

Riley Purgatory Bluff Creek Watershed District Permit Application Review

Permit No: 2023-053

Considered at Board of Managers Meeting: January 10, 2023

Application Received complete: November 7, 2023

Applicant: Brace Helgeson

Project: Helgeson Residence – The applicant is seeking an after-the-fact permit for construction of a

home addition with driveway and earthen berm completed in 2015 and installation of a patio

and associated landscaping completed in 2023.

Location: 6575 Pleasant View Way, Chanhassen, MN

Reviewer: Mathieu Nicklay, RPBCWD

Proposed Board Action	
Manager moved and Manager seconded adoption of the following resolutions based on the permit report that follows and the presentation of the matter at the January 10, 2024 meeting of the managers:	
Resolved that the application for Permit 2023-053 is approved, subject to the conditions and stipulations set forth in the Recommendations section of the attached report;	
Resolved that on determination by the RPBCWD administrator that the conditions of approval have been met, the RPBCWD president or administrator is authorized and directed to sign and deliver Permit 2023-053 to the applicant on behalf of RPBCWD.	
Upon vote, the resolutions were adopted, [VOTE TALLY].	

Applicable Rule Conformance Summary

Rule	Issue	Conforms to RPBCWD Rules?	Comments
В	Floodplain	See comment	
	Management		
С	Erosion Control	Yes	
	Plan		
D	Wetland Buffer	See comment	See rule-specific permit D1 related to
			recordation of buffer maintenance
			declaration.
E	Dredging	See Comment	
J	Stormwater	See Comment	See rule-specific permit condition J1
	Management		related to recordation of buffer
			maintenance declaration.
L	Permit Fee Deposit	No	Permit fee deposit not received. The
			applicant must replenish the permit
			fee deposit to the original amount
			due before the permit will be issued.
			As of December 28, the amount due
			is \$1,922.53.
M	Financial	Yes	\$6,063.75 received October 11, 2023.
	Assurances		

Project Description

The applicant is seeking an after-the-fact permit for the construction of a home addition with driveway and earthen berm completed in 2015 and installation of a patio and associated landscaping completed 2023 on an existing lot of record. (The two phases of work on the property are referred to together herein as "the project.") The 2.28-acre project site is located at 6575 Pleasant View Way in Chanhassen, MN. As of the time of this report work at the site has been completed.

In 2015, concurrently with the construction of the home addition and earthen berm, dredging work took place in the Public Waters wetland on the project site, creating an open-water pond. This work was conducted without a permit. The Department of Natural Resources issued a restoration order (Exhibit 3) requiring removal of sod, regrading, and planting of the disturbed area with native wetland species on January 8, 2016 and subsequently determined that the site had been restored in compliance with the order and issued a Certificate of Satisfactory Restoration (Exhibit 4) on August 9, 2016. However, the restoration approved by the DNR did not include a wetland buffer as required in RPBCWD Rule D, Subsection 2.1.

The project included the planting of a 2,815 square foot wetland buffer in 2023, but the buffer has yet to be fully established. The buffer is positioned to intercept the majority of stormwater flowing from and through the site and designed to encourage infiltration and provide treatment of stormwater flowing from the site to Lotus Lake.

Project Site Information	Area (acres)
Total Site Area	2.28
Existing Site Impervious	0.39
Post-project Site Impervious Area	0.45
Change in Site Impervious Area	0.03 (15% increase)
Total Disturbed Area	.85

Exhibits:

- 1. Permit Application received August 17, 2023. Materials completing the application were received November 7, 2023.
- 2. Project Plan Set dated January 5, 2015 (revised January 6, 2015, August 31, 2023, November 7, 2023)
- 3. Department of Natural Resources restoration order dated January 8, 2016
- 4. Department of Natural Resources Certificate of Satisfactory Restoration dated August 9, 2016

Rule Specific Permit Conditions

Rule B: Floodplain Management and Drainage Alterations

Because the project involved land-disturbing activities below the 100-year flood elevation of Lotus Lake (the dredging), the project must conform to the requirements in the RPBCWD Floodplain Management and Drainage Alterations rule (Rule B, Subsection 2.1).

Dredging work occurred below the 100-year flood elevation of Lotus Lake and within a public waters wetland, creating an open water pond within the shallow marsh wetland community. The Minnesota DNR's exercise of enforcement authority addressed this work, resulting in the issuance of a Certificate of Satisfactory Restoration. Rule C: Erosion and Sediment Control

Because the project altered 0.85 acres of land-surface area, the project must conform to the requirements in the RPBCWD Erosion and Sediment Control rule (Rule C, Subsection 2.1).

The erosion control plan included installation of silt fence perimeter control, weekly inspection, placement of a minimum of 6 inches of topsoil, decompaction of areas compacted during construction, and retention of native topsoil onsite. Site visits while the site was active showed that the erosion control plan was effectively implemented.

Rule D: Wetland and Creek Buffers

Because the project triggered a permit under RPBCWD Rule B, Rule E, and Rule J, and the onsite wetland was disturbed by the dredging, Rule D, Subsections 2.1a and 3.1a require buffer around the entirety of the wetland.

Because the project site is an existing single-family property, Rule D, Subsection 3.2.d requires a wetland buffer with an average of 20 feet from the delineated edge of the wetland, minimum 10 feet. The buffer must encompass the entirety of the wetland to the extent that surrounding property is owned by the applicant. Because the property is existing single-family home property, wetland functions and values need not be determined; applicable buffer widths are stated in the table below.

	RPBCWD Wetland Value	Required Minimum Width (ft)	Required Average Width (ft)	Provided Minimum Width (ft)	Provided Average Width (ft)
Wetland 1	N/A	10	20	20	20

The buffer was planted with native vegetation, not yet fully established as of December 2023, thus conforming to Rule D, Subsection 3.3. The submitted plans show only the portion of the buffer that was revegetated but do not show the full extent of the buffer, which must extend along the entire edge of the delineated wetland up to the property lines.

A note was included on the plan sheet indicating the project had to be constructed so as to minimize the potential transfer of aquatic invasive species (e.g., zebra mussels, Eurasian watermilfoil, etc.) to the maximum extent possible conforming to Rule D, Subsection 3.6.

To conform to the RPBCWD Rule D the following revisions are needed:

- D1. Submit revised site plans showing the buffer extending along the entire edge of the delineated wetland up the property lines.
- D2. Buffer areas and maintenance requirements must be documented in a declaration recorded after review and approval by RPBCWD in accordance with Rule D, Subsection 3.5.

Rule E: Dredging and Sediment Removal

Because the project involved removal of greater than 1 cubic yard of material from the bed of a public waters wetland, the project must conform to the requirements in the RPBCWD Dredging and Sediment Removal rule (Rule E, Subsection 2).

Dredging work occurred below the 100-year flood elevation of Lotus Lake and within a public waters wetland, creating an open water pond within the shallow marsh wetland community. The work did not meet any of the conditions for permitting of dredging work under Rule E, Subsections 2.1a-e. The Minnesota DNR's exercise of enforcement authority addressed compliance of this work with RPBCWD Rule E and was the subject of a Certificate of Satisfactory Restoration.

Rule J: Stormwater Management

Because the project involved the disturbance of 0.85 acres of land-surface area and the site is an existing single-family home property within 500 feet of the ordinary high-water level of Lotus Lake and drains to Lotus Lake, the project required a permit under RPBCWD's Stormwater Management rule (Rule J, Subsections 2.1.a and 2.2.a.1; 3.4).

Subsection 3.4 requires implementation of a stormwater-management practice consistent with guidance promulgated by the State of Minnesota. The buffer constitutes a stormwater-management practice under state guidelines, complying with Rule J.

To conform to RPBCWD Rule J the following condition must be met:

J1. Buffer areas, markers and maintenance requirements must be documented in a declaration recorded after review and approval by RPBCWD in accordance with Rule J, Subsection 3.7.

Rule L: Permit Fee Deposit:

The RPBCWD permit fee schedule adopted in February 2020 requires permit applicants to deposit \$200 to be held in escrow and applied to cover the \$10 permit-processing fee and reimburse RPBCWD for permit review and inspection-related costs and when a permit application is approved, the deposit must be replenished to the applicable deposit amount by the applicant before the permit will be issued to cover actual costs incurred to monitor compliance with permit conditions and the RPBCWD Rules. A permit fee deposit has not been received. If the costs of review, administration, inspections and closeout-related or other regulatory activities exceed the fee deposit amount, the applicant will be required to replenish the deposit to the original amount or such lesser amount as the RPBCWD administrator deems sufficient within 30 days of receiving notice that such deposit is due. The administrator will close out the relevant application or permit and revoke prior approvals, if any, if the permit-fee deposit is not timely replenished.

- L1. The applicant must provide a permit fee deposit of \$200.
- L2. The applicant must replenish the permit fee deposit to the original amount due before the permit will be issued. As of December 28, 2023 the amount due is \$1,722.53.

Rule M: Financial Assurance:

	Unit	Unit Cost	# of Units	Total
Rule C: Erosion Control				
Silt Fence	LF	\$2.50	205	\$512.50
Rule D: Wetland Buffers				
Buffer	Ea	\$5,000	1	\$5000.00
Contingency (10%)		10%		\$551.25
Total Financial Assurance				\$6,063.75

Applicable General Requirements:

- 1. The grant of the permit does not relieve the permittee of any responsibility to obtain approval of any other regulatory body with authority.
- 2. The issuance of this permit does not convey any rights to either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.
- 3. In all cases where the doing by the permittee of anything authorized by this permit involves the taking, using or damaging of any property, rights or interests of any other person or persons, or of any publicly owned lands or improvements or interests, the permittee, before proceeding therewith, must acquire all necessary property rights and interest.
- 4. RPBCWD's determination to issue this permit was made in reliance on the information provided by the applicant. Any substantive change in the work affecting the nature and extent of applicability of RPBCWD regulatory requirements or substantive changes in the methods or means of compliance with RPBCWD regulatory requirements must be the subject of an application for a permit modification to the RPBCWD.
- 5. If the conditions herein are met and the permit is issued by RPBCWD, the applicant, by accepting the permit, grants access to the site of the work at all reasonable times during and after construction to authorized representatives of the RPBCWD for inspection of the work.

<u>Findings</u>

- 1. The submitted application is supported by the information necessary, plan sheets and erosion control plan for review.
- 2. The proposed project conformed to Rule B, Rule C and Rule E, and will conform to Rules D, J and L if the Rule Specific Permit Conditions listed above are met.

Recommendation:

Approval of the permit contingent upon:

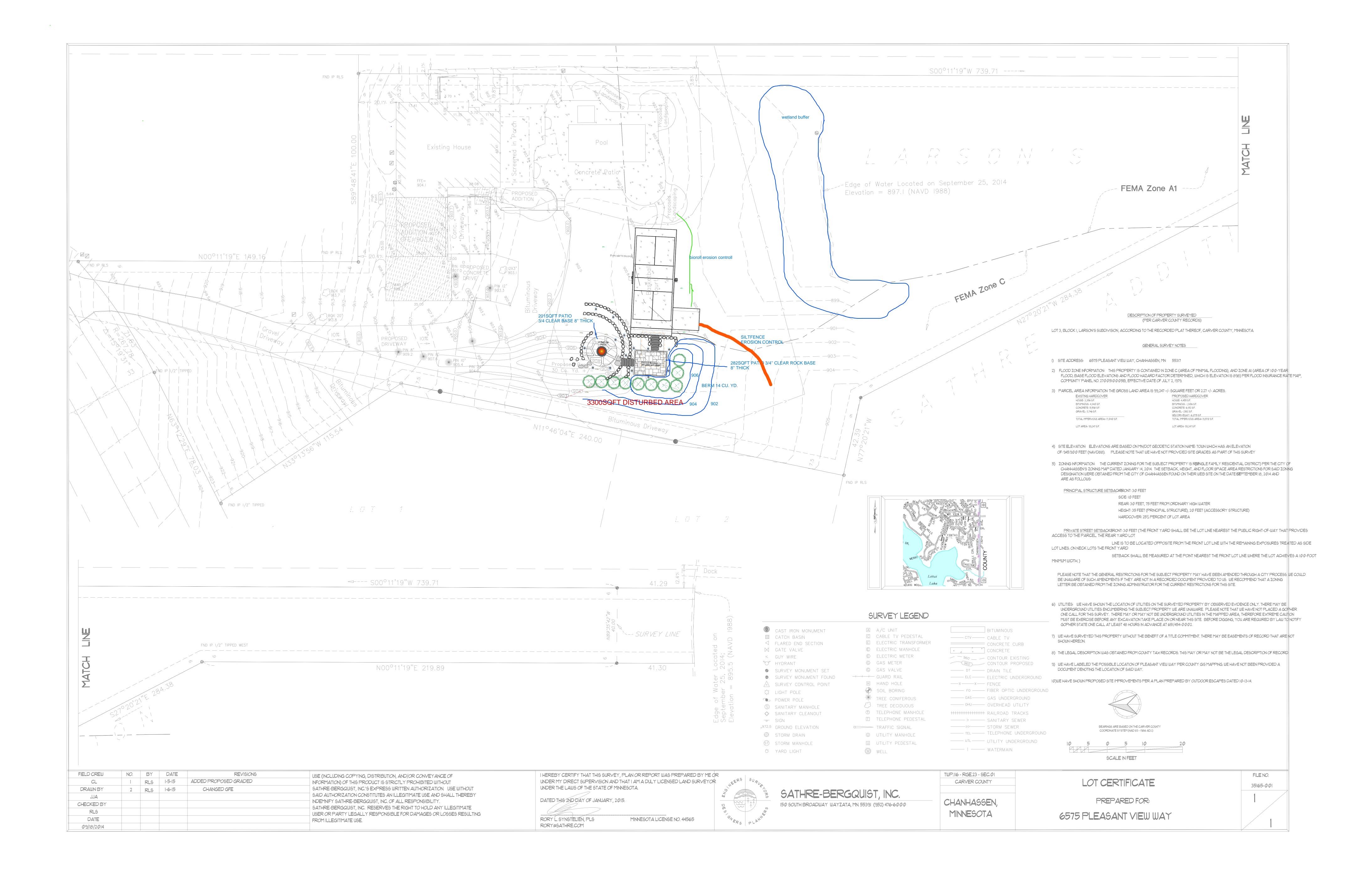
- 1. Buffer areas and maintenance requirements must be documented in a declaration recorded after review and approval by RPBCWD in accordance with Rule D, Subsection 3.5.
- 2. The applicant must provide the permit fee deposit of \$200 and replenish the same to the original amount due before the permit will be issued. As of December 38, 2023 the amount due is \$1,922.53.

By accepting the permit, when issued, the applicant agrees to the following stipulations:

- 1. Continued compliance with General Requirements
- 2. Replenish the permit fee deposit to the original amount or such lesser amount as the RPBCWD administrator determines sufficient within 45 days of receiving notice that such deposit is due in

order to cover continued actual costs incurred to monitor compliance with permit conditions and

the RPBCWD Rules.





AMENDED PUBLIC WATERS RESTORATION AND REPLACEMENT ORDER

CDO#	
867236	
RPN	

Pursuant to Minnesota Statutes, Section 103G.2372 and Minnesota Rules, part 6115.0255, the Commissioner of Natural Resources hereby orders Brace Helgeson, 6575 Pleasant View Way, Chanhassen, MN 55317 to remove sod and any associated soil from a previously excavated wetland area of Lotus Lake (10-6) on parcel #254000030 at Section 01, T116-R23W, Carver County, Minnesota.

Findings of Fact:

- On-site investigation on November 10, 2015 by DNR Area Hydrologist Jennie Skancke, Riley Purgatory Bluff Creek Watershed District manager Claire Bleser and DNR Conservation Officer Jackie Glaser revealed that earthen material and wetland vegetation had been excavated from DNR public water #10-6P and placed in a spoils pile on the parcel. A portion of the excavated area appears to have been graded and planted with sod.
- 2. Carver County property tax data indicates that this parcel is owned by Brace Helgeson.
- 3. State rules (*Minnesota Rules* 6115.0190 and 6115.0201) contain specific standards for placement of fill and excavation that alter the course, current, or cross-section of public waters.

Order

You shall accomplish restoration by doing the following:

- 1. Area Hydrologist Jennie Skancke will flag an area of sod for removal by April 1, 2015.
- Develop a planting plan for the area and submit to the Area Hydrologist for approval by May 1, 2015. The planting plan must include seedling plugs and may include a native wetland seed mix. Erosion and sediment control measures must be detailed in the plan.
- 3. Remove sod and grade to a 3:1 slope in flagged area. Disturbed shoreline must be stabilized using temporary erosion control measures. The removal must occur by June 1, 2016.
- 4. Plant the area with native wetland species. Planting must occur by June 15, 2016. Appropriate seedling plugs must be used.
- 5. You must contact Area Hydrologist Jennie Skancke at 651-259-5790 within seven days of completing the work required by this Order. The culmination of successful restoration is the issuance of a *Certificate of Satisfactory Restoration*.
- 6. You must obtain any other necessary local, state and federal authorizations for the work being ordered.

This Order is final and binding on you, unless within 30 days of the date on which it was served on you, you appeal the terms and conditions of this restoration order to the commissioner by filing a written request for review. Please mail any such request to: DNR Ecological and Water Resources, Violations Coordinator, 500 Lafayette Rd., St. Paul, MN 55155-4032

Violation of this order is a misdemeanor.

Order Created by

1/8/2016 Jennie Skancke

DNR Hydrologist Signature

Printed Name

Date

Order Served by

Jackie Glaser

01/11/16

Conservation Officer Signature

Printed Name Badge #

Date

Officer Issuance Record: in person; or by certified mail on

Attachments

Carver County SWCD, Mike Wanous City of Chanhassen, Terry Jeffery DNR Enforcement, Jacqueline Glaser DNR Enforcement, Keith Bertram DNR Fisheries, Daryl Ellison DNR Violations Coordinator, John Gleason DNR Wildlife, Diana Regenscheid DNR EWR Regional Mgr, Terri Yearwood DNR EWR District Mgr, Jeanne Daniels US. Army Corps of Engineers, Melissa Jenny

Minnesota Department of Natural Resources

Ecological and Water Resources Division Central Region Headquarters 1200 Warner Road, Saint Paul MN 55106 Telephone: (651) 259-5845 Fax: (651) 772-7977



PUBLIC WATERS CERTIFICATE OF SATISFACTORY RESTORATION

August 9, 2016

Brace Helgeson 6575 Pleasant View Way Chanhassen, MN 55317

Public Water: Lotus Lake County: Carver Public Water Restoration Order: 867236 Public Waters Work Permit Application: NA

Dear Mr. Helgeson,

The actions taken to comply with the conditions of the restoration order issued January 11, 2016 have been determined to be complete. The flagged portion of the shoreline has been planted with wetland plants and stabilized to prevent further erosion. The restoration order is hereby satisfied.

Thank you for your cooperation in this matter. Should you have questions regarding this issue, please feel free to contact me.

Sincerely,

Jennie Skancke Area Hydrologist 651-259-5790

Jennie.Skancke@state.mn.us

EC:: Carver County SWCD, Mike Wanous Carver County, Jason Mielke City of Chanhassen, Terry Jeffery RPBCWD, Claire Bleser DNR Enforcement, Keith Bertram

DNR Enforcement, Leah Weyandt DNR Fisheries, Daryl Ellison DNR Violations Coordinator, John Gleason DNR Wildlife, Diana Regenscheid DNR EWR Regional Mgr, Terri Yearwood DNR EWR District Mgr, Jeanne Daniels

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