

Enrolled 158-66  
PROPOSED ORDINANCE 158-72-

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3 APPROVAL OF 3-WAY MINING AGREEMENT BETWEEN THE WAUKESHA COUNTY  
4 DEPARTMENT OF PARKS AND LAND USE, JOHNSON SAND & GRAVEL, INC. AND  
5 WOLF CONSTRUCTION CO., INC.  
6

7 WHEREAS Waukesha County ("County") owns a 102 acre parcel of land, including a  
8 previously mined gravel pit ("County Property") located along the east side of C.T.H. C in  
9 Section 6 of the Town of Genesee; and,  
10

11 WHEREAS through Contract #0221, between Waukesha County and Johnson Sand & Gravel,  
12 Inc. ("JSG"), JSG is required to complete mining and reclamation work and operate a yard waste  
13 composting facility on the County Property for a period of 10 years; and,  
14

15 WHEREAS through the adoption of Enrolled Resolution #157-10 on February 25, 2003, the  
16 Waukesha County Board of Supervisors authorized the Department of Parks and Land Use to  
17 negotiate a new 3-Way Mining Agreement with JSG and Wolf Construction Co., Inc. ("Wolf")  
18 for the purposes of:  
19

- 20 1. Removing/mining a 40-foot high hill on the northwest corner of the County  
21 Property, including an old landfill owned by the County; and
- 22 2. Coordinating mining and grading activities along property boundaries shared  
23 between the County and Wolf; and
- 24 3. Facilitating groundwater monitoring for a JSG proposed aggregate washing  
25 operation on the County Property; and,  
26

27 WHEREAS Wolf has requested additional provisions in the agreement to clarify future storm  
28 water practice maintenance requirements along shared property boundaries and to document  
29 conditions for JSG to pump water from a Wolf pond to support the proposed JSG aggregate  
30 washing operation on the County Property.  
31

32 THE BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES ORDAIN that  
33 the 3-Way Mining Agreement between the Waukesha County Department of Parks and Land  
34 Use, Wolf Construction Co., Inc. and Johnson Sand & Gravel, Inc., which is on file with the  
35 Waukesha County Clerk, is hereby approved.  
36

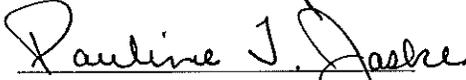
37 BE IT FURTHER ORDAINED that the 3-Way Mining Agreement shall supercede all previous  
38 agreements with Wolf pertaining to mining and reclamation of the County Property, and shall  
39 serve as an addendum to Contract #0221 between Waukesha County and Johnson Sand &  
40 Gravel.  
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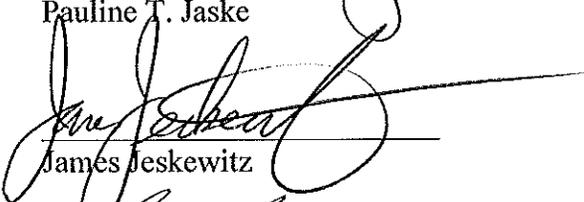
42 BE IT FURTHER ORDAINED that the 3-Way Mining Agreement shall be recorded on the Wolf  
43 and County Properties through the Waukesha County Register of Deeds.

APPROVAL OF 3-WAY MINING AGREEMENT BETWEEN THE WAUKESHA COUNTY DEPARTMENT OF  
PARKS AND LAND USE, JOHNSON SAND & GRAVEL, INC. AND WOLF CONSTRUCTION CO., INC.

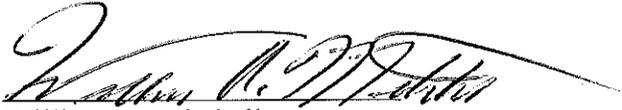
Presented by:  
Land Use, Parks, and Environment Committee

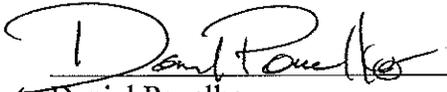
  
Walter L. Kolb, Chair

  
Pauline T. Jaske

  
James Jeskewitz

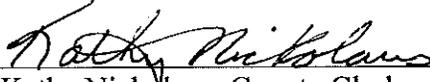
  
Scott J. Klein

  
William A. Mitchell

  
Daniel Pavelko

  
Vera Stroud

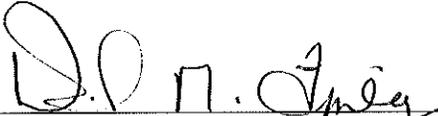
The foregoing legislation adopted by the County Board of Supervisors of Waukesha County,  
Wisconsin, was presented to the County Executive on:

Date: 10-17-03,   
Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County,  
Wisconsin, is hereby:

Approved:

Vetoed:

Date: 10-22-03,   
Daniel M. Finley, County Executive

NOTE: These changes are for Page 9 of the attachment to Ordinance 158-0-070.

Proposed revision to Section 8.(e) of the 3-Way Mining Agreement, as approved by the Land Use and Parks Committee on 9/30/03:

8. Miscellaneous Provisions.

(e) ~~Performance Bond~~ Financial Assurance. The County shall retain a \$100,000 performance bond or letter of credit from JSG until the County has certified completion of all activities and requirements as described above and in the 2002 Contract. Upon request, the County may reduce the bond financial assurance amount in accordance with the ratio of completed items. Said ~~performance bond~~ financial assurance shall ~~replace~~ satisfy any previous financial assurance the County required from JSG under Contract #0221 and may be shared with Town of Genesee to support similar financial assurance requirements under Town Permits if approved by the Town of Genesee and the County. If shared with the Town of Genesee, the Town of Genesee and the County shall approve the bond financial assurance form and any future reduction in bond financial assurance amount or other modification, ~~made to the bond.~~

Explanation of Proposed Changes:

- Double underlined words are added, ~~crossed-out~~ words are deleted.
- Intent of the change is to broaden the acceptable methods of financial assurance to the County, which will better allow for a joint financial assurance with the Town of Genesee.

Three-Way Mining & Storm Water  
Practice Maintenance Agreement

Document Number

WHEREAS Waukesha County ("County") owns a 102 acre parcel of land in Section 6 of the Town of Genesee ("County Property"), which is bordered by property owned or leased by Wolf Construction Co., Inc. ("Wolf") on the north and east sides ("Wolf Property"), as described in Exhibit I; and

WHEREAS in June of 2002 the County entered into a 10-year contract (Contract #0221) with Johnson Sand and Gravel, Inc. ("JSG") to conduct nonmetallic mining, land reclamation and yard waste composting operations on the County Property ("2002 Contract"); and

WHEREAS an active boundary agreement currently exists between the County and Wolf, originally executed on September 9, 1967 between Vulcan Materials Company and the County, and subsequently transferred from Vulcan Materials Company to Wolf by letter agreement on June 11, 1990 ("Boundary Agreement"). The purpose of the Boundary Agreement is to coordinate mining and grading activities along a portion of shared property lines on the north and east boundaries of the County Property. It would benefit both parties to terminate the Boundary Agreement and enter into this agreement to cover the entire east boundary of the County Property, as shown in Exhibit A; and

WHEREAS there is a 40-foot high hill on the north County Property line, including a 1-acre County-owned closed landfill (see Exhibit A) that severely restricts future land use on both the County and Wolf properties due to steep grades where a road is needed and 1200-foot well setback requirements from the landfill; and

WHEREAS transferring mining rights and reclamation duties to JSG in exchange for the removal of the above noted hill and landfill would greatly enhance future land use for the site and satisfy the reclamation provisions of a mining agreement dated August 16, 1993 between the County and Wolf for that area ("1993 Agreement"); and

WHEREAS to help meet the water needs for a proposed aggregate washing operation and meet local regulatory requirements, JSG desires to pump water from an existing pond and place a groundwater monitoring well on the Wolf property.

WHEREAS a permanent storm water basin was partially constructed across a shared property boundary between the Wolf Property and the County Property through the 1993 Agreement. This basin needs to be incorporated into long-range land use plans for both properties, including the clarification of future maintenance responsibilities.

NOW, THEREFORE, in consideration of these premises, and to facilitate the planned mining and reclamation of the County Property, Waukesha County, Johnson Sand and Gravel, Inc. and Wolf

Name and Return Address

Perry Lindquist  
Department of Parks & Land Use  
1320 Pewaukee Rd. - Room 260  
Waukesha, WI 53188

Construction Co., Inc. hereby agree to the covenants, conditions and restrictions described herein. This agreement includes the following exhibits:

**Exhibit A:** Site Reference Map – Shows the general location of the properties and several site features referenced in this agreement.

**Exhibit B:** Grading Plan for North County Property Line - Shows existing and planned grades and storm water management easements as described in Section 2 of this agreement.

**Exhibit C:** Grading Plan for East County Property Line - Shows existing and planned grades as described in Section 5 of this agreement.

**Exhibit D:** Example Cross-Section of East Boundary Agreement - Illustrates in cross-section format the provisions of Section 5.c. of this agreement.

**Exhibit E:** Monitoring Well Easement - Shows the location of the monitoring well and 10-year easement for JSG to monitor groundwater on the Wolf Property, as described in Section 6 of this agreement.

**Exhibit F:** Wash Pond Pumping - Shows the location of the pond, the proposed aggregate washing operation and wells covered under a well guarantee, as described in Section 7 of this agreement.

**Exhibit G:** Storm Water Practice Maintenance Agreement - Describes the permanent storm water management practices and their maintenance requirements for the Wolf and County Properties, as referenced in Section 3 of this agreement.

**Exhibit H:** Approved Landfill Exhumation Plan - Describes the requirements for exhuming the landfill materials from the County Property, as described in Section 4 of this agreement.

**Exhibit I:** Legal Descriptions - Describes the real estate to which this Agreement applies (“County Property” and “Wolf Property”).

**Exhibit J:** Permits - Describes and lists all of the Permits referred to in this agreement.

**Exhibit K:** Reclamation Specifications – Describes the procedures and specifications that Wolf must follow when reclaiming the east County Property line area after mining.

1. Approval of Grading and Reclamation Plans for Shared Property Boundaries

(a) *Approved Plans and Permits.* All parties to this agreement have reviewed and approved the final grading and reclamation plans (“Approved Plans”) for all land within 200 feet of property boundaries shared by Wolf and the County. The Approved Plans are illustrated in Exhibits B and C. It is understood by all parties that the Approved Plans are subsets of a larger set of plans and permits approved by the Town

of Genesee, Waukesha County ~~Park and Planning Commission~~ and the Wisconsin Department of Natural Resources ("Permits"), as described in Exhibit J. Said Permits shall be strictly adhered to by JSG through the implementation of this agreement and the 2002 Contract. Additional provisions regarding Permit enforcement, are provided in Sub. 8(d) of this agreement.

- (b) *Amendments.* Under this agreement, any subsequent changes made to the Approved Plans must be approved by all parties to this agreement, and any applicable regulatory authority in writing, including changes resulting from any applicable regulatory authority review or those resulting from unforeseen construction conditions.
- (c) *Accuracy.* It is understood that the nature of mining and reclamation activities limits its accuracy in meeting planned grades. Therefore it is agreed that any final grade that is within 1 foot in elevation (2 feet on back slopes) of the Approved Plans shall be considered compliant with the Approved Plans, unless the grade changes result in a lack of positive drainage for surface runoff. In this case, JSG shall conduct additional grading as necessary to correct the drainage problem, and as approved by the landowner. Under no circumstances is over-excavation and filling of material authorized, unless specified in this agreement or otherwise approved in writing by all parties.

2. Mining Along the North County Property Boundary (Exhibit B)

- (a) *Approved Plans.* JSG shall, under the 2002 Contract with Waukesha County, excavate and remove material from both the County Property and Wolf property and reclaim the site in accordance with the Approved Plans and Permits. It is understood that JSG will excavate beyond the deeded County Property boundary line in order to match the Approved Plans.
- (b) *No Payment.* JSG shall make no additional payment to Wolf or the County for the excavated material described in this section. The value of material mined on County and Wolf property in this area shall be paid to both parties through the "in-kind" services described in Section 4 of this agreement, improved end land use values on both properties, satisfying the terms and conditions of previous mining agreements, and through annual payments already committed to the County under the 2002 Contract.
- (c) *As-built Survey.* After JSG has completed mining activity in this area, but before topsoil application, JSG shall at their cost, provide the County and Wolf with an "as-built" survey of the area, showing 2-foot contours and the location of property corner stakes and property lines. The survey shall be stamped by a Wisconsin certified surveyor. The County and Wolf shall review the survey and determine compliance with the Approved Plans. Upon a written determination of compliance by both the County and Wolf, JSG shall complete site reclamation, in accordance with the Approved Plans and Permits.

3. Storm Water Management Along the North County Property Boundary (Exhibits B and G)

- (a) *Storm Water Plan.* To ensure proper planning for storm water runoff from both the Wolf and County Properties, Wolf and the County have cooperatively developed a storm water management plan for the drainage area along the North County Property boundary. Construction of planned storm water management practices was partially completed by Wolf under the 1993 Agreement and shall be completed by JSG, as shown in Exhibit B, as part of the work required under the 2002 Contract.
- (b) *Easements.* To allow for future maintenance of the storm water practices noted in sub. (a), Wolf and the County hereby grant permanent storm water management and access easements on each property, as described in Exhibit B, and the associated restrictive covenants described in Exhibit G.
- (c) *Maintenance.* To ensure future maintenance of the storm water management practices within the easement areas, Wolf and the County hereby enter into the storm water facility maintenance agreement presented in Exhibit G, including the granting of enforcement authority to the Town of Genesee. Exhibit G describes the storm water management practices, their maintenance requirements, the responsible party, a cost distribution formula, enforcement authorities and other provisions related to the maintenance of the storm water management practices.

4. Landfill and Other Deposited Materials (Exhibits A and B)

- (a) *Definition and Location.* For purpose of this agreement, the term “landfill and other deposited material” refers to all soil, rock, concrete, tree stumps and other wood wastes, metal, rubber, household garbage and any other foreign materials that cannot be processed through normal mining activities, with the exception of “hazardous materials”, as defined by the DNR. It is understood by all parties that there is a 1-acre closed licensed landfill on the site and that the exact location, volume and content of landfill and other deposited materials on the County Property is unknown because they are largely buried. JSG has conducted excavations throughout the site for planning purposes and has developed some estimates near the closed landfill, which were incorporated into a permit application to the DNR for exhuming the landfill. Approximate known locations of the landfill and other deposited materials are shown in Exhibit A.
- (b) *Exhumation Plan.* JSG shall at JSG’s cost, remove, process, recycle or dispose of all landfill and other deposited materials that are encountered anywhere on the County Property during mining or site grading activities, in accordance with the Approved Landfill Exhumation Plan, as presented in Exhibit H.
- (c) *Hazardous Material.* If any suspected hazardous materials are encountered, JSG shall have no responsibility for removal. Upon recognizing such hazardous materials, JSG shall immediately cease all mining or grading activities near the hazardous material and notify the County and the DNR in accordance with Exhibit H. The County shall

be responsible for arranging proper testing (if necessary), handling and disposal of hazardous materials, and shall pay all associated costs.

- (d) *Certification.* Prior to the application of topsoil in the area of the licensed County landfill, as shown in Exhibit B, JSG shall provide to the County a signed and stamped letter from a Professional Engineer certifying compliance with Exhibit H for exhuming the landfill and the Approved Plans and Permits for final grades. The County may request a letter of no objection from the DNR.
- (e) *Oversight and Documentation.* JSG shall at JSG's cost, provide engineering oversight and all project documentation and reporting for the removal of all landfill material in accordance with Exhibit H.

5. Mining Along the East County Property Boundary (Exhibits C, D and K)

- (a) *Agreement.* Wolf and the County each agree to allow the other to extend their excavations beyond the common east property boundary line in accordance with Exhibits C and D. The purpose of this agreement is to prevent excess material, or a wall, to remain after mining from both sides of the property boundary. It is understood that, due to the 2002 Contract, JSG will be the first to mine in this area.
- (b) *Site Survey.* Prior to JSG conducting any excavation within 50 feet of the east County Property line, a certified surveyor shall, at JSG's cost, field stake the adjacent property boundaries, a 10-foot setback line and planned grades. A representative from JSG, the County and Wolf shall confirm the staking prior to excavation work and shall agree on the "proper line of excavation".
- (c) *Proper Line of Excavation.* The "proper line of excavation" shall be defined as a line beyond and generally parallel with the deeded boundary line to which excavation must be advanced to allow for the removal of material from each party's reserves and also produce an angle of repose for the remaining material of 1.5' horizontal (maximum) to 1' vertical slope, as illustrated in Exhibit D. For JSG, the proper line of excavation shall be based on the planned elevations in the Approved Plans under Section 1 and the angle of repose. It is understood that JSG will make every reasonable attempt to minimize the encroachment onto the Wolf property and may create a steeper angle of repose than shown in Exhibit D if soil stability can be obtained, as approved by the County and the Town of Genesee Engineer.
- (d) *Overburden.* JSG shall assume the responsibility of removing the overburden material (topsoil and subsoil) from an area on Wolf's side of the deeded boundary line, up to the proper line of excavation. JSG shall separate and temporarily stockpile all existing topsoil and subsoils from this area on the Wolf Property within 100 feet of the proper line of excavation and use the material to reclaim the final slope in accordance with Approved Plans. During final grading and reclamation activities, JSG shall allow no overburden material to be mixed with the material to be mined in the future by Wolf. If Wolf chooses not to retain all of the overburden material, JSG may apply the excess overburden material anywhere on the County Property that does not violate Sub. (e),

while maintaining compliance with all Permits. Under all circumstances, there shall be no direct payments owed or made for the material.

- (e) *No Fill.* JSG shall remove no material below the "proper line of excavation" on the Wolf property and no overburden or any other fill shall be placed above this line, other than the stockpiled overburden noted in sub. (d) and the topsoil or topsoil substitute that is specified in the reclamation plan and Permits.
- (f) *As-built Survey.* After JSG has completed mining activity in this area, but before topsoil application, JSG shall at their cost, provide the County and Wolf with an "as-built" survey of this area, showing 2-foot contours and the location of property corner stakes and property lines. The survey shall be stamped by a Wisconsin certified surveyor. The County and Wolf shall review the survey and determine compliance with the Approved Plans. Upon a determination of compliance by both the County and Wolf, JSG shall complete site reclamation, in accordance with the Approved Plans.
- (g) *Wolf Mining Rights.* For a period of 20 years after JSG has completed all grading and reclamation work under the 2002 Contract, Wolf shall be entitled to enter upon the County Property for the purpose of excavating and removing the remaining material (see Exhibit D), matching the planned grades and floor elevations. Prior to exercising this right, Wolf shall meet the owner(s) or a owner(s) representative(s) from of the County Property on-site to confirm the area to be affected and the procedures to be followed in the mining operation. Access to the County Property shall be limited to 30 feet beyond the actual line where the remaining material to be mined ends ("proper line of excavation"), including the area used for topsoil stockpiles. The County hereby grants Wolf a temporary access easement for this purpose, as shown in Exhibit C. Wolf shall complete mining and reclaiming the affected County Property in accordance with the procedures and specifications provided in Exhibit K.

6. Groundwater Monitoring Wells (Exhibit E)

- (a) *Well on Wolf Property.* Wolf shall allow JSG to install, at JSG's cost, one monitoring well on the Wolf Property, as shown in Exhibit E. For a period of 10 years after execution of this agreement Wolf hereby grants JSG and the County an access easement to the monitoring well as shown in Exhibit E. The purpose of the well and the access easement is to monitor the impacts of the mining operation on local groundwater resources, in accordance with Permits.
- (b) *Wells on County Property.* The County shall allow JSG to install one monitoring well on the County Property and use three existing monitoring wells during mining activities.
- (c) *Well Removal.* At the end of the 10-year mining period, JSG shall, at JSG's cost, remove all five monitoring wells in accordance with DNR or other applicable regulations at the time of removal.

7. Wash Pond Pumping (Exhibit F)

- (a) *Pumping Rights.* For a period of 10 years after execution of this agreement, JSG shall be granted rights to pump water from an existing pond on the Wolf property, as shown on Exhibit F. The sole purpose and maximum rate of said pumping shall be that needed to provide make-up water for an aggregate washing operation on the County property, as described in their Permits.
- (b) *Equipment.* Wolf and JSG shall mutually agree to the location and installation of all pumping equipment and piping prior to placement by JSG. If the need should arise to relocate the pumping equipment or piping, the initiating party shall provide the other party a 10-day notice. Wolf and JSG shall mutually agree to the relocation and installation of all pumping equipment and piping prior to placement by JSG. JSG shall remove all pumping equipment and piping after the terms of this agreement have expired.
- (c) *Vehicle Access.* JSG shall be granted vehicular access rights to the Wolf property during normal business hours, as needed solely to maintain the pond, pumping equipment and piping.
- (d) *Costs.* JSG shall be responsible for all costs associated with the installation, operation, relocation and removal of pumping equipment and piping.
- (e) *Property Damage.* JSG shall be responsible for any property damage that may be caused by the pumping operation, including but not limited to damage to the wells shown in Exhibit F or from the installation, relocation or removal of the pumping equipment and piping.
- (f) *Termination of Pumping Rights.* Upon a 90-day written notice to JSG, Wolf may terminate the pumping rights granted to JSG under this section if Wolf determines that the pumping is negatively affecting their business operations or otherwise causing property damage.

8. Miscellaneous Provisions

- (a) *Previous Agreements.* This Agreement shall supersede all previous agreements with respect to this property executed between the County and Wolf, including the Boundary Agreement and the 1993 Agreement. All such previous agreements are hereby terminated and the County and Wolf release and agree to hold each other harmless from any and all claims, obligations, or liabilities arising out of all such previous agreements. This agreement shall also serve as an addendum to the 2002 Contract between the County and JSG (Contract #0221 – Dated June 6, 2002).
- (b) *Term of Agreement.* This Agreement shall become effective upon execution by all parties. Except as noted in Section 3, this agreement shall remain in effect for 20 years

after all specified mining and reclamation work is completed in accordance with the Approved Plans and Permits, and other provisions described in this agreement. This agreement shall serve to extend the term of the contract with JSG, as noted above, until completion is certified as described in Sub. (e).

- (c) *Binding Agreement.* This agreement shall be recorded with the Waukesha County Register of Deeds for the applicable Wolf and County Properties and shall be binding upon the parties hereto and their respective successors and assigns. If the 2002 Contract between the County and JSG is terminated prior to the completion of all work in this agreement, the County remains obligated to all agreement provisions related to mining and reclamation on the Wolf property.
- (d) *Subject to Permits and Contracts.* This agreement shall be subject to all Permits and 2002 Contract provisions and shall not be in force and effect until all Permits have been issued. Implementation of this agreement shall be in strict compliance with all Permits and shall be subject to Permit enforcement actions by the applicable regulatory authorities. A list of applicable Permits is provided in Exhibit J.
- (e) *Performance Bond.* The County shall retain a \$100,000 performance bond from JSG until the County has certified completion of all activities and requirements as described above and in the 2002 Contract. Upon request, the County may reduce the bond amount in accordance with the ratio of completed items. Said performance bond shall replace any previous financial assurance the County required from JSG under Contract #0221 and may be shared with Town of Genesee to support similar financial assurance requirements under Town Permits if approved by the Town of Genesee and the County. If shared with the Town of Genesee, the Town of Genesee and the County shall approve the bond form and any future reduction in bond amount or other modification made to the bond.
- (f) *Entire Agreement and Agreement Modifications.* This Agreement contains the entire agreement of the parties, except as noted under Sub. (a), and may not be modified unless such a modification is in writing, approved by each party, duly executed by the authorized representative and approved by all applicable regulatory authorities.
- (g) *Effect of Agreement.* The County, Wolf and JSG recognize that this Agreement is the product of a unique set of circumstances. Accordingly, it is mutually acknowledged that many of the provisions contained herein are unique unto themselves and should not be seen as precedent for any future agreement between the County and other entities.
- (h) *Indemnification.* The County covenants and agrees to indemnify, hold harmless and defend Wolf and JSG from and against any and all claims for loss, damage or injury and from and against any and all suits, actions and legal proceedings of every kind brought against Wolf or JSG for or on account of any loss or damage to the property of any person or persons, corporation, or corporations, for or on account of any injuries or damages received or sustained by any person or persons, if any of the foregoing result from negligence of the County, its agents, employees or subcontractors, if any. The

County further agrees to take upon itself the settlement of all such claim or claims and the defense of any suit or suits or legal proceedings of any kind brought to enforce such claim or claims, and to pay all judgments rendered in said suit or proceedings and all costs, attorney's fees and other expenses.

JSG covenants and agrees to indemnify, hold harmless and defend the County and Wolf from and against any and all claims for loss, damage or injury and from and against any and all suits, actions and legal proceedings of every kind brought against the County or Wolf for or on account of any loss or damage to the property of any person or persons, corporation, or corporations, for or on account of any injuries or damages received or sustained by any person or persons, if any of the foregoing result from negligence of JSG, its agents, employees or subcontractors, if any. JSG further agrees to take upon itself the settlement of all such claim or claims and the defense of any suit or suits or legal proceedings of any kind brought to enforce such claim or claims, and to pay all judgments rendered in said suit or proceedings and all costs, attorney's fees and other expenses.

Wolf covenants and agrees to indemnify, hold harmless and defend the County and JSG from and against any and all claims for loss, damage or injury and from and against any and all suits, actions and legal proceedings of every kind brought against the other for or on account of any loss or damage to the property of any person or persons, corporation, or corporations, for or on account of any injuries or damages received or sustained by any person or persons, if any of the foregoing result from negligence of Wolf, its agents, employees or subcontractors, if any. Wolf further agrees to take upon itself the settlement of all such claim or claims and the defense of any suit or suits or legal proceedings of any kind brought to enforce such claim or claims, and to pay all judgments rendered in said suit or proceedings and all costs, attorney's fees and other expenses.

- (i) *Severability.* If any clause, provision or section of this Agreement be declared invalid by any Court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions of this Agreement.
- (j) *Insurance.* In addition to the insurance requirements currently stated in Contract #0221 between JSG and the County, JSG agrees to carry and pay the premiums for public liability insurance insuring JSG and Wolf against injury to property, person, or loss of life with limits of at least Five Million Dollars and shall provide a certificate of such insurance to Wolf prior to commencing any activity described in this agreement. Such policy of insurance shall not be canceled, discontinued, or altered without ten days written notice to Wolf. A single insurance policy may be used to satisfy these requirements.
- (k) *Dispute Resolution.* Any dispute or controversy arising under or in connection with this agreement will be settled exclusively by arbitration by a single arbitrator in the city of Waukesha, Wisconsin, or any place mutually agreeable to the parties, under the arbitration rules of Resolute Systems, Inc. Judgment upon the award rendered by the arbitrator, including an award concerning the payment of costs, attorneys' fees, and

expenses of the arbitration proceedings, may be entered in any court of competent jurisdiction. In the event that any party commences arbitration or legal proceedings against any other party in connection with this agreement, the prevailing party or parties, as the case may be, shall be entitled to recover their costs, attorneys' fees, and expenses.

**By Johnson Sand and Gravel, Inc.**

\_\_\_\_\_  
(Date)

**By Wolf Construction Co., Inc.**

\_\_\_\_\_  
(Date)

**By Waukesha County Department of Parks and Land Use**

\_\_\_\_\_  
(Date)  
Dale R. Shaver, Director

**Acknowledgements**

State of Wisconsin) :ss  
County of Waukesha)

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 200\_, the above named \_\_\_\_ [Owners name]\_\_\_\_\_ to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
[Name]  
Notary Public, Waukesha County, WI  
My commission expires:\_\_\_\_\_.

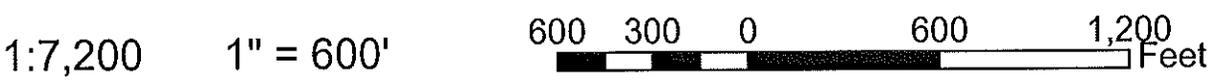
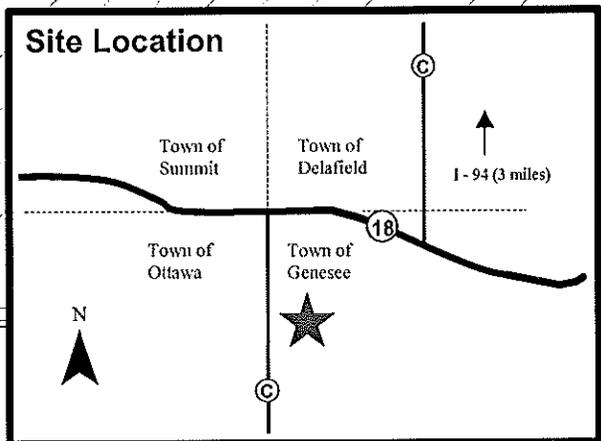
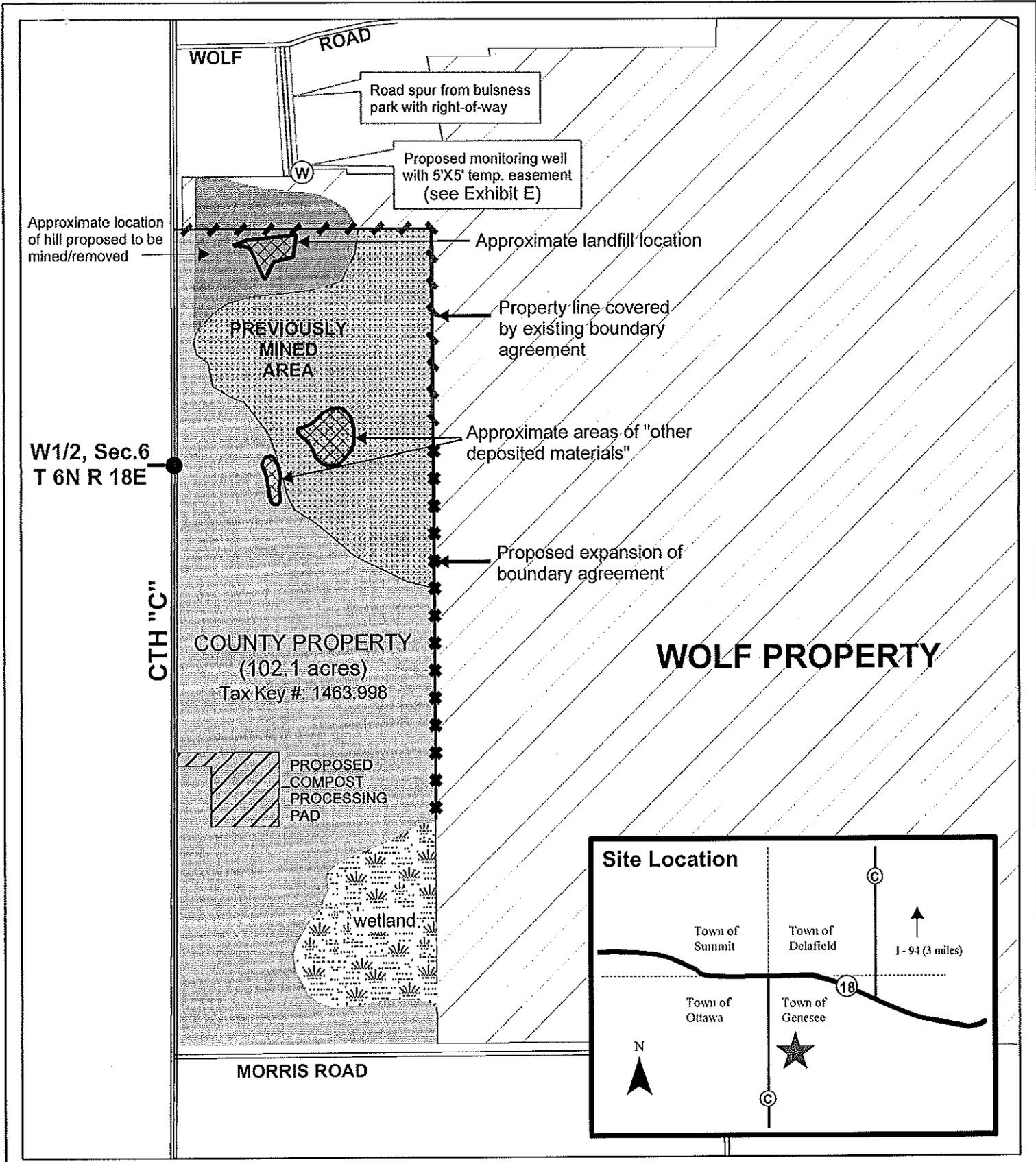
State of Wisconsin) :ss  
County of Waukesha)

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 200\_, the above named [Name of Authorized Municipal Representative] \_\_\_\_\_, as the [Title] \_\_\_\_\_ of the [Municipality Name], to me known to be the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
[Name]  
Notary Public, Waukesha County, WI  
My commission expires:\_\_\_\_\_.

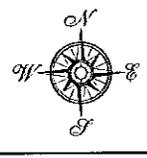
*This document was drafted by:*

Perry Lindquist  
Land Resources Manager  
Waukesha County Department of Parks and Land Use  
1320 Pewaukee Road – Room 260  
Waukesha, WI 53188



**EXHIBIT "A"**  
**SITE REFERENCE MAP**  
W1/2, SECTION 6, T 6N R 18E  
TOWN OF GENESSEE

The information and depictions herein are for informational purposes and Waushara County specifically disclaims accuracy in this reproduction and specifically acknowledges and advises that if specific and precise accuracy is required, the same should be determined by procurement of certified maps, surveys, plans, Flood Insurance Studies, or other official maps. Waushara County will not be responsible for any damages which result from third party use of the information and depictions herein or for use which ignores this warning.

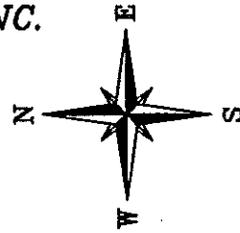


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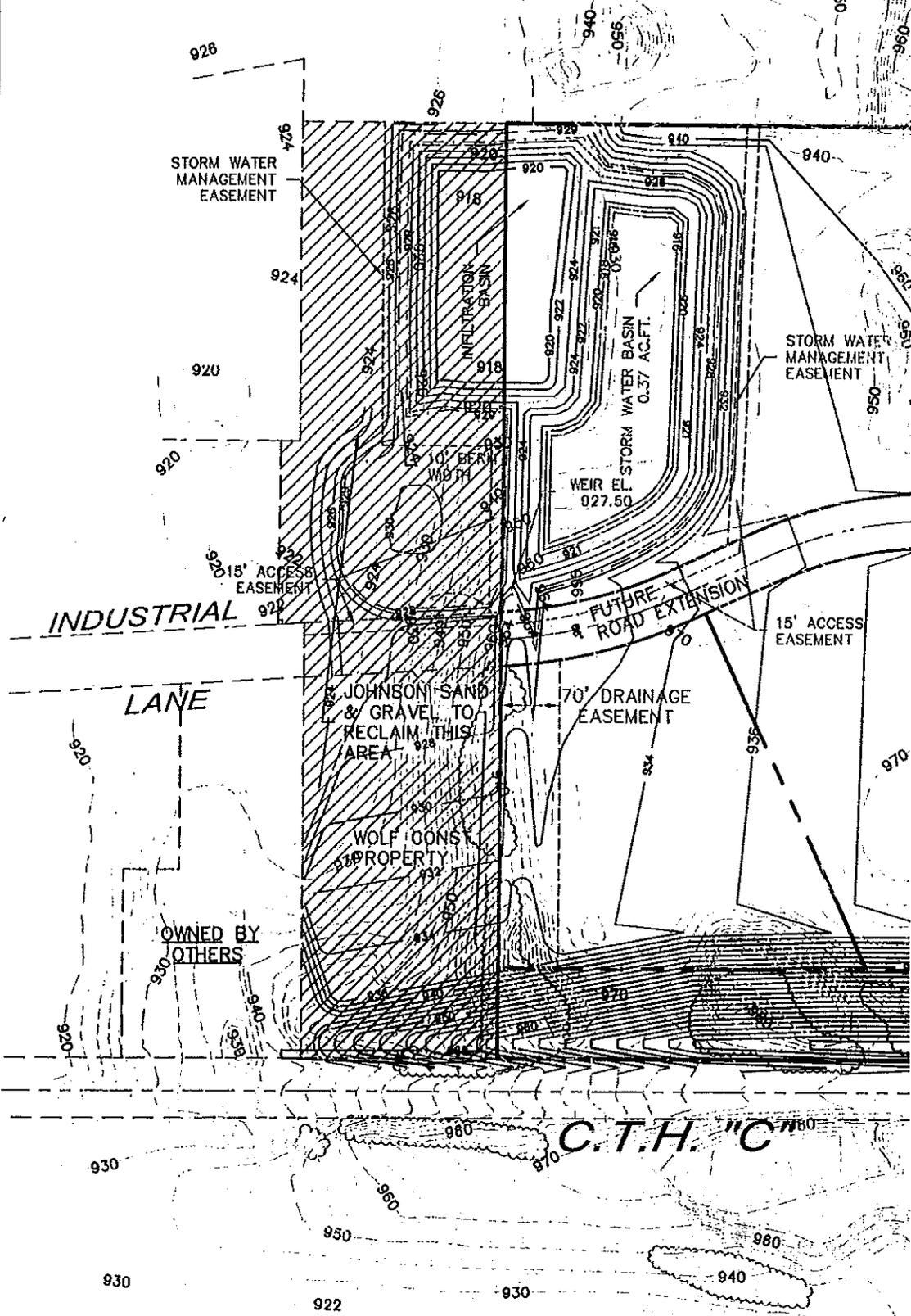
**JAHNKE & JAHNKE ASSOCIATES INC.**

PLANNERS & PROFESSIONAL ENGINEERS  
711 W. MORELAND BLVD. - WAUKESHA, WI. 53188  
TEL.No. (262) 542-5797 FAX (262) 542-7698



**EXHIBIT B**  
**PAGE - 1**  
**GRADING PLAN FOR**  
**NORTH COUNTY PROPERTY LINE**

SCALE: 1" = 150'



REVISED: AUGUST 25, 2003  
REVISED: JUNE 10, 2003  
DATE: MAY 14, 2003

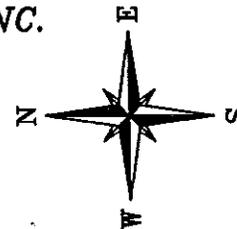
FILE NAME: S\PROJECTS\S6138\S6138.dwg

158-0-070

14

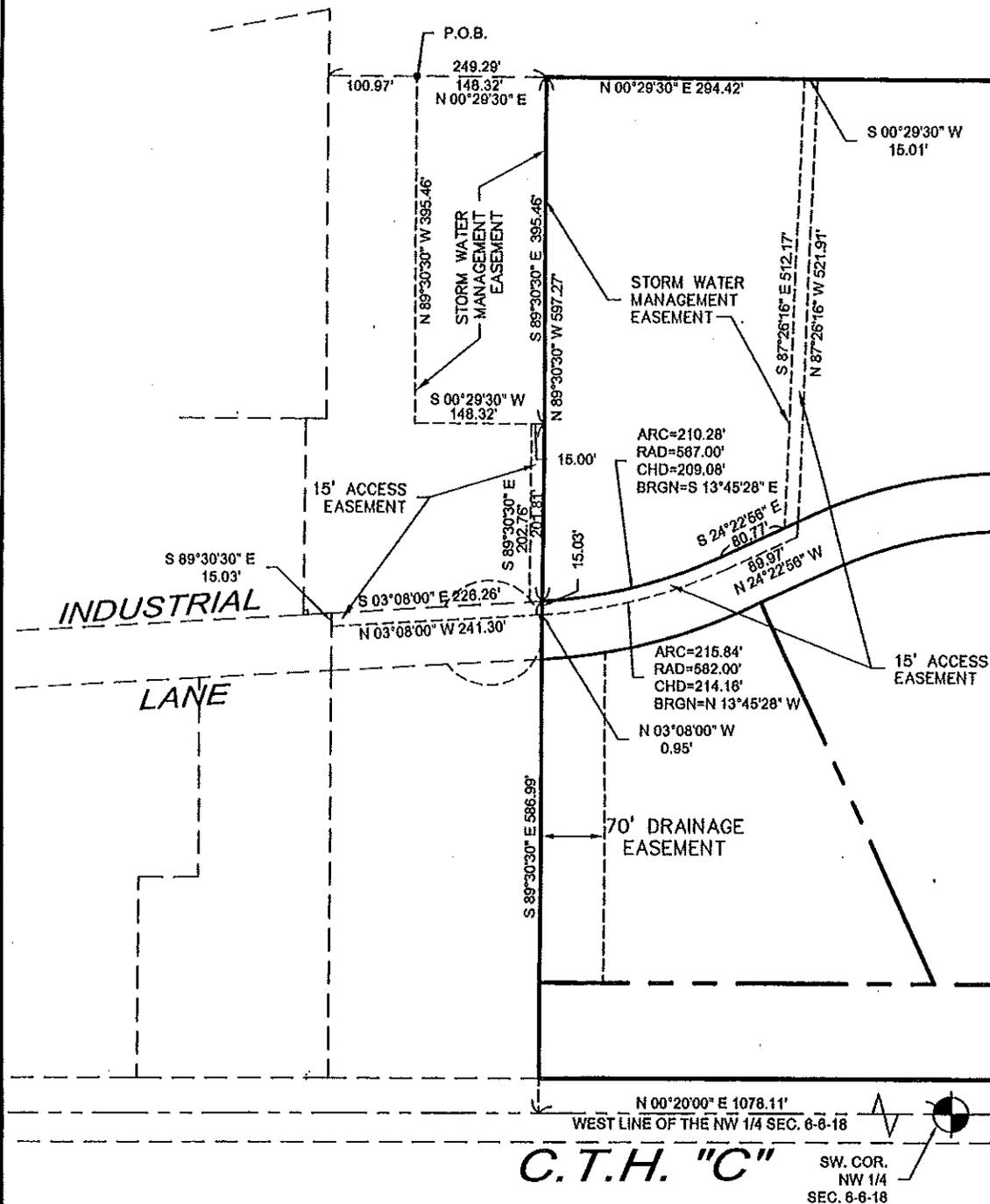
**JAHNKE & JAHNKE ASSOCIATES INC.**

PLANNERS & PROFESSIONAL ENGINEERS  
711 W. MORELAND BLVD.-WAUKESHA, W.I. 53188  
TEL.No. (262) 542-5797 FAX (262) 542-7698



SCALE: 1" = 150'

**EXHIBIT B**  
**PAGE-2**  
**GRADING PLAN FOR**  
**NORTH COUNTY PROPERTY LINE**



REVISED: AUGUST 25, 2003  
REVISED: JUNE 10, 2003  
DATE: MAY 14, 2003

FILE NAME: S:\PROJECTS\S6138\S6138.dwg

158-0-070

15

**EXHIBIT – B**  
**PAGE 3**

**LEGAL DESCRIPTION – STORM WATER MANAGEMENT EASEMENT ON WOLF  
CONSTRUCTION CO. INC. LANDS**

All that part of Lot 3 of Certified Survey Map No. 8642 and part of the Southwest Quarter (SW ¼) of the Northwest Quarter (NW ¼) of Section 6, Town 6 North, Range 18 East, Town of Genesee, Waukesha County, Wisconsin, bounded and described as follows: Commencing at the northeast corner of Lot 3 of Certified Survey Map No. 8642 recorded in Volume 76 of Certified Survey Maps on pages 164-166 as Document No. 2370638; thence South 00°29'30" West along the east line of said Lot 3 100.97 feet to the place of beginning; thence North 89°30'30" West 395.46 feet; thence South 00°29'30" West 148.32 feet to the south line of said Lot 3; thence South 89°30'30" East along said south line 395.46 feet; thence North 00°29'30" East along the east line of said Lot 3 148.32 feet to the place of beginning. Containing 58,654 square feet of land.

Also including a 15 feet wide easement to the storm water basin for access purposes bounded and described as follows: Commencing at the northeast corner of Lot 3 of Certified Survey Map No. 8642 recorded in Volume 76 of Certified Survey Maps on pages 164-166 as Document No. 2370638; thence South 00°29'30" West along the east line of said Map No. 8642 249.29 feet; thence North 89°30'30" West 395.46 feet to the place of beginning of a 15 feet access easement; thence continuing North 89°30'30" West 216.84 feet; thence North 03°08'00" West 241.30 feet to the north line of abovesaid Lot 3; thence South 89°30'30" East along said north line 15.03 feet; thence South 03°08'00" East along the future east right of way line of Industrial Lane 226.26 feet; thence South 89°30'30" East 202.76 feet; thence South 0°29'30" West 15.00 feet to the place of beginning.

EXHIBIT – B  
PAGE 4

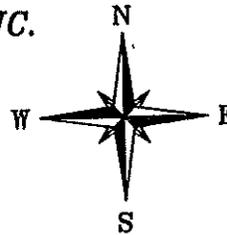
LEGAL DESCRIPTION – STORM WATER MANAGEMENT EASEMENT ON WAUKESHA COUNTY LANDS

All that part of the Southwest Quarter (SW ¼) of the Northwest Quarter (NW ¼) of Section 6, Town 6 North, Range 18 East, Town of Genesee, Waukesha County, Wisconsin, bounded and described as follows: Commencing at the southwest corner of the Northwest Quarter (NW ¼) of Section 6; being marked by a concrete monument with Brass Cap; thence North 00°20'00" East along the west line of said Northwest Quarter (NW ¼) 1078.11 feet; thence South 89°30'30" East 586.99 feet along the south line of Certified Survey Map No. 8642 recorded in Volume 76 of Certified Survey Maps on Page 164-166 as Document No. 2370638 to the place of beginning of the lands hereinafter described; thence southerly 210.28 feet along the arc of a curve of radius 567.00 feet; center lies to the east, chord bears South 13°45'28" East 209.08 feet; thence South 24°22'56" East 80.77 feet; thence South 87°26'16" East 512.17 feet; thence North 00°29'30" East 294.42 feet to the south line of said Certified Survey Map No. 8642; thence North 89°30'30" West along said south line 597.27 feet to the place of beginning. Containing 160,658 square feet of land.

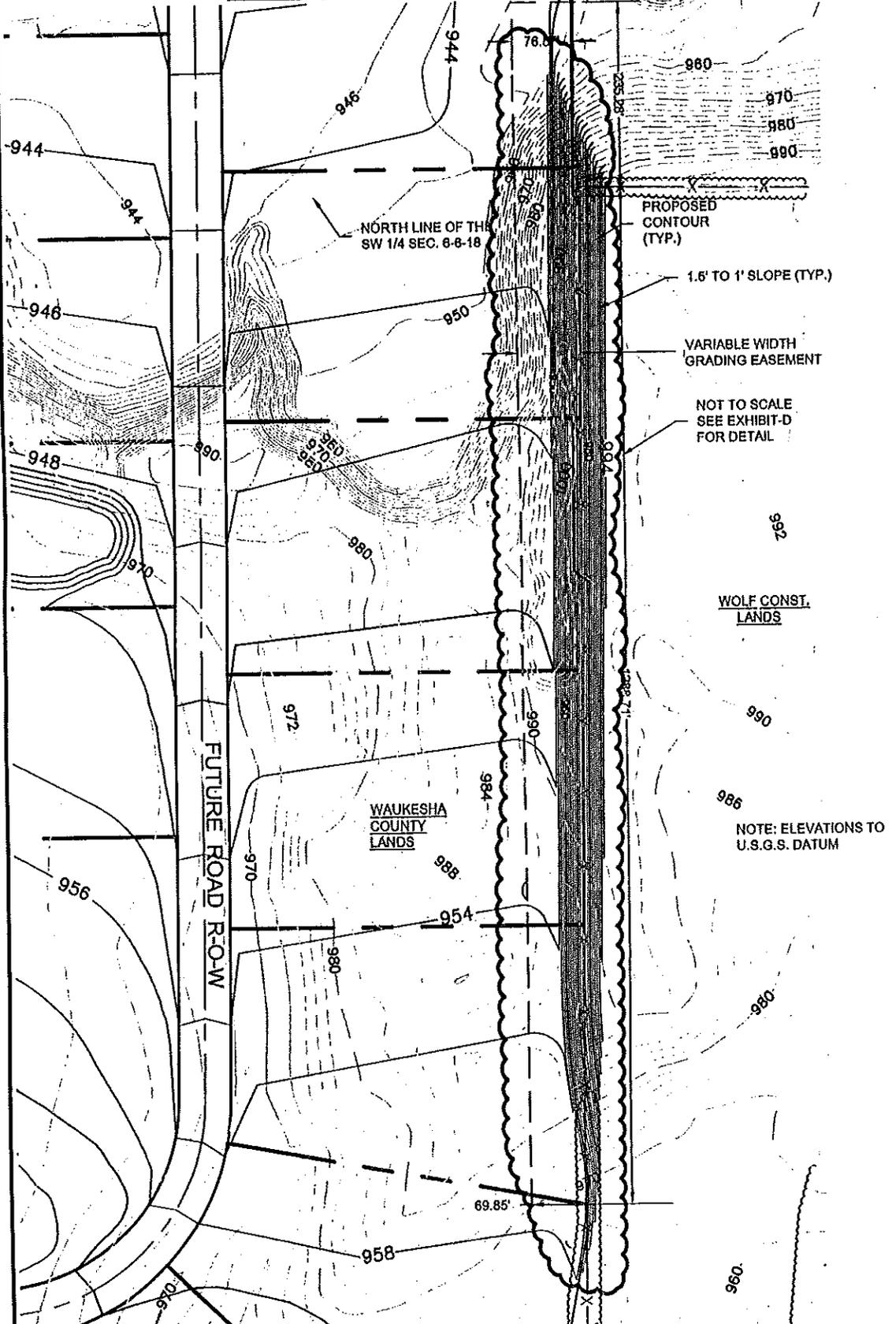
Also including a 15 feet easement for access to the storm water basin bounded and described as follows: Commencing at the southwest corner of the Northwest Quarter (NW ¼) of Section 6 being marked by a concrete monument with brass cap; thence North 0°20'00" East along the west line of said Northwest Quarter (NW ¼) 1078.11 feet to the south line of Certified Survey Map No. 8642; thence South 89°30'30" East along said south line 586.99 feet to the place of beginning of said access easement; thence southerly 210.28 feet along the arc of a curve of radius 567.00 feet; center lies to the east, chord bears South 13°45'28" East 209.08 feet; thence South 24°22'56" East 80.77 feet; thence South 87°26'16" East 512.17 feet; thence South 00°29'30" West 15.01 feet; thence North 87°26'16" West 521.91 feet; thence North 24°22'56" West 89.97 feet; thence northerly 215.84 feet along the arc of a curve of radius 582.00 feet; center lies to the east, chord bears North 13°45'28" West 214.16 feet; thence North 03°08'00" West 0.95 feet to the south line of said Certified Survey Map No. 8642; thence South 89°30'30" East along said south line 15.03 feet to the place of beginning.

**JAHNKE & JAHNKE ASSOCIATES INC.**

PLANNERS & PROFESSIONAL ENGINEERS  
711 W. MORELAND BLVD. - WAUKESHA, WISCONSIN 53188  
TEL. No. (262) 542-5797 FAX (262) 542-7698



**EXHIBIT C**  
**GRADING PLAN FOR**  
**EAST COUNTY PROPERTY LINE**

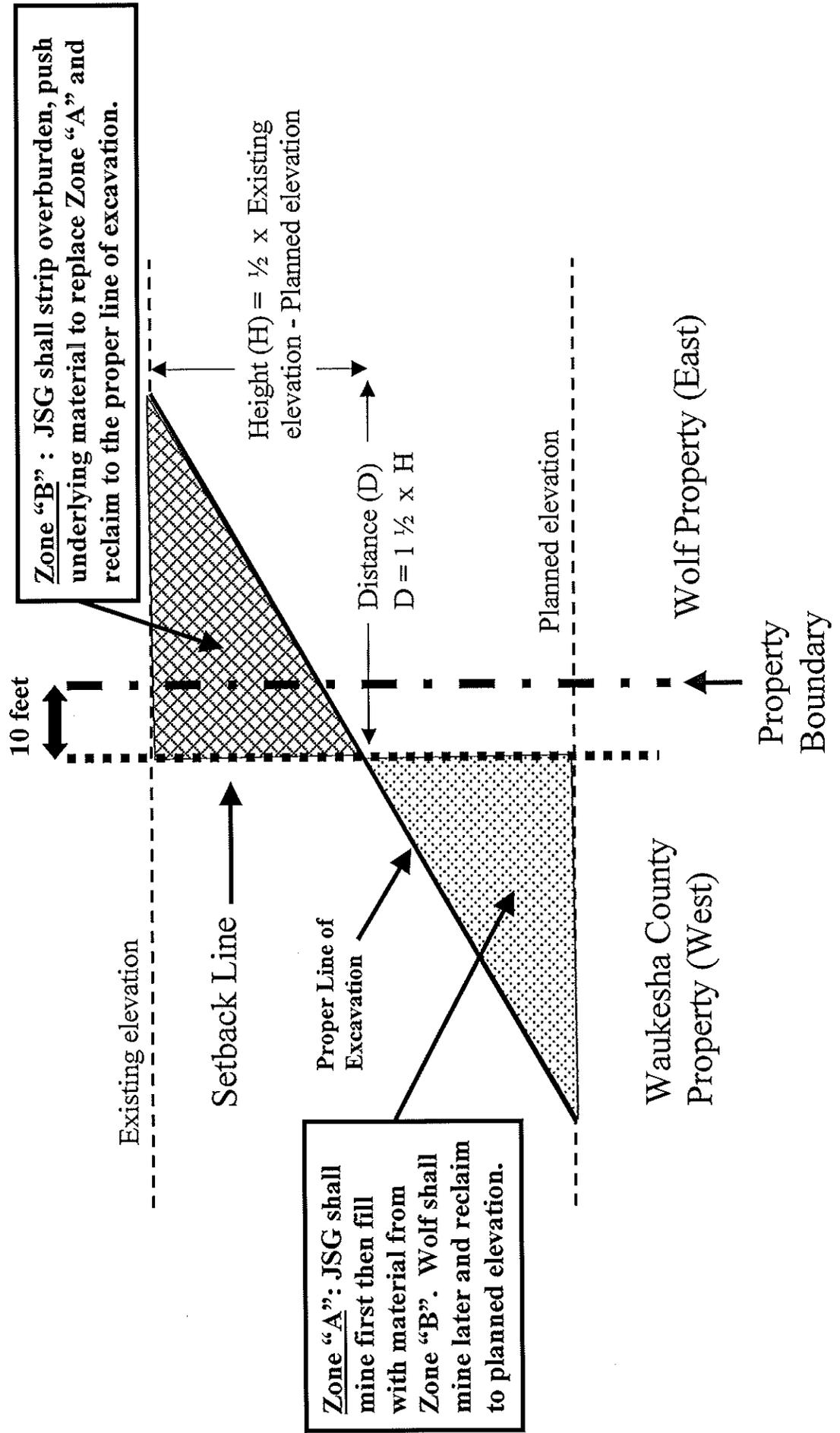


REVISED: SEPTEMBER 15, 2003  
DATE: MAY 13, 2003

FILE NAME: S\PROJECTS\S6138\S6138.dwg

158-0-00

# Exhibit D Example Cross-section of East Boundary Agreement



# EXHIBIT E - MONITORING WELL EASEMENT

FOR: WAUKESHA COUNTY

TOWN OF GENESEE, WAUKESHA COUNTY, WISCONSIN

PREPARED BY: JAHNKE & JAHNKE ASSOCIATES INC.

Consultants in Engineering, Planning, Subdivisions and Surveying  
711 W. MORELAND BLVD. WAUKESHA, WISCONSIN 53188  
TELEPHONE (262) 542-6797 FAX (262) 542-7698

REFERENCE BEARING: THE WEST LINE OF THE NW 1/4 OF SECTION 6, T6N, R18E WAS USED AS THE REFERENCE BEARING AND HAS A BEARING OF N 00° 20'00" E BASED ON THE WISCONSIN STATE PLANE COORDINATE SYSTEM (SOUTH ZONE)

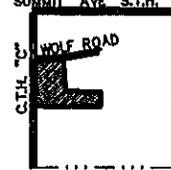
OWNERS: WOLF CONSTRUCTION CO., INC.  
612 NORTH SAWYER ROAD  
OCONOMOWOC, WI. 53068

SURVEYOR: JAHNKE & JAHNKE ASSOCIATES INC.  
711 WEST MORELAND BOULEVARD  
WAUKESHA, WI. 53188-2479

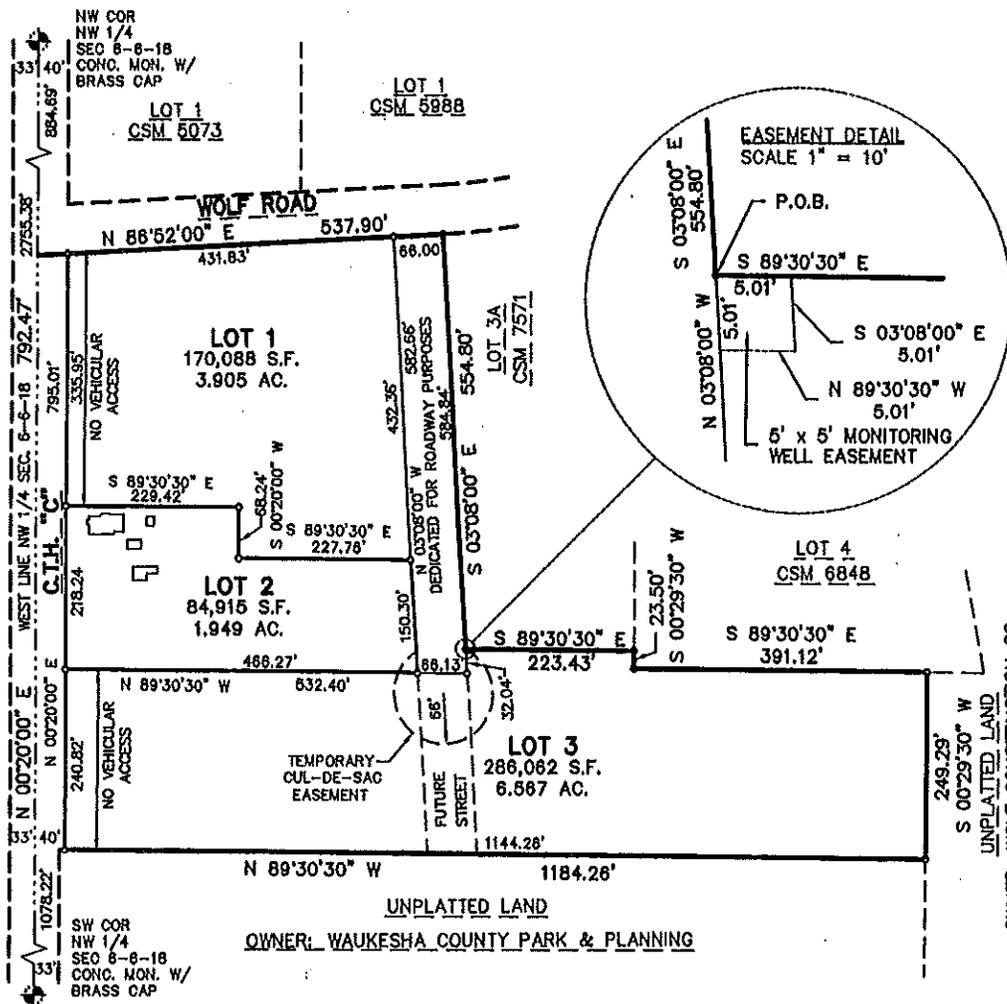


SCALE 1" = 200'

VICINITY SKETCH  
NW 1/4 SEC. 6-6-18  
SUMMIT AVE S.T.H. "16"



SCALE: 1" = 2640'



STATE OF WISCONSIN  
COUNTY OF WAUKESHA



WE, JAHNKE & JAHNKE ASSOCIATES, INC., DO HEREBY CERTIFY THAT WE HAVE MADE THIS SURVEY AND THAT THE INFORMATION AS SHOWN ON THE ABOVE PLAT OF SURVEY IS TRUE AND CORRECT REPRESENTATION THEREOF.

JOHN R. STIGLER Wis. Reg. No. 1820

DATED THIS 10TH DAY OF JANUARY, 2003

FILE NAME: \PROJECTS\56138\DWG\56138EXH.dwg

158-0-070

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# JAHNKE & JAHNKE ASSOCIATES INC.

CONSULTANTS IN  
ENGINEERING, PLANNING, SUBDIVISIONS AND SURVEYING

711 W. Moreland Blvd.  
Waukesha, WI 53188-2

Telephone: 262-542-5797  
Fax: 262-542-7698  
E-Mail: [jstigler@jahnkeandjahnke.com](mailto:jstigler@jahnkeandjahnke.com)

## Exhibit E - Page 2

### Legal Description of Monitoring Well Easement

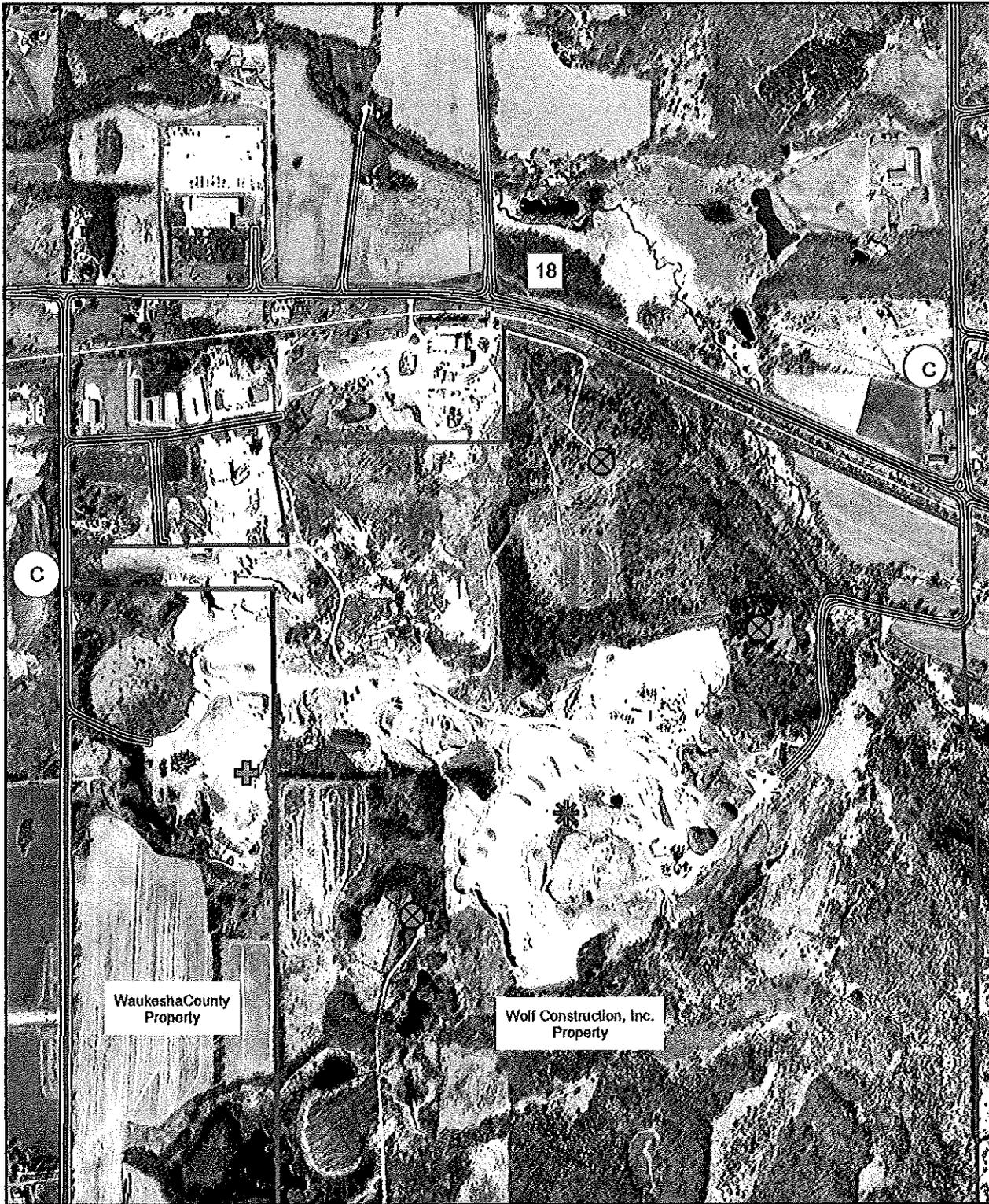
#### LEGAL DESCRIPTION:

All that part of the Northwest Quarter (NW ¼) of Section 6, Town 6 North, Range 18 East, Town of Genesee, Waukesha County, Wisconsin bounded and described as follows:  
Commencing at the Northwest corner of said Northwest Quarter (NW ¼) thence South 0°20'00" West 884.69 feet; thence North 86°52'00" East 537.90 feet along the south right-of-way line of Wolf Road; thence South 03°08'00" East 554.80 feet along the west line of Lot 3A of Certified Survey Map No. 7571 to the place of beginning of an easement for monitoring well purposes; thence South 89°30'30" East 5.01 feet; thence South 03°08'00" East 5.01 feet; thence North 89°30'30" West 5.01 feet; thence North 03°08'00" West 5.01 feet to the place of beginning.

Prepared by: John R. Stigler, RLS  
Wis. Reg. No. S-1820  
Dated: January 10, 2003

158-0070

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C

C

Waukesha County Property

Wolf Construction, Inc. Property

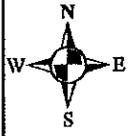
0 800 1,600 2,400 3,200 Feet

Legend

-  Property Boundary
-  Roads
-  "Make-up" Water Pond
-  Wells Owned by Wolf
-  Proposed Wash Pond

# Wash Pond Pumping Exhibit F

This location and depth have been set for informational purposes and Waukesha County is not responsible for the accuracy of the location and depth information. The user assumes all responsibility for the use of this information. Waukesha County is not responsible for any damage or injury resulting from the use of this information.



158-0-070

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## Exhibit G

### Storm Water Practice Maintenance Agreement

1. Purpose and Applicability:

Waukesha County and Wolf Construction Co., Inc., as owners of the property described in Exhibit I (“County Property” and “Wolf Property”) hereby enter into this maintenance agreement, in accordance with Chapter 14 Waukesha County Code, to ensure that the storm water management practices shown in Exhibit B are maintained and therefore continue serving their intended functions in perpetuity.

2. Drainage Easements.

All areas designated as “Drainage Easements” are preserved for storm water collection, conveyance, and treatment in accordance with approved plans on file with the Department of Parks and Land Use. No grading or filling is allowed in these areas, except as required to meet the approved plans, as shown in Exhibits B. After construction, all drainage easements shall be maintained in a manner that preserves unimpeded flow of surface runoff. These areas shall be kept free of buildings, sheds or other structures and shall be maintained in permanent vegetation or other approved cover to prevent soil erosion. Grass swales are reserved for storm water conveyance and shall not be used as vehicle access lanes.

3. Access Lanes.

Access lanes, as designated in Exhibit B are constructed and reserved for heavy equipment that may be required to complete future maintenance activities, as described below. These lanes shall be kept free of obstructions to maintenance vehicles, such as trees and other woody vegetation. The property owner(s) and the Town of Genesee must approve any gates or other structures that may restrict access.

4. Storm Water Management Practices.

The storm water practices shown in Exhibit B are planned to treat runoff from an 89-acre watershed that would be created by following the approved grading and reclamation plans, including the majority of the County property to the south and a smaller portion of the Wolf Property to the east. Under approved land use plans for the site, the design of these practices assumes that the entire watershed land cover will be a business park. Storm water from the business park would be directed to the northwest corner of the County Property via grass swales along planned roadways and drainage easements. The grass swales would encourage infiltration and treatment of the small storm events.

Runoff from larger storm events would first be directed to the wet detention basin, which serves as a pretreatment device before discharging to an infiltration basin. The wet detention basin will help remove suspended solids and associated pollutants in the runoff prior to infiltration. Storms up to the 100-year, 24-hour event will flow from the wet detention basin into the infiltration basin, where the runoff will seep into the underlying soils and recharge the shallow aquifer. Storms greater than the 100-year, 24-hour event

will backup to the roadside swale along Industrial Lane and be directed toward the natural depression 1000 feet to the north of the County Property.

5. Maintenance Responsibilities.

The titleholder(s) of the County Property shall be the "Responsible Party" for the routine and extraordinary maintenance of all drainage easements and storm water management practices shown in Exhibit B, including those portions shown on the Wolf Property. Maintenance cost shall be distributed in accordance with Section 7 of this maintenance agreement.

6. Maintenance Requirements.

The responsible party shall maintain the storm water management practices shown in Exhibit B in accordance with the following minimum requirements:

- (a) A minimum of 70% soil cover made up of native grasses must be maintained on the infiltration basin bottom to ensure infiltration rates. Periodic burning or mowing is recommended to enhance establishment of the prairie grasses (which may take 2-3 years) and maintain the minimum native cover. To reduce competition from cool season grasses (bluegrass, fescues, quack, etc.) and other weeds refer to Natural Resources Conservation Service technical standards for mowing, burning and reseeding practices.
- (b) The infiltration and wet detention basins and all components (grass swales, forebay, inlets, outlets, etc.) should be inspected after each heavy rain, but at a minimum shall be inspected once per year. If the infiltration basin is not draining properly (within 72 hours), further inspection may be required by persons with expertise in storm water management and/or soils.
  - o If soil testing shows that the soil surface has become crusted, sealed or compacted, some deep tillage should be performed. Deep tillage will cut through the underlying soils at a 2-3 foot depth, loosening the soil and improving infiltration rates, with minimal disturbance of the surface vegetation. Types of tillage equipment that can be used include a subsoiler or straight, narrow-shanked chisel plow.
  - o If sedimentation is determined to be causing the failure, the accumulated sediment must be removed and the area reseeded in accordance with the notes above.
  - o If inspection of the monitoring well shows that groundwater is regularly near the surface, additional design features may need to be considered, such as subsurface drainage or conversion to a wetland treatment system.
- (c) All outlet pipes, stone trenches and other flow control devices must be kept free of debris. Any blockage must be removed immediately.
- (d) Any eroding areas must be repaired immediately to prevent premature sediment build-up in the system. Erosion matting is recommended for repairing grassed areas.
- (e) Heavy equipment and vehicles must be kept off of the bottom and side slopes of the infiltration basin to prevent soil compaction. Soil compaction will reduce

infiltration rates and may cause failure of the basin, resulting in ponding and possible growth of wetland plants.

- (f) No trees are to be planted or allowed to grow on the earthen berms or the bottom of the basin. On the berms, tree root systems can reduce soil compaction and cause berm failure. On the basin bottom, trees may shade out the native grasses. The basin must be inspected annually and any woody vegetation removed.
- (g) Grass swales leading to the basin shall be preserved to allow free flowing of surface runoff in accordance with approved grading plans. No buildings or other structures are allowed in these areas. No grading or filling is allowed that may interrupt flows in any way.
- (h) If floating algae or weed growth becomes a nuisance in the wet detention basin (decay odors, etc.), it must be removed and deposited where it cannot drain back into the basin or forebay. Removal of the vegetation from the water reduces regrowth the following season (by harvesting the nutrients). Wetland vegetation must be maintained along the waters edge for safety and pollutant removal purposes.
- (i) If sediment has accumulated in the wet detention basin to an elevation of three feet below the outlet elevation, it must be removed. All removed sediment must be placed in an appropriate upland disposal site and stabilized (grass cover) to prevent sediment from washing back into the basin. Failure to remove sediment will cause resuspension and increase deposition in the infiltration basin.
- (j) Periodic mowing of grass swales will encourage rigorous grass cover and allow better inspections for erosion. Mowing around the wet detention basin may attract nuisance populations of geese to the property and is not necessary or recommended. Native plantings in this area are recommended.
- (k) Any other repair or maintenance needed to ensure the continued function of the storm water management practices shall be completed, as ordered by the Town of Genesee under the provisions listed below.

#### 7. Maintenance Costs.

Until such time as the Wolf Property is converted to an urban land use other than mining, all costs incurred to complete the above-prescribed maintenance shall be paid by the owners of the County Property, except those lands that do not ultimately drain to the storm water practices described in Section 4. After the aforementioned land use conversion has occurred on the Wolf Property, all costs incurred for maintenance shall be paid by the owner(s) of all property that drains to the storm water management facilities, prorated by the percentage of the total drainage area served by the facilities. Based on the design of the facilities at the time of drafting this agreement, 15 acres of the Wolf property drains to the facilities, representing 16% of the maintenance costs, while 74 acres of the County Property drains to the facilities, representing 84% of the total costs. If any future land divisions of the Wolf or County Properties are made, the titleholders shall be bound by the same method of calculating maintenance costs. If the drainage areas should change in the future as the watershed is developed, the prorated maintenance costs shall be modified accordingly.

*Note: A copy of the original watershed maps and associated drainage calculations are maintained at the Waukesha County Department of Parks and Land Use – Land Resources Division. The County must approve any amendments to these documents.*

8. Access and Inspections.

The Town of Genesee, Waukesha County and the owner(s) of the Wolf Property are hereby authorized to access the property as necessary to conduct inspections of the storm water management practices to ascertain compliance with this maintenance agreement.

9. Corrective Actions.

In the event the Responsible Party does not maintain the storm water management practices in accordance with this agreement, the Town of Genesee may send a written notice to the Responsible Party describing the corrective actions that shall be performed by the Responsible Party within a reasonable time frame, as set by the Town of Genesee. Said notice shall also indicate that the Town of Genesee will perform the corrective actions if not properly completed by the Responsible Party within the designated time frame, and that the Town of Genesee shall have the right to charge the Responsible Party for any costs incurred, in accordance with Section 10. Access for maintenance equipment shall be limited to the designated lanes as shown in Exhibit B.

10. Special Charges.

The Town of Genesee is hereby authorized to perform the corrective actions identified in its inspection report or its notice if the Responsible Party does not make the required corrections within the specified time period. The costs and expenses of such corrective actions shall be assessed as special charges pursuant to Section 66.0627 Wis. Stats. If such charges are not paid by the Responsible Party within the time period specified by the Town of Genesee, the charges shall become a lien upon the Responsible Party's Property as provided in Section 66.0627 Wis. Stats., and shall be entered on the tax roll as a delinquent tax against the Responsible Party's Property and collected with any other taxes levied thereon for the year in which the work is completed in accordance with Chapter 74, Wis. Stats.

11. Binding on Future Owners.

The terms and conditions contained in these covenants shall run with the Property and be binding upon all the successors and assigns.

# Exhibit H

## Approved Landfill Exhumation Plan

This exhibit outlines the procedures, schedule, project oversight and reporting requirements that have been approved by the Wisconsin Department of Natural Resources (DNR) to exhume and process all the landfill materials from the County property. The DNR retains jurisdiction to modify this approval at any time, if in the DNR's opinion, conditions warrant modification.

### A. Notification Requirements.

- (1) JSG shall notify the DNR and the County at least one week prior to initiating waste exhumation activities on the County property.
- (2) JSG shall notify the County immediately and the DNR within 24 hours if the visual inspection of excavated waste encounters any materials that need to be set aside and handled as suspect hazardous waste materials.

### B. Procedures & Methods

- (1) JSG will remove the landfill cover and exhume all landfill materials within a 30-day time period using standard grading and excavating equipment such as bulldozers, backhoes and dump trucks. JSG shall analyze, sort and process materials during the excavation process in accordance with the following:
  - (a) Materials not exempted under NR 500.08(2)(a) Wisc. Administrative Code shall be taken to a licensed landfill.
  - (b) Suspected "hazardous materials", as defined by the DNR, shall only be moved to the locations on the County's property pursuant to the instructions of a County or DNR representative. Once JSG encounters a suspected hazardous waste, JSG shall notify DNR and the County in accordance with Sub. A.(2) so that handling, testing and disposal processes can be approved. Mining or grading activities near the suspected hazardous material shall cease until further notice by the County or DNR.
  - (c) Metal, tires and any other large objects that may now be banned from landfills shall be separated and recycled if possible.
  - (d) Concrete shall be separated, crushed and processed with other on-site aggregate during the mining operation if possible.
  - (e) All other "exempt" materials under NR 500.08(2)(a) shall be reburied in designated areas on the County property, in accordance with the specifications of the Reclamation Permit. This material shall be covered in accordance with NR 506.08(3)a-c. In general, this requires a minimum of 2 feet of compacted subsoil and at least 4 inches of topsoil. The surface shall be stabilized with grass (seed & erosion matting) and tree plantings. Storm water drainage shall be directed around the area through proper grading. The Reclamation Permit and NR 506 contains further details on all of these items.
- (2) On-site inspectors and scale house staff shall keep accurate records of the amount of material meeting each of the above noted categories through weight tickets, field notes and photographs.

(3) JSG shall complete the necessary site surveys to document:

- (a) The horizontal and vertical limits of removed waste in the closed landfill (once all landfill materials are visibly removed, but before mining proceeds in the area);
- (b) The horizontal and vertical limits of wastes under Sub. B.(1)(e) that are reburied on-site (before and after reburial); and
- (c) The location of any non-exempt wastes under Sub. B.(1)(a) that are not removed from the property and a description of the cover material placed over the wastes. The cover material shall comply with the requirements of NR 506.08(3)a-c.

(4) After the site survey has been completed, JSG shall continue mining activities in the landfill area in accordance with the Reclamation Permit.

C. Project Oversight & Record Keeping

JSG shall provide a professional engineer, licensed in Wisconsin, to be responsible for daily oversight of all activities related to exhuming and sorting the landfill materials. The person examining the material and determining its classification under Sub. B.(1) shall keep daily logs of all activity described in this exhibit.

D. Project Reporting

JSG shall submit, within 60 days of completion of exhumation activities, one copy each of a final construction documentation report to the DNR, the County and the Town of Genesee containing the following information:

- (1) A narrative report describing the activities, methodologies and dates from start to finish of the entire operation relating to the landfill.
- (2) Total weight or volume of all material exhumed from the landfill and the weight or volume of material in each of the five categories noted in Sub.B.(1). If volumes are used, a weight conversion must be calculated based on a representative sample.
- (3) Selected photographs of key parts of the operation, including but not limited to the removal of the landfill cover, exhuming the material, sorting activities, burying exempt materials on-site and final covering and site stabilization.
- (4) Description of any wastes that were handled under the suspected "hazardous" category and the handling and disposal methods followed.
- (5) A post-excavation survey showing the actual horizontal and vertical limits of the buried waste in the closed landfill. The survey shall include one plan view of the landfill area and at least one North-South and one East-West cross-section through the excavation, showing the before and after elevations, tied to a recognized County benchmark.
- (6) Copies of weight tickets for all materials taken off-site for recycling or to a licensed landfill.
- (7) Copies of field notes and other records, if requested by the County or the DNR.
- (8) A certified statement of accuracy for all the data submitted and compliance with the DNR approved plans (as summarized in this exhibit), with the project engineer's stamp and signature. Any significant deviation from the DNR approved plans or this exhibit shall be noted.

# EXHIBIT I

## PAGE 1

### LEGAL DESCRIPTION – WOLF CONSTRUCTION CO. INC. LANDS:

The East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of Section 6, Town 6 North, Range 18 East, Town of Genesee, Waukesha County, Wisconsin, EXCEPTING those lands recorded in Vol. 230 of Deeds at page 446 described as follows; All that part of the Southwest  $\frac{1}{4}$  of Section 6, Township 6 North, Range 18 East, Waukesha County, Wisconsin, bounded and described as follows: Starting at the South  $\frac{1}{4}$  corner of said Section 6; thence West along the South line of said Section 6, 1294.8 feet; thence North 33 feet; thence West 33 feet; thence North 16.5 feet; thence East and parallel to and 49.5 feet distant from the south line of said Section 6, 1327.8 feet to the South  $\frac{1}{4}$  line of said Section 6; thence South on said line 49.5 feet to the place of beginning.

GNT Key No. 1462.999

That part of the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 6, Township 6 North, Range 18 East, Town of Genesee, County of Waukesha and State of Wisconsin, that lies South of the right of way of the Chicago & Northwestern Railroad.

That part of the East  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of Section 6, Township 6 North, Range 18 East, Town of Genesee, County of Waukesha and State of Wisconsin, that lies South of the right of way of the Chicago & Northwestern Railroad.

That part of the East  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of Section 6, Township 6 North, Range 18 East, Town of Genesee, County of Waukesha and State of Wisconsin, lying between present U.S.H. "18" and the right of way of the Chicago & Northwestern Railroad, except that parcel conveyed to Moses Felix by a deed recorded October 31, 1950 in Volume 533 of Deeds at Page 262, as Document No. 344889.

That part of the Northeast  $\frac{1}{4}$  of Section 6, Township 6 North, Range 18 East, Town of Genesee, County of Waukesha and State of Wisconsin, lying South of U.S.H. "18" and described as follows: Commencing at a point on the North line, 31.02 feet West of the Northeast corner thereof and in the center of the Delafield Road, now C.T.H. "CC"; thence South 0 degrees 30 minutes West along the center of said highway and Jones Drive, 1879.68 feet to the intersection with the center of the Old Waterville Road, now Jones Drive, being 50.82 feet West of the East section line; and thence North 76 degrees 30 minutes West 1020.36 feet (being along the center of said last mentioned road and beyond the angle thereof, being also along the Northerly line of the premises described in Warranty Deed recorded October 17, 1978 in Reel 328, Image 1254, as Document No. 1069319); thence Southwesterly 1727.22 feet along the center of the fence (being the North line of the premises described in Warranty Deed recorded August 15, 1969 in Volume 1168 of Deeds at Page 477, as Document No. 745552) to a point on the North  $\frac{1}{4}$  line that is 708.18 feet North of the center section post; thence North on the  $\frac{1}{4}$  line 2063.16 feet to the North line of the section; thence East on said North line 2608.98 feet, more or less, to the place of beginning. EXCEPT that part conveyed to the Milwaukee & Madison Railway Company (now the Chicago & Northwestern Railroad) by Warranty Deed recorded November 11, 1880 in Volume 57 of Deeds at Page 288.

158.0-070

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EXHIBIT – I  
PAGE 2

LEGAL DESCRIPTION – COUNTY PROPERTY

All that part of the Southwest Quarter (SW  $\frac{1}{4}$ ) and Northwest Quarter (NW  $\frac{1}{4}$ ) of Section 6, Town 6 North, Range 18 East, Town of Genesee, Waukesha County, Wisconsin bounded and described as follows: Beginning at an iron pipe set at the West  $\frac{1}{4}$  corner of Section 6; thence South along the west line of Section 6, 2653.86 feet to a point 49.50 feet north of the SW corner of Section 6; thence N 89-31-37 E parallel to the south line of Section 6, 1205.42 feet to the  $\frac{1}{8}$  line; thence N 0-23-50 W; along said  $\frac{1}{8}$  line 3724.10 feet to a point 250.00 feet south of the north line of the SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 6 (said line being the E-W  $\frac{1}{8}$  line of the NW  $\frac{1}{4}$ ); thence S 89-54-30 W parallel to said line 1184.26 feet to the west line of the NW  $\frac{1}{4}$  of Section 6; thence S 0-15-00 E along said line 1078.22 feet to the place of beginning, said parcel containing 102.118 acres.

158.0.070

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EXHIBIT I  
PAGE 3

LEGAL DESCRIPTION – LAWRENCE WOLF FAMILY PARTNERSHIP & WOLF FAMILY TRUST

All that part of the West ½ of Section 5 and the East ½ of Section 6, Town 6 North, Range 18 East, Town of Genesee, County of Waukesha, State of Wisconsin, bounded and described as follows:

Beginning at the South ¼ corner of Section 6; thence North 00°05' West along existing fence line 3101.68 feet; thence North 77°07' East along existing fence line 462.66 feet; thence South 87°14' East along existing fence line, 1256.00 feet; thence North 12°07' East along existing fence line, 185.50 feet; thence North 52°44' East along existing fence line, 28.00 feet; thence North 02°31' East along existing fence line 80.10 feet; thence North 03°40' East along existing fence line, 271.08 feet to the centerline of Jones Drive (a Town Road); thence along said centerline, the following courses: North 82°50' East, 68.30 feet; thence South 75°24' East 223.95 feet; thence South 77°32' East, 563.00 feet; thence North 00°23' West, 571.09 feet to the Southerly right-of-way line of the Chicago and Northwestern Railroad; thence South 64°58' East along said right-of-way line and existing fence line, 2081.97 feet; thence South 18°01' West 527.72 feet; thence South 72°36' West 255.01 feet; thence South 88°14' West, 124.42 feet to an existing fence corner; thence South 00°01' West along existing fence line, 707.56 feet; thence South 89°45' West along existing fence and extension thereof; 1157.14 feet; thence South 25°20' West along existing fence line, 310.14 feet; thence South 7°56' West along existing fence line 318.11 feet; thence South 00°36' East along approximate centerline of an existing farm drainage ditch, 1332.35 feet; thence North 89°49' West along existing fence and extension thereof, 2649.20 feet to the place of beginning.

EXCEPT that part conveyed in Warranty Deed, dated May 7, 1986 and recorded on May 8, 1986 on Reel 758, Image 518 as Document No. 1344971.

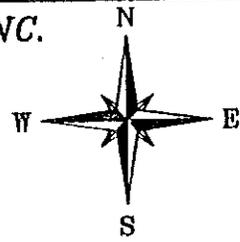
GNT Key No. 1464.999

158-0-070

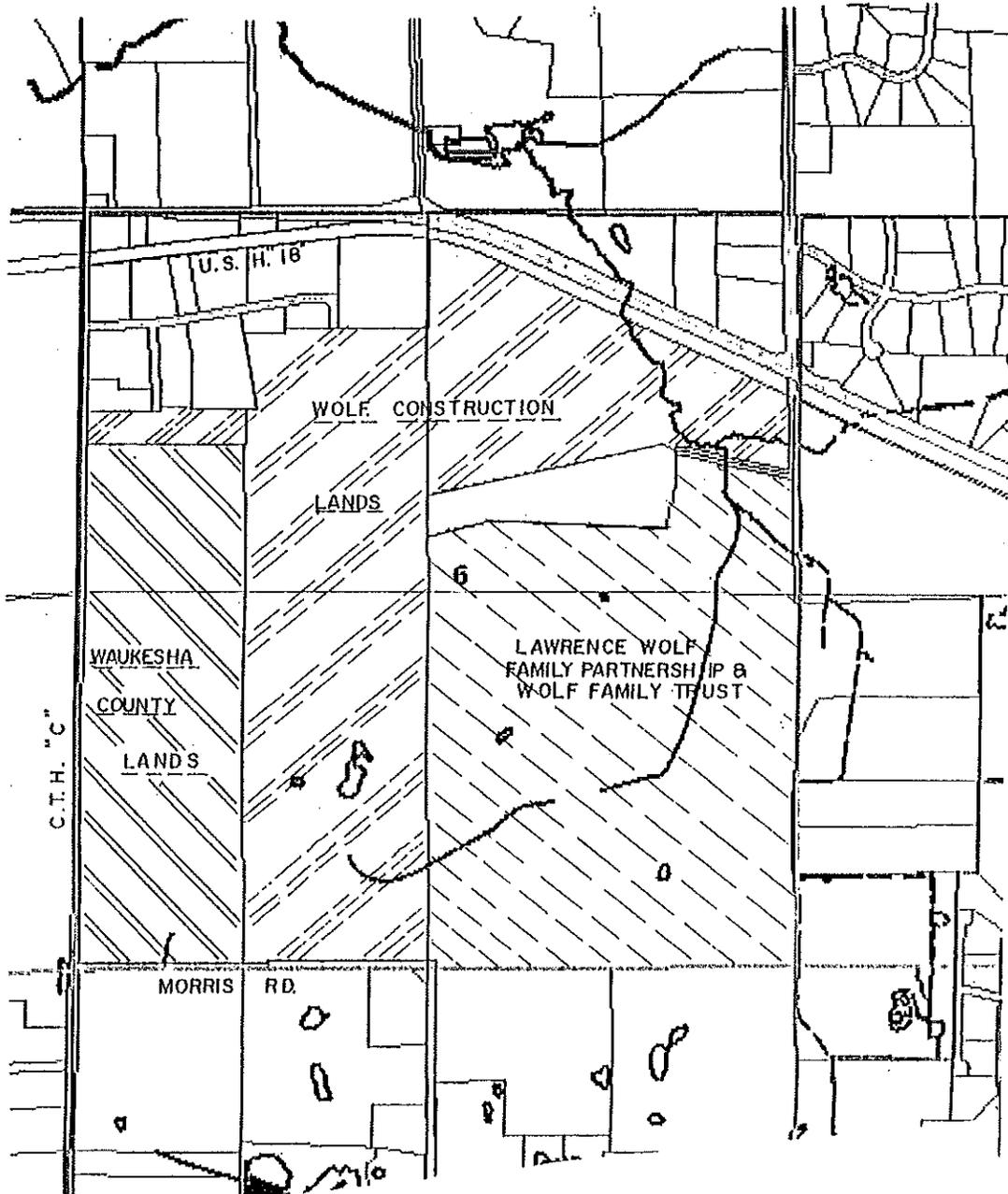
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**JAHNKE & JAHNKE ASSOCIATES INC.**

PLANNERS & PROFESSIONAL ENGINEERS  
711 W. MORELAND BLVD. - WAUKESHA, WI. 53188  
TEL. No. (262) 542-5797 FAX (262) 542-7698



**EXHIBIT I**  
**PAGE 4**  
**PROPERTY MAP**



## Exhibit J Permits

The permits and other regulatory documents listed below shall define the term “Permits” as used in this agreement, and shall be strictly adhered to at all times during the implementation of this agreement.

1. Conditional Use Permit (CU-752G/PO-03-GNT-11) - issued by the Waukesha County Department of Parks and Land Use – Planning and Zoning Division, under Section 3.08, Appendix A of the Waukesha County Code.
2. Storm Water Management and Erosion Control Permit (Permit #1553) – issued by the Waukesha County Department of Parks and Land Use –Land Resources Division, under Chapter 14 of the Waukesha County Code.
3. Nonmetallic Mine Reclamation Permit (Permit #1-WC-2003) – issued by the Town of Genesee, under Ordinance #01-4.
4. Highway Access Permit (Permit #A2003-115) – issued by the Waukesha County Department of Public Works under Chapter 15 of the Waukesha County Code.
5. Landfill Exhumation Plan – approved by the Wisconsin Department of Natural Resources on April 22, 2003 under NR 506 Wis. Admin. Code.
6. Composting Operation License #4270 – issued annually by the Wisconsin Department of Natural Resources under NR 502 Wis. Admin. Code.
7. Wisconsin Pollution Discharge Elimination Permit #WI-0046515-3 – issued on August 5, 2002 by the Wisconsin Department of Natural Resources under Chapter 293 Wis. Stats. and NR 216 Wis. Adm. Code.

## Exhibit K

### Reclamation Specifications

Wolf shall complete mining the remaining materials left on the County Property, as illustrated in Exhibits C and D. Wolf shall strip and stockpile topsoil from this area within 30 feet of the toe of slope so that it can be reapplied during final site reclamation. Wolf shall match the final reclaimed elevations on the County Property along the "proper line of excavation" and continue those elevations in an easterly direction until reaching the County Property line.

Once Wolf reaches final grades minus 4" along an 800-foot continuous section of the County Property, but before reapplication of topsoil, Wolf shall contact the owner(s) of the County Property to confirm that final grades comply with Exhibit C. Within 30 days of obtaining the owner(s) approval of the final grades, Wolf shall reapply the stripped topsoil and seed at a rate of 100 pounds per acre with the following seed mix:

- 6 % Kentucky Bluegrass
- 24% Hard Fescue
- 40% Tall Fescue
- 30% Perennial Ryegrass

Wolf may substitute the above seed mix with native seed species or another seed mix with the approval of the owner(s) of the County Property. Wolf shall apply fertilizer in accordance with manufacturers recommendations. To enhance seed germination and prevent soil erosion, Wolf shall apply mulch at a rate needed to cover 70% of the soil surface. Reclamation shall be deemed complete when 70% of the soil surface is covered with live vegetation. As soon as this occurs, Wolf shall be released of all further obligations in the reclamation of the County Property.

WAUKESHA COUNTY BOARD OF SUPERVISORS EO-158-66

V

DATE-10/14/03

(ORD) NUMBER-1580070

- 1 K. HERRO.....AYE
- 3 D. STAMSTA.....AYE
- 5 J. MARCHESE.....AYE
- 7 J. JESKEWITZ.....
- 9 P. HAUKOHL.....AYE
- 11 K. HARENDA.....AYE
- 13 J. MORRIS.....AYE
- 15 D. SWAN.....AYE
- 17 J. BEHREND.....AYE
- 19 W. MITCHELL.....AYE
- 21 W. KOLB.....AYE
- 23 P. PRONOLD.....
- 25 K. CUMMINGS.....AYE
- 27 D. PAULSON.....AYE
- 29 M. THOMAS.....AYE
- 31 V. STROUD.....AYE
- 33 D. PAVELKO.....AYE
- 35 C. SEITZ.....AYE

- 2 R. THELEN.....AYE
- 4 H. CARLSON.....AYE
- 6 D. BROESCH.....AYE
- 8 J. DWYER.....AYE
- 10 S. WOLFF.....AYE
- 12 J. GRIFFIN.....AYE
- 14 J. LA PORTE.....AYE
- 16 R. MANKE.....AYE
- 18 B. MORRIS.....AYE
- 20 M. KIPP.....AYE
- 22 G. BRUCE.....AYE
- 24 A. SILVA.....AYE
- 26 S. KLEIN.....AYE
- 28 P. JASKE.....AYE
- 30 K. NILSON.....AYE
- 32 P. GUNDRUM.....AYE
- 34 R. SINGERT.....NAY

TOTAL AYES-32

TOTAL NAYS-01

CARRIED X

DEFEATED \_\_\_\_\_

UNANIMOUS \_\_\_\_\_

TOTAL VOTES-33