

Agenda

Joint Meeting of The Park Board & City Council

Wednesday, November 14, 2018

5:30 p.m.

Minnetonka Community Center – Dining Room

Parks & Recreation **Board Vision**

A city with outstanding parks and recreational opportunities within a valued natural environment.

Parks & Recreation Board Mission

The mission of the Minnetonka Parks & Recreation Board is to proactively advise the City Council, in ways that will:

- » **Protect & enhance** Minnetonka's natural environment
- » **Promote quality** recreation opportunities and facilities
- » **Provide a forum for** citizens interested in our parks, trails, athletic fields and open space

1. Roll Call

Park Board

- | | |
|---|--|
| <input type="checkbox"/> James Durbin | <input type="checkbox"/> Chris Gabler |
| <input type="checkbox"/> Chair Nelson Evenrud | <input type="checkbox"/> Madeline Seveland |
| <input type="checkbox"/> Cynthia Kist | <input type="checkbox"/> Chris Walick |
| <input type="checkbox"/> Peggy Kvam | |

City Council

- | | |
|---|---|
| <input type="checkbox"/> Mayor Brad Wiersum | |
| <input type="checkbox"/> Patty Acomb | <input type="checkbox"/> Bob Ellingson |
| <input type="checkbox"/> Tim Bergstedt | <input type="checkbox"/> Mike Happe |
| <input type="checkbox"/> Deb Calvert | <input type="checkbox"/> Rebecca Schack |

2. Business Items

A) Report from the Chair

B) Cullen Nature Preserve

C) Ridgedale Park - Community Outreach Results

3. Information Items

4. Adjournment



Joint Meeting of the Minnetonka Park Board and City Council
Item 2A
Meeting of November 14, 2018

Subject:	Progress report from the Chair
Park Board Related Goal:	Enhance Long-Term Park Board Development
Park Board Related Objective:	Enhance council relations – serve as a voice to the council
Brief Description:	The Chair will provide a summary of 2018 work completed to date

Background

In January, the park board appointed Nelson Evenrud as Chair and Cindy Kist as Vice-Chair for terms running through January 31, 2019. Student member, Jack Acomb, resigned his position on the board effective August 31.

Summary

As of November, the park board has met a total of seven times in 2018. In addition, the board conducted a tour of parks and facilities in May. The following is a summary of significant park board accomplishments to date in 2018:

- ✓ Adopted a Strategic Plan in January that includes a mission, vision, four primary goals, and related objectives.
- ✓ Reviewed, discussed and recommended park and trail projects for the 2019 – 2023 Capital Improvement Program.
- ✓ Reviewed the 2018 Shady Oak Beach operations report.
- ✓ Mountain bike trail project:
 - Reviewed the Mountain Bike Study and held two public meetings to gather citizen input.
 - Held a public hearing and recommended the construction of mountain bike trails in Lone Lake Park to the city council.
- ✓ Reviewed the 2017 Farmers Market operations report and staff's recommendations for 2018.
- ✓ Received reports and presentations regarding the Burwell House and Cullen Nature Preserve.
- ✓ Reviewed the Natural Resources Division's 2018 Education and Outreach Plan.
- ✓ Approved 2018 slip fees for Gray's Bay Marina.

Chair Evenrud will provide a brief overview of these accomplishments at the November 14 joint meeting with the city council.

Recommended Action: Informational only.

**Joint Meeting of the Minnetonka Park Board and City Council
Item 2B
Meeting of November 14, 2018**

Subject:	Cullen Nature Preserve
Park Board related goal:	To protect natural resources and open space
Park Board related objective:	Review options to enhance natural resources & open space
Brief Description:	Discuss the Cullen Nature Preserve

Background

In 2001, Minnetonka voters approved a \$15 million referendum to fund parks renewal and open space preservation. A resident task force was formed to establish open space criteria and identify properties for potential preservation. The open space criteria is included in Council Policy 11.11, *Open Space Preservation Program and the Management of Natural Resources*, attached for your review.

The Ann Cullen Smith property located at 2510 Oakland Road contains all four of the Open Space Preservation criteria; 1) high ecological value, with oak savannas, wetlands and diversity of habitat, 2) the land provides a buffer and 3) is visible from I-494 and Oakland Road and 4) is a large parcel (30 acres), and provides linkage to Meadow Park.

On February 23, 2004, the city council approved a purchase agreement and a conservation agreement to acquire two of the identified parcels totaling 30 acres, owned by Ann Cullen Smith. The purchase agreement negotiated an acquisition price of \$2.6 million (\$100,000 earnest money was applied as partial prepayment) to be paid to Ms. Smith's estate or heirs upon her death. Sadly, at the age of 106 Ms. Smith passed away on January 25, 2015. The city acquired the land in the spring of 2015.

The agreement with Ms. Smith and her representatives included establishing a conservation easement over the property in perpetuity held by the Minnesota Land Trust. The easement over the parcel is prescriptive as it relates to the conservation purpose, land use restrictions and reserved rights.

In the spring of 2016, the existing home at 2510 Oakland Road was planned to be deconstructed by the city. In conversations with the MN Land Trust and relatives of Ms. Smith, the services of Better Futures Minnesota was retained with the goal to reclaim, recycle or reuse as much of the home as possible. The diversion rate avoiding landfilling of materials was astonishingly over 92% and over 82% of the home materials were recycled.

Totals:	Weight (Tons)	Percent of Total	CO2 Impact (MTCO2e)	Embodied Energy Conserved (MMBTU)
Total Reclaimed Material	8.88	3.00%	-36.77	-103.25
Total Recycled Material	242.62	82.08%	-70.74	-429.53
Total Alternative Daily Cover	20.68	7.00%	57.70	0.00
Total Diverted Material	272.18	92.08%	-49.82	-532.78
Total Direct Landfilled Material	23.41	7.92%	65.31	0.00
Net Totals	295.59	100.00%	15.50	-532.78

In March of 2017, John Anderson of Conservation Minnesota contacted the city to inquire how he and a group of dedicated volunteers might work with the city to determine what the future of the property might be, as well as to assist in restoration of the property.

In 2017, city staff met with Mr. Anderson and several interested residents to discuss the work that staff had undertaken. Staff also discussed what they hoped to accomplish in 2018. This included surveying the property boundaries, communicating with adjacent neighbors, conducting a tree inventory, assessing and possibly stabilizing a ravine and continued invasive species management with the volunteers.

The following outlines the type of work and details that staff identified:

Type of work	Status of work
Survey the north property boundary	Complete, the north boundary has been surveyed
Communicating with adjacent neighbors	Initial communication has occurred; staff needs to follow up with those neighbors encroaching onto the Cullen property.
Conducting an inventory of the natural plant communities and trees	Yet to be scheduled.
Assessing and possibly stabilizing a ravine	This is a future item; the ravine has existed for a number of years and has not changed significantly in the last two years.
Continued invasive species management with the volunteers	This is on-going work. Buckthorn and garlic mustard control has occurred with a committed group of volunteers and this work is expected to continue.

In September 2018, the Conservation Minnesota group presented information to the Park Board for their consideration. They suggested the incorporation of wood chip trails, and possibly a boardwalk to the island. They wanted to continue to restore the property to provide birding habitat, this honors Ms. Cullen Smith, as she was an active birder. They suggested ideas relating to nature interpretation like utilizing mobile devices, signage or an interpretive shelter. They also requested that the city formally adopt the Cullen Nature Preserve as the name for the parcel.

Next Steps

Staff plans to continue working to complete a site inventory & analysis including: a survey of the property boundaries, a tree inventory, identify native plant communities, soils & topography, and other work with the intent to better inform future work. Future work is anticipated to include, but is not limited to, potentially stabilizing a ravine and continued invasive species management with the volunteer group.

The Park Board and City Council will need to review and approve any changes, improvements, associated funding, and any additional restrictions that may be placed on the parcel. Staff recommends development of a public process to determine future site function and use, conceptual design elements, and possible regulations for this parcel. This process would include community outreach with interested stakeholders and adjacent neighbors, alignment with the POST Plan, conservation easement and working with existing volunteers.

Discussion Points

Does the Park Board and City Council agree that staff should prioritize work to complete a site inventory & analysis and continued invasive species management?

Does the Park Board and City Council agree that staff should develop a public process for this parcel?

Summary

Ann Cullen-Smith moved to her property in 1937 and raised her family there. As the largest single unspoiled parcel of land in Minnetonka, the city identified it as one of the most important to purchase. When she passed away at age 106 in January 2015, Ann's generous land donation became the crowning jewel in the City of Minnetonka's Open Spaces Program. By establishing an inclusive and thoughtful process on determining amenities, access and use of the land this parcel will benefit the community for years to come.

Recommended City Council and Park Board Action

None. Discuss the items outlined above and provide feedback to city staff.

Attachments

1. Policy 11.11, *Open Space Preservation Program and the Management of Natural Resources*
2. City Council report pertaining to the Cullen Smith property dated February 23, 2004
3. September 5, 2018 Park Board minutes relating to the Cullen Nature Preserve
4. Recorded Conservation Easement
5. Final Environmental Impact Analysis for 2510 Oakland Rd

Policy Number 11.11
Open Space Preservation Program
and the Management of Natural Resources

Purpose of Policy: This policy establishes an open space preservation program in Minnetonka in order to: 1) retain open space; 2) improve the quality of open space; and 3) foster and encourage voluntary preservation of open space by the community.

Introduction

Open space is land that is un-built. It is characterized by natural areas that are generally areas containing vegetation distributed in naturally occurring patterns. It is valued by the community for the sense and feel of nature that it provides.

Statement of Policy

- Applicability – This policy requires action by both the city of Minnetonka and by Minnetonka residents.
- General Policy Goals
 - Preserve open space where appropriate. Doing so is appropriate where the city believes specified preservation criteria are met and where an appropriate method to protect and maintain open space has been identified.
 - Create opportunities for the Minnetonka community to voluntarily participate in open space preservation. The city will foster and encourage this by making information available to residents about methods to protect open space, facilitating the preservation of open space by residents, and informing residents about management techniques that can preserve the quality of open space.
 - Develop and implement resource management plans to maintain or enhance the quality of Minnetonka's open space.
- Preservation Criteria – The following criteria will be considered when the city is contemplating preserving open space. These criteria are not ranked; a decision to preserve open space can only be arrived at by balancing all of the relevant criteria. In general, however, properties that meet more than one criterion should be more strongly considered for preservation than properties meeting only one criterion.

Properties that are already protected from development will not be considered for preservation unless there is reason to believe that their protected status may disappear. Similarly, properties which are already developed generally should not be considered, although some parcels that are largely undeveloped and contain structures may be taken into account.

- *Sensitive environmental features.* Properties that contain or are near sensitive environmental features should be strongly considered for protection. Sensitive environmental features particularly include wetlands but may also include unique stands of trees, water bodies such as creeks, significant geological features, high quality natural resources, and unusual habitats. In deciding about preservation, the City should consider more than just whether development of the property is likely to have a negative impact on the sensitive environmental feature.

Even where no negative impact is likely, it may be appropriate to preserve the property because of the value that the community assigns to the feature and the community's belief that development near this feature would be inappropriate.

- *Provision of a buffer.* Properties that buffer a neighborhood from the noise or light of competing land uses should be considered for preservation. These competing land uses include, but are not limited to, commercial/industrial development and roadway systems. Properties that buffer the trail system from development may also be important because they maintain the aesthetics of the trail system.
 - *Visibility.* Properties that are highly visible should be considered for preservation, where the property in question meets one or more of the other preservation criteria such as the presence of sensitive environmental features.
 - *Size and linkage to other areas.* Priority should be given to the preservation of larger parcels. Properties which provide a link to other open areas should also be considered for preservation. Where the property in question is adjacent to, and would function as part of, existing open space or would create a corridor linking open spaces, then preservation of smaller rather than larger parcels may be appropriate.
- Protection Methods
 - *General Protection Methods* – Preservation of open space generally requires ownership since only the property owner can put in place the legal tools that will protect his/her land from development. The following approaches provide the most permanent protection of open space.
 - Conservation easements – A conservation easement restricts development of land while permitting the landowner to retain ownership of the property. It is filed in the public records of the property and binds current and future property owners. The landowner may sell or donate the easement to a conservation organization but does not have to. Where the easement is donated to a qualified charitable organization, a tax benefit may occur to the property owner.

- Donation - The property owner may donate land to a conservation organization that agrees to preserve it. The property owner may receive a tax benefit for doing so.

Where permanent protection is not sought, a number of other options are available:

- Deed restrictions – Deed restrictions establish specific limits on the use of a property. They are put in place by the property owner and do not last for more than 30 years unless they are renewed.
 - Mutual covenants – Mutual covenants are deed restrictions that are agreed to by two or more property owners and apply to two or more properties. They also do not endure for more than 30 years unless they are renewed.
 - Stewardship – Land management practices may be voluntarily undertaken by a landowner to preserve open space. In some instances, a landowner may “register” his/her property with a conservation organization, thereby entering into a non-binding agreement to follow good land management practices. A landowner may also enter into a management agreement with a conservation organization, specifying how land will be managed. Or the property owner may follow “best management practices” at his/her own initiative.
- *City Protection Methods* – The city will pursue methods that allow permanent protection of open space. In some instances, permanent protection may require the city to become the property owner. This is likely to occur through property purchase or donation. In other cases, ownership by the city may not be appropriate, and the city should encourage open space preservation through other tools such as conservation easements. Decisions about purchasing property, accepting donations of land, or encouraging conservation easements, should be guided by the following:
- Purchase – Purchase by the city is appropriate when it is clear that the parcel meets the preservation criteria, particularly the criteria for sensitive environmental features. Priority should be given to parcels or groups of contiguous parcels at least three acres in size. Because of the expense of purchasing parcels of land and maintaining them, purchase by the city should be considered only after other protection methods have been rejected and after the quality of the natural resources has been analyzed.
 - Donations – Sometimes the city may be asked to accept gifts of land or to take tax forfeited parcels and to preserve them for open space. Accepting such donations is appropriate where preservation of the

land as open space meets the preservation criteria, where the parcel is at least one-half acre in size, where maintaining the land will not be overly burdensome, where the quality of the natural resources has been analyzed, and where, after reasonable investigation, the city has no reason to believe that any hazardous substances or other items are present that might cause the city to have any liability.

- Conservation easements – The decision about whether a portion of the land should be preserved by a conservation easement should be guided by the preservation criteria. Conservation easements usually will be obtained by the city as part of negotiation over a development proposal. While the city is not responsible for maintaining property protected by a conservation easement, it may enforce the conservation easement's terms. Accordingly, in deciding whether a conservation easement is appropriate, issues related to enforcement and notice should also be considered.

The city should be proactive in encouraging developers to protect open space, using conservation development and tools such as conservation easements and deeding. It should pursue new development approaches, such as cluster housing and consider whether transfer of development rights may be appropriate. Where open space results from development negotiations, it should generally be protected with a conservation easement.

- *Community Protection Methods* – In some instances, preservation of open space can best be accomplished by the Minnetonka community and not by the city. That is the case in instances where the preservation criteria are not met or a protection method is not appropriate for the city.
 - Neighborhood acquisition – While the city may decline to purchase a parcel of land, a neighborhood, or an individual, may feel strongly that preservation is appropriate and decide to acquire the property. In purchasing property collectively, a neighborhood needs to resolve several issues: what amount should each property owner pay, how will responsibility for the maintenance of the property be carried out, what happens when neighbors/owners move, and how will the neighborhood legally ensure that the property is maintained as open space?
 - Easements – In some instances, individuals may want to place conservation easements upon their land, or upon a portion of their land, in order to protect it from development. These easements are private, which means that the city will not get involved in any issues relating to them.
 - Participation in land trust programs – Property owners may want to donate their property or a conservation easement to a conservation

program. A number of these programs exist; however, because of their requirements for participation (particularly with regards to the size of parcels which will be accepted) they may be of limited use to Minnetonka residents.

The city will facilitate the voluntary preservation of qualifying open space by the community. In order to do this, the city will assist the community by specifying what protection methods are available, what the issues are surrounding the use of any of these options, facilitating agreements when practical, and providing sample legal documents where appropriate. The city will also set up a special assessment program, similar to that for fire sprinkler retrofits, to assist community members to preserve open space.

- Protected Open Space – The city should recognize open space that is permanently protected from development by designating it as such on the Comprehensive Guide Plan. Doing so will increase awareness among residents as to where development is likely to occur in the community. When coupled with tax incentives, such a designation will also create an incentive for residents to participate in open space preservation.

Guiding land as Protected Open Space would mean that development could not occur under that designation. Natural resource management could take place, however, as could recreation and trails.

The following criteria will be used for determining whether land is “Protected Open Space”:

1. The property owner must request the designation of “Protected Open Space”;
2. The property must be at least one-half acre in size; and
3. Satisfactory evidence must be submitted to the city attorney that the property is permanently protected from development either by a conservation easement granted to the city or by donation to a qualified conservation organization or the city.

The city assessor should value “Protected Open Space” at the level authorized by State law.

- Natural Resources Stewardship Program – The natural resources stewardship program applies to the five major parks (Big Willow, Civic Center, Lone Lake, Meadow, and Purgatory) and three creek corridors (Minnehaha, Purgatory, and Nine Mile). When remedial efforts are nearing completion and maintenance programs are sustaining these areas, then the program should move into other areas of the park system and open space.

When it becomes appropriate to expand the stewardship program beyond the major parks and creek corridors, based on funding availability, then the following priority list will apply:

1. Public open space within existing parks;
2. Public space abutting trails;
3. Public space adjacent to parks;
4. Public space which does not require extensive remedial action.

As part of the city's protection of open space, parcels should be analyzed for the quality of the resources they contain, with an eye towards the burden that expanding the stewardship program to them might entail. Smaller parcels with deteriorated resources may be more likely candidates for neighborhood acquisition than for city acquisition.

The city should consider low-cost maintenance methods that will control invasive species in areas where the stewardship program does not apply. Mowing, for example, may be an inexpensive maintenance method for certain areas of open space.

- Funding Mechanisms – A variety of sources should be used to begin to build a fund which would be available for open space preservation. These include budget surpluses; the general tax levy; individual, corporate, and foundation gifts; and government grants.

Using these options will not provide a quick source of funds or a large source of funds. If the city decides that the open space preservation program requires a large amount of funds in the near future, then only two real funding sources are apparent: a bond referendum or the Community Investment Fund.

A bond referendum has certain specific requirements. First, its success may depend upon the ability to identify specific parcels located throughout the city for purchase. Second, it may be appropriate to purchase larger parcels not just for open space but also for active park land, so participation by the park board may be necessary. Finally, it should not be undertaken without a community survey, and perhaps multiple surveys, to assess the community reaction to a bond referendum, likelihood of passage, and the identification of specific issues. It should not be attempted without a large commitment of time and effort.

Using the Community Investment Fund also requires careful planning. If use of the Community Investment Fund is desired, the city council should modify the Community Investment Fund policy to specifically include open space preservation as a permitted use. The Community Investment Fund could be used to purchase

several large parcels of land or as a source of annual funds for the open space preservation program.

Adopted by Resolution No. 99-166
Council Meeting of September 13, 1999

Amended by Resolution No. 2003-077
Council Meeting of August 25, 2003

AGENDA

MINNETONKA CITY COUNCIL

REGULAR MEETING, MONDAY, FEBRUARY 23, 2004

**6:30 P.M.
COUNCIL CHAMBERS**

1. CALL TO ORDER.
2. PLEDGE OF ALLEGIANCE.
3. ROLL CALL: Ellingson-Wiersum-Callison-Schneider-Thomas-Wagner-Anderson
4. APPROVAL OF AGENDA.
5. APPROVAL OF MINUTES: February 9, 2004 regular council meeting.
6. SPECIAL MATTERS: Recognition of Planning Commission Members Terry Egge and John Knight.
7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.
8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA.
9. BIDS AND PURCHASES:
 - A. Consideration of bid from Precision Fire Apparatus of Camdenton, Missouri, for one new fire pumper truck.

RECOMMENDATION: Award bid to Precision Fire Apparatus in the amount of \$232,768 for the construction and delivery of one new 1250 GPM fire pumper truck.

- B. Items related to the property at 2510 Oakland Road:
 - 1) Authorization of purchase agreement with Ann Cullen Smith to purchase the property at 2510 Oakland Road.
 - 2) Authorization of an agreement with Minnesota Land Trust regarding a conservation easement.

RECOMMENDATION:

- 1) Approve the purchase agreement subject to approval of the final form by the city attorney (4 VOTES).
- 2) Approve the conservation easement agreement subject to approval of the final form by the city attorney (4 VOTES).

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Replays of this meeting can be seen during the following days and times:
Mondays, 6:30 p.m., Wednesdays, 6:30 p.m.,
Fridays, 12:00 p.m., Saturdays, 12:00 p.m.
For more information, please call 952.939.8200 or visit eminnetonka.com

CONSENT AGENDA

All matters listed under the Consent Agenda are considered to be routine by the city council and will be enacted by one motion. There will be an explanation but no separate discussion on these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately. Concerning motions before the council, the council has provided that all motions of the council shall include staff and commission recommendations as set out in tabular form unless specifically stated otherwise.

10. Items requiring a majority vote:

- A. Claims for council authorization – February 23, 2004.
- B. Resolution approving the agreement for joint and cooperative use of fire personnel and equipment.
- C. Resolution approving the adoption of the Hennepin County Hazard Mitigation Plan as a part of the Minnetonka Emergency Plan.
- D. Temporary sign for the City of Minnetonka to advertise the Eco-Fair at 14600 Minnetonka Boulevard.
- E. Two temporary banners for two separate ten-day periods for fall registration and for summer school for the Accell Academy at 4626 Linnea Lane for Jim Walters.
- F. Resolution amending appointment term for Bill Yaeger on the Bassett Creek Water Management Commission.

11. Items requiring Five Votes: None.

12. INTRODUCTION OF ORDINANCES:

An ordinance must be considered by the city council at two regular meetings before adoption. At the first meeting, the ordinance is introduced by the council. The city council may discuss and /or refer the ordinance to an advisory board for review and public comment. The ordinance will be placed on a second city council meeting agenda for adoption.

- A. Ordinance rezoning 10413, 10405, 10401, and 10402 34th Circle West (vacant lots at the end of 34th Circle West), from PURD (planned unit residential district) to PUD (planned unit development) and adoption of a master development plan for Curt Fretham.

RECOMMENDATION: Introduce the ordinance and refer it to the EDA and the planning commission (4 VOTES).

12. INTRODUCTION OF ORDINANCES – continued:

- B. Ordinances concerning the Cargill Property development at 2201 Crosby Road for Keith Waters & Associates, Inc.:
- 1) Ordinance rezoning from R-1, low density residential, to PUD, planned unit development, and adopting a master development plan, with final site and building plans, with a variance.
 - 2) Ordinance changing a wetland overlay district boundary for the Cargill Property development.

RECOMMENDATION: Introduce the ordinances and refer them to the EDA and the planning commission (4 VOTES).

- C. Ordinance amending the zoning text to allow fast-food restaurants and requirements for outdoor restaurant seating in the I-394 district.

RECOMMENDATION: Introduce the ordinance and refer it to the planning commission (4 VOTES).

13. PUBLIC HEARINGS:

- A. Public hearing to consider a resolution giving preliminary approval to the issuance of revenue refunding bonds for the Beacon Hill project, 5240-5283 Beacon Hill Road.

RECOMMENDATION: Hold the public hearing and adopt the resolution (4 VOTES).

- B. Public hearing to consider a resolution approving the projected use of Community Development Block Grant (CDBG) funds for the year 2004.

RECOMMENDATION: Hold the public hearing and adopt the resolution (4 VOTES).

- C. Proposed amendments to the city charter:
- 1) Incompatible offices
 - 2) Emergency purchases
 - 3) Official means of publication

RECOMMENDATION: Hold the continued public hearing, take comments, close the hearing, and adopt the ordinance (7 VOTES).

14. OTHER BUSINESS:

- A. Presentation of the 2004 Assessment Report.

RECOMMENDATION: Receive the report (4 VOTES).

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT.

City Council Agenda Item #9B
Meeting of February 23, 2004

Brief Description: Items related to the property at 2510 Oakland Road:

- 1) Authorization of purchase agreement with Ann Cullen Smith to purchase the property at 2510 Oakland Road
- 2) Authorization of an agreement with the Minnesota Land Trust regarding a conservation easement

Recommended Action:

- 1) Approve the purchase agreement subject to approval of the final form by the city attorney
- 2) Approve the conservation easement agreement subject to approval of the final form by the city attorney

Background

In 2001, Minnetonka voters approved a \$15 million referendum to fund parks renewal and open space preservation. The open space preservation task force established criteria to determine properties appropriate for preservation, and the city council and park board established prioritization and preservation alternatives for each of those properties.

Two of the parcels identified for preservation are located at 2510 Oakland Road and owned by Ann Cullen Smith. Ms. Smith attended most of the open space task force meetings, and over the past several years has shown extreme interest in preserving her property. This is the only property classified as urgent in the open space inventory and is truly the crown jewel of land to be preserved by the city.

The property meets all of the preservation criteria established by council policy. It has high ecological value, with oak savannas, wetlands and diversity of habitat, is part of a larger wetland system, is large in size (30 acres), and provides linkage to Meadow Park, one of the city's largest parks. The land is visible from I-494 and Oakland Road.

Staff has negotiated a purchase agreement with Ms. Smith and her representatives. Additionally, Ms. Smith is granting a conservation easement to the Minnesota Land Trust (MLT) to preserve and protect this open space in perpetuity. An agreement between the city and the land trust is necessary as part of this transaction.

As part of the negotiation process, an independent appraisal of the property value was conducted. The sale price is approximately half of the appraised value.

Purchase Agreement Terms

The purchase agreement calls for the following:

- \$100,000 earnest money to be paid by the city to Ms. Smith in exchange for the exclusive right to purchase the land.
- A purchase price of \$2.6 million (includes earnest money) to be paid to Ms. Smith's estate or heirs within 60 days of her death.
- Naming the property "Cullen Nature Preserve" or a similar name that includes a reference to the Cullen family.
- Granting of a conservation easement to the Minnesota Land Trust.

Conservation Easement Terms

The conservation easement with the MLT (attached as Exhibit A to the purchase agreement) identifies conservation values, which justify protection of the property. The terms of the easement are specifically intended to provide a significant public benefit by:

- Preserving the open and natural character of the property for scenic enjoyment by the general public from I-494, Oakland Road and Stone Road.
- Protecting a relatively natural habitat for wildlife and plants.
- Providing an opportunity for the public to experience and enjoy the out-of-doors in a relatively undisturbed and natural setting.

Land use restrictions are outlined in the easement, which prohibit industrial and commercial activity, agricultural use and residential development. Paths and pedestrian trails for passive and recreational uses will be allowed. Bicycles and motorized recreational vehicles will be prohibited, however. The property can be used as a nature center, but no other active use. The easement allows vegetation management with reasonable conditions.

MLT Agreement

The agreement between the city and the MLT provides for the city's notification to the MLT upon the owner's death and outlines required conditions before the MLT accepts the easement. Ms. Smith has indicated she may decide to convey the conservation easement to the MLT in the near future. Taking this into consideration, staff is requesting that council approve this agreement and the purchase agreement subject to approval of their final form by the city attorney.

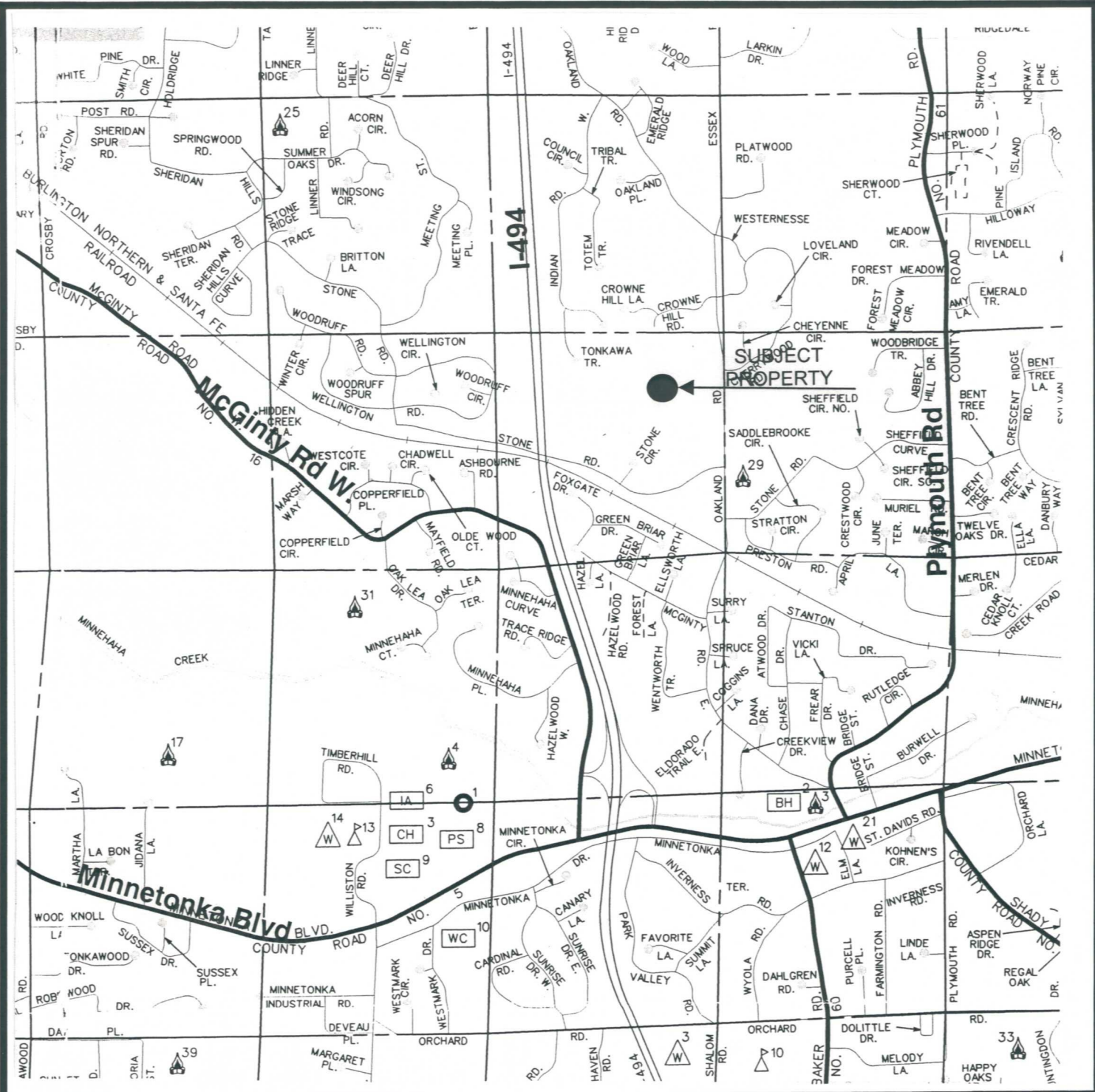
Recommendation

Based upon the recommended approvals, Ms. Smith will be invited to a council meeting this spring so she can be recognized for her willingness to sell the property to the city for a substantially reduced price compared to the appraised value and for allowing the city to share in her legacy of open space preservation.

The city council is requested to authorize the purchase agreement with Ann Cullen Smith to purchase the property at 2510 Oakland Road and authorize an agreement with the Minnesota Land Trust regarding a conservation easement, both subject to approval of the final form by the city attorney.

Submitted through:
John Gunyou, City Manager

Originated by:
Geraldyn R. Barone
Assistant City Manager/
Director of Administrative Services



AREA MAP

Parcel Group # 10

Location: 1011722310001
 1011722310002
 (2510, 2620 Oakland Road)

City of
minnetonka



This map is for illustrative purposes only.



LOCATION MAP

Parcel Group # 10

Location: 1011722310001
1011722310002
(2510, 2620 Oakland Road)



This map is for illustrative purposes only.



CONTOUR MAP

Parcel Group # 10

Location: 1011722310001
 1011722310002
 (2510, 2620 Oakland Road)

City of
minnetonka



This map is for illustrative purposes only.

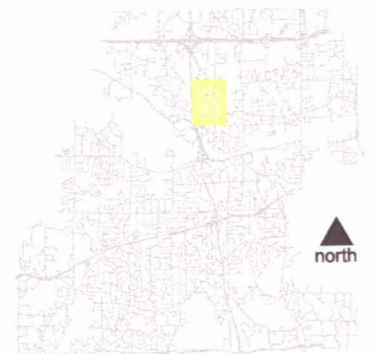


AERIAL PHOTOGRAPH

Parcel Group # 10

Location: 1011722310001
1011722310002
(2510, 2620 Oakland Road)

City of
minnetonka



This map is for illustrative purposes only.

PURCHASE AGREEMENT

This Purchase Agreement made _____, _____, by and between Ann Cullen Smith ("Seller"), and City Of Minnetonka, a Minnesota Municipal Corporation ("Buyer").

1. **Earnest Money.** In consideration of the mutual agreements contained in this Agreement and the sum of \$100,000.00 ("Earnest Money") paid by the Buyer to the Seller, the receipt of which is acknowledged, the Seller grants unto the Buyer the exclusive right to purchase fee simple title to a tract or parcel of land ("Subject Property") situated in the County of Hennepin, State of Minnesota, legally described as follows:

Parcel 1, consisting of two tracts of land described as follows:

TRACT A: That portion of the following described tract of land, namely:

Commencing at a point in the West line of the East One-half (E1/2) of the West One-half (W1/2) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), according to the United States Government survey thereof, which is 50.5 feet North of the Southwest corner of the Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4) of said Section Ten (10); thence East at right angles 1312.8 feet more or less to the East line of the East One-half (E1/2) of the West One-half (W1/2) of said Section Ten (10); thence South along said East line 798.85 feet; thence West 1309.15 feet, more or less, to a point in the west line of the East One-half (E1/2) of the West One-half (W1/2) of said Section Ten (10) distant 800 feet South of the point of beginning; thence North along said West line of the East one-half (E1/2) of the West One-half (W1/2) of said Section Ten (10) 800 feet to the point of beginning; (said tract being designated hereinafter for convenience as "Tract G-H"); lying West of the center line of the public highway as now laid out and traveled across "Tract G-H" prior to November 8, 1935, and formerly known as County Road No. 74; now vacated, subject to the public easement in said County Road No. 74. Oakland Road as now laid out and established by that certain NOTICE OF DEDICATION OF OAKLAND ROAD AS A PUBLIC STREET IN THE VILLAGE OF MINNETONKA filed in the office of the County Recorder in and for the County of Hennepin, State of Minnesota in Book 1045 Mc, page 64, as Document Number 3614108.

TRACT B: That part of the East One-half (E1/2) of the Southwest one-quarter (SW1/4) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), described as follows:

Beginning at a point in the West line of the East one-half (E1/2) of the Southwest one-quarter (SW1/4) of said Section Ten (10), distant 749.5 feet South of the Northwest corner of said tract; thence South along the West line of the East one-half (E1/2) of the Southwest Quarter (SW1/4) a distance of 250 feet; thence at a right angle East to the center line of County Road Number 74; now vacated; thence Northerly along the center of said vacated County Road 250 feet more or less to a point in a line drawn Easterly from the point of beginning, and at a right angle to the West line of the East one-half (E1/2) of the Southwest one-quarter (SW1/4) of said Section Ten (10); thence Westerly to the point of beginning, subject to Public Easement in said County Road Oakland Road as now laid out and established by that certain NOTICE OF DEDICATION OF OAKLAND ROAD AS A PUBLIC STREET IN THE VILLAGE OF MINNETONKA filed in the office of the County Recorder in and for the County of Hennepin, State of Minnesota in Book 1045 Mc, page 64, as Document Number 3614108; all according to the United States Government Survey thereof; also,

That part of the East one-half (E1/2) of the Southwest one-quarter (SW1/4) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), lying Easterly of the center line of County Road Number 74 now vacated and between the extension of the Northerly and the Southerly side lines of the tract of land hereinbefore described, subject to the public easement in County Road Number 74 Oakland Road as now laid out and established by that certain NOTICE OF DEDICATION OF OAKLAND ROAD AS A PUBLIC STREET IN THE VILLAGE OF MINNETONKA filed in the office of the County Recorder in and for the County of Hennepin, State of Minnesota in Book 1045 Mc, page 64, as Document Number 3614108.

Parcel 2, consisting of one tract of land described as follows:

All that part of the East one-half (E1/2) of the West one-half (W1/2) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), according to the United States Government survey thereof, lying Easterly of the center line of County Road Number 74 now vacated, and between the extension of the Northerly and the Southerly side lines of TRACT A, hereinafter described, subject to the public easement in Oakland Road as now laid out and established by that certain NOTICE OF DEDICATION OF OAKLAND ROAD AS A PUBLIC STREET IN THE VILLAGE OF MINNETONKA filed in the office of the County Recorder in and for the County of Hennepin, State of Minnesota in Book 1045 Mc, page 64, as Document Number 3614108.

2. **Purchase Price.** The purchase price for the subject property will be \$2,600,000, payable by check on the Closing Date. The Earnest Money will be applied as a partial pre-payment of the purchase price.

3. **Title Issues:**

a. **MARKETABILITY OF TITLE.** The Seller must, within 15 days of the date of this Purchase Agreement, deliver to the Buyer a registered property abstract, an abstract of title certified to date, or a commitment for title insurance. The Buyer will have 20 days for the examination thereof, and to deliver any written objections to title regarding Parcel 1 to the Seller. Seller will not encumber the Subject Property between the date of this Purchase Agreement and the Closing Date. After receiving the notice referenced in paragraph 4 below, the Buyer will again have 20 days to examine the status of title for Parcel 1 and to deliver any written objections to the Seller. Any objections must relate only to matters occurring after the date of the first examination of title by Buyer.

If title to Parcel 1 is found by the Buyer at either time to be unmarketable, and cannot be made marketable by the Seller within 120 days after notice of a defect, then, at the option of the Buyer, this Agreement will be null and void and the Earnest Money will be refunded to the Buyer. Alternatively, the Buyer may clear title to the extent required and charge the cost of clearing to the Seller.

b. **DEED DELIVERED AT CLOSING.** Seller agrees to give good and marketable title to Parcel 1 of the Subject Property in fee-simple, together with all improvements, hereditaments and appurtenances thereunto belonging and all of the right, title and interest of the Seller in and to any streets or alleys adjoining or abutting thereon, and to convey the same by warranty deed joined in by all individuals known collectively as Seller herein, and in form acceptable to counsel for Buyer. Seller agrees to give title to Parcel 2 by quit claim deed in a form acceptable to counsel for Buyer. Buyer will be responsible for paying the cost of recording the deed; Seller will pay the state deed tax.

c. **EXCEPTIONS TO MARKETABLE TITLE.** Seller will convey marketable title to the Parcel 1 of the Subject Property to the Buyer subject only to the following exceptions:

- 1) Building and Zoning laws, ordinances, State and federal regulations.
- 2) Reservation of minerals or mineral rights to the State of Minnesota.
- 3) Utility and drainage easements.
- 4) Conservation easement in favor of the Minnesota Land Trust or similar qualified organization, which will be granted by Seller, in substantially the same form as attached Exhibit A.

4. **Closing Date.** Seller's estate or heirs must give notice of Seller's death to the Buyer within 30 days after Seller dies. The closing of the sale of Subject Property will take place on or before 30 days after the Seller's estate or heirs gives notice to the Buyer of Seller's death, or at such earlier or later date as may be mutually agreed upon by the Seller and Buyer. The Buyer will not unreasonably deny a request from Seller for additional time to dispose of the personal property on the Subject Property.

5. **Other Terms of Sale.**

- a. The Seller agrees to free Parcel 1 of the Subject Property from all liens, leases, encumbrances and charges of any kind to the date of closing, except for those items noted in paragraph 3(c) above. Buyer will not take possession of the Subject Property subject to any leases.
- b. Property taxes will be pro-rated to the date of closing.
- c. All pending and levied special assessments will be the responsibility of the Seller.
- d. Buyer will be responsible for the appropriate abandonment of any wells on the site.
- e. Buyer will pay all costs that the Minnesota Land Trust or similar qualified organization requires in order to assume its obligations under the conservation easement.
- f. Buyer will pay all costs of recording the necessary documents.

6. **Broker's Fees.** The parties represent that they have not retained a real estate broker to represent them in the sale and purchase of the Subject Property. Each party agrees to indemnify the other for any and all claims for brokers commissions or finder's fees in connection with negotiations for the sale or purchase of the Subject Property arising out of any alleged agreement, commitment or negotiation by the indemnifying party.

7. **Possession and Insurance.** Seller will continue in possession of the Subject Property until the Closing Date, will maintain it in its present condition, and will not undertake, authorize, or allow any substantial change to the Subject Property without the Buyer's express written consent. Risk of loss from casualty or any liability incurred by or as a result of the use or contact with the Subject Property will be the Seller's until delivery of possession to the Buyer as herein provided.

8. **Entire Agreement; Amendments.** This Purchase Agreement constitutes the entire agreement between the parties and no other agreement prior to this Purchase Agreement or contemporaneous herewith will be effective except as expressly set forth or incorporated herein. Any purported amendment will not be effective unless it is set forth in writing and executed by both parties or their respective successors or assigns.

9. **Binding Effect; Assignment.** This Purchase Agreement is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns. All references to Seller in this Agreement that are relevant after Seller dies mean Seller's estate or her heirs. Neither Seller nor Buyer may assign its rights and interest hereunder without notice to, and approval by the other. All representations and warranties made in this agreement are intended to survive closing and will not be merged in the deed.

10. **Notice.** All written notices permitted or required by this Agreement to be given to the parties must identify this Agreement by date and description and will be binding and deemed sufficiently served upon the parties when sent by first class mail of the United States Postal Service, pre-paid, certified, return receipt requested to Seller and Buyer at the following addresses:

- a. If to Seller: William J. Cullen
858 Nine Mile Cove North
Hopkins, Minnesota 55343
- b. If to Buyer: City Manager
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345

Either party may change this location by giving written notice to the other party specifying the new location.

11. **Specific Performance.** This Purchase Agreement may be specifically enforced by either party.

12. **Special Provisions.**

a. If Seller fails to comply with any requirement in this Agreement, Buyer may, at its sole discretion, be released from its obligation to purchase upon written notice to Seller of such election, and all monies paid Seller must be refunded to Buyer. However, Buyer may, at its sole discretion, elect to waive any requirement not met by Seller and proceed with the purchase or otherwise enforce Buyer's rights to purchase.

b. Buyer agrees to name the Subject Property the Cullen Nature Preserve or a similar name that includes a reference to the Cullen family. This provision will survive the closing of the transaction and will be included as a covenant in the deed.

IN WITNESS WHEREOF, the parties have executed this agreement, the day and year first printed above.

ANN CULLEN SMITH

Ann Cullen Smith

CITY OF MINNETONKA

By: _____
Its Mayor

And: _____
Its City Manager

STATE OF MINNESOTA }
COUNTY OF HENNEPIN } SS

The foregoing instrument was acknowledged before me on January 28, 2004, by Ann Cullen Smith, a single person.

[Signature]
Notary Public



STATE OF MINNESOTA }
COUNTY OF HENNEPIN } SS

The foregoing instrument was acknowledged before me on _____, by Karen Anderson, Mayor, and John Gunyou, City Manager, on behalf of the City of Minnetonka.

Notary Public

This instrument drafted by:

Minnetonka City Attorney
14600 Minnetonka Boulevard
Minnetonka MN 55345
952-939-8200

Exhibit A

CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted by Ann Cullen Smith, single, fee owner, (the “Owner”) to the Minnesota Land Trust, a non-profit corporation organized and existing under the laws of the State of Minnesota (the “Trust”).

RECITALS:

- A. OWNER. The Owner is the current owner of approximately 30 acres of real property located in Hennepin 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 depicted on the “Property Map” in Exhibit B. Both exhibits are attached to this Easement and incorporated by this reference.

The Protected Property is currently used for a single residence and open space. Existing improvements on the Protected Property include a residential dwelling and detached storage building.

- 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 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 open and natural features of the Protected Property provide outstanding scenic views prominently visible to the public from Interstate 494, Oakland Road and Stone Road.

- The Protected Property contains wetlands and mature forest providing habitat for a variety of plants and animals.
- The undeveloped and relatively undisturbed natural areas provide important open space that adds to the natural character of the City of Minnetonka as advocated by the City.
- Use of the Protected Property as a publicly accessible natural and scenic park provides important opportunities for nature observation, study and reflection.

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

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

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

- City of Minnetonka Parks, Open Space, and Trails plan (“POST Plan”).
- Minnetonka City Council Policy on Open Space Preservation.
- The Parks and Open Space referendum adopted by the voters of the City of Minnetonka on September 11, 2001.
- Minnesota Statutes Chapter 84C which recognizes the importance of private conservation efforts by authorizing conservation easements for the protection of natural, scenic, or open space values of real property, assuring its availability for agriculture, forest, recreational, or open space use, protecting natural resources, and maintaining or enhancing air or water quality

F. CONSERVATION INTENT. The Owner and the 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 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 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:

- Preserving the open and natural character of the Protected Property for scenic enjoyment by the general public from Interstate 494, Oakland Road, and Stone Road.
- Protecting a relatively natural habitat for wildlife and plants.
- Providing an opportunity for the public to experience and enjoy the out-of-doors in a relatively undisturbed and natural setting.

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

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

- 2.1. Industrial and Commercial Activity. No industrial or commercial use of the Protected Property is allowed.
- 2.2. Agricultural Use. No agricultural use of the Protected Property is allowed. This includes tilling, plowing, commercial cultivation of row crops, livestock grazing or production, haying or feedlots.
- 2.3. Residential Development. No residential use or development of the Protected Property is allowed except as specifically permitted in paragraph 3 below.
- 2.4. Right of Way. No right of way shall be granted across the Protected Property in conjunction with any industrial or commercial use or residential development of other land not protected by this Easement, except for the reasonable widening of adjacent Oakland Road.

- 2.5. Mining. No mining, drilling, exploring for or removing of any minerals from the Protected Property is allowed.
- 2.6. Subdivision. The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel, regardless of whether it consists of or was acquired as separate parcels or is treated as separate parcels for property tax or other purposes.
- 2.7. Density. No portion of the Protected Property may be used to satisfy land area requirements for other property not subject to this Easement for purposes of calculating building density, lot coverage or open space under otherwise applicable laws, regulations or ordinances controlling land use. No development rights that have been encumbered or extinguished by this Easement may be transferred to any other property.
- 2.8. Structures and Improvements. No temporary or permanent buildings, structures, roads or other improvements of any kind may be placed or constructed on the Protected Property except as specifically authorized in paragraph 3 or as set forth below:

- a. Utilities. Utility systems and facilities may be installed, maintained, repaired, extended and replaced only to serve uses and activities specifically permitted by this Easement. This includes, without limitation, all systems and facilities necessary to provide power, fuel, water, waste disposal and communication. No communications towers, wind turbines, or similar structures may be installed.

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 to a condition consistent with the conservation purposes of this Easement.

No toilet facilities may be constructed or installed outside of the structures described in paragraph 3.2 below.

- b. Signs. No billboards or other signs may be placed or erected on the Protected Property except for small, unlighted signs for informational or interpretive purposes.
- c. Roads and Trails. Existing roads may be maintained, improved and reasonably widened. Paths and pedestrian trails may be established on the Protected Property for passive recreational and educational uses. These paths and trails will not be paved, except where necessary to prevent erosion. Bicycles and motorized recreational vehicles are prohibited. A driveway and parking lot may be installed to serve the passive recreational and educational

uses allowed by paragraph 3.3 of this easement. A parking lot may not be located outside of the areas currently developed for structures and driveway. If a structure is removed, a parking area may be constructed within the footprint of the structure for general parking. If the structures remain, the parking on the Property must be limited to handicapped parking only. No other roads or other rights of way may be established or constructed on the Protected Property without the prior written approval of the Trust.

- d. Fences. Existing fences may be maintained, improved, replaced or removed. Additional fences may be constructed and maintained, improved, replaced or removed to mark boundaries, to secure the Protected Property, or as needed in carrying out activities permitted by this Easement.
- 2.9. Topography and Surface Alteration. No alteration or change in the topography of the surface of the Protected Property is allowed. This includes no ditching, draining or filling and no excavation or removal of soil, sand, gravel, rock or other materials, except as incidental to activities or uses specifically permitted by this Easement.
- 2.10. Vegetation Management. No removal, cutting, pruning, trimming or mowing of any trees or other vegetation, living or dead, and no introduction of non-native species is allowed except as follows:
- a. In conjunction with activities specifically permitted in paragraph 3 below.
 - b. As reasonably required to construct and maintain permitted buildings, structures, road and other improvements and provided that vegetation shall be restored following any construction to a condition consistent with the conservation purposes of this Easement.
 - c. Landscaping in areas immediately adjacent to permitted buildings.
 - d. As reasonably required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury or property damage. The use of herbicides and pesticides will be kept to a minimum and will be used only when the benefit to the natural resources is greater than the detriment.
 - e. To remove downed or dead timber. Removal of downed or dead timber will be kept to a minimum. Downed or dead timber that are a benefit to the natural resources or serve as wildlife habitat will be removed only when necessary.
- 2.11. Water. No alteration or manipulation of natural watercourses, lakes, shorelines, wetlands or other surface or subsurface bodies of water is allowed except to restore or enhance wildlife habitat or native biological communities or to improve or enhance the function and quality of existing wetlands.

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

- 2.12. Dumping. No trash, non-compostable garbage, hazardous or toxic substances or unsightly material may be dumped or accumulated on the Protected Property. This does not prohibit burning or composting of excess brush or other plant material resulting from activities permitted by this Easement.
 - 2.13. Vehicles. Except for Oakland Road and the parking lot and driveway permitted under paragraph 2.8(c) above, only motorized vehicles for permitted construction, maintenance, or enforcement may be operated on 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 Trust before exercising any reserved right that might have an adverse impact on the Conservation Values associated with the Protected Property.

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

- 3.1. Right to Convey. The Owner may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property.
 - a. Any conveyance or encumbrance of the Protected Property is subject to this Easement.
 - b. The Owner will reference or insert the terms of this Easement in any deed or other document by which the Owner conveys title to the Protected Property.

The Owner will notify the Trust of any conveyance within fifteen (15) days after closing and will provide the Trust with the name and address of the new owner and a copy of the deed transferring title.

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

- 3.2. Forest and Animal Management: The Owner may remove timber and other wood products and otherwise use land stewardship techniques to manage the vegetation on the Protected Property in accordance with the City of Minnetonka Natural Resources Management Plan, POST Plan, or another management plan approved by the Trust. The removal of any animals such as deer may only occur pursuant to a management plan approved by the Trust.

- 3.3. Residential Use. The Protected Property may be used for residential purposes by a caretaker or caretakers retained by the Owner as follows:
- a. Existing structures. The existing residential dwelling and related accessory buildings and structures may be maintained, repaired, remodeled, improved, expanded and replaced in substantially their same location. Any expansion or replacement of an existing building or structure shall not substantially alter its character or function and shall not exceed its current total covered ground area or footprint by more than twenty-five percent.
 - b. Notice. The Owner will give the Trust notice as set out in paragraph 7.8 of this Easement before beginning construction permitted under this paragraph.
- 3.4. Recreational and Educational Uses. The structures identified in paragraph 3.3 may also be used for passive recreational and educational uses. A parking lot and related driveway may be erected in conjunction with those structures only if the residential dwelling exists. The Protected Property may also be used for hiking, cross-country skiing, educational camping, nature observation or study, and other similar low impact, passive recreational and educational programs or activities. Minor rustic structures such as tents, trail barriers, wooden benches, and informational kiosks may be placed on the Protected Property in conjunction with these activities. A few rustic-appearing picnic tables may be located on the developed areas of the property near the structures and parking. The Protected Property may not be used for more than minimal, passive recreational purposes.
- 3.5. Habitat. The Protected Property may be used to maintain, restore or enhance habitat for wildlife and native biological communities

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

- 4.1. Right to Enter. The 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 or boundary demarcation 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 Trust has the right to prevent or remedy violations of this Easement through appropriate judicial action brought against the Owner or other responsible party in any court of competent jurisdiction.

- a. Notice. The 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 Trust, immediate judicial action is necessary to prevent or mitigate significant damage to the Protected Property or if reasonable, good faith efforts to notify the Owner are unsuccessful.
- b. Remedies. Remedies available to the Trust in enforcing this Easement include the right to request temporary or permanent injunctive relief for any violation or threatened violation of this Easement, to require restoration of the Protected Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement, to seek specific performance or declaratory relief and to recover damages resulting from a violation of this Easement or injury to any Conservation Values protected by this Easement.

These remedies are cumulative and are available without requiring the Trust to prove actual damage to the Conservation Values protected by this Easement. The Trust and the Owner also recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Easement.

The 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 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 Trust. The 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 Trust in discovering a violation or initiating enforcement proceedings.
- e. Acts Beyond Owner's Control. The Trust may not bring any action against the Owner for any change to the Protected Property resulting from causes beyond the Owner's control, such as changes caused by fire, flood, storm, natural deterioration or the unauthorized acts of persons other than the Owner

or the Owner's agents, employees or contractors or resulting from reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.

f. **Right to Report.** In addition to other remedies, the 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.

4.3. **Signs.** The Trust has the right to place on the Protected Property signs that identify the land as protected by this Easement. The number and location of any signs are subject to the Owner's approval and must comply with local ordinances.

4.4. **Limitation on Rights.** Nothing in this Easement gives the Trust the right or ability to exercise physical control over day-to-day operations on the Protected Property or to become involved in management decisions involving the use, handling or disposal of hazardous substances or to otherwise become an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act.

5. **PUBLIC ACCESS.** Nothing in this Easement gives the general public a right to enter upon or use the Protected Property where no such right existed prior to the conveyance of this Easement.

6. **DOCUMENTATION.** The current uses of the Protected Property, the state of any existing improvements, and the specific Conservation Values of the Protected Property that are briefly described in this Easement are more fully described in a property report on file at the office of the Trust. The Owner and the Trust acknowledge that this property report accurately represents the condition of the Protected Property at the time of this conveyance and may be used by the 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 establish the present condition of the Protected Property in the event of a future controversy.

7. **GENERAL PROVISIONS.**

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

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

- 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 Trust, it (i) does not further the purposes of this Easement, (ii) will adversely impact the Conservation Values protected by this Easement, (iii) affects the perpetual duration of the Easement, or (iv) affects the validity of the Easement under Minnesota law or the status of the 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. Extinguishment. This Easement may be extinguished only through judicial proceedings and only under the following circumstances:
- a. This Easement may be extinguished only (i) if unexpected change in the conditions of or surrounding the Protected Property makes the continued use of the Protected Property for the conservation purposes set out above impossible or impractical or (ii) pursuant to the proper exercise of the power of eminent domain.
 - b. The Owner recognizes that uses of the Protected Property prohibited by this Easement may, in the future, become more economically viable than those uses permitted by the Easement. The Owner also recognizes that neighboring properties may, in the future, be put entirely to uses not permitted on the Protected Property by this Easement.

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

- 7.4. Proceeds. If this Easement is extinguished or terminated in whole or in part, the Trust is entitled to a portion of any proceeds of a sale, exchange or involuntary conversion in an amount that is equal to the fair market value of this Easement at the time of the extinguishment but that is not less than an amount equal to the proportionate value that this Easement bears to the value of the Protected Property as a whole at the time of this conveyance. The Trust shall use its share of any proceeds in a manner consistent with the conservation purposes of this Easement.
- 7.5. Warranties. The Owner represents and warrants as follows:

- a. The Owner is the sole owner of the Protected Property in fee simple and has the right and ability to convey this Easement to the Trust.
 - b. The Protected Property is free and clear of all encumbrances other than those subordinated to this Easement, except for existing easements of record and any deferred special assessments.
 - c. The Owner has no actual knowledge of any use or release of hazardous waste or toxic substances on the Protected Property that is in violation of a federal, state or local environmental law and will defend, indemnify and hold the Trust harmless against any claims of contamination from such substances.
- 7.6. Real Estate Taxes. The Owner shall pay all real estate taxes and assessments levied against the Protected Property, including any levied against the interest of the Trust created by this Easement. The Trust may, at its discretion, pay any outstanding taxes or assessments and shall then be entitled to reimbursement from the Owner.
- 7.7. Ownership Costs and Liabilities. The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property. The Owner agrees to defend, indemnify and hold the Trust harmless from any and all costs or liability for any personal injury or property damage occurring on or related to the Protected Property or the existence of this Easement. If the Owner is a government agency, this obligation to indemnify is limited by the limitations on liability granted to the governmental agency by Minnesota law.
- 7.8. Notice and Approval. Any notice or request for approval required by this Easement must be written and is subject to the following:
- a. Delivery. Any required notice or request for approval must be delivered personally or sent by first class mail or other nationally recognized delivery service to the appropriate party at the following addresses (or other address specified in writing):

<p>To the Owner:</p> <p><u>Ann Cullen Smith</u> <u>c/o William J. Cullen</u> <u>858 Nine Mile Cove North</u> <u>Hopkins, Minnesota 55343</u></p>	<p>To the Trust:</p> <p>Minnesota Land Trust 2356 University Avenue West St. Paul, MN 55114</p>
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 - 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 would include (i) the location, nature and scope of the proposed activity, (ii) the proposed use, design and location of any building, structure or improvement and (iii) the potential impact on the Conservation Values of the Protected Property.
- d. **Approval.** The 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 Trust to reach an informed decision. The Trust may condition its approval on the Owner's acceptance of modifications, which would, in the Trust's judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns.

7.9. **Binding Effect.** This Easement shall run with and burden the Protected Property in perpetuity. The terms of this Easement are binding and enforceable against the current Owner of the Protected Property, all successors in title to the Protected Property and all other parties entitled to possess or use the Protected Property.

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

7.10. **Definitions.** Unless the context requires otherwise, the term "Owner" includes, jointly and severally, the current owner or owners of the Protected Property identified above and their personal representatives, heirs, successors and assigns in title to the Protected Property. The term "Trust" includes the Minnesota Land Trust and its successors or assigns to its interest in this Easement.

7.11. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon the transfer or termination of that party's interest in this Easement or the Protected Property, provided, however, that any liability for acts or omissions occurring prior to the transfer or termination will survive that transfer or termination.

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

7.13. **Controlling Law and Construction.** This Easement shall be governed by the laws of the State of Minnesota and construed to resolve any ambiguities or questions of validity of specific provisions in favor of giving maximum effect to its conservation purposes and to the policies and purposes of Minnesota Statutes Chapter 84C.

- 7.14. Severability. A determination that any provision or specific application of this Easement is invalid shall not affect the validity of the remaining provisions or any future application.
- 7.15. Additional Documents. The Owner agrees to execute or provide any additional documents reasonably needed by the 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.
- 7.16. Entire Agreement. This document sets forth the entire agreement of the parties with respect this Easement and supercedes all prior discussions or understandings.

IN WITNESS WHEREOF, the Owner has voluntarily executed this Conservation Easement on the 28th day of January, 2004.

OWNER:

AAnn Cullen Smith

STATE OF Minnesota)
 COUNTY OF Kenosha) ss

The foregoing instrument was acknowledged before me this 28th day of January, 2004, by AAnn Cullen Smith, single.

Kenneth Tully
 Notary Public
 My Commission Expires:

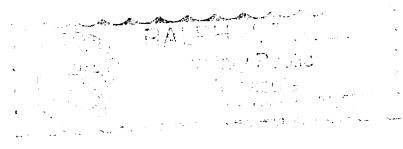


EXHIBIT A

TRACT A: That portion of the following described tract of land, namely:

Commencing at a point in the West line of the East One-half ($E\frac{1}{2}$) of the West One-half ($W\frac{1}{2}$) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), according to the United States Government survey thereof, which is 50.5 feet North of the Southwest corner of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of said Section Ten (10); thence East at right angles 1312.8 feet more or less to the East line of the East One-half ($E\frac{1}{2}$) of the West One-half ($W\frac{1}{2}$) of said Section Ten (10); thence South along said East line 798.85 feet; thence West 1309.15 feet, more or less, to a point in the west line of the East One-half ($E\frac{1}{2}$) of the West One-half ($W\frac{1}{2}$) of said Section Ten (10) distant 800 feet South of the point of beginning; thence North along said West line of the East One-half ($E\frac{1}{2}$) of the West One-half ($W\frac{1}{2}$) of said Section Ten (10) 800 feet to the point of beginning; (said tract being designated hereinafter for convenience as "Tract G-H"); lying West of the center line of the public highway as now laid out and traveled across "Tract G-H" prior to November 8, 1935, and formerly known as County Road No. 74; now vacated, subject to the public easement in said County Road No. 74. Oakland Road as now laid out and established by that certain NOTICE OF DEDICATION OF OAKLAND ROAD AS A PUBLIC STREET IN THE VILLAGE OF MINNETONKA filed in the office of the County Recorder in and for the County of Hennepin, State of Minnesota in Book 1045 Mc, page 64, as Document Number 3614108.

TRACT B: That part of the East One-half ($E\frac{1}{2}$) of the Southwest One-Quarter ($SW\frac{1}{4}$) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), described as follows:

-Beginning at a point in the West line of the East One-half ($E\frac{1}{2}$) of the Southwest One-Quarter ($SW\frac{1}{4}$) of said Section Ten (10), distant 749.5 feet South of the Northwest corner of said tract; thence South along the West line of the East One-half ($E\frac{1}{2}$) of the Southwest Quarter ($SW\frac{1}{4}$) a distance of 250 feet; thence at a right angle East to the center line of County Road Number 74; now vacated; thence Northerly along the center of said vacated County Road 250 feet more or less to a point in a line drawn Easterly from the point of beginning, and at a right angle to the West line of the East One-half ($E\frac{1}{2}$) of the Southwest One-Quarter ($SW\frac{1}{4}$) of said Section Ten (10); thence Westerly to the point of beginning, subject to Public Easement in said County Road Oakland Road as now laid out and established by that certain NOTICE OF DEDICATION OF OAKLAND ROAD AS A PUBLIC STREET IN THE VILLAGE OF MINNETONKA filed in the office of the County Recorder in and for the County of Hennepin, State of Minnesota in Book 1045 Mc, page 64, as Document Number 3614108; all according to the United States Government Survey thereof; also,

That part of the East One-half ($E\frac{1}{2}$) of the Southwest One-Quarter ($SW\frac{1}{4}$) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), lying Easterly of the center line of County Road Number 74 now vacated and between the extension of the Northerly and the Southerly side lines of the tract of land hereinbefore described, subject to the public easement in County Road Number 74 Oakland Road as now laid out and established by that certain NOTICE OF DEDICATION OF OAKLAND ROAD AS A PUBLIC STREET IN THE VILLAGE OF MINNETONKA filed in the office of the County Recorder in and for the County of Hennepin, State of Minnesota in Book 1045 Mc, page 64, as Document Number 3614108.

AGREEMENT REGARDING CONSERVATION EASEMENT

This agreement is made on _____ by the **CITY OF MINNETONKA** (“City”), a Minnesota municipal corporation, 14600 Minnetonka Boulevard, Minnetonka, MN 55345 and the **MINNESOTA LAND TRUST** (“Trust”), a non-profit corporation organized and existing under the laws of the State of Minnesota, 2356 University Avenue West, St. Paul, MN 55114.

The City has entered into a purchase agreement (“the Purchase Agreement”) for certain land in the City located at 2510 Oakland Road and legally described on the attached Exhibit A (“the Property”). The seller of the Property has included a condition in the Purchase Agreement that the Property will be subject to a conservation easement (“the Easement”) that will be conveyed to the Trust or other qualified organization. The Purchase Agreement is attached as Exhibit B. The Trust agrees to accept the Easement substantially in the form attached as Exhibit C, subject to certain conditions.

The City will provide notice to the Trust as soon as the City is notified of the death of the owner of the Property described above.

Therefore, the parties agree that before the Trust will accept the Easement, the following conditions must be satisfied, unless waived in the Trust’s sole discretion:

1. Within 10 days after the City receives title evidence pursuant to the Purchase Agreement, the City must deliver to the Trust a current title commitment from a reputable title insurance company or an abstract of title certified to date covering all of the Property to be included in the Easement. The Trust will have 30 days to examine it and to deliver written objections to title, if any, to the City. If the Trust finds title to the Property is unmarketable at any time before execution of the Easement, and cannot be made marketable by the City within 90 days after notice of a defect, then the Trust may choose to not accept the Easement.
2. If requested by the Trust, the City will execute and record a document acceptable to the parties indicating that the City joins in the Easement or otherwise agrees to be bound by the Easement.
3. The Trust must obtain approval of the Easement by the Trust’s Board of Directors.
4. The Trust must undertake an environmental review of the Property with results that are satisfactory to the Trust in its sole discretion.
5. The parties must agree on the funds that the City will pay to the Trust for stewardship and enforcement of the Easement.
6. The Property, and all improvements thereon, are in substantially the same condition as existed at the time of the signing of the Purchase Agreement, as determined by the Trust.

This Agreement shall terminate upon written notification by the Trust, in the event any of the

above conditions is not satisfied, or in the event the City does not purchase the Property under the terms of the Purchase Agreement.

Date: _____

CITY OF MINNETONKA

By _____
Its Mayor

And _____
Its City Manager

Date: _____

MINNESOTA LAND TRUST

By _____
Its _____

B. Cullen Nature Preserve presentation

Jo Colleran, City of Minnetonka, Natural Resources Manager explained back in 2001 the voters of Minnetonka approved a \$15 million referendum and that was for parks and open space specifically park renewal. As part of that process a resident task force was formed to establish open space criteria to identify ways for potential preservation. In February of 2004, the city council approved a purchase agreement and conservation easement to acquire two of the parcels which are located on Oakland Road. The parcels totaled 30 acres and at that time were owned by Ann Cullen Smith. The land is covered by a conservation easement that is currently held by the Minnesota Land Trust and that easement is put into place so the land is protected in perpetuity. After the passing of Ann Cullen Smith on January 25, 2015 at the age of 106 the city acquired the land in the spring of that year. The land is referred to as the Cullen Nature Preserve. Several residents shortly after the city acquired the property inquired about the land and what was going to happen to it. In 2017, John Anderson of Conservation Minnesota and a group of dedicated volunteers approached city staff in hopes of working with the city to determine what the future might hold for this parcel of land. Volunteers have pulled garlic mustard and cut buckthorn with Janet Van Sloun, Natural Resources Manager and last year a small herd of goats attacked the buckthorn. Anderson and some of the volunteers are here tonight and they are the friends of the Cullen Nature Preserve. They are here to discuss the property and its possibilities. Also, with us tonight is Bill Cullen, Ann's Cullen Smith's son and he continues to have an interest in the property.

Anderson is the West Metro Regional Manager for Conservation Minnesota and they are a statewide nonpartisan, nonprofit that works on a broad variety of conservation advocacy issues. One of the things they work on is preserving a habitat for wildlife, open spaces and the advocates for parks and trails. One of the things they believe strongly in is preserving parcels like the Cullen Nature Preserve. The property is on Oakland Road, a little bit north of Meadow Park. In 2017, they heard through word of mouth of the property. They were curious about it so they took a self-guided tour and after realized it could be a great asset for the future of Minnetonka. At the same time in order to preserve it and have it be that asset, it would need some work. At this point there are about 25 people that have expressed interest in the property.

In the spring and summer of 2017, they connected with Van Sloun and participated in a number of city lead garlic mustard removal events. They spent a lot of time researching this history of this parcel which they thought was really interesting as well as Ann's life.

Mary Beth Pottratz is a Minnesota Master Naturalist volunteer, which is a bunch of volunteers that help preserve Minnesota's natural resources, protect them and educate others about their importance. A lot of the people who have been volunteering at the Cullen Nature Preserve are also Master Naturalist volunteers. Pottratz showed a picture of Ann Cullen Smith and explained that her maiden name was Jewett. She was born on the fourth of July in Hibbing, Minnesota. Cullen Smith moved to the property (Cullen Nature Preserve), which is 2510 Oakland Road in 1937. She raised her family there and lived there for 78 years. Before Cullen Smith passed away, she wanted to preserve the land for nature so she placed it into a Minnesota conservation easement through Minnesota Land Trust. Then she agreed to sell the land for less than half the value to the city, so very impressive and generous on her part. The rules were that the land would not

be developed and that the city would receive the land upon her passing. Cullen Smith was well educated and did a lot of volunteer work specifically with nursing, education and family services. At the age of 104, she found out about her friends the Paton's that owned Paton's Birder Haven in Patagonia, AZ had passed away and their land was probably going to be sold. From visiting them for many years, she knew that the very rare Violet-crowned Hummingbird was in that area and it was very difficult to find that bird anywhere. She started seeing what she could do to rescue it and the bird habitat. She made some phone calls to a bunch of people. The Tucson Audubon Society and the nature conservancy got involved and helped with funding. There were a lot of fundraisers after that to help keep the birding property open as a birding haven and that is how it is today.

Colleran asked if the property is owned by the Audubon Society or who owns the property so it's protected. Pottratz said it was a fundraiser so their daughter Barbara Paton Moon is now managing it but she does not know who the ownership is.

There are a lot of people that are volunteering to help at the Cullen Nature Preserve such as: residents of the city, scout groups, Wild Ones – a nationwide organization that promotes landscaping with native plants, non-residents, high school students, Master Naturalists volunteers, Audubon Society members and Dragonflies Society.

Heather Holm is a biologist, bee researcher and for the last 15 years has been professionally and on a volunteer basis restoring native landscapes. Holm showed the Marschner Map that indicates the city's boundaries and it shows the original plant cover. The predominant plant community in Minnetonka is called the oak woodland-brushland plant community and that is also the predominant plant community of the Cullen Nature Preserve. What is interesting about this map is that it is a statewide map composed from land surveyor notes, so when the first European land surveyors started mapping out the Midwest in their grid like patterns. When the surveyors got to a quadrant, they would note a tree species and from all of the surveyor notes they comprised this huge statewide map showing the make-up of each of these plant communities. Since European settlement has retransformed most of the landscape into housing and agriculture, we only have about four percent remaining of the original plant community. One of the reasons why this donation from Cullen Smith was so generous was because it's provided us with this wonderful opportunity to preserve open space. What is an oak woodland-brushland? It is essentially a plant community that is more densely treed than an oaked savanna but less than a big woods maple basswood forest. Cullen Smith moved to the property in 1937 and historical aerial photographs back to then show the whole property entirely wooded. Since that time like many of our wooded spaces in Minnetonka have been invaded by a lot of different exotic plants including European buckthorn. Holm showed a picture of Big Willow Park and the open understory that you can see through. The challenge with the Cullen Nature Preserve is it requires a lot of work to get it to the biological diversity that is at Big Willow Park. It will take many years of a sustained restoration investment to restore this property and the animals, birds and other insects and plants that should co-occur in this plant community. There is a large group of friends that are very interested in the restoration of this property and with a coordinated effort they look forward to working with the city to meet the goals and the vision of Ann Cullen Smith on restoring this property for the benefit of all residents.

Jerrold Gershone, a Minnetonka resident, that lives near the Cullen Nature Preserve property, a Master Naturalist volunteer for the city of Minnetonka and the city of Minneapolis park board. Our goal is to realize the vision that Cullen Smith had for this property and that's a place for the preservation and appreciation of nature. The city has shown great foresight in acquiring this property and of course Cullen Smith and her family, their generosity in selling it as they did to the city.

The first step in our vision is to get rid of the invasive species. We would like to form a formal friends group so we can help with the vision and also get a bigger volunteer base because people can burn out easily. Van Sloun and Colleran brought in the goats this past fall to get to the buckthorn. Next steps would be the establishments of paths, right now it is pretty choked with buckthorn in certain areas so access is difficult. We would like to make some paths for access for appreciating different habitats because there are a lot of different habitats in there. Also, looking possibly down the road, boardwalks in the swampy areas, perhaps a boardwalk that goes to out to the island so that can be observed and appreciated. Gershone showed an image of an Indian pipe plant that is a fungus but it is one of the very interesting things that you will see at Cullen Nature Preserve as the restoration continues. As Holm mentioned with the removal of invasive species, a lot more of the wildlife will come back and we know Cullen Smith was a birder. After many years this could be a birding destination. Popularity of birding has exploded in the United States among all different age groups. Another option is looking at interpretive possibilities. In Minnetonka, there is not an extensive nature interpretation area. What can we do with limited resources at this point to maybe help people with interpretation? It could be something as simple as using mobile devices and having a post with a QRL code on there and people can tune into what is there and can hear about that habitat or typical birds in the area. There are all sorts of creative things we can do to start looking into interpretation. Being a place for school groups and community groups to come in as well. Perhaps information panels down the road and then maybe eventually having a small interpretive shelter.

Anderson said in this work we sort of came across a number of questions that needed to be answered. The best way to make progress on these sort of issues is to focus on finding a way to work with city staff along with other interested parties in the community to sort of work on developing a designation as to what a nature preserve means. It can mean a lot of different things but we really envision it as being a great asset for the community and sort of something that is preserved. Also, finding ways to go about policies for the property. There are a lot of questions that are up about how to use it and not to use it and we would love a chance to work with stakeholders to try and work on answers to those questions. Also, finally making sure to designate it formally the Cullen Nature Preserve.

Kist asked what the timeline is for it to be up and used by school groups. Anderson said that the actual work to restore it is a long-term process. The next step would be the paths because once things start to merge, we do not want to trample over them. It is difficult to find your way around right now. Maybe getting some natural paths to start with. Getting the friends group going would help, or getting some contractors helping with removal it all depends on how much enthusiasm we have.

Kist mentioned putting an update in the natural resources area of the Minnetonka Memo to remind people they are welcome to help out. Colleran responded and said that is one of the things they talked about with Anderson and the group. They want to start restoring this land and at first she was hesitant because they already manage 310 acres of the 700 natural acres of park land and once you start restoration, you have to stay with it. Van Sloun said that we have this group of volunteers that are willing so why would we not take advantage of this. Now that it has started, we need to continue because otherwise the time and energy that's been invested will fall by the wayside. With that said, the point of developing the friends of nature preserve and trying to formalize that is a great idea and then staff can really work with that group of volunteers to continue to restore the landscape.

Evenrud said he enjoyed the presentation. A couple of tours ago they were able to see the property when the house was standing. Having seen it and seeing where you are going with this is really exciting because he likes to bring his kids to nature destinations. Evenrud said during the tour they heard talks about no dogs or they would be discouraged on that property and recently he heard maybe there would be so he is just curious about that subject. Anderson replied that it is something about developing policies for the property. That is obviously a question that needs to be asked. As far as he knows there is nothing in the conservation easement that is direct about that. That is the sort of question that we love to work with other stakeholders to try and get a good answer on.

Colleran said she did not notice this before and asked to go back to the slide that shows the post Marschner Map. Colleran pointed out the island and said that the not so quite southern third was owned by Ann Perry and Dean Johnson. They donated that portion of the island to the city so the city owns the island.

Bill Cullen said that he grew up on the property and his parents moved out there when he was born and he loved that property. His mother would be extremely pleased with your representation of her life and what she did. She would be thrilled that there are volunteers doing this on her property. He thanked everyone.

5. Park Board Member Reports

Kist said that we didn't get a chance to thank Jack Acomb for his service to the park board so she wanted to thank him. O'Dea said June was his last meeting and he tried getting him to come today but he could not make it. Hopefully, Acomb will come to the October meeting so we can thank him and wish him well at college.

Walick said that the presentations were great and it was nice to see people not just care about the city but maintain the essence of the city. Walick asked if a baby changing station could be installed in the bathroom at Libbs Lake.

Durbin said that last week he went to Lone Lake Park and looked at the pickleball courts. Durbin said they are impressive and definitely worth taking a look at. He is excited to see it when it is finished. He also spent a lot of time at Shady Oak Beach and it was wonderful.

#2004-253



2003 AND PRIOR TAXES PAID
TAXPAYER SERVICES
TRANSFER ENTERED

Doc No 8386356 06/28/2004 01:00 PM
Certified filed and or recorded on above date:
Office of the County Recorder
Hennepin County, Minnesota
Michael H. Curniff, County Recorder
Deputy 3 TransID 42398

JUN 22 2004

HENNEPIN COUNTY MINN.
[Signature]
DEPUTY

Deputy 3
Fees
\$17.00 DOC
\$5.00 SUR
\$5.00 MAIL
\$27.00 Total

CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted by Ann Cullen Smith, f/k/a Ann Jewett Cullen, widowed and unremarried, (the "Owner") to the Minnesota Land Trust, a non-profit corporation organized and existing under the laws of the State of Minnesota (the "Trust").

RECITALS:

- A. **OWNER.** The Owner is the current owner of approximately 30 acres of real property located in Hennepin County, Minnesota. That real property is more fully described below as the "Protected Property."
- B. **PROTECTED PROPERTY.** The Protected Property is that real property legally described in Exhibit A and generally depicted on the "Property Map" in Exhibit B. Both exhibits are attached to this Easement and incorporated by this reference.

The Protected Property is currently used for a single residence and open space. Existing improvements on the Protected Property include a residential dwelling and detached storage building.

- 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 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 open and natural features of the Protected Property provide outstanding scenic views prominently visible to the public from Interstate 494, Oakland Road and Stone Road.

- The Protected Property contains wetlands and mature forest providing habitat for a variety of plants and animals.
- The undeveloped and relatively undisturbed natural areas provide important open space that adds to the natural character of the City of Minnetonka as advocated by the City.
- Future use of the Protected Property as a publicly accessible natural and scenic park would provide important opportunities for nature observation, study and reflection.

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

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

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

- The Environmental Stewardship Policy in the City of Minnetonka 1999 Comprehensive Plan, which supports protection of the City's wetlands and woods.
- The City of Minnetonka Parks, Open Space, and Trails plan ("POST Plan"), adopted as part of the 1999 Comprehensive Plan, particularly the portion that states "[t]he City will work with landowners to encourage land conservation practices....and establish permanent protection of key resources through conservation easements...."
- Minnetonka City Council policy on Open Space Preservation.
- The Parks and Open Space referendum adopted by the voters of the City of Minnetonka on September 11, 2001.
- Minnesota Statutes Chapter 84C which recognizes the importance of private conservation efforts by authorizing conservation easements for the protection of natural, scenic, or open space values of real property, assuring its availability for agriculture, forest, recreational, or open space use, protecting natural resources, and maintaining or enhancing air or water quality.

F. CONSERVATION INTENT. The Owner and the 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 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 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:

- Preserving the open and natural character of the Protected Property for scenic enjoyment by the general public from Interstate 494, Oakland Road, and Stone Road.
- Protecting a relatively natural habitat for wildlife and plants.
- Providing an opportunity for future public access to experience and enjoy the out-of-doors in a relatively undisturbed and natural setting.

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

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

- 2.1. Industrial and Commercial Activity. No industrial or commercial use of the Protected Property is allowed.
- 2.2. Agricultural Use. No agricultural use of the Protected Property is allowed. This includes tilling, plowing, commercial cultivation of row crops, livestock grazing or production, haying or feedlots.

- 2.3. **Residential Development.** No residential use or development of the Protected Property is allowed except as specifically permitted in paragraph 3 below.
- 2.4. **Right of Way.** No right of way shall be granted across the Protected Property in conjunction with any industrial or commercial use or residential development of other land not protected by this Easement, except for the reasonable widening of adjacent Oakland Road.
- 2.5. **Mining.** No mining, drilling, exploring for or removing of any minerals from the Protected Property is allowed.
- 2.6. **Subdivision.** The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel, regardless of whether it consists of or was acquired as separate parcels or is treated as separate parcels for property tax or other purposes.
- 2.7. **Density.** No portion of the Protected Property may be used to satisfy land area requirements for other property not subject to this Easement for purposes of calculating building density, lot coverage or open space under otherwise applicable laws, regulations or ordinances controlling land use. No development rights that have been encumbered or extinguished by this Easement may be transferred to any other property.
- 2.8. **Structures and Improvements.** No temporary or permanent buildings, structures, roads or other improvements of any kind may be placed or constructed on the Protected Property except as specifically authorized in paragraph 3 or as set forth below:
- a. **Utilities.** Utility systems and facilities may be installed, maintained, repaired, extended and replaced only to serve uses and activities specifically permitted by this Easement. This includes, without limitation, all systems and facilities necessary to provide power, fuel, water, waste disposal and communication. No communications towers, wind turbines, or similar structures may be installed.
- 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 to a condition consistent with the conservation purposes of this Easement.
- No toilet facilities may be constructed or installed outside of the structures described in paragraph 3.3 below.
- b. **Signs.** No billboards or other signs may be placed or erected on the Protected Property except for small, unlighted signs for informational or interpretive purposes.

- c. Roads, Trails, and Parking. Existing roads may be maintained, improved and reasonably widened. Paths and pedestrian trails may be established on the Protected Property for passive recreational and educational uses. These paths and trails may not be paved, except where necessary to prevent erosion, or if required by law. Horses, bicycles and motorized recreational vehicles are prohibited.

A driveway and parking lot may be installed to serve the passive recreational and educational uses allowed by paragraph 3.4 of this Easement. If a current structure is removed, a parking area for general parking may be constructed within the footprint of that structure. No driveway or general parking lot may be located outside of the areas currently developed for structures and driveway. If the structures remain, any parking lot constructed on the Protected Property must be limited to handicapped parking only.

No other roads, driveways, parking lots or other rights of way may be established or constructed on the Protected Property without the prior written approval of the Trust.

- d. Fences. Existing fences may be maintained, improved, replaced or removed. Additional fences may be constructed and maintained, improved, replaced or removed to mark boundaries, to secure the Protected Property, or as needed in carrying out activities permitted by this Easement.

- 2.9. Topography and Surface Alteration. No alteration or change in the topography of the surface of the Protected Property is allowed. This includes no ditching, draining or filling and no excavation or removal of soil, sand, gravel, rock or other materials, except as incidental to activities or uses specifically permitted by this Easement.

- 2.10. Vegetation Management. No removal, cutting, pruning, trimming or mowing of any trees or other vegetation, living or dead, and no introduction of non-native species is allowed except as follows:

- a. In conjunction with activities specifically permitted in paragraph 3 below.
- b. As reasonably required to construct and maintain permitted buildings, structures, road and other improvements and provided that vegetation shall be restored following any construction to a condition consistent with the conservation purposes of this Easement.
- c. Landscaping in areas immediately adjacent to permitted buildings.
- d. As reasonably required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury or property damage. The use of

herbicides and pesticides will be kept to a minimum and will be used only when the benefit to the natural resources is greater than the detriment.

e. To remove downed or dead timber. Removal of downed or dead timber will be kept to a minimum. Downed or dead timber that are a benefit to the natural resources or serve as wildlife habitat will be removed only when necessary.

2.11. Water. No alteration or manipulation of natural watercourses, lakes, shorelines, wetlands or other surface or subsurface bodies of water is allowed except to restore or enhance wildlife habitat or native biological communities or to improve or enhance the function and quality of existing wetlands.

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

2.12. Dumping. No trash, non-compostable garbage, hazardous or toxic substances or unsightly material may be dumped or accumulated on the Protected Property. This does not prohibit burning or composting of excess brush or other plant material resulting from activities permitted by this Easement.

2.13. Vehicles. Except for Oakland Road and on the parking lot and driveway permitted under paragraph 2.8(c) above, only motorized vehicles for permitted construction, maintenance, or enforcement may be operated on 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 Trust before exercising any reserved right that might have an adverse impact on the Conservation Values associated with the Protected Property.

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

3.1. Right to Convey. The Owner may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property.

a. Any conveyance or encumbrance of the Protected Property is subject to this Easement.

b. The Owner will reference or insert the terms of this Easement in any deed or other document by which the Owner conveys title to the Protected Property.

- c. The Owner will notify the Trust of any conveyance within fifteen (15) days after closing and will provide the Trust with the name and address of the new owner and a copy of the deed transferring title.

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

- 3.2. **Forest and Animal Management**: The Owner may remove timber and other wood products and otherwise use land stewardship techniques to manage the vegetation on the Protected Property in accordance with the City of Minnetonka Natural Resources Management Plan, POST Plan, or another management plan approved by the Trust. The removal of any animals such as deer may only occur pursuant to a management plan approved by the Trust.
 - 3.3. **Residential Use**. The Protected Property may be used for residential purposes by a single family, a caretaker or caretakers retained by the Owner as follows:
 - a. Existing structures. The existing residential dwelling and related accessory buildings and structures may be maintained, repaired, remodeled, improved, expanded and replaced in substantially their same location. Any expansion or replacement of an existing building or structure shall not substantially alter its character or function and shall not exceed its current total covered ground area or footprint by more than twenty-five percent.
 - b. Notice. The Owner will give the Trust notice as set out in paragraph 7.8 of this Easement before beginning construction permitted under this paragraph.
 - 3.4. **Recreational and Educational Uses**. The structures identified in paragraph 3.3 may also be used for passive recreational and educational uses. A parking lot and related driveway may be erected in conjunction with those structures as provided in paragraph 2.8 above. The Protected Property may also be used for hiking, cross-country skiing, educational camping, nature observation or study, and other similar low impact, passive recreational and educational programs or activities. Minor rustic structures such as tents, trail barriers, wooden benches, and informational kiosks may be placed on the Protected Property in conjunction with these activities. A few rustic-appearing picnic tables may be located on the developed areas of the property near the structures and parking. The Protected Property may not be used for more than minimal, passive recreational purposes.
 - 3.5. **Habitat**. The Protected Property may be used to maintain, restore or enhance habitat for wildlife and native biological communities
4. **TRUST'S RIGHTS AND REMEDIES**. In order to accomplish the purposes of this Easement, the Trust has the following rights and remedies:

- 4.1. Right to Enter. The 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 or boundary demarcation 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 Trust has the right to prevent or remedy violations of this Easement through appropriate judicial action brought against the Owner or other responsible party in any court of competent jurisdiction.

- a. Notice. The 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 Trust, immediate judicial action is necessary to prevent or mitigate significant damage to the Protected Property or if reasonable, good faith efforts to notify the Owner are unsuccessful.
- b. Remedies. Remedies available to the Trust in enforcing this Easement include the right to request temporary or permanent injunctive relief for any violation or threatened violation of this Easement, to require restoration of the Protected Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement, to seek specific performance or declaratory relief and to recover damages resulting from a violation of this Easement or injury to any Conservation Values protected by this Easement.

These remedies are cumulative and are available without requiring the Trust to prove actual damage to the Conservation Values protected by this Easement. The Trust and the Owner also recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Easement.

The 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 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 Trust. The 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 Trust in discovering a violation or initiating enforcement proceedings.
 - e. **Acts Beyond Owner's Control.** The Trust may not bring any action against the Owner for any change to the Protected Property resulting from causes beyond the Owner's control, such as changes caused by fire, flood, storm, natural deterioration or the unauthorized acts of persons other than the Owner or the Owner's agents, employees or contractors or resulting from reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.
 - f. **Right to Report.** In addition to other remedies, the 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.
- 4.3. **Signs.** The Trust has the right to place on the Protected Property signs that identify the land as protected by this Easement. The number and location of any signs are subject to the Owner's approval and must comply with local ordinances.
- 4.4. **Limitation on Rights.** Nothing in this Easement gives the Trust the right or ability to exercise physical control over day-to-day operations on the Protected Property or to become involved in management decisions involving the use, handling or disposal of hazardous substances or to otherwise become an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act.
5. **PUBLIC ACCESS.** Nothing in this Easement gives the general public a right to enter upon or use the Protected Property where no such right existed prior to the conveyance of this Easement.
6. **DOCUMENTATION.** The current uses of the Protected Property, the state of any existing improvements, and the specific Conservation Values of the Protected Property that are briefly described in this Easement are more fully described in a property report on file at the office of the Trust. The Owner and the Trust acknowledge that this property report accurately represents the condition of the Protected Property at the time of this conveyance and may be used by the 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 establish the present condition of the Protected Property in the event of a future controversy.

7. GENERAL PROVISIONS.

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

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

- 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 Trust, it (i) does not further the purposes of this Easement, (ii) will adversely impact the Conservation Values protected by this Easement, (iii) affects the perpetual duration of the Easement, or (iv) affects the validity of the Easement under Minnesota law or the status of the 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. Extinguishment. This Easement may be extinguished only through judicial proceedings and only under the following circumstances:
- a. This Easement may be extinguished only (i) if unexpected change in the conditions of or surrounding the Protected Property makes the continued use of the Protected Property for the conservation purposes set out above impossible or impractical or (ii) pursuant to the proper exercise of the power of eminent domain.
 - b. The Owner recognizes that uses of the Protected Property prohibited by this Easement may, in the future, become more economically viable than those uses permitted by the Easement. The Owner also recognizes that neighboring properties may, in the future, be put entirely to uses not permitted on the Protected Property by this Easement.

The Owner and the Trust believe that such changes will increase the public benefit provided by this Easement. Therefore, such changes are not

considered unexpected changes and shall not be deemed to be circumstances justifying the extinguishment of this Easement as otherwise set forth above.

- 7.4. Proceeds. If this Easement is extinguished or terminated in whole or in part, the Trust is entitled to a portion of any proceeds of a sale, exchange or involuntary conversion in an amount that is equal to the fair market value of this Easement at the time of the extinguishment but that is not less than an amount equal to the proportionate value that this Easement bears to the value of the Protected Property as a whole at the time of this conveyance. The Trust shall use its share of any proceeds in a manner consistent with the conservation purposes of this Easement.
- 7.5. Warranties. The Owner represents and warrants as follows:
- a. The Owner is the sole owner of the Protected Property in fee simple and has the right and ability to convey this Easement to the Trust.
 - b. The Protected Property is free and clear of all encumbrances other than those subordinated to this Easement, except for existing easements of record and any deferred special assessments.
 - c. The Owner has no actual knowledge of any use or release of hazardous waste or toxic substances on the Protected Property that is in violation of a federal, state or local environmental law and will defend, indemnify and hold the Trust harmless against any claims of contamination from such substances.
- 7.6. Real Estate Taxes. The Owner shall pay all real estate taxes and assessments levied against the Protected Property, including any levied against the interest of the Trust created by this Easement. The Trust may, at its discretion, pay any outstanding taxes or assessments and shall then be entitled to reimbursement from the Owner.
- 7.7. Ownership Costs and Liabilities. The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property. The Owner agrees to defend, indemnify and hold the Trust harmless from any and all costs or liability for any personal injury or property damage occurring on or related to the Protected Property or the existence of this Easement. If the Owner is a government agency, this obligation to indemnify is limited by the limitations on liability granted to the governmental agency by Minnesota law.
- 7.8. Notice and Approval. Any notice or request for approval required by this Easement must be written and is subject to the following:
- a. Delivery. Any required notice or request for approval must be delivered personally or sent by first class mail or other nationally recognized delivery

service to the appropriate party at the following addresses (or other address specified in writing):

To the Owner:

Ann Cullen Smith
2510 Oakland Road
Minnetonka, MN 55305

To the 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 would include (i) the location, nature and scope of the proposed activity, (ii) the proposed use, design and location of any building, structure or improvement and (iii) the potential impact on the Conservation Values of the Protected Property.
- d. **Approval.** The 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 Trust to reach an informed decision. The Trust may condition its approval on the Owner's acceptance of modifications, which would, in the Trust's judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns.
- 7.9. **Binding Effect.** This Easement shall run with and burden the Protected Property in perpetuity. The terms of this Easement are binding and enforceable against the current Owner of the Protected Property, all successors in title to the Protected Property and all other parties entitled to possess or use the Protected Property.
- This Easement creates a property right immediately vested in the Trust and its successors and assigns that cannot be terminated or extinguished except as set out herein.
- 7.10. **Definitions.** Unless the context requires otherwise, the term "Owner" includes, jointly and severally, the current owner or owners of the Protected Property identified above and their personal representatives, heirs, successors and assigns in title to the Protected Property. The term "Trust" includes the Minnesota Land Trust and its successors or assigns to its interest in this Easement.
- 7.11. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon the transfer or termination of that party's interest in this Easement or the Protected Property, provided, however, that any liability for

CONSENT
OF
CITY OF MINNETONKA

The CITY OF MINNETONKA, a Minnesota municipal corporation, hereby consents to and approves of all of the terms of the foregoing Conservation Easement this 7th day of June, 2004.



CITY OF MINNETONKA

By: Karen J. Anderson
Its Mayor

By: John Bunyon
Its City Manager

STATE OF MINNESOTA)
) SS
COUNTY OF Wenona

The foregoing instrument was acknowledged before me this 7th day of June 2004 by Karen J. Anderson, and John Bunyon, the Mayor and City Manager, respectively, of the City of Minnetonka, a Minnesota municipal corporation, on behalf of said municipal corporation.

Desyl L. Peterson
Notary Public
My Commission Expires: 1-31-2005

This document drafted by:

Minnetonka City Attorney
14600 Minnetonka Blvd.
Minnetonka MN 55345

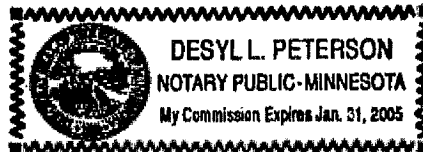


EXHIBIT A
Legal Description of Protected Property

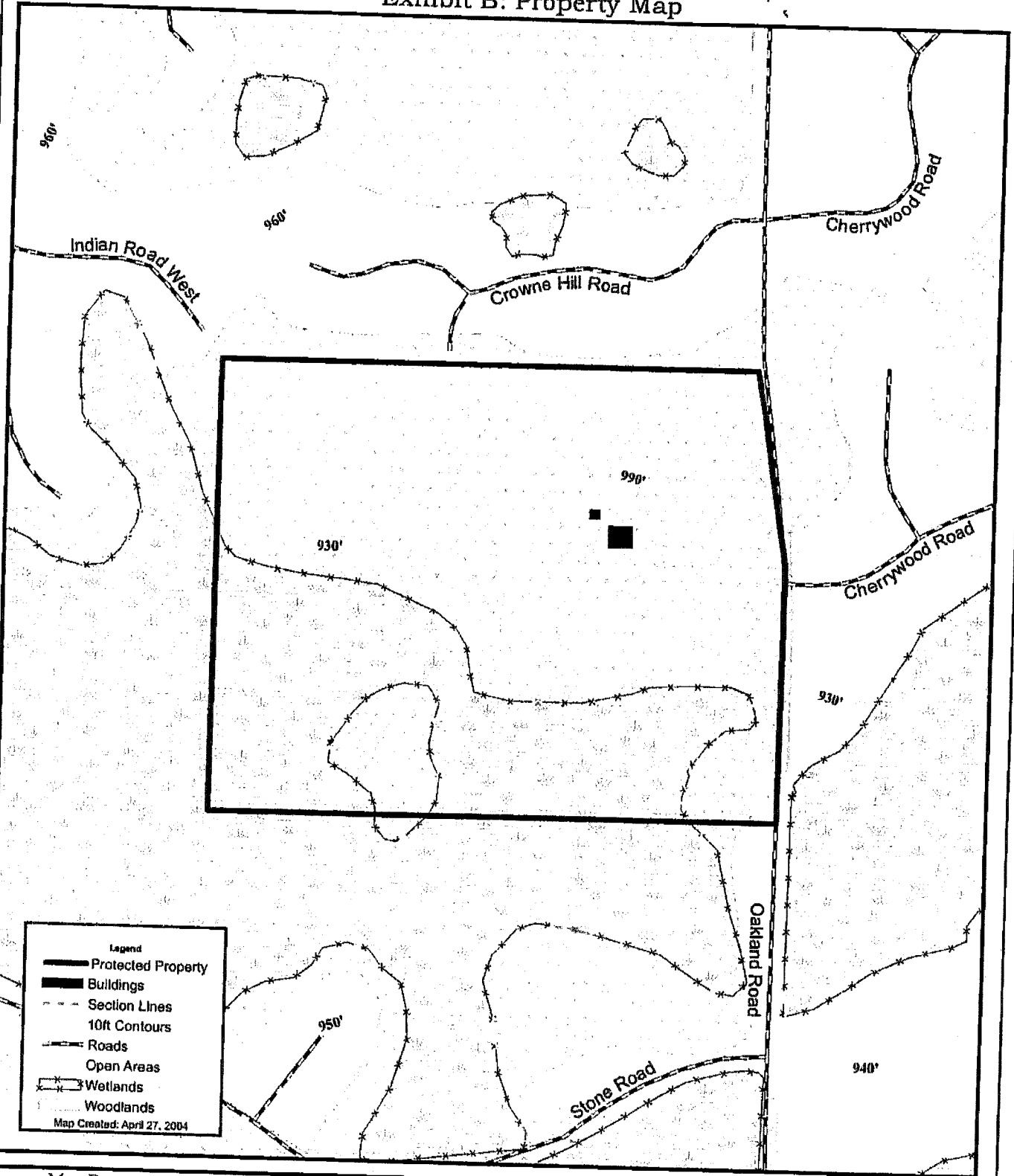
Commencing at a point in the West line of the East One-half (E1/2) of the West One-half (W1/2) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), according to the United States Government survey thereof, which is 50.5 feet North of the Southwest corner of the Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4) of said Section Ten (10); thence East at right angles 1312.8 feet more or less to the East line of the East One-half (E1/2) of the West One-half (W1/2) of said Section Ten (10); thence South along said East line 798.85 feet; thence West 1309.15 feet, more or less, to a point in the West line of the East One-half (E1/2) of the West One-half (W1/2) of said Section Ten (10) distant 800 feet South of the point of beginning; thence North along said West line of the East One-half (E1/2) of the West One-half (W1/2) of said Section Ten (10) 800 feet to the point of beginning; lying West of the center line of the public highway as laid out and traveled across the premises prior to November 8, 1935, and formerly known as County Road No. 74, now vacated, according to the United States Government Survey thereof and situate in Hennepin County, Minnesota.

And

That part of the East One-half (E1/2) of the Southwest One-Quarter (SW1/4) of Section Ten (10), Township One hundred seventeen (117), Range Twenty-two (22), described as follows:

Beginning at a point in the West line of the East One-half (E1/2) of the Southwest One-Quarter (SW1/4) of said Section Ten (10), distant 749.5 feet South of the Northwest corner of said tract; thence South along the West line of the East One-half (E1/2) of the Southwest Quarter (SW1/4) a distance of 250 feet; thence at a right angle East to the center line of County Road Number 74, now vacated; thence Northerly along the center of said vacated County Road 250 feet more or less to a point in a line drawn Easterly from the point of beginning, and at a right angle to the West line of the East One-half (E1/2) of the Southwest One-Quarter (SW1/4) of said Section Ten (10); thence Westerly to the point of beginning, according to the United States Government Survey thereof and situate in Hennepin County, Minnesota.

Exhibit B: Property Map



Legend

- Protected Property
- Buildings
- Section Lines
- 10ft Contours
- Roads
- Open Areas
- Wetlands
- Woodlands

Map Created: April 27, 2004

Map Resource Information

Section Lines obtained from USGS Topographic Maps.
 Protected Property, 10-Foot Contours, Open Areas, Woodlands,
 and Wetlands created by Community GIS Services Inc.

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

Cullen Smith Project
 Hennepin County - Twp. 117 N Rng. 22 W Sec. 10



Scale
 1" = 300'





Environmental Impact Analysis

2510 Oakland Rd, Minnetonka, MN, 55305
 Total Diversion Rate: 92.08%

Project Summary:

Totals:	Weight (Tons)	Percent of Total	CO2 Impact (MTCO2e)	Embodied Energy Conserved (MMBTU)
Total Reclaimed Material	8.88	3.00%	-36.77	-103.25
Total Recycled Material	242.62	82.08%	-70.74	-429.53
Total Alternative Daily Cover	20.68	7.00%	57.70	0.00
Total Diverted Material	272.18	92.08%	-49.82	-532.78
Total Direct Landfilled Material	23.41	7.92%	65.31	0.00
Net Totals	295.59	100.00%	15.50	-532.78

MTCO2e - Metric Tons of CO2 (carbon dioxide) emitted

MMBTU - Million British Thermal Units

Net totals combine the *source reduction* for reclaimed materials, *recycling emissions* for recycled materials, and *landfill emissions* for landfilled materials.

Alternative Daily Cover is finings used in place of topsoil for landfill cover. It displaces the use of topsoil, but is not classified as recycling.

Environmental Impact of Diverted Materials:

Totals:	Homes Energy Use per Year	"Trees Saved"	Vehicle Emissions per Year	Barrels of Oil Equivalent
Reclaimed	3.35	941	7.74	18.60
Recycled	1.19	334	2.75	77.37
Total Diverted	4.54	1275	10.49	95.97

Equivalencies calculated based on EPA calculated emission equivalency factors.

"Homes' Energy Use per Year": CO2 emissions from an average home's energy use for one year.

"Trees Saved": Tree Seedlings grown for 10 years needed to sequester this amount of carbon emissions.

"Vehicle Emissions per Year": Number of passenger vehicles' annual GHG emissions.

<http://www.epa.gov/cleanenergy/energy-resources/refs.html>

Prepared for: Better Futures Minnesota

By: Ecotone Partners GBC, INC.

Date: Jan 17, 2016



Impacts by Item Type:

Materials and Impacts:	Weight (Tons)	GHG Factor	CO2 Impact (MTCO2e)	Embodied Energy Factor	Embodied Energy Conserved (MMBTU)
RECLAIMED FOR REUSE	8.88	Source Reduction Factor	-36.77		-103.25
ATTIC LADDER - WOODEN	0.027	-4.05	-0.1094	-15.02	-0.4055
ATTIC LADDER PULLEYS	0.002	-3.06	-0.0046	-37.04	-0.0556
ATTIC LADDER PULLEYS	0.002	-3.06	-0.0046	-37.04	-0.0556
BATHROOM SINK	0.037	-0.04	-0.0015	-13.00	-0.4843
BATHROOM TOILET	0.023	-0.04	-0.0009	-13.00	-0.2925
BATHROOM TOILET	0.023	-0.04	-0.0009	-13.00	-0.2925
CABINET - 31 X 64	0.057	-4.05	-0.2288	-15.02	-0.8486
CABINET - 96 X 18	0.057	-4.05	-0.2309	-15.02	-0.8561
CABINET - BASE 114 X 34	0.106	-4.05	-0.4303	-15.02	-1.5959
CABINET - BASE 24 X 34	0.027	-4.05	-0.1094	-15.02	-0.4055
CABINET - BASE 34 X 68.5	0.005	-4.05	-0.0203	-15.02	-0.0751
CABINET - BASE 37X 32	0.047	-4.05	-0.1883	-15.02	-0.6984
CABINET - BASE 46 X 35	0.075	-4.05	-0.3038	-15.02	-1.1265
CABINET - BOOKSHELF 34 X 82	0.038	-4.05	-0.1529	-15.02	-0.5670
CABINET - CORNER UNIT	0.064	-4.05	-0.2582	-15.02	-0.9575



CABINET - CORNER UNIT	0.064	-4.05	-0.2582	-15.02	-0.9575
CABINET - GLASS UPPER CORNER UNIT 30 X 68	0.041	-0.52	-0.0212	-7.95	-0.3240
CABINET - SINK BASE 47 X 31	0.045	-4.05	-0.1833	-15.02	-0.6797
CABINET - UPPER 25 X 51	0.023	-4.05	-0.0932	-15.02	-0.3455
CABINET - UPPER 34 X 52	0.034	-4.05	-0.1377	-15.02	-0.5107
CABINET - UPPER 37 X 44.5	0.025	-4.05	-0.1002	-15.02	-0.3717
CABINET - UPPER 37 X 52	0.034	-4.05	-0.1357	-15.02	-0.5032
CABINET - UPPER 38.5 X 58.5	0.030	-4.05	-0.1225	-15.02	-0.4544
CABINET - UPPER 43 X 35	0.031	-4.05	-0.1245	-15.02	-0.4619
CABINET - UPPER 48 X 53	0.034	-4.05	-0.1367	-15.02	-0.5069
CABINET - UPPER 51 X 19	0.018	-4.05	-0.0709	-15.02	-0.2629
CABINET - UPPER 52 X 52	0.048	-4.05	-0.1954	-15.02	-0.7247
CABINET - UPPER 82 X 20	0.028	-4.05	-0.1134	-15.02	-0.4206
LIGHT FIXTURE - CEILING (BLACK)	0.002	-50.80	-0.0762	-66.00	-0.0990
LIGHT FIXTURE - CEILING (BLACK)	0.002	-50.80	-0.0762	-66.00	-0.0990
LIGHT FIXTURES	0.001	-50.80	-0.0254	-66.00	-0.0330
LIGHT FIXTURES	0.001	-50.80	-0.0254	-66.00	-0.0330
LIGHT FIXTURES	0.001	-50.80	-0.0254	-66.00	-0.0330
LIGHT FIXTURES	0.001	-50.80	-0.0254	-66.00	-0.0330
LIGHT FIXTURES	0.001	-50.80	-0.0254	-66.00	-0.0330
LIGHT FIXTURES	0.001	-50.80	-0.0254	-66.00	-0.0330
LIGHT FIXTURES	0.001	-50.80	-0.0254	-66.00	-0.0330

Prepared for: Better Futures Minnesota
 By: Ecotone Partners GBC, INC.
 Date: Jan 17, 2016





LONG LIGHT FIXTURES	0.003	-50.80	-0.1524	-66.00	-0.1980
LONG LIGHT FIXTURES	0.003	-50.80	-0.1524	-66.00	-0.1980
MAIDS SEAT	0.008	-4.05	-0.0304	-15.02	-0.1127
MAIDS SEAT	0.008	-4.05	-0.0304	-15.02	-0.1127
MIRRORED VANITY CABINET	0.010	-4.05	-0.0415	-15.02	-0.1540
MIRRORED VANITY CABINET	0.010	-4.05	-0.0415	-15.02	-0.1540
MIRRORED VANITY CABINET	0.010	-4.05	-0.0415	-15.02	-0.1540
NON MIRRORED VANITY	0.008	-4.05	-0.0304	-15.02	-0.1127
PEDASTAL LIGHT FIXTURE	0.001	-50.80	-0.0254	-66.00	-0.0330
TELEPHONE	0.002	-1.96	-0.0029	-48.99	-0.0735
TELEPHONE	0.002	-1.96	-0.0029	-48.99	-0.0735
TELEPHONE	0.002	-1.96	-0.0029	-48.99	-0.0735
VINTAGE HOTPOINT FRIDGE	0.083	-50.80	-4.1910	-66.00	-5.4450
VINTAGE HOTPOINTE DISHWASHER	0.090	-50.80	-4.5466	-66.00	-5.9070
WOOD DOOR SCREEN 92 X 31	0.009	-4.05	-0.0375	-15.02	-0.1389
WOOD DOOR SCREEN 92 X 31	0.009	-4.05	-0.0375	-15.02	-0.1389
WOOD DOOR SCREEN 92 X 31	0.009	-4.05	-0.0375	-15.02	-0.1389
WOOD DOOR SCREEN 92 X 31	0.009	-4.05	-0.0375	-15.02	-0.1389
WOOD DOOR SCREEN 92 X 31	0.009	-4.05	-0.0375	-15.02	-0.1389
WOOD DOOR SCREEN 92 X 31	0.009	-4.05	-0.0375	-15.02	-0.1389
WOOD DOOR	0.009	-4.05	-0.0375	-15.02	-0.1389

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SCREEN 92 X 31					
WOOD DOOR SCREEN 92 X 31	0.009	-4.05	-0.0375	-15.02	-0.1389
WOOD DOOR SCREEN 92 X 31	0.009	-4.05	-0.0375	-15.02	-0.1389
WOOD DOOR SCREEN 92 X 31	0.009	-4.05	-0.0375	-15.02	-0.1389
WOOD DOOR SCREEN 92 X 31	0.009	-4.05	-0.0375	-15.02	-0.1389
WOOD SHUTTERS 16 X 51	0.004	-4.05	-0.0172	-15.02	-0.0638
WOOD SHUTTERS 16 X 51	0.004	-4.05	-0.0172	-15.02	-0.0638
WOOD SHUTTERS 16 X 51	0.004	-4.05	-0.0172	-15.02	-0.0638
WOOD SHUTTERS 16 X 51	0.004	-4.05	-0.0172	-15.02	-0.0638
WOOD SHUTTERS 16 X 51	0.004	-4.05	-0.0172	-15.02	-0.0638
WOOD SHUTTERS 16 X 51	0.004	-4.05	-0.0172	-15.02	-0.0638
WOOD SHUTTERS 20 X 43	0.004	-4.05	-0.0152	-15.02	-0.0563
WOOD SHUTTERS 20.5 X 68	0.006	-4.05	-0.0243	-15.02	-0.0901
WOOD SHUTTERS 20.5 X 68	0.006	-4.05	-0.0243	-15.02	-0.0901
WOOD SHUTTERS 55.5 X 15	0.005	-4.05	-0.0182	-15.02	-0.0676
WOOD SHUTTERS 55.5 X 15	0.005	-4.05	-0.0182	-15.02	-0.0676
WOOD SHUTTERS 55.5 X 15	0.005	-4.05	-0.0182	-15.02	-0.0676
WOOD SHUTTERS 55.5 X 15	0.005	-4.05	-0.0182	-15.02	-0.0676
WOOD SHUTTERS 55.5 X 15	0.005	-4.05	-0.0182	-15.02	-0.0676
WOOD SHUTTERS	0.005	-4.05	-0.0182	-15.02	-0.0676

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26 X 32					
WOOD WINDOW 26 X 32	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 26 X 32	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 26 X 32	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 26 X 32	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 26 X 32	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 26 X 32	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 26 X 32	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 26 X 32	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 26 X 32	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 30 X 24	0.005	-4.05	-0.0203	-15.02	-0.0751
WOOD WINDOW 30 X 24	0.005	-4.05	-0.0203	-15.02	-0.0751
WOOD WINDOW 30 X 24	0.005	-4.05	-0.0203	-15.02	-0.0751
WOOD WINDOW 30 X 24	0.005	-4.05	-0.0203	-15.02	-0.0751
WOOD WINDOW 30 X 24	0.005	-4.05	-0.0203	-15.02	-0.0751
WOOD WINDOW 30 X 24	0.005	-4.05	-0.0203	-15.02	-0.0751
WOOD WINDOW 30 X 40	0.005	-4.05	-0.0203	-15.02	-0.0751
WOOD WINDOW 30 X 40	0.005	-4.05	-0.0203	-15.02	-0.0751
WOOD WINDOW	0.007	-4.05	-0.0294	-15.02	-0.1089

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30 X 40					
WOOD WINDOW 30 X 40	0.007	-4.05	-0.0284	-15.02	-0.1051
WOOD WINDOW 30 X 40	0.007	-4.05	-0.0294	-15.02	-0.1089
WOOD WINDOW 30 X 40	0.007	-4.05	-0.0294	-15.02	-0.1089
WOOD WINDOW 30 X 40	0.007	-4.05	-0.0294	-15.02	-0.1089
WOOD WINDOW 30 X 40	0.007	-4.05	-0.0294	-15.02	-0.1089
WOOD WINDOW 30 X 40	0.007	-4.05	-0.0294	-15.02	-0.1089
WOOD WINDOW 30 X 40	0.007	-4.05	-0.0294	-15.02	-0.1089
WOOD WINDOW 30 X 40	0.007	-4.05	-0.0294	-15.02	-0.1089
WOOD WINDOW 30 X 40	0.007	-4.05	-0.0294	-15.02	-0.1089
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW	0.006	-4.05	-0.0253	-15.02	-0.0939

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32 X 27					
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 32 X 27	0.006	-4.05	-0.0253	-15.02	-0.0939
WOOD WINDOW 40 X 40	0.008	-4.05	-0.0324	-15.02	-0.1202
WOOD WINDOW 40 X 40	0.008	-4.05	-0.0324	-15.02	-0.1202
WOOD WINDOW 48 X 60	0.012	-4.05	-0.0486	-15.02	-0.1802
WOOD WINDOW 48 X 60	0.012	-4.05	-0.0486	-15.02	-0.1802
WOOD WINDOW 48 X 60	0.012	-4.05	-0.0486	-15.02	-0.1802
WOOD WINDOW 48 X 20	0.006	-4.05	-0.0243	-15.02	-0.0901
WOOD WINDOW SCREEN 10.5 X 32	0.006	-4.05	-0.0243	-15.02	-0.0901
WOOD WINDOW SCREEN 39 X 49	0.006	-4.05	-0.0243	-15.02	-0.0901
WOOD WINDOW	0.002	-4.05	-0.0081	-15.02	-0.0300

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SCREEN 39 X 49					
WOOD WINDOW SCREEN 49 X 60	0.007	-4.05	-0.0284	-15.02	-0.1051
WOOD WINDOW SCREEN 49 X 60	0.007	-4.05	-0.0284	-15.02	-0.1051
WOOD WINDOW SCREEN 49 X 60	0.007	-4.05	-0.0284	-15.02	-0.1051
42 6-panel wood doors in jambs	1.575	-4.05	-6.3788	-15.02	-23.6565
5 5-panel wood doors	0.108	-4.05	-0.4354	-15.02	-1.6147
1450 sq ft oak flooring 1.5"	1.631	-4.05	-6.6056	-15.02	-24.4976
525 sq ft Attic floor 1x6	0.558	-2.02	-1.1262	-4.16	-2.3192
480 sq ft sub floor 1x8	0.510	-2.02	-1.0302	-4.16	-2.1216
1020 ln ft 2x4 studs	0.510	-2.02	-1.0302	-4.16	-2.1216
400 ln ft 2x6 rafters	0.350	-2.02	-0.7070	-4.16	-1.4560
750 ln ft 2x10 joists	1.688	-2.02	-3.4088	-4.16	-7.0200
RECYCLED: On- site separated	194.78	Recycling Factor	-9.29	Recycling Factor	-209.49
Steel	3.91	-1.81	-7.08	-20.49	-80.11
Shingles	3.87	-0.09	-0.35	-2.99	-11.57
Concrete	187.00	-0.01	-1.87	-0.63	-117.81
RECYCLED: Off- site separated	47.84	Recycling Factor	-61.45	Recycling Factor	-220.05
Cardboard	0.41	-3.12	-1.28	-15.27	-6.26
Wood	16.44	-2.46	-40.44	0.08	1.32
Aggregate	6.10	-0.01	-0.06	-0.63	-3.84
Steel	2.70	-1.81	-4.89	-20.49	-55.32
Other Metals	0.08	-4.38	-0.35	-67.17	-5.37
Shingles	6.66	-0.09	-0.60	-2.99	-19.91
Fiber: Carboard and Paper	0.13	-3.53	-0.46	-20.60	-2.68

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Aggregate: Asphalt, Concrete, Masonry	10.73	-0.01	-0.11	-0.63	-6.76
Metals: Iron, Copper, Aluminum, Brass	1.78	-4.38	-7.80	-67.17	-119.56
Mixed Wood	2.20	-2.46	-5.41	0.08	0.18
Shingles	0.61	-0.09	-0.05	-2.99	-1.82
Sheetrock	0.00	0.03	0.00	-3.17	0.00
DIVERTED: (ADC)	20.68	ADC Factor	57.70	ADC Factor	0.00
Alternative Daily Cover	12.60	2.79	35.15	0.00	0.00
Alternative Daily Cover	8.08	2.79	22.54	0.00	0.00
DIRECT LANDFILL	23.41	Landfill Factor	65.31	Landfill Factor	0.00
Direct Landfill	7.61	2.79	21.23	0.00	0.00
Line Residuals	15.80	2.79	44.08	0.00	0.00

Social Cost of Carbon:

Social Cost of Carbon	Landfill Weight (Tons)	Net Emissions (MTCO _{2e})	Social Cost of Carbon @ \$40	Social Cost of Carbon @ \$15
Landfill Demolition	108.59	301.08	\$12,043.29	\$4,516.23
Deconstruction	23.41	15.50	\$619.91	\$232.47
Potential Carbon Credit Value		285.58	\$11,423.38	\$4,283.77

For traditional demolition, concrete weight and its emissions are backed out since that is commonly recycled even in landfill-based demoliion.

<http://www.yaleclimateconnections.org/2015/02/understanding-the-social-cost-of-carbon-and-connecting-it-to-our-lives/>

California carbon market daily price: <http://calcarbodash.org>



Integrated Reporting and Process Management, LLC. certifies these estimates as accurate based on EPA WARM model estimates, and the weights and recycling receipts and weigh tickets provided by Better Futures Minnesota Deconstruction staff.

Final disposition of reclaimed material is for resale at Better Futures ReUse Warehouse at 2620 Minnehaha Avenue South, Minneapolis, MN 55406.

Sales: Tamiko Trott-Binns - Donations and Sales Manager, 612-405-4552

Final disposition of recycled material may include the following facilities: Atomic Recycling, Dem-Con Companies, Broadway Resource Recovery, Pioneer Paper Stock Company, CS McCrossan-Burnsville Aggregate, Northern Metal Recycling & Spectro Alloys, ProPellet, LDI Fibres, Commercial Asphalt, New Ulm Steel and Recycling, Bay Side Recycling, Final Grade, Dem-Con Green Fuels, Alliance Steel, Shine Bros Corp, North Pine Aggregate, and Midwest Asphalt.

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Joint Meeting of the Minnetonka Park Board and City Council
Item 2C
Meeting of November 14, 2018

Subject:	New Park at Ridgedale - Community Outreach Results
Park Board related goal:	To renew and maintain parks and trails
Park Board related objective:	Identify areas of the city that are deficient of adequate park or trail amenities
Brief Description:	New Park at Ridgedale & Crane Lake Preserve community outreach & engagement results to guide concept designs

Background

As part of the ongoing revitalization and reimagining of the Ridgedale area, the City of Minnetonka will develop a new community park adjacent to Ridgedale Center and implement improvements at Crane Lake Preserve.

The new community park at Ridgedale will be a signature community gathering space that will serve as a catalyst for this transformation and will set the tone for redevelopment in the area. Community level parks are designed to provide a combination of passive and active recreational activities for the entire community.

Improvements at Crane Lake Preserve will include targeted removal of invasive species, natural resource reestablishment, enhanced access, and passive recreation opportunities. Community preserves function to create opportunities for human use and appreciation of the community's natural areas to a level that is appropriate for the site.

A robust community outreach and engagement effort to identify preferences and values in park space has been completed for this project. This process included a variety of methods to engage with people, particularly traditionally underrepresented groups including youth, seniors and non-residents. The unique methods were funded by an active living grant through Hennepin County and MN State Health Improvement Program (SHIP).

Attached are a summary of the community outreach methods and results of this outreach, which are intended to inform concept design. Once the city council and park board provide feedback on this information, the next step of concept design will begin in November 2018.

Two plans will be developed as part of the concept design phase. These concepts will be available for review and comment by residents and other interested stakeholders online in addition to public meetings in January, 2019. A preferred concept will be identified based on public, Park Board and City Council feedback, and revised to reflect input received.

Discussion Questions

- ***Does the city council or park board have any feedback about the results of the community outreach and engagement findings and how they will inform concept designs?***
- ***Does the city council or park board have any feedback on the proposed concept design phase?***

Recommended City Council and Park Board Action

The city council and park board are requested to review and provide feedback on the results of the community outreach effort and discuss next steps of park concept design phase.

Joint Meeting of the Minnetonka Park Board and City Council
Item 3
Meeting of November 14, 2018

Subject:	Information Items
Park Board related goal:	N/A
Park Board related objective:	N/A
Brief Description:	The following are informational items and developments that have occurred since the last park board meeting.

Franchise Fees

At its August 27, 2018 meeting, the city council approved two ordinances related to franchise fees:

- Ordinance increasing the electric franchise fee on Northern States Power Company for providing electric energy service within the City of Minnetonka
- Ordinance implementing a gas franchise fee on CenterPoint Energy Minnesota Gas for providing gas energy service within the City of Minnetonka

A portion of the franchise fees will be earmarked for trails, which amounts to approximately \$1.8 million per year. As in previous years, the park board will review the parks and trails pages of the Capital Improvement Program.

Sunrise Ridge Park

A new home is proposed to be built on a vacant lot south of the existing basketball court adjacent to Sunrise Ridge Park. In order for the new homeowners to access the lot, the basketball court needs to be relocated.

Prior to the park being constructed in 2003, there was a cul-de-sac street where the park is currently located. The city is legally required to provide access to the new home. A survey and wetland delineation have been performed on the lot, and the lot is verified to be buildable for a new home. City staff will host a neighborhood meeting on Tuesday, November 13 to gather feedback from neighbors.

Facility and Programming Space Study Update

The city of Minnetonka contracted the BKV Group to execute a study, which evaluates current and future community facility and programming space. The study encompasses recreation department needs, community needs and current facility conditions. The desired outcome is to produce an overall assessment of the city's programming space that will give direction to staff as we look for future development and growth opportunities.

A draft of the study indicates the following preliminary findings:

- The Williston Center and Community Center are at or near capacity
- There is high demand for senior and aquatic programs
- Creating and maintaining partnerships will be critical to meet the needs of our users as we move forward

Staff will bring the final study back for review in early 2019.