



Farmland and Natural Area Protection Plan

Chapter 2

Application, Review and Acquisition

**Revised to reflect current Land
Conservation Program – 2018**

I. Application Process

The Dakota County Board of Commissioners will determine whether a new Land Conservation Program (LCP) application round will take place. The process of selling or donating land or a conservation easement starts with the landowner learning about the LCP by reviewing the LCP guidelines. If landowners want to participate in the LCP, they complete and submit a pre-application. This information is used to determine if a proposed project is eligible for the LCP. Completing a pre-application is a voluntary choice by the landowner. Pre-applications may be submitted for natural area protection, wetland restoration, and/or water retention projects. In 2015, the County discontinued the agricultural land protection component, due to a no-net-loss of cultivated land between 2003 and 2014, and changes to the 2013 federal Farm Bill that reduced funding, changed the project criteria, and changed the funding formula. Options for future agricultural land protection will be included in a new 2018 Land Conservation Plan.

Submitting a pre-application does not commit the applicant to selling land or a conservation easement, nor does it commit Dakota County to acquiring an interest in the land. If a project is eligible, the landowner is required to provide additional information in a final application form. If a project does not appear eligible, County staff contacts the applicant to see if the project can be revised to become eligible. A landowner may withdraw a pre-application or final application at any point in the process.

Figure 2-1, illustrates the general project application, evaluation, and project selection process.

A. Pre-Application

A three-page pre-application form is used to determine if a project being submitted for land protection is eligible for consideration. This easy-to-complete form provides the County with contact information for the landowner and/or applicant, general property location and description, and other information about the property and project. It is the landowners' indication that they are interested in exploring the County LCP. County staff will review the materials to determine if the project meets the eligibility requirements. Applicants are contacted once eligibility is determined.

The deadline to submit pre-applications is approved by the County Board, typically in the early fall. Check the Dakota County web page for the deadline date or call County staff (952-891-7018).

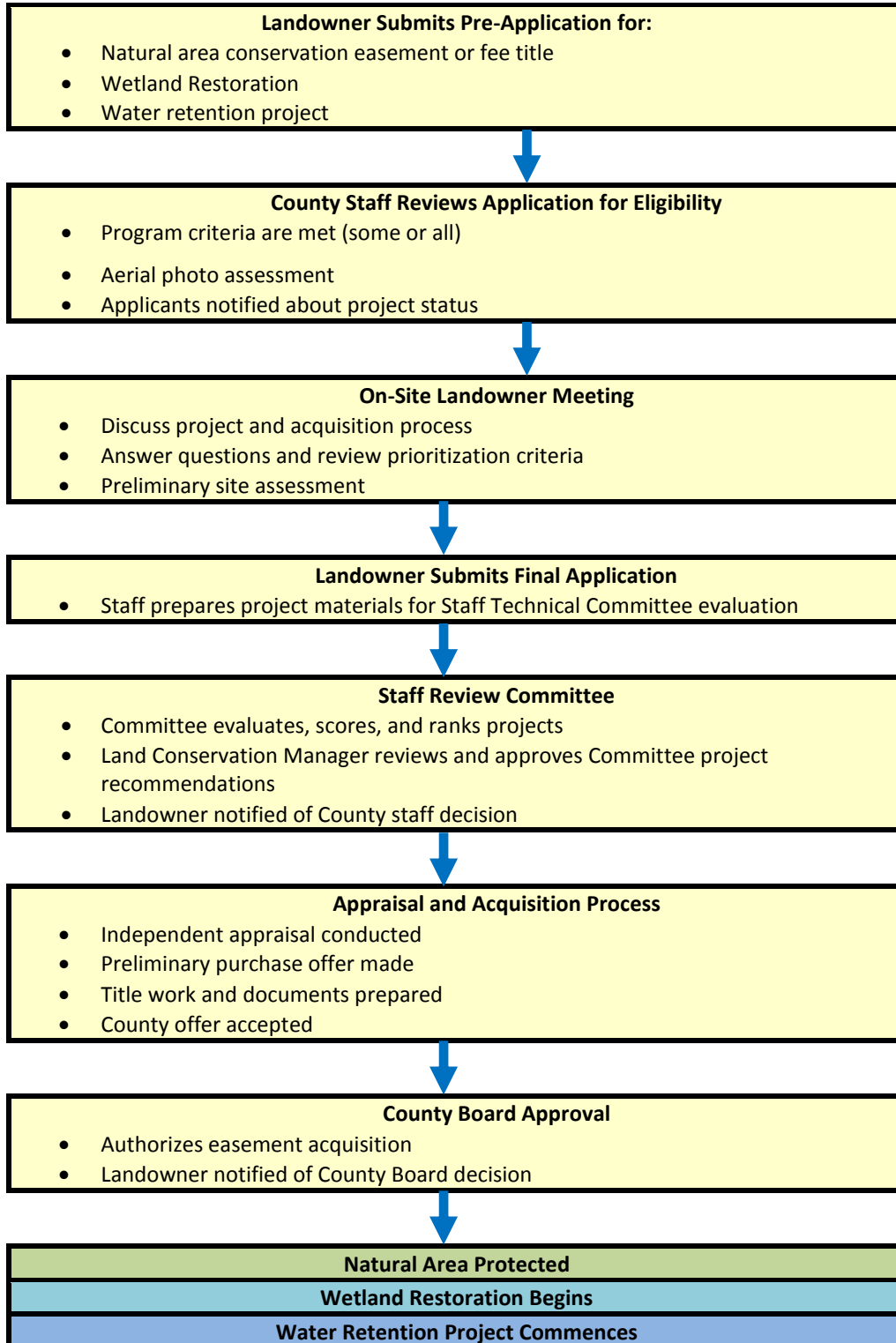
B. Final Application

If the project is eligible and a landowner is interested in participating, a site visit is scheduled to discuss the project and the final application. The final application form includes information that is used to evaluate how well the project meets LCP goals based on established prioritization criteria. Natural area final applications may contain agricultural land that is intended to be restored to natural vegetation. Natural area applications will be compared only with other natural area protection projects. Other

The deadline to submit a Final Application is approved by the County Board, usually in the late fall. Check the Dakota County web page for the deadline date or call County staff (952-891-7018).



Figure 2-1: Dakota County Land Conservation Program Generalized Landowner Application Process



II. Application Review and Ranking

Dakota County established a review process for evaluating and ranking farmland and natural area applications. This section describes the criteria and process for reviewing and ranking applications.

A. Criteria Reflect Program Purposes

The Land Conservation Program (LCP) criteria reflect the following purposes:

1. Every natural area protection project should accomplish at least one of the following:
 - a. Protect high quality natural areas
 - b. Protect restorable natural areas that connect or buffer other high quality natural areas
 - c. Protect and improve wildlife habitat
 - d. Protect and improve water quality.
2. Every wetland restoration project should accomplish at least one of the following:
 - a. Restore historic or existing degraded wetlands
 - b. Improve surface water quality
 - c. Increase groundwater recharge
 - d. Improve downstream erosion and flood control functions
 - e. Protect threatened or rare wetlands species
 - f. Provide habitat for wildlife Species of Greatest Conservation Need (SGCN)
3. Every water retention project should accomplish at least one of the following:
 - a. Reduce downstream erosion and flood damage
 - b. Increase groundwater recharge
 - c. Provide surface water wildlife habitat



Any pre-application that does not meet the intent of these purposes could be removed from consideration or may be ranked lower by the Staff Review Committee.

B. Two-Step Review Process: Eligibility and Prioritization

A pre-application submitted to the Dakota County LCP will be reviewed using the following two steps:

1. The initial step is to review the pre-application to determine whether the project meets minimum eligibility requirements. County staff will determine project eligibility. As part of the initial eligibility review, County staff may consult with applicants/landowners when information on the pre-application is incomplete or unclear. Pre-applications that do not meet the program eligibility requirements will not be considered. Applicants will be informed of the results from the initial review. If circumstances change, an ineligible property may be re-submitted and considered in a later round.
2. The second step is to evaluate and prioritize eligible projects. County staff will schedule a site visit with eligible project applicants to discuss their project in more detail. The site visit will provide valuable information about the unique characteristics and circumstances for each project and allow landowners to

fully understand the prioritization criteria. The goal of the prioritization process is to objectively evaluate each project and then determine project scores and ranking. County staff will collect and organize preliminary project information and present these materials to the Staff Review Committee (SRC). The SRC will evaluate, score, rank, and make specific and general recommendations. The SRC findings and recommendations are then forwarded to the Land Conservation Manager for review. The Land Conservation Manager will confirm which projects should be approved for continued consideration.

C. Donation of Land or Conservation Easements

Some landowners may wish to donate land or a conservation easement to Dakota County or some other entity through the Land Conservation Program (LCP). A landowner interested in donating property or an easement at no cost or at a significant cost reduction can contact LCP staff throughout the year. LCP County staff will review all potential donations to determine if the property and conditions meet LCP goals. If it does, the project will not be required to complete the same selection process and schedule as other submitted projects.

D. Natural Area Projects Reviewed

Natural area applications must meet natural area eligibility requirements and will then be prioritized among other natural area applications.

E. Natural Area Eligibility Criteria

Natural areas are lands with significant natural features or lands with potential for restoration of significant natural characteristics and ecological functions. The Dakota County Board of Commissioners directed the LCP to protect natural areas with at least one of the following important characteristics:

- Contains and protects features of ecological significance
- Improves and/or expands wildlife habitat
- Is adjacent to a stream, river, or lake
- Provides additional environmental benefits such as protecting or improving surface or groundwater

The LCP map (Figure 1-1, in the full Plan) identifies properties that meet at least one of these eligibility requirements. To be eligible, a property must be identified on the map or demonstrate at least one of the significant natural characteristics listed.

F. Natural Area Prioritization Criteria

Dakota County will prioritize properties that meet the natural area eligibility requirements according to an objective scoring system that quantifies. Table 2-1 describes the prioritization criteria and their numerical values. The range of scores is 0 to 215 points.

The LCP Staff Review Committee will evaluate the projects using the prioritization criteria, score and rank the projects, and forward their prioritized project list and recommendations to the County Land Conservation Manager.



Prioritization Criteria for Wetland and Water Retention projects is forthcoming (April 2018).

Table 2-1: Natural Area Prioritization Criteria

Dakota County Natural Area Protection Eligibility & Scoring Criteria (2018)

Minimum Eligibility Requirements

Natural areas are lands with high quality natural resources or lands with the potential for restoring natural features. Natural areas with at least one of the following significant natural characteristics will be eligible:

- Is ecologically significant
- Provides important wildlife habitat
- Is adjacent to a river, lake or stream
- Provides environmental benefits such as water quality protection or flood control.

The County's Priority Natural Areas (PNAs) Map (see Map A) identifies areas that are the highest priority for protection. To be eligible, a natural area must be identified on the map, or provide evidence that the property has at least one of the significant natural characteristics listed above, or has restoration potential.

Projects with unique features, circumstances (such as threat of immediate development), or are in priority locations will be reviewed on a case-by-case basis.

Priority Natural Areas, Natural Area Conservation Zones, and Buffer Corridors were all drawn using the best available natural resource and land cover data. After a site visit, the program administrator may adjust these boundaries for the purposes of scoring the project, based on existing conditions and new or refined data.

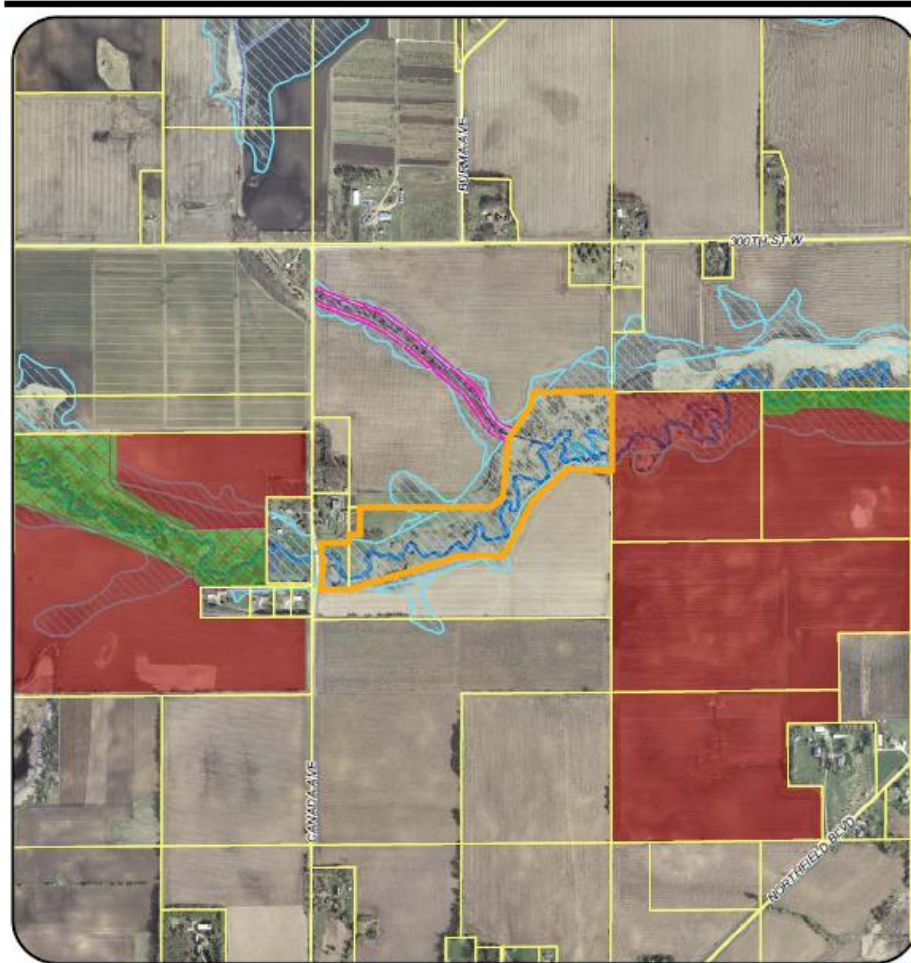
Natural Area Scoring Criteria	Points
<p>I. Location Intent: Protect and connect contiguous, high quality natural areas</p>	215
<p>A. Priority Natural Area The highest quality natural areas remaining in the County have been identified using a variety of criteria including ecological quality, size and location. Land with these features is considered the highest priority for protection (see attached Map A). Points are awarded based on the percentage of project acreage within a Priority Natural Area.</p> <p><i>Example: 18 acres of a 40-acre project is within a Priority Natural Area 45% x 50 = 22.5 points</i></p>	0 to 50
<p>B. Open Space Corridor The County identified corridors along streams, rivers and lakes (generally 660 feet from the waterway) as a high priority for protecting water quality, wildlife habitat and open space (see attached Map B). These corridors include surface water, existing natural areas and potential restoration sites such as new buffer areas. Points are awarded based on the percentage of project acreage within the corridor.</p> <p><i>Example: 18 acres of a 40-acre project are within a Open Space Corridor and adjacent to a stream 45% x 40 = 18 points</i></p>	0 to 40
<p>C. Natural Area Conservation Zone The County has identified natural area conservation zones to protect and connect the Priority Natural Areas and other protected land (See attached Map A). Points are awarded based on the percentage of project acreage within the Natural Area Conservation Zone.</p> <p><i>Example: 18 acres of a 40-acre project is within a Natural Area Conservation Zone. 45% x 40 = 18 points</i></p>	0 to 40
<p>D. Non-riparian Greenway Greenways can provide multiple benefits such as ecological services, habitat and recreation, within a single corridor. The County, together with cities and townships, has developed a network of existing and potential regional and local greenways (see attached Map C). Points are awarded based on the percentage of project acreage within the area that could be part of an identified greenway.</p> <p><i>Example: 18 acres of a 40-acre project is within a Greenway. 45% X 30 = 13.5 points</i></p>	0 to 30

<p>E. Water Adjacency</p> <p>Projects that are directly adjacent to lakes, streams or rivers have unique opportunities to provide multiple benefits (resource protection, water quality, and habitat,) and therefore are prioritized by the County. If a project is directly adjacent to a waterway, 15 points are awarded. Additional points are awarded based on the length of shoreline (in the case of lakes) or length of waterway centerline (in the case of streams & rivers) compared to the total perimeter of the project easement. To determine this ratio, use the following formula: Waterway length over easement / total easement perimeter = Waterway Ratio The following scale is used to determine any additional points above 15: Waterway Ratio of 0.3 or greater: 15 additional points are awarded Waterway Ratio of 0.1 to 0.29: 1 point awarded for each 0.02 (rounded up to the nearest point)</p> <p><i>Example: Waterway length of 1,000 feet and easement perimeter of 5,280 feet (40-acre parcel) = .19 = 9.5 points</i></p>	<p>0 to 30</p>
<p>F. Urban Projects</p> <p>Projects in incorporated cities are rarer due to urbanization, loss of natural land and higher land prices, characteristics that, along with adjacency to large populations, make them more significant.</p> <p>Projects located in incorporated cities will be awarded 7 to 15 points depending upon alignment with existing approved plans.</p> <p>Projects located outside of incorporated cities will be awarded 0 to 7 points depending upon proximity to city boundaries and population density.</p>	<p>0 or 15</p>
<p>G. Adjacency to Protected Land</p> <p>Projects that are adjacent to previously protected land (city or County parks, County easements or State-protected land, etc.) are valuable because they create opportunities for contiguous natural area protection and more effective management and will be awarded 10 points.</p>	<p>0 or 10</p>

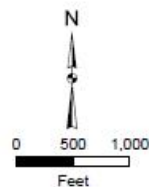
<h2>II. Financial Considerations</h2> <p>Intent: Provide incentives to landowners to reduce County land protection costs</p>	<h1>40</h1>												
<h3>A. Easement Value Donation</h3> <p>The number of points increases with an increasing percentage of easement value donation based on the value of the final easement.</p> <table border="1" data-bbox="215 510 1221 583"> <tr> <td>Donation Amount</td> <td>5%</td> <td>10%</td> <td>15%</td> <td>20%</td> <td>25%</td> </tr> <tr> <td>Points</td> <td>6</td> <td>8</td> <td>11</td> <td>15</td> <td>20</td> </tr> </table> <p><i>Note: A landowner can increase their donation beyond 25%. A bonus of one point will be awarded for every one percent donation above 25% up to a maximum of 40 points.</i></p>	Donation Amount	5%	10%	15%	20%	25%	Points	6	8	11	15	20	<p>0 to 20</p> <p>~</p> <p>More Points Are Possible</p>
Donation Amount	5%	10%	15%	20%	25%								
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<h3>B. Leveraged Resources</h3> <p>Leveraged resources include funds from project partners and other funding sources such as the Outdoor Heritage Fund, Legislative-Citizen Commission on Minnesota Resources, DNR, City, or other.</p> <table border="1" data-bbox="220 970 1214 1043"> <tr> <td>Leveraged Amount</td> <td>5%</td> <td>10%</td> <td>15%</td> <td>20%</td> <td>25%</td> </tr> <tr> <td>Points</td> <td>6</td> <td>8</td> <td>11</td> <td>15</td> <td>20</td> </tr> </table> <p><i>Note: A bonus of one point will be awarded for every one percent of leveraged resources above 25% up to a maximum of 40 points.</i></p>	Leveraged Amount	5%	10%	15%	20%	25%	Points	6	8	11	15	20	<p>0 to 20</p> <p>~</p> <p>More Points Are Possible</p>
Leveraged Amount	5%	10%	15%	20%	25%								
Points	6	8	11	15	20								
<h2>III. Stewardship</h2> <p>Intent: Encourage the management and restoration of high-quality natural areas and areas that maintain or increase natural resource quality</p>	<h1>25</h1>												
<h3>A. Commitment to Restoration</h3> <p>Restoration means going beyond generally accepted minimum stewardship practices to significantly improve the natural resource features of the land to higher quality. Examples include restoring wetlands, re-meandering streams, or replanting native grasses, trees and shrubs. Staff will determine what practices could be considered given the unique circumstances of each property and assign points accordingly.</p>	<p>0 to 15</p>												

<p>B. Commitment to Stewardship and/or Maintenance</p> <p>Landowners will be awarded up to 10 points for stewardship activities previously conducted on the property, <u>if</u> they commit to continuing those practices into the future.</p> <p>If minimal stewardship or maintenance practices are not currently being undertaken <u>and</u> the landowner is willing to commit to implementing those practices in the future, up to 10 points will be awarded.</p> <p>Common stewardship or management practices that may apply can be found here (link). Staff will determine what practices could be considered, given the unique circumstances of each property and award points accordingly.</p>	<p>0 to 10</p>								
<p>IV. Public Access</p> <p>Intent: Encourage appropriate and compatible public access</p>	<p>50</p>								
<table border="1"> <thead> <tr> <th>Level of Access</th> <th>Points</th> </tr> </thead> <tbody> <tr> <td>No public access</td> <td>0</td> </tr> <tr> <td>Appropriate access allowed on a portion of the project area or at specific times/seasons, e.g., trails, nature observation, fishing, cross-country skiing, etc.</td> <td>1 to 25</td> </tr> <tr> <td>Appropriate access allowed on the entire project area, ideally with another public partner (DNR, etc.)</td> <td>26 to 50</td> </tr> </tbody> </table>	Level of Access	Points	No public access	0	Appropriate access allowed on a portion of the project area or at specific times/seasons, e.g., trails, nature observation, fishing, cross-country skiing, etc.	1 to 25	Appropriate access allowed on the entire project area, ideally with another public partner (DNR, etc.)	26 to 50	<p>0 to 50</p>
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Appropriate access allowed on the entire project area, ideally with another public partner (DNR, etc.)	26 to 50								
<p>V. Unique Qualities/Other Considerations</p> <p>Intent: Protect unique or threatened sites, and ensure project readiness</p>	<p>20</p>								
<p>A. Level of Threat – 5 points Examples: Development pressure, imminent land sale, ownership transfer, changes in zoning, etc.</p> <p>B. Project Partners and Readiness – 5 points Examples: Number of project partners, known issues or complexities</p> <p>C. Unique Features – 10 points Examples: Wildlife species of special concern; state-wide, regional, County or local significance; public interest; historic/cultural significance, etc.</p>	<p>0 to 20</p>								

Figure 2-2: Example of Applying Natural Area Prioritization Criteria



- 2012 Applicant Easement
- 2012 Farmland Application
- 2012 Natural Area Application
- 2011 Farmland Project
- Approved/Protected Farmland
- Approved/Protected Natural Area
- Parcels
- Municipal Boundary
- Park Boundary
- CRP Land
- Railroad
- 100 Year Floodplain
- Water



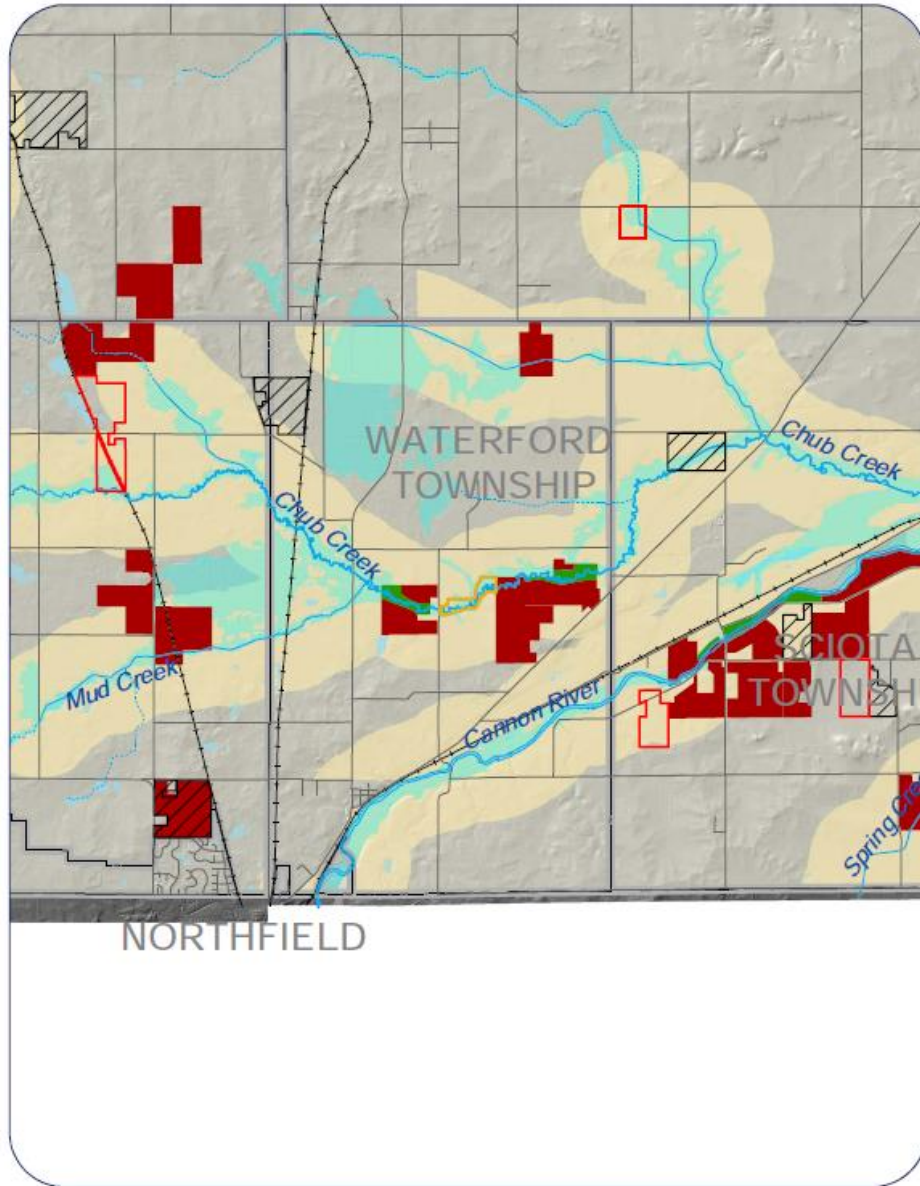
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








Dakota County Farmland and Natural Areas Program 2012 Natural Area Application

Waterford Township		Rank =
36 acres		
Natural Area Scoring Criteria	Measurement	Possible Points
I. Location		350
A. Priority Natural Area (0 - 50)	98%	49
B. Open Space Corridor (0 - 40)	100%	40
C. Natural Area Conservation Zone (0 - 40)	99%	40
D. Non-riparian Greenway (0 - 30)	None	0
E. Water Adjacency (0 - 30)	72%	22
F. Urban Projects (0 or 15)	No	0
G. Adjacency to Protected Land (0 or 10)	Yes	10
II. Financial Considerations		
A. Easement Value Donation (0 - 20)	15% (maybe 20%)	11
B. Leveraged Resources (0 - 20)	50% (LSOHC)	40
III. Stewardship		
A. Commitment to Restoration (0 - 15)	Have already begun restoring the property and are committed to continue to restore it to its native state.	
B. Commitment to Stewardship and/or Maintenance (0 - 10)	Have been practicing land stewardship since acquiring the property and are committed to continuing to restore and maintain the property to protect this sensitive area. They plan to select native plants for the restoration process, and work with Carleton College science department staff. They are interested in setting the restoration up as a teaching tool for Carleton students. They plan to enlist help from Pheasants Forever to advise the creation of a shelter belt.	
IV. Public Access (0 - 50)	They do and will allow public access for responsible people; they allow hunting for a handicapped neighbor, and allow people to fish regularly	
V. Unique Qualities/Special		
A. Level of Threat (5)	There are no building rights available.	
B. Project Partners and Readiness (5)	Yes	5
C. Unique Features (10)	Chub Creek, designated as environmentally sensitive, runs the length of the property. The property is adjacent to an FNAP easement.	
Preliminary Score		
Final Project Adjustment		
Final Score		

Other Information:

Chub Creek, designated as environmentally sensitive, runs the length of the property. Deer, fox, coyotes, pheasants, raccoon, muskrat, ducks and geese are present. Hundreds of ducks rest in the spring when the creek floods. A bald eagle visits daily in the summer months. Twelve Sandhill cranes arrive in late summer. I've seen badgers and a timber wolf also. The parcel provides an important buffer between Chub Creek and adjacent farmland. Wildlife use it as a corridor. This property is also covered 100% by an Agricultural Conservation Zone. Please see the attached landowner essay.



- | | | | |
|---|---------------------------------|---|----------------------|
|  | 2012 Applicant Easement |  | Railroad |
|  | 2012 Farmland Application |  | Municipal Boundaries |
|  | 2012 Natural Area Application |  | Parks |
|  | 2011 Farmland Project |  | Floodplain |
|  | Approved/Protected Farmland |  | Water |
|  | Approved/Protected Natural Area |  | Eligible Farmland |

III. Property Acquisition Process

A. Commitment of Interest

Landowners are contacted by Land Conservation Program (LCP) staff to determine if they are still interested in participating in the program. Willing owners are asked to review and sign a "Commitment of Interest" form and submit a refundable \$750 deposit to Dakota County to initiate the acquisition process. If a project is successfully negotiated, these funds will be reimbursed at the time of the transaction. If a landowner chooses to withdraw from the program prior to the completion of an appraisal, or after a tentative agreement is reached, the landowner forfeits the deposit funds.

B. Appraisal Process

After a list of projects is approved for continued consideration, County staff will work with respective project partners and landowners to complete a new appraisal to establish fair market value for the property.

Dakota County will hire a qualified, independent appraiser to determine the fair market value of the interest to be acquired. The landowner may also hire an appraiser to provide an independent opinion of the property value. If a landowner chooses to hire an appraiser, this should be done at the same time as the County appraiser is hired, so appraisal instructions are consistent, and the landowner appraisal can be considered along with the County's appraisal. The cost of the landowner's independent appraisal is the responsibility of the landowner. And, it should be noted that the \$750 commitment of interest deposit is not partial payment for either a County or landowner appraisal.



Landowners will be invited to accompany the County's appraiser and County staff during an initial meeting to discuss the project, including special instructions and subsequent inspection of the property. The County is not allowed to discuss the value with the landowner before the appraisal has been completed. The County-hired appraiser will not act as negotiator for the purchase.

For the sale of fee title to land, the appraiser estimates what an independent buyer would pay for the land based on sales of comparable property. For the sale of a conservation easement, the appraiser determines a "before" and "after" value. First, the appraiser determines the value of the land "as is" in its unrestricted condition, before an easement is placed on the property. The appraiser then determines the value of the land after the easement restrictions are in place. The difference between the two values is the conservation easement value.

C. Continued Consideration

After the appraisal is completed by the appraiser and reviewed by County staff, a meeting is scheduled with landowners to begin the acquisition process. Landowners are provided with a certified value and real property interested offer letter that includes: a summary of the subject property, a summary of the County Certified Value, summary of landowner donation of value (if applicable), and instructions on accepting or rejecting the certified value offer. Landowners sign this letter, which is only an indication that the contingent offer to purchase letter was provided by County staff.



The appraised value only establishes a price ceiling. Dakota County is under no obligation to make an offer to the applicant for the full appraised value of a conservation easement or fee title of the land. If the landowner has also hired an independent appraiser and this appraisal has a higher assigned value, the County is willing to review this appraisal report to determine if an adjustment to the property's fair market value will be made.

County staff and landowners will determine the process and sequence to proceed, depending on respective project circumstances. Except for extenuating circumstances, discussions and signing a purchase agreement must generally conclude within one year of the County Board project approval. In addition to cost, discussions may include possible changes to easement boundaries, easement terms and conditions, buffer requirements and responsibilities, time schedules, and other considerations. Signed agreements may contain contingencies and escrow requirements. Closing on the acquisition may also occur later than one year from an approval date.



If discussions between landowners and County staff are successful, the County prepares a purchase agreement for landowner signature. Final approval of the agreement is contingent on County Board approval of all terms and conditions, to be evidenced by a duly adopted County Board resolution. If the County Board approves the acquisition, landowners will be notified in writing.

Although every attempt will be made to conclude a acquisition in a timely, positive, and fair manner, it is anticipated that not all applications will result in the sale of a conservation easement or fee title.

If landowners do not accept an offer from Dakota County, or time has extended beyond agreed on limits, Dakota County will discontinue discussions and terminate the acquisition. If the County Board chooses not to purchase the easement, a written letter will be sent to landowners explaining the reasons for not purchasing the property or an easement. If the County does not elect to complete an acquisition for which a purchase agreement has been submitted, the County will refund the \$750 "Commitment of Interest" deposit to landowners.

D. Limit on Conservation Easement Purchase Price

The Dakota County Land Conservation Program will limit its contribution to the purchase of a natural area conservation easement over private property by establishing a \$5,000 per acre cap. Funding contributions from sources other than Dakota County are not subject to this cap. Therefore, the total compensation paid from all sources may exceed this County cap.

The reason for establishing a County funding cap is that at some level, it is more fiscally responsible to pay the full fair market of the entire fee title than a slightly lower amount paid for a conservation easement. Purchase of fee title would allow public access, whereas the purchase of a conservation easement may not. If Dakota County is paying nearly the full fee title price for an easement, it may be more fiscally responsible to purchase fee title and provide access.

The cap does not apply to fee title acquisitions where a public agency will hold title and allow public access to the property.

E. Conservation Easement Terms

For properties where a conservation easement will be purchased, Dakota County has established the basic terms of the permanent conservation easement for natural areas. **Attachment A** contains a model natural area conservation easement deed. County staff will meet with applicants to discuss terms for each property based on the model easement. The final, negotiated easement may contain terms different than the model, but in no case will they be less restrictive than the model.

A conservation easement will contain the following elements:

- Who is giving and receiving the easement
- Legal Description (established at no cost by County Surveyor)
- Purpose for the easement – natural area protection/wetland restoration/water retention project
- Prohibited Uses – any use other than for protecting natural areas/restoring wetlands/retaining water on the land will be prohibited
- Rights of Landowner – maintained right to limit public access, right to use the land for open space, right to transfer, sell, or lease the property
- Rights of Easement Holder – allowed right of the County to enter the land to monitor compliance and to enforce the terms of the easement
- Duration – the duration of the easement is perpetual and shall bind future holders of the underlying fee title
- Termination – if Dakota County determines the purpose of easement is no longer possible to meet, and if permitted by law or other easement holders, the parties to the easement will determine whether to: sell the easement back to the landowner at the value of the easement at the time of termination; or purchase the underlying fee title of the property from the landowner at its encumbered value. All costs associated with terminating the easement will be the responsibility of the parties.



For ease of monitoring and enforcement, current and anticipated buildings and other structures will be excluded from conservation easements. An area large enough to include existing structures and anticipated future structures, as well as current and anticipated road right-of-way, will not be included in the land area to be included in the easement.

F. Other Requirements

1. Natural Resource Management Plans

Landowners are required to work with the County to develop, adopt, and implement a Natural Resource Management Plan (NRMP) for natural area easements.

The purpose of the NRMP is to describe the current and preferred natural resource conditions, goals, and activities for the easement area (Protected Property). The NRMP includes information on the Protected Property location; historic, existing, and adjacent land use; bedrock and surficial geology; soils; topography; hydrology, including groundwater and surface water; historic and existing vegetation cover, noxious and invasive plants, and land cover; ecological impacts, past and present, from fire suppression, diseases, wildlife, and climate change; plant community assessment; wildlife; target vegetation communities, including management priorities, methods, five-year work plan, and long-term work plan. The NRMP also includes plant restoration goals and recommendations, a restoration process, schedule, and cost estimates. The NRMP will be reviewed and updated every five years, or as needed to maintain its relevancy.

2. Restoration/Enhancement and Maintenance/Management of Easement Area

A Natural Resource Management Agreement (Management Agreement) is developed in conjunction with the NRMP and includes: a workplan for implementing jointly agreed on natural resource activities and priorities; the respective roles and responsibilities of the landowners, the County or partners; schedules: and cost estimates and funding/in-kind sources.

The status of any approved activity under the Management Agreement is monitored and assessed as part of the annual Easement monitoring process or routine ecological monitoring of the restored or enhanced areas by County staff, as allowed by the Management Agreement. **Attachment B** contains a model Natural Resource Management Agreement.

Through the County Land Conservation Program (LCP), the public is investing in landowners' property. The Protected Property becomes eligible to receive natural resource restoration funding through State grants obtained by the County, and County matching funds, for restoration and management purposes. It is assumed, based on landowner interest in the County LCP, that landowners already manage their property to maintain or improve its natural resource features, or seek to improve its condition through conservation.



For Management Agreements executed after June 1, 2019, public investment to improve the condition of natural areas and natural resources on the Protected Property is based on cost-share agreements with landowners, using the following ratios:

- Shoreland Areas: County/State funds provide up to 90% – Landowners provide at least 10%
- Upland Areas: County/State funds provide up to 75% – Landowners provide at least 25%.

Additionally, landowners are required to manage/maintain restored areas for three years. The details of cost share agreements and the responsibilities of landowners and the County are confirmed within a Management Agreement.

3. Title Search

Dakota County Abstract and Title conducts a title search of the property before closing on the sale of land or a conservation easement. The title search must show the applicant holds marketable title before closing may occur. Landowners are asked to provide an abstract and other documents pertaining to property title, if needed.

4. Survey

Before closing on the sale, a perimeter survey will be required of the land to be acquired or the area over which a conservation easement will be acquired. This will establish the legal description and an accurate acreage total. The Dakota County Surveyor will complete the survey.

5. Environmental Assessment

The County will conduct a preliminary environmental assessment to determine if there are any environmental hazards located within the proposed acquisition area. Landowners are required to comply with existing ordinances and regulations prior to closing, and work with the County to voluntarily resolve other issues. Please note that Dakota County Ordinance No. 110 prohibits burning and burying waste on all land, including farms.

6. Subordination Agreement(s)

If a conservation easement will be placed on property that is subject to a mortgage or lien, or is used to secure a loan or other credit, the holder of the mortgage, lien, loan or other credit instrument, must approve the sale, in writing, before closing. Model subordination agreements are available to landowners.

7. Pipeline Easements

If there is a pipeline or other utility located on the Protected Property, the landowner must work with the respective company to restrict the utility easement to a legally-defined corridor and provide recorded documentation to the County prior to closing.

8. Power of Attorney

If one or more individuals own an interest in the land and are legally represented by a person vested with Power of Attorney (PoA), the County will require documentation that the PoA has been recorded, or be provided with an original PoA that can be recorded prior to closing.

9. Property Report

Dakota County prepares a Property Report establishing the conditions of the subject property at the time an easement is transferred. This Property Report will contain maps and photographs, and will be used to monitor changes in the use or condition of the property, including required buffers. The landowner and County agree the Property Report is an accurate representation of the Protected Property at the time of easement transfer by signing it.

10. Septic Systems and Unused Wells

Dakota County requires septic systems to be upgraded. If a landowner house was built prior to 1996, a septic system compliance inspection is required, unless an as-built record or inspection report verifying the system was upgraded after 1996 is produced by the landowner. Dakota County requires that unused wells be sealed. These requirements are enforced even though no structures are included in the Protected Property area.

G. Payment for Other Associated Costs

The County will pay for the abstracting and recording fees related to recording the easement being acquired. If the property is held as security for a loan or advance of credit that requires or permits the imposition of a pre-payment penalty, the County will be reimbursed for any associated penalty expenses. The costs of obtaining and recording mortgage subordination agreements and clearing title defects, payment of taxes and attorney's fees for any attorney retained by the landowner are the responsibility of the landowner and are not reimbursable.

H. Closing Sale and Recording Conservation Easement

Following completion of all necessary steps in the acquisition process, a closing is held to sign documents and transfer funds. Closing consists of signing and delivering recordable documents of conveyance to the County. The closing is coordinated through Dakota County Abstract and Title and all landowners, or their legal representatives, are required to attend the closing. Closing on the transfer of a conservation easement will not be deemed complete until the conservation easement is recorded in the Dakota County Recorder's office. The



recording of the conservation easement on the title of the subject property is necessary to notify and bind subsequent holders of the underlying fee title to the terms of the conservation easement.

Table 2.2 lists the Easement closing costs that are shared by the County and landowners.

Table 2.2: Easement Closing Costs

Easement Closing Costs	Landowners	Dakota County
Closing fee required by the closing company	50%	50%
Settlement costs	50%	50%
Abstract updates	100%	---
Recording, service and legal fees required to resolve title issues (e.g., deceased spouses, trust issues) or to facilitate the closing	100%	---
Title insurance	---	100%
All remaining taxes payable for the year and beyond	100%	---



I. Payment Options

Payment for the sale of a conservation easement or fee title can take only three forms under the Dakota County Land Conservation Program:

1. Lump-sum Payment

A lump-sum payment transfers the entire negotiated purchase price to the landowner at closing. A lump-sum payment may be of most interest to a landowner with a high basis and a large debt load.

2. Lump sum Payment with a “Bargain Sale” Component

A part cash sale and part donation of a conservation easement is known as a “bargain sale.” The easement seller may be able to use the appraised value of the donated portion as an income tax deduction.

3. Like-kind (1031) Exchanges

A landowner who is selling a conservation easement or fee title to property used in business, trade, or investment may consider of “like-kind exchanges” instead of receiving a cash payment. There are a variety of options and landowners should consult their attorney or other financial professionals.

PERMANENT NATURAL AREA CONSERVATION EASEMENT
BETWEEN THE COUNTY OF DAKOTA, MINNESOTA AND

NAME

TRACT No. _____

This grant of a permanent Natural Area Conservation Easement (hereinafter referred to as the "Easement") is made and entered this _____ day of _____, 201____, by _____ Name(s) _____ (hereinafter referred to as the "Grantor"), having an address at _____ Address _____, and the County of Dakota (hereinafter referred to as the "Grantee"), a political subdivision of the State of Minnesota, having a mailing address at 1590 Highway 55, Hastings, Minnesota 55033, as set forth herein.

1.0 RECITALS.

1.1. **Land Ownership.** Grantor is the fee simple owner of approximately _____ acres, more or less, of real property (hereinafter referred to as the "Property") located in Dakota County, Minnesota.

1.2. **Qualified Organization.** Grantee is a qualified political subdivision under the laws of the State of Minnesota and is authorized by Minnesota Statute §375.18, subd.12 to acquire development rights in the form of a conservation easement under Minnesota Statute Chapter 84C; and is an organization qualified under Section 170(h) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated there under, to receive qualified conservation contributions.

1.3. **Protected Property.** Grantor is willing to grant an Easement on approximately _____ acres of the Property, legally described in **Exhibit A**, and generally depicted in **Exhibit A-1** attached hereto (hereinafter referred to as the "Protected Property").

- a. The Protected Property is located _____ Describe _____.
- b. The Protected Property consists of _____ Describe features and ecological attributes _____.
- c. Existing improvements on the Protected Property includes _____ Describe (shed, trail, bridge, etc.) _____.
- d. The Protected Property is currently used for _____ Describe (recreation, grazing, etc.) _____.
- e. The Protected Property is a component of/consistent with _____ Describe (greenway corridor contiguous protected land, etc.) _____.
- f. The scenic attributes of the Protected Property include _____ Describe _____ which is/are visible from _____ Describe _____.
- g. The public does not have access to the Protected Property, without the landowners' permission. Dakota County has legal, physical access to monitor the Protected Property.
- h. The public has access to the Protected Property through _____ Describe _____.
- i. The Protected Property is located in an area experiencing _____ Describe any changing land use, _____.
- j. The Protected Property is also important for/because _____ Describe _____.

The Protected Property and this Easement are subject to the following encumbrances:

- a. Building and zoning laws, ordinances, State and Federal Regulations
- b. Utility, drainage and other easements and documents of record

_____ List as appropriate, including document number and date _____

1.4. **Conservation Values.** The Protected Property, as outlined above, has significant natural, scenic, aesthetic, scientific, and educational values (individually and collectively, referred to as the "Conservation Values"), that provides "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Section 170(h) (4) (A)



(ii) of the Internal Revenue Code and in the regulations promulgated thereunder. These Conservation Values have not been and are not likely to be significantly impaired by the continued use of the Protected Property as described above or as authorized in this Easement; or by the use, maintenance of any structures and improvements that presently exist on the Protected Property; or that are authorized below. Preservation and protection of these Conservation Values will provide significant benefit to the public. Grantor and Grantee are committed to protecting and preserving the Conservation Values of the Protected Property in perpetuity for the benefit of this and future generations. Accordingly, it is their intent to create and implement a conservation easement that is binding upon the current landowner and all future owners of the Protected Property.

1.5. Conservation Policy. Protection of the Conservation Values of the Protected Property is consistent with and will further governmental policies, including those established by the following:

- A. Article XI, Section 15 of the Minnesota Constitution established the Outdoor Heritage Fund (hereinafter referred to as the "OHF"), dedicated for the benefit of Minnesotans, to restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife. Minnesota Statutes Section 97A.056 governs the OHF.
- B. (Delete if not relevant or include if area has shoreland or other riparian areas) **Minnesota Statutes Chapter 103A, which promotes protection of the state's waters and their adjacent lands and Section.103A.206, in particular, which recognizes the economic and environmental importance of maintaining and enhancing the soil and water resources of the state and the role of private lands in these conservation efforts, to among other reasons, preserve natural resources, protect water quality, preserve wildlife, and protect public lands and waters.**
- C. (Delete if not relevant or include if area has wetlands,) **Minnesota Statutes Section 103A.201, which specifically promotes the protection of wetlands and Minnesota Statutes Section 103A.202, which specifically declares that it is in the public interest to preserve wetlands of the state in order to conserve surface waters, maintain and improve water quality, preserve wildlife habitat, reduce runoff, provide for floodwater retention, reduce stream sedimentation, contribute to improved sub-surface soil moisture and enhance the natural beauty of the landscape.**
- D. (Delete if not relevant or include if area has significant forests) **Minnesota Statutes Section 89A.02, which specifically states that it is the policy of the state to pursue sustainable management, use and protection of the state's forest resources to achieve the state's economic, environmental and social goals and to encourage cooperation and collaboration between the public and private sectors in the management of the state's forest resources.**
- E. 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. Dakota County has adopted a comprehensive and long-term land conservation vision and implementation programs to protect and improve natural areas; productive farmland; shoreland along all rivers, streams and undeveloped lakeshore; regional parks; and multi-purpose regional greenways throughout the County.

1.6. Conservation Intent. Grantor and Grantee are committed to protecting and preserving the Conservation Values of the Protected Property in perpetuity for the benefit of this and future generations. Accordingly, it is their intent to create and implement a conservation easement that is binding upon the current landowner and all future owners of the Protected Property.

1.7 State Funding. Funding for this Easement has been provided by the Outdoor Heritage Fund (hereinafter referred to as "OHF"), as recommended by the Lessard-Sams Outdoor Heritage Council (hereinafter referred to as the "LSOHC"). Specifically, for this Easement, funding was included in M. L. 20[redacted], Chap. [redacted], Article [redacted], Subd. [redacted], under grant number [redacted], for the purposes of Describe. Grantee is required to record a "Notice of Funding Restriction" that references the initial state funding agreement and Minnesota Statute Section 97A.056.

2.0 GRANT OF CONSERVATION EASEMENT.

For and in consideration of the facts recited above, the mutual covenants, terms, conditions, and restrictions herein contained, and pursuant to the laws of the State of Minnesota, in particular Minn. Stat. Chapter 84C, and in consideration of the payment of [REDACTED] Dollars (\$ [REDACTED]) to Grantor, Grantor hereby grants and conveys unto Grantee, and its successors and assigns forever an Easement in perpetuity that runs with the Protected Property consisting of specific terms and conditions as set forth herein.

3.0 EASEMENT PURPOSE.

It is the purpose of this Easement to ensure that the Protected Property will be retained forever substantially unchanged from its present condition as natural open space, to protect water quality and to prevent any use that will significantly impair or interfere with the Conservation Values of the Protected Property. Grantor intends that this Easement will confine the use of the Protected Property to activities that are consistent with the purpose of this Easement. However, more restrictive applicable Federal, State or local laws shall prevail in determining permitted uses of the Protected Property.

4.0 COVENANTS AND RESTRICTIONS.

All activities on or uses of the Protected Property must be consistent with the purpose of this Easement. The following activities and uses are expressly prohibited, except as provided in each of the respective subsections of this Easement:

4.1. Industrial Use and Development. No industrial use, development or right of ingress or egress across or upon the Protected Property for industrial use is allowed.

4.2. Commercial Use and Development. No commercial use, development or right of ingress or egress across or upon the Protected Property for commercial use is allowed except for forest management, minimal recreational, and/or home business use described and allowed in the Natural Resource Management Plan described in Section 4.5 of this Easement or other use specifically permitted in Sections 4 and 5 of this Easement, or except as incidental to other uses or activities specifically permitted in this Easement.

4.3. Agricultural Use. There shall be no plowing, construction of agricultural wells or new drainage ditches, new tiling or grazing of the Protected Property for cultivating commercial crops or pasturing commercial livestock. Conservation grazing, as specifically allowed in the Natural Resource Management Plan described in Section 4.5 of this Easement, is permitted. Use of the Protected Property for specialty plantings shall be allowed as described in the Natural Resource Management Plan and as approved by the Grantee. Use of systemic insecticides, neonicotinoids, and seeds coated with neonicotinoids or other agricultural inputs that would negatively affect water quality and wildlife, including pollinators, is not permitted. See section 4.12.

4.4. Residential Use and Development. No residential use, development or right of ingress or egress across or upon the Protected Property for residential use is allowed.

- A. Grantor shall not divide, subdivide, or partition, either legally or physically, the Protected Property. The Protected Property may be conveyed only in its entirety as a single ownership (joint or undivided) regardless of whether it now consists of separate parcels, was acquired as separate parcels, or is treated as separate parcels for property tax or other purposes.

This general provision described above does not prohibit the following:

1. Division of the Protected Property when a portion of the Protected Property is being conveyed to a conservation entity described in Section 7.4 of this Easement.
2. Legal division of the Protected Property into separate parcels or lots as described in Section 5.2 of this Easement.



3. Boundary line adjustments in the case of technical errors made in the survey or legal description. Any correction or adjustment to the Protected Property boundary must be reviewed and approved by the Grantee.
- B. There are [redacted] development rights on the Protected Property currently allowed by local ordinance. Grantor has conveyed [redacted] of [redacted] development rights to Grantee, and Grantor has retained [redacted] of [redacted] existing development rights. Development rights conveyed to Grantee by Grantor shall not be transferred by Grantor to any location outside the Protected Property, whether pursuant to a cluster development plan or any other agreement or plan for transferable development.
- C. No portion of the Protected Property shall be used to satisfy land area requirements for other property not subject to this Easement for purposes of calculating building density, transferring development rights, lot coverage, or open space under otherwise applicable laws, regulations, or ordinances controlling land use.

4.5. Natural Resource Management Plan. All natural resource management practices on the Protected Property shall be in accordance with a jointly developed and approved preliminary and final Natural Resources Management Plan (hereinafter referred to as the "NRMP"). A preliminary NRMP that describes the current and preferred natural resource conditions, goals and activities for the Protected Property, dated [redacted], 201[redacted], has been completed and approved by Grantee and Grantor prior to conveying this Easement. The final NRMP which, along with the Agreement, as defined in Section 4.6 of this Easement, must be completed and approved by Grantee and Grantor within six months of the date of closing. Grantee and Grantor agree to consult with one another periodically with respect to updating the NRMP, and further agree that the NRMP may be revised or modified as necessary to reflect changed conditions or circumstances, so as to assure that the original intent and purpose of this Easement are carried out in perpetuity. Grantee shall be responsible for any modifications to the NRMP, which shall not contradict the terms of this Easement, and which shall take effect only upon written agreement by both Grantee and Grantor. Grantee and Grantor will each retain an updated copy of the NRMP.

4.6. NRMP Implementation. Implementation of the NRMP shall be in accordance with a Natural Resource Management Agreement (hereinafter referred to as the "Agreement") developed and approved by the Grantor and Grantee. The Agreement shall include a [redacted]-year work plan, commencing at the time of final NRMP approval, which describes the priority management activities, responsibilities, estimated costs, and schedule for implementing the NRMP during a defined time period. Grantor agrees to contribute a minimum of [redacted] Dollars (\$[redacted]) in cash or in-kind services (not to exceed comparable contractor rates for purposes of valuing such services), over a [redacted]-year period commencing at the time of final NRMP, to implement the NRMP on the Protected Property (hereinafter referred to as the "Contribution"). Except for the Contribution, Grantor shall not be required to contribute any funding or in-kind services for implementing or complying with the NRMP or the Agreement.

Grantor agrees to work cooperatively with partners mutually agreed upon by Grantor and Grantee, to implement the NRMP if partners provide materials and services at no additional cost to Grantor and all activities will follow the NRMP and are approved by the Grantor and Grantee. Grantee and Grantor agree to consult with one another to modify the Agreement as necessary and for developing and approving any subsequent Agreements to assure that the original intent and purpose of this Easement are carried out in perpetuity. Grantee and Grantor shall be responsible for any modifications to the original Agreement and any subsequent Agreement, which shall not contradict the terms of this Easement. The Agreement shall take effect only upon written agreement by both Grantee and Grantor no later than six (6) months after the closing. Grantee and Grantor will each retain an updated copy of the Agreement.

4.7. Buildings, Structures and Improvements. There shall be no temporary or permanent buildings, or permanent structures of any kind placed or constructed on the Protected Property, except as set forth below or specifically provided for in the NRMP.

- A. Utility Services and Septic Systems – Maintenance, repair, replacement, removal, and relocation of existing electric, gas, and water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over or under the Protected Property for the purpose of providing electrical, gas, water, sewer, or other utilities to serve improvements outside of the Protected Property for such purposes, is permitted. Grantor shall not permit or grant easements for new utility transmission or distribution facilities or systems without the written consent of Grantee. Maintenance, repair or improvement of a septic system(s) or other underground sanitary system that exists on the Protected Property at the time of this Easement, or the construction of a new septic, other underground sanitary system or other utility, for the benefit of an existing residence and any improvements permitted herein, is permitted. Notification and written

approval by Grantee is required for any excavation. All other utilities are prohibited on the Protected Property. Following installation and construction, the surface and vegetation shall be restored to a condition consistent with the conservation purposes of this Easement in a timely and appropriate manner.

- B. Roads, Parking Areas, Paths, and Trails – There shall be no building of new roads or other rights-of-way, except for paths and trails, consistent with the preservation of the Protected Property. Existing roads, parking areas, paths and trails may be maintained or improved, but may not be widened or relocated without the prior written approval of Grantee. New paths or trails may be established on the Protected Property for non-motorized, recreational uses only in accordance with a revised NRMP. No other roads or other rights-of-way may be established or constructed on the Protected Property without the prior written approval of Grantee. In order to prevent erosion and soil loss, Grantor may relocate existing roads/trails on the Protected Property, provided the total number and cumulative length and width does not increase and the disturbance to soils is minimized. Existing roads/trails are identified in the Property Report described in Section 7.2 of this Easement. Abandoned roads/trails shall be returned to native vegetative cover, either by letting natural succession occur or by replanting with appropriate native species (based on soil type) using local seed, if possible.
- C. Fences – Grantor may, but shall not be obligated to maintain, repair, replace, improve or remove any fence located on the Protected Property, except as required by the NRMP, or to prevent current or future livestock from harming the Conservation Values of the Protected Property. Grantor may construct, install, maintain, repair, replace, improve or remove additional fencing on the Protected Property as Grantor deems necessary to secure the Protected Property, and as required for wildlife management purposes.
- D. Small Structures – Grantor, may, but shall not be obligated to maintain, repair, replace, improve or remove any existing small structures such as deer stands, wildlife blinds, trail shelters, kiosks, benches, boardwalks, docks or bridges on the Protected Property at the time this Easement is conveyed. Upon receiving prior written consent of Grantee, which consent may be given or withheld at Grantee's sole discretion, Grantor may install small structures such as deer stands, wildlife blinds, trail shelters, kiosks, benches, boardwalks, docks or bridges on the Protected Property.

Grantor shall ensure that the Protected Property is restored to a condition consistent with the purpose of this Easement in a timely and appropriate manner following any construction, maintenance, repair, replacement, removal, or relocation of any improvements authorized by, or pursuant to, this section.

4.8. Public Access. Although the public benefits from this easement through the preservation and protection of the Conservation Values of the Protected Property, nothing contained herein shall be construed as a dedication of title to any portion of the Protected Property to the public, or as affording the general public physical access to any portion of the Protected Property, where no such right existed prior to the conveyance of this Easement.

4.9. Water. No hydrological modifications, including alteration or manipulation of natural rivers, creeks and streams, surface or subsurface springs, and shorelines of lakes, ponds, or wetlands, or other surface or sub-surface water bodies on the Protected Property is allowed. Alteration or manipulation to restore or enhance water quality, wildlife habitat, native biological communities or ecological functions, which are approved in writing by Grantee and consistent with the NRMP described in Section 4.5 of this Easement, if applicable, is allowed. Increased storm water volumes or flow rates to the Protected Property due to changes in the topography, land use, buildings, or drainage systems on and from adjacent or nearby properties after the date of this Easement is not allowed unless it improves the Conservation Values of the Protected Property and is approved in the NRMP. No activities or uses of the Protected Property that cause soil erosion or are detrimental to water quality are allowed. Grantor is responsible for notifying Grantee if there are new storm water or erosion issues on the Protected Property and is responsible for enforcing this provision.

4.10. Topography and Surface Alteration. There shall be no change of the topography of the Protected Property, including ditching, draining, filling or excavation of soil or other material. Surface alterations incidental to any construction or other activities or uses specifically allowed by this Easement shall be allowed provided there is minimal disturbance to the topography, soils and vegetation and shall utilize proper erosion control practices. At the conclusion of any allowed activity, the surface shall be restored in a timely manner to a condition consistent with the Conservation Intent of this Easement.



Alterations to the topography and surface of the Protected Property for the purpose of maintaining, restoring or enhancing wildlife habitat or native biological communities as included in the NRMP described in Section 4.5 of this Easement shall be allowed with prior written approval of Grantee.

4.11. Mining and Extraction. No mining, drilling, exploring for or removal of any minerals, sand, gravel, or rock from the Protected Property is allowed. (If landowner does not own the mineral rights, add)

The minerals and mineral rights in the Protected Property have been severed in whole or in part from the fee title and are not under the current control or ownership of Grantor. Grantor believes at the time of the conveyance of this Easement, the probability of surface mining on the Protected Property is so remote as to be negligible. If the currently severed minerals and mineral rights and fee title are merged or reassembled in the future, Grantor agrees that no mining, drilling exploring for or removal of any minerals from the Protected Property is allowed.

If Grantor is contacted by the owner of the minerals or mineral rights for the purpose of entering into any agreement or contract regarding the minerals or mineral rights, including a surface use agreement, Grantor shall obtain prior written approval from Grantee under the provisions of Section 7.17 of this Easement before executing such agreement or contract. If the exercise of the mineral interest results in the extinguishment of this Easement, such extinguishment shall be subject to the provisions of Section 7.8 of this Easement.

4.12. Vegetation Management. Grantor shall maintain the vegetation as permanent vegetative land cover within the Protected Property in compliance with the NRMP as described in Section 4.5 of this Easement. There shall be no removal, destroying, burning, cutting, mowing or altering of trees, shrubs and other vegetation on the Protected Property except as reasonably required to maintain existing improvements, and as provided in the NRMP as described in Section 4.5 of this Easement, or as follows:

- A. Timber Resources and Plant Products - Grantor may selectively harvest timber resources and naturally occurring plant products (i.e., berries, nuts, herbs, seeds, etc.) from the Protected Property for management or revenue-generating purposes. Such selective harvest shall be conducted in a manner that maintains a sustainable growth and reproduction cycle for the harvested plant populations and the surrounding vegetation, is consistent with all terms and conditions of this Easement, and in accordance with the NRMP to minimize harmful impacts to the Conservation Values of the Protected Property as determined by Grantee. Grantor may remove downed or dead timber for firewood or other personal use.
- B. Control of Harmful Insects and Invasive Species - There shall be no plant or animal species knowingly and willfully introduced on the Protected Property except those native species that are appropriate with the Conservation Values of this Easement and consistent with the NRMP. Activities to prevent or control harmful insects, invasive species, noxious weeds, diseases, personal injury, or property damage are permitted, if provided for in the NRMP as described in Section 4.5 of this Easement.
- C. Herbicides and Pesticides - There shall be no application of herbicides or systemic insecticides, neonicotinoids, seeds coated with neonicotinoids or other agricultural inputs that would negatively affect water quality and wildlife, including pollinators, on the Protected Property, except those that are necessary as part of approved practices specified in the NRMP. Herbicide and pesticide use must comply with all applicable Federal and State regulations and Best Management Practices. Labeled and approved herbicides and pesticides may be used by spot applications to control State/County-designated noxious weeds, invasive woody species or pest insect infestations, provided their use is designed to minimize the impact on the Conservation Values of the Protected Property. Broadcast spraying of herbicides or pesticides, including aerial applications, is permitted, if known infestation is determined to be a threat to human, animal and/or plant community health, provided that, at a minimum, the following conditions are met: (a) spot treatment is not practical because of the severity of the infestation; (b) the timing of application is scheduled to minimize damage to non-target species; and (c) the type of herbicide or pesticide used has the least impact on non-target species while still being effective in controlling target species.

4.13. Animals. Livestock such as cattle, horses, goats, sheep, llamas, and alpacas shall not be permitted on the Protected Property unless for conservation grazing purposes included in the NRMP as described in Section 4.5 of this Easement. Recreational use of horses by family members, social guests or permitted parties shall be allowed on the Protected Property, so long as the same does not significantly alter or degrade the natural features and ecological

functions of the Protected Property, or contradict the provisions of the NRMP, as determined by Grantee. Domestic dogs and other domesticated animals are permitted on the Protected Property in accordance with local ordinances.

4.14. Motorized Vehicles. Trucks, tractors, all-terrain vehicles, snowmobiles or any other types of motorized vehicles used by family members, social guests or permitted parties shall be allowed on the Protected Property, so long as the vehicle use does not significantly alter or degrade the natural features, ecological functions and scenic qualities of the Protected Property or contradict the NRMP as described in Section 4.5 of this Easement, as determined by Grantee.

This provision is not intended to otherwise limit the use of motorized vehicles on existing roads, trails or driveways permitted under this Easement or in conjunction with construction or maintenance of existing or permitted buildings, structures, roads, trails, other improvements, and for natural resource management. All other motorized vehicle use is prohibited, except for administrative, habitat management, law enforcement, public safety, and emergency purposes.

4.15. Waste Disposal. There shall be no storage, accumulation, processing or disposal of mixed municipal solid waste, demolition debris, industrial waste, unserviceable vehicles, unused equipment, hazardous or toxic substances or other unsightly or offensive material on the Protected Property. Use of the Protected Property for dumping, storing, processing or landfilling solid or hazardous wastes is prohibited, including, without limitation, application of municipal sewage sludge and/or bio-solids.

4.16. Signs. Commercial signs, billboards, and outdoor advertising structures may not be displayed on the Protected Property. Informational signage is permitted and is limited to the following purposes:

- A. Displaying the name of the Protected Property;
- B. Announcing the existence of this Easement;
- C. Providing interpretive and directional information;
- D. Providing the name and address of Grantor, Grantee, project partners, and/or funding sources;
- E. Delineating the boundaries of the Protected Property in order to prohibit trespass or hunting or other non-permitted activities;
- F. Providing information with regard to on-site uses and activities permitted by this Easement, for which approval will not be unreasonably withheld, conditioned, or delayed.

For all signs permitted by this section, the location, number, size, and design must not significantly diminish the Conservation Values of the Protected Property, and must be approved by the Grantor and Grantee.

4.17. Outdoor Lighting. No permanent outdoor lighting is allowed on the Protected Property.

5.0 GRANTOR'S RESERVED RIGHTS.

Grantor reserves for itself, its heirs, successors and assigns all rights to use the Protected Property for all purposes that are not expressly restricted or prohibited herein and are not inconsistent with this Easement. Grantor agrees to notify Grantee in writing before exercising any reserved right that may have an adverse impact on the natural characteristics, and the ecological and aesthetic features of the protected Property. Without limiting the applicability of the foregoing, Grantor reserves the following rights:

5.1. Conveyance. Grantor may sell, give, mortgage, lease, bequeath or otherwise encumber or convey all or a portion of the Protected Property. This right to convey the protected Property is subject to the following provisions:

- A. Any deed, lease or other conveyance or encumbrance of the Protected Property, is subject to this Easement.
- B. Grantor will reference or insert the terms of this Easement in any deed or other document by which Grantor conveys title too or any interest in the Protected Property. Grantor will also specify to what extent any rights included in this Easement have been exercised, if at all, and are no longer available for use by the new owner, and which reserved rights are specifically allocated to the property or interest being conveyed.



- C. Grantor shall notify Grantee of any proposed conveyance of title or encumbrance at least fourteen (14) days before closing. Grantor shall also provide Grantee with the name and address of the new owner of the Protected Property and a copy of the deed transferring title within fourteen (14) days of closing in accordance with Section 7.16.
- D. If the Protected Property is owned by a trust, business entity or any common or jointly held ownership, Grantor shall designate a representative authorized to receive notice on behalf of Grantor and provide Grantee with the new name, address and other contact information. Grantor shall notify Grantee of any change in the designated representative and provide Grantee with the new name, address and other contact information within fourteen (14) days after the change.
- E. Grantor will also notify Grantee of any proposed condemnation, or any claim, legal proceeding, foreclosure or other legal action that might affect the title to the Protected Property or the validity or enforceability of this Easement.

5.2. Division of the Protected Property. The Protected Property may be divided into no more than (specify number) separately owned parcels or lots. These parcels or lots may be configured only as depicted in **Exhibit**. (insert **B** if there is no separate access easement or **C** if there is an access easement) Prior to any conveyance, the specific configuration of each parcel or lot must be submitted in writing and approved by Grantee under the provisions of Section 7.17 of this Easement.

Before conveying any parcel or lot, Grantor will allocate reserved rights, such as development rights, to specific parcels or lots as needed. Each parcel or lot will otherwise remain subject to the terms and conditions of this Easement. Grantor will provide Grantee with a copy of any survey or map created documenting the new parcels or lots or other documentation for the allocation of reserved rights.

This reserved right to divide the Protected Property does not include the right to construct any buildings, structures or improvements in addition to those otherwise permitted by this Easement.

5.3. Recreational and Educational Activities. Grantor expressly reserves the right to engage in low impact, recreational and educational activities requiring no significant surface alteration of the land and posing no threat to the Conservation Values set herein, such as hunting, fishing, hiking, cross-country skiing, horseback riding, tent camping, nature observation or study, bird watching, and other non-intensive recreational activities, and to control access of all persons for these purposes; provided that these activities do not impact the protection and conservation of any animal habitat or other Conservation Values of the Protected Property as determined by Grantee. Use of motorized vehicles for recreational use by family members and social guests shall also be permitted on the Protected Property, so long as the same does not significantly alter or degrade the natural features and ecological functions of the Protected Property or contradict the provisions of the NRMP described in Section 4.5 or use of motorized vehicles included in Section 4.14 of this Easement, as determined by the Grantee.

5.4. Natural Resource Management. The Protected Property may be used to create, maintain, restore or enhance natural resources in accordance with the NRMP described in Section 4.5 of this Easement, as jointly approved by Grantor and Grantee.

5.5. Public Use. Grantor retains the right to permit any public use of the Protected Property consistent with the protection of the Conservation Values of the Protected Property and the terms and restrictions of this Easement, including the restrictions on commercial recreational use described in Section 4.2 of this Easement.

6.0. RIGHTS AND REMEDIES OF GRANTEE.

In order to accomplish the conservation purposes of this Easement, Grantee shall have the following rights and remedies:

6.1. Remedies and Enforcement. In the event that Grantee becomes aware that Grantor is not in compliance with this Easement or the NRMP, Grantee shall give notice to Grantor, at Grantor's last known post office address, of such violation via certified mail, return receipt requested, and request corrective action sufficient to abate such violation and restore the Protected Property to its previous condition. Grantor shall work with Grantee to explore and conduct voluntary methods of compliance. Failure by Grantor to cause discontinuance, abatement or such other corrective action as may be

requested by Grantee within thirty (30) days after receipt of such notice shall entitle Grantee to enforce by proceedings at law or in equity the provisions of this Easement including, but not limited to, the right to require the restoration of the Protected Property to its condition at the date of this Easement, subject to the reserved rights of Grantor set forth herein. Grantee, or its successors or assigns, shall not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms and conditions of this Easement by any prior failure to act. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period for cure to expire.

Nothing herein shall be construed to entitle Grantee to institute any enforcement proceeding against Grantor for any changes to the Protected Property due to causes beyond Grantor's control, such as changes caused by fire, flood, storm, infestations, natural deterioration, the acts of third parties legally authorized to act by recorded document or other legally established rights or the unauthorized wrongful acts of third persons; provided, however, that Grantor shall notify Grantee of any occurrence which would adversely affect or interfere with the conservation purpose of this Easement, whether caused by the acts or omissions of Grantor or third parties.

Grantee shall be entitled to seek expedited injunctive relief to enforce its rights with respect to the Protected Property, and Grantor waives any bond requirement otherwise applicable to any petition for such relief. Grantee shall have the right to report to regulatory authorities any environmental conditions or any potential or actual violations of environmental laws, including noxious weed laws, with respect to the Protected Property.

In the event either party becomes involved in legal proceedings against the other to enforce such party's respective rights or interests under this Easement, the prevailing party shall be entitled to receive from the non-prevailing party reasonable attorney's fees incurred in connection with any such proceedings, if the non-prevailing party's position is determined to be frivolous by the court.

Grantor shall notify Grantee of any occurrence which would adversely affect or interfere with the purpose of this Easement, whether caused by the acts or omissions of Grantor or third parties.

6.2. Right of Entry. Grantee, or its designated representative, shall have the right to enter the Protected Property, in a reasonable manner, with advance notice to Grantor and at reasonable times, for the purpose of ensuring that this Easement and the NRMP required pursuant to Section 4.5 of this Easement are being implemented appropriately, and as needed to exercise its contingent rights, for the following purposes:

- A. Inspecting the Protected Property to determine if Grantor or Grantor's heirs, successors or assigns, are complying with the provisions of this Easement;
- B. Obtaining evidence for the purpose of seeking judicial enforcement of this Easement;
- C. With Grantor's approval, making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by Grantor. Grantor shall be allowed to participate in all such observations and studies;
- D. Posting signs for the purpose of promoting provisions of this Easement, with Grantor's approval as to the size and location of signs;
- E. Inspecting the Protected Property to determine if Grantor or Grantor's heirs, successors or assigns, are complying with the provisions of the NRMP and Agreement;
- F. Removing invasive plants or animals, as agreed on by Grantor and Grantee. Such activities by Grantee shall not relieve Grantor of the responsibility of removing and controlling invasive species in accordance with appropriate Federal, State and County laws and regulations.

Grantor hereby grants and conveys to Grantee and its successors and assigns forever a right of entry over non-protected property belonging to Grantor legally described in **Exhibit B** and generally depicted in **Exhibit A-1**, for access to the Protected Property in perpetuity. Grantee will provide advance notice of its need for access and will minimize any damage to Grantor's non-protected property by selecting, at Grantee's sole discretion, appropriate vehicle(s) (if required) and time(s) for obtaining access to the Protected Property. If vegetation is damaged during access by Grantee, Grantee will restore to a condition as nearly equal as possible to that which existed immediately prior to the entry upon that portion of Grantor's non-protected property where the access is located.

All notices to Grantor under this section may be made either in writing or verbally, at the discretion of the party providing the notice.



6.3. Limitation of Grantee's Rights. Nothing contained herein shall give rise, in the absence of a judicial decree, to any right or ability of Grantee to become the owner, manager or operator of the Protected Property.

6.4. Monitoring. Upon written or verbal notice to Grantor, Grantee shall have the right, but not the obligation, to monitor the condition of the Protected Property, plant and animal populations, plant communities, and natural habitats on the Protected Property. A written summary of findings shall be provided to Grantor.

6.5. Consent to Otherwise Prohibited Activities. Grantee's consent for activities otherwise prohibited or for any activities requiring Grantee's consent under Sections 4 and 5 of this Easement may be given under the following conditions and circumstances: If, owing to unforeseen or changed circumstances, any of the activities listed in Sections 4 and 5 of this Easement are deemed desirable by Grantor and Grantee, Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and requests for permission for activities requiring Grantee's consent under Section 4 and 5 of this Easement, shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement. Grantee shall make reasonable efforts to respond to such written request within 60 days of receipt by Grantee. Grantee may give its permission only if it determines, in its sole discretion, that such activities: (a) do not violate the purpose of this Easement; and (b) either enhance or do not significantly impair any Conservation Values of the Protected Property. Notwithstanding the foregoing, Grantor and Grantee have no right or power to agree to any activities that would result in the termination of this Easement, that would allow residential, commercial, industrial or other activities not provided for above, or contradicts Minnesota Statute Section 97A.056.

7.0 GENERAL PROVISIONS.

7.1. Perpetual Burden. This Easement shall run with and burden the Protected Property in perpetuity and shall bind Grantor, Grantor's heirs, successors and assigns.

7.2. Easement Documentation. Grantor and Grantee agree that the natural characteristics, the ecological and aesthetic features, the physical condition, the present uses, and the Conservation Values of the Protected Property at the time of this Easement conveyance are documented in the Property Report. The Property Report, including reports, maps, photographs and other documentation prepared by Grantee and signed and acknowledged by Grantor and representative of Grantee, establishes the condition of the Protected Property at the time of this Easement conveyance. The Property Report includes without limitation, the status of existing roads, trails, fences, utility systems, small structures storm water conveyance, points of access, types of motorized vehicle use, other allowable uses that would otherwise be restricted by this Easement, and the planned location of signs (if any). The Property Report is not intended to preclude the use of other information and evidence to document the condition of the Protected Property in the event of any future enforcement issue. A copy of the Property Report shall be maintained at the office of Grantee and may be used by Grantee in any enforcement action.

7.3. Grantor Access. Nothing in this Easement shall be construed to preclude Grantor's own right to access all portions of the Protected Property, provided this access does not significantly alter or degrade the natural features and ecological functions of the Protected Property or contradict the provisions of the NRMP described in Section 4.5 of this Easement.

7.4. Assignment. This Easement is in gross and may be assigned or transferred by Grantee, and such transfer shall be duly recorded. Grantee agrees that, if it transfers or assigns its interest in this Easement, the following requirements shall apply:

- A. Ownership of this Easement transfers to the State of Minnesota, if Grantee or successor fails to comply with the terms and conditions of the state funding grant agreement or work/accomplishment plan, or if restrictions are placed on the Protected Property that preclude its use for the intended purpose as specified in the state funding appropriation, as described in Minnesota Statute Section 97A.056.

Grantee or successor may not convey any interest in the Protected Property acquired with the state funding appropriation without the prior review and approval of the LSOHC or its respective successors, as described in Section 1.7.

An approved transferee or assignee will be required to record a "Notice of Funding Restriction" that references the initial state funding agreement and Minnesota Statute Section 97A.056.

- B. The governmental entity receiving this interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder and which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder.
- C. An approved transferee or assignee will be required to carry out in perpetuity the purpose that this Easement was originally intended to advance.
- D. Grantee will notify Grantor of any assignment within thirty (30) days of the assignment and will provide the Grantor with the name and address of the new holder.

7.5. Dissolution of Grantee. In the event of the dissolution of Grantee, Grantee's interest will be assigned to a governmental entity qualified to hold and monitor this Easement.

7.6. Subsequent Transfers by Grantor. Unless this Easement is extinguished, as set forth below, Grantor agrees that the terms, conditions, restrictions, and purposes of this Easement will either be incorporated by reference or inserted by Grantor in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in all or part of the Protected Property. Grantor agrees to notify Grantee of such conveyance in writing by certified mail within fifteen (15) days after closing. If ownership of the Protected Property is transferred from Grantor to another family member or entity due to death, incapacitation or other reason, Grantee shall be notified of any such conveyance in writing by certified mail within thirty (30) days. Upon conveyance of the Protected Property, Grantor is released from all covenants, representations, warranties, and any obligations created by this Easement, save and except liabilities arising solely under Section 7.12 of this Easement herein for actions, conduct or conditions which existed or occurred prior to the date of the conveyance of the Protected Property.

7.7. Amendment. This Easement may be modified or amended by written agreement of the Grantee and Grantor, subject to Minnesota Statute Chapter Section 97A.056 and Grantee's right, in its sole discretion and exclusive judgment, to refuse to agree to any proposed amendment or modification of this Easement, including any amendment in which the following apply:

- A. The amendment is inconsistent with the purpose of this Easement.
- B. The amendment will impair or interfere with the Conservation Values of the Protected Property.
- C. The amendment affects the perpetual duration of this Easement.
- E. The amendment affects the validity of this Easement under Minnesota law or other law.
- F. The amendment creates/results in impermissible private benefit as prohibited by the Internal Revenue Code.
- G. Lienholders of existing liens and mortgages will not agree to subordinate their interests to the amended Easement.

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

7.8. Extinguishment. Grantor agrees that this grant of Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that this Easement, at the time of this conveyance, bears to the value of the Protected Property as a whole at the time of conveyance. The proportionate value of property rights shall remain a constant fractional share of the unrestricted value of the Protected Property.

If a subsequent unexpected change in the conditions of or surrounding the Protected Property makes impossible or impractical the continued use of the Protected Property for the conservation purposes described herein, and if the restrictions of this Easement are extinguished by judicial proceedings (including, but not limited to, eminent domain proceedings), then upon the sale, exchange or involuntary conversion of the Protected Property, Grantee shall be entitled to a share of the proceeds at least equal to the proportionate value of this Easement described above, as determined by an independent fair market appraisal using the Uniform Standards of Professional Appraisal Practices.



Grantee will use its share of any and all proceeds received for such sale, exchange or involuntary conversion in a manner consistent with the conservation purposes of this Easement or for the protection of a “relatively natural habitat of fish, wildlife, or plants or similar ecosystem,” as that phrase is used in Section 170(h) (4) (A) (ii) of the Internal Revenue Code, as that section may be amended from time to time, and in regulations promulgated thereunder.

Funding for this Easement was appropriated from the OHF and Grantee will comply with Minnesota Statute Section 97A.056.

- A. Seek approval from the LSOHC to utilize the proceeds, based on the proportional amount of the proceeds based on the same proportional financial contribution for a reasonable equivalent conservation purpose compared to the interest being replaced, or
- B. Reimburse the OHF a proportional amount of the proceeds based on the same proportional financial contribution provided by the ENRTF towards the original acquisition cost.

7.9. Title Warranty. Grantor hereby warrants and represents that Grantor is the fee simple owner of the Protected Property and has good right to grant and convey this Easement, that the Protected Property is free and clear of any and all encumbrances except those of record that have been approved by Grantee, and that Grantee and its successors and assigns shall enjoy all of the benefits derived from and arising out of this Easement. Any present or future mortgage on the Protected Property has been or will be subordinated to this Easement.

7.10. General Indemnification. To the greatest extent allowed by law, Grantor shall indemnify, and hold harmless the County, its officers, agents, and employees, from and against any actual or alleged loss, litigation cost (including, but not limited to, reasonable attorney fees and costs and expenses of defense), costs, settlement, judgment, demands, damage, liability, injury, harm, fees, fines, penalties, interest, expenditure, diminution in value, disbursement, action, claim, proceeding, or dispute of any sort (collectively “Losses”), whether or not involving a third party, which are attributable to Grantor, or Grantor’s agents’, independent contractors’, employees’, invitees’ or delegates’, actual or alleged:

- A. intentional, willful, or negligent acts or omissions; or
- B. actions or omissions that give rise to strict liability; or
- C. breach of any representation, warranty, or covenant,

whether or not well-founded in fact or in law, known or unknown, foreseen or unforeseen, fixed or contingent and howsoever originating or existing, and whether or not based upon statute, common law, or equity.

7.11. General Liability Insurance. Grantor will name Grantee as an additional insured on any general liability insurance policy carried by Grantor with respect to the Protected Property. If Grantor provides general liability insurance policy covering the Protected Property that is at least equal to the municipal tort liability limits as defined in state statute as of the date of any insurable claim or loss, with Grantee named as an additional insured, and with proof of said insurance provided to Grantee, Grantor’s liability under this section shall be limited to such policy for matters covered by the policy. The municipal tort liability limit is currently found in Chapter 466, which sets the limit at \$1,500,000 and is subject to future increases by the legislature.

7.12. Environmental Condition and Compliance with Environmental Laws. Grantor represents that to the best of its knowledge, no hazardous substance or materials or toxic waste exists or has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property.

Subject to the limitations of Grantor’s liability contained in Section 7.10 or Section 7.11 of this Easement, Grantor, and Grantor’s heirs, successors and assigns shall indemnify, defend and hold Grantee harmless from any liability related to Grantor’s representations and warranties in this paragraph or related to the use, deposit or release of any hazardous substance or material or toxic waste on the Protected Property after the date of this Easement.

Grantor represents that to the best of its knowledge, it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. “Environmental Law” or “Environmental Laws” means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication,

noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

Grantor represents that to the best of its knowledge, there are no notices by any governmental authority of any violation, or alleged violation, of non-compliance or alleged non-compliance with or any liability under any environmental law relating to the operations or conditions of the Protected Property.

Grantor represents that to the best of its knowledge that it has no actual knowledge of a release or threatened release of any hazardous materials on, at, beneath or from the Protected Property. Hazardous materials means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance, which may pose a present or potential hazard to human health or the environment.

Grantor hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the use, deposit, release or threatened release of any hazardous materials before, on or after the date of this Easement, on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee shall be responsible for any hazardous materials contributed after this date to the Protected Property by Grantee.

In the event that the successor or assign of the Grantor is a political subdivision of the state covered by Minnesota Tort Claims Act, Minnesota Statutes, Chapter 466, the provisions of said Chapter, as may be amended, shall apply to the successor or assign.

7.13. Real Estate Taxes. Grantor agrees to pay any and all real estate taxes due and payable for the Protected Property in the year 201█, for all prior years and thereafter so long as the Grantor is the fee owner of the Protected Property and will pay all assessments levied by competent authority on the Protected Property.

7.14. Costs and Liabilities. Grantor 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, including the maintenance of adequate comprehensive general liability insurance coverage. Grantee shall have no duty or responsibility to manage or maintain the Protected Property. If, however, the Protected Property is damaged by causes beyond Grantor's control, such as changes caused by fire, flood, storm, infestations, natural deterioration, the acts of third parties legally authorized to act by recorded document or other legally established rights or the unauthorized wrongful acts of third persons, Grantor and Grantee will meet and seek to arrive at an equitable solution to restore the Protected Property. Grantor shall keep Grantee's interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor.

7.15. Recording. Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement. For such purpose, Grantor appoints Grantee as Grantor's attorney-in-fact to execute, acknowledge and deliver any necessary instrument on Grantor's behalf. Without limiting the foregoing, Grantor agrees to execute any such instruments upon request.

7.16. Definitions of Grantor and Grantee. The terms "Grantor" and "Grantee" as used herein shall be deemed to include, respectively, Grantor, Grantor's heirs, successors, and assigns; and Grantee, its successors and assigns.

7.17. Notices. Excepted as provided below, any notice required by or sent pursuant to this Easement shall be sent by registered or certified mail, return receipt requested, to the following addresses or such addresses as may be specified in writing:

GRANTOR

Name(s)
Address

Phone Number
Email

GRANTEE

Alan Singer, Land Conservation Manager, or successor
Dakota County
14955 Galaxie Avenue
Apple Valley, MN 55124
952-891-7001



al.singer@co.dakota.mn.us

However, notice provided by Grantee, or Grantee's designated representative, in exercising its right of entry under Section 6.2 of this Easement may be made to the Grantor either in writing or verbally, at the discretion of Grantee. Grantor shall provide notice of any subsequent transfer in accordance with the provisions of Section 7.6 of this Easement.

7.18. Severability. Each provision of this Easement is severable from any other provision of this Easement. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

7.19. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of Minnesota Statutes Chapter 84C and Section 97A.056. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

7.20. Future Economic Condition. A change in the potential economic value of any use that is prohibited by or inconsistent with this Easement, or any change in any current or future uses of adjacent or nearby properties, shall not constitute a change in the conditions that make it impossible or impractical for preserving and protecting the Conservation Values of the Protected Property and fulfilling the intent of this Easement, and shall not constitute grounds for extinguishing this Easement.

7.21. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussion, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. The Grantor agrees to execute or provide any additional documents reasonably needed by Grantee to carry out in perpetuity the provisions and the intent of this Easement, including but not limited to any documents needed to correct any error or mutual mistake, legal description or title matter or to comply with any Federal, State, or local law, rule or regulation.

7.22. Opportunity to Review with Legal Counsel. Grantor has had an opportunity to review the terms of this Easement with Grantor's own legal counsel, whether Grantor has elected to consult with counsel or not. Grantor has read and understands the terms of this Easement and agrees to be bound by its terms.

7.23. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in this Easement or Protected Property, except that liability for acts or omissions prior to transfer shall survive transfer.

7.24. No Merger. Should Grantee acquire fee title to the Protected Property, no merger shall occur and this Easement and the fee shall continue to be managed as separate estates.

7.25. Counterparts. This Easement may be executed in one or more counterparts and will become effective when one or more of the counterparts have been signed by each of Grantees and Grantors.

This space intentionally left blank.

TO HAVE AND TO HOLD the above-described Easement to the use, benefit and behalf of Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Permanent Natural Area Conservation Easement this _____ day of _____, 201█.

GRANTOR

By: _____
Name

By: _____
Name

STATE OF MINNESOTA)
)SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201█, by _____ **Name(s)**, **marital status**, who being duly sworn, represent and warrants that **he/she is or they are** authorized by law to execute this Easement, intending to be legally bound thereon.

Notary Public



GRANTEE

Dakota County hereby accepts the foregoing Permanent Natural Area Conservation Easement this ____ day of _____, 201█.

Name, Chair
Dakota County Board of Commissioners

Attested to By:

Kelly D. Olson,
Clerk to the Board

STATE OF MINNESOTA)
) SS.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before this ____ day of _____, 201█, by Name, Chair of the Dakota County Board of Commissioners, a political subdivision of the State of Minnesota, on behalf of the County.

Notary Public

Approved by Dakota County
Board Resolution No. 1█-█

Approved as to Form:

Assistant County Attorney

Date: _____

C-█
Contract # █

RECORDED FOR THE BENEFIT OF COUNTY OF DAKOTA AND EXEMPT FROM RECORDING FEES PER MINNESOTA STATUTE 386.77.

Drafted by:

Alan Singer
Dakota County
14955 Galaxie Ave.
Apple Valley, MN 55124
952-891-7001
al.singer@co.dakota.mn.us

After document is recorded, return to:

Lisa West
Dakota County
14955 Galaxie Ave.
Apple Valley, MN 55124
952-891-7018
lisa.west@co.dakota.mn.us

May 13, 2015

Dakota County Land Conservation Program

Legal Description of the Name Natural Area Conservation Easement

Tract No.

Insert Legal Description



Dakota County Land Conservation Program

General Depiction of the Name Natural Area Conservation Easement and Access

Insert Map

Dakota County Land Conservation Program

Legal Description of the Access to the Name Natural Area Conservation Easement

Insert legal description

(Insert the following if there is a planned subdivision)



Dakota County Land Conservation Program

General Depiction of the Planned Sub-division of the _____ Name _____ Natural Area Conservation Easement

Insert map

Natural Resource Management Agreement

This Natural Resource Management Agreement (hereinafter referred to as the “Agreement”), between _____, (hereinafter referred to as the “Landowner”), and Dakota County (hereinafter referred to as the “County”) is entered into in order to conduct natural resource restoration, enhancement, and/or management activities on the Landowner’s property.

WHEREAS, a Permanent **Agricultural/ Greenway/ Natural Area/ Buffer** Conservation Easement was granted to the County, recorded on _____ in the Office of the Dakota County Recorder as Document No. _____ (hereinafter referred to as the “Easement”); and

WHEREAS, a Natural Resource Management Plan (hereinafter referred to as the “NRMP”) was jointly developed by the Landowner and the County to guide the restoration, enhancement, and/or management of the area included in the Easement (hereinafter referred to as the “Protected Property”); and

WHEREAS, the NRMP is referenced in and subject to the Easement and a copy is held by both parties; and

WHEREAS, the County and the Landowner have prepared a NRMP Work Plan (hereinafter referred to as the “Work Plan”) describing activities, responsibilities, costs, and schedule for implementing the NRMP on the Protected Property, taking into account factors such as soil, topography, geology, existing vegetation, cost, and other relevant factors; and

WHEREAS, the Landowner and the County each agree to implement the restoration, enhancement, and/or management activities on the Protected Property as described in the Work Plan; and

WHEREAS, the Landowner and the County each agree to contribute cash and/or labor as described in the Work Plan.

NOW THEREFORE, in consideration of the mutual promises and covenants and agreements stated in this document, it is agreed by and between Landowner and County as follows:

1. Work Plan. The Landowner and the County, after adequate opportunity for review and comment, agree to the terms of the Work Plan setting forth the restoration, enhancement, installation, maintenance, and/or monitoring within the Protected Property, attached as **EXHIBIT A**, with associated Land Cover Management Units generally depicted on the map attached as **EXHIBIT B**. Any work in the Work Plan estimated by the County to exceed Five Thousand Dollars (\$5,000) shall be completed by a contractor retained by the County in accordance with County contracting practices.

2. Landowner Obligations.

- A. The Landowner shall fulfill the cash and in-kind Landowner responsibilities listed in the Work Plan, subject to weather-related or other unavoidable delays.
- B. The Landowner shall maintain a record of any in-kind contributions (e.g. personal time, equipment and materials provided in support of restoration, enhancement and/or management activities) in the form attached hereto as **EXHIBIT C** (hereinafter referred to as the “Landowner Contribution Certification”).



- C. The Landowner shall provide the Landowner Contribution Certification to the County detailing the exact nature of the contribution within five (5) business days of a written request from the County or within five (5) business days of the completion of a task identified in the Work Plan.
- D. The Landowner acknowledges that this in-kind reporting information may be used by the County to document funding matches for any grant funds used for the project.
- E. The Landowner shall be responsible for maintaining the restored and enhanced area(s) improved through the Work Plan for a minimum of three (3) years from the date of final inspection and approval of the work by the County, or according to agreements with other entities, whichever is of longer duration. Maintenance will consist of those activities described in the Maintenance Section of the Work Plan and in accordance with the Easement and the NRMP.

3. County Obligations. The County shall fulfill County responsibilities listed in the Work Plan, subject to weather-related and other unavoidable delays. The County's funding sources for its obligations are a combination of state grant funds, with County grant-match funds. In no event will funding be accepted that will result in mortgages, liens or encumbrances being filed against the property subject to the Easement, without the express, written consent of the Landowner and the County. The state grant and County grant-match funds available to complete Work Plan activities will expire when the state grant and County grant-match funding deadlines are reached. The County shall have no responsibility to contribute funds for completing the Work Plan if state grant funds or County grant-match funds are not available.

4. Reimbursable Items. The Work Plan contains no items for which the County will reimburse Landowner Responsibility costs. Or The County will reimburse the Landowner from the County Contribution Amount in an amount not to exceed \$XXXX for costs incurred for the landowner Responsibility(ies) identified in the Work Plan as Item(s) XXX. The reimbursement shall be based on the lesser of the invoice amount or the NRMP Reimbursable Cost Schedule maintained by the County, which the parties agree represents market rates for the task(s) and equipment rental and operation. If the Work Plan identifies materials (e.g., seeds, plants, chemicals) for which the County agrees to reimburse the Landowner from the County Contribution Amount, the reimbursement shall be based on the lesser of the invoice amount or the estimated cost of materials identified in the Work Plan. Reimbursement shall be paid within thirty-five (35) days of County receipt of a Land Contribution Certification itemizing the reimbursable items and supporting documentation. Any obligation of the County to pay a reimbursement is subject to the County's inspection of the Landowner's work and/or documentation to ensure it is completed in a professional manner and in compliance with industry standards.

5. Post-Restoration Impacts. If the Landowner reasonably believes the Landowner must temporarily impact a restoration or enhancement area within the Protected Property to respond to emergent issues affecting other uses of the property permitted by the Easement, the Landowner shall consult with the County and receive written approval from the County prior to taking any action. The Landowner shall restore the impacted site to pre-impacted conditions as soon as reasonably possible at the Landowner's sole cost.

6. Conflict of Terms. Nothing in this Agreement permits the Landowner to take any action within the Protected Property that is contrary to the terms of the Easement or the NRMP. In the event of any conflict in terms in this Agreement, the Easement and the NRMP, the terms of the Easement shall prevail, followed by the terms of the NRMP.

7. Ecological Monitoring. The County, or its representatives, will routinely conduct ecological monitoring of the restoration/enhancement area(s) when funding is available. This monitoring may be in conjunction with or separate from the annual monitoring for general Easement compliance. The County may monitor the Landowner's work on the Protected Property to ensure it is completed in an acceptable manner and in compliance with industry standards solely for the purpose of determining compliance with the Easement, the NRMP and this Agreement. The County, its contractor or project partner will contact the Landowner at least five (5) days in advance of any monitoring visit.

8. Access. The Landowner agrees to allow the County or its representatives to access the Work Plan project area(s) for site preparation, construction, installation, maintenance, evaluation, inspection, monitoring, and

promotional activities as determined in previously approved access procedures included in the Easement. In addition, the Landowner will allow access to any contractor or project partner selected by the County with prior notification.

9. Permits. The County, its contractors or project partners will obtain any permits or authorizations required for the Work Plan tasks or other work conducted or directed by the County. The Landowner shall obtain any permits or authorizations required for the Landowner work contemplated by this Agreement.

10. Indemnification. To the greatest extent allowed by law, in the performance of or failure to perform this Agreement, the Landowner shall indemnify, defend (in the case of third-party claims, with counsel satisfactory to County), and hold harmless the County, its officers, agents, and employees, from and against any actual or alleged loss, litigation cost (including, but not limited to, reasonable attorney fees and costs and expenses of defense), costs, settlement, judgment, demands, damage, liability, injury, harm, fees, fines, penalties, interest, expenditure, diminution in value, disbursement, action, claim, proceeding, or dispute of any sort (collectively "Losses"), whether or not involving a third party, which are attributable to Landowner's, or Landowner's agents', independent contractors', employees', or delegates', actual or alleged:

- A. intentional, willful, or negligent acts or omissions; or
- B. actions or omissions that give rise to strict liability; or
- C. breach of any representation, warranty, covenant or subcontract,

whether or not well-founded in fact or in law, known or unknown, foreseen or unforeseen, fixed or contingent and howsoever originating or existing, and whether or not based upon statute, common law, or equity.

11. County Liability. Neither the County, its agents, employees, contractors nor any of its funding agencies assume any liability for injury or damage, other than that caused by its or their own intentional, willful, or negligent acts or omissions while pursuing the agreed on Work Plan activities within the Protected Property. The County will require any contractor hired to perform work on the Protected Property to name the Landowner as an additional insured on its liability insurance for the work to be performed. Nothing contained herein is intended to create a joint venture or other legal organization made up of the parties or to create joint and several liability among the parties. The County expressly reserves all of its governmental defenses and immunities and accepts only such liabilities as provided for in Minnesota Statutes Chapter 466. The County assumes no jurisdiction over the Protected Property for purposes of controlling trespass, noxious weeds, granting rights-of-way, or other incidents of ownership.

12. Amendment/Modification. This Agreement may be amended by mutual consent of the County and the Landowner. All such amendments will be reduced to a writing that will be signed by representatives of all the entities executing this Agreement.

13. Effective Date. This Agreement will be effective as of the date of execution by all parties and shall remain effective until terminated: 1) by agreement of the parties; 2) by the terms of this Agreement; or 3) it is replaced by a new Agreement addressing the same subject matter. Unless terminated or replaced earlier for the reasons listed in this Agreement, this contract expires [redacted] () years after the last Work Plan item is implemented for the purpose of fulfilling required maintenance of restored and enhanced areas. Neither the County, its funders, its contractors, nor the Landowner shall have any obligation to restore or enhance all or a portion of the Protected Property to its recommended condition following expiration or termination of this Agreement.

14. Termination for Cause. If the Landowner is unable or unwilling to cure a breach of any of the provisions of this Agreement within thirty (30) days following receipt of a written notice from the County detailing such breach, then this Agreement shall be terminated.

15. Termination by the County - Lack of Funding. Notwithstanding any provision of this Agreement to the contrary, the County may immediately terminate this Agreement if it does not obtain funding from the Minnesota



Legislature, State of Minnesota agencies or other funding source, or if its funding cannot be continued at a level sufficient to allow payment of the amounts due under this Agreement. Written notice of termination sent by the County to the Landowner by mail or email is sufficient notice under the terms of this Agreement. The County is not obligated to pay for any services that are provided after written notice of termination for lack of funding. The County will not be assessed any penalty or damages if the Agreement is terminated due to lack of funding.

16. Applicable Law. The Landowner shall abide by all Federal, State or local laws; statutes, ordinances, rules and regulations pertaining to this Agreement and this Agreement shall be construed in accordance with the substantive and procedural laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in the County of Dakota, State of Minnesota.

17. Authorized Representatives/Notice. The signatories of this Agreement are designated as the authorized representatives of the parties for purposes of this Agreement. These persons have authority to bind the party they represent and to consent to modifications and subcontracts, except that, as to the County, the authorized representative shall have only the authority specifically or generally granted by the County Board of Commissioners.

Notification required to be provided pursuant to this Agreement shall be provided to the following named persons and addresses, unless otherwise stated in this Agreement or in a modification of this Agreement.

Landowner

[Name]
[Address]
[Address]
[Phone]
[Email]

County

Lisa West, Senior Project Manager
or successor
14955 Galaxie Ave.
Apple Valley, MN 55124
Phone: (952) 891-7018
lisa.west@co.dakota.mn.us

~This space intentionally left blank~

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 201█.

LANDOWNERS

Name

Date

Name

Date

COUNTY OF DAKOTA

Georg T. Fisher, Director
Environmental Resources Department

Date

APPROVED AS TO FORM:

Thomas R. Donely, Assistant County Attorney

Date

Attorney File No. _____



WORK PLAN

Landowner(s): _____

Property Location: _____

Protected Property Tract No.: _____

Restoration and Enhancement Activities, Budget and Schedule

The following tasks and budget are based on estimated costs and project needs developed at the time of the Final Natural Resource Management Plan. Final activities and estimated costs will be determined based on selected contractor bids, and landowner and County priorities. The Work Plan timeline, tasks, schedule, and estimated costs are subject to change, due to weather, ground conditions and other factors. The Parties agree to amend this Work Plan, as necessary, in response to these conditions.

Below is a list of priority restoration/enhancement activities, locations, timeline, estimated costs, responsibilities and associated costs to the Landowner and the County. The location of each Unit within the Easement, referenced in the table, is attached as **EXHIBIT B**.

	Timeline	Location	Task	Estimated Cost	Landowner Responsibility	County Responsibility
1		Unit X		\$	\$	\$
2		Unit X		\$	\$	\$
3		Unit X		\$	\$	\$
4		Unit X		\$	\$	\$
5		Unit X		\$	\$	\$
6		Unit X		\$	\$	\$
7		Unit X		\$	\$	\$
8		Unit X		\$	\$	\$
9		Unit X		\$	\$	\$

Maintenance Activities and Schedule

The following maintenance activities are the responsibility of the Landowner and are based on the above restoration and enhancement activities. Actual maintenance activities may change depending upon the restoration and enhancement activities that are completed and other considerations. Any revisions to the maintenance activities and schedule will be agreed to by all parties prior to completion or termination of the Restoration and Enhancement portion of this Agreement. Below is a list of maintenance activities, locations and timeline:

	Timeline	Location	Task
1		Unit X	
2		Unit X	
3		Unit X	
4		Unit X	
5		Unit X	

Land Cover Management Unit Map

DRAFT



LANDOWNER CONTRIBUTION CERTIFICATION

Landowner(s): _____

Property Location: _____

Protected Property Tract No.: _____

Work Plan Task: _____

*All defined terms used herein shall have the meaning assigned in the Natural Resources Management Agreement dated: _____

The undersigned Landowner certifies that: 1) all costs shown below are true and correct; 2) the items listed include all personal time, equipment and material required to complete the identified task assigned as a Landowner's Responsibility in the Work Plan; and 3) there is nothing due or to become due for materials, labor or other work other than as stated below:

	Item (labor, material equipment)	Rate	Quantity	Total Cost	Completed By	Reimbursable Item (Y/N)
1						
2						
3						
4						
5						

All true and correct copies of invoices paid by the Landowner for the items listed above are attached hereto. The Landowner acknowledges that if an item was identified as reimbursable by the County in the Natural Resource Management Agreement, the reimbursement shall be based on the NRMP Reimbursable Cost Schedule maintained by the County. Any obligation of the County to pay a reimbursement is subject to the County's inspection of the Landowner's work to ensure it is completed in a workmanlike manner and in compliance with industry standards.

The Landowner acknowledges that the in-kind reporting information provided by Landowner may be used by the County to document funding matches for any grant funds used for the project and the Landowner warrants that there are no overstatements or misrepresentations contained herein.

LANDOWNERS

Name

Date