for lawful gambling is approved for Carver Elementary School, 2680 Upper Afton Road, Maplewood.

FURTHERMORE, that the Maplewood City Council waives any objection to the timeliness of application for said permit as governed by Minnesota Statute §349.213.

FURTHERMORE, that the Maplewood City Council requests that the Gambling Control Division of the Minnesota Department of Gaming approve said permit application as being in compliance with Minnesota Statute §349.213.

NOW, THEREFORE, be it further resolved that this Resolution by the City Council of Maplewood, Minnesota, be forwarded to the Gambling Control Division for their approval.

Seconded by Councilmember Koppen Ayes – All

The motion passed.

6. Approval of a Temporary Gambling Permit Resolution for MN Deer Hunters Association, Capitol Sportsmen Chapter.

Councilmember Juenemann moved to approve the lawful gambling Resolution for the MN Deer Hunters Association, Capitol Sportsmen Chapter for their event at Downtown Lav 52 Restaurant located at 3030 Southlawn Drive.

RESOLUTION 13-2-856

RESOLUTION 13-2-862
ADOPTING THE MINNESOTA GENERAL RECORDS RETENTION SCHEDULE FOR CITIES
CITY OF MAPLEWOOD, RAMSEY COUNTY, MINNESOTA

WHEREAS, to comply with the Records Management Statute MS 138.17, it is necessary to adopt a plan for managing governmental records including the proper retention and disposal of municipal records; and

WHEREAS, the Records Management Statute MS 138.17 establishes the Records Disposition Panel and requires all government entities to follow an orderly process in disposing of government information; and

WHEREAS, the State of Minnesota has approved for use by all Minnesota Cities the "Minnesota General Records Retention Schedule for Cities" which authorizes cities adopting said schedule an orderly method of disposing of municipal records; and

WHEREAS, the "Minnesota General Records Retention Schedule for Cities" is regularly updated.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Maplewood, Minnesota adopts the Minnesota General Records Retention schedule and directs the City Clerk to notify the Minnesota Historical Society/State Archives Department.

BE IT FURTHER RESOLVED, that following state approval, City Departments are directed to provide for retention and destruction of records as set forth in said schedule and its subsequent revisions.

Seconded by Councilmember Koppen

Ayes – All

The motion passed.

H. PUBLIC HEARING

1. **Hills and Dales Area Street Improvements, Project 09-15**
 - a. **Re-Assessment Hearing, 7:00pm**
 - b. **Resolution Adopting Assessment Roll**

Assistant City Engineer Love gave the staff report and answered questions of the council.

Mayor Rossbach opened the public hearing. The following people spoke:

1. Diana Longrie, Attorney for residents
2. Bob Serreyn, 1695 Howard Street
3. Rebecca Gurrola, 2210 Duluth Street
4. Raymond Decker, 2002 Duluth Street
5. Individual representing Jay Gruett, 1237 Lealand Road
6. Peggy Thomason 1246 County Road B East

Mayor Rossbach closed the public hearing.

Councilmember Cardinal moved to approve the Resolution for the Adoption of the Assessment Roll for 2002 Duluth Street, 2132 Atlantic Street, 2117 Atlantic Street, 1232 Shryer Avenue,

2017 Duluth St, 1246 E. County Road B, 1237 Lealand Road, 2210 Duluth Street, 1685 Howard Street, 1866 Furness Street, and 1695 Howard Street for the Hills and Dales Area Street Improvements, City Project 09-15.

RESOLUTION 13-2-863
ADOPTING ASSESSMENT ROLL

WHEREAS, pursuant to a resolution adopted by the City Council on January 14, 2013, calling for a Public Hearing for purposes of Reassessment, the assessment roll for the Hills and Dales Area Street Improvements, City Project 09-15, was presented in a Public Hearing format, pursuant to Minnesota Statutes, Chapter 429, and

WHEREAS, the following property owners have filed objections to their assessment according to the requirements of Minnesota Statutes, Chapter 429, summarized as follows:

- a. Parcel 162922140017 – Raymond R. Decker; 2002 Duluth Street.
It is currently proposed that the property be assessed for \$6,800. Mr. Decker is requesting that the assessment be cancelled due to the assessment amount being greater than the benefit to the property and the reassessment not occurring in a reasonable amount of time.
- b. Parcel 162922110075 – Joseph and Kerry Brabbit ; 2132 Atlantic Street.
It is currently proposed that the property be assessed for \$6,800. Mr. and Mrs. Brabbit are that the assessment be cancelled due to the assessment amount being greater than the benefit to the property and the reassessment not occurring in a reasonable amount of time.
- c. Parcel 162922110099 – Esther D. Olson ; 2117 Atlantic Street.
It is currently proposed that the property be assessed for \$6,800. Ms. Olson is requesting that the assessment be cancelled due to the assessment amount being greater than the benefit to the property and the reassessment not occurring in a reasonable amount of time.
- d. Parcel 162922140012 – Arthur Moore and Megan Nelson ; 1232 Shryer Avenue.
It is currently proposed that the property be assessed for \$6,800. Mr. Moore and Ms. Nelson are requesting that the assessment be cancelled due to the assessment amount being greater than the benefit to the property and the reassessment not occurring in a reasonable amount of time.
- e. Parcel 162922140045 – Kenneth G. and Therese A. Dufner ; 2017 Duluth Street.
It is currently proposed that the property be assessed for \$6,800. Mr. and Mrs. Dufner are requesting that the assessment be cancelled due to the assessment amount being greater than the benefit to the property and the reassessment not occurring in a reasonable amount of time.
- f. Parcel 092922440069 – Peggy J. Hartzell; 1246 County Road B East.
It is currently proposed that the property be assessed for \$5,200. Ms. Hartzell is requesting that the assessment be cancelled due to the assessment amount being greater than the benefit to the property and the reassessment not occurring in a reasonable amount of time.
- g. Parcel 092922440076 – Jay R. Gruett; 1237 Leland Road.
It is currently proposed that the property be assessed for \$4,000. Mr. Gruett is requesting that the assessment be cancelled due to the assessment amount being greater than the benefit to the property and the reassessment not occurring in a reasonable amount of time.
- h. Parcel 092922440086 – Rebecca Gurrola; 2210 Duluth Street.
It is currently proposed that the property be assessed for \$5,200. Ms. Gurrola is requesting that the assessment be cancelled due to the assessment amount

being greater than the benefit to the property and the reassessment not occurring in a reasonable amount of time.

- i. Parcel 142922440047 – Phoenix Residence, Inc.; 1685 Howard Street.
It is currently proposed that the property be assessed for \$6,300. Phoenix Residence, Inc. is requesting that the assessment be cancelled due to the assessment amount being greater than the benefit to the property and the reassessment not occurring in a reasonable amount of time.
- j. Parcel 142922410048 – Phoenix Residence, Inc.; 1866 Furness Street.
It is currently proposed that the property be assessed for \$6,800. Phoenix Residence, Inc. is requesting that the assessment be cancelled due to the assessment amount being greater than the benefit to the property and the reassessment not occurring in a reasonable amount of time.
- k. Parcel 142922440048 – Bob A. M. Serreyn and Dominic J. Chiappetta ; 1695 Howard Street.
It is currently proposed that the property be assessed for \$6,300. Mr. Serreyn and Mr. Chiappetta are requesting that the assessment be cancelled due to the assessment amount being greater than the benefit to the property and the reassessment not occurring in a reasonable amount of time.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA:

1. That the City Engineer and City Clerk are hereby instructed to review the objections received and report to the City Council at the regular meeting on February 25, 2013 as to their recommendations for adjustments.
2. The assessment roll for the Hills and Dales Area Street Improvements as amended, without those property owner's assessments that have filed objections, a copy of which is attached hereto and made a part hereof, is hereby adopted. Said assessment roll shall constitute the special assessment against the lands named therein, and each tract of land therein included is hereby found to be benefited by the proposed improvement in the amount of the assessment levied against it.
3. Such assessments shall be payable in equal annual installments extending over a period of 15 years, the first installments to be payable on or before the first Monday in January 2014 and shall bear interest at the rate of 5.0 percent per annum. To the first installment shall be added interest on the entire assessment from February 11, 2013 until December 31, 2014. To each subsequent installment when due, shall be added interest for one year on all unpaid installments.
4. The owner of any property so assessed may, at any time prior to certification of the reassessment to the county auditor, pay the whole of the reassessment on such property, with interest accrued to the date of payment, to the City of Maplewood, except that no interest shall be charged if the entire reassessment is paid within 30 days from the adoption of the reassessment. Owner may at any time thereafter, pay to the Ramsey County the entire amount of the reassessment remaining unpaid, with interest accrued to December 31 of the year in which such payment is made. Such payment must be made before November 15 or interest will be charged through December 31 of the succeeding year.
5. The City Engineer and City Clerk shall forthwith after November 15, 2013 but no later than November 16, 2013 transmit a certified duplicate of this assessment to the county auditor to be extended on the property tax lists of the county. Such assessments shall be collected and paid over the same manner as other municipal taxes.

Adopted by the City Council this 11th day of February 2013.

Seconded by Councilmember Juenemann

Ayes – Mayor Rossbach, Council Members
Cardinal, Juenemann and Koppen
Nays – Councilmember Cave

The motion passed.

I. UNFINISHED BUSINESS

1. Second Reading of the Wetland Ordinance Amendment

Environmental Planner Finwall gave the staff report and answered questions of the council.

Councilmember Cave moved to approve the second reading of the Wetland Ordinance Amendment.

ORDINANCE NO. 928 AN ORDINANCE AMENDING THE ENVIRONMENTAL PROTECTION AND CRITICAL AREA ARTICLE OF THE CITY CODE

The Maplewood City Council approves the following changes to the Maplewood Code of Ordinances:

This amendment revises portions of Chapter 18, Article V (Environmental Protection and Critical Area) dealing with wetlands. Additions are shown underlined and deletions are shown as stricken.

.Section 1. Findings.

- a. Wetlands serve a variety of beneficial functions. Wetlands help maintain water quality by filtering suspended solids and pollutants. They reduce flooding and erosion, provide open space for human interaction, and are an integral part of the city's environment. Depending upon their type, size, and location within a watershed, they represent important physical, educational, ecological, aesthetic, recreational, and economic assets of the city. Properly managed wetlands are needed to support the city's efforts to reduce flooding and to protect the public health, safety, and general welfare.
- b. Wetlands and buffers provide habitat for aquatic, semi-aquatic, and terrestrial wildlife, including rare, threatened, or endangered species. They provide breeding, nesting and feeding grounds for many forms of plant and animal life. Many species of wildlife require both wetlands and their associated upland buffers for survival. Protecting wetlands and buffers is essential for preserving the diversity of plant and animal species in the city.
- c. Streams are also significant elements of the city's hydrologic system. Streams flow into wetlands and lakes, provide food and habitat for wildlife, provide open space, and are an integral part of the city's environment. Like wetlands, streams are an important physical, educational, ecological, aesthetic, recreational, and economic asset.
- d. Various existing state and federal laws restrict activities and development within wetlands and streams. The city finds that development adjacent to and surrounding wetlands may also degrade and pollute wetlands or accelerate the aging or elimination of wetlands and that development next to streams may degrade, pollute, or damage streams and, in turn, degrade other surface waters downstream. Regulating

development and land use around wetlands and streams is therefore in the public interest.

- e. As defined and used herein, buffers are land areas adjacent to wetlands and streams that are deemed important for maintaining the health and valuable functions of such wetlands and streams. Restricting development of and land use in buffers recognizes that the surrounding upland impacts the quality and functions of wetlands and streams and, therefore, is in the public interest.
- f. Buffers planted with native or naturalized vegetation serve the following functions:
 - (1) Stabilize soil and prevent erosion.
 - (2) Preserve and enhance the quality of surface water by reducing the input of suspended solids, nutrients, and harmful chemical substances that may adversely impact public health or aquatic habitat.
 - (3) Filter suspended solids, nutrients, pollutants, and harmful substances so that they do not enter the wetland or stream.
 - (4) Moderate water level fluctuations during storms.
 - (5) Protect beneficial plant life and provide habitat for wildlife.
 - (6) Provide shade to reduce the temperature of both stormwater runoff and the wetland, thereby helping to maintain the conditions for healthy aquatic life.
 - (7) Reduce the adverse impacts of human activities on wetlands and streams and thereby preserve them in a natural state.
- g. In addition to regulating development and land use around wetlands, this ordinance is intended to educate the public (including appraisers, owners, potential buyers, and developers) about the importance of wetlands and streams and the functions of buffers and to encourage property owners who live adjacent to and/or near wetlands and streams to be responsible stewards by managing and enhancing the quality of buffers as hereinafter described.

Section 2. Definitions.

The following words, terms, and phrases when used in this ordinance shall have the meanings ascribed to them in this section, except where the context of the word, terms, and phrases clearly indicates a different meaning.

Administrator means the director of the community development department or other person or persons charged with the administration and enforcement of this ordinance.

Alteration means human action that adversely affects the vegetation, hydrology, wildlife or wildlife habitat in a wetland, stream or buffer, including grading, filling, dumping, dredging, draining, paving, construction, application of gravel, discharging pollutants (including herbicides and pesticides), and compacting or disturbing soil through vehicle or equipment use. Alteration also includes the mass removal or mass planting of vegetation by means of cutting, pruning, topping, clearing, relocating, or applying herbicides or any hazardous or toxic substance designed to kill plant life. Alteration does not include the following activities in a buffer:

- a. Walking, passive recreation, fishing, or other similar low-impact activities.

- b. The maintenance of pre-existing, nonconforming lawn area.
- c. The removal of trees or vegetation that is dead, dying, diseased, *noxious*, or hazardous in a manner that does not cause the compacting or disturbing of soil through vehicle or equipment use.
- d. The removal of *noxious* weeds by non-chemical methods, or by means of chemical treatment in accordance with application methods that prevent the introduction of toxic chemicals into wetlands and streams.
- e. The removal of non-native shrubs, such as buckthorn, if:
 - 1. there is little chance of erosion; and
 - 2. site is flat or generally has slopes less than 6 percent grade; and
 - 3. cut and treat method of removal is used on shrubs more than one-half (½) inches in diameter (not pulling).
- f. *Selective* management of vegetation as follows:
 - 1. *Selective* pruning of trees or shrubs in order to enhance their health.
 - 2. *Selective* removal of tree saplings (less than 2 inches in diameter) in order to enhance wildlife value of the buffer.
 - 3. *Selective* removal of non-native trees.
 - 4. *Selective* removal of non-native weeds.
 - 5. *Selective* seeding or planting of vegetation that is native to Minnesota.
- g. Installation of temporary fencing without footings.
- h. Projects within the buffer that are the subject of a wetland buffer management worksheet approved by the administrator.

Best management practices (BMP's) mean measures taken to minimize negative effects of stormwater runoff on the environment including, but not limited to, installation of rain gardens, infiltration basins, infiltration trenches, retention basins, filters, sediment traps, swales, reduction of impervious surfaces, planting of deep-rooted native plants, landscape and pavement maintenance.

Boathouse means a structure designed and used solely for the storage of boats or boating equipment.

Buffers are land areas adjacent to wetlands and streams in which development and land use are restricted as set forth herein and in which the growth of native and naturalized plants and trees are to be preserved and encouraged in accordance with this ordinance.

Clearing means the cutting or removal of vegetation.

Enhancement means an action that increases the functions and values of a wetland, stream, or buffer.

Erosion means the movement of soil or rock fragments, or the wearing away of the land surface by water, wind, ice, and gravity.

Incidental wetland means a wetland which did not naturally occur, but was incidentally created by humans.

Infiltration basin means a pond or basin that captures stormwater and allows it to soak into the ground. An infiltration basin will typically drain within forty-eight (48) hours of a storm event.

Lake means an area of open, relatively deep water that is large enough to produce a wave-swept shore. Lake shall also be defined as a “public water” as delineated and listed in the city’s shoreland ordinance (Article IX).

Large-scale project means a vegetation maintenance, control, removal, mitigation or restoration project that will affect more than fifty percent (50%) of a buffer located on a piece of property.

Lawn area means that area within a buffer with maintained landscape, including areas of mowed turf grass, gardens, play areas, work areas, patios, play structures, and nonpermanent structures. Lawn area does not include: (1) areas within a buffer consisting of native or naturalized vegetation; and (2) the land area that is outside of a buffer.

Minnesota Routine Assessment Method (MnRAM) is a scientific methodology to assess the quality of wetlands.

Mitigation means an action that reduces, rectifies, eliminates, or compensates for the alteration of a buffer or wetland.

Mitigation plan means a plan submitted by an applicant and approved by the city that shows strategies for reducing, rectifying, eliminating, or compensating for the alteration of a buffer or wetland.

Native area means an area where native vegetation exists.

Native vegetation means tree, shrub, grass, or other plant species that are indigenous to the Twin Cities metropolitan area and that could have been expected to naturally occur on the site. Native vegetation does not include noxious weeds.

Naturalized area means an area where naturalized vegetation exists and does not include a lawn area.

Naturalized vegetation means tree, shrub, grass, or other plant species that exists on a site naturally without having been planted or maintained as a lawn area. It may be a native or non-native species.

Nonconforming lawn area means that area within a buffer with maintained landscape (lawn area) as of the date of adoption of this ordinance. Once a nonconforming lawn area is converted to native or naturalized buffer, it loses its legal nonconforming status and may not thereafter be treated as a nonconforming lawn area.

Noxious weed means plants listed as prohibited noxious weeds in the Minnesota Noxious Weed Law. (See also weed.)

Ordinary high water mark (OHWM) means a mark delineating the highest water level maintained for enough time to leave evidence upon the landscape. The ordinary high water mark is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

Public waters means water basins assigned a shoreline management classification by the Minnesota Department of Natural Resources commissioner under Minnesota Statutes, sections 103F.201 to 103F.221, except wetlands less than 80 acres in size that are classified as natural environment lakes.

Rain garden means an infiltration basin that is planted as a garden that allows water to infiltrate within forty-eight (48) hours of a storm event.

Restoration means restoring a wetland, stream, or buffer in whole or in part to a condition that is similar to that before development of the surrounding area.

Selective means vegetation management done in a naturalized or native buffer, where a minimal amount of vegetation is altered, with the goal of improving ecological quality of the buffer and/or its ability to filter stormwater runoff.

Semipublic means land that is maintained by a private organization or citizen for use by a larger group of people to include employees, neighbors, or the general public.

Setback means the minimum horizontal distance between a structure and the nearest edge of the wetland, stream, or buffer.

Slope means the inclination of the natural surface of the land from the horizontal; commonly described as a ratio of the length to the height.

Stormwater pond means a pond that has been created to capture stormwater runoff. Stormwater is often piped into stormwater ponds but may also enter through sheet runoff.

Stormwater pond edge means the normal high water level for a stormwater pond.

Straight-edge setback is a measurement to determine the allowable setback of an addition to an existing house, garage, deck or driveway which is located closer to or within the required buffer. Straight-edge setback additions are measured by using the existing edge of the house, garage, deck, or driveway located nearest to the edge of a buffer, wetland, or stream and extending that line in a parallel direction. No portion of the addition can encroach closer to the edge of a buffer, wetland, or stream than the existing structure.

Stream means those areas where surface waters produce a defined channel or bed. A defined channel or bed is land that clearly contains the constant passage of water under normal summer conditions.

Structure means anything constructed or erected that requires location on the ground or attached to something having location on the ground.

Sustainable design means a development design which minimizes impacts on the landscape.

Temporary erosion control means methods of keeping soil stable during construction or grading. Temporary erosion control measures include, but are not limited to, silt fencing, erosion control blankets, bale slope barriers, or other best management erosion control methods approved by the city.

Variance means a deviation from the standards of this ordinance that is not specifically allowed.

Vegetation means any plant life growing at, below, or above the soil surface.

Water-oriented accessory structure means a small, aboveground building or other improvement that the owner needs to locate closer to public waters than the normal structure setback. Such a setback would be because of the relationship of its use to a surface water feature. Examples of such structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses or freestanding decks. The definition of water-oriented accessory structures or facilities shall not include stairways, fences, docks or retaining walls.

Weed means a plant which causes damage in some way to native vegetation or ecosystems. (See also noxious weed.)

Wetlands means those areas of the city inundated or saturated by groundwater or surface water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas as defined. Where a person has removed or mostly changed the vegetation, one shall determine a wetland by the presence or evidence of hydric or organic soil and other documentation of the previous existence of wetland vegetation such as aerial photographs. This definition does not include lakes or stormwater ponds as herein defined.

Wetlands adjacent to lakes means those areas of land or vegetation that have been classified as wetlands by an applicable Watershed District in accordance with the Minnesota Routine Assessment Method (MnRAM) system but which are attached to or part of the edge of a lake as defined herein.

Wetland classes are defined as follows:

- a. Manage A wetlands are based on the "Preserve" wetland classification as defined in MnRAM. These wetlands are exceptional and the highest-functioning wetlands in Maplewood.
- b. Manage B wetlands are based on the "Manage 1" wetland classifications as defined in MnRAM. These wetlands are high-quality wetlands.
- c. Manage C wetlands are based on the "Manage 2" wetland classifications as defined in MnRAM. These wetlands provide moderate quality.
- d. Stormwater Pond – These are ponds created for stormwater treatment. A stormwater pond shall not include wetlands created to mitigate the loss of other wetlands.

Wetland functions mean the natural processes performed by wetlands. These include providing wildlife food and habitat, maintaining the availability of water, purifying water, acting as a recharge and discharge area for groundwater aquifers, moderating the flow of surface water and stormwater, and performing other functions including but not limited to those set out in U.S. Army Corps of Engineers regulations.

Wetland buffer management worksheet is a printed form available through the community development department which is required to be completed by a property owner who wishes to undertake certain activities in a wetland or stream buffer. The activities proposed by the property owner on the worksheet must be approved by the administrator prior to any work in the buffer.

Wetland or stream edge means the line delineating the outer edge of a wetland or stream. The wetland edge shall be established using the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated January 10, 1989, and jointly published by the U.S. Environmental

Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers and the U.S. Soil Conservation Service, or succeeding publication that is adopted by the Federal Government. The applicable watershed district must verify this line.

Section 3. Applicability and Effective Date.

a. Applicability.

1. This ordinance shall take effect after the city publishes it in the official newspaper.
2. Except as specified elsewhere in this ordinance, this ordinance shall apply to all real property which is located in a wetland, stream, or buffer or any person or use that would alter a wetland, stream, or buffer after adoption of this ordinance (December 14, 2009) and revisions of this ordinance (February 11, 2013).
3. The city adopts the wetland classification map dated December 14, 2009, which is based on wetland classifications from the MnRAM studies and assigned by the applicable watershed district. Other wetland classification regulations are as follows:
 - a. Any wetland not currently assigned a classification based on MnRAM studies as of the date of the adoption of this ordinance (December 14, 2009) shall carry over the city's April 24, 1995, wetland classifications and shall be assigned the following management classes:
 - 1) Class 1 wetlands are defined as Manage A wetlands.
 - 2) Class 2 wetlands are defined as Manage A wetlands.
 - 3) Class 3 wetlands are defined as Manage B wetlands.
 - 4) Class 4 wetlands are defined as Manage C wetlands.
 - 5) Class 5 wetlands are defined as stormwater ponds.
 - b. Appeals to the wetland classifications are within the jurisdiction of the applicable watershed district and shall be filed and heard pursuant to the administrative review process of that district. In the event that an appeal is granted, the city will recognize the results of that appeal for purposes of the classification of wetlands within the city.
4. The city council will adopt changes to the wetland map which are approved by watershed districts.
5. When any provision of any ordinance conflicts with this ordinance, the provision that provides more protection for buffers, wetlands, or streams shall apply unless specifically provided otherwise in this ordinance. This also applies to the applicable watershed district regulations.

b. Exemptions. This section does not apply to the following property located in the city limits of Maplewood:

1. Property which is located within a buffer, but is separated from the wetland or stream by an existing road.
2. Buildings and structures not in conformity with the regulations prescribed in this ordinance as of its effective date shall be regarded as nonconforming and may continue.
3. Lawn areas not in conformity with regulations prescribed in this ordinance as of its effective date shall be regarded as nonconforming and may continue. A nonconforming lawn area will lose its legal nonconforming status if it is converted to native or naturalized buffer and may not thereafter be treated as a lawn area.

Section 4. Buffer Widths and Requirements.

- a. Minimum buffers. The following are the minimum required buffer widths and structure setbacks:

| Buffer | Wetland Classes | | | |
|---------------------------------------|-------------------------------|-----------------|-----------------|------------------------|
| | <i>Manage A & Streams</i> | <i>Manage B</i> | <i>Manage C</i> | <i>Stormwater Pond</i> |
| Minimum Buffer Width | 100 ft. | 75 ft. | 50 ft. | 10 ft. |
| Structure Setback from Edge of Buffer | 0 | 0 | 0 | 10 ft. |

- b. Buffer measurement. Buffers shall be measured from the wetland or stream edge.
- c. Buffers containing slopes. For new development or construction on slopes greater than eighteen percent (18%) that are within a buffer, the buffer width shall be increased to ten (10) feet beyond the apex of the slope. Extension of the buffer for steep slopes shall apply to all wetland classes.
- d. Buffers for wetlands adjacent to lakes. In light of the fact that lakes perform different functions than wetlands and streams and are used for different recreational purposes, wetlands adjacent to lakes and their designated buffers shall have alternative buffers as follows:

| Buffer | Wetland Classes (for Wetlands Adjacent to Lakes) | | |
|----------------------|--|-----------------|-----------------|
| | <i>Manage A</i> | <i>Manage B</i> | <i>Manage C</i> |
| Minimum Buffer Width | 75 ft. | 50 ft. | 50 ft. |

- e. Average Buffers: Recognizing that there are instances where, because of the unique physical characteristics of a specific parcel of land, the averaging of buffer width for the entire parcel may be necessary to allow for the reasonable use of the land during a development or construction project. In such cases decreasing the minimum buffer width will be compensated for by increased buffer widths elsewhere in the same parcel to achieve the required average buffer width.

1. The average buffer standards set forth below may be applied based on an assessment of the following:

- a) Undue hardship would arise from not allowing the average buffer, or would otherwise not be in the public interest.
- b) Size of parcel.
- c) Configuration of existing roads and utilities.
- d) Percentage of parcel covered by wetland.
- e) Configuration of wetlands on the parcel.
- f) Averaging will not cause degradation of the wetland or stream.
- g) Averaging will ensure the protection or enhancement of portions of the buffer which are found to be the most ecologically beneficial to the wetland or stream.

2. The following are the average buffer widths for freestanding wetlands:

| Buffer | Wetland Classes (for Freestanding Wetlands) | | |
|----------------------|---|-----------------|-----------------|
| | <i>Manage A & Streams</i> | <i>Manage B</i> | <i>Manage C</i> |
| Minimum Buffer Width | 75 ft. | 50 ft. | 50 ft. |
| Average Buffer Width | 100 ft. | 75 ft. | N/A |

3. The following are the average buffer widths for wetlands adjacent lakes:

| Buffer | Wetland Classes (for Wetlands Adjacent to Lakes) | | |
|----------------------|--|-----------------|-----------------|
| | <i>Manage A</i> | <i>Manage B</i> | <i>Manage C</i> |
| Minimum Buffer Width | 50 ft. | 50 ft. | 50 ft. |
| Average Buffer Width | 75 ft. | N/A. | N/A |

- 4. Average buffer measurement. Average buffer measurement shall be determined by averaging the buffer along the wetland edge situated on the subject property, not the entire wetland.
- 5. A mitigation plan is required for construction of development projects which meet the requirements described in Section 5.d. (Mitigation).
- 6. The appropriateness of using average buffers will be evaluated as part of the review of the contractor's or owner's development application. The average buffer used must be within the spirit and intent of this ordinance and must meet one or more of the requirements described in Section 7 (Best Management Practices).
- 7. The administrator must approve the average buffer.

8. If an average buffer is denied by the administrator, an applicant may appeal the denial by submitting a written appeal request to the administrator within fifteen (15) days of the administrator's written denial of the average buffer. The administrator shall send appeals of average buffers to the environmental and natural resources commission for review.
9. If an average buffer is denied by the environmental and natural resources commission, an applicant may appeal the denial by submitting a written appeal request to the administrator within fifteen (15) days of the commission's denial of the average buffer. The administrator shall send these appeals to the city council for final review.

Section 5. Development and Construction.

- a. Unless an exemption applies, the following development and construction activities are not allowed in wetlands, streams, or buffers:
 1. Alterations, including the filling of wetlands.
 2. The construction of structures.
 3. Projects which convert native or naturalized areas to lawn area.
 4. The construction of stormwater drainage facilities, sedimentation ponds, infiltration basins, and rain gardens within a buffer.
 5. Discharge of stormwater to a wetland not in compliance with the city's stormwater management ordinance (Section 44-1245, or subsequent ordinances).
- b. Exemptions. This section does not apply to the following activities in a buffer:
 1. Walking, passive recreation, fishing or other similar low-impact activities.
 2. The maintenance of pre-existing, nonconforming lawn area.
 3. The removal of trees or vegetation that is dead, dying, diseased, *noxious*, or hazardous in a manner that does not cause the compacting or disturbing of soil through vehicle or equipment use.
 4. The removal of noxious weeds by non-chemical methods, or by means of chemical treatment in accordance with application methods that prevent the introduction of toxic chemicals into wetlands and streams.
 5. The removal of non-native shrubs, such as buckthorn, if:
 - a) there is little chance of erosion; and
 - b) site is flat or generally has slopes less than 6 percent grade; and
 - c) cut and treat method of removal is used on shrubs more than one-half (½) inches in diameter (not pulling).
 6. Selective management of vegetation as follows:
 - a) Selective pruning of trees or shrubs in order to enhance their health.

- b) Selective removal of tree saplings (less than 2 inches in diameter) in order to enhance wildlife value of the buffer.
 - c) Selective removal of non-native trees.
 - d) Selective removal of non-native weeds.
 - e) Selective seeding or planting of vegetation that is native to Minnesota.
7. Installation of temporary fencing without footings.
8. Projects within the buffer that are the subject of a wetland buffer management worksheet approved by the administrator.
9. Public maintenance of wetlands and buffers. The city may waive the requirements of this ordinance for public operations required to properly maintain in and around water bodies where it determines that there is a greater public need for the project than to meet the requirement of this ordinance. In waiving these requirements the city shall apply the following standards:
- a) All necessary erosion control measures must be in place before activities begin.
 - b) The public entity performing the work shall replant all disturbed areas within the buffer with native plantings.
 - c) The city may require additional mitigation actions as specified in Section 5.d. (Mitigation).
10. Public or semi-public streets and utilities. The city council may waive the requirements of this ordinance for the construction or maintenance of public or semipublic streets and utilities through buffers where it determines that there is a greater public need for the project than to meet the requirement of this ordinance. In waiving these requirements the city council shall apply the following standards:
- a) The city may only allow the construction of public or semipublic utilities and streets through buffers where there is no other practical alternative.
 - b) Before the city council acts on the waiver the environmental and natural resources commission and the planning commission shall make a recommendation to the city council. The city shall hold a public hearing for the waiver. The city shall notify the property owners within five hundred (500) feet of the property for which the waiver is being requested at least ten (10) days before the hearing.
 - c) Utility or street corridors shall not be allowed near endangered or threatened species.
 - d) Utility or street corridors, including any allowed maintenance roads, shall be as far from the wetland as possible.
 - e) Utility or street corridor construction and maintenance shall protect the wetland and buffer and avoid large trees as much as possible.
 - f) The city shall not allow the use of pesticides or other hazardous or toxic substances in buffers or wetlands; however, in some situations the use of

herbicides may be used if prior approval is obtained from the administrator.

- g) The owner or contractor shall replant utility or street corridors with appropriate native vegetation, except trees, at preconstruction densities or greater after construction ends. Trees shall be replaced as required by city ordinance.
- h) Any additional corridor access for maintenance shall be provided as much as possible at specific points rather than to the road which is parallel to the wetland edge. If parallel roads are necessary they shall be no greater than fifteen (15) feet wide.
- i) The city council, upon recommendation of the administrator, may require additional mitigation actions as a condition of granting the waiver.

11. Public or semipublic trails. The city may waive the requirements of this ordinance for the construction or maintenance of public or semipublic trails through buffers, and boardwalks in wetlands, where it determines that there is a greater public need for the project than to meet the requirement of this ordinance. In waiving these requirements the city shall apply the following standards:

- a) Trails shall not be allowed near endangered or threatened species.
- b) Buffers shall be expanded, equal to the width of the trail corridor.
- c) The owner or contractor shall replant all disturbed areas next to the trail in a timeframe approved by the city.
- d) All necessary erosion control measures must be in place before constructing a trail. The erosion control measures must also be maintained and inspected by the city to ensure that the wetland or stream is not compromised by trail construction activities.
- e) The trail must be designed and constructed with sustainable design methods.
- f) Boardwalks are allowed within the buffer for public or semipublic use.
- g) The administrator may require additional mitigation actions as specified in Section 5.d. (Mitigation).

c. Construction Practices. Special construction practices shall be required on projects or developments adjacent to wetlands and adjacent to and in their buffers. Special construction practices shall be approved by the administrator before issuance of a grading or building permit. Such practices may include, but are not limited to, grading, sequencing, vehicle tracking platforms, additional silt fences, and additional sediment control. They may also include the following:

- 1. Wetland Buffer Sign Standards: The city may require that a property owner or developer install wetland signs before grading or starting construction. The buffer will be identified by installing wetland signs on the boundary between a buffer and adjacent land. These signs shall mark the edge of the buffer and shall state there shall be no building, mowing, cutting, filling, or dumping beyond this point.

These signs shall be installed at each lot line where it crosses a wetland or stream buffer, and where needed to indicate the contour of the buffer, with a maximum spacing of one-hundred (100) feet of wetland or stream edge.

2. Erosion Control Installation: Before grading or construction, the owner or contractor shall put into place erosion control measures around the borders of buffers. Such erosion control measures must remain in place until the owner and contractor have finished all development activities that may affect the buffer.
 3. Erosion Control Breaches: All erosion control measures must be maintained and inspected to ensure compliance and protection of wetlands, streams, and buffers. The owner or contractor shall be responsible for all erosion/sedimentation breaches within the buffer and shall restore impacted areas to conditions present prior to grading or construction activities.
 4. Erosion Control Removal: After completion of grading or construction, the contractor or owner may remove the erosion control measures only after inspection and approval by the city and the applicable watershed district to ensure the areas affected have been established per requirements.
 5. Platting: When platting or subdividing property, the plat or subdivision must show the wetland boundaries as approved by the applicable watershed district.
 6. It is the responsibility of the owner to alleviate any erosion during and after completion of grading or construction. The owner or contractor must remove erosion control measures after final approved inspection by the city and the applicable watershed district.
- d. Mitigation. For large-scale projects or new development or construction, the city requires mitigation when a property owner or contractor has altered or will alter a wetland or buffer. The property owner or contractor shall submit a mitigation plan to the administrator for approval. In reviewing the plan, the city may require one or more of the following actions:
1. Reducing or avoiding the impact by limiting the degree or amount of the action, such as by using appropriate technology.
 2. Rectifying the impact by repairing, rehabilitating, or restoring the buffer.
 3. Reducing or eliminating the impact over time by prevention and maintenance operations during the life of the actions.
 4. Compensating for the impact by replacing, enhancing, or providing substitute buffer land at a two-to-one ratio.
 5. Monitoring the impact and taking appropriate corrective measures.
 6. Where the city requires restoration or replacement of a buffer, the owner or contractor shall replant the buffer with native vegetation. A restoration plan must be approved by the city before planting.
 7. Any additional conditions required by the applicable watershed district and/or the soil and water conservation district shall apply.

8. A wetland or buffer mitigation surety, such as a cash deposit or letter of credit, of one hundred and fifty percent (150%) of estimated cost for mitigation. The surety will be required based on the size of the project as deemed necessary by the administrator. Funds will be held by the city until successful completion of restoration as determined by the city after a final inspection. Wetland or buffer mitigation surety does not include other sureties required pursuant to any other provision of city ordinance or city directive.

Section 6. Activities in Wetlands, Streams, and Buffers.

- a. Unless an exemption applies, the following activities are not allowed in wetlands, streams, or buffers:
 1. Alterations, including the filling of wetlands.
 2. The construction of structures.
 3. Projects which convert native or naturalized areas to lawn area.
 4. The construction of stormwater drainage facilities, sedimentation ponds, infiltration basins, and rain gardens within a buffer.
 5. The discharging of stormwater to a wetland must comply with the city's stormwater management ordinance (Section 44-1245, or subsequent stormwater ordinances).
- b. Wetland buffer management worksheet. A wetland buffer management worksheet is required for certain activities within a wetland and stream buffer:
 1. The administrator must approve wetland buffer management worksheets.
 2. If a wetland buffer management worksheet is denied by the administrator, an applicant may appeal the denial by submitting a written appeal request to the administrator within fifteen (15) days of the administrator's written denial of the average buffer. The administrator shall send appeals of average buffers to the environmental and natural resources commission for review.
 3. If a wetland buffer management worksheet is denied by the environmental and natural resources commission, an applicant may appeal the denial by submitting a written appeal request to the administrator within fifteen (15) days of the commission's denial of the average buffer. The administrator shall send these appeals to the city council for final review.
- c. Exemptions. This section does not apply to the following activities in a buffer:
 1. Walking, passive recreation, fishing or other similar low-impact activities.
 2. The maintenance of pre-existing, nonconforming lawn area.
 3. The removal of trees or vegetation that is dead, dying, diseased, *noxious*, or hazardous in a manner that does not cause the compacting or disturbing of soil through vehicle or equipment use.

4. The removal of noxious weeds by non-chemical methods, or by means of chemical treatment in accordance with application methods that prevent the introduction of toxic chemicals into wetlands and streams.
5. The removal of non-native shrubs, such as buckthorn, if:
 - a) there is little chance of erosion; and
 - b) site is flat or generally has slopes less than 6 percent grade; and
 - c) cut and treat method of removal is used on shrubs more than one-half (½) inches in diameter (not pulling).
6. Selective management of vegetation as follows:
 - a) Selective pruning of trees or shrubs in order to enhance their health.
 - b) Selective removal of tree saplings (less than 2 inches in diameter) in order to enhance wildlife value of the buffer.
 - c) Selective removal of non-native trees.
 - d) Selective removal of non-native weeds.
 - e) Selective seeding or planting of vegetation that is native to Minnesota.
7. Installation of temporary fencing without footings.
8. Projects within the buffer that are the subject of a wetland buffer management worksheet approved by the administrator.
9. For properties that are zoned single or double-dwelling residential or are used as a single or double-dwelling residential use:
 - a) The use, maintenance, and alteration of existing nonconforming lawn area for the purpose of outdoor enjoyment which may include gardening, nonpermanent structures (including such things as storage sheds under 120 square feet in area, swing sets and volleyball nets), impervious patios, or fire pits.
 - b) Work within a wetland, stream, or buffer which was approved by the Minnesota Department of Natural Resources water permitting process and access to those areas by a trail which is limited to the width of the permit.

Section 7. Best Management Practices.

The city encourages and in some cases requires that best management practices be implemented to minimize negative effects of stormwater runoff on the environment and the loss of wildlife habitat when a property owner or contractor has altered or will alter a wetland, stream, or buffer. Best management practices may include the following:

- a. Restore buffer with native plantings. For large-scale projects or new development or construction refer to Section 5.d. (Mitigation).
- b. Manage weeds in buffer. Pursuant to state law, all weeds listed on the Minnesota noxious weed list must be controlled by the property owner. Owners are encouraged to control other weeds that are not on the noxious weed list but can threaten the health of a wetland. Submittal of a wetland buffer management worksheet is required for management of weeds within the native and naturalized areas of buffers, except for

selective treatment. In addition, a management plan drafted by a professional experienced in wetland and stream restoration may be needed for large-scale projects or new development including:

1. Target weeds.
 2. Appropriate management techniques, including the use of chemical treatment if approved by the administrator as part of the management plan.
 3. Management schedule.
 4. Erosion control and reseeding if management will create large areas of dead vegetation.
 5. Cash escrow or letter of credit to cover 150 percent of the required work.
- c. Reduce stormwater runoff and/or improve the quality of stormwater runoff entering a wetland or stream. This may be achieved through the following strategies or other administrator approved best management practices for dealing with stormwater. These practices are to be located outside of the wetland buffer.
1. Reduce amount of pavement on site (i.e. fewer parking stalls, narrower driveways, shared parking with other businesses).
 2. Use pervious pavement such as pavers or porous asphalt.
 3. Use turf pavers or modified turf areas for overflow parking.
 4. Install rain garden or infiltration basin.
 5. Install rock trench or rock pit.
 6. Install filter strip of grass or native vegetation.
 7. Install surface sand filter or underground filter.
 8. Install native plantings on site to reduce fertilizer use and improve infiltration.
 9. Install a green roof on buildings.
 10. Install grit chambers, sediment traps, or forebays.

Section 8. Variances.

- a. Procedures. Procedures for granting variances from this ordinance are as follows:
1. The city council may approve variances to the requirements in this ordinance.
 2. Before the city council acts on a wetland ordinance variance the environmental and natural resources commission and the planning commission, will make a recommendation to the city council. The city shall hold a public hearing for the variance. The city shall notify property owners within five hundred (500) feet of the property for which the variance is being requested at least ten (10) days before the hearing.

3. The city may require the applicant to mitigate any wetland, stream, or buffer alteration impacts with the approval of a variance, including but not limited to, implementing one or more of the strategies listed in Section 5.d. (Mitigation).
 4. To approve a variance, the city council shall apply the findings for variance approval as required in Minnesota Statutes.
 5. The applicant for a variance shall submit, with the variance application and any other required materials, a statement showing how the proposal would meet the findings for variance approval.
- b. Exemptions to Variances. Variances are not needed for the following:
1. A nonconforming single or double-dwelling residential structure which loses its nonconforming status as described in Minnesota Statutes, section 462.357, subdivision 1(e) is allowed to be rebuilt on its same footprint in its entirety (including foundations and decks) in the buffer if the new single or double-dwelling family residential structure meets the following conditions:
 - a) Best management practices are implemented to help protect the wetland as described in Section 7 (Best Management Practices). The administrator approves the location and best management practices through the building permit process.
 - b) All other applicable building ordinance requirements are met.
 2. A nonconforming manufactured home which is located within a wetland buffer can be replaced with a new manufactured home without approval of a variance as long as the replacement meets with the requirements of Minnesota Statutes, section 462.357, subdivision 1(a).
 3. Additions to a nonconforming single or double-dwelling family house, garage, deck, or driveway using the existing straight-edge setbacks to a wetland or stream if the following apply:
 - a) Property that is zoned single or double-dwelling residential or is being used as a single or double-dwelling residence.
 - b) There is no other reasonable alternative than encroachment toward the wetland or stream with the addition.
 - c) The new addition of the house, garage, deck, or driveway is a minimum of twenty-five (25) feet from the wetland or stream edge.
 - d) The process of constructing the addition does not cause degradation of the wetland, stream, or the existing buffer.
 - e) Mitigation actions must be met as specified in Section 5.d. (Mitigation).
 4. Water-oriented accessory structure or boat house which is located within a wetland buffer for a wetland adjacent a lake if the structure meets the city's Shoreland ordinance requirements.
 5. Stairways, lifts and landings which are located within a wetland buffer for a wetland adjacent a lake if the stairway, lift and landing meets the city's Shoreland ordinance requirements.

Section 9. Enforcement.

The city reserves the right to inspect the site or property during regular city business hours or upon notice to the property owner or its designated representative one business day in advance if the inspection is to occur at a different time for compliance with this ordinance during development or construction or alteration pursuant to an approved wetland buffer management worksheet or plan.

The city shall be responsible for the enforcement of this ordinance. Any person who fails to comply with or violates any section of this ordinance may be charged with a misdemeanor and, upon conviction, shall be subject to punishment in accordance with misdemeanor level convictions as set by State Statute. The violator may be civilly fined and/or liable for restoration costs as well. All land use building and grading permits shall be suspended until the developer has corrected the violation. Each day that a separate violation exists shall constitute a separate offense.

The city council approved the first reading of this ordinance on January 28, 2013.

The city council approved the second reading of this ordinance on February 11, 2013

Attest: Karen E. Guilfoile, City Clerk

Seconded by Councilmember Juenemann Ayes – All

The motion passed.

J. NEW BUSINESS

1. Consideration of Authorizing the Publication of the Environmental Assessment Worksheet (EAW) for the Proposed 3M Research and Development Building

Assistant City Manager Ahl introduced the report. Sherri Buss, Senior Planner from TKDA, representing 3M addressed the council and presented the report. Roger Spinner from 3M Company addressed and answered questions of the council.

Councilmember Koppen moved to authorize the publication of the 3M Company Draft Environmental Assessment Worksheet in the EQB Monitor for public agency comments.

Seconded by Councilmember Juenemann Ayes – All

The motion passed.

Mayor Rossbach requested a member from Girl Scout Troop 5125 to address the council and give details about why they were attending the Council Meeting.

K. AWARD OF BIDS

None

L. ADMINISTRATIVE PRESENTATIONS

1. Consider Cancellation of March 4 Council – Manager Workshop

Councilmember Juenemann moved to approve the cancellation of the Council – Manager Workshop on March 4, 2013.

Seconded by Councilmember Koppen

Ayes – All

The motion passed.

M. COUNCIL PRESENTATIONS

1. Fish Creek

Councilmember Juenemann reminded residents that the Fish Creek Event-Minnesota Get Together on February 22, 2013 is at the Maplewood Community Center from 5:30 p.m. to 9:00 p.m.

2. Application for the Park Group

Councilmember Cave informed residents that applications are being accepted for four positions on the Park Group Task Force. Interested citizens should contact city hall for additional information.

N. ADJOURNMENT

Mayor Rossbach adjourned the meeting at 8:34 p.m.

**City of Maplewood
Public Hearing Sign-Up Sheet**

*By putting your name and address on this sheet, you are requesting to address
the Maplewood City Council on the following topic for up to five minutes.*

Public Hearing: H1 Hills and Dales Area Street Improvements, Project 09-15

Date: February 11, 2013 Time: 07:00 PM

Name - First & Last
(please print clearly)

Address

- | | <u>Name - First & Last</u>
<i>(please print clearly)</i> | <u>Address</u> |
|-----|---|------------------------------------|
| 1. | <i>Diana Longue</i> | <i>1321 Frost Ave Maplewood MN</i> |
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