

**MINNEHAHA CREEK WATERSHED DISTRICT  
BOARD OF MANAGERS**

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**In the Matter of permit no. 15-445  
300 Sixth Avenue N.,  
Orono**

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**FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER**

***FINDINGS OF FACT***

1. On October 13, 2016, at a duly scheduled meeting of the Minnehaha Creek Watershed District (District) Board of Managers (Board), a hearing was held on compliance of Erosion Control, Wetland Protection, and Floodplain Alteration work at 300 Sixth Avenue N., Orono, (the Property), owned at all times relevant to this matter by BPS Properties, LLC, a Minnesota limited liability company and holder of District permit 15-445 (the Permittee).
2. Managers present were [TBD]. Also present were [TBD].
3. The Board hearing was preceded by a meeting of the Board's Executive Committee [attendance TBD], at which the probable violation and possible terms of a Board compliance order were discussed. [Additional attendance TBD].
4. Written notice of the meeting and hearing was sent via email October 6, 2016, to the Permittee's email address. The confirmed meeting time was conveyed in person to the Permittee on October 10, 2016. Additional notice and record materials were sent to the Permittee via email October 11, 2016. [Permittee attendance TBD].
5. At the hearing, Staff provided the following documents, which constitute the hearing record in this matter:
  - a. 15-445 Permit Report and Attachments – October 22, 2015
  - b. 15-445 Permit issued for Erosion Control, Wetland Protection, and Stormwater Management – October 30, 2015
  - c. 15-445 Notice of Probable Violation – September 9, 2016
  - d. 15-445 Letter of Non-Compliance – September 9, 2016
  - e. Soil Impact Drawing Submitted by Permittee – September 22, 2016
  - f. Plan of Action Submitted by Permittee – September 22, 2016
  - g. W16-54 Wetland Conservation Act No Loss Application Submitted by Permittee – September 22, 2016
  - h. Tree Replacement Plan Submitted by Permittee – October 4, 2016
  - i. 15-445 Compliance Order – October 6, 2016
  - j. Seeding Stabilization Plan Submitted by Permittee – October 7, 2016
  - k. Proposal for Site Assessment and Restoration Plan by Wenck Associates – October 10, 2016

1. Tree Survey with Species, Diameter, and Location Submitted by Permittee – October 11, 2016

These documents, along with the testimony provided during the hearing, constitute the record in this matter.

6. At the request of [TBD], Staff related the discussion that occurred before the committee, summarized as follows:

300 Sixth Street North, Orono is an 89.09 acre lot platted for an 11 lot subdivision referred to as Mooney Lake Preserve. On October 22<sup>nd</sup>, 2015 the Board of Managers approved the permit application for Erosion Control, Stormwater Management, and Wetland Protection for the construction of an 11 lot subdivision.

Routine site inspections were conducted in November 2015, January, February, March, April, July, and August 2016 for permit compliance. On September 8, 2016 the following apparent violations were observed:

- Disturbance of wetlands “Wetland ML” and “Wetland P Pond” and associated buffers not included in approved plans
- Missing and non-functioning sediment control around the disturbed wetlands and wetland buffer perimeter
- Non-functioning Stormwater Pond and culvert along 6<sup>th</sup> Ave North
- Missing sediment control around the structure under construction along Mooney Lake Drive and 6<sup>th</sup> Ave North

A Notice of Probable Violation was issued on September 9<sup>th</sup>, 2016. Following the Notice of Probable Violation, MCWD Staff, The City of Orono staff, and the Permittee met onsite to discuss required action for the Notice of Probable Violation to be lifted. A memo summarizing the meeting was sent on September 16<sup>th</sup>, 2016 requesting the following to be submitted by September 23, 2016 to assess the amount of unpermitted impact to Wetland ML, Wetland P Pond and associated wetland buffers, floodplain alteration, and tree removal:

- Submission of an updated site survey showing the following items:
  - Quantified wetland disturbance area
  - Quantified wetland buffer disturbance area
  - 100-year floodplain elevation contour line (elevation to be provided by MCWD)
  - Inventory of all removed trees-including species, diameter, and location
- Have a certified wetland delineator re-flag the wetland boundary area as approved in the Notice of Decision that was issued on July 10, 2015
- Submit a Wetland Conservation Act No-Loss application for the wetland disturbance and proposed restoration work

MCWD received an updated site survey, restoration narrative, and WCA No-Loss application on September 22<sup>nd</sup>, 2016. Upon review of the submitted materials, Staff determined the materials to be incomplete as described below:

- The site survey did not quantify the amount of wetland buffer disturbance around Wetland ML or Wetland P Pond;
- The site survey submitted did not quantify the number of trees removed, identify the species, nor the tree diameter;
- It was unclear if the Wetland Boundaries around Wetland ML and Wetland P Pond were reflagged as approved in the NOD using GPS coordinates, or were reflagged based on the current disturbed site conditions;
- WCA No-Loss Application did not identify the correct No-Loss activity for the disturbance.

Another site inspection was conducted on Thursday September 29<sup>th</sup>, 2016. The following compliance issues were observed:

- Un-stabilized soils along Prairie View Drive
- Non-functioning sediment control around Prairie View Drive
- Non-functioning stormwater management pond on the corner of County Road 6 and Prairie View Drive
- Missing perimeter control around Outlot F access road with un-stabilized soils
- Un-stabilized soils flowing down the south western corner of lot 2 towards Wetland #1
- Inconsistent and sparse flagging delineating the boundary of Wetland #1
- Potential wetland fill within the north eastern boundaries of Wetland #1
- Un-stabilized stockpiles for greater than 14 inactive construction days

Due to the incomplete information submitted, the additional compliance issues observed, and the threat to natural resources imposed by an unstable shoreline resulting from unauthorized wetland, wetland buffer, and floodplain disturbance; Staff issued a Compliance Order on October 6<sup>th</sup>, 2016. The Compliance Order required site stabilization by October 11<sup>th</sup>, 2016. Upon stabilization, all land disturbing activity is required to cease. The Permittee acknowledged receiving the Compliance Order and was notified of the date and time of the Board Meeting.

7. The Board of Managers finds the above-stated report of the committee meeting in the matter and the facts stated herein to be supported by the record and adopts it as the factual findings in this matter.
8. The Board of Managers finds that the unauthorized disturbance of floodplain, wetlands, and wetland buffers constitutes an increased risk of erosion along the shoreline of Mooney Lake and a long-term risk of degradation of wetlands on site.

### ***CONCLUSIONS OF LAW***

1. The District possesses authority under Minnesota Statutes sections 103D.335 and 103D.341 to adopt and implement rules applicable to erosion control, wetland protection, and floodplain alteration, and to issue remedial orders for compliance with its rules.
2. The District's erosion control, wetland protection, and floodplain alteration rules are duly adopted and in force pursuant to the Board's statutory authority and all applicable

provisions of law and has been, in relevant part, throughout the time actions described herein took place.

3. The Permittee [is responsible- TBD] for violation of District permit 15-445 and the applicable District erosion control, wetland protection, and floodplain alteration regulatory requirements applicable to the Property;
4. The Permittee received actual notice of the meeting and hearing. [Permittee attendance TBD]. The Board may hear the evidence of a violation and issue a compliance order on the basis of evidence presented at the hearing.

**ORDER**

Accordingly, the Board of Managers ORDERS as follows:

1. By October 11, 2016, the Permittee must stabilize the site as directed in the Compliance Order issued by Staff on October 6, 2016.
2. Upon completion of stabilization, the Permittee is to cease all land disturbing work while the site is assessed by Wenck Associates and a Restoration Plan is drafted as described in Attachment i. Work may resume once the Permittee agrees to implement Restoration Plan drafted by Wenck Associates.
3. Staff is authorized to execute an agreement with the Permittee to implement the Restoration Plan drafted by Wenck Associates.
4. The Permittee must pay applicable costs of enforcement of permit 15-445 and District rules, of [TBD], representing the District's actual costs of field inspection, analysis, services of consultants including engineering and legal consultants, and monitoring; and pay such further permit compliance fees accrued and that accrue [wetland buffer financial assurance and additional erosion control financial assurance as applicable], pursuant to District rules by November 13, 2016.

This Order may be enforced in District Court through criminal misdemeanor prosecution, civil injunction or other appropriate order pursuant to Minnesota Statutes sections 103D.545 and 103D.551.

\_\_\_\_\_  
Sherry White, President  
MCWD Board of Managers

Date \_\_\_\_\_



Permit Application No.: 15-445

Rules: Erosion Control,  
Wetland Protection, &  
Stormwater Management

Applicant: BPS Properties, LLC

Project: Mooney Lake Preserve

Location: 300 Sixth Ave. N., Orono

Received: 8-24-15

Complete: 9-15-15

Noticed: 9-16-15

**Recommendation:**

Approval with conditions:

- Submission of a draft Declaration for maintenance of Wetland Buffers and Stormwater Facilities for MCWD approval, then recordation;
- Submission of a Financial Assurance in the amount of \$11,000.00;
- Submission of documentation of NPDES permit application and number; and
- Reimbursement of Fees.

And stipulations:

- The applicant must submit buffer monumentation for approval prior to installation; and
- The applicant must submit as-built drawings of all stormwater facilities on completion of construction; and
- The applicant must verify the emergency overflow (EOF) elevation of Wetland 6 against the low opening elevation of the structure to be built on Lot 2 Block 2, to affirm 2 vertical feet of separation from the 100-year high water elevation;

**Background:**

BPS Properties, LLC has applied for a Minnehaha Creek Watershed District permit for Erosion Control, Wetland Protection, and Stormwater Management for the construction of an 11-lot subdivision located at 300 Sixth Ave. N. in the City of Orono. The project will result in a 3.72 acre increase in impervious surface on the 89.09 acre lot, which ultimately drains to Mooney Lake, with 1.55 acres draining to Hadley Lake.

The applicant has submitted all exhibits, plans and materials necessary to analyze compliance with the MCWD rules. No variances from MCWD rule provisions are needed for approval of the permit. Rather this permit is before the Board of Managers for determination at the request of a member of the public. In accordance with Resolution 049-2004 delegating permitting authority to staff, staff attempted to meet with the individual who made the request to address concerns about the proposed work. Since the requesting party is a plaintiff in the suit related to the project that is the subject of the permit, MCWD legal counsel attempted to set up an informal meeting between the requesting party and staff to address concerns, but counsel for the party declined.

**Erosion Control:**

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

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. The proposed project involves approximately 8.0 acres of disturbance within the City of Orono, the rule is triggered. The erosion and sediment control practices proposed for the project meet District standards. Erosion and sediment control best management practices (BMPs) provided include: silt fence, bio-logs, rock construction entrances, concrete washout locations, inlet protection, seeding, sodding, and vegetation protection, where applicable. The proposed erosion control plan is consistent with requirements outlined in Section 5 of the District's Erosion Control rule, including: identification of onsite water features; location of trees and vegetation on-site; location of all structures; existing and proposed grading; erosion control measures; existing and proposed stormwater management features; and conforms to all criteria outlined in Section 5(b). The proposed erosion control plan meets the District's Erosion Control rule.

**Wetland Conservation Act & Wetland Protection:**

The District exercises regulatory authority for Wetland Protection in the City of Orono. The District administers the Wetland Conservation Act in the City of Orono.

A complete Wetland Conservation Act (WCA) wetland boundary & type application (W15-14) for the parcels associated with the above mentioned permit application was submitted to the District on May 21, 2015. A WCA Notice of Decision approving the boundaries & types for 14 wetlands on the project parcels was issued on July 10, 2015.

The proposed redevelopment project does not propose wetland impacts, such as would trigger a need for the applicant to apply for replacement-plan approval under WCA. Because the project triggers the District’s Stormwater Management rule, under sections 3(b), 4(a) and 5(a) of the Wetland Protection Rule wetland buffers must be provided on each wetland on the property downgradient from land-disturbing activity to be undertaken for the project. The applicant’s plans leave existing wetland buffers undisturbed, therefore the requirements for revegetation of buffer areas in paragraph 7(c) of the rule do not apply. However, in accordance with paragraph 7(a) of the rule, the applicant is required to record a declaration ensuring continued protection and maintenance of the buffer areas. Plans submitted provide for installation of buffer monumentation approved at the required spacing throughout the project area, in accordance paragraph 5(d); the applicant must submit monumentation designs/language for verification by MCWD staff prior to installation.

Of the 14 wetlands on the project parcels, eight wetlands are located downgradient of the proposed work. Paragraphs 6(b) and 6(c) of the District’s Wetland Protection Rule allow reductions in buffer width when the applicant submits documentation of beneficial slope or soil conditions (Section 6(b)), or demonstrated site constraints (Section 6(c)). The applicant is not proposing reductions in buffer width based on either of these criteria, and is applying the full applicable buffer width as shown in Table 1. The applicant is not utilizing the buffer width averaging provided in paragraph 6(c) of the rule to reduce buffer widths at any location on the project site, and the minimum applied buffer widths in paragraph 6(a) of the rule – 16 feet for Manage 3 wetlands, 24 feet for manage 2 wetlands – is maintained throughout the project area.

| <b>Wetland</b> | <b>Management Class</b> | <b>Base Buffer Width</b> | <b>Provided Buffer Width</b> |
|----------------|-------------------------|--------------------------|------------------------------|
| Wetland 1      | Manage 2                | 30’                      | 30’                          |
| Wetland 2      | Manage 3                | 20’                      | 20’                          |
| Wetland 6      | Manage 3                | 20’                      | 20’                          |
| Wetland 7*     | Manage 2                | 30’                      | 30’                          |
| Wetland 8      | Manage 3                | 20’                      | 20’                          |
| Wetland SW     | Manage 3                | 20’                      | 20’                          |
| Wetland ML     | Manage 2                | 30’                      | 30’                          |
| Wetland P      | Manage 2                | 30’                      | 30’                          |

*Table 1: Wetland Buffer Widths*

\*The management class of Wetland 7 was not listed on the District’s Functional Assessment of Wetlands inventory; thus, in accordance with the Wetland Protection rule, on August 27<sup>th</sup>, 2015 the applicant submitted a Minnesota Routine Assessment Method (MnRAM) report evaluating the management class. The District reviewed and approved the output of the report, which classified the wetland as Manage 2.

All wetlands and corresponding buffer areas are depicted in Attachment 5 & 6.

The plan meets the District’s Wetland Protection rule.

**Stormwater Management:**

The District exercises regulatory authority for stormwater management in the City of Orono.

The District’s Stormwater Management rule is applicable for any project proposing new or replacing existing impervious surface. Because the proposed work constitutes redevelopment involving the addition of 3.72 acres (162,043 square feet) of new impervious surface to the present 1.38 acres of impervious area on a site larger than

one acre, paragraph 5(b) of the rule requires the applicant to provide stormwater management meeting the District's stormwater criteria for the entire site area.

The table below summarizes the impervious surface increase on-site:

| Size of Site (ac)        | Site Drains To                 | Existing Impervious (ac) | Proposed Impervious (ac) |
|--------------------------|--------------------------------|--------------------------|--------------------------|
| 89.09<br>(8.0 disturbed) | Mooney Lake and<br>Hadley Lake | 1.38                     | 5.10                     |

Table 2: Increase in Impervious Surface

The proposed project will construct two new stormwater ponds (one containing a filtration bench), two infiltration basins, and 9 lot-specific raingardens. All proposed BMPs are designed and will be installed in accordance with generally accepted design practices and guidance of the Minnesota Pollution Control Agency's *Minnesota Stormwater Manual*. In accordance with Section 3(d) of the District's Stormwater Management rule, BMPs have been incorporated to provide the necessary volume of abstraction through on-site infiltration and peak flow control and to limit pollutant discharge from the site. Paragraph 3(c)(1) of the District's Stormwater Management rule requires an applicant's stormwater management plan to provide for the abstraction of the first one inch of rainfall from the site's impervious surface. Here, that calculation results in a required 18,513 cubic feet of abstraction (i.e., stormwater retained onsite). The submitted stormwater management plan for the project provides an abstraction volume of 20,625 cubic feet of runoff, as shown in Table 3 below.

The abstraction volume is provided by the following stormwater practices:

| Source of Impervious Surface            | Area (ac) | Required Abstraction (cf) | Provided Abstraction (cf) | BMP Proposed               |
|---|-----------|---------------------------|---------------------------|----------------------------|
| Existing Drive                          | 0.37      | 1,333                     | 1,350                     | Infiltration Basin (south) |
| New West Road and 2 Houses w/ Driveways | 0.89      | 3,233                     | 3,450                     | Infiltration Basin (north) |
| New East Road                           | 0.36      | 1,300                     | 1,650                     | Filtration Bench           |
| 9 Houses with Driveways                 | 3.48      | 12,646                    | 14,175                    | Raingardens                |
| Totals                                  | 5.10      | 18,513                    | 20,625                    |                            |

Table 3: Abstraction by Stormwater Practice

All infiltration practices were designed and sized to draw down within 48 hours. The District's engineer analyzed the design and sizing of the proposed infiltration practices based on the infiltration rates through the soil media, and determined the applicant has met the volume control criteria. The infiltration rates were based on soil information provided by the applicant and soil borings, which match the infiltration rates prescribed by MPCA guidelines.

The stormwater-management plan for the project provides phosphorus control by virtue of its meeting the volume control requirement in 3(c)(1).

The rate control requirement in paragraph 3(b) of the District's Stormwater Management rule requires no net increase in the peak runoff rate for the 1-, 10-, and 100-year over the site's impervious surface. The proposed stormwater ponds and infiltration practices will reduce runoff below the existing rates for the 1-, 10-, and 100-year TP40 rain events. Thus, in accordance with Section 3(b)(2), no rate increase will occur within any drainage area of the site. The applicant has shown that the criteria of Stormwater rate and volume control were met.

After review of HydroCAD calculations, the grading plan, and the location of proposed impervious surfaces, the project as proposed will not increase the bounce and inundation of any wetland or waterbody beyond the limits

outlined in the Stormwater Management rule Section 8(b)(1-2). Also, the project does not propose any changes to runoff control elevations for any waterbody or wetland which satisfies the criteria of Rule 8(b)(3).

Table 4 below lists the pre- and post-construction runoff rates for the proposed disturbed areas at the downgradient site boundaries and discharge locations:

| Drainage Area     | 1-year event |       | 10-year event |       | 100-year event |       |
|-------------------|--------------|-------|---------------|-------|----------------|-------|
|                   | Pre-         | Post- | Pre-          | Post- | Pre-           | Post- |
| Hadley Lake       | 0.13         | 0.11  | 1.75          | 0.97  | 6.30           | 3.91  |
| Mooney Lake       | 0.52         | 0.19  | 6.17          | 2.85  | 7.87           | 6.67  |
| Total (Disturbed) | 0.65         | 0.30  | 7.92          | 3.82  | 14.17          | 10.58 |

Table 4: Existing and Proposed Runoff Rates

The applicant has also provided analysis showing that the raingardens would provide phosphorus, rate, and volume for each lot.

Based upon the elevation of the proposed building pads in relation to adjacent stormwater facilities, wetlands or other waterbodies, all low openings of structures are proposed to have two feet of vertical separation from the 100-year high water elevations, with the exception of the building pad located on Lot 2, Block 2. The criteria of the rule will be met on the stipulation that, the emergency overflow (EOF) elevation of wetland 6 be verified and maintained and the low openings on Lot 2 Block 2 be verified to show 2 feet of vertical separation.

The proposed peak runoff rates meet the District's rate-control requirements. The proposed stormwater management system satisfies the District's requirements.

**Summary:**

BPS Properties, LLC is proposing an 11-lot subdivision project that will trigger the District's Erosion Control, Wetland Protection, and Stormwater Management 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.

**Attachments:**

1. Permit Application
2. Site Plan – North Detail
3. Site Plan – South Detail
4. Notice of Decision – Approved July 10, 2015
5. Wetland Buffer Plan – North
6. Wetland Buffer Plan – South

15-445

WATER RESOURCE PERMIT APPLICATION FORM

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

15320 Minnetonka Blvd. Minnetonka, MN 55345.

Keep a copy for your records.

YOU MUST OBTAIN ALL REQUIRED AUTHORIZATIONS BEFORE BEGINNING WORK.

1. Name of each property owner: BPS Properties L.L.C. (George W. Strickney  
 Mailing Address: Coldwell Banker Bank Realty Attn: T City: Wayzata State: Mn Zip: 55391  
 Email Address: 5 Strick @ chabernet.com Phone: 952-476-3694 Fax: 952-216-0055

2. Property Owner Representative Information (not required) (licensed contractor, architect, engineer, etc...)  
 Business Name: GRANBERG + ASSOCIATES, INC. Representative Name: MARK GRANBERG  
 Business Address: 445 N. Willow Drive City: Lake Lake State: MN Zip: 55356  
 Email Address: Markg@granbergassoc.com Phone: 952-473-4141 Fax: 952-473-4435

3. Project Address: 300 RYTH AVE N. City: 01010  
 State: MN Zip: 55391 Qtr Section(s): 5E Section(s): 25 Township(s): 118 Range(s): 23  
 Lot: N/A Block: N/A Subdivision: N/A PID: 25-118-23-41-001  
 PID: 25-118-23-49-001

4. Size of project parcel (square feet or acres): 89.09 ± ac. excl. Road Area 25-118-23-44-0003  
 Area of disturbance (square feet): 3 ± ac. excl. Road Volume of excavation/fill (cubic yards): 10,000  
 Area of existing impervious surface: 1.38 ± ac Area of proposed impervious surface: 5.10 ± ac.  
 Length of shoreline affected (feet): N/A Waterbody (& bay if applicable): MOONLAKES LAKE

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

6. Project purpose (Check all that apply):  
 SINGLE FAMILY HOME  MULTI FAMILY RESIDENTIAL (apartments)  
 ROAD CONSTRUCTION  COMMERCIAL or INSTITUTIONAL  
 UTILITIES  SUBDIVISIONS (include number of lots) 11  
 DREDGING  LANDSCAPING (pools, berms, etc.)  
 SHORELINE/STREAMBANK STABILIZATION  OTHER (DESCRIBE): WILL BE APPLYING DRAIN A

7. NPDES/SDS General Stormwater Permit Number (if applicable): CONTRACTOR SELECTED.

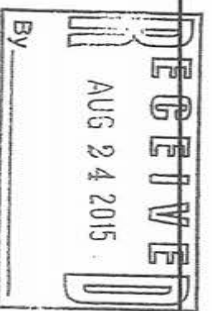
8. Waterbody receiving runoff from site: MOONLAKES LAKE

9. Project Timeline: Start Date: FALL 2015 Completion Date: FALL 2015

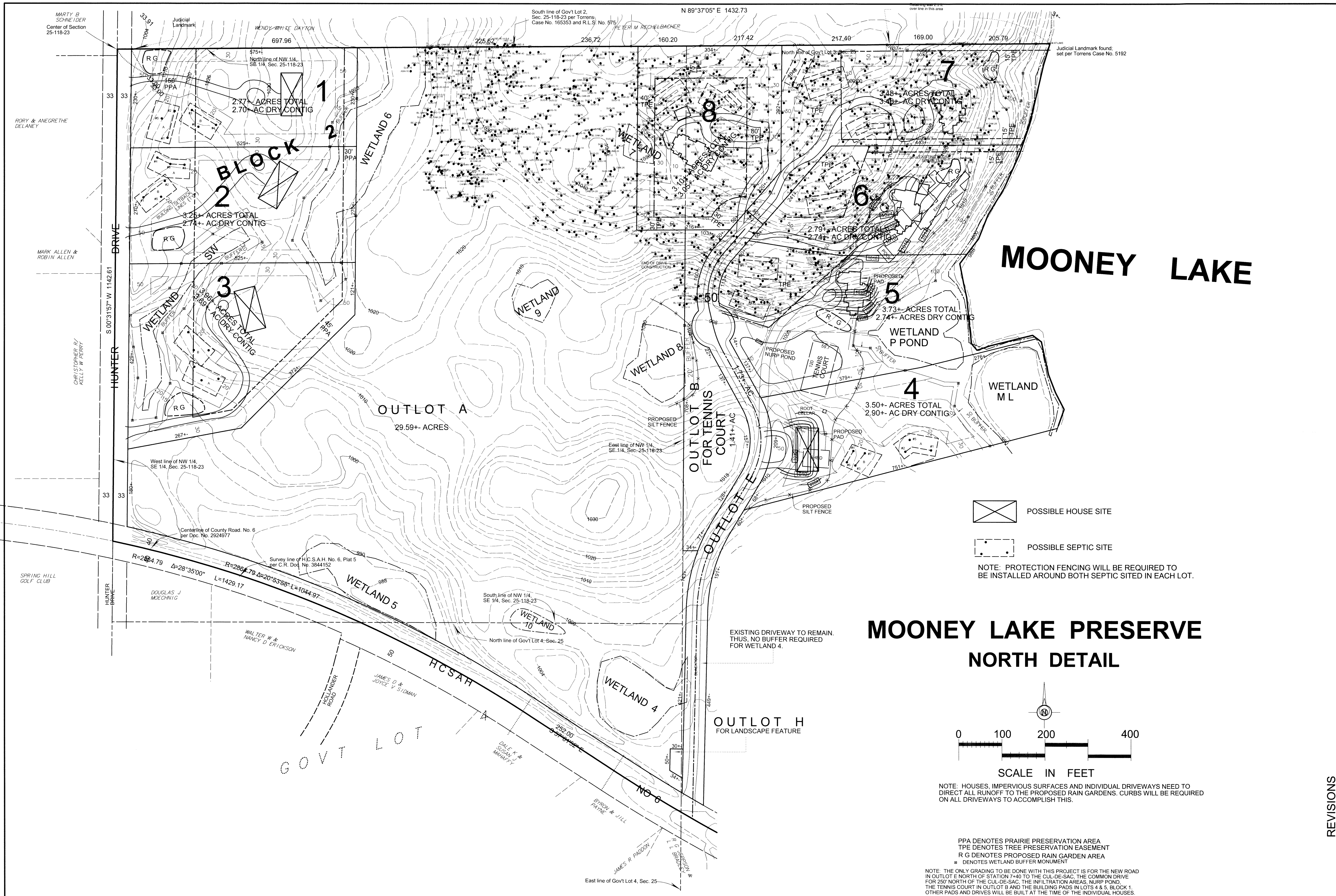
Permits have been applied for: City  County  MN Pollution Control Agency  DNR  COB   
 Permits have been received: City  County  MN Pollution Control Agency  DNR  COB

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

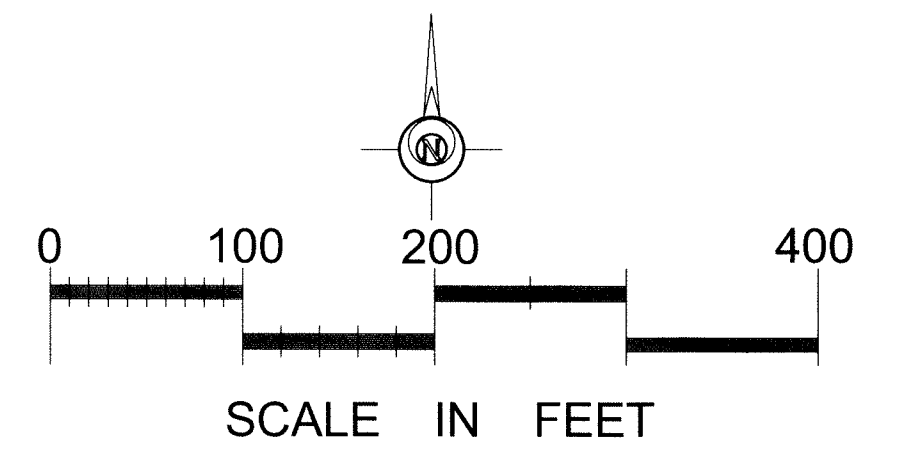
Signature of Each Property Owner George W. Strickney BPS Properties L.L.C. Date 08/24/15







# MOONEY LAKE PRESERVE NORTH DETAIL



NOTE: HOUSES, IMPERVIOUS SURFACES AND INDIVIDUAL DRIVEWAYS NEED TO DIRECT ALL RUNOFF TO THE PROPOSED RAIN GARDENS. CURBS WILL BE REQUIRED ON ALL DRIVEWAYS TO ACCOMPLISH THIS.

PPA DENOTES PRAIRIE PRESERVATION AREA  
TPE DENOTES TREE PRESERVATION EASEMENT  
R G DENOTES PROPOSED RAIN GARDEN AREA  
■ DENOTES WETLAND BUFFER MONUMENT

NOTE: THE ONLY GRADING TO BE DONE WITH THIS PROJECT IS FOR THE NEW ROAD IN OUTLOT E NORTH OF STATION 7+40 TO THE CUL-DE-SAC. THE COMMON DRIVE FOR 250' NORTH OF THE CUL-DE-SAC, THE INFILTRATION AREAS, NURP POND, THE TENNIS COURT IN OUTLOT B AND THE BUILDING PADS IN LOTS 4 & 5, BLOCK 1. OTHER PADS AND DRIVES WILL BE BUILT AT THE TIME OF THE INDIVIDUAL HOUSES.

POSSIBLE HOUSE SITE  
 POSSIBLE SEPTIC SITE  
 NOTE: PROTECTION FENCING WILL BE REQUIRED TO BE INSTALLED AROUND BOTH SEPTIC SITED IN EACH LOT.

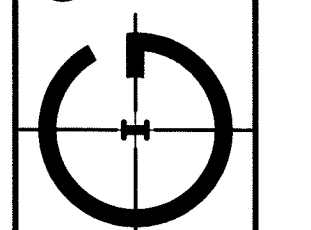
### REVISIONS

| DATE    | BY | REMARKS           |
|---------|----|-------------------|
| 5-21-15 |    | REVISED LOT LINES |
| 8-11-15 |    |                   |
| 8-22-15 |    |                   |
| 9-3-15  |    |                   |
| 9-25-15 |    |                   |

DESIGNER: [Signature]  
DRAWN: [Signature]  
CHECKED: [Signature]

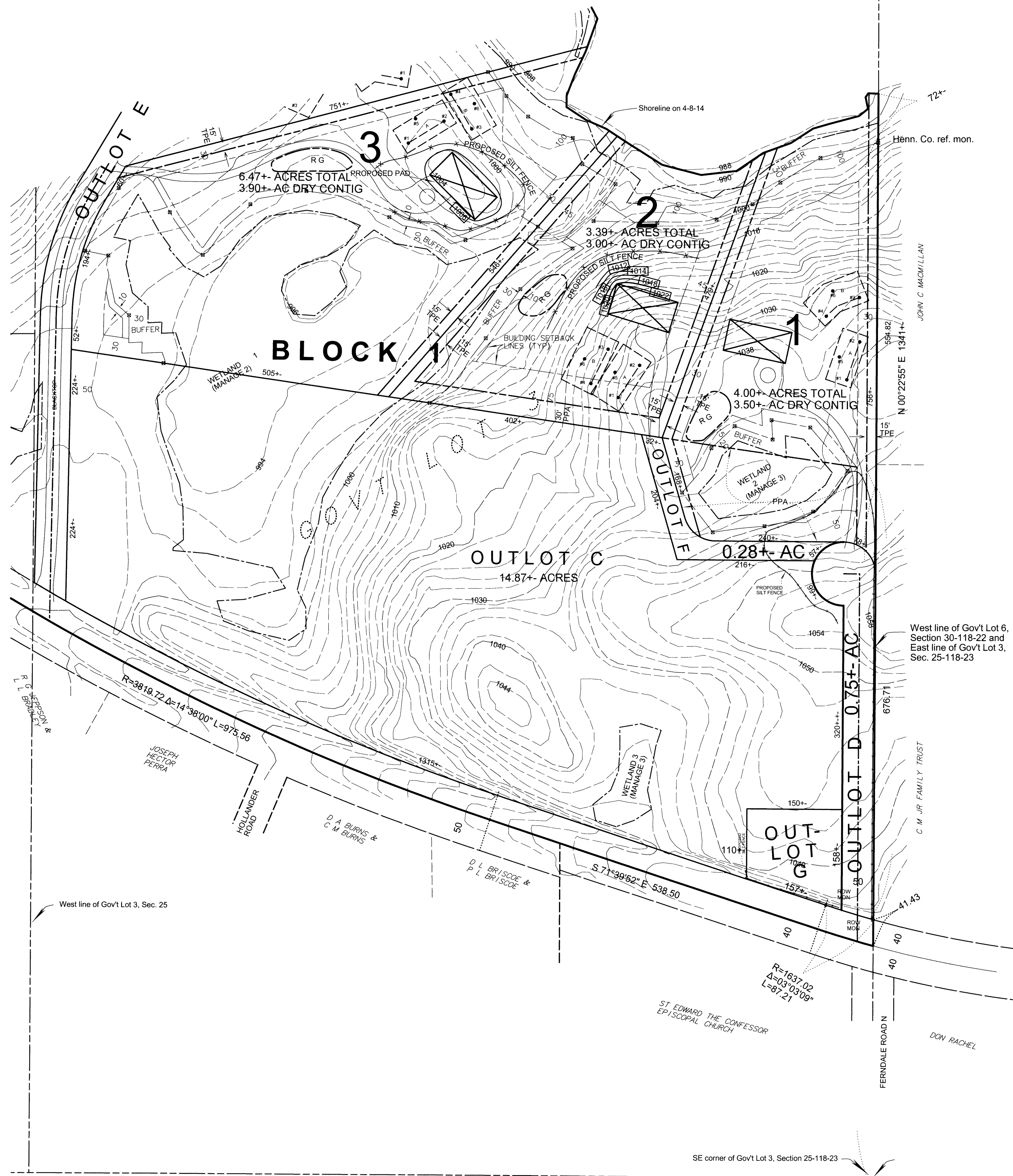
I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.  
 DATE 10-12-15 MNN LICENSE NUMBER 11271

| DATE   | SCALE   | SHEET NO. | TOTAL SHEETS |
|--------|---------|-----------|--------------|
| 5-5-15 | 1"=100' | 15-052    | 15           |



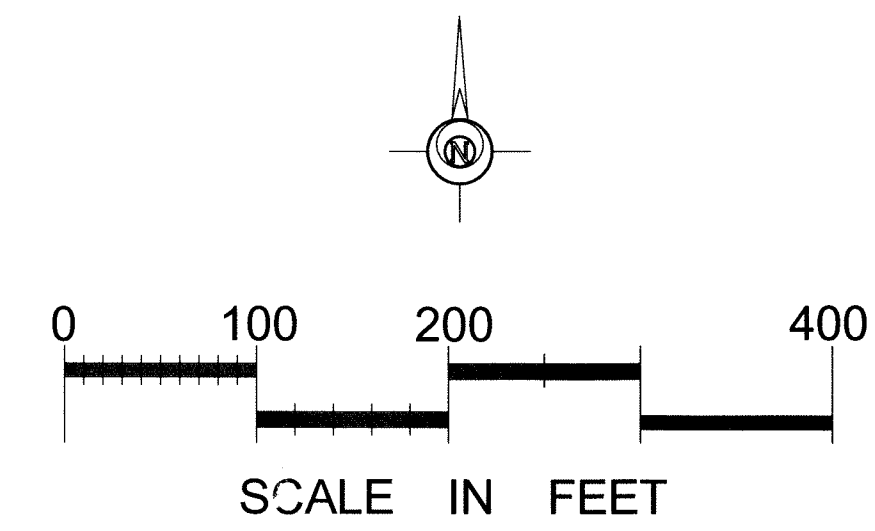
**GRONBERG & ASSOCIATES, INC.**  
 CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS  
 445 N. WILLOW DRIVE LONG LAKE, MN 55356  
 PHONE: 952-473-4141 FAX: 952-473-4435





# MOONEY LAKE PRESERVE

## SOUTH DETAIL



- POSSIBLE HOUSE SITE
- SEPTIC SITE

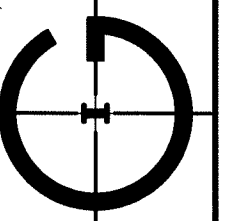
PPA DENOTES PRAIRIE PRESERVATION AREA  
 TPE DENOTES TREE PRESERVATION EASEMENT  
 R G = PROPOSED RAIN GARDEN

NOTE: HOUSES, IMPERVIOUS SURFACES AND INDIVIDUAL DRIVEWAYS NEED TO DIRECT ALL RUNOFF TO THE PROPOSED RAIN GARDENS. CURBS WILL BE REQUIRED ON ALL DRIVEWAYS TO ACCOMPLISH THIS.

R G DENOTES PROPOSED RAIN GARDEN AREA  
 \* DENOTES WETLAND BUFFER MONUMENT

NOTE: THE ONLY GRADING TO BE DONE WITH THIS PROJECT IS FOR THE NEW ROAD IN OUTLOT D, THE NURP POND IN OUTLOT G AND THE BUILDING PAD IN LOT 3, BLOCK 2. OTHER PADS AND DRIVES WILL BE BUILT AT THE TIME OF THE INDIVIDUAL HOUSES.

**GRONBERG & ASSOCIATES, INC.**  
 CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS  
 445 N. WILLOW DRIVE LONG LAKE, MN 55356  
 PHONE: 952-473-4141 FAX: 952-473-4435



DATE: 5-5-15  
 SCALE: 1"=100'  
 SHEETS: 15 OF 22  
 SHEET NO: 15

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.  
*Mark J. Gronberg*  
 DATE: 10-2-15 MINN. LICENSE NUMBER: 42321

| REVISIONS |           |
|-----------|-----------|
| DATE      | REMARKS   |
| 6-1-15    | REVISIONS |
| 7-27-15   | REVISIONS |
| 8-22-15   | REVISIONS |
| 9-3-15    | REVISIONS |
| 9-25-15   | REVISIONS |
| 10-12-15  | REVISIONS |

# Minnesota Wetland Conservation Act

## Notice of Decision

|  |   |
|--|---|
| Local Government Unit (LGU)<br><b>Minnehaha Creek Watershed District</b> | Address<br><b>15320 Minnetonka Blvd<br/>         Minnetonka, MN 55345</b> |
|--|---|

### 1. PROJECT INFORMATION

|   |   |  |                                     |
|---|---|--|-------------------------------------|
| Applicant Name<br>George Stickney (BPS Properties, LLC)<br>Wendy Dayton (Landowner) | Project Name<br><b>300 6<sup>th</sup> Ave N</b> | Date of Application<br><b>4/20/15<br/>         (Incomplete)<br/>         6/17/15<br/>         (Complete)</b> | Application Number<br><b>W15-14</b> |
| <input checked="" type="checkbox"/> Attach site locator map                         |   |  |                                     |

Type of Decision:

|  |                                       |                                    |                                     |
|--|---------------------------------------|------------------------------------|-------------------------------------|
| <input checked="" type="checkbox"/> Wetland Boundary or Type | <input 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:                         |  |                               |

### 2. LOCAL GOVERNMENT UNIT DECISION

|  |   |                                 |
|--|---|---------------------------------|
| Date of Decision:                            |   |                                 |
| <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):

George Stickney (BPS Properties, LLC) and Wendy Dayton (landowner) applied for a wetland boundary and type confirmation for the wetlands located at 300 6<sup>th</sup> Ave N in the City of Orono. Legal description: Section 25, Township 118N, Range 23W (PID 2511823410001, 2511823130006, 2511823440003, and 2511823430001).

A wetland delineation was conducted by Svoboda Ecological Resources on November 3, 4, 6, 11, 2014 and April 4 and 10, 2015. A complete delineation report was submitted on May 21, 2015. Thirteen wetlands were delineated on site, including the fringe of one DNR Public Water (Lake Mooney). Two additional areas were investigated for wetland characteristics and determined to be upland. The subject area is approximately 80 acres in size.

Wetland one was classified as a Type 3-4 excavated shallow/deep fresh marsh surround by a Type 2 fresh meadow wetland, Wetland two was a type 1 floodplain forest, Wetland three was a Type 2 fresh wet meadow, Wetland four was a Type 4 deep marsh, Wetland five was a Type 1-2 fresh wet meadow/floodplain forest, Wetland six was a Type 1 floodplain forest, Wetland seven was a Type 1 seasonally flooded basin, Wetland eight was a Type 2 fresh wet meadow, Wetland nine was a Type 2 fresh wet meadow, Wetland ten was a Type 2 fresh wet meadow, Wetland "ML" was a Type 2 fresh wet meadow that fringes Mooney Lake, and Wetland "P" surrounds a pond and is a Type 3 shallow



marsh.

Wenck Associates, representing MCWD, and BWSR reviewed the boundaries in the field on 6/11/15. Wetland boundary revisions were requested and an additional wetland, Wetland 11 (Type 1, seasonally flooded basin), was identified and delineated during the field visit. Final updated materials from SER were received by MCWD on 6/17/15.

MCWD approves the wetland boundaries and types as delineated in the field and documented in the updated SER materials. This decision is valid for five years. A future project located on this property may require a permit from the MCWD.

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<br><b>Beth Brown</b>  | Title<br><b>Permitting Technician</b> |  |
| Signature<br><i>Elyavets Brown</i>   | Date<br><i>7/10/15</i>                | Phone Number and E-mail<br><b>(952) 641-4504</b><br><b>ebrown@minnehahacreek.org</b> |

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:<br><b>Minnehaha Creek Watershed District</b><br><b>15320 Minnetonka Blvd</b><br><b>Minnetonka, MN 55345</b> | <input type="checkbox"/> Appeal of LGU governing body decision. Send petition and \$500 filing fee to:<br>Executive Director<br>Minnesota Board of Water and Soil Resources<br>520 Lafayette Road North<br>St. Paul, MN 55155 |
|--|---|

### 4. LIST OF ADDRESSEES

|  |
|--|
| <input checked="" type="checkbox"/> SWCD TEP member: <b>Stacey Lijewski – stacey.lijewski@co.hennepin.mn.us</b><br><input checked="" type="checkbox"/> BWSR TEP member: <b>Ben Meyer – ben.meyer@state.mn.us</b><br><input type="checkbox"/> LGU TEP member (if different than LGU Contact):<br><input type="checkbox"/> DNR TEP member: <b>Kate Drewry- kate.drewry@state.mn.us</b><br><input checked="" type="checkbox"/> DNR Regional Office (if different than DNR TEP member): <b>Brooke Haworth - brooke.haworth@state.mn.us</b><br><input type="checkbox"/> WD or WMO (if applicable):<br><input checked="" type="checkbox"/> <b>George Stickney (BPS Properties, LLC) gstickney@cbburnet.com</b><br><input checked="" type="checkbox"/> Members of the public who requested notice: <b>Frank Svoboda (Svoboda Ecological Resources) franks@gpsinnovations.com; Christine Mattson - cmattson@ci.orono.mn.us; Melanie Curtis - mcurtis@ci.orono.mn.us</b><br><input checked="" type="checkbox"/> Corps of Engineers Project Manager (notice only): <b>Melissa Jenny – melissa.m.jenny@usace.army.mil</b><br><input type="checkbox"/> BWSR Wetland Bank Coordinator (wetland bank plan applications only) |
|--|

### 5. MAILING INFORMATION

➤ For a list of BWSR TEP representatives: [www.bwsr.state.mn.us/aboutbwsr/workareas/WCA\\_areas.pdf](http://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](http://www.bwsr.state.mn.us/wetlands/wca/DNR_TEP_contacts.pdf)

➤ Department of Natural Resources Regional Offices:

|   |   |  |  |
|---|---|--|--|
| <b>NW Region:</b><br>Reg. Env. Assess. Ecol.<br>Div. Ecol. Resources<br>2115 Birchmont Beach Rd.<br>NE<br>Bemidji, MN 56601 | <b>NE Region:</b><br>Reg. Env. Assess. Ecol.<br>Div. Ecol. Resources<br>1201 E. Hwy. 2<br>Grand Rapids, MN<br>55744 | <b>Central Region:</b><br>Reg. Env. Assess.<br>Ecol.<br>Div. Ecol. Resources<br>1200 Warner Road<br>St. Paul, MN 55106 | <b>Southern Region:</b><br>Reg. Env. Assess. Ecol.<br>Div. Ecol. Resources<br>261 Hwy. 15 South<br>New Ulm, MN 56073 |
|---|---|--|--|

For a map of DNR Administrative Regions, see: [http://files.dnr.state.mn.us/aboutdnr/dnr\\_regions.pdf](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](http://www.mvp.usace.army.mil/regulatory/default.asp?pageid=687)

➤ For a list of Corps of Project Managers: [www.mvp.usace.army.mil/regulatory/default.asp?pageid=687](http://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

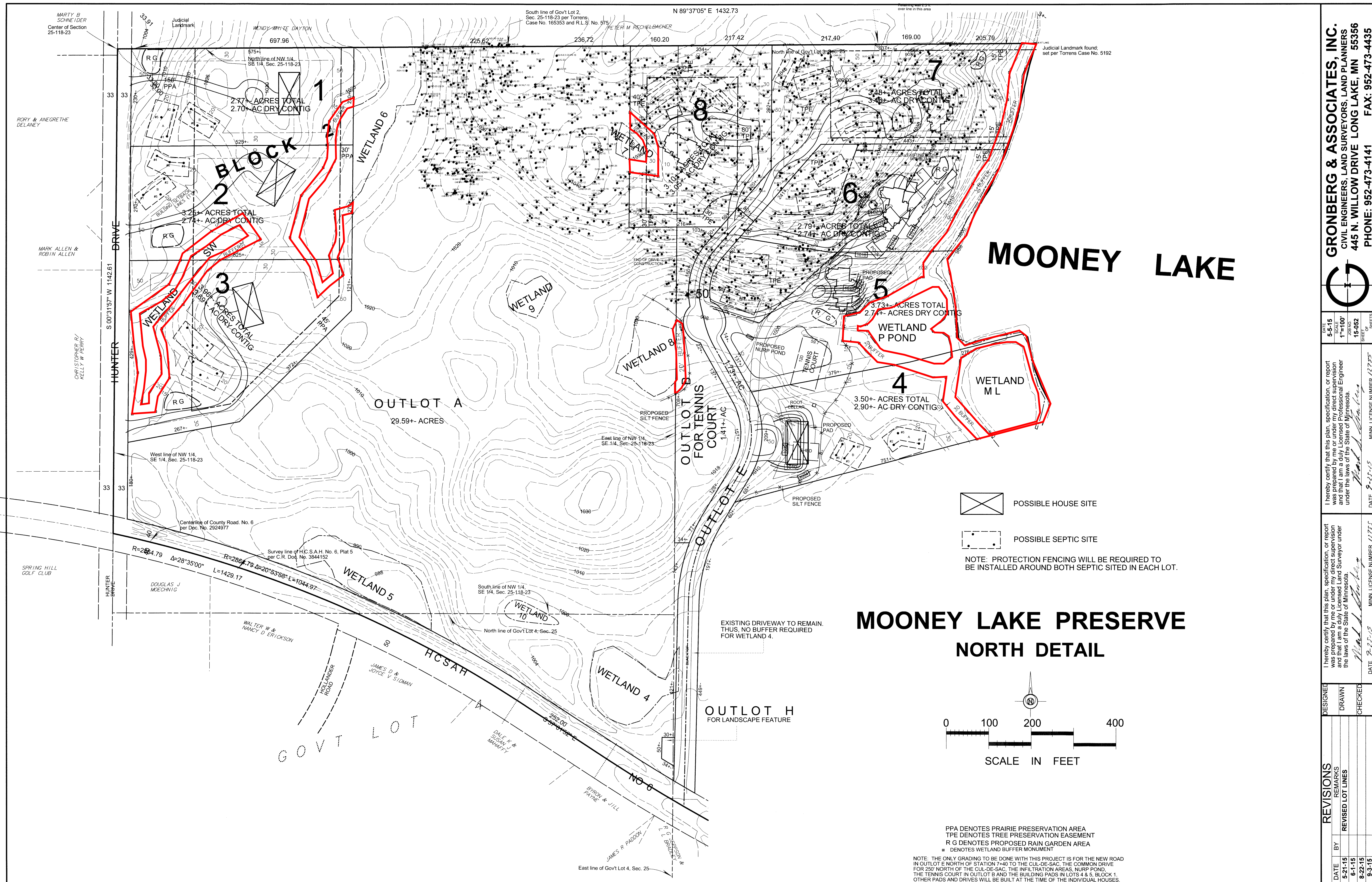
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## 6. ATTACHMENTS

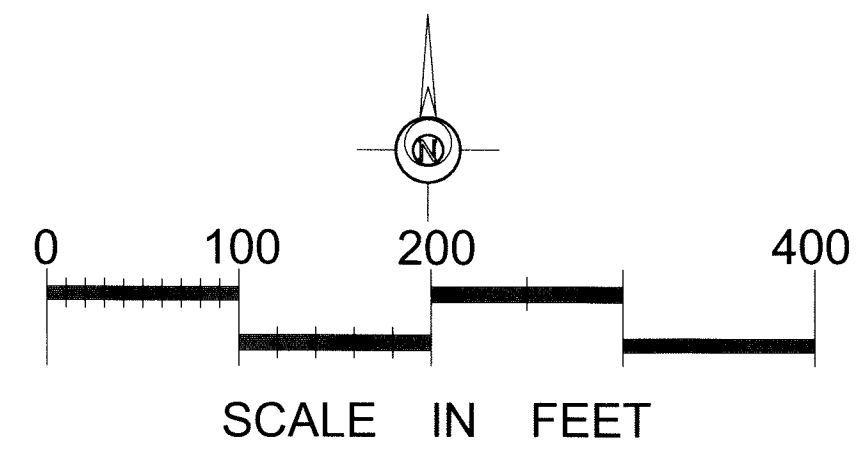
In addition to the site locator map, list any other attachments:

- Approved wetland boundaries**
- SER technical memo**
-





# MOONEY LAKE PRESERVE NORTH DETAIL

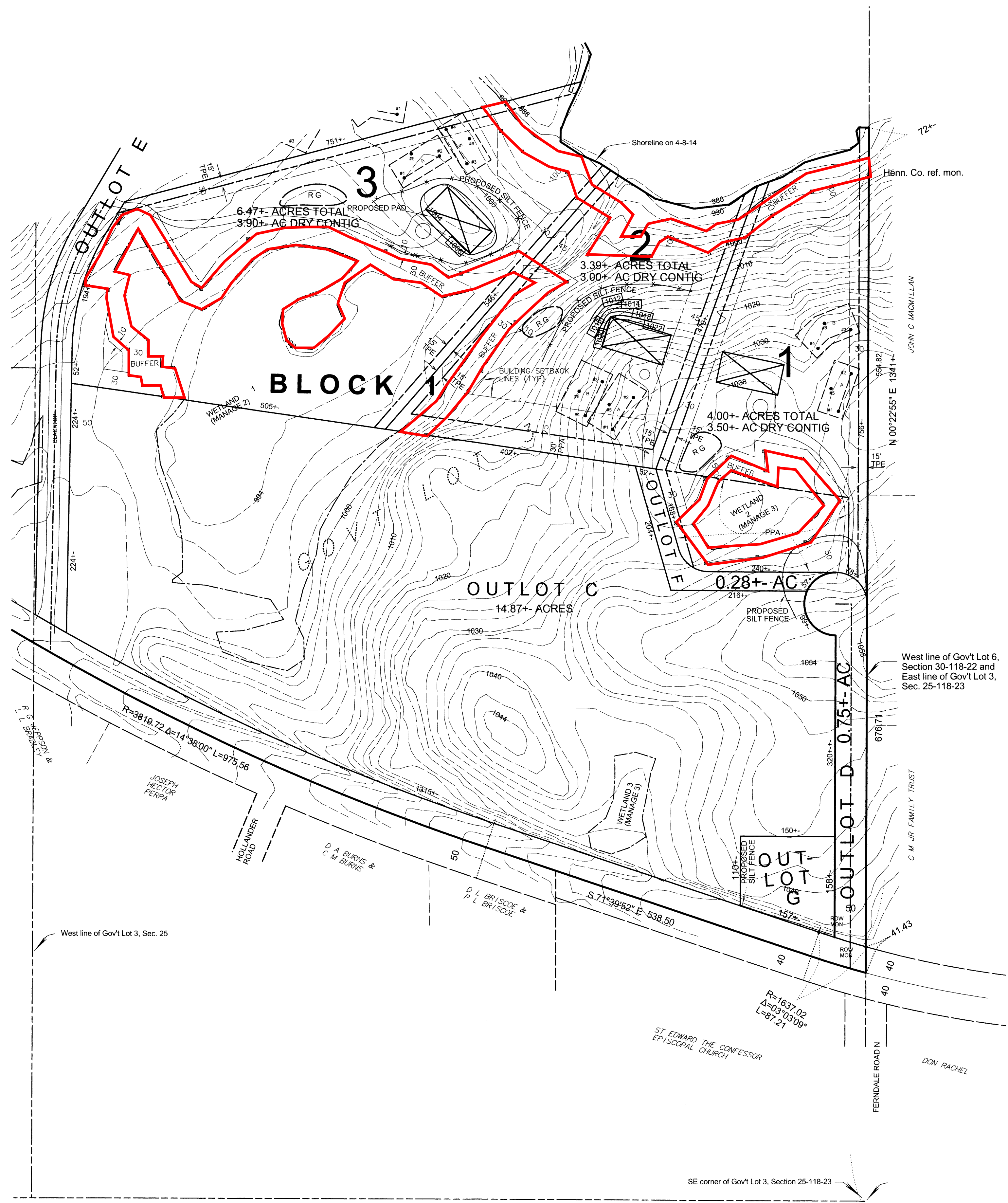


PPA DENOTES PRAIRIE PRESERVATION AREA  
 TPE DENOTES TREE PRESERVATION EASEMENT  
 R G DENOTES PROPOSED RAIN GARDEN AREA  
 \* DENOTES WETLAND BUFFER MONUMENT

NOTE: THE ONLY GRADING TO BE DONE WITH THIS PROJECT IS FOR THE NEW ROAD IN OUTLOT E NORTH OF STATION 7+40 TO THE CUL-DE-SAC. THE COMMON DRIVE FOR 250' NORTH OF THE CUL-DE-SAC, THE INFILTRATION AREAS, NURRY POND, THE TENNIS COURT IN OUTLOT B AND THE BUILDING PADS IN LOTS 4 & 5, BLOCK 1. OTHER PADS AND DRIVES WILL BE BUILT AT THE TIME OF THE INDIVIDUAL HOUSES.

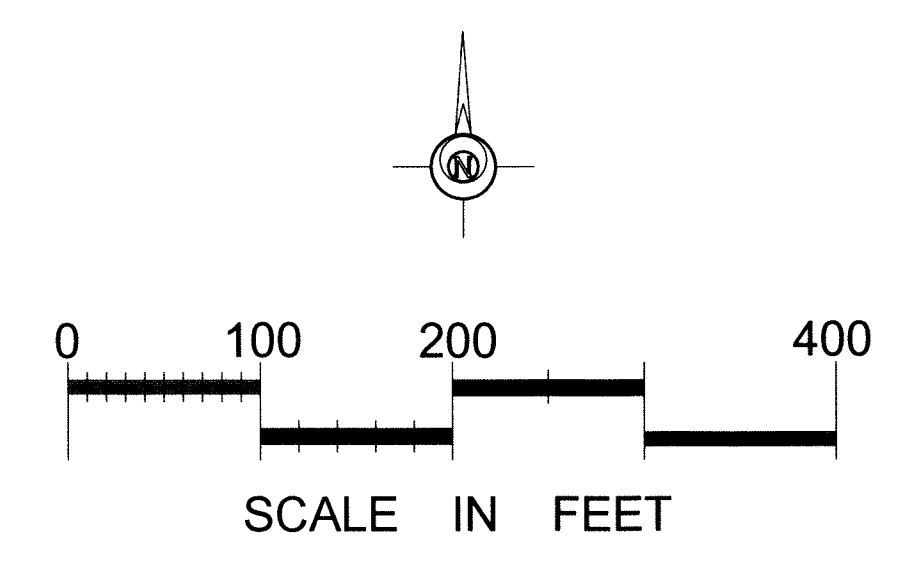
|   |         |                   |
|---|---------|-------------------|
| <b>GRONBERG &amp; ASSOCIATES, INC.</b><br>CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS<br>445 N. WILLOW DRIVE LONG LAKE, MN 55356<br>PHONE: 952-473-4141 FAX: 952-473-4435                              |         |                   |
|   |         |                   |
| DATE  | 5-5-15  |                   |
| SCALE   | 1"=100' |                   |
| SHEET NO.   | 15-052  |                   |
| I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota. |         |                   |
| DATE  | 5-27-15 |                   |
| MINN. LICENSE NUMBER  | 17757   |                   |
| I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.         |         |                   |
| DATE  | 5-27-15 |                   |
| MINN. LICENSE NUMBER  | 17757   |                   |
| DESIGNED  |         |                   |
| DRAWN   |         |                   |
| CHECKED   |         |                   |
| <b>REVISIONS</b>  |         |                   |
| DATE  | BY      | REMARKS           |
| 5-21-15   |         | REVISED LOT LINES |
| 6-1-15  |         |                   |
| 8-22-15   |         |                   |
| 9-3-15  |         |                   |





# MOONEY LAKE PRESERVE

## SOUTH DETAIL



- POSSIBLE HOUSE SITE
- SEPTIC SITE
- PPA DENOTES PRAIRIE PRESERVATION AREA
- TPE DENOTES TREE PRESERVATION EASEMENT
- R G = PROPOSED RAIN GARDEN
- R G DENOTES PROPOSED RAIN GARDEN AREA
- \* DENOTES WETLAND BUFFER MONUMENT

NOTE: THE ONLY GRADING TO BE DONE WITH THIS PROJECT IS FOR THE NEW ROAD IN OUTLOT D, THE NURP POND IN OUTLOT G AND THE BUILDING PAD IN LOT 3, BLOCK 2. OTHER PADS AND DRIVES WILL BE BUILT AT THE TIME OF THE INDIVIDUAL HOUSES.

**GRONBERG & ASSOCIATES, INC.**  
 CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS  
 445 N. WILLOW DRIVE LONG LAKE, MN 55356  
 PHONE: 952-473-4141 FAX: 952-473-4435

|        |         |
|--------|---------|
| DATE   | 5-5-15  |
| SCALE  | 1"=100' |
| SHEET  | 15-052  |
| SHEETS | 15      |

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.  
*John C. Macmillan*  
 DATE 5-27-15 MINN. LICENSE NUMBER 72753

| DESIGNED |    | DRAWN   |    | CHECKED |    |
|----------|----|---------|----|---------|----|
| DATE     | BY | DATE    | BY | DATE    | BY |
| 6-1-15   |    | 7-27-15 |    | 8-22-15 |    |
| 9-3-15   |    |         |    |         |    |

| REVISIONS         |  |
|-------------------|--|
| REMARKS           |  |
| REVISED LOT LINES |  |

# Memo

**To:** Board of Managers  
**From:** Tom Dietrich, Permit & Compliance Coordinator  
**Date:** October 19<sup>th</sup>, 2015  
**Re:** **Board Packet Material for Permit #15-445: Mooney Lake Preserve**

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Managers,

Attached is an affidavit and memo that were filed Friday, October 16, on behalf of the plaintiffs in the Healy/Mooney Lake Preserve litigation. (As you know, Minnehaha Creek Watershed District is a defendant.) The affidavit and memo are from Cecilio Olivier of Emmons and Olivier Resources and relate to stormwater management for the proposed redevelopment, which is the subject of permit 15-445 on the managers' agenda for the October 22 meeting. Staff and the MCWD engineer have reviewed the Olivier memo and are preparing a response for the managers' review. The responsive memo will be uploaded/delivered as soon as possible, prior to the meeting.

In addition, another affidavit and report were filed in the Mooney Lake Preserve litigation Friday, October 16, from Doug Mensing from Applied Ecological Services. The Mensing memo addresses topics that need not be considered by the managers, but one point from the Mensing memo will be addressed by the staff/engineer response:

15. Wetland 7 represents a vernal pool, also known as an ephemeral pool. This type of wetland plays a critical role in the life cycle of certain species, including uncommon species such as salamanders, as well as commoner toads and frogs. Proposed Lot 8 encroaches on this wetland. Land alteration, tree clearing, and runoff from this lot may adversely impact this sensitive and important wetland type.

If you have any questions or concerns prior to the October 22<sup>nd</sup> meeting, please feel free to contact me.

Sincerely,



Tom Dietrich  
Permit & Compliance Coordinator






5. My principal work as a Water Resources Senior Engineer focuses on Integrated Water Resources Management and Assessment, Runoff Quality and Quantity Modeling and Stormwater Best Management Practices Design and Implementation.
6. Through my practice, I have worked on a wide range of environmental, ecological and particular water related projects. Most notably and presently, I provide consulting advice on stormwater assessment and facilities design related matters to the US Bank/Viking Stadium project.
7. Your affiant further states that on this Mooney Lake Preserve Development, I performed with the assistance of staff at my firm, a number of significant analyses; conducted a review of several hundred pages of critical documents; did a site visit to the subject property where I performed topographic and runoff paths assessment, location identification of the proposed development footprint and proposed runoff mitigation measures and evaluation of proposed tree loss.
8. Your affiant states that in conducting my analysis, I considered five factors that Minnesota Courts weigh to determine whether a proposed development project will "materially adversely affect the natural resources on a land or property.
9. These five factors are:
  1. The quality and severity of any adverse effects of the proposed action on the natural resources affected;
  2. Whether the natural resources affected are rare, unique, endangered, or have historical significance;
  3. Whether the proposed action will have long-term adverse effects on natural resources, including whether the affected resources are easily replaceable...;
  4. Whether the proposed action will have significant consequential effects on other natural resources ...;
  5. Whether the affected natural resources are significantly increasing or decreasing in number, considering the direct and consequential impact of the proposed action.
10. My own opinion is based upon direct evidence as it relied on scientifically-defensible information that is acceptable across the scientific community within which I practice; the weight of the evidence as it relates to the natural resources on the property, specifically as to the Mooney Lake Watershed and other water related resource values of the property; and, the anticipated development of those natural resource values, in particular as to the storm-water and other water resources.
11. To which, your affiant states that following customary scientific practices and procedure in my field, I prepared the attached report, which is a true and correct version of my analysis and opinions (see Exhibit A).
12. This report is based on my analysis of the data I collected from a site visit on October 14, 2015, in which I conducted a field assessment of the Dayton Property. It is also based on my review of all relevant documents, which I have attached as exhibit B.



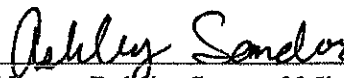
13. After a thorough review of all the relevant documents, maps, surveys, photographs, and plans prepared by the City of Orono as well as proposed Plan A and B prepared by BPS Properties, L.L.C.; and after the site visit to which I referred to above, it is my unequivocal opinion that the proposed Plan B presented by BPS Properties, L.L.C. does inflict a material adverse effect on the natural water resources, to which I specifically refer to in my report and, across the entire ecosystem leaving irreparable harm and long term effects on the subject Dayton Property.

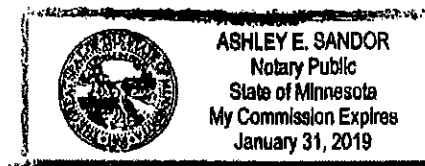
Further Your Affiant Sayeth Not,

October 15, 2015

  
\_\_\_\_\_  
Cecilio Olivier

Subscribed and sworn to before me  
on this 15<sup>th</sup> day of October, 2015.

  
\_\_\_\_\_  
Notary Public, State of Minnesota  
My commission expires: January 31<sup>st</sup> of 2019



## technical memo



**Project Name** | Orono Dayton Property Development **Date** | October 15, 2015  
**To / Contact info** | Robert R. Hopper, Robert R. Hopper & Associates, L.L.C.  
**Cc / Contact info** | James S. Lane  
**From / Contact info** | Cecilio Olivier, MS, PE  
**Regarding** | Stormwater Review of the Mooney Lake Preserve Development in Orono

Dear Mr. Hopper,

I have reviewed the stormwater materials provided yesterday by the MCWD regarding the proposed development in the Mooney Lake Preserve.

The received information included hundreds of pages and plans, many duplicated documents and was delivered in a very disorganized fashion. The materials included several different stormwater plans at various levels of design, but the final plans and final submittal materials were not identified. It took us a significant effort to finally locate and assess these materials.

Overall, the proposed development will have significant adverse impacts on the unique natural resources of the site and to Mooney Lake. The following is a summary of our main findings:

- The development proposes about 4.9 acres (212,000 ft<sup>2</sup>) of additional impervious area, which is in itself a very high burden on the very sensitive resources in the area. In addition, the final impervious area after the development is constructed will be significantly higher for the following reasons:
  - Impervious area of accessory structures is not considered in the impervious area these calculations. Based on the proposed lot sizes, the City of Orono allows a maximum total accessory building footprint ranging from 2,400 square feet to 4,800 square feet per lot. This will result in 15% more (33,200 square feet) impervious area requiring mitigation.
  - The combination of new and existing road area on the west side of the property is shown in the calculations as lesser than the existing driveway, despite the addition of a cul-de-sac and widening to 24 feet.
  - The driveways are depicted with the minimum width of 20 feet while this is stated as the minimum criteria, i.e. driveways can be wider as stated under the Conclusions, Order and Conditions of the 7/23/15 City of Orono Draft Resolution.

The addition of impervious area at the level proposed and with limited mitigation, will result in the following impacts:

- Alteration and concentration of stormwater runoff from impervious surfaces causing greater amounts of erosion and less diffusion for soil uptake and infiltration.
- Decrease in water quality through higher concentration and accelerating delivery of pollutants, including phosphorus.
- Reduction in the biological diversity of this unique and irreplaceable area, changing to different pollutant tolerant species.

- Exacerbate flooding potential in the already flood-prone Mooney Lake.
- As a result of a significant portion of the big woods area being converted into impervious surfaces, there will be a considerable increase in runoff volume above what it could be mitigated by the proposed stormwater infrastructure and practices. This will produce long-term adverse effects on the forest, wetlands and Mooney Lake. Additionally, the volume control efficacy of the proposed mitigation facilities is not corroborated by the design and supporting documentation:
  - Rain garden infiltration rates are not supported by underlying soil evidence.
  - Infiltration rates assumed for the roadside facilities of 0.2, 0.3, and 0.8 inches/hour are inconsistent with soil boring information presented. The soil borings consistently display the underlying soil to be sandy clay loam for which the Minnesota Stormwater Manual design rate of 0.2 inches/hour is to be assigned.
  - Rain garden design assumes entirety of the proposed impervious area will be directed to the facility. Review of the runoff catchment areas to the rain gardens found that runoff from the homes, driveways and yard will bypass the rain gardens and be directed to the woods, wetlands and Mooney Lake.
    - Lot 1 Block 1: Rain garden captures portion of driveway; remaining runoff directed to Wetland 2.
    - Lot 2 Block 1: Rain garden captures portion of driveway; remaining runoff directed to Wetland 6.
    - Lot 3 Block 1: Rain garden captures majority of driveway and portion of the house; remaining runoff directed to Wetland 1
    - Lot 4 Block 1: NURP pond captures 50% of runoff; 50% directed to the wetland ML and P near Mooney Lake
    - Lot 5 Block 1: NURP pond and rain garden captures driveway runoff; house runoff directed to Wetland P near Mooney Lake.
    - Lot 6 Block 1: Rain garden captures portion of existing house; proposed house and existing/proposed driveway runoff directed to woods and Mooney Lake
    - Lot 7 Block 1: Rain garden does not capture proposed impervious; all runoff directed to woods and Mooney Lake.
    - Lot 8 Block 1: Rain garden captures portion of house runoff; remaining runoff directed to woods.
    - Lot 1 Block 2: Rain garden captures portion of driveway runoff, remaining runoff directed to Wetland 6
    - Lot 2 Block 2: Rain garden captures majority of house and driveway runoff, but a portion will still be directed to wetland 6
    - Lot 3 Block 3: Rain garden captures majority of runoff from the house and driveway, but a significant portion is directed to the SW Wetland which drains to Wetland 6.
- Runoff discharge ratios will not be met at a number of key locations generating erosion, sediments and pollutants being discharged into Mooney Lake.

- Mooney Lake (117 acres) is the primary receiving water within the watershed and receives drainage from two sub-watersheds, LLC-20 and LLC-21. Mooney Lake is a naturally closed basin with no overland outlet. Mooney Lake is pumped out when certain agreed-upon conditions occur. Storm water volume from upstream development in Plymouth results in periodic flooding. The MCWD has developed and implemented a cooperative emergency pump-out plan with the City of Plymouth. Increase runoff volumes due to this development will exacerbate flooding potential in the already flood-prone Mooney Lake.
- The runoff volume control facilities proposed in the design are also under-sized due to a misunderstanding of the hydrology of this unique big woods area. Existing condition assumptions for stormwater runoff overestimate the current runoff rate of flow and volume by not taking into consideration the capacity of the big woods to reduce runoff. This over-estimation translates in less runoff being mitigated and higher runoff volumes and rates being discharged into the big woods, wetlands and into Mooney Lake Hydrologic factors not considered in the design include:
  - Big Woods canopy interception and understory absorption of rainfall produces significantly less runoff than conventional woods.
  - Proposed volume controls do not protect for impact of increased volume for the majority of storm events. Furthermore, the Midwest Region has shown an increase of 45% in very heavy precipitation events, defined as the heaviest 1% of all daily events, indicating that events greater than the 10-year event will likely occur more frequently due to climate change.
- As a result of increased runoff volumes, there will be a substantial increase in the amount of phosphorus, metals, and sediments being discharged to the big woods, wetland and Mooney Lake, but there are other reasons why the impact of phosphorus, metals and solids has been underestimated in the design.
  - The assumptions used to estimate pollutant discharge is erroneous and results in severely under estimation of the amount of runoff pollution. The Minnehaha Creek Watershed District Water Resource Permit Application use values that are contradictory to values found in literature. For example, in the equation below, the MPCA recommends using a runoff coefficient "RV" between (0.3 - 0.5) for single family residential areas rather than 0.1015 which is used in this calculation. Runoff coefficients for forests/open space with hydrologic soil group B should be around 0.03 rather than the 0.0640 used in pollutant load calculations.
  - Furthermore, the total phosphorus concentration "C" used to calculate the pre development load is 0.30; a total phosphorus concentration of 0.30 mg/l is typical of phosphorus concentrations found in residential runoff. The existing pre development conditions would not be considered to be residential. Rather, this is a high quality site, therefore, existing phosphorus concentrations should be 0.04 mg/l for a site dominated by forests/grasslands (see table on next page by the MCWD).

| Land cover/land use                               | Total phosphorus (mg/L)   |
|---|---------------------------|
| Cropland <sup>1</sup>                             | 0.32                      |
| Forest/shrub/grassland <sup>1</sup>               | 0.04                      |
| Open water <sup>1</sup>                           | 0.01                      |
| Wetlands <sup>1</sup>                             | 0.01 to 0.04 <sup>3</sup> |
| Freeways <sup>2</sup>                             | 0.25                      |
| Commercial <sup>1,2</sup>                         | 0.22                      |
| Farmsteads <sup>1</sup>                           | 0.46                      |
| Industrial <sup>1,2</sup>                         | 0.26                      |
| Residential <sup>2</sup>                          | 0.30                      |
| Multi-family residential <sup>1,2</sup>           | 0.27 to 0.32              |
| Parks and recreation <sup>1</sup>                 | 0.04                      |
| Open space <sup>1,2</sup>                         | 0.31                      |
| Public/semi public (institutional) <sup>1,2</sup> | 0.18                      |

<sup>1</sup> Minnehaha Creek Watershed district, 2003

<sup>2</sup> Robert Pitt et al., 2004

<sup>3</sup> Average for large wetlands and wetland complexes. Individual wetlands should be monitored to determine source/sink behavior.

- o Finally, vegetation buffers around Mooney Lake are being considered as an element to clean the phosphorus, metals and solids in the runoff. This will produce the deterioration of the quality and functionality of the buffers with the consequent impact in wildlife and lake health.
- The City of Orono has established wetland protection strategies in the Orono Surface Water Management Plan (January 2011). A protection classification has been assigned to each wetland in Orono based on their stormwater susceptibility and functional assessment. The city has also established additional protection requirements for each classification. The four protection classifications are described as follows:

| Protection Classification | Susceptibility Rating  | Description   | Additional Protection Requirements (B = Bounce = Change in water level due to runoff event) (P = Phosphorus)                              |
|---------------------------|------------------------|---|---|
| "Preserve"                | Highly Susceptible     | Highly susceptible to both quantity and quality impacts from runoff; have the highest degree of protection  | B: Maintain bounce at or below existing conditions<br>P: Limit loadings to predevelopment loading (0.14 Lbs/Ac/Yr)                        |
| "Manage 1"                | Moderately Susceptible | Moderately susceptible to quantity and quality impacts; protection is less stringent than Preserve, provides protection to maintain their characteristics | B: Maintain bounce at or below existing conditions plus 0.5 foot<br>P: Limit loadings to predevelopment loadings times 2 (0.28 Lbs/Ac/Yr) |

| Protection Classification | Susceptibility Rating | Description  | Additional Protection Requirements<br>(B = Bounce = Change in water level due to runoff event)<br>(P = Phosphorus)                    |
|---------------------------|-----------------------|--|---|
| "Manage 2"                | Slightly Susceptible  | Less stringent protection than Manage 1 wetlands; maintenance of characteristics is desirable  | B: Maintain bounce at or below existing conditions plus 1.0 foot<br>P: Limit concentration to predevelopment concentrations (200 ppb) |
| "Manage 3"                | Least Susceptible     | Wetlands are significantly degraded (e.g., cultivated or canary grass monotype) or lack of wetland characteristics; not typically impacted by runoff; no quantity and only limited quality treatment of runoff is required | B: No quantity requirement<br>P: Limit concentration to 225 ppb   |

- o Wetlands in the Mooney Lake watershed are classified as a Manage 2 and require to maintain water level changes to less than 1 foot under any storm event, and limit concentrations to less than 0.2 mg/l to preserve the current wetland quality and function. Neither analysis has been done as part of this development. There is a very strong probability that these standards will not be met, resulting in wetland deterioration.

| <b>Document #</b> | <b>Date</b> | <b>Title</b>  | <b>Type</b>                            |
|-------------------|-------------|---|--|
| 1                 | 8/24/15     | MCWD Water Resource Permit Application Form                           | Permit                                 |
| 2                 | 8/22/15     | Mooney Lake Preserve East Road Drainage Summary                       | Comparing Existing vs. Proposed Runoff |
| 3                 | 8/23/15     | Mooney Lake Preserve West Road Drainage Summary                       | Comparing Existing vs. Proposed Runoff |
| 4                 | 8/29/15     | Mooney Lake Preserve Existing Road Infiltration Area                  | Infiltration Testing                   |
| 5                 | 9/3/15      | Routing Diagram for Mooney Lake Preserve Existing                     | Hydrocad                               |
| 6                 | 9/3/15      | Routing Diagram for Mooney Lake Preserve Proposed                     | Hydrocad                               |
| 7                 | 9/4/15      | Routing Diagram for Mooney Lake Preserve Existing                     | Hydrocad                               |
| 8                 | 9/4/15      | Routing Diagram for Mooney Lake Preserve Proposed                     | Hydrocad                               |
| 9                 | 10/10/15    | Mooney Lake Preserve Proposed Rain Gardens Runoff Calculations        | Rain Garden Calcs                      |
| 10                | 10/10/15    | HydroCad model  | Block 1 Existing                       |
| 11                | 10/10/15    | HydroCad model  | Block 1 Proposed                       |
| 12                | 10/10/15    | HydroCad model  | Block 2 Existing                       |
| 13                | 10/10/15    | HydroCad model  | Block 2 Proposed                       |
| 14                | 10/10/15    | HydroCad model  | Block 1, lots 5-6 Existing             |
| 15                | 10/10/15    | HydroCad model  | Block 1, lots 5-6 Proposed             |
| 16                | 9/15/15     | Rain Garden Areas and Soil Boring                                     | Soil Boring Results                    |
| 17                | 10/12/15    | HydroCad model  | East Road drainage                     |
| 18                | 10/12/15    | HydroCad model  | East Road                              |
| 19                | 10/12/15    | Mooney Lake Preserve East Road Drainage Summary                       | Comparing Existing vs. Proposed Runoff |
| 20                | 9/24/15     | Mooney Lake Preserve Road Infiltration Areas                          | Infiltration Testing                   |
| 21                | 9/18/15     | Rain garden design  | Rain garden design                     |
| 22                | 10/12/15    | Mooney Lake Preserve Road Infiltration Areas                          | Infiltration Testing                   |
| 23                | 8/22/15     | Mooney Lake Preserve Prairie View Lane Plan and Profile for East Road | Plan Profile                           |
| 24                | 9/8/15      | Mooney Lake Preserve North detail                                     | Plan Profile                           |
| 25                | 9/8/15      | Mooney Lake Preserve South detail                                     | Plan Profile                           |
| 26                | 9/3/15      | Mooney Lake Preserve Plan and Profile for West Road                   | Plan Profile                           |
| 27                | 8/22/15     | Mooney Lake Preserve Plan Profile                                     | Plan Profile                           |
| 28                | 9/8/15      | Mooney Lake Preserve Plan Profile                                     | Plan Profile                           |
| 29                | 9/25/15     | Mooney Lake Preserve Plan Profile North Detail                        | Plan Profile                           |

|    |          |  |   |
|----|----------|--|---|
| 30 | 9/25/15  | Mooney Lake Preserve Plan Profile<br>South Detail                            | Plan Profile                              |
| 31 | 9/2/15   | Mooney Lake Preserve Grading and<br>Storm Water Pollution Prevention<br>Plan | SWPP                                      |
| 32 | 9/25/15  | Mooney Lake Preserve Plan Profile<br>West Road                               | Plan Profile                              |
| 33 | 9/25/15  | Mooney Lake Preserve Plan Profile<br>East Road                               | Plan Profile                              |
| 34 | 10/12/15 | Mooney Lake Preserve Plan Profile<br>East Road                               | Plan Profile                              |
| 35 | N/A      | Mooney Lake Preserve Prairie View<br>Lane Plan and Profile                   | Plan Profile                              |
| 36 | 10/12/15 | Mooney Lake Preserve Plan Profile<br>South Detail                            | Plan Profile                              |
| 37 | N/A      | Mooney Lake Preserve Prairie View<br>Lane Plan and Profile                   | Plan Profile                              |
| 38 | 10/12/15 | Mooney Lake Preserve Plan Profile<br>East Road                               | Plan Profile                              |
| 39 | 10/12/15 | Mooney Lake Preserve Plan Profile<br>East Road                               | Plan Profile                              |
| 40 | 9/3/15   | Mooney Lake Preserve Road<br>Infiltration Areas West Road                    | Infiltration Testing                      |
| 41 | 9/3/15   | Mooney Lake Preserve Existing Road<br>Infiltration Area West Road            | Comparing Existing vs.<br>Proposed Runoff |
| 42 | 8/27/15  | MNRAM Wetland Assessment<br>Wetland 7 Management Classification              | MNRAM                                     |
| 43 | 8/27/15  | Report   | MNRAM                                     |
| 44 | 8/27/15  | MNRAM Site Response Report   | MNRAM                                     |
| 45 | 1985     | Minnesota Hydrology Guide<br>(Department of Ag.)                             | Technical reference book                  |
| 46 | 2014     | Minnesota BMP designand<br>stormwater manual                                 | Technical reference book                  |
| 47 | 2015     | Atlas 14   | Technical reference paper                 |
| 48 | 2013     | MCWD Rules   | Reference material, legal<br>document     |
| 50 | N/A      | Orono ordinances   | Compliance document                       |
| 51 | 7/23/15  | Conclusions, Order and Conditions<br>Orono Draft Resolution                  | Legal document                            |
| 52 | 2015     | MCWD Water Resource Permit<br>Application Form                               | Permit form                               |
| 53 | Jan-11   | Orono Surface Water Management<br>Plan                                       | Study                                     |
| 54 | Mar-14   | Upper Minnehaha Creek Watershed<br>Nutrient and Bacteria TMDL                | Study                                     |



|    |             |   |                     |
|----|-------------|---|---------------------|
| 55 | 2003        | MCWD recommended Total Phosphorus Export Loads                          | Technical reference |
| 56 | 2004        | Robert Pitt et al. Total P export coefficients                          | Technical Paper     |
| 57 | 2015        | Geo-reference manual  | Technical manual    |
| 58 | 1980 - 2015 | Multiple papers, articles, reports and studies related to SW management | Technical documents |

**Technical/Legal Case Materials**

|    |         |   |                                |
|----|---------|---|--------------------------------|
| 59 | 3/16/15 | Minutes of the Orono Planning Commission Meeting                      | Technical/Legal Case Materials |
| 60 | 6/28/14 | Doug Dayton's sanctuary is for sale -- but not to developers          | Technical/Legal Case Materials |
| 61 | 7/13/15 | Minutes of the Orono Planning Commission Meeting                      | Technical/Legal Case Materials |
| 62 | 7/27/15 | Minutes of the Orono Planning Commission Meeting                      | Technical/Legal Case Materials |
| 63 | 7/9/15  | REQUEST FOR COUNCIL ACTION  | Technical/Legal Case Materials |
| 64 | 7/23/15 | REQUEST FOR COUNCIL ACTION  | Technical/Legal Case Materials |
| 65 | 7/27/15 | City of Orono Resolution of the City Council                          | Technical/Legal Case Materials |
| 66 | 9/14/15 | #15-3739 Mooney Lake Preserve - Final Plat Punchlist                  | Technical/Legal Case Materials |
| 67 | 6/1/15  | Meadowood Property Map  | Technical/Legal Case Materials |
| 68 | 9/30/15 | Lawsuit Against Developer of Dayton Property, City of Orono, and MCWD | Technical/Legal Case Materials |
| 69 | 10/1/15 | Orono subdivision of Dayton land could move forward                   | Technical/Legal Case Materials |
| 70 | 5/8/15  | #15-3739, BPS Properties, 300 Sixth Avenue N - Preliminary Plat       | Technical/Legal Case Materials |
| 71 | 3/16/15 | Minutes of the Orono Planning Commission Meeting                      | Technical/Legal Case Materials |
| 72 | 5/8/15  | Minutes of the Orono Planning Commission Meeting (1)                  | Technical/Legal Case Materials |
| 73 | 5/8/15  | Minutes of the Orono Planning Commission Meeting (2)                  | Technical/Legal Case Materials |
| 74 | 5/8/15  | Minutes of the Orono Planning Commission Meeting (3)                  | Technical/Legal Case Materials |
| 75 | 6/15/15 | Minutes of the Orono Planning Commission Meeting (1)                  | Technical/Legal Case Materials |

|    |         |   |                                |
|----|---------|---|--------------------------------|
| 76 | 6/15/15 | Minutes of the Orono Planning Commission Meeting (2)                    | Technical/Legal Case Materials |
| 77 | 6/15/15 | Minutes of the Orono Planning Commission Meeting (3)                    | Technical/Legal Case Materials |
| 78 | 5/14/15 | #15-3720, o/b/o Wendy Dayton, 300 Sixth Avenue N - Preliminary Plat (1) | Technical/Legal Case Materials |
| 79 | 5/14/15 | #15-3720, o/b/o Wendy Dayton, 300 Sixth Avenue N - Preliminary Plat (2) | Technical/Legal Case Materials |
| 80 | 6/10/15 | #15-3739, 300 Sixth Avenue N - Preliminary Plat Second Review (1)       | Technical/Legal Case Materials |
| 81 | 6/10/15 | #15-3739, 300 Sixth Avenue N - Preliminary Plat Second Review (2)       | Technical/Legal Case Materials |
| 81 | 7/27/15 | City of Orono Resolution of the City Council                            | Technical/Legal Case Materials |
| 82 | 3/11/15 | #15-3720, BPS Properties, 300 Sixth Avenue N - Sketch Plan Review       | Technical/Legal Case Materials |
| 83 | 3/11/15 | Exhibit 1 3-11-2015 David Thill Letter to City of Orono                 | Technical/Legal Case Materials |



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.

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:        | BPS Properties, LLC  | Permit No:          | 15-445     |
| Location:         | 300 Sixth Ave. N., Orono                                     |                     |            |
| Purpose:          | Erosion Control, Wetland Protection, & Stormwater Management |                     |            |
| Date of Issuance: | 10/30/2015   | Date of Expiration: | 10/30/2016 |

By Order of the Board of Managers

Tom Dietrich  
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.

**Stipulations:** Project to be completed as described in plans submitted to the MCWD office on September 8, 2015 according to the provisions of this permit.

- Submission of buffer monumentation for approval prior to installation;
- Submission of as-built drawings for all stormwater facilities on completion of construction;
- Verification of the emergency overflow (EOF) elevation of Wetland 6 against the low-opening elevation of the structure to be built on Lot 2 Block 2, to affirm 2 vertical feet of separation from the 100-year high water elevation;
- Properly install and maintain all required erosion control measures until the disturbed areas are re-stabilized;
- When the site is re-stabilized and the MCWD staff has performed a final inspection, all silt fences must be removed.

# MINNEHAHA CREEK WATERSHED DISTRICT



QUALITY OF WATER Inspection/Analysis/Monitoring Fees LIFE

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    | \$ 65.51*                   |
| District interns               | \$ 40.35*                   |
| District clerical staff        | \$ 46.69*                   |
| 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 |

\* Hourly

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.



**NOTICE OF PROBABLE VIOLATION**

|   |  |
|---|--|
| <b>Property Owner:</b> BPS Properties L.L.C.<br><b>Permit #:</b> 15-445<br><b>Notice Issued</b> Friday, September 9, 2016 | <b>Address:</b> 300 Sixth Ave North, Orono<br><b>Property Owner's Representative:</b> George Stickney<br><b>Activity:</b> Wetland and wetland buffer disturbance |
|---|--|

OBSERVATIONS:

The following apparent violations have been observed by MCWD staff (including citation to MCWD rule provision(s), permit or order violated):

1. *Unapproved land disturbing activity in wetlands and wetland buffers called out as "Wetland ML" & "Wetland P Pond" (Per development plans)*
2. *Missing and non-functioning sediment control around the disturbed wetland areas*
3. *Non-functioning Stormwater pond and culvert along 6th Ave North*
4. *Missing sediment control around the structure being constructed along Mooney Lake Drive and 6th Ave North.*

You hereby are requested to take the following actions to come into compliance with the above requirements:

ACTION COMPLIANCE:

DEADLINE

- |   |                                    |
|---|------------------------------------|
| 1. <i>Stop all new land disturbing activity in all wetlands and wetland buffers until further discussing proposed work with the MCWD</i>  | 7:00 AM – Saturday, Sept. 10, 2016 |
| 2. <i>Submit calculation of disturbed buffer area for use in determining financial assurance that is required in conjunction with the planting, maintenance, and monitoring plan in accordance with sections 7,9, and 10 of the wetland protection rule</i> | 9:00 AM-Friday, Sept. 23, 2016     |
| 3. <i>Submit planting, maintenance, and monitoring plan for the disturbed buffer area</i>   | 9:00 AM– Friday, Sept. 23, 2016    |
| 4. <i>Submit updated plans of site displaying the existing and proposed buffer restoration project that will be completed</i>   | 9:00 AM–Friday, Sept. 23, 2016     |
| 5. <i>Install and repair all sediment control measures around the disturbed wetland areas and stabilize all bare soils with sediment control blankets</i>   | 9:00 AM– Wednesday, Sept. 14, 2016 |
| 6. <i>Remove all deposited sediment within the Stormwater pond and culvert at Prairie View Drive</i>  | 9:00 AM– Wednesday, Sept. 14, 2016 |
| 7. <i>Install functioning sediment control around and upland of the Prairie View Drive Stormwater Pond by using silt fences and ditch checks</i>  | 9:00 AM– Wednesday, Sept. 14, 2016 |
| 8. <i>Install sediment control around the structure being constructed at the corner of Mooney Lake Drive and 6th Ave North</i>  | 9:00 AM– Wednesday, Sept. 14, 2016 |

**MINNEHAHA CREEK**  **WATERSHED DISTRICT**  
QUALITY OF WATER QUALITY OF LIFE

Failure of your compliance with the above-requested actions will result in a Compliance Order that will be considered by the MCWD Board of Managers in deciding whether to take further appropriate enforcement steps. On notice and an opportunity to be heard, the board may issue an order requiring remedial, corrective, preventative or other actions to achieve compliance with applicable MCWD requirements. The listing of apparent violations above does not prevent the board from finding additional or other violations on the basis of the evidence presented. Under Minnesota Statutes section 103D.545, failure to comply with MCWD rules, the conditions of your permit or an order of the Board of Managers subjects you to possible civil and criminal penalties.

Pursuant to MCWD Enforcement Rule, paragraph 5, you will be liable for all costs incurred by the MCWD to secure your compliance pursuant to this notice, including District consultant and legal costs. If you do not complete the actions requested above by the indicated deadlines, the MCWD may act to remedy the noncompliance and recover the costs of its action, including attorneys' fees, from you or your surety.

This notice does not affect the ability of any other federal, state or local body of government to take enforcement action against you pursuant to its own laws and regulations.

**ISSUED BY:**

Heidi Quinn Position: Permitting Technician  
Name

Heidi Quinn Date: 9/9/16  
Signature

**ISSUED VIA:**

EMAIL:

**TO:**

George Stickney, BPS Properties Date: September 9, 2016  
Name/Title (Print)

Property Owner  
Position

*Your signature below indicates only that you received this order. Your signature does not constitute an admission of any kind with respect to the apparent violations listed above.*

**RECEIVED BY:**

\_\_\_\_\_ Date: \_\_\_\_\_  
Name/Title (Print)

\_\_\_\_\_  
Company

\_\_\_\_\_  
Signature

Address:

Telephone:

Email:



September 16, 2016

George Stickney  
201 East Lake Street  
Wayzata, MN 55391

RE: MCWD Permit 15-445: 300 Sixth Ave North, Orono

Dear Mr. Stickney,

A Minnehaha Creek Watershed permit application was received for Erosion Control, Wetland Protection, and Stormwater Management on August 24, 2015 for the Mooney Lake Preserve Redevelopment Project. The permit was issued on October 30, 2015 according to the approved plans dated September 8, 2015. The Permit was approved with the following conditions:

- Submission of buffer monuments for approval prior to installation
- Submission of as-built drawings for all Stormwater facilities on completion of construction
- Verification of the emergency overflow (EOF) elevation of Wetland 6 against the low-opening elevation of the structure to be built on Lot 2 Block 2, to affirm two vertical feet of separation from the 100-year high water elevation
- Properly install and maintain all required erosion control measures until the disturbed areas are re-stabilized
- When the site is re-stabilized and the MCWD staff has performed a final inspection, all silt fences must be removed

Routine site inspections were conducted in November 2015, January, February, March, April, July, and August 2016. During these visits, the site was generally in good compliance. On September 8, 2016 the following violations were observed:

- Disturbance of wetlands "Wetland ML" and "Wetland P Pond" and associated buffers not included in approved plans
- Missing and non-functioning sediment control around the disturbed wetlands and wetland buffer perimeter
- Non-functioning Stormwater Pond and culvert along 6<sup>th</sup> Ave North
- Missing sediment control around the structure under construction along Mooney Lake Drive and 6<sup>th</sup> Ave North

Per the Minnehaha Creek Watershed District enforcement policy, a Notice of Probable Violation was sent on September 9, 2016 (see attached). Within the Notice of Probable Violation, there were multiple action items that were asked to be addressed by September 14, 2016 to comply with critical erosion control concerns. The remaining restorative action items were asked to be addressed by September 23, 2016. Following the Notice of Probable Violation, an on-site meeting took place on the morning of September 14, 2016. A list of the on-site meeting attendees can be found below:

George Stickney (Developer)  
Gage Chaffee (Terry Bros Inc.)  
Cory Pilling (Prairie Restorations Inc)  
Melanie Curtis (City of Orono)

Art Taylor (Bolton & Menk, Inc)  
Terrence Chastan-Davis (MCWD)  
Wes Boll (Wenck Associates)  
Mike Gaffron (City of Orono)

Based on the onsite meeting discussions and findings, the following action and approvals will be required before the Notice of Probable Violation is lifted:

| Requirements:   | Deadline                           |
|---|------------------------------------|
| <ul style="list-style-type: none"> <li>• Submission of an updated site survey showing the following items:               <ul style="list-style-type: none"> <li>○ Quantified wetland disturbance area</li> <li>○ Quantified wetland buffer disturbance area</li> <li>○ 100-year floodplain elevation contour line (elevation to be provided by MCWD)</li> <li>○ Inventory of all removed trees-including species, diameter, and location</li> </ul> </li> </ul> | 9:00 AM-Friday, September 23, 2016 |
| <ul style="list-style-type: none"> <li>• Have a certified wetland delineator re-flag the wetland boundary area as approved in the Notice of Decision that was noticed on July 10, 2015</li> </ul>   | 9:00 AM-Friday, September 23, 2016 |
| <ul style="list-style-type: none"> <li>• Submit a Wetland Conservation Act No-Loss application (form attached) for the wetland disturbance and proposed restoration work</li> </ul>   | 9:00 AM-Friday, September 23, 2016 |

Once the above mentioned items have been submitted, the MCWD and City of Orono will advise on restoration plan requirements and completion deadlines for work listed below. Moving forward, the items outlined below will need to be submitted for District and City review and approval for the proposed restoration plan. Restoration work must not proceed until approval is received.

- Submission of financial assurance for the proposed buffer restoration establishment (amount will be determined by MCWD)
- A maintenance and monitoring plan for the proposed wetland buffer restoration
- Submission of a tree replacement plan in accordance with the City of Orono Section 78-1285.-Vegetation Alteration Rules and as further required through the restoration plan.
- An as-built survey will be required to ensure the wetland has been restored to pre-impact conditions and contours

Failure to meet timelines and requests stated above will result in a Compliance Order stopping work on the project. Staff will then pursue further enforcement action through the MCWD Board of Managers in coordination with the City of Orono

Pursuant to MCWD Enforcement Rule, paragraph 5, you will be liable for all costs incurred by the MCWD to secure your compliance pursuant to this notice, including District consultant and legal costs. If you do not complete the actions requested above by the indicated deadlines, the MCWD may act to remedy the noncompliance and recover the costs of its action, including attorneys' fees, from you or your surety.

This notice does not affect the ability of any other federal, state or local body of government to take enforcement action against you pursuant to its own laws and regulations.



**MINNEHAHA CREEK**  **WATERSHED DISTRICT**  
QUALITY OF WATER QUALITY OF LIFE

If you have any questions or concerns about the requirements or timeline listed above, please feel free to contact Terrence Chastan-Davis at [tchastan-davis@minnehahacreek.org](mailto:tchastan-davis@minnehahacreek.org) or me at [ksylvia@minnehahacreek.org](mailto:ksylvia@minnehahacreek.org).

Sincerely,



Katherine Sylvia  
Permitting Program Lead

CC: James Wisker, MCWD Director of Planning & Projects  
Wes Boll, Wenck Associates  
Melanie Curtis, City of Orono  
Mike Gaffron, City of Orono  
Art Taylor, Bolton & Menk, Inc  
Frank Svoboda, Svoboda Ecological Resources  
Gage Chaffee, Terry Bros Inc  
Cory Piling, Prairie Restorations Inc

Attachments:

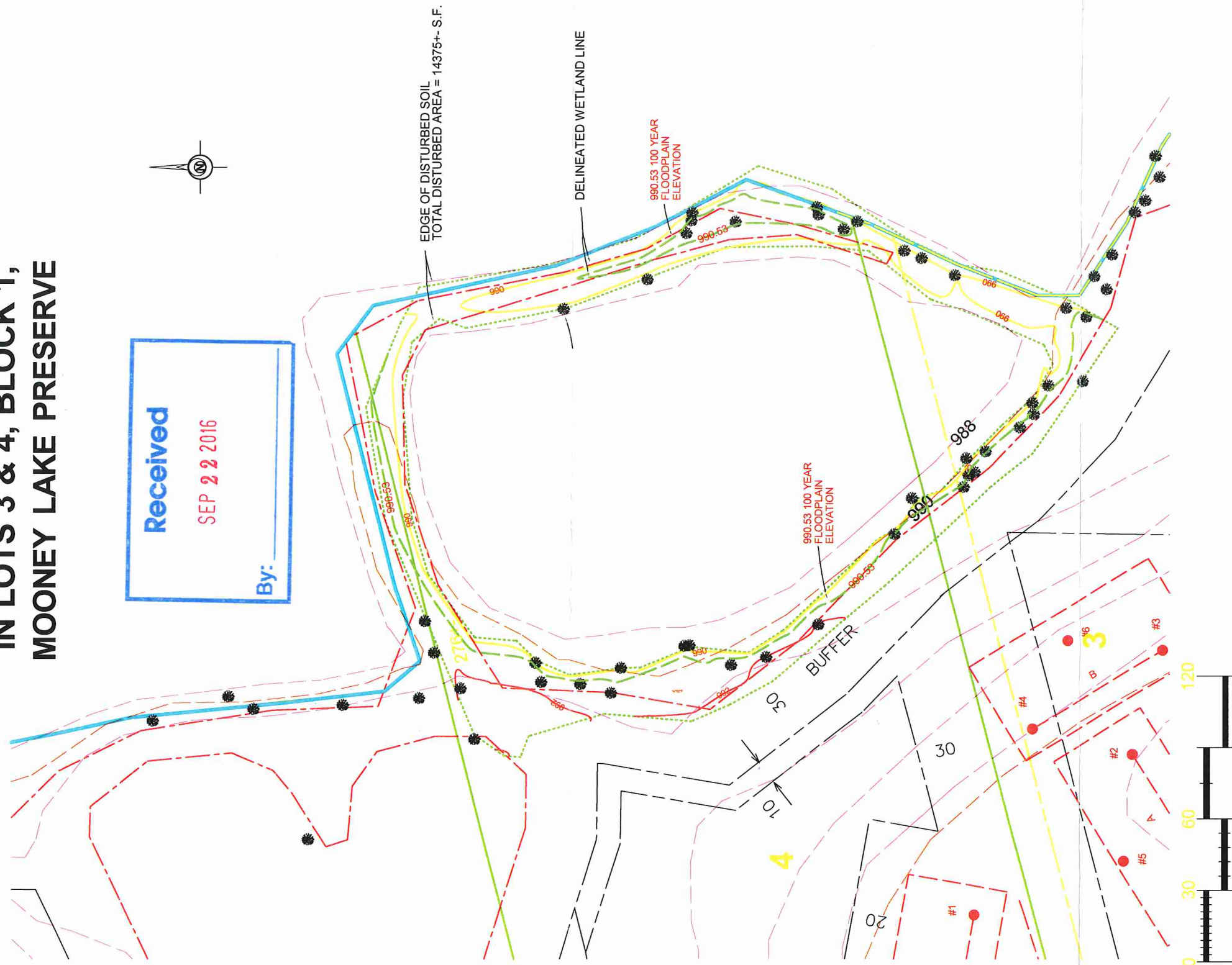
Notice of Probable Violation 9/9/2016  
W15-14 Boundary & Type Notice of Decision and Approved Boundaries Map  
Wetland Conservation Act No-Loss Application form

# DISTURBED SOIL DRAWING IN LOTS 3 & 4, BLOCK 1, MOONEY LAKE PRESERVE

Received

SEP 22 2016

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



| DESIGNED | REVISION | DATE | DESCRIPTION |
|----------|----------|------|-------------|
|          |          |      |             |
|          |          |      |             |
|          |          |      |             |
|          |          |      |             |

**GRONBERG & ASSOCIATES, INC.**  
CONSULTING ENGINEERS, LAND SURVEYORS,  
SITE PLANNERS  
445 N. WILLOW DR. LONG LAKE, MN. 56356  
952-473-4141

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

DATE 9-22-16    SCALE NUMBER 15-053    JOB NO. 15-053

9/22/2016

Dear George,

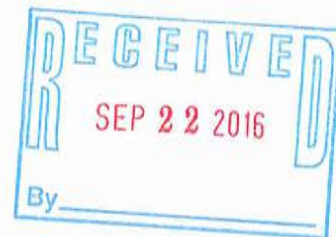
This letter describes the native restoration work to be completed around the pond nearest to Mooney Lake. In an effort to create a beautiful and functional native planting, these are the steps involved:

**Fall 2016-** Before PRI begins seeding we would like the stumps ground down to existing grade, but not below, to save any remaining root structure. Apply stump treatment to all stumps to prevent regrowth. After the stump grinding, smooth out and add clean black dirt fill as necessary within MCWD guidelines. Seed the site with a cover crop of winter wheat and straw mulch with clean straw to stabilize the soil (anchor disk if possible).

**Spring 2017-** Allow the site to green up. With all the soil disruption we are expecting a flush of weeds come spring time. Apply an aquatic approved glyphosate herbicide (Rodeo® or equivalent) and a triclopyr herbicide (Garlon 3A® or equivalent) with appropriate surfactants, as per manufacturer's directions to the actively growing vegetation. Allow a minimum of 30 days before disturbing the site with other procedures. Burn off dead thatch to prep for seeding. Broadcast native seed mixes and a cover crop of winter wheat or oats. Seed mixes can be found on the following page. Cover entire seeding area with erosion blanket (S-150 or equivalent).

Once seeded, install the necessary amount of replacement trees and shrubs. Installed plants will be no larger than a 5 gallon pot size. Depending on placement requirements, these are the potential species we would suggest:

- River Birch (*Betula nigra*)
- Tamarack (*Larix laricina*)
- Red-osier dogwood (*Cornus sericea*)
- High bush cranberry (*Viburnum trilobum*)
- Red-berried elder (*Sambucus racemosa*)
- Alleghany serviceberry (*Amelanchier laevis*)
- Red maple (*Acer rubrum*)
- Sugar maple (*Acer saccharum*) (if drier areas)
- Bur oak (*Quercus macrocarpa*) (if drier areas)





**Prairie  
Restorations, Inc.**

P.O. Box 1127 • Watertown, Minnesota 55388  
Office: 952-955-3400 Fax: 952-955-3401

The seed mixes are as follows:

**PRI Shoreline Grass Mix:**

18% Pointed broom sedge, 15% Green bulrush,  
12% Wool grass, 10% Blue joint grass,  
8% Fringed brome, 7% Soft-stemmed bulrush,  
6% stalk-grain sedge, 6% Virginia wild rye  
6% Tall manna grass, 5% Fox sedge,  
5% River bulrush, 2% Cord grass, all by PLS  
weight.

**Rate:** 2.5 pls. lbs./ 10,000 sq. ft.

**PRI Shoreline Wildflower Mix:**

10% Blue vervain, 10% Swamp milkweed, 9% Joe-pye  
weed, 8% Sweet flag, 8% Tall meadow rue, 7% Blue  
flag iris, 6% Giant bur-reed, 6% Golden Alexander,  
5% Boneset, 5% Black-eyed Susan, 4% Tall blazing  
star, 4% New England aster, 4% Flat-topped aster, 4%  
Ironweed, 3% Sneezeweed, 3% Common ox-eye,  
2% Water plantain, 2% Arrowhead, all by PLS weight.

**Rate:** 0.7 pls. lbs./ 10,000 sq. ft.

**PRI Mixed Height Mesic Grass Mix:**

33% Big bluestem, 23% Little bluestem, 22%  
Indian grass,  
12% Side oats grama, 5% Canada wild rye, 2%  
June grass,  
1% Switch grass, 1% Sand dropseed,  
1% Prairie dropseed, all by PLS weight

**Rate:** 10 pls. lbs./ 10,000 sq. ft.

**PRI Mixed Height Mesic Wildflower Mix:**

18% Purple prairie clover, 15% Black-eyed Susan, 15%  
Hoary vervain, 12% Leadplant, 8% Common ox-eye,  
5% Golden Alexander 5% Bush clover, 4% Smooth  
aster 4% Stiff goldenrod, 3% Wild bergamot, 3% Blue  
vervain, 3% Canada tick trefoil 2% Common milkweed,  
1% White prairie clover, 1% Yarrow,  
1% Northern bedstraw, all by PLS weight

**Rate:** 1 pls. lb./ 10,000 sq. ft.

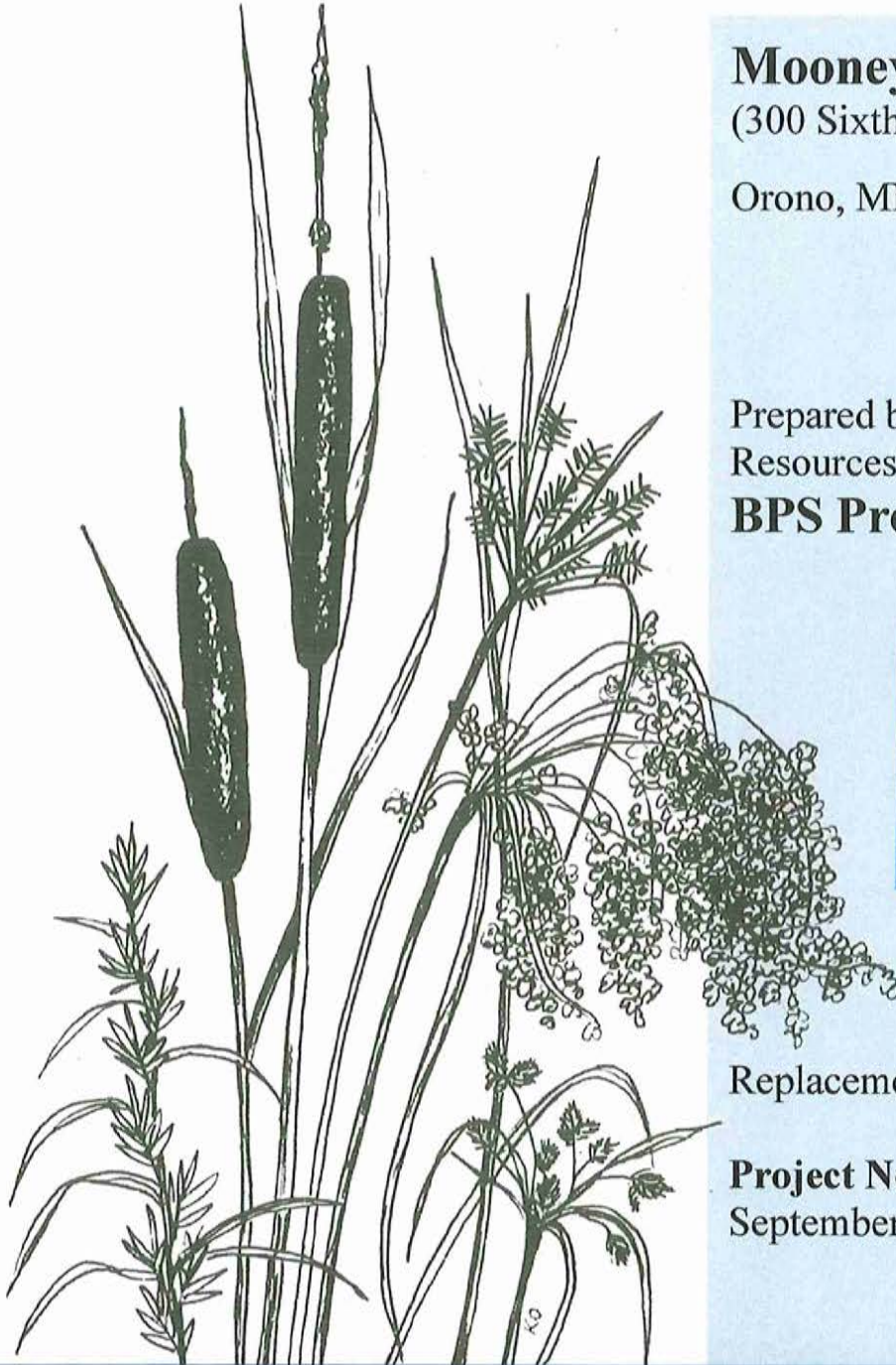
As always, let me know if you have any questions.

Sincerely,

Cory Pilling  
Project Manager  
Prairie Restorations Inc.  
612-708-9440  
cpilling@prairieresto.com



W16-54



**Mooney Lake Preserve**  
(300 Sixth Ave – Dayton Parcel)

Orono, MN

Prepared by Svoboda Ecological  
Resources for:  
**BPS Properties, LLC**

**Received**

SEP 22 2016

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

Replacement Plan Application

**Project No. 2015-003-12**  
September 21, 2016

**SVOBODA**

*Providing the Sharper Edge in  
Natural Resources & Environmental Consulting*

**ECOLOGICAL RESOURCES**



## 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:** BPS Properties, LLC-George Stickney

**Mailing Address:** 201 East Lake Street, Wayzata, MN 55391

**Phone:** 952-476-3694

**E-mail Address:** [gstickney@cbburnet.com](mailto:gstickney@cbburnet.com)

**Authorized Contact (do not complete if same as above):**

**Mailing Address:**

**Phone:**

**E-mail Address:**

**Agent Name:** Frank Svoboda – Svoboda Ecological Resources

**Mailing Address:** 22752 Co Rd 7, Hutchinson, MN 55350

**Phone:** 612-384-7770

**E-mail Address:** [franks@gpsinnovatitons.com](mailto:franks@gpsinnovatitons.com)

## PART TWO: Site Location Information

**County:** Hennepin

**City/Township:** Orono

**Parcel ID and/or Address:** 300 Sixth Ave North (PID # 2511823410001 & 130006 & 440003 & 430001)

**Legal Description (Section, Township, Range):** A part of the SE ¼ Section 25, T118N, R23W, City of Orono, Hennepin County, Minnesota

**Lat/Long (decimal degrees):** Lat. 44.994251 (44° 59' 50.1864" N)/ Long. -93.530431 (93° 31' 38.6688" W)

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):** 87.25 Acres

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](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.

**See Attachment B**



## PART FOUR: Aquatic Resource Impact<sup>1</sup> 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) <sup>1</sup> | Size of Impact <sup>2</sup> | Overall Size of Aquatic Resource <sup>3</sup> | Existing Plant Community Type(s) in Impact Area <sup>4</sup> | County, Major Watershed #, and Bank Service Area # of Impact Area <sup>5</sup> |
|---|---|--|--|-----------------------------|---|--|--|
| ML  | Lake edge   | Remove vegetation  | T  | 700 LF                      | 1921 LF                                       | Fresh, wet meadow  | Hennepin, 20, Mississippi River (Metro)  |
| Pond  | Pond  | Remove vegetation  | T  | 0 LF                        | 0.54 Ac                                       | Shallow marsh, excavated                                     | Hennepin, 20, Mississippi River (Metro)  |
|   |   |  |  |                             |   |  |  |
|   |   |  |  |                             |   |  |  |
|   |   |  |  |                             |   |  |  |

<sup>1</sup>If 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)".

<sup>2</sup>Impacts 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).

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

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

<sup>5</sup>Refer 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: \_\_\_\_\_

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.

<sup>1</sup> 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:

Mn Rules 8420.0315 No Loss Application – temporary grading to remove invasive species and replace with native plant materials

Mn Rules 8420.0415 A. an activity that will not impact a wetland – removal of vegetation from the buffer area and replacement with native species.

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:

This is an after-the-fact application. Two areas have been affected as referenced by the attached Figure 5 from the wetland delineation report. The two areas are ML, the edge along Mooney Lake and the easterly edge of P, an excavated Pond. The following descriptions are taken from the Wetland Delineation Report prepared for BPS Properties dated February 19, 2015 and April 19, 2015, Revised. A Notice of Decision approving the wetland boundary was issued by the LGU, MCWD on July 10, 2015.

**ML – Mooney Lake** - The twelfth wetland basin on this parcel is classified as a PEM1Cx, Type 2, fresh wet meadow, excavated which fringes Mooney Lake. The wetland vegetation at sample point ML-1 WET was dominated by Reed canary grass (*Phalaris arundinacea* FACW) in the herb stratum. Sample point ML-2 WET was dominated by Reed canary grass (*Phalaris arundinacea* FACW) in the herb stratum, Buckthorn (*Rhamnus cathartica* FAC) in the sapling/shrub stratum, and American elm (*Ulmus americana* FACW) in the tree stratum. The transition to upland can be marked by the change in vegetation community and geomorphic position. The further upslope the more upland species became dominant, such as Sugar maple (*Acer saccharum* FACU), Northern red oak (*Quercus rubra* FACU), Paper birch (*Betula papyrifera* FACU), and Tall goldenrod (*Solidago altissima* FACU). Part of the edge along Mooney Lake was disturbed as indicated in the table above.

**P- Pond** - The thirteenth wetland basin on this parcel is a pond which is classified as a PEM1Fx, Type 3, shallow marsh, excavated. The wetland vegetation at sample point Pond-1 WET was dominated by Narrow-leaf cattail (*Typha angustifolia* OBL) and Giant goldenrod (*Solidago gigantean* FACW) in the herb stratum. The transition to upland can be marked by the change in vegetation community and geomorphic position. The further upslope the plant community becomes dominated by Kentucky blue grass (*Poa pratensis* FAC). Disturbance of the Pond was limited to the east edge of the Pond. The length in lineal feet is given in the above table.

Exotic and invasive species that were observed around the two areas by ecologists from Prairie Restorations include:



Canada Thistle  
Purple Loosestrife  
Narrow leaved cattail  
Reed canary  
Yellow nut sedge  
Birdsfoot trefoil  
Willows  
Box elder  
Glossy buckthorn  
European buckthorn

As requested by MCWD, the wetland edge was re-located based on the presence of some wetland flagging that was part of the previously approved wetland delineation, by topographic indicators on the landscape, by remnant herbaceous vegetation and by stumps of buckthorn some of which were up to 6 – 8” in diameter. Figures 5 and 5d show the Area of Interest. The wetland edge flagging will be located by land survey and displayed on the site grading and restoration plan. The areas where trees were removed are shown on the attached line drawing. Trees were cut off at existing grade level. The top of the remaining stumps also aided in the establishment of the former wetland edge. The top of the stumps also is evidence that no filling occurred and also represents a guide to where construction equipment activity disturbed the edge of the wetland.

The edges of Mooney Lake and the Pond were disturbed by grading and tree and shrub removal. Trees removed included willow and elm. Brush was mainly buckthorn and willow. The purpose of removal was to create conditions suitable for planting native grasses and forbs. No wetland filling occurred however in the process of tree and brush removal some disturbance of the wetland edge occurred as a result of equipment operations.

### **Restoration Strategies**

The same restoration practices for the disturbed areas will be used for both ML and the eastern edge of the Pond. These practices are described below. Prairie Restorations is very familiar with these practices but they are listed here as a matter of documentation for the application.

Seed mixes recommended by Prairie Restorations will be used and are listed below.

Best management practices, such as use of mulch for temporary coverage of bare soil prior to seeding and establishment of permanent vegetative cover, implementation of erosion control measures, etc., shall be followed as appropriate. Prairie Restorations has been involved with the Dayton property for many years and is the company that introduced the native prairie vegetation to the former farm fields. They will continue to be involved in the restoration of the disturbed areas where the exotic and invasive species were removed and will also be responsible for future monitoring and maintenance.

### **Wetland Buffer Restoration and Maintenance**

Included are excerpts from a joint MNDOT and BWSR publication entitled “Guidelines For Restoring And Managing Native Wetland Vegetation”, by Robert L. Jacobson. The restoration guide is available off of the BWSR website (<http://www.bwsr.state.mn.us/wetlands/publications/nativewetveg.pdf>). While some of these suggestions do not work well with projects on a short timeline, following as many of these recommended procedures will help assure the success of the wetland buffer restoration and management. Vegetative development will be examined during routine monitoring visits, and developmental problems will be reported to the developer in a timely manner so that remedial measures may be taken. The most common developmental problems encountered in the field are reed canary grass invasion, purple loosestrife invasion, and erosion/sedimentation problems. We discuss recommended remedial measures for these three potential problems here. If any additional developmental problems occur as time passes (e.g., lack of hydrophytic plants), Prairie Restorations will make additional remedial recommendations as needed.

### ***Reed Canary Grass***

Patches of reed canary grass should be eliminated if they develop in the vegetated buffer areas before they begin to dominate them.

A herbicide containing 6% glyphosate, such as Rodeo, should be used to spot treat patches of reed canary grass. Most studies indicate that either a spring or fall application is best. Spring spraying may be preferable since it tends to minimize damage to warm season natives and since reed canary grass tends to emerge before most native vegetation appears, making it easier to target.

If reed canary grass coverage well-overtakes native plant species (i.e., if it makes up 75% or more of an area), a controlled burn could be performed however given the narrow and lineal nature of the buffers spot spraying will likely be a more effective remedy. Burning should be done in either early spring or late fall, and should be followed with an herbicide treatment to any regrowth areas. Prairie Restorations will use their discretion in determining the best management strategy.

After treatment using an herbicide and/or burning, large areas of open soil should be re-seeded to help prevent reed canary grass regrowth.

SER recommends that both herbicide application and controlled burns be performed only by properly trained and licensed personnel using appropriate safety precautions.

### ***Purple Loosestrife***

Purple loosestrife should be eliminated from the buffer areas soon after plants begin to appear since it is so highly invasive. If the number of plants is relatively small, purple loosestrife plants should be hand weeded. Plants should be pulled out of the ground early in the season since young loosestrife plants are much easier to pull than older ones, making it easier to remove most or all of the root system. As much of the root system as possible should be removed since loosestrife plants can regrow from root fragments.

If purple loosestrife coverage continues to increase, an herbicide treatment is recommended. As with reed canary grass, spot treatment with a glyphosate herbicide, such as Rodeo, is most effective. Mid- to late- summer application of herbicide seems to be most effective in purple loosestrife reduction.

SER recommends that herbicide application and hand weeding be performed only by properly trained and licensed personnel using appropriate safety precautions.

### **Erosion/Sedimentation**

If sedimentation is noted in a basin, side slopes should be examined to determine if plant establishment is adequate. If a lack of plant establishment on side slopes is causing sedimentation, the best solution would be re-seeding the side slopes. While waiting for plant re-establishment, two measures would help reduce sedimentation. First, the slopes in question should be anchored with wood fiber blanket with plantings through it. Second, silt fencing should be in place between the toe of the slope and the wetland itself to reduce sediment delivery into the wetland.

As will be discussed in more detail below, monitoring of the site will occur in accordance with parts 8420.0610 and 8420.0620 of the WCA rules. Annual reports will be produced every year until the LGU is satisfied with the quality of the restored areas (predicted to be the typical five years of monitoring that WCA requires).

### ***Steep slopes and drainages***

Erosion blankets are useful on wide gradual slopes to hold the seed and soil in place while the plants establish. These can be made out of many different materials, but most break down after a year or two. Some come pre-seeded with the desired mix, but this is generally not necessary and rather expensive.

If there are storm outlets or shorelines, riprap (rock) is often used but, since it does not support vegetation, it is not always desirable in restoration projects. Many local government units regulate the amount of riprap on a project site, especially in wetland zones. Pre-vegetated blankets are useful for stabilizing these areas and can also be used on shorelines or in flooded areas, where vegetation is often difficult to establish. There are erosion control blankets that have young plants already growing into them. The high cost of these blankets is usually balanced by the low labor costs to install them relative to the addition of plugs and other erosion blankets. These are also less likely to require follow-up maintenance, as is often necessary for plugs and seeding areas.

### ***Introducing native vegetation onto the site***

Based on the experience of Prairie Restorations, vegetation consisting of different groups of species will be seeded in the buffers, though some species will be introduced throughout a site. Seed should be broadcast for both the temporary and permanent mixes. Seedlings and other live plants will require a lot of labor, but these plants will generally spread, so this is an effective and dependable means of establishing native vegetation. Also, the site does not need to be completely covered with plants because they will expand fairly quickly.

### ***Invasive Species Control***

Weeds will be aggressively controlled from the beginning of a project so that management is simplified in the future. To be approved at the conclusion of monitoring, a site must be kept relatively free of invasive and non-native species to varying degrees for at least 5 years after restoration.

The control of invasive species is often very difficult and should be managed in the first steps of a restoration. Initial site preparation should thoroughly remove all invasive species and account for seed banks containing these invasive plants as well as resprouts from surviving roots and underground stems. Some important things to consider:

- Ensure that everything brought to the wetland and surrounding buffer site, including soil, mulch, and seed are weed-free. **Do not use soil from a degraded wetland (i.e. infested with Reed Canary Grass or other invasive species)**
- Excavating within the upper two feet of soil is rarely enough to eliminate all of the propagules from these species.
- The application of herbicides such as glyphosate labeled for wetland use (e.g. Rodeo™ is required near water rather than Roundup™) is effective but this does not eliminate seed banks and resprouting is still likely. Therefore, several applications will be required especially as spot treatments where invasive species re-establish. Timing the application is critical and the type of herbicide is also important. Glyphosate kills all plants, so make sure the application targets only the invasive plant. Fall applications are often used for Reed Canary Grass, where it is still actively growing and most other plants are not. Fall is also a good time to spray for Canada thistle, but Transline™ herbicide is preferable. It is recommended to use a contractor with a pesticide applicators permit; many herbicides cannot be legally applied without one.
- Pulling plants can be effective, but many species will resprout from rhizomes underground. These are usually very difficult to destroy, especially for species like Reed Canary grass and Canada thistle. Therefore, this method is recommended only for small patches.
- Mowing can be useful to prevent seed-set. It must be performed at the appropriate time of year, just before the invasive species is developing seed. If it is done too early, most plants will set seed anyway; if it is done too late, the seed will have been released and the mower will only cut stems that are drying out for the season.



### **Years 2 & 3. Invasive Species Control and Encourage establishment**

Early spring

- Reed Canary Grass control. If it can be identified spot-spray with glyphosate labeled for wetlands.

Late spring and summer

- Mow entire site 1-2 times to encourage establishment of permanent vegetation
- Two monitoring trips to the site to locate and identify invasive species

Fall

- Spot spray Reed Canary Grass while it is still green and other plants are dormant
- Spot spray other invasive species as well

### **Year 4 & 5. Invasive Species Control and Encourage Establishment**

Early Spring and Fall– Continue Reed Canary Grass control.

Late Spring and Fall - Two monitoring trips to the site to locate and identify invasive species

### **Prairie Restorations Summary of Restoration Procedures**

- 1) Once the site is graded, sow a 50/50 cover crop mix of winter wheat and oats. This will help with stabilization of the site.
- 2) Straw mulch the seeding area.
- 3) Next spring, spray the cover crop and emerging weeds with aquatic approved glyphosate(Rodeo).
- 4) Burn dead vegetation to remove thatch.
- 5) Seed proposed native species along with a cover crop.
- 6) Install erosion blanket where necessary. Straw mulch remainder of project area.
- 7) Provide 3+ years of maintenance to ensure a successful native planting.

### **Prairie Restorations Recommended Seed Mixes**

#### **PRI Tall Wet Grass Mix:**

44% Big bluestem, 15% Indian grass, 6% Blue joint grass,  
6% Canada wild rye, 6% Green bulrush, 5% Virginia wild rye,  
5% Little bluestem, 5% Cord grass,  
3% Tall manna grass, 3% Wool grass,  
2% Switch grass

#### **PRI Shoreline Grass Mix:**

18% Pointed broom sedge, 15% Green bulrush,  
12% Wool grass, 10% Blue joint grass,  
8% Fringed brome, 7% Soft-stemmed bulrush,  
6% stalk-grain sedge, 6% Virginia wild rye  
6% Tall manna grass, 5% Fox sedge,  
5% River bulrush, 2% Cord grass

#### **PRI Mixed Height Mesic Grass Mix:**

33% Big bluestem, 23% Little bluestem, 22% Indian grass,  
12% Side oats grama, 5% Canada wild rye, 2% Junc grass,  
1% Switch grass, 1% Sand dropseed,  
1% Prairie dropseed

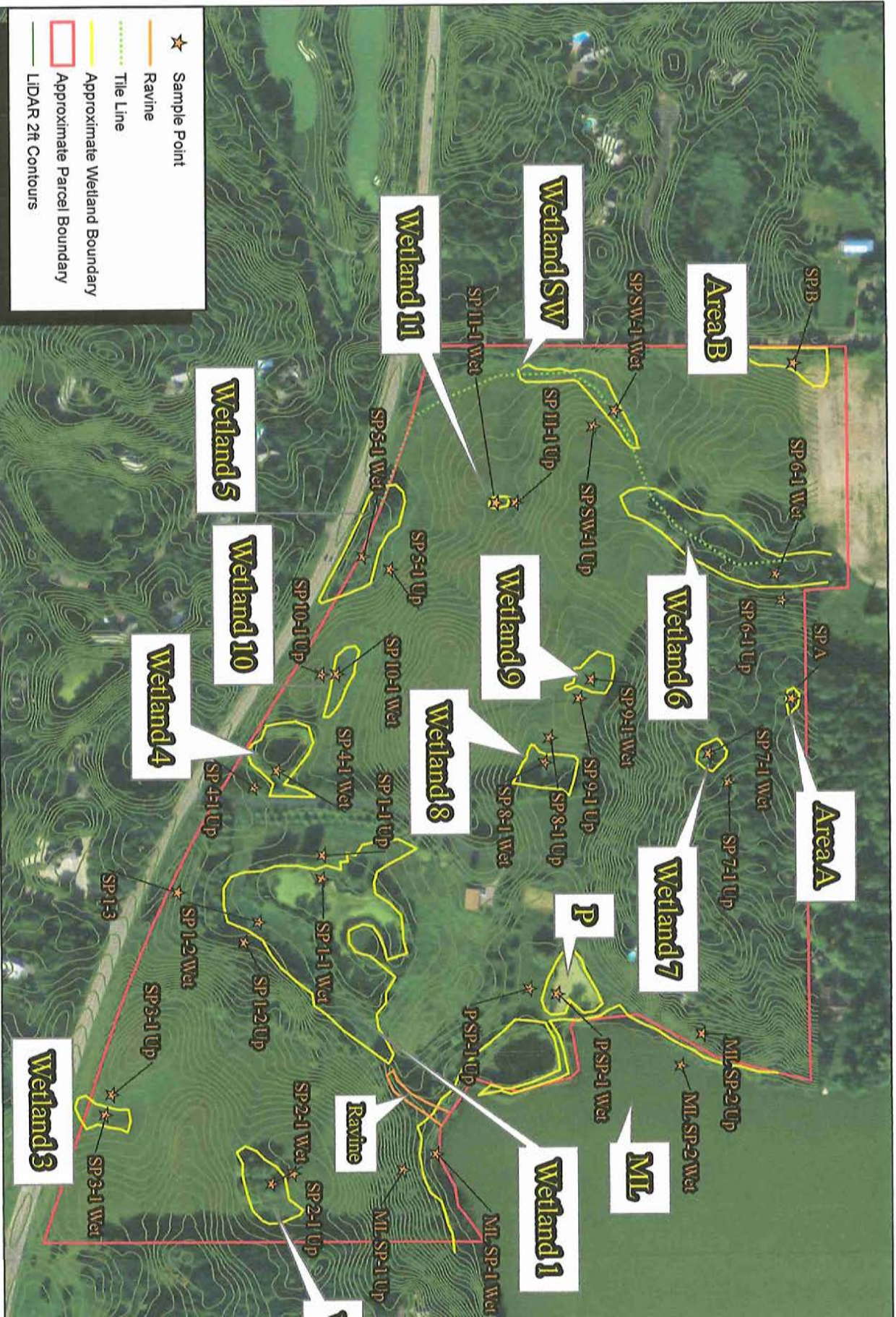
#### **PRI Tall Wet Wildflower Mix:**

12% Blue vervain, 11% Swamp milkweed, 10% Joe-pye weed,  
9% Boneset, 8% Golden Alexander, 7% Black-eyed Susan,  
6% Common ox-eye, 4% Smooth aster,  
4% Blue flag iris, 4% New England aster, 4% Ironweed,  
4% Tall meadow rue, 3% Sweet flag, 3% Canada tick trefoil,  
3% Tall blazing star, 3% Stiff goldenrod, 3% Purple prairie clover,  
1% Sneezeweed, 1% Northern bedstraw

#### **PRI Shoreline Wildflower Mix:**

10% Blue vervain, 10% Swamp milkweed, 9% Joe-pye weed,  
8% Sweet flag, 8% Tall meadow rue, 7% Blue flag iris,  
6% Giant bur-reed, 6% Golden Alexander,  
5% Boneset, 5% Black-eyed Susan, 4% Tall blazing star,  
4% New England aster, 4% Flat-topped aster, 4% Ironweed,  
3% Sneezeweed, 3% Common ox-eye,  
2% Water plantain, 2% Arrowhead





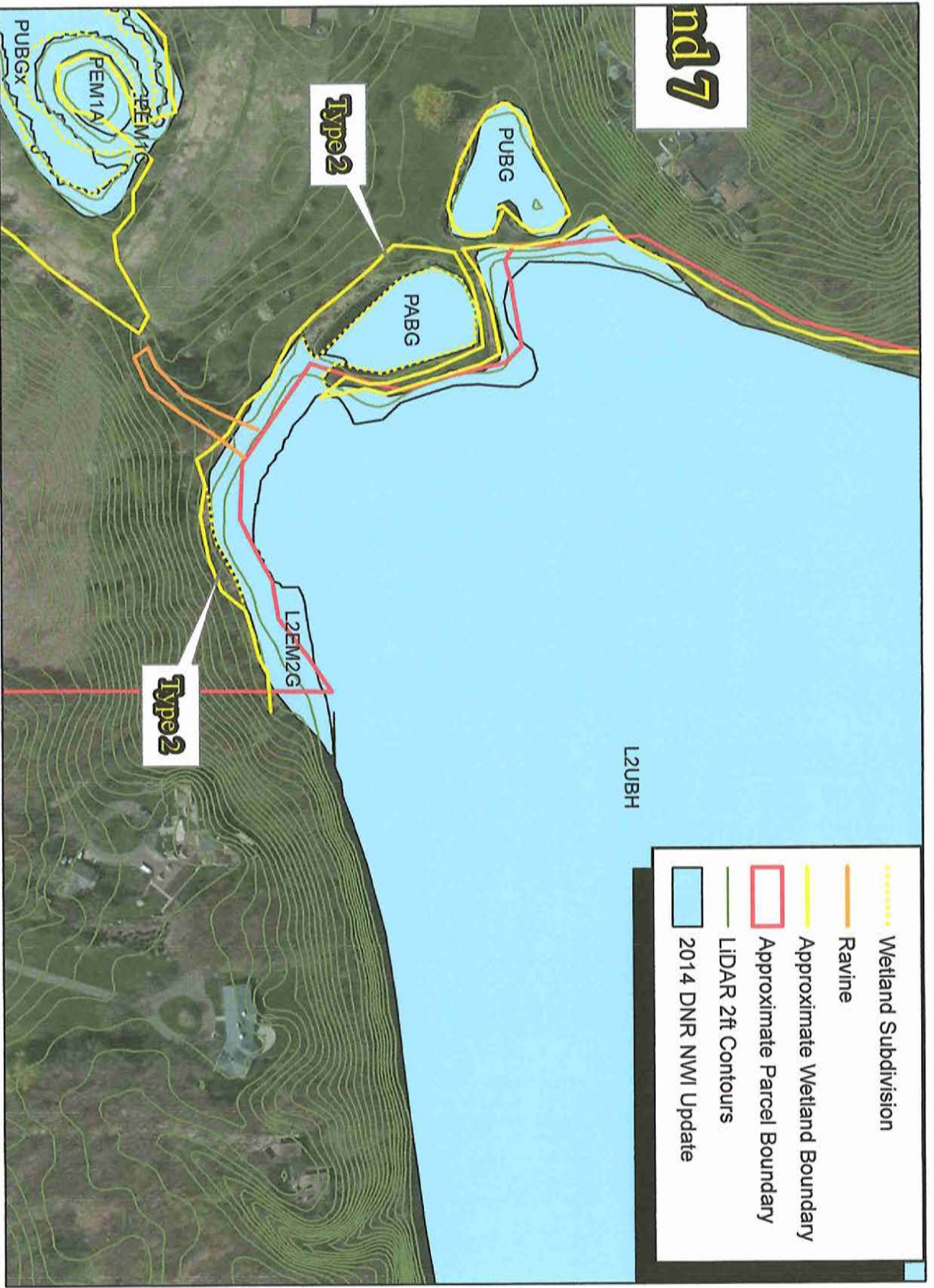
Approximate Wetland Boundaries

Overlaid on 2014 Aerial Photo

TI18N R23W S25







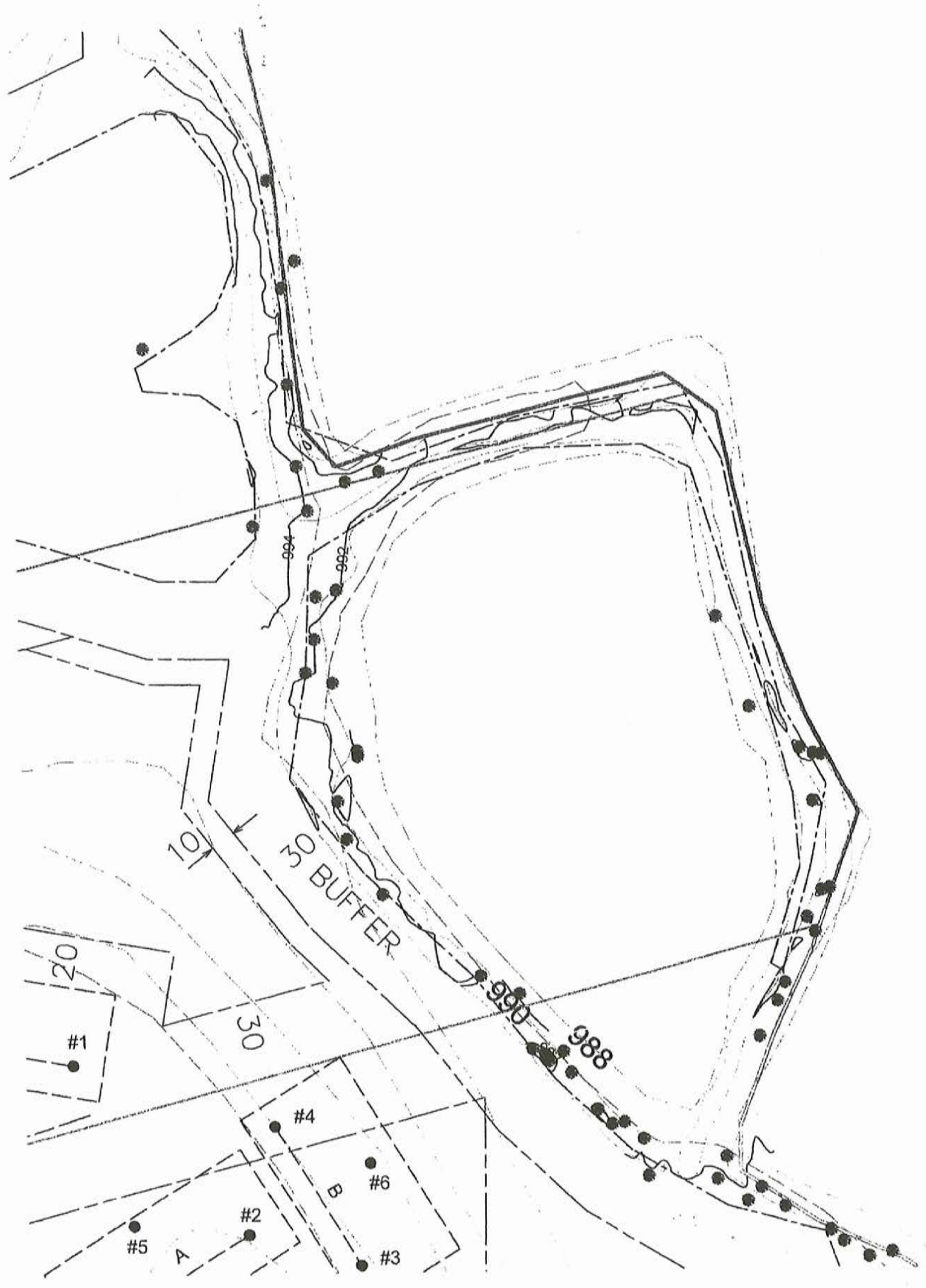
**Mooney Lake Boundary and Subdivisions**

Overlaid on 2014 Aerial Photo

**Figure 5d**

T118N R23W S25







## 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 <sup>1</sup> | Corps Mitigation Compensation Technique <sup>2</sup> | Acres | Credit % Requested | Credits Anticipated <sup>3</sup> | County | Major Watershed # | Bank Service Area # |
|---|--|-------|--------------------|----------------------------------|--------|-------------------|---------------------|
|   |  |       |                    |                                  |        |                   |                     |
|   |  |       |                    |                                  |        |                   |                     |
|   |  |       |                    |                                  |        |                   |                     |
|   |  |       |                    |                                  |        |                   |                     |

<sup>1</sup>Refer to the name and subpart number in MN Rule 8420.0526.

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

<sup>3</sup>If 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.):

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:



09/21/16

Date:

Project Name and/or Number:



**Technical Evaluation Panel Concurrence:**

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:

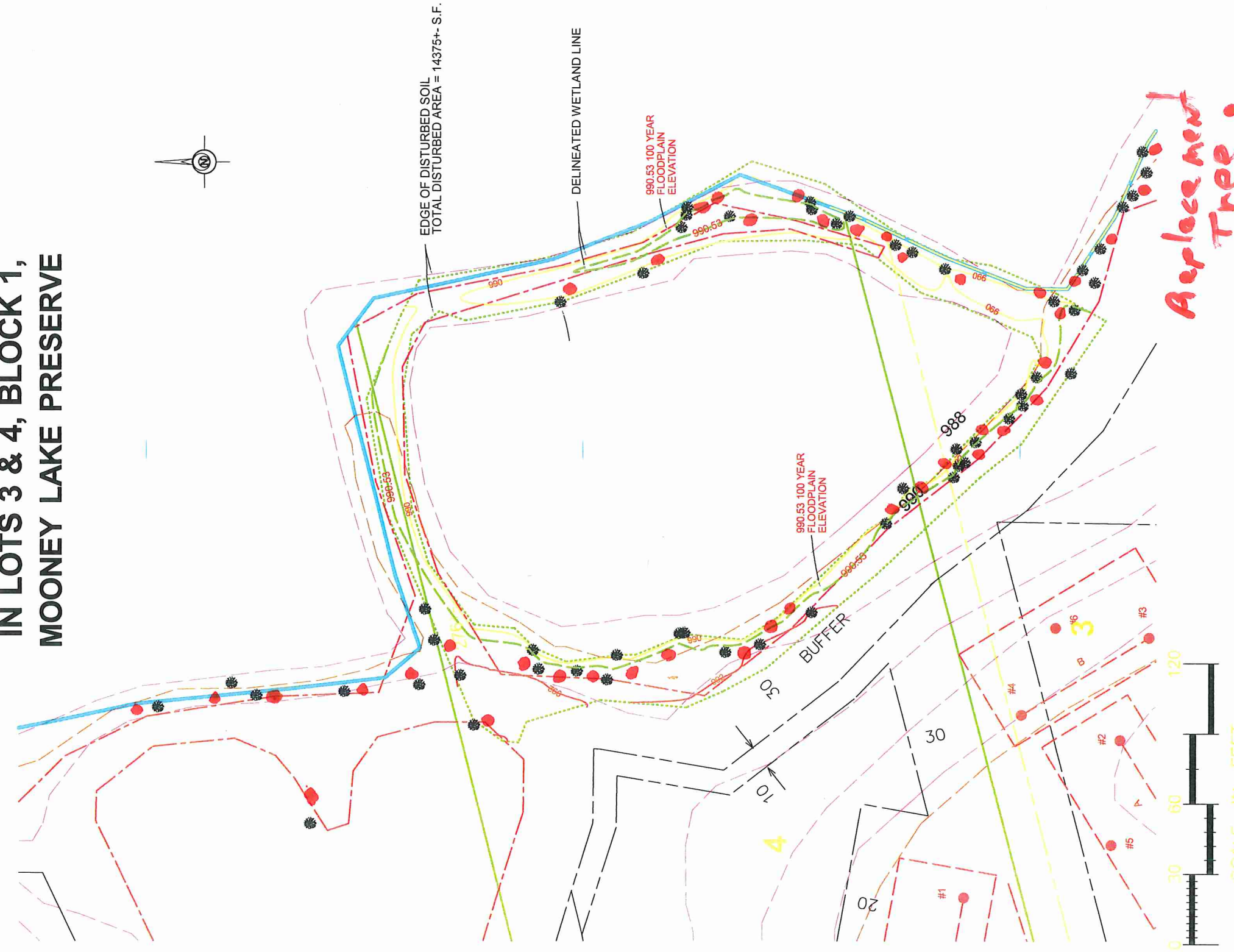
Concur with road authority's determination of qualification for the local road wetland replacement program?  Yes  No

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**

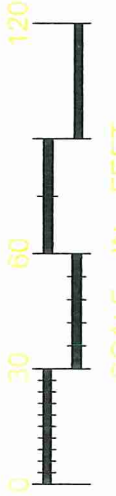
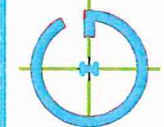
# DISTURBED SOIL DRAWING IN LOTS 3 & 4, BLOCK 1, MOONEY LAKE PRESERVE



|                 |                 |             |                    |
|-----------------|-----------------|-------------|--------------------|
| <b>DESIGNED</b> | <b>REVISION</b> | <b>DATE</b> | <b>DESCRIPTION</b> |
|                 |                 |             |                    |
| <b>DRAWN</b>    |                 |             |                    |
|                 |                 |             |                    |
| <b>CHECKED</b>  |                 |             |                    |
|                 |                 |             |                    |

|  |   |
|--|---|
| <b>GRONBERG &amp; ASSOCIATES, INC.</b><br>CONSULTING ENGINEERS, LAND SURVEYORS,<br>SITE PLANNERS<br>445 N. WILLOW DR. LONG LAKE, MN. 55356<br>952-473-4141 | I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.<br><br><i>Mark A. Grunberg</i><br>License No. 15-0019 |
|--|---|



**RECEIVED**  
 OCT 04 2016  
 By \_\_\_\_\_





October 6<sup>th</sup>, 2016

George Stickney  
201 East Lake Street  
Wayzata, MN 55391

RE: MCWD Permit 15-445: 300 Sixth Ave North, Orono

Dear Mr. Stickney,

Per the Minnehaha Creek Watershed District enforcement policy, MCWD sent a Notice of Probable Violation on September 9, 2016 regarding violations of Permit 15-445. The Notice of Probable Violation included multiple action items requested to be addressed by September 14, 2016. Following a September 14<sup>th</sup> on-site meeting, MCWD requested the following on September 16<sup>th</sup>, 2016:

| Requirements:   | Deadline                           |
|---|------------------------------------|
| <ul style="list-style-type: none"> <li>• Submission of an updated site survey showing the following items:               <ul style="list-style-type: none"> <li>○ Quantified wetland disturbance area</li> <li>○ Quantified wetland buffer disturbance area</li> <li>○ 100-year floodplain elevation contour line (elevation to be provided by MCWD)</li> <li>○ Inventory of all removed trees-including species, diameter, and location</li> </ul> </li> </ul> | 9:00 AM-Friday, September 23, 2016 |
| <ul style="list-style-type: none"> <li>• Have a certified wetland delineator re-flag the wetland boundary area as approved in the Notice of Decision that was noticed on July 10, 2015</li> </ul>   | 9:00 AM-Friday, September 23, 2016 |
| <ul style="list-style-type: none"> <li>• Submit a Wetland Conservation Act (WCA) No-Loss Application</li> </ul>   | 9:00 AM-Friday, September 23, 2016 |

MCWD received an updated site survey and a WCA No-Loss application on September 22<sup>nd</sup>, 2016. Upon review of the submitted materials, Staff have determined the following items to be incomplete:

- The site survey did not quantify the amount of wetland buffer disturbance around Wetland ML or Wetland P Pond;
- The site survey submitted did not quantify the number of trees removed, identify the species, nor the tree diameter;
- It is unclear if the Wetland Boundaries around Wetland ML and Wetland P Pond were reflagged as approved in the NOD using GPS coordinates, or were re-flagged based on the current disturbed site conditions;

*(continued)*

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- WCA No-Loss Application
  - Staff does not find that the after-the-fact application qualifies for MN Rules 8420.415 (A) an activity that will not impact a wetland. Due to the documented disturbance caused by equipment for tree, shrub, and brush removal with the intent for restoration, MN Rules 8420.0415 (H) a temporary impact that is restoring a wetland, is the appropriate rule criteria that should be met. Please submit information to fulfill the conditions, particularly subsection (1), ground elevations and contours are restored to pre-project conditions.

Additionally, a follow up inspection was conducted on Thursday 29, 2016 and the following issues were observed:

- Un-stabilized soils along Prairie View Drive
- Non-functioning sediment control around Prairie View Drive
- Non-functioning stormwater management pond on the corner of County Road 6 and Prairie View Drive
- Missing perimeter control around Outlot F access road with un-stabilized soils
- Un-stabilized soils flowing down the south western corner of lot 2 towards Wetland #1
- Inconsistent and sparse flagging delineating the boundary of Wetland #1
- Potential wetland fill within the north eastern boundaries of Wetland #1
- Un-stabilized stockpiles for greater than 14 inactive construction days

Due to incomplete information and threat to natural resources, MCWD is issuing the attached Compliance Order. If you have any questions or concerns about the requirements or timeline listed in the Compliance Order, please feel free to contact me at [ksylvia@minnehahacreek.org](mailto:ksylvia@minnehahacreek.org) or 952-473-2855.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Katherine Sylvia', with a long horizontal flourish extending to the right.

Katherine Sylvia  
Permitting Program Lead

CC: James Wisker, MCWD Director of Planning & Projects  
Wes Boll, Wenck Associates  
Melanie Curtis, City of Orono  
Mike Gaffron, City of Orono  
Art Taylor, Bolton & Menk, Inc  
Frank Svoboda, Svoboda Ecological Resources  
Gage Chaffee, Terry Bros Inc  
Cory Piling, Prairie Restorations Inc

Attachments: Permit 15-445 Compliance Order

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## COMPLIANCE ORDER

Under authority of Minnesota Statutes §103D.341 and  
Minnehaha Creek Watershed District Enforcement Rule

**Property Owner:** BPS Properties L.L.C.

**Address:** 300 Sixth Ave North, Orono

**Permit #:** 15-445

**Property Owner's Representative:** George Stickney

**Notice of Probable Violation Issued:** Friday, September 9, 2016

**Activity:** Wetland disturbance, wetland buffer disturbance, and floodplain alteration

### OBSERVATIONS:

The following apparent violations have been observed by MCWD staff (including citation to MCWD rule provision(s), permit or order violated):

1. *Failure to submit quantified wetland buffer disturbance around Wetland ML and Wetland P Pond by September 23<sup>rd</sup>, 2016;*
2. *Failure to submit quantified inventory of tress removed, including species, diameter, and location by September 23<sup>rd</sup> 2016;*
3. *Failure to remove all deposited sediment within the stormwater pond and culvert at Prairie View Drive and County Road 6 by September 14<sup>th</sup>, 2016;*
4. *Unauthorized Floodplain Disturbance.*

A site inspection was conducted on Thursday, September 29<sup>th</sup>, 2016 and the following additional issues were observed:

1. *Un-stabilized soils along Prairie View Drive;*
2. *Non-functioning sediment control around Prairie View Drive;*
3. *Non-functioning stormwater management pond on the corner of County Road 6 and Prairie View Drive;*
4. *Missing perimeter control around Outlot F access road with un-stabilized soils;*
5. *Un-stabilized soils flowing down the south western corner of lot 2 towards Wetland #1;*
6. *Inconsistent and sparse flagging delineating the boundary of Wetland #1;*
7. *Potential wetland fill within the north eastern boundaries of Wetland #1;*
8. *Un-stabilized stockpiles for greater than 14 inactive construction days.*

You hereby are ordered to take the following actions to come into compliance with the above requirements:

### Action

1. *Stabilize exposed soils around wetland ML, P pond, and Wetland #1;*
2. *Install rock construction entrance north of pavement on Prairie View Drive to reduce sedimentation runoff;*
3. *Stabilize all bare soils with either erosion control blankets or hydro seed;*

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4. *Install functioning sediment control at and around Prairie View Drive;*
5. *Install functioning sediment control around the entire perimeter of Outlot F to reduce further runoff into Wetland #1;*
6. *Reflag Wetland #1 boundary using GPS coordinates as approved in NOD issued July 10<sup>th</sup>, 2015;*
7. *Stabilize all exposed soils and stockpiles that have been inactive for 14 days or greater.*

MCWD requests that the following corrective actions are taken by **Tuesday, October 11th, 2016.**

**Upon completion of site stabilization, CEASE ALL LAND DISTURBING WORK.**

*The District will conduct a site assessment to determine the extent of work that is outside of the approved limits of disturbance and impacts to water resources as in violation of the District's Wetland Protection, Erosion Control, and Floodplain Alteration rules. The District will then provide a restoration plan guided by MCWD and City of Orono rule requirements. The Property Owner will be required to implement the restoration plan at the direction of the Board of Managers.*

This Compliance Order will expire 10 days from the date of the order, if rescinded by the MCWD administrator, or when superseded by further order of the MCWD Board of Managers, whichever occurs first. Failure to comply with this Compliance Order is a civil violation and a criminal misdemeanor.

The matters alleged in this order will be heard by the board on **October 13<sup>th</sup>, 2016, at TBD p.m.**, at the following location: 15320 Minnetonka Boulevard, Minnetonka. At this time you may address the board, be represented by an attorney and present evidence or witnesses in your behalf. (If no date/time/location information is indicated here, you will be advised shortly of the date, time and location of the hearing.)

After hearing, the Board of Managers may dismiss this order, extend the order, direct that you act to remedy further violations found by the board, and/or initiate civil or criminal proceedings, pursuant to Minnesota Statutes section 103D.545. The listing of violations above does not preclude the MCWD from finding additional or other violations on the basis of the evidence presented.

Your compliance with the direction to take the action specified above, whether remedial, corrective, preventative or otherwise, is required pending the board hearing. **IF SPECIFIED ABOVE AS A REQUIRED ACTION, YOU MUST CEASE WORK UNTIL THE MCWD HAS VERIFIED COMPLIANCE WITH THE TERMS OF THIS ORDER. IF NOT SPECIFIED ABOVE, YOU NEED NOT CEASE WORK. HOWEVER, FAILURE TO COMPLY WITH THE TERMS AND DIRECTIONS OF THIS ORDER BY THE COMPLIANCE DEADLINE MAY RESULT IN A FURTHER ADMINISTRATIVE ORDER DIRECTING THAT WORK CEASE.** The timeliness and completeness of your compliance will be considered by the board in determining further appropriate action, if any.

Pursuant to MCWD Enforcement Rule, paragraph 5, you will be liable for all costs incurred by the MCWD to secure your compliance with this order, including District consultant and legal costs. If you do not complete the actions ordered above by the indicated deadlines, the MCWD may act to remedy the noncompliance and recover the costs of its action, including attorneys' fees, from you or your surety.

This order does not affect the ability of any other federal, state or local body of government to take enforcement action against you pursuant to its own laws and regulations.

*(Continued)*

*We collaborate with public and private partners to protect and improve land and water for current and future generations.*



# MINNEHAHA CREEK



# WATERSHED DISTRICT

QUALITY OF WATER

QUALITY OF LIFE

**ISSUED BY:**

Katherine Sylvia  
Permitting Program Lead

  
Signature

Date: October 6<sup>th</sup>, 2016

**ISSUED VIA:**

- EMAIL (email: \_\_\_\_\_)
- IN PERSON
- OTHER (specify: \_\_\_\_\_)

**TO:**

George Stickney  
BPS Properties, LLC

Date: October 6<sup>th</sup>, 2016

*Your signature below indicates only that you received this order. Your signature does not constitute an admission of any kind with respect to the apparent violations listed above.*

**RECEIVED BY:**

\_\_\_\_\_  
Name/Title (Print)                      Date: \_\_\_\_\_

\_\_\_\_\_  
Company

\_\_\_\_\_  
Signature

Address:

Telephone:

Email:

*We collaborate with public and private partners to protect and improve land and water for current and future generations.*







Area will be seeded week of 10/10 with native PRI native seed. Pockets of wet species along with PRI Mixed Height Grass and Wildflowers.

- Seeded with no-till drill
- Straw wattles installed where water flow concentrates.
- Seed Mix: PRI Mixed Height Grass, PRI Mixed Height Wildflowers

Mooney Lake Drive

Alvarado Lane North

Prairie View Lane

6th Avenue North



# Proposal



Responsive partner.  
Exceptional outcomes.

**To:** Katherine Sylvia, Minnehaha Creek Watershed District

**From:** Wes Boll and Mike Graham, Wenck Associates, Inc.

**Date:** October 10, 2016

**Subject:** Proposal for Analysis of Disturbance and Preparation of Restoration Plan, Mooney Lake Subdivision, (Permit 15-445)

This proposal is prepared to summarize the level of effort required for Wenck staff to conduct an analysis of the extent of disturbances resulting potential rule violations on the Mooney Lake subdivision site in the City of Orono. Specifically, this proposal provides a proposed scope of services and cost estimate to review information from the site (site plans, applications, restoration plans, Notice of Violation), conduct a site investigation to assess and quantify disturbances, and determine if disturbances are in violation of MCWD, WCA, or other applicable rules. It is our understanding that violations may have occurred to MCWD Wetland Protection and Erosion Control Rules, as well as potential violations to WCA and City of Orono Rules. The scope of work will also include the development of a restoration plan for the stabilization and revegetation of the site to a condition that would meet regulatory requirements.

## **SCOPE OF SERVICES**

### **TASK 1: Obtain and Review Existing Information**

Wenck proposes to obtain and review existing information on the site from MCWD, the applicant, or the applicant's surveyor/consultant in order to establish a baseline of existing conditions prior to site disturbance and to demonstrate the extent of disturbance that was permitted on the site. Wenck also would attempt to obtain recently collected data obtained by the surveyor and consultant that documents the extent of site disturbance. Wenck also would review the site plan, Notice of Probable Violation, and Compliance Order issued by MCWD in order to determine the violations and potential violations on the site. This information will be used as a basis for the Site Investigation proposed in Task 2.

### **TASK 2: Site Investigation**

Wenck proposes to conduct a site investigation to assess disturbances on the site to wetlands, wetland buffers, stormwater ponds, and previously vegetated areas. Areas of disturbed wetlands and wetland buffers would be quantified and recorded with GPS. Wenck would confirm that the previously approved delineated wetland boundary is adequately staked in the field. Wenck also will attempt to quantify the number and size of trees removed adjacent to Mooney Lake and wetlands by counting and measuring stumps that remain in the disturbed areas. Best attempts will also be made to determine species of the trees, which may be difficult by looking at the stumps alone.

### **TASK 3: Summary of Site Disturbance and Develop Restoration Plan**

Following the completion of Tasks 1 and 2, Wenck will develop a plan that quantifies and demonstrates site disturbances and determines areas of potential impact/violation of WCA and MCWD (wetland protection, erosion control, floodplain) rules. For areas determined to be violations, the plan will also include measures to be followed to restore the site



**Katherine Sylvia**  
Minnehaha Creek Watershed District  
July 26, 2016



Responsive partner.  
Exceptional outcomes.

conditions to a value that is equal to or greater than what was present on the site prior to disturbance, as required by WCA for a permitted no-loss activity. This plan will include recommendations to restore pre-existing grades, a review of the proposed vegetation establishment plan (prepared by Prairie Restorations) with recommendations for improvements to vegetation and tree plantings, and recommendations to repair eroded areas and protect disturbed slopes to prevent future damage.

A summary of the proposed tasks and associated fee for services is provided in Table 1:

**Table 1. Cost Estimate**

| <b>Scope of Work</b>  | <b>Fee Estimate</b> |
|---|---------------------|
| <b>Task 1: Obtain and Review Existing Information</b>                   | \$1,400             |
| <b>Task 2: Site Investigation</b>                                       | \$2,500             |
| <b>Task 3: Summary of Site Disturbance and Develop Restoration Plan</b> | \$3,500             |
| <b>TOTAL =</b>  | <b>\$7,400</b>      |

The estimate for each task includes the expected level of effort along with direct expenses covering items such as mileage and survey equipment. It is anticipated that the site investigation would be completed in October 2016 with the restoration plan being completed within 2 weeks of the completion of the investigation.

Wenck appreciates the opportunity to provide you with our proposal. If you have any questions or comments regarding this proposal, please call me at (763)479-4283.

Sincerely,

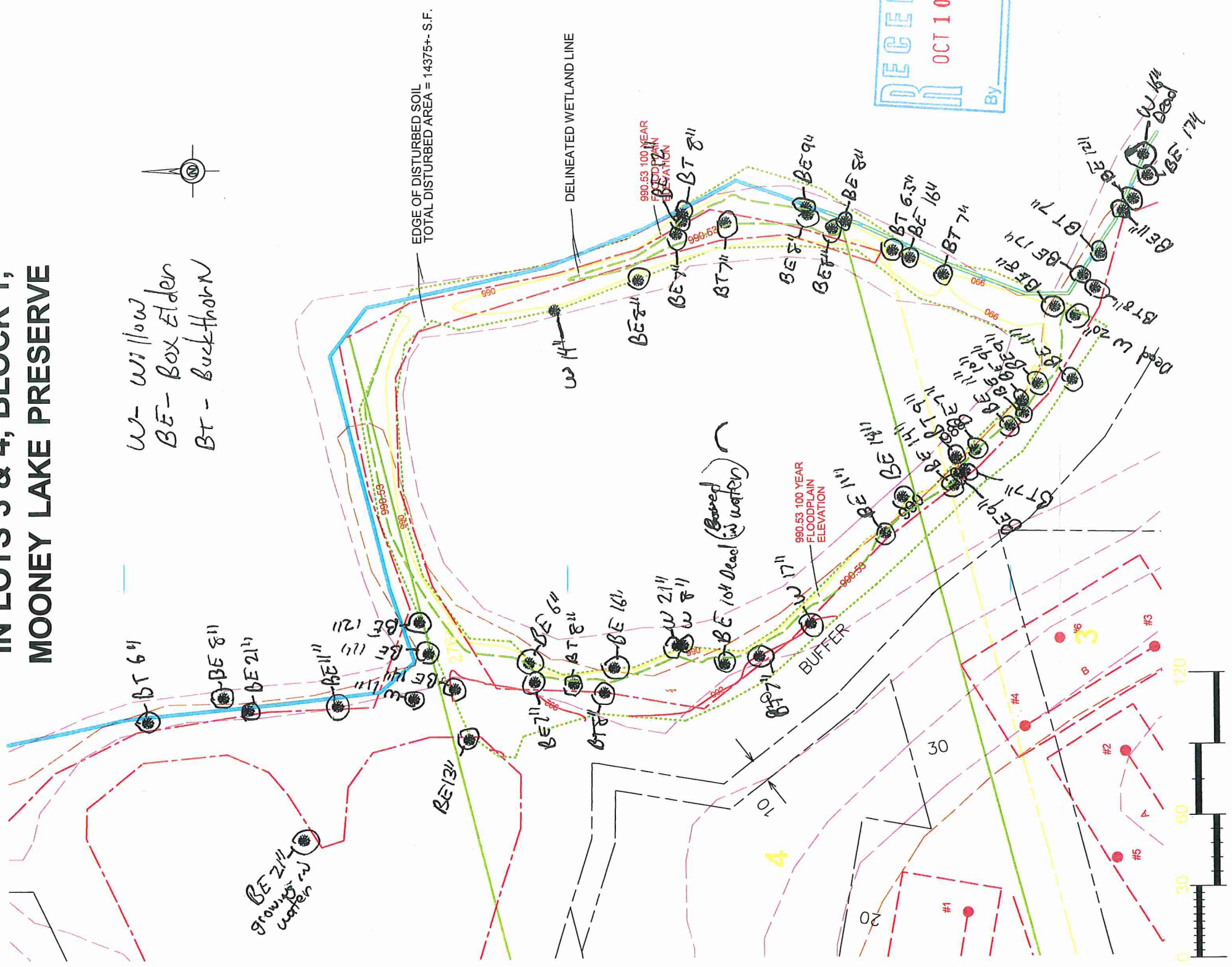
WENCK ASSOCIATES, INC.

A handwritten signature in black ink that reads 'Wesley Boll'. The signature is written in a cursive, flowing style.

Wes Boll

**DISTURBED SOIL DRAWING  
IN LOTS 3 & 4, BLOCK 1,  
MOONEY LAKE PRESERVE**

W - Willow  
BE - Box Elder  
BT - Buckthorn



**RECEIVED**  
OCT 10 2016  
By

|          |          |      |             |
|----------|----------|------|-------------|
| DESIGNED | REVISION | DATE | DESCRIPTION |
| DRAWN    |          |      |             |
| CHECKED  |          |      |             |

SCALE: 1"=40'

DATE: 10-28-16

JOB NO.: 15405

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

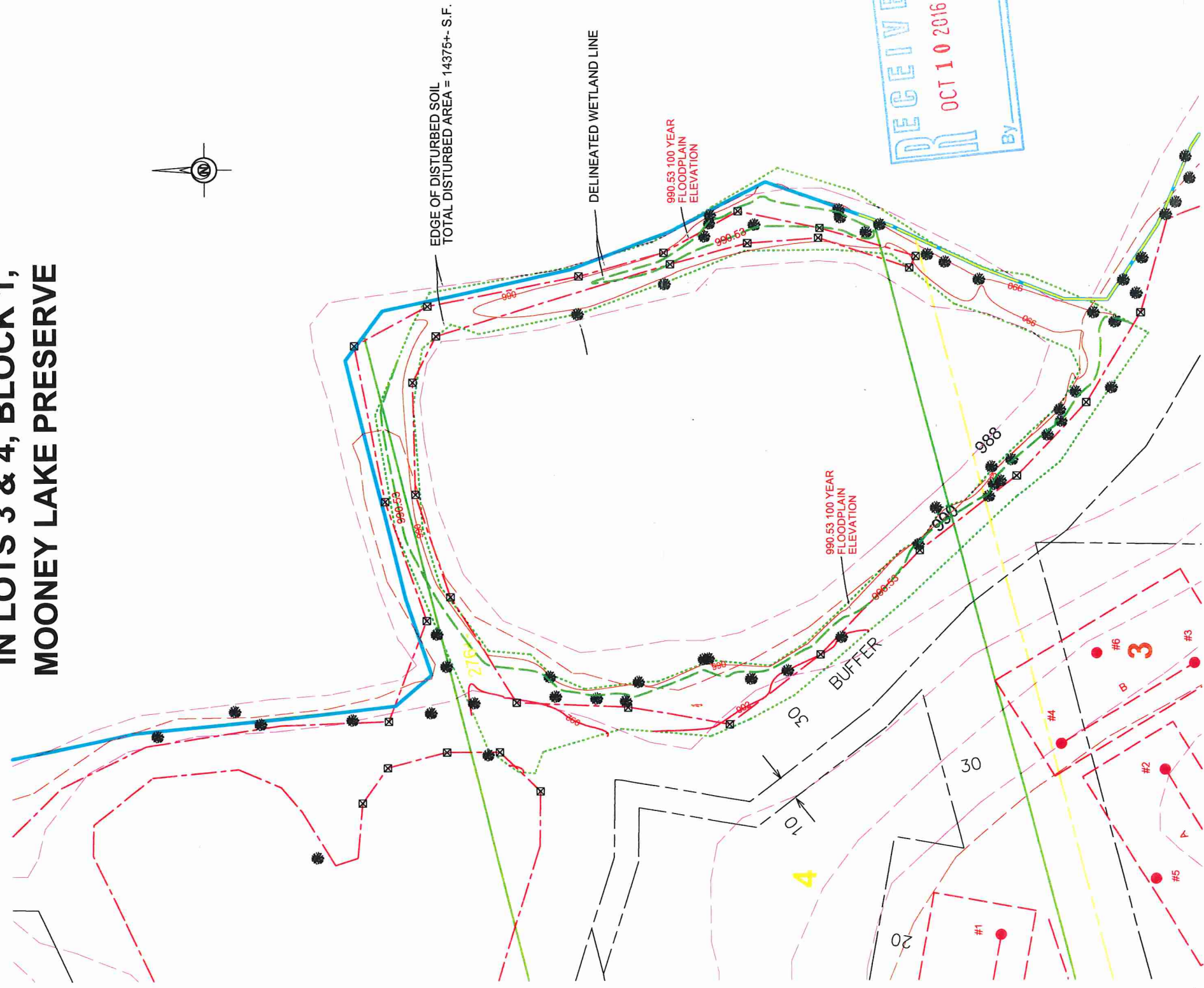
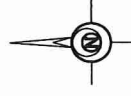
  
 Mark A. Danberg  
 License No. 0000000000

**GRONBERG & ASSOCIATES, INC.**  
 CONSULTING ENGINEERS, LAND SURVEYORS,  
 SITE PLANNERS  
 445 N. WILLOW DR., LONG LAKE, MN. 55356  
 952-473-4141

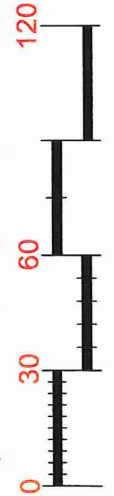
15405



# DISTURBED SOIL DRAWING IN LOTS 3 & 4, BLOCK 1, MOONEY LAKE PRESERVE



RECEIVED  
 OCT 10 2016  
 By \_\_\_\_\_

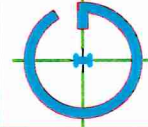


SCALE IN FEET

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| DESIGNED | REVISION | DATE | DESCRIPTION | SCALE<br>1"=30'   |
| DRAWN    |          |      |             | DATE<br>9-20-16   |
| CHECKED  |          |      |             | JOB NO.<br>15-052 |

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

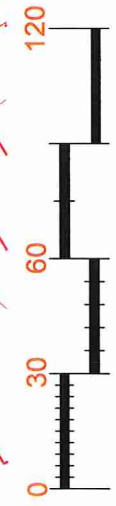
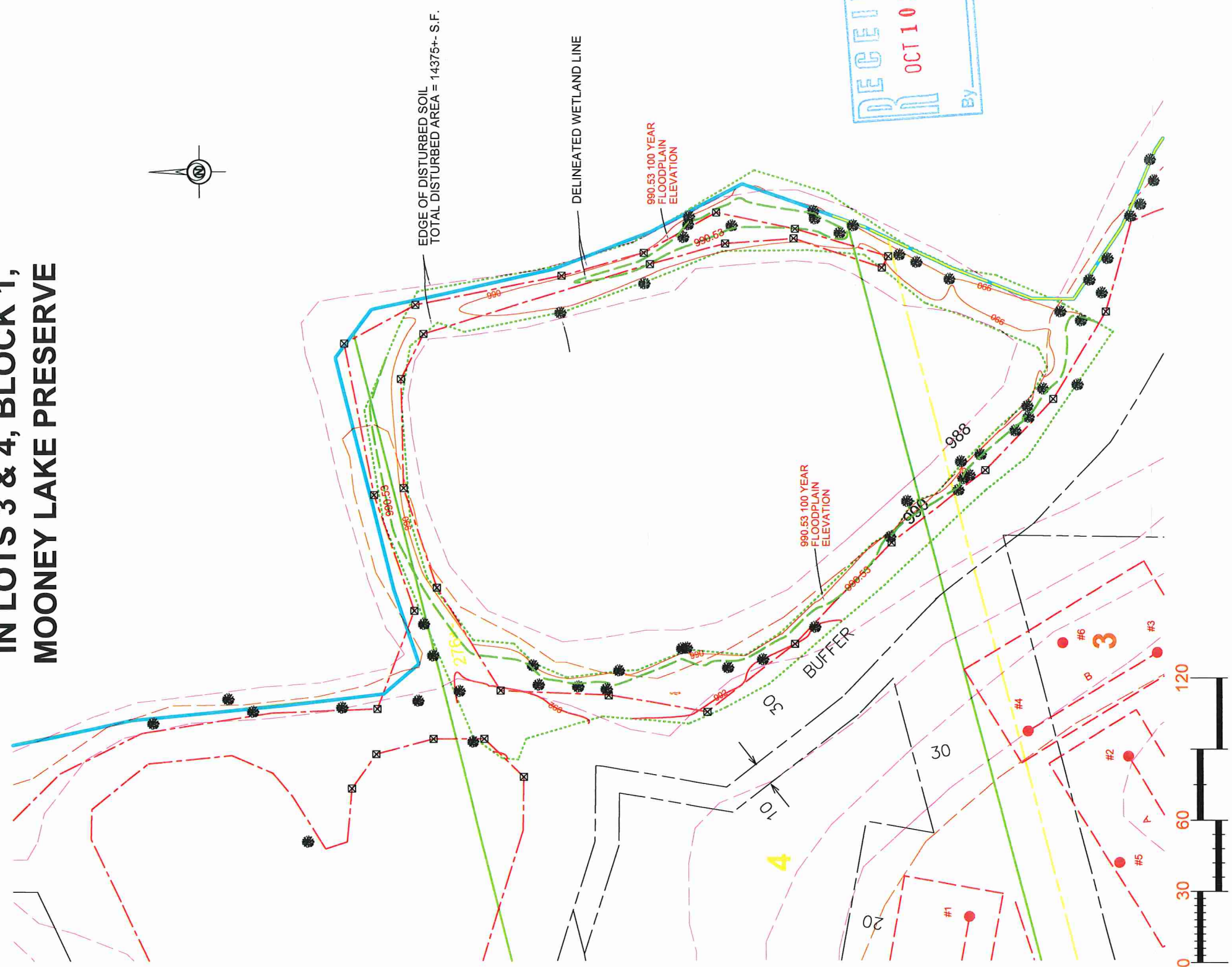
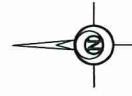
DATE 9-20-16 MN LICENSE NUMBER 12255



**GRONBERG & ASSOCIATES, INC.**  
 CONSULTING ENGINEERS, LAND SURVEYORS,  
 SITE PLANNERS  
 445 N. WILLOW DR. LONG LAKE, MN. 55356  
 952-473-4141



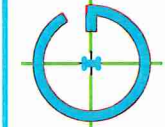
# DISTURBED SOIL DRAWING IN LOTS 3 & 4, BLOCK 1, MOONEY LAKE PRESERVE



SCALE IN FEET

| DESIGNED | REVISION | DATE | DESCRIPTION |
|----------|----------|------|-------------|
|          |          |      |             |
|          |          |      |             |
|          |          |      |             |

**GRONBERG & ASSOCIATES, INC.**  
CONSULTING ENGINEERS, LAND SURVEYORS,  
SITE PLANNERS  
445 N. WILLOW DR. LONG LAKE, MN. 55356  
952-473-4141



I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

*Michael J. Gronberg*  
DATE: 9-20-16 MN LICENSE NUMBER: 12255

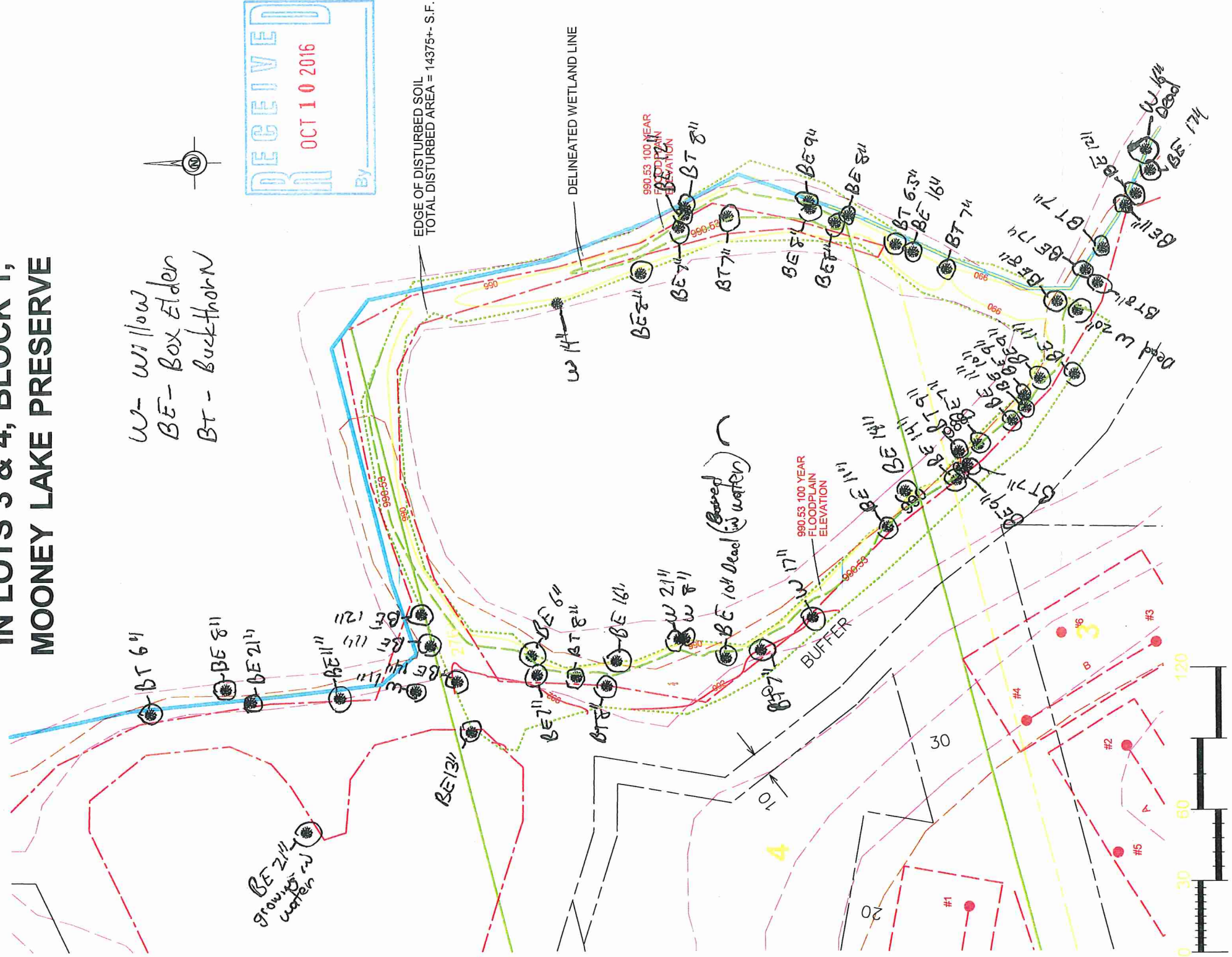
SCALE: 1"=30'  
DATE: 9-20-16  
JOB NO.: 15-052



# DISTURBED SOIL DRAWING IN LOTS 3 & 4, BLOCK 1, MOONEY LAKE PRESERVE

W - Willow  
BE - Box Elder  
BT - Buckthorn

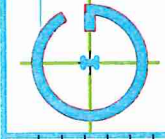
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By \_\_\_\_\_



I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

*Mark A. Emley*

**GRONBERG & ASSOCIATES, INC.**  
CONSULTING ENGINEERS, LAND SURVEYORS,  
SITE PLANNERS  
445 N. WILLOW DR., LONG LAKE, MN, 55356  
952-473-4141



| DESIGNED | DATE | DESCRIPTION |
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