

MEETING DATE: August 24, 2017

TITLE: Approval of Agreement for environmental site assessment and grant of easement option for District wetland and channel restoration, Long Lake Creek, City of Orono

RESOLUTION NUMBER: 17-053

PREPARED BY: Renae Clark

E-MAIL: rclark@minnehahacreek.org

TELEPHONE: 952-641-4510

REVIEWED BY: Administrator Counsel Program Mgr. (Name): _____
 Board Committee Engineer Other

WORKSHOP ACTION:

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

PURPOSE or ACTION REQUESTED:

1. Approval of an agreement between 445 Brown Road, LLC (Owner) and MCWD authorizing the Administrator on behalf of the District to apply for Hennepin County grant funds for the performance of a Phase II Environmental Site Assessment (ESA) for 445 Brown Road.
2. Approval of draft easement terms for the District's easement option on the property.

PROJECT/PROGRAM LOCATION:

445 Brown Road, Orono (see attached map)

PROJECT TIMELINE:

August – December 2017 Phase II investigation
December 2018 or sooner, Board decision to proceed with easement

PROJECT/PROGRAM COST:

Fund name and number: 2002-2002
Current Budget: \$100,000 (Land Conservation Planning line item)
Expenditures to date: \$41,595.66
Requested amount of funding: \$0
Is a budget amendment requested? No
Is additional staff requested? No

PAST BOARD ACTIONS:

- January 14, 2010 – Res. 10-007 – Authorization to contract services with EOR for feasibility work for Long Lake Creek Channel Restoration (Reaches 2 and 5)

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Resolutions are not final until approved by the Board and signed by the Board Secretary.**

- July 22, 2010 – Review of Draft Feasibility Study for Long Lake Creek Channel Restoration; Board action to expand feasibility study
- February 24, 2011 – Res. 11-014 – Authorization to contract services with EOR for feasibility work for expanded Long Lake Creek Corridor Improvement Project
- July 7, 2011 – Board review of Long Lake Creek Corridor Draft Feasibility Study (no Board action)
- August 4, 2011 – Board review of Long Lake Creek Corridor Final Feasibility Study and work plan and Public Hearing (no Board action)
- August 25, 2011 – Res. 11-071 – Board ordering of Long Lake Creek Corridor Improvement Project
- March 22, 2012 – Res. 12-017 – Authorization to execute a contract for design and construction oversight services for Long Lake Creek Corridor (09-LLC) Project
- May 23, 2013 – Res. 13-063 – Approval of design for Long Lake Creek Corridor Improvement Project (Phase I) and authorization to solicit bids and obtain easements
- October 23, 2014 – Res. 14-085 – Approval of design for Long Lake Creek Corridor Improvements, Phase 2 Restoration Project
- December 11, 2014 – Res. 14-100 – Approval of construction contract for Long Lake Creek Corridor Improvements, Phase 2 Restoration Project

SUMMARY:

Beginning with a feasibility study initiated in 2010 the District explored opportunities for restoration of areas of Long Lake Creek identified in the Minnehaha Creek Stream Assessment (2004) and 2007 Comprehensive Water Resources Management Plan (WRMP) to improve water quality to downstream Tanager Lake which is listed as impaired and included in the Upper Minnehaha Creek Watershed Nutrient and Bacteria TMDL Study (2014).

The feasibility study identified many small-scale dispersed stormwater BMP opportunities throughout subwatersheds including a wetland restoration and creek remeander project through 445 Brown Road, Orono, known as the Smith Dump Site (Long Lake Creek Corridor Restoration, phase 1) and restoration of the former Long Lake sewage lagoon in partnership with the Metropolitan Council Environmental Services (MCES) (phase 2).

Upon completion of the feasibility work, based on the partnership opportunity with MCES and their scheduled work to remediate the Lagoon, the Board authorized prioritizing phase 2 while continuing to coordinate with land owners to obtain property rights for phase 1. The restoration of the former sewage lagoon was substantially complete in 2015.

The feasibility analysis provided a good technical understanding of how to address water quality throughout the corridor, however, phase 1 work has not advanced because staff was unable to secure property rights to construct and overall it was out of sync with local land use changes. The present opportunity arises from the District's more recently developed Balanced Urban Ecology approach that seeks to integrate land use and water planning, and emphasizes coordinating with public and private partners to achieve mutual goals. The technical understanding of how to address water quality issues, and where, has allowed the District to respond to land use change applications throughout this area in coordination with the City and land owners in ways that can incorporate the previously identified water quality improvements.

To progress plans to subdivide and construct a new single family home, the landowner of 445 Brown Road, Orono approached the District indicating his intentions to proceed with a Phase II Environmental Site Assessment and explore the opportunity to partner. The Phase I Environmental Site Assessment determined that for a period between about 1958 and 1970, a portion of the property was used as a disposal site for household and demolition waste. Through consultation with Wenck Associates and the landowner, Hennepin County grant funds for the Phase II ESA were identified. The funds are available to local governments for

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environmental investigation which MCWD is eligible to receive. Phase II EAS is required by the City of Orono prior to the applicant being considered for preliminary plat approval. The investigation is also required for the District to advance future streambank improvements as previously identified in this area.

Under the draft Agreement presented for Board consideration, the District will apply for funding from Hennepin County to support the performance of a Phase II ESA, participate in the final scope of work, and receive an option for an easement on the property that would allow it to undertake restoration and preservation work along the Long Lake Channel and within wetland riparian to it.

The draft Agreement and Easement were presented to the Board of Managers on April 27, 2017. Since that time, staff has been working with the land owner to finalize the proposed easement boundary. To satisfy landowner intentions to subdivide the western portion of the easement area and sell to the adjacent landowner, a new easement boundary has been established and shown on the attachments. The District easement will be over that portion of property shown in the easement area that is under the landowner's ownership at the time the District elects to proceed with the easement. The easement may or may not include that westerly section of the property shown on Attachment B of the Agreement. Staff has determined that the District's restoration intentions are not affected by this change. Changes to the draft Agreement and Easement are redlined in the attachments.

ATTACHMENTS:

1. Agreement
2. Easement

RESOLUTION

RESOLUTION NUMBER: 17-053

TITLE: Approval of Agreement for environmental site assessment and grant of easement option for District wetland and channel restoration, Long Lake Creek, City of Orono

WHEREAS, the Minnehaha Creek Watershed District (MCWD) has adopted a water resources management plan (WRMP) in accordance with Minnesota Statutes §103B.231; and

WHEREAS, the WRMP identifies both wetland restoration and stream restoration projects in the Long Lake Creek sub watershed as capital improvement projects for the purpose of protecting and improving water quality in Long Lake Creek and Tanager Lake and providing other water resource benefits; and

WHEREAS, a Comprehensive Long Lake Creek Feasibility Study was completed that identified numerous project opportunities, and four of these projects were selected for ordering for design in 2012, including the Reach 2 stream remeander, Wetland D-117-23-03-016 restoration, and streambank stabilization downstream of the Brown Road outfall and Wayzata Boulevard outfall (together, the Project); and

WHEREAS, the projects were not advanced due to lack of available lands; and

WHEREAS, In 2014 the Board adopted the balanced urban ecology (BUE) policy as fundamental philosophy and way of doing business and to guide the development of the District's 2017 Comprehensive Plan and future planning and watershed management activities through partnership that support the integration of land use and water planning; and

WHEREAS, to operationalize the BUE vision policy, the organization conducted a strategic planning process which in part provided clear organizational direction through the adoption of a new mission statement and alignment of programs with the District's mission and strategic goals to protect and improve land and water resources; and

WHEREAS, Pursuant to BUE, the MCWD's overarching organizational strategy to accomplishing its mission is to develop high impact capital projects integrated with non-water initiatives through multi-jurisdictional partnerships; and

WHEREAS, the District's 2017 update to its WRMP creates a collaborative approach to alignment of water resource investments in coordination with land use changes and community planning while focusing in areas of high natural resource need and being flexible and responsive to opportunities; and

WHEREAS; the understanding of water resource issues and the engaged communities of Long Lake and Orono have led to increased coordination on local land use issues; and

WHEREAS, the land owner of 445 Brown Road, Orono is pursuing redevelopment of a parcel of land that intersects with the Long Lake Creek Reach 2 stream remeander project; and

WHEREAS, redevelopment of 445 Brown Road and Long Lake Creek Reach 2 stream improvements on this site require a Phase II Environmental Site Assessment due to the historic land use as a dump site; and

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WHEREAS, The District is eligible for Hennepin County grant funding for the Phase II Environmental Site Assessment; and

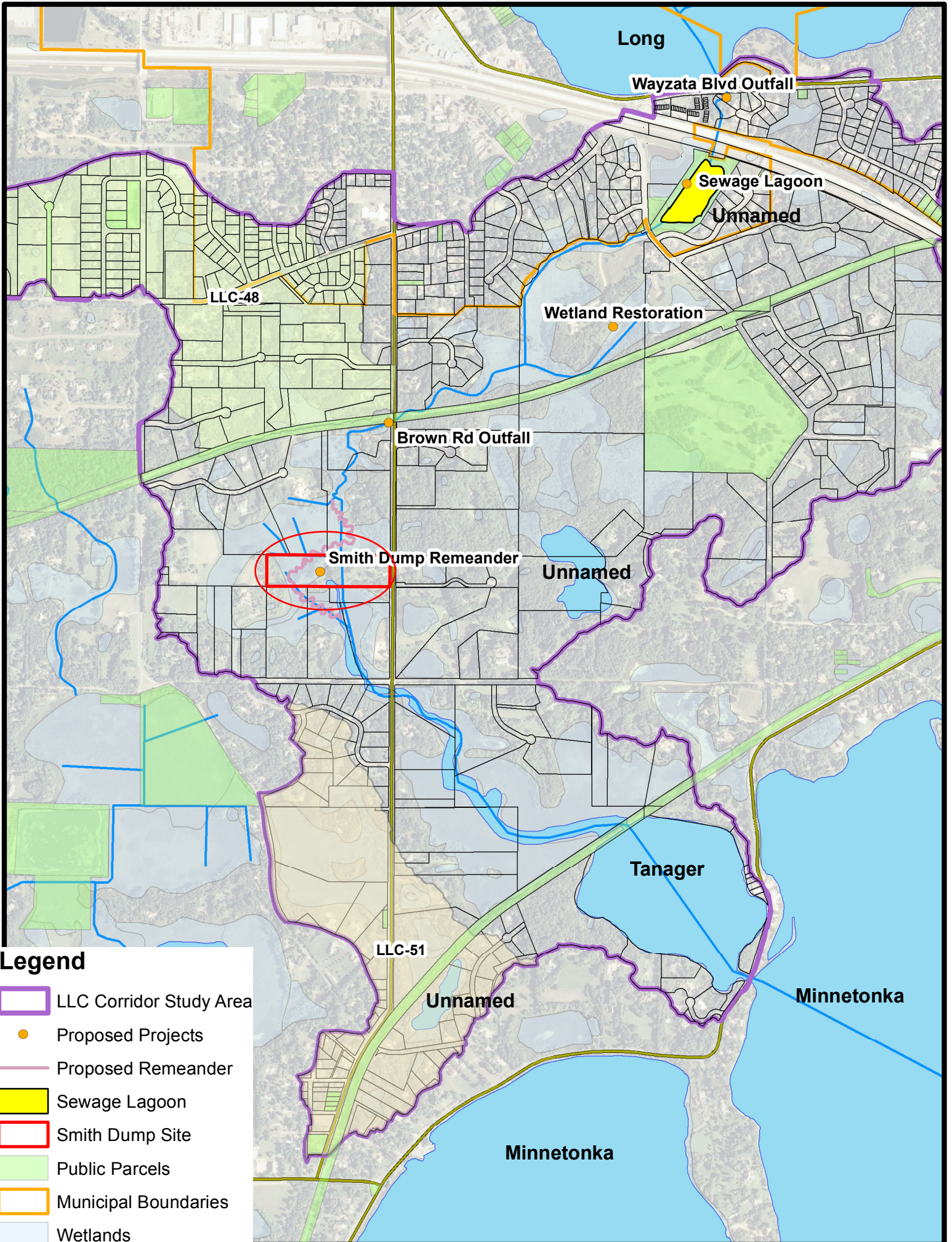
WHEREAS, Staff has negotiated an Agreement with the land owner of 445 Brown Road which provides for the District to seek Hennepin County grant funds for the joint purposes of site redevelopment and water resources improvements, in exchange for the option to receive the draft easement which provides the District rights to alter and maintain a portion of the property for water quality and conservation purposes.

NOW, THEREFORE, BE IT RESOLVED the Minnehaha Creek Watershed District Board of Managers hereby approves an Agreement with 445 Brown Road, LLC for coordination for funding through Hennepin County for a Phase II ESA and eligible related activities and authorizes the Board President to execute the agreement, with further non-substantive changes and on advice of counsel;

BE IT FURTHER RESOLVED that the Administrator is to take all appropriate steps to fulfill the District's rights and obligations in performance of the Phase II ESA, and will advise the Board on the outcome of the ESA as it relates to the District's goals and opportunities regarding the property.

Resolution Number 17- 053 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date:_____



Legend

- LLC Corridor Study Area
- Proposed Projects
- Proposed Remeander
- Sewage Lagoon
- Smith Dump Site
- Public Parcels
- Municipal Boundaries
- Wetlands

AGREEMENT

445 Brown Road South, City of Orono

This Agreement is entered into by 445 Brown Road, LLC (“Owner”) and the Minnehaha Creek Watershed District, a political subdivision of the State of Minnesota with purposes and powers set forth at Minnesota Statutes chapters 103B and 103D (MCWD) (together, the “Parties”).

RECITALS

A. Owner owns in fee simple a tract of about 9.97 acres located at 445 Brown Road South, Orono (the “Property”). The channel of Long Lake Creek crosses the Property and wetlands associated with and adjacent to the creek also lie on the Property. A house, as well as a garage, two animal barns and a chicken coop, are located on the Property.

B. In 2009, a Phase I Environmental Site Assessment (ESA) was performed on the Property for a bank that at that time held an interest in the Property. The Phase I ESA reported that from 1958 and for a period of at least 12 years, the Property was used as a disposal and burn site for household goods and demolition materials. The ESA made a finding that this history, and debris and junk piles observed partially buried and scattered across the Property, constitutes a Recognized Environmental Condition warranting further consideration, as does suspected groundwater contamination at a nursing home located about 500 feet upgradient from the Property.

C. Owner would like to subdivide and develop the Property for residential purposes. For this reason, Owner wishes to perform a Phase II ESA and provide for site remediation sufficient for the intended use.

D. The MCWD would like to perform restoration work on Long Lake Creek and associated wetlands for purposes of water quality, habitat and ecological improvement within the creek corridor and downstream. To evaluate a feasible project, the MCWD requires further information as to the environmental condition of the Property, both within areas where soils might be disturbed for a project and as it affects groundwater that makes its way to the creek and downgradient.

E. The MCWD, as a unit of government, is eligible to apply for funding from Hennepin County to support the performance of a Phase II ESA. The Parties enter into this Agreement to seek funding for and perform a Phase II ESA, pursuant to the terms herein, and agree that it is for mutual valuable consideration and legally binding.

TERMS

1. The MCWD, in coordination with Owner, will apply to Hennepin County for funding for a Phase II ESA and eligible related activity. The MCWD will serve as the applicant and grantee. Owner will be a co-applicant or co-grantee if Hennepin County so requires and will cooperate with the MCWD in good faith in all matters necessary for the MCWD to fulfill grant agreement terms.

2. The Parties will agree on a consultant to assist in developing the Phase II ESA scope and to perform the Phase II ESA if Hennepin County funding is supplied. Owner and the MCWD each may require scope elements as they find necessary or appropriate for their purposes and each must concur in the final scope. Owner will retain the consultant for performance of the Phase II ESA, except as Hennepin County may require that the MCWD be the contracting party or a co-contracting party.

3. The contract for Phase II ESA performance will:

(a) Include the consultant's warranty that the ESA will meet current standards for establishing pollution liability due diligence under state and federal law;

(b) Provide for the consultant's coordination with the Minnesota Pollution Control Agency (MPCA) so that the scope is adequate for the MPCA's subsequent consideration and development of applicable liability protection and determination letters for the ownership rights and intended uses of each Party;

(c) Provide that the consultant's warranties and duties of care run to both Owner and the MCWD.

(d) To the extent covered by Hennepin County funding, provide for the consultant's assistance in obtaining MPCA liability protection and determination letters for each Party's ownership status and intended use of the Property.

4. Neither Owner nor the MCWD will have intellectual property rights in the consultant's Phase II ESA report and each may possess and make use of the report as it deems appropriate. As a public agency, the MCWD is subject to the Minnesota Data Practices Act with respect to public access to data.

5. When the Phase II ESA has been completed, Owner and the MCWD will consult in good faith regarding the interests and intentions of each. The MCWD retains its full discretion to decide whether to pursue a water resource improvement project on the Property. If the MCWD determines to pursue such a project, Owner and the MCWD will consult in good faith to explore whether by coordination they can enhance mutual benefit. Any further formal cooperation would be established by means of a subsequent agreement between the Parties.

6. Owner hereby grants to the MCWD an option for an easement on the Property as attached hereto as Attachment A and incorporated herein, or substantively equivalent thereto. Within ten (10) days of a written MCWD request, Owner will execute three originals of the easement and deliver them to the MCWD. The MCWD must exercise this option by December 31, 2018. Until that date or ten days after Owner's delivery of the signed originals, whichever sooner, Owner will not encumber the Property in any respect contrary to the Owner's warranty at section 7 of the attached easement.

7. If as a result of the Phase II ESA or the terms of any MPCA liability protection or determination letter, the MCWD determines that the easement as at Attachment A does not support the water resource improvement project that is most appropriate for the site, Owner and the MCWD will

cooperate in good faith to modify the easement. This does not constitute a legally binding commitment by either party to agree to such a modification but indicates a cooperative intention.

8. At any time, Owner may convey to a third party any portion of the Property that lies west of the line delineated and legally described on the site sketch attached hereto as Attachment B and incorporated herein. In the event of any such conveyance, the term "Property" as used herein will refer to Owner's remaining fee interest. If the conveyance occurs before the MCWD requests to exercise the option under paragraph 6, above, Attachment A will be modified to reflect Owner's new property boundary.

SO AGREED.

445 BROWN ROAD, LLC, Owner

By: [name, title]

Date:

Approved for form and execution

MCWD Counsel

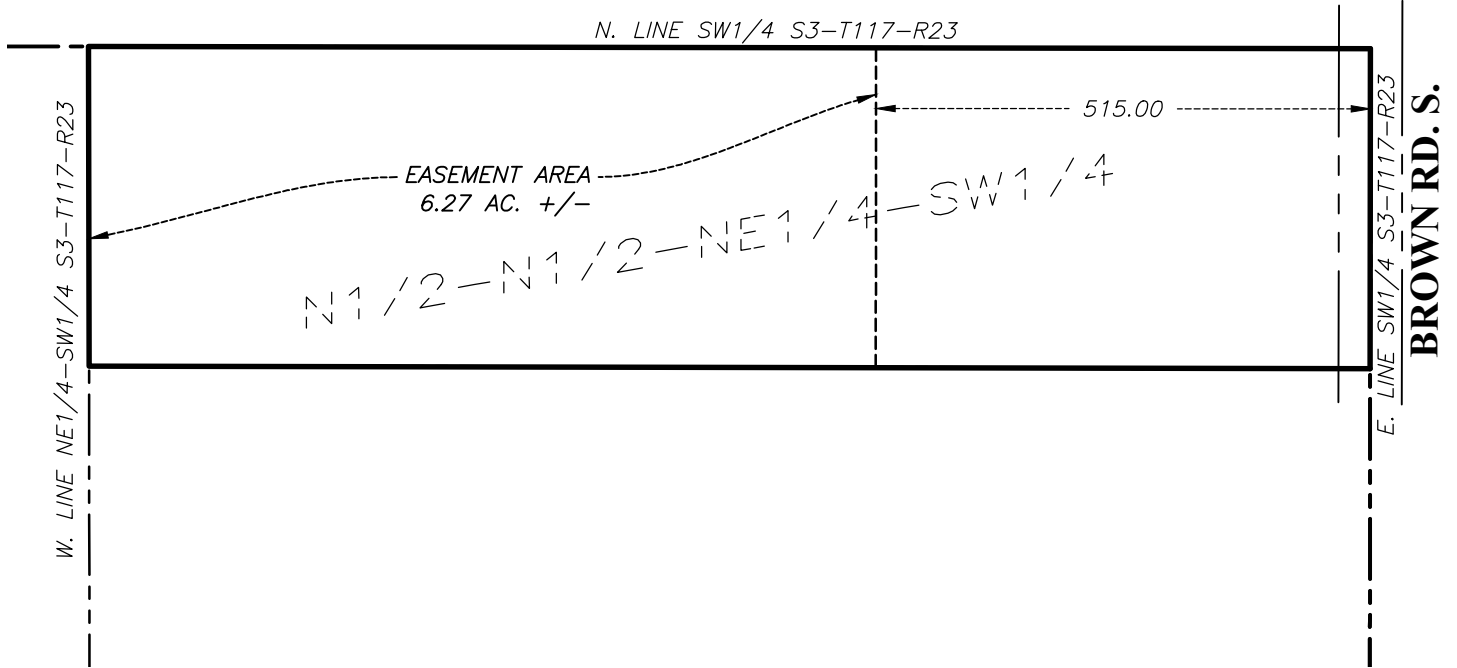
MINNEHAHA CREEK WATERSHED DISTRICT

Lars Erdahl, Administrator

Date:

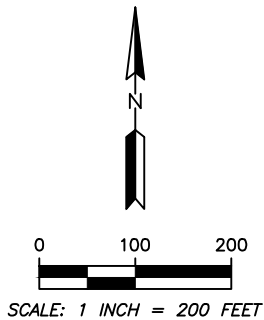
ATTACHMENT A

Plot Date & Time: 21 August 2017 10:04 AM



EASEMENT AREA DESCRIPTION:

That part of the North Half of the North Half of the Northeast Quarter of the Southwest Quarter of Section 3, Township 117, Range 23, Hennepin County, Minnesota, lying west of the east 515.00 feet thereof.



1802 WOODDALE DR.
WOODBURY, MN, 55125
Ph:651-395-5212

Responsive partner. Exceptional outcomes.

CLIENT NAME

MINNEHAHA CREEK WATERSHED DISTRICT

PROJECT TITLE

EASEMENT EXHIBIT

DWN BY CNA	CHK'D XXX	APP'D XXX	DWG DATE 8-21-17
PROJECT NO. 0185-0062			SHEET NO. 1 OF 1

0185-0062

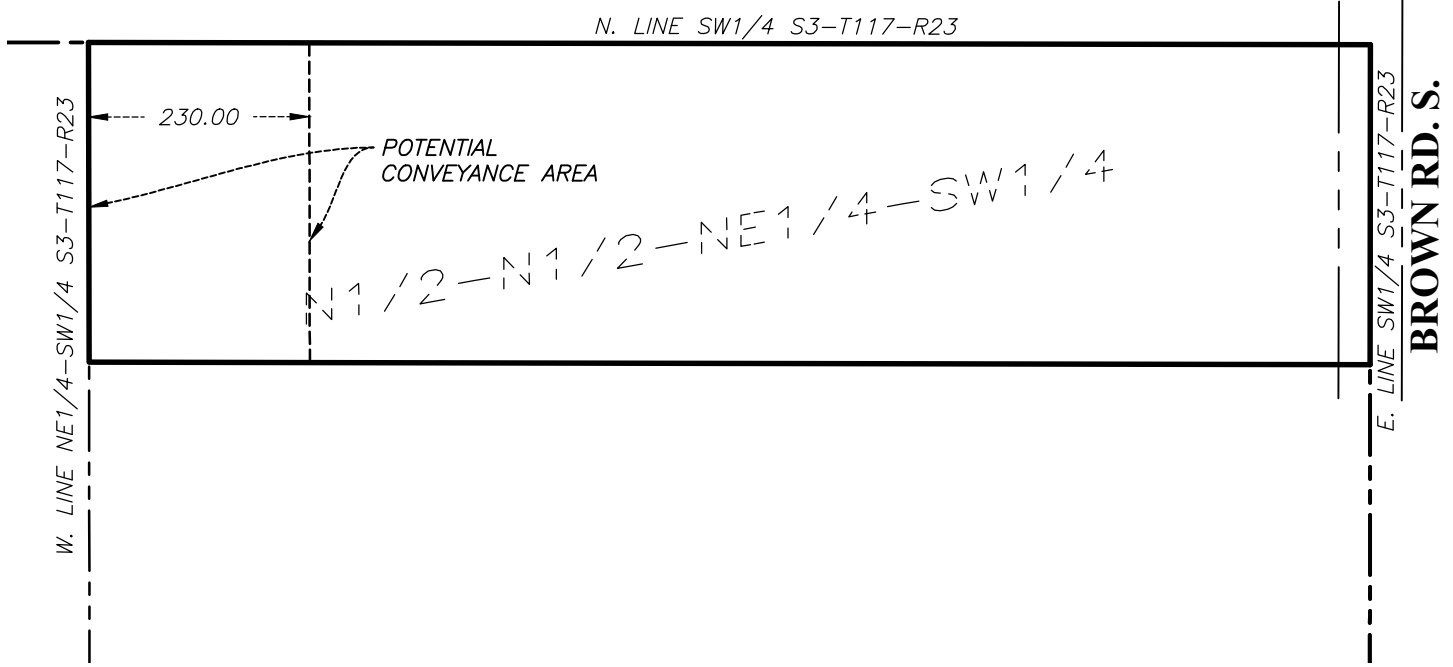
SHEET NO.

1 OF 1

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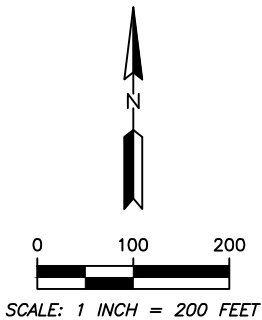
ATTACHMENT B

Plot Date & Time: 21 August 2017 2:31 PM



POTENTIAL CONVEYANCE AREA DESCRIPTION:

That part of the North Half of the North Half of the Northeast Quarter of the Southwest Quarter of Section 3, Township 117, Range 23, Hennepin County, Minnesota, lying east of the west 230.00 feet thereof.



WENCK
ASSOCIATES

1802 WOODDALE DR.
WOODBURY, MN, 55125
Ph:651-395-5212

Responsive partner. Exceptional outcomes.

CLIENT NAME

MINNEHAHA CREEK WATERSHED DISTRICT

PROJECT TITLE

EASEMENT EXHIBIT

DWN BY	CHK'D	APP'D	DWG DATE
CNA	XXX	XXX	8-21-17
			SCALE 1" = 200'

PROJECT NO.	SHEET NO.
0185-0062	1 OF 1

M:\0185\0062\445 Brown Road\Survey\CAD\0185-0062 Brown Road Easement.dwg

EASEMENT

**On the Property of 445 Brown Road, Orono
Hennepin County, Minnesota**

**Legal description of burdened property:
Attachment A**

THIS EASEMENT is entered into by and between 445 Brown Road, LLC, a _____ (“Owner”), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.

WITNESS:

A. Owner owns in fee simple certain real property with address 445 Brown Road South, Orono, MN, Hennepin County, Minnesota (the “Burdened Property”). The channel of Long Lake Creek crosses the Burdened Property and is characterized by associated adjacent wetland.

B. The MCWD proposes to perform work on the creek and wetland to improve water quality, habitat and ecological conditions within the creek corridor and within Tanager Lake and Lake Minnetonka downstream.

C. The easement here conveyed is a perpetual easement to construct and maintain hydrologic and vegetative improvements within and adjacent to surface waters and wetland lying on the Burdened Property, including but not limited to excavation, grading and filling; installing rock, bioengineered, vegetated and appurtenant structural elements for bank stabilization; and planting and maintaining vegetation for stabilization, water quality, habitat and aesthetic purposes (“Easement”).

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

1. Easement Description. The Easement is as legally described and delineated on the site plan at Attachment B hereto, incorporated herein (“Easement Area”). If the legal description and delineation do not coincide, the legal description controls.

2. MCWD’s Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD’s own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. The MCWD may modify lands and channel alignments within the Easement Area, including the beds of wetland and surface waters and adjacent top of bank, by excavation, dredging, grading, fill and shaping. The MCWD may remove surface vegetation, brush and trees within the Easement Area. The MCWD owns all right, title and interest in any spoils, soil or timber produced thereby and will remove such materials from the Burdened Property, but will deposit the material in an upland location on Owner’s property at Owner’s request on reasonable written terms arranged with Owner. For each tree removed by the MCWD that measures at least four inches in diameter at a height of 54 inches, the MCWD will plant a sapling of a type and in a location mutually agreeable to the parties.

b. Flowage and Flow Management. The MCWD may direct and redirect surface water flows; flood or drain lands, wholly or partly; and otherwise manage surface flows within and through the Easement Area. This does not include the right to increase flood elevation on, or drain or redirect surface flows on or across, any lands outside of the Easement Area, including the remainder of the Burdened Property, whether by design or by the failure to maintain any structure that the MCWD has installed. If any portion of Long Lake Creek is realigned, the District will integrate the grade and vegetation of the abandoned channel with the adjacent land.

c. Rock, Bioengineered Elements and Associated Structures. The MCWD may install rock, bioengineered elements and fabricated structures within the Easement Area to stabilize the bed and banks of wetlands and surface waters and manage flows.

d. Vegetation. The MCWD may plant vegetation within the Easement Area for stabilization, water quality, habitat and aesthetic purposes, and may manage vegetation through means including but not limited to replanting and reseeded, mowing, weeding, use of approved herbicides and controlled burns within the Easement Area.

- e. **Signs.** The MCWD may install signs within the Easement Area stating that it is subject to this Easement and describing the purposes to which it is dedicated. Signage size and design is subject to consent of Owner, not to be unreasonably withheld.
- f. **Right to Occupy.** For the purposes authorized in this section 2, the MCWD may use the Easement Area for purposes including but not limited to site inspection, testing and surveys; performing due diligence and compliance activities related to applicable laws; equipment staging and materials stockpiling during construction; and maintaining erosion control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect, maintain and, with reasonable prior notice to Owners, repair, modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement.
- g. **Site Condition.** During active work, the MCWD will maintain the Easement Area in proper condition and free of trash and debris. If work is not complete but is inactive for an extended period, the MCWD will remove equipment from the Easement Area and properly stabilize and protect any disturbed areas and stockpiled materials.
3. **MCWD Access.** The MCWD may cross the Burdened Property, on foot and by motorized equipment or vehicle, to reach the Easement Area within a corridor lying within 50 feet of the north boundary line of the Burdened Property. The route may be adjusted at the request of a party but must remain reasonably convenient to the MCWD. The MCWD will repair any disturbance to the Burdened Property caused by its crossing.
4. **Owner's Reserved Rights.** Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this Easement.
- a. **Interference.** Owner will not interfere with, and will not knowingly allow another to interfere with, the MCWD's exercise of its rights under this Easement.
- b. **Construction.** Owner will not construct or install within the Easement Area a permanent or temporary structure, surface or improvement of any kind. Owner may install and maintain birdhouses for wood ducks and other species.
- c. **Utilities.** Owner will not install a new utility system or expand an existing system within the Easement Area including, without limitation, water, sewer, power, fuel, communications and data lines and related

facilities, without the prior written approval of and in accordance with terms specified by the MCWD.

d. Surface Alteration. Owner will not alter surface soils or vegetation within the Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.

e. Soil and Water Degradation. Owner will not engage in an activity or use within or adjacent to the Easement Area that results in the mobilization or movement of sediments or pollutants within or into the Easement Area.

f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Easement Area.

g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Easement Area, and in each case with written MCWD approval.

h. Hunting. Owner may hunt within the Easement Area and retains all authority to decide in accordance with law whether to allow hunting by others.

Notwithstanding the foregoing restrictions, among other rights and privileges reserved to Owner, Owner may do the following:

i. Animal Food Plots. Owner may maintain animal food plots of corn and soy beans within the Easement Area, without ~~tillage or~~ application of fertilizer, herbicides or pesticides, ~~and provided that the surface retains vegetative cover with root structure.~~ provided, however, that: (a) any food plot will maintain a distance of at least 50 feet from any wetland boundary determined pursuant to the Minnesota Wetland Conservation Act; (b) soil surface will be mulched or otherwise stabilized within two weeks of disturbance; and (c) this right to maintain food plots is subject to any rule or regulation of the MCWD or any other regulatory entity, at such time as that rule or regulation should apply to the Burdened Property.

j. Deer Stands. Owner may erect and maintain one or more deer stands within the Easement Area.

k. Owner's Crossing. Owner may cross the Easement Area on foot or all-terrain vehicle and may encroach within the Easement Area to construct and maintain a crossing over Long Lake Creek sufficient for that purpose, subject to MCWD concurrence in the crossing design, not to be unreasonably withheld.

l. Channel Structures. Owner may maintain, replace and modify culvert and other structures within the channel of Long Lake Creek.

m. Beavers. Owner may control beaver activity within Long Lake Creek.

5. Recitations Incorporated. All recitations are a part of this agreement.

6. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to the MCWD, where the MCWD is defined to include authorized MCWD representatives, agents, designees, contractors and subcontractors.

7. Owner's Warranty. Owner warrants to the MCWD as follows:

a. Authority to Convey. Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject.

b. Pending Actions. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.

c. Liens. No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.

d. Hazardous Materials. Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means

any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

8. Inspection and Enforcement. The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of the Easement Area.

9. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it. All actions by Owner on the Burdened Property, including those specifically identified in section 4, above, are subject to all applicable laws and regulations, including those of the MCWD. Specifically but not exclusively, the applicability of certain laws and regulations may depend on the boundary of wetland on the Burdened Property, which has not yet been officially determined.

10. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes. This Easement does not prohibit Owner from including the Easement Area in a calculation of developable area or from subdividing the Easement Area, as may be allowed by the local land use authority.

11. Property Transfer. Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that the MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

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

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

14. Insurance. Owner and the MCWD each is solely responsible to maintain liability and other insurance for its own uses of and authority over the Burdened Property.

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

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

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

OWNER

MCWD

445 Brown Road, LLC
[address]

Administrator
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)
400 Second Avenue South
Suite 1200
Minneapolis MN 55401

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

445 BROWN ROAD, LLC

Date:

By: [type name, title]

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me this ____ day of _____, 2016,
by _____ as _____ of 445 Brown
Road, LLC.

Notary Public

MINNEHAHA CREEK WATERSHED DISTRICT

Sherry Davis White, President

Date:

**STATE OF MINNESOTA
COUNTY OF HENNEPIN**

This instrument was acknowledged before me this ____ day of _____, 2017, by Sherry Davis White as President of the Minnehaha Creek Watershed District.

Notary Public

This document prepared by:
Smith Partners P.L.L.P.
400 Second Avenue South
Suite 1200
Minneapolis MN 55401

ATTACHMENT A

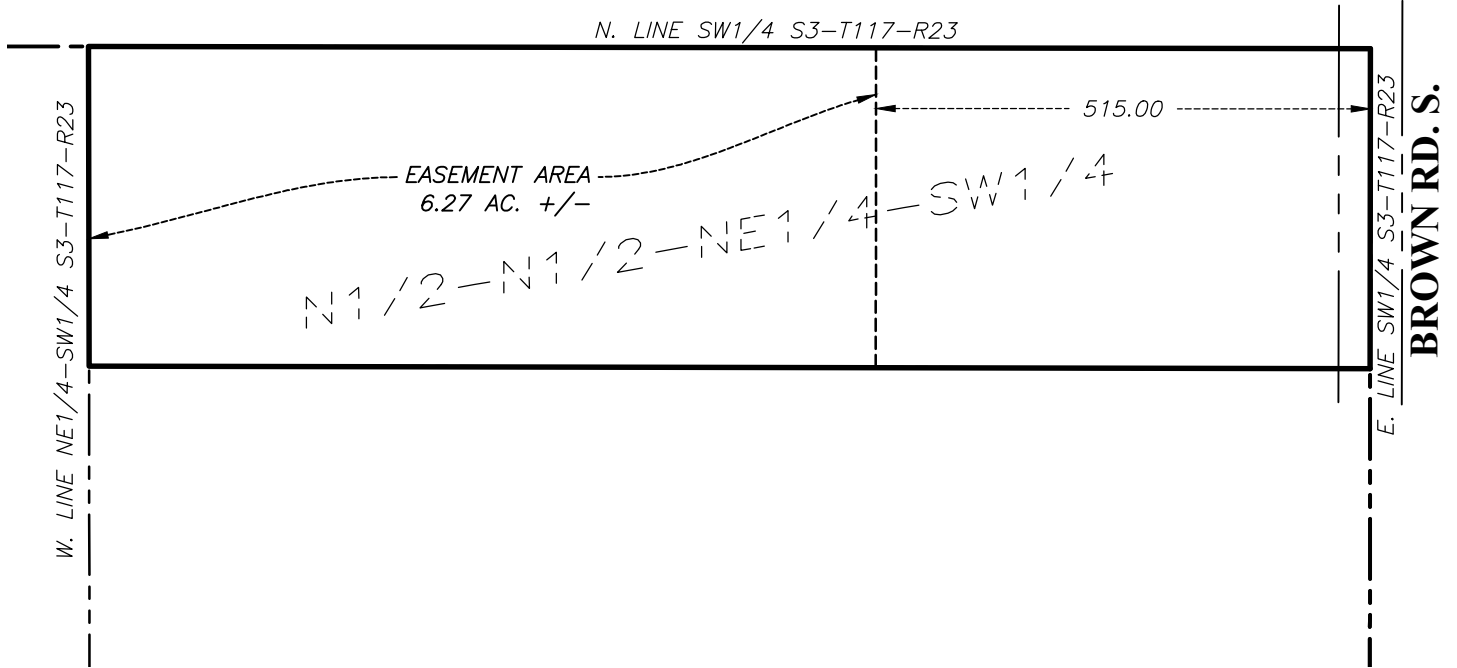
LEGAL DESCRIPTION: BURDENED PROPERTY

The North Half of the North Half of the Northeast Quarter of the Southwest Quarter of Section 3, Township 117, Range 23, Hennepin County, Minnesota.

DRAFT

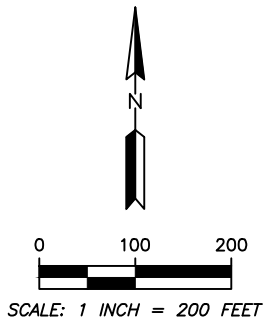
ATTACHMENT B

Plot Date & Time: 21 August 2017 10:04 AM



EASEMENT AREA DESCRIPTION:

That part of the North Half of the North Half of the Northeast Quarter of the Southwest Quarter of Section 3, Township 117, Range 23, Hennepin County, Minnesota, lying west of the east 515.00 feet thereof.



WENCK
ASSOCIATES

1802 WOODDALE DR.
WOODBURY, MN, 55125
Ph:651-395-5212

Responsive partner. Exceptional outcomes.

CLIENT NAME

MINNEHAHA CREEK WATERSHED DISTRICT

PROJECT TITLE

EASEMENT EXHIBIT

DWN BY CNA	CHK'D XXX	APP'D XXX	DWG DATE 8-21-17
PROJECT NO. 0185-0062			SHEET NO. 1 OF 1

0185-0062

SHEET NO.

1 OF 1

M:\0185\0062\445 Brown Road\Survey\CAD\0185-0062 Brown Road Agreement Attachment A.dwg