

PLANNING COMMISSION AGENDA

June 3, 2019

7:00 pm

- 1. CALL TO ORDER -**
- 2. PLEDGE OF ALLEGIANCE –**
- 3. ROLL CALL -**
 - a) Scott Patten
 - b) Sally Doherty
 - c) Kris Kopitzke (Chair)
 - d) Jim Langan
 - e) Roger Bowman
 - f) Justin Sykora
 - g) Christian Dawson
 - h) Doug Parker
 - i) Kuchen Hale
- 4. APPROVAL OF AGENDA –**
- 5. APPROVAL OF MINUTES –**
 - A. May 6, 2019 Meeting Minutes
- 6. REPORTS AND PRESENTATIONS – None**
- 7. PUBLIC HEARINGS –**
 - A. Amendment to Article IX. Sewer of the Afton City Code – Ordinance 02-2019
- 8. NEW BUSINESS – None**
- 9. OLD BUSINESS -**
 - A. Review and Clarification of Elements of the PLCD Ordinance Language
 - B. Pervious Pavers
 - C. Update on City Council Actions – Council Highlights from the May 21, 2019 Council meeting - attached.
- 10. ADJOURN –**

A quorum of the City Council or Other Commissions may be present to receive information.

CITY OF AFTON
DRAFT PLANNING COMMISSION MINUTES
 May 6, 2019

- 1
- 2
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- 4
- 5 **1. CALL TO ORDER** – Chair Kris Kopitzke called the meeting to order at 7:00 PM
- 6
- 7 **2. PLEDGE OF ALLEGIANCE** – was recited.
- 8
- 9 **3. Oath of Office** – Kuchen Hale
- 10
- 11 **4. ROLL CALL** – Present: Kris Kopitzke, Sally Doherty, Christian Dawson, Doug Parker, Roger Bowman,
 12 Justin Sykora, Kuchen Hale. A Quorum was present. Absent were Scott Patten & Scott Langan (excused).
 13 **ALSO IN ATTENDANCE** – Mayor Palmquist, City Administrator Ron Moose
- 14
- 15 **5. APPROVAL OF AGENDA** –
 16 **Motion/Second Hale/Doherty To approve the agenda for the May 6, 2019 Planning Commission**
 17 **meeting. Passed 6-0.**
- 18
- 19 **6. APPROVAL OF MINUTES** –
 20 A. February 4, 2019
 21 **Motion/Second Bowman/Sykora To approve the minutes of the February 4, 2019 Planning Commission**
 22 **meeting. Passed 4-0-3 (Doherty, Hale, Dawson abstain due to absence).**
 23 B. April 1, 2019
 24 **Motion/Second Parker/Kopitzke To approve the minutes of the April 1, 2019 Planning Commission**
 25 **meeting. Passed 5-0-2 (Doherty, Hale abstain due to absence).**
- 26
- 27 **7. REPORTS AND PRESENTATIONS** - None
- 28
- 29 **8. PUBLIC HEARINGS** – none
- 30
- 31 **9. NEW BUSINESS** – none
 32 A. City of Lake St Croix Beach Draft 2040 Comprehensive plan
 33 Discussion was held over septic and well systems, ground and surface water management, municipal
 34 sewer system.
 35 Comments: maintain low density development along border, concerns about water quality/would like to
 36 see the updated implementation plan for water management, address exploration of city sewer, desire to
 37 have a collective effort on water issues, land density and monitoring of existing septic systems.
 38 **Motion/Second Kopitzke/Hale to recommend providing comments listed above to the city council**
 39 **regarding the City of Lake St Croix Beach draft 2040 Comprehensive plan. Passed 7-0-0.**
- 40
- 41 **10. OLD BUSINESS** –
 42 A. Election of Officers - Secretary
 43 **Motion/Second Dawson/Doherty To nominate Doug Parker for Secretary. Passed 6-0-1 (Parker**
 44 **abstain).**
- 45
- 46 B. Review & clarification of elements of PLCD ordinance language
 47 a. Discuss approaches to prohibit further subdivision of PLCD lots.
 48 Sykora asked what happens if the HOA dissolves over time? Language is needed.
 49 Administrator Moose stated that the responsibilities go back to the city and city can assess for
 50 maintenance expenses.
 51 Sykora asked if HOA dissolves do the majority of owners take place of the HOA?
 52 Doherty recommended changing language to read “and/or” any government having jurisdiction.
 53 Dawson stated approval should be required of all people in the PLCD and abutting landowners.
 54 Hale stated it has to stay within the PLCD, not abutting properties.
 55 Moose stated there are limitations on a city empowering abutting properties to have control.

56 Doherty asked why are there particular constraints on these parcels and groups if changes occur in
57 future?

58 Bowman stated that a PLCD development was an exception to agriculture, not zoned RR.

59 Hale stated if the HOA dissolves, falls under city jurisdiction.

60 Dawson stated that a PLCD is allowed in areas they typically can't be in due to the conservation benefit.
61 If it is developed more, it loses the conservation element and restriction of further development.

62 Doherty stated that if changes occur in the future in Afton's density; the ordinance could be changed

63 Kopitzke stated that the language like this is already in the ordinance, question is if there should be
64 more.

65 Sykora asked about the intent

66 Hale stated the reason to allow the higher density is to have contiguous open space.

67 Moose stated that if density were to change, the Met council would have to approve, likely regional
68 sewer. Would take time.

69 Dawson stated that in the event of HOA disbandment, the city could hire someone to run, the
70 management company would follow covenants.

71

72 b. Clarify the purpose and language of the conservation easement requirements

73 Doherty stated that neighbors shouldn't have control over other properties.

74 Bowman stated that the purpose was to protect values.

75 Kopitzke not enough incentive for developer to try.

76 Hale would like it to include language that the MN Land Trust has to agree to be involved.

77 **Motion/Second Doherty/Hale to change language to read:**

78 **Sec. 12-2380. Final development plan.**

79 **E. The applicant(s) shall grant a Conservation Easement which shall run with the land in**
80 **perpetuity to the City of Afton, all of the owners of the lots and parcels to be created in the**
81 **PLCD, all land owners of property within Afton abutting the PLCD and the Minnesota Land**
82 **Trust (or similar independent third party approved by the City of Afton), which restricts the**
83 **lots and parcels, as well as the development rights on the undeveloped parcel(s), within the**
84 **PLCD to the number of dwelling units approved for the PLCD and the land cover and use**
85 **approved by the City of Afton as a part of this PLCD.**

86 Moose stated that the MN Land Trust needs to approve of the HOA covenants.

87 **Hale friendly amendment (accepted) to include language "MN Land review and approve the**
88 **HOA covenants".**

89 **Motion vote: Passed 7-0.**

90

91 **Motion/Vote Hale/Dawson Add language that "The MN Land Trust (or similar independent**
92 **third party approved by the City of Afton) provide written statement that they will agree to the**
93 **conservation easement over the land prior to final PLCD approval." Passed 7-0.**

94

95 c. constraints on open space parcel

96 Dawson questioned what is definition of developable land to get credit for density?

97 Kopitzke asked about use of open space - are trails are allowed? Ag? Soccer field?

98 Hale stated that we need to see what MN Land Trust rules are before adding any language

99 Sykora stated we need to define natural area and have it spelled out in easement language

100 Bowman stated it has to be appropriate use for that particular piece of land. How is use enforced?

101 Kopitzke would like a copy of conservation easement for review next month.

102 Sykora define open space (next month).

103

104 C. Pervious Pavers

105 Sykora asked what is the benefit unless water is captured and treated? It is good to slow down flow
106 but doesn't treat problem. Function of design and maintenance.

107 Parker stated that it only works if ground is not already saturated. Other issues are maintenance,
108 how to measure permeability, can't use salt.
109 Bowman stated that the purpose was to find a way to get more hard surface without violating
110 pervious surface requirements.
111 Hale stated that we need to know storm drain capacity. If pervious, how do we capture and treat or
112 be sure it goes toward storm drain?
113 Dawson stated that there needs to be guidelines to show how it can be allowed and done correctly.
114 Doherty stated that it would be a nice option for property owners.
115 Kopitzke likes the 50% rule like Minnetrista has.
116 Hale asked when was the ordinance created? What was the intention? What is capacity of system?
117 Kopitzke state that we need current ordinance, capacity, draft ordinance language for next month.
118 Bowman stated that he would vote against change. Cannot measure and control or do anything
119 about it if there are violations.

120
121 E. Update on City Council actions
122 Council member Wroblewski provided a summary of the April City Council meeting.

123
124 **11. ADJOURN**

125 **Motion/Second Parker/Doherty To adjourn. Passed 7-0.**

126
127 Meeting adjourned at 9:12 PM.

128
129
130
131
132 Respectfully submitted by:

133
134 _____
135 Julie Yoho, City Clerk

136
137
138 **To be approved on June 3, 2019 as (check one): Presented: _____ or Amended: _____**

City of Afton
3033 St. Croix Trl, P.O. Box 219
Afton, MN 55001

Planning Commission Memo

Meeting: June 3, 2019

To: Chair Kopitzke and members of the Planning Commission

From: Ron Moorse, City Administrator

Date: May 28, 2019

Re: Amendment to Article IX. Sewer of the Afton City Code – Ordinance 02-2019

The City Council has referred to the Planning Commission, for a public hearing and recommendation, an amendment to the sanitary sewer ordinance regarding additional triggers for required connections to the sanitary sewer system, restrictions on the use of septic systems in the floodplain, and illegal discharge into the sanitary sewer system. The proposed ordinance amendment is attached for the Planning Commission's consideration and recommendation. The following is an outline of the elements of the ordinance amendment.

1. The current sanitary sewer ordinance requires properties to be connected to the municipal sanitary sewer system if the property's septic system is nonconforming. The proposed ordinance amendment additionally requires properties to connect to the municipal sewer system at such time as the property is sold, transferred or otherwise disposed of. Also, if a property owner cannot demonstrate a compliant septic system, i.e. with an approved septic permit, a compliance inspection is required. If the inspection does not find that the system is compliant, the property must connect to the sanitary sewer system.
2. With the recent high water levels along the St. Croix River and Valley Creek, septic systems in the flood plain were most likely underwater and not adequately treating wastewater. The ordinance amendment includes language requiring that ISTS located in a flood plain and/or subject to flooding shall be prohibited from being used during periods when the ISTS does not meet the required 3 foot separation from groundwater that is necessary to properly treat wastewater and/or any part of the ISTS is inundated with water such that wastewater would be released into the flood waters.
3. The current sanitary sewer ordinance prohibits the discharge of stormwater, groundwater and surface water into the sanitary sewer system and also enables inspections of sanitary sewer connections, but it does not specifically allow a program of inspections to determine whether a property has made an illegal connection to the sanitary sewer system or is illegally discharging into the sanitary sewer system. This language has been included in the ordinance amendment. The ordinance also provides that unlawful discharge to the LSTS shall be subject to penalty per the city's fee schedule.

Because the sanitary sewer ordinance is in the Land Use chapter of the City Code, an amendment to the ordinance requires a public hearing.

Planning Commission Recommendation Requested

Motion regarding Ordinance 02-2019, an ordinance amending the sanitary sewer ordinance regarding triggers for required connections to the sanitary sewer system, restrictions on the use of septic systems in the floodplain and illegal discharge into the sanitary sewer system.

ORDINANCE 02-2019

CITY OF AFTON

WASHINGTON COUNTY, MINNESOTA

AN ORDINANCE AMENDING CHAPTER 12 ARTICLE IX. SEWAGE

THE CITY COUNCIL OF THE CITY OF AFTON, MINNESOTA HEREBY ORDAINS:

The following sections of Chapter 12, Article IX of the Afton Code of Ordinances shall be amended by adding the **bold and underlined** language and deleting the ~~strike-through~~ language.

Sec. 12-1955. Inspections.

Inspections of ISTS, community systems, or connections to LSTS, **including inspections to determine unlawful connections and unlawful discharge to LSTS**, as required to determine compliance with this article shall be performed by the City Administrator or his/her agent under the following circumstances:

A. Duly authorized employees of the City shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this article. Those employees shall have no authority to inquire into processes including metallurgical, chemical, oil refining, ceramic, paper, or other industries except as is necessary to determine the kind and source of the discharge to the public sewer.

Sec. 12-1954. Connection to Large Subsurface Treatment System (LSTS).

This article shall apply and be in effect for the stated purposes within the Historic Village Sewage Treatment Service Area, as shown in the Comprehensive Plan. Any property outside of the HVSTSA shall be connected to an individual subsurface sewage treatment system (ISTS) meeting the requirements of Section 12-83 of the Zoning Code ("Septic Permits") or to a community sewage treatment system approved under the authority of the City.

A. The sewer permit fee and sewer connection charges shall be established by the City, as outlined in the City's fee schedule.

B. At the time the LSTS becomes available to properties within the HVSTSA, the City Engineer shall contact the property owner in writing notifying them of the availability of the LSTS and requesting completion of a sewer permit and to schedule a connection. Properties previously connected to the "201" community sewage treatment system or with existing ISTS which are failing to adequately treat sewage, posing a hazard to the public health or otherwise deemed by the City to be ~~non-complaint~~ **non-compliant** shall connect to the LSTS within 60 days from when the **LSTS sewer** becomes available.

ORDINANCE 02-2019

1. In the case when it is not clear whether an existing ISTS is compliant; if a property owner is not able to demonstrate that the existing ISTS is compliant, a compliance inspection is required within 30 days. If the compliance inspection does not find that the ISTS is compliant, or if the property owner fails to obtain a compliance inspection within 30 days, the property shall be connected to the sanitary sewer system within 60 days.

C. At the time a property within the HVSTSA with an ISTS is sold, transferred or otherwise disposed of, the property shall connect to the LSTS within 60 days.

~~C.~~ **D.** All properties located in the HVSTSA shall be connected to the LSTS no later than December 31, 2024.

~~D.~~ **E.** Properties within the HVSTSA where construction is proposed for a new structure with a building drain requiring sewage treatment shall not be granted final building permit approval without the issuance of a sewer permit to connect to the LSTS system.

~~E.~~ **F.** The size, slopes, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling of the trench, shall all conform to the requirements of the state building and plumbing code or other applicable rules and regulations of the City. In the absence of code provisions or in the amplification thereof, the materials and procedures set forth in appropriate specifications of the American Society for Testing and Materials (ASTM) and Water Pollution Control Federation (WPCF) Manual of Practice No. 9, shall apply.

Sec. 12-1984. Unlawful discharge to LSTS.

No person shall discharge or cause to be discharged directly or indirectly any waste which, by volume or strength or nature, may harm the LSTS facility or cause obstruction to the free flow in sewers or endanger life or cause a nuisance.

A. No person shall discharge or cause to be discharged directly or indirectly any stormwater, groundwater, roof runoff, subsurface drainage, waste from on-site disposal systems, unpolluted cooling or processing water to the LSTS except as permitted by the City. **Unlawful discharge to the LSTS shall be subject to penalty per the city's fee schedule.**

B. No person shall connect a sump pump to the LSTS. Unlawful connections shall be subject to penalty, per city's fee schedule.

C. Stormwater and all other unpolluted water shall be discharged to a storm sewer or to the ground surface, and as allowed by MPCA.

Subdivision III. Use of Individual Sewage Treatment Systems

Sec. 12-2006. **Use of ISTS Located in a Floodplain and/or Subject to Flooding**

ORDINANCE 02-2019

ISTS located in a flood plain and/or subject to flooding shall be prohibited from being used during periods when the system does not meet the required 3 foot separation from groundwater that is necessary to properly treat wastewater and/or any part of the system is inundated with water such that wastewater may be released into the flood waters.

Sec. 12-2006~~7~~—12-2040. Reserved.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF AFTON THIS 18TH DAY OF JUNE, 2019.

SIGNED:

Bill Palmquist, Mayor

ATTEST:

Ronald J. Moorse, City Administrator

Motion by:
Second by:
Perkins:
Wroblewski:
Ross:
Nelson:
Palmquist:

City of Afton
3033 St. Croix Trl, P.O. Box 219
Afton, MN 55001

Planning Commission Memo

Meeting: June 3, 2019

To: Chair Kopitzke and members of the Planning Commission

From: Ron Moorse, City Administrator

Date: May 29, 2019

Re: Review and Clarification of Elements of the Preservation and Land Conservation Development (PLCD) Ordinance

Conservation Easement and Homeowners Association Declaration

The Planning Commission has completed its review of the first two of three groups of PLCD ordinance elements, with the exception that the Commission requested a copy of the portions of the Conservation Easement that relate to the restriction of uses and a copy of relevant sections of the Homeowners Association Declaration regarding restrictions and requirements. These are attached for the Commission's review and discussion.

Review Group 3 – Clarification of Ordinance Language Elements and Shared Driveways

The following is an outline regarding the elements of Review Group 3.

- A. Parcels previously subdivided to their maximum density may not be joined to a PLCD
- B. Should a lot in an existing subdivision that has been previously subdivided to its maximum density be allowed to be used to provide access to a PLCD?
- C. The proposed total development is designed in such a manner as to form a desirable and unified environment within its own boundaries.
- D. Review of the conditions placed on the Afton Creek Preserve PLCD to determine if some of those conditions are universal enough to be incorporated into the PLCD ordinance as conditions to be placed on all PLCD's.
- E. Shared Driveways

1. Sec. 12-2377. Coordination with subdivision regulations.

C. Parcels which contain their maximum permitted density or have been previously subdivided to their permitted density may not be joined to a PLCD.

A clear explanation of what it means to be "joined" to a PLCD is needed. Also, the purpose of this language should be clarified. For example, is the purpose to prevent the transfer of development rights (density) to the PLCD, enabling it to have a greater density (not just more lots, but greater density) than without the addition of the parcel? This density issue may have been addressed with the language in the PLCD ordinance that requires all subdivision requirements to be met, which includes the 5-acre minimum lot size, vs. the previous PLCD-type ordinances that allowed smaller lot sizes.

2. Sec. 12-2379. General development plan.

5. The proposed total development is designed in such a manner as to form a desirable and unified environment within its own boundaries.

The question was raised regarding whether the need for a road easement through a developed lot that is part of a previous subdivision and is not part of the PLCD meets this standard. It would be helpful to clarify the meaning of "form a desirable and unified environment within its own boundaries", and/or to add language to the PLCD ordinance that

specifically clarifies whether a PLCD can be approved if it requires an access through an existing lot previously subdivided to its maximum density in an adjacent subdivision.

3. Conditions Placed on the Afton Creek Preserve PLCD and PLCD Ordinance Requirements

Attached are the conditions placed on the Afton Creek Preserve PLCD Final Plat, with a number highlighted as possibly being universally applicable to PLCD subdivisions, such that they would be added to the PLCD ordinance as conditions to be placed on all PLCD's.

4. Shared Driveways

- a. Consider allowing a shared driveway as an alternative to a PLCD to enable a subdivision to serve two or three very large lots, with the condition that a conservation easement be placed on the lots to preserve the open space and natural features and prevent future subdivision of the lots.

Planning Commission Direction Requested:

Motion regarding the review and clarification of elements of the Preservation and Land Conservation Development (PLCD) Ordinance

Afton Creek Preserve Conservation Easement - Sections Related to
Restrictions on the Use of the Open Space Parcels

CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted by Albert W. Carlson, as trustee of the Trust Agreement of Albert W. Carlson U/T/D February 17, 2010, (the “Owner”) to the Minnesota Land Trust, a non-profit corporation organized and existing under the laws of the State of Minnesota (the “Land Trust”) and City of Afton, a political subdivision of the State of Minnesota (the “City”). The County and Land Trust are also from time to time hereinafter referred to as “Co-Holders.”

BACKGROUND

- A. OWNER. The Owner is the current owner of approximately 218 acres of real property located in Washington County, Minnesota, platted as *Afton Creek Preserve* (hereinafter referred to as “*Afton Creek Preserve*”, a Preservation and Land Conservation Development (PLCD) with 18 single family homes to be developed by the Owner. Approximately 109 acres of open space, consisting of 2 noncontiguous outlots in *Afton Creek Reserve*, are more fully described below as the “Protected Property.” The remaining portions of that real property are intended to be developed for residential use.
- B. MINNESOTA LAND TRUST. The Minnesota Land Trust is a non-profit corporation organized and operated exclusively for charitable and educational purposes including the preservation and protection of land in its natural, scenic or other open space condition. The Land Trust is a public charity as defined in Sections 501(c)(3) and 509(a) of the Internal Revenue Code and an organization qualified to hold conservation easements under Minnesota law and Section 170(h) of the Internal Revenue Code and related regulations, possessing the commitment to protect the conservation purpose of this conservation easement (the “Conservation Purpose”) and the resources to enforce the restrictions.

- C. CITY OF AFTON. The City of Afton is a political subdivision of the State of Minnesota that is qualified to hold conservation easements under Minnesota Statutes Chapter 84C and Section 170(h) of the Internal Revenue Code and related regulations.
- D. PROTECTED PROPERTY. The Protected Property is that real property legally described in Exhibit A and generally depicted on the “Property Map” in Exhibit B. Both exhibits are attached to this conservation easement (the “Easement”) and incorporated by this reference.

The Protected Property lies within the city limits of Afton, Minnesota, in Washington County. It is located within the St. Paul-Baldwin Plains and Moraines subsection, which is part of the Eastern Broadleaf Forest Province of Minnesota’s Ecological Classification System. The subsection is dominated by glacial end moraine complex with rolling to hummocky terrain on the moraine (steep, short complex slopes) and level to rolling on the outwash plains. A mosaic of vegetation occurred in the subsection historically, ranging from oak and aspen savanna to tallgrass prairie and maple-basswood forest.

The Protected Property lies within the Land Trust’s *Twin Cities Metro and Rum and St. Croix Rivers* Priority Conservation Program Areas. The Minnesota Land Trust’s *Twin Cities Metro Priority Conservation Program Area* encompasses the rapidly growing Greater Minneapolis-St. Paul Metropolitan area that contains a majority of Minnesota’s increasingly diversifying population. This program area grades from densely populated and heavily developed at its core to predominantly agricultural at its perimeter. The Minnesota and St. Croix rivers merge with the Mississippi here, providing important wildlife corridors for wildlife and migratory birds. The program area is notable for its varied habitats, including oak savannas, Big Woods forests, prairies and wetlands, that support one of the highest concentrations of Species in Greatest Conservation Need in the state.

The Minnesota Land Trust’s *Rum River and St. Croix River Priority Conservation Program Area* encompasses the watersheds of the Rum and St. Croix rivers in east-central Minnesota. The area is rich in water features, including four important Minnesota rivers and Lake Mille Lacs, one of the state’s largest lakes. The St. Croix River is a designated National Scenic Riverway, one of the original eight American rivers to be designated through this prestigious program, and an important recreational asset in close proximity to the Twin Cities Metropolitan Area. The Rum and Kettle rivers are designated as Minnesota Wild and Scenic Rivers. All three, along with the Snake River, are designated state water trails.

The Protected Property currently consists of approximately 75 acres of grasslands, 14 acres of woodlands, 8 acres of forest, 11 acres of wetlands, and 1 acre of open water. The Protected Property has approximately 5,939 feet of shoreline along Trout Brook. The Protected Property consists of rolling topography with elevations decreasing from high points on the north and south perimeters of the Protected Property to Trout Brook, which flows west to east through both Outlot A and Outlot B of the Protected Property.

There are currently no improvements on the Protected Property other than fencing and an overhead electrical line located on Outlot A. These improvements are more specifically

described in the baseline documentation report referred to in section 6 of this Easement (the “Baseline Documentation Report”).

The natural attributes of the Protected Property provide habitat for fish, wildlife and plants and include grassland, woodlands, wetlands, open ponds, and Trout Brook, a state-designated trout stream. Approximately 57 acres of Outlot B will be restored to prairie beginning some time in 2019.

The northwestern corner of the Protected Property is part of a site (Afton 32) of moderate biodiversity significance, as identified by the Minnesota Biological Survey (MBS). Moderate biodiversity sites typically contain occurrences of rare species, support native plant communities with modest environmental disturbance, and have strong potential for recovery of characteristic ecological functioning. An area of Dry Bedrock Bluff Prairie (Southern) was identified within this area on the Protected Property by MBS. This native plant community is increasingly rare within the state and has been assigned a conservation status rank of S3 in Minnesota, meaning that it is vulnerable to extirpation. The area containing this community is also part of a corridor the Minnesota DNR identified as a Regionally Significant Ecological Area. While the Dry Bedrock Bluff Prairie (Southern) community on the Protected Property is transitioning into a woodland due to long periods of fire suppression, it provides excellent potential for restoration activities.

The Protected Property is located within the St. Croix River Watershed Conservation Focus Area, as identified in the Minnesota Wildlife Action Plan 2015-2025. Dry Bedrock Bluff Prairie (Southern) is a target habitat and brook trout is a target species within the conservation focus area. The plan identifies buffering riparian habitat with native vegetation as an important strategy to restore degraded water quality and altered hydrology in the focus area.

The Protected Property is located within the Lower St. Croix River major watershed, which covers 585,735 acres in ten counties in northwest Wisconsin and east-central Minnesota. Portions of the watershed located near the Twin Cities Metropolitan Area and the Protected Property are heavily developed for residential and commercial use. Despite these pressures, the Lower St. Croix River is well known for its outstanding scenic beauty and recreational opportunities. The Lower St. Croix River was designated as a National Wild and Scenic River on June 17, 1976, administered by the states of Minnesota and Wisconsin. The Riverway protects one of the most diverse natural mussel populations in the National Park system, with around 40 species. The Riverway is located approximately two miles to the east of the Protected Property.

The Protected Property is located less than a half mile to the west of the St. Croix Lake Important Bird Area (IBA). The widening of the St. Croix River within the IBA is a unique feature that separates this area ecologically from other IBAs to the north and south. The IBA is an important migratory route, wintering area, and breeding area for a wide variety of birds, including migratory raptors and waterbirds. Its location and variety of habitats results in a large avian species diversity, with 268 bird species documented within the IBA boundaries. Development is a major threat to the quality bird habitat found in the IBA. The Protected

Property contains excellent habitat along the western edge of the IBA, including an undeveloped riparian corridor. This habitat buffers the IBA and provides additional benefits for the birds that use the IBA.

Within five miles of the Protected Property there are eleven properties permanently protected with Land Trust conservation easements totaling approximately 841 acres, as well as the approximately 1,620 acre Afton State Park managed by the Minnesota Department of Natural Resources (Minnesota DNR). Additional conservation lands within five miles of the Protected Property include four Conservation Reserve Program (CRP) easements, two Washington County regional parks, two Minnesota DNR Division of Trails and Waterways parcels, and one Minnesota DNR Scientific & Natural Area. As part of this protected matrix of lands, the Protected Property contributes to the preservation of natural areas for habitat, prevents detrimental land use conversion, and protects groundwater and surface water sources.

The scenic attributes of the Protected Property include its rural, open and wooded character, which are visible to the general public from 60th Street South.

It is anticipated that the public will have access to a walking trail located on Outlot B of the Protected Property through a public access easement located between Lots 5 and 6, Block 2, granted by the Owner and running from Oakridge Court South, a platted public road in *Afton Creek Preserve*.

The Protected Property is located in an area of the Twin Cities Metropolitan Region experiencing increased housing development and fragmentation of natural lands. According to the 2015 System Statement for City of Afton by the Metropolitan Council, the population of the City is projected to grow by 8.1% by year 2040, with a household increase of 17% during the same time period.

Preservation of the Protected Property provides a unique opportunity to protect the watershed of Trout Brook, one of the few natural trout streams in the Twin Cities Metropolitan area.

E. CONSERVATION VALUES. Collectively and individually, the following natural, scenic and open space qualities of the Protected Property that are outlined above comprise its “Conservation Values:”

- The undeveloped and relatively natural character of the Protected Property provides significant habitat for a variety of fish, wildlife and plants.
- The undeveloped shoreline along Trout Brook helps maintain the water quality of the brook and provides near-shore habitat for a variety of aquatic plants, animals and natural communities.
- The open and natural character of the Protected Property provides scenic views enjoyed by the general public from 60th Street.

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, or construction of any structures and improvements that presently exist on the Protected Property or that are authorized below.

The preservation and protection of these Conservation Values will provide significant benefit to the public.

F. CONSERVATION POLICY. Protection of the Conservation Values of the Protected Property is consistent with, and will further, delineated governmental policies including those established by the following:

- Minnesota Statutes Chapter 103A, which promotes protection of Minnesota's waters and their adjacent lands, and Minnesota Statutes Section 103A.206 in particular, which recognizes the economic and environmental importance of maintaining and enhancing the soil and water resources of this state and the role of private lands in these conservation efforts to, among other things, preserve natural resources, protect water quality, preserve wildlife, and protect public lands and waters.
- Minnesota Statutes Section 103A.201, which specifically promotes the protection of wetlands, and Minnesota Statutes Section 103A.202, which specifically declares that it is in the public interest to preserve the wetlands of this state to conserve surface waters, maintain and improve water quality, preserve wildlife habitat, reduce runoff, provide for floodwater retention, reduce stream sedimentation, contribute to improved subsurface moisture, and enhance the natural beauty of the landscape.
- City of Afton Comprehensive Plan (2008), which establishes goals to maintain and enhance fish and wildlife habitats, preserve existing forests, woodlands and prairies; protect and preserve steep slopes; protect and preserve natural features unique to the City of Afton, and policies to preserve open spaces and natural resources for passive use and create non-motorized trails through direct purchase, subdivision, scenic and/or conservation easements and other means, and to protect steep slopes, tree cover, wetlands and other fragile lands through conservation easements, scenic easements and other available means.
- National Park Service, through its Cooperative Management Plan: Lower St. Croix National Scenic Riverway (2002), which identifies water quality and quantity as a priority natural resource concern for the riverway inclusive of the Trout Brook watershed. The plan discusses the need for a whole basin strategy for the St. Croix River, inclusive of specific goals, projects and mitigating measures, with the Minnesota Pollution Control Agency the primary State of Minnesota partner.
- Minnesota Pollution Control Agency, through its 2013 revised Lake St. Croix Total Maximum Daily Load (TMDL) Implementation Plan, which identifies Trout Brook as a high source of phosphorus to the St. Croix River. Trout Brook currently has the third highest load per unit area of all St. Croix River tributaries. The TMDL Implementation

Plan lists retirement of cropland in high phosphorous contributing areas, wetland restoration, and installation of shoreline buffers as priority opportunities to reduce phosphorous inputs.

- South Washington Watershed District Watershed Management Plan (2016), which sets a goal for a 35% reduction in total phosphorous for Trout Brook as specified in the Lake St. Croix TMDL and a no net loss for wetland acreage or function.
- Washington County Acquisition of Development Rights Ordinance 175, which establishes a program for the preservation of open space, parks and public water, commonly referred to as the Land and Water Legacy Program. Primary objectives of the program include improving water quality of rivers, lakes and streams; protecting drinking water sources; purchasing parkland; preserving wetlands and woodlands; and protecting land along water bodies from development. The program identifies Trout Brook as priority for conservation action.
- Minnesota Statewide Conservation and Preservation Plan, 2008, which promotes the protection of priority land habitats, critical shorelands and private shorelands via economic incentives and other tools, including conservation easements.
- 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.

G. CONSERVATION INTENT. The Owner and the Co-Holders are committed to protecting and preserving the Conservation Values of the Protected Property in perpetuity. Accordingly, it is their intent to create and implement a conservation easement that is binding upon the current Owner and all future owners of the Protected Property and that conveys to the Co-Holders the right to protect and preserve the Conservation Values of the Protected Property for the benefit of this generation and generations to come.

CONVEYANCE OF CONSERVATION EASEMENT

Pursuant to the laws of the State of Minnesota, and in particular Minnesota Statutes Chapter 84C, and in consideration of the facts recited above and the mutual covenants contained herein, the Owner hereby conveys and warrants to the Co-Holders and their successors and assigns a perpetual conservation easement over the Protected Property. This Easement creates a property right immediately vested in the Co-Holders and consists of the rights, terms, and restrictions set out below.

The Owner also conveys and warrants to the Co-Holders a perpetual easement for access to the Protected Property. The terms of this access easement are described in more detail in section 4 of this Easement.

1. CONSERVATION PURPOSE. The Conservation Purpose of this Easement is to provide significant public benefit by preserving and protecting in perpetuity the Conservation Values of the Protected Property identified above as those values exist at the time of this conveyance and as they may evolve in the future.

This Conservation Purpose is accomplished by confining the development, management and use of the Protected Property to activities and improvements that are consistent with the preservation of these Conservation Values, by prohibiting activities and improvements that significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Easement.

2. RESTRICTIONS. Any activity or improvement on or use of the Protected Property in a manner that may significantly impair or interfere with a Conservation Value of the Protected Property or that is inconsistent with the terms or the Conservation Purpose of this Easement is prohibited.

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

Except as specifically permitted in section 3 of this Easement and without limiting the general prohibition above, restrictions imposed upon the Protected Property expressly include the following:

- 2.1. Industrial and Commercial Activity. No industrial or commercial use of the Protected Property is allowed.
- 2.2. Agricultural Use. Except as specifically provided in this section, no agricultural use of the Protected Property is allowed. This includes and prohibits tilling, plowing, commercially cultivating row crops, keeping or grazing livestock, haying, feedlots, tree farms, orchards or nurseries. This does not include or prohibit vegetation management activities allowed in section 2.13 of this Easement or vegetation management activities allowed in accordance with an approved habitat management plan as provided in section 3.2 of this Easement.
- 2.3. Residential Use and Development. No residential use or development of the Protected Property is allowed.
- 2.4. Division of the Protected Property. The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel under single ownership (joint or undivided) regardless of whether it now consists of separate parcels, was acquired as separate parcels, or is treated as separate parcels for property tax or other purposes.

The general prohibition set out above does not prohibit the following:

- a. The division of the Protected Property when a portion of the Protected Property is being conveyed to a conservation entity defined in section 7.1 of this Easement.
 - b. The correction or adjustment of boundary lines to resolve a bona fide ownership dispute.
- 2.5. Density. No portion of the Protected Property may be used to satisfy land area requirements for other property not subject to this Easement for purposes of calculating building density, lot coverage or open space under otherwise applicable laws, regulations, or ordinances controlling land use other than the plat of *Afton Creek Preserve*, recorded prior to this Easement. No development rights that have been encumbered or extinguished by this Easement may be transferred to any other property.
- 2.6. Rights of Way. No right of way shall be granted across the Protected Property by the Owner in conjunction with any industrial, commercial, or residential use or development of other land not protected by this Easement without the prior approval of the Co-Holders under the provisions of section 7.6 of this Easement.
- 2.7. Structures and Improvements. No temporary or permanent buildings, structures, utilities, roads or other improvements of any kind may be placed or constructed on the Protected Property except as specifically permitted in section 3 of this Easement or as set forth below:
- a. Utilities. Utility systems and facilities may be installed, maintained, repaired, extended and replaced to serve only uses and activities specifically permitted by this Easement or to serve the overall residential development of *Afton Creek Preserve*. This includes, without limitation, any systems and facilities necessary to provide and maintain on-site power, fuel, water, storm water drainage, waste disposal, and communication, but does not permit communication towers, wind turbines, or similar structures without the prior approval of the Co-Holders as provided in section 7.6 of this Easement.
 - b. Signs. No billboards or other signs may be placed or erected on the Protected Property except for small, unlighted signs for informational or interpretive purposes, and those signs required or authorized under this section. The Owner agrees to place and maintain appropriate signs along the boundaries of the Protected Property as designated by the Co-Holders and as provided in section 2.7.e below. Additionally, the Owner agrees that the Co-Holders may place signs on the Protected Property identifying the land as protected.

The Owner may, during the construction and development of *Afton Creek Preserve*, erect and maintain necessary promotional signs advertising lots and homes for sale within *Afton Creek Preserve*. Such signs shall be removed by the Owner from the Protected Property upon completion of the initial build-out of

Afton Creek Preserve.

- c. Roads. Currently, no roads or other rights of way exist on the Protected Property. No new roads, driveways or parking areas may be established or constructed on the Protected Property without the prior approval of the Co-Holders under the provisions of section 7.6 of this Easement.
 - d. Trails. Currently, no trails exist on the Protected Property. A generally circular, mowed hiking trail may be established and maintained in Outlot B of the Protected Property, with approval of the Co-Holders under the provisions of section 7.6 of this Easement; the trail may be used by pedestrians, but not bicycles or motorized vehicles. Any additional trails on the Protected Property will be subject to the approval of the Co-Holders under the provisions of section 7.6 of this Easement. Permitted trails may be established, maintained and used only in a manner that does not result in significant erosion and that does not impair or interfere with the natural habitat, water quality or scenic quality of the Protected Property.
 - e. Fences. Prior to beginning construction on the first residential lot in *Afton Creek Preserve*, the Owner shall permanently stake with iron monuments the corners of all residential lots that have a common boundary with the Protected Property. Also at that time, the Owner shall post small permanent signs near these monuments that state the Protected Property is permanently protected with a conservation easement in favor of the Co-Holders.
 - f. Removal of Existing Structures. At present, culverts, interior fences and remains of an old wooden bridge over Trout Brook exist in Outlot A of the Protected Property. In addition, a foundation from a historic building and remains of a root cellar are present in Outlot B. The Owner shall remove these structures and restore surface conditions to match adjacent lands prior to October 1, 2019.
- 2.8. Dumping. No trash, non-compostable garbage, debris, unserviceable vehicles or equipment, junk, other unsightly material or hazardous or toxic substances may be dumped or accumulated on the Protected Property. Remnant debris and junk from historic farming operations on the Protected Property, including among other things, old farm equipment, shall be removed by the Owner prior to October 1, 2019.
- 2.9. Mining and Extraction. No mining, drilling, exploring for, or removing any minerals, sand, gravel, rock, or fossil fuels from the Protected Property is allowed.
- 2.10. Topography and Surface Alteration. After the grading of *Afton Creek Preserve* is completed, no alteration or change in the topography or the surface of the Protected Property is allowed. This includes no ditching, draining or filling and no excavation or removal of soil or other material, except as incidental to the development of *Afton Creek Preserve* or activities or uses specifically permitted by this Easement.

This provision does not include or prohibit creation, maintenance, restoration or enhancement of wildlife habitat or native biological communities otherwise permitted under section 3 of this Easement.

An existing historic borrow pit is located in Outlot A and the remains of a root cellar is located in Outlot B. The Owner shall fill and contour, and restore vegetation onto these areas by October 1, 2019.

- 2.11. Water. With the exception of drainage easements reserved on the plat of *Afton Creek Preserve* and other drainage systems put in place on the residential Lots 1, 2, 4, 5, 6, 7 and 8 of Block 2, *Afton Creek Preserve*, no alteration, manipulation or diversion of natural watercourses, lakes, shorelines, wetlands or other surface or subsurface bodies of water or creation of new wetlands or water bodies is allowed except to restore or enhance wildlife habitat or native biological communities, to improve or enhance the function and quality of existing wetlands or water bodies or as specifically permitted in section 3 of this Easement.

Any alteration or creation of wetlands, watercourses or water bodies must be undertaken in accordance with a habitat management plan and detailed action plan approved by the Co-Holders under section 3 of this Easement.

No activities on or uses of the Protected Property that cause significant erosion or that significantly impair water quality or quantity are allowed.

- 2.12. Vegetation Management. No removal, cutting, pruning, trimming or mowing of any trees or other vegetation, living or dead, and no introduction of non-native species is allowed except as follows:
- a. In conjunction with the habitat management as specifically required in section 3.2 of this Easement.
 - b. As reasonably required to construct and maintain structures, trails and other improvements specifically permitted under this Easement and provided that following any construction disturbed vegetation shall be restored in a timely manner to a condition consistent with the Conservation Purpose of this Easement.
 - c. As minimally required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury or property damage.
 - d. Harvesting naturally occurring plant products (i.e. mushrooms, berries, nuts, herbs, prairie seed, etc.) in a manner that maintains a sustainable growth and reproduction cycle for the harvested plant populations and the surrounding vegetation.

Nothing in this section allows the intentional introduction of recognized invasive vegetation on the Protected Property. Section 2.12.c is intended to permit only

limited, small scale activities. Any larger scale activities on the Protected Property require an approved habitat management plan and an approved detailed action plan in accordance with section 3.2 of this Easement.

2.13. Vehicles. After the grading of *Afton Creek Preserve* is completed, no use of motorized vehicles on the Protected Property is allowed except in conjunction with habitat management or restoration or enhancement, or in conjunction with the creation or maintenance of permitted trails or structures, or the maintenance of utility and drainage systems on the Protected Property, provided that any resulting erosion or soil compaction is repaired and replanted after such vehicle use. This provision is not intended to prohibit the use of any emergency vehicle on the Protected Property.

3. **RESERVED RIGHTS**. The Owner retains all rights associated with ownership and use of the Protected Property that are not expressly restricted or prohibited by this Easement. The Owner may not, however, exercise these rights in a manner that impairs or interferes with the Conservation Values of the Protected Property. Additionally, the Owner must give notice to the Co-Holders before exercising any reserved right that might impair or interfere with a Conservation Value of the Protected Property.

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

- 3.1. Right to Convey. The Owner may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property. This right to convey the Protected Property is subject to the following provisions.
- a. Covered Transactions. Any lease, deed or other conveyance or any encumbrance of the Protected Property is subject to this Easement.
 - b. Notice to New Owner. The Owner will reference this Easement in any deed or other document by which the Owner conveys title to or any interest in the Protected Property.
 - c. Notice to Co-Holders. The Owner will notify the Co-Holders of any proposed conveyance of title to the Protected Property at least fifteen (15) days before closing. The Owner will also provide the Co-Holders with the name and address and telephone number of the new owner of the Protected Property and a copy of the deed transferring title within fifteen (15) days after closing. Notice and documents shall be sent to the Co-Holders in accordance with section 7.6 of this Easement.
 - d. Designated Representative. If the Protected Property is owned by an association of homeowners, the Owner shall provide the Co-Holders with the name and address of the contact person for the association. Additionally, the Owner shall provide the Co-Holders, on an annual basis, with a list of the current homeowners in *Afton Creek Preserve* with their mailing addresses.

- e. Notice of Action Affecting Easement. The Owner will also notify the Co-Holders of any proposed condemnation or any claim, legal proceeding, foreclosure or other legal action that might affect title to the Protected Property or the validity or enforceability of this Easement.

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

- 3.2. Habitat Management. The Protected Property shall be used to create, maintain, restore, or enhance habitat for wildlife and native biological communities in accordance with a habitat management plan approved by the Co-Holders under the provisions of section 7.6 of this Easement. Specific habitat management, restoration or enhancement activities are permitted in accordance with an additional detailed action plan approved by the Co-Holders under the provisions of section 7.6 of this Easement that is consistent with the approved habitat management plan. The Owner may actively manage, enhance or restore the vegetation on the Protected Property only in accordance with this approved detailed action plan, or as otherwise permitted under section 2.12 of this Easement.
- 3.3. Recreational and Educational Uses. The Protected Property may be used for hiking, nature observation or study, and other non-intensive recreational and educational programs or activities that have no more than minimal impact on the Conservation Values of the Protected Property.

Minor rustic structures such as trail barriers, benches, picnic tables and informational kiosks that do not impair or interfere with the natural habitat (and the management thereof) or scenic qualities of the Protected Property may be placed on the Protected Property in conjunction with these activities.

- 4. **CO-HOLDER'S RIGHTS AND REMEDIES**. In order to accomplish the Conservation Purpose of this Easement to preserve and protect the Conservation Values of the Protected Property, the Co-Holders have the following rights and remedies:

- 4.1. Right to Enter. The Co-Holders have the right to enter the Protected Property at reasonable times and in a reasonable manner for the following purposes:
 - a. To inspect the Protected Property and to monitor compliance with the terms of this Easement.
 - b. To obtain evidence for use in seeking judicial or other enforcement of this Easement.
 - c. To survey or otherwise mark the boundaries of all or part of the Protected Property if necessary to determine whether there has been or may be a violation of this Easement.

d. To otherwise exercise its rights under this Easement.

4.2. Access. In order to enter the Protected Property, the Co-Holders have a non-exclusive, perpetual right of access that benefits the Protected Property, over that other property currently owned by the Owner and legally described in Exhibit C attached to this Easement and incorporated by this reference and as identified on the Property Map.

4.3. Right of Enforcement. The Co-Holders have the right to prevent or remedy violations of this Easement, including prohibiting the construction of buildings or improvements on the Protected Property, through appropriate judicial action brought in any court of competent jurisdiction, or through other methods of dispute resolution, against the Owner or other responsible party.

a. Notice. The Co-Holders may not initiate judicial action until the Owner has been given notice of the violation, or threatened violation, of this Easement and a reasonable opportunity to correct the situation. This provision shall not apply if in the Co-Holders' sole discretion and exclusive judgment immediate judicial action is necessary to prevent or mitigate significant impairment to or interference with the Conservation Values of the Protected Property or if reasonable, good faith efforts to notify the Owner are unsuccessful.

b. Remedies. In enforcing this Easement, the Co-Holders have the right to:

- Temporary or permanent injunctive relief for any violation or threatened violation of this Easement.
- Require restoration of the Protected Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement.
- Specific performance or declaratory relief.
- Recover damages resulting from a violation of this Easement or injury to any Conservation Values associated with the Protected Property.

These remedies are cumulative and are available without requiring the Co-Holders to prove actual damage to the Conservation Values of the Protected Property.

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

The Co-Holders are entitled to seek expedited relief, ex parte if necessary, and shall not be required to post any bond applicable to a petition for such relief.

- c. Costs of Enforcement. The Owner shall be responsible for all reasonable costs incurred by the Co-Holders in enforcing this Easement, including without limitation costs of suit, attorneys' fees, and expenses related to restoration of the Protected Property. If, however, the Owner ultimately prevails in a judicial enforcement action, each party shall be responsible for its own costs and attorneys' fees.
- d. Enforcement Decisions. The Co-Holders do not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement by any delay or prior failure of the Co-Holders in discovering a violation or initiating enforcement proceedings. The Co-Holders shall not be barred by any applicable statute of limitations in bringing any action to enforce the terms of this Easement.
- e. Acts Beyond Owner's Control. The Co-Holders may not bring an action against the Owner for any change to the Protected Property resulting from any of the following:
- Causes beyond the Owner's control such as changes caused by fire, flood, storm, natural deterioration or the unauthorized acts of third parties.
 - Reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.

Actions by the Owner's lessees, agents, employees or contractors, as well as actions by parties entitled to use the Protected Property, are not considered unauthorized acts of third parties.

In the event the Owner fails to enforce required third party compliance with the Easement restrictions in a reasonable manner, and to restore the Protected Property to its condition before the violation occurred, the Co-Holders may bring an appropriate judicial action against the Owner for a violation of this Easement or injury to any Conservation Value associated with the Protected Property resulting from causes created by such third parties.

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

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

- 4.4. Limitation on Rights. Nothing in this Easement gives the Co-Holders the right or responsibility to exercise physical control over day-to-day operations on the Protected Property or to become involved in management decisions involving the use or disposal of hazardous substances or to otherwise become an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act, the Minnesota Environmental Response and Liability Act, or other similar successor federal, state or local statutes or laws regarding responsibility for environmental conditions associated with contamination.
5. PUBLIC ACCESS. Although the public benefits from this Easement through the preservation and protection of the Conservation Values of the Protected Property, nothing in this Easement gives the public a right to enter upon or use the Protected Property where no such right exists otherwise. However, the public has a right to use any public trails established on the Protected Property.
6. DOCUMENTATION. The current uses of the Protected Property, the state of any existing improvements, and the specific Conservation Values of the Protected Property that are briefly described in this Easement are more fully described in the Baseline Documentation Report on file at the offices of the Co-Holders. The Owner and the Co-Holders acknowledge that the Baseline Documentation Report accurately represents the condition of the Protected Property at the time of this conveyance and may be used by the Co-Holders in monitoring future uses of the Protected Property, in documenting compliance with the terms of this Easement and in any enforcement proceeding. This Baseline Documentation Report, however, is not intended to preclude the use of other information and evidence to document the present condition of the Protected Property in the event of a future controversy. The Baseline Documentation Report will be updated by the parties as necessary to accurately describe the condition of the Protected Property after planned restoration activities are completed.
7. GENERAL PROVISIONS.
- 7.1. Assignment. This Easement may be assigned or transferred by the Co-Holders only to a conservation entity defined as a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and as an authorized conservation easement holder under Minnesota law. Any future holder of this Easement shall have all of the rights conveyed to the Co-Holders by this Easement.

As a condition of any assignment or transfer, the Co-Holders will require any future holder of this Easement to continue to carry out the Conservation Purpose of this Easement in perpetuity.

The Co-Holders will notify the Owner of any assignment within thirty (30) days after the assignment and will provide the Owner with the name and address of the new holder.

7.2. Amendment. Under appropriate circumstances, this Easement may be modified or amended. However, the Co-Holders may in their sole discretion and exclusive judgment refuse to agree to any amendment or modification of this Easement, including any amendment in which the following apply:

- The amendment is inconsistent with the Conservation Purpose of this Easement.
- The amendment will impair or interfere with the Conservation Values of the Protected Property.
- The amendment affects the perpetual duration of this Easement.
- The amendment affects the validity of this Easement under Minnesota law or the status of the Land Trust under Sections 501(c)(3) and 170(h) of the Internal Revenue Code or successor or related law.
- The amendment creates or results in impermissible private benefit or private inurement as prohibited by 501(c)(3) of the Internal Revenue Code.
- Lienholders of existing liens and mortgages will not agree to subordinate their interests to the amended Easement.

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

7.3. Termination. This Easement may be terminated or extinguished in whole or in part only as set out in this section.

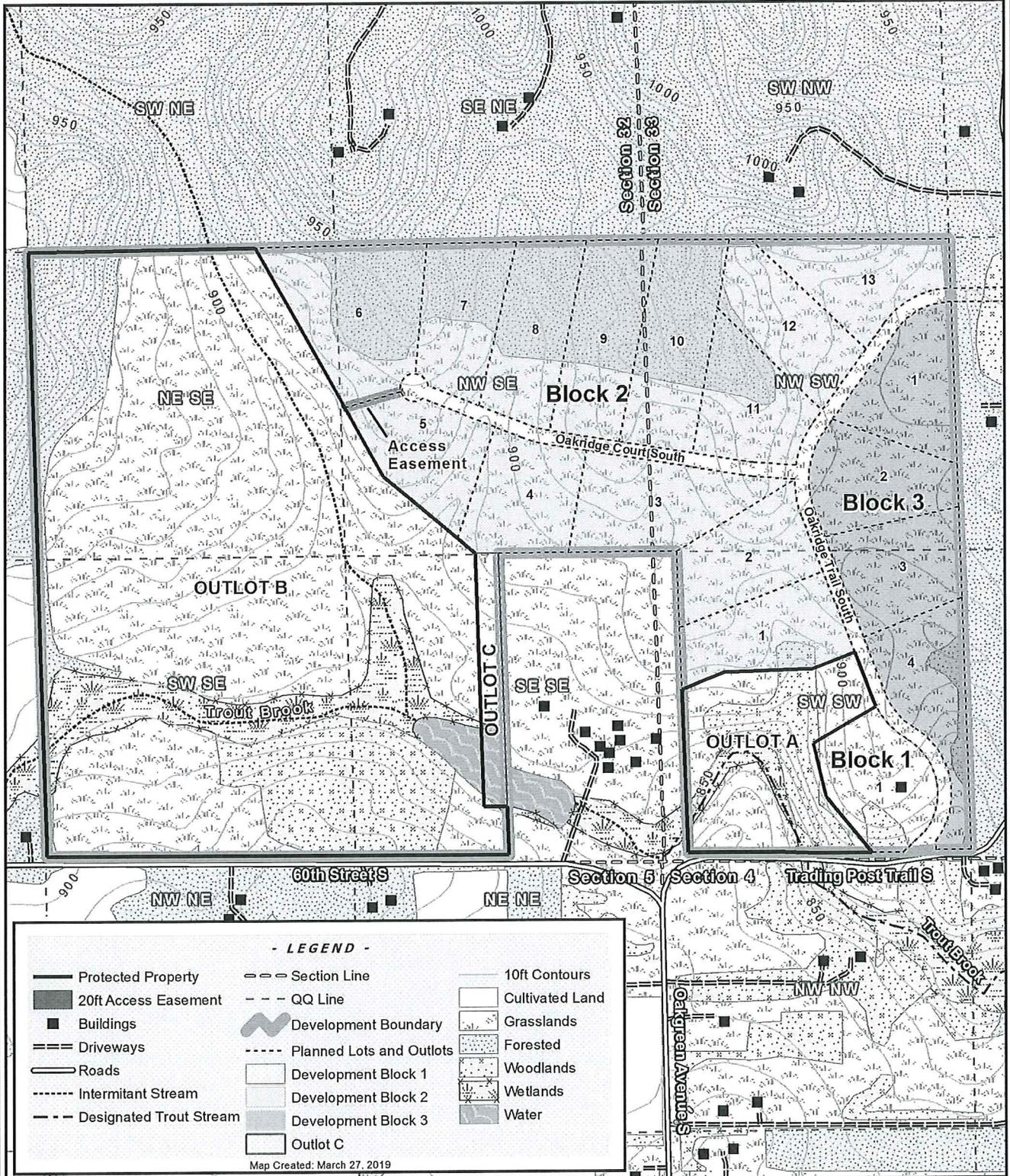
- a. Change of Circumstances. This Easement may be terminated or extinguished if circumstances arise that make continued use of the Protected Property in a manner consistent with the Conservation Purpose of this Easement impossible or impractical. In this event, this Easement may be extinguished only through judicial proceedings.
- b. Condemnation. This Easement may be terminated or extinguished pursuant to the proper exercise of the power of eminent domain.
- c. Proceeds upon Termination. Following any termination or extinguishment of this Easement in whole or in part, the Co-Holders shall be entitled to a portion of the proceeds from any sale, exchange or involuntary conversion of the Protected Property.

The Co-Holder's share of the proceeds shall be an amount equal to the fair market value of this Easement at the time of the extinguishment but not less than an amount equal to the proportionate value that this Easement bears to the value of the Protected Property as a whole at the time of this conveyance.

The Co-Holders will use the resulting share of its proceeds in a manner consistent with the Conservation Purpose of this Easement.

7.4. Warranties. The current Owner represents and warrants as follows:

Exhibit B: Property Map



- LEGEND -

Protected Property	Section Line	10ft Contours
20ft Access Easement	QQ Line	Cultivated Land
Buildings	Development Boundary	Grasslands
Driveways	Planned Lots and Outlots	Forested
Roads	Development Block 1	Woodlands
Intermittent Stream	Development Block 2	Wetlands
Designated Trout Stream	Development Block 3	Water
	Outlot C	

Map Created: March 27, 2019

Map Resource Information

Protected Property, Section Lines, Buildings, Roads, Driveways & Minor Roads, Contours, Cultivated Land, Forested, Grasslands, Woodlands, Wetlands & Water created by Community GIS Services Inc.

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

Site: Afton Creek Preserve - Tract: Carlson

Washington County - Twp. 28 N Rng. 20 W Sec. 32 & 33



Scale: 1" = 600'

Afton Creek Homeowners Association Declaration- Sections Related to
Restrictions on the Lots

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

AFTON CREEK PRESERVE HOMEOWNERS ASSOCIATION

This Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is made as of the 15th day of April, 2019, by Albert W. Carlson, Trustee of the Trust Agreement of Albert W. Carlson, dated February 17, 2010, as amended (the “Declarant”), for the purpose of establishing the Afton Creek Preserve as a single-family residential housing community.

WHEREAS, Declarant is the owner of certain real property located in Washington County, Minnesota, legally described in Exhibit A attached hereto, and Declarant desires to submit said real property and all improvements thereon (collectively the “Property”) to this Declaration, and

WHEREAS, Declarant desires to establish on the Property a plan for a permanent, single-family residential community to be owned, occupied and operated for the use, health, safety and welfare of its resident owners and occupants, and for the purpose of preserving the open space, the value, the quality and character of the Property, and

WHEREAS, the Property is not subject to the Minnesota Common Interest Ownership Act, Minnesota Statutes, Chapter 515B (“MCIOA”), by reason of the exemption contained in Section 515B.1-102(e)(2) of MCIOA, and

THEREFORE, Declarant makes this Declaration and submits the Property to this Declaration as a residential community under the name “Afton Creek Preserve” consisting of the Units referred to in Section 2, declaring that this Declaration shall constitute covenants to run with the Property, and that the Property, and all real estate added thereto, shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein and in the Association all of which shall run with the land and be binding upon all persons owning or acquiring any right, title or interest therein, and their heirs, personal representatives, successors and assigns.

SECTION 1 DEFINITIONS

The following words when used in the Governing Documents shall have the following meanings unless the context indicates otherwise):

1.1 “Act” means the Minnesota Nonprofit Corporation Act, Minnesota Statutes, Chapter 317A, as amended.

1.2 “Assessment” means all assessments levied by the Association pursuant to Section 6 of this Declaration, including annual assessments, and special assessments.

1.3 “Association” means Afton Creek Preserve Homeowners Association, a Minnesota nonprofit corporation created pursuant to Minnesota Statutes, Chapter 317A, whose members consist of all Owners.

1.4 “Board” means the Board of Directors of the Association as provided for in the Bylaws.

1.5 “Bylaws” mean the Bylaws governing the operation of the Association, as amended from time to time.

1.6 “City” means the City of Afton, Minnesota.

1.7 “Common Elements” means any part of the Property except the Units, including all Improvements thereon, owned by the Association for the common benefit of the Owners and Occupants. The Common Elements are legally described in Exhibit C attached hereto.

1.8 “Common Expenses” means all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including Assessments, the Association’s share of certain maintenance, repair, replacement and operational costs incurred by the Association as determined and allocated in accordance with the Conservation Easement with Minnesota Land and Trust, and items otherwise identified as Common Expenses in this Declaration or the Bylaws.

1.9 “Conservation Easement” means that Conservation Easement dated _____, in favor of the Minnesota Land Trust and the City of Afton, as Co-Holders, recorded as Document No. _____, which governs the Protected Property. The Conservation Easement is perpetual in duration and may be amended in rare circumstance, and only as provided therein. The Conservation Easement imposes certain restrictions and other covenants that run with the land and which support and govern the natural ecological system located within the Protected Property.

1.10 “Declarant Control Period” means the time period during which Declarant has the exclusive right to appoint the members of the Board, as provided in Section 16.5.

1.11 “Developer” means Afton Creek Preserve Development, LLC, a limited liability company created pursuant to Minnesota Statutes, Chapter 322C.

1.12 “Development Area” means all real estate subject to development by the Declarant and Developer as part of Afton Creek Preserve, as described in the Declaration.

1.13 “Dwelling” means a building consisting of one or more floors, designed and intended for occupancy as a detached, single family residence, and located within the boundaries of a Unit. The Dwelling includes any garage attached thereto or otherwise included within the boundaries of the Unit in which the Dwelling is located.

1.14 “Governing Documents” means this Declaration, and the Articles of Incorporation and Bylaws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.

1.15 “Improvement” means any physical improvement of any kind, or any design or color change to any part of the Property, including without limitation any building, wall, fence, sign, enclosure, screening, utilities system, communications system, irrigation or drainage system, pond, roadway, trail, planting, landscaping, or any other type of structure, physical improvement or change.

1.16 “MCIOA” means the Minnesota Common Interest Ownership Act, Minnesota Statutes, Chapter 515B, as amended.

1.17 “Member” means all persons who are members of the Association by virtue of being Owners. The words “Owner” and “Member” may be used interchangeably in the Governing Documents.

1.18 “Occupant” means any person or persons, other than an Owner, in possession of or residing in a Unit.

1.19 “Owner” means a Person who owns a Unit, but excluding contract for deed vendors, mortgagees and other parties holding a security interest in a Unit, and Persons holding a remainder or reversionary interest in a Unit. The term “Owners” includes, without limitation, a contract for deed vendee and a holder of a life estate.

1.20 “Person” means a natural individual, corporation, limited liability company, partnership, limited liability partnership, trustee, or other legal entity capable of holding title to real property.

1.21 “Plan” means the habitat management plan and detailed action plan required under the terms of the Conservation Easement for the restoration and maintenance of the Protected Property for wildlife habitat and ecological communities approved by the Co-Holders of the Conservation Easement.

1.22 “Plat” means the recorded plat or part thereof depicting the Property pursuant to the requirements of Minnesota Statutes, Chapter 505, 508 or 508A, as applicable, including any amended Plat or replat recorded from time to time.

1.23 “Private Improvement Developer’s Agreement” means the Private Improvement Developer’s Agreement by and between the Developer and the City of Afton recorded or to be recorded against the Property and portions of the Property identified therein as further described in Section 7.17.

1.24 “Property” means all of the real property now or hereafter subjected to this Declaration, including the Dwellings and all other structures and Improvements located thereon now or in the future. The Property is legally described in Exhibit A attached hereto.

1.25 “Protected Property” means the part of the Property identified on the plat as Outlot A and Outlot B, which are subject to the Conservation Easement.

1.26 “Rules” means the Rules of the Association as approved from time to time pursuant to Section 5.6.

1.27 “Unit” means any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, as described in Section 2.1 and shown on the Plat, including all Improvements thereon, but excluding Common Elements.

Any terms used in the Governing Documents, and defined in the Act and not in this Section, shall have the meaning set forth in the Act. References to the singular may refer to the plural, and conversely, depending on context.

**SECTION 2
DESCRIPTION OF UNITS**

2.1 Units. There are eighteen (18) Units. All Units are restricted to residential use. Each Unit constitutes a separate parcel of real estate. The locations of the Units are as shown on the Plat, which is incorporated herein by reference, and a schedule of Units is set forth on Exhibit B attached hereto. The Unit identifier for a Unit shall be its lot and block number and the subdivision name.

2.2 Unit Boundaries. The front, rear and side boundaries of each Unit are the boundary lines of the platted lot upon which the Dwelling is located or intended to be located as shown on the Plat. The Units have no upper or lower boundaries. All spaces, walls, and other Improvements within the boundaries of a Unit are a part of the Unit.

2.3 Appurtenant Easements. The Units shall be subject to and benefited by the easements described in Section 13.

**SECTION 3
COMMON ELEMENTS AND OTHER PROPERTY**

3.1 Common Elements. The Common Elements and their characteristics shall be as follows:

3.1.1 Common Expenses for the maintenance, repair, replacement, management and operation of the Common Elements shall be assessed and collected from the Owners in accordance with Section 6.

3.1.2 Except as otherwise expressly provided in the Governing Documents, or as agreed in writing with the Association, all maintenance, repair, replacement, management and operation of the Common Elements shall be the responsibility of the Association.

3.1.2 The Common Elements are owned by the Association for the benefit of the Owners and Occupants.

3.1.4 The Common Elements are subject to (i) easements as described in this Declaration, Conservation Easement and reflected on the Plat, and (ii) the right of the Association to establish reasonable Rules governing the use thereof.

3.1.5 Common Elements include the additional obligations of the Association set forth in Paragraph 3.4 below.

3.2 Annexation of Real Property. Other real property may also be annexed to the Property as Units or Common Elements, or any combination thereof, and subjected to this Declaration, with the approval of (i) Owners (other than Declarant) of Units to which are allocated at least sixty-seven percent (67%) of the votes in the Association, and (ii) Declarant so long as Declarant owns any unsold Unit for sale. Following the required approvals, the Association shall be authorized to take all actions necessary to complete the annexation, including without limitation the execution and recording of an amendment to this Declaration reflecting the annexation.

3.3 Dedication and Deannexation of Property. The Association has the power to dedicate or convey reasonable portions of the Property owned by it to any governmental or private Person for private or public purposes, subject to the terms of the Conservation Easement and subject to the written consent of (i) the City, and (ii) Declarant so long as Declarant owns any unsold Unit for sale. Declarant shall have similar authority over portions of the Property owned by it, subject to the written consent of (i) the City, and (ii) the Association. The portion of the Property which is deannexed shall be automatically released from this Declaration, effective upon the recording of an instrument evidencing such dedication or conveyance; provided that such instrument shall reference this Declaration and the authority contained in this Section.

3.4 Additional Obligations.

3.4.1 The Association shall be responsible for the restoration and maintenance of the Protected Property, Outlot A and Outlot B, as set forth in the Plat, and as required by that certain Conservation Easement co-held by the Minnesota Land Trust and the City of Afton (the "Co-Holders") in accordance with the Plan as approved by the Co-Holders

under the terms of the Conservation Easement. Copies of the approved Plan shall be made available by the Declarant or the Developer upon request of an Owner.

3.4.2 The trail system within Outlot B and identified on the Final Development Plan will be available for public access and will be maintained by the Association.

3.4.3 Other than road and street maintenance or snowplowing performed by or on behalf of the City of Afton, the initiation of which is set out in the Development Agreement with the City of Afton, the Association shall maintain the real property legally described as Lot 1, Block 2, St. Croix Valley Estates, Washington County, Minnesota, otherwise known as 5500 Odell Avenue South, Afton, Minnesota.

3.4.4 The Association shall maintain the Property, including the outlots not included in the Protected Property, with natural prairie grasses, forbs, shrubs and trees as provided in that certain Private Improvement Developer's Agreement with the City of Afton, using Washington Conservation District's Prairie Projects Operations and Maintenance Guide. No less than sixty percent (60%) of each unit shall be planted in natural prairie grasses, and other forbs, shrubs and trees, including existing trees.

3.4.5 Other obligations as set forth in the Private Improvement Developer's Agreement with the City of Afton.

3.4.6 The Association shall maintain the stormwater basins identified on the Plat, pursuant to a maintenance plan developed with a licensed civil engineer and subject to review and approval by the City Engineer.

3.4.7 The Association shall maintain the ingress and egress easement lying between and over Lot 5 and Lot 6, Block 2, Afton Creek Preserve, Washington County, Minnesota.

SECTION 4 ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS

Membership in the Association, and the allocation to each Unit of a portion of the votes in the Association and a portion of the Common Expenses of the Association, shall be governed by the following provisions:

4.1 Membership. Each Owner shall be a Member solely by reason of Unit Ownership, and the membership shall be automatically transferred with the conveyance of the Owner's title to the Unit. An Owner's membership terminates when the Owner's Unit ownership terminates. When more than one Person is an Owner of a Unit, all such Persons shall be Members, but multiple ownership of a Unit shall not increase the voting rights allocated to the Unit nor authorize the division of the voting rights.

4.2 Voting and Common Expenses. Each Unit is assigned one vote. Common Expense obligations are allocated equally among the Units, subject to the qualifications set forth in Section 6.

SECTION 7 RESTRICTIONS ON USE OF PROPERTY

All Owners and Occupants, and all secured parties, by their acceptance or assertion of an interest in the Property, or by their occupancy of a Unit, covenant and agree that, in addition to any other restrictions which may be imposed by the Governing Documents, the occupancy, use, operation, alienation and conveyance of the Property shall be subject to the following restrictions:

7.1 General. The Property shall be owned, conveyed, encumbered, leased, used and occupied subject to the Governing Documents, as amended from time to time. All covenants, restrictions and obligations set forth in the Governing Documents are in furtherance of a plan for the Property, and shall run with the Property and be a burden and benefit to all Owners and Occupants and to any other Person acquiring or owning an interest in the Property, their heirs, personal representatives, successors and assigns.

7.2 Protected Property. The Protected Property is subject to the Conservation Easement held by the Minnesota Land Trust and the City of Afton. The purpose of the Conservation Easement is to protect and preserve the conservation value of the Protected Property by prohibiting activities that significantly interfere with the natural habitat and open space of the Protected Property and by requiring the restoration and maintenance of the Protected Property as natural habitat for wildlife and native biological communities.

It is the intent of the Declarant, the Co-Holders of the Conservation Easement and the Association that, in the event of a conflict between the Declaration, Bylaws, any Rules and Regulations, and the Conservation Easement, the Conservation Easement shall control as to all matters relating to the Protected Property.

The Declarant, or the Association, or other fee owner of the Protected Property, is responsible for the restoration of the Protected Property and the cost of restoration and maintenance. Use of the Protected Property is limited in the terms and restrictions of the Conservation Easement.

7.3 Subdivision Prohibited. No Unit nor any part of the Common Elements may be subdivided or partitioned or otherwise changed without the prior written approval of the Board, the Owners at an Association meeting, any governmental authorities having jurisdiction over the Property, and any secured parties holding first mortgages on any Units affected. In addition, the Protected Property may not be subdivided, except as specifically provided in the Conservation Easement.

7.4 Residential Use. Except as provided in Section 7.4, the Units shall be used by Owners and Occupants and their guests exclusively as private, single family residential Dwellings. An Owner may delegate, in accordance with the Governing Documents, the Owner's right of use and enjoyment of the Unit to persons living in the Unit pursuant to a legal right of possession; provided, that such persons shall be subject to the Governing Documents and the Rules.

7.5 Business Use Restricted. No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted in any Dwelling, Unit or the Common Elements except:

7.5.1 An Owner or Occupant may maintain a home occupation in such Owner or Occupant's Dwelling; provided, that such use (i) is incidental to the residential use of the Dwelling, (ii) does not involve physical alteration of the Dwelling or Unit visible from the exterior of the Dwelling, (iii) does not involve any observable business activity such as signs, advertising displays, frequent deliveries, or use of the Unit by customers or employees, and (iv) complies with any additional requirements contained in the Rules and the Governing Documents, or in any governmental laws, codes, rules, statutes or ordinances.

7.5.2 The Association may maintain offices on the Property for management and related purposes.

7.5.3 Declarant, Developer, or a builder authorized by one of them, may maintain offices, sales facilities, model homes and other business facilities on the Property in connection with the exercise of the rights reserved under this Declaration, as the case may be.

7.6 Leasing. Leasing of Units shall be allowed, subject to reasonable regulation by the Association, and subject to the following conditions: (i) no Unit shall be leased for transient or hotel purposes; (ii) no Unit may be subleased; (iii) a Dwelling must be leased in its entirety (not by room) unless simultaneously occupied by the Owner; (iv) the lease shall be in writing; and (v) the lease shall provide that it is subject to the Governing Documents and the Rules, and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease. The Association may impose such reasonable Rules as may be necessary to implement non-discriminatory procedures for the leasing of Units, consistent with this Section and applicable law.

7.7 Parking/Vehicles/Personal Property. Vehicles of any type owned or used by Owners or Occupants shall only be parked or kept within the Owner's garage or driveway, subject to the provisions of this Section. All campers, trailers, boats, ATVs and recreational vehicles and all non-working vehicles must be stored within the garages. Driveways should be used for parking purposes only, not for vehicle storage. No Person shall perform maintenance, repair or restoration work on any vehicle on the Property except for their own vehicles, and then only (i) within the Owner's garage, or (ii) for emergency repairs. Notwithstanding anything to the contrary in this Section, commercial vehicles shall not be parked or stored on the Property, except within a garage or on a temporary basis in connection with construction work on a Unit or deliveries. The Association shall have the authority to establish Rules to further regulate and restrict outside storage and parking of passenger vehicles, trucks, trailers, watercraft, recreational vehicles and all other kinds of personal property.

7.8 Traffic Regulations. All vehicular traffic on the Property is subject to federal, state and local laws and regulations. All vehicles operated on the Property shall be operated in a careful, prudent, and safe manner; and with due consideration for the rights of all Owners and Occupants.

7.9 Pets. Only domestic pets as defined by the City of Afton ordinances and not other animals shall be permitted on the Property and such ordinances shall control the keeping of such pets.

7.10 Use of Temporary Structures. No structure of a temporary character, mobile home, manufactured home, trailer, camper or tenet shall be used or occupied on any Unit at any time as a residence, living abode or living quarters, either temporarily or permanently.

7.11 Quiet Enjoyment; Interference Prohibited. All Owners and Occupants and their guests have a right to quiet enjoyment in their respective Units. The Property shall be occupied and used in such a manner as will not cause a nuisance, nor unduly restrict, or interfere with the use and quiet enjoyment of the Property by other Owners and Occupants and their invitees.

7.12 Compliance with Law. The Property shall be used in compliance with municipal codes or ordinances, and state and federal laws. No Person shall cause waste to the Property, cause a material increase in insurance rates on the property, or otherwise cause any unusual liability, health or safety risk, or expense, for the Association, or any Owner or Occupant.

7.13 Improvements. Except for those made by Declarant, Developer or authorized builders in connection with the sale of a Unit or construction of the first Dwelling thereon, no Improvement may be made, or caused or allowed to be made, in any part of the Common Elements, or in any part of Unit or Dwelling which is visible from the exterior of the Dwelling, without approval pursuant to Section 8.

7.14 Ponds, Wetlands, Prairie Grasses, Forbs, Shrubs and Trees. Ponds, marshes, wetland areas, vegetation and trees, whether located on a Unit or on Common Elements, and whether natural or otherwise, shall be maintained in substantially the same condition as originally established, subject only to (i) the terms and conditions of the Conservation Easement, or (ii) changes authorized by the Association consistent with all statutes, requirements, rules and regulations imposed on such areas and items by governmental authorities having jurisdiction over the Property, and (iii) the prior approval of any governmental authorities, if required. No cutting, moving, trimming, draining, dredging or other alteration of such areas and items shall be permitted, except as authorized by this Section 7.14, it being the intention that such areas and items remain and be maintained in a substantially natural condition, and subject to natural changes.

7.15 Time Share Ownership. No Unit may be sold under or subjected to any time-sharing, time-interval or similar right-to-use programs, unless approved in writing by the Board.

7.16 Access to Units. In case of emergency, the yard areas of the Units are subject to entry, without notice and at any time, by an officer or member of the Board, by the management agent of the Association, or by any public safety personnel. Reasonable access is also authorized for maintenance purposes under Sections 9 and 13 and for enforcement purposes under Section 14.

7.17 Compliance with Private Improvement Developer's Agreement. There is a certain Private Improvement Developer's Agreement, dated April 15, 2019, as amended whether before or after the date of this Declaration, entered into between the Developer and the City (the "Development Agreement"). The Development Agreement contains various restrictions and requirements with respect to the development of Afton Creek Preserve, as defined in the Declaration, the construction of homes and other Improvements, and the use and maintenance of various spaces owned or to be owned by the Association, or the City. The Declarant, Developer and the Association shall comply in all respects with the Development Agreement.

7.17.1 In the event of a failure to comply, the City may (i) enter the Property and cure the non-compliance, or (ii) compel compliance by any legal or administrative means available to it under existing laws, ordinances, codes or regulations.

7.17.2 Prior to undertaking any action to cure the noncompliance, the City shall give written notice to the Association, and to the Developer, responsible for the noncompliance, and the responsible party shall have fifteen (15) days thereafter to cure the noncompliance; except, that in the event of an emergency, the City may act immediately provided that it makes a reasonable effort to give the previously described notice. Except in an emergency, notice shall be mailed, or hand delivered during business hours, to the party in question at its last known business address on the City's records. In addition, if the cure of a default requires more than fifteen (15) days after the mailed notice; provided, however, that for the cure of a default that requires more than fifteen (15) days to complete, Developer will commence the performance to cure the default within fifteen (15) days of the date of the notice and make good faith efforts to complete the performance as soon thereafter as possible. In addition to actually performing under this Section, the process of soliciting a contractor bid for any performance shall be considered commencing the performance hereunder.

7.17.3 The City shall be entitled to recover against the Association the City's costs and expenses, including reasonable administrative costs and attorneys' fees, incurred in undertaking or enforcing compliance with the Development Agreement.

7.17.4 The City shall have easements over the Property for reasonable access in the event that it is required to enforce its rights under this Section.

SECTION 8 BUILDING STANDARDS

8.1 Approved Builders. The Association shall maintain at its sole discretion a list of Approved Builders. Only builders on the approved list will be allowed to construct new houses in Afton Creek Preserve.

8.2 Application for House Construction. Each lot owner desiring to build a house on a lot within Afton Creek Preserve must submit to the Association, through one of the Approved Builders, a fully completed Application for House Construction. The primary goal of the

application process is to determine that the proposed house conforms to the building standards and lot requirements as set forth in this Declaration and of the City of Afton.

8.3 Commencement of Construction. An Approved Builder must begin construction within one (1) year from the date of the closing of the purchase of a lot from the owner of the lot as of the date of this Declaration. A subsequent resale of the lot shall not enlarge or modify the requirements of this provision.

8.4 No building, fence, wall, or other structure shall be erected or maintained upon the Properties, nor shall any exterior additions, change or alteration be made to any such building, fence, wall, or any other structure until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Board as to harmony of external design and location in relation to surrounding structures and topography. Boundary markers required by the Co-Holders of the Conservation Easement to clearly mark boundaries between the Units and the Protected Property shall be maintained and enforced by the Association.

8.5 Accessory buildings shall be constructed of the same exterior materials and style of the main structure.

8.6 All driveways must be surfaced with concrete, asphalt, brick, or other materials except raw exposed gravel.

8.7 No structure of a temporary nature, including trailers, basements, garages, barns or other buildings shall be used on any lot at any time as a residence, either temporarily or permanently. All construction of the house and all related construction, including driveways and landscaping, must be completed within one (1) year from the date the construction begins or the date on which a building permit is issued, whichever date is first, except where such completion is made impossible or would result in great hardship to the owner or builder because of strikes, fires, national emergency or other disaster.

8.8 The minimum floor area of any dwelling, exclusive of garage, basement and porches, shall be as follows:

8.8.1 A one-story dwelling with basement shall have a minimum floor area of 1950 square feet.

8.8.2 A one-story dwelling without a basement shall have a minimum floor area of 2000 square feet of which no more than 200 square feet of the floor area may be utility room.

8.8.3 A two-story or two and one-half story dwelling shall have a minimum first floor area of 1650 square feet.

8.9 The exterior of any dwelling shall be muted earth tone or natural color and the texture and surface of the materials used to finish the exterior of any dwelling shall be consistent

with this color requirement in that the texture and surface of the exterior finish shall be maintained so as to enhance and preserve the natural or earth tone color and appearance of the dwelling. No aluminum, vinyl, or steel siding, soffit, or major portions of exterior may be used without specific cause for design elements.

8.10 All mailboxes will be uniform in design and color, and will comply with plans and specifications approved by the Association.

**SECTION 9
MAINTENANCE**

9.1 Maintenance by Association. The maintenance obligations of the Association are as follows:

9.1.1 The Association shall maintain the Common Elements.

9.1.2 The Association shall install, maintain, repair and replace the mailboxes located on the Units at the Owner's expense, assessed pursuant to Section 6.4.

9.2 Maintenance by Owner. Subject to Section 9.1, all maintenance of the Dwelling, Unit and all Improvements located within the Unit shall be the sole obligation and expense of the Owner of the Unit. Maintenance for which the Owner is obligated shall be performed in a good and workmanlike manner and in accordance with all applicable codes, ordinances, regulations, laws and reasonable standards (if any) established by the Association. If an Owner fails to perform any maintenance, repair or replacement activity for which the Owner is responsible hereunder (except for the exterior or interior of the Dwelling located within the Unit), or renders any maintenance, repair or replacement necessary by such Owner's acts or omissions, or by that of Occupants or guests, the Association may undertake such maintenance, repair or replacement activity and assess the Owner's Unit for the cost thereof pursuant to Section 6.4. However, prior to undertaking such maintenance, repair or replacement, the Association shall provide notice to the Owner, specifying the deficiencies at issue. If the deficiencies are not promptly corrected, then the Association may proceed with the maintenance, repair or replacement work.

9.3 Damage Caused by Owner. Notwithstanding any provision to the contrary in this Declaration, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the act or omission of an Owner or Occupant, or his or her guests, or by a condition in a Unit which the Owner or Occupant has caused or allowed to exist after notice from the Association, the Association may cause such damage or condition to be repaired or corrected (and enter the yard area of upon any Unit to do so), and the cost thereof may be charged and assess against the Unit of the Owner responsible for the damage. Such cost shall be a personal obligation of the Owner and a lien against the Owner's Unit.

**SECTION 10
INSURANCE**

11.1 Reconstruction. In the event of a casualty on or to any portion of the Property, the obligations and procedures for the repair, reconstruction or disposition of the damaged Improvements shall be governed by the following provisions.

11.1.1 All repairs and reconstruction of the damaged Improvements shall be commenced promptly following the casualty and shall be carried through diligently to conclusion. The Association shall be responsible for the repair and reconstruction of Common element Improvements and the Owners shall be responsible for the repair and reconstruction of Improvements to their respective Units.

11.1.2 All repair and reconstruction shall be approved pursuant to Section 8. The repair and reconstruction shall be in accordance with the requirements of all applicable zoning, subdivision, building, and other governmental regulations.

11.1.3 Notice of substantial damage or destruction to any portion of the Property shall be promptly given to the Association by the Owner of the damaged Improvements.

11.1.4 Notwithstanding the foregoing, repair and reconstruction of a Dwelling need not be undertaken if the Association, the Owner and the Owner's mortgagee agree in writing that the damaged Improvements need not be repaired and reconstructed. If such an agreement is made, the ruins and debris of any damaged Improvements shall promptly be cleared away and the damaged portion of the Property shall be left in an orderly, safe and sightly condition.

11.2 Condemnation and Eminent Domain. In the event of a taking of any part of the Common Elements by condemnation or eminent domain, the Association shall have authority to act on behalf of the Owners in all proceedings, negotiations and settlement of claims. Except for proceeds payable to the holder of the Conservation Easement as provided under the terms of the Conservation Easement, all other proceeds shall be payable to the Association to hold and distribute for the benefit of the Owners and their mortgagees, as their interests may appear. With respect to the taking of all or part of a Unit, the Owner of the Unit shall negotiate and settle all claims, subject to the rights of any mortgagee of the Unit.

SECTION 12 SPECIAL PROVISIONS WITH THE CITY OF AFTON

12.1 The City of Afton and the Minnesota Land Trust shall be named as an additional insured on the pertinent Association insurance policies and the policies shall cover those risks identified by the City, including but not limited to coverage for personal injuries and any other losses occurring as a result of the public use of the walking trails on Outlot B and otherwise on the Property. The Association shall hold harmless and indemnify the City of Afton and the Minnesota Land Trust from all losses incurred as a result of the public's use of the walking trails located on Outlot B and otherwise on the Property.

12.2 The Association waives its right to appeal any assessment of the City of Afton.

- 12.3 In the event the Association becomes insolvent or ceases to operate, the City of Afton shall have the first right to exercise control of the Association itself or to designate such control to another.
- 12.4 The Developer shall provide a maintenance agreement requiring that the permanent stormwater basins will be inspected and maintained long term by the Developer or the HOA. The maintenance agreement shall be subject to review and approval by the City Engineer. The agreement at a minimum shall include the following:
- i. Who will conduct maintenance
 - ii. Inspection frequency
 - iii. Maintenance necessary to ensure effective performance
 - iv. Maintenance intervals
 - v. Removal of settled materials
 - vi. Maintenance of vegetation
- 12.5 A minimum of a 48 hour notice shall be provided to the Turner Rhode Horse Farm in advance of controlled burns for the maintenance of the prairie grass, and the burning shall be done only when the prevailing winds will carry all or most of the smoke away from the Horse Farm.
- 12.6 The Association's restrictive covenants shall not include Architectural controls, but may contain Building Standards as provided in Section 8.
- 12.7 The City's restrictions regarding setbacks shall control.

SECTION 13 EASEMENTS

Each Unit and the Common Elements, and the rights of the Owners and Occupants therein, shall be subject to (i) the appurtenant easements and rights granted and reserved in the Declaration, (ii) the appurtenant easements and rights granted and reserved in this Section 13, and (iii) the other appurtenant easements and rights of record as referenced herein.

13.1 Access. Each Unit is the beneficiary of a nonexclusive easement for access to a public street or highway on or across those portions of the Common Elements designated for use as streets or sidewalks, as show on the Plat or otherwise designated by the Association, subject to any restrictions imposed pursuant to the Governing Documents.

RESOLUTION 2018 - 59

CITY OF AFTON
COUNTY OF WASHINGTON, MINNESOTA

A RESOLUTION APPROVING THE FINAL PLAT FOR J.P. HOMES, INC. "AFTON CREEK PRESERVE"

WHEREAS, J.P. Bush Homes, Inc. has made application for approval of a final plat to subdivide 18 lots from 218 acres for a Preservation and Land Conservation Development subdivision to be known as Afton Creek Preserve; and,

WHEREAS, based upon review of the application and evidence received, the Afton City Council now makes the following findings of fact:

- A. The legal description of the property is attached as Exhibit A.
- B. The 2008 Afton Comprehensive Plan allows Preservation and Land Conservation Development subdivisions in the Agricultural District.
- C. The property is zoned Ag, Agricultural District, which allows Preservation and Land Conservation Developments with a Conditional Use Permit and single family dwellings as a permitted use.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Afton that based on the foregoing information and applicable ordinances, the request is hereby **APPROVED** and is subject to the following conditions:

- 1. Access and traffic related issues shall be subject to review and approval by the City Engineer.
- 2. The developer shall obtain and provide an easement providing access to Odell Avenue prior to the approval of the final plat.
- 3. The developer shall provide an acceptable method of ensuring adequate long term maintenance of the 5550 Odell Avenue parcel.
- 4. Street-related designs and specifications, including but not limited to right-of-way width, shall be subject to review and approval by the City Engineer to insure they meet Afton's standards.
- 5. The acceptability of the drainage and utility easement within Lot 4, Block 3 and related maintenance responsibilities shall be subject to review and approval by the City Engineer.
- 6. In accordance with the submitted seeding plan, **pre-development seeding with a prairie grass/wildflower mix shall be provided on all lots and on the open space parcels.** Maintenance responsibilities associated with the seeded areas shall also be addressed by the applicant (to the satisfaction of the City).
- 7. Wetland-related issues shall be subject to review and approval by the City Engineer.
- 8. The proposed 20-foot wide access easement width between Lots 5 and 6, Block 2 shall be determined acceptable to the City Engineer and/or Fire Chief.
- 9. Easements for drainage and utilities shall be provided over individual lots as recommended by the City Engineer.
- 10. Review of proposed septic designs and final septic permits shall be received from Washington County prior to building permit approval.
- 11. The applicant shall pave 60th Street from Trading Post Trail to Neal Avenue.
- 12. The farm access shall be prohibited as a construction thoroughfare or road during development of the PLCD and redeployed to the benefit of the neighborhood.
- 13. All proposed right-of-way dedication and street construction plans are subject to review and approval of the City Engineer.
- 14. Driveways accessing the proposed lots shall comply with Section 12-84 of the Zoning Ordinance.

15. All grading, drainage and erosion control issues are subject to review and approval by the City Engineer and South Washington Watershed District.
21. All drainage and utility easements shall be subject to review and approval of the City Engineer.
22. Park dedication requirements shall be satisfied at the time of final plat approval.
- 23. The Developer shall enter into a Developer's Agreement with the City regarding the installation of required improvements, and shall provide financial guarantees as required in Sections 12-1471 to 12-1476 of the subdivision ordinance.**
24. The developer shall grant a conservation easement over the required open space parcels to the Minnesota Land Trust, the provisions of which shall be approved by both the City and the Minnesota Land Trust.
- 25. The homeowner's association restrictive covenants shall contain a provision that in the event the homeowner's association becomes insolvent or ceases operating control shall at its option be transferred to the city of Afton or another method of succession shall be dictated by the City.**
- 26. The homeowner's association documents shall contain a waiver of assessment appeal running in favor of the city.**
- 27. The provision in the homeowner's association restrictive covenants allowing changes in lots upon the vote of 2/3 of the residents shall be changed to comply with Afton's requirements.**
- 28. The public walking paths shall be added to the Final Development Plan.**
- 29. The city of Afton shall be a named insured on the homeowner association insurance policy and the policy shall cover those risks identified by the city, including but not limited to coverage for personal injuries and any other losses occurring as a result of the public use of the walking trails on the conservation area.**
- 30. The homeowner's association shall be required to indemnify and hold the city of Afton harmless from all losses incurred as a result of the public's use of the conservation area walking trails.**
- 31. Covenant amendment provisions in the homeowner's restrictive covenants permitting changes after a certain number of years have passed shall be amended to remove the current conflict with restrictions on future subdivision of PLCD lots and other provisions of Afton's ordinances.**
32. Architectural controls shall be removed from the homeowner's association restrictive covenants.
33. Prairie Restoration shall be the vendor planting the conservation easement and the initial planting of all residential lots with a seed mix matching the one submitted with the preliminary plat application.
34. Provisions on setbacks shall be removed from the homeowner's restrictive covenants and Afton's restrictions shall control.
35. The provisions restricting certain pets shall be removed from the homeowner's restrictive covenants; Afton's ordinances shall control pets.
- 36. Residential lots shall be subject to restrictive covenants in favor of the other lot owners in the development and the City of Afton requiring that 60% of each lot remain planted in natural prairie, forbs, shrubs and trees, and appropriate language shall be inserted in the homeowners association documents to ensure enforcement of the maintenance of the lots in accordance with these requirements.**
37. All bid documents received by the developer must be approved by the City's engineers prior to acceptance.
38. No work shall commence until the final plat has been approved.
39. The letter of credit securing performance shall include amounts necessary to pay the city's engineers for on-site monitoring, review of plans and specifications and intermediate and final certifications of completion required prior to all fund releases.
40. All fund releases shall be based on completion of plans and specifications and sign-off by the city's engineers.
41. The final release of funds shall not occur until all improvements in the development, including construction of homes and accessory structures on all lots, has occurred.
42. The development agreement shall be personally guaranteed by Albert W. Carlson in a form acceptable to the city.

43. Costs of completion shall be calculated based on an assumed annual 4%, year over year, with provision for a 10-year build-out.
- 44. The final plat application shall include estimated initial costs including but not limited to grading, surface water controls and roads and also a final cost estimate, both of which shall be subject to approval by the city's engineers.**
- 45. No final plat approval shall occur until both the development contract and the tri-party agreement between the developer, the city and the Minnesota Land Trust has been executed by all parties.**
46. Plat improvements and off-site improvements shall be separately secured by separate letters of credit.
47. Albert W. Carlson will at his expense install a 60' road access to the development through the lot at 5550 Odell Avenue. Included will be the removal of existing structures, erosion control management, complete road installation, boulevard/tree landscape. Similarly, Albert W. Carlson, at his expense, will install bituminous improvements on 60th Street as determined necessary by the City Council.
48. Albert W. Carlson will provide proof of his funding capabilities to the City of Afton. Funding for the City's security of development completion and any release of funds must be approved by City staff, consultants and City Council.
49. Lots 1,2,3,4 Block 2, abutting the Turner Rhode Horse Farm, will have a 100 foot setback instead of the required 50 foot setback. Will Carlson will install evergreen trees and prairie grass as a screening buffer within the 100 foot setback area. Tree height will be a minimum of 12 feet with proper spacing for screening.
50. Lot 13 Block 2 and lots 1,2,3, 4 Block 3 that are abutting the Graham, Dawson/Lewandowski, McConnell, Rickard, Mettler, Dickes and Forbes properties will also have an increased setback of 100 feet. Albert W. Carlson will also provide evergreen trees in locations that help screen sightlines to new homes.
51. Albert W. Carlson has 2.5 acres of land abutting the Turner Rhode Horse Farm that are not being used in the development site requirements or lots. He shall offer either an easement for use of this land or the sale of this land for \$1.00 to the Turner Rhode Horse Farm owners.
52. Albert W. Carlson will transfer ownership of the farm access road at no cost to either or both Dawson/Lewandowski and McConnell, the abutting property owners.
53. No construction related traffic to be allowed on Odell.
54. Tree border to be provided to block farm access road from the development on eastern boundary.
55. Tree border to be provided along eastern boundary of the development abutting existing properties.
56. The Home Owners Association (HOA) plan and documents to be reviewed and approved by the city attorney.
57. The Home Owners Association shall develop a stormwater pond maintenance plan for eastern boundary.
58. A minimum of a 48 hour notice shall be provided to the Turner Rhode Horse Farm in advance of controlled burns for the maintenance of the prairie grass, and the burning shall be done only when the prevailing winds will carry all or most of the smoke away from the Horse Farm.
59. City to review and approve a tree/vegetation plan for the 100 foot setback area abutting the Turner Rhode Horse Farm, and no tree removals shall be allowed in this area without the approval of the City.
60. The developer/HOA shall be responsible for on-going maintenance of the 5550 Odell parcel.
61. The boundaries of the new lots adjacent to the open space outlots shall be marked by fencing, at minimum at the property corners, as approved by both the City and the Minnesota Land Trust, to enable a visual demarcation of the property boundaries to prevent encroachments into the conservation easement area.
62. A Letter of Credit, in a form and amount acceptable to the City and the City Engineer, shall be provided to ensure sufficient financial security for the completion of the development.
- 63. All new streets shall be named in accordance with the Washington County street naming conventions.**

ADOPTED BY THE CITY COUNCIL OF THE CITY OF AFTON THIS 18TH DAY OF DECEMBER, 2018.

SIGNED:

Richard Bend, Mayor

ATTEST:

Ronald J. Moore, City Administrator

Motion by:	Bend
Second by:	Nelson
Palmquist:	Aye
Richter:	Nay
Ross:	Aye
Nelson:	Aye
Bend:	Aye

<p>City of Afton 3033 St. Croix Trl, P.O. Box 219 Afton, MN 55001</p>
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Planning Commission Memo

Meeting: June 3, 2019

To: Chair Kopitzke and members of the Planning Commission

From: Ron Moorse, City Administrator

Date: May 29, 2019

Re: Pervious Pavers and Impervious Coverage Regulations

The Planning Commission, at its May 6, 2019 meeting, discussed a number of items, and had a number of questions, related to pervious pavers. The questions included whether pervious pavers provide any filtering of the stormwater before it reaches the groundwater; whether there is excess capacity in the City's stormwater system, and if so, how the excess capacity is allocated; and when the impervious coverage ordinance was put in place, and what its purpose was.

Filtration and Stormwater System Capacity

The City Engineer has advised that pervious pavers are installed over a rock and gravel base that does filter the stormwater as it passes through the base. The City Engineer also indicated there is excess capacity in the City's stormwater system, and that the excess capacity should be sufficient for new impervious surface areas that may be constructed for two reasons: First, all development that creates 6,000 square feet or more of impervious surface is required to provide on-site treatment of the increased stormwater run-off. Second, because the downtown area is nearly fully developed, there is not an opportunity to add a very large amount of additional impervious surface.

Purpose of Impervious Coverage Ordinance

The impervious coverage regulations in the downtown area are found in the Lower St. Croix River Bluffland and Shoreland Ordinance. The purpose of this ordinance is set out as follows:

- A. Designating suitable land use districts along the bluffland and shoreland of the Lower St. Croix River.
- B. Regulating the area of a lot, and the length of bluffland and water frontage suitable for building sites.
- C. Regulating the setback of structures and sanitary waste treatment facilities from blufflines to protect the existing and/or natural scenic values, vegetation, soils, water, and bedrock from disruption by manmade structures or facilities.
- D. Regulating the setback of structures and sanitary waste treatment facilities from shorelines to protect the natural scenic value, floodplain, and water quality.
- E. Regulating alterations of the natural vegetation and topography.
- F. Conserving and protecting the natural scenic values and resources of the river valley and maintaining a high standard of environmental quality to comply with state department of natural resources standards and criteria for the Lower St. Croix National Scenic Riverway

Within these overall purpose statements, the impervious coverage ordinance has two specific purposes. First, limit the amount of stormwater run-off that reaches the river without being treated. Second, limit the disruption of natural and scenic values by manmade structures, including limiting the amount of structure visible from the river.

Ordinance Options

While treating pervious pavers as a pervious surface vs. an impervious surface could enable a property owner to replace non-structural impervious surface (parking lot or driveway) with structural impervious (a building) an ordinance could prohibit this. An ordinance could also allow pervious pavers to be treated as pervious surface only if they were in a location with minimal impurities in the stormwater that reaches the pavers, i.e. a vegetated yard area. The Commission discussed that the location of pervious pavers affects their effectiveness, particularly in relation to the types of impurities that are in the stormwater run-off. For example, pervious pavers in a parking lot are subject to salt, silt and oils.

Treating pervious pavers as pervious surface could also be allowed only with a conditional use permit that required the property owner to demonstrate the perviousness of the pavers on an annual basis, and to return them to pervious either by maintenance or replacement if they had become impervious.

Planning Commission Direction Requested

Motion to provide direction regarding whether pervious pavers should be treated as pervious surface, and, if so, ordinance elements to regulate the use of pervious pavers.

May 21, 2019 City Council Meeting Highlights

The Council:

- Held a public hearing and approved an ordinance amending Section 14.1 Use and Discharge of Weapons – Ordinance 01-2019.
- Provided comments regarding the Lake St. Croix Beach Draft 2040 Comprehensive Plan.
- Approved the Michael Orth and Cynthia Kovisto Application for a Simple Subdivision at 16226 53rd Street.
- Selected Tom Niedzwiecki to provide accounting services on a two year contract.
- Reappointed Jim Cox and Peter Vujovich to the Design Review/Heritage Preservation Commission.
- Appointed Grant Jensen to the Parks Committee.
- Approved connection of the Afton Historical Museum to the Municipal Sanitary Sewer System.