

MEETING DATE: May 10, 2018

TITLE: Authorization to execute an MOU with the City of Medina for School Lake Preserve easement enforcement and to execute an Indemnification Agreement for School Lake Preserve Public Trails and to execute the School Lake Preserve Conservation Easement

RESOLUTION NUMBER: 18-048

PREPARED BY: Laura Domyancich

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REVIEWED BY: Administrator Counsel Program Mgr.
 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): Requesting authorization at May 10 Board Meeting.	

PURPOSE or ACTION REQUESTED: Authorization to execute an enforcement MOU and an indemnification agreement with the City of Medina for the School Lake Preserve conservation easement (Attachments 1 and 2), and to execute the School Lake Preserve Conservation Easement (Attachment 3).

PROJECT/PROGRAM LOCATION: School Lake Preserve Conservation Design-Planned Unit Development (CD-PUD), Medina.

PROJECT TIMELINE: September 9, 2017: Developer submitted for Preliminary Plat approval to City of Medina
February 20, 2018: Developer submitted for Final Plat approval from City of Medina

PROJECT/PROGRAM COST:
Fund name and number: Planning 200-2002
Current Budget: \$1,125,493
Expenditures to date: \$74,146
Requested amount of funding: \$0

SUMMARY: Wallace Marx owns approximately 90 acres in Medina southwest of what is commonly known as School Lake. Mr. Marx proposes to develop the property into a 6-lot single family subdivision under the City of Medina’s conservation design-planned unit development (CD-PUD) ordinance, which may allow for lot density increases above what would be permitted under rural-residential subdivision requirements.

The development of the property is of interest to MCWD because of its location within a key conservation area as designated by the District's watershed management plan, with proximity to School Lake and a District-held conservation easement along the western shoreline of School Lake and Three Rivers Park District's Baker Park. MCWD is also providing technical guidance to additional private landowners in this area to complete conservation planning and natural areas restoration, which has created a significant conservation corridor within Medina.

The CD-PUD process includes dedication of conservation areas within the development that encompass all wetlands and wetland buffers, all steep slopes in excess of 18% grade, and a minimum of 30% of the remaining buildable land area. The development exceeds these minimum requirements: the conservation easement will encompass about 70 acres of the 90-acre tract, including 41% of upland buildable land. As such, the conservation areas offer the potential to restore, connect, and regionally integrate these 70 acres of high-quality wetlands, existing tamarack bog, and uplands to create a significant habitat corridor.

The City of Medina CD-PUD ordinance requires the developer to create a Land Stewardship Plan for the conservation areas and to seek a holder of the conservation easement. In November 2016, Mr. Marx and his consultants approached the District about the potential to serve in this role. This opportunity was discussed at the August 10, 2017 and December 21, 2017 Policy and Planning Committee Meetings, and the committee recommended to the Board of Managers that staff indicate support for, and negotiate, the role of easement holder within the School Lake Preserve conservation subdivision.

Over the last 18 months, District staff have been coordinating with Mr. Marx, his consultants, and the City of Medina on planning the long-term management of the conservation areas and the drafting of the conservation easement and Land Stewardship Plan.

District staff have also coordinated the drafting and City of Medina approval of two agreements: a memorandum of understanding (MOU) that establishes roles and responsibilities of the District and the City in easement enforcement and an indemnification agreement.

The MOU states that the District has the responsibility and authority to monitor the conservation land for compliance with the easement and to take appropriate action to enforce the easement, that the District and City will coordinate on potential easement violation issues, and that the City may undertake compliance and enforcement actions independently.

The conservation easement allows the City to obtain from the landowner an easement to install and maintain non-motorized trails across the conservation area and to make those trails available for passive recreational public use. The indemnification agreement obligates the City to protect and restore the adjacent conservation area, including water resources, during and after the City's trail installation and maintenance; places responsibility to monitor trail use on the City; and obligates the City to indemnify the District for any occurrences or claims relating to trail use, except to the extent arising from the District's own negligence.

Mr. Marx submitted final plat application materials to City of Medina staff on February 8, 2018. City staff reviewed the materials, provided a report to the Medina City Council on February 20, and the Council approved the final plat on this date contingent on regulatory approvals.

The conservation easement terms are similar in format and substance to other conservation easements the District has acquired under its Land Conservation program. The majority of the conservation land, including the tamarack bog and maple-oak-basswood forest, will be preserved in its present condition. District staff have worked to identify other areas within the conservation land that would benefit from restoration activities. A homeowner's association (HOA) will be established as the individual lots are sold, and the HOA members will

contribute annually to a fund to maintain and restore the conservation areas in perpetuity. This management will be guided by annual inspections by District staff and subsequent reports that specify needed management in the following growing season. This management will be performed by vegetation management contractors retained by the HOA or individual homeowners. If this management is not sufficiently completed within the growing season, the District may provide for the work and the City of Medina will assess the homeowners for the District's cost.

Under the easement, certain activities are permitted on HOA request and District approval, based on the District's judgment that the proposed activity would be consistent with the easement's conservation purposes. The proposed resolution would delegate to the District administrator the authority to make approval decisions contemplated under the easement. Also, with concurrence of the property owners, the District would have the ability to undertake its own hydrologic and vegetation enhancements within the conservation area.

Pursuant to the City conservation development ordinance, the easement incorporates a land stewardship plan (LSP). The LSP, which accompanies the easement for Board approval, provides more detail as to the physical and ecological condition of the conservation area and how it will be managed. It will be used as a guide to implement the conservation easement, but may not be read to authorize any action that the easement prohibits.

As holder, the District would commit itself to a monitoring and inspection role that typically it would exercise semi-annually, at its own cost. Under the easement and the development agreement between Mr. Marx and the City, the HOA would be responsible to reimburse the District for any further enforcement costs and under the Memorandum of Understanding, the City would be able to assess those costs for the District's benefit.

The easement is perpetual. If at some future time, the District's mission or priorities change, it would have the right to assign its role to another public or institutional entity authorized to hold conservation easements, with the consent of the HOA and the City.

- ATTACHMENTS:**
1. Memorandum of Understanding MCWD – Medina, School Lake Preserve Conservation Development
 2. School Lake Preserve Conservation Easement – Indemnification Agreement
 3. School Lake Preserve Conservation Easement
 4. School Lake Preserve Land Stewardship Plan

RESOLUTION

RESOLUTION NUMBER: 18-048

TITLE: Authorization to execute an MOU with the City of Medina for School Lake Preserve easement enforcement and to execute an Indemnification Agreement for School Lake Preserve Public Trails and to execute the School Lake Preserve Conservation Easement

- WHEREAS, Wallace Marx intends to develop 90 acres for residential use utilizing a conservation design planned unit development named School Lake Preserve; and
- WHEREAS, the subject property is located in a key conservation area as designated by the District's watershed management plan with proximity to School Lake, Three Rivers Park District's Baker Park, and other District-held conservation easements on School Lake and east of Lake Katrina; and
- WHEREAS, the District is actively involved in providing technical assistance for natural areas restoration to additional nearby landowners; and
- WHEREAS, the proposed conservation and restoration work has the potential to restore, connect, and regionally integrate approximately 70 acres of wetland, existing tamarack wetland, and associated high-quality woodlands, supporting and enhancing a significant conservation corridor; and
- WHEREAS, there is substantial public water resource benefit from this project, including the protection of these 70 acres and the District's ability to undertake future resource improvements within the entire conservation area, which will be protected in perpetuity by conservation easement, and that this public benefit exceeds the modest public cost to monitor conservation easement compliance and otherwise undertake the role of easement holder; and
- WHEREAS, the conservation areas provide additional public benefit including public recreational trail access, wildlife and pollinator habitat corridor linkages, and protection of a tamarack bog, an increasingly rare wetland type; and
- WHEREAS, the City of Medina's ordinances require the creation of a Land Stewardship Plan for all conservation areas associated with the project and the designation of an easement holder to ensure these areas are protected in perpetuity; and
- WHEREAS, the District and Mr. Marx have worked proactively and collaboratively to bring conservation considerations to bear on the proposed development of the property to optimize the water resource and ecological benefits of the development and facilitate an orderly development review process while securing desired economic outcomes of Mr. Marx.; and
- WHEREAS, the District, as a conservation easement holder, is positioned to ensure the conservation provisions of the easement are upheld, provide technical and regulatory guidance to the property owner with respect to management of the conservation property, and undertake its own enhancements to water resources within the conservation area; and
- WHEREAS, by serving as a conservation easement holder, the District will facilitate the water resource goals of the City of Medina as reflected in its conservation development program and will advance the

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

capacity of the two public bodies to advance mutual resource management goals collaboratively; and

WHEREAS, the City of Medina reserves to itself the right to install and maintain trails across the conservation area, and to make the trails available for non-motorized recreational public use, and in accepting the role of land steward the District should not assume responsibilities or liability related to the design, construction, monitoring or maintenance of the trails for public use; and

WHEREAS, the Medina City Council has approved, and the City has executed, a memorandum of understanding for coordination between the City and the District on easement monitoring and enforcement, and an agreement by which the City provides appropriate liability protection to the District relating to the City's public trails;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the Board President to execute the School Lake Preserve Conservation Easement, with non-material changes and on the advice of counsel; and

BE IT FURTHER RESOLVED that the District administrator hereby is delegated decision authority under those easement terms that provide for District consent to specified actions by the property owner or others;

BE IT FURTHER RESOLVED that the Board President is authorized to execute the memorandum of understanding between the District and the City of Medina coordinating enforcement for the School Lake Preserve Conservation Easement; and

BE IT FINALLY RESOLVED that the Board President is authorized to execute the agreement between the District and the City of Medina establishing the City's responsibility to indemnify the District for occurrences or claims relating to the City's design, construction, monitoring and maintenance of trails within the conservation area.

Resolution Number 18-048 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: May 10, 2018

Secretary Date: May 10, 2018

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Memorandum of Understanding

Minnehaha Creek Watershed District and City of Medina School Lake Preserve Conservation Development

1. The City of Medina ("City") has approved the School Lake Preserve plat, 90 acres more or less, as a Conservation Design-Planned Unit Development with 6 single-family lots. Within that development, about 71 acres are to be protected as conservation land subject to a Conservation Easement ("Easement"), within the meaning of Minnesota Statutes chapter 84C, conveyed to the Minnehaha Creek Watershed District ("District") as holder.

2. Under the Easement, the District has the responsibility and authority to monitor the conservation land and compliance with the Easement terms and to take appropriate action to enforce the Easement. The City also has enforcement authority as both the local police power authority and having been granted a third-party right of enforcement under the Easement.

3. The District and the City each may undertake compliance and enforcement actions independently under the authority each possesses. However, the parties intend that the District will be primarily responsible for such actions and in the ordinary case will coordinate on potential noncompliance matters as follows:

a. The District will monitor the Easement and communicate potential noncompliance to the City. The parties will consult to mutually confirm noncompliance and to determine appropriate corrective action.

b. The District will notify the owner of the conservation land, which will be the homeowners' association (HOA), detailing the violation and stipulating the corrective action.

c. If the violation is not addressed within the applicable time specified in the Conservation Easement, the District will take appropriate enforcement action pursuant to the terms of the Easement, which may include entering the premises under its authority to take corrective action.

d. The City may assist with or independently take enforcement and corrective action under its third party right of enforcement and City regulations.

4. The Easement, including the land stewardship plan, also states that the HOA will reimburse the District and City for costs each incurs to investigate and address noncompliance issues, including reasonable costs of technical and legal assistance. It further states that the HOA will not contest the City's authority to assess these District costs against residential lots and outlots within the residential community in the same manner as assessable City costs. The City has consulted with its counsel and represents that it has the legal authority to assess for District

costs in accordance with the foregoing. The parties will coordinate as needed to provide for the efficient administration of any such assessment.

5. The parties otherwise will coordinate in good faith to achieve the conservation purposes set forth in the Easement.

6. This memorandum of understanding does not state any legally binding responsibilities or obligations but documents the understanding of the parties and establishes a cooperative framework for the matters addressed herein consistent with the Easement.

CITY of MEDINA

Bob Mitchell
By: Bob Mitchell, Mayor

Date: 5/2/18

Scott Johnson
By: Scott Johnson, City Administrator

Date: May 2, 2018

MINNEHAHA CREEK WATERSHED DISTRICT

By: Sherry Davis White, President

Date:

AGREEMENT
City of Medina and Minnehaha Creek Watershed District

School Lake Preserve Conservation Easement – Indemnification Agreement

This Agreement is entered into by and between the City of Medina, a statutory city of the State of Minnesota (“City”), and the Minnehaha Creek Watershed District, a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D (“District”) (together, the “Parties”).

RECITALS

A. The City, as land use authority, has approved a Conservation Design Planned Unit Development (CD-PUD) in favor of Wallace Marx for the School Lake Preserve plat within the City. By city ordinance, the property owner must convey a perpetual conservation easement under Minnesota Statutes chapter 84C to a third-party holder to preserve conservation values within the described conservation area.

B. To facilitate the City’s use of conservation design and to advance its own statutory water resource goals, the District has agreed to serve as the third-party holder under the School Lake Preserve conservation easement. As the holder, the District will assume certain responsibilities to monitor the preservation and restoration activities of the fee owner and may undertake or participate in such activities in its discretion.

C. In the conservation easement, the City has reserved to itself the right to install and maintain trails within and across the conservation area (“Trails”) and to make the Trails available for passive recreational public use.

D. On May 10, 2018 the District’s Board of Managers authorized the Board President to execute the conservation easement, contingent on an agreement providing for City indemnification of the District with respect to the installation, maintenance and use of the Trails. The purpose of this Agreement is to fulfill that condition.

TERMS

1. During installation and maintenance of the Trails, the City will take measures necessary to prevent erosion and sedimentation, protect water resources and restore any disturbance.
2. The City will be responsible for all elements of maintenance and use of the Trails, including but not limited to day-to-day use monitoring and maintenance, sanitation, inspecting for and addressing hazards, inappropriate or unlawful use and public safety.
3. The City will indemnify the District, its managers, staff and agents, and hold those parties harmless, with respect to all claims, costs, losses and damages (including reasonable attorney fees) arising out of the City's design, installation and maintenance of the Trails and the public use thereof, except to the extent resulting from a negligent or willfully wrongful act or omission of the District, or a manager, staff, agent or contractor thereof.
4. The District will indemnify the City, its council members, staff and agents, and hold those parties harmless, with respect to all claims, costs, losses and damages (including reasonable attorney fees) arising out of the City's design, installation and maintenance of the Trails and the public use thereof, to the extent resulting from a negligent or willfully wrongful act of the District, or a manager, staff, agent or contractor thereof.
5. Nothing in this Agreement waives or otherwise diminishes, with respect to any third party, any immunity, defense or liability limit available to the City or District as a matter of law.

IN WITNESS THEREOF, the City and District execute this Agreement by their authorized officers, intending it to be legally binding.

CITY OF MEDINA

By Bob Mitchell
Its Mayor

Date: 5/2/18

By Jeff J. Johnson
Its City Administrator

Date: May 2, 2018

MINNEHAHA CREEK WATERSHED DISTRICT

Approved for form and execution:

MCWD Counsel

By _____
Its President

Date:

CONSERVATION EASEMENT

Legal Description of Burdened Property:

Lots 1 and 2, Block 1;
Lots 1 and 2, Block 2;
Lots 1 and 2, Block 3; and
Outlots A Through I, and Outlot K

All according to the plat of School Lake Nature Preserve, Hennepin County, Minnesota.

This is a CONSERVATION EASEMENT (hereinafter "Easement") granted by Wallace and Bridget Marx, each the spouse of the other ("Grantors") pursuant to a Conservation Design – Planned Unit Development ("CD-PUD") approved by the City of Medina, a political subdivision of the State of Minnesota (the "City"), to the Minnehaha Creek Watershed District, a governmental body created under Minnesota Statutes Chapter 103D (the "District").

RECITALS:

- A. **OWNER.** The Grantors are the fee owners of the real property legally described above (the "Burdened Property"). The areas of the Burdened Property encumbered by this Easement are identified as Outlots A through I, and Outlot K on the Final Plat attached hereto as Exhibit A (hereinafter referred to as the "Plat") and the Site Plan attached hereto as Exhibit B (hereinafter referred to as the "Site Plan") (Outlots A through I, and Outlot K hereinafter referred to as the "Protected Property"). The terms and covenants of this Easement that bind the remaining (residential) lots within the Burdened Property are appurtenant to the conservation protections on the Protected Property hereunder and intended by this Easement to run with the land and bind those lots in perpetuity in accordance with Minnesota Statutes chapter 84C.

The term "property owner" or "owner" is used in certain terms of this Easement to indicate that the term applies only to the owner of the affected parcel, and not to all owners within the Burdened Property.

- B. **PROTECTED PROPERTY.** The Protected Property is approximately 29.7 acres of maple-oak-basswood woodland and restored prairie and 41.58 acres of wetlands and lakeshore along two lakes, one locally known as School Lake on the northeastern corner of the property and another locally known as Miller Lake to the south of the site. These lakes are public waters under Minnesota Statutes §103G.005. The Grantors have agreed to grant this Easement, in part, as a condition imposed by the City for approval of a Conservation Design Planned Unit Development, (hereinafter referred to as the "CD-PUD") a form of residential development (pursuant to applicable City regulations) on the Burdened Property and contiguous real property thereto (hereinafter referred to as the "Residential Community"). In its PUD approval process, the City will reference "Ordinance No. 618 Establishing a Conservation Design-Planned Unit Development District for 'School Lake

Nature Preserve', approved on October 17, 2017, and amending the Official Zoning Map" and the "School Lake Nature Preserve Final Plat" approved on February 20, 2018.

C. **MINNEHAHA CREEK WATERSHED DISTRICT.** The District is a governmental body created and operated exclusively for the purposes of water resource protection, conservation and management, including the protection, conservation, and management of related lands. The District is an organization qualified to hold conservation easements under Minnesota law and Section 170(h) of the Internal Revenue Code and related regulations.

D. **CONSERVATION VALUES.** The Protected Property has the following natural, scenic and open space qualities of significant importance:

Numerous natural habitat communities are present including a tamarack wetland complex, maple-basswood forest, mesic oak forest, extensive undeveloped lakeshore on School Lake, and a diverse mosaic of wetland communities. The Protected Property also provides scenic views to and from School Lake. There are several animal trails leading to and from School Lake, and habitat for numerous species of animals including white-tail deer, grey and red squirrels, groundhogs, opossums, rabbits, coyotes, foxes, minks, pheasants, wild turkeys, and migratory waterfowl such as ducks, geese, trumpeter swans, egrets, blue herons, and sandhill cranes.

One of the primary conservation values of the Protected Property is the corridor created between and among the diverse habitat features of the Protected Property and with other habitats outside of the Protected Property. The connectivity created by the Protected Property will be essential as climate change potentially alters vegetation composition and species' distributions over time. The specific plants, animals, and habitat found on the Protected Property at the time of this Easement are reflective of the conditions at that time. Should climate change or other natural factors beyond Grantors' control affect the plants, animals, or habitat on the Protected Property, it is the intention of the parties that the Protected Property will be preserved and managed to provide habitat reflective of local natural conditions as they may vary from time to time.

Collectively, these natural, scenic and open space qualities of the Protected Property constitute its "Conservation Values."

These Conservation Values have not been and are not likely to be adversely affected to any substantial extent by the continued use of the Protected Property as described above or as authorized below or by the construction of those structures and improvements that are authorized below.

E. **CONSERVATION POLICY.** Preservation of the Protected Property will further those governmental policies established by the following:

1. Minnesota Statutes Chapter 84C, which recognizes the importance of private conservation efforts by authorizing conservation easements for the protection of natural, scenic, or open space values of real property, assuring its availability for agriculture, forest,

recreational, or open space use, protecting natural resources, and maintaining or enhancing air or water quality.

2. The Metropolitan Surface Water Act, Minnesota Statutes Section 103B, which specifically identifies the importance of protecting the natural surface waters and groundwaters of the Metropolitan Area.

3. Minnesota Statutes Section 103D which provides for the establishment of watershed districts to conserve the natural resources of the State.

4. Minnehaha Creek Watershed District Comprehensive Water Management Plan, which includes the policies, programs, and projects implementing the Metropolitan Surface Water Act.

5. The City of Medina Comprehensive Plan, which states that the City shall “maintain its rural character in which natural infrastructure is the dominant feature while planning for new business and residential areas,” “Protect natural resources and natural corridors,” and “Plan neighborhoods using innovative design techniques to ensure a high quality of life for residents.”

6. The City of Medina CD-PUD Ordinance, as determined by the Medina City Council on July 5, 2017.

7. The City of Medina Natural Resource Inventory in which significant portions of the Protected Property are identified as an Ecologically Significant Natural Area.

8. The City of Medina Open Space Plan which identifies the Protected Property as Priority Areas.

9. The Hennepin County Environmental Services 2008 conceptual Greenway Corridor Plan.

10. The Minnesota Department of Natural Resources Regionally Significant Terrestrial and Wetland Ecological Areas plan which identifies the Protected Property as part of a large complex identified as Regionally Significant. Along with Baker Park and areas to the immediate north, the Protected Property is one of a few large complexes of such areas in Hennepin County.

F. **CONSERVATION INTENT.** The parties are committed to protecting and preserving the Conservation Values of the Protected Property in perpetuity. Accordingly, it is their intent to create and implement a conservation easement that is binding in perpetuity upon the current owners and all future owners of the Protected Property and that conveys to the District the right to protect and preserve the Conservation Values of the Protected Property for the benefit of this generation and generations to come.

G. **DOCUMENTATION** – The current condition of the Protected Property will be described and documented in a property report, signed by Grantors and the District, titled “School Lake Nature Preserve Conservation Easement Property Report” (the “Property Report”). Grantors

and the District each acknowledge that they will consider the Property Report to accurately represent the condition of the Protected Property at the time of this conveyance, except as the Property Report explicitly may provide otherwise, and that the Property Report may be used by the parties in monitoring future uses of the Protected Property, in documenting compliance with the terms of this Easement, and in any enforcement proceeding. This paragraph does not preclude the use of other information and evidence to establish the present condition of the Protected Property in the event of a future controversy.

The Easement is accompanied by a Land Stewardship Plan ("Plan") that provides detail as to the rights and responsibilities of Grantors under the Easement. The Plan is not specifically incorporated herein except as explicitly referenced, or otherwise to be filed on the title of the Protected Property, but gives more detailed meaning to certain provisions of this Easement that reference the Plan. The parties intend that the Plan be admissible in defining the meaning of those provisions of this Easement that reference it. It will not be interpreted to authorize any use or disturbance of the Protected Property contrary to this Easement, or that is detrimental to any Conservation Value set forth herein. To the extent any provision of this Easement is found to be in conflict with the Plan, the Easement provision shall prevail. The Plan may be amended by the Grantors and District. The Plan and any amendment thereto will be signed by the Grantors and the District and dated. In conjunction with a conveyance of land rights within the Burdened Property or an assignment or transfer of this Easement, or at any other reasonable time, a party on request will sign an estoppel or other mutually-acceptable document affirming the then-current version of the Plan and amendments.

CONVEYANCE OF CONSERVATION EASEMENT:

Pursuant to the laws of the State of Minnesota and in particular Minnesota Statutes Chapter 84C and in consideration of the facts recited above and the mutual covenants contained herein and in further consideration of the sum of one dollar and other valuable consideration, the Grantors hereby convey to the District a perpetual conservation easement over the entirety of those lots identified as Outlots A through I, and Outlot K on Exhibit A, also known as the Protected Property. This Easement consists of the following rights, terms, and restrictions applicable within the Protected Property.

1. **CONSERVATION PURPOSE.** The purpose of this Easement is to preserve and protect in perpetuity the Conservation Values of the Protected Property by confining the development, management, and use of the Protected Property to activities that are consistent with the preservation of these Conservation Values, by prohibiting activities that significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Easement.

The terms of this Easement are specifically intended to provide a significant public benefit, including but not limited to the protection of the water quality, habitat value (including terrestrial upland habitat), and ecological integrity of surface waters and wetlands, as well as associated riparian land, floodplain and supporting groundwater, both on the Protected Property and within the wider hydrologic system in which they are situated, as further described in the District's watershed management plan as it may be amended, along with the facilitation of public use of designated walking trails consistent with the protection of the Conservation Values.

2. **ACTIVITY RESTRICTIONS ON PROTECTED PROPERTY:** In furtherance of the intent of this Conservation Easement, the terms of this Section 2 apply to the Grantors and all persons acting under Grantors' authority or control.
- 2.1. Industrial and Commercial Activity. No industrial or commercial use of the Protected Property is allowed.
- 2.2. Right of Way. No right of way for surface travel shall be granted across the Protected Property except the right-of-way(s) shown on the Plat (Exhibit A) and the Site Plan (Exhibit B), and right-of-way for trails pursuant to paragraph 2.10, below. Grantors may disturb the Protected Property adjacent to platted right-of-way to the extent necessary to pave and otherwise improve and maintain the right-of-way, and will restore soils and vegetation when work is completed.
- 2.3. Mining. No mining, drilling, exploring for or removing of any minerals from the Protected Property is allowed.
- 2.4. Subdivision. A lot of record as identified in Exhibit A may be subdivided only with a written amendment to the Easement to preserve the effectiveness of the assessment mechanism referenced in Section 5 of this Easement. This section does not prevent or otherwise inhibit a property owner's voluntary transfer of fee interest in any portion of the Protected Property to a government entity for conservation purposes.
- 2.5. Water. No activity shall be conducted on the Protected Property that would pollute, alter, deplete, or extract surface water or groundwater; cause erosion; or be detrimental to water quality, except as follows:
- a. Activities approved in writing by the District that restore or enhance wildlife habitat or native biological communities or that improve or enhance the function and quality of existing wetlands and surface waters on and off of the property.
 - b. Activities undertaken in the exercise of rights explicitly granted under this Section 2 that might cause erosion or impact water quality on a temporary basis, provided that all reasonable erosion and sediment control measures are undertaken to limit the impacts of those activities. All activities permitted hereunder remain subject to the permitting requirements of the District and other governmental bodies.
 - c. Activities expressly permitted in Paragraph 2.9 below.
- 2.6. Dumping. No trash, waste vegetation, compostable or non-compostable garbage, hazardous or toxic substances or unsightly material may be dumped or placed on the Protected Property.

- 2.7. Storage Tanks. There shall be no placement of storage tanks on, in, or under the Protected Property.
- 2.8. Agricultural Use. No agricultural use or cultivation is allowed within the Protected Property, except as permitted under subsection 2.13, below.
- 2.9. Utilities. No utility structure, system, or facility may be installed or extended across, under or above the Protected Property. This includes, without limitation, any structure, system, or facility to provide power, fuel, water, waste disposal, communication or data. Notwithstanding this provision: (a) stormwater management facilities may be located within the Protected Property; and (b) a utility structure, system or facility may be installed or extended to provide service to one or more residential lots within the Burdened Property. In each case, Grantors will select alignment and installation method to reasonably minimize disturbance, and will restore soils and vegetation after disturbance. Grantors may dedicate or convey one or more utility easements across the Protected Property for utilities permitted under this subsection 2.9. This Easement will be subordinated to each such easement, provided it states that disturbance will be reasonably minimized, and that soils and vegetation will be restored, in accordance with this subsection.
- 2.10. Roads and Trails. No road or trail, paved or unpaved, may be established or constructed on the Protected Property except for horse and pedestrian trails of grass, woodchip or paved surface, no more than eight feet in width average and 10 feet maximum, on the alignments indicated on Exhibit C, attached hereto and incorporated herein. Grantors may convey one or more easements to the City to construct and maintain public trail on alignments indicated on Exhibit C, provided each such easement states, as to construction-phase disturbance outside of the trail width, that: (a) disturbance will be minimized; (b) and the City will restore disturbed soils and vegetation in a manner satisfactory to the District.
- 2.11. Fences. Any fencing installed within the Protected Property will follow technical guidelines and best practice so that it does not materially restrict wildlife movement, and will not impede the exercise of any right of Grantors or the District under this Easement. Notwithstanding this limitation, existing fencing as identified within the Property Report may be maintained as described in the Plan.
- 2.12. Structures and Improvements. No temporary or permanent building, structure, or other improvement of any kind may be placed or constructed on the Protected Property. Notwithstanding the immediately foregoing, incidental placement of temporary structures on the Protected Property associated with permitted use of that part of the Burdened Property not subject to the Easement (e.g. weddings in the formal gardens) is permitted, provided that there is no land alteration or damage to vegetation. Grantors will restore soils and vegetation if disturbed. Further notwithstanding the foregoing, signage for ordinary residential or trail purposes may be placed and maintained within the Protected Property.

- 2.13. Vegetation Management. Vegetation may be altered within the Protected Property only to maintain, restore or enhance habitat for wildlife and native biological communities; for lake view and lake access in accordance with the Land Stewardship Plan; to prevent or control noxious weeds, invasive vegetation, or disease; or to improve the water quality of the site or stabilize areas of potential erosion. Any such activity must be authorized by the Plan or pursuant to written District approval, not to be unreasonably withheld. Notwithstanding, in an emergency situation, action may be taken as necessary to prevent or abate fire or any other condition causing or threatening injury or substantial property damage. Notwithstanding the foregoing, aquatic plant management subject to an individual or a general Minnesota Department of Natural Resources (MnDNR) permit does not require District approval. This Easement will be subordinated to any separately recorded instrument signed by the District that allows for land or vegetation disturbance consistent with the criteria of paragraph 6.7(d), including without limitation the Wetland Buffer Easement Agreement dated [DATE] between Grantor, the District, and the City.
- 2.14. Topography and Surface Alteration. No alteration or change in the topography or surface of the Protected Property is allowed except as explicitly permitted elsewhere under this section 2. This includes no ditching, draining, diking, filling, excavation, dredging, mining, drilling or removal of soil, sand, gravel, rock, minerals, or other materials. Notwithstanding, with the District's written approval, surface disturbance including excavation and fill may occur for the purpose of restoring previously disturbed areas on the Protected Property.
- 2.15. Vehicles. No motorized vehicle may be operated within the Protected Property except as reasonably required for uses authorized by this Easement or the Plan including City installation and maintenance of trails pursuant to subsection 2.10.
- 2.16. Chemicals. Except as authorized pursuant to subsection 2.13, above, or as otherwise authorized in writing by the District, within the Protected Property there shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, and no use of devices commonly known as "bug-zappers."
- 2.17. County Road Right of Way. Grantors are not responsible for actions taken or rights exercised by Hennepin County pursuant to any preexisting ROW easement.
3. **RESERVED RIGHTS.** The Grantors retain all rights associated with ownership and use of the Protected Property that are not expressly restricted or prohibited by this Easement. However, the Grantors may not exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property. The Grantors must give notice to the District before exercising any reserved right that might have an adverse impact on the Conservation Values associated with the Protected Property.
- 3.1. Right to Convey. Subject to Section 5, The Grantors may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property. Grantors must give written notice to the District of any conveyance of

fee title of a residential property within the Burdened Property, or of any conveyance of fee title or lease of any part of the Protected Property, in accordance with subsection 6.7 of this Easement.

- a. The Grantors will reference this Easement in any deed or other document by which the Grantors convey title to, or a leasehold interest in, all or a portion of the Burdened Property.
- b. The Grantors will notify the District of any conveyance or lease, as required above, within fifteen (15) days after closing and will provide the District with the name and address of the new owner or lessee and, if transferring title, a copy of the deed.
- c. The enforceability or validity of this Easement will not be impaired or limited by any failure of the Grantors to comply with this subsection.

4. **DISTRICT'S RIGHTS AND REMEDIES.** In order to accomplish the purposes of this Easement, the District has the following rights and remedies. The District may not, however, exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property.

- 4.1. Preserve and Protect Conservation Values. The right to preserve and protect the Conservation Values of the Protected Property through the rights and remedies set forth below.
- 4.2. Right to Enter. The District, its agents and authorized representatives may enter the Protected Property at reasonable times and in a reasonable manner for the purpose of, and may engage in, the following activities:
 - a. To inspect the Protected Property, monitor compliance with the terms of this Easement, and enforce the terms of this Easement as set forth herein. The District shall not unreasonably interfere with the legal and appropriate use and quiet enjoyment of the Protected Property by the Grantors, trail users, or any permitted invitees of those persons, so long as such use is in a manner consistent with this Conservation Easement.
 - b. To survey or otherwise mark the boundaries of all or part of the Protected Property. Any survey or boundary demarcation completed under this provision will be at the District's expense.
 - c. To make scientific and educational observations and studies and take samples within the Protected Property, in such a manner as will not disturb the quiet enjoyment of the Protected Property.
 - d. The right, but not the obligation, to manage the Protected Property subject to applicable laws and regulations. Said management may consist of, but not be limited to: vegetative maintenance and management; hydrologic or soils modifications; land alteration and stabilization; installation of improvements

for water quality and flood management purposes as the District reasonably determines to be consistent with the Conservation Values of the Protected Property and the Plan and in accordance with all reasonable measures to minimize the impact of any temporary disturbance to the waterbodies on or adjacent to the site and adjacent wetland; fencing or other measures to protect the Conservation Values against intentional or unintentional impact; and the installation and maintenance of boundary markers and informational signage.

- e. All actions hereunder except for vegetative management, slope stabilization and the installation of standard boundary survey markers are subject to written property owner concurrence, not to be unreasonably withheld. The written concurrence will document any agreement of Grantors and the District that the District will assume maintenance responsibility for the improvement. Boundary markers on boundary lines adjacent to a residential lot shall be low-profile and unobtrusive, while still establishing a durable, visible record of the boundary line.
- f. District entry will not interfere unreasonably with Grantors' permitted uses of the Burdened Property. District will provide advance notice to the property owner prior to entering the Burdened Property, except where immediate entry is necessary or desirable to prevent, terminate, or mitigate damage to the Conservation Values; necessary to prevent, terminate or mitigate an apparent violation of the terms of this Conservation Easement; or otherwise authorized by law.
- g. To further the purposes as set out in this Section 4, Grantors hereby grant to the District a perpetual non-exclusive easement for the purpose of access to the Protected Property by reasonable motorized and non-motorized means, on, over, and across all trails, public and private roads, rights of way, and platted drainage and utility easements within the Burdened Property. The District will repair any damage to the Burdened Property from its use.

4.3 No Grant of Public Right. Nothing in this Easement shall be construed as: (i) a public dedication; or (ii) a grant of right to persons other than the District, its agents, authorized representatives and contractors to enter or use the Easement as provided in this Easement. Nothing in this Easement constitutes a general right of public entry onto or across the Easement. Notwithstanding the foregoing, the City may allow for public trail use in accordance with paragraph 2.10, above.

4.4. Right of Enforcement. If the District finds at any time that a property owner has breached the terms of this Easement, the District, itself or in conjunction with the City, will notify the owner of the alleged breach and direct the owner to take action to cure the breach. If such action is not taken within a reasonable time, the District will give written notice detailing the breach to the owner and demand action to cure the breach including, without limitation, restoration of the Protected Property as required in this Easement. Notwithstanding anything to the contrary, a property owner is not liable for damages to the District for acts of trespassers except as paragraph 4.4(g) provides. The District may prevent or

remedy a violation of this Easement through judicial action brought against the responsible party in any court of competent jurisdiction. The City is granted a third-party right of enforcement as described in Minnesota Statutes chapter 84C.

- a. Notice. At least thirty (30) days before initiating judicial action against the owner of the Protected Property, the District will advise the owner in writing of the apparent violation or threatened violation and allow a reasonable opportunity to confer and resolve the matter, unless the District determines that immediate judicial action is needed to prevent or mitigate damage to the Protected Property.
- b. Enforcement Costs. The property owner is responsible for reasonable costs that the District incurs, exclusive of periodic monitoring costs, to investigate and resolve Easement violations. This includes reasonable costs of technical and legal assistance. The owner will not contest the legal authority of the City to assess the District's reasonable and verifiable enforcement costs incurred in accordance with the procedures of this Subsection 4.4 against the owner's residential lot within the Burdened Property, or to assess reasonable and verifiable maintenance and restoration costs against residential lots within the Burdened Property as stipulated in the Plan, each in the same manner as assessable City costs. The owner will not bear enforcement costs judicially determined to have been unreasonable or incurred without a good faith District judgment that there was an actual or imminent violation. The Grantors acknowledge the benefit to the Burdened and other property within the Subdivision and hereby consent to said City assessment and waive the right to a hearing or notice of hearing or any appeal thereon under Minnesota Statutes, Chapter 429.
- c. Attorney's Fees. Notwithstanding paragraph 4.4(b), the prevailing party in a judicial action under this Easement shall be entitled to reimbursement from the non-prevailing party for all reasonable attorneys' fees and costs incurred by the prevailing party after filing of the action. The parties waive their right to a jury trial on the issues of which is the prevailing party and the reasonable amount of attorneys' fees and costs to be awarded to the prevailing party. Those issues will be decided by the trial judge upon motion by one or both parties, such motion to be decided based on the record as of the end of trial augmented only by testimony and/or affidavits from the attorneys and others working on their behalf. The parties agree that, subject to the trial judge's discretion, the intent of this clause is to have all issues related to the award of attorneys' fees and costs decided by the trial judge as quickly as practicable.
- d. Remedies. Remedies available to the District include but are not limited to temporary and permanent injunctive relief, restoration of the Protected Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of the Easement, specific performance, declaratory relief and recovery of damages. These remedies are cumulative and are available without requiring the District to prove actual impact to the Conservation Values protected by this Easement. The parties also recognize

that restoration may be the only adequate remedy for certain violations of this Easement. The District may seek expedited relief, ex parte if necessary, and need not post a bond applicable to a petition for such relief.

- e. Discretionary Enforcement. Enforcement of the terms of this Easement is solely at the District's discretion. The District does not, by any delay or prior failure of the District to discover a violation or initiate enforcement proceedings, waive or forfeit any enforcement right.

- f. Acts Beyond Owner's Control: Natural Events. Nothing in this Easement entitles the District to take or bring any action against a property owner for any change to the Protected Property resulting from natural events or natural causes beyond the owner's control, including, without limitation, fire, flood of a return frequency greater than 100 years, storm, infestations, natural deterioration, earth movement or climate change, or from any prudent action taken by the owner under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such natural event or cause. Nor does this Easement entitle the District to take or bring any action against a property owner for an any change to the Protected Property resulting from the acts of any animal beyond the property's owner's possession, custody or control. The owner will notify the District of any such event and the action taken in response to it, if any. If such an event alters the Protected Property, the owner and District will work together to identify restoration or rehabilitation activities and develop a restoration plan.

This paragraph 4.4(f) does not apply to actions that the owner is required to take in response to natural events as set forth in the Plan.

- g. Acts Beyond Owner's Control: Third Parties. Under no circumstances shall a property owner's liability exceed that imposed by Minn. Stat. Sec. §604A.23. A property owner shall not be liable for injury to person or property to or on the Protected Property caused by the acts of a third party other than the property owner's agents, employees, lessees, invitees, family members, or contractors, provided the owner has not participated in, acquiesced in, or otherwise consented to such acts of such third parties.

A property owner shall also not be liable for any change to the Protected Property, to the extent caused by an action of the owner, or of a party acting under the owner's authority, taken reasonably and in good faith under emergency conditions to prevent or mitigate substantial damage from such a third party cause.

The owner will promptly notify the District and the City of any such occurrence and cooperate fully in reporting, investigating and taking any action against the responsible parties. In the event that such third party acts interfere with the Conservation Purpose and Conservation Values of this Easement, the owner and the District will work together to identify restoration or rehabilitation activities and develop a restoration plan.

Nothing in this Easement shall cause a property owner or the District to assume a duty of care with respect to, or responsibility for acts of, third party members of the public on the Protected Property in conjunction with use of a public trail maintained by the City pursuant to paragraph 2.10, above.

5. **RESTRICTIONS ON CONVEYANCE OF PROTECTED PROPERTY.** The means by which owners of residential property are held responsible for maintenance and enforcement costs related to the Protected Property, as provided in the Easement and Plan, requires that each platted outlot within the Protected Property be owned by an owner of residential property within the Burdened Property. Accordingly, the fee interest in an outlet within the Protected Property may not be conveyed to a party who is not also the owner of a residential lot within the Burdened Property. The parties consider this restriction on outlet sale as essential to this Easement and a part of the mutual consideration for it. Notwithstanding, the fee interest in an outlet may be conveyed to a government entity for conservation purposes.

6. **GENERAL PROVISIONS.**

- 6.1. Assignment. This Easement, and any rights or responsibilities hereunder, may be assigned exclusively or transferred by the District by written instrument, but only to a public body or conservation organization that is a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and that is authorized to hold conservation easements under Minnesota law. Any future holder of this Easement shall have all of the rights conveyed to the District by this Easement. As a condition of any assignment or transfer, the District shall require any future holder of this Easement to continue to carry out the Conservation Purposes of this Easement in perpetuity.

The District shall provide thirty (30) days written notice to the property owners within the Burdened Property and the City before any such transfer or assignment shall be effective. Any assignment or transfer under this provision is subject to approval by the City.

- 6.2. Amendment. This Easement may be modified or amended. However, no amendment or modification will be allowed if, in the sole and exclusive judgment of the District, it: (i) does not further the purposes of this Easement, (ii) will adversely impact the Conservation Values protected by this Easement, (iii) affects the perpetual duration of the Easement, or (iv) affects the validity of the Easement under Minnesota law or under Section 170(h) of the Internal Revenue Code.

Any amendment or modification must be in writing, signed by all parties, and recorded in the same manner as this Easement.

- 6.3. Extinguishment. This Easement may be extinguished without consent of the District only through judicial proceedings and only: (i) to the extent that one or more unexpected change(s) in the conditions of or surrounding the Protected Property makes the continued use of the Protected Property for the conservation

purposes set out above impossible or impractical; or (ii) pursuant to the proper exercise of the power of eminent domain.

The Grantors recognize that uses of the Protected Property prohibited by this Easement may, in the future, become more economically viable than those uses permitted by the Easement. The Grantors also recognize that in the future, neighboring properties may be put entirely to uses not permitted on the Protected Property by this Easement. The Grantors and the District agree that such changes in use may increase the public benefit provided by this Easement and, in any event, will not qualify as “unexpected changes” to justify the extinguishment of this Easement as otherwise set forth above.

- 6.4. Real Estate Taxes. The Grantors shall pay all real estate taxes and assessments levied against the Protected Property. At its discretion, the District may pay any outstanding tax or assessment and shall then be entitled to reimbursement from the Grantors.

- 6.5. Ownership Costs and Liabilities. Except as explicitly assumed by the District in this Easement as otherwise set forth herein, or as Grantors and the District may agree under paragraph 4.2(e), the Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of such comprehensive general liability insurance coverage as the Grantors deem adequate. The Grantors agree to release, hold harmless, defend and indemnify the District from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees that the District may suffer or incur, to the extent they result from the activities of Grantors on the Protected Property. The District agrees to release, hold harmless, defend and indemnify the Grantors from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees that the Grantors may suffer or incur, to the extent they result from the activities of the District on the Protected Property.

The District shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by it. The property owner will transmit a copy of a lien statement of claim to the District within one week of receipt from the lien claimant. The property owner hereby assigns the District, non-exclusively, all rights that it possesses to apply for and obtain a release of lien. With due notice to the property owner, the District may apply and make payment for a release of lien, and may have the City assess the payment, as well as reasonable attorney fees and costs, against the owner’s residential property.

Nothing in this paragraph or this Easement creates any right in any third party or diminishes any immunity, defense or liability limitation of the Grantors, the City, or the District as against any third party. Neither party by entering into this Easement assumes responsibility or liability arising from the maintenance or use of City trails on the Protected Property pursuant to paragraph 2.10, above. In any matter involving both the District and the City, the total liability of the District and the

City on a claim against it or them arising out of a single occurrence shall not exceed the limits set forth in Minnesota Statutes Section 466.04, subd. 1.

6.6 The Grantors agree to release, hold harmless, defend and indemnify the District from any and all liabilities, loss, claim, damage or expense (including reasonable attorney fees, costs and disbursements) that the District may incur arising out of any waste or contaminant, or other pre-existing environmental condition, on the Protected Property as of the date of this Easement. The terms “waste” and “contaminant” are to be understood in their broad common meaning and not as defined by any specific statute.

6.7. Notice and Approval. Any notice or request for approval required by this Easement must be written and is subject to the following:

a. Delivery. Any required notice or request for approval must be delivered or sent by first class mail or other nationally recognized delivery service, or transmitted by electronic mail with confirmation from an authorized representative of the recipient, to the appropriate party at the following addresses (or other address specified in writing):

To the Grantors:

at the address(es) on file with
Hennepin County
tax assessor.

Secretary of State.

To the District:

at the address of their principal
place of business as on file
with the Minnesota

b. Timing. Unless the parties agree otherwise in writing, any notice or request under this Paragraph shall be deemed accepted unless the receiving party objects in writing within thirty (30) days after receipt of same, provided that In the event the party who receives notice does not respond within 30 days of the documented day of delivery, the proposed activity shall be deemed approved by that party so long as the request states prominently in a top heading “Response Required Within 30 Days” and the activity is not inconsistent with the Conservation Purpose of the Conservation Easement and is not otherwise prohibited by the Conservation Easement. The District will communicate a final decision within 60 days of a request.

c. Content. The notice or request for approval must include sufficient information to allow the recipient to make an informed decision on whether any proposed activity is consistent with the terms and purposes of this Easement.

d. District Approval. The District may consent to any activity under this Easement only if it reasonably determines that the activity (1) will not violate the purpose of this Conservation Easement and (2) will either enhance or not impair any significant Conservation Values associated with the Protected Property. The District may condition its approval on the Grantors’ acceptance of

modifications that, in the District's reasonable judgment, would allow the proposed activity to meet these criteria.

- 6.8. Binding Effect. This Easement will run with and burden the Protected Property in perpetuity. The terms of this Easement are binding and enforceable against the Grantors, their heirs, lessees, agents, personal representatives, successors and assigns, and all other parties entitled to possess or use the Protected Property.

This Easement creates a property right immediately vested in the District that cannot be terminated or extinguished except as set out herein.

- 6.9. Merger. The terms of this Easement shall survive any merger of the fee and easement interest in the Protected Property.
- 6.10. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon the transfer or termination of that party's interest in this Easement or the Protected Property, provided, however, that any liability for acts or omissions occurring prior to the transfer or termination will survive that transfer or termination.
- 6.11. Recording. The District will record or register this Easement in a timely manner in the official records for Hennepin County. The District may re-record or re-register this Easement or any other document necessary to protect its rights under this Easement or to assure the perpetual enforceability of this Easement. The Grantors will cooperate as necessary to accomplish and effect acts of recordation.
- 6.12. Controlling Law and Construction. This Easement shall be governed by the laws of the State of Minnesota and construed to resolve any ambiguities or questions of validity of specific provisions in favor of giving maximum effect to its conservation purposes and to the policies and purposes of Minnesota Statutes Chapter 84C.
- 6.13. Permits and Applicable Laws. The Grantors and the District acknowledge that the exercise of any reserved right herein or other use of the Protected Property is not by this Easement relieved from complying with or obtaining any permit from any applicable governmental authority, including the District, prior to the exercise thereof.
- 6.14. Severability. A determination that any provision or specific application of this Easement is invalid shall not affect the validity of the remaining provisions or any future application.
- 6.15. Captions and Recitals. The captions herein have been inserted solely for convenience of reference and are not a part of this Easement and shall have no effect upon construction or interpretation. The Recitals are incorporated into this Easement and a part hereof.
- 6.16. Additional Documents. The Grantors agree to execute or provide any additional documents reasonably needed by the District to carry out in perpetuity the

provisions and intent of this Easement, including, but not limited to any documents needed to correct any legal description or title matter or to comply with any federal, state, or local law, rule or regulation.

6.17. Entire Agreement. This document states the entire agreement of the parties with respect to this Easement and supersedes all prior discussions or understandings.

IN WITNESS WHEREOF, on the basis of mutual valuable consideration, and intending to be legally bound, the Grantors and the District voluntarily execute this Conservation Easement on the ____ day of _____, 2018.

GRANTORS

By: _____
Wallace Marx

And: _____
Bridget Marx

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Wallace Marx and Bridget Marx, each the spouse of the other.

Notary Public

ACCEPTANCE

The Minnehaha Creek Watershed District hereby accepts the foregoing Conservation Easement this ____ day of _____, 2018.

MINNEHAHA CREEK WATERSHED DISTRICT

By: _____

Title: _____

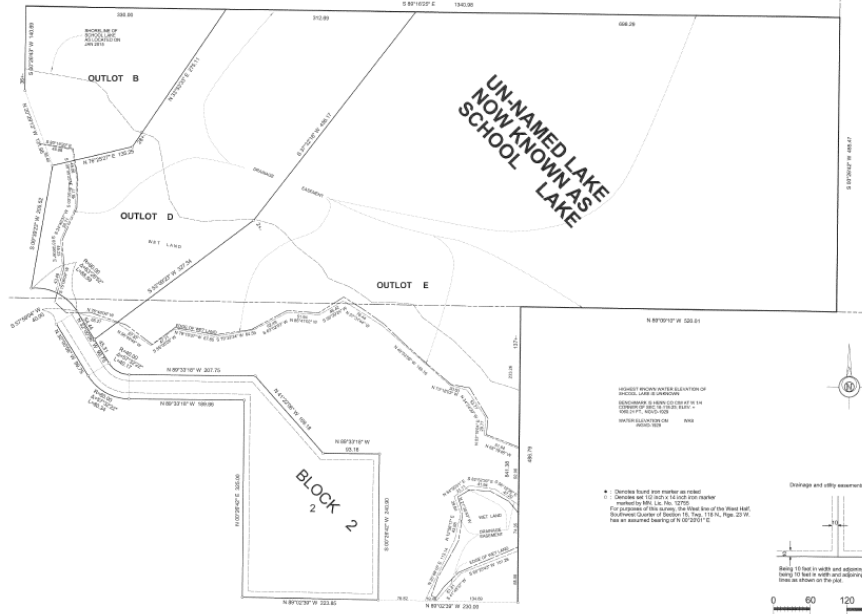
STATE OF MINNESOTA)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, as _____ of the Minnehaha Creek Watershed District.

Notary Public
My Commission Expires:

SCHOOL LAKE NATURE PRESERVE INSET B

C.R.DOC.NO. _____



UNNAMED LAKE WATER ELEVATION OF SCHOOL LAKE IN PREVIOUS SURVEY IS 14.00 FEET ABOVE SEA LEVEL. WATER ELEVATION ON THIS DATE IS 14.00 FEET.

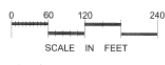
- 1. Control based from marker as noted.
- 2. Control on 100' x 100' x 100' iron marker marked by M.L. Co. Inc. 1275 2nd Avenue, S.W. for a distance of 100' from the West line of the West Quarter of Section 10, Twp. 118 N., Rge. 23 W. See an attached sheet for 11/20/2014.



Drainage and utility easements shown (date)



Being 10 feet in width and adjoining lot lines, and being 10 feet wide and adjoining right of way lines as shown on the plan.

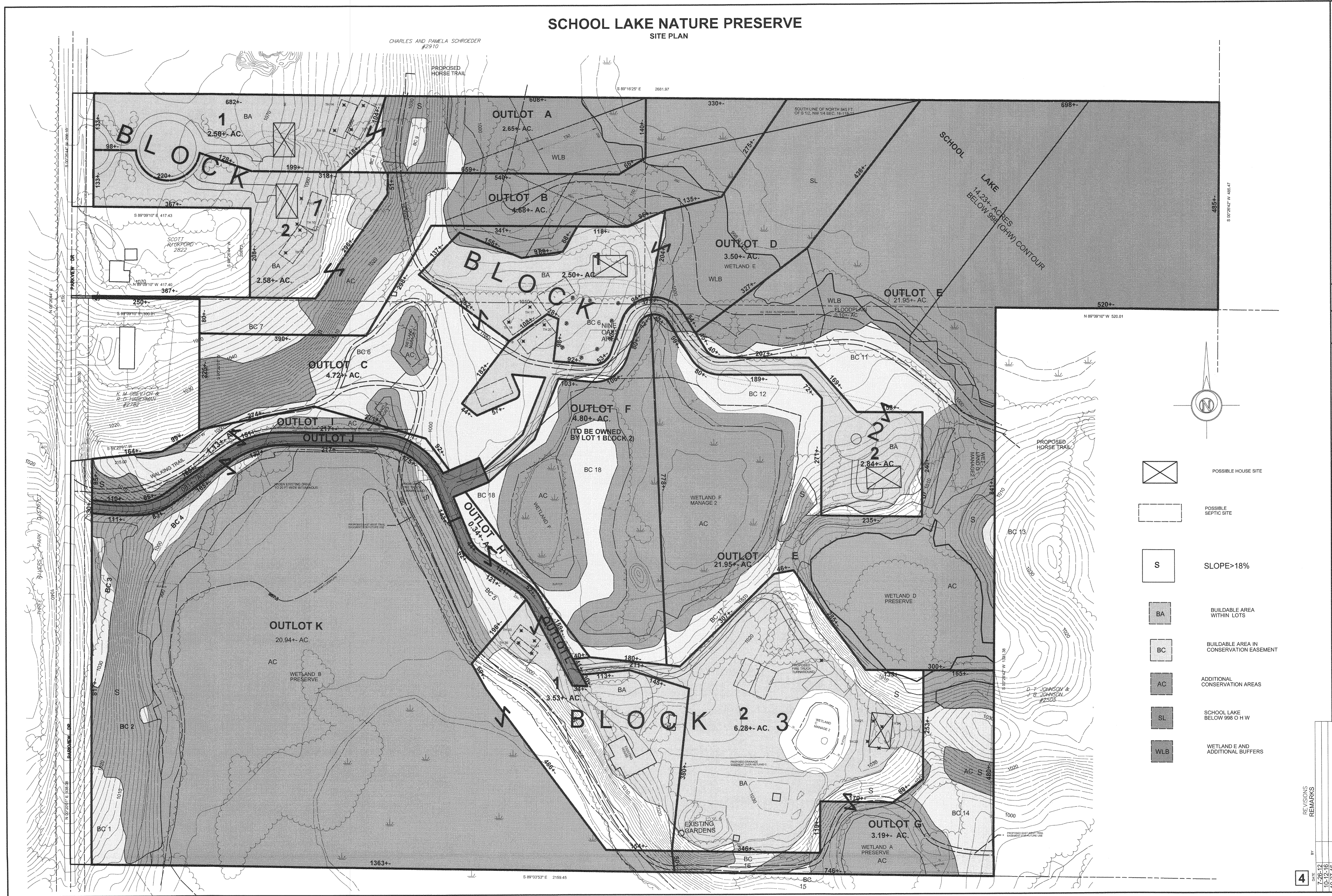


SCALE IN FEET

- 1. Control based from marker as noted.
- 2. Control on 100' x 100' x 100' iron marker marked by M.L. Co. Inc. 1275 2nd Avenue, S.W. for a distance of 100' from the West line of the West Quarter of Section 10, Twp. 118 N., Rge. 23 W. See an attached sheet for 11/20/2014.

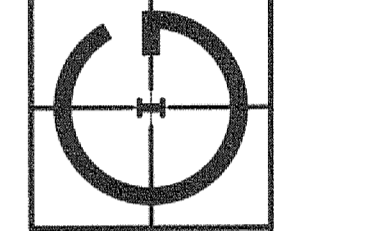
EXHIBIT B - SITE PLAN

SCHOOL LAKE NATURE PRESERVE
SITE PLAN



- POSSIBLE HOUSE SITE
- POSSIBLE SEPTIC SITE
- SLOPE > 18%
- BUILDABLE AREA WITHIN LOTS
- BUILDABLE AREA IN CONSERVATION EASEMENT
- ADDITIONAL CONSERVATION AREAS
- SCHOOL LAKE BELOW 998' O H W
- WETLAND E AND ADDITIONAL BUFFERS

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	8-5-16
SCALE	1" = 100'
NO.	17-238

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER AND LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

David J. Gronberg
DAVID J. GRONBERG
DATE: 5-1-18
MINN. LICENSE NUMBER: 13155

NO.	DATE	REVISIONS	REMARKS
1	7-28-12		
2	10-27-16		
3	11-7-16		
4	12-1-16		
5	2-8-17		
6	6-15-17		
7	7-5-17		
8	8-3-17		
9	8-25-17		
10	2-5-18		
11	3-4-18		

EXHIBIT C TRAIL ALIGNMENTS FOR WALLY MARX

IN OUTLOTS B, C & I, SCHOOL LAKE NATURE PRESERVE
HENNEPIN COUNTY, MINNESOTA

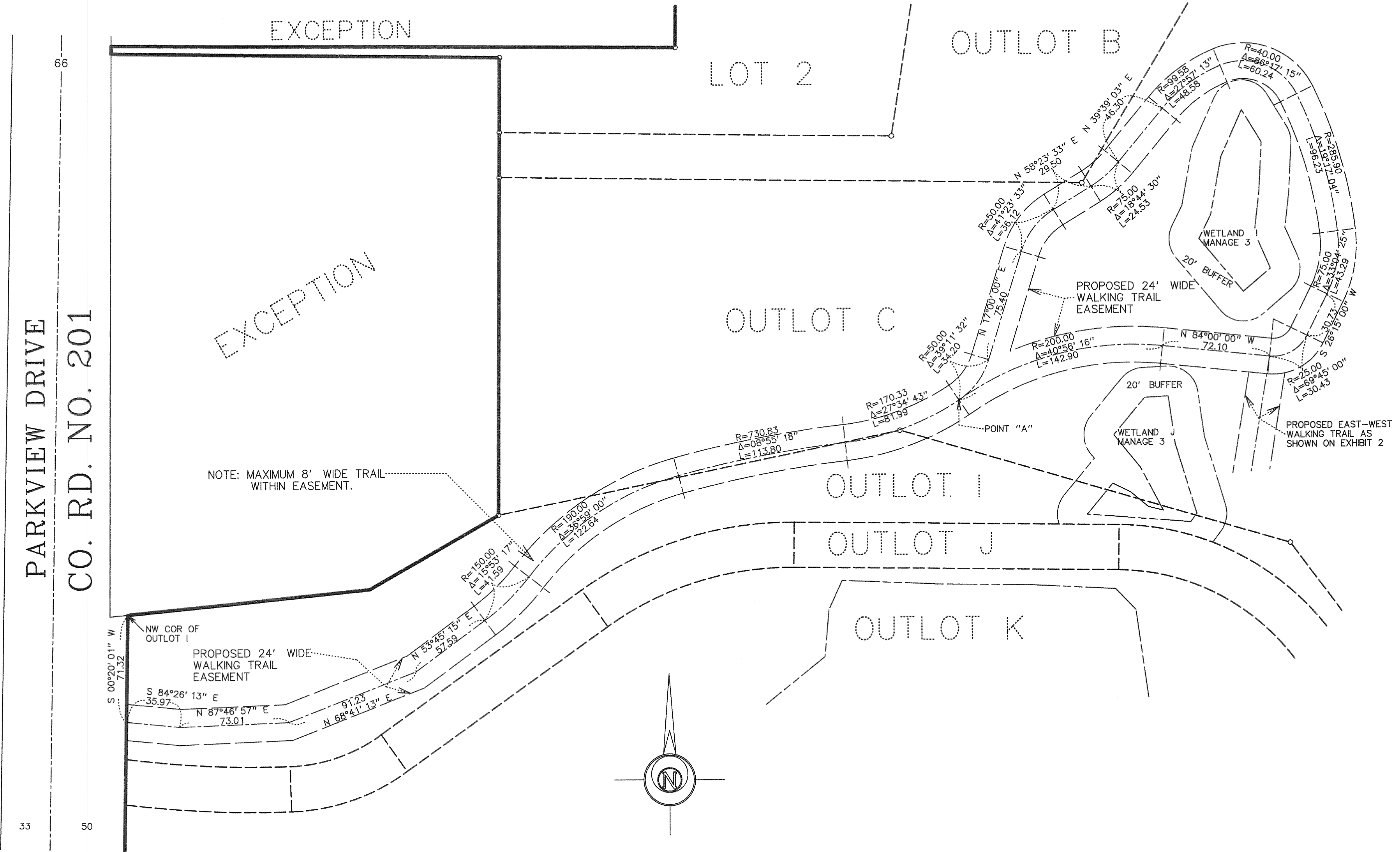
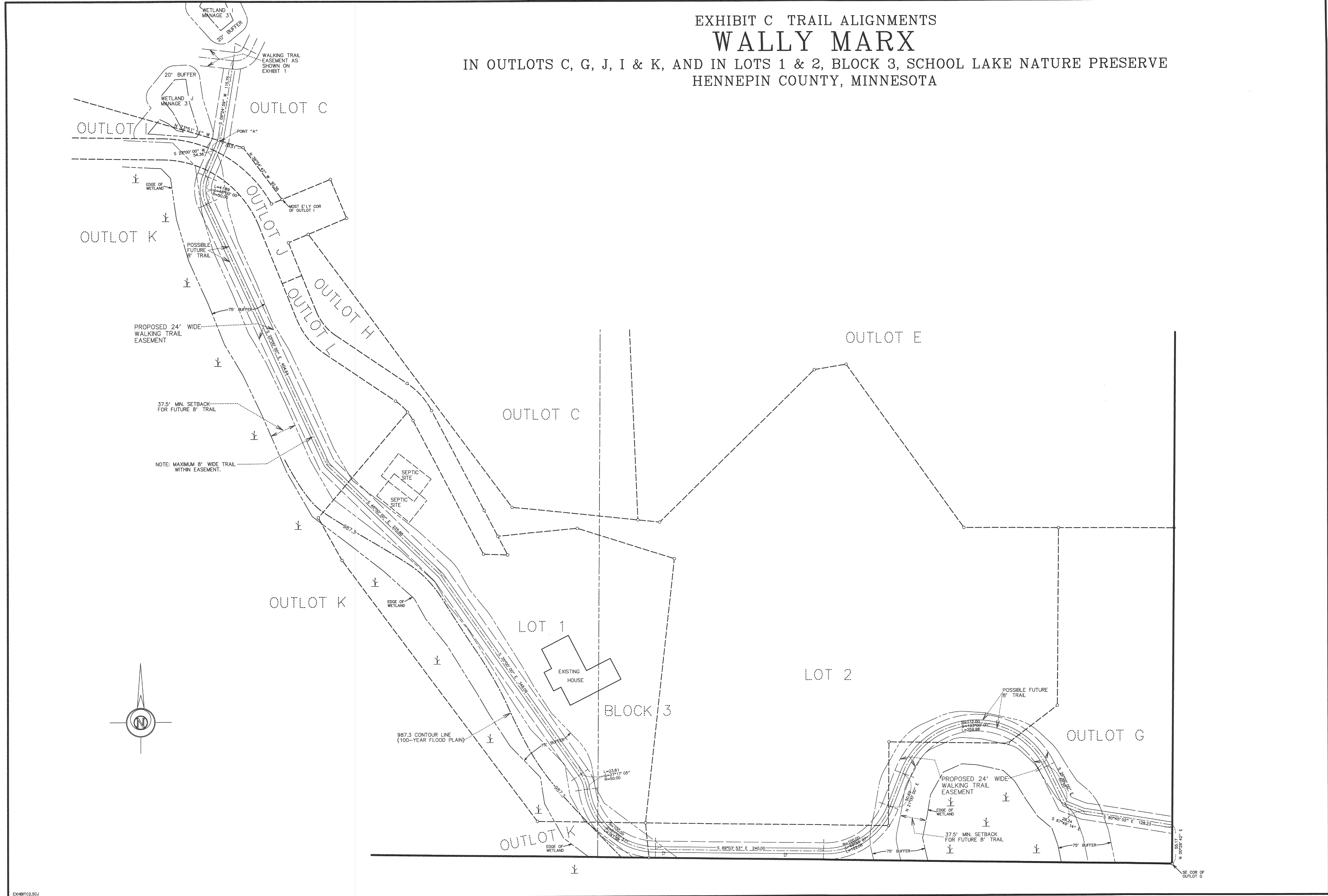


EXHIBIT C TRAIL ALIGNMENTS
WALLY MARX
 IN OUTLOTS C, G, J, I & K, AND IN LOTS 1 & 2, BLOCK 3, SCHOOL LAKE NATURE PRESERVE
 HENNEPIN COUNTY, MINNESOTA



DATE	REMARKS
1-24-18	WETLAND BUFFER ADDED, PROPOSED TRAIL ADJUSTED TO BE AT LEAST 30' FROM
2-25-18	EDGE OF WETLAND
5-1-18	FUTURE BLACKTOP TRAIL, ADDITIONAL BUFFER SHOWN
	EXHIBIT C, TRAIL ALIGNMENTS
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 S. Gronberg Minnesota License Number 12755	
DATE	PROJECT
12-15-17	
SCALE	
1"=60'	
JOB NO.	
17-238	
GRONBERG & ASSOCIATES, INC. CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS 445 NORTH WILLOW DRIVE LONG LAKE, MN 55356 952-473-4141	

LAND STEWARDSHIP PLAN

School Lake Nature Preserve Medina, Minnesota

May 10, 2018

Prepared for: Wally Marx
2700 Parkview Drive
Medina, MN 55340

Prepared by: Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka, MN 55345

TABLE OF CONTENTS

INTRODUCTION.....3-4

 Conservation Design.....3

 Land Stewardship Plan.....4

EXISTING CONDITIONS5-8

 Compilation of Existing Data.....5

 Field Reconnaissance.....5-6

 Findings.....6-8

CONSERVATION DESIGN OF SCHOOL LAKE
PRESERVE.....8-10

 Development Layout.....8-9

 Grading & Ecological Stormwater Management.....9

 Cultural Amenities.....10

OWNERSHIP, CONSERVATION OBJECTIVES & LAND PROTECTION.....10-18

 School Lake Preserve Land Allocation.....11

 Development Area.....11

 City Park Land Dedication.....11

 Conservation Area.....12-16

LAND STEWARDSHIP PLAN

SCHOOL LAKE NATURE PRESERVE FINAL PLAT Medina, Minnesota

INTRODUCTION

Wally Marx proposes to develop 89.75 acres of land contained within three contiguous parcels in Medina, Hennepin County, Minnesota following the City's Conservation Design – Planned Unit Development (CD-PUD) requirements. The project includes 6 single family sites and holds unique and important conservation values based on its regional location and variety of wetland, woodland, and shoreline habitats. These values are recognized by a number of local agencies, and Mr. Marx's goal is to create unique lots that preserve the natural resource values of the site, integrate the home sites into the landscape, and provide guidance for perpetual management of the conservation areas by the fee owners or Minnehaha Creek Watershed District (MCWD).

Conservation Design

The proposed development complies with the City of Medina's Conservation Design Development requirements as described in detail in subsequent sections and per City Code Section 827.51. Conservation Design (CD) – Purpose, which states:

The purpose of this district is to preserve the City's ecological resources, wildlife corridors, scenic views, and rural character while allowing residential development consistent with the goals and objectives of the City's Comprehensive Plan and Open Space Plan as updated from time to time. The specific conservation objectives of this district are to:

1. Protect the ecological function of native hardwood forests, lakes, streams, and wetlands.
2. Protect moderate to high quality ecologically significant natural areas.
3. Protect opportunities to make ecological connections between parks and other protected lands and ecologically significant natural areas.
4. Protect important viewsheds including scenic road segments.
5. Create public and private trails for citizens to access and enjoy Open Space resources.
6. Create public and private Open Space for citizens to access and enjoy.

The proposed development also complies with City Code Section 827.57, Subd. 5 and 7, which define Conservation Area and Conservation Easement for purposes of the CD-PUD ordinance.

Land Stewardship Plan

Per City of Medina Code Section 827.65, a Land Stewardship Plan (LSP) is required for the project. An LSP addresses the development, long-term use, maintenance, and insurance of the Conservation Area associated with a proposed development. More specifically, this Final LSP:

- (a) Defines ownership and methods of land protection.
- (b) Establishes necessary regular and periodic operation and maintenance responsibilities.
- (c) Estimates staffing needs, insurance requirements, and other costs associated with plan implementation and defines the means for funding the same on an on-going basis. This includes land management fees necessary to fund monitoring and management of the Conservation Easement by the easement holder. The fees have been found reasonable by the proposed easement holder.
- (d) Addresses the requirements of the future Conservation Easement holder.

The following Land Stewardship Plan applies to the entire area contained within the Conservation Easement, unless otherwise stated. Mr. Marx intends to develop Lots 1 and 2, Block 1; and Lots 1 and 2, Block 2 at once. Lot 1, Block 3 is already developed. Lot 2, Block 3 will be developed at a later date. Block and lot designations are shown on the final plat attached as Exhibit C.

Restoration after Construction Related Activities

Construction activities in development of the private lots may temporarily impact portions of the Conservation Area. The following summary generally describes how the fee owner anticipates coordinating site development and restoration activities concurrently:

- The fee owner anticipates commencing road clearing in Fall 2017 and site development in late Winter - Spring 2018, weather permitting.
- Utilities may be constructed as part of the development of the residential lots. Any construction activities that damage a Conservation Area will be corrected to achieve conditions similar to those at the time of easement recording.

Disturbance of the conservation area during development will be limited to that necessary for construction and installation of the roads, driveways, and utilities and avoided or minimized to the greatest extent possible. Any disturbance will be corrected to achieve conditions that mimic the cover type and density of cover present at the time of easement recording.

The following sections address the City-required elements of the LSP.

EXISTING CONDITIONS

Compilation of Existing Data

The following existing data were compiled and reviewed to assess the natural, cultural, historic, and scenic character of the site and its surroundings:

- MnDNR Ecological Classification System
- MnDNR Minor Watershed boundaries
- Minnesota Pollution Control Agency (MPCA)-listed Impaired Waters
- Web Soil Survey (SSURGO Soil Survey data from USDA/NRCS)
- Original Vegetation of Minnesota (pre-European vegetation mapping by Marshner/MnDNR)
- MnDNR Rare Natural Features (from the Natural Heritage Information System, NHIS)
- MnDNR Native Plant Communities (NPC)
- MnDNR Sites of Biological Significance (SBS)
- Regionally Significant Ecological Areas (RSEA) – both original mapping and 2008 update
- MnDNR Regional Ecological Corridors – based on 2008 MLCCS data
- Metro Conservation Corridors
- Hennepin County Open Space Corridors and Priority Natural Resources Corridors
- Minnehaha Creek Watershed District (MCWD) wetland mapping
- MCWD Key Conservation Area mapping
- Restoration Prioritization and Prediction Model (RePP)
- Public conservation lands (e.g., public parks, Scientific and Natural Area (SNA), Wildlife Management Area (WMA))
- Historical and current aerial photographs (1937, 1957, 1960, 1962, 1967, 1969, 1971, 2000, 2015)
- Minnesota Land Cover Classification System (MLCCS) mapping (based on discrete datasets from 2001, 2005, and 2008)
- Wetlands (including delineated site wetlands, Hennepin County Wetland Inventory, and MCWD Functional Assessment of Wetlands (FAW))
- City of Medina Open Space Plan (2007)
- Site parcel boundaries
- Topographic contours (2-ft LiDAR data) and digital elevation model (DEM)
- Minnesota Historical Society database report

Field Reconnaissance

On December 5, 2016, Laura Domyancich (Minnehaha Creek Watershed District) conducted a field reconnaissance of the development area accompanied by David Thill of Hennepin County

Natural Resources, Michael Pressman of Conservation Solutions, and the property owner, Wally Marx. Existing conditions (including landforms, slopes, wetland boundaries, drainage patterns, erosion, etc.) were noted. In brief, the site is dominated by several small wetlands, moderate to high quality woodlands, restored prairie, and maintained formal gardens. Steep slopes were observed along the western edge of the site and in the northern portion of the site to the west of School Lake.

Findings

Ecological Context

According to Minnesota's Ecological Classification System, the site is located in Minnesota's Big Woods Subsection of the Minnesota & NE Iowa Morainal Section, of the Eastern Broadleaf Forest Province. The site is within the Long Lake Creek sub-watershed, which drains into Lake Minnetonka (several bays of which are listed by the MPCA as "impaired"), then into the Minnehaha Creek and eventually the Mississippi River. Moderate slopes (<18%) exist in the northern portion of the site. Site soils consist of a variety of upland and wetland (i.e., hydric) soils, ranging from well drained to very poorly drained. Pockets of poorly drained soil are mapped throughout the site and are associated with the wetland areas. Prior to European settlement, the majority of the site was dominated by Big Woods (e.g., oak, maple, basswood, hickory, elm). Some of this original land cover type remains on the site. The southwestern portion of the site contains a 6-acre tamarack swamp, fringed by 12-acres of black ash swamp. The other 6 acres of wetland on site are dominated by narrow-leaf cattail and reed canary grass. The northern and western portions of the site include nearly 22-acres of maple-basswood forest.

Regional Ecological Significance

Remnant tamarack and black ash swamps and maple-basswood forests have been noted on the site and create a resource corridor between Minnesota County Biological Survey-identified mesic oak forest and maple-basswood forest to the northeast and a large minerotrophic tamarack swamp complex to the south. A Hennepin County Environmental Services report identified a one-acre nearly pure silver maple stand, a 14-acre maple basswood remnant, and an 11-acre tamarack wetland complex. Conifer swamps are a sensitive wetland type, susceptible to degradation resulting from invasive species, stormwater runoff, and hydrologic alterations.

The property has been identified as a conservation priority in numerous plans and studies, including the following:

1. City of Medina Natural Resources Inventory: most of the property is identified as an Ecologically Significant Natural Area.
2. Medina Open Space Plan: property and its natural areas are called out as Priority Areas
3. Minnesota Department of Natural Resources Regionally Significant Terrestrial and Wetland Ecological Areas: property is part of a large complex identified as "Regionally

Significant” by the MN DNR. Along with Baker Park and areas to the immediate north, it is one of a few large terrestrial and wetland complexes remaining in Hennepin County.

4. Minnehaha Creek Watershed District Comprehensive Water Resources Management Plan: property is identified as part of a District Conservation Priority of the Long Lake Subwatershed Plan, which is part of an important conservation corridor extending to the Wolsfeld Woods Scientific and Natural Area.
5. Hennepin Environmental Services: property is part of a conceptual greenway corridor system proposed by Hennepin County in 2008.

The broader landscape includes a significant natural resource corridor that includes School Lake to the northeast and Baker Park Reserve to the west and southwest, and a larger tamarack swamp complex to the south.

Cultural/Historical/Scenic Significance

The Minnesota State Historic Preservation Office (SHPO) database search did not identify cultural/historical resources on the site. Currently, there is only one home on the site, the residence of the property owner at 2700 Parkview Drive. Approximately 8 acres of the property has been developed into extensive formal gardens maintained by the property owner. Prior to Mr. Marx purchasing the property, the northernmost parcel was the site of a hog farm, which caused significant soil disturbance. Mr. Marx has completed restoration of this area, which is now the site of an apple orchard and restored prairie.

Aerial Photograph Review

The earliest available aerial photograph of the site is from September 1937. The photo shows an area on the northern portion of the site in row crop agriculture. The wetland complex around Miller Lake at the southern extent of the property is a mix of herbaceous vegetation with presumably tamarack and black ash in the center. School Lake appears to have no open water. A photo from 1957 shows that the area was likely dredged to create open water. Between the aerial photo year of 1937 and 1960, the farm site on the northern portion of the site was established. A review of more recent aerial photos from the early 1960s indicates that portions of the site consisted of row crop agricultural fields until around 1960-1962. The tamarack swamp and several apparent lowlands and drainageways were not cultivated. A wetland in the center of the site appears to have been expanded and deepened around 1967 and again in 2000, but has begun to fill in with cattails over the last 17 years. The formal gardens were installed in the early 2000s.

Agricultural Records

Prior to the Marx’s purchase of the property in 1998-1999, the northern portions of the property served as a 400 animal hog farm, which caused significant soil disturbance, damage to School Lake’s vegetative buffer, and significant pollution to School Lake. In 2000, the Marx’s contracted with Ron Bowen, former president of Prairie Restorations, and restored approximately seven acres of prairie at a cost of \$20,000 plus annual maintenance. There is also a 130-tree apple orchard the Marx’s planted on the northern end of the property.

In 2000, Mr. Marx put the entire 43 acre north parcel into the status of Agricultural Preserve. The initial mandatory term was eight years, and Mr. Marx renewed its status for an additional eight years that expired in 2016. During that time Mr. Marx continued to improve the quality of the land by extensive cleaning up debris from the previous forty-five years of animal farming, quality planting and maintenance. The land produced forage and crops of apples.

Land Cover & Wetlands

The Minnesota Land Cover Classification System (MLCCS) was developed in the late 1990s but was not released until approximately 2001. The City of Medina was one of the first areas mapped as part of the pilot program, with MLCCS field work conducted in 1999 and updated in 2008. This land cover mapping identified existing site features such as the maple-basswood forest dominating the western portion of the site, the tamarack and black ash swamp in the south, box elder-green ash forest, areas of seasonally and permanently flooded non-native dominated emergent vegetation, palustrine open water, and mesic prairie. This mapping is reflective of the site's current land cover classifications.

In 2016, an approved wetland delineation of the entire site identified 9 wetlands totaling 41.58 acres. Of this wetland area, the tamarack swamp, the surrounding black ash and willow swamp, and the temporarily flooded emergent wetlands containing hybrid and narrow-leaf cattail and reed canary grass combine for 15.75 acres total. All of these wetlands are in the southern portion of the site. Another 14.13 acres of wetland are adjacent to School Lake. Several smaller wetlands were delineated in the eastern portion of the site, south of School Lake.

The remaining acreage of the property includes 15.05 acres of steep slopes or non-buildable land and 28.76 acres of buildable land, 11.77 acres of which will be placed in conservation easement. In total, 67.9 acres of natural resource lands will be placed in conservation easement (75.65% of the entire property).

CONSERVATION DESIGN OF SCHOOL LAKE PRESERVE

Development Layout

The conservation design approach described in the Introduction was applied to the Marx site. The development team (including Mark Gronberg, Michael Pressman, Kent Williams, and Wally Marx) worked together to identify and respond to the site's unique attributes and sensitive natural features. Primary and secondary Conservation Areas were identified along with appropriate ecological buffers, and ecological corridors/connections. These Conservation Areas were avoided to the extent feasible when siting roads and residential lots, and they have been thoughtfully integrated into the development's design, establishing a connected network of predominantly native landscapes. Buffer averaging to allow minor impacts to buffers of low quality, small wetlands were favored over disturbance to high quality oak stands, a forest condition that is not quickly or easily replicated.

The Marx site design also followed the Better Site Design/Low Impact Development (LID) practices of the Minnesota Stormwater Manual from the Minnesota Pollution Control Agency

(MPCA). The Marx conservation development design incorporated all of the MPCA's "better site design techniques" listed below, except where noted:

- Preserve natural areas
- Natural area conservation
- Site reforestation
- Wetland and shoreline buffers
- Open space design
- Disconnect and distribute runoff
- Soil compost amendments (these may be incorporated into final design of stormwater management elements)
- Disconnect surface impervious cover
- Grass channels
- Stormwater landscaping
- Narrower roadways where possible
- Reduce impervious cover in site design
- Narrower sidewalks (no sidewalks are proposed; all trails will be natural surface)

Construction of the driveways and home areas of the proposed conservation development plan will remove 27 "significant trees" (as defined by the City of Medina's tree preservation ordinance) out of an estimated 4,136 "significant trees" on the property. Additional limited tree clearing is provided for below pursuant to the below section entitled Land Protection Methods and Schedule, to allow views of the lake from the homes while keeping the shoreline integrity and providing visual screening of the homes from other parts of School Lake. The plan strives to preserve and buffer the existing maple-basswood forest at the west edge of the site. Development is clustered on the perimeter of the property away from the sensitive ecological features of the tamarack and black ash swamps.

Grading and Ecological Stormwater Management

Site grading and disturbance has been minimized to the extent feasible, retaining natural drainage patterns. The design team has capitalized on opportunities for ecological stormwater management in order to minimize runoff.

Because of the siting of homes on Block 1, Lots 1&2 on the plateau off of County Road 201, any impact of stormwater drainage from that which currently exists should be minimal. Also, due to the small size of the building lots, and given their locations, any impact of stormwater drainage from that which currently exists should also be minimal. Necessary stormwater management will be addressed through stormwater ponds, rain gardens, and infiltration or filtration areas.

Cultural Amenities & Access

As noted in the walking trail easement exhibit attached as Exhibit D, a public access trail is proposed to be built, and an easement granted to the City for walking use only, with an entrance just north of the existing Marx driveway near the Old Growth Woods, heading east-northeast along the driveway and then northeast into Outlot C and heading on toward School Lake, circling in a loop, and then connecting back to the original trail. The City currently intends to secure the easement for this access but not develop it until a later date. The public access trail shall be configured so that it does not interfere with the existing private horse trail. In addition, the City shall be granted a general east-west easement for a second public access trail shown on Exhibit D which will link trails to the east and west, with one possible route indicated on Exhibit D.

An existing private horse trail will be retained for private use and dedicated to a third party via a private easement for access and maintenance. The current trail alignment extends through the property along the shoreline of School Lake and continues around the lake through neighboring properties. This alignment is shown on Exhibit D.

The site has very little frontage on the adjacent scenic roadway to the west (Parkview Drive), and is not highly visible from adjacent properties. Planned lots have been positioned to provide screening between homes on the site and existing homes on Parkview Drive and on School Lake. The site does contain significant topographic changes, given the slopes above School Lake and on the western edge of the site. Siting and existing tree cover on the property will make structures, at most, only intermittently visible from the surroundings.

OWNERSHIP, CONSERVATION OBJECTIVES & LAND PROTECTION

Marx Property Land Allocation

The Marx Property Final Plat, attached as Exhibit C, addresses an 89.75-acre Conservation Design Subdivision. The proposed development plan calls for Development Areas including the private lots and roadways and Conservation Areas, as illustrated in Figure 1 below.

Figure 1. School Lake Preserve Land Allocation



Development Area

Areas not included in the Land Stewardship Plan

The Marx Property’s approximately 21.85 acres of Development Area includes roads, rights-of-way (ROW), and private lots. Mr. Marx shall retain ownership of all private roads with necessary rights-of-way provided to the homeowners, the District, and the City, as appropriate. Private lots will be owned and maintained by Mr. Marx until the lots are purchased by homeowners.

City Park Land Dedication

The City will be granted easements to construct and maintain two pedestrian public trails within the Conservation Area and the corresponding acreage is included within the Conservation Area identified in Figure C. Acreage associated with public and semi-private trails are as follows:

Semi-Private Horse Trail	= 2050 LF x 8 FT	= 16,400 SF
Public Walking Trail	= 1460 LF x 24 FT	= 35,040 SF
Public East-West Trail	= 2220 LF x 24 FT	= 53,280 SF
Total Trail Area within Conservation Area		= 104,720 SF = 2.40 Acres

Conservation Area

The City of Medina defines **Conservation Area** as:

Designated land within a Conservation Design Subdivision that contributes towards achievement of one or more of the conservation objectives. A Conservation Easement is placed on Conservation Areas to permanently restrict the Conservation Area from future development. Conservation Areas may be used for preservation of ecological resources, habitat corridors, passive recreation, and for pasture, hay cropping and other low impact agricultural uses.

And, the City of Medina defines **Conservation Easement** as:

As defined in Minnesota Statutes, Chapter 84C: A nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

The approximately 67.9 acres of Conservation Area (CA) in the subdivision will be protected under a Conservation Easement that will be held by the Minnehaha Creek Watershed District (MCWD), with individual lot owners retaining underlying fee ownership of specific outlots in the CA. This area is discussed below in terms of ownership, objectives, proposed restoration/enhancement, land protection methods, scheduling, funding, and enforcement.

Ownership & Objectives

The Conservation Areas will be transferred to future lot owners as individual outlots with conservation easements. The boundaries of these areas will be marked clearly in the field with permanent MCWD conservation easement signage. Adjoining easement outlots will be marked with permanent MCWD conservation easement signage along their shared boundaries. The overarching objective for the CA is to retain or improve the existing natural resource values and ecosystem functions of these areas.

Land Protection Methods & Schedule

The conservation easement (“Easement”) protects the CA. The MCWD is the Easement holder. The MCWD, at its own cost, will inspect the CA at least annually for compliance. Fee owners will be responsible for the reasonable cost of additional MCWD inspection activity prompted by compliance issues.

The Easement includes a Property Report, which documents CA conditions at the time of Easement recording. The MCWD will document conditions observed during annual inspections such as natural disturbance, spread of invasive species, and areas of erosion, and will detail both required and recommended corrections. The MCWD will provide, at least, an annual inspection report to the fee owners.

Fee owner disturbance of the CA is as allowed by the Easement in specific, limited circumstances. A fee owner must restore any area of disturbance by decompacting and/or amending soils to restore prior soil structure and seeding with an appropriate seed mix (Exhibit A) to reproduce preexisting cover type and density. A fee owner will maintain seeded area with mowing during the first growing season, early and late season mowing with targeted spot herbicide applications during the second growing season, and targeted spot herbicide applications during the third growing season. All fee owner actions under this paragraph are at the fee owner’s cost.

In addition to disturbance allowed under the Easement, in conjunction with initial house construction, the fee owners of Block 1, Lots 1 and 2 and Block 2, Lots 1 and 2 may remove trees in accordance with a tree removal and site stabilization plan approved by the MCWD and in accordance with the City of Medina Tree Management Code. The purpose of tree removal is to provide for a reasonable lake view from the house and lake access, while preserving as much of the existing extent of naturalized shoreline view from the lake as possible. The fee owner will timely contact the MCWD during house design for an on-site meeting to develop this plan. The plan will conform to the constraints contained in the following table. The MCWD may prescribe such other reasonable conditions to protect slope and riparian edge stability, water quality buffering function, and riparian habitat.

Tree Type	Allowable Actions	Replacement Required
Invasive Species (buckthorn, Japanese honeysuckle)	Remove all anywhere on the property. Treat cut stumps with herbicide.	No, unless threat of erosion is present.
Saplings under 4” DBH	Ongoing removal as necessary to maintain lake views. Treat cut stumps with herbicide.	No, unless threat of erosion is present.
Trees between 4” DBH and 8” DBH	Remove up to 10% per outlot to provide lake view and access. Treat cut stumps with herbicide.	No, unless threat of erosion is present.
Trees over 8” DBH	Remove up to 5% per outlot to provide lake view and access. Treat cut stumps with herbicide.	Yes, elsewhere in the shoreline area. Replacement trees to be of at least #10 pot size.

After initial removal, non-lethal trimming of remaining trees and removal of new tree growth are permitted to maintain the established view and access.

Docks and aquatic vegetation management will be allowed subject to City and State regulations and permitting requirements. If needed to provide lake access, a single mowed path shall be established through the conservation area to each dock that shall not exceed 8 feet in width at any point and shall not exceed 4 feet in width at any point in the wetland buffer. The mowed paths are allowed to provide direct access to School Lake from Lot 1, Block 1, Lot 2, Block 1, Lot 1, Block 2, and Lot 2, Block 2 only.

Perpetual Management

This section describes CA management by fee owners after initial construction and restoration. Perpetual management is essential to maintain the composition, structure, and function of healthy ecosystems throughout the CA. The guiding principle in response to alterations due to natural events is not to restore to the initial condition but to maintain the CA in a condition that preserves a healthy ecological condition consistent with the Conservation Values but reflecting natural adaptation. Perpetual management activities will include:

- Areas of significant erosion causing or that may cause soil loss, vegetation loss, destabilized slopes, water quality issues, or soil movement will be stabilized. The following table identifies favored corrective approaches.

Erosion Type	Potential Corrections
Sheet erosion on relatively flat area	Erosion control blanket, seed, hydroseed, silt socks
Rill erosion on flat or sloped area	Bio-rolls or coir logs, check dams, planting by seed, hydroseed, potted plants, live stakes
Slope erosion	Erosion control blanket or coir blanket, planting by seed, plants, live stakes
Shoreline erosion	Bio-rolls or coir logs, planting by potted plants, live stakes

- Blowdown or windthrow in woodland areas is to be evaluated based on the specific area, extent, and density of downed trees and the conservation values of the affected area. Retention of dead, dying, and downed trees and limbs provide important habitat features and coarse woody debris that is essential to the health of forest ecosystems. Allowing deadwood to accumulate with the forested areas supports floral and faunal habitat, water retention, and nutrient cycling. Downed trees will be removed if they pose a safety risk. Woodland areas will be inspected to determine need for removal for fire prevention and need for restoration. Additional selected removal of downed trees and limbs will be approved on a case-by-case basis.

- Areas with vegetation loss due to wildfire will be evaluated for regeneration potential and need for remediation. Woodland areas with dense shade and steep slopes will be re-seeded with appropriate seed mixes (see Exhibit A) and protected with erosion control materials.
- Restored prairie as delineated on Exhibit B: annual control of herbaceous invasive vegetation with mowing and spot herbicide treatments, prescribed burning, or haying.
- Woodlands as delineated on Exhibit B: targeted management of woodland areas where invasive woody plants have been previously managed as of the date of the easement; control of woody invasive plants by cutting and herbicide treatments in these specific areas.
- Woodlands and wetlands: remedial or enhancement seeding or planting in areas where invasive plants have previously been controlled as of the date of the easement as delineated on Exhibit E. Remedial or enhancement plantings along the School Lake shoreline where less desirable trees and shrubs are thinned.
- Wetland buffers: annual control of herbaceous invasive vegetation with spot mowing and spot herbicide treatments within wetland buffers as delineated on Exhibit E. Remedial planting where invasive removal has created bare areas greater than 10 square feet. Wetland buffer signage shall be installed consistent with MCWD wetland buffer rules. This is in addition to the conservation easement area signage to be installed by MCWD.
- Monitoring and reporting: landowner(s) or their ecologists and land management contractors to supply management activity reports to easement holder.

Covenants associated with the development provide for the collection of annual dues and assessments for conservation maintenance. By June 15 of each year, the MCWD will provide the HOA with a report that, on the basis of MCWD inspection, describes annual HOA management pursuant to this section. By July 30, the HOA will supply a proposed work scope for MCWD concurrence, which the MCWD will not unreasonably withhold. The MCWD will advise the HOA on its concurrence within 14 business days of receipt. The cost of the proposed scope of work shall not exceed the total amount of dues collected under the HOA's general assessment authority for the year in which the proposed scope of work is provided. If work under an approved scope has not been completed by September 20, the MCWD may request that the City assess the scope cost as provided in the Easement, may retain a contractor to perform the work at an appropriate time, and may receive the assessed funds from the City. If the fee owners have not established one or more approved scopes encompassing the entire CA, the MCWD may retain a contractor to perform a scope for the entire CA based on its report and may request that the City assess the reasonable cost of that scope.

Land Protection Enforcement

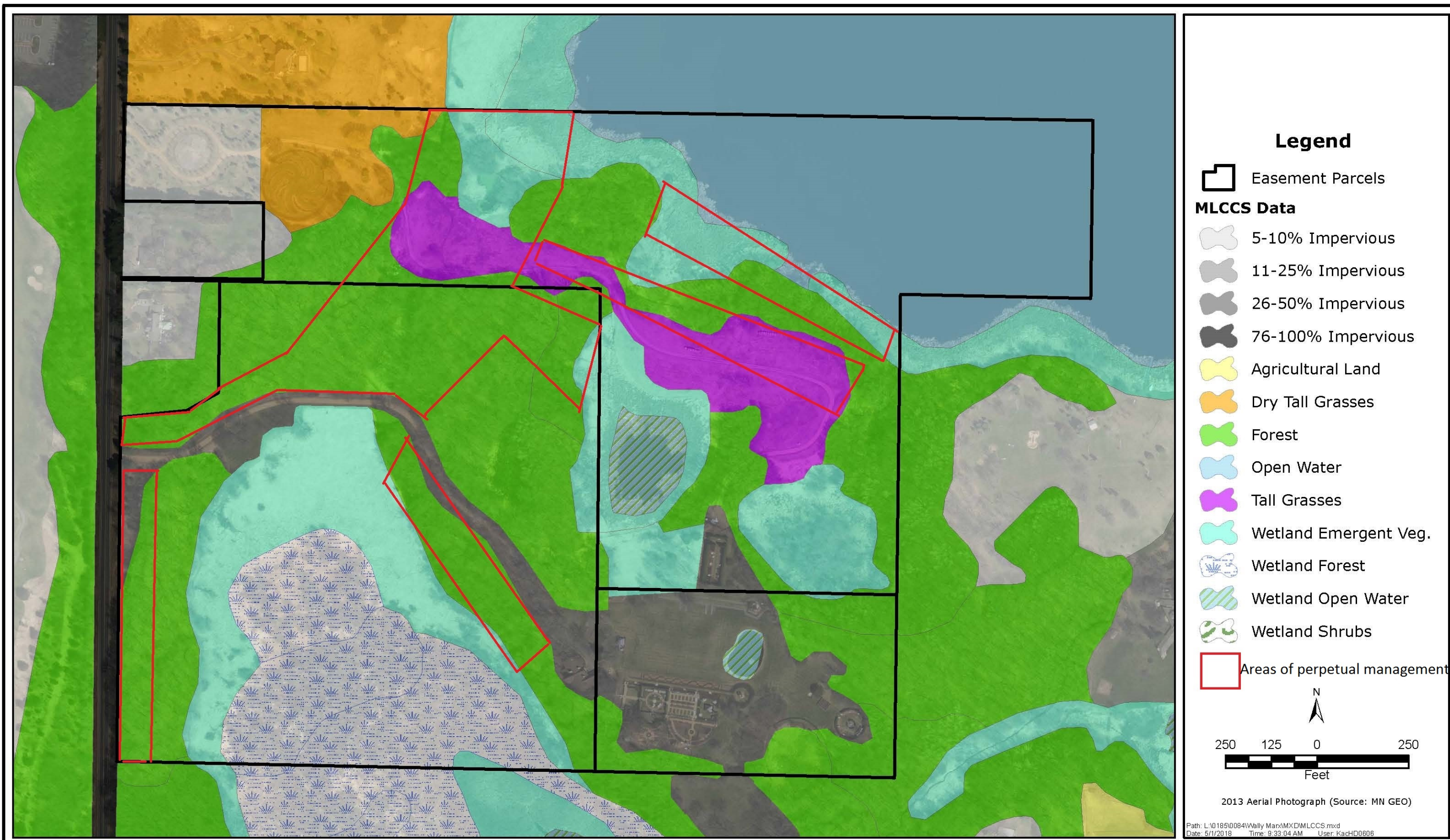
Because the CA will be protected by the Easement, the MCWD will monitor conformance to the Easement and inform the HOA of all violations and any required actions to resolve any issues. If, after being so informed, the fee owner fails to conform to the Easement within a reasonable period of time, the City or the MCWD, independently or together, may serve written notice on the fee owner stating the alleged violation, the corrections required and a reasonable time within which the corrections shall be made. If the fee owner fails to comply within the time specified, or such other time as the MCWD, City and fee owner may agree, the City and/or the MCWD may enter the premises and take corrective action as needed to attain compliance. The reasonable costs of enforcement and corrective action by the City and the MCWD, including reasonable attorney costs, may be assessed against the residential property associated with the compliance issue in accordance with the Easement. Any assessment (including any portion of an assessment) made hereunder may be challenged in a legal action, with the attorney's fees and costs of such challenge to be awarded to the prevailing party.

CONCLUSION

The proposed School Lake Nature Preserve complies with the City of Medina's Conservation Design District requirements and will serve as a model for future conservation developments in the City and region. The implementation and perpetual management of the project—as protected by the MCWD-held Conservation Easement—will result in a high quality development in which thoughtfully-planned home sites and enhanced ecological functions all work together and create a beautiful, livable place.

Exhibit A. Approved seed mixes for site restoration.

Soil or cover type	Seed Mix	BWSR Designation
Stormwater feature/infiltration	Dry Swale / Pond	33-262
Wetland restoration post-herbicide	Wetland Rehabilitation	34-171
Herbaceous wetland w/ intact native vegetation	Emergent Wetland	34-181
Wetland with tree and shrub cover	Riparian South & West	34-261
Wet prairie	Wet Prairie	34-262
Upland prairie	Dry Prairie	35-221 or 35-621
Mesic prairie	Mesic Prairie General	35-241
Woodland edge	Woodland Edge South & West	36-211



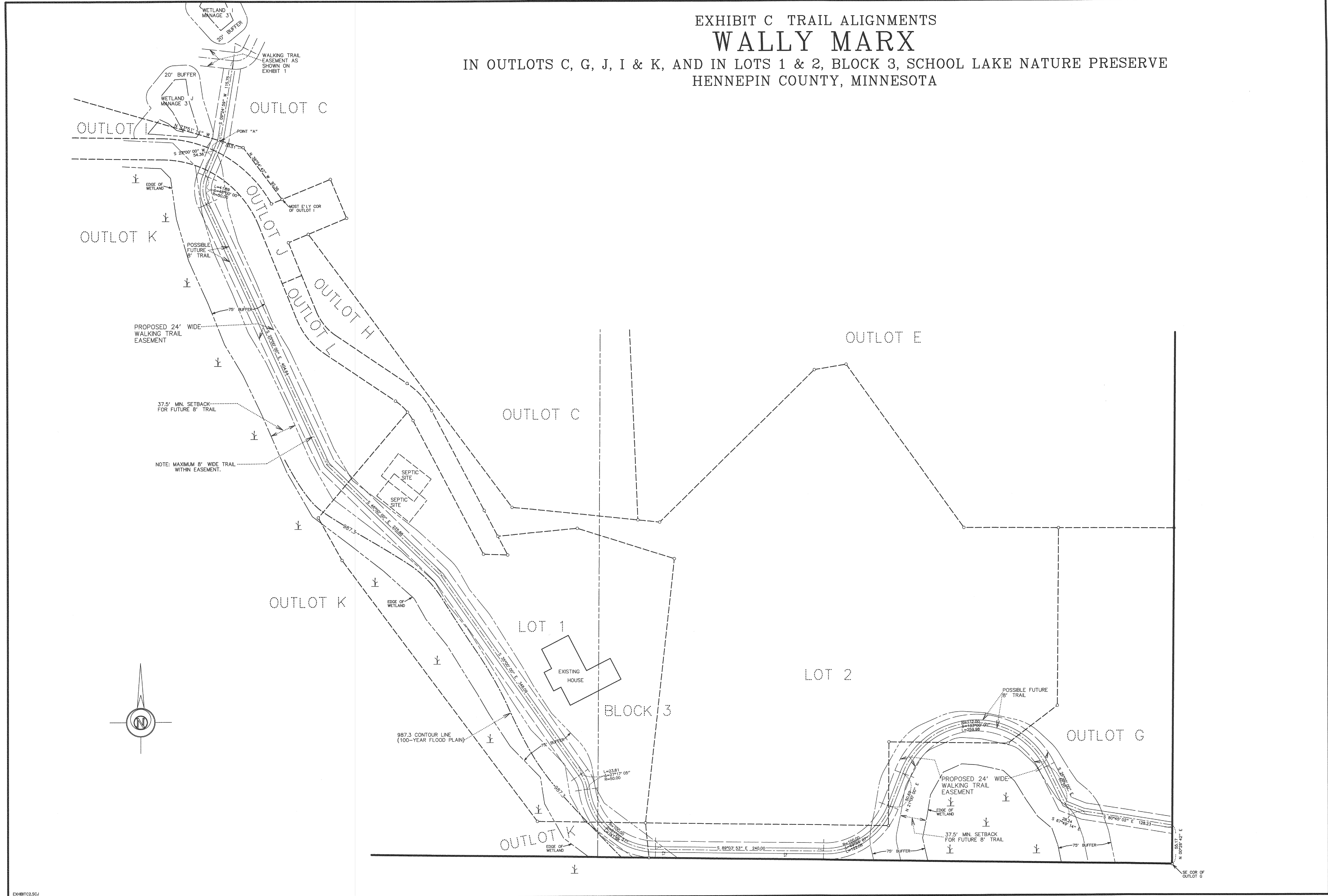
MINNEHAHA CREEK WATERSHED DISTRICT

Wally Marx



MAY 2018

EXHIBIT C TRAIL ALIGNMENTS
WALLY MARX
 IN OUTLOTS C, G, J, I & K, AND IN LOTS 1 & 2, BLOCK 3, SCHOOL LAKE NATURE PRESERVE
 HENNEPIN COUNTY, MINNESOTA



DATE	REMARKS
1-24-18	EDGE OF WETLANDS & 75' WETLAND BUFFER ADDED; PROPOSED TRAIL ADJUSTED TO BE AT LEAST 30' FROM
2-25-18	EDGE OF WETLAND
5-1-18	FUTURE BLACKTOP TRAIL; ADDITIONAL BUFFER SHOWN
	EXHIBIT C TRAIL ALIGNMENTS

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 S. Gronberg
 Mark S. Gronberg Minnesota License Number 12755

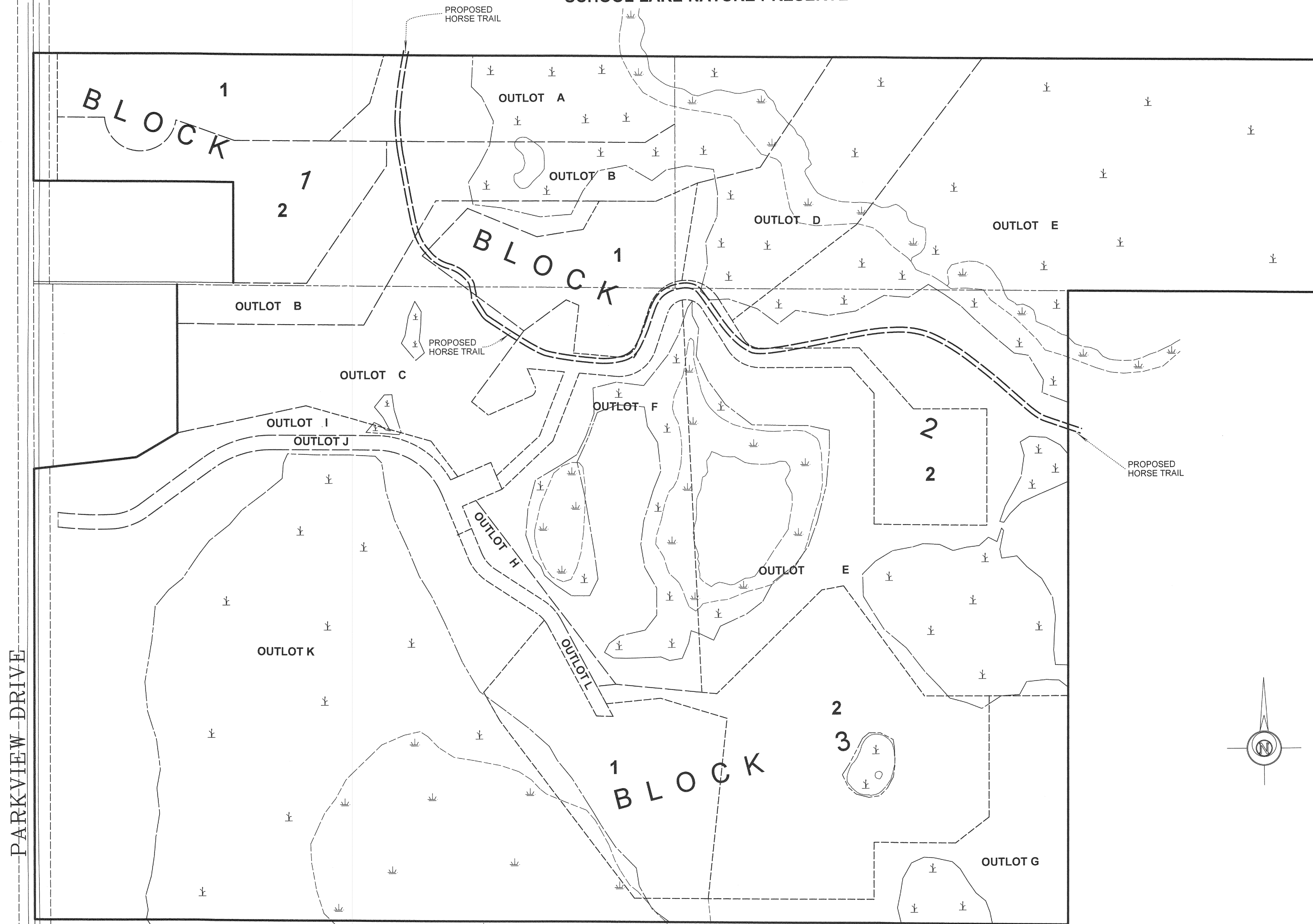
PROJECT

DATE
 12-15-17
 SCALE
 1"=60'
 JOB NO.
 17-238

GRONBERG & ASSOCIATES, INC.
 CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS
 445 NORTH WILLOW DRIVE LONG LAKE, MN 55356
 952-473-4141

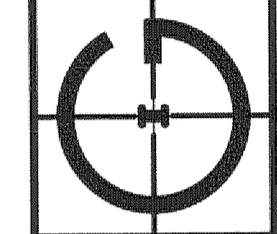
Exhibit D: Trail Easements

EXHIBIT C HORSE TRAIL ALIGNMENT
SCHOOL LAKE NATURE PRESERVE



PARKVIEW DRIVE

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



8-5-16
1"=100'
17-238

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND I AM A LICENSED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.
Michael J. Gronberg
DATE: 5-4-18

DATE	REVISIONS	REMARKS
7-26-12		
10-12-16		
10-27-16		
12-1-18		
12-8-18		
5-8-17		
6-15-17		
8-3-17		
12-5-17		

DESIGNED: []
DRAWN: []
CHECKED: []
DATE: 5-4-18
LOT DIMENSIONS, EAST-WEST TRAIL EASEMENT REVISIONS
LOT 4 MOVED EAST
50' R.O.W. PARKVIEW
EXHIBIT C, HORSE TRAIL ALIGNMENT

