December 17, 2019

St. Louis County TIF Commission
Attn: Tina Politowski
11911 Dorsett Road
Maryland Heights, MO 63043
tpolitowski@marylandheights.com

VIA ELECTRONIC MAIL

Re: City of Maryland Heights’ Maryland Lake Park District Tax Increment Financing Development Plan and Project dated October 11, 2019

Dear Commission Members:

Great Rivers Environmental Law Center (“Great Rivers”) submits the following comments to the St. Louis County TIF Commission regarding the City of Maryland Heights’ Maryland Lake Park District Tax Increment Financing Development Plan and Project dated October 11, 2019 (“Development Plan” or “Project”). Great Rivers is a public interest law firm that provides free and reduced-fee legal services to individuals, organizations and citizen groups working to protect the environment and public health. Great Rivers’ members and its clients will be injured by the environmental and financial impacts of the Development Plan if it is approved, and accordingly offer these comments in hopes that the Commission denies approval of the Development Plan or delays its approval until the Commission performs further study and analysis of the Plan’s environmental impacts and compliance with the TIF Act.

The Development Plan should not be approved by the TIF Commission for various reasons. First, the Development Plan fails to demonstrate that the development area is blighted, that development in the area would not happen but for TIF funds, and that the Development Plan
conforms with the City’s Comprehensive Plan. Second, several policy issues demonstrate that
the TIF Commission should deny the Development Plan as drafted.

I. The Development Plan Does Not Comply with the TIF Act Because It Does Not
Demonstrate A Predominance of Blighting Factors in the Proposed Development
Area, that Development Would Not Happen in the Area “But For” TIF Funds, or
that it Complies with the City’s Comprehensive Plan

For TIF Funds to be used for redevelopment purposes, the City must demonstrate that the
proposed development area suffers from a predominance of one or more blighting factors based
on the present conditions and use of the development area. Additionally, the City must
demonstrate that development in the area would not occur “but for” the use of TIF funds. Finally,
the City must demonstrate that the development plan conforms with the City’s Comprehensive
Plan. The City’s Development Plan under consideration by the TIF Commission fails to meet
any of these TIF Act requirements.

A. Blighting Factors

The Development Plan’s presentation of blighting factors does not conform with the
requirements of the TIF Act, which requires that a predominance of one or a combination of any
blighting factors be present in the area in question (the proposed TIF district) “in its present
condition and use.” (emphasis added). Great Rivers Habitat All. v. City of St. Peters, 246
S.W.3d 556, 561 (Mo. Ct. App. 2008). The Development Plan analyzes these blighting factors in
relation to the proposed development rather that the present use of the area, and focuses
myopically, and improperly, on existing conditions without analyzing existing uses. Similarly,
the Development Plan fails to demonstrate that other blighting factors are predominant in the
area.

(i) Defective or Inadequate Street Layout

In discussing the blighting factor of defective or inadequate street layout, the
Development Plan states that “the parcels in the Area are often large, many times in odd
configurations, and typically without access to platted rights-of-way from which subdivisions of
property could readily be created for the development purposes contemplated in the City’s
Comprehensive Plan.” Development Plan, Page 7. These large configurations are based on the
present use of the land as primarily agricultural. Basing a blighting factor determination on
future uses violates the TIF Act.

Similarly, the Development Plan states that “[f]or these parcels to develop to their
highest and best use, they will need to be re-platted and significant roadway infrastructure must
be constructed to provide access to the parcels.” Id. The highest and best use is clearly not the
present use and so the conclusion that streets are inadequate for future uses, rather than present
uses violates the TIF Act.
Again, the Development Plan states that “what few feeder roads exist in the Area (Creve Coeur Mill Road and River Valley Drive in particular) are not capable of handling arterial road-levels of traffic to support development of the Area.” Id. Supporting future development is not the measure of the mark for a blighting analysis. The Development Plan continues this error in concluding that “[i]n summary, while the area has access to highways, the existing internal roadway system is inadequate and cannot support future development.” Id. Page 8.

The reliance on future development to conclude that the street layout is inadequate for the present uses of the area violates the TIF Act. Not once is this factor discussed related to existing uses of the area in violation of the TIF Act. This is particularly apparent when one looks at Plate 5 for the parcels the Development Plan claims do not have adequate access to public rights of way. Id. Plate 5. Every single highlighted property is agricultural. While these properties may not have adequate access for future development, no showing has been made that the present uses of the property require such access.

(ii) Improper Subdivision or Obsolete Platting

In discussing the blighting factor of improper subdivision or obsolete platting, the Development Plan again fails to account for the present uses of the area and instead focuses singlehandedly and inappropriately on future development. The Development Plan relies on Slide 6 to make a finding that 69% or parcels are without proper subdivision or have obsolete platting and that “these are parcels that resulted from the construction of the Maryland Heights Expressway and now represent irregular parcel shapes that are inefficient for development.” Id. Page 8; See also, Slide 6. All of the parcels identified in Slide 6 are agricultural land. The Development Plan does not conclude that the subdivision and platting of these lands are improper for agricultural purposes, but instead that the present condition is not conducive to future development in violation of the TIF Act.

(iii) Insanitary and Unsafe Conditions

The Development Plan continues its improper logic regarding future development rather than present uses required by the TIF Act when analyzing the blighting factor of insanitary and unsafe conditions. It states:

Additional transportation system improvement needs for the Area are noted in the Comprehensive Plan and other transportation studies conducted by the City; however, at this point, they cannot be considered economically feasible without future land development in the Area. This future development is dependent on alleviating the flooding that is a recurring problem within a large part of the Area.

Page 9. (emphasis added). Again, the needs of future development uses are not appropriate considerations regarding blighting determinations.
Additionally, the TIF ACT requires that there be a “predominance” of a blighting factor within an area to make a finding of blighting to use TIF taxing authority. The Development Plan admits that “[a]ccording to the latest FEMA data, about 50.3% of the Area, or approximately 1,213 acres, are subject to flooding.” *Id.* If flooding is the blighting factor that the City will rely on to make a finding of blight under the TIF Act, only having 50.3% of the area suffer from this factor does not amount to a predominance of that factor and, therefore, flooding alone cannot form the basis for using TIF dollars for the entire proposed development area.

(iv) *The existence of conditions which endanger life or property by fire and other causes*

The Development Plan relies on the analysis in subsection (iii) above regarding insanitary and unsafe conditions to conclude that the project area suffers from the existence of conditions which endanger life or property by fire and other causes and contains no new analysis of this blighting factor. As described above, the Development Plan improperly relies on future development as opposed to existing uses to find flooding as a blighting factor and fails to demonstrate that a predominance of flooding exists over the entire project area (only 50.3%) in contravention of the TIF Act.

The TIF Act requires that a predominance of one or a combination of blighting factors exists based on the present conditions and use of the project area before a finding of economic or social liability or that the area is a menace to public health and safety. Because none of the blighting factors have been adequately demonstrated under the requirements of the TIF Act as described above, the Development Plan’s analysis of economic liability, social liability, and whether the area is a menace to public health and safety is superfluous.

B. The “But For” Requirement

Section 99.810 RSMo establishes that a municipality must find, before adopting a redevelopment plan, that “[t]he redevelopment area ... has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing.”

The Development Plan concludes that despite the construction of the Maryland Heights Expressway and the Howard Bend 500-year flood levee, development will not occur on its own because “[t]he principal remaining problem impeding development relates to significant areas of floodplain that remain and are the result of internal flooding on an annual basis from heavy rain and storm-related events.” Development Plan, Page 3. To support this conclusion, the Development Plan cites to the economic analysis in Section 3 of the Plan. *Id.*

In discussing the purported economic liability allegedly caused by the lack of necessary infrastructure within the Lake District, the Development Plan concludes that without $85,000,000 in tax incentives to pay for stormwater infrastructure, the Lake District development will not occur—in essence, “but for” these tax incentives, the Lake District will not happen organically. *Id.*, Pages 17-18. The Development Plan uses Earth City as an example to try to
argue that “but for” tax incentives, the Lake District will not develop on its own. As the Development Plan admits, Earth City used no tax incentives and yet it developed on its own despite having all of the exact same issues that Maryland Heights Lake District claims it has such as drainage issues and flooding. The Development Plan concludes that Earth City demonstrates that tax incentives are needed for the Lake District because it took thirty years for Earth City to develop organically. However, the Earth City example does not show that the Lake District would not develop “but for” tax incentives due to a lack of necessary infrastructure but instead demonstrates that the Lake District would develop without tax incentives if it otherwise made economic sense.

Furthermore, the logic employed by the Development Plan in the “but for” analysis assumes that economic development is needed in the floodplain from a supply and demand economic perspective. One need only to look at the Mills Mall a few miles north in the floodplain to find an example of failed development in the floodplain. The City of Maryland Heights should use TIF to redevelop areas that people already use for economic purposes – not force development in an area that should be used for open space and recreation.

C. Comprehensive Plan

The City’s Comprehensive Plan states that the Vision Statement for the Maryland Lake Park District is to “develop in a manner that fosters the reduction the impacts of natural hazards thus preventing the loss of life and minimizing illness and injury resulting from these hazards.” Comprehensive Plan, Page 7.3.14. To achieve this Vision Statement, the Comprehensive Plan identifies the three most important Goals for the Maryland Lake Park District as:

1. minimize the loss of life and injuries that could be caused by natural hazards;
2. encourage growth that is compatible with hazard mitigation strategies…; and
3. encourage sustainable development by protecting development from natural hazards.

Id. The Development Plan’s short-sided approach to floodplain development contravenes the City’s Comprehensive plan to minimize flood damage, encourage growth that is compatible with flooding, and to encourage sustainable development by protecting development from natural hazards.

The Development Plan states that the Development shares the City’s Comprehensive Plan’s vision to “[c]atalyze regional and City economic development through the creation of … environmentally-responsive neighborhoods.” Page 21. The intentional non-use of the term “environmentally-responsible” is quite telling. Development in the floodplain is definitely not “environmentally-responsible” in light of increasing flood frequency and magnitude which will only get worse with climate change. This development constitutes neither an attempt to mitigate impacts of climate change nor to adapt to climate change—instead it is a kamikaze decision that flies in the face of good governance and sound policy that will result in the citizens who end up in the development area unable to mitigate or adapt to climate change.
Similarly, the Development Plan states that the Development Plan shares the City’s Comprehensive Plan’s vision to “[p]rovide an area where significant new housing, commercial, and industrial development can occur within the core of the St. Louis region thereby reducing urban sprawl and its negative social and environmental impacts.” Id. To characterize the proposed Lake District development plan as somehow reducing “urban sprawl” is both laughable and extremely disingenuous. The proposed development would quintessentially constitute nothing other than urban sprawl by forcing uneconomic development in a hunting heritage preservation area/floodplain. Just because urban sprawl has leapfrogged the Lake District into St. Charles County because floodplain development is bad policy and uneconomic, does not magically make the proposed Lake District plan infill development. Furthermore, the development plan will cause the exact negative social impacts (loss of tax revenue and economic risk borne by the taxpayers) and environmental impacts (increased regional flooding by further cutting off the river from its floodplain) that it purportedly will alleviate, which is not in conformance with the goals of the Comprehensive Plan.

Ultimately, the short-term and short-sided decision to spend $85,000,000 on internal flood control measures to allow development that is not compatible with the Missouri River floodplain will result in loss of life and property from flooding hazards. These businesses and community members will be unable to adapt to or mitigate the effects of climate change. The Comprehensive Plan demands that this area be used for functions that are compatible with the floodplain including open space, agriculture, and recreation. The proposed development will not mitigate hazards as portrayed by the Development Plan, but instead will result in the exacerbation of flooding hazards by placing incompatible uses in a flood-prone area. The proposed development cannot under any logic be described as sustainable development, especially in light of climate change. Therefore, the Development Plan is not in compliance with the City’s Comprehensive Plan and the TIF Act cannot be used to subsidize the proposed boondoggle development.

II. Several Policy Issues Demonstrate that the Development Plan Should Not Be Approved By the TIF Commission

The TIF Commission should reject the Development Plan because it would set a terrible precedent for using the TIF Act to support unwise development in the region’s floodplains and exacerbate the current race-to-the-bottom to promote these bad policy choices by local governments. The TIF Commission was established to provide this crucial counterbalance to local interests that fail to account for regional concerns. Because of the regional adverse economic, social, and environmental impacts caused by floodplain development, the TIF Commission should deny the Development Plan.

A. The Project Proposes to Pump Water Back Into the Missouri River, Which Would Exacerbate Flooding Conditions Downstream

One of the significant objectives of the Project is to “alleviate the stormwater flooding conditions that impede the development of the area.”1. The Project proposes to accomplish this

1 Development Plan at p. 22.
goal through the construction of diversion channels, internal levees, spillways and pump stations. While these new flood controls will help to protect the development area, the proposed stormwater management system will also pump overflows of water back into the Missouri River. This pumping will undoubtedly increase flooding risks downstream, in places like St. Charles, West Alton, and on into the Mississippi River in and south of St. Louis, which are already hydrologically stressed.

There is widespread agreement that flooding controls constructed by humans have directly caused the significant increase in 100- and 500-year flood events along the banks of major rivers such as the Missouri and the Mississippi. Flood stages have systematically risen on the Lower Missouri River for equal discharge volumes over the period of record. The floodplain zone at the confluence of the Missouri and Mississippi Rivers held 260 billion gallons of water in July of 1993. Since that time, higher levees have been constructed, and an even greater percentage of the floodplain has been developed with impervious surfaces. Not surprisingly, three of the eight highest flood levels ever recorded in St. Louis have occurred since 2013, and five since 1993. Rising flood stage trends imply that large floods will occur more frequently than previously estimated, and could continue to increase in frequency over the next several years if development continues in this area. Similarly, the Project could cause serious flooding ramifications for downstream communities.

**B. The Proposed Development Area is Rife With Wetlands, the Destruction of Which Would Have Serious Negative Environmental Implications**

Wetlands provide a plethora of essential functions for humans, fish and wildlife. “Wetlands are among the most productive ecosystems in the world, comparable to rain forests and coral reefs.” An immense number of species are found in a wetlands ecosystem. Changes in the amount and movement of water through these ecosystems, such as the changes proposed by the Project, can have drastic impacts on such wetlands ecosystems. Wetlands have an essential function in providing food for numerous animal species. Further, they help to store carbon rather

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2 City of Maryland Heights Comprehensive Plan, Section 7, Maryland Park Lake District, at pp. 7.4.37-46 (Adopted May 24, 2016).
7 See U.S. Environmental Protection Agency wetlands informational website, [https://www.epa.gov/wetlands/why-are-wetlands-important](https://www.epa.gov/wetlands/why-are-wetlands-important) (last visited December 16, 2019).
than releasing it to the atmosphere as carbon dioxide. In this way, wetlands help to moderate and prevent climate change.  

Many natural products used in our economy come from wetlands – including fish, blueberries, cranberries, timber and wild rice. Some medicines originate from wetlands. Many threatened and endangered species live in wetlands, and wetlands provide the only habitat in which the species can live. In other words, when a wetlands area is destroyed, most of the species residing there will die as well, because there is no replacement habitat to accommodate their needs.

Perhaps most importantly to humans, wetlands serve as a natural sponge that traps, stores and slowly releases storm and flood water. This water storage helps to reduce flooding, and reduce erosion and storm damage. The storage feature of wetlands is especially valuable in urban areas, where pavement and impervious structures greatly reduce the holding capacity of an area.

The Project proposes to destroy a significant amount of property that likely can be considered to be wetlands. These areas are likely wetlands because they provide habitat for numerous wetlands plant species, and because of their soils and hydrology. The following wetlands plant species are commonly observed in the immediate vicinity of the Project:

- American Lotus (Nelumbo lutea)
- Southern Leopard Frogs (Lithobates sphenoecephalus)
- Upright Burhead (Echinodorus berteroi)
- Cattails (Typha sp.)
- Mississippi Arrowhead (Sagittaria calycina)
- Blue Mud Plantain (Heteranthera limosa)
- Scarlet Toothcup (Ammannia coccinea)
- Indigo Bush (Amorpha fruticosa)
- Swamp White Oak (Quercus bicolor)
- Pecan (Carya illinoinsensis)
- Sedges (Carex sp.)
- Eastern Cottonwood (Populus deltoides)
- Water Hyssop (Bacopa rotundifolia)

More than ninety percent (90%) of the soils in the area have been classified as water, frequently flooded or occasionally flooded. Portions of the area are already mapped on Corps National

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8 Id.
9 Id.
10 Id.
11 Based upon personal observations of Scott George, Professional Geologist, Environmental Science Consulting, LLC.
12 U.S. Department of Agriculture, Custom Soil Map, copy attached as Exhibit A.
Great Rivers Environmental Law Center  
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Wetlands Inventory mapping as jurisdictional wetlands. Anecdotally, it is widely known and accepted that the proposed development area floods frequently. In fact, frequent flooding is cited as one of the rationales of the project. Accordingly, filling in the wetlands in the proposed area with pavement and other impervious structures will not make the flooding problem better as project engineers suggest – instead it will likely make the flooding significantly worse. Further, the project will destroy the other potential benefits of wetlands ecosystems laid out above and recognized by the Environmental Protection Agency.

C. The Project Likely Involves Jurisdictional Wetlands and Will Require Regulatory Approval

As outlined above, much of the proposed development area meets U.S. Army Corps of Engineers’ (the “Corps”) wetlands criteria for plants, soils, and hydrology. As a result, it is likely that in order for the project to proceed, developers will have to obtain approval from the Corps. This will entail demonstration of the regulatory requirements of Clean Water Act Section 404 – avoidance, minimization and mitigation. Avoidance requires mitigation by selecting the least damaging project type. Minimization involves managing the severity of a project’s impact through design and risk avoidance measures. Mitigation entails replacement with suitable (typically offsite) replacement wetlands. The EPA and the Corps mandate that the mitigation types must be applied sequentially with avoidance considered first, minimization second, and mitigation only if the first two options are impossible.

At a minimum, compliance with such regulatory requirements for the Project will be costly and time consuming, and the costs of such loss of wetlands should not be subsidized by tax dollars borne by the public. At worst, the requirements of the Clean Water Act have the potential to derail the Project entirely. Because the Corps now favors mitigation through mitigation banks rather than on-site mitigation, if compensatory mitigation is required for the project from a mitigation bank, it is certain that such mitigation will not occur in the Maryland Lake Park District, which will deprive the area of valuable ecological resources that are needed for the area to meet the requirements of the City’s Comprehensive Plan. These financial, time and environmental ramifications should be taken fully into consideration in evaluating the Project. Great Rivers suggests that the Commission delay a decision on the Project until full information has been ascertained as to the costs, time delays and environmental ramifications of the Project. Authorizing tax dollars for a project that may not comply with environmental laws is putting the proverbial carriage before the horse.

D. The Project Will Cause Negative Impacts to Nearby Creve Coeur Lake Park

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The U.S. Army Corps of Engineers, Custom National Wetlands Inventory Map, copy attached as Exhibit B.

33 U.S.C. § 1344(b)(1 and 40 C.F.R. § 230)

40 C.F.R. § 230.10(a); Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency regarding Mitigation under CWA Section 404(b)(1) Guidelines (Feb. 6, 1990) (“Mitigation MOA”).

40 C.F.R. § 230.10(d); Mitigation MOA.

40 C.F.R. § 230, Subpart J.

Mitigation MOA.
The area around Creve Coeur Lake has always been a topographically low part of the Missouri River floodplain and prone to flooding. The Lake was formed several thousand years ago when a meander loop of the Missouri River was cut off. The Project plans to divert water from the development area, much of which currently flows into Creve Coeur Lake, back into the Creve Coeur Lake Park wetlands. This would drastically alter the hydrology of the area, likely converting many of the Park’s wetlands into lakes. The Development Plan would result in the degradation of habitat or destruction of any wetlands species currently living in the area, and would serve to hydrologically isolate the Lake from the Missouri River. Further, the Project could potentially cause the water levels in Creve Coeur Lake to be adversely affected, and thereby impact recreational uses. The Project also plans to fill in parts of Little Creve Coeur Lake. This is a wetlands area with a plethora of wetlands species that will be destroyed if the Project proceeds.

The development would also forever alter the aesthetic beauty of Creve Coeur Park. Instead of offering views of undeveloped wetlands, agricultural fields, the Missouri River and other natural open space as it does now, the Park’s views would become obstructed by buildings constructed as part of the Project. The high-density development proposed with the Project will likely significantly reduce the use of the Park and surrounding areas by wildlife. Open space and park land should be preserved in St. Louis County, rather than destroyed, as it is becoming a rarer and rarer commodity. Creve Coeur Park has been a favorite of birders for over 100 years, but this development will likely have a negative impact on such activities as well as those of other naturalists.

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19 See St. Louis County, Missouri Parks Department website for Creve Coeur Park, [https://www.stlouisco.com/Parks-and-Recreation/Park-Pages/Creve-Coeur](https://www.stlouisco.com/Parks-and-Recreation/Park-Pages/Creve-Coeur) (last visited December 16, 2019).
Because the Development Plan fails to comply with the TIF Act, the Commission should reject it. Great Rivers respectfully requests that the Commission carefully consider the significant negative financial, social and environmental impacts of the Project. Great Rivers requests that the Commission deny the project so as to avoid such impacts. In the alternative, Great Rivers asks that the Commission postpone its decision on the Project until such time as additional information can be ascertained as to the extent of the impacts the Project will have on area wetlands, local flooding, and regional flooding.

Sincerely,

Bob Menees  
Staff Attorney

Sarah Rubenstein  
Staff Attorney
Soil Map—St. Louis County and St. Louis City, Missouri
(Maryland Heights Proposed TIF Area)

EXHIBIT A

Map projection: Web Mercator   Corner coordinates: WGS84   Edge tics: UTM Zone 15N WGS84

Map Scale: 1:42,000 if printed on a portrait (8.5" x 11") sheet.

Natural Resources Conservation Service
Web Soil Survey
National Cooperative Soil Survey

12/17/2019 Page 1 of 3
The soil surveys that comprise your AOI were mapped at 1:24,000.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: St. Louis County and St. Louis City, Missouri
Survey Area Data: Version 19, Sep 16, 2019

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Sep 17, 2018—Oct 24, 2018

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

### MAP INFORMATION

### MAP LEGEND

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#### Special Point Features
- Blowout
- Clay Pit
- Closed Depression
- Gravel Pit
- Gravelly Spot
- Landfill
- Lava Flow
- Marsh or swamp
- Mine or Quarry
- Miscellaneous Water
- Perennial Water
- Rock Outcrop
- Saline Spot
- Sandy Spot
- Severely Eroded_spot
- Sinkhole
- Slide or Slip
- Sodic Spot
- Spoil Area
- Stony Spot
- Very Stony Spot
- Wet Spot
- Other

#### Special Line Features
- Streams and Canals
- Rails
- Interstate Highways
- US Routes
- Major Roads
- Local Roads
- Aerial Photography
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This page was produced by the NWI mapper National Wetlands Inventory (NWI)

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

December 17, 2019

**Wetlands**

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine

EXHIBIT B

This page was produced by the NWI mapper National Wetlands Inventory (NWI)