

Permit Application No.: 16-169

Rules: Erosion Control, Floodplain Alteration, Waterbody Crossings & Structures, Wetland Protection, and Exception

Applicant: Minnehaha Creek Watershed District (on behalf of Dean and Dawn Mooney)

Project: Johnson Cattle Crossing Repair

Location: 6165 County Road 6, Independence

Received: 4-14-16

Complete: 4-14-16

Noticed: 4-14-16

Noticed: 8-17-16

Recommendation:

Approval of Erosion Control, Floodplain Alteration, Waterbody Crossings and Structures, Wetland Protection, WCA –No Loss Decision and Exception as outlined in this report

Summary:

Minnehaha Creek Watershed District, on behalf of Dean and Dawn Mooney, has proposed a farm road reconstruction project that will trigger the District's Erosion Control, Floodplain Alteration, Waterbody Crossings & Structures, and Wetland Protection rules. The project as proposed meets applicable requirements under each of these District rules. Staff recommends approval of this application with the conditions provided above.

Background:

The Minnehaha Creek Watershed District (the District), on behalf of Dean and Dawn Mooney, has applied for a Minnehaha Creek Watershed District permit for Erosion Control, Floodplain Alteration, Waterbody Crossings & Structures, and Wetland Protection for the repair of an existing cattle crossing within Painter Creek, located at 6165 County Road 6 in the City of Independence (Attachment 1).

The existing cattle crossing at the Mooney property was assessed as part of a review of flooding damage that occurred as a result of unusually wet weather in the Spring-Summer of 2014. The inspection performed revealed the crossing had partially washed out at the crossing of Painter Creek and had almost completely washed out at the wetland crossing. In an effort to re-establish the existing crossing, the District Engineer recommended that the original road footprint would need to be replaced with the same character of fill as originally constructed (rip-rap and clay). Additionally, the new cross section is designed to have a high-flow crossing to provide an armored flow path for rates between the 10-yr and 100-yr flow periods (Attachment 2).

The District had permitted repair of this cattle crossing in 2008 under the District's erosion control rule (08-305) and Wetland Conservation Act (WCA) exemption 8420.0122 Subp. 5 (Attachment 3). As part of the 2008 design, crushed rock was used as the surface material across the high-flow area. Over time, this material was washed away during high-flows, contributing to the degradation of the structure. To remedy this issue, the proposed design utilizes concrete slabs in the over-flow area in order to resist wash-out and maintain the function and integrity of the crossing structure.

The District is pursuing the redesign and replacement of this road in collaboration with the property owners as part of a Land Conservation initiative, in which the District will repair the cattle crossing in exchange for conservation easements over proximate land interests. This conservation easement provides MCWD access to manage and maintain vegetation within the boundaries of the easement which includes 350-acres across 8 properties. In addition to vegetation maintenance, this easement also includes the maintenance of the proposed cattle crossing in accordance with MCWD's duty as the drainage authority pursuant to Minnesota Statutes chapter 103E, to the extent of such a duty, and otherwise for a period of 5 years from the date reconstruction is complete. The crossing repair and easement conveyance were authorized by the Board of Managers under Resolution 16-041 (Attachment 4).

Erosion Control:

The District exercises regulatory authority for erosion control in the City of Independence.

The District's Erosion Control rule is applicable for any project exceeding 5,000 square feet of land disturbance or 50 cubic yards of excavation. Because the proposed project involves approximately 475 cubic yards of fill within

the City of Independence, the rule is triggered. Erosion control practices include the use of geotechnical material beneath the proposed rip rap, native seeding, and erosion control blanket for stabilization.

The erosion and sediment control practices proposed for the project meet District standards.

Floodplain Alteration:

The District exercises regulatory authority for Floodplain Alteration in the City of Independence.

The District's Floodplain Alteration rule is triggered for any project proposing disturbance below the projected 100-year high water elevation of a waterbody. The proposed project involves disturbance below the 100-year high water elevation of Painter Creek within the City of Independence, therefore, the rule is triggered. The rule requires that such activity not result in an increase of the 100-year high water elevation of the waterbody. All fill and grade stabilization within the floodplain is provided to replace existing floodplain fill that was lost to scour or prolonged inundation during the 2014 flood. As the project replaces previously existing fill, the volume of which can be verified through records in MCWD's possession, and the proposed grading and fill within the floodplain will not cause a net decrease in storage capacity, nor will it cause an increase in the upstream or downstream 100-year flood elevation, staff reasons the purposes and intent of the rule are met without requiring the applicant to provide flood storage compensation for the volume "gained" in the 2014 event.

New structures are not proposed as part of this project, therefore Section 3(f) does not apply to this project.

The proposed project conforms to all applicable criteria of the District's Floodplain Alteration rule.

Waterbody Crossings & Structures:

The District exercises regulatory authority for Waterbody Crossings & Structures in the City of Independence

The District's Waterbody Crossings & Structures rule is applicable for any project proposing a road, highway, utility, or associated structure in contact with the bed or bank of a waterbody. The proposed project involves repairing an existing road crossing within Painter Creek, therefore, the rule is triggered.

Currently, the cattle crossing uses an eight-foot culvert to convey the flow of Painter Creek underneath the farm road. An initial analysis showed that the culvert is undersized compared to upstream and downstream crossings. The crossing was designed so that 100-yr flows and above will not top the entire road. The 16 foot wide high-flow crossing will provide an alternate flow path and keep surface flows below 3 ft/second. The project does not propose changes to the existing culvert size, length, or invert elevations. The applicant has demonstrated that the addition of the over-flow section will maintain the creek's hydraulic capacity under Section 3(b) of the rule. Additionally, the project will not adversely affect water quality as the crossing will limit further sediment erosion by re-establishing the crossing and installing concrete slabs as opposed to gravel at the high-flow section.

The Waterbody Crossings and Structures rule requires that two alternatives be analyzed in order to evaluate minimal impact design standards. Initially, an alternate crossing was examined upstream of the current crossing, located on the northeastern portion of PID #3511824240002. This crossing would be a completely new impact and would result in wetland fill. In order to avoid wetland impacts at this crossing location, the design would need to have been a board walk which spanned approximately 500-linear feet of wetland. This design was not found to be appropriate for cattle crossing. A no-build alternative was also evaluated, and would result in the cattle continuing to cross through low-flow areas and continue to cause erosion of the remaining road and channel. The proposed design was found to be the minimal impact solution as it utilizes the existing road footprint and culvert, it proposes hard armoring in order to limit further erosion of the road, incorporates a high-flow design so that water will pass over concrete slabs as opposed to over-topping the road.

Paragraph 3(a) requires that a crossing in the bed or bank of a public water such as Painter Creek must meet a demonstrated public benefit. Painter Creek is also a legal public ditch. Under Minnesota Statutes chapter 103E, the owner of property through which a ditch traverses is entitled to maintain crossings that ensure continued hydraulic capacity of the ditch. That is, the chapter evidences a legislative determination that a landowner may maintain a crossing to facilitate use of his property, as long as the crossing ensures the continued hydraulic capacity of the system. This project serves to maintain the hydraulic capacity of the ditch while also improving the crossing design to limit continued erosion of sediment into the waterbody.

The crossing repair does not limit or restrict wildlife from navigating through and across Painter Creek.

The proposed project conforms to all applicable criteria of the District's Waterbody Crossings and Structures Rule.

Wetland Protection

The District exercises regulatory authority for Wetland Protection and is the WCA Local Government Unit (LGU) in the City of Independence.

The District's wetland protection rule is applicable for any project proposing to drain, fill, or excavate a wetland. The proposed project involves the replacement of 475-cubic yards of fill across 0.12-acre, therefore, the rule is triggered. The existing crossing is within a Public Water Wetland. Regulation of public water wetlands is not within the purview of the WCA and they are regulated by the Minnesota Department of Natural Resources (DNR), however the DNR has waived its jurisdiction to WCA for this project.

Pursuant to Section 2(a) of the District's Wetland Protection rule incorporates exemptions and no-loss criteria as set forth by WCA. The applicant has applied for a No-Loss decision under WCA 8420.0415 Subpt. A for 0.12-ac of fill associated with replacing the existing road. Aerial images and pictures submitted by the applicant show that the area identified as wetland impact previously existed as the dirt road. Since the project is replacing this footprint and does not propose to exceed the previous limits of the road, it will not result in wetland impact. The No-Loss Notice of Decision is drafted and attached for Board consideration and approval (Attachment 5).

Exception:

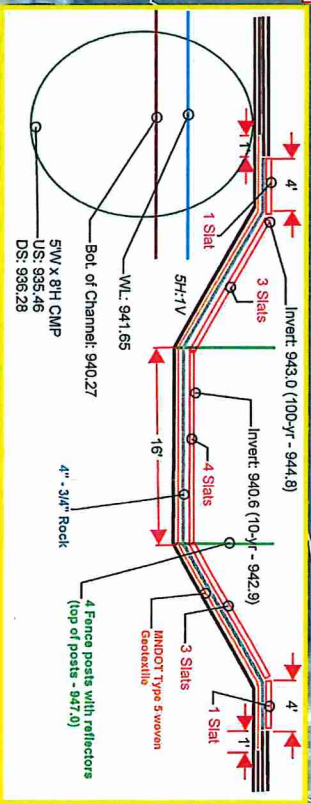
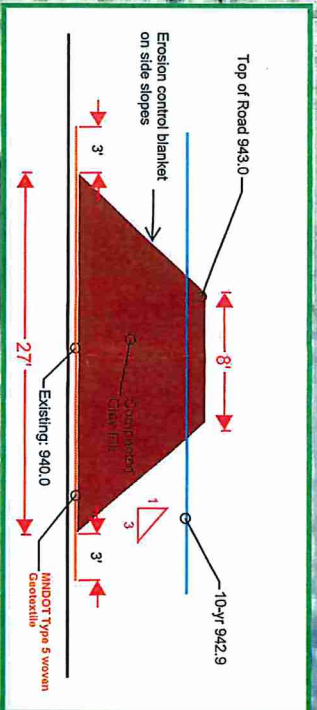
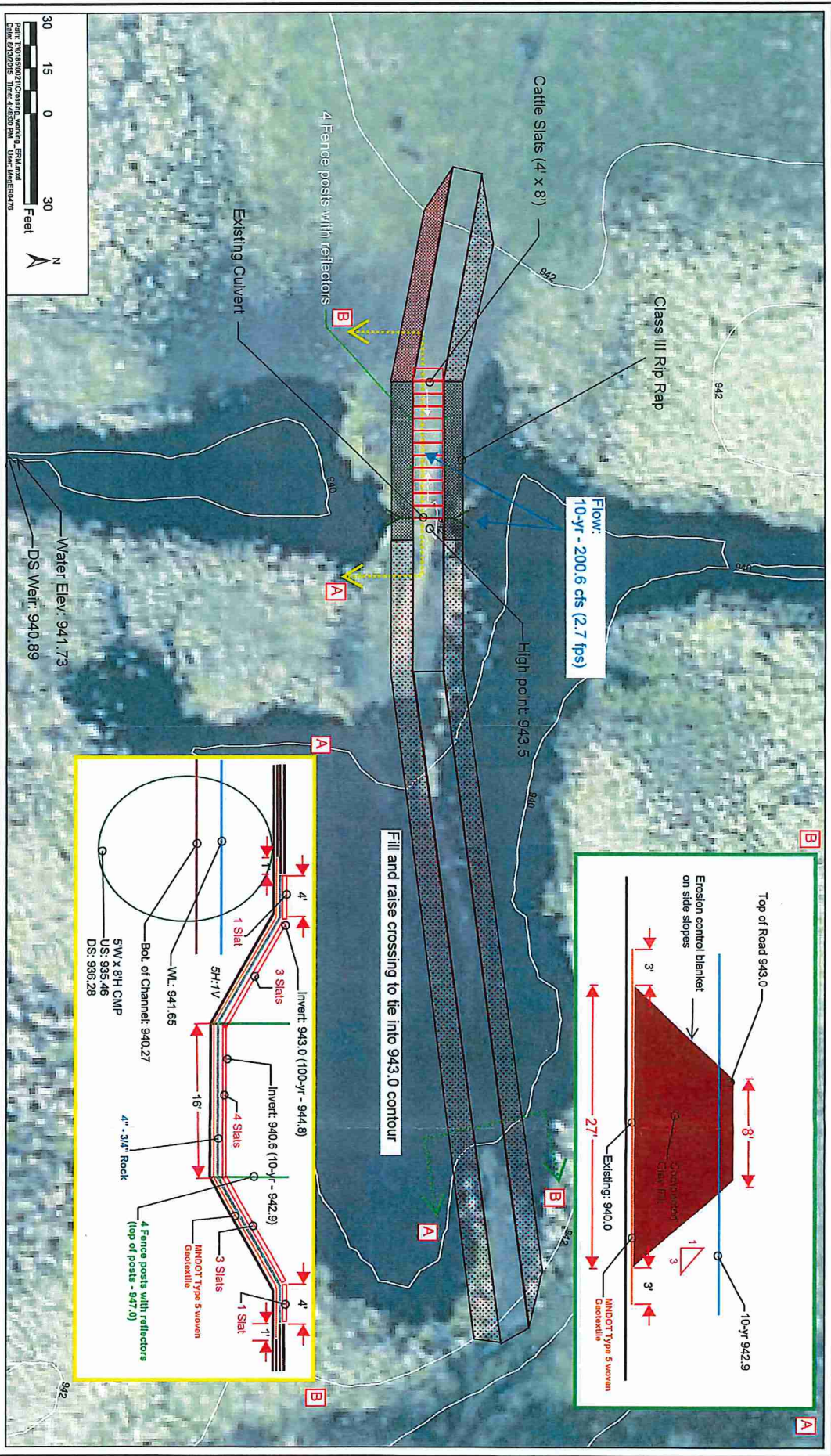
Projects that trigger the District's Waterbody Crossings and Structures rule also trigger the Buffer Provision of the District's Wetland Protection rule. The proposed cattle crossing is within a Preserve Wetland as classified by the District's Functional Assessment of Wetlands and requires a 75-foot buffer. The Conservation Easement provides protection over 350-acre of land on 8 parcels, including the Mooney property on which the crossing is located (Attachment 6). The easement (944 Contour Easement as shown on Attachment 6) restricts the landowners from construction of permanent or temporary structures, the installation of utilities, surface alteration, soil and water degradation, placement of fill, and vegetation removal. These are the same restrictions provided by the typical Buffer Declaration that would be required by the District. The executed Easement provides upland and wetland protection over a much larger area of the natural resource than if the buffer rule was simply applied to the Mooney Property.

Staff recommends approval of the Notice of Decision for No-Loss and the exception which utilizes the Conservation Easement in place of a typically required wetland buffer declaration.

Attachments:

1. Location Map
2. Site Plan
3. MCWD Permit 08-305 and WCA Decision W08-33
4. MCWD Board Resolution 16-041
5. W16-45 Draft Notice of Decision
6. Easement Map





MINNEHAHA CREEK WATERSHED DISTRICT
 Painter Creek Cattle Crossing Overview

RECEIVED
 APR 14 2016
 By: _____

WENCK ASSOCIATES
 Responsive partner. Exceptional outcomes.

FEB 2016
 Figure 1


Minnehaha Creek Watershed District

IMPROVING QUALITY OF WATER, QUALITY OF LIFE

Pursuant to Minnesota Statutes Chapter 103D, and on the basis of statements and information contained in the permit application, correspondence, plans, maps, and all other supporting data submitted by the applicant, and made a part hereof by reference, PERMISSION IS HEREBY GRANTED to the applicant named below for use and development of land in the Minnehaha Creek Watershed District.

Issued to:	Marv Johnson & Carole Mooney	Permit No:	08-305
Location:	6330 County Rd 6, Minnetrista		
Purpose:	Rule B: Erosion Control		
Date of Issuance:	11/26/2008	Date of Expiration:	11/26/2009

By Order of the Board of Managers


Becky Houdek
District Technician

This permit is not transferable without District approval, and is valid to the date of expiration. No activity is authorized beyond the expiration date. If the permittee requires more time to complete the project, an application for renewal of the permit must be received by the District at least 30 days before expiration.

The applicant is responsible for compliance with all District Rules and for the action of their representatives, contractors, and employees.

Conditions: Project to be completed as described in plans submitted to the MCWD office on November 12, 2008 according to the provisions of this permit.

- Properly install and maintain all required MCWD Rule B, erosion control measures until the disturbed areas are restabilized
- When the site is restabilized and the MCWD staff has performed a final inspection, all silt fences must be removed

(Statement concerning fees for inspections, violations, etc... on following page)

The Minnehaha Creek Watershed District is committed to a leadership role in protecting, improving and managing the surface waters and affiliated groundwater resources within the District, including their relationships to the ecosystems of which they are an integral part. We achieve our mission through regulation, capital projects, education, cooperative endeavors, and other programs based on sound science, innovative thinking, an informed and engaged constituency, and the cost effective use of public funds.

Inspection/Analysis/Monitoring Fees

A site inspection and monitoring by District staff will be performed where the activity involves:

- a commercial/industrial/multi-family residential development
- a single family residential development greater than 5 acres or of any size if within the Minnehaha Creek subwatershed
- any alteration of a floodplain or wetland
- dredging within the beds, banks or shores of any protected water or wetland
- a violation
- any project which in the judgment of the District staff should be inspected due to project location, scope, or construction techniques

In these cases, the applicant shall pay to the District a fee equal to the actual costs of field inspection of the work, including investigation of the area affected by the work, analysis of the work, and any subsequent monitoring of the work, which in the case of a violation shall be at least \$35.

Standard Fee Schedule

District professional staff	\$ 51.01*
District interns	\$ 31.30*
District clerical staff	\$ 46.09*
Consulting Senior Engineer	\$ contracted rate
Consulting Engineer/Technician	\$ contracted rate
District Counsel	\$ contracted rate
Application fee	\$ 10.00
Copy costs	\$.25 + actual staff time
Color copy costs	\$ 1.00 + actual staff time
Audio tapes	\$ 20.00 each
Watershed Plan (Paper)	\$ cost of production
Watershed Plan CD	\$ 10.00 each
CIP	\$ 10.00 each

* Hourly

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**Minnesota Wetland Conservation Act
Notice of Wetland Conservation Act Decision**

Name and Address of Local Government Unit: Minnehaha Creek Watershed District

Name of Applicant: Marv Johnson/Carole Mooney
Repair

Project Name: Cattle Crossing

Application Number: W08-33

- Type of Application (check one):
- Exemption
 - No Loss
 - Replacement Plan
 - Banking Plan
 - Wetland Boundary / Type

Date of Decision: 11-7-08

- Check One:
- Approved
 - Approved with conditions (see note on page 2 regarding use of wetland banking credits)
 - Denied

Summary of Project/Decision (indicate exemption number per MN Rule 8420.0122, if applicable): Subp. 5
The landowner is proposing to repair a cattle crossing over Painter Creek. A beaver dam was constructed downstream of the previously existing cattle crossing over the creek. The presence of the dam caused impoundment of water which backed up flow upstream and caused erosion on both sides of an existing culvert within the creek. Since Painter Creek is a judicial ditch, Minnehaha Creek, the public ditch authority responded to the landowners request to remove the beaver dam. Once the beaver dam was removed, the erosion on both sides of the culvert was apparent and the landowner subsequently applied to replace the eroded material.

The repairs will consist of the placement of approximately 300 cubic yards of fill to reconstruct the previously existing, 12' wide crossing with 3:1 side slopes. The fill material will receive seed and mulch following installation to ensure adequate soil stabilization.

Pursuant to Chapter 8420.0122 Subp. 5: Wetland areas may be drained, excavated or filled if the landowner can show that the wetland was created solely by actions, the purpose of which was not to create the wetland.

Given the presence of the beaver dam downstream and the erosion that was visible in aerial photographs, the incidental exemption criteria has been met.

List of Addressees:

Landowner:
 Marv Johnson/Carole Mooney
 6330 County Road 6
 Maple Plain, MN 55359

Members of Technical Evaluation Panel:

Lynda Peterson
MN BWSR
520 Lafayette Road, 2nd Floor
St. Paul MN 55155

Stacey Lijewski
Hennepin County Environmental Services
417 N 5th St, Ste 200
Minneapolis MN 55401-3206

Reg. Env. Assess. Ecol.
Div. Ecol. Services
1200 Warner Road
St. Paul MN 55106

Jack Gleason
DNR Waters
1200 Warner Road
St. Paul MN 55106

Dept of the ACOE, St. Paul District
Attn: CO-R
190 5th St E
St. Paul MN 55101-1638

Watershed District or Watershed Management Organization (If Applicable):

Department of Natural Resources Regional Office (select appropriate office):

NW Region:	NE Region:	Central Region:	Southern Region:
Regional Director	Reg. Env. Assess. Ecol.	Reg. Env. Assess. Ecol.	Reg. Env. Assess. Ecol.
2115 Birchmont Beach Rd. NE	Div. Ecol. Services	Div. Ecol. Services	Div. Ecol. Services
Bemidji, MN 56601	1201 E. Hwy. 2	1200 Warner Road	261 Hwy. 15 South
	Grand Rapids, MN 55744	St. Paul, MN 55106	New Ulm, MN 56073

DNR TEP Representative (if different than above)

Corp of Engineers Project Manager @

Department of the Army, Corps of Engineers, St. Paul District
ATTN: CO-R, 190 Fifth Street East
St. Paul, MN 55101-1638
Individual members of the public who requested a copy, summary only

You are hereby notified that the decision of the Local Government Unit on the above-referenced application was made on the date stated above. A copy of the Local Government Unit's Findings and Conclusions is attached. Pursuant to Minn. R. 8420.0200 and 8420.0250 any appeal of the decision must be commenced by mailing a petition for appeal within thirty (30) calendar days of the date of the mailing of this Notice to the following as indicated:

Check one:

(For LGU staff decisions and decisions made without a public hearing, list name and address of LGU governing body or designated appeal body.)

(For LGU decisions made after a public hearing)

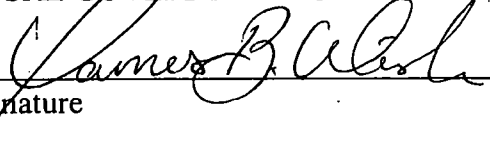
Executive Director
Minnesota Board of Water and Soil Resources
520 Lafayette Road North
St. Paul, MN 55155

NOTE: Approval of Wetland Replacement Plan Applications involving the use of wetland banking credits is conditional upon withdrawal of the appropriate credits from the state wetland bank. No wetland impacts may commence until the applicant receives a copy of the fully signed and executed "Application for Withdrawal of Wetland Credits," signed by the BWSR wetland bank administrator certifying that the wetland bank credits have been debited.

THIS DECISION ONLY APPLIES TO the Minnesota Wetland Conservation Act. Additional approvals or permits from local, state, and federal agencies may be required. Check with all appropriate authorities before commencing work in or near wetlands.

Applicant proceeds at their own risk if work authorized by this decision is started before the appeal time period has expired. If this decision is reversed or revised under appeal the applicant is responsible for all wetland impacts.

LOCAL GOVERNMENT UNIT



Signature

11-10-08

Date

James Wisker, MCWD Regulatory Program Manager

Name and Title

MEETING DATE: April 28, 2016

TITLE: Authorization to enter into an agreement for crossing repair and conveyance of easements over Painter Marsh

RESOLUTION NUMBER: 16-041

PREPARED BY: Renae Clark

E-MAIL: rclark@minnehahacreek.org

TELEPHONE: 952-641-4510

REVIEWED BY: Administrator Counsel Program Director: James Wisker
 Board Committee Engineer Other

WORKSHOP ACTION:

<input type="checkbox"/> Advance to Board mtg. Consent Agenda. action.	<input type="checkbox"/> Advance to Board meeting for discussion prior to
<input type="checkbox"/> Refer to a future workshop (date):_____ (date):_____	<input type="checkbox"/> Refer to taskforce or committee
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input checked="" type="checkbox"/> Other (specify): <u>Action</u>	

PURPOSE or ACTION REQUESTED:

Authorization to enter into an agreement for the conveyance of easements for eight parcels and the District's repair of a cattle crossing.

PROJECT/PROGRAM LOCATION:

Painter Creek Subwatershed – See attached map

PROJECT TIMELINE:

- 2015 Negotiated easement terms
- May 2016 execute easements
- May 2016 solicit quotes for reconstruction of the crossing
- Fall 2016 estimated timing for construction

PROJECT/PROGRAM COST:

Fund name and number: Project Maintenance and Land Management, 2003

Current budget: \$546,429

Expenditures to date: \$13,483

Requested amount of funding: \$14,670*

*The engineer's estimate of construction for the crossing repair is \$37,870. Because the crossing was repaired by the District in 2008, and its disrepair is due in part to recent flooding, its reconstruction is eligible for Federal Emergency Management Agency (FEMA) funding which is being coordinated by the District. FEMA has

DRAFT for discussion purposes only and subject to Board approval and the availability of funds. Resolutions are not final until approved by the Board and signed by the Board Secretary.

approved a reimbursement amount of \$23,200. The remaining funds needed for construction will be precisely known upon receipt of quotes which is scheduled to be brought for Board consideration in May 2016.

PAST BOARD ACTIONS:

- Resolution 06-025: Acting under MN Statute 103 E.701 as the public drainage authority, the MCWD Board of Managers authorized the District to undertake repair of a cattle crossing of Painter Creek on property owned by Dean and Dawn Mooney, leased by Marvin Johnson.
- Resolution 15-060: Authorization of a Memorandum of Understanding with Marvin Johnson, Dean and Dawn Mooney and Hilltop Farm to perform conservation area planning and repair of a cattle crossing within an approximate 350 acre area over Painter Marsh within the City of Independence and authorization to contract with Wenck Associates for the design of a new cattle crossing.

SUMMARY:

The requested Board Action seeks approval of an Agreement between MCWD, Marvin Johnson, Dean and Dawn Mooney and Hilltop Farm under which the MCWD will receive perpetual conservation easements on eight parcels allowing the MCWD perform habitat/wetland enhancement and manage hydrology on a large portion of Painter marsh and, in exchange, will repair an existing crossing over the Painter Creek channel and maintain the crossing for five years. Because the existing crossing, which was repaired by the District in 2008, is in disrepair due in some measure to recent flooding, its repair or reconstruction is eligible for Federal Emergency Management Agency (FEMA) funding which is being coordinated by the District. .

The Painter Creek Subwatershed is a developing area in the western portion of MCWD. Painter Creek, also known as county Ditch 10, an altered natural watercourse and a public drainage system constructed in 1908, drains from the headwaters at Lake Katrina (Baker Park Reserve), through Painter Marsh to Jennings Bay on Lake Minnetonka. Jennings Bay is currently on the State Impaired Waters List and has historically had water quality issues. In 2004, MCWD undertook a Painter Creek Feasibility Study to assess the methods available to restore water quality to Jennings Bay and its tributary area, with primary emphasis on the Painter Creek Subwatershed and identified opportunities within Painter Marsh. The marsh in its current extent lies on portions of about 16 parcels. Four of these are owned by Marvin Johnson, one by Grace Johnson, one by Dean and Dawn Mooney, and three by Hilltop Farm. Three are owned by the District. The others are owned by private parties.

A cattle crossing over Painter Creek where it enters the northern edge of the marsh, on the property of Dean and Dawn Mooney, was repaired by the District in 2008, in its role as drainage authority. The crossing is primarily utilized by Marvin Johnson who leases the land. As part of discussions with members of the Johnson family regarding the disrepair of the crossing due in part to the 2014 high water, the District and members of the Johnson family have memorialized in a memorandum of understanding mutual conservation goals for Painter Marsh and adjacent properties.

The memorandum of understanding outlined the following general areas of collaboration:

1. Physical assessment of the hydrologic, hydraulic and ecological conditions of Painter Marsh and the potential for a beneficial restoration and conservation plan.
2. Cooperation in review of Owners' intentions for maintenance, use and development of their properties and the compatibility of Owners' intentions with preservation and ecological improvement of Painter Marsh. At Owners' request, the District would assist in reviewing the regulatory context under WCA and District rules and in consulting with the City of Independence with respect to city land use plans, ordinances and controls.

3. The District, in consultation with and with cooperation of Owners, would prepare for a reconstructed crossing. For this purpose, the District would take steps to seek to secure FEMA funding and applicable permits and would authorize the District engineer to prepare a design in accordance with legal constraints. The MOU stated that the warranty for the crossing design and responsibility for construction would be determined in a subsequent, legally binding agreement.

4. Cooperation in the development of the terms of easements that would protect the water quality, flood management and ecological features of Painter Marsh and allow the District to undertake projects to preserve and enhance those features. Owners would also facilitate contact with other property owners not signatory to the MOU and assist to gain those owners' cooperation in the goals of the MOU and in conveying easements necessary to support the District's work.

Subsequently, an agreement and an easement for each of the eight parcels was developed consistent with the intentions set forth in the MOU. Staff and the Johnsons remain in cooperation to pursue easements throughout remaining areas of Painter Marsh.

Staff is currently in the process of soliciting quotes for construction of the crossing and expects to bring a recommendation for Board consideration in May. FEMA representatives have advised that the work is eligible for funding up to \$23,200. Work not covered by FEMA funding, along with the approximately \$8,000 design cost, will be funded from the District's budgeted Project Maintenance and Land Management funds.

ATTACHMENTS:

1. Parcel Identification Map
2. Agreement for Crossing Repair and Conveyance of Easements
 - a. Attachment A: Easements
 - 1) G. Johnson
 - 2) Mooney
 - 3) M. Johnson
 - 4) M. Johnson
 - 5) Hilltop Farm
 - 6) Hilltop Farm
 - 7) Attachment B to easements: 945.57 description and 944 description
 - 8) Attachment C to easements: Proposed Painter Marsh Overall Easements
 - b. Attachment B: Cattle Crossing Plan

RESOLUTION

RESOLUTION NUMBER: 16-041

TITLE: Authorization to enter into an agreement for crossing repair and conveyance of easements over Painter Marsh

- WHEREAS, the Minnehaha Creek Watershed District has identified the Painter Creek subwatershed as a priority area for Capital Improvements in its 2007 watershed management plan (WMP);
- WHEREAS, under the watershed law and its WMP, the District is responsible to manage wetland and related surface water resources within its boundaries for public flood management, water quality and ecological benefits;
- WHEREAS, the District also serves as the drainage authority under Minnesota Statutes chapter 103E for public drainage systems within the watershed including Painter Creek (County Ditch 10);
- WHEREAS, the U.S. Army Corps of Engineers (USACE) has performed feasibility work for wetland and related water resource restoration within the Painter Creek subwatershed including Painter Marsh, and the USACE and the District is exploring opportunities to implement identified restoration work through cooperation and cost-sharing;
- WHEREAS, the Board of Managers authorized a memorandum of understanding (MOU) with Marvin Johnson, Dean and Dawn Mooney, and Hilltop Farm, owners of land underlying Painter Marsh, to explore means to achieve preservation and ecological improvement of Painter Marsh consistent with these parties' intent as to the maintenance, use and development of their properties and to prepare for reconstruction of a cattle crossing over Painter Creek damaged by recent high water; and
- WHEREAS, staff, in consultation with Marvin Johnson, Dean and Dawn Mooney and Hilltop Farm have prepared plans for a reconstructed cattle crossing and easements to convey rights to MCWD and the U.S. Army Corps of Engineers to perform ecological restoration work within Painter Marsh.

NOW, THEREFORE, BE IT RESOLVED that the District Administrator is authorized to execute the attached Agreement for Crossing Repair and Conveyance of Easements, and all easements to be conveyed thereunder as attached, with non-material changes and on advice of counsel, as well as any additional access easements required, and to take all steps necessary to provide for the recording or registration of the easements and the District's fulfillment of its obligations under the agreement;

Resolution Number 16-041 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: April 25, 2016.

Secretary Date: _____

AGREEMENT for CROSSING REPAIR and CONVEYANCE of EASEMENTS

**Minnehaha Creek Watershed District, Marvin Johnson, Grace Johnson,
Dean and Dawn Mooney and Hilltop Farms Inc.**

Painter Marsh, City of Independence

This Agreement for Crossing Repair and Conveyance of Easements (“Agreement”) is made among the Minnehaha Creek Watershed District, a political subdivision of the State of Minnesota (“District”), and Marvin Johnson; Dean and Dawn Mooney; and Hilltop Farm, a Johnson family trust, owners of land surrounding and including Painter Marsh within the City of Independence (together, “Owners”).

Statement of Purpose

A. Under governing law and its adopted watershed management plan, the District is responsible to manage wetland and related surface water resources within its boundaries for public flood management, water quality and ecological benefits. In addition, the District is the drainage authority under Minnesota Statutes chapter 103E for public drainage systems within the watershed and, within the City of Independence, implements the Minnesota Wetland Conservation Act (WCA) and District rules governing impacts to wetlands.

B. Painter Marsh occupies an area of about 350 acres, lying between County Roads 6 and 26. It is within a 13.5-square-mile watershed that drains to Jennings Bay, Lake Minnetonka. Jennings Bay is listed on the State Impaired Waters List. Painter Marsh encompasses approximately 6,000 lineal feet of Painter Creek. This portion of the creek also is within Hennepin County Judicial Ditch #10, a public drainage system under state law. Painter Marsh is contiguous to and encompasses lands that the District owns, or on which it holds easements, for conservation purposes and on which it has built and maintains capital improvements to protect and improve ecosystem function and water quality.

C. The marsh in its current extent of ordinary flowage lies on portions of 16 parcels of record, more or less. Four of these are owned by Marvin Johnson, one by Dean and Dawn Mooney, and one by Hilltop Farm. Three are owned by the District. The others are owned by private parties not signatory to this MOU.

D. Owners’ parcels presently are subject to non-intensive uses including large-lot single-family residential use, cattle pasture, woodlot, and maple syruping. Owners

are interested in preserving and enhancing the ecological condition of the marsh while also preserving use and economic value of their lands.

E. A cattle crossing over the creek where it enters the northern edge of the marsh, on the property of Dean and Dawn Mooney, was repaired by the District in 2008, in its role as drainage authority. The crossing is again in disrepair due in some measure to recent flooding. Its repair or reconstruction may be eligible for Federal Emergency Management Agency (FEMA) funding. The crossing is of use to Owners for cattle access to pasture, woodlot access and other purposes.

F. The District's purposes include managing and maintaining public drainage systems within its boundaries, assisting property owners to responsibly manage their wetland and stream resources, and acting to improve water quality and ecology. Federal funds, through the U.S. Army Corps of Engineers, may become available to the District for water resource enhancement work within Painter Marsh.

G. Pursuant to a June 16, 2015 memorandum of understanding among the District and Owners, the District has prepared design plans for crossing reconstruction. The parties now wish to proceed with cooperative efforts to reconstruct the crossing for Owners' benefit while advancing mutual conservation objectives consistent with Owners' desired use of their properties.

THEREFORE this Agreement rests on mutual consideration and states legally binding terms to achieve the purposes stated above.

Agreement

1. Owners own in fee the following tracts of land:

35-118-24-23-0001 Grace Johnson 6325 County Road 6 Maple Plain, MN 55359	35-118-24-24-0003 Dean and Dawn Mooney 6165 County Road 6 Maple Plain, MN 55359
35-118-24-24-0002 Hilltop Farm Inc. Address unassigned	35-118-24-31-0001 Marvin Johnson Address unassigned
35-118-24-32-0001 Marvin Johnson Address unassigned	35-118-24-34-0001 Marvin Johnson Address unassigned

35-118-24-34-0002 Hilltop Farm Inc. Address unassigned	02-117-24-21-0001 Hilltop Farm Inc. Address unassigned
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The owner(s) of record for each listed tract will execute an easement materially identical to the corresponding easement in Attachment A, attached hereto and incorporated herein.

2. On receiving a fully executed easement from an Owner, the District will promptly file the easement for recording or registration at the Office of the Hennepin County Recorder - Registrar of Titles. On filing of easements for all tracts listed in paragraph 1, above, the District will be obligated to reconstruct and maintain the cattle crossing pursuant to paragraphs 4-5, below.

3. If all easements required under paragraph 2, above, have not been executed and delivered to the District by May 31, 2016, this Agreement will be deemed rescinded and the District will execute a release of easement that the Owner may file on the title for each easement that has been filed.

4. Attachment B to this Agreement, incorporated herein, is a plan for reconstruction of the cattle crossing on the tract listed in paragraph 1 owned by Dean and Dawn Mooney. Within one year of the vesting of the District's obligation under paragraph 2, above, the District, through such contracts as it may deem appropriate, will complete reconstruction of the crossing in material conformance to Attachment B and materially in the location stated therein. A delay due to an Act of God will forgive a failure to meet this deadline provided that the District proceeds promptly to completion thereafter. The District will give the Mooneys written notice of substantial and final completion. On final completion of the crossing reconstruction, the Mooneys will assume ownership of the reconstructed crossing.

5. The District, at its cost, will maintain the crossing in accordance with its duty as the drainage authority pursuant to Minnesota Statutes chapter 103E, to the extent of such a duty, and otherwise for a period of five (5) years from the date reconstruction is substantially complete, so that the crossing does not become a hydraulic obstruction and so that its use as a cattle crossing may be maintained. The District is not, however, responsible for repair due to an act of an Owner, an Owner's successor in title, or anyone acting under the permission or authority of either, other than the ordinary use contemplated herein.

6. The parties recognize that soil conditions under the crossing are poor and that the life expectancy of the proposed crossing repair will depend heavily on actual weather conditions and use. Therefore, the District represents only that the crossing as reconstructed and maintained by the District will be structurally sound as an ordinary cattle crossing, and conform materially to Attachment B, for the maintenance period stated in paragraph 5. The District does not represent that the crossing is suitable for any other use or purpose, nor does it represent that the crossing will meet requirements of the land use authority or any other regulatory authority for the purpose of any future proposed use of the surrounding lands.

7. The District may seek and apply external funds for its reconstruction and maintenance obligations under this Agreement. Owners will cooperate with the District as necessary for the District to apply or qualify for such funds, provided that doing so creates no more than incidental expense and no additional property encumbrance.

8. The District and Owners will continue to cooperate to review Owner's intentions for maintenance of their properties and the compatibility of Owners' intentions with preservation and ecological improvement of Painter Marsh and surrounding land. At Owners' request, the District may assist in reviewing the regulatory context under WCA and District rules and in consulting with the City of Independence with respect to city land use plans, ordinances and controls.

9. The District holds each Owner harmless, and agrees to defend and indemnify each Owner, from and against any and all suits, actions, causes of action, proceedings, claims, costs and damages to the extent caused by the District's failure to conform to the representation of paragraph 6, above. Nothing in this Agreement creates a right in any third party or affects any immunity, defense or liability limit the District or an Owner enjoys under law.

10. Each Owner and the District remains solely responsible to maintain liability and other insurance for their own acts and omissions under this Agreement and their own property interests.

11. A party will not exercise a right of enforcement against another party for injury or alteration to real property or fixtures resulting from a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm and earth movement resulting from natural forces, and the act of a third party not under the authority or control of the party.

12. All recitals above are a part of this Agreement. This Agreement is effective when fully executed by all Owners and the District. Signature in counterparts is effective. The District and an Owner may amend this Agreement only with respect to that Owner's property and only by a writing duly executed by both parties and meeting all requirements of law.

Each party signs below, intending thereby to be legally bound:

MINNEHAHA CREEK WATERSHED DISTRICT

Approved for Form and Execution:

MCWD Counsel

Sherry White, President
15320 Minnetonka Blvd
Minnetonka, MN 55345

Date:

Marvin Johnson
6325 County Road 6
Maple Plain, MN 55359

Date:

Dean Mooney
6165 County Road 6
Maple Plain, MN 55359

Date:

Dawn Mooney
6165 County Road 6
Maple Plain, MN 55359

Date:

HILLTOP FARM, a family trust

Marvin Johnson, President/Trustee
6325 County Road 6
Maple Plain, MN 55359

Date:

ESTATE of GRACE JOHNSON

Marvin Johnson, Executor

Date:

Minnesota Wetland Conservation Act

Notice of Decision

Local Government Unit (LGU) Minnehaha Creek Watershed District	Address 15320 Minnetonka Blvd Minnetonka, MN 55345
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1. PROJECT INFORMATION

Applicant Name Minnehaha Creek Watershed District, on behalf of Dean and Dawn Mooney	Project Name Johnson Cattle Crossing	Date of Application 8/8/2016 Application Complete 8/8/16	Application Number W16-45
<input checked="" type="checkbox"/> Attach site locator map			

Type of Decision:

<input type="checkbox"/> Wetland Boundary or Type	<input checked="" type="checkbox"/> No-Loss	<input type="checkbox"/> Exemption	<input type="checkbox"/> Sequencing
<input type="checkbox"/> Replacement Plan	<input type="checkbox"/> Banking Plan		

Technical Evaluation Panel Findings and Recommendation (if any):

<input type="checkbox"/> Approve	<input type="checkbox"/> Approve with conditions	<input type="checkbox"/> Deny
Summary (or attach):		

2. LOCAL GOVERNMENT UNIT DECISION

Date of Decision: 8/26/2016		
<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Approved with conditions (include below)	<input type="checkbox"/> Denied

LGU Findings and Conclusions (attach additional sheets as necessary):

Minnehaha Creek Watershed District, on behalf of Dean and Dawn Mooney (the Applicant) has applied for a No-Loss decision for proposed fill associated with replacing an existing cattle crossing within a Public Water Wetland located at 6165 County Road 6 in the City of Independence, Hennepin County, Minnesota (PID 3511824240003). Legal description: Section 35, Township 118, Range 24. The complete application was received on August 8, 2016.

The applicant is proposing to repair an existing cattle crossing which spans Painter Creek and associated wetland marsh. This wetland is classified as Public Water Wetland and the DNR has waived jurisdiction of this Project to WCA. The previously existing cattle crossing partially washed out due to flooding and extended inundation associated with the 2014 flood events. The applicant has submitted photos and aerial imagery to show the road in its previous existing state. The applicant proposes to replace the crossing with the original material (clay and rip-rap) and will also limit the construction to the previously existing footprint. Approximately 0.12-acre of fill will be required to complete the crossing.

MCWD determines that the proposed activity qualifies as No-Loss as it meets the criteria of 8420.0415 Subp A (an activity that does not impact a wetland) as the proposed fill is to replace an existing road. This decision is valid for 5 years.

For Replacement Plans using credits from the State Wetland Bank:

Bank Account #	Bank Service Area	County	Credits Approved for Withdrawal (sq. ft. or nearest .01 acre)

Replacement Plan Approval Conditions. In addition to any conditions specified by the LGU, the approval of a Wetland Replacement Plan is conditional upon the following:

- Financial Assurance:** For project-specific replacement that is not in-advance, a financial assurance specified by the LGU must be submitted to the LGU in accordance with MN Rule 8420.0522, Subp. 9 (List amount and type in LGU Findings).
- Deed Recording:** For project-specific replacement, evidence must be provided to the LGU that the BWSR “Declaration of Restrictions and Covenants” and “Consent to Replacement Wetland” forms have been filed with the county recorder’s office in which the replacement wetland is located.
- Credit Withdrawal:** For replacement consisting of wetland bank credits, confirmation that BWSR has withdrawn the credits from the state wetland bank as specified in the approved replacement plan.

Wetlands may not be impacted until all applicable conditions have been met!

LGU Authorized Signature:

Signing and mailing of this completed form to the appropriate recipients in accordance with 8420.0255, Subp. 5 provides notice that a decision was made by the LGU under the Wetland Conservation Act as specified above. If additional details on the decision exist, they have been provided to the landowner and are available from the LGU upon request.		
Name	Title	
Signature	Date	Phone Number and E-mail (952) 473-2855 ksylvia@minnehahacreek.org

THIS DECISION ONLY APPLIES TO THE MINNESOTA WETLAND CONSERVATION ACT. Additional approvals or permits from local, state, and federal agencies may be required. Check with all appropriate authorities before commencing work in or near wetlands.

Applicants proceed at their own risk if work authorized by this decision is started before the time period for appeal (30 days) has expired. If this decision is reversed or revised under appeal, the applicant may be responsible for restoring or replacing all wetland impacts.

This decision is valid for three years from the date of decision unless a longer period is advised by the TEP and specified in this notice of decision.

3. APPEAL OF THIS DECISION

Pursuant to MN Rule 8420.0905, any appeal of this decision can only be commenced by mailing a petition for appeal, including applicable fee, within thirty (30) calendar days of the date of the mailing of this Notice to the following as indicated:

Check one:

<input checked="" type="checkbox"/> Appeal of an LGU staff decision. Send petition and \$0 fee (if applicable) to: Minnehaha Creek Watershed District 15320 Minnetonka Blvd Minnetonka, MN 55345	<input type="checkbox"/> Appeal of LGU governing body decision. Send petition and \$500 filing fee to: Executive Director Minnesota Board of Water and Soil Resources 520 Lafayette Road North St. Paul, MN 55155
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4. LIST OF ADDRESSEES

<input checked="" type="checkbox"/> SWCD TEP member: Stacey Lijewski – stacey.lijewski@hennepin.us <input checked="" type="checkbox"/> BWSR TEP member: Ben Meyer – ben.meyer@state.mn.us <input type="checkbox"/> LGU TEP member (if different than LGU Contact): <input type="checkbox"/> DNR TEP member: <input checked="" type="checkbox"/> DNR Regional Office (if different than DNR TEP member): Becky Horton—becky.horton@state.mn.us <input type="checkbox"/> WD or WMO (if applicable): <input checked="" type="checkbox"/> Applicant (notice only) and Landowner (if different): Tiffany Schaufler (MCWD)- tschaufler@minnehahacreek.org <input checked="" type="checkbox"/> Members of the public who requested notice (notice only): Toni Hirsch (Independence) thirsch@ci.independence.mn.us <input checked="" type="checkbox"/> Corps of Engineers Project Manager (notice only): Melissa Jenny – melissa.m.jenny@usace.army.mil <input type="checkbox"/> BWSR Wetland Bank Coordinator (wetland bank plan applications only)
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5. MAILING INFORMATION

➤ For a list of BWSR TEP representatives: www.bwsr.state.mn.us/aboutbwsr/workareas/WCA_areas.pdf

➤ For a list of DNR TEP representatives: www.bwsr.state.mn.us/wetlands/wca/DNR_TEP_contacts.pdf

➤ Department of Natural Resources Regional Offices:

NW Region: Reg. Env. Assess. Ecol. Div. Ecol. Resources 2115 Birchmont Beach Rd. NE Bemidji, MN 56601	NE Region: Reg. Env. Assess. Ecol. Div. Ecol. Resources 1201 E. Hwy. 2 Grand Rapids, MN 55744	Central Region: Reg. Env. Assess. Ecol. Div. Ecol. Resources 1200 Warner Road St. Paul, MN 55106	Southern Region: Reg. Env. Assess. Ecol. Div. Ecol. Resources 261 Hwy. 15 South New Ulm, MN 56073
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For a map of DNR Administrative Regions, see: http://files.dnr.state.mn.us/aboutdnr/dnr_regions.pdf

➤ For a list of Corps of Project Managers: www.mvp.usace.army.mil/regulatory/default.asp?pageid=687
 or send to:

US Army Corps of Engineers

St. Paul District, ATTN: OP-R
180 Fifth St. East, Suite 700
St. Paul, MN 55101-1678

- For Wetland Bank Plan applications, also send a copy of the application to:
Minnesota Board of Water and Soil Resources
Wetland Bank Coordinator
520 Lafayette Road North
St. Paul, MN 55155

6. ATTACHMENTS

In addition to the site locator map, list any other attachments:

- W16-45 Application**
-
-

DRAFT

Joint Application Form for Activities Affecting Water Resources in Minnesota

This joint application form is the accepted means for initiating review of proposals that may affect a water resource (wetland, tributary, lake, etc.) in the State of Minnesota under state and federal regulatory programs. Applicants for Minnesota Department of Natural Resources (DNR) Public Waters permits **MUST** use the MPARS online permitting system for submitting applications to the DNR. Applicants can use the information entered into MPARS to substitute for completing parts of this joint application form (see the paragraph on MPARS at the end of the joint application form instructions for additional information). This form is only applicable to the water resource aspects of proposed projects under state and federal regulatory programs; other local applications and approvals may be required. Depending on the nature of the project and the location and type of water resources impacted, multiple authorizations may be required as different regulatory programs have different types of jurisdiction over different types of resources.

Regulatory Review Structure

Federal

The St. Paul District of the U.S. Army Corps of Engineers (Corps) is the federal agency that regulates discharges of dredged or fill material into waters of the United States (wetlands, tributaries, lakes, etc.) under Section 404 of the Clean Water Act (CWA) and regulates work in navigable waters under Section 10 of the Rivers and Harbors Act. Applications are assigned to Corps project managers who are responsible for implementing the Corps regulatory program within a particular geographic area.

State

There are three state regulatory programs that regulate activities affecting water resources. The Wetland Conservation Act (WCA) regulates most activities affecting wetlands. It is administered by local government units (LGUs) which can be counties, townships, cities, watershed districts, watershed management organizations or state agencies (on state-owned land). The Minnesota DNR Division of Ecological and Water Resources issues permits for work in specially-designated public waters via the Public Waters Work Permit Program (DNR Public Waters Permits). The Minnesota Pollution Control Agency (MPCA) under Section 401 of the Clean Water Act certifies that discharges of dredged or fill material authorized by a federal permit or license comply with state water quality standards. One or more of these regulatory programs may be applicable to any one project.

Required Information

Prior to submitting an application, applicants are **strongly encouraged** to seek input from the Corps Project Manager and LGU staff to identify regulatory issues and required application materials for their proposed project. Project proponents can request a pre-application consultation with the Corps and LGU to discuss their proposed project by providing the information required in Sections 1 through 5 of this joint application form to facilitate a meaningful discussion about their project. Many LGUs provide a venue (such as regularly scheduled technical evaluation panel meetings) for potential applicants to discuss their projects with multiple agencies prior to submitting an application. Contact information is provided below.

The following bullets outline the information generally required for several common types of determinations/authorizations.

- For delineation approvals and/or jurisdictional determinations, submit Parts 1, 2 and 5, and Attachment A.
- For activities involving CWA/WCA exemptions, WCA no-loss determinations, and activities not requiring mitigation, submit Parts 1 through 5, and Attachment B.
- For activities requiring compensatory mitigation/replacement plan, submit Parts 1 thru 5, and Attachments C and D.
- For local road authority activities that qualify for the state's local road wetland replacement program, submit Parts 1 through 5, and Attachments C, D (if applicable), and E to both the Corps and the LGU.

Submission Instructions

Send the completed joint application form and all required attachments to:

U.S Army Corps of Engineers. Applications may be sent directly to the appropriate Corps Office. For a current listing of areas of responsibilities and contact information, visit the St. Paul District's website at:

<http://www.mvp.usace.army.mil/Missions/Regulatory.aspx> and select "Minnesota" from the contact Information box.

Alternatively, applications may be sent directly to the St. Paul District Headquarters and the Corps will forward them to the appropriate field office.

Section 401 Water Quality Certification: Applicants do not need to submit the joint application form to the MPCA unless specifically requested. The MPCA will request a copy of the completed joint application form directly from an applicant when they determine an individual 401 water quality certification is required for a proposed project.

Wetland Conservation Act Local Government Unit: Send to the appropriate Local Government Unit. If necessary, contact your county Soil and Water Conservation District (SWCD) office or visit the Board of Water and Soil Resources (BWSR) web site (www.bwsr.state.mn.us) to determine the appropriate LGU.

DNR Public Waters Permitting: In 2014 the DNR will begin using the Minnesota DNR Permitting and Reporting System (MPARS) for submission of Public Waters permit applications (<https://webapps11.dnr.state.mn.us/mpars/public/authentication/login>).

Applicants for Public Waters permits **MUST** use the MPARS online permitting system for submitting applications to the DNR. To avoid duplication and to streamline the application process among the various resource agencies, applicants can use the information entered into MPARS to substitute for completing parts of this joint application form. The MPARS print/save function will provide the applicant with a copy of the Public Waters permit application which, at a minimum, will satisfy Parts one and two of this joint application. For certain types of activities, the MPARS application may also provide all of the necessary information required under Parts three and four of the joint application. However, it is the responsibility of the Applicant to make sure that the joint application contains all of the required information, including identification of all aquatic resources impacted by the project (see Part four of the joint application). After confirming that the MPARS application contains all of the required information in Parts one and two the Applicant may attach a copy to the joint application and fill in any missing information in the remainder of the joint application.

PART ONE: Applicant Information

If applicant is an entity (company, government entity, partnership, etc.), an authorized contact person must be identified. If the applicant is using an agent (consultant, lawyer, or other third party) and has authorized them to act on their behalf, the agent's contact information must also be provided.

Applicant/Landowner Name: Dean and Dawn Mooney
Mailing Address: 6165 County Road 6, Independence, MN 55359
Phone:
E-mail Address:

Authorized Contact (do not complete if same as above):
Mailing Address:
Phone:
E-mail Address:

Agent Name: Minnehaha Creek Watershed District
Mailing Address: 15320 Minnetonka Blvd., Minnetonka, MN 55345
Phone: 952-641-4513
E-mail Address: tschaufler@minnehahacreek.org

PART TWO: Site Location Information

County: Hennepin **City/Township:** Independence
Parcel ID and/or Address: 3511824240003
Legal Description (Section, Township, Range): N 1/2 Sec. 35 T 118 R24
Lat/Long (decimal degrees): 44.986706, -93.681478
Attach a map showing the location of the site in relation to local streets, roads, highways.
Approximate size of site (acres) or if a linear project, length (feet): Parcel is 42.66 ac; size of project is 0.16 ac

If you know that your proposal will require an individual Permit from the U.S. Army Corps of Engineers, you must provide the names and addresses of all property owners adjacent to the project site. This information may be provided by attaching a list to your application or by using block 25 of the Application for Department of the Army permit which can be obtained at:

http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/engform_4345_2012oct.pdf

PART THREE: General Project/Site Information

If this application is related to a delineation approval, exemption determination, jurisdictional determination, or other correspondence submitted *prior to* this application then describe that here and provide the Corps of Engineers project number.

Describe the project that is being proposed, the project purpose and need, and schedule for implementation and completion. The project description must fully describe the nature and scope of the proposed activity including a description of all project elements that effect aquatic resources (wetland, lake, tributary, etc.) and must also include plans and cross section or profile drawings showing the location, character, and dimensions of all proposed activities and aquatic resource impacts.

Project Name and/or Number:

PART FOUR: Aquatic Resource Impact¹ Summary

If your proposed project involves a direct or indirect impact to an aquatic resource (wetland, lake, tributary, etc.) identify each impact in the table below. Include all anticipated impacts, including those expected to be temporary. Attach an overhead view map, aerial photo, and/or drawing showing all of the aquatic resources in the project area and the location(s) of the proposed impacts. Label each aquatic resource on the map with a reference number or letter and identify the impacts in the following table.

Aquatic Resource ID (as noted on overhead view)	Aquatic Resource Type (wetland, lake, tributary etc.)	Type of Impact (fill, excavate, drain, or remove vegetation)	Duration of Impact Permanent (P) or Temporary (T) ¹	Size of Impact ²	Overall Size of Aquatic Resource ³	Existing Plant Community Type(s) in Impact Area ⁴	County, Major Watershed #, and Bank Service Area # of Impact Area ⁵
Wetland 1	Wetland	Fill	P	0.12 ac	N/A	N/A	Hennepin, 20, 7

¹If impacts are temporary; enter the duration of the impacts in days next to the "T". For example, a project with a temporary access fill that would be removed after 220 days would be entered "T (220)".

²Impacts less than 0.01 acre should be reported in square feet. Impacts 0.01 acre or greater should be reported as acres and rounded to the nearest 0.01 acre. Tributary impacts must be reported in linear feet of impact and an area of impact by indicating first the linear feet of impact along the flowline of the stream followed by the area impact in parentheses). For example, a project that impacts 50 feet of a stream that is 6 feet wide would be reported as 50 ft (300 square feet).

³This is generally only applicable if you are applying for a de minimis exemption under MN Rules 8420.0420 Subp. 8, otherwise enter "N/A".

⁴Use *Wetland Plants and Plant Community Types of Minnesota and Wisconsin* 3rd Ed. as modified in MN Rules 8420.0405 Subp. 2.

⁵Refer to Major Watershed and Bank Service Area maps in MN Rules 8420.0522 Subp. 7.

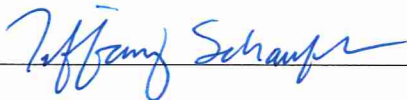
If any of the above identified impacts have already occurred, identify which impacts they are and the circumstances associated with each:

PART FIVE: Applicant Signature

Check here if you are requesting a pre-application consultation with the Corps and LGU based on the information you have provided. Regulatory entities will not initiate a formal application review if this box is checked.

By signature below, I attest that the information in this application is complete and accurate. I further attest that I possess the authority to undertake the work described herein.

Signature: _____



Date: 8/3/16

I hereby authorize _____ to act on my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this application.

¹ The term "impact" as used in this joint application form is a generic term used for disclosure purposes to identify activities that may require approval from one or more regulatory agencies. For purposes of this form it is not meant to indicate whether or not those activities may require mitigation/replacement.

Attachment A

Request for Delineation Review, Wetland Type Determination, or Jurisdictional Determination

By submission of the enclosed wetland delineation report, I am requesting that the U.S. Army Corps of Engineers, St. Paul District (Corps) and/or the Wetland Conservation Act Local Government Unit (LGU) provide me with the following (check all that apply):

Wetland Type Confirmation

Delineation Concurrence. Concurrence with a delineation is a written notification from the Corps and a decision from the LGU concurring, not concurring, or commenting on the boundaries of the aquatic resources delineated on the property. Delineation concurrences are generally valid for five years unless site conditions change. Under this request alone, the Corps will not address the jurisdictional status of the aquatic resources on the property, only the boundaries of the resources within the review area (including wetlands, tributaries, lakes, etc.).

Preliminary Jurisdictional Determination. A preliminary jurisdictional determination (PJD) is a non-binding written indication from the Corps that waters, including wetlands, identified on a parcel may be waters of the United States. For purposes of computation of impacts and compensatory mitigation requirements, a permit decision made on the basis of a PJD will treat all waters and wetlands in the review area as if they are jurisdictional waters of the U.S. PJDs are advisory in nature and may not be appealed.

Approved Jurisdictional Determination. An approved jurisdictional determination (AJD) is an official Corps determination that jurisdictional waters of the United States are either present or absent on the property. AJDs can generally be relied upon by the affected party for five years. An AJD may be appealed through the Corps administrative appeal process.

In order for the Corps and LGU to process your request, the wetland delineation must be prepared in accordance with the 1987 Corps of Engineers Wetland Delineation Manual, any approved Regional Supplements to the 1987 Manual, and the *Guidelines for Submitting Wetland Delineations in Minnesota* (2013).

<http://www.mvp.usace.army.mil/Missions/Regulatory/DelineationJDGuidance.aspx>

Attachment B

Supporting Information for Applications Involving Exemptions, No Loss Determinations, and Activities Not Requiring Mitigation

Complete this part *if* you maintain that the identified aquatic resource impacts in Part Four do not require wetland replacement/compensatory mitigation OR *if* you are seeking verification that the proposed water resource impacts are either exempt from replacement or are not under CWA/WCA jurisdiction.

Identify the specific exemption or no-loss provision for which you believe your project or site qualifies:

Applying for provision 8420.0415A which provides for no-loss due to replacement of an existing road which was damaged during flooding.

Provide a detailed explanation of how your project or site qualifies for the above. Be specific and provide and refer to attachments and exhibits that support your contention. Applicants should refer to rules (e.g. WCA rules), guidance documents (e.g. BWSR guidance, Corps guidance letters/public notices), and permit conditions (e.g. Corps General Permit conditions) to determine the necessary information to support the application. Applicants are strongly encouraged to contact the WCA LGU and Corps Project Manager prior to submitting an application if they are unsure of what type of information to provide:

Applying for no-loss under criteria A because it will not impact the wetland. Area to be filled was a road that was washed out during a flood event. Replacement of the road will match the exact same footprint of the previous road and is not impacting wetland as it was not wetland before.

Attachment C

Avoidance and Minimization

Project Purpose, Need, and Requirements. Clearly state the purpose of your project and need for your project. Also include a description of any specific requirements of the project as they relate to project location, project footprint, water management, and any other applicable requirements. Attach an overhead plan sheet showing all relevant features of the project (buildings, roads, etc.), aquatic resource features (impact areas noted) and construction details (grading plans, storm water management plans, etc.), referencing these as necessary:

Avoidance. Both the CWA and the WCA require that impacts to aquatic resources be avoided if practicable alternatives exist. Clearly describe all on-site measures considered to avoid impacts to aquatic resources and discuss at least two project alternatives that avoid all impacts to aquatic resources on the site. These alternatives may include alternative site plans, alternate sites, and/or not doing the project. Alternatives should be feasible and prudent (see MN Rules 8420.0520 Subp. 2 C). Applicants are encouraged to attach drawings and plans to support their analysis:

Minimization. Both the CWA and the WCA require that all unavoidable impacts to aquatic resources be minimized to the greatest extent practicable. Discuss all features of the proposed project that have been modified to minimize the impacts to water resources (see MN Rules 8420.0520 Subp. 4):

Off-Site Alternatives. An off-site alternatives analysis is not required for all permit applications. If you know that your proposal will require an individual permit (standard permit or letter of permission) from the U.S. Army Corps of Engineers, you may be required to provide an off-site alternatives analysis. The alternatives analysis is not required for a complete application but must be provided during the review process in order for the Corps to complete the evaluation of your application and reach a final decision. Applicants with questions about when an off-site alternatives analysis is required should contact their Corps Project Manager.

Attachment D Replacement/Compensatory Mitigation

Complete this part *if* your application involves wetland replacement/compensatory mitigation not associated with the local road wetland replacement program. Applicants should consult Corps mitigation guidelines and WCA rules for requirements.

Replacement/Compensatory Mitigation via Wetland Banking. Complete this section if you are proposing to use credits from an existing wetland bank (with an account number in the State wetland banking system) for all or part of your replacement/compensatory mitigation requirements.

Wetland Bank Account #	County	Major Watershed #	Bank Service Area #	Credit Type (if applicable)	Number of Credits

Applicants should attach documentation indicating that they have contacted the wetland bank account owner and reached at least a tentative agreement to utilize the identified credits for the project. This documentation could be a signed purchase agreement, signed application for withdrawal of credits or some other correspondence indicating an agreement between the applicant and the bank owner. *However, applicants are advised not to enter into a binding agreement to purchase credits until the mitigation plan is approved by the Corps and LGU.*

Project-Specific Replacement/Permittee Responsible Mitigation. Complete this section if you are proposing to pursue actions (restoration, creation, preservation, etc.) to generate wetland replacement/compensatory mitigation credits for this proposed project.

WCA Action Eligible for Credit ¹	Corps Mitigation Compensation Technique ²	Acres	Credit % Requested	Credits Anticipated ³	County	Major Watershed #	Bank Service Area #

¹Refer to the name and subpart number in MN Rule 8420.0526.

²Refer to the technique listed in *St. Paul District Policy for Wetland Compensatory Mitigation in Minnesota*.

³If WCA and Corps crediting differs, then enter both numbers and distinguish which is Corps and which is WCA.

Explain how each proposed action or technique will be completed (e.g. wetland hydrology will be restored by breaking the tile.....) and how the proposal meets the crediting criteria associated with it. Applicants should refer to the Corps mitigation policy language, WCA rule language, and all associated Corps and WCA guidance related to the action or technique:

Attach a site location map, soils map, recent aerial photograph, and any other maps to show the location and other relevant features of each wetland replacement/mitigation site. Discuss in detail existing vegetation, existing landscape features, land use (on and surrounding the site), existing soils, drainage systems (if present), and water sources and movement. Include a topographic map showing key features related to hydrology and water flow (inlets, outlets, ditches, pumps, etc.):

Project Name and/or Number:

Attach a map of the existing aquatic resources, associated delineation report, and any documentation of regulatory review or approval. Discuss as necessary:

For actions involving construction activities, attach construction plans and specifications with all relevant details. Discuss and provide documentation of a hydrologic and hydraulic analysis of the site to define existing conditions, predict project outcomes, identify specific project performance standards and avoid adverse offsite impacts. Plans and specifications should be prepared by a licensed engineer following standard engineering practices. Discuss anticipated construction sequence and timing:

For projects involving vegetation restoration, provide a vegetation establishment plan that includes information on site preparation, seed mixes and plant materials, seeding/planting plan (attach seeding/planting zone map), planting/seeding methods, vegetation maintenance, and an anticipated schedule of activities:

For projects involving construction or vegetation restoration, identify and discuss goals and specific outcomes that can be determined for credit allocation. Provide a proposed credit allocation table tied to outcomes:

Provide a five-year monitoring plan to address project outcomes and credit allocation:

Discuss and provide evidence of ownership or rights to conduct wetland replacement/mitigation on each site:

Quantify all proposed wetland credits and compare to wetland impacts to identify a proposed wetland replacement ratio. Discuss how this replacement ratio is consistent with Corps and WCA requirements:

By signature below, the applicant attests to the following (only required if application involves project-specific/permittee responsible replacement):

- All proposed replacement wetlands were not:
 - Previously restored or created under a prior approved replacement plan or permit
 - Drained or filled under an exemption during the previous 10 years
 - Restored with financial assistance from public conservation programs
 - Restored using private funds, other than landowner funds, unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the local government unit in writing that the restored wetland may be considered for replacement.
- The wetland will be replaced before or concurrent with the actual draining or filling of a wetland.
- An irrevocable bank letter of credit, performance bond, or other acceptable security will be provided to guarantee successful completion of the wetland replacement.
- Within 30 days of either receiving approval of this application or beginning work on the project, I will record the Declaration of Restrictions and Covenants on the deed for the property on which the replacement wetland(s) will be located and submit proof of such recording to the LGU and the Corps.

Applicant or Representative:

Title:

Signature: _____

Date:

Project Name and/or Number:

Attachment E Local Road Replacement Program Qualification

Complete this part *if* you are a local road authority (county highway department, city transportation department, etc.) seeking verification that your project (or a portion of your project) qualifies for the MN Local Government Road Wetland Replacement Program (LGRWRP). If portions of your project are not eligible for the LGRWRP, then Attachment D should be completed and attached to your application.

Discuss how your project is a repair, rehabilitation, reconstruction, or replacement of a currently serviceable road to meet state/federal design or safety standards/requirements. Applicants should identify the specific road deficiencies and how the project will rectify them. Attach supporting documents and information as applicable:

Provide a map, plan, and/or aerial photograph accurately depicting wetland boundaries within the project area. Attach associated delineation/determination report or otherwise explain the method(s) used to identify and delineate wetlands. Also attach and discuss any type of review or approval of wetland boundaries or other aspects of the project by a member or members of the local Technical Evaluation Panel (TEP) or Corps of Engineers:

In the table below, identify only the wetland impacts from Part 4 that the road authority has determined should qualify for the LGRWRP.

Wetland Impact ID (as noted on overhead view)	Type of Impact (fill, excavate, drain)	Size of Impact (square feet or acres to 0.01)	Existing Plant Community Type(s) in Impact Area ¹	County, Major Watershed #, and Bank Service Area # of Impact ²

¹Use *Wetland Plants and Plant Community Types of Minnesota and Wisconsin* 3rd Ed. as modified in MN Rules 8420.0405 Subp. 2.

²Refer to Major Watershed and Bank Service Area maps in MN Rules 8420.0522 Subp. 7.

Discuss the feasibility of providing onsite compensatory mitigation/replacement for important site-specific wetland functions:

Please note that under the MN Wetland Conservation Act, projects with less than 10,000 square feet of wetland impact are allowed to commence prior to submission of this notification so long as the notification is submitted within 30 days of the impact. The Clean Water Act has no such provision and requires that permits be obtained prior to any regulated discharges into water of the United States. To avoid potential unauthorized activities, road authorities must, at a minimum, provide a complete application to the Corps and receive a permit prior to commencing work.

By signature below, the road authority attests that they have followed the process in MN Rules 8420.0544 and have determined that the wetland impacts identified in Part 4 are eligible for the MN Local Government Road Wetland Replacement Program.

Road Authority Representative:

Title:

Signature: _____

Date:

Technical Evaluation Panel Concurrence:

Project Name and/or Number:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No

Signature: _____

Date:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No

Signature: _____

Date:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No

Signature: _____

Date:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? Yes No

Signature: _____

Date:

Upon approval and signature by the TEP, application must be sent to: **Wetland Bank Administration**
Minnesota Board of Water & Soil Resources
520 Lafayette Road North
Saint Paul, MN 55155



Hennepin County Property Map

Date: 8/2/2016



PARCEL ID: 2711824220001

OWNER NAME: Dellcroft Farms Llp

PARCEL ADDRESS: 1475 Pioneer Creek Rd,
Independence MN 55359

PARCEL AREA: 76.93 acres, 3,351,267 sq ft

A-T-B: Abstract

SALE PRICE:

SALE DATA:

SALE CODE:

ASSESSED 2015, PAYABLE 2016
PROPERTY TYPE: Farm
HOMESTEAD: Non-Homestead
MARKET VALUE: \$567,200
TAX TOTAL: \$6,599.30

ASSESSED 2016, PAYABLE 2017
PROPERTY TYPE: Farm
HOMESTEAD: Non-homestead
MARKET VALUE: \$494,100

Comments:

This data (i) is furnished 'AS IS' with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this data.

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Hennepin County Natural Resources Map

Leg:

Date: 8/3/2016



No results

Comments:

1 inch = 200 feet



This data (i) is furnished 'AS IS' with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this data.

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Hennepin County Property Map

- 2009 Aerial

Date: 8/1/2016



1 inch = 100 feet

PARCEL ID: 3511824240003

OWNER NAME: Dean L Mooney & Dawn Mooney

PARCEL ADDRESS: 6165 Co Rd No 6, Independence MN 55359

PARCEL AREA: 42.66 acres, 1,858,453 sq ft

A-T-B: Abstract

SALE PRICE:

SALE DATA:

SALE CODE:

ASSESSED 2015, PAYABLE 2016
PROPERTY TYPE: Residential
HOMESTEAD: Homestead
MARKET VALUE: \$321,200
TAX TOTAL: \$2,834.80

ASSESSED 2016, PAYABLE 2017
PROPERTY TYPE: Residential
HOMESTEAD: Homestead
MARKET VALUE: \$309,300

Comments:

This data (i) is furnished 'AS IS' with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this data.

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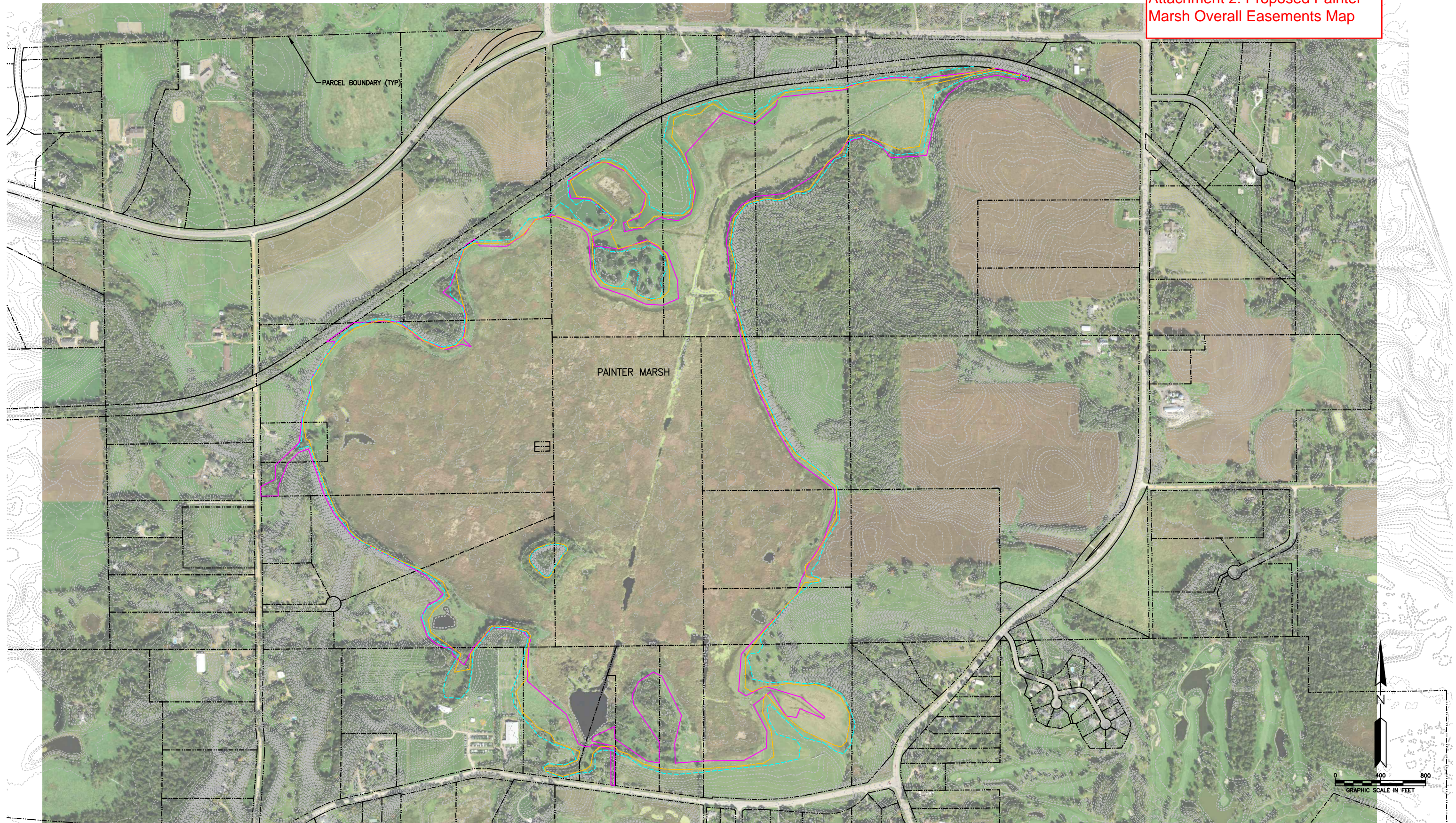


Cattle Crossing- Facing East



Cattle Crossing- Facing West

Attachment 2: Proposed Painter Marsh Overall Easements Map



LEGEND

- EXISTING EASEMENT
- PROPOSED 944 CONTOUR EASEMENT
- PROPOSED 945.57 CONTOUR EASEMENT

#	DESCRIPTION	XXX	XXX	XX/XX/XX
REV	REVISION DESCRIPTION	DWN	APP	REV DATE

SEAL

PRIME CONSULTANT



Responsive partner. Exceptional outcomes.

PROJECT TITLE
PAINTER MARSH EASEMENT ASSISTANCE



MINNEHAHA CREEK
WATERSHED DISTRICT
QUALITY OF WATER, QUALITY OF LIFE

SHEET TITLE
PROPOSED PAINTER MARSH
OVERALL EASEMENTS

DWN BY	CHK'D	APP'D	DWG DATE	FEB 2016
MJS			SCALE	AS SHOWN
PROJECT NO.	SHEET NO.	REV NO.		
0185-0037	FIGURE 1			

