



STAFF REPORT

DATE: June 12, 2018

DISCUSSION

AGENDA ITEM: Water Supply Issues

SUBMITTED BY: Kristina Handt, City Administrator

REVIEWED BY: Jack Griffin, City Engineer

Rob Weldon, Public Works Director

BACKGROUND:

In March the city received notice that Well #1 (located in the Old Village Area) had slightly exceeded the Health Index for PFOAs for the last four quarters of sampling. Staff made the decision to stop using well #1 and instead supply water to the whole city from wells 2 and 4. The pumping was increased to capacity at these wells in May following some low water tower level alarms.

Since March, staff has had a number of meetings with state officials from MPCA, MDH and DNR as all three play a role in regulating municipal water systems. Discussions have focused on the immediate and short term needs to continue to supply safe drinking water to the city. The long range solutions will be tackled separately as part of the 3M settlement work group.

Immediate needs the staff have identified include getting a generator for well 2 (it doesn't have one as well 4 does and could be a concern in a power outage), some improvements to the water system near Tower 1 so that we will be able to bring that back online and increase storage capacity, and discussions with Oakdale about establishing a emergency interconnection agreement. MPCA has been very supportive and shown willingness assist the city in these immediate needs. They are reviewing their internal processes for how to get us reimbursements for the costs of the generator and improvements near Tower 1 but do not expect any problems at this point.

Short term needs would include identifying a new well location since contamination was found in well 1. Staff has not asked DNR for an increase in our water appropriations permit; only that we be able to drill a new well since contamination was found in well 1. Furthermore, well 1 is in multiple aquifers and being a low capacity well presents challenges to just placing a treatment plant on that water source. The city's current water appropriation permit is for 260 million gallons per year. In 2017, the city used 207 million gallons which included water purchased from Oakdale. MPCA, with help from MDH, provided the map included in your packet which shows the different areas of contamination or possible contamination as well as the 5 mile radius from White Bear Lake that impacts new well siting.

ISSUE BEFORE COUNCIL:

How would the Council like to move forward on addressing water supply issues in the city?

PROPOSAL DETAILS/ANALYSIS/OPTIONS:

With respect to the immediate needs, staff will continue to pursue the items outlined above. In addition, we have begun increasing our communication efforts with respect to the odd/even watering restrictions. This ordinance has been in place for many years. Like most of our code enforcement, we respond as complaints come in. We have had to reach out to a few developers and HOAs as complaints came in. We will continue

to monitor our water supply and alert the Council if further restrictions will be necessary. This will largely depend upon the weather we get this summer. We have also stopped lending hydrant meters to contractors that request bulk water, which should help reduce water use related to construction activities.

At the work session, we are seeking direction from Council most importantly related to the issue of a new well. In the past, the city has taken the position that it prefers to use a clean water source rather than operating a treatment system. If that is still the case, the locations are very limited as shown on the map. Discussions with the state first focused on the areas with the green hash mark (roughly 90 acres) north of Stillwater Blvd, west of Manning and south of 50th St. since that map layer represents likely safe locations outside of the White Bear Lake buffer. The city could explore placing a well in the well capture zone or orange hash mark area since there is only a possible risk. These later two options would require deeper study and review.

Staff identified the Tana Ridge Park site as a priority location to review. The reasons for this include: (1) it's located within the likely safe location area, (2) is property the city owns so delays in purchasing property won't be encountered, and (3) there is currently 12 inch water main running through the park which minimizes the costs to connect to a new well. Tana Ridge Park is a 6 acre site between the Tana Ridge and Fields of St Croix developments. The parcel currently has a soccer field on the west side of the park, a softball field on the east and a trail that runs through it. Staff would propose the Park Dedication Fund be compensated for the loss of park land.

Other options within the likely safe location (green hash area) would require the acquisition of property and extension of water mains. Possibilities would include approaching the landowner to the west of the park or acquiring approval from Robert Engstrom and The Fields of St. Croix HOA as it relates to the Open Space Conservation Easement for land along CSAH 14. The current agreement prohibits new utilities without approval of all parties. A copy is included in your packet.

Council could also consider placing a new well in one of the areas identified as contaminated. In addition to the PFC area (red hash marks) the city also has TCE contamination from the Baytown Super Fund site. Wells may be allowed in these areas but it requires the city to also operate a water treatment plant.

Lastly, the gray shaded area represents the 5 mile radius from White Bear Lake which was established last year in the lawsuit between the state and the White Bear Lake Restoration Association and HOA. The state has appealed the district court decision to the appellate court and oral arguments regarding a possible stay are anticipated sometime in June. A copy of the order is included in your packet for reference. The analysis mentioned is expected to be completed in August as required.

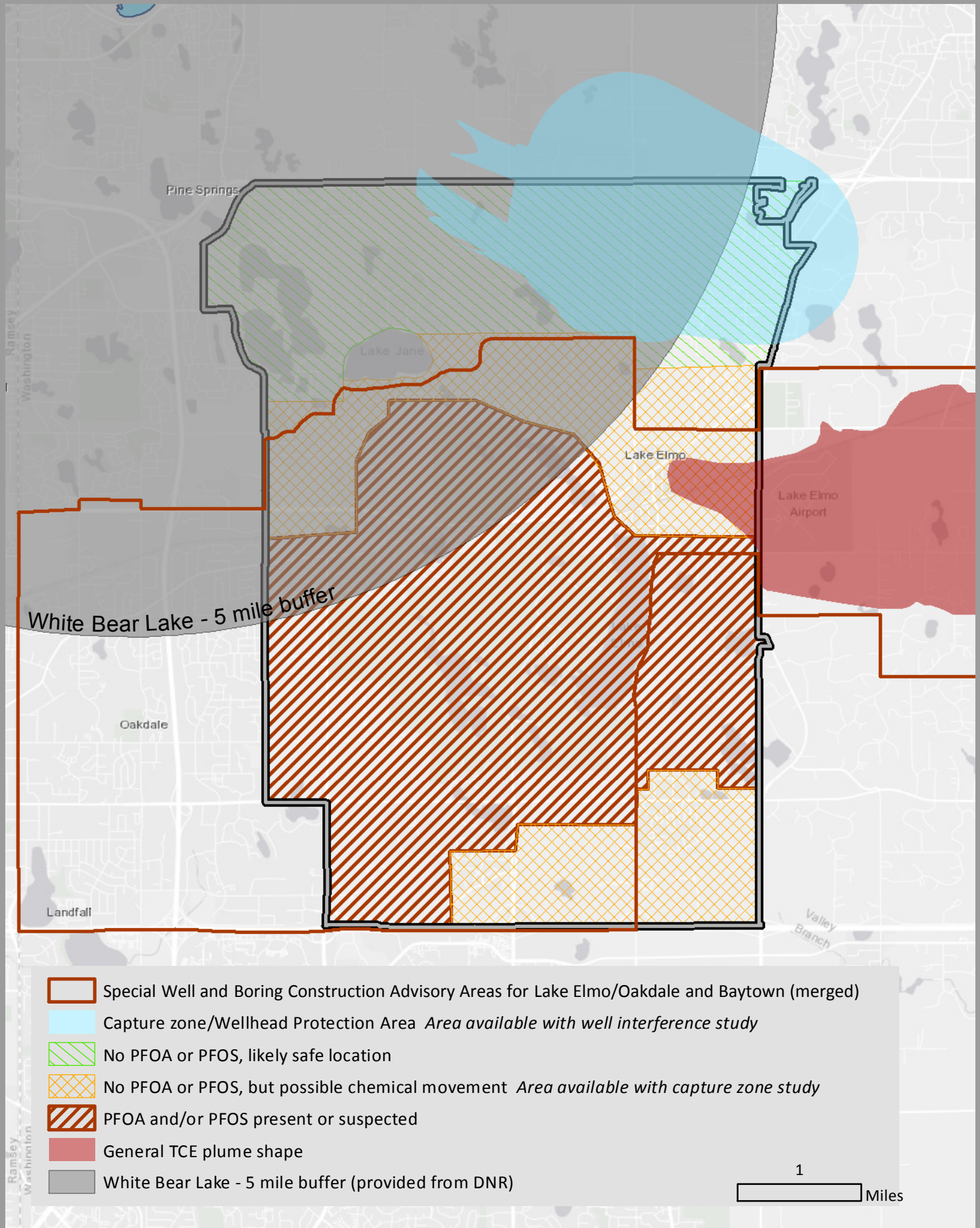
In addition to replacing the well, staff would also like to begin discussions on a new water tower in the low pressure zone in the southeast area of the city (south of 10th St and near Lake Elmo Ave). As development continues in Stage 2, the city is approaching the limit of 400 RECS that can be supported with our current infrastructure. At the June 5th Council meeting, a contract to have AE2S perform an updated evaluation of our water system was approved. That report is expected back mid-summer. Staff is looking for direction from Council on whether or not we can begin identifying sites and begin testing (soil borings) them to determine if they are suitable locations. Once suitable locations are determined staff would begin contacting property owners.

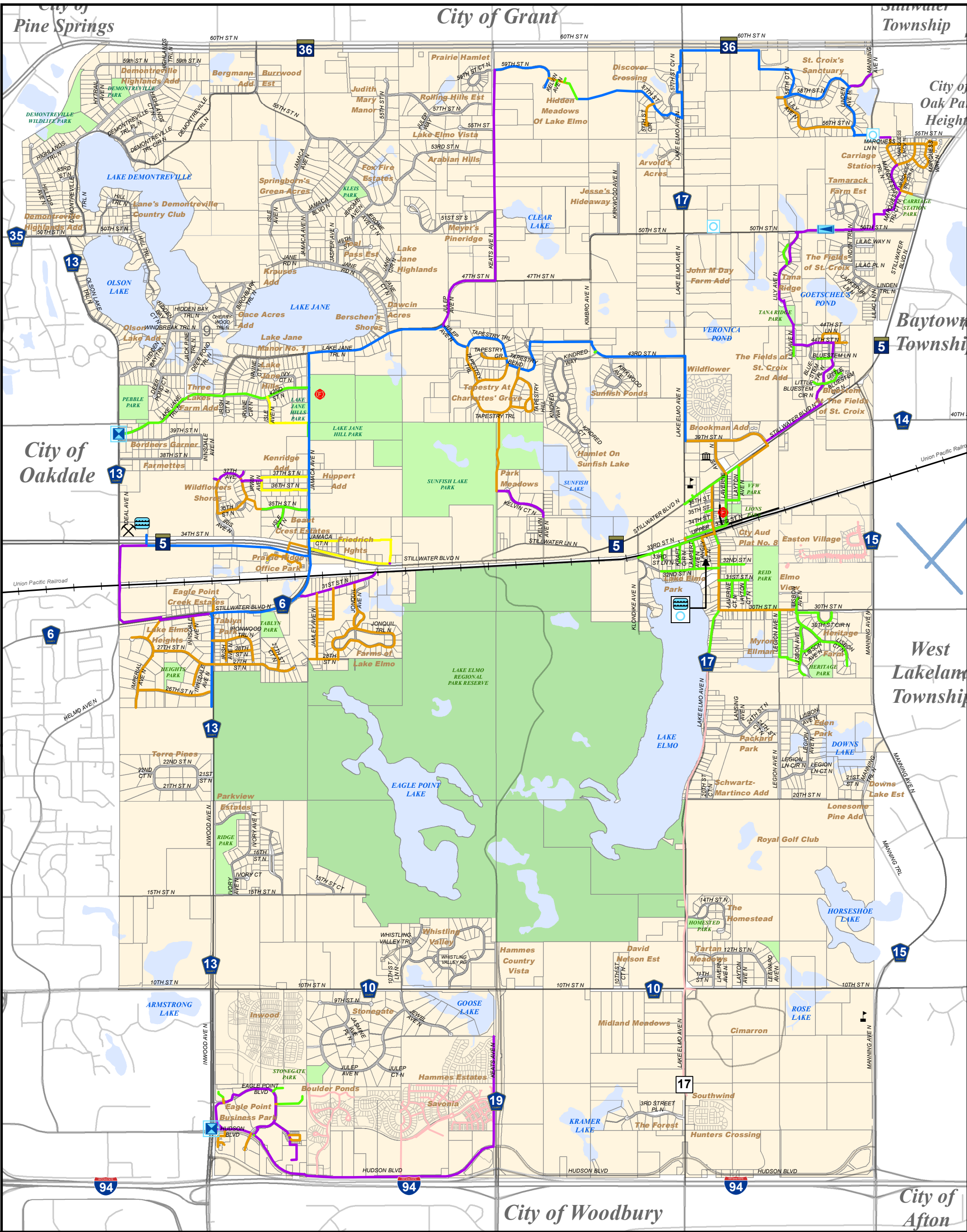
ATTACHMENTS:

- Map from MPCA/MDH
- Map of Lake Elmo Water System
- GIS of Likely Safe Well Locations
- Open Space Conservation Easement in Fields of St. Croix
- Copy of Order in White Bear Lake case

Lake Elmo Well Siting Considerations

Data provided from the Minnesota Department of Health, May 2018





Water System Map

Water Main

- 4"
- 6"
- 8"
- 12"
- 16"
- Unknown

Water Infrastructure



Water Tower



Well



Reducing Station



Interconnection



0.5 0.25 0 0.5 Miles

Map Date: June 2018

Created By: Planning Department



**AMENDED AND RESTATED OPEN SPACE EASEMENT
THE FIELDS OF ST. CROIX
2ND ADDITION**

THIS AMENDED AND RESTATED OPEN SPACE EASEMENT is entered into this 21st DAY OF July, 2015 by and between Robert Engstrom Companies, a Minnesota Corporation, ("Owner"), The Fields of St. Croix Community Association, a Minnesota Non-Profit Corporation, ("Association"), and the City of Lake Elmo, a Minnesota statutory city (the "City") (hereinafter collectively referred to as the "Parties").

WITNESSETH

1. This Amended and Restated Open Space Easement amends and restates those certain Open Space Easements filed with the Washington County Recorder as Document Numbers 3094199 and 3298378 and the Washington County Registrar of Titles as Document Number 1089200.
2. Owner and Association are the fee owners of the following described Real Property located in Washington County, Minnesota (the "Protected Land").

Outlots A, D, F, I, J, K, and M, , all in The Fields of St. Croix 2nd Addition; Outlot C, Bluestem at the Fields of St. Croix, and Outlots H, I and J, Wildflower at Lake Elmo 1st Addition

3. The Protected Land is primarily farmland, woodland and open space as defined in the Comprehensive Use Plan and Open Space Preservation District Regulations (both herein "City Development Regulations").
4. The natural, scenic and agricultural qualities, and the forested and open space character ("Conservation Values") of the Protected Land are described in the City's Development File for The Fields of St. Croix 2nd Addition ("Development File"). The City intends to use the description of the Protected Property as contained in the City's Development File for monitoring the subsequent uses of the Protected Land and enforcing the terms of this Amended and Restated Open Space Easement. Notwithstanding this intent, the Parties may use other relevant evidence to establish the present condition of the Protected Land in the event of a disagreement as to whether a subsequent activity or use is inconsistent with the terms of this Amended and Restated Open Space Easement.
5. Owner and Association intend to convey to the City the right to preserve and protect the Conservation Values of the Protected Land in perpetuity and to prevent or remedy subsequent activities or uses that are inconsistent with the terms of this Amended and Restated Open Space Easement.

6. The grant of this Amended and Restated Open Space Easement will further the purpose and intent of the City's Development Regulations.
7. The parties acknowledge that as a Local unit of government, the City has a direct interest in the enforcement of the terms of this Open Space Easement and that the City is in a position to monitor compliance with the terms of this Amended and Restated Open Space Easement.

NOW, THEREFORE, in consideration of their mutual covenants and pursuant to the provisions of the City's Development Regulations, Owner and Association convey and warrant to the City and the City accepts a perpetual open space easement on the Protected Land of the character and to the extent set forth herein.

1. Intent. The parties intend to permanently retain the Protected Land in its predominantly natural, scenic, agricultural, forested, and open space condition and to prevent or remedy any subsequent activity or use that significantly impairs or interferes with the Conservation Values of the Protected Land. Owner and Association intend to restrict all subsequent use of the Protected Land to activities consistent with the terms of this Amended and Restated Open Space Easement.
2. City's Rights. To accomplish the parties' intent, Owner and Association convey the following rights to the City as specified below:
 - a. The City shall preserve and protect the Conservation Values of the Protected Land, pursuant to the terms of this Amended and Restated Open Space Easement.
 - b. The City may enter the Protected Land at reasonable times to monitor subsequent activities and uses and to enforce the terms of this Amended and Restated Open Space Easement. The City shall give reasonable notice to Owner and Association of all such entries and shall not unreasonably interfere with Association's and Owner's use and quiet enjoyment of the Protected Land.
 - c. The City may act, pursuant to Paragraph 19, to prevent or remedy all, subsequent activities and uses of the Protected Land not consistent with the terms of this Amended and Restated Open Space Easement.
 - d. Own, maintain and operate a storm water management facility located on Outlot J, Wildflower at Lake Elmo 1st Addition.
 - e. Allow public use of the pathways constructed on Outlot J, Wildflower at Lake Elmo 1st Addition.
3. Prohibited Uses. Owner and Association shall not perform or knowingly allow others to perform acts on the Protected Land that would significantly impair or interfere with the Conservation Values of the Protected Land. This general restriction is not limited by the more specific restrictions set forth in Paragraphs 4

through 14 hereof. The Parties acknowledge that the present use of the Protected Land is consistent with the terms of this Amended and Restated Open Space Easement and the City's Development Regulations. The Owner and Association may, subject to the restrictions set forth in Paragraphs 4 through 14 hereof, continue making such use of the Protected Land.

4. Residential, Commercial & Industrial Use. Owner and Association shall not subdivide all or part of the Protected Lands for residential, commercial or industrial development. Owner and Association shall not subdivide, either legally or physically, the Protected Land for any other reason without each other's prior written approval. Owner and Association shall not engage in commercial or industrial activities on the Protected Land, other than the activities relating to agricultural operations as set forth in Paragraph 7. Owner and Association shall not engage in the exploration or extraction of soil, sand, gravel, rock minerals, hydrocarbons or any other natural resource on or from the Protected Land. Owner and Association shall not grant rights of way on the Protected Land in conjunction with commercial or industrial activities, or residential development, or any other purpose inconsistent with the Conservation Values, on Lands other than the Protected Land, except for access to adjacent parcels owned by Owner and Association.
5. Construction. Owner and Association shall not construct or install additional buildings or improvements of any kind including, without limitation, fences, driveways, parking lots, and roads, on the Protected Land, except as specified herein. Owner and Association may maintain, repair, and replace existing roads but shall not widen them unless doing so lessens the environmental impact of the road on the Protected Land and Owner and Association have obtained each other's, and the City's, prior written approval. Owner and Association may maintain, renovate, expand or replace existing agricultural and related buildings or improvements in substantially their present Location. Any expansion or replacement of an existing building or improvement shall not substantially alter its character or function, and shall not exceed its current square footage, without the prior written approval of all of the Parties to this Agreement.
6. Utility Systems. Owner and Association may maintain, repair, and replace utility systems in place as of the date of this Amended and Restated Open Space Easement on the Protected Land including, without limitation, water, sewer, power, fuel, and communications lines and related Facilities. Owner and Association shall not install new utility systems or extensions or expansions of existing utility systems on the Protected Land including, without limitation, water, sewer, power, fuel, and communications lines and related facilities, without each other's prior approval. Owner and Association may install, maintain, and replace irrigation systems used on the Protected Land. Owner and Association may install sewage systems on or under the Protected Land which comply with all existing federal, state and local regulations regarding water quality and other environmental concerns, and which do not disrupt other activities permitted under the terms of this Amended and Restated Open Space Easement. Owner may grant City such easement rights as the city deems necessary for the installation of any

future utility systems and lines over Outlot H, Wildflower at Lake Elmo 1st Addition.

7. Agricultural Use. Owner and Association may conduct agriculture operations, except livestock operations, on the Protected Land provided that such use is in compliance with the City's Development Regulations and with each other's prior written approval.
8. Surface Alteration. Owner and Association shall not alter the surface of the Protected Land including, without limitation, the filling, excavation, or removal of soil, sand, gravel, rocks, or other material. Notwithstanding the forgoing, surface alteration on Outlots I and J, Wildflower at Lake Elmo 1st Addition, may be conducted as may be reasonably required in the course of activities or uses permitted under the terms of this Amended and Restated Open Space Easement or as reasonably required during the initial development of the adjacent property (being the real property platted as "Wildflower at Lake Elmo 1st Addition") owned by Owner or Association. Such initial development period shall expire no later than the 30th day of September, 2016.
9. Soil and Water Degradation. Owner and Association shall not engage in activities or uses that cause or are likely to cause soil degradation, erosion, or water pollution, either on the surface or underground, except for activities or uses reasonably required in the course of agricultural operations permitted by Paragraph 7.
10. Waste Removal. Owner and Association shall not dump or dispose of refuse or other waste material on the Protected Land although, subject to applicable laws and regulations, Owner and Association may dispose of brush and other plant material from the Protected Land by burning or composting if such material results from agricultural operations permitted by Paragraph 7 or other activities or uses permitted by this Amended and Restated Open Space Easement. Subject to the applicable laws and regulations, Owner and Association may store and make use of agricultural products and by-products including, without limitation, crops, silage, fertilizers, Lime, and manure on the Protected Land if such material results from or is to be used in agricultural operations permitted by Paragraph 7.
11. Water Bodies and Courses. Owner and Association shall not alter existing bodies of water or water courses or construct new bodies of water or water courses on the Protected Land except as reasonably required for the activities or uses permitted by the terms of this Amended and Restated Open Space Easement or to enhance wildlife habitat or water quality.
12. Trees, Shrubs, and Vegetation. Owner and Association shall not remove, destroy, cut, mow, or alter trees, shrubs, and other vegetation except (i) for areas immediately adjacent to buildings or improvements permitted by Paragraph 5, (ii) as reasonably required for agricultural operations permitted by Paragraph 7, (iii) to prevent or control insects, noxious weeds, diseases, fire, personal injury, or property damage, (iv) for firewood or construction material intended for

residential use on the protected Land or adjacent land (v) as reasonably required to construct and maintain the trails permitted in Paragraph 13, (vi) selective cutting for harvest pursuant to sound forest management practices, and (vii) for other activities or uses permitted by the terms of this Amended and Restated Open Space Easement, including surface alteration permitted by Paragraph 8

13. Recreational Uses. Owner and Association may establish and maintain trails for fire breaks, walking, horseback riding, cross-country skiing, and other non-motorized recreational activities on or across the Protected Land. Owner and Association shall not use or allow others to use motorcycles, all-terrain vehicles, or other motorized vehicles on the Protected Land except as reasonably required for other activities or uses permitted by the terms of this Amended and Restated Open Space Easement.
14. Signs. Owner and Association shall not erect or install any signs or billboards on the Protected Land without consent of the City.
15. City's Approval. The Owner and Association may not change the use of the Protected Land as described in the City's Development file without prior written approval of the City so that the City may determine if the proposed change is consistent with this Amended and Restated Open Space Easement and maintains or enhances the Conservation Values of the Protected Land. Owner and Association shall submit a request in writing to the City at least ninety (90) days prior to the proposed date of commencement of the use in question. The request shall set out the use for which approval is sought, its design and location, the impact of the proposed use on the Conservation Values of the Protected Land, and other material information in sufficient detail to allow the City to make an informed judgment that the proposed use is or is not consistent with this Amended and Restated Open Space Easement or would adversely affect the Conservation Values of the Protected Land. The City shall notify Owner and Association in writing of its decision within sixty (60) days of its receipt of Owner or Association's request. Where the proposed use or modification of use requires a development permit or other approval from the City pursuant to the City's Development Regulations, the Owner and Association shall follow the process described in such regulations and the City shall notify the Owner and Association of its decision within sixty (60) days of receipt of a completed application from the Owner and Association. The City may withhold its approval only on a reasonable determination that the proposed use would be inconsistent with this Amended and Restated Open Space Easement, impairs the Conservation Values of the Protected Land, results in violation of any law or regulation or that it lacks information in sufficient detail to reach an informed judgment that the proposed use is or is not consistent with this Amended and Restated Open Space Easement. The City may condition its approval on the Owner or Association's acceptance of modifications which, in the City's judgment, would make the proposed use, as modified consistent with this Amended and Restated Open Space Easement or protects the Conservation values of the Protected Land.

16. **Public Access.** No right of access by the public to any portion of the Protected Land is conveyed by this Amended and Restated Open Space Easement, except that the public shall have access to the trails to be constructed over Outlot J, Wildflower at Lake Elmo 1st Addition..
17. **Reserved Rights.** Owner and Association reserve all rights accruing from their ownership of the Protected Land including, without limitation, the right to engage in or allow others to engage in all activities or uses of the Protected Land that are not prohibited or limited by this Amended and Restated Open Space Easement or the City's Development Regulations, the right to exclude all or any of the public from the Protected Land and to sell or transfer all or part of the Protected Land subject to this Amended and Restated Open Space Easement. Owner and Association shall inform all others who exercise any right by or through it on the Protected Land of the terms of this Amended and Restated Open Space Easement. Owner and Association shall incorporate by reference the terms of this Amended and Restated Open Space Easement in all deeds or other legal instruments by which they transfer any interest, including a leasehold interest, in all or part of the Protected Land. Owner and Association shall give sixty (60) days prior written notification to the City of a transfer of all or any part of fee title to the Protected Land.
18. **Costs and Liabilities.** Owner and Association retain all obligations and shall bear all costs and liabilities of any kind accruing from their ownership of the Protected Land including the following responsibilities:
 - a. Owner and Association shall remain solely responsible for the operations, upkeep, and maintenance of the Protected Land. Owner and Association shall keep the Protected Land free of all liens arising out of work performed for, materials furnished to, or obligations incurred by Owner and Association.
 - b. Owner and Association shall pay all taxes, special assessments and other assessments levied against the Protected Land.
 - c. Owner and Association shall remain solely responsible for maintaining liability insurance for their uses of the Protected Land. Liability insurance policies maintained by the Owner and Association covering the Protected Land will name the City as an additional named insured. Owner and Association shall hold harmless, indemnify, and defend the City from and against all liabilities, penalties, costs, Losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorney's fees, arising out of or relating to (i) personal injury, data or property damage resulting from an act, omission, or condition on or about the Protected Land, unless due solely to the negligence or willful act of the City, (ii) the obligations retained by Owner and Association to maintain the Protected Land and pay taxes in Paragraphs 18(A) and (B) , and (iii) the existence of this Amended and Restated Open Space Easement.

19. Enforcement. If the City finds at any time that Owner and/or Association have breached or may breach the terms of this Amended and Restated Open Space Easement, the City may give written notice of the breach to Owner and Association and demand action to cure the breach including, without limitation, restoration of the Protected Land. If Owner and Association do not cure the breach within thirty (30) days of notice, the City may commence an action to (i) enforce the terms of this Amended and Restated Open Space Easement (ii) enjoin the breach, ex parte if needed, either temporarily or permanently, (iii) recover damages, (iv) require restoration of the Protected Land to its condition prior to Owner and/or Association's breach, and (v) pursue any other remedies available to it is law or equity. If the City determines that immediate action is needed to prevent or mitigate significant damage to the Protected Land, the City may pursue its remedies under this Paragraph without written notice or giving Owner and Association time to cure the breach
20. Costs of Enforcement. If the City prevails in an action brought under Paragraph 19, Owner and/or Association shall reimburse the City for all costs incurred by the City in enforcing the terms of this Amended and Restated Open Space Easement including, without limitation, costs of suit, reasonable attorney's fees, and costs of restoration. If Owner and/or Association prevails and the District Court finds that the City brought the action without reasonable cause or in bad faith, the City, as determined by the Court, shall reimburse Owner and/or Association's costs of defense including, without limitation, costs of suit and reasonable attorney's fees.
21. Waiver. The enforcement of the terms of this Amended and Restated Open Space Easement is subject to the City's discretion. A decision by the City not to exercise its respective rights of enforcement in the event of a breach of a term of this Amended and Restated Open Space Easement shall not constitute a waiver by the City of such term, or of any subsequent breach of the same or any other term, or any of the City's rights under this Amended and Restated Open Space Easement. The delay or omission by the City to discover a breach by Owner or Association or to exercise a right of enforcement as to such breach shall not impair or waive its rights of enforcement against Owner or Association.
22. Acts Beyond Owner and Association's Control. The City shall not exercise its respective rights of enforcement against Owner and Association for injury or alteration to the Protected Land resulting from causes beyond the reasonable control of Owner and Association including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Owner or Association under emergency conditions to prevent, abate, or mitigate significant injury or alteration to the Protected Land resulting from such causes.
23. Extinguishment. If, in the judgment of the City, subsequent unexpected changes in the conditions surrounding the Protected Land make it impossible to preserve and protect the Conservation Values of the Protected Land, this Amended and Restated Open Space Easement can be extinguished, either in full or in part, by proceedings in a court having jurisdiction. The City agrees that it will not

commence proceedings in such court to extinguish this Amended and Restated Open Space Easement without providing notice of the City's intent to the Owner and the Association under Section 25 (Notices) at least 120 days in advance thereof.

24. Assignment of Easement. The City may transfer its rights and obligations in this Amended and Restated Open Space Easement only to a qualified conservation organization, as provided in Section 170 (h) of the Internal Revenue Code, which may hold Open Space Easements, as provided in Minnesota Statutes Sect. 84C.01(2) (1992). As a condition of such transfer, the City shall require the continued enforcement of this Amended and Restated Open Space Easement unless the Amended and Restated Open Space Easement has been extinguished.
25. Notices. Any notice or other communication that either party wishes to or must give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, to the following addresses or such other address as any party shall designate by written notice to the others:

OWNER:

Robert Engstrom Companies
4801 West 81st Street Suite 101
Minneapolis, MN-55437

CITY:

City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042
ATTN: City Administrator

ASSOCIATION:

The Fields of St. Croix Community Association
PO Box 56
Lake Elmo, MN 55042

26. Governing Law and Construction. This Amended and Restated Open Space Easement shall be governed by the laws of the Minnesota. Nothing contained in this Amended and Restated Open Space Easement shall be construed to allow any use or development of the Protected Land in a manner which is not in compliance with the City's Development Regulations or to allow the use or development of the Protected Land without obtaining all permits required by the City's Development Regulations. Where inconsistencies occur between the provisions of state law, city regulations, or the terms of this Amended and Restated Open Space Easement, the most restrictive regulation shall apply.
27. Entire Agreement. This Amended and Restated Open Space Easement sets forth the entire agreement of the parties and supersedes all prior discussions.

28. Amendment. The parties may amend this Amended and Restated Open Space Easement provided that such amendment shall not impair or threaten the Conservation Values of the Protected Land and shall not affect the perpetual duration of this Amended and Restated Open Space Easement. Any purported amendment to this Agreement shall be in writing and shall be executed by all of the Parties hereto.
29. Binding Effect. The covenants, terms, conditions, and restrictions of this Amended and Restated Open Space Easement shall bind and inure to the benefit of the parties, their personal representatives, heirs, successors, assigns, and all others who exercise any right by or through them and shall run in perpetuity with the Protected Land. Notwithstanding anything to the contrary contained herein, the rights and obligations of the Owner and Association shall relate solely to the property which is owned by the Owner and Association. The Association shall have no obligations with regard to Owner's property and the Owner shall have no obligation with regard to Association's property.

[Signature pages follow]

1. The first part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles.

ASSOCIATION:

The Fields of St. Croix Community Association, Minnesota non Profit Corporation

By:

John W. Hodler

Its:

John W Hodler
President

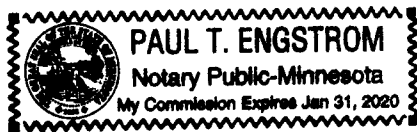
STATE OF MINNESOTA)

)ss.

COUNTY OF Hennepin)

On this 21ST day of JULY, 2015, before me a, notary public within and for said county, personally appeared JOHN HODLER, to me known to be the PRESIDENT of the above described non-profit corporation, and he executed the foregoing instrument and acknowledged that he executed the same by authority of and on behalf of The Fields of St. Croix Community Association.

Notary Public



Drafted by:
Netzell Legal Services, PLLC
7900 International Dr.
Suite 300
Bloomington, MN 55425

City Of Lake Elmo, A Minnesota statutory city

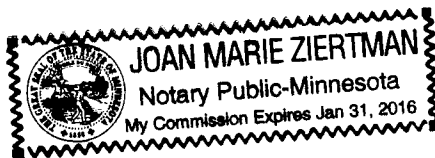
By:

Its:

[illegible]

On this 16th day of September, 2015, before me a, notary public within and for said county, personally appeared Mike Pearson, to me known to be the Mayor of the above described Minnesota statutory city, and he executed the foregoing instrument and acknowledged that he executed the same by authority of and on behalf of the City of Lake Elmo.

Notary Public

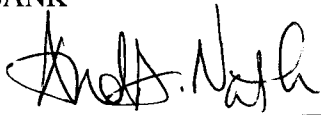


**CONSENT TO AMENDED AND RESTATED OPEN SPACE EASEMENT
THE FIELDS OF ST. CROIX 2ND ADDITION**

PREMIER BANK, a Minnesota corporation, as mortgagee under that certain (i) \$2,100,000.00 Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents from Robert Engstrom Companies, a Minnesota corporation, as mortgagor, to the undersigned, as mortgagee, dated June 30, 2014 and recorded in the Office of the County Recorder, Washington County, Minnesota on July 11, 2014 as Document No. 3993489; (ii) UCC-1 Financing Statement naming Robert Engstrom Companies, a Minnesota corporation, as debtor, and the undersigned, as secured party, recorded in the Office of the County Recorder, Washington County, Minnesota on July 11, 2014 as Document No. 3993490, and (iii) \$4,569,000.00 Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents from Robert Engstrom Companies, a Minnesota corporation, as mortgagor, to the undersigned, as mortgagee, dated May 5, 2015 and recorded in the Office of the County Recorder, Washington County, Minnesota on May 6, 2015 as Document No. 4024575 and recorded in the Office of the Registrar of Titles, Washington County, Minnesota on May 6, 2015 as Document No. 1233835, hereby consents to the recording of the attached Amended and Restated Open Space Easement (the "Amended and Restated Open Space Easement"), and agrees that in the event of the foreclosure of any of said Mortgages, or other sale of the real estate covered by and pursuant to any of the above described Mortgages under judicial or non-judicial proceedings, the same shall be sold subject to this Amended and Restated Open Space Easement, and to all terms, provisions, conditions, covenants and restrictions contained therein.

IN WITNESS WHEREOF, the undersigned has executed this Consent on this 1 day of OCTOBER, 2015.

PREMIER BANK

By: 

Andrew D. Nath

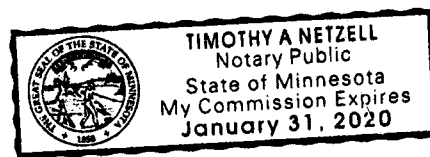
Its: Executive Vice President

STATE OF MINNESOTA)

COUNTY OF Ramsay) ss.

The foregoing instrument was acknowledged before me this 1 day of OCTOBER, 2015 by Andrew D. Nath, the Executive Vice President of Premier Bank, a Minnesota corporation, on behalf of the corporation.


Notary Public



NOW THEREFORE, IT IS HEREBY ORDERED:

1. The Court declares that the DNR's current and planned permitting of high capacity groundwater appropriations and management of White Bear Lake and the Prairie du Chien-Jordan Aquifer violate:

A. MERA, by impairing both White Bear Lake and the Prairie du Chien Aquifer.

B. The Public Trust Doctrine, by:

- 1) Causing a continuing decline in the levels of both the Prairie du Chien Jordan Aquifer and of White Bear Lake that diminishes the size of the lake and its lakebed, and adversely impacts public uses of the lake; and
- 2) Failing to take remedial measures within its authority to protect White Bear Lake and the Prairie du Chien Aquifer, when it had knowledge that its actions in issuing and failing to manage high capacity groundwater pumping permits were adversely affecting the lake and aquifer.

2. The Court declares that by virtue of its violating the following statutes and rules, the DNR has violated MERA:

A. M.S. § 103G.211 (the draining of the lake resulting from the excessive pumping of the aquifer);

B) M.S. § 103G. 287, subd. 5 (issuance of permits for pumping without a determination that the amount of use is sustainable, particularly for future generations);

C) M.S. § 103G.287 and .285 (failing to set collective annual withdrawal limits from the lake; failing to require permittees to submit contingency plans for alternate water sources; failing to set a meaningful trigger for implementation of

action before the protected elevation is reached); and

D) M. Rule 6115.0670 (approval of groundwater appropriations without sufficient data to determine the effects of the appropriation allowed).

3. The DNR is prohibited from issuing appropriation permits for new groundwater wells, or increasing appropriation amounts in existing groundwater permits, within a 5-mile radius of White Bear Lake until it has **fully** complied with the requirements of the above statutes. To that end, it shall:

A) Review *all* existing groundwater appropriation permits within a 5-mile radius of White Bear Lake, analyzing them both individually, and cumulatively, to ensure compliance with the sustainability standard of M.S. §103G.287, subd. 5. The review will be completed within one year of the date of this order. The specific results of the analysis will be published in a public newspaper, in a form understandable to the general public.

B) In the event that any of the above permits do not comply with the sustainability standard set by statute, they will be reopened and down-sized within 6 months of failure to comply with the sustainability standard of M.S. § 103G.287, subd. 5.

C) Analyze the cumulative impact of these permits within the 5-mile radius of White Bear Lake to determine whether pumping at the maximum rates allowed by the permits is sustainable. The analysis will be completed within one year of the date of this order. The specific results will be published in a public newspaper, in a form understandable to the public.

4. For groundwater permits within a 5-mile radius of White Bear Lake, the DNR shall comply with all the applicable provisions of M.S. § 103G.285, including:

A) Setting a collective annual withdrawal limit for White Bear Lake;

B) Setting a trigger elevation of 923.5 feet for implementation of the protected elevation;

C) Preparing, enacting and enforcing a residential irrigation ban when the level of White Bear Lake is below 923.5 feet, to continue until the lake has reached an elevation of 924 feet. The preparation and enactment of this process will be completed within 6 months of this order.

D) Requiring that all existing permits include an enforceable plan to phase down *per capita* residential water use to 75 gallons per day and total *per capita* water use to 90 gallons per day. The enactment of this requirement will be completed no later than 1 year from the date of this order.

E) *Immediately* amending *all* permits within the five mile radius of White Bear Lake to require that within one year of the date of this order, permittees submit a contingency plan in their water supply plans for conversion to total or partial supply from surface water sources. This contingency plan will include a schedule for funding design, construction and conversion to surface water supply. The Court notes that while the DNR has previously ignored the mandate of this statute, submission of these water supply conversion plans is required for the issuance of permits. Whether any conversion would occur shall be determined by the DNR and the affected communities.

F) Requiring that all groundwater permittees report annually to the DNR on collaborative efforts with other northeast metro communities to develop plans as described in (D), above.

5. The DNR shall issue no groundwater appropriation permits unless it has sufficient hydrologic data to understand the impact, whether cumulative or otherwise, of those groundwater appropriations on White Bear Lake and the Prairie du Chien-Jordan Aquifer.

6. The DNR shall work with the Metropolitan Council to evaluate current conservation goals and update them as needed.

7. The DNR shall require that water supply plans include measurable conservation goals and shall evaluate compliance with water conservation requirements on all permits

issued within the 5 mile radius of the lake. Should the individual community be out of compliance with those requirements, the DNR shall take appropriate action in downsizing that community's permit.

6. For each day that the DNR is out of compliance with this Order, it will be subject to a fine of \$1000 per day.

7. Costs are awarded Plaintiff and Plaintiff/Intervenor against Defendant DNR.

8. The Court retains jurisdiction over this action to monitor the DNR's compliance with the conditions imposed by this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

30 August 2017

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Margaret M. Marrinan', written over a horizontal line.

Margaret M. Marrinan

Judge of District Court

Memorandum

The last 12 months have been the wettest on record in Minnesota, a record that dates back to 1837. From August, 2016 to July, 2017, 40.72 inches of rain fell in the Twin Cities, well above the 30-year average for annual MSP rainfall of 31 inches (which is 20% wetter than the 1941-1970 rainfall average of 26 inches).⁵⁶⁸ The span of time between the start of this trial and the date of this Order runs from March 6, 2017 to August 30, 2017. In that period of time, 24.02 inches of rain fell in the Twin Cities, as

⁵⁶⁸ Paul Douglas, Minneapolis Tribune, August 16, 2017.

compared to the annual average rainfall of 19.33 inches.⁵⁶⁹ In January, 2017, the level of White Bear Lake was approximately 923 feet; in May, 2017, 923.8 feet; on August 24, 2017, 923.17 feet.⁵⁷⁰

None of this information appears in the body of the Court's Order because most of it occurred after the time of trial. It is included in this Memorandum simply to alert the reader that 1) the Court recognizes the large amounts of rain have fallen in the last several months; 2) the fact that 24 inches of rain has fallen in a 6 month period does not translate to an increase to the lake of that amount—or anything near it; and that 3) the findings of fact remain valid: that in the long term (years, decades) White Bear Lake levels are controlled mainly by groundwater fluctuations, and in the short term (monthly, seasonally) by precipitation and runoff.

30 August 2017

MMM ³

⁵⁶⁹ Weather Underground, August 29, 2017.

⁵⁷⁰ Minn. DNR website, August 29, 2017.

