



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR - 8 2017

REPLY TO THE ATTENTION OF

WW-16J

CERTIFIED MAIL
RETURN-RECEIPT REQUESTED

Clark Arneson
City of Blaine
10801 Town Square Drive N.E.
Blaine, Minnesota 55449-8101

Re: Clean Water Act Administrative Compliance Order on Consent CWA-05-2017-0006

Dear Mr. Arneson:

The enclosed copy of the Final Administrative Compliance Order on Consent (ACO) is provided pursuant to Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). The ACO establishes actions you agree to complete to address alleged violations of section 301 of the CWA, 33 U.S.C. § 1311. Please ensure the actions described in paragraphs 34-37 under the Compliance Requirements subsection of the ACO are carried out within the designated timeframes.

Thank you for your cooperation in resolving this matter.

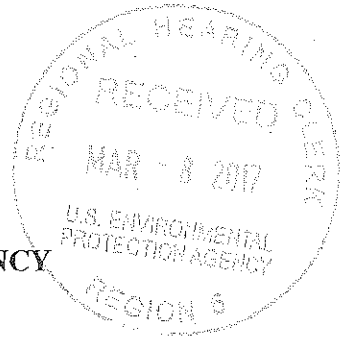
Sincerely,

A handwritten signature in black ink that reads "Peter Swenson".

Peter Swenson, Chief
Watersheds and Wetland Branch

Enclosures

cc: Chad Konickson, Army Corps of Engineers, St. Paul District (via email)
Andy Beaudet, Army Corps of Engineers, St. Paul District (via email)
Jim Brist, Minnesota Pollution Control Agency (via email)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

The City of Blaine
Blaine, Minnesota 55449-8101
Respondent.

DOCKET NO. CWA-05-2017-0006

PROCEEDING UNDER
SECTION 309(a) OF THE
CLEAN WATER ACT,
33 U.S.C. § 1319(a).

FINDINGS OF VIOLATION AND
ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

The following FINDINGS are made and ORDER issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of the EPA, Region 5, who has duly redelegated this authority to the undersigned Director, Water Division, EPA, Region 5, who hereby makes these Findings and issues this Order.

REGULATORY BASIS

1. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), states that: "Whenever, on the basis of any information available . . . the Administrator finds that any person is in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), the Administrator shall issue an order requiring such person to comply with such Section"
2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states: "Except as in compliance with Section 404 of the CWA the discharge of any pollutant by any person shall be unlawful."
3. Section 404(a) of the CWA, 33 U.S.C. § 1344(a), states: "The Secretary [of the Army] may issue permits . . . for the discharge of dredged or fill material into the navigable waters at

specified disposal sites."

4. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."

5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of pollutants" as "any addition of any pollutant to navigable waters from any point source. . . ."

6. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines a "pollutant" as "dredged spoil, solid waste . . . biological materials . . . rock, sand, cellar dirt . . . and agricultural waste discharged into water."

7. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines a "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, [or] discrete fissure . . . from which pollutants are or may be discharged."

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" in pertinent part as "the waters of the United States . . ."

9. The term "water of the United States" means "all interstate waters [such as lakes, rivers and streams] . . ." and "[w]etlands adjacent to [interstate] waters . . ." and includes "all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce . . . [including] intrastate lakes, rivers, streams (including intermittent streams) . . . wetlands . . . the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters . . . tributaries of [such] waters . . . [and] wetlands adjacent to [all such] waters." 40 C.F.R. § 230.3(s).

10. "Wetlands" are defined as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." 40 C.F.R. § 230.3(t).

GENERAL FINDINGS

11. The Respondent in this Order is:

The City of Blaine
10801 Town Square Drive N.E.
Blaine, Minnesota 55449-8101

12. At all times relevant to this Order the Respondent was and remains a city.

13. Therefore, Respondent was a municipality as defined at section 502(4) of the Act, 33 U.S.C. § 1362(4).

14. Therefore, the Respondent was a "person" as defined at section 502(6) of the Act, 33 U.S.C. § 1362(5).

Aquatore Park

15. At all times relevant to this Order the Respondent owned and operated, at least in part, or in equity, real property located at Aquatore Park, (Sec. 12, T.31N., R 23W., Anoka County, Minnesota (Latitude 45.13831° N, Longitude -93.24151° W)) in Blaine, Minnesota, ("Aquatore Park").

16. On or about July and August of 2014, Respondent, or its contractors, added 4,520 cubic yards of solid waste or municipal waste or rock or sand or cellar dirt or fill material from bulldozers and backhoes, into 1.22 acres of water on Aquatore Park.

17. The 1.22 acres of water at Aquatore Park were wetlands. The wetlands were next to, and

flowed into, the waters of Springbrook Creek (also known as County Ditch 17). The waters of Springbrook Creek flowed into the waters of the Mississippi River. The Mississippi River was used in interstate and foreign commerce. The Mississippi River was “waters of the United States.” The waters of the wetlands, and Springbrook Creek, were tributaries of the Mississippi River, and thus, also “waters of the United States.”

18. The addition of solid waste or municipal waste or rock or sand or cellar dirt or fill material into the waters referenced in paragraph 16 constituted a “discharge of pollutants” within the meaning of the definition set forth in section 502(12) of the CWA, 33 U.S.C. § 1362(12).

19. The solid waste or municipal waste or rock or sand or cellar dirt or fill material referenced in paragraph 16 constituted “pollutants” within the meaning of the definition set forth in section 502(6) of the CWA, 33 U.S.C. § 1362(6).

20. The bulldozers, excavators, backhoes, and trucks referenced in paragraph 16 constituted “point sources” within the meaning of the definition set forth in section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. Each of the Respondent’s discharges of pollutants from a point source into navigable waters constituted a discrete violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

22. At no time from the dates of the activities described in paragraph 16 above until the date of this Order did the Respondent have a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants referenced in paragraph 16.

23. Each day the discharged material remains in the wetlands without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constituted a discrete violation of Section 301 of the CWA, 33 U.S.C. § 1311

Lexington Athletic Complex

24. At all times relevant to this Order the Respondent owned and operated, at least in part, or in equity, real property located at the Lexington Athletic Complex (Sec. 32, T.31N., R.23W., Anoka County, Minnesota, (Latitude 45.18748° N, Longitude -93.16018° W)), in Blaine, Minnesota, (“Lexington”).

25. On or about July and August of 2014, Respondent, or its contractors, added 7,165 cubic yards of rock or sand or cellar dirt or fill material from bulldozers and backhoes into 1.11 acres of waters at Lexington.

26. The 1.11 acres of water at Lexington were wetlands. The wetlands were next to, and flowed into, the waters of a private ditch that flowed into Anoka County Ditch No. 53-62. The waters of Anoka County Ditch No. 53-62 flowed into the waters of Golden Lake and then flowed to Rice Creek. The waters of Rice Creek flowed into the waters of the Mississippi River. The Mississippi River was used in interstate and foreign commerce. The Mississippi River was “waters of the United States.” The waters of the wetlands, Anoka County Ditch No. 53-62, Golden Lake, and Rice Creek, were tributaries to the Mississippi River, and thus, also “waters of the United States.”

27. The addition of rock or sand or cellar dirt or fill material into the waters referenced in paragraph 25 constituted a “discharge of pollutants” within the meaning of the definition set forth in section 502(12) of the CWA, 33 U.S.C. § 1362(12).

28. The rock or sand or cellar dirt or fill material referenced in paragraph 25 constituted “pollutants” within the meaning of the definition set forth in section 502(6) of the CWA, 33 U.S.C. § 1362(6).

29. The bulldozers and backhoes referenced in paragraph 25 constituted “point sources” within the meaning of the definition set forth in section 502(14) of the CWA, 33 U.S.C. § 1362(14).

30. Each of the Respondent’s discharges of pollutants from a point source into navigable waters constituted a discrete violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

31. At no time from the dates of the activities described in paragraph 25 above until the date of this Order did the Respondent have a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants referenced in paragraph 25.

32. Each day the discharged material remains in the wetlands without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constituted a discrete violation of Section 301 of the CWA, 33 U.S.C. § 1311.

COMPLIANCE REQUIREMENTS

BASED ON THE FOREGOING FINDINGS, and pursuant to the authority under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), duly delegated to the undersigned, **THE PARTIES CONSENT TO THE FOLLOWING:**

33. The Respondent shall refrain from further discharges of pollutants into waters on the Sites, except in compliance with a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and the CWA, 33 U.S.C. §§ 1251-1387.

34. On or before May 22, 2017, the Respondent shall file with the Anoka County Recorder of Deeds, and provide EPA a complete copy of, the appropriate and relevant legal real property documents to establish a Conservation Easement (i.e. a filed real estate instrument protecting the property in perpetuity) for 2.83 acres of forested wetlands, for 50 feet on each side of the

centerline of Springbrook Creek, within the real property of Aquatone Park, and identified in Exhibit A. Respondent shall legally describe, survey, and verify the presence of the forested wetlands in a Certified Wetland Delineation. Respondent shall include the Certified Wetland Delineation with the Conservation Easement. The Conservation Easement shall run with the land in perpetuity, and bind all of Respondent's assigns and successors in interest; prohibit any division or subdivision of its real property; prohibit any filling, excavations, or other changes in the general topography of its real property; prohibit any commercial activity or industrial development of its real property; prohibit the drilling of new wells for the production of oil, gas, or other related products of its real property; prohibit the placement or construction of any man-made modifications such as buildings, structures, fences, roads, and parking lots on its real property; prohibit any cutting of trees, ground cover or vegetation, or destroying such plant life by means of herbicides, on its real property, except for the control of invasive plant species; prohibit waste, garbage, and unsightly or offensive materials from accumulating on its real property; and prohibit dredging and filling beyond routine maintenance, and any straightening, channelizing, impeding, diverting, or otherwise altering natural water courses and streams and adjacent riparian buffers on its real property.

35. On or before seven (7) calendar days of the date the Respondent and the Anoka County Recorder of Deeds officially record and establish the Conservation Easement, Respondent shall submit to EPA written certification that it completed the Conservation Easement and provide EPA certified copies of the filed and established Conservation Easement. If EPA determines that the Conservation Easement does not conform to the requirements in paragraph 34, Respondent shall correct the deficiencies identified by EPA, and establish a new Conservation Easement to

conform to the requirements in paragraph 34, and within fourteen (14) calendar days of EPA's notification to Respondent of any deficiencies in the Conservation Easement.

36. Within seven (7) calendar days of EPA approval of the Conservation Easement, Respondent shall include the Conservation Easement with its application to the U.S. Army Corps of Engineers (USACE) for Clean Water Act Section 404 After-the-Fact permits (the Permits) for the Aquatore and Lexington Sites. The Conservation Easement shall be incorporated into the Permit Applications and Permits.

37. Within seven (7) days of receiving the Permits from the USACE, Respondent shall submit to EPA written certification that it has received the Permits. Such certification shall include a copy of the complete Permits.

38. Submittals provided under paragraphs 34, 35, and 37 of this Order shall be certified as true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

39. This Order, once signed by the Respondent under authorized signature, and all other submittals under this Order, should be sent to the following address:

Kerryann Weaver, Enforcement Officer
U.S. Environmental Protection Agency (WW-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

GENERAL PROVISIONS

40. EPA does not waive any rights to use the information requested herein in an

administrative, civil, or criminal action.

41. Neither this Consent Order nor compliance with its terms, affects Respondent's ongoing obligation to comply with the CWA or any other federal, state, or local law or regulation, nor does it preclude further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations alleged herein. The parties will subsequently sign and file a Clean Water Act Section 309(g) Consent Agreement and Final Order.

42. EPA reserves all rights and remedies, legal and equitable, available to address any violation cited in this Order, any other violation of the CWA, and to enforce this Order.

43. Violation of the terms of this Consent Order may subject Respondent to administrative penalties of up to \$16,000 per day of violation, up to a maximum of \$177,500 under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), or to civil judicial penalties of \$37,500 per day of violation under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and civil injunctive relief for violations of the CWA under Section 309(b) of the CWA, 33 U.S.C. § 1319(b). Furthermore, EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under Section 309(c) of the CWA, 33 U.S.C. § 1319(c).

44. Respondent admits the jurisdictional allegations of this Consent Order.

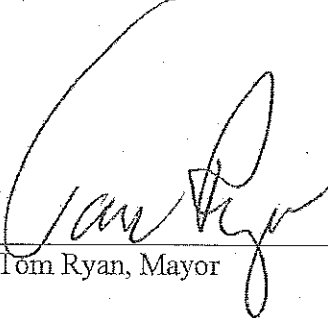
45. Respondent neither admits nor denies the remaining factual allegations of this Consent Order.

46. Respondent waives all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review under Chapter 7 of the Administrative Procedures Act, 5 U.S.C. § 701-706.

47. Respondent agrees to the terms of this Consent Order.
48. The terms of this Consent Order bind Respondent, its successor and assigns.
49. Each person signing this Consent Order certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
50. Each party agrees to bear its own costs and attorney's fees in this Consent Order.
51. This Consent Order constitutes the entire agreement between the parties for this Order.
52. The parties anticipate a subsequent Clean Water Act Section 309(g) Civil Penalty Consent Agreement and Final Order.
53. This Consent Order is effective on the date of signature by the Director of the Water Division.

The City of Blaine, Blaine, Minnesota
Respondent

March 2, 2017
Date



Tom Ryan, Mayor

March 2, 2017
Date


Clark Arneson, Manager

Region 5, U.S. Environmental Protection Agency
Complainant

3/8/17
Date


Christopher Korleski
Director
Water Division

In the Matter of: **The City of Blaine, Blaine, Minnesota.**
Docket No. **CWA-05-2017-0006**
Clean Water Act Section 309(a) Administrative Order on Consent.

CERTIFICATE OF SERVICE

I hereby certify that today I served a true and correct copy of this fully executed Clean Water Act Section 309(a) Administrative Order on Consent as follows:

Copy to Respondent by Certified U.S. Mail, Return-Receipt Requested:

Patrick J. Sweeney, Esquire
Counsel for Respondent
Eckberg Lammers
1809 Northwestern Avenue
Stillwater, MN 55082

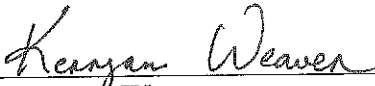
Copy to Counsel for Complainant, Via E-Mail:

Jeffery M. Trevino
trevino.jeffery@epa.gov

Copy to Regional Judicial Officer, Via E-Mail:

Ann L. Coyle
coyle.ann@epa.gov

3-8-17
Date


Kerryann Weaver
Wetlands Enforcement Specialist
Region 5
Watersheds and Wetlands Branch
U.S. Environmental Protection Agency
77 West Jackson Boulevard (WW-16J)
Chicago, Illinois, 60604-3590

CWA-05-2017-0006

EXHIBIT A

SKETCH AND DESCRIPTION

for THE CITY OF BLAINE
of PROPOSED BUFFER AREA IN AQUATORE PARK

DESCRIPTION OF PROPOSED BUFFER AREA:

A strip of land 100 feet in width for buffer purposes over, under and across part of Lots 2 and 3, Block 1, CLOVERLEAF COMMERCE CENTER 2ND ADDITION, Anoka County, Minnesota. The center line of said 100 foot strip is described as follows:

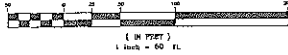
Commencing at the southwest corner of said Lot 3, thence South 05 degrees 12 minutes 54 seconds East, along the westerly line of said Lot 2, a distance of 30.78 feet to a southwesterly corner of said Lot 2, thence South 95 degrees 54 minutes 59 seconds East, along the southerly line of said Lot 2, a distance of 32.69 feet to the point of beginning of the centerline to be described, thence North 35 degrees 17 minutes 04 seconds East a distance of 812.42 feet, thence North 34 degrees 18 minutes 43 seconds East, a distance of 121.89 feet, thence North 23 degrees 22 minutes 54 seconds East, a distance of 62.60 feet, thence North 06 degrees 26 minutes 52 seconds East, a distance of 245.26 feet to the northerly line of said Lot 3 and said centerline there terminating. The side lines of said buffer area are to be situated or extended to the southerly and westerly lines of said Lot 2 and the northerly line of said Lot 3.

□ DENOTES PROPOSED BUFFER AREA (2.84 ACRES)

NOTES

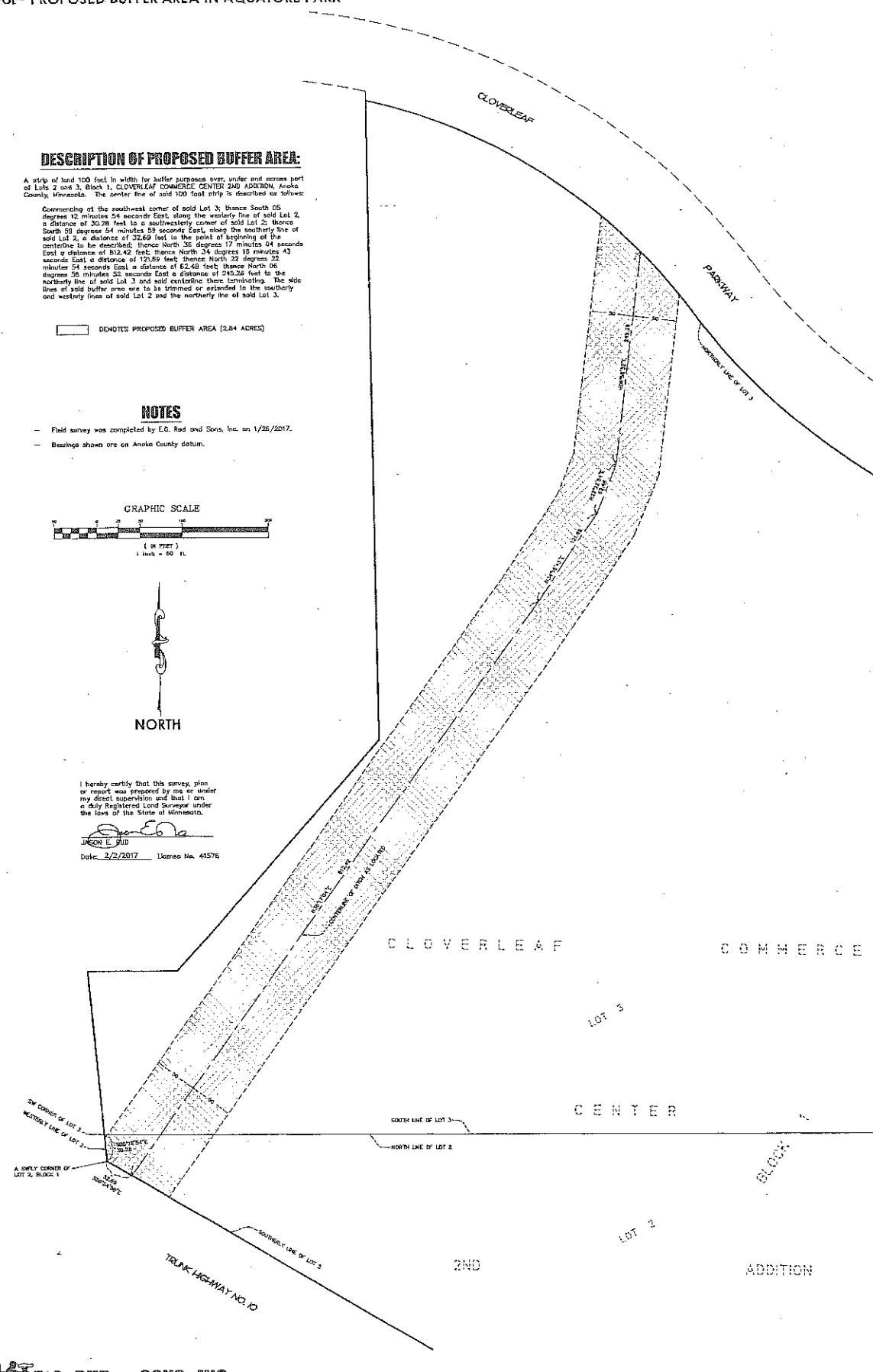
- Field survey was completed by E.G. Rud and Sons, Inc. on 1/26/2017.
- Bearings shown are on Anoka County datum.

GRAPHIC SCALE



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

JASON E. RUD
Date: 2/2/2017 License No. 45576



DATE BY END	REV NO.	REVISION	DATE
DATE BY END	REVISION	DATE	
1			
2			
3			
NO.	DATE	DESCRIPTION	BY