

City of Lake Elmo  
3800 Laverne Avenue North

October 21, 2008  
7:00 p.m.

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE:
- C. ATTENDANCE: \_\_\_\_\_ Johnston \_\_\_\_\_ DeLapp \_\_\_\_\_ Johnson \_\_\_\_\_ Park \_\_\_\_\_ Smith
- D. APPROVAL OF AGENDA: (The approved agenda is the order in which the City Council will do its business.)
- E. ORDER OF BUSINESS: (This is the way that the City Council runs its meetings so everyone attending the meeting or watching the meeting understands how the City Council does its public business.)
- F. GROUND RULES: (These are the rules of behavior that the City Council adopted for doing its public business.)
- G. APPROVE MINUTES:
  - 1. October 7, 2008
- H. PUBLIC COMMENTS/INQUIRIES: In order to be sure that anyone wishing to speak to the City Council is treated the same way, meeting attendees wishing to address the City Council on any items NOT on the regular agenda may speak for up to three minutes.
- I. CONSENT AGENDA: (Items are placed on the consent agenda by city staff and the Mayor because they are not anticipated to generate discussion. Items may be removed at City Council's request.)
  - 2. Approve payment of disbursements and payroll
- J. REGULAR AGENDA:
  - 3. Consider approval of a conservation easement to the Minnesota Land Trust for Sunfish Lake Park and authorize the Park Commission to develop a park concept plan for Area 2 of Sunfish Lake Park
- K. REPORTS AND ANNOUNCEMENTS:
  - Mayor and City Council
  - Administrator
- L. UPCOMING DATES OF NOTE:
  - November 5 –City Council Meeting to canvass election results
- M. Adjourn

City of Lake Elmo  
City Council Minutes

October 7, 2008

Mayor Johnston called the meeting to order at 7:00 p.m.

Present: Mayor Johnston and Council Members DeLapp, Johnson, Park and Smith

Also present: City Administrator Hoyt, Planning Director Klatt, City Engineer Griffin, City Attorney Filla, Finance Director Bouthilet, and Recording Secretary Luczak.

APPROVAL OF AGENDA:

*Motion: Council Member Smith moved to approve the October 7, 2008 agenda as presented. Council Member Johnson seconded the motion. The motion passed unanimously.*

ORDER OF BUSINESS:

GROUND RULES:

APPROVED MINUTES:

The minutes of September 16, 2008 were approved by consensus.

PUBLIC COMMENTS/INQUIRIES:

Jim Blackford, 9765 45<sup>th</sup> St. N., expressed his concerns about the clean up of the polluted water areas. The landfill liners also need to have a warranty from the State when they fail.

Susan Dunn, 11018 Upper 33<sup>rd</sup> St. N., thanked the City for the October 4, 2008, Pebble Park buckthorn clean-up. She also asked about the Pulte senior housing project. Mayor Johnson stated that plans were never submitted to the City for review. She requested that those persons who are campaigning be honest.

Brian McGoldrick, 36 Moonlight Bay, Stillwater, introduced himself as the representative for the Gary Mulcahy group which had recently purchased the former Mulligan Masters Golf Course located on Keats Avenue and explained that he will be looking for an interim use for the area. He was directed to proceed through the planning commission.

CONSENT AGENDA:

*MOTION: Council Member Smith moved to approve the consent agenda. Council Member Johnson seconded the motion. The motion passed unanimously.*

- Approval of disbursements in the amount of \$172,129.55
- Approve the purchase of an asphalt roller Stone Wolf PAC 3100 from St. Joseph Equipment with lights, city logo and tax for \$13,410.41 and an asphalt saw and blade from United Rental for \$2,005.84 out of the capital equipment fund.
- Approve the purchase of Springbrook utility billing software for \$10,100.00 charged to the water, sewer and surface water funds with an annual maintenance cost of \$2,090.00.
- Approve the release of financial security in the amount of \$102,820.00 for the Park Meadows Development.

REGULAR AGENDA:

Consider endorsing an Eagle Scout Veterans Memorial Park Project for VFW Park

Project Assistant Carol Kriegler, requested the City Council endorse and accept donations for Kevin Schwarz's proposal for an Eagle Scout Veterans Memorial project at the VFW Park.

Scout Kevin Schwarz explained the memorial would be located at the site of the existing flag pole just outside the outfield fence in right-center field near Layton Avenue and plans to have the dedication on November 11, 2008. The VFW will provide the care and maintenance of the US and POW flags.

*MOTION: Council Member Johnson moved to endorse the Veterans Memorial Eagle Scout project at the VFW Park and to accept donations for this project. Council Member DeLapp seconded the motion. The motion passed unanimously.*

Hold a Drawing for Participants in the Sunfish Lake Park Deer Hunt

Project Assistant Carol Kriegler requested City Council participation in a random drawing of 8 individuals and 2 alternates for the deer harvest in Sunfish Lake Park on November 8-9 and 15-16. The deer hunt is being held in conjunction with the Lake Elmo Park Reserve to help reduce the deer population in the City. All hunters are required to attend a DNR training session being held on November 5, 2008, at 7:00 p.m.

Washington County Deputy Loperfido randomly drew the following names: Steve Forster, Larry Feldhahn, Mary Feldhahn, Pat Dean, John Meyer, Jerry LeMire, Michale Harrington, and Douglas Ouimet. Alternates are Dennis Oeltjen and Steve Flanagan.

Resident Dave Sovereign, 4415 Olson Lake Rd, suggested for the next deer harvest that the city draw names for each weekend rather to allow for more hunting opportunities.

Consider Improvements to the Community/ Fire Meeting Space in Fire Station #1.

Fire Chief Malmquist explained that fire station required some upgrades to be efficiently used for community meetings, elections and fire training. The station has had no major upgrades in the past 15 years. The funding for this work is budgeted in the capital budget for 2009. Firefighters have volunteered to do the painting and assist with some of the improvement work.

*MOTION: Council Member DeLapp moved to approve no more than \$21,000.00 for improvements to the community/ fire meeting space at Station #1 out of the Capital Equipment Fund. Council Member Johnson seconded the motion. The motion passed unanimously.*

Terminate Existing Agreement on 9224 31<sup>st</sup> Street North and Approve New Agreement to Bring Property into Compliance with City Code

Administrator Susan Hoyt requested the City Council consider approval of a new agreement for the property at 9224 31<sup>st</sup> Street North to replace the existing agreement that was adopted in November 2006. The six-month agreement has set perimeters and conditions and the City will take action if conditions are not met. A project manager will be assigned to track this work with the owner Mrs. Hardy.

Council members discussed the follow-up procedures to assure compliance to required housing conditions.

*MOTION: Council Member Park moved to approve the new agreement, as amended by clarifications from Council Member DeLapp, between Linda and David Hardy, 9224 North 31<sup>st</sup> Street, to replace the existing agreement dated November 6, 2006. Council Member Johnson seconded the motion. The motion passed unanimously.*

Update on the Comprehensive Water System Plan.

City Engineer Jack Griffin provided an overview of the Comprehensive Water System Plan. The top three priorities 1) provide City water to the 55 homes near Inwood Avenue currently using contaminated well water, 2) add a third City well and 3) connect two existing water mains in northern Lake Elmo with a new line down Keats Avenue. Providing City water connections to homes in Torre Pines, Cardinal Ridge, Cardinal View and Whistling Valley is also a priority. Griffin reported that municipal water

projects being built due to polluted or contaminated water in an area may be eligible for state and federal funding. In addition, exploring opportunities to share.

James Kelly, Minnesota Department of Health (MDH), answered questions regarding the PCF's in the various area of the City.

Jim Blackford, 9765 45<sup>th</sup> St. N., stated that all residents should be getting clean water now because their water supply was contaminated and that this should be the city's highest priority.

The council asked questions and discussed the information. The council requested that the city proceed with plans for finalizing the water plan so that it can be implemented.

The meeting was adjourned at 10:02 p.m.

Respectfully submitted by Carole Luczak, Recording Secretary

City Council  
Date: 10/21/2008  
CONSENT  
Item: 2

ITEM: Approve disbursements in the amount of \$325,581.28

SUBMITTED BY: Tom Bouthilet, Finance Director

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<u>Claim #</u>	<u>Amount</u>	<u>Description</u>
ACH	\$ 8,480.65	Payroll Taxes to IRS
ACH	\$ 1,282.47	Payroll Taxes to Mn Dept. of Revenue
DD1852-DD1880	\$ 21,412.49	Payroll Dated 10/09/2008 (Direct Deposit)
33282-33298	\$ 17,719.46	Payroll Dated 10/09/2008 (Payroll & Benefits)
33300-33351	\$276,686.21	Accounts Payable Dated 10/21/2008

**Total: \$ 325,581.28**

SUMMARY AND ACTION REQUESTED: The City Council is being asked to approve disbursements in the amount of \$ 325,581.28

# Accounts Payable

## Checks for Approval

User: julie  
 Printed: 10/16/2008 - 1:03 PM

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
33300	10/21/2008	Water	Utility System Maintenance	Ace Hardware	8.80
33300	10/21/2008	Water	Utility System Maintenance	Ace Hardware	51.60
Check Total:					60.40
33301	10/21/2008	General Fund	Repairs/Maint Contractual Bldg	Airgas North Central	12.94
Check Total:					12.94
33302	10/21/2008	Capital Aquisitions	Other Equipment	AMEE Central	4,984.20
33302	10/21/2008	General Fund	Use Tax Payable	AMEE Central	-304.20
Check Total:					4,680.00
33303	10/21/2008	General Fund	Radio	ANCOM COMMUNICATIONS, INC.	105.12
33303	10/21/2008	General Fund	Use Tax Payable	ANCOM COMMUNICATIONS, INC.	-0.62
Check Total:					104.50
33304	10/21/2008	General Fund	Contract Services	Animal Control Services	376.92
Check Total:					376.92
33305	10/21/2008	General Fund	Repairs/Maint Contractual Bldg	Aramark	61.37
33305	10/21/2008	General Fund	Uniforms	Aramark	35.06
33305	10/21/2008	General Fund	Uniforms	Aramark	35.08
33305	10/21/2008	General Fund	Repairs/Maint Contractual Bldg	Aramark	28.68
33305	10/21/2008	General Fund	Uniforms	Aramark	35.06
Check Total:					195.25
33306	10/21/2008	General Fund	Equipment Parts	Aspen Equipment Co.	78.60

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount	
					Check Total:	78.60
33307	10/21/2008	General Fund	Uniforms	Aspen Mills, Inc.	23.43	
33307	10/21/2008	General Fund	Uniforms	Aspen Mills, Inc.	92.40	
33307	10/21/2008	General Fund	Uniforms	Aspen Mills, Inc.	34.99	
33307	10/21/2008	General Fund	Equipment	Aspen Mills, Inc.	169.45	
					Check Total:	320.27
33308	10/21/2008	General Fund	Equipment Parts	Batteries Plus Woodbury	169.34	
33308	10/21/2008	General Fund	Equipment Parts	Batteries Plus Woodbury	73.49	
					Check Total:	242.83
33309	10/21/2008	General Fund	Rentals - Buildings	Biff's Inc.	61.26	
33309	10/21/2008	General Fund	Rentals - Buildings	Biff's Inc.	122.52	
33309	10/21/2008	General Fund	Rentals - Buildings	Biff's Inc.	61.26	
33309	10/21/2008	General Fund	Rentals - Buildings	Biff's Inc.	61.26	
33309	10/21/2008	General Fund	Rentals - Buildings	Biff's Inc.	61.26	
33309	10/21/2008	General Fund	Rentals - Buildings	Biff's Inc.	61.26	
33309	10/21/2008	General Fund	Rentals - Buildings	Biff's Inc.	61.26	
33309	10/21/2008	General Fund	Rentals - Buildings	Biff's Inc.	61.26	
33309	10/21/2008	General Fund	Rentals - Buildings	Biff's Inc.	61.26	
33309	10/21/2008	General Fund	Rentals - Buildings	Biff's Inc.	61.26	
					Check Total:	673.86
33310	10/21/2008	Water	Repairs\Maint Imp Not Bldgs	Burberl Black Dirt, Inc.	76.86	
					Check Total:	76.86
33311	10/21/2008	Development Fund	Legal Services	Campbell Knutson P.A.	210.00	
					Check Total:	210.00
33312	10/21/2008	General Fund	Miscellaneous	City of Roseville	1,112.75	
					Check Total:	1,112.75
33313	10/21/2008	General Fund	Telephone	CP Telecom	442.68	
33313	10/21/2008	General Fund	Telephone	CP Telecom	523.71	



Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
				Check Total:	966.39
33314	10/21/2008	General Fund	Building Repair Supplies	Dad's Plumbing	1,030.00
				Check Total:	1,030.00
33315	10/21/2008	General Fund	Conferences & Training	Donald Salverda & Associates	200.00
33315	10/21/2008	General Fund	Conferences & Training	Donald Salverda & Associates	34.03
33315	10/21/2008	General Fund	Conferences & Training	Donald Salverda & Associates	873.73
				Check Total:	1,107.76
33316	10/21/2008	General Fund	Miscellaneous	Hagbergs Country Market	127.04
33316	10/21/2008	Fall Festival	Miscellaneous	Hagbergs Country Market	14.20
33316	10/21/2008	General Fund	Miscellaneous	Hagbergs Country Market	9.05
				Check Total:	150.29
33317	10/21/2008	Water	Repairs\Maint Imp Not Bldgs	Hawkins, Inc.	235.48
				Check Total:	235.48
33318	10/21/2008	General Fund	Assessing Services	Kern DeWenter Viere	4,862.00
				Check Total:	4,862.00
33319	10/21/2008	General Fund	Travel Expense	Kyle Klatt	190.66
				Check Total:	190.66
33320	10/21/2008	Escrow Fund	Deposits Payable	LaBelle Homes	1,000.00
				Check Total:	1,000.00
33321	10/21/2008	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	56.79
33321	10/21/2008	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	70.01
33321	10/21/2008	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	20.65
33321	10/21/2008	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	64.79
33321	10/21/2008	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	59.01
33321	10/21/2008	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	68.00
33321	10/21/2008	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	66.00
33321	10/21/2008	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	81.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
33321	10/21/2008	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	60.01
33321	10/21/2008	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	110.10
33321	10/21/2008	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	7.39
33321	10/21/2008	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	45.72
33321	10/21/2008	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	38.01
Check Total:					747.48
33322	10/21/2008	General Fund	Repairs/Maint Contractual Eqpt	LOFFLER	206.38
33322	10/21/2008	General Fund	Repairs/Maint Contractual Eqpt	LOFFLER	9.15
33322	10/21/2008	General Fund	Repairs/Maint Contractual Eqpt	LOFFLER	64.19
Check Total:					279.72
33323	10/21/2008	General Fund	Refuse	Maroney's Sanitation, Inc	103.09
33323	10/21/2008	General Fund	Refuse	Maroney's Sanitation, Inc	45.37
33323	10/21/2008	General Fund	Refuse	Maroney's Sanitation, Inc	197.77
33323	10/21/2008	General Fund	Refuse	Maroney's Sanitation, Inc	103.09
Check Total:					449.32
33324	10/21/2008	General Fund	Building Repair Supplies	Menards - Oakdale	10.61
33324	10/21/2008	General Fund	Use Tax Payable	Menards - Oakdale	-0.65
33324	10/21/2008	General Fund	Repairs/Maint Contractual Bldg	Menards - Oakdale	41.17
Check Total:					51.13
33325	10/21/2008	Sewer	Sewer Utility - Met Council	Metropolitan Council	1,081.72
Check Total:					1,081.72
33326	10/21/2008	General Fund	Contract Services	MFRA	2,474.70
33326	10/21/2008	General Fund	Engineer Serv Utility Permits	MFRA	382.50
Check Total:					2,857.20
33327	10/21/2008	General Fund	Contract Services	Miller Excavating, Inc.	765.00
Check Total:					765.00
33328	10/21/2008	Water	Conferences & Training	MN Rural Water Association	200.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
				Check Total:	200.00
33329	10/21/2008	Fall Festival	Contract Services	Muska Lighting	167.95
				Check Total:	167.95
33330	10/21/2008	General Fund	Telephone	Nextel Communications	128.85
33330	10/21/2008	General Fund	Telephone	Nextel Communications	193.86
33330	10/21/2008	General Fund	Telephone	Nextel Communications	63.86
33330	10/21/2008	General Fund	Telephone	Nextel Communications	109.34
33330	10/21/2008	General Fund	Telephone	Nextel Communications	181.07
				Check Total:	676.98
33331	10/21/2008	General Fund	Contract Services	Gopher State One-Call One Call Concept	256.25
				Check Total:	256.25
33332	10/21/2008	General Fund	Cable Operation Expense	Steven Press	58.88
				Check Total:	58.88
33333	10/21/2008	General Fund	Fuel, Oil and Fluids	River Country Cooperative	314.00
33333	10/21/2008	General Fund	Repairs/Maint Contractual Eqpt	River Country Cooperative	33.08
				Check Total:	347.08
33334	10/21/2008	General Fund	Cleaning Supplies	Diane Rud	19.51
33334	10/21/2008	General Fund	Repairs/Maint Contractual Bldg	Diane Rud	240.00
33334	10/21/2008	General Fund	Repairs/Maint Contractual Bldg	Diane Rud	240.00
				Check Total:	499.51
33335	10/21/2008	General Fund	Office Supplies	S&T Office Products, Inc.	211.47
33335	10/21/2008	General Fund	Office Supplies	S&T Office Products, Inc.	13.48
33335	10/21/2008	General Fund	Office Supplies	S&T Office Products, Inc.	64.48
33335	10/21/2008	General Fund	Office Supplies	S&T Office Products, Inc.	209.90
				Check Total:	499.33
33336	10/21/2008	General Fund	Miscellaneous	Sam's Club	162.07
33336	10/21/2008	General Fund	Office Supplies	Sam's Club	53.08

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
33336	10/21/2008	Fall Festival	Miscellaneous	Sam's Club	863.22
33336	10/21/2008	General Fund	Miscellaneous	Sam's Club	57.18
33336	10/21/2008	General Fund	Office Supplies	Sam's Club	40.43
33336	10/21/2008	General Fund	Equipment	Sam's Club	192.09
Check Total:					1,368.07
33337	10/21/2008	Water	Software Support	Springbrook Software	1,500.00
33337	10/21/2008	Water	Software Support	Springbrook Software	1,200.00
Check Total:					2,700.00
33338	10/21/2008	General Fund	Equipment Parts	St Joseph Equipment, Inc.	96.48
Check Total:					96.48
33339	10/21/2008	General Fund	Fire Prevention	Stephens Publishing Co.	890.77
33339	10/21/2008	General Fund	Use Tax Payable	Stephens Publishing Co.	-54.37
Check Total:					836.40
33340	10/21/2008	General Fund	Printed Forms	SUN NEWSPAPERS	39.50
Check Total:					39.50
33341	10/21/2008	General Fund	Medical Insurance	SW/WC Service Cooperatives	11,714.00
Check Total:					11,714.00
33342	10/21/2008	General Fund	Street Maintenance Materials	T.A. Schifsky & Sons	490.25
33342	10/21/2008	Water	Repairs\Maint Imp Not Bldgs	T.A. Schifsky & Sons	5,770.00
Check Total:					6,260.25
33343	10/21/2008	General Fund	Telephone	TDS METROCOM - MN	161.04
33343	10/21/2008	General Fund	Telephone	TDS METROCOM - MN	69.96
33343	10/21/2008	Sewer	Telephone	TDS METROCOM - MN	103.29
33343	10/21/2008	Water	Telephone	TDS METROCOM - MN	67.09
Check Total:					401.38
33344	10/21/2008	Water	Repairs\Maint Imp Not Bldgs	Telemetry & Process Controls	1,627.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
				Check Total:	1,627.00
33345	10/21/2008	Water	Utility System Maintenance	Twin City Water Clinic, Inc.	65.00
				Check Total:	65.00
33346	10/21/2008	General Fund	Clean-up Days	Veolia Environmental Services	4,494.20
				Check Total:	4,494.20
33347	10/21/2008	General Fund	Telephone	Verizon Wireless	98.51
				Check Total:	98.51
33348	10/21/2008	Capital Acquisitions	Office Equipment & Furnishings	VISA	259.54
33348	10/21/2008	Fall Festival	Contract Services	VISA	314.19
33348	10/21/2008	General Fund	Conferences & Training	VISA	300.00
33348	10/21/2008	General Fund	Travel Expense	VISA	357.12
				Check Total:	1,230.85
33349	10/21/2008	General Fund	Law Enforcement Contract	Washington County	210,110.09
				Check Total:	210,110.09
33350	10/21/2008	General Fund	Electric Utility	Xcel Energy	51.72
33350	10/21/2008	Sewer	Electric Utility	Xcel Energy	28.93
33350	10/21/2008	General Fund	Street Lighting	Xcel Energy	62.95
33350	10/21/2008	General Fund	Street Lighting	Xcel Energy	0.12
33350	10/21/2008	General Fund	Electric Utility	Xcel Energy	160.04
33350	10/21/2008	General Fund	Electric Utility	Xcel Energy	432.65
33350	10/21/2008	General Fund	Street Lighting	Xcel Energy	25.60
33350	10/21/2008	General Fund	Electric Utility	Xcel Energy	13.82
33350	10/21/2008	General Fund	Electric Utility	Xcel Energy	44.05
33350	10/21/2008	General Fund	Electric Utility	Xcel Energy	30.18
33350	10/21/2008	Water	Electric Utility	Xcel Energy	2,328.28
33350	10/21/2008	General Fund	Street Lighting	Xcel Energy	36.93
33350	10/21/2008	General Fund	Electric Utility	Xcel Energy	107.00
33350	10/21/2008	Sewer	Electric Utility	Xcel Energy	15.82
33350	10/21/2008	Sewer	Electric Utility	Xcel Energy	14.03
33350	10/21/2008	General Fund	Electric Utility	Xcel Energy	221.64
33350	10/21/2008	General Fund	Electric Utility	Xcel Energy	33.31

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
33350	10/21/2008	General Fund	Street Lighting	Xcel Energy	1,695.39
33350	10/21/2008	General Fund	Street Lighting	Xcel Energy	27.27
33350	10/21/2008	General Fund	Electric Utility	Xcel Energy	48.24
33350	10/21/2008	General Fund	Electric Utility	Xcel Energy	448.06
33350	10/21/2008	Water	Electric Utility	Xcel Energy	23.35
33350	10/21/2008	General Fund	Street Lighting	Xcel Energy	9.66
Check Total:					5,859.04
33351	10/21/2008	General Fund	Repairs/Maint Contractual Bldg	Yocum Oil Company, Inc.	160.13
Check Total:					160.13
Report Total:					273,686.21

City Council  
Date: 10-21-08  
REGULAR  
Item: 3  
Resolution: 08-048  
Motion

ITEM: Consider approval of a Conservation Easement to the Minnesota Land Trust for Sunfish Lake Park and authorize the Park Commission to develop a park concept plan for Area 2 of Sunfish Lake Park.

REQUESTED BY: Park Commission

SUBMITTED BY: Carol Kriegler, Project Assistant

REVIEWED BY: Susan Hoyt, City Administrator  
Mike Bouthilet, Public Works and Parks Superintendent  
Jerry Filla, City Attorney  
Sarah Strommen, Minnesota Land Trust

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**SUMMARY AND ACTION REQUESTED:** The city council is being asked to 1) approve a Conservation Easement to the Minnesota Land Trust for Sunfish Lake Park including that expenditure of \$10,000 to the Land Trust for this transaction; and 2) to direct the Park Commission to develop a park plan for Area 2. The adoption of a conservation easement for Sunfish Lake Park will fulfill one of the park commission's goals that it has strived to achieve over the past two plus years. Sunfish Lake Park is a 315 acre park of which 225 acres are in woodland, 20 acres are in open fields and 70 acres are under an MPCA easement associated with the landfill. The conservation easement covers the entire 256 acres. The park is used for hiking, horseback riding, cross-country skiing and nature observation. The intent of the conservation easement over Sunfish Lake Park is to ensure its permanency as a natural area to be enjoyed by citizens into perpetuity by preserving and protecting it through an easement to the Land Trust. The easement, if approved, will protect the park for conservation by confining the development, management and use of the property to activities that are consistent with preserving the property. Area 2 is a 20 acre or 6% of the total land area in the park that is currently used for agricultural purposes. The conservation easement notes that it may be used for educational, outdoor recreational and nature observations, but until a park plan details the future uses, the area will remain as it is. It is recommended that the Park Commission recommend a plan within a year after adoption of the easement so that the park plan is a proactive statement that clearly defines the future uses of Area 2 rather than having the park plan be done retroactively in response to a specific project that may or may not meet the intent of the Park Commission and City Council as it has developed this easement document. The Park Commission is reviewing the easement and request for the park plan at its October 20, 2008 meeting.

#### BACKGROUND INFORMATION

The city council gave the Park Commission the authority to explore the option of placing a conservation easement over Sunfish Lake Park on June 6, 2006. The Park Commission spent several meetings crafting a report and recommendation for the city council that identified future uses for the park. This report was approved by the city council and submitted to the Land Trust in January of 2008 as a guide from the city for how the city plans to use the park into the future. The Land Trust responded with a project report entitled "Proposed Rights and Restrictions for a Conservation Easement" that was presented by the Park Commission and approved by the city

council on July 15, 2008. This document served as a resource for the development of the Conservation Easement document currently under consideration.

The Conservation Easement addresses proposed future uses for two areas in Sunfish Lake Park. Area 3 is restricted by an MPCA easement and is not proposed to be covered by the Minnesota Land Trust easement.

The three areas include:

1. Area 1 is approximately 225 acres or 71% of the land area, which is mostly wooded and contains access to Sunfish Lake itself and three ponds, as well as an extensive system of dirt and woodchip trails
2. Area 2 is a predominantly open area in the southern part of the park consisting of approximately 20 acres or 6 % of the land area and is used for agricultural purposes.
3. Area 3 is approximately 70 acres or 22% of the land area and is controlled by an MPCA easement related to the Washington County landfill. Most of this area is not used for park but may return to park use in the future.

#### ADDITIONAL INFORMATION

##### 1. WHAT IS THE PURPOSE OF THE EASEMENT?

The purpose of the conservation easement is to preserve and protect the property by limiting and confining the development, management and use of the property to activities that are consistent with defined Conservation Values for the property. To this end, the easement details specific restrictions on use of the property and the reserved rights.

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

- Providing an opportunity for the public to learn about, experience, and enjoy the out-of-doors in a significant and relatively undisturbed natural setting.
- Protecting natural habitat that contributes to a larger complex of protected forest and wetlands that support a variety of wildlife and plants, both terrestrial and aquatic.
- Protecting the water quality and near-shore aquatic habitat of Sunfish Lake by restricting development of the lakeshore of the Protected Property.

##### 2. WHAT ARE CONSERVATION VALUES?

Conservation values are the qualities, characteristics and significant importance of the property. The natural, scenic and open space qualities of the property collectively comprise the "Conservation Values". These values are defined by the Minnesota Department of Natural Resources and the Metropolitan Corridors Partnership, a collaboration of public and private conservation entities.

##### 3. WHAT IS THE RESPONSIBILITY OF THE LAND TRUST in regard to the easement?

The Land Trust is responsible for the conservation easement stewardship. Their responsibilities include regular monitoring; easement administration and record keeping; and enforcement when necessary. The Land Trust is not the enforcement agency for park rules, operations or variations in the use of the park unless it is deemed inconsistent



with the easement. For example, the city, not the Land Trust, would be responsible for determining if a limit on the number or the size of horseback riding groups or if specific requirements related to trail clean up from horses would be required in the future.

4. WHAT IS THE RESPONSIBILITY OF THE CITY in regard to this easement?

The City continues to own and manage the property consistent with the easement restrictions while allowing the Land Trust to monitor the easement. While the easements purpose is to preserve and protect the property by confining development and managing use, the city is responsible for adopting policies and ordinances that clarify or specific the use of the park. (See horseback example above).can choose to place additional restrictions on the property and retains the right to further manage the park through local ordinances, rules and laws as long as they don't conflict with terms of the easement.

5. WHY IS THE CREATION OF A PARK CONCEPT PLAN FOR AREA 2 BENEFICIAL FOR NOW AND THE FUTURE?

The easement states that the city can choose to use and develop Area 2, or a portion of it, as an educational, outdoor recreational, and nature observation area. In addition, the terms of the easement are specifically intended to provide for the opportunity for the public to learn about, experience, and enjoy the out-of doors in a relatively undisturbed setting. Given this, the Land Trust recognizes the importance of striking a reasonable balance between preserving the natural setting of Area 2 and providing facilities, structures, and improvements that facilitate educational use and enhance enjoyment of the area before allowing for any changes to be made in Area 2 under the easement. .

For these reasons, The Minnesota Land Trust has suggested that the city develop a park concept plan to serve as a guide for the development of Area 2. The easement is not a substitute for a park plan as it does not provide any detail related to specific structures and improvements such as type, location, size, scale, density, use of materials, etc. It is the intent of the Land Trust to providing the city with flexibility and responsibility in meeting the ever-changing outdoor recreation and education interests and needs of its citizenry while recognizing the overarching parameters and overall purpose of the easement.

Developing a park concept plan for Area 2 as an independent exercise will provide the city with the opportunity to focus specifically on developing a plan for best meeting the educational, outdoor recreational, and nature observation needs of the community within Area 2 of Sunfish Lake Park. This exercise will also provide an opportunity to educate the public about the Sunfish Lake Park easement and park uses and to get public input for the Park Commission on how Area 2 might be used to serve the conservation principles while allowing for specific types of park development. The suggested timeline if for the Park Commission to develop a draft plan for the city council within a year from the adoption of the easement. The timeline is suggested so that the plan can be developed so that the plan is proactive and guides the future use of Area 2 rather than coming later and having the plan be reactive to a specific proposal for the site.

6. WHY DOES THIS REQUIRE \$ 10,000 TO TRANSACT?

The \$10,000 easement transaction fee is used to cover the Land Trust's future costs for managing and enforcing the easement.

The city's park fund has a balance of nearly \$1,000,000 so the \$10,000 cost can be covered through the park fund. This has been a planned expenditure for the past two years.

*Suggested motions for consideration:*

*Motion 1:*

*Move approval of the Resolution 08-048 approving a conservation easement with the Minnesota Land Trust for Sunfish Lake Park and the expenditure of \$10,000 from the park fund to the Minnesota Land Trust for its execution.  
AND*

*Motion 2:*

*Move to direct the Park Commission to develop a park plan for Area 2 of Sunfish Lake Park to recommend to the City Council by November 1, 2009.*

**ORDER OF BUSINESS**

- o Introduction Susan Hoyt, City Administrator
- o Report Carol Kriegler, Project Assistant  
David Steele, Chair, Park Commission  
Sarah Strommen, Minnesota Land Trust
- o Questions to presenters Mayor and Council members  
(3 minutes)
- o Questions from public Mayor facilitates  
To council (3 minute max)
- o Call for a motion Mayor and Council members
- o Discussion Mayor and Council members  
(3 minutes)
- o Action City Council  
Resolution  
And  
Motion

**ATTACHMENTS:**

- 1 Draft conservation easement
2. Aerial Photography Map of easement area
3. Exhibit B: Property Map
4. Aerial Photography
  - a Aerial photo of Area 1 and Area 2
  - b Aerial photo of Area 2
  - c Aerial photo of Area 1, Area 2 and Area 3

## CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted by the City of Lake Elmo, a political subdivision under the laws of the State of Minnesota, (the "Owner") to the Minnesota Land Trust, a non-profit corporation organized and existing under the laws of the State of Minnesota (the "Land Trust").

### RECITALS:

- A. OWNER. The Owner is the current owner of approximately 256 acres of real property located in Washington 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 conservation easement and incorporated by this reference.

The Protected Property, known to area residents as "Sunfish Lake Park," consists of approximately 173 acres of rolling forest land that includes a number of hardwood tree species such as oak, maple, birch, and cherry. The Protected Property also consists of approximately 2 acres of woodland, 25 acres of grassland, 20 acres of wetland, and 4 acres of open water ponds. Sunfish Lake, which is classified by the Minnesota Department of Natural Resources as a natural environment lake, covers approximately 17 acres of the eastern portion of the Protected Property. Approximately 15 acres of the site consists of cultivated fields currently planted in corn.

Two clustered residential developments with open space protected by conservation easements are located adjacent to the Protected Property, contributing to a larger expanse of open space.

Sunfish Lake Park is part of the Lake Elmo park system, but it has primarily been used as a passive park for activities such as walking, hiking and horseback riding. The Protected Property has an unimproved divided access road and parking area, barbeque grills, a portable toilet, and fencing. A power line traverses the western portion of the Protected Property. No other structures or improvements currently exist on the Protected Property.

- C. MINNESOTA LAND TRUST. The Minnesota Land Trust is a non-profit corporation organized and operated exclusively for charitable and educational purposes, including the preservation and protection of land in its natural, scenic or other open space condition. The

Land Trust is a public charity as defined in Sections 501(c)(3) and 509(a) of the Internal Revenue Code and an organization qualified to hold conservation easements under Minnesota law and Section 170(h) of the Internal Revenue Code and related regulations.

D. CONSERVATION VALUES. The Protected Property has the following natural, scenic and open space qualities of significant importance:

- The Protected Property includes native upland aspen-oak and upland hardwood forests, which provide habitat for a variety of species in greatest conservation need as established by the Minnesota Department of Natural Resources in *Tomorrow's Habitat for the Wild and the Rare: An Action Plan for Minnesota's Wildlife*, Comprehensive Wildlife Conservation Strategy, 2006.
- The Protected Property also is a component of a regionally significant wildlife corridor and project focus area identified by the Minnesota Department of Natural Resources and the Metropolitan Conservation Corridors Partnership, a collaboration of public and private conservation entities funded in part by Minnesota Laws 2007, Chapter 30, Section 2, Subd. 4(c).
- The undeveloped shoreline along Sunfish Lake helps maintain the water quality and near-shore aquatic habitat of the lake.
- The Protected Property provides important publicly accessible open space containing scenic rolling hills, ridges, and water that adds to the natural and scenic character of the City of Lake Elmo.

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.

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

- Minnesota Laws 2007, Chapter 30, Section 2, Subd. 4(c), which provides funding to accelerate programs for the purposes of planning, improving and protecting important natural areas in the metropolitan region and portions of the surrounding counties.
- Minnesota Statutes Chapter 103A, which promotes protection of Minnesota's waters and their adjacent lands and Minnesota Statutes Section 103A.206 in particular, which recognizes the economic and environmental importance of maintaining and enhancing the soil and water resources of this state and role of private lands in these conservation efforts.

- Minnesota Statutes Section 103A.201, which specifically promotes the protection of wetlands and Minnesota Statutes Section 103A.202, which specifically declares that it is in the public interest to preserve the wetlands of this state to conserve surface waters, maintain and improve water quality, preserve wildlife habitat, reduce runoff, provide for floodwater retention, reduce stream sedimentation, contribute to improved subsurface moisture, and enhance the natural beauty of the landscape.
- 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.
- It is the goal of The City of Lake Elmo to maintain the rural character and open spaces of the City by preserving woodlands, wetlands, and other significant natural features.

E. CONSERVATION INTENT. The Owner and the Land Trust 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 Land Trust 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 as an absolute and unconditional gift, the Owner hereby conveys and warrants to the Land Trust 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:

- Providing an opportunity for the public to learn about, experience, and enjoy the out-of-doors in a significant and relatively undisturbed natural setting.
- Protecting natural habitat that contributes to a larger complex of protected forest and wetlands that support a variety of wildlife and plants, both terrestrial and aquatic.
- Protecting the water quality and near-shore aquatic habitat of Sunfish Lake by restricting development of the lakeshore of 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.

This prohibition specifically includes any intrusion or future development that would interfere with the essential scenic quality of the Protected Property or the visual enjoyment of the open and natural character of the Protected Property by the general public.

Except as specifically permitted in section 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 agricultural use, forest or habitat management, or minimal commercial recreational use specifically permitted in section 3 below.
- 2.2. Agricultural Use. No agricultural use of the Protected Property is allowed except as specifically permitted in section 3 below.
- 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, commercial, or residential use or development of other land not protected by this Easement without the prior approval of the Land Trust.
- 2.5. Division of the Protected Property. The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel under single ownership (joint or undivided) regardless of whether it now consists of separate parcels, was acquired as separate parcels, or is treated as separate parcels for property tax or other purposes.

This provision does not, however, prohibit:

- The division of the Protected Property when a portion of the Protected Property is being conveyed to a conservation organization defined in section 7.1 below.
  - The correction or adjustment of boundary lines to resolve an ownership dispute.
- 2.6. Development Rights. 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, open space, or natural resource use or extraction under otherwise applicable laws, regulations, or ordinances controlling land use. The development rights that have been encumbered or extinguished by this Easement may not be transferred to any other property or used to obtain any regulatory mitigation credits.
- 2.7. Structures and Improvements. No temporary or permanent buildings, structures, utilities, roads or other improvements of any kind may be placed or constructed on the Protected Property except as specifically authorized in section 3 or as set forth below:
- a. Utilities. Utility systems and facilities may be installed, maintained, repaired, extended, and replaced to serve only uses and activities specifically permitted by this Easement.
- Permitted utility systems and facilities include, without limitation, all systems and facilities necessary to provide on-site power, fuel, water, waste disposal, and communication but do not include communication towers, wind turbines, or similar structures without the prior approval of the Land Trust.
- Permitted utility systems and facilities shall be installed or constructed with minimal grading and disturbance to vegetation. Following installation or construction, the surface shall be restored in a timely manner to a condition consistent with the purposes of this Easement.
- b. Signs. No billboards or other signs may be placed or erected on the Protected Property except for small signs for informational or interpretive purposes. Additionally, the Owner may also construct and maintain a park entry monument or sign as permitted in section 3.5 below. With the Owner's permission, the Land Trust may place signs on the Protected Property identifying the land as protected.
- c. Roads and Parking Areas. The existing park access road and parking area may be maintained and improved but may not be widened, enlarged, or relocated without the prior written approval of the Land Trust.

No other roads or paved areas may be established or constructed on the Protected Property without the prior written approval of the Land Trust.

- d. Trails. Unpaved paths or foot trails, including necessary footbridges and boardwalks, may be established and maintained for non-motorized recreational uses. Paved trails may be established and maintained only within Area 2 of the Protected Property. Paved trails may be allowed in other areas of the Protected Property only as necessary to meet requirements of the American with Disabilities Act and only with advance written approval from the Land Trust. Trails shall be established, maintained and used in a manner that does not result in significant erosion or have an adverse impact on the natural and scenic quality of the Protected Property.
  - e. Fences. Fences may be constructed, maintained, improved, replaced or removed to mark boundaries, to secure the Protected Property, or as needed in carrying out activities permitted by this Easement.
  - f. Outdoor Lighting. In order to minimize sky glow or light pollution originating from the Protected Property, no permanent outdoor lighting is permitted within Area 1 of the Protected Property. Any outdoor light fixtures within Area 2 must minimize light emitted above the plane of the horizon of the fixture through the use of earthward directed or full cut-off fixtures or lamps with single or minimal-color light sources, or other equally effective fixtures designed to minimize light pollution.
- 2.8. Dumping. No trash, non-compostable garbage, debris, unserviceable vehicles or equipment, junk, other unsightly material or hazardous or toxic substances 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.
- 2.9. Mining. No mining, drilling, exploring for, or removing any minerals, sand, gravel, rock, or fossil fuels from the Protected Property is allowed.
- 2.10. Topography and Surface Alteration. No alteration or change in the topography or the surface of the Protected Property is allowed. This includes no ditching, draining or filling and no excavation or removal of soil or other material, except as incidental to activities or uses specifically permitted by this Easement.
- Any permitted alteration shall be undertaken with minimal grading and disturbance to vegetation and with the surface restored in a timely manner to a condition consistent with the purposes of this Easement.
- 2.11. Water. No alteration or manipulation of natural watercourses, lakes, shorelines, wetlands or other surface or subsurface bodies of water or creation of new wetlands or water bodies 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 or water bodies. Any alteration or creation of wetlands or water bodies must be undertaken in accordance with a habitat management plan approved by the Land Trust under section 3 below.



No activities on or uses of the Protected Property that cause significant erosion or are seriously detrimental to water quality or purity are allowed.

- 2.12. 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 agricultural use and forest or habitat management as specifically permitted in section 3 below.
  - b. As reasonably required to construct and maintain permitted buildings, structures, roads, trails and other permitted improvements and provided that vegetation shall be restored by the Owner following any construction to a condition consistent with the purpose of this Easement.
  - c. As reasonably required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury, or property damage.
  - d. Landscaping in areas immediately adjacent to permitted buildings, within the divided entry road corridor, or as specifically authorized in section 3 below.
- 2.13. Vehicles. Motorized vehicles may not be used on the Protected Property except on roads or parking areas permitted under this Easement or in conjunction with construction and maintenance of permitted buildings, structures, roads, trails, or other improvements, forest or habitat management, or agricultural use. Use of motorized vehicles shall not result in significant erosion or have an adverse impact on the natural and scenic quality of the Protected Property.

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 Land Trust before exercising any reserved right that might have an adverse impact on the Conservation Values of 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. This right to convey the Protected Property is subject to the following:
- 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 also specify to what extent reserved rights have been exercised, if at all, and are no longer available for use by the new owner and which reserved rights are specifically allocated to the property being conveyed in accordance with other provisions of this Easement.

- c. The Owner will notify the Land Trust of any conveyance within fifteen (15) days after closing and will provide the Land Trust with the name and address of the new owner and a copy of the deed transferring title.
- d. If the Protected Property is owned by a trust, business entity or any common or jointly held ownership, the Owner shall designate a representative authorized to receive notice on behalf of the owner and provide the Land Trust with the name and address of the designated representative. The Owner shall notify the Land Trust of any change in the designated representative and provide the Land Trust with the new name, address and other contact information.

The enforceability or validity of this Easement will not be impaired or limited by any failure of the Owner to comply with this section 3.1.

- 3.2. Agricultural Use. Agricultural use of the Protected Property is limited to only that area designated as Cultivated Land on the Property Map attached as Exhibit B. If this area is restored to forest or grassland, then no further agricultural use is permitted.
- 3.3. Forest and Habitat Management. The Protected Property may be used to create, maintain, restore, or enhance habitat for wildlife and native biological communities in accordance with a restoration or habitat management plan approved in writing by the Land Trust. The Owner may remove timber and other wood products and otherwise manage the vegetation on the Protected Property in accordance with this approved plan.
- 3.4. Recreational and Educational Uses. The Protected Property may be used for hiking, cross-country skiing, horseback riding, nature observation or study, and other non-intensive recreational and educational programs or activities that have no more than minimal impact on the Conservation Values of the Protected Property.

The Protected Property may not be used for more than minimal commercial recreational purposes.

- 3.5. Recreational and Educational Structures. Minor rustic structures such as tents, trail barriers, boardwalks, overlook decks, footbridges, benches, birdhouses, and informational kiosks may be placed within Areas 1 and 2 of the Protected Property in conjunction with permitted recreational and educational activities.

Additionally, the Owner may choose to use and develop Area 2 of the Protected Property, or a portion of it, as an educational, outdoor recreational, nature observation, or interpretive center. Such use must be consistent with and must not interfere with the Conservation Values and purposes of this Easement. The size, location, and characteristics of the buildings and structures, as well as all necessary

utilities, driveways, parking areas, and all other improvements associated with the facility or the uses described in this section must be in accordance with a park concept plan developed by the Owner and approved in writing by the Land Trust. All buildings, structures and improvements must be designed and constructed so as not to detract from the natural and scenic character of the Protected Property. Review and written approval of architectural plans by the Land Trust is required prior to commencing construction.

The Owner will request and obtain approvals and give the Land Trust notices as set out in section 7.7 of this Easement before beginning any construction permitted under this section.

4. LAND TRUST'S RIGHTS AND REMEDIES. In order to accomplish the purposes of this Easement to preserve and protect the Conservation Values of the Protected Property, the Land Trust has the following rights and remedies:

4.1. Right to Enter. The Land Trust 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 completed under this provision will be at the Owner's expense.
- d. To otherwise exercise its rights under this Easement.

4.2. Right of Enforcement. The Land Trust has the right to prevent or remedy violations of this Easement, including prohibiting the construction of buildings or improvements, through appropriate judicial action brought in any court of competent jurisdiction against the Owner or other responsible party.

- a. Notice. The Land Trust 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 Land Trust, immediate judicial action is necessary to prevent or mitigate significant damage to the Conservation Values of the Protected Property or if reasonable, good faith efforts to notify the Owner are unsuccessful.
- b. Remedies. In enforcing this Easement, the Land Trust has the right to:

- Temporary or permanent injunctive relief for any violation or threatened violation of this Easement.
- 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.
- Specific performance or declaratory relief.
- Recover damages resulting from a violation of this Easement or injury to any Conservation Values associated with the Protected Property.

These remedies are cumulative and are available without requiring the Land Trust to prove actual damage to the Conservation Values of the Protected Property.

The Land Trust and the Owner agree that the damages created by a violation of this Easement may be determined by calculating the cost of acquiring a conservation easement over similar property. The Land Trust and the Owner also recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Easement.

The Land Trust 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 Land Trust 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 Land Trust. The Land Trust 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 Land Trust in discovering a violation or initiating enforcement proceedings. The Land Trust shall not be barred by any applicable statute of limitations in bringing any action to enforce the term of this Easement.
- e. Acts Beyond Owner's Control. The Land Trust may not bring an 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 third parties, or
  - reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.

Actions by the Owner's lessees, agents, employees or contractors are not considered unauthorized acts of third parties.

This section does not preclude the Owner or the Land Trust from recovering damages or bringing an action against any third party for trespass or other violation of their respective rights in this Easement or in the Protected Property.

- f. Right to Report. In addition to other remedies, the Land Trust has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.
- g. Enforcement Rights of Others. Nothing in this Easement is intended to create any right to enforce this Easement in any third party where no such right otherwise exists under this Easement or under law.

4.3. Limitation on Rights. Nothing in this Easement gives the Land Trust the right or responsibility to exercise physical control over day-to-day operations on the Protected Property or to become involved in management decisions involving the use 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, the Minnesota Environmental Response and Liability Act, or other similar successor federal, state or local statutes or laws regarding responsibility for environmental conditions associated with contamination.

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.

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 will be more fully described in a property report on file at the office of the Land Trust. The Owner and the Land Trust acknowledge that this property report will accurately represent the condition of the Protected Property at the time of this conveyance and may be used by the Land Trust 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 document 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 Land Trust only to a conservation organization defined as a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and as an authorized

conservation easement holder under Minnesota law. Any future holder of this Easement shall have all of the rights conveyed to the Land Trust by this Easement.

As a condition of any assignment or transfer, the Land Trust will require any future holder of this Easement to continue to carry out the purpose of this Easement in perpetuity.

The Land Trust will notify the Owner of any assignment within thirty (30) days of the assignment and will provide the Owner with the name and address of the new holder.

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 Land Trust any of the following apply:

- The amendment does not further the purposes of this Easement.
- The amendment will adversely impact the Conservation Values of the Protected Property.
- The amendment affects the perpetual duration of this Easement.
- The amendment affects the validity of this Easement under Minnesota law or the status of the Land Trust 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. Termination. This Easement may be terminated or extinguished only as follows:

- The Owner and the Land Trust recognize that circumstances may arise that make continued use of the Protected Property in a manner consistent with the purpose of this Easement impossible or impractical. In this event, this Easement may be extinguished through judicial proceedings.
- This Easement may be extinguished pursuant to the proper exercise of the power of eminent domain.

7.4. Proceeds. Following any extinguishment or termination of this Easement in whole or in part, the Land Trust shall be entitled to a portion of the proceeds from any sale, exchange or involuntary conversion of the Protected Property.

The Land Trust's share of the proceeds shall be an amount equal to the fair market value of this Easement at the time of the extinguishment but 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 (excluding the value of any permitted improvements made after the conveyance of this Easement.)

The value of this Easement shall be calculated by the method required by the Internal Revenue Service for calculating an income tax deduction for the charitable donation of a conservation easement.

The Land Trust will use its share of any proceeds in a manner consistent with the purpose of this Easement.

7.5. Warranties. The current 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 Land Trust.
- b. The Protected Property is free and clear of all rights, restrictions and encumbrances other than those subordinated to this Easement or otherwise specifically agreed to by the Land Trust.
- 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 Land Trust harmless against any claims of contamination from such substances.

7.6. Ownership Responsibilities, Costs and Liabilities. The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the use, ownership, and maintenance of the Protected Property.

- a. Taxes. The Owner shall pay all real estate taxes and assessments levied against the Protected Property, including any levied against the interest of the Land Trust created by this Easement. The Land Trust may, at its discretion, pay any outstanding taxes or assessments and shall then be entitled to reimbursement from the Owner.
- b. Regulatory Compliance. All activities or construction permitted by this Easement shall be undertaken in accordance with applicable federal, state and local laws, regulations and ordinances and nothing in this Easement shall be construed to exempt the Protected Property or the Owner from otherwise applicable laws or regulations.

The Owner is solely responsible for obtaining any required governmental permits.

- c. Indemnity. The Owner shall defend, indemnify, and hold the Land Trust harmless from any and all costs or liability for any loss, damage, or personal injury occurring on or related to the Protected Property or the existence of this Easement, except to the extent attributable to the negligence of the Land Trust.
- d. Insurance. The Owner will name the Land Trust as an additional insured on any general liability insurance policy carried by the Owner with respect to the Protected Property.

- e. Future Environmental Condition. The Owner is solely responsible for Owner's use or release on the Protected Property of any hazardous or toxic substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, the Minnesota Environmental Response and Liability Act, or other similar successor federal, state or local law or regulation regarding responsibility for environmental conditions associated with contamination. The Owner shall take all steps necessary to assure any needed containment or remediation resulting from any release of such substance.

7.7. Notice and Approval. Any notice or request for approval required by this Easement must be in writing 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:  
City of Lake Elmo  
3800 Laverne Avenue N.  
Lake Elmo, MN 55042

To the Land Trust:  
Minnesota Land Trust  
2356 University Avenue West  
St. Paul, MN 55114

- 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 Trust to make an informed decision on whether any proposed activity is consistent with the terms and purposes of this Easement. At a minimum, this should include:
- The location, nature, and scope of the proposed activity.
  - The proposed use, design, and location of any building, structure or improvement.
  - The potential impact on the Conservation Values of the Protected Property.
- d. Approval. The Land Trust 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 Land Trust to reach an informed decision. The Land Trust may condition its approval on the Owner's acceptance of



modifications, which would, in the Land Trust's judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns.

Approval of the Land Trust must be in writing to be effective.

- 7.8. Binding Effect. This Easement creates a property right immediately vested in the Land Trust and its successors and assigns that cannot be terminated or extinguished except as set out herein.

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.

If at any time the Land Trust or other holder of this Easement becomes the owner of all or a portion of the fee interest in the Protected Property, this Easement shall not be deemed to merge with the underlying fee interest but shall remain in force and effect unless otherwise terminated or extinguished as set out herein.

- 7.9. 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 "Land Trust" includes the Minnesota Land Trust and its successors or assigns to its interest in this Easement.

- 7.10. 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.

- 7.11. Recording. The Land Trust will record this Easement in a timely manner in the official records for the county in which the Protected Property is located. The Land Trust 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.

- 7.12. Interpretation. This Easement shall be interpreted as follows.

- a. 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.
- b. 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.

- c. Captions. Captions have been inserted in this document solely for convenience of reference and shall have no effect upon interpretation or construction.
  - d. Future Economic Condition. In conveying this Easement, the Owner has considered the possibility that uses of the Protected Property prohibited by this Easement may in the future become more economically valuable than uses permitted by this Easement and that neighboring properties maybe put entirely to such prohibited uses. Such changes alone are not deemed to be circumstances justifying the extinguishment of this Easement as otherwise set forth above.
- 7.13. Additional Documents. The Owner agrees to execute or provide any additional documents reasonably needed by the Land Trust 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.
- 7.14. Entire Agreement. This document sets forth the entire agreement of the parties with respect this Easement and supersedes all prior discussions or understandings.

*The remainder of this page has been intentionally left blank.*

IN WITNESS WHEREOF, the Owner has voluntarily executed this Conservation Easement on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

OWNER:

CITY OF LAKE ELMO

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Administrator

State of MINNESOTA )  
 ) ss  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by Dean Johnston and Susan Hoyt, the Mayor and the City Administrator, respectively, of the City of Lake Elmo, a municipal corporation in the State of Minnesota, on behalf of the City.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

ACCEPTANCE

The MINNESOTA LAND TRUST hereby accepts the foregoing Conservation Easement this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

MINNESOTA LAND TRUST

By: \_\_\_\_\_

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

State of MINNESOTA )  
 ) ss  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Jane Prohaska, the President of the Minnesota Land Trust, a non-profit corporation under the laws of the State of Minnesota, on behalf of said corporation.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

This document drafted by:

Minnesota Land Trust  
2356 University Avenue West  
St. Paul, MN 55114

Exhibit A

Legal Description of the Protected Property



# Aerial Photography Map



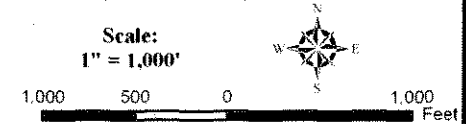
## Map Resource Information

Protected Property & Section Lines created by Community GIS Services Inc. All data overlaid 2008 Farm Service Agency True Color Aerial photograph. Map & labeled coordinates use projection of: UTM, Zone 15, Datum NAD83

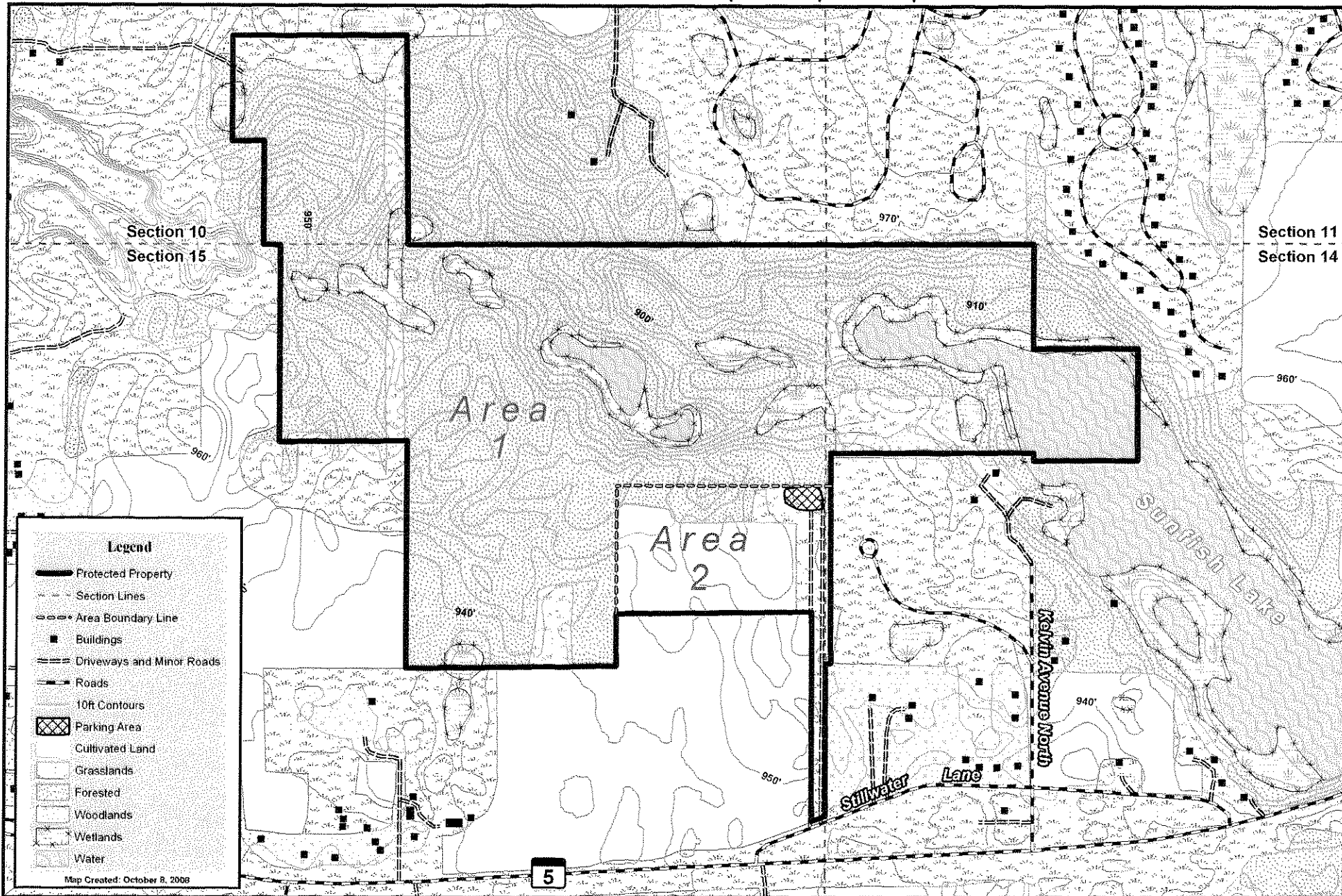
Users of this map agree and acknowledge that Community GIS Services Inc. and the Minnesota Land Trust cannot be held liable for accuracy of GIS material provided. GIS materials should not be relied upon to establish legal title, boundary lines, or locations of improvements.



**Site: Sunfish Park - Tract: City of Lake Elmo**  
 Washington County - Twp. 29 N Rng. 21 W Sec. 10, 14 & 15



# Exhibit B: Property Map



## Map Resource Information

Protected Property, Section Lines, Area Boundary Line, Buildings, Roads, Driveways & Minor Roads, 10-Foot Contours, Parking Area, Cultivated Land, Grasslands, Forests, Woodlands, Wetlands, and Water created by Community GIS Services, Inc.

Users of this map agree and acknowledge that Community GIS Services, Inc. and the Minnesota Land Trust cannot be held liable for accuracy of GIS material provided. GIS materials should not be relied upon to establish legal title, boundary lines, or locations of improvements.



**Site: Sunfish Park - Tract: City of Lake Elmo**

Washington County - Twp. 29 N Rng. 21 W Sec. 10, 14 & 15



Scale:  
1" = 800'

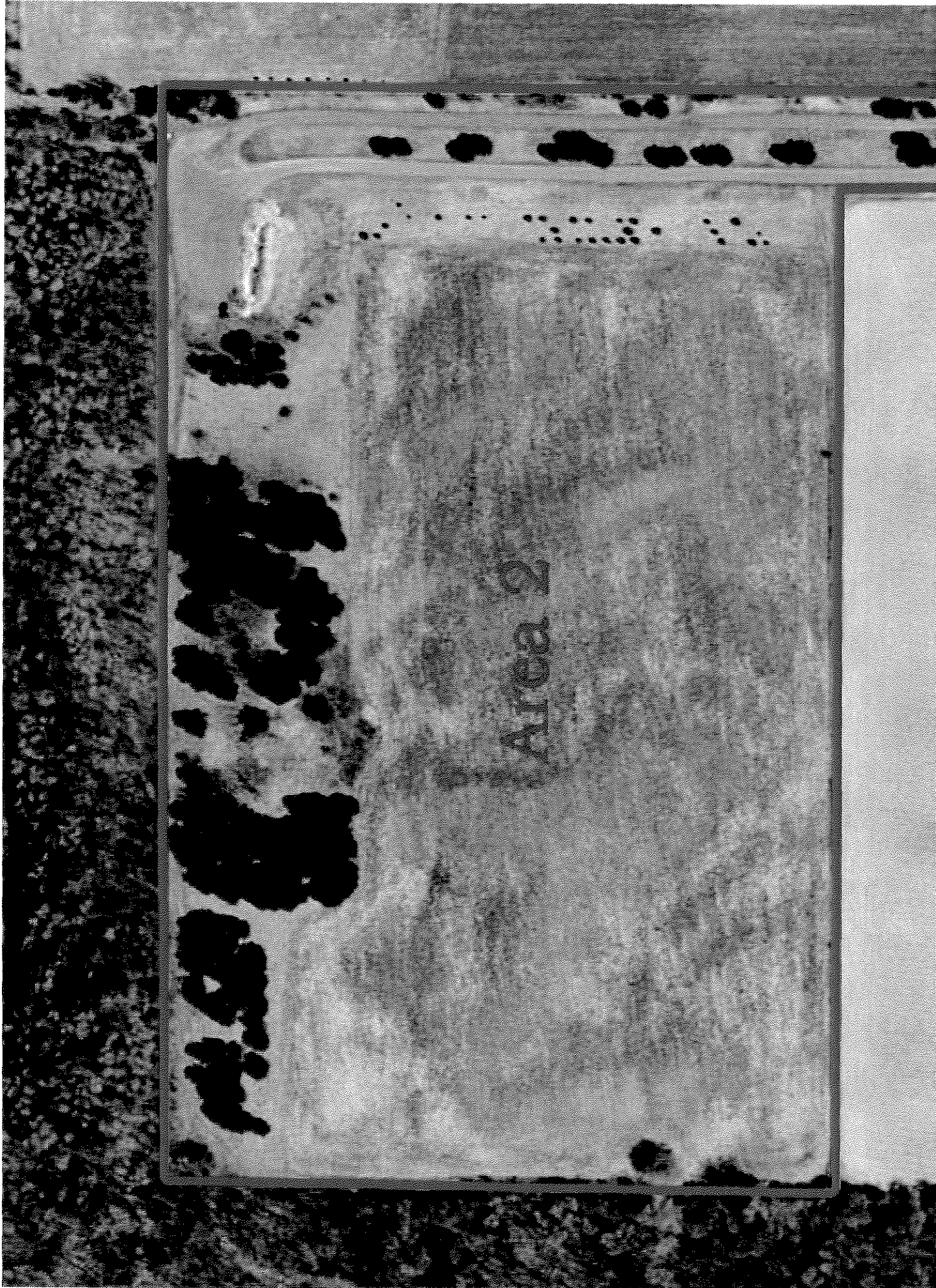


800 400 0 800 Feet













Area 1

Area 2

Area 3

Sunfish Lake Park

RESOLUTION NO. 2008-048

CITY OF LAKE ELMO  
WASHINGTON COUNTY, MINNESOTA

A RESOLUTION APPROVING A CONSERVATION EASEMENT GRANTED BY  
THE CITY OF LAKE ELMO TO THE MINNESOTA LAND TRUST

WHEREAS, Sunfish Lake Park is a 315 acre park with natural, scenic and open space qualities of significant importance; and

WHEREAS, the park provides important habitat for a variety of wildlife species, both terrestrial and aquatic, in conservation need; and

WHEREAS, the park is a component of a regionally significant corridor and project focus area as identified by the Minnesota Department of Natural Resources and the Metropolitan Conservation Corridors Partnership; and

WHEREAS, the property provides important publicly accessible open space to learn about, experience, and enjoy the out-of-doors in a significant and relatively undisturbed natural setting;

NOW THEREFORE, BE IT RESOLVED, that the City Council of Lake Elmo hereby approves the conveyance of a conservation easement for Sunfish Lake Park to the Minnesota Land Trust.

ADOPTED, by the Lake Elmo City Council this 21<sup>st</sup> day of October, 2008.

\_\_\_\_\_  
Dean Johnston, Mayor

ATTEST:

\_\_\_\_\_  
Susan Hoyt, City Administrator

In Favor:

Against: