

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

11-0261R

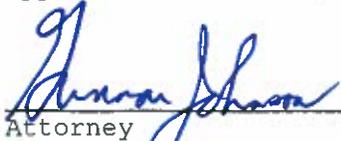
RESOLUTION REQUESTING THE BOARD OF COUNTY COMMISSIONERS
OF ST. LOUIS COUNTY TO WITHHOLD FROM SALE CERTAIN TAX
FORFEITED PARCELS (ANNUAL LIST, FN 11-053)

CITY PROPOSAL:

RESOLVED, that the board of commissioners of St. Louis County is hereby requested to withhold from sale for the public interest and to classify as "conservation" the following parcels from the county auditor's list of properties which have been declared tax forfeited and title thereto vested in the state:

Parcel ID and Legal Description	Location	Reason
010-2710-04626 6.03 Acres; See attached legal.	Adjacent to and Southwest of Mall Drive	Storm Water Management, Stream Preservation, and Conservation Easement Management

Approved as to form:



Attorney

PC:plng KD:eu 5/12/2011

STATEMENT OF PURPOSE: This resolution STATEMENT OF PURPOSE: This resolution exercises authority granted to municipalities by Minnesota Statutes, Chapter 282, to disapprove of the classification of tax forfeited lands upon notification from the board of county commissioners. The City's response, via resolution, must be sent to the County within 60 days of receiving notice.

Pursuant to Minnesota Statutes Section 282.01, Subdivision 1; all parcels of land becoming the property of the State of Minnesota in trust through forfeiture for nonpayment of real estate taxes shall be classified as "Conservation" or "Non-Conservation." Lands classified Conservation are those properties for which there is potential for some public purpose.

This resolution requests the Saint Louis County Board of Commissioners classify as "conservation" a parcel of tax forfeited land and to withhold it from sale. In total, 42 parcels of land forfeited in Duluth and this resolution requests that only one parcel be classified "conservation." The balance will be made available for sale in the future.

The Duluth City Planning Commission, at its May 10, 2011, regular meeting, reviewed a list of recommendations for the classification of tax forfeited lands prepared by Planning Division staff with input from other City divisions. The Commission voted to recommend this list to the City Council and Saint Louis County Board of Commissioners and in doing so, they considered the goals of a successful classification process:

- a.) To encourage the most economical and efficient use of the property for transportation, roads, water supply, drainage, sanitation, education, and recreation.
- b.) To reduce the City's local government expenses.
- c.) To conserve and develop Duluth's natural resources.
- d.) To encourage economic development in suitable areas.

PID 010-2710-04626, for conservation. In 2003, a conservation easement was established on this property to preserve and protect in perpetuity the conservation values by prohibiting activities that significantly impair or interfere with the conservation values. The conservation easement was established by the Miller Creek Joint Powers Board, and can only be assigned to the City of Duluth. The subject parcel between Krenzen Auto and Super One is an important wetland area containing coldwater tributaries that are critical to providing cool base flow waters to Miller Creek, a MPCA listed impaired water of the State.

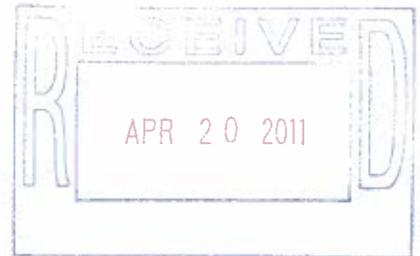
<u>Summary of Recommendation</u>	
Parcels forfeited in 2010	42
Parcels recommended for "Conservation" class	1
Parcels recommended for "Non-Conservation" class and release for sale	41

New Tax Forfeitures - Nonplatted Lands

17-Dec-10

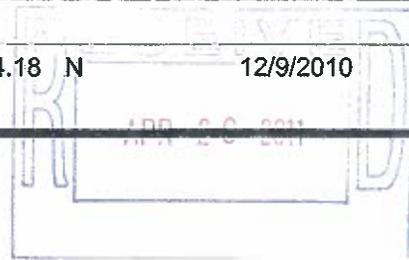
Township	Description	Cvt	Plat	Parcel	Acres	Und	Forfeit Date	Parcel Key
49 15 3	E 231 FT OF W1/2 OF NE1/4 OF NW1/4 LYING S OF CENTERLINE OF ST LOUIS RIVER RD	185	240	25	2.44	N	12/9/2010	70915
49 15 27	THAT PART OF S 1/2 OF NE 1/4 OF SE 1/4 LYING N OF A LINE RUNNING FROM THE POINT OF INTERSECTION BETWEEN THE W LINE OF 93RD AVE W AND THE SLY LINE OF AN 80 FT ROADWAY AND NWLY TO A POINT ON THE ELY RT OF W LINE OF THE STATE HIGHWAY 260 FT FROM THE INTER SECTION BETWEEN SAID ROADWAY AND HIGHWAY	10	2746	980	2.94	N	12/9/2010	70983
49 15 29	N 300 FT OF S 1030 FT OF W 1000 FT OF SW 1/4 OF NE 1/4	450	10	4135	6.9	N	12/9/2010	70939
49 15 29	N 229 31/100 FT OF S 730 FT OF W 450 69/100 FT OF SW 1/4 OF NE 1/4	450	10	4142	2.38	N	12/9/2010	70940
→ 50 14 18	THAT PART OF NW 1/4 OF SW 1/4 LYING SWLY OF HWY NO 53 EX SW 1/4 OF SW 1/4 & EX HWY R/W AND EX PART NLY OF CENTERLINE OF TARGET SERVICE RD AND EX THAT PART COMM AT NW CORNER OF SAID FORTY THENCE S ALONG W LINE 991.06 FT TO NW CORNER OF SW1/4 OF SW1/4 OF NW1/4 OF SW1/4 THENCE S 89 DEG 43 MIN 46 SEC E 33 FT TO PT OF BEG THENCE CONTINUE SAME BEARING 378 FT THENCE N 275 FT THENCE N 89 DEG 43 MIN 46 SEC W 378 FT THENCE S TO PT OF BEG	10	2710	4626	6.03	N	12/9/2010	70982
50 15 4	THAT PART OF NE 1/4 OF SW 1/4 LYING N OF THE MILLER TRUNK ROAD EX 6 AC AT NE	395	10	730	15.94	N	12/9/2010	70927

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Township	Description	Cvt	Plat	Parcel	Acres	Und	Forfeit Date	Parcel Key
50 15 4	CORNER AND EX PART BEG AT INTERSECTION OF W LINE OF SAID FORTY WITH N R/W LINE OF HWY #53 THENCE SELY ALONG NLY R/W LINE 600 FT THENCE NELY AND PERPENDICULAR TO SAID HWY 200 FT THENCE NWLY 90 DEG TO W LINE OF FORTY THENCE S TO PT OF BEG	395	10	730	15.94	N	12/9/2010	70927
50 15 23	SLY 822 FT OF SW1/4 OF NE1/4 EX WLY 880 FT	395	10	6140	8.39	N	12/9/2010	70928
50 16 29	NLY 20 FT OF ELY 130 FT OF SLY 660 FT OF SW1/4 OF SE1/4	530	10	5593	0.06	N	12/9/2010	70948
50 18 13	E 1/2 OF E 1/2 OF SE 1/4 OF SW 1/4	535	10	2064	10	N	12/9/2010	70949
51 13 8	NW 1/4 OF NE 1/4	415	10	1850	40	N	12/9/2010	70929
51 13 26	W 1/2 OF NE 1/4 OF NE 1/4 EX HWY RT OF W	10	2690	90	19.42	N	12/9/2010	70978
51 13 26	S 3/10 OF N 6/10 OF NE 1/4 OF NE 1/4 OF SW 1/4 EX HWY RT OF W	10	2690	280	1.98	N	12/9/2010	70979
51 13 26	S 4/10 OF NE 1/4 OF NE 1/4 OF SW 1/4 EX HWY RT OF WAY	10	2690	290	1.03	N	12/9/2010	70980
51 13 26	E 1/2 OF NW 1/4 OF NE 1/4 OF SW 1/4 EX WLY 258 79/100 FT	10	2690	300	1.07	N	12/9/2010	70981
51 13 30	SE 1/4 OF NW 1/4 OF NW 1/4	415	10	7480	10	N	12/9/2010	70930
51 14 32	ELY 410 FT OF WLY 910 FT OF S 1/2 OF S 1/2 OF S 1/2 OF SW 1/4 OF SW 1/4	520	19	255	1.5	N	12/9/2010	70945
51 14 32	ELY 410 FT OF S 1/2 OF S 1/2 OF S 1/2 OF SW 1/4 OF SW 1/4	520	19	256	1.5	N	12/9/2010	70946
51 19 27	ELY 375 FT OF GOVT LOT 1 LYING S OF RY RT OF WAY	225	70	17	4.18	N	12/9/2010	70916

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New Tax Forfeitures - Platted Lands

17-Dec-10

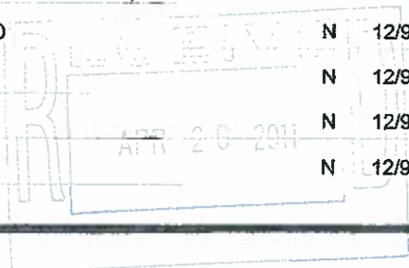
CVT	Plat	Parcel	Plat Name/City	Block	Lot	Description	Und	Forfeit Date	LD_key
10	340	90	BRYANT ADDITION TO DULUTH SECOND DIV	1	7	LOT: 007 BLOCK:001	N	12/9/2010	70955
10	340	100	BRYANT ADDITION TO DULUTH SECOND DIV	1	8	LOT: 08 BLOCK:001	N	12/9/2010	70956
10	880	3760	DULUTH HEIGHTS 5TH DIVISION	13	30	LOT: 0030 BLOCK:013	N	12/9/2010	70957
10	880	3770	DULUTH HEIGHTS 5TH DIVISION	13	0	LOTS 31 AND 32	N	12/9/2010	70958
10	1020	280	DULUTH PROPER 1ST DIVISION WEST 5TH STREET	0	27	ELY 24 FT	N	12/9/2010	71035
10	1020	290	DULUTH PROPER 1ST DIVISION WEST 5TH STREET	0	0	W 26 FT OF LOT 27 AND ALL OF LOT 29	N	12/9/2010	70959
10	1030	380	DULUTH PROPER 1ST DIVISION EAST 6TH STREET	0	51	ELY 40 FT INC E 40 FT OF LOT 51 BLK 83 DULUTH PROPER 3RD DIV	N	12/9/2010	70960
10	1180	2600	DULUTH PROPER SECOND DIVISION	116	442	E 1/2	N	12/9/2010	70961
10	1180	4710	DULUTH PROPER SECOND DIVISION	125	323	W 30 FT OF E 40 FT EX HWY RT OF WAY	N	12/9/2010	70962
10	1180	4720	DULUTH PROPER SECOND DIVISION	125	0	W 10 FT OF LOT 323 AND E 1/2 OF LOT 325 EX HWY RT OF WAY	N	12/9/2010	70963
10	1270	1680	DULUTH PROPER THIRD DIVISION	36	0	S 17.75 FT OF N 57.25 FT OF LOTS 130 & 132	N	12/9/2010	70964
10	1310	1945	DULUTH PROPER THIRD DIVISION	75	87	W 3 FT OF N 20 FT	N	12/9/2010	70965
10	1350	620	DULUTH PROPER THIRD DIVISION	83	50	W 40 FT OF N 70 FT	N	12/9/2010	71036
10	1370	5740	REARR PART EAST DULUTH & FIRST ADD TO EAST DU	35	14	LOT: 0014 BLOCK:035	N	12/9/2010	70966
10	1610	140	FOND DU LAC THIRD STREET DULUTH	0	0	LOTS 27 AND 29	N	12/9/2010	70967
10	1790	7420	GARY CENTRAL DIVISION DULUTH	80	0	LOTS 10 THRU 15	N	12/9/2010	70968
10	2120	1060	HAZELWOOD ADDITION TO ONEOTA DULUTH	17	6	ELY 1/2	N	12/9/2010	70969
10	2120	1690	HAZELWOOD ADDITION TO ONEOTA DULUTH	23	8	LOT: 0008 BLOCK:023	N	12/9/2010	71042
10	2140	480	HAZELWOOD PARK DIVISION OF WEST DULUTH	5	1	LOT: 0001 BLOCK:005	N	12/9/2010	70970
10	2220	210	HIGHLAND PARK ADDITION TO DULUTH	16	13	LOT: 0013 BLOCK:016	N	12/9/2010	70971
10	2230	1370	HOME ACRES 1ST DIVISION OF	4	0	LOTS 1 THRU 8	N	12/9/2010	70972
10	2410	1020	HUNTERS GRASSY PT ADDN TO DULUTH 3RD DIV	18	9	LOT 9 BLOCK 18	N	12/9/2010	70973
10	2450	950	HUNTERS PARK 1ST DIVISION DULUTH	9	1	LOT: 0001 BLOCK:009	N	12/9/2010	70974

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CVT	Plat	Parcel	Plat Name/City	Block	Lot	Description	Und	Forfeit Date	LD_key
10	2550	1560	IRONTON 4TH DIVISION DULUTH	7	21	ELY 60 FT	N	12/9/2010	70975
10	2650	92	KENWOOD ACRES DULUTH	1	0	WLY 20 FT OF LOT 7	N	12/9/2010	70976
10	2660	2970	KIMBERLY AND STRYKERS ADDN TO DULUTH	23	0	LOTS 7 & 8	N	12/9/2010	70977
10	2746	1150	DULUTH LANDS IN THE CITY			THAT PART OF S1/2 OF NE1/4 OF SE1/4 LYING BETWEEN THE ELY LINE OF THE 200 FT HIGHWAY RT OF WAY AND THE WLY LINE OF THE EXTENDED 93RD AVE W AND WITHIN 40 FT ON EITHER SIDE OF A LINE RUNNING FROM A POINT ON THE NORTH LINE OF S1/2 OF NE1/4 OF SE1/4 221 20/100 FT W OF NE CORNER AND SWLY ALONG A CURVE WITH RADIUS OF 716 78/100 FT TO A POINT ON THE E LINE OF SAID 20 ACRE TRACT 125 FT MORE OR LESS N OF SE CORNER THEREOF	N	12/9/2010	70984
10	2780	845	LAKESIDE GARDENS DULUTH	6	19	NLY 140 FT	N	12/9/2010	70985
10	2780	850	LAKESIDE GARDENS DULUTH	6	20	NLY 140 FT	N	12/9/2010	70986
10	3710	1020	PACIFIC AVE ADDITION DULUTH	7	0	LOTS 2, 3, AND 6	N	12/9/2010	70987
10	3710	1630	PACIFIC AVE ADDITION DULUTH	11	0	LOTS 1 AND 2	N	12/9/2010	70988
10	3760	710	PIEDMONT DIVISION OF DULUTH	3	19	LOT: 0019 BLOCK:003	N	12/9/2010	70989
10	3980	550	RIVERSIDE PARK 2ND ADDITION TO DULUTH	3	17	LOT: 0017 BLOCK:003	N	12/9/2010	70990
10	4110	620	STEEL PLANT TERMINAL ADDN TO DULUTH	2		LOTS 11 AND 12	N	12/9/2010	70991
10	4500	3670	WEST DULUTH 4TH DIVISION	99	0	LOTS 1 AND 2	N	12/9/2010	70992
10	4570	1735	WEST PARK DIVISION OF DULUTH	16	0	E 10 FT OF S 63 FT OF LOT 11 AND E 12 1/2 FT OF N 37 FT OF LOT 11	N	12/9/2010	70993
20	10	4780	CHISHOLM	16	0	LOTS 21 AND 22	N	12/9/2010	70994
20	30	800	CENTRAL AVE REARRANGEMENT OF CHISHOLM	30	0	LOT H	N	12/9/2010	70995
20	50	2090	CARLIN 1ST ADDITION CHISHOLM	0	0	OUTLOT B	N	12/9/2010	70996
20	80	400	CARLIN GARDENS CHISHOLM	2	11	LOT: 0011 BLOCK:002	N	12/9/2010	70997
20	90	30	GARDEN LANDS CHISHOLM	0	3	LOT: 0003 BLOCK:000	N	12/9/2010	70998
20	150	6690	NORTHERN ADDITION TO CHISHOLM	25	0	LOTS 20 AND 21	N	12/9/2010	70999
20	200	2560	WESTERN ADDITION TO CHISHOLM	11	0	LOTS 19 20 AND 21	N	12/9/2010	71000
30	10	1040	ELY	9	0	LOTS 11 AND 12	N	12/9/2010	71001

VIII
C 7



Legend

Water Distribution System

- 30 - 60" Water Pipe
- 16 - 24" Water Pipe
- 4 - 8" Water Pipe

Sanitary Sewer Collection System

- Sanitary Sewer Collector
- Sanitary Sewer Interceptor
- Sanitary Sewer Forced Main

Storage Basin

- Storage Basin
- Pump Station

Gas Distribution Main

- 8" - 16" Gas Pipes
- 4" - 6" Gas Pipes
- 0" - 4" Gas Pipes

Storm Sewer Collection System

- Storm Sewer Pipe
- Storm Sewer Catch Basin
- Discharge Points

Municipal Boundary

- Municipal Boundary

Trout Stream (GPS)

- Trout Stream (GPS)

Other Stream (GPS)

- Other Stream (GPS)

Wetlands (NRR)

- Wetlands (NRR)

10' Contour (elev. change)

- 10' Contour (elev. change)

Right-of-Way Type

- Road or Alley ROW
- Vacated ROW

Easement Type

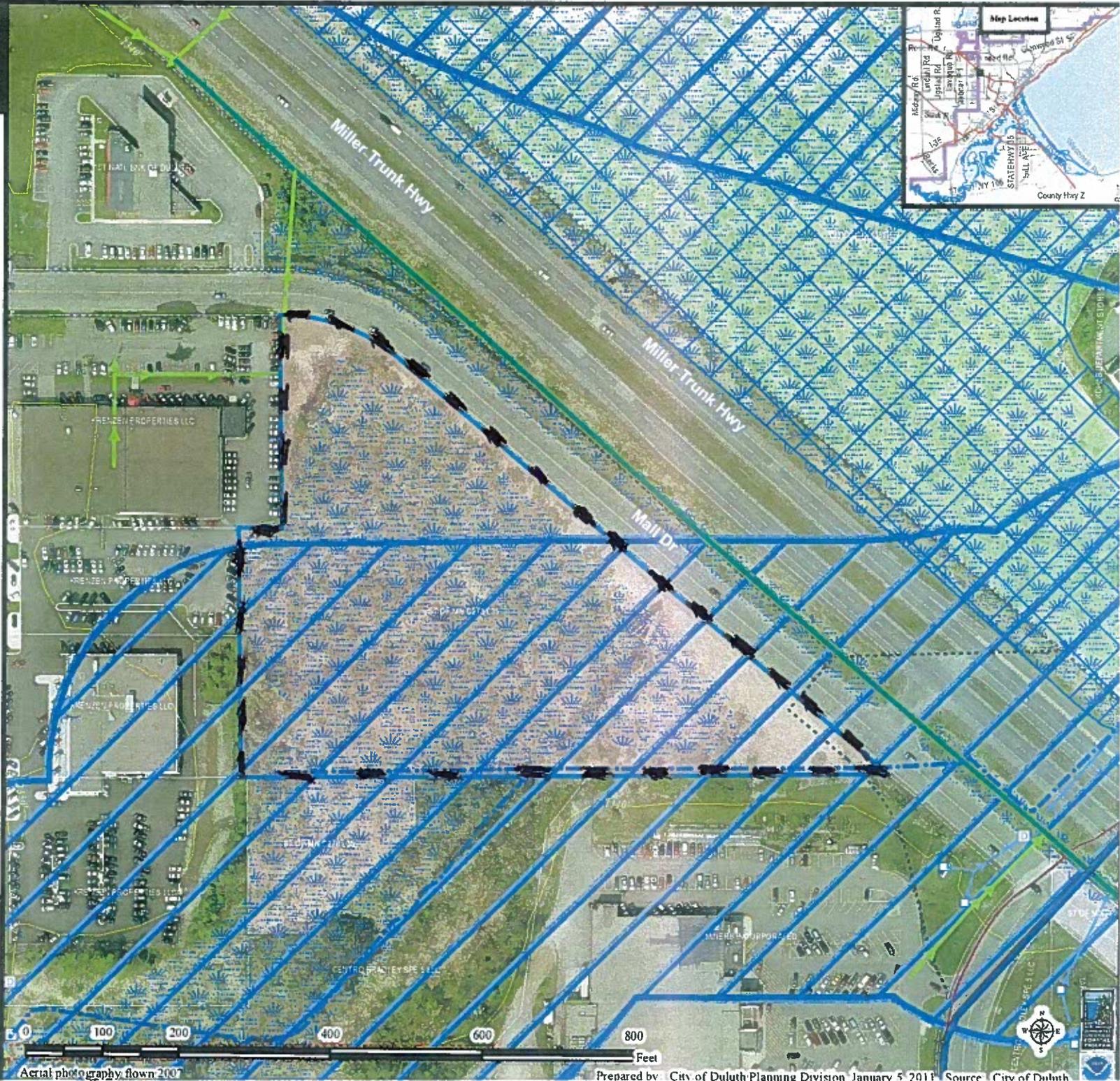
- Utility Easement
- Other Easement

Shoreland Overlay Zone

- Cold Water
- Natural Environment
- General Development

Floodplain Type

- General Flood Plain
- Flood Way
- Flood Fringe



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

Aerial photography flown 2007



CITY OF DULUTH
 Planning Division

411 W 1st St, Rm 208 * Duluth, Minnesota 55802-1197
 Phone: 218/730.5580 Fax: 218/723-3559

STAFF REPORT

File Number	FN 11-053	Contact	Steven Robertson	
Application Type	Tax Forfeited Land Classification	Planning Commission Date	May 10, 2011	
Deadline for Action	Application Date	April 15, 2011	60 Days	N/A
	Date Extension Letter Mailed	N/A	120 Days	N/A
Location of Subject	Various (See Attachments)			
Applicant	St. Louis County Land Department	Contact	Karen Zeisler	
Agent		Contact		
Legal Description	Various (See Attachments)			
Site Visit Date	N/A	Sign Notice Date	N/A	
Neighbor Letter Date	N/A	Number of Letters Sent	N/A	

Proposal

Review of 42 parcels that were forfeited in 2010 because of non-payment of property taxes and classified Non-Conservation by the Saint Louis County Board. See "Summary of Code Requirements" below for more information.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject			
North			
South			
East			
West			

Summary of Code Requirements (reference section with a brief description):

Pursuant to Minnesota Statutes Section 282.01, Subdivision 1; all parcels of land becoming the property of the State of Minnesota in trust through forfeiture for nonpayment of real estate taxes shall be classified or reclassified as "Conservation" or "Non-Conservation." Lands classified Conservation are those properties for which there is potential for some public purpose.

Once per year, the County Board review parcels of land that have been forfeited during the previous year for non-payment of taxes and classifies each parcel "Conservation" or "Non-Conservation." The attached list of parcels were classified "Non-Conservation" by the County Board; the City was given notice of the classification on 5-20-2011 and has 60 days to respond whether the City agrees with the classification. Classifying a parcel "conservation" prevents it from being sold.

The goals of the classification/reclassification and listing process include:

- 1.) Encouraging the most economical and efficient use of property for transportation, roads, water supply, drainage, sanitation, education and recreation.
- 2.) Reducing local government taxes.
- 3.) Conserving and developing local natural resources.
- 4.) Encouraging suitable economic development.

VIII C 1

Comprehensive Plan Findings (Governing Principle and/or Policies) and Current History (if applicable):

Governing Principles: Principle #2 - Declare the necessity and secure the future of undeveloped places, Principle #5 - Strengthen neighborhoods, Principle #6 - Reinforce the place-specific, Principle #9 - Support private actions that contribute to the public realm.

Discussion (use numbered or bullet points; summarize and attach department, agency and citizen comments):

The list of parcels that have been classified "Non-Conservation" and proposed for sale by the County Board; the City has 60 days to respond. City Planning Staff have a meeting scheduled with staff from Engineering, Parks and Recreation, and Facilities Management on Wednesday, May 4, 2011, to review the information and make preliminary comments. There will be a "Tax Forfeit Land Sub-committee" meeting on Tuesday, May 10, at 4:00 pm for the members of the sub-committee to review the maps and the comments from City Staff. These recommendations will be shared with the Planning Commission at their regular meeting at 5:00 pm.

After reviewing the information on the 42 parcels on the list, the Planning Commission will need to make a motion that the City Council oppose the "Non-Conservation" classification for the parcels that do have a public purpose for it; the remaining parcels that do not have a public purpose will then be eligible for possible sale.

Staff Recommendation (include Planning Commission findings, i.e., recommend to approve):

Staff recommends that the Planning Commission recommend that the City Council oppose the "Non-Conservation" classification of some of the 42 parcels classified by the County Board and listed in the notice received by the City on 04/20/2011, to the City Council. Those parcels and reasons to be identified during the Planning Commission meeting of May 10th, 2011.

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Attachments (aerial photo with zoning; future land use map; site plan; copies of correspondence)



Saint Louis County

Land Department • 320 West 2nd Street, Room 607, Gov't. Serv. Cntr. • Duluth, MN 55802
Phone: (218) 726-2606 • Fax: (218) 726-2600

Robert L. Krepps
Land Commissioner

April 15, 2011

Mark E. Reed
Deputy Land Commissioner

City of Duluth
Jeff Cox, Clerk
330 City Hall
Duluth, MN 55802

Re: Classification of State tax forfeited lands. Board Resolution #175, dated 4/12/11

Dear City Clerk:

The St. Louis County Board of Commissioners has completed the classification/reclassification of State tax forfeited properties to non-conservation/conservation. Under Minn. Stat. 282.01, once the County Board has classified or reclassified and listed the property, each city or town in which their property is located must have the opportunity to approve the classification/reclassification and listing for properties within their jurisdiction.

The goals of the classification/reclassification and listing process are: 1) to encourage the most economical and efficient use of the property for transportation, roads, water supply, drainage, sanitation, education, and recreation; 2) to reduce local and state government expenses; 3) to conserve and develop the state's natural resources; and 4) to encourage both agricultural and nonagricultural economic development in the areas of the state best suited for each.

If your council or board disagrees with the classification/reclassification of any parcel(s), please provide detailed information on the attached form number LD.Disapproval.9/02, setting forth the rationale and statutory basis for such disapproval.

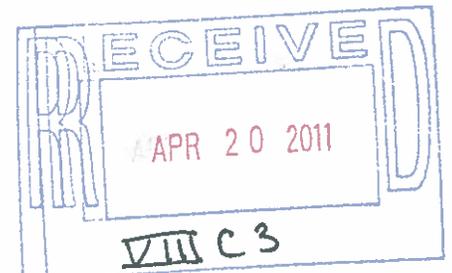
If your municipality wishes to acquire any parcel(s) listed, please complete the form number LD.withhold.9/02, to withhold the property from sale for up to six months while your municipality completes the acquisition of the property. This application must be received within 60 days of the date of this letter. After six months and absent acquisition of the property by the municipality, the County will be free to sell the property.

Please respond with any of your concerns within 60 days. If no response is received within that time period, the submitted reclassification and listing will be deemed approved.

Sincerely,

Karen Zeisler
Tax Forfeited Land Coordinator

KZ/pb



REV #02-180

CE Recorded 12-31-03

Doc # 76849

EXHIBIT B

PIN # 010-2110-04636

CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted by Fifty-Three Duluth Properties, a Missouri Partnership, (the "Owner") to the Miller Creek Joint Powers Board, a joint powers Board formed by the cities of Duluth and Hermantown, organized and existing under the laws of the State of Minnesota (the "Board").

RECITALS:

- A. OWNER. The Owner is the current owner of approximately 6.65 acres of real property located in St. Louis County, Minnesota. That real property is more fully described below as the "Protected Property."
- B. PROTECTED PROPERTY. The Protected Property is that real property legally described in Exhibit A and generally depicted on the "Property Map" in Exhibit B. Both exhibits are attached to this Easement and incorporated by this reference.

The Protected Property is currently an undeveloped property, which is not currently being used except for real-estate investment purposes. There are no existing improvements on the Protected Property except for a drainage ditch running along the western boundary.

- C. MILLER CREEK JOINT POWERS Board. The Miller Creek Joint Powers Board was formed by the cities of Duluth and Hermantown according to Minnesota Statutes, Chapter 471.59. The Board was formed to implement watershed restoration projects. The overall mission of the Miller Creek Joint Powers Board is to provide for a viable, self-sustaining urban trout fishery as well as educate the public regarding watershed health and urban impacts to area trout streams.
- D. CONSERVATION VALUES. The Protected Property has the following natural and open space qualities of significant importance:
7. The Protected Property surrounds approximately 500 feet along a tributary to Miller Creek, which is a state-designated trout stream. Wetlands and vegetation on the Protected Property currently helps maintain the water temperature and water quality of Miller Creek. Miller Creek is one of the most highly urbanized

watershed in the Lake Superior basin, and as such, protection of the remaining wetlands is critical to its long-term viability.

- The Protected Property's undisturbed natural condition also contributes to a small but important wildlife refuge along an urbanized corridor. Ruffed grouse, hares, waterfowl and other wildlife have been identified in this pocket habitat.

Collectively, these natural, scenic and open space qualities of the Protected Property comprise its "Conservation Values."

These Conservation Values have not been and are not likely to be adversely affected to any substantial extent by the continued use of the Protected Property as described above or as authorized below or by the use, maintenance or construction of those structures and improvements that presently exist on the Protected Property or that are authorized below.

E. CONSERVATION POLICY. Preservation of the Protected Property will further those governmental policies established by the following:

- Resolution by the Miller Creek Joint Powers Board.
8. Resolution by the South St. Louis Soil and Water Conservation District, August 28, 2002.
 9. Miller Creek Clean Water Partnership Diagnostic Study and Implementation Plan approved by the city of Duluth and the Minnesota Pollution Control Agency in 2001.
 10. South St. Louis Soil and Water Conservation District Comprehensive Plan 2003 - 2007.
 11. The grant agreement to be executed for this project by the MN Department of Natural Resources-Waters and Minnesota's Lake Superior Coastal Program through the Coastal Zone Management Act, administered through the Office of Oceans and Coastal Resource Management, National Oceanic and Atmospheric Administration.
- Minnesota Statutes Chapter 84C, which recognizes the importance of private conservation efforts by authorizing conservation easements for the protection of natural, scenic, or open space values of real property, assuring its availability for agriculture, forest, recreational, or open space use, protecting natural resources, and maintaining or enhancing air or water quality.

- F. **CONSERVATION INTENT.** The Owner and the Board are committed to protecting and preserving the Conservation Values of the Protected Property in perpetuity. Accordingly, it is their intent to create and implement a conservation easement that is binding upon the current Owner and all future owners of the Protected Property and that conveys to the Board the right to protect and preserve the Conservation Values of the Protected Property for the benefit of this generation and generations to come.

CONVEYANCE OF CONSERVATION EASEMENT:

Pursuant to the laws of the State of Minnesota and in particular Minnesota Statutes Chapter 84C and in consideration of the facts recited above and the mutual covenants contained herein and in further consideration of the sum of Two Hundred Fifty Thousand Dollars and other valuable consideration, the Owner hereby conveys and warrants to the Board and its successors and assigns a perpetual conservation easement over the Protected Property. This conservation easement consists of the following rights, terms and restrictions (the "Easement"):

1. **CONSERVATION PURPOSE.** The purpose of this Easement is to preserve and protect in perpetuity the Conservation Values of the Protected Property identified above by confining the development, management and use of the Protected Property to activities that are consistent with the preservation of these Conservation Values, by prohibiting activities that significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Easement.

The terms of this Easement are specifically intended to provide a significant public benefit by:

Maintain on the Protected Property wetlands, land cover, and the undeveloped state of the Protected Property to protect Miller Creek from any point or nonpoint source or point source pollution and water temperature increases that could result from the development of the Protected Property.

Maintain the small pocket wildlife habitat associated with the Protected Property.

2. **LAND USE RESTRICTIONS.** Any activity on or use of the Protected Property that is inconsistent with the purposes of this Easement is prohibited.

Except as specifically permitted in paragraph 3 below and without limiting the general prohibition above, restrictions imposed upon the Protected Property expressly include the following:

- 2.1. Industrial and Commercial Activity. No industrial or commercial use of the Protected Property is allowed except for that signage for advertisement purposes, as specifically permitted in paragraph 3 below.
- 2.2. Agricultural Use. No agricultural use of the Protected Property is allowed. This includes tilling, plowing, commercial cultivation of row crops, livestock grazing or production, haying or feedlots.
- 2.3. Residential Development. No residential use or development of the Protected Property is allowed.
- 2.4. Right of Way. No right of way shall be granted across the Protected Property in conjunction with any industrial or commercial use or residential development of other land not protected by this Easement.
- 2.5. Mining. No mining, drilling, exploring for or removing of any minerals from the Protected Property is allowed.
- 2.6. Subdivision. The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel, regardless of whether it consists of or was acquired as separate parcels or is treated as separate parcels for property tax or other purposes.
- 2.7. Density. No portion of the Protected Property may be used to satisfy land area requirements for other property not subject to this Easement for purposes of calculating building density, lot coverage or open space under otherwise applicable laws, regulations or ordinances controlling land use. No development rights that have been encumbered or extinguished by this Easement may be transferred to any other property.
- 2.8. Structures and Improvements. No temporary or permanent buildings, structures, roads or other improvements of any kind may be placed or constructed on the Protected Property except as specifically authorized in paragraph 3 or as set forth below:
 - a. Utilities. Utility systems and facilities may be installed, maintained, repaired, extended and replaced only to serve uses and activities specifically permitted by this Easement. This includes, without limitation, all systems and facilities necessary to provide electrical power for the signage permitted in paragraph 3 below.

Utility systems and facilities shall be installed or constructed with minimal grading and disturbance to vegetation using best construction management practices. Following installation or construction, the surface shall be timely restored to a condition consistent with the conservation purposes of this Easement.

- b. Roads and Trails Unpaved paths or foot trails may be established on the Protected Property for non-motorized recreational uses. No other roads or other rights of way may be established or constructed on the Protected Property without the prior written approval of the Board, except as related to activities permitted in paragraph 3.
 - c. Fences. Fences of effective minimal height and visibility may be constructed and maintained, improved, replaced or removed to mark boundaries, to secure the Protected Property, or as needed to carry out activities permitted by this Easement.
- 2.9. Topography and Surface Alteration. No alteration or change in the topography of the surface of the Protected Property is allowed. This includes no ditching, draining or filling and no excavation or removal of soil, sand, gravel, rock or other materials, except as incidental to activities or uses specifically permitted by this Easement, and except as necessary to improve or restore the wetland and vegetation of the Protected Property.
- 2.10. Vegetation Management. No removal, cutting, pruning, trimming or mowing of any trees or other vegetation, living or dead, and no introduction of non-native species is allowed except as follows:
- a. In conjunction with vegetation management activities approved by the Board.
 - b. As reasonably required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury or property damage.
- 2.11. Water. No alteration or manipulation of natural watercourses, lakes, shorelines, wetlands or other surface or subsurface bodies of water is allowed except to restore or enhance wildlife habitat or native biological communities or to improve or enhance the function and quality of existing wetlands.
- No activities on or uses of the Protected Property that cause erosion or are detrimental to water quality or purity are allowed. This includes using the Protected Property as a storm water management area for other properties.
- 2.12. Dumping. No trash, non-compostable garbage, hazardous or toxic substances or unsightly material may be dumped or accumulated on the Protected Property. This does not prohibit burning or composting of excess brush or other plant material resulting from activities permitted by this Easement. No snow or ice collected off-site may be dumped or stored on the Protected Property.
- 2.13. Vehicles. No vehicle use is permitted except as necessary to conduct activities permitted by this easement.

3. **RESERVED RIGHTS.** The Owner retains all rights associated with ownership and use of the Protected Property that are not expressly restricted or prohibited by this Easement. The Owner may not, however, exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property. Additionally, the Owner must give notice to the Board before exercising any reserved right that might have an adverse impact on the Conservation Values associated with the Protected Property.

Without limiting the generality of the above, the following rights are expressly reserved and the Owner may use and allow others to use the Protected Property as follows:

- 3.1. Right to Convey. The Owner may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property.
- a. Any conveyance or encumbrance of the Protected Property is subject to this Easement.
 - b. The Owner will reference or insert the terms of this Easement in any deed or other document by which the Owner conveys title to the Protected Property. The Owner will notify the Board of any conveyance within fifteen (15) days after closing and will provide the Board with the name and address of the new owner and a copy of the deed transferring title.

The enforceability or validity of this Easement will not be impaired or limited by any failure of the Owner to comply with this subparagraph.

- 3.2. Structures and Improvements. One outdoor advertising sign built to local zoning specifications may be constructed on the Protected Property. The sign must be located within a Sign Construction Zone, which may not exceed 5,625 square feet (75' x 75') in total area. All grading, removal of vegetation, soil and material stockpiling, sign footings, electrical boxes and any other activity related to the sign construction and operation must be contained within the Sign Construction Zone. The location of the Sign Construction Zone must have the prior written approval of the Board. Owner must survey and stake the Sign Construction Zone prior to any clearing or grading. Owner may construct and maintain a vehicle access as necessary to construct and maintain the sign.
- 3.3. Recreational and Educational Uses. The Protected Property may be used for hiking, nature observation or study, and other similar low impact recreational and educational programs or activities. Minor rustic structures such as trail barriers and informational kiosks may be placed on the Protected Property in conjunction with these activities.
- 3.4. Habitat. The Protected Property may be used to maintain, restore or enhance habitat for wildlife and native biological communities in accordance with a management plan approved by the Board in writing.

4. **BOARD'S RIGHTS AND REMEDIES.** In order to accomplish the purposes of this Easement, the Board has the following rights and remedies:

- 4.1. Right to Enter. The Board has the right to enter the Protected Property at reasonable times and in a reasonable manner for the following purposes:
- a. To inspect the Protected Property and to monitor compliance with the terms of this Easement.
 - b. To obtain evidence for use in seeking judicial or other enforcement of this Easement.
 - c. To survey or otherwise mark the boundaries of all or part of the Protected Property if necessary to determine whether there has been or may be a violation of this Easement. Any survey or boundary demarcation completed under this provision will be at the Owner's expense.
 - d. To otherwise exercise its rights under this Easement.
 - e. To enter as necessary, in a reasonable manner and at a reasonable time, and with prior notice to owner, to manage the plant communities and wetland structure in furtherance of the protection objectives of this easement
- 4.2. Right of Enforcement. The Board has the right to prevent or remedy violations of this Easement through appropriate judicial action brought against the Owner or other responsible party in any court of competent jurisdiction.
- a. Notice. The Board may not initiate judicial action until the Owner has been given notice of the violation, or threatened violation, of this Easement and a reasonable opportunity to correct the situation. This provision shall not apply if, in the sole discretion of the Board, immediate judicial action is necessary to prevent or mitigate significant damage to the Protected Property or if reasonable, good faith efforts to notify the Owner are unsuccessful.
 - b. Remedies. Remedies available to the Board in enforcing this Easement include the right to request temporary or permanent injunctive relief for any violation or threatened violation of this Easement, to require restoration of the Protected Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement, to seek specific performance or declaratory relief and to recover damages resulting from a violation of this Easement or injury to any Conservation Values protected by this Easement.

These remedies are cumulative and are available without requiring the Board to prove actual damage to the Conservation Values protected by this Easement.

The Board and the Owner also recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Easement.

The Board is entitled to seek expedited relief, ex parte if necessary, and shall not be required to post any bond applicable to a petition for such relief.

- c. **Costs of Enforcement.** The Owner shall be responsible for all reasonable costs incurred by the Board in enforcing this Easement, including without limitation costs of suit, attorneys' fees, and expenses related to restoration of the Protected Property. If, however, the Owner ultimately prevails in a judicial enforcement action, each party shall be responsible for its own costs and attorneys' fees.
 - d. **Discretionary Enforcement.** Enforcement of the terms of this Easement is solely at the discretion of the Board. The Board does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement by any delay or prior failure of the Board in discovering a violation or initiating enforcement proceedings.
 - e. **Acts Beyond Owner's Control.** The Board may not bring any action against the Owner for any change to the Protected Property resulting from causes beyond the Owner's control, such as changes caused by fire, flood, storm, natural deterioration or the unauthorized acts of persons other than the Owner or the Owner's agents, employees or contractors or resulting from reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.
 - f. **Right to Report.** In addition to other remedies, the Board has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.
- 4.3. **Signs.** The Board has the right to place on the Protected Property signs that identify the land as protected by this Easement. The number and location of any signs are subject to the Owner's approval.
- 4.4. **Limitation on Rights.** Nothing in this Easement gives the Board the right or ability to exercise physical control over day-to-day operations on the Protected Property or to become involved in management decisions involving the use, handling or disposal of hazardous substances or to otherwise become an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act.
5. **PUBLIC ACCESS.** Nothing in this Easement gives the general public a right to enter upon or use the Protected Property where no such right existed prior to the conveyance of this Easement or where such right is granted by the Owner. Any such right granted by the

Owner, however, shall be subject to the conditions and restrictions of this Easement Agreement.

6. **DOCUMENTATION.** The current uses of the Protected Property, the state of any existing improvements, and the specific Conservation Values of the Protected Property that are briefly described in this Easement are more fully described in a property report on file at the office of the Board. The Owner and the Board acknowledge that this property report accurately represents the condition of the Protected Property at the time of this conveyance and may be used by the Board in monitoring future uses of the Protected Property, in documenting compliance with the terms of this Easement and in any enforcement proceeding. This property report, however, is not intended to preclude the use of other information and evidence to establish the present condition of the Protected Property in the event of a future controversy.

7. **GENERAL PROVISIONS.**

- 7.1. **Assignment.** This Easement may be assigned or transferred by the Board only to the City of Duluth, Minnesota, or to a conservation organization which is a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and which is authorized to hold conservation easements under Minnesota law. Any future holder of this Easement shall have all of the rights conveyed to the Board by this Easement. As a condition of any assignment or transfer, the Board shall require any future holder of this Easement to continue to carry out the conservation purposes of this Easement in perpetuity.

The Board will notify the Owner of any assignment within fifteen (15) days of the assignment and will provide the Owner with the name and address of the new holder.

In the event that the existence of the Board is terminated for any reason and no assignment of this Easement is made pursuant to the first paragraph of this Section 7.1, such termination shall transfer and assign this Easement and the rights, duties and obligations of the Board hereunder to the City of Duluth, Minnesota.

- 7.2. **Amendment.** Under appropriate circumstances, this Easement may be modified or amended. However, no amendment or modification will be allowed if, in the sole and exclusive judgment of the Board, it (i) does not further the purposes of this Easement, (ii) will adversely impact the Conservation Values protected by this Easement, (iii) affects the perpetual duration of the Easement, or (iv) affects the validity of the Easement under Minnesota law or the status of the Board under Sections 501(c) (3) and 170(h) of the Internal Revenue Code.

Any amendment or modification must be in writing and recorded in the same manner as this Easement.

7.3. Extinguishment. This Easement may be extinguished only through judicial proceedings and only under the following circumstances:

- a. This Easement may be extinguished only (i) if unexpected change in the conditions of or surrounding the Protected Property makes the continued use of the Protected Property for the conservation purposes set out above impossible or impractical or (ii) pursuant to the proper exercise of the power of eminent domain.
- b. The Owner recognizes that uses of the Protected Property prohibited by this Easement may, in the future, become more economically viable than those uses permitted by the Easement. The Owner also recognizes that neighboring properties may, in the future, be put entirely to uses not permitted on the Protected Property by this Easement.

The Owner and the Board believe that such changes will increase the public benefit provided by this Easement. Therefore, such changes are not considered unexpected changes and shall not be deemed to be circumstances justifying the extinguishment of this Easement as otherwise set forth above.

7.4. Proceeds. If this Easement is extinguished or terminated in whole or in part, the Board is entitled to a portion of any proceeds of a sale, exchange or involuntary conversion in an amount that is equal to the fair market value of this Easement at the time of the extinguishment but that is not less than an amount equal to the proportionate value that this Easement bears to the value of the Protected Property as a whole at the time of this conveyance. The Board shall use its share of any proceeds in a manner consistent with the conservation purposes of this Easement, or according to the rules of grant funds from MN Department of Natural Resources-Waters and Minnesota's Lake Superior Coastal Program through the Coastal Zone Management Act, administered through the Office of Oceans and Coastal Resource Management, National Oceanic and Atmospheric Administration.

7.5. Warranties. The Owner represents and warrants as follows:

- a. The Owner is the sole owner of the Protected Property in fee simple and has the right and ability to convey this Easement to the Board.
- b. The Protected Property is free and clear of all encumbrances other than those subordinated to this Easement.
- c. The Owner has no actual knowledge of any use or release of hazardous waste or toxic substances on the Protected Property that is in violation of a federal,

state or local environmental law and will defend, indemnify and hold the Board harmless against any claims of contamination from such substances.

- 7.6. Real Estate Taxes. The Owner shall pay all real estate taxes and assessments levied against the Protected Property, including any levied against the interest of the Board created by this Easement.
- 7.7. Ownership Costs and Liabilities. The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property except for any management right retained by the Board in paragraph 3. The Owner agrees to defend, indemnify and hold the Board harmless from any and all costs or liability for any personal injury or property damage occurring on or related to the Protected Property or the existence of this Easement. [The Owner will name the Board as an additional insured on any general liability insurance policy carried by the Owner with respect to the Protected Property.]
- 7.8. Notice and Approval. Any notice or request for approval required by this Easement must be written and is subject to the following:
- a. Delivery. Any required notice or request for approval must be delivered personally or sent by first class mail or other nationally recognized delivery service to the appropriate party at the following addresses (or other address specified in writing):

To the Owner: Fifty-Three Duluth Properties C/O Thomas J. White The White Company 1750 Brentwood Boulevard St. Louis, Missouri 63144	To the Board: Miller Creek Joint Powers Board C/O South St. Louis Soil & Water Conservation District 215 North 1 st Ave East Room 110 Duluth, MN 55802
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- and
- b. Timing. Unless otherwise specified in this Easement, any required notice or request for approval must be delivered at least 30 days prior to the date proposed for initiating the activity in question.

- c. **Content.** The notice or request for approval must include sufficient information to allow the Board to make an informed decision on whether any proposed activity is consistent with the terms and purposes of this Easement. At a minimum this would include (i) the location, nature and scope of the proposed activity, (ii) the proposed use, design and location of any building, structure or improvement and (iii) the potential impact on the Conservation Values of the Protected Property.
- d. **Approval.** The Board may withhold its approval if it determines that the proposal is inconsistent with the terms or purposes of this Easement or lacks sufficient information to allow the Board to reach an informed decision. The Board may condition its approval on the Owner's acceptance of modifications, which would, in the Board's judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns.
- 7.9. **Binding Effect.** This Easement shall run with and burden the Protected Property in perpetuity. The terms of this Easement are binding and enforceable against the current Owner of the Protected Property, all successors in title to the Protected Property and all other parties entitled to possess or use the Protected Property.
- This Easement creates a property right immediately vested in the Board and its successors and assigns that cannot be terminated or extinguished except as set out herein.
- 7.10. **Definitions.** Unless the context requires otherwise, the term "Owner" includes, jointly and severally, the current owner or owners of the Protected Property identified above and their personal representatives, heirs, successors and assigns in title to the Protected Property. The term "Board" includes the Miller Creek Joint Powers Board and its successors or assigns to its interest in this Easement.
- 7.11. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon the transfer or termination of that party's interest in this Easement or the Protected Property, provided, however, that any liability for acts or omissions occurring prior to the transfer or termination will survive that transfer or termination.
- 7.12. **Recording.** The Board will record this Easement in a timely manner in the official records for the county in which the Protected Property is located. The Board may re-record this Easement or any other documents necessary to protect its rights under this Easement or to assure the perpetual enforceability of this Easement.
- 7.13. **Controlling Law and Construction.** This Easement shall be governed by the laws of the State of Minnesota and construed to resolve any ambiguities or questions of validity of specific provisions in favor of giving maximum effect to its conservation purposes and to the policies and purposes of Minnesota Statutes Chapter 84C.

- 7.14. Severability. A determination that any provision or specific application of this Easement is invalid shall not affect the validity of the remaining provisions or any future application.
- 7.15. Additional Documents. The Owner agrees to execute or provide any additional documents reasonably needed by the Board to carry out in perpetuity the provisions and the intent of this Easement, including, but not limited to any documents needed to correct any legal description or title matter or to comply with any federal, state, or local law, rule or regulation.
- 7.16. Entire Agreement. This document sets forth the entire agreement of the parties with respect this Easement and supercedes all prior discussions or understandings.

EXHIBIT A

LEGAL DESCRIPTION

All that part of the Northwest Quarter of Southwest Quarter (NW¼ of SW¼) of SECTION Eighteen (18), TOWNSHIP Fifty (50) North, RANGE Fourteen (14) West, lying southwesterly of the Southerly line of the Miller Trunk Highway, EXCEPT the following parcels, to-wit:

1. The Southwest Quarter of Southwest Quarter of the Northwest Quarter of Southwest Quarter (SW¼ of SW¼ of NW¼ of SW¼);
2. The West 33 feet for Haines Road;
3. All that part of the NW¼ of the SW¼ lying Southwesterly of the Southerly line of the Miller Trunk Highway and lying Northerly of the center line of the Target Service Road, as such service road is described and condemned in Torrens Doc. No. 396983;
4. A tract of land being part of the NW¼ of SW¼, more particularly described as follows: Beginning at an iron pin at the Northwest corner of the NW¼ of SW¼ of Section 18, Township 50 North, Range 14 West, said iron pin being also on the center line of Haines Road; thence along the west line of Section 18, being South 0° 0' West of 991.06 feet, more or less, to a point, which point is the Northwest corner of the SW¼ of SW¼ of NW¼ of SW¼, Section 18, Township 50 North, Range 14 West, thence leaving the west line of Section 18 South 89° 43' 46" East 33.0 feet to a point, said point being the point of beginning of the description contained herein; thence South 89° 43' 46" East 378.0 feet to a point; thence North 0° 0' West 275.0 feet to a point; thence North 89° 43' 46" West 378.0 feet to a point; thence South 0° 0' East along a line parallel to and 33.0 feet East of the West line of Section 18 to the point of beginning.

EXCEPT all minerals.