



Title: Permit 23-071: Mediacom, 1948 Wayzata Boulevard West

Prepared by: Name: Maria Friedges, Permitting Technician
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Recommendation:

Approval of MCWD permit application on the following conditions:

Conditions for permit issuance:

1. Reimbursement of District fees for engineering and legal review
2. Board of Managers approval of requested variance from Section 3(g) of the waterbody crossings and structures rule requirement requiring 100 feet setback for entrance and exit holes for directional drilling.

Summary and Background:

Location:

Mediacom (Applicant) has applied for a Minnehaha Creek Watershed District (MCWD) permit for the installation of a fiber optic cable line via directional boring between the properties of 1948 and 1916 Wayzata Boulevard West, Long Lake.

The project is located north of Wayzata Boulevard, and west of Long Lake, in the City of Long Lake. The property drains to a channel and through downstream stormwater ponds in Nelson Lakeside Park, before discharging into Long Lake.

Proposed Project and Rule Triggers:

The existing fiber optic line, connected to a utility pole owned and recently removed by Xcel Energy, services internet to the building and businesses at 1916 Wayzata Boulevard West. The Applicant was leasing the utility pole from Excel Energy and was not informed prior to the removal of the pole. Consequently, the fiber cable is currently lying exposed on the ground and at risk of damage. Therefore, the Applicant is proposing to install a new cable underground.

The Applicant proposes to install 290 linear feet of 1.5-inch PVC innerduct using the method of directional bore. 67 feet of this duct will be located beneath the nearby channel.

There will be two sites of excavation for tie-ins or bore pit locations. The first site is north of the building at 1916 Wayzata Boulevard West and at the location of the existing utility pole. Any directional bore machinery will be staged at this site and will be set back at least 100 feet from the channel bank. The second site is to the west of the channel on the property of 1948 Wayzata Boulevard West. This bore pit location will be setback less than 100 feet from the channel bank (Attachment B).

Request for Variance to Waterbody Crossings and Structures Rule:

The project triggers MCWD's Waterbody Crossings and Structures rule, due to the proposed crossing beneath the channel.

The Applicant has requested the Board consider granting a variance to the [Waterbody Crossings and Structures rule section 3\(g\)](#), which requires a minimum 100 foot setback from waterbodies for directional drilling holes, due to spatial constraints associated with the property and proposed use of the adjacent property. (Attachment B).

The bore pit located west of the channel cannot be moved closer to the 100-foot setback due to an apartment being built at the property of 1948 Wayzata Boulevard West, whose structure or building footprint is located in close proximity

to the proposed bore pit. In addition, there is utility infrastructure located on the property, west of the channel, for the apartment that limits the location of the proposed bore pit to not interfere with other utility pipes or lines.

Therefore, the Applicant is proposing to operate within existing utility easements and underground the cable, which will require a bore pit to be located closer than 100 feet from the channel. Staff have reviewed the proposed location of this bore pit, and while it does not meet the required 100-foot setback, the Applicant has proposed redundant silt fence to mitigate any potential risk of erosion and sediment transport from the proposed bore pit.

District Rule Analysis:

Waterbody Crossings and Structures Rule

The District's Waterbody Crossings and Structures Rule is applied to any project that proposes to place a road, highway, utility, bridge, boardwalk, or associated structure in contact with the bed or bank of any waterbody.

A channel with defined banks, meeting the definition of a MCWD waterbody, is proposed to be subject to the location of a utility beneath its bed, thereby triggering the Waterbody Crossings and Structures rule.

The Waterbody Crossings and Structures rule requires that the project:

1. Meet a demonstrated public benefit for projects in public waters, and a specific need in all other cases.
2. Retain adequate hydraulic capacity and not restrict navigational capacity.
3. Preserve aquatic and upland wildlife passage
4. Not adversely affect water quality
5. Represent the minimal impact solution
6. In the case of directional drilling provide three feet of vertical clearance and 100' setback for drill holes

Per section 3(a) of the Waterbody Crossing and Structures rule, the proposed fiber optic cable line meets a demonstrated public benefit and a specific need. Installing the fiber cable under the channel via directional boring meets the specific needs of maintaining internet connection to locally served properties absent the ability to use a utility pole, while minimizing the land disturbance relative to a utility relocate south or southwest of Wayzata Boulevard, which would require disturbing the public roadway and sidewalk and the acquisition of new easements in an area that may conflict with other public utilities.

Sections 3(b), 3(c), and 3(d) of the rule do not apply, as the crossing will be beneath the channel, and therefore the Applicant proposes no change in hydraulic or navigational capacity or passage of aquatic or upland wildlife along the channel banks. Section 3(h) of the rule also does not apply as this is not a sanitary service project.

Per section 3(e), the placement of the fiber optic cable underground will not adversely affect water quality. The Applicant has indicated erosion and sediment control measures (see Attachment B) to ensure water quality is not affected by the temporary disturbance proposed. District staff finds the erosion control plan meets the requirements of the rule and the plan is sound for the purpose of this project.

Per section 3(f), the Applicant has submitted design alternatives to show the proposed plan meets the minimum impact solution with respect to all other reasonable alternatives. The Applicant has submitted alternate routing plans for the fiber cable which avoid crossing the channel. The alternative routes are less direct and would require additional linear feet of duct to be installed to avoid crossing the channel. These routes would result in the potential for more land disturbance, including in the right of way of Wayzata Boulevard West, in an area the applicant does not presently have easement. The Applicant has also explored the alternative of installing a utility pole at the location where the Excel Energy pole was removed. The Applicant leases utility poles and is not the property owner of 1948 Wayzata Boulevard West. Installing a utility pole would require approval from the property owner(s) or permits, potential tree clearing to make space for the utility pole and aerial cable and would be in close proximity to the proposed senior cooperative apartment building footprint.

Per section 3(g), the proposed work shall provide for a minimum clearance of three feet below the bed of a waterbody and a minimum setback of 100 feet from any stream bank for pilot, entrance, and exit holes, for projects involving horizontal directional drilling.

Based on review of the plans and specifications, the Applicant is not able to provide the required minimum setback for one bore pit location, shown in Attachment B, which is located 33 feet from the top of bank of the channel. The Applicant has requested a Variance from compliance with section 3(g) of the Waterbody Crossings and Structures rule, which has been analyzed under the Variance criteria below.

Variance Request and Analysis:

Waterbody Crossings and Structures Requirements:

The Variance and Exception Rule allows the Board of Managers to hear requests for variances from strict compliance with provisions of the District Rules if the Board determines that the request meets five criteria.

1. Due to special conditions inherent to the property, strict compliance results in hardship
2. The hardship, not economic in nature, was not created by the landowner, or its representative
3. Granting a variance will not merely serve as a convenience to the applicant,
4. There are no feasible and prudent alternative to the proposed activity requiring the variance
5. Granting a variance will not impair or be contrary to the intent of these rules

Variance Analysis:

Each variance criterion is analyzed below:

1. Criterion 1: Because of special conditions inherent to the property that do not apply generally to other land or structures in the District, strict compliance with a provision of the District rule will cause undue hardship to the applicant.
 - a. The Applicant has submitted a variance application (Attachment A), citing the alignment and positions of the bore pit sites as a special condition inherent to the property and an existing condition that was not created by the Applicant.

The subject fiber optic cable line was initially aerially connected from the existing utility handhole or at-grade vault at Wayzata Boulevard West to the utility pole at 1916 Wayzata Boulevard West via an Xcel Energy-owned utility pole located on the west side of the channel on the property of 1948 Wayzata Boulevard West. In addition, a new senior cooperative living apartment building (Zvago Long Lake) is being constructed on the property of 1948 Wayzata Boulevard West, which restricts the distance of the proposed bore pit on the north side of the channel.

2. Criterion 2: The hardship was not created by the applicant, its owner or representative, or a contractor. Economic hardship is not grounds for issuing a variance.
 - a. The fiber cable is proposed to conform to its existing alignment, but be located underground. The reason for the proposed undergrounding was the removal of a utility pole being leased by the Applicant, which was out of the Applicant's control. The Applicant is proposing to install the fiber optic cable via horizontal directional boring and have entrance and exit holes on either side of the channel in order to pass below. The Applicant is not able to meet the required setbacks for the bore pit, due to the presence of a building being constructed at 1948 Wayzata Boulevard and the existing layout of utility easements, and the need to connect to a utility pole located on the north side of a building at 1916 Wayzata Boulevard West.
3. Criterion 3: Granting the variance will not serve merely as a convenience to the applicant.
 - a. The project is required due to actions taken by entities other than the Applicant that have resulted in the existing fiber optic cable being laid at grade on the ground and across the existing channel. The need to find a sustainable location for this utility is not merely a convenience to the Applicant.

4. There is no feasible and prudent alternative to the proposed activity requiring the variance;
 - a. The Applicant has explored alternative options for this location.

Alternative one would be to construct a utility pole on the west side of the channel to have the fiber optic line cross aerially. Constructing a utility pole would cause more land disturbance than directional boring, potential channel impacts if the constructed utility pole were to fall or become damaged, and would require ongoing future maintenance around the utility pole and fiber optic line for existing trees and trees proposed as part of the landscaping plan for the senior living apartment building.

The second alternative option explored was to leave the fiber optic line crossing the channel at ground elevation. Leaving the fiber optic line exposed on the ground at surface level would pose a risk of the cable being damaged or the cable falling into the channel.

The Applicant also explored options to alternatively route the fiber optic line and tie it into the existing utility pole from the south side of the building. Currently, the fiber line is running from the handhole located at the roadway on 1948 Wayzata Boulevard West, west of the channel. From there the fiber cable is laying on the ground, to the location where Excel Energy's utility pole was located, before crossing over the stream and tying into the existing utility pole located north of 1916 Wayzata Boulevard West.

Excavating or constructing a new handhole or at-grade vault along Wayzata Boulevard would be contrary to the special provisions condition listed on the Applicant's right-of-way utility permit from Hennepin County. The special provisions condition states that *"this roadway was resurfaced within the last 5 years. Therefore no excavations will be allowed in the paved surface."* This roadway refers to Wayzata Boulevard and no excavations allowed in the paved surface refer to any excavation, manhole, handhole, or land disturbance within the roadway, curb and gutter, or sidewalk areas. In addition, alternatively routing the fiber cable south of the building at 1916 Wayzata Boulevard West would still require the Applicant to cross the channel.

5. Granting the variance will not impair or be contrary to the intent of the rule to discourage the use of beds and banks of waterbodies for the placement of utilities, to preserve the ecological integrity of the riparian and aquatic habitat, and to encourage the improvement of wildlife passage and habitat;
 - a. The Applicant will not work within the bed or bank of the channel and will provide a clearance of three feet beneath the channel bed. The Applicant has submitted a site plan (Attachment B) that cites where the fiber optic cable is to be installed and the positions of the bore pit sites in relation to the channel.

The proposed bore pit locations at 1948 Wayzata Boulevard West are setback as far as possible to prevent work from being done near the channel, prevent destabilization of the bank, sedimentation into the channel, and permanent impacts. The proposed bore pit for the fiber optic cable is approximately 33 feet from the channel top of bank.

The Applicant has provided an erosion control plan that shows additional erosion and sedimentation control measures will be taken at both bore pit locations for temporary disturbance to ensure that the channel will not be impacted.

Summary:

The Applicant has applied for a Minnehaha Creek Watershed District permit for the Waterbody Crossings and Structures rule and a Variance to providing the required minimum setback requirement of 100 feet for bore pit sites.

Based on staff and District Engineer analysis of the submittals provided by the Applicant, there is a sound technical basis to find that the proposed bore pit sites cannot feasibly be moved further from the channel top of bank. Staff concurs in the factual statements and technical justifications stated above in the variance application.

Therefore, staff recommends approval of the permit application with the conditions listed at the beginning of the report and, with respect to the variance request, concurs in the factual statements and technical justifications that the Applicant presents.

Attachments:

- A. Variance Application
- B. Directional Drill Plan & Profile
- C. Site Plan
- D. Alternative Routes map

REQUEST FOR VARIANCE AND STATEMENT OF HARDSHIP

MINNEHAHA CREEK WATERSHED DISTRICT (MCWD)
15320 MINNETONKA BLVD.
MINNETONKA, MN 55345

Phone: 952-471-0590
Fax: 952-471-0682

A request for a Variance must be accompanied by a MCWD Water Resources Application

Project Details:

Project address: 1948 Wayzata Blvd W & Nelson Lakeside Park City: Long Lake State: MN Zip: 55356
County: Hennepin Property ID number (PID): 3411823130112 & 3411823130066

The Board of Managers may hear requests for variances from strict compliance with provisions of the District Rules in instances where strict enforcement of the rules would cause an undue hardship because of circumstances unique to the property under consideration. The Board of Managers may grant variances where it is demonstrated that such action will remain in spirit and with the intent of these rules. An applicant granted a variance from full compliance with a requirement of the rules would be required to meet the requirement to the greatest degree feasible short of full compliance. A variance must be approved by a two-thirds majority of managers voting.

To grant a variance, the Board of Managers must determine, based on a showing by the applicant:

- That because of special conditions inherent to the property, which do not apply generally to other land or structures in the District, strict compliance with a provision of a District rule will cause undue hardship to the applicant or property owner;
- That the hardship was not created by the landowner, the landowner's agent or representative, or a contractor. Economic hardship is not grounds for issuing a variance.
- That granting such variance will not merely serve as a convenience to the applicant.
- That there is no feasible and prudent alternative to the proposed activity requiring the variance.
- That granting the variance will not impair or be contrary to the intent of these rules.

A variance will remain valid only as long as the underlying permit remains valid.

A violation of any condition of approval of a permit subject to a variance shall constitute grounds for termination of the variance.

Variance Requested From MCWD Rule(s):

- Erosion Control
- Floodplain Alteration
- Wetland Protection
- Shoreline & Streambank Stabilization

- Waterbody Crossings & Structures
- Stormwater Management
- Appropriations
- Illicit Discharge

Provision(s) and Requirement(s) of the Rule(s):

Rule 3.(g) - Shall provide for minimum clearance of 3 feet below the bed of a waterbody and a minimum setback of 100 feet from any stream bank for pilot, entrance, and exit holes, for projects involving horizontal directional drilling.

Requested Variance:

Requesting to reduce the minimum setback of 100' due to confined space.

Please complete the below narrative to be used as the variance justification that will be considered by the Board of Managers. Please note that economic hardship is not grounds for issuing a variance.

Describe the special conditions inherent to the property and how strict compliance with the rule will cause an undue hardship.

The north side of the channel has 33' between the channel and the building being constructed at 1948 Wayzata Blvd. The south side of the channel has 75' between the channel and the utility pole holding the overhead fiber line that will be tied into.

Describe how the special condition was not created by the applicant, the representative, or a contractor.

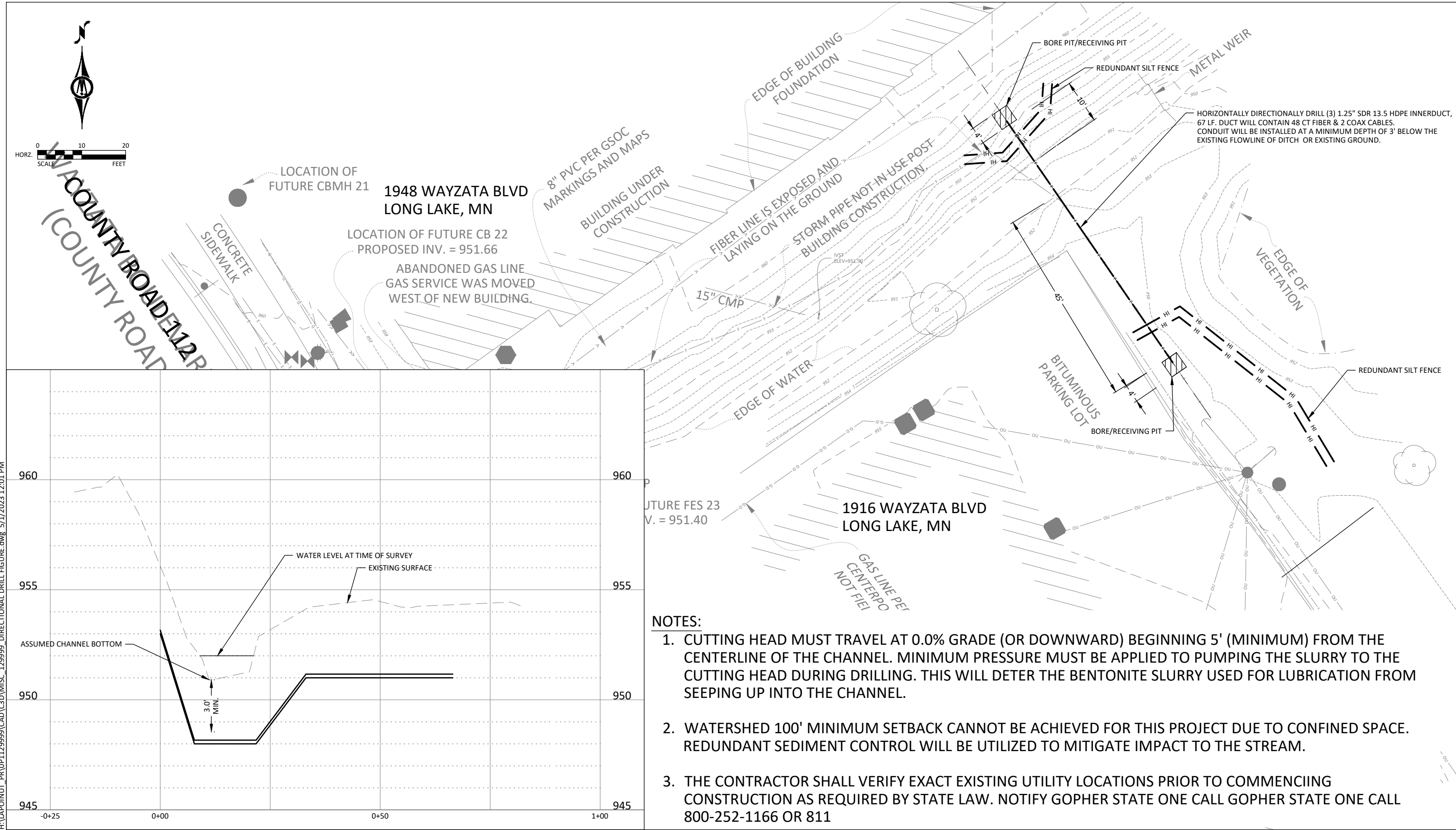
The proposed utility line will be a minimum of 3' below the bottom of the channel and redundant erosion and sediment control practices will be utilized to prevent negative impact to the channel.

Provide a minimum of two alternatives that were considered and why they were rejected to demonstrate that there is no feasible and prudent alternative to the proposed activity requiring the variance.

1. Construct a utility pole on north side of channel to have fiber line cross channel in air. This option requires more maintenance to ensure trees in area don't damage the lines.
2. Leave the cable crossing the channel at the surface. This poses a high risk of the line being damaged through nature or people.

Referring to the Policy of the Rule(s), describe how the intent of the rule(s) will be met.

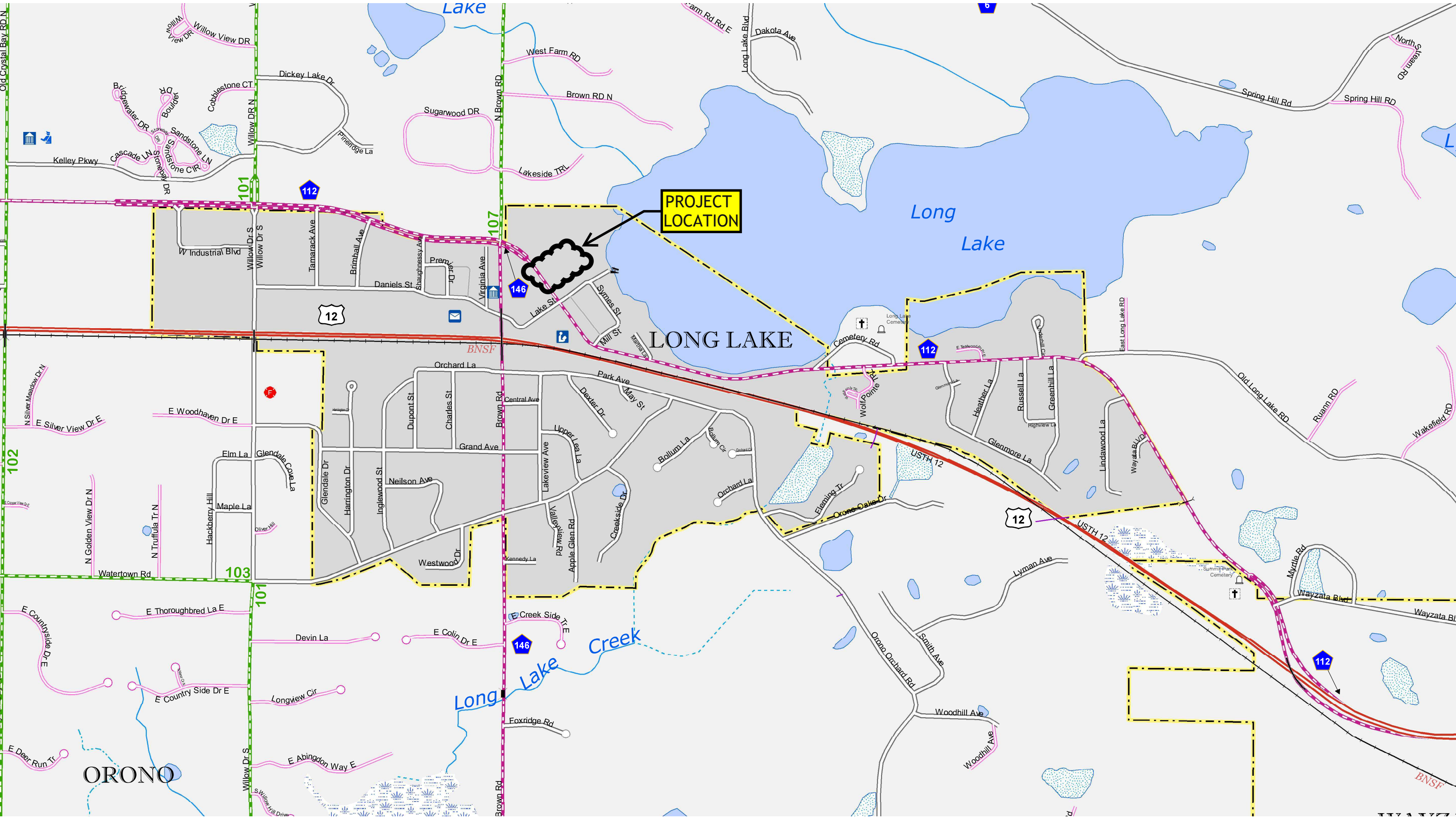
The proposed activity will meet the intent of rule Rule 3.g by ensuring the vertical separation between the channel and the boring will maintain at least 3', and the boring pits will not negatively impact the channel through the use of redundant silt fence between the boring pits and the channel.



NOTES:

1. CUTTING HEAD MUST TRAVEL AT 0.0% GRADE (OR DOWNWARD) BEGINNING 5' (MINIMUM) FROM THE CENTERLINE OF THE CHANNEL. MINIMUM PRESSURE MUST BE APPLIED TO PUMPING THE SLURRY TO THE CUTTING HEAD DURING DRILLING. THIS WILL DETER THE BENTONITE SLURRY USED FOR LUBRICATION FROM SEEPING UP INTO THE CHANNEL.
2. WATERSHED 100' MINIMUM SETBACK CANNOT BE ACHIEVED FOR THIS PROJECT DUE TO CONFINED SPACE. REDUNDANT SEDIMENT CONTROL WILL BE UTILIZED TO MITIGATE IMPACT TO THE STREAM.
3. THE CONTRACTOR SHALL VERIFY EXACT EXISTING UTILITY LOCATIONS PRIOR TO COMMENCIING CONSTRUCTION AS REQUIRED BY STATE LAW. NOTIFY GOPHER STATE ONE CALL GOPHER STATE ONE CALL 800-252-1166 OR 811

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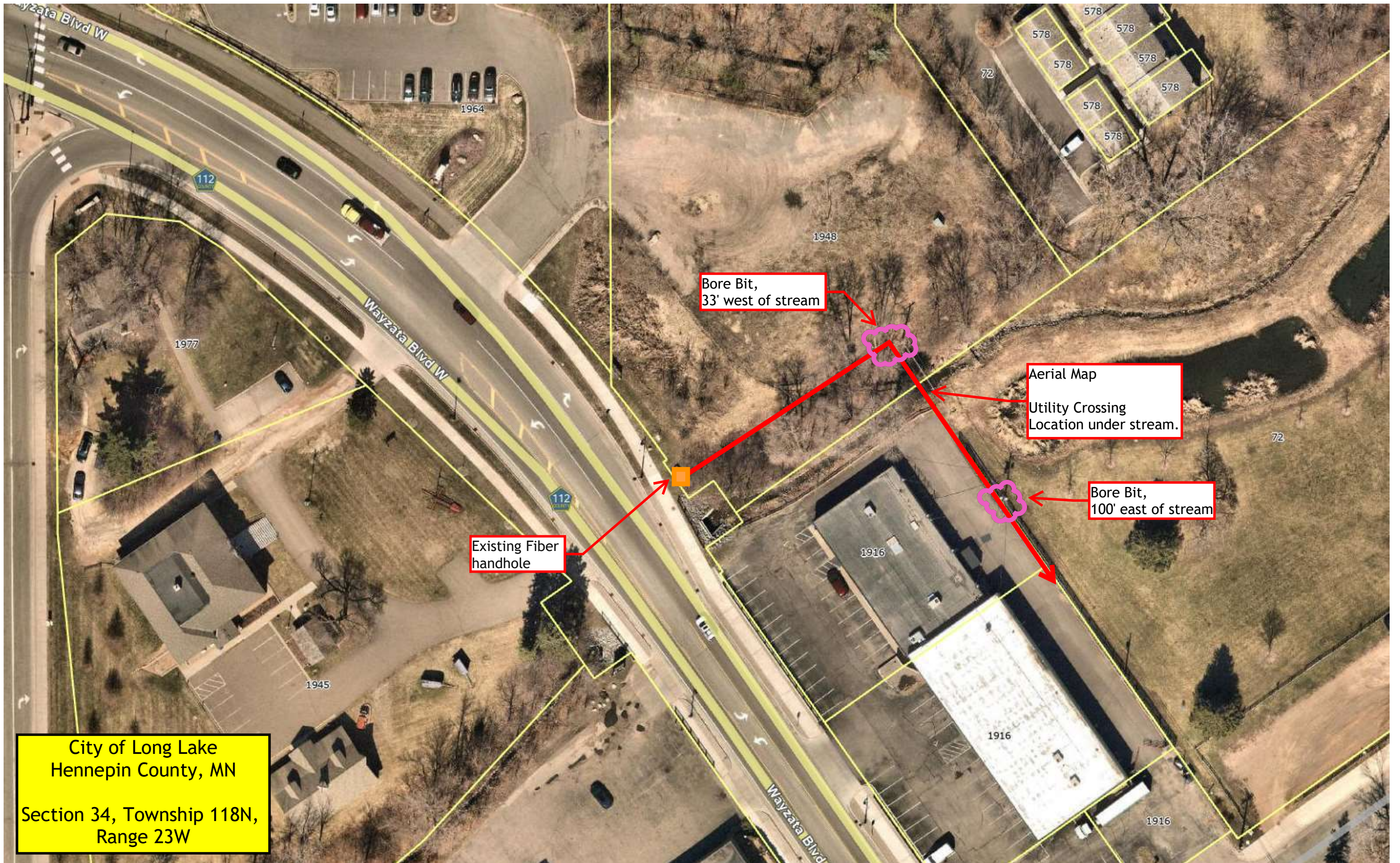
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Bore Bit,
33' west of stream

Aerial Map
Utility Crossing
Location under stream.

Bore Bit,
100' east of stream

Existing Fiber
handhole

City of Long Lake
Hennepin County, MN
Section 34, Township 118N,
Range 23W

Alternative Route Option #1



Alternative Route Option #2

