



PERMIT REPORT

To: Board of Managers

From: Elizabeth Showalter, Permitting Technician

Date: July 9, 2018

Re: Permit 18-273: Topside Subdivision (825 Old Crystal Bay Road, Orono)

Summary:

Judson Dayton (Applicant) has applied for a Minnehaha Creek Watershed District permit under the Stormwater Management, Erosion Control, Wetland Protection, and Variance and Exception rules for a subdivision of three existing lots into four lots and the construction of one new home. The Applicant has applied for a variance from the minimum buffer width requirement when employing buffer averaging to retain an existing driveway between two wetlands. The Applicant proposes to provide additional buffer on a portion of the wetland and other wetlands on the site where buffer would not otherwise be required. The Board of Managers is asked to consider the variance, and delegate the authority to issue permits under the remaining rules to Staff.

Background:

The Applicant owned three adjacent parcels with the address 825 Old Crystal Bay Road in Orono. The Applicant recently completed a lot line rearrangement for the two internal lot lines to bring two narrow parcels into conformance with the minimum lot width requirements, which was filed with Hennepin County on February 22, 2018. Two lots were sold after the rearrangement was completed. The Applicant is currently pursuing a subdivision of the remaining large parcel into two parcels. The definitions adopted by the MCWD Board of Managers define parcel or site as a contiguous area of land under common ownership, designated and described in official public records and separated from other lands. Under the common scheme of development framework of the Stormwater Management Rule states that, “activity subject to this rule on adjacent sites under common or related ownership shall be considered in aggregate, and the requirements applicable to the activity under this rule will be determine with respect to all development that has occurred on a site, or on adjacent sites under common or related ownership, since the date this rule took effect (January 2005).” The subdivision and adjustment of lot lines for the creation of four distinct parcels from the existing three lots, therefore triggers the District’s Stormwater Management Rule.

The Applicant has submitted an application and a stormwater management plan for the two north parcels, which are currently the subject of a subdivision application. As the development of the

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southern two parcels is uncertain at this time and the applicant sold those parcels prior to application, this application review is only pertinent to the northern two parcels. Homes built on the southern parcels will be subject to regulation under the Stormwater Management and Erosion Control rules

District Rule Analysis:

Erosion Control Rule

The District's Erosion Control Rule is applied when a project proposes 5,000 square feet of disturbance or 50 cubic yards of fill, excavation, or stockpiling on-site. The Applicant is proposing 2.5 acres of disturbance, therefore the rule is triggered. The Applicant has submitted an erosion control plan which provides best management practices to achieve erosion and sediment control including a rock construction entrance, silt fence and inlet protection where necessary. A vegetative stabilization plan including the incorporation of six-inches of topsoil into underlying soils prior to final stabilization has also been provided. The Project's concrete washout will be contained on a truck. A Minnesota Pollution Control Agency National Discharge Elimination System (NPDES)/State Disposal System (SDS) stormwater permit for construction activity will be obtained by the Applicant prior to the start of construction; provision of this information will be condition of staff approval of the permit.

Stormwater Management Rule

The Stormwater Management Rule is applied when a project proposes to subdivide a parcel one acre or large into three or more lots. Since the Applicant is proposing the subdivision of three lots into four lots and one outlot, the rule is triggered. The Applicant is proposing an increase in impervious surface greater than 50%, therefore the existing and proposed impervious area must be treated for phosphorus, rate, and volume control. The Applicant has submitted a stormwater management plan which is not currently complete. Staff will continue to work with the Applicant to complete the application and approve the permit for the development if the plan is in conformance with the District rules and the variance is approved by the Board.

Wetland Protection Rule

The buffer provision of the Wetland Protection Rule is applied to Projects that propose development triggering the Stormwater Management Rule and wetlands are located on the property. The rule requires that buffers must be provided downgradient of disturbance. The stormwater management rule is triggered and there are three wetlands on the property downgradient of proposed disturbance, therefore buffers must be provided. The northern edge of Wetland 1 is downgradient of disturbance related to the construction of a wider main driveway. All of Wetland 3, aside from the southern edge, is down gradient of a proposed new driveway to the proposed home. A small portion of Wetland 2 on the northeast corner is down gradient of the proposed new driveway to the existing home (see Attachment 6). The Applicant has provided the required buffer width on Wetland 1 and Wetland 3. The buffer on Wetland 2 is the subject of the variance.

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Wetland	Base Buffer Width	Minimum buffer width provided
Wetland 1	20 feet	20 feet
Wetland 2	30 feet	8 feet
Wetland 3	30 feet	30 feet

Variance

The District's Variance and Exception Rule states that the Managers may grant a variance from a provision of the rules if the applicant demonstrates the following:

- Because of special conditions inherent to the property that do not apply generally to other land or structures in the District, strict compliance with a provision of the a District rule will cause undue hardship to the applicant;
- The hardship was not created by the applicant, its owner or representative, or a contractor. Economic hardship is not grounds for issuing a variance;
- Granting the variance will not serve merely as a convenience to the applicant;
- There is no feasible and prudent alternative to the proposed activity requiring the variance; and
- Granting the variance will not impair or be contrary to the intent of the rules.

The District allows for Buffer Averaging to meet the required area of buffer width given that the minimum width is at least 50% of the base buffer width and the maximum does not exceed 200% of the base buffer width. The Applicant has requested a variance from the minimum buffer width requirement on Wetland 2 (15 feet) to allow for an existing drive to remain in place which is located 8 feet from the edge of the wetland and is down gradient of disturbance.

The proximity of the driveway to the wetland is a special condition inherent to the property. The District has no record of permitting for the construction of the home in 1995, but at that time, buffers would not have been required. Strict compliance with the rule would require relocation of the driveway, which the Board has previously found to not be a reasonable expectation.

To demonstrate granting the variance would not be contrary to the intent of the rule, the Applicant has provided additional buffer area to exceed the total buffer area required by the rule to provide additional water quality and habitat benefits intended by the rule. To mitigate for the failure to meet the 15 foot minimum buffer width requirement for the portion of Wetland 2 that is downgradient of disturbance, the Applicant has proposed to add additional buffer area surrounding the wetland ranging from 15 to 30 feet as allowed by the location of the current drive and house. The Applicant has also provided additional buffer on the northern side of Wetland 3, which is connected via culvert to Wetland 2. The Applicant has also provided buffer on the entirety of Wetland 1. The proposed plan provides greater buffer area than strict compliance with the rule. The additional buffer area on Wetland 2 and Wetland 3 will provide additional filtration of runoff from proposed and existing hard surfaces.

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Staff concurs in the factual statements and technical justifications stated above and in the variance application. Accordingly, staff finds there is an adequate technical basis and justification to grant the requested variance.

Conclusion:

Judson Dayton has applied for an MCWD permit for Erosion Control, Wetland Protection, and Stormwater Management and applied for a variance from the minimum buffer width requirement of the Wetland Protection rule for Wetland 2. The permit application is currently incomplete. If the Board of Managers grants the variance, staff recommends delegation of final permitting authority to staff to allow staff to continue to work with the Applicant to satisfy the requirements of the Stormwater Management Rule.

Attachments:

1. Application Form
2. Variance Request
3. Grading Plan
4. Stormwater Pollution Prevention Plan
5. Driveway Plan
6. Wetland Buffer Exhibit

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WATER RESOURCE PERMIT APPLICATION FORM

Use this form to notify/apply to the Minnehaha Creek Watershed District (MCWD) of a proposed project or work which may fall within their jurisdiction. Fill out this form completely and submit with your site plan, maps, etc. to the MCWD at:
15320 Minnetonka Blvd. Minnetonka, MN 55345.

Keep a copy for your records.

YOU MUST OBTAIN ALL REQUIRED AUTHORIZATIONS BEFORE BEGINNING WORK.

1. Name of each property owner: JUDSON DAYTON
Mailing Address: 825 OLD CRYSTAL BAY RD. S. City: ORONO State: MN Zip: 55391
Email Address: judsondayton@mac.com Phone: 612-867-4427 Fax: _____

2. Property Owner Representative Information (not required) (licensed contractor, architect, engineer, etc...)
Business Name: GRONBERG + ASSOCIATES, INC. Representative Name: MARK GRONBERG
Business Address: 445 N. WILLOW DRIVE City: LONG LAKE State: MN Zip: 55356
Email Address: markg@gronbergassoc.com Phone: 952-473-4141 Fax: 952-473-4435

3. Project Address: 825 OLD CRYSTAL BAY ROAD S. City: ORONO
State: MN Zip: 55391 Qtr Section(s): SW Section(s): 9 Township(s): 117 Range(s): 23
Lot: IN LOT 35 Block: - Subdivision: AHD. 548. NO. 230 PID: 09-117-23-21-0001

4. Size of project parcel (square feet or acres): 20.58 ± AC.
Area of disturbance (square feet): 109,000 ± SF (2.5 AC) Volume of excavation/fill (cubic yards): 15,000 ± CY
Area of existing impervious surface: 1.24 ± AC. Area of proposed impervious surface: 1.98 ± AC.
Length of shoreline affected (feet): N/A Waterbody (& bay if applicable): LAKE MTKA. (MAXWELLS BAY)

5. Type of permit being applied for (Check all that apply):

<input checked="" type="checkbox"/> EROSION CONTROL	<input type="checkbox"/> WATERBODY CROSSINGS/STRUCTURES
<input type="checkbox"/> FLOODPLAIN ALTERATION	<input checked="" type="checkbox"/> STORMWATER MANAGEMENT
<input type="checkbox"/> WETLAND PROTECTION	<input type="checkbox"/> APPROPRIATIONS
<input type="checkbox"/> DREDGING	<input type="checkbox"/> ILLICIT DISCHARGE
<input type="checkbox"/> SHORELINE/STREAMBANK STABILIZATION	

6. Project purpose (Check all that apply):

<input type="checkbox"/> SINGLE FAMILY HOME	<input type="checkbox"/> MULTI FAMILY RESIDENTIAL (apartments)
<input checked="" type="checkbox"/> ROAD CONSTRUCTION	<input type="checkbox"/> COMMERCIAL or INSTITUTIONAL
<input type="checkbox"/> UTILITIES	<input checked="" type="checkbox"/> SUBDIVISIONS (include number of lots) <u>2</u>
<input type="checkbox"/> DREDGING	<input type="checkbox"/> LANDSCAPING (pools, berms, etc.)
<input type="checkbox"/> SHORELINE/STREAMBANK STABILIZATION	<input type="checkbox"/> OTHER (DESCRIBE):

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

8. Waterbody receiving runoff from site: LAKE MINNETONKA

9. Project Timeline: Start Date: SPRING 2018 Completion Date: FALL 2018

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

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

Judson M. Dayton _____ 4/25/18 _____
Signature of Each Property Owner Date

**Request for Variance
And
Statement of Hardship**

The Board of Managers may hear requests for variances from the literal provisions of these rules in instances where their strict enforcement would cause undue hardship because of circumstances unique to the property under consideration. The Board of Managers may grant variances where it is demonstrated that such action will be keeping with the spirit and intent of these rules. An applicant granted a variance from full compliance with a requirement of the rules would be required to meet the requirement to the degree feasible short of full compliance.

In order to grant a variance, the Board of Managers shall determine that:

- the special conditions which apply to the structure or land in question do not apply generally to other land or structures in the District
- the granting of such variance will not merely serve as a convenience to the applicant.
- the variance will not impair or be contrary to the intent of these rules.

A hardship cannot be created by the landowner, the landowner's agent or representative, or a contractor, and must be unique to the property. Economic hardship are not grounds for issuing a variance.

A variance shall become void one year after it is granted if not used.

A violation of any condition set forth in a variance shall be a violation of the District rules and shall automatically terminate the variance.

Date **5-29-18**

Permit #

Applicant **Judson Dayton**

Address **825 Old Crystal Bay Road S., Orono, MN 55391**

Telephone number **612-867-4427**

Property ID number **09-117-23-21-0001**

MCWD Rule (circle applicable rule(s)): **A B C D E F G J K M N**
WETLAND BUFFER MINIMUM WIDTH

Description of project:

A 2⁺ subdivision on 21 acres.

Requirements of rule(s)

Minimum buffer width of 50% required buffer.

Requested Variance

To be less than 50% in one area where his existing driveway exists.

Statement of Hardship (include any mitigating circumstances).

The existing driveway has been in use for a long time. The wetland 2 that is adjacent to the driveway is actually a man-made pond and has a fountain in it. There is also a well that is used to pump water into this pond in order to maintain water levels. The existing driveway is needed to reach the nearby house and barn to the east. Also, wetland 2 is not a good wetland habitat for the following reasons:

1. Too much runoff from surrounding landscape through a manicured lawn enters the pond at regular intervals causing pollution.
2. There are no other ponds or terrestrial native grass habitats adjacent in the area to create a landscape habitat link desired by amphibians.
3. The pond is designed to drop off quickly and does not have broad shallow margins preferred by amphibians.
4. Long grass adjacent to the pond in the form of a adequate buffer are absent which would be preferred by amphibian species.

5. Shading of the pond by the tree cover nearby reduces photosynthesis and aquatic plant growth for egg laying amphibian species.
6. Pond has leaf detritus but little aquatic plant growth.
7. Pond has no dead logs used by amphibians to sun bask on.
8. Pond has heavy clay soils dominating the shoal water soil area which would be better for amphibians with an organic soil component.
9. This pond appears to be a water holding constructed pond which did not consider amphibian habitat in its design.

The hardship was not created by the landowner and is not merely serving as a convenience. The driveway has been used predating the wetland buffer requirements. The hardship was not created by the landowner.

How do you propose to meet the requirements of the applicable MCWD rules?

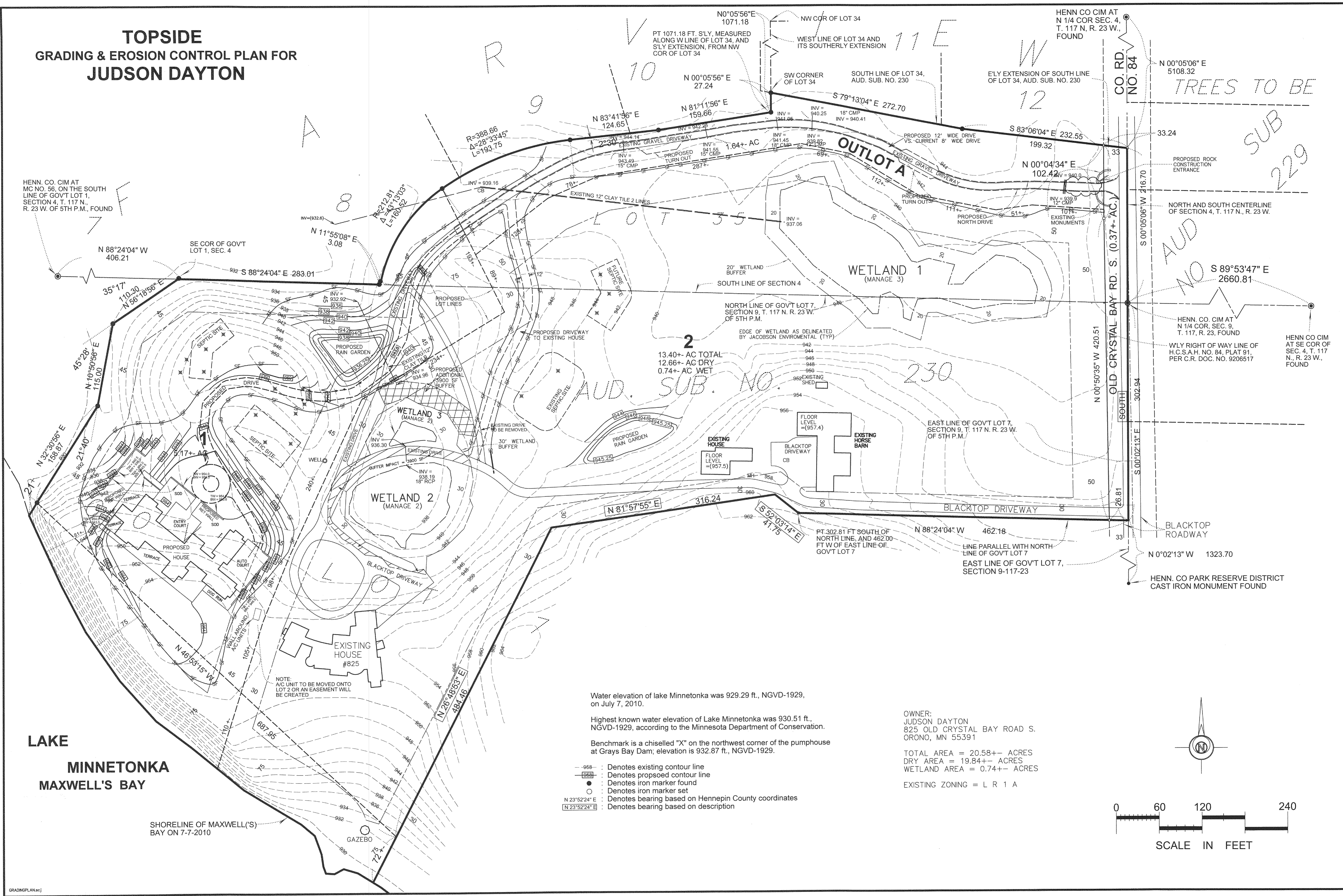
By mitigating for the buffer in nearby areas so the required buffer area is still met.

Applicant name: Jud Dayton / By George W. Stickney Date: 05/29/18

Applicant signature: [Signature]

Staff Recommendation (For staff use only) Approve

**TOPSIDE
GRADING & EROSION CONTROL PLAN FOR
JUDSON DAYTON**



**LAKE
MINNETONKA
MAXWELL'S BAY**

SHORELINE OF MAXWELL(S)
BAY ON 7-7-2010

Water elevation of lake Minnetonka was 929.29 ft., NGVD-1929, on July 7, 2010.

Highest known water elevation of Lake Minnetonka was 930.51 ft., NGVD-1929, according to the Minnesota Department of Conservation.

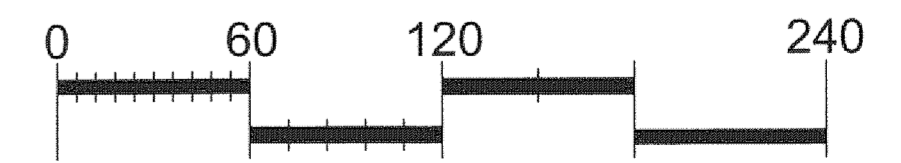
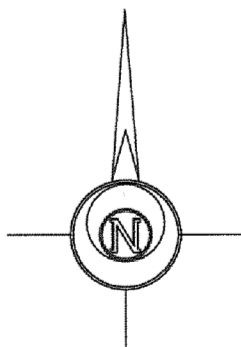
Benchmark is a chiselled "X" on the northwest corner of the pumphouse at Grays Bay Dam; elevation is 932.87 ft., NGVD-1929.

- 959 : Denotes existing contour line
- 958 : Denotes proposed contour line
- : Denotes iron marker found
- : Denotes iron marker set
- N 23°52'24" E : Denotes bearing based on Hennepin County coordinates
- N 23°52'24" E : Denotes bearing based on description

OWNER:
JUDSON DAYTON
825 OLD CRYSTAL BAY ROAD S.
ORONO, MN 55391

TOTAL AREA = 20.58+- ACRES
DRY AREA = 19.84+- ACRES
WETLAND AREA = 0.74+- ACRES

EXISTING ZONING = L R 1 A



SCALE IN FEET

GRONBERG & ASSOCIATES, INC.
Civil Engineers, Land Surveyors, Land Planners
445 N. Willow Drive, Long Lake, MN 55356
952-473-4141

DATE: 5-4-18
SCALE: 1"=50'
PROJECT: 18-086
SHEET: 1 OF 2

PROJECT

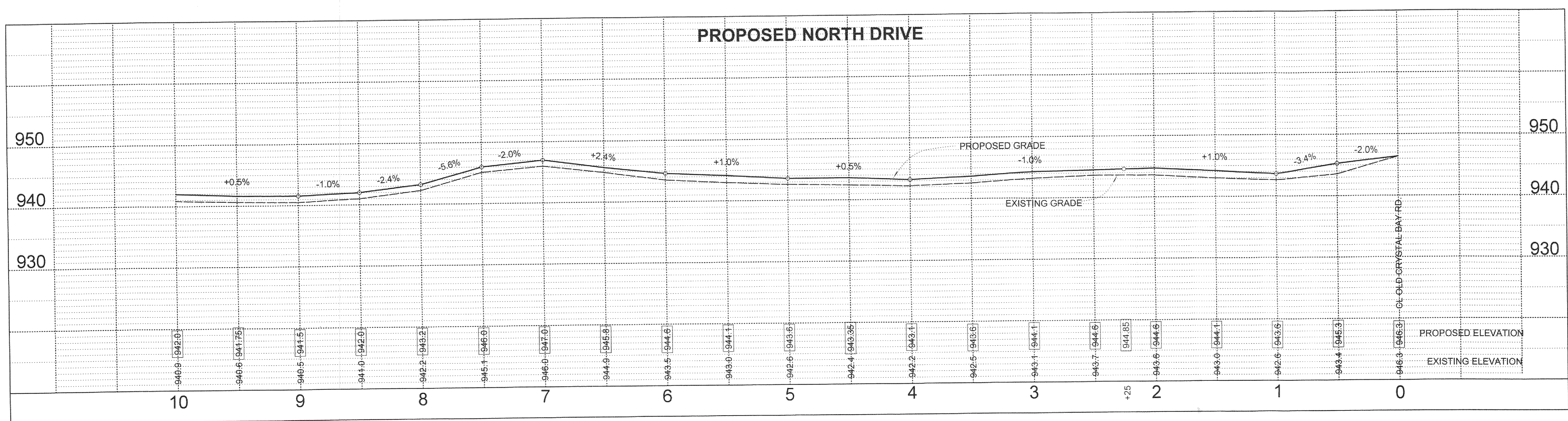
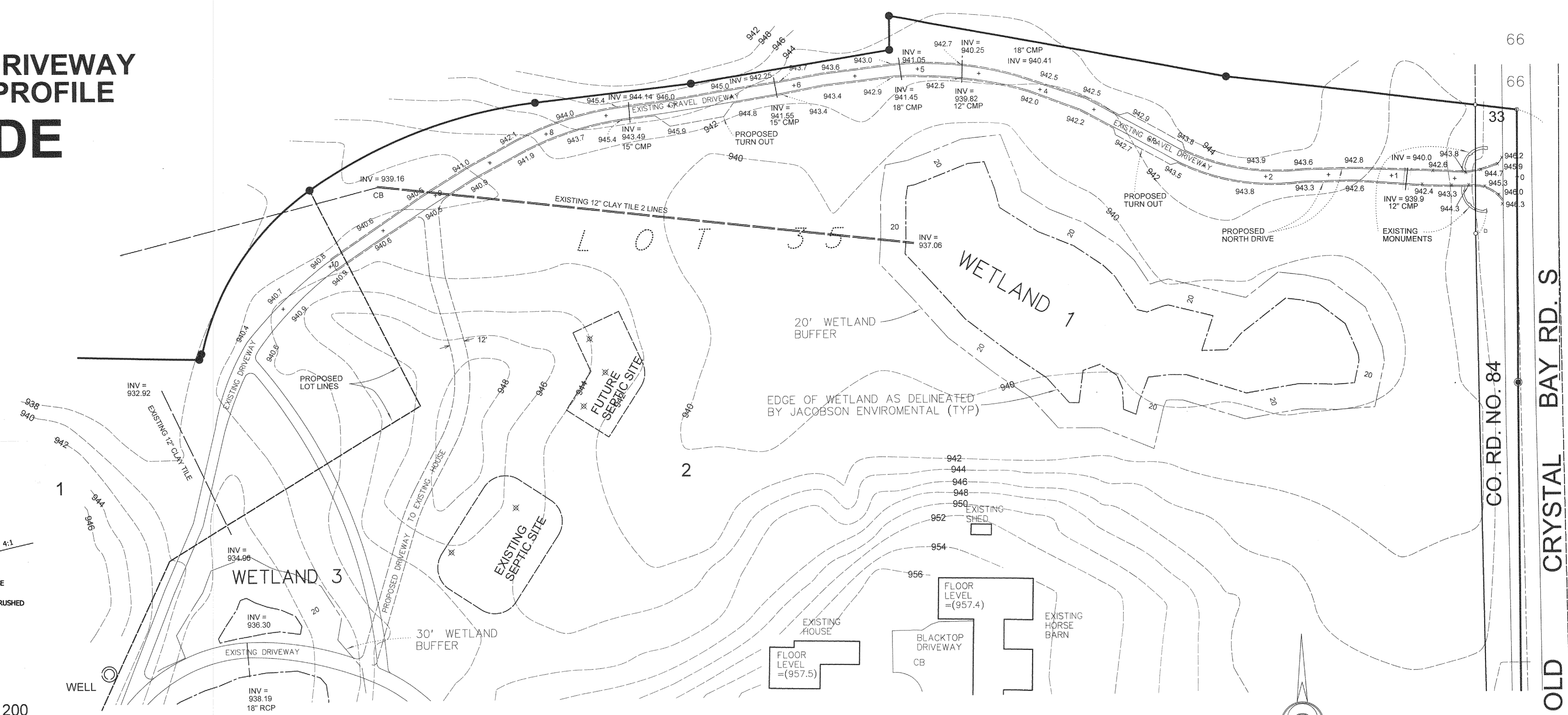
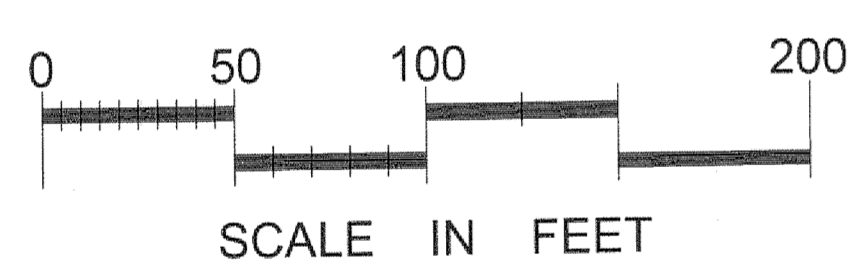
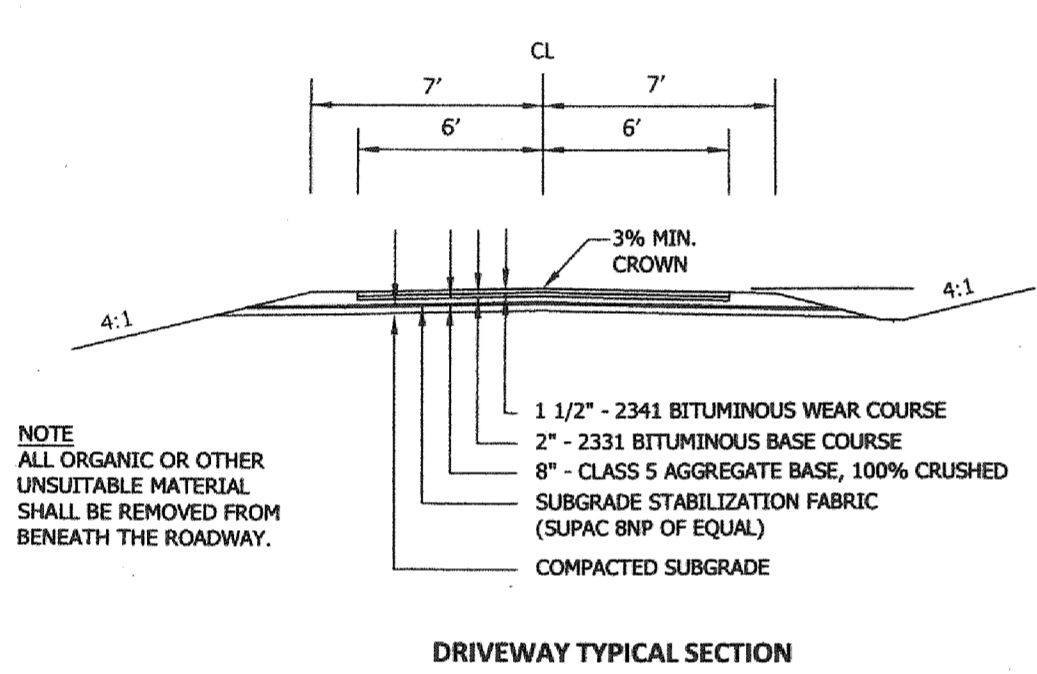
I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

DATE: 5-4-18 MN LICENSE NUMBER: J2277

DESIGNED	DRAWN	CHECKED

DATE	REMARKS

PROPOSED DRIVEWAY PLAN AND PROFILE TOPSIDE



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

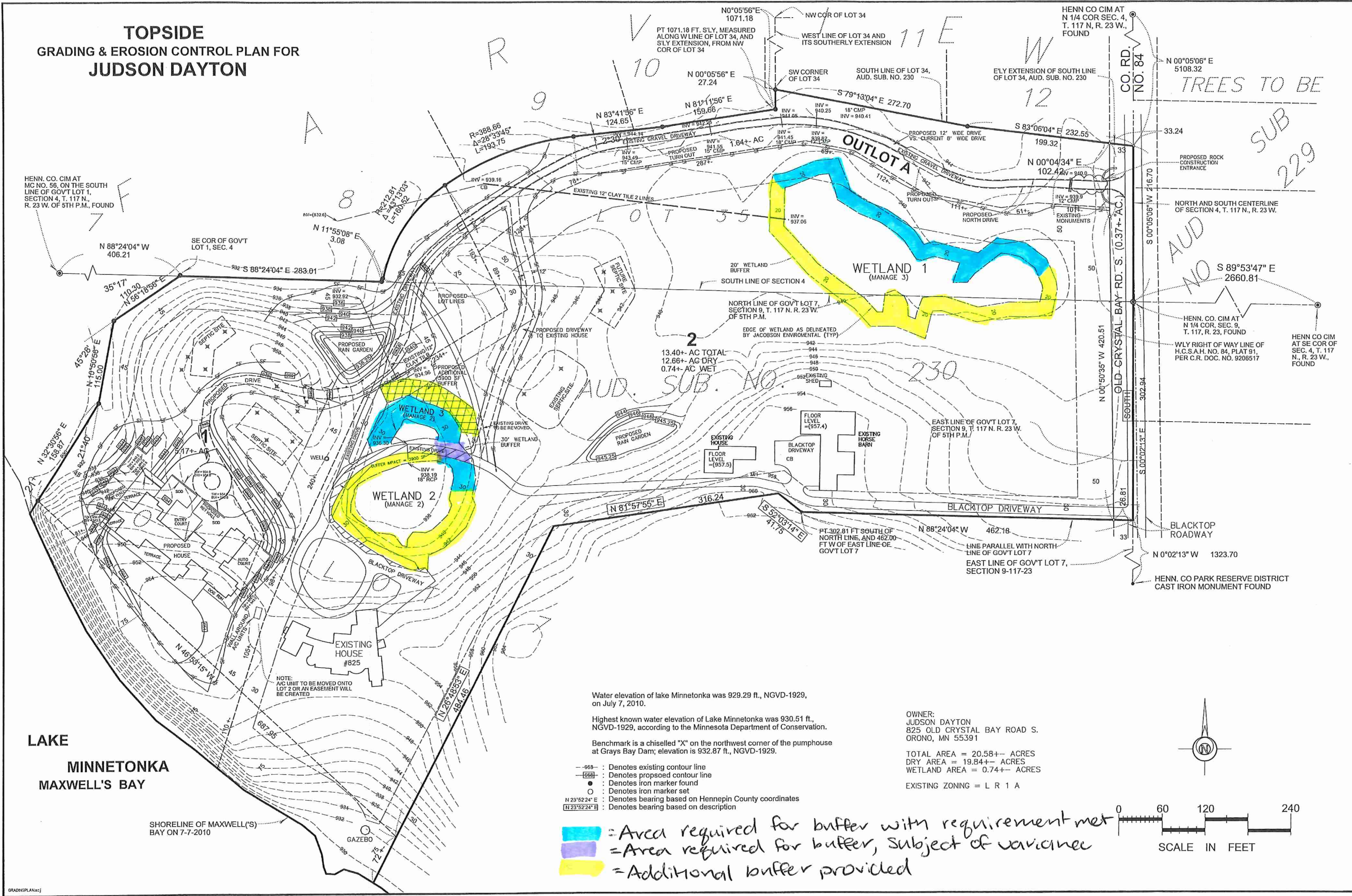


DATE: 5-7-18
SCALE: 1"=50' H, 1"=10' V
JOB NO.: 18-086

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.
Mark A. Hartley
DATE: 5-7-18 MINN. LICENSE NUMBER: 17257

DESIGNED		DRAWN		CHECKED	
DATE	BY	DATE	BY	DATE	BY
REVISIONS					
REMARKS					

**TOPSIDE
GRADING & EROSION CONTROL PLAN FOR
JUDSON DAYTON**



GRONBERG & ASSOCIATES, INC.
Civil Engineers, Land Surveyors, Land Planners
445 N. Willow Drive, Long Lake, MN 55356
952-473-4141

3-4-18
11-50'
18-085

PROJECT

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.
DATE: 3-4-18 MN LICENSE NUMBER: 12233

DESIGNED
DRAWN
CHECKED

DATE	REMARKS