

**MEETING DATE:** July 14, 2016

**TITLE:** Authorization to Execute a Purchase Agreement and Easement for the Laketown 9<sup>th</sup> Wetland Restoration

**RESOLUTION NUMBER:** 16-060

**PREPARED BY:** Anna Brown

**E-MAIL:** abrown@minnehahacreek.org

**TELEPHONE:** 952-641-4522

**REVIEWED BY:**  Administrator  Counsel  Program Mgr. (Name): \_\_\_\_\_  
 Board Committee  Engineer  Other

**WORKSHOP ACTION:**

<input type="checkbox"/> Advance to Board mtg. Consent Agenda.	<input type="checkbox"/> Advance to Board meeting for discussion prior to action.
<input type="checkbox"/> Refer to a future workshop (date): _____	<input type="checkbox"/> Refer to taskforce or committee (date): _____
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input checked="" type="checkbox"/> Other (specify): <b>Approval at July 14 Board Meeting</b>	

**PURPOSE or ACTION REQUESTED:**

Authorization to execute a purchase agreement and easement for the Laketown 9<sup>th</sup> wetland restoration project

**PROJECT/PROGRAM LOCATION:**

The property is located along the southern boundary of the City of Victoria north of Marsh Lake Rd between Victoria elementary and the Wassermann woods development (PID 650260300)

**PROJECT TIMELINE:**

Execute purchase agreement: July 14, 2016  
Closing on or before: August 1, 2016  
Restoration begins: Spring 2016  
Restoration complete: Fall 2017

**PROJECT/PROGRAM COST:**

Fund name and number: Land Conservation 200-2004  
Current budget: \$3,018,360  
Expentures to date: \$537,969  
Requested amount of funding: \$80,000

**PAST BOARD ACTIONS:**

- April 15, 2010: Public hearing and project ordering for Phase II Wassermann Wetland Improvement

- August 27, 2015: Approval of permit 15-266 for Laketown 9<sup>th</sup> Development in Victoria and authorization to work with Lennar Corporation to develop a partnership for wetland restoration to meet replacement plan requirements for the development
- October 22, 2015: District entered a Memorandum of Understanding with Jane and James Hesse and Pentom Land Company to evaluate the Hesse's interest in conveying an easement to the District for the purposes of fulfilling a wetland restoration
- April 28, 2016: Authorization, in closed session, to negotiate with the landowners for easement acquisition
- May 26, 2016: Approval of agreement with US Homes for wetland restoration

## **SUMMARY:**

The 2007 Comprehensive Plan identified the wetland complexes along Six Mile Creek between Marsh and Wassermann lakes as opportunities for restoration to reduce phosphorus pollution. Wassermann Lake, which receives inflow from Marsh Lake, is on the State List of Impaired Waters due to excessive nutrients. Two capital improvement projects were identified in the Marsh-Wassermann corridor which were not advanced beyond feasibility.

In the spring of 2015 Lennar submitted a permit application to the District to complete a 99 unit residential development on 164 acres in the City of Victoria. The development as proposed includes the improvement of an old farm road on the southern end of the property which fulfills the Victoria's connectivity plans. The road as proposed would impact .87 acres of wetland and would therefore trigger replacement requirements under the Wetland Conservation Act (WCA). Lennar initially proposed fulfilling its regulatory obligation through the purchase of bank credits. Given that the District does not have any wetland banks within its boundaries, the proposal would have resulted in a net loss of wetland acreage in the District.

Working in coordination with Victoria City staff and Lennar, the District identified an opportunity to restore 12 acres of wetland on an adjacent 59-acre parcel and an additional 5 acres of upland buffer as a project specific mitigation. The partnership will result in 6-8 acres of restored wetland beyond what is necessary to meet Lennar's regulatory requirements. The approach has been met with substantial support from other regulatory agencies, receiving letters of support from the Department of Natural Resources, the US Army Corps of Engineers, the Carver County Soil and Water Conservation District, the MN Board of Water and Soil Resources, and the City of Victoria.

Under the agreement framework, the District is responsible for acquiring property rights necessary to complete the restoration and for performing maintenance and monitoring requirements under WCA through the five year establishment period. Lennar is responsible for completing the replacement plan application, including the outlet and restoration design, and for construction. Preliminary feasibility has already been completed by the District. The agreement was approved by the Board of Managers on May 26, 2016, and Lennar is currently working to complete its restoration plan, with input from District staff, and permit application.

The Wassermann Phase II project identified in the 2007 Capital Improvement Plan (CIP) was evaluated and ordered in 2010, and proposed modification of the outlet structure at Marsh Lake Road and wetland enhancements in coordination with Lennar. Staff have determined the 2010 ordering to substantially conform with the current restoration proposal and preparation of another Board action to order not necessary.

On October 22, 2015, Board of Managers executed an agreement with the landowners – Jane Ann and James Hesse – and Pentom Land Company - informally representing the landowners and their future development interests - to evaluate the Hesse's interest in conveying an easement to the District for restoration purposes. On April 28, 2016 the Board of Managers authorized staff to negotiate with the landowners – Jane Ann and James Hesse – to purchase an easement over the wetland and upland buffer area necessary to fulfill the

District's obligation under this agreement. The easement is 23.55 acres and the parties have reached agreement in principle on a price of \$80,000. The easement will allow the District and Lennar to move forward with the restoration plan, resulting in ecological lift along this priority corridor.

## RESOLUTION

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**RESOLUTION NUMBER:** 16-060

**TITLE:** **Authorization to Execute a Purchase Agreement and Easement for the Laketown 9<sup>th</sup> Wetland Restoration**

WHEREAS, the Minnehaha Creek Watershed District Board of Managers has adopted a balanced urban ecology policy that recognizes the multi-sector value of integrating natural systems and land use planning; and

WHEREAS, this approach incorporates geographic focus, facilitating a greater understanding of the threats and opportunities within a system and allowing the District to develop relationships with municipalities and other partners; and

WHEREAS, pursuant to Resolution 14-047 the MCWD Board of Managers has identified the Six Mile Creek subwatershed as a priority area for focusing District planning activities and coordination efforts with subwatershed partners; and

WHEREAS, the District recognizes that, through partnership, the District can achieve outcomes greater than those achieved through regulatory compliance enforcement alone; and

WHEREAS, on March 26, 2015 the Board authorized the District to enter a Memorandum of Understanding with the City of Victoria, outlining opportunities to collaborate and integrate mutual efforts in the realms of coordinated planning of local water and land use plans, assessment of specific water management issues, and coordinated regulatory review of water and land development; and

WHEREAS, Lennar Corporation has submitted an application for Wetland Conservation Act sequencing, as well as the District's Erosion Control, Floodplain Alteration, Waterbody Crossing & Structures, and Stormwater Management Rules, for a 99 unit residential development in the City of Victoria in Carver County that would impact 0.87 acres (37,840 square feet) of one wetland in one location for the improvement of an existing farm road; and

WHEREAS, through advanced coordination between Lennar, the City of Victoria, and the District an alternative, preferred strategy to bank credit purchase was identified to meet USACE, MN DNR, WCA and MCWD wetland replacement requirements through a partnership with MCWD to restore degraded wetlands adjacent to the development, portions of which are on a property owned by a third party (the Property); and

WHEREAS, the alternative identified has been determined to substantially conform to the Wassermann Phase II project ordered by the Board of Managers on April 15, 2010; and

WHEREAS, on August 27, 2015, the Board approved sequencing, as well as District erosion and sediment control, and, the following day, issued a notice of conditional approval of the floodplain alteration, waterbody crossing & structures, and stormwater management, pending the completion of a Wetland Conservation Act replacement plan for either banking or project-specific replacement; and

WHEREAS, the District has received letters of support from the US Army Corps of Engineers, the Board of Soil and Water Resources, the MN Department of Natural Resources, and the Carver County Soil and Water Conservation District for the proposed partnership approach to mitigation; and

WHEREAS, on October 22, 2015, the District executed a Memorandum of Understanding with Jim and Jane Hesse, the Landowners, and Pemtom Land Company to evaluate the potential restoration of the Property and an easement conveyance to the District; and

WHEREAS, on May 26, 2016, the Board further authorized District staff to execute an agreement with Lennar Corporation to complete the wetland restoration as a project specific mitigation and the agreement has been duly executed by the parties; and

WHEREAS, on April 28, 2016, the Board authorized staff to negotiate with the landowners for easement acquisition on the Property in order to fulfill a condition of the Agreement; and

WHEREAS, District staff and the Landowners have drafted a Purchase Agreement and Easement and have reached agreement in principle on the terms of that agreement and a value of the easement of \$80,000.

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorize the administrator to execute, on advice and consent of counsel, the agreement for the purchase, at a cost not to exceed \$80,000, of the easement on the Hesse property, with nonsubstantive revisions to effect the purposes of the transaction as necessary, and take such other further actions necessary to effect the transaction, including but not limited to the payment of not to exceed \$5,000 in closing and related costs.

Resolution Number 16-060 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: \_\_\_\_\_.

\_\_\_\_\_  
Secretary Date: \_\_\_\_\_

EASEMENT  
On the Property of Jane Ann and James R. Hesse  
Hennepin County, Minnesota

Legal description of burdened property:  
Attachment A

THIS EASEMENT is entered into by and between Jane Ann and James R. Hesse, each the spouse of the other (together, Owners), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes chapters 103B and 103D.

WITNESS:

A. Owners own jointly in fee simple certain real property in the City of Victoria, Carver County, Minnesota, designated by property identification number 650260300 in the Carver County property records and legally described in Attachment A hereto (the Burdened Property).

B. The parties desire to provide for a perpetual easement over the Burdened Property in favor MCWD for purposes of the Laketown 9<sup>th</sup> Wetland Restoration Project, which will entail wetland restoration, improvement and maintenance, as well as establishment and maintenance of upland buffer, principally through construction and maintenance of hydrologic and vegetative improvements, on the Burdened Property to achieve both regulatory compliance and fulfillment MCWD's public water-resources management goals in the Six Mile Creek subwatershed.

THEREFORE, for the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owners convey and warrant to MCWD and MCWD accepts the easement on the Burdened Property as specifically set forth herein.

1. Easement Area. The easement area is as legally described in Attachment B hereto (the Easement Area) and as delineated on the site plan in Attachment C hereto, each of which is incorporated into and a term of this easement. In the event that the legal description and site plan do not coincide, the legal description controls.

2. MCWD's Easement Rights. Owners convey to MCWD the right in perpetuity to enter and use the Burdened Property to undertake the following activities, solely at MCWD's cost and expense, within the Easement Area. MCWD, its contractors, successors and assigns may:

- a. Enter to assess the Easement Area, including taking surveys, conducting due diligence investigation and sampling of soils and water;
- b. Stage equipment and materials necessary for the exercise of the rights conveyed in this section;
- c. Excavate, grade and fill land, including the beds of wetland and surface waters, and alter surface and groundwater flow, including inundation of wetland area and flows

onto adjacent lands, except that MCWD will cause no increase in the 100-year flood elevation on the Burdened Property outside the Easement Area;

- d. Install and maintain practices to prevent erosion and sedimentation;
- e. Install and maintain one or more weirs or other water-level control structures, along with appurtenant bioengineered and structural elements for management of water levels, for purposes of altering and managing hydrology, then modify and reconstruct such structures and structural elements as necessary to achieve the purposes of the Easement;
- f. Remove surface vegetation, brush and trees, plant vegetation, sow seed and maintain vegetation, including though replanting and reseeded, mowing, use of herbicides and controlled burning; and
- g. Install signs designating the Easement Area and describing the purposes to which the Easement Area is dedicated.

In addition to the rights to make physical alterations to the Easement Area described in this section, MCWD's rights under the Easement include the right to apply for permits and other regulatory approvals on behalf of MCWD and Owners, and to record on the deed to the Burdened Property such restrictions as required for the Easement Area to serve as mitigation or replacement area for compliance with federal, state and local regulatory requirements.

MCWD will retain and may utilize at its sole discretion any and all wetland-regulation credit under state and federal law resulting from its exercise of the easement rights described in this section and any economic value derived therefrom.

MCWD owns all right, title and interest in any spoils, soil or timber produced through the exercise of its rights herein.

3. Recording; Owners' Cooperation. The easement rights set forth herein run with and burden the Burdened Property and bind the representatives, heirs, successors and assigns of the parties in perpetuity as specified herein. MCWD may record and rerecord this easement at its cost. Owners will cooperate with MCWD as requested to effect recording, including but not limited to executing documentation necessary for the Easement Area to serve as mitigation or replacement area for compliance with federal, state and local regulatory requirements.

4. Owners' Reserved Rights. Owners reserve all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply only within the Easement Area. Owners, their representatives, heirs, successors and assigns will not:

- a. Perform or knowingly allow others to perform acts on the Easement Area that would materially impair or interfere with MCWD's ability to perform work authorized under this easement;
- b. Construct or install within the Easement Area a permanent or temporary structure, surface or improvement of any kind;

- c. Install within the Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by MCWD;
- d. Alter surface soils or vegetation within the Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material, without the prior written approval of and in accordance with terms specified by MCWD;
- e. Remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides except as reasonably required to remove, prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, without the prior written approval of and in accordance with terms specified by MCWD;
- f. Operate motorized vehicles within the Easement Area, without the prior written approval of and in accordance with terms specified by MCWD; and
- g. Dump, dispose or otherwise place refuse, brush or other waste material within the Easement Area.

Notwithstanding the restrictions stated in this section, Owners may utilize the Easement Area for construction and operation of stormwater-treatment facilities to facilitate use and development of the Burdened Property, provided that plans and designs for any such construction and operation conform with applicable local, state and federal requirements and restrictions imposed through MCWD's exercise of its rights under section 2 of this easement and MCWD determination that the purposes of the easement will not be frustrated.

5. Inspection and Enforcement. MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of the Easement Area. MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this easement.

6. No Public Access. Nothing in this easement authorizes any right of access onto the Burdened Property by the general public. The right of entry conveyed to MCWD under this easement is limited to authorized employees, representatives, assigns and contractors and subcontractors of MCWD and its assigns, including representatives of regulatory authorities whose review and approval of work in the Easement Area are required to effect the purposes of this easement.

7. Notice of Property Transfer. Owners will notify MCWD at least 15 days before Owners convey all or any part of the fee interest in the Burdened Property, provided that MCWD shall have no right to block or prevent Owners' transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise. Owners will facilitate communication between MCWD and the party or parties to whom the Burdened Property is conveyed to ensure understanding of the purposes and implications of this easement.

8. Regulatory Authorities Not Affected. This easement does not replace or diminish the regulatory authority of any federal, state or local public body, including MCWD, as it may apply to the Burdened Property or any activity on it.



9. Taxes and Liens. Owners retain all financial obligations and bear all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owners will pay all taxes and assessments levied against the Burdened Property. MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owners and will be reimbursed by Owners for such amounts.

10. Indemnification. MCWD holds Owners and their heirs, successors and assigns (collectively, Indemnitees) harmless, and agrees to defend and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney fees, which does not include attorney fees incurred by Owners during such time that MCWD has retained an attorney to provide a defense of Owners) arising out of activity pursuant to this easement by MCWD or its representatives, agents, contractors, subcontractors, except to the extent resulting from an action or inaction of Owners for which Owners independently would be subject to liability.

11. Insurance. Owners and MCWD remain solely responsible to maintain liability and other insurance for its own uses of and authority over the Burdened Property. MCWD will provide proof of insurance prior to commencing construction activities.

12. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

13. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury, alteration or encroachment within the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, 100-year flood event, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

14. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

OWNERS

Jane Ann & James Hesse  
9020 County Road 43  
Chaska MN 55318-9314

MCWD

Administrator, Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:  
Smith Partners PLLP (Attn: MCWD)  
Suite 1200  
400 Second Avenue South  
Minneapolis MN 55401

15. Recitations Incorporated. The recitations stated above are a part of this easement.

16. Miscellaneous. This easement is governed by the laws of the State of Minnesota. The easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of the easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. MCWD bears the cost of duly recording this easement at the Carver County office of Property Records.

*(Signature page follows.)*

Executed by Owners and MCWD, intending to be bound as of the dates set forth below,

JAMES R. & JANE ANN HESSE

\_\_\_\_\_ Date:  
James Hesse

\_\_\_\_\_ Date:  
Jane Ann Hesse

STATE OF MINNESOTA  
COUNTY OF CARVER

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by James and Jane Ann Hesse, each the spouse of the other.

\_\_\_\_\_  
Notary Public

MINNEHAHA CREEK WATERSHED DISTRICT

\_\_\_\_\_ Date:  
Sherry Davis White, President

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Sherry Davis White as President of the Minnehaha Creek Watershed District.

\_\_\_\_\_  
Notary Public

This document prepared by:  
Smith Partners P.L.L.P.  
400 Second Avenue South

Suite 1200  
Minneapolis MN 55401

## ATTACHMENT A

### LEGAL DESCRIPTION OF BURDENED PROPERTY

That part of the North One Half of the Northeast Quarter of Section 26, Township 116 North, Range 24 West of the Fifth Principal Meridian, Carver County, Minnesota, described as follows:

Beginning at the northwest corner of the Northeast Quarter of said Section 26; thence on an assumed bearing of South 1 degree 04 minutes 04 seconds West, along the west line of said Northeast Quarter, a distance of 885.70 feet; thence South 64 degrees 09 minutes 53 seconds East a distance of 414.12 feet; thence southeasterly a distance of 86.38 feet along a tangential curve concave to the northeast having a radius of 2414.89 feet and a central angle of 2 degrees 02 minutes 58 seconds; thence North 14 degrees 45 minutes 17 seconds East, not tangent to the last described curve, a distance of 335.28 feet; thence South 75 degrees 14 minutes 43 seconds East a distance of 896.56 feet; thence South 3 degrees 10 minutes 14 seconds West a distance of 351.52 feet to the south line of the North Half of the Northeast Quarter of said Section 26; thence South 89 degrees 01 minutes 30 seconds East, along said south line, a distance of 1331.04 feet to the southeast corner of said North Half of the Northeast Quarter; thence North 1 degree 38 minutes 19 seconds East, along the east line of said Northeast Quarter, a distance of 1313.95 feet to the northeast corner of said Northeast Quarter; thence North 88 degrees 36 minutes 20 seconds West, along the north line of said Northeast Quarter, a distance of 2736.81 feet to the point of beginning.

Except that part of the Northeast Quarter of the Northeast Quarter of Section 26, Township 116 North, Range 24 West of the Fifth Principal Meridian, Carver County, Minnesota, described as follows:

Beginning at the Northeast corner of said Northeast Quarter of Section 26; thence southerly along the easterly line thereof, to the intersection with a line drawn 464.45 feet southerly of and parallel with the north line of said Northeast Quarter of Section 26; thence westerly along said parallel line to the intersection with a line drawn 855.00 feet westerly of and parallel with the East line of said Northeast Quarter of Section 26; thence north along said parallel line to the intersection with a line drawn 75.00 feet southerly of and parallel with said North line of the Northeast Quarter of Section 26; thence westerly along said parallel line to the intersection with the west line of the Northeast Quarter of said Northeast Quarter of Section 26; thence northerly along said westerly line to the Northwest Corner of said Northeast Quarter of the Northeast Quarter of Section 26; thence easterly to the point of beginning and there terminating.

**ATTACHMENT B**

**LEGAL DESCRIPTION OF EASEMENT AREA**


# EASEMENT DESCRIPTION

**EASEMENT DESCRIPTION:**

That part of the North One Half of the Northeast Quarter of Section 26, Township 116 North, Range 24 West of the Fifth Principal Meridian, Carver County, Minnesota, described as follows:

Commencing at the northwest corner of said Northeast Quarter of Section 26; thence South 00 degrees 24 minutes 41 seconds East, on an assumed bearing along the west line of said Northeast Quarter, a distance of 885.70 feet; thence South 65 degrees 38 minutes 38 seconds East a distance of 414.12 feet; thence southeasterly a distance of 86.38 feet along a tangential curve concave to the northeast having a radius of 2414.89 feet and a central angle of 2 degrees 02 minutes 58 seconds; thence North 13 degrees 16 minutes 32 seconds East a distance of 335.28 feet; thence South 76 degrees 43 minutes 28 seconds East a distance of 896.56 feet to a line hereinafter referred to as 'Line A'; thence South 01 degrees 41 minutes 29 seconds West, along said 'Line A' a distance of 351.52 feet to the south line of the North Half of said Northeast Quarter and the point of beginning of the lands to be described; thence North 89 degrees 29 minutes 45 seconds East, along said south line, a distance of 500.36 feet; thence North 01 degrees 37 minutes 33 seconds East a distance of 112.58 feet; thence South 89 degrees 45 minutes 42 seconds East a distance of 411.54 feet; thence North 06 degrees 53 minutes 23 seconds East a distance of 273.30 feet; thence North 88 degrees 23 minutes 22 seconds East a distance of 384.20 feet to the east line of said Northeast Quarter; thence North 00 degrees 09 minutes 52 seconds East a distance of 463.49 feet, to the south line of the north 464.45 feet of said Northeast Quarter; thence South 89 degrees 55 minutes 22 seconds West, along said south line, a distance of 855.01 feet to the west line of the east 855.00 feet of said Northeast Quarter; thence North 00 degrees 09 minutes 52 seconds East, along said west line, a distance of 389.45 feet to the south line of the north 75.00 feet of said Northeast Quarter; thence South 89 degrees 55 minutes 22 seconds West, along said south line, a distance of 341.06 feet; thence South 28 degrees 07 minutes 44 seconds East a distance of 79.11 feet; thence North 89 degrees 52 minutes 00 seconds West a distance of 234.23 feet; thence South 23 degrees 25 minutes 05 seconds East a distance of 196.35 feet; thence South 47 degrees 21 minutes 35 seconds East a distance of 118.95 feet; thence South 43 degrees 45 minutes 43 seconds East a distance of 108.44 feet; thence South 40 degrees 45 minutes 56 seconds East a distance of 68.45 feet; thence South 00 degrees 22 minutes 37 seconds East a distance of 84.84 feet; thence North 48 degrees 44 minutes 26 seconds West a distance of 128.58 feet; thence North 78 degrees 44 minutes 43 seconds West a distance of 33.48 feet; thence South 81 degrees 19 minutes 57 seconds West a distance of 16.80 feet; thence South 63 degrees 27 minutes 30 seconds West a distance of 27.10 feet; thence South 28 degrees 07 minutes 48 seconds West a distance of 14.23 feet; thence South 12 degrees 20 minutes 10 seconds West a distance of 90.18 feet; thence South 00 degrees 14 minutes 09 seconds East a distance of 30.43 feet; thence South 48 degrees 20 minutes 26 seconds East a distance of 91.25 feet; thence South 74 degrees 13 minutes 27 seconds East a distance of 77.01 feet; thence South 23 degrees 47 minutes 41 seconds West a distance of 194.25 feet; thence South 00 degrees 00 minutes 09 seconds West a distance of 183.15 feet; thence South 34 degrees 53 minutes 11 seconds West a distance of 162.01 feet to said 'Line A'; thence South 01 degrees 41 minutes 29 seconds West, along said 'Line A', a distance of 73.97 feet to the point of beginning.

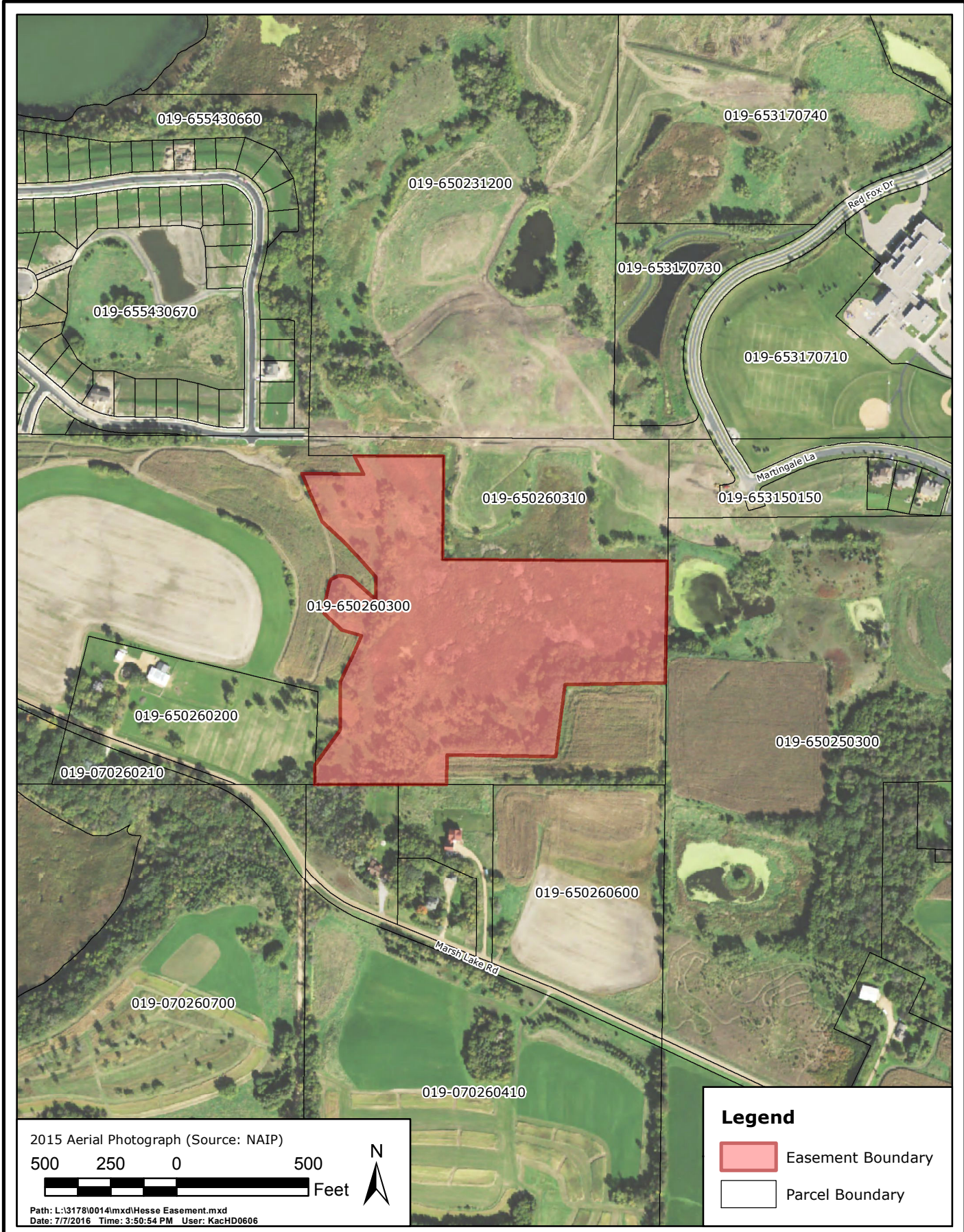
Containing 23.55 acres of land, more or less.

 Responsive partner. Exceptional outcomes.	PROJECT TITLE			
	<b>EASEMENT DESCRIPTION</b>			
CLIENT NAME	DWN BY CNA	CHK'D XXX	APP'D XXX	DWG DATE JULY 2016 SCALE 1" = XX'
MINNEHAHA CREEK WATERSHED DISTRICT	PROJECT NO. 0185-0050	SHEET NO. 1 OF 1		

**ATTACHMENT C**

**SITE PLAN: WETLAND RESTORATION AND BUFFER ESTABLISHMENT PLAN;  
EASEMENT AREA**





MINNEHAHA CREEK WATERSHED DISTRICT

Hesse Easement



JULY 2016

Figure 1

## AGREEMENT

THIS AGREEMENT (the “**Agreement**”) is made and entered into as of the Effective Date (as defined below) between **JAMES R. HESSE and JANE ANN HESSE**, husband and wife residing in the State of Minnesota (collectively, “**Seller**”), and **MINNEHAHA CREEK WATERSHED DISTRICT**, a Minnesota a governmental body created under Minnesota Statutes Chapter 103D (“**Buyer**”).

## RECITALS

A. Seller is the owner of approximately 59.55 acres of land located in the City of Victoria, Minnesota and legally described on **Exhibit A** attached hereto and made a part hereof (the “**Property**”)

B. Seller desires to grant to Buyer and Buyer desires to acquire from Seller an easement for wetland restoration purposes over that certain portion of Seller's Property containing approximately 29 acres and legally described on **Exhibit B** attached hereto and made a part hereof for the purposes more particularly described in the easement.

## AGREEMENT

NOW, THEREFORE, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Seller and Buyer agree as follows:

1. **Easement over the Property.** Seller agrees to grant to Buyer and Buyer agrees to accept from Seller an easement over the Property in form and substance attached hereto as **Exhibit C** (the “**Easement**”), subject to and upon the terms and conditions of this Agreement.

1.1 **Easement Value.** Buyer will pay to Seller an amount equal to Eighty Thousand and 00/100 Dollars (\$80,000.00) (the “**Easement Value**”) as consideration for the grant of the Easement.

1.2 **Payment of Easement Value.** On or before the third (3<sup>rd</sup>) business day following the Effective Date, Buyer will deposit an amount equal to Five Hundred and 00/100 Dollars (\$500.00) (the “**Deposit**”) into an account with Stewart Title Insurance Company (“**Title Company**”) for the benefit of Buyer. The Deposit is non-refundable except as expressly provided in this Agreement, and will be credited against the Easement Value at Closing. Buyer will deposit the Easement Value, less the amount of the Deposit, with the Title Company on the Closing Date.

2. **Closing.**

2.1 **Closing Date.** The execution, delivery and recordation of the Easement (the “**Closing**”) shall occur on the fifth (5<sup>th</sup>) business day following the later of (a) satisfaction by

Seller or waiver by Buyer of the Objections (as defined in Section 4.1.2 below); and (b) satisfaction by Seller or waiver by Buyer of the Additional Contingencies (as defined in Section 5.2 below) (the “**Closing Date**”), subject to extension as provided herein.

2.2 **Closing Deliveries** On the Closing Date, Buyer will deliver into an escrow established with the Title Company the Easement duly signed and acknowledged by Buyer. On the Closing Date, Seller will deliver to the escrow with the Title Company the following documents duly signed and, as appropriate, acknowledged (a) the Easement; and (b) a certification by Seller that Seller's representations and warranties set forth in Article 6 hereof remain true and correct as of the Closing Date; and (c) a document materially conforming to the consent and subordination attached hereto as **Exhibit D**.

3. **Costs.** Buyer will pay the cost of recording the Easement and any subsequent documents. Buyer will pay any Title Company closing fee and closing costs according to the customary practice for similar transactions in the Minneapolis-St. Paul metropolitan area. Except as provided in Articles 5 and 12, each party will pay its own attorneys' fees.

4. **Intentionally deleted.**

5. **Due Diligence Matters.**

5.1 **Inspection.**

5.1.1 **Inspection.** Prior to the Effective Date Buyer has performed physical and other inspections, engineering studies and other tests of the Property desired by Buyer and Buyer is satisfied with the inspection and physical condition of the Property.

5.2 **Additional Contingencies.**

5.2.1 **Additional Contingencies.** In addition to all other conditions set forth in this Agreement, the Buyer's obligation to consummate the transactions contemplated in this Agreement is contingent upon satisfaction of all of the following (individually, the “**Additional Contingency**” and collectively, the “**Additional Contingencies**”): (a) on the Closing Date, Seller's representations and warranties made in this Agreement remain true and correct, as if remade on and effective as of the Closing Date; (b) on the Closing Date, Seller is not in default under this Agreement or any other contract or agreement affecting or relating to the Property; (c) on or before the Closing Date, receipt by Buyer of documentary evidence reasonably acceptable to Buyer evidencing that the holders of any mortgages encumbering the Property have agreed to subordinate such mortgages to the Easement; and (d) on or before the Closing Date, receipt by Buyer of documentary evidence reasonably acceptable to Buyer that any abandoned wells on the Property have been sealed in accordance with applicable law.

5.2.2 **Additional Contingencies Date.** If any of the other Additional Contingencies described in Subsection 5.2.1 above has not been satisfied as of the date specified above for satisfaction of such Additional Contingency, then Buyer may furnish written notice to

Seller terminating this Agreement. Notwithstanding the foregoing, Buyer may elect, in its sole discretion, to waive the satisfaction of any of the Additional Contingencies. If Buyer terminates this Agreement pursuant to this Section 5.2.2, the Deposit will be refunded to Buyer and neither party shall have any further obligation under this Agreement. Furthermore, if Buyer terminates this Agreement due to an untruth or breach of a representation or warranty made by Seller, Seller will reimburse Buyer for the actual out-of-pocket expenses incurred by Buyer in relation to this Agreement (including costs and expenses relating to the inspection and Buyer's reasonable attorneys' fees and costs).

6. **Seller's Representations and Warranties.** As an essential part of this Agreement and in order to induce Buyer to enter into the transaction contemplated in this Agreement, Seller hereby represents and warrants to Buyer that:

6.1 No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or, to the best of Seller's knowledge, threatened against or affect Seller or the Property.

6.2 No condemnation or eminent domain proceedings are now pending or, to the best of Seller's knowledge, contemplated against the Property.

6.3 Seller has not received any notices, orders, suits, judgments or other proceedings relating violations of zoning, subdivision, platting or building laws with respect to the Property.

6.4 There are mortgages encumbering the Property.

6.5 Seller has full power to enter into and to perform this Agreement according to its terms and the execution and the delivery of this Agreement and the consummation of the transactions contemplated hereby will not constitute a default under any mortgages or other instruments or agreements to which Seller is a party, and this Agreement is not in contravention of any law, order, ordinance, or regulation by which Seller is bound or subject.

6.6 Seller has not used, handled, stored, generated, treated, emitted, manufactured, transported or disposed of any Hazardous Materials on or affecting the Property in any manner which violates any federal, state or local law, statute, regulation, requirement, ordinance, rule or policy, and to the best of Seller's knowledge, no prior or current owner, tenant, subtenant, occupant or licensee of the Property has used, handled, stored, generated, treated, emitted, manufactured, transported or disposed of any Hazardous Materials on or affecting the Property in any manner which violates any federal, state or local law, ordinance, rule, regulation or policy. For purposes of this Agreement, "**Hazardous Materials**" means any asbestos, urea formaldehyde foamed in place insulation, polychlorinated biphenyl, petroleum, crude oil or any dangerous, toxic or hazardous pollutants, chemicals, wastes or substances as defined in the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, the Minnesota

Environmental Response and Liability Act, as amended, or any other federal, state or local laws, statutes, regulations, requirements, ordinances, rules or policies.

6.7 There are no wells located on the Property.

6.8 To the best of Seller's knowledge, methamphetamine production has not occurred on the Property.

The representations and warranties contained in this Section 6 shall survive closing.

7. **Assignment.** The parties hereto shall not transfer or assign their interests in this Agreement without the prior written consent of the other party.

8. **Brokers.** Neither Seller nor Buyer has engaged the services of any broker in connection with the transactions contemplated in this Agreement. Seller and Buyer each agree to indemnify the other against any claim made by any broker or sales agent or similar party for a commission due or alleged to be due under the terms of any brokerage agreement entered into by said party with any party.

9. **Interim Operations.** Commencing on the Effective Date and continuing through and including the Closing Date, Seller will (a) operate, maintain, preserve and insure the Property in the same manner as prior to the Effective Date, including, without limitation, preventing any action or conduct which would violate or would require prior written authorization of Buyer pursuant to the terms of the Easement, maintenance of adequate insurance and full and timely compliance with any and all permits, approvals and applicable laws, (b) not transfer any interest in the Property, (c) execute no agreements or instruments regarding any of the Property without the prior consent of Buyer, (d) undertake no alterations to the Property without the prior consent of Buyer (including, without limitation, installation of any impervious surfaces), which consent may be withheld by Buyer based on the purpose and scope of the Easement, and (e) promptly deliver to Buyer a copy of any notice, consent, waiver, request or other communication Seller receives from any public or private entity with respect to any of the Property. Seller agrees to indemnify Buyer from and against all liabilities incurred by Buyer by reason of the operation and maintenance of the Property prior to Closing. The provisions of this Article 9 shall survive Closing.

10. **Default.** In the event that:

10.1 Seller breaches any provision of this Agreement, Buyer may enforce specific performance of this Agreement or cancel and terminate this Agreement and be relieved of its obligations hereunder and immediately have all of the Deposit returned to Buyer. No delay or omission in the exercise of any right or remedy accruing to Buyer upon any breach by Seller under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach. The waiver by Buyer of any condition, or the breach of any term, covenant or condition herein contained, shall not be deemed to be a waiver of any other condition, or of any subsequent breach, covenant or condition herein contained. Seller's remedies are cumulative.

10.2 Buyer breaches any provision of this Agreement, except to the extent caused by Seller's default or failure of Seller to satisfy any conditions precedent to Buyer's obligations set forth herein, Seller will have the right to terminate this Agreement by giving Buyer written notice of such default and, upon such termination, Seller, as its sole and exclusive remedy, shall retain all of the Deposit as liquidated damages. In no event will Buyer be liable for damages or specific performance.

11. **Notices.** Any notice, demand, request or other communication under this Agreement must be in writing, and shall be deemed given when it is personally delivered to the address set forth below or two (2) business days after such notice is mailed by first class mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

To Seller:

James and Jane Hesse  
9020 County Road 43  
Chaska, MN 55318

To Buyer:

Minnehaha Creek Watershed District  
15320 Minnetonka Blvd.  
Minnetonka, MN 55345  
Attn.: Anna Brown

With a copy to:

Smith Partners, PLLP  
400 Second Avenue South, Suite 1200  
Minneapolis MN 55401  
Attn: Michael Welch

and

Lindquist & Vennum LLP  
80 South 8th Street, Suite 4200  
Minneapolis, Minnesota 55402  
Attn: Laura Graf

Either party may change its address for notice purposes by giving written notice to the other party in the manner set forth in this Article.

12. **Attorneys' Fees.** In the event of any proceeding to enforce this Agreement, the non-prevailing party shall pay the reasonable attorneys' fees and costs incurred by the prevailing party.

13. **Miscellaneous.**

13.1 **Effective Date.** “Effective Date” means the date on which Buyer signs the Agreement after Seller has signed it, as shown on the signature page.

13.2 **Entire Agreement.** This Agreement, including all exhibits to this Agreement, embodies the entire agreement and understanding between the parties relating to the transaction contemplated hereby and may not be amended, waived or discharged except by an instrument in writing executed by both parties.

13.3 **Invalidity.** If any clauses or provisions herein contained would invalidate this Agreement in whole or in part, such clauses or provisions only shall be invalid, and the remainder of this Agreement will remain in full force and effect.

13.4 **Limitation on Offer.** The preparation of the Agreement by Buyer and the submission of this Agreement for the review or execution by any party shall not be deemed to be an offer by Buyer to acquire an easement over the Property, and this Agreement shall not be binding upon Buyer unless or until it has been executed by both Seller and Buyer.

13.5 **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

13.6 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

13.7 **Dates.** Time is of the essence of this Agreement. If any date, deadline or time for performance under this Agreement falls on a weekend or is a bank holiday, that date, deadline or time for performance will automatically be extended to the next day that is not on a weekend and is not a bank holiday.

13.8 **Construction.** The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as defining or as limiting in any way the scope or intent of the provisions hereof. Wherever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

13.9 **Counterparts; Facsimile Signature.** This Agreement may be executed in counterparts, each of which will be deemed an original. For purposes of executing this Agreement, a facsimile of a signature will be deemed an original.

13.10 **Disclaimer.** Buyer makes no representation or warranty as to the tax treatment of Seller's interest in the grant and conveyance to Buyer of the Easement. Seller's conveyance to Buyer of the Easement does not rest on any mutual assumption as to local, state or federal tax treatment of either Seller's or Buyer's interest in the Easement.

***SIGNATURES APPEAR ON FOLLOWING PAGE***

Seller and Buyer have signed and delivered this Agreement as of the Effective Date.

**SELLER:**

\_\_\_\_\_  
James R. Hesse

\_\_\_\_\_  
Jane Ann Hesse

**BUYER:**

**MINNEHAHA CREEK WATERSHED  
DISTRICT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_



## **EXHIBIT A**

### **LEGAL DESCRIPTION OF PROPERTY**

That part of the North One Half of the Northeast Quarter of Section 26, Township 116 North, Range 24 West of the Fifth Principal Meridian, Carver County, Minnesota, described as follows:

Beginning at the northwest corner of the Northeast Quarter of said Section 26; thence on an assumed bearing of South 1 degree 04 minutes 04 seconds West, along the west line of said Northeast Quarter, a distance of 885.70 feet; thence South 64 degrees 09 minutes 53 seconds East a distance of 414.12 feet; thence southeasterly a distance of 86.38 feet along a tangential curve concave to the northeast having a radius of 2414.89 feet and a central angle of 2 degrees 02 minutes 58 seconds; thence North 14 degrees 45 minutes 17 seconds East, not tangent to the last described curve, a distance of 335.28 feet; thence South 75 degrees 14 minutes 43 seconds East a distance of 896.56 feet; thence South 3 degrees 10 minutes 14 seconds West a distance of 351.52 feet to the south line of the North Half of the Northeast Quarter of said Section 26; thence South 89 degrees 01 minutes 30 seconds East, along said south line, a distance of 1331.04 feet to the southeast corner of said North Half of the Northeast Quarter; thence North 1 degree 38 minutes 19 seconds East, along the east line of said Northeast Quarter, a distance of 1313.95 feet to the northeast corner of said Northeast Quarter; thence North 88 degrees 36 minutes 20 seconds West, along the north line of said Northeast Quarter, a distance of 2736.81 feet to the point of beginning.

Except that part of the Northeast Quarter of the Northeast Quarter of Section 26, Township 116 North, Range 24 West of the Fifth Principal Meridian, Carver County, Minnesota, described as follows:

Beginning at the Northeast corner of said Northeast Quarter of Section 26; thence southerly along the easterly line thereof, to the intersection with a line drawn 464.45 feet southerly of and parallel with the north line of said Northeast Quarter of Section 26; thence westerly along said parallel line to the intersection with a line drawn 855.00 feet westerly of and parallel with the East line of said Northeast Quarter of Section 26; thence north along said parallel line to the intersection with a line drawn 75.00 feet southerly of and parallel with said North line of the Northeast Quarter of Section 26; thence westerly along said parallel line to the intersection with the west line of the Northeast Quarter of said Northeast Quarter of Section 26; thence northerly along said westerly line to the Northwest Corner of said Northeast Quarter of the Northeast Quarter of Section 26; thence easterly to the point of beginning and there terminating.

**EXHIBIT B**

LEGAL DESCRIPTION OF THE EASEMENT

*[SEE ATTACHED]*

# EASEMENT DESCRIPTION

**EASEMENT DESCRIPTION:**


That part of the North One Half of the Northeast Quarter of Section 26, Township 116 North, Range 24 West of the Fifth Principal Meridian, Carver County, Minnesota, described as follows:

Commencing at the northwest corner of said Northeast Quarter of Section 26; thence South 00 degrees 24 minutes 41 seconds East, on an assumed bearing along the west line of said Northeast Quarter, a distance of 885.70 feet; thence South 65 degrees 38 minutes 38 seconds East a distance of 414.12 feet; thence southeasterly a distance of 86.38 feet along a tangential curve concave to the northeast having a radius of 2414.89 feet and a central angle of 2 degrees 02 minutes 58 seconds; thence North 13 degrees 16 minutes 32 seconds East a distance of 335.28 feet; thence South 76 degrees 43 minutes 28 seconds East a distance of 896.56 feet to a line hereinafter referred to as 'Line A'; thence South 01 degrees 41 minutes 29 seconds West, along said 'Line A' a distance of 351.52 feet to the south line of the North Half of said Northeast Quarter and the point of beginning of the lands to be described; thence North 89 degrees 29 minutes 45 seconds East, along said south line, a distance of 500.36 feet; thence North 01 degrees 37 minutes 33 seconds East a distance of 112.58 feet; thence South 89 degrees 45 minutes 42 seconds East a distance of 411.54 feet; thence North 06 degrees 53 minutes 23 seconds East a distance of 273.30 feet; thence North 88 degrees 23 minutes 22 seconds East a distance of 384.20 feet to the east line of said Northeast Quarter; thence North 00 degrees 09 minutes 52 seconds East a distance of 463.49 feet, to the south line of the north 464.45 feet of said Northeast Quarter; thence South 89 degrees 55 minutes 22 seconds West, along said south line, a distance of 855.01 feet to the west line of the east 855.00 feet of said Northeast Quarter; thence North 00 degrees 09 minutes 52 seconds East, along said west line, a distance of 389.45 feet to the south line of the north 75.00 feet of said Northeast Quarter; thence South 89 degrees 55 minutes 22 seconds West, along said south line, a distance of 341.06 feet; thence South 28 degrees 07 minutes 44 seconds East a distance of 79.11 feet; thence North 89 degrees 52 minutes 00 seconds West a distance of 234.23 feet; thence South 23 degrees 25 minutes 05 seconds East a distance of 196.35 feet; thence South 47 degrees 21 minutes 35 seconds East a distance of 118.95 feet; thence South 43 degrees 45 minutes 43 seconds East a distance of 108.44 feet; thence South 40 degrees 45 minutes 56 seconds East a distance of 68.45 feet; thence South 00 degrees 22 minutes 37 seconds East a distance of 84.84 feet; thence North 48 degrees 44 minutes 26 seconds West a distance of 128.58 feet; thence North 78 degrees 44 minutes 43 seconds West a distance of 33.48 feet; thence South 81 degrees 19 minutes 57 seconds West a distance of 16.80 feet; thence South 63 degrees 27 minutes 30 seconds West a distance of 27.10 feet; thence South 28 degrees 07 minutes 48 seconds West a distance of 14.23 feet; thence South 12 degrees 20 minutes 10 seconds West a distance of 90.18 feet; thence South 00 degrees 14 minutes 09 seconds East a distance of 30.43 feet; thence South 48 degrees 20 minutes 26 seconds East a distance of 91.25 feet; thence South 74 degrees 13 minutes 27 seconds East a distance of 77.01 feet; thence South 23 degrees 47 minutes 41 seconds West a distance of 194.25 feet; thence South 00 degrees 00 minutes 09 seconds West a distance of 183.15 feet; thence South 34 degrees 53 minutes 11 seconds West a distance of 162.01 feet to said 'Line A'; thence South 01 degrees 41 minutes 29 seconds West, along said 'Line A', a distance of 73.97 feet to the point of beginning.

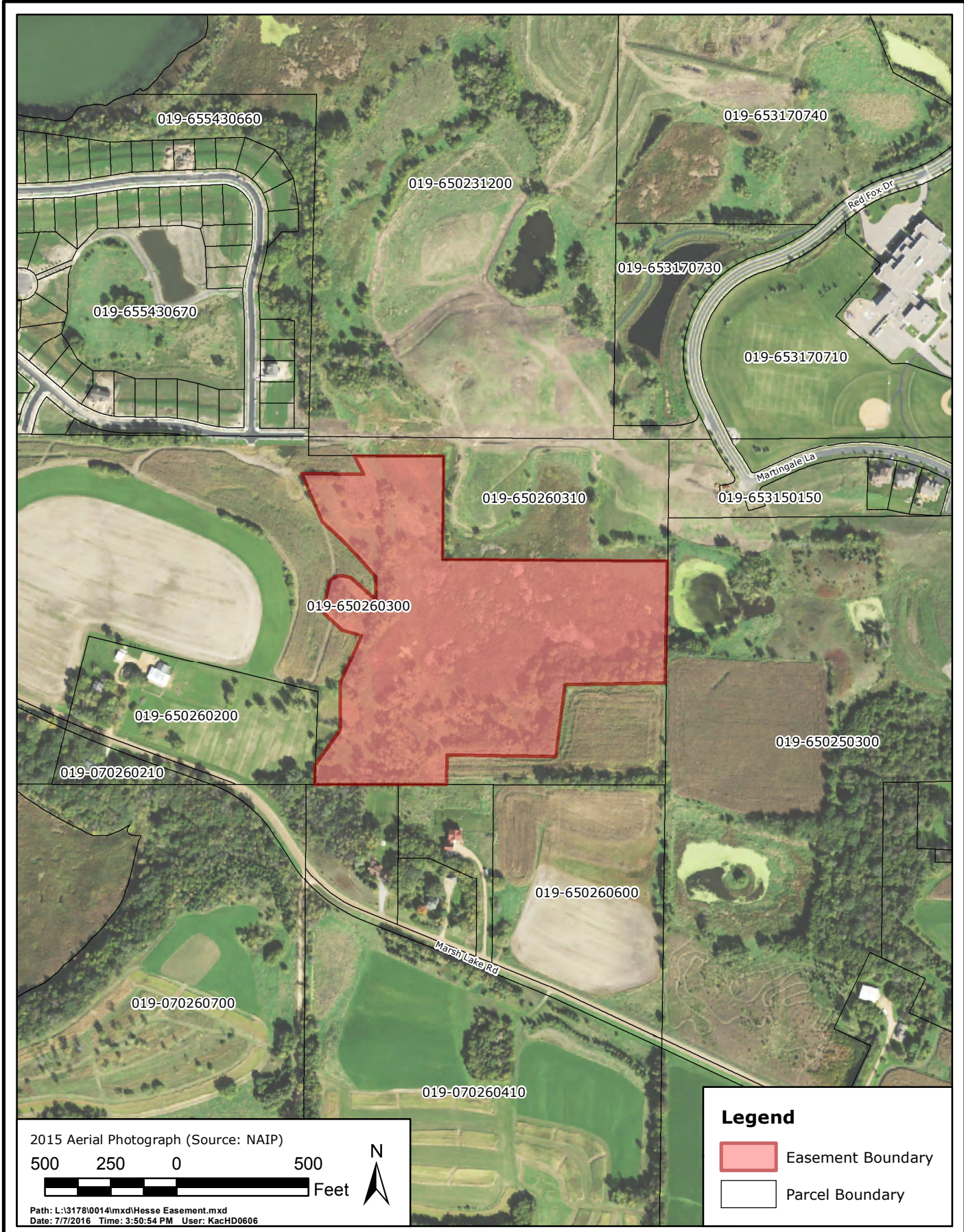
Containing 23.55 acres of land, more or less.

Plot Date & Time: 7 July 2016 9:38 AM

M:\0185\0050\Survey\CAD\0185-0050 ease1.dwg

 Responsive partner. Exceptional outcomes.	PROJECT TITLE			
	<b>EASEMENT DESCRIPTION</b>			
CLIENT NAME	DWN BY CNA	CHK'D XXX	APP'D XXX	DWG DATE JULY 2016 SCALE 1" = XX'
MINNEHAHA CREEK WATERSHED DISTRICT	PROJECT NO. 0185-0050	SHEET NO. 1 OF 1		

**EXHIBIT C**  
**EASEMENT**  
*[SEE ATTACHED]*



MINNEHAHA CREEK WATERSHED DISTRICT

Hesse Easement



JULY 2016

Figure 1

EXHIBIT D  
CONSENT AND SUBORDINATION  
*SEE ATTACHED*

**CONSENT AND SUBORDINATION**

MidCountry Bank, a [DESCRIPTION], the holder of a mortgage dated April 12, 2011, filed for record with the Office of County Recorder of Carver County, Minnesota, on April 15, 2011, as Document No. A536526, and amended by Modification of Mortgage, dated June 25, 2014, filed July 3, 2014, as Document No. A596099 and corrected by Modification of Mortgage, dated June 25, 2014, filed September 5, 2014 as Document No. A598974, and subject to the Partial Release of Mortgage dated June 16, 2015, filed August 6, 2015, as Document No. A614516, hereby consents to the recording of the attached Easement and agrees that its interest in the property affected by the Easement will be subordinated thereto. MidCountry Bank agrees to the creation of replacement wetland for regulatory compliance purposes through the restoration of wetland on the property and acknowledges that its interest in the property shall be subject to all federal, state and local laws and regulations regarding wetlands, for which MidCountry Bank consents to the recording of a completed and signed document materially confirming the Declaration of Restrictions and Covenants for Project-Specific Wetland Replacement attached hereto and agrees that its interest in the property affected will be subordinated thereto.

**IN WITNESS WHEREOF**, MidCountry Bank, a [DESCRIPTION], has caused this Consent and Subordination to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_ (authorized signature)

By: \_\_\_\_\_ (print name)  
\_\_\_\_\_ (title) of  
\_\_\_\_\_ (company or organization).

State of \_\_\_\_\_  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ (date) by  
\_\_\_\_\_ (name(s) of person(s)) as \_\_\_\_\_  
(type of authority, e.g., officer, trustee, etc.) of  
\_\_\_\_\_ (name of party on behalf of whom the  
instrument was executed).

\_\_\_\_\_ (Signature of notarial officer)

(Stamp)

\_\_\_\_\_ Title (and Rank)

Drafted by:  
Smith Partners PLLP  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401