

## **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, and it has been used primarily as a passive park for activities such as walking, hiking, cross country skiing, horseback riding, solitude, and nature observation. The Protected Property has an unimproved divided access road and parking area, barbecue 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 outstanding opportunities for the public to experience, appreciate and learn about the natural and scenic environment through low-impact outdoor recreation and educational activities.

Collectively, these outdoor recreational and educational, 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:

- Minnesota Statutes Chapter 116P, which establishes the Environmental and Natural Resources Trust Fund, and Minnesota Laws 2008, Chapter 367, Section 2, Subdivision 3(a), which provides funding from that Fund to accelerate programs for the purposes of planning, restoring, 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.
- City of Lake Elmo 2030 Comprehensive Plan, which outlines a city-wide planning policy to "evaluate available options to increase the long-term viability of its park system in an environmentally sensitive manner" (Chapter II, Page II-5), and more specifically, sets out goals to "have recreational and natural parks available to all residents" and to "prevent use of parkland for non recreational or non-conserving purposes." (Chapter IX, Page IX-2)

F. 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. Rights of Way. No new right of way shall be granted across the Protected Property by the Owner 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 under the provisions of section 7.7 of this Easement. This provision does not affect any rights of way existing at the time of conveyance.

The Owner may, however, grant an easement to the Commissioner of the Minnesota Pollution Control Agency as needed to permit the location, operation and maintenance of a monitoring well or wells on the Protected Property.

- 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. These permitted small signs include signs necessary for monitoring, safety, and security purposes in conjunction with those recorded easements and agreements between the Owner and the Minnesota Pollution Control Agency.

Additionally, the Owner may also construct and maintain a park entry monument and signs 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, which is generally depicted on the Property Map attached as Exhibit B. Paved trails may be allowed in Area 1 of the Protected Property, as generally depicted on the Property Map, 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 and by recorded documents between the Owner and the Minnesota Pollution Control Agency, including those documents specifically referenced in section 7.5.

- 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, agricultural use, or in conjunction with Minnesota Pollution Control Agency permitted activities including those permitted under the recorded documents specifically referenced in section 7.5 below. 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 on 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, including a park entry monument and signs, 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 AND USE. The public shall have the right to use the Protected Property and any trail established on the Protected Property for low-impact recreational and educational purposes, subject to the restrictions set out in this easement and subject to any reasonable use restrictions established by the Owner.
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. A portion of the Protected Property is subject to the terms and restrictions of the following documents:
- Landfill Cleanup Agreement by and between Washington County, Ramsey County, the City of Lake Elmo and the Commissioner of the Minnesota Pollution Control Agency dated November 21, 1995, recorded December 14, 1995, as Document Number 866611;
  - Easement in favor of the State of Minnesota dated November 13, 1995, recorded December 14, 1995, as Document Number 866615; and
  - Declaration of Restrictions and Covenants dated November 13, 1995, recorded December 14, 1995, as Document Number 866619.
- d. 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.



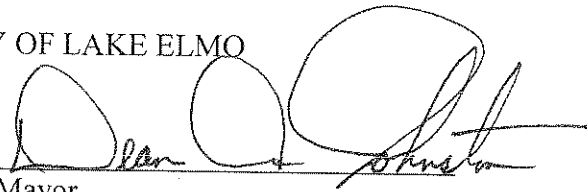
- c. Captions. Captions have been inserted in this document solely for convenience of reference and shall have no effect upon interpretation or construction.
  - d. Future Economic Condition. In conveying this Easement, the Owner has considered the possibility that uses of the Protected Property prohibited by this Easement may in the future become more economically valuable than uses permitted by this Easement and that neighboring properties may be 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 to this Easement and supersedes all prior discussions or understandings.
- 7.15. Signatures. This Easement may be completed with the signatures of the parties to this Easement executed and notarized on separate pages which when attached to this document shall constitute one complete document.

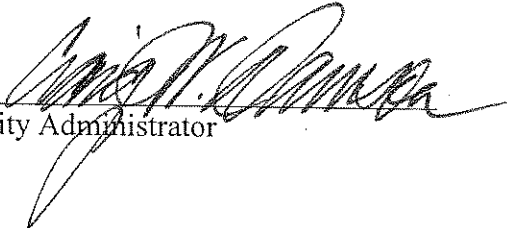
*The remainder of this page has been intentionally left blank.*

IN WITNESS WHEREOF, the Owner has voluntarily executed this Conservation Easement on the 30<sup>th</sup> day of June, 2009.

OWNER:

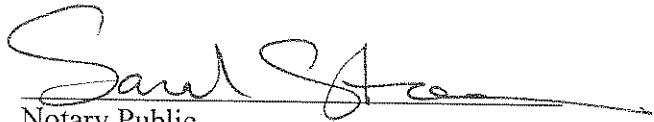
CITY OF LAKE ELMO

By:   
Mayor

By:   
City Administrator

State of MINNESOTA )  
County of Washington ) ss

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of June, 2009, by Dean Johnston and Craig Dawson, 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 effective as of the 30<sup>th</sup> day of June, 2009.

MINNESOTA LAND TRUST

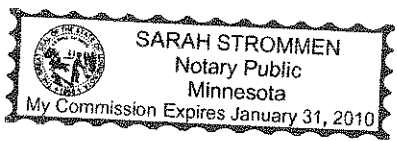
By: [Signature]

Title: President

State of MINNESOTA )  
County of Ramsey ) ss )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of June, 2009, 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.

[Signature]  
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

The Northwest Quarter of the Northwest Quarter (NW 1/4 of NW 1/4) of Section Fourteen (14), Township Twenty-nine (29), Range Twenty-one (21), and the West Thirty-three (33) feet of the Southwest Quarter of the Northwest Quarter (SW 1/4 of NW 1/4) of Section Fourteen (14), Township Twenty-nine (29), Range Twenty-one (21), Washington County, Minnesota.

AND

That part of the Northeast quarter of the Northwest quarter of Section 15, Township 29, Range 21, Washington County, Minnesota, described as commencing at the Northeast corner of said Northeast quarter of Northwest quarter; thence South  $0^{\circ} 51' 45''$  East, assumed bearing, along the East line thereof, 501.27 feet to the South line of the North 30 acres of said Northwest quarter and to the actual point of beginning of the land to be hereinafter described; thence South  $89^{\circ} 01' 54''$  West along said South line of North 30 acres 800 feet; thence South  $0^{\circ} 51' 45''$  East 734.30 feet; thence North  $89^{\circ} 01' 54''$  East 800 feet to the East line of said Northeast quarter of the Northwest quarter; thence North  $0^{\circ} 51' 45''$  West along said East line 734.30 feet to the actual point of beginning.

AND

The Northwest quarter of the Northeast quarter, the Northeast quarter of the Northeast quarter, the Southwest quarter of the Northeast quarter, the North three-quarters of the Southeast quarter of the Northeast quarter and that part of the East 87 feet lying South of the North three-quarters of the Southeast quarter of the Northeast quarter all in Section 15, Township 29, Range 21.

AND

The east 87 feet of that part of the Southeast quarter of Section 15, Township 29, Range 21, lying Northerly of the Northerly right of way line of State Highway #212, subject to the right of way Stillwater Lane (formerly State Highway #212).

AND

The Southwest Quarter of the Northeast Quarter of the Northwest Quarter (SW1/4 of NE 1/4 of NW 1/4) of Section Fourteen (14), Township Twenty-nine (29) North, Range Twenty-one (21) West, Washington County, Minnesota.

AND

The North Three (3) rods of the Northwest Quarter of the Southeast Quarter of the Northwest Quarter (NW 1/4 of SE 1/4 of NW 1/4) of Section Fourteen (14), Township Twenty-nine (29), Range Twenty-one (21), Washington County, Minnesota.

AND

The South Forty (40) acres of Government Lot Five (5), Section Ten (10) and the Southeast Quarter of the Southwest Quarter (SE ¼ of SW ¼) of Section Ten (10). AND the North Thirty (30) acres of the North one-half of the Northwest Quarter (N ½ of NW ¼) of Section Fifteen (15), all in Township Twenty-nine (29) North of Range Twenty-one (21) West, containing 110 acres more or less.

EXCEPT:

All that part of the South 40 acres of Government Lot 5, Section 10, and the Southeast Quarter of the Southwest Quarter of Section 10, and the North 30 acres of the North One-Half of the Northwest Quarter of Section 15, all in Township 29 North, Range 21 West, Washington County, Minnesota, described as follows:

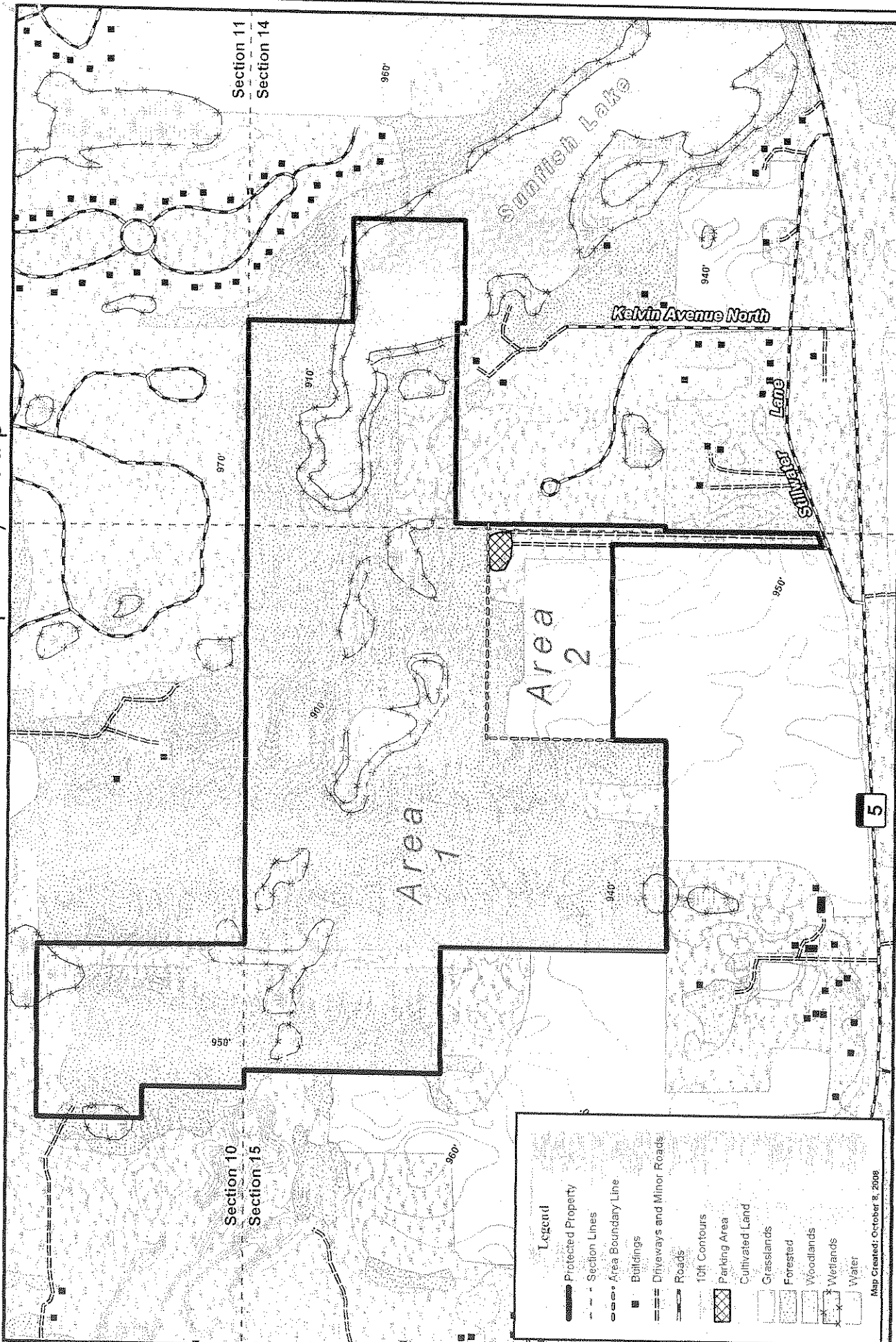
Beginning at the northwest corner of said Section 15, thence South 00 degrees, 18 minutes, 30 seconds West, bearings are based on the Washington County Coordinate System NAD83, along the west line of said Section 15, a distance of 501.27 feet to the south line of said North 30 acres of the North One-Half of the Northwest Quarter of Section 15, thence North 89 degrees, 51 minutes, 00 seconds East, along said south line, a distance of 1808.59 feet, thence North 00 degrees, 02 minutes, 32 seconds West and parallel with the east line of said Northwest Quarter of Section 15, a distance of 501.26 feet to the north line of said Section 15, thence South 89 degrees, 51 minutes, 00 seconds West, along said north line a distance of 105.52 feet, thence North 00 degrees, 53 minutes, 21 seconds West and parallel with the west line of said Section 10, a distance of 650.00 feet, thence South 89 degrees, 51 minutes, 00 seconds West and parallel with the south line of said Section 10, a distance of 200.00 feet, thence North 00 degrees, 53 minutes, 21 seconds West and parallel with the west line of said Section 10, a distance of 656.24 feet, to a point on the north line of said Southeast Quarter of the Southwest Quarter of Section 10, thence South 89 degrees, 45 minutes, 24 seconds West, along said north line, a distance of 193.17 feet to the northwest corner of said Southeast Quarter of the Southwest Quarter, thence North 00 degrees, 42 minutes, 39 seconds West, along the east line of said Government Lot 5, a distance of 29.52 feet to the northeast corner of said South 40 acres of Government Lot 5, thence South 89 degrees, 51 minutes, 00 seconds West, along the north line of said South 40 of Government Lot 5, a distance of 706.92 feet, thence South 00 degrees, 53 minutes, 21 seconds East and parallel with the west line of said Section 10, a distance of 200.00 feet, thence South 50 degrees, 54 minutes, 08 seconds West, a distance of 127.25 feet, thence South 89 degrees, 51 minutes, 00 seconds West and parallel with the north line of said South 40 acres of Government Lot 5, a distance of 500.00 feet to the west line of said Section 10, thence South 00 degrees, 53 minutes, 21 seconds East along the west line of said Section 10, a distance of 1055.45 feet to the point of beginning, containing 65.9 acres, more or less.

AND ALSO EXCEPT:

All that part of the South 40 acres of Government Lot 5, Section 10, Township 29 North, Range 21 West, Washington County, Minnesota, described as follows:

Commencing at the southwest corner of said Section 10, thence North 00 degrees, 53 minutes, 21 seconds West along the west line of said Section 10, a distance of 1055.45 feet to the point of beginning, thence continuing North 00 degrees, 53 minutes, 21 seconds West along the west line of said Section 10, a distance of 280.00 feet to the northwest corner of said South 40 acres of Government Lot 5, thence North 89 degrees, 51 minutes, 00 seconds East along the north line of said South 40 acres of Government Lot 5, a distance of 600.00 feet, thence South 00 degrees, 53 minutes, 21 seconds East and parallel with the west line of said Section 10, a distance of 200.00 feet, thence South 50 degrees, 54 minutes, 08 seconds West, a distance of 127.25 feet, thence South 89 degrees, 51 minutes, 00 seconds West and parallel with the north line of said South 40 acres of Government Lot 5, a distance of 500.00 feet to the point of beginning, containing 3.8 acres, more or less.

# Exhibit B: Property Map



**Map Created:** October 8, 2008

**Legend**

- Protected Property
- Section Lines
- Area Boundary Line
- Buildings
- Driveways and Minor Roads
- Roads
- 10ft Contours
- Parking Area
- Cultivated Land
- Grasslands
- Forested
- Woodlands
- Wetlands
- Water

**Map Resource Information**  
 Protected Property, Section Lines, Area Boundary Line, Easements, Roads, Driveways & Minor Roads, 10-foot Contours, Parking Area, Cultivated Land, Grasslands, Forested, Woodlands, Wetlands, and Water created by Community GIS Services Inc.  
 Users of this map should not rely on this map for legal purposes. Community GIS Services Inc. and the Minnesota Land Trust do not warrant the accuracy of the information 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