

**PERMIT REPORT**

To: Board of Managers

From: Cole Thompson, Permitting Technician

Date: August 9, 2018

Re: Permit 18-362: 15500 Minnetonka Boulevard, Minnetonka

Recommendation:

Approval of MCWD permit application on the following conditions:

1. Resubmittal of a wetland buffer monument plan
2. Submission for MCWD approval of a draft declaration for the maintenance and monitoring of wetland buffers
3. Submission of a 5-year maintenance and monitoring plan for the proposed buffer restoration
4. Submission of financial assurance for Wetland Protection (\$5,000)

Summary:

Steven Arundel (Applicant) has applied for a Minnehaha Creek Watershed District Permit for a 3-lot subdivision of an 11.5-acre property in Minnetonka. The project triggers MCWD's Wetland Protection rule, and meets the buffer requirements of the rule on two of the three lots; a shortfall from buffer width on the third lot is the subject of a variance request. The Board of Managers is asked to consider the variance request.

Background:

The Applicant is proposing a 3-lot subdivision on the property located at 15500 Minnetonka Boulevard in the City of Minnetonka. A single family home is currently located on the property and will remain as one of the three lots. A Type 3 Shallow Marsh wetland has been delineated on the property and approved under a Notice of Decision issued by the City of Minnetonka on July 19, 2017. The City is the Local Government Unit for the Wetland Conservation Act. A wetland buffer is not currently declared to the property. The subdivision triggers the District's Erosion Control, Stormwater Management, and Wetland Protection rules. The City of Minnetonka exercises sole regulatory authority for Erosion Control and Stormwater Management. The District implements the Wetland Protection rule within the City of Minnetonka which includes buffer requirements. The District's Wetland Protection rule is applied to the proposed subdivision because the work triggers the Stormwater Management Rule. The wetland rule

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requires that a wetland buffer must be provided for the wetland on each property downgradient of disturbance. The rule analysis summarizes the application of the Wetland Protection rule and the variance request from the applicant.

District Rule Analysis:

Wetland Protection Rule

The proposed 3-lot subdivision triggers the District's Stormwater Management rule even though the City of Minnetonka in fact exercises regulatory authority for stormwater management. The Stormwater Management Rule is triggered by the subdivision into three or more lots of a property one acre or large; under 5(a) of the Wetland Protection Rule, work triggering the Stormwater Rule must comply with the buffer provisions of the Wetland Protection Rule. The buffer provision of the Wetland Protection Rule is triggered whenever the Stormwater Management Rule is applied to a project and buffers must be provided downgradient of disturbance. No disturbance – draining, filling or excavation of the wetland on the property – is proposed. The wetland on site is a Preserve wetland according to the District's Functional Assessment of Wetlands. According to Section 6 of the Wetland Protection rule, the base buffer width to be applied to the subdivision is 75 feet and not to be reduced less than a minimum buffer width of 67 feet. The Applicant has demonstrated that the average buffer slope is 5-percent. Per Section 6(b)(1) of the rule, the Base Buffer Width may be reduced 2 feet for every five percent decrease from 20%, therefore the Buffer may be reduced by 6 feet. Additionally, the Applicant has demonstrated that the predominant buffer soil condition is classified as Hydrologic Soil Group A. Per Section 6(b)(2), the Base Buffer Width may be reduced 2 feet for every grade above Type D, therefore the Buffer may be reduced by an additional 6 feet. Since the total reduction would result in an Applied Buffer Width of 63', the Minimum Applied Buffer Width of 67 feet is applied.

The Applicant is utilizing Buffer Averaging per section 6(c) to meet the District's buffer requirements for lots 2 and 3 of the subdivision. The required buffer width has been demonstrated on lots 2 and 3 of the subdivision and meets the District's wetland protection rule.

Variance

The Applicant is requesting a Variance to the required buffer width for Lot 1. As the driveway and home were built in 2007 before MCWD enforced wetland buffers to single family homes, The Applicant proposes to provide a buffer an averaged buffer width of 25' which does not meet the minimum buffer width or buffer averaging requirements for the subdivision. The provided buffer would present a 10,250 square foot shortfall in buffer area. The District's Variance and Exception Rule states that the Managers may grant a variance from a provision of the rules if the applicant demonstrates the following:

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- 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 a District rule will cause undue hardship to the applicant;
- The hardship was not created by the applicant, its owner or representative, or a contractor. Economic hardship is not grounds for issuing a variance;
- Granting the variance will not serve merely as a convenience to the applicant;
- There is no feasible and prudent alternative to the proposed activity requiring the variance; and
- Granting the variance will not impair or be contrary to the intent of the rules.

The District allows for Buffer Averaging to meet the required total area of buffer width if the minimum width (at least 50% of the base buffer width) is maintained; buffer exceeding 200% of the base buffer width does not accrue toward compliance with the total-area requirement. The Applicant has requested a variance from the minimum buffer width requirement to allow the existing home to remain while providing a buffer with an averaged width of 25'. The minimum width for this project is 33.5'. The minimum width proposed is 20' therefore there would be a 13.5' shortfall of buffer width adjacent to the existing driveway on lot 1. As the rule is written the subdivision is required to provide 46,400 square feet of buffer. As proposed the subdivision would provide 36,150 square feet.

The proximity of the home on lot 1 to the wetland is a special condition inherent to the property. The District has no record of permitting for the construction of the home in 2007. At the time of construction the District did not apply wetland buffers to single family homes. Strict compliance with the rule would require relocation of the existing home and driveway.

Staff concurs in the factual statements and technical justifications stated above and in the variance application. Accordingly, staff finds there is an adequate technical basis and justification to grant the requested variance.

Conclusion:

Steven Arundel has applied for an MCWD permit for Wetland Protection and applied for a variance from the minimum buffer width requirement of the Wetland Protection rule for Lot 1. Lot 1 as proposed would reduce the applied minimum buffer width from 33.5' to an averaged width of 25'. Lot 2 and lot 3 as proposed meet the requirements of the rule. The permit application is currently incomplete. If the Board of Managers grants the variance, staff recommends delegation of final permitting authority to staff to allow staff to issue the permit.

Attachments:

1. Application Form
2. Variance Request

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3. Site Plan
4. Wetland Delineation diagram

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Print Form

WATER RESOURCE PERMIT APPLICATION FORM

Use this form to notify/apply to the Minnehaha Creek Watershed District (MCWD) of a proposed project or work which may fall within their jurisdiction. Fill out this form completely and submit with your site plan, maps, etc. to the MCWD at: 15320 Minnetonka Blvd. Minnetonka, MN 55345.

Keep a copy for your records.

YOU MUST OBTAIN ALL REQUIRED AUTHORIZATIONS BEFORE BEGINNING WORK.

1. Name of each property owner: Steve Arundel
Mailing Address: 15500 Minnetonka Boulevard City: Minnetonka State: MN Zip: 55345
Email Address: scott@briteair.com Phone: 952-334-4621 Fax: _____

2. Property Owner Representative Information (not required) (licensed contractor, architect, engineer, etc...)
Business Name: Sathre-Bergquist, Inc. Representative Name: Dan Schmidt
Business Address: 150 South Broadway City: Wayzata State: mn Zip: 55391
Email Address: schmidt@sathre.com Phone: 952-476-6000 Fax: none

3. Project Address: 15500 Minnetonka Boulevard City: Minnetonka
State: MN Zip: 55345 Qtr Section(s): 31(SW) Section(s): 16 Township(s): 117 Range(s): 22
Lot: _____ Block: _____ Subdivision: Unplatted PID: 1611722310004

4. Size of project parcel (square feet or acres): 11.5 acres
Area of disturbance (square feet): 43000 Volume of excavation/fill (cubic yards): 4,000
Area of existing impervious surface: 25,500 sf Area of proposed impervious surface: 31,650
Length of shoreline affected (feet): N/A Waterbody (& bay if applicable): N/A

5. Type of permit being applied for (Check all that apply):
 EROSION CONTROL WATERBODY CROSSINGS/STRUCTURES
 FLOODPLAIN ALTERATION STORMWATER MANAGEMENT
 WETLAND PROTECTION APPROPRIATIONS
 DREDGING ILLICIT DISCHARGE
 SHORELINE/STREAMBANK STABILIZATION

6. Project purpose (Check all that apply):
 SINGLE FAMILY HOME MULTI FAMILY RESIDENTIAL (apartments)
 ROAD CONSTRUCTION COMMERCIAL or INSTITUTIONAL
 UTILITIES SUBDIVISIONS (include number of lots)
 DREDGING LANDSCAPING (pools, berms, etc.)
 SHORELINE/STREAMBANK STABILIZATION OTHER (DESCRIBE): _____

7. NPDES/SDS General Stormwater Permit Number (if applicable): N/A

8. Waterbody receiving runoff from site: Wetland

9. Project Timeline: Start Date: 10/01/2018 Completion Date: 11/15/2019

Permits have been applied for: City County MN Pollution Control Agency DNR COE
Permits have been received: City County MN Pollution Control Agency DNR COE

By signing below, I hereby request a permit to authorize the activities described herein. I certify that I am familiar with MCWD Rules and that the proposed activity will be conducted in compliance with these Rules. I am familiar with the information contained in this application and, to the best of my knowledge and belief, all information is true, complete and accurate. I understand that proceeding with work before all required authorizations are obtained may be subject to federal, state and/or local administrative, civil and/or criminal penalties.

Stephen D. Arundel 8/6/18
Signature of Each Property Owner Date

**Request for Variance
And
Statement of Hardship**

The Board of Managers may hear requests for variances from the literal provisions of these rules in instances where their strict enforcement would cause 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 be keeping with the spirit and intent of these rules. An applicant granted a variance from full compliance with a requirement of the rules will be required to meet the requirement to the degree feasible short of full compliance.

In order to grant a variance, the Board of Managers shall determine that:

- the special conditions which apply to the structure or land in question do not apply generally to other land or structures in the District
- the granting of such variance will not merely serve as a convenience to the applicant,
- the variance will not impair or be contrary to the intent of these rules.

A hardship cannot be created by the landowner, the landowner's agent or representative, or a contractor, and must be unique to the property. Economic hardship are not grounds for issuing a variance.

A variance shall become void one year after it is granted if not used.

A violation of any condition set forth in a variance shall be a violation of the District rules and shall automatically terminate the variance.

Date 06/12/2018

Permit # 18-362

Applicant STEVE ARUNDEL

Address 15500 Minnetonka Blvd.

Telephone number 952-334-4621

Property ID number 1611722310004

MCWD Rule (circle applicable rule(s)): A B C D E F G J K M N

Description of project:

The subdivision of one existing lot into three proposed lots. The three lots will be served by a private drive.

Requirements of rule(s)

Wetland Protection Rule.

MCWD Buffer for Preserve Wetland - 75 feet.

(1) For every 5 percent decrease in average buffer slope from 20 percent, the Base Buffer Width may be reduced 2 feet.

Existing slope is 5% so there is 6 feet buffer reduction.

(2) For every grade of Hydrologic Soil Group above Type D for the predominant buffer soil c

The MCWD Buffer shall be 67 feet.

Requested Variance

We are requesting a variance from the 67 foot buffer to a 25 foot buffer for the existing lot for the existing home. The existing home was built in approximately 2007, prior to the current wetland buffer rules. We proposed to meet the new Minnehaha Creek Watershed District Rules for the two new lots (Lots 2 and 3). See Proposed Wetland Buffer Averaging Plan

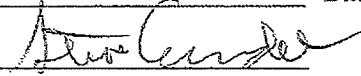
Statement of Hardship (include any mitigating circumstances).

Our hardship and mitigating circumstance is that the existing home is already constructed inside of the new buffer. The existing home was constructed prior to the current Minnehaha Watershed District Rules.

How do you propose to meet the requirements of the applicable MCWD rules?

We meet all MCWD rules except the Buffer rules for the existing home.

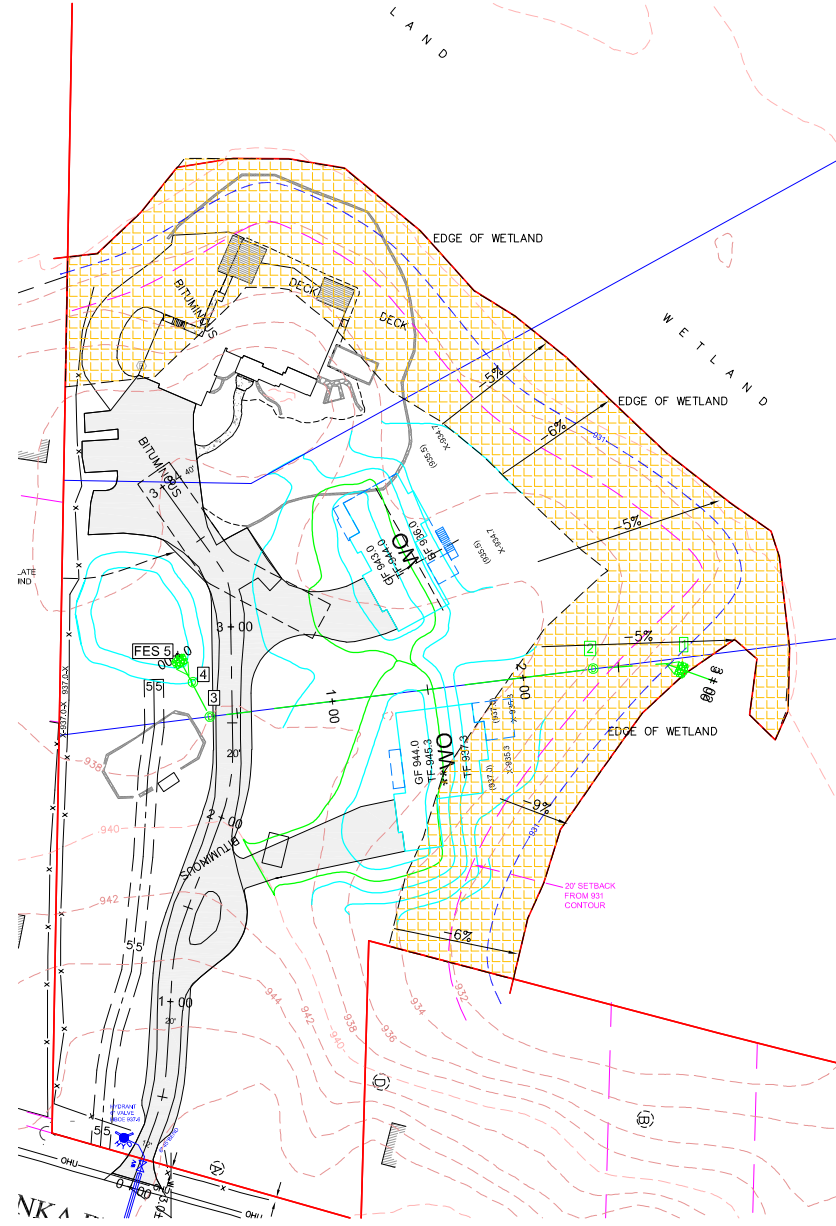
Applicant name: Steve Arundel Date: 6/12/2018

Applicant signature: 

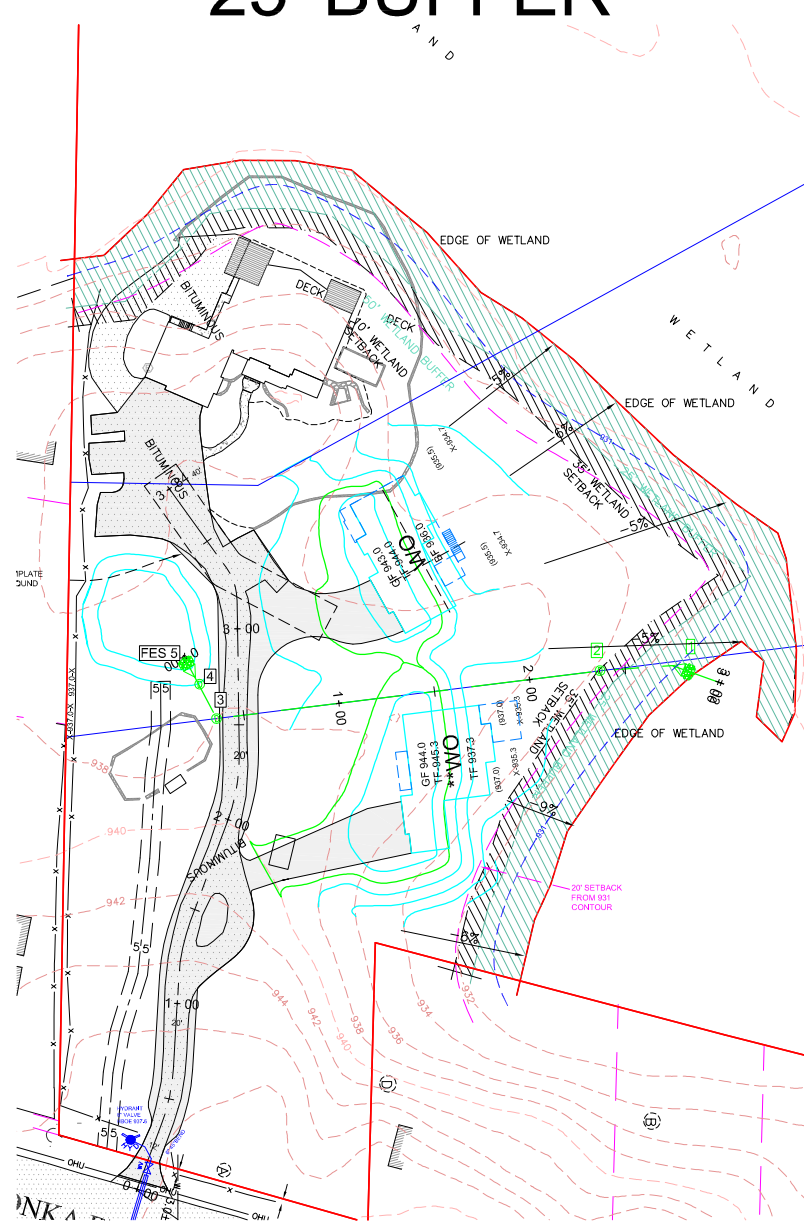
Staff Recommendation (For staff use only) Approve

MCWD 67' BUFFER

46,400 SF

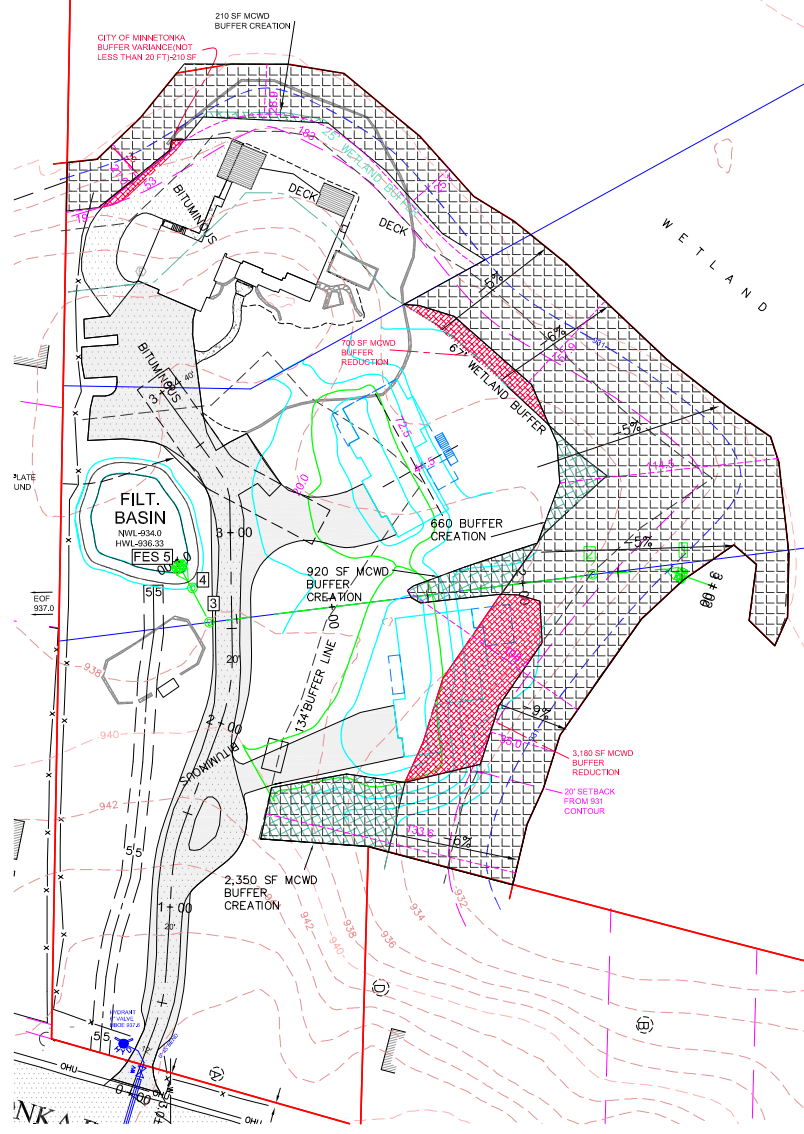


MINNETONKA 25' BUFFER



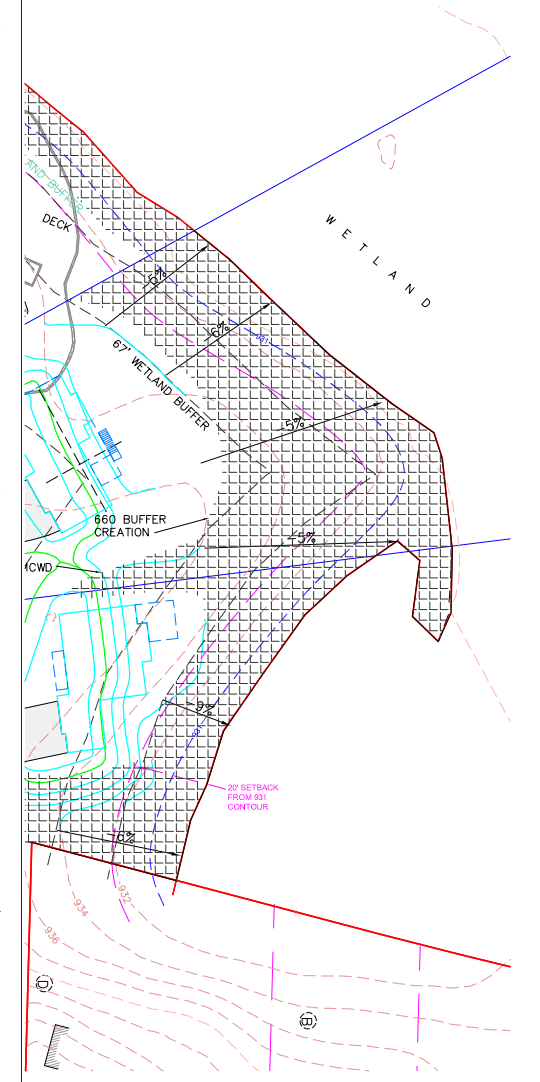
BUFFER AVERAGING

(35 FT MIN., 134 FT MAX.)
 3,930 SF WETLAND BUFFER CREATION
 3,880 SF OF WETLAND BUFFER REDUCTION



SLOPE AVERAGE CALCULATION

AVERAGE -6%



BUFFER RULES

MCWD Buffer - 75 feet.

For every 5 percent decrease in average buffer slope from 20 percent, the Base Buffer Width may be reduced 2 feet. Existing slope is 6% so there is 4 feet buffer reduction.

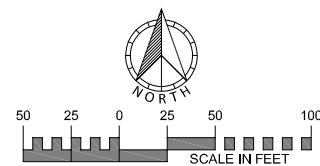
For every grade of Hydrologic Soil Group above Type D for the predominant buffer soil condition, the Base Buffer Width may be reduced 2 feet. According to the NRCS maps, the majority of the site is Type A soils so there is 6 feet in buffer reduction.

The minimum applied buffer is 67 feet. Minimum Buffer Average is 33.5 feet and the maximum buffer is 134 feet.

City of Minnetonka

- 35 foot wetland setback for the homes (there is a reduced setback to 25 feet allowed for uncovered and unenclosed decks and patios as well as cantilevered building areas, but they cannot extend into the buffer)
- 25 foot wetland buffer. A wetland buffer variance would be required down to no less than 20 feet in the location of the existing drive (and then immediately widened to 25 feet outside the drive location -

MCWD buffers will apply.

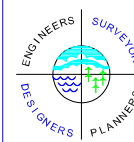


DRAWING NAME	NO.	BY	DATE	REVISIONS
AA BASE	04	DLS	04/09/2018	REVISIONS AS PER CITY STAFF
DRAWN BY	05	DLS	05/09/2018	REVISIONS TO BUFFERS AND WATERMAIN
DLS	06	DLS	06/08/2018	FINAL PLANS
CHECKED BY	07	DLS	07/24/2018	MCWD REVISIONS
DLS	08	DLS	08/03/2018	ADDED BUFFER WIDTHS
DATE				
10/23/2017				

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I HEREBY CERTIFY THAT THIS PLAN OR SPECIFICATION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

Daniel L. Schmidt
 Daniel L. Schmidt, P.E.
 Date: 10/23/2017 Lic. No. 26147



SATHRE-BERGQUIST, INC.
 150 SOUTH BROADWAY WAYZATA, MN. 55391 (952) 476-6000

CITY PROJECT NO.
 --
MINNETONKA, MINNESOTA

MCWD BUFFER AVERAGING PLAN

ARUNDEL ADDITION
 SCOTT ARUNDEL

FILE NO.
 10063-001

3

3

Table 3. Delineated Wetland Size and Type, 15500 Minnetonka Blvd. Minnetonka, MN

Wetland ID	Wetland Area	Wetland Type		
		Circ. 39	Cowardin Class.	Eggers & Reed
A	8.23 Ac. (358,499 S.F.)	Type 3	PEMC	Shallow Marsh

Legend

- Wetland Flag
- Sample Point
- Upland
- Wetland
- ↑ Photo Location
- Wetland Delineation
- Wetland Delineation-Post TEP
- - - Approximate Wetland Boundary (Not Delineated)
- ▭ Project Area



S:\Projects\20000 PROJ\20300-20399\20355 15500 Minnetonka Blvd\15500 Minnetonka Blvd\Docs\Post_TEP\20255 W.D. Figsr_6 - Wetland Delineation Map- Revised.mxd



PN: 17-20355
 Source(s):
 Orthophoto (USDA, NAIP, 2015)
 Wetland Delineation (ISG, 2017)



0 37.5 75 150 Feet
 1 inch = 150 feet

Thursday, July 20, 2017

Figure 6
Wetland Delineation Map-Post TEP
 15500 Minnetonka Blvd
 Minnetonka, Hennepin County, Minnesota