

P 612.672.8200  
F 612.672.8397  
www.maslon.com

3300 WELLS FARGO CENTER  
90 SOUTH SEVENTH STREET  
MINNEAPOLIS, MINNESOTA  
55402-4140

June 19, 2008

**Virginia A. Bell**  
Direct Phone: 612-672-8332  
Direct Fax: 612-642-8332  
Ginny.Bell@maslon.com

RECEIVED  
JUN 23 2008  
BY: \_\_\_\_\_

Arlene Furuseth  
Project Leader  
Detroit Lakes Office  
Remediation Division  
Minnesota Pollution Control Agency  
714 Lake Avenue, Suite 220  
Detroit Lakes, MN 56501

**Re:** *Petroleum Tank Release Investigation*  
**Site:** Alex Exhaust, 905 3<sup>rd</sup> Avenue East, Alexandria, MN 56308  
**Site ID#:** Leak 15656

Dear Ms. Furuseth:

Enclosed please find for your consideration a form of License Agreement.

Sincerely,



Virginia A. Bell

VAB/cms  
Enclosure

cc: Morrell Properties, LLC (w/enc.)

595845.1 (2008-968)

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made this \_\_\_ day of \_\_\_\_\_, 2008, the ("Date of Agreement"), by and between **Morrell Properties, LLC** ("Owner") with offices at 1401 Fallon Avenue, Monticello, Minnesota, and the **Minnesota Pollution Control Agency** ("Licensee") with offices located at 714 Lake Avenue, Suite 220, Detroit Lakes, Minnesota 56501.

WHEREAS, Owner is the owner of certain real property located at the southwest corner of the intersection of Park Street and Third Avenue East, in Alexandria, Minnesota, and legally described in the attached Exhibit A (the "Property").

WHEREAS, Licensee has retained STS Consultants to investigate the extent and magnitude of a petroleum tank release ("Cenex Petroleum Release") from an underground storage tank(s) owned and operated by the former Cenex Station located at 905 Third Avenue East, Alexandria, across the street from the Property ("Cenex Property").

WHEREAS, in order to characterize the magnitude and extent of the petroleum release and design an appropriate cleanup remedy, Licensee desires access to the Property.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

1. Grant of License. Owner hereby grants to Licensee and its consultants, representatives and agents, a limited, temporary and nonexclusive license ("License") to enter upon the Property for the limited purposes of installing soil borings to determine the extent of any petroleum on the Property ("Work"). This right of entry will only be permitted between the hours of 5:30 p.m. and 10:00 p.m., Monday through Friday through the term of this License. Licensee shall remove all of its casings, rigs and other equipment which it places on the Property by 10:00 p.m. each evening. License shall not interfere in any way with the business being conducted on the Property by the Owner, its tenants or agents. The right of entry permitted by the License shall extend only to such portion of the Property as is necessary to perform the Work. In no event shall this Agreement be construed to permit Licensee, its employees, agents, representatives, consultants, contractors or anyone else to enter into or upon any building located on the Property.

2. Term. The term of this Agreement and the License shall commence on the Date of Agreement and continue through and including July 31, 2008, unless extended by mutual agreement between the parties.

3. Notice of Work. Licensee shall notify the Owner at least five (5) days in advance before entering the Property to conduct any component of the Work. Such notice shall be given to Owner at the notice address set forth in Section 12 below.

4. Performance of Work. Licensee shall be responsible for obtaining, at its sole expense, all necessary permits and approvals relating to the Work. Licensee covenants and agrees with Owner that the samples from the borings shall be tested only for petroleum. All Work, including, but not limited to the storage, treatment, transportation and disposal of any soil

and/or water samples, hazardous substances, pollutants, contaminants or free product which result from the Work, will be performed in accordance with all applicable laws and regulations. Licensee shall make all necessary contacts with utilities to determine the location of underground utilities and avoid damaging underground objects. Licensee, its employees, agents, representatives, consultants and contractors, shall do no unnecessary damage to the Property and shall promptly restore the Property to substantially the same condition in which it was found, at its sole cost and expense. Licensee shall not move, remove or disturb any concrete block or other product, equipment, vehicles or other property located or stored on the Property ("Personal Property"), and Licensee shall promptly restore any Personal Property that is moved, removed or disturbed, at Licensee's sole cost and expense.

5. Information, Reporting, and Confidentiality. Licensee, at its sole cost and expense, will promptly provide Owner with copies of data obtained, reports issued, and correspondence to and from the Minnesota Pollution Control Agency and other governmental entities, pertaining to the Work, the environmental conditions of the Property and/or the Cenex Property. Licensee shall maintain, and shall cause its employees, agents, representatives, consultants, and/or contractors to maintain, the confidentiality of all records, reports and information relating to or obtained in connection with the Work to the extent that it relates to the Property.

6. Insurance. Before commencing the Work, Licensee shall furnish to Owner evidence of general liability, automobile, and worker's compensation insurance issued to Licensee, and its consultants and contractors as well as evidence of professional liability insurance for each consultant performing the Work in an amount reasonably acceptable to Owner. The Owner shall be included as an additional insured with respect to the commercial general liability insurance and the automobile liability insurance.

7. Hold Harmless and Indemnity and Reimbursement of Expenses. Licensee agrees to indemnify and hold harmless Owner, Owner's members, agents, tenants, representatives, successors and assigns from any and all claims, actions, demands, liabilities, liens, damages and costs, including attorneys' fees, which may be imposed on or incurred by Owner, its members, agents, tenants, representatives, successors and/or assigns resulting directly or indirectly from (i) the negligence, gross negligence or willful misconduct of Licensee or its agents, employees, contractors, subcontractors, consultants, and/or representatives in connection with the License or (ii) Licensee's failure to perform any of its obligations herein or to abide by any of its agreements made herein. Licensee also agrees to (i) indemnify and hold harmless Owner, its members, agents, tenants, representatives, successors and/or assigns from all claims, actions, demands, liabilities, liens, damages, expenses and costs including attorneys' fees which result from the discovery of petroleum in connection with the soil samples made pursuant to this License Agreement and (ii) to promptly reimburse Owner, its members, agents, tenants, representatives, successors and assigns for all remediation costs incurred by any of them in connection with the remediation of such petroleum.

8. No Interest in Real Estate. This Agreement is not intended to constitute and shall not be construed to constitute, a public dedication or a grant of an easement or any other interest in real estate.

9. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any oral or written agreements between the parties with respect thereto. This Agreement may only be amended by the parties hereto by written instrument executed with the same procedures and formality as were followed in the execution of this Agreement.

10. Assignment; Successors. This Agreement and the License granted hereunder shall not be assignable by Licensee without the prior written consent of Owner, which may be given or denied in Owner's sole and absolute discretion. Subject to the foregoing, this Agreement shall be binding upon the parties hereto and their respective successors, and assigns.

11. No Liens. Licensee shall not permit any lien to be filed against the Property for any labor or materials in connection with the Work. In the event any such lien attaches to the Property, Licensee shall cause the lien to be removed promptly.

12. Notices. All notices, demands, and requests required or permitted to be given under this Agreement shall be in writing and shall be sent by deposit in U.S. mail, postage paid, registered or certified mail, return receipt requested, or by deposit, prepaid, for overnight delivery by a reputable overnight courier service, or by facsimile, in either case addressed as follows:

If to Owner:                    Mr. Jay Morrell  
    Morrell Properties, LLC  
    1401 Fallon Avenue  
    Monticello, MN 55362

If to Licensee:                Minnesota Pollution Control Agency  
    Detroit Lakes Office  
    714 Lake Avenue, Suite 220  
    Detroit Lakes, MN 56501

Each party may change its address for notice hereunder by notice given in accordance with the provisions hereof at least ten (10) days' prior to the effective date of the address change.

13. Other Terms. This Agreement shall be governed by the substantive law of the State of Minnesota. This Agreement may be executed in counterparts, each of which shall be deemed an original but which together shall constitute one and the same Agreement. A facsimile signature to this Agreement shall be deemed an original signature.

14. Survivorship. All of the obligations of the Licensee under this License Agreement shall survive the termination and/or expiration of the term of this License Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be made as of the date first above written.

Morrell Properties, LLC

Signature: \_\_\_\_\_

Name: Jay Morrell \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Minnesota Pollution Control Agency

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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15656



TL



LEAK SITE



MPCA REQUESTS AGREEMENT WITH JAY MORRELL



ALEX EXHAUST



05-08-2008



**Minnesota Pollution Control Agency**  
Detroit Lakes Office

May 8, 2008

Mr. Jay Morrell  
Morrell Properties, LLC  
1401 Fallon Avenue  
Monticello, MN 55362

RE: Petroleum Tank Release Investigation  
Site: Alex Exhaust, 905 3<sup>rd</sup> Avenue East, Alexandria, MN 56308  
Site ID#: LEAK 15656

Dear Mr. Morrell:

The Minnesota Pollution Control Agency (MPCA) staff has retained STS Consultants to investigate the extent and magnitude of a petroleum tank release in the area of property which you own. The source is believed to have been the underground storage tank(s) owned and operated by the former Cenex Station located at 905 3<sup>rd</sup> Avenue East, Alexandria.

High levels of petroleum contaminated ground water have been detected in soil borings across the street from your property and ground water flow direction is generally to the southwest, directly toward your property. In order to characterize the magnitude and extent of the petroleum release and design an appropriate cleanup remedy, it will be necessary to install a soil boring and/or monitoring well(s) on property owned by you, preferably on the southwest corner of the intersection of Park Street and 3<sup>rd</sup> Avenue East.

The MPCA staff is requesting that you extend your full cooperation to STS Consultants by allowing them access to your property for the purposes of conducting the investigation. The MPCA staff considers this release to be a very serious potential threat to human health, welfare and the environment, and may risk the land use options and values for properties in its path. Every effort must be made to ensure that this release does not result in any adverse effects to human health, welfare, or the environment. Should you agree to cooperate, STS Consultants will make every effort to minimize disturbance and will return the property to original condition once the work is completed.

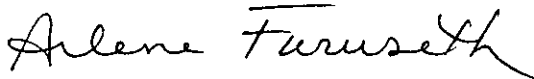
We hope that this request is acceptable to you. However, if you choose not to cooperate, please be aware that the MPCA may enter upon private property for the purpose of conducting surveys, investigations, and taking corrective action under state law at Minn. Stat. § 115C.03, subd. 7 (2002). In addition, the MPCA Commissioner may order a responsible person to take reasonable and necessary corrective action. In that case, the MPCA is required by state law at Minn. Stat. § 115C.03, subd. 1 (2002) to notify the owner of real property where corrective action is necessary that the owner's cooperation will be required for the responsible person to take such corrective action.



Mr. Jay Morrell  
Page 2  
May 8, 2008

We look forward to your cooperation in response to this petroleum release. Please respond to this request within 10 days after receipt of this letter. If you have any questions or comments, please contact me at 218-846-0732. You may also reach me by calling toll-free at 800-657-3864.

Sincerely,



Arlene Furuseth  
Project Leader  
Detroit Lakes Office  
Remediation Division

AF:gd

cc: Tim Grape, STS Consultants, Maple Grove  
Carmen Netten, Assistant Attorney General, St. Paul





OBSELFCONFIG



1096



15656



ALEX EXHAUST



905 3RD AVE E



ALEXANDRIA



DOUGLAS



LS



LEAK SITE



TL



TIMELINE OF REQUESTS FOR ACCESS ON MORRELL PROPERTIES



04-01-2008

STS

10900 73<sup>rd</sup> Ave. North, Suite 150, Maple Grove, MN 55369  
T 763.315.6300 F 763.315.1836

## Facsimile

---

Please deliver to

Name: Arlene Furuseth  
Firm: WPCA - Detroit Lakes  
Fax number: (218) 846-0719  
Phone number:  
Subject: Alex Exhaust  
Project number: 200705448  
LK # 15,656

---

From

Name: Tim Grape (STS)  
Direct Line: (612) 759-5042  
Date transmitted: 4/1/08  
Pages to follow: 4

---

Message:

Arlene,

I have tried emailing this to you a couple times but it kept getting kicked back - probably due to the size of the attachment?

So, hopefully this fax including my email message finds you!

Call me with any questions (612) 759-5042

*Tim*

**Important:**

This facsimile is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this facsimile is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return this facsimile to us at the above address via the United States Postal Service. Thank you.

If you do not receive all pages, please call 763.315.6300 immediately.

**Grape, Tim**

---

**From:** Grape, Tim  
**Sent:** Tuesday, April 01, 2008 11:27 AM  
**To:** 'arlene.furuseth@pca.state.mn.us'  
**Subject:** Alex Exhaust - Property Access  
**Attachments:** image-3311001-0001.pdf

Hi Arlene,

Did you get the blast of wonderful spring weather up there too? An early April Fools joke I think!

Attached is a record of phone calls and transmittal information between myself and Mr. Jay Morrell, the property owner of Alexandria Concrete located south of the Alex Exhaust site. Included are the access agreement I sent him and a site map showing his property ownership near the site for your reference.

Soil borings B-7 and B-8 conducted in February, 2008 were essentially "clean" with the exception of a 200 ppb DRO detection in the water sample at B-8. With groundwater flow direction to the southwest, we still need a boring southwest of the Alex Exhaust site on Morrell Properties to define the down gradient extent of impacts.

Mr. Morrell's contact information:

**Morrell Properties, LLC**  
**1401 Fallon Avenue**  
**Monticello, MN 55362**

**Telephone: (763) 295-3122**

Please call me with any questions at (612) 759-5042.

Regards,

Tim

**Timothy J. Grape, PG**  
**Project Geologist**  
**D: 763.315.6318**

**STS | AECOM**  
**10900 73rd Avenue N, Suite 150**  
**Maple Grove, MN 55369**  
**T: 763.315.6318 F: 763.315.1836**  
**www.stsconsultants.com**

4/1/2008

**Conversation and Transmittal Record Between STS and Mr. Jay Morrell of Morrell Properties, LLC.**

**For: Property Access Agreement Associated With Environmental Investigation of Leak 15,656 at Alex Exhaust**

- February 1, 2008 – I (Tim Grape of STS) telephoned Mr. Jay Morrell to inform him of our intent to conduct environmental investigation work on behalf of the Minnesota Pollution Control Agency (MPCA) on property owned by Morrell Properties, LLC located at 924 3<sup>rd</sup> Avenue E. and 923 4<sup>th</sup> Avenue E. associated with Leak # 15,656 (Alex Exhaust). I informed Mr. Morrell that I would send him an access agreement form for him to review and sign allowing us access to the property. Mr. Morrell said he didn't see a problem with us conducting work on the above referenced property but he would like his lawyer to review the access agreement prior to signing.
- February 4, 2008 – Access agreement form was mailed to Mr. Morrell by STS.
- February 14, 2008 – I telephoned Mr. Morrell to confirm that he received the access agreement and to see if he had any questions. Mr. Morrell informed me that he was in a property dispute with the Minnesota Department of Transportation (Mn/DOT) and that Mn/DOT recently canceled a meeting they had set up to discuss the property dispute. Mr. Morrell informed me that his lawyer advised him not to sign our access agreement until the property dispute with Mn/DOT was resolved. Mr. Morrell stated that a revised meeting date with Mn/DOT was set up for February 26, 2008 and that he believed the property issue with Mn/DOT would be resolved after the above referenced meeting and he would likely sign the access agreement at this time.
- February 26, 2008 – I telephoned Mr. Morrell but his office assistant (Kate) informed me that he was not presently in the office. I asked her to have him call me back as soon as he returned as we were scheduled to conduct drilling the next day (February 27, 2008) and had not yet received final approval to access Mr. Morrell's property.
- February 27, 2008 – Mr. Morrell called me in the morning (approximately 0830) and informed me that the meeting with Mn/DOT regarding the property dispute did not go well for him and based on that fact he has decided not to permit us access to the property at this time. I reminded Mr. Morrell that we are not working for Mn/DOT we are working for the MPCA but he still did not consent to allowing us access to his property.
- March 17, 2008 – I attempted to contact Mr. Morrell again in regards to property access. Mr. Morrell's office assistant (Kate) informed me that he was out of the office. I asked her to have him call me when he returned to discuss property access. I did not receive a return phone call from Mr. Morrell.

STS  
10900 73<sup>rd</sup> Ave. North, Suite 150, Maple Grove, MN 55369  
T 763.315.8300 F 763.315.1836

February 4, 2008

Mr. Jay Morrell  
Morrell Properties, LLC  
1401 Fallon Avenue  
Monticello, MN 55362

RE: Minnesota Pollution Control Agency (MPCA) Access Agreement for 924 3<sup>rd</sup> Avenue E. and 923 4<sup>th</sup> Avenue E.  
in Alexandria, Minnesota.

Dear Mr. Morrell:

The Minnesota Pollution Control Agency (MPCA) is conducting soil borings for a petroleum release (Leak number 15,656) at 905 3<sup>rd</sup> Avenue E. in Alexandria, Minnesota. The MPCA is requesting access to property owned by you located at 924 3<sup>rd</sup> Avenue E and 923 4<sup>th</sup> Avenue E in Alexandria, Minnesota to conduct investigation work for the above referenced project.

Please review the following MPCA access agreement form and if acceptable to you; sign, date and return to me in the enclosed stamped envelope. I will forward your signed copy to the MPCA for their signature and provide you with a copy of the access agreement signed by both parties.

Please call me at (763) 315-6318 if you have any questions regarding this access agreement.

Respectfully,



Timothy J. Grape, PG  
Project Geologist

©STS 2008, ALL RIGHTS RESERVED



# Minnesota Pollution Control Agency

## ACCESS AGREEMENT BETWEEN THE MINNESOTA POLLUTION CONTROL AGENCY AND JAY MORRELL PROPERTIES, LLC

The Minnesota Pollution Control Agency (MPCA) is investigating, and/or taking corrective action in response to, a release of petroleum from a tank(s) located at 905 3<sup>rd</sup> Avenue E (MPCA Leak Number 15,656). The investigation will be conducted in the vicinity of the properties owned by Jay Morrell Properties, LLC, located at:

**924 3<sup>rd</sup> Avenue E. and 923 4<sup>th</sup> Avenue E.  
Alexandria, Minnesota**

The Property Owner hereby consents and authorizes the MPCA, its employees, agents and contractors, to enter this property for the purpose of performing reasonable and necessary investigations and corrective actions in response to the suspected petroleum tank release. The MPCA is authorized to take these actions under Minn. Stat. § 115C.03, subd. 7 (2002).

The MPCA will notify the Property Owner at least 48 hours before entering the property. Work will be conducted during regular business hours (8:00 a.m. to 5:00 p.m.) unless the MPCA receives permission to conduct work during different hours. The MPCA will conduct its activities so as to minimize interference with the use of the property. If any portion of the property must be disturbed as a result of the MPCA's activities, the MPCA will restore the property as close to its original condition as is reasonably possible under the circumstances. The Property Owner will take reasonable precautions to ensure that the equipment of the MPCA and its contractors on the property is not damaged, and that the work being conducted by the MPCA, its employees, agents and contractors is not disrupted.

The MPCA will obtain all necessary permits for installation and maintenance of the monitoring wells, remediation wells, and/or water wells, if such wells are installed. Upon completion of all necessary sampling or remediation, the MPCA will seal the monitoring wells, remediation wells and/or water wells in accordance with state law. Results of all testing conducted on the property will be provided to the Property Owner.

The MPCA shall be liable for injury to or loss of property, or personal injury or death, caused by an act or omission of any employee of the state in the performance of the work described above, under the circumstances where the state, if a private person, would be liable to the claimant, in accordance with Minn. Stat. § 3.736.

MINNESOTA POLLUTION CONTROL AGENCY

Property Owner: **Jay Morrell**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Title:

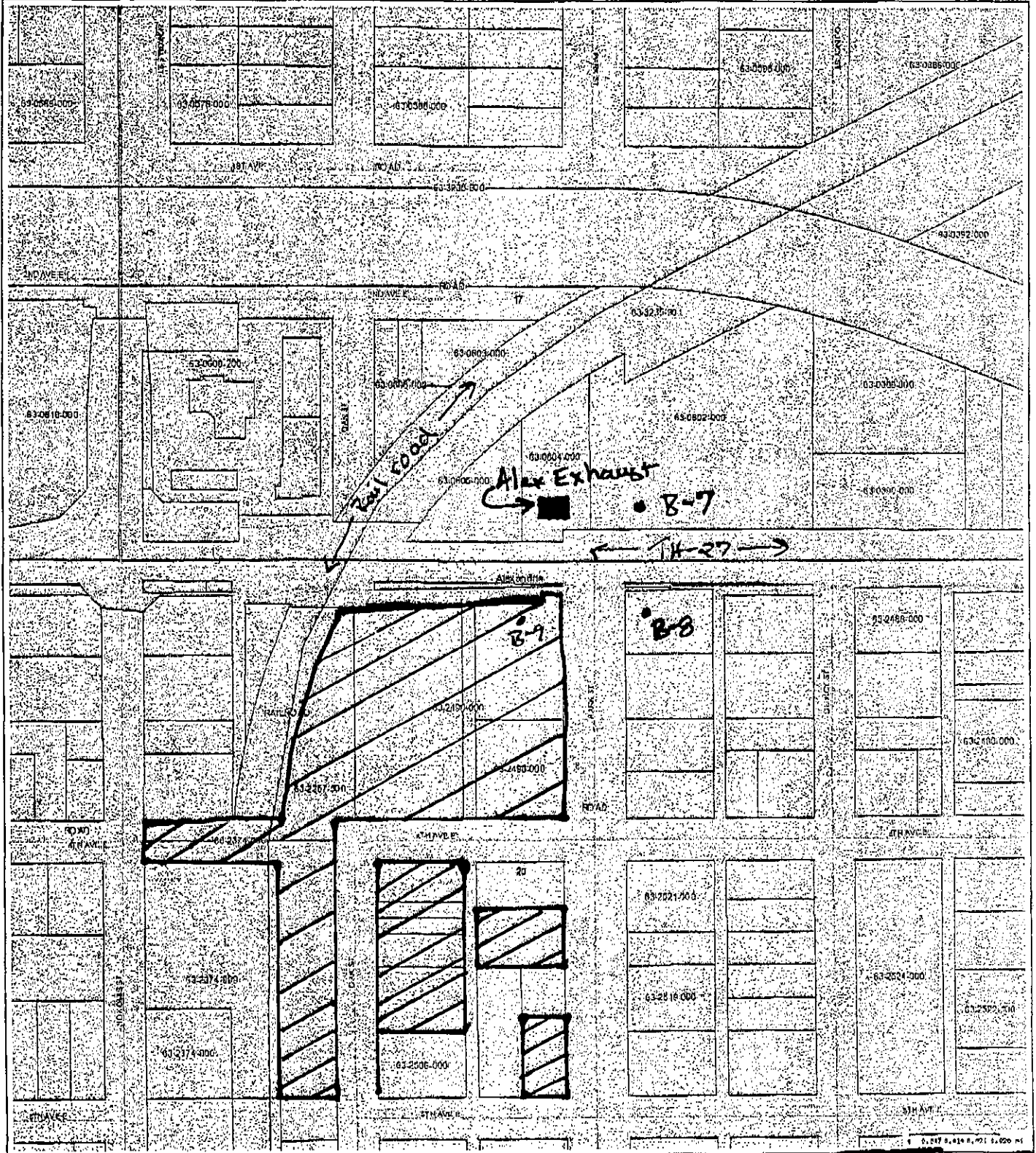
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

 = Property owned by Jay Morrell Properties

### Douglas County, MN - Map



Disclaimer: Douglas County does not warrant or guarantee the accuracy of the data.  
 The data is meant for reference purposes only and should not be used for official decisions.  
 If you have questions regarding the data presented in this map, please contact the Douglas County GIS Department.

1" = 215'



Groundwater flow is generally to the southwest.  
 Map created on Mar 17, 2008 1:07. This information is to be used for reference purposes only.  
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