



MEMORANDUM

To: MCWD Board of Managers
From: Lars Erdahl
Date: November 9, 2017
Re: Big Island Nature Park Conservation Easement Enforcement Plan

Purpose:

Define plan to fully enforce the MCWD conservation easement on Big Island Nature Park to protect the conservation purpose of the conservation easement and significant investment in the natural resource value of the property.

Background:

The Conservation Easement, executed in March 2006, protects the conservation purpose of the protected property in perpetuity. The conservation easement defines the conservation purpose “to preserve and protect in perpetuity the Conservation Values of the Protected Property by confining the development, management and use of the Protected Property to activities that are consistent with the preservation of these Conservation Values, by prohibiting activities that significantly impair or interfere with these Conservation Values and by providing for remedies in the event of any violation of this Easement.”

The Big Island Nature Park Management Plan, approved by both the City of Orono and the MCWD in 2011, was prepared as a cooperative effort by the City of Orono and the Minnehaha Creek Watershed District in fulfillment of the conditions of the Conservation Easement held by the District, and in furtherance of the mutual goals of the District and the City of Orono. The Conservation Easement identifies both a “Recreation Area” and a “Natural Area,” each with slightly different prohibited and permitted uses.

Summary of Board action leading up to acquisition of Big Island Nature Park conservation easement...

DATE	RESOLUTION OR ACTION	DESCRIPTION
3/10/2005	Res 05-013	Passed in support of public ownership of the Big Island Veterans Camp Property.
5/5/2005	Motion	Board motion to approve, in concept, the purchase of the Big Island conservation easement for \$850,000 to be paid in 2005-06 and to direct staff to develop the conservation easement for presentation to the Board at a future date.
11/3/2005	Res 05-060	Authorizes purchase of Big Island conservation easement (Orono commits \$2.85 million, State Legislature: \$2 million bonding bill).
3/27/2006		Conservation easement executed.
4/5/2006		Conservation easement recorded.
2/1/2007	Res 07-007	Declares official intent to finance the Big Island conservation easement acquisition through Hennepin County Land Conservation Financing Partnership.

Summary of Board action regarding Big Island shoreline restorations in 2008 and 2013...

DATE	RESOLUTION OR ACTION	DESCRIPTION
2/8/2007	Res 07-030	Authorizes staff to solicit consultant services for Big Island Shoreline Restoration feasibility study.
9/13/2007	Res 07-057	Approves the Big Island Feasibility Study and authorizes the ordering of the project and for staff to solicit bids for engineering services for final design.
12/20/2007	Res 07-093	Authorizes the District Administrator to enter into contracts for Big Island restoration.
2/7/2008	Res 08-024	Authorizes the hiring of Barr Engineering for Big Island bluff restoration design services
7/10/2008	Res 08-050	Approves the preliminary design for the Big Island bluff restoration project and authorizes completion of the final design.
10/30/2008	Res 08-077	Approves the Big island Bluff Restoration bid award.
10/27/2011	Res 11-098	Approves Big Island Management Plan.
6/28/2012	Res 12-060	Authorizes the execution of a cost share agreement with Three Rivers Park District and to enter into a design contract with Barr Engineering for restoration of 1200 feet of shoreline on Big Island.
11/1/2012	Res 12-096	Approves the design of the TRPD Big Island shoreline Restoration Project and authorizes the solicitation of bids.
1/24/2013	Res 13-013	Authorizes the awarding of the construction contract for the TRPD Big Island Shoreline Restoration Project.

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Summary of recent Board discussion/action regarding the City of Orono and violations of easement...

DATE	RESOLUTION OR ACTION	DESCRIPTION
2/23/2017	Administrator's report to Board	Included information on controversy surrounding maintenance of Big Island Nature Park docks. Staff were to attend City Council meeting on 2/27 when council was to decide on issue. <i>Managers directed MCWD legal counsel provide a memo outlining terms of easement.</i>
3/9/2017	Administrator's report to Board	Noted that legal counsel had provided memo regarding the Big Island dock issue (attached).
4/13/2017	CAC liaison report by Manager Becker	Noted CAC discussion regarding the City of Orono's Big Island Committee and their intention to look at future use/reprogramming of Big Island. <i>Motion passed to direct District Administrator to attend meetings of committee and to engage and participate in the discussions reprogramming Big Island Nature Park for the District's interest generally and specifically with regard to easement rights in the park.</i>
5/11/2017	Administrator's report to Board	Noted a meeting with City of Orono councilmember regarding the Big Island Committee, and that it was advised that the District is focused on preservation rather than programming and suggested that the City proceed with its programming discussion before involving the District. CAC report from Manager Miller noted the Big Island Committee's interest in developing a 501(c)(3) to take over management of the City's interest. Manager Miller questioned how the State is represented in the issue in light of state bonding dollars used for acquisition. Manager Loftus noted that the Committee is a body of individuals selected by the Mayor to generate ideas, but there has been no outreach to partners.
7/13/2017	Administrator's report to Board	Noted that the City of Orono's Big Island Committee had a recent meeting and that staff intended to attend the next meeting and make a connection with City staff in the interim. Orono staff and the Committee are interested to know what they can/cannot do under the easement. Manager Becker noted concern over setting precedent for what is allowed under an easement if those actions are not consistent with the District's intentions and goals. Manager Loftus agreed and said the District should advise the Committee and citizens of what the options are and do so in a proactive way rather than being reactive and to make a presentation to the Committee on the easement. Manager Olson noted that the District Administrator should get directly engaged in the development of ideas for Big Island. Michael Welch was directed to provide the recent legal memo on the topic, as well as the easement, to all managers.
7/27/2017	Matter from Floor	Gabriel Jabbour brought matter from floor and presented concerns over current planning discussions and recent activities (tree cutting, cutting of shoreline vegetation near docks, wedding ceremony) at Big Island and concerns that the City is undertaking planning activities that are not consistent with intended passive recreational use and conservation values. He requested that the District become more actively engaged in Big Island discussions and consider sharing its easement with another conservation organization.

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8/10/2017	Board Discussion	Reported on recent meetings with an Orono City Councilmember, Gabriel Jabbour, and District staff to share the District's commitment to protect Big Island's resource values per the terms of the easement and to work with City staff to promote passive use of the property. The District Administrator shared a memo provided by legal counsel which reviewed the assignability of the Big Island easement. <i>A motion was passed to direct staff to explore contracting with the Minnesota Land Trust to provide easement inspection services.</i>
10/12/2017	Administrator's report to Board/Board motion	Reported to Board that MN Land Trust is not interested in providing contracted monitoring or inspection for the Big Island easement. Board Motion to direct Administrator directed to create a plan to enforce the District's easements on Big Island

Timeline of annual site visits/monitoring report summaries

- **6/2006:** Notice of violation sent to City of Orono following replacement of Big Island well (placed within secondary bald eagle management zone). No correction was required, but District required immediate restoration to the disturbed area around the well.
- **5/2009:** Easement monitoring report produced and distributed during demolition and removal of several buildings remaining from the Big Island Veteran's Camp.
- **2010-2011:** City of Orono – MCWD meetings to draft Big Island Management Plan. Management Plan approved 10/27/2011.
- **7/14/2014:** annual inspection of easement and 2 shoreline restorations
- **9/2/2015:** annual inspection, no issues noted
- **7/12/2016:** annual inspection, no issues noted
- **4/2017:** first Big Island Committee meeting
- **5/2017:** Big Island Committee meeting
- **6/6/2017:** Big Island Committee meeting
- **7/11/2017:** Big Island Committee meeting
- **8/8/2017:** Big Island Committee meeting (attended by MCWD staff Erdahl & Clark): discussion of volunteer clean-up, plans for potential improvements including building restroom facilities, renovating the existing building to use as a visitor center, and building an ADA accessible trail; discussion of security; discussion of buckthorn management

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- **8/14/2017:** Orono staff requested MCWD approval to place a permanent storage container on an existing building foundation within the Recreation Area of the easement to house a mower and related maintenance equipment for use by Orono Public Works Staff. MCWD staff authorized the container placement based on the chosen location that would create no new disturbance and allow for regular mowing of the trails within Big Island Nature Park. The 2011 Management Plan foresaw this need and noted the benefits of having permanent storage for maintenance equipment.
- **8/15/2017:** annual inspection, easement violations noted including the cutting of lower limbs from approximately 50 trees within Big Island Nature Park, the piling of the cut material, the cutting of native plantings in the shoreline near the dock area that had been originally planted by MCWD, and the presence of a burn scar from an illegal bonfire. An inspection report (attached) detailing these violations of the easement was sent to the Orono interim city administrator according to the communication protocol specified in the conservation easement.
- **9/18/2017:** Orono Public Works staff took steps to address violations of the easement noted in the 8/15 report. A chipper was brought to Big Island, material cut from trees and piled near trails was chipped with wood chips distributed on nearby trails. Burnt material from bonfire was removed.
- **9/28/2017:** Big Island Committee meeting
- **10/5/2017:** MCWD follow-up inspection, staff verified that material cut from trees and piled was chipped and distributed on trails and the bonfire material was removed. Shoreline vegetation that had been cut was resprouting, but will be inspected for regrowth in spring 2018. If plants do not recover, City of Orono will be directed to replant appropriate vegetation.
- **10/25/2017:** Met with City of Orono Administrator and Director of Public Works to emphasize vegetation management restrictions, required remediation and to clarify appropriate city communication channels and governance. Reiterated that the protection Big Island Nature Park and the full enforcement of the conservation easement is a high priority for MCWD.
- Next steps: Perform easement inspection in **spring 2018** to determine need for shoreline replanting and to monitor the easement as a whole with appropriate follow-up.
- Meet with Orono staff in **March 2018** for first semi-annual meeting to discuss planned management and maintenance activities, need for corrective action, and any City of Orono plans for improvements within the “Recreation Area.”

MCWD Conservation Easement Monitoring and Enforcement Process

- MCWD pursues the acquisition of conservation easements as a means to protect land and water resources within the District without the financial burden of owning the land in fee. Easements are structured to provide permanent protection of natural resources while allowing for landowner and/or public use of the property in manners that do not diminish the property’s resource values.

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- MCWD-held conservation easements are inspected on an annual basis, at minimum, to affirm protection of District investments and adherence to easement terms.
 - Protected land with suspected or known violations, land adjacent to disturbance, or land held in easement through partnership or other agreement is inspected with greater frequency.
- The purpose of inspections is to verify that easement terms are not violated, to note concerns regarding structures, encroachment, vegetation, erosion, or other issues, and to collect documentation of the easement's condition. This documentation includes photos from designated photo points to compare condition over time, changes in land use, and natural or human-caused disturbance that requires restoration.
- If violations of the easement are noted, the easement requires notification of the property owner or other appointed person to correct the violations and restore the property to its condition at the time of conveyance or as otherwise necessary. The corrections are to be made within a specified timeframe.
- If corrections are not made, the District may correct on its own and require reimbursement from the property owner.
- The District may also determine that the violations rise to the level of judicial action prior to requiring correction.

Conservation Easement Inspection Form attached

MCWD Rights & Remedies and Right of Enforcement

As with all properties for which the MCWD owns conservation easements to protect critical and high-value natural resources, the MCWD regularly monitors the Big Island Nature Park and addresses any violation of the conservation easement to protect the property into perpetuity. As noted above, if violations are noted, the easement requires notification of the property owner or other appointed person to correct the violations and restore the property to its condition at the time of conveyance or as otherwise necessary. The corrections are to be made within a specified timeframe. If corrections are not made, the District may correct on its own and require reimbursement from the property owner. The District may also determine that the violations rise to the level of judicial action prior to requiring correction.

The following information from pages 11-13 of the Big Island Nature Park conservation easement further define the Rights & Remedies and Right of Enforcement as defined for this property.

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6. **DISTRICT'S RIGHTS AND REMEDIES.** In order to accomplish the purposes of this Easement, the District has the following rights and remedies. The District may not, however, exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property.

6.1. Preserve and Protect Conservation Values. The right to preserve and protect the conservation values of the Protected Property through the rights and remedies set forth below.

6.2. Right to Enter. The District, its agents, and authorized representatives, 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, to monitor compliance with the terms of this Easement, and to enforce 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. Any survey or boundary demarcation completed under this provision will be at the District's expense.
- d. To make scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by Orono.
- e. The right to manage the wetlands, shoreland, and waterbodies on the Protected Property subject to applicable laws and regulations. Said management may consist of, but not be limited to: vegetative maintenance and management and hydrologic modifications. The District shall provide Orono with advance notice of any need to utilize heavy equipment for such management.

In addition to any rights of entry it has under statute, the District and its authorized agents shall have, in perpetuity, the right at reasonable times to cross and recross, on foot or by vehicle, and to transport equipment across the Protected Property or otherwise to exercise any right or responsibility under this Easement. The District will pay for or repair any actual damage to the Protected Property caused by its exercise of rights under this Section.

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- 6.3. Right of Enforcement. The District has the right to prevent or remedy violations of this Easement through appropriate judicial action brought against Orono or other responsible party in any court of competent jurisdiction.
- a. Notice. The District may not initiate judicial action until Orono has been given notice of the violation, or threatened violation, of this Easement and the time in which to correct the situation has been provided and has elapsed. This provision shall not apply if, in the sole discretion of the District, immediate judicial action is necessary to prevent or mitigate significant damage to the Protected Property or if reasonable, good faith efforts to notify Orono are unsuccessful.
 - b. Remedies. Remedies available to the District in enforcing this Easement include the right to request temporary or permanent injunctive relief for any violation or threatened violation of this Easement, to require restoration of the Protected Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement, to seek specific performance or declaratory relief and to recover damages resulting from a violation of this Easement or injury to any Conservation Values protected by this Easement.

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

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

Notwithstanding Section 6.2.c, if such court determines that Orono has failed to comply with this Conservation Easement, Orono shall reimburse District for any reasonable costs of enforcement, including costs of restoration, court costs, in addition to any other payments ordered by such court. If such court determines that Orono has not failed to comply with this Conservation Easement, District shall reimburse Orono for any court costs, in addition to any other payments ordered by such court.

- c. Discretionary Enforcement. Enforcement of the terms of this Easement is solely at the discretion of the District. The District does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement by any delay or prior failure of the District in discovering a violation or initiating enforcement proceedings.
- d. Acts Beyond Orono's Control. The District may not bring any action against Orono for any change to the Protected Property resulting from causes beyond

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Orono's control, such as changes caused by fire, flood, storm, natural deterioration or the unauthorized acts of persons other than Orono or Orono's agents, employees or contractors or resulting from reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.

- e. **Right to Report.** In addition to other remedies, the District has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.

6.4. **Signs.** The District has the right to place on the Protected Property signs that identify the land as protected by this Easement and/or advise of limitations on public use in accordance with applicable law. The number and location of any signs are subject to Orono's approval, such approval shall not be unreasonably withheld.

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

Communication Plan

MCWD staff have actively participated, monitored and advised ongoing communication and planning activities that the City of Orono has initiated for Big Island Nature Park. This has been a year of transition for the City of Orono and as updated processes, initiatives and plans have developed, MCWD has demonstrated adaptive management for its collaboration with the City of Orono and encouraged clarity for governance and communication and repeatedly emphasized its intention to fully protect the conservation purpose of Big Island Nature Park and to fully enforce its conservation easement for the property.

As required by the conservation easement, any notice or request for approval is to be addressed by communication between the Orono City Administrator and the Minnehaha Creek Watershed District. Going forward, the communication plan is to be proactive and responsive with all communication.

- **Proactive:** instruct staff on limitations of management
- **Responsive:** respond promptly to requests and participate in early in any discussion related to management and for direction of management action

Semi-annual meetings with the Orono City Administrator, MCWD Administrator and other staff will help to maintain open and regular communication. Any urgent issues that arise would of course be dealt with on a timely basis.

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Proactive Conservation Easement Protection Plan

- DRAFT letter from MCWD Board of Managers President to Mayor of City of Orono will be presented for consideration at November 9, 2017 Board of Managers Workshop meeting to elevate and emphasize the high importance for conservation easement recent violations to be remedied in a timely manner and for violations to be avoided in the future.
- Regular communication with City of Orono staff to track city council and Big Island Committee activities and plans.
- Establish semi-annual Spring and Fall meetings between MCWD staff and City of Orono City Administrator and Public Works Director to discuss plans and issues for Big Island Nature Park and to regularly reiterate management plan and limitations.
- Continue regular property monitoring evaluations at a higher than required frequency to address ongoing concerns related to violations of vegetative management limitations of the conservation easement and management plan.
- Continue to develop plan for progressive enforcement of conservation easement as required. At advice of MCWD legal counsel, this could include direct presentations to the City of Orono City Council, combined meeting of the MCWD Board of Managers and City of Orono City Council, and legal action options as defined in the conservation easement.
- Working closely with MCWD legal counsel, MCWD is prepared to fully enforce the conservation easement to its full extent.

Attachments:

1. Big Island Nature Park Management Plan, November 2011 (includes Conservation Easement document)
2. Legal Memo: MCWD Interests in Big Island Nature Park, March 7, 2017 (confidential – to be distributed at meeting)
3. Legal Memo: Big Island Conservation Easement: Review of Assignability, August 8, 2017
4. Letter to Orono City Council, Mayor, Staff, Big Island Committee, August 15, 2017 (cc's to MCWD Board of Managers)
5. Big Island Nature Park Easement Inspection Report, August 17, 2017
6. Inspection Form 2017

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Big Island Nature Park Management Plan

November, 2011



City of Orono, Minnesota
in partnership with the
Minnehaha Creek Watershed District



MINNEHAHA CREEK
WATERSHED DISTRICT
QUALITY OF WATER, QUALITY OF LIFE



Big Island Nature Park Management Plan



City of Orono



**MINNEHAHA CREEK
WATERSHED DISTRICT**
QUALITY OF WATER, QUALITY OF LIFE

**Minnehaha Creek
Watershed District**

This management plan has been prepared as a cooperative effort by the City of Orono and the Minnehaha Creek Watershed District in fulfillment of the conditions of the Conservation Easement held by the District, and in furtherance of the mutual goals of the District and the City of Orono.

Adopted by the Board of Managers of the Minnehaha Creek Watershed District on October 27, 2011.

Adopted by the City Council of the City of Orono on November 28, 2011.

Principal Preparers

City of Orono

Mike Gaffron
Assistant City Administrator

MCWD

Renae Clark
Projects, Operations and
Maintenance Programs Manager



CITY of ORONO

RESOLUTION OF THE CITY COUNCIL

NO. 6095

A RESOLUTION APPROVING THE BIG ISLAND NATURE PARK MANAGEMENT PLAN

WHEREAS, in January 2006 the City of Orono purchased for park and open space purposes a 56-acre property on Big Island in Lake Minnetonka which had formerly been used as a Veterans Camp; and

WHEREAS, the purchase was in part funded by a grant from the Minnehaha Creek Watershed District (MCWD) in exchange for a Conservation Easement over the entire property, such easement intended to preserve the natural resources of this unique property, including a maple basswood forest, wetlands, and approximately 7,500 feet of relatively undeveloped shoreline on Lake Minnetonka; and

WHEREAS, the Conservation Easement limits the permitted uses of the protected property and specifies that the uses may be elaborated and conditioned in a written Management Plan agreed to by the City of Orono and the MCWD; and

WHEREAS, the Big Island Nature Park Management Plan has been prepared through a cooperative effort of the City of Orono and MCWD to be consistent with the principles contained within the Conservation Easement and to address the preservation of the Park's natural resources; and

WHEREAS, in addition to its primary focus on natural resources, the Plan has been drafted to document the background leading to the City's acquisition of the site and define for future City leaders a set of fundamental principles for management of the Park; to provide a structure for defining and managing the major natural, cultural, interpretive and recreation resources of Big Island Nature Park; and to establish a general long-term management direction for Big Island Nature Park; and

WHEREAS, the various elements of the Big Island Nature Park Management Plan are intended to be reviewed by the City Council on a regular basis as needed to address new and ongoing Park management issues; and



CITY of ORONO

RESOLUTION OF THE CITY COUNCIL

NO. 6095

WHEREAS, the Minnehaha Creek Watershed District Board of Managers approved the Big Island Nature Park Management Plan at a meeting held October 27, 2011.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Orono does hereby approve the Big Island Nature Park Management Plan.

Adopted by the City Council of Orono this 28th day of November, 2011.

ATTEST:

Linda S. Vee

Linda S. Vee, City Clerk

Lili Tod McMillan

Lili Tod McMillan, Mayor

**- BIG ISLAND NATURE PARK MANAGEMENT PLAN -
November 2011**

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EXECUTIVE SUMMARY

Big Island Nature Park includes 56 acres of diverse natural and cultural resources. It provides ecological and passive recreational benefits for the Lake Minnetonka region and the state. The Park preserves a diversity of natural resources including maple-basswood forest, wetlands, and more than 1.4 miles of undeveloped Lake Minnetonka lakeshore. In addition, the cultural heritage of the park property adds to the uniqueness of this recreational amenity.

This plan documents the planning process and actions taken by the City of Orono and others during the period 2004-2011 and sets a general direction for the management of Big Island Nature Park for the future. The goals and policies contained herein reflect what can rightly be deemed an evolutionary process that has resulted in a management plan directed toward preservation and maintenance of the site's natural features and historical amenities, while maintaining a minimal level of physical facilities.

The goals of this plan are to:

- Document the background leading to the City's acquisition of the site and define for future City leaders a set of fundamental principles for management of the Park.
- Provide a structure for defining and managing the major natural, cultural, interpretive and recreation resources of Big Island Nature Park.
- Establish a general long-term management direction for Big Island Nature Park.

To accomplish these goals, the plan has been divided into a number of parts. Part I, the Introduction, describes the park generally and documents the background of its acquisition; describes the local and regional roles of Big Island Nature Park; discusses the partnership with the Minnehaha Creek Watershed District (MCWD); presents long-term mission, vision and goal statements; and documents the planning process that resulted in this plan.

Part II provides a natural resource inventory and analysis; describes the MCWD Conservation easement that encompasses the entire property; and presents management goals and recommendations regarding the Park's natural resources.

Part III establishes a framework for future development of a cultural resources inventory and establishment of management goals and recommendations for the various cultural resources of the property. This section of the Plan will be further developed as human and financial resources permit.

Part IV contains goals, objectives and recommendations for implementing and managing interpretive and educational services for the Park.

Part V includes goals and objectives for recreational use of the Park; provides an inventory of existing recreational facilities; addresses future recreation needs and potential improvements; discusses park use regulations; and explores the need to better define and manage visitor expectations.

Part VI discusses site and facilities management, including background on park buildings, transportation, sanitation, utility and security issues. Future ongoing maintenance expectations are addressed, and a number of recommendations are presented.

Part VII addresses opportunities for public involvement in the future of Big Island Nature Park, including partnerships, volunteer opportunities and tourism.

Finally, Part VIII discusses administrative and operational aspects of the park, including the topics of staffing, funding and revenue, and enforcement of Park regulations.

While this Big Island Nature Park Management Plan establishes the fundamental principles for management of the Park, it is intended to be a working document that is reviewed and updated on a regular basis.

I. INTRODUCTION

Park Description

Big Island Nature Park consists of 56 acres of upland maple-basswood forest and wetlands on the east end of Big Island within the lower basin of Lake Minnetonka. The Park is located adjacent to and directly east of Three Rivers Park District's Big Island Regional Park, a 62-acre wildlife preserve. Big Island is completely within the corporate boundaries of the City of Orono, and in total is approximately 250 acres in area, of which approximately 50 acres is wetland. The Island actually consists of two large islands separated by a navigable channel dredged in the 1890's, plus a third, much smaller island known as Mahpiyata Island.

Big Island has been known by a number of names since it was first viewed by white men in 1822. Originally called Cottage Island for the Indian timber shelters found there, it was informally referred to as Owens Island after Colonel John P. Owens who accompanied Governor Ramsey on his visit to Lake Minnetonka in 1852. It then became referred to as Meeker's Island for Judge Bradley B. Meeker who settled there in 1852. W.B. Morse purchased it in 1854 and for many years thereafter it was known as Morse Island. In 1887 and 1888, two subdivisions to create small parcels were platted, Morse Island Park on the most southerly point, and Pleasant View on the west end. This resulted in the construction of a number of individual summer homes. Today, the portions of Big Island that are not encompassed by Big Island Nature Park and Big Island Regional Park remain in private ownership, with approximately 50 mostly seasonal lakeshore dwellings dotting the shoreline.

Beginning in 1906, the Twin City Rapid Transit Company developed and operated Big Island Amusement Park on the east end of the Island, providing transportation via streetcars from Minneapolis to Excelsior, and by steam-powered ferryboats to Big Island. The Amusement Park was family-oriented with expansive facilities for picnics, and a 1500-seat music casino that hosted performances of many well known bands of the time including that of John Philip Sousa. Other attractions included an aquarium, an aviary, a Ferris wheel and carousel, rowboat rental, a baseball diamond, a huge roller coaster and other rides. Notable was the 186-foot central tower at the north end of the grand mall, architecturally mimicking the famous tower in Seville, Spain, holding the Park's water supply and illuminated at night so as to be visible from nearly all points around the lake.

The Big Island Amusement Park closed abruptly at the end of the 1911 season, likely for financial reasons. The onset of World War I resulted in its dismantling, leaving a few of the Spanish-style service buildings intact. In 1923 the property became the Big Island Veterans Camp, offering camping and other recreational opportunities to Minnesota's war veterans. A large dining hall was constructed on the high central knoll of the site, and a variety of cabins and campsites were developed. This Veterans Camp remained in operation for more than 8 decades until shortly before its sale to the City of Orono for parkland in 2006.

The Big Island Nature Park property, like much of Lake Minnetonka's shoreland, has undergone a series of transformations over the past century. However, in contrast to the ever-intensifying nature of the Lake's residential development, the Big Island Nature Park property has experienced gradual reversion back to a substantially undeveloped state with a diversity of

significant natural resource features. Remnants of the grandeur of the Big Island Amusement Park can still be found on the site, including the concrete landing and grand entry portal stairway near the boat landing, and portions of old foundations hide among the wooded glens. A few of the Amusement Park's original paved pathways that wind throughout the property continue to serve Island visitors.

Nearly all of the cabins and buildings that were later built to serve the Veterans Camp have been removed in recent years, leaving just a small structure in place near the main docks to serve as an entry portal for the Park. Areas that for many decades were mowed as lawns have been allowed to grow undisturbed.

City acquisition of the Veterans Camp has preserved this unique site as public natural open space for future generations, rather than allowing it to become privately developed. The Park is intended to serve a dual role in preservation of a unique natural setting while offering the public a variety of passive recreational opportunities.

This Management Plan for the Park is intended to balance the needs and desires of the public for access and use with the realities of extremely limited public services availability due to the island nature of the property.

Park Legislative History

Big Island was originally surveyed in 1853-54 as part of the Public Land Survey of Hennepin County. In 1856 brothers John Morse and W. B. Morse purchased the Island, John owning the west half and William the east half. W. B. Morse platted the southerly portion of his property as "Morse Island Park" in 1887, creating small cottage lots. The remainder of his property to the northeast was sold around 1905 to the Minneapolis and St. Paul Suburban Railway Company, a subsidiary of the Twin Cities Rapid Transit Company ("TCRT") which operated the Big Island Amusement Park on the property beginning in 1906. In 1910 the property was sold to the White Bear and Minnetonka Navigation Company ("WBMN"), another subsidiary of TCRT. The Amusement Park closed in mid-season of 1911 and was eventually dismantled.

In 1923 the Minnesota legislature leased the property for the purposes of creating a memorial and rest camp for WWI veterans and their families. The property became known as the Big Island Veterans Camp. In 1947 the legislature appropriated funds to purchase the property from WBMN, created the Big Island Board of Governors, and deeded the property to the Board of Governors. In 1979, the District Court ordered that the Board of Governors reconvey the property to the State of Minnesota. An action by the State legislature in 1985 quit-claimed the property back to the Board of Governors, subject to the provisions of Minnesota Statutes 197.131-197.133. In April 2004 a majority of the Board of Governors determined that disposal of the camp would be in the best interests of Minnesota veterans, and made plans to close the camp and offer it for sale, with the intent to use the proceeds for other veterans needs throughout Minnesota as required by Statute.

Upon hearing of this action, the Orono City Council immediately appointed former mayor Gabriel Jabbour to represent the City in discussions with Three Rivers Parks, Hennepin County and the Department of Veterans Affairs with regards to maintenance of the property in the

interim and reaching an acceptable outcome for future use of the property. During 2004 and into 2005, the City put substantial effort into discussions with existing and potential stakeholders, and concluded that permanent public ownership of the property was of paramount importance.

A financial package was put together to meet the \$5.85 million price tag of the Camp, including \$1.4 million in available City park funds (of which \$1 million was from a generous donation by Orono resident William Lurton), \$1.6 million in Orono HRA Public Project Revenue Bonds, and a \$2 million grant from the State of Minnesota. In early 2005 the Minnehaha Creek Watershed District agreed to partner with the City by contributing the remaining \$850,000 in exchange for a Conservation Easement over the entire 56-acre property to preserve its open space and natural character, with 45 acres to remain undeveloped, and allowing the remaining 11 acres to be developed in a limited manner for generally passive recreational and educational uses. Purchase of the property was completed in January 2006.

Role of Big Island Nature Park in Orono Municipal Park System

The City of Orono municipal park system includes a variety of park, recreation, open space and trail facilities totaling approximately 260 acres, in addition to those provided by regional and state government, the Orono School District, and private enterprise. Orono's Mini-parks are typically less than 2 acres in area, serving their immediate neighborhoods, and providing for informal recreation, play and relaxation. Neighborhood parks and Community playfields are somewhat larger, 2-15 acres in area, and include a higher level of facilities for informal as well as organized recreation. Special Use areas are typically devoted to a single dedicated use, such as the Orono Golf Course. Orono's trail system provides pedestrian and bicycle connections between other recreational facilities. Finally, Orono's Nature & Conservation areas provide opportunities for passive recreational uses such as nature observation, walking and hiking, and environmental education.

Big Island Nature Park at 56 acres is the largest of Orono's City-owned Nature and Conservation areas, which in total comprise approximately 170 acres throughout the City. Big Island Nature Park is uniquely situated to provide for passive recreation activities related to woods, lakes, and wetlands, and is large enough to accommodate a variety of users without them bumping into each other. The relative inaccessibility of the Park due to its location on an island surrounded by water presents challenges to development and maintenance of the property as well as in the provision of services to Park visitors. At the same time, the location of the park within the largest and most extensively visited recreational lake in the Twin Cities metro area makes it highly attractive to boaters. Primary amenities of the Park include public docking facilities, hiking trails, a swimming beach, and areas suitable for picnicking.

Regional Role

Big Island Nature Park has the potential to play a significant role in Twin Cities regional recreation, being situated within Lake Minnetonka and readily accessible to boaters originating from any of the fourteen municipalities and the many public access points surrounding the Lake. Because most of the approximately 130 miles of Lake Minnetonka shoreline is privately

owned and has been developed residentially or commercially for many decades, public recreation land abutting the Lake is relatively scarce.

Big Island Nature Park's uniqueness lies not only in its accessible location and availability to the public, but in its storied history as an amusement park and later as a place where military veterans and their families could come to relax and enjoy the benefits of nature. Generations of vets and their families have intimate ties to the Park spanning many decades, and its draw for them lies in its peaceful setting as well as the pure mystique of being on an island and the memories it holds of days gone by.

The Park also abuts Three Rivers Park District's Big Island Regional Park, a 62-acre wildlife refuge that has remained completely undeveloped. Separated by a narrow peninsula, the complementary parks share a goal of preserving the woodlands and wetlands that provide habitat for a wide diversity of animal and plant species.

The cove along the northwestern shore of Big Island Nature Park has become a popular summer weekend gathering place for boaters from far and wide, who often tie their craft together in multiple rafts of a dozen or more boats each. There are few if any similar near-shore locations on Lake Minnetonka where adjacent lakeshore homeowners would not be affected by the noise of revelers and the bustle of boats coming and going. However, this level of activity along the shore on summer weekends has the potential to create an atmosphere that is in stark contrast to the serene natural character of the Park.

Partnership with Minnehaha Creek Watershed District

In addition to its key role in the City's acquisition of Big Island Nature Park, The Minnehaha Creek Watershed District has provided complete and unfailing support of Orono's efforts to improve and manage the Park. Activities aimed at long-term environmental management of the property have been accomplished primarily via Orono's partnership with MCWD, and could not have been accomplished without that cooperative effort. Not the least of these activities was the massive shoreline stabilization project in 2008-2009 which involved shoreline rip-rapping as well as use of vegetative methods for limiting further bluff erosion. MCWD staff have assisted the City in such diverse ways as creating the Big Island Recreational Map & Park Rules brochure, and by including a representative from the District on Orono's Big Island Nature Park Committee.

Mission, Vision & Goal Statements

Mission

The mission of Orono's Big Island Nature Park is to provide safe and enjoyable passive recreational and educational opportunities for visitors while preserving the natural, cultural and physical resources of the site.

Vision

Big Island Nature Park on Lake Minnetonka is a serene natural refuge on an island surrounded by an intensely used recreational lake. Accessible only by water, it is characterized by open and wooded hills, wetland areas, and steep bluffs. Historically, a succession of diverse recreational uses has been accommodated on the property, and the remnants of those uses add to the character and mystique of the site. Through mutual collaboration between the City of Orono and the Minnehaha Creek Watershed District, Big Island Nature Park will be preserved, maintained and improved as a passive recreational, ecological and educational asset to the Lake Minnetonka community and its visitors.

Overall Goal for Big Island Nature Park

Achieve an appropriate and responsible balance between the recreational use, protection and interpretation of the biological, physical and cultural resources of the park.

Park Planning Process

Initial Planning.

In February 2006 a Big Island Park Committee was appointed by the Orono City Council to assist in formulating an action plan for making the property available for public enjoyment. The Committee included three members of the City Council; a City Park Commission member; a former mayor; and a number of City staff. In initial discussions, the committee identified immediate items of concern, including:

- removal of hazardous buildings;
- refurbishment of remaining buildings (including two picnic pavilions, a toilet building, the entrance office building, and block storage buildings) to make them functional and vandal-proof;
- assessment of ADA accessibility for these buildings as well as for docks, bathrooms, walkways, etc.
- completion of site work needed to protect the natural resources, enhance aesthetics, and ensure public safety, including grading of pathways, shoreline erosion control, general debris removal, tree trimming, repair or replacement of fencing, etc.;
- establishment of utility systems functionality, including the well and water system, protection of existing septic systems, locating and confirming the viability of buried and overhead lines such as electric service and telephone; and
- coordination of public safety services.

During 2006 the MCWD Conservation Easement was formally established and mapped. The City Council authorized expenditures for burying power lines and replacement of the well. A Hazardous Materials Inventory of the mess hall, cabins, and storage buildings on the property was completed in preparation for demolition, and the historic significance and value of the remaining buildings was considered prior to the decisions regarding their removal.

2008 Visioning Process

Orono’s initial intent in purchasing the property was to keep it available for the public rather than having it fall into private hands where it would likely have been developed into as many as 7 or 8 individual recreational homesites. In February 2008 the City involved the Big Island Committee and the City Council in a visioning process in which a number of questions were asked of each participant about their perceptions, views and goals for the Park. The list of questions included the following:

- What do you like about Big Island Park that should be preserved?
- What is unique about the Park (elements, characteristics, natural features)?
- Who uses the Park now and should continue to use it?
- Who else should be using it, or using it more?
- What activities should the Park support?
- What types of activities should not be allowed in the Park?
- What changes to the Park are needed?
- What services should be provided (restrooms, picnic table, docks, trails, interpretive signage, etc.)?
- What services/amenities/improvements should be provided by other agencies in the next 10 years?
- Describe what you want the Park to be like in 10 years.

A number of common themes emerged, through which the Big Island Committee formulated a set of goals for management of the Park, focused on passive recreation in harmony with the natural environment, and revising the Park’s name to Big Island Nature Park. These goals are listed below, and the policies for implementing them are included in the appropriate sections of this Management Plan.

Big Island Nature Park Management Goals

1. Manage the Park in a manner consistent with its identity as a Natural Passive Recreation Area
2. Implement environmentally sound and sustainable policies within the Park
3. Improve access to and mobility within the Park
4. Provide the level of recreational and service facilities necessary for safe public use of the Park while limiting the need for intensive operation and maintenance activity
5. Allow for educational and service opportunities related to the biological, physical and cultural resources of the Park
6. Promote a passive day-use recreation and natural area identity in the Park reinforced by the design of facilities and amenities as well as by the establishment of rules and regulations consistent with that identity
7. Recognize, acknowledge and embrace the special relationship that America’s military veterans have with the Park property, and encourage their use of the Park in a manner consistent with its mission, vision and goals

Management Plan Development

Orono from the very beginning has embraced the concept that Big Island Nature Park is a unique natural environment. The site has experienced a number of transitions over the past century - from being relatively untouched forest in the 1800s, converted to a highly-developed amusement park in the early 20th century, later becoming a popular camping and vacation area for veterans, and finally now reverting back to a more natural state. The challenge for the future is to balance the recreational desires of the public with protection of the natural environmental values of the property that make it a desirable destination.

This Plan in many respects is the result of a steady progression of directed actions, reactions, and learning experiences over the 5-year period since Big Island Nature Park was acquired by the City. The result is a much broader understanding of the opportunities, challenges and limitations for maintaining this public park in an island setting. The Big Island Nature Park Committee has met 3-4 times per year to evaluate the ongoing status of the Park, to consider options for its management, and to provide recommendations to the City Council and staff.

Orono's expectations for the Park have changed somewhat from those initially contemplated at the time it was acquired. When the Veterans Camp ceased operation, the City expressed concerns about security and maintenance of the property. In the ensuing years, ongoing vandalism of the basic park facilities caused a careful reconsideration of the level of services and amenities that can reasonably be provided. Because full-time staffing of the site is not economically feasible or practical, **this Management Plan is directed toward preservation and maintenance of the site's natural features and historical amenities, while maintaining a minimal level of physical facilities.** The City's commitment remains steadfast to managing this resource in a manner that supports the provisions of the MCWD Conservation Easement.

II. NATURAL RESOURCES

This section includes a natural resources inventory and outlines appropriate natural resources management consistent with protection of the conservation values of the land identified in the conservation easement held by the Minnehaha Creek Watershed District (~~the District~~):

Conservation Values

- A. Approximately 7,500 feet of undeveloped lake frontage on Lake Minnetonka, that helps protect the water quality of the Lake from impacts of non-point source pollution and provides habitat for flora and fauna. Lake Minnetonka is an important natural resource and recreation area in the Twin Cities metropolitan area;
- B. Approximately 7.59 acres of wetlands providing valuable habitat and also deemed important by the District for the protection and enhancement of water quality in Lake Minnetonka;
- C. Undeveloped vegetated buffers and uplands, including significant stands of maple-basswood forest that provide habitat for flora and fauna and protect the property's wetlands from non-point source pollution impacts that could be associated with future development or other uses of surrounding land including the Protected Property;
- D. A bald eagle nesting site. Bald eagles are considered a Minnesota Special Concern Species by the Minnesota Department of Natural Resources; and
- E. Offers the general public opportunities to experience, appreciate, and learn about the natural environment through sustainable outdoor recreation and educational opportunities.

Inventory and Analysis

Regional Context

Big Island is a large island in the Lower Lake portion of Lake Minnetonka. The island is partially developed, but largely preserved by parks and easements. The District maintains easement rights over important natural areas on the island. The eastern portion of the island (~~the site~~) covered by the easement is approximately 56.41 acres. The site is owned by the City of Orono (~~the City~~) and is contiguous with the Arthur Allen Wildlife Sanctuary owned by Three Rivers Park District; other land use on the island is residential and seasonal lakeshore parcels. West of the site there is an area of regional biodiversity significance on the Three Rivers Park District property. The plant community on Three Rivers Park District property was identified by the Department of Natural Resources' Minnesota County Biological Survey as sugar maple-basswood-(bitternut hickory) forest with moderate biodiversity significance. The designation of moderate significance means the area ~~contains~~ occurrences of rare species, moderately disturbed native plant communities, and/or landscapes that have strong potential for recovery of native plant communities and characteristic ecological processes."

The City of Orono owned site subject to this management plan has a designated natural area (see ALTA Survey, Appendix B) that contains maple-basswood forest and multiple wetlands. The forest received a Minnesota Land Cover Classification System (MLCCS) grade B, indicating a good quality natural community with some evidence of past human impacts and a

generally low level of exotic species. The two recreational areas are not classified as native plant communities. These consist of altered/non-native grassland and some impervious surface. There are steep bluffs on the eastern shoreline of the site.

Climate observations for the region are made at the Minneapolis-St. Paul International Airport, roughly 20 miles east of the site. The 30-year mean (1971-2000) precipitation is 29.41 inches per year. The 30-year normal temperature range is 4.3 - 21.9 °F in January and 63.0 - 83.3 °F in July. Upland soils were mapped by the Hennepin County Soil Survey as mostly Lester loam morainic, 6-12 and 12-18 % slopes, eroded. Wetland soils were classified as Glencoe loam depressional (hydric). Most maple-basswood forest in the region grows on till plains and stagnation moraines from the Des Moines Lobe of the Wisconsinan glaciations.

Wetlands

Five wetlands on the site were field assessed as part of the District's Functional Assessment of Wetlands (FAW). Two were given the manage class —Preserve.” The —preserve” designation was assigned based on wetland functions. The FAW lists the following management goals for a preserve wetland: —avoid and preserve wetland if at all possible. No change in wetland hydrology. No increase in nutrient load.” According to the MLCCS, the easternmost basin is a palustrine open water wetland, about 1.1 acres in size. On the western isthmus there is a 4.9 acre wetland classified as a semi-permanently flooded cattail marsh. The marsh received an MLCCS quality grade of —C,” indicating a moderate quality natural community with obvious human impacts, but still recognizable as native plant community. The FAW also recognizes a lacustrine fringe wetland on the north side of the isthmus, and two small (1/4 to 1/3 acre) forested ephemeral wetlands.

Vegetation

A limited natural resources inventory was performed by MCWD staff on May 26, 2010. The recreation areas were dominated by leafy spurge (*Euphorbia esula*) and non-native grasses. The maple-basswood forest had a somewhat disturbed ground layer, dominated by upland sedges and other species tolerant of earthworms and deer browse. The shrub layer and subcanopy had good diversity and showed evidence of forest regeneration, with young sugar maple (*Acer saccharum*), ironwood (*Ostrya virginiana*), basswood (*Tilia americana*), hackberry (*Celtis occidentalis*), and green ash (*Fraxinus pennsylvanica*). There were common buckthorn (*Rhamnus cathartica*) shrubs and seedlings scattered throughout. The plant community in the isthmus wetland was cattail marsh, with lake sedge (*Carex lacustris*) in shallower areas. There were scattered native forbs, and very little reed canary grass (*Phalaris arundinacea*). The open water wetland has a fringe of sedge species with a few patches of cattails and reed canary grass.

Wildlife and fisheries

State listed special concern species exist on the island. A bald eagle (*Haliaeetus leucocephalus*) nest is located in the woodland on the south side of the isthmus. There are also records of two special concern fish species, pugnose shiners (*Notropis anogenus*) and least darters (*Etheostoma microperca*), near Big Island. There is a record of one special concern vascular plant species on the island.

Invasive species

Invasive species were noted during the May 2010 inventory. Common buckthorn was present in the forest as mature shrubs and seedlings. Leafy spurge was co-dominant with smooth brome (*Bromus inermis*) in the recreation areas. Other invasive species were present in smaller amounts. Some reed canary grass was growing around the wetlands. A few non-native honeysuckles (*Lonicera x bella*, other *Lonicera* spp.) were noted in the forest. Cheatgrass (*Bromus tectorum*) was present near the dock envelope.

Natural Resource Goals

The primary goal of the natural resource plan is to protect the five conservation values listed above. To that end, management objectives for the natural and recreational areas are:

1. Management of maple-basswood forest for native community composition, prevention of erosion
2. Management of recreation area for reduction in invasive species, prevention of erosion
3. Management of wetland areas for native community composition, prevention of erosion, no change in hydrology
4. Management of shoreline and bluffs for stabilization and prevention of erosion
5. Management to protect special concern species

Natural Resource Management Recommendations

This section outlines management and maintenance practices that will achieve the management objectives. Practices are divided into those that protect species of concern, vegetation restoration and maintenance, and shoreline improvements. Although divided into three areas, the practices are closely related and good management in one area will benefit the others. Future discussions will occur to clearly establish responsibility regarding the roles and responsibilities of the city of Orono and the MCWD in oversight of the Park's natural resources.

Protecting species of concern

Restoration and maintenance activities shall be scheduled to minimize disturbance at the bald eagle nest. Protection of emergent plants and prevention of erosion/sedimentation on the site will benefit listed fish species. In order to protect the listed plant and other species, no collection of native plant material is allowed, with the exception of seed collection for use in restoration on the site. No disturbance or removal of plants is allowed except for management activities described herein.

Vegetation maintenance and restoration plan

1. **Restoration/establishment** techniques and strategies for disturbed areas. Prior to seeding or planting, a detailed site preparation and planting plan shall be developed or approved by a qualified restoration ecologist.
 - Seeding—prairie/woodland edge species are most appropriate in the recreation areas. Seeding shall take place in spring, early summer, or late fall. Node seeding is recommended for the recreation areas. This technique was tested at a Nature Conservancy natural area in Glyndon, MN. Node seeding simulates

small-scale disturbances, in which native species are broadcast seeded in a matrix of existing non-native grasses. Node seeding reduces ground disturbance, leading to less possibility of erosion and less disruption of recreational use. Node seeding also has significant cost savings over tilling or herbicide treatment and then broadcast seeding the entire area, and has been shown to have similar resulting species richness. Detailed specifications are available in Grygiel et al. 2009.

- The seed mix for the recreation area shall be 36-211 (MN state mix for woodland edge) or similar. Source of origin of seed shall be as close as possible to the project site, with a maximum distance of 150 miles.
- Tree planting—some planting was already completed as part of the 2008/2009 District capital project. Additional planting may be desirable in the recreation area and in former campsites where there is little or no shrub layer. Plant material origin shall be as close to the project site as possible. Spacing of plants shall be planned to achieve target canopy cover of 70 – 90 % in the maple-basswood forest, and 25 – 50 % for any recreation area plantings.

Recommended species below:

Common Name	Species Name
Maple-Basswood Forest Species	
Sugar Maple	<i>Acer saccharum</i>
Basswood	<i>Tilia americana</i>
Hackberry	<i>Celtis occidentalis</i>
Ironwood	<i>Ostrya virginiana</i>
Bitternut Hickory	<i>Carya cordiformis</i>
Recreation Area Species	
Bur Oak	<i>Quercus macrocarpa</i>

- Shrub planting—some shrub planting was previously done in conjunction with the 2008/2009 capital project. Additional shrub planting may be desirable in former campsite areas that currently lack a shrub layer. Plants shall be spaced to achieve a patchy shrub canopy; for example, shrubs could be placed in groups of 3-5 plants of a single species. Plant material origin shall be as close to the project site as possible. Recommended species below:

Common Name	Species Name
Forest planting	
Saskatoon Serviceberry	<i>Amelanchier alnifolia</i>
Black Chokeberry	<i>Aronia melanocarpa</i>
Pagoda Dogwood	<i>Cornus alternifolia</i>
Red-twig Dogwood	<i>Cornus stolonifera</i>
Bush Honeysuckle	<i>Diervilla lonicera</i>
American Elderberry	<i>Sambucus canadensis</i>
Red-berried Elder	<i>Sambucus pubens</i>
Barrier along bluff top trails	
Prickly Ash	<i>Xanthoxylum americanum</i>

2. **Maintenance** techniques and strategies. The City is responsible for routine maintenance of the natural and recreation areas.
- No alteration of vegetation is allowed in natural areas except as described herein for restoration, plant establishment or maintenance.
 - Herbicide must be applied by certified pesticide applicators, and all applications must be made according to the herbicide label.
 - Management of common buckthorn and other woody invasive species is a high priority, given possible erosion impacts due to shading and suppression of ground layer vegetation and forest regeneration. Plants larger than pencil-size in diameter shall be cut and the stumps treated with herbicide to prevent resprouts. Cut plants with mature berries shall be removed from the site. Any chipped buckthorn shall not be spread on site. Seedlings and any resprouts shall be treated with foliar herbicide in autumn after desirable plants have senesced.
 - Dead trees shall be removed only if diseased or causing a safety hazard.
 - The recommended management for leafy spurge on the site is biological control. Flea beetle (*Aphthona* spp) larvae feed on the roots of leafy spurge, and are available from Hennepin County Environmental Services. The beetles mature and can be released in early summer.
 - Mowing of recreation areas should be conducted in spring before the leafy spurge goes to seed, to a 4-6” mow height. Prescribed fire may be appropriate for management of non-native cool season grasses in the recreation area. No burning shall take place between May 15th and Sept 1st in order to protect nesting animals and beetles released for biological control of leafy spurge.

Shoreline Protection

- As part of the 2008/2009 District capital project, 2,725 feet of shoreline and bluff were stabilized with riprap shoreline protection, live stakes, brush mattresses, and fascines.
- Planting of shrubs and/or vines is recommended for camouflage of riprap near the dock envelope. Recommended species include:

Common Name	Species Name
Riverbank Grape	<i>Vitis riparia</i>
Virginia Creeper	<i>Parthenocissus quinquefolia</i>
Red Twig Dogwood	<i>Cornus stolonifera</i>

Monitoring

An annual report prepared by a qualified restoration ecologist, shall be submitted to the City and the District. The report shall include:

- Description of any management or restoration work performed with date and location
- Invasive species present with location and abundance
- Location and description of erosion on shorelines, bluffs, and other areas
- Non-compliance and other issues

In the first year of monitoring, photo points shall be established and located with GPS, so the same points can be reassessed in future monitoring reports. If problems needing corrective

action are found, an action plan shall be submitted. At least every five years, the monitoring report shall include a more detailed assessment of results of past restoration and management and recommendations for changes, if results are not as expected. The Natural Resources section of the Conservation Management Plan shall be reviewed and updated by the City and the District every 10 years. New information and the results of ongoing monitoring shall inform the updates to the plan, and management activities and techniques shall be adapted as conditions change and new data is available.

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III. CULTURAL RESOURCES

Cultural Resource Management Goals

Goal:

Recognize, acknowledge and embrace the special relationship that America's military veterans have with the Park property, and encourage their use of the Park in a manner consistent with its mission, vision and goals

Objectives:

- Consider establishment of a Veteran's Memorial
- Preserve historically significant foundations and structural remnants from past uses of the property

Historical Context

Native Americans, European Settlers: The 1800s

(To be developed)

Amusement Park: 1906-1911

(To be developed - See Jim Ogland's brochures and other Lake Minnetonka history resources)

Veterans Camp: 1923-2003

(To be developed)

Current Cultural Resource Inventory and Analysis

(To be developed - See Maritime Heritage Minnesota's report on archaeological activities as part of the 2007 Big Island Summer Institute)

Research Needs and Priorities

(To be developed)

Cultural Resource Management Recommendations

(To be developed)

Books and Publications about Big Island

(Listing to be developed)

IV. INTERPRETIVE AND EDUCATIONAL SERVICES

The purpose of interpretive and educational services is to provide programs, activities and information resources that work to create a sense of connection with and stewardship for the natural and cultural heritage of Big Island Nature Park. This can be accomplished by working with educational institutions, local historical organizations, citizens and various agencies, to develop informational and educational resources that will enhance the visitor's experience by increasing their understanding, enjoyment and appreciation of the Park's natural and cultural features.

In keeping with the premise that Big Island Nature Park will be managed for the preservation and maintenance of the site's natural features and historical amenities while maintaining a minimal level of physical facilities, an Interpretive Center is not planned for the Park. This presents a challenge by limiting the range of potential interpretive tools to those that do not require an indoor setting, and which require only minimal maintenance.

Big Island Nature Park contains a wealth of natural and cultural features that can provide unique interpretive and educational opportunities for the benefit of the public. An example is the Orono Schools' Big Island Summer Institute which during each summer from 2006 through 2010 held sessions at the Park. Students were immersed in daily 6-hour sessions where each week they explored such diverse topics as wetland creatures, outdoor survival skills, fishing and fish habitat, boating skills, and discovering and interpreting historical elements of the park and surrounding area. The ability to allow for similar programs relies on the fostering of activities that are adaptable to a limited-facilities environment.

Interpretive and Educational Services Goals

The following goal and objectives have been developed by the Big Island Nature Park Committee based on an understanding of the park's resources and limitations:

Goal:

Allow for educational and interpretive service opportunities related to the biological, physical and cultural resources of the Park

Objectives:

- Identify, protect, preserve and interpret sites and areas significant to the history, archaeology and culture of the Park area
- Develop interpretive tools that focus on the plants, animals, natural communities, natural features and cultural resources within the Park
- Support and promote interpretive programs and tools for the general public and organized groups
- Provide opportunities for service projects of mutual benefit to Big Island Nature Park and volunteer organizations or individuals

- Encourage volunteer opportunities and promote volunteering that promotes long-term community stewardship of the Park
- Provide opportunities for input regarding Park management and development from the public
- Establish a permit system for educational and service activities to ensure that such activities are consistent with the above goals

Interpretive Services Management Recommendations

- 1) The City in conjunction with MCWD and other stakeholders should develop an Interpretive Plan to guide the development of interpretive materials, programs and activities.
- 2) Consideration should be given to establishing a ‘Friends of Big Island Nature Park’ volunteer organization that will assist in promoting and providing for interpretive and educational programs.
- 3) Because interpretive staffing for the Park is not expected in the foreseeable future, physical interpretive elements should be developed to be largely self-guiding; for example, trail maps and interpretive brochures keyed to interpretive trail markers placed at selected locations of interest.
- 4) A formal inventory and location survey of important historical, cultural and natural features within the Park should be developed and maintained as a baseline for future maintenance, study and interpretation.

V. RECREATIONAL USE AND VISITOR SERVICES

Recreational Use and Visitor Services Goals

Goal:

Promote a passive day-use recreation and natural area identity in the Park reinforced by the design of facilities and amenities as well as by the establishment of rules and regulations consistent with that identity.

Objectives:

- Encourage and support the use of the Park for recreational activities that require little or no infrastructure
- Promote recreation and enjoyment by individuals and small groups as opposed to large group special events; limit and manage special events to minimize impact on the Park and interference with Park users; prohibit all for-profit activity within the park
- Establish appropriate permits and policies for non-profit group and individual use of the Park within the guidelines established in the MCWD Conservation Easement
- Ensure that the Park and its facilities remain available to all users and are not used exclusively by any single group or entity

Goal:

Manage the Park in a manner consistent with its identity as a Natural Passive Recreation Area.

Objectives:

- Maintain the Park as a nature and wildlife preserve within the guidelines established in the Minnehaha Creek Watershed District Conservation Easement while encouraging and allowing only minimal impact recreational and educational uses
- Provide only facilities and amenities that are compatible with the level of recreational and educational activities intended for the Park
- Provide an inviting impression of the natural character of the Park by planning and implementing shoreline and point-of-access improvements, regular maintenance and provision of tasteful directional or informational signage at strategic locations
- Protect the natural scenic quality of the Park as viewed from internal and external locations
- Define and constantly reinforce the unique character of the Park with every decision and communication related to the Park

Existing Recreation Facilities and Amenities

Docks. Two docks are currently provided at the main entry point of the Park along its southwesterly shore to allow for boating access. Located at the site of the boat landing that originally served the Big Island Amusement Park and later the Veterans Camp, they include a large floating dock suitable to accommodate large craft such as the historic steamer Minnehaha, and a parallel dock for smaller boats. Bulkhead facilities are in place to allow for installation of two additional parallel docks if needed in the future.

The docks are intended to be available specifically for boating access, and are not designed or suited to accommodate fishing, bathing or other activities. Signage was installed in 2009 prohibiting fishing from the docks. Shore fishing is allowed at the Park except within the designated swimming beach area.

Trails. Visitors enjoy more than 1-1/2 miles of informal trails that wander through woods and open meadows within the 56-acre Park. Beautiful vistas of Lake Minnetonka are encountered where the trails traverse the bluffs near the shore. A majority of the trail system is essentially unimproved, with just a few short segments of deteriorated pavement remaining from the amusement park era. The trails are not marked, but are easily followed.

Swimming Beach. A natural swimming beach approximately 200 feet in width is located along the southeasterly shore of the Park. The beach is enjoyed by Park visitors who arrive at the docks as well as recreational boaters who pull their watercraft up to the shore at or near the beach. The beach area is not improved, is not attended by a lifeguard, and is posted “No Life Guard On Duty”.

Regulatory Signage. Signage that could be characterized as primarily regulatory in nature was installed at appropriate locations within the Park in spring 2009, addressing “No Fishing from Dock”; “No Life Guard on Duty”; “No Dumping Allowed”; and general park rules & prohibitions.

Demand for Facilities - Visitor Expectations

Big Island Nature Park has been open for public use since 2006. Although no formal visitor counts have been performed, it has been observed by City staff and others that the number of visitors is relatively low during weekdays but increases on weekends, especially during periods of good weather. Special events or activities such as the Orono Schools’ Big Island Summer Institute and the Minnehaha Big Island Weekend have brought numerous visitors to the Park on occasion. Informal use of the swimming beach area by the Lake Minnetonka Sailing School during weekdays has also resulted in additional use. However, no charter boats have made Big Island Nature Park a destination point, and the City has not sanctioned Big Island Nature Park as a port-of-call except for the Minnehaha, the Sailing School, and the Lake Minnetonka Water Taxi service. Most Park visitors arrive in individual boats. The typical length of stay has not been studied.

Based on the number and types of inquiries received by City staff regarding Big Island Nature Park, a significant share of the general public appears to harbor certain expectations for its

potential uses and amenities. Those expectations include basic sanitation facilities, picnic facilities including tables and grills, the ability to have bonfires, and opportunities for large group events. One possible reason for these presumptions may be the mere fact that it is called a 'Park' and is located in a prominent public location easily accessible via a provided dock. Additionally, some members of the public may view this as a regional facility that they expect will provide the type of amenities they would find at a typical Three Rivers Park District or MnDNR park. Finally, the history of use of the property as a Veterans Camp for more than eight decades has ingrained into past visitors and their families that this is a campground, with all the associated recreational features.

There are a number of actual recent examples of how the limited physical facilities provided in the Park impact potential recreational users:

- During 2009 the operators of the Minnehaha steamboat determined that regular scheduled visits to the Island would not be feasible due to the lack of toilet facilities on the Island, as their scheduling would only allow for stops at 4-hour intervals.
- After the south pavilion burned to the ground in January 2011, the City concluded that the remaining north pavilion building should be removed due to ongoing vandalism. This resulted in no remaining facility being suitable for the Big Island Summer Institute, and Orono Schools has discontinued that program.
- The City regularly receives requests to allow weddings and corporate picnic events at the Park. The lack of sanitation facilities coupled with the provisions of the Conservation Easement and City prohibitions on alcohol use, sound amplification, open fires, and exclusive use of facilities, combine to make it infeasible to hold such large group events.

For all the reasons documented in this Management Plan, Big Island Nature Park is not intended to provide the level of facilities and amenities that some members of the public may desire. **Managing public expectations will continue to be a critical factor in successful management of Big Island Nature Park.**

Proposed Facilities Development

Docks. Bulkheads and concrete aprons are in place to provide for two additional docks at the main entry point of the Park. The need for installation of additional docks is dependent on future levels of demand for boat access to the Park.

Installation of a designated fishing dock is not proposed and has not been requested by the public. Future consideration for a fishing dock must take into consideration a suitable separation distance from the main entry docks and provisions to eliminate conflicts with boaters.

Trails. Because the trails are located mainly within the Natural Area defined by the Conservation Easement, future improvements to the existing trails will be limited to addition of limestone or crushed gravel in selected areas where necessary to provide a stable walking surface.

Potential trail improvements that should be considered and addressed in the future include:

- whether it is feasible or appropriate to extend/improve the trail system westward to connect with the adjacent Three Rivers Park District's Big Island Regional Park
- the potential need to make erosion control improvements where erosion threatens the trail or where erosion is caused by trail, or to consider relocation of trail segments if necessary (Boy Scouts, volunteer project potential)
- ongoing monitoring of trail conditions to remove trail impediments due to exposed rocks and roots or other hazards
- assess the feasibility and requirements for providing handicap accessibility to selected segments of trail
- review the areas along the trails that provide a scenic overlook of Lake Minnetonka and determine whether selective tree trimming may enhance those views

Swimming Beach. Because the beach is not manned by lifeguards or otherwise monitored, and because past and anticipated future users will often arrive by boat and beach their watercraft at the shore, establishment of a defined swimming area will be considered. Use of ropes and buoys, signage, or other demarcation methods will be investigated.

Entry Office' Structure. The small 256 s.f. building and attached deck near the main entry dock area has been retained for potential future use as an entry portal to the Park. The building has been in its current location since 1997-98 and served the veterans Camp as an entry point for camp visitors. The structure is currently in disrepair. An assessment of this structure will be required in order to determine its future use and whether it can be suitably renovated and secured to serve some yet-to-be-determined entry-point function.

Directional and Interpretive Signage. Additional signage contemplated for the Park includes signage that identifies and interprets various natural and cultural features; trail markers; and demarcation of the boundary between the Natural Area and the Recreation Area. Directional signage should be considered, possibly including a simple map of the Park. An assessment of the need and appropriate format of each of these signage elements should be conducted prior to any action.

Park Use Regulations

The Orono City Council in June 2010 adopted an ordinance providing special regulations for Big Island Nature Park. The ordinance is included in its entirety in **Appendix A** of this Management Plan. Specific elements of the ordinance include:

- a "Purpose" statement that reflects the intent of the Park as a natural area for passive recreation and resource preservation
- provisions regarding park hours, requiring permits for special events, prohibiting exclusive use of site or facilities
- prohibitions on alcohol, gambling, littering, glass containers, dangerous weapons, fireworks, open fires (but portable propane grills allowed), commercial activity, sign

posting, sound amplification, motorized vehicles and bicycles, engine-powered models and toys, overnight camping, etc.

- limitations on animals and pets, hunting & fishing, etc.
- prohibitions on vandalism, disturbance of natural resources, interference with Park property (much of this is from the Conservation Easement language)
- enforcement provisions

With regard to formal or large group events, the ordinance specifically prohibits the reservation or designation of facilities for exclusive use by any individual group or organization. Removal of nearly all buildings on the property has reduced the likelihood of requests for exclusive use; however, special events, private events or large assemblies that meet certain criteria established by City Code will be required to obtain a Special Event Permit.

Recreational Use and Visitor Services Recommendations

- 1) An assessment of the need for additional public boat docks in the future should be based on actual visitor counts and usage patterns in the Park. The existing concrete bulkheads should remain in place to allow for easy installation if a determination is made to add docks.
- 2) Consideration should be given to the installation of a dedicated seasonal fishing dock.
- 3) The existing trail system should be reviewed to determine whether and at what locations improvements or modifications may be necessary to increase connectivity, improve safety, manage erosion, and allow for enhanced handicap accessibility.
- 4) Methods and advisability of marking the beach and swimming areas to avoid user conflicts should be considered.
- 5) An assessment of the physical condition and potential uses of the existing entry portal building should be conducted to determine whether that structure should be renovated or removed. Absent that entry building, a kiosk or some method should be employed to provide visitors information about the Park near the main docks.
- 6) Active recreational facilities such as playground equipment, sports fields and the like are not appropriate in the context of Big Island Nature Park and should not be considered.
- 7) Because informal picnicking is one of the intended uses of the Park, consideration should be given to the development and maintenance of grassy picnic sites within the defined Recreation Area, but the provision of benches or picnic tables should be avoided unless they can be made vandal-proof.
- 8) Interpretive, directional and regulatory signage should be developed and installed throughout the Park at appropriate locations. Signage should be consistent in style to create a sense of uniformity and cohesiveness to the Park.
- 9) A methodology and ongoing program should be established for identifying who is using the Park, how they are using it, what areas receive the most use, and to identify the goals and expectations of visitors. This information will be valuable in future management and planning for the Park.

VI. SITE AND FACILITIES MANAGEMENT

Site and Facilities Management Goals

Goal:

Improve access to and mobility within the Park

Objectives:

- Provide docks and landing areas to allow for public access by boat
- Manage pedestrian pathways to respect the natural character of the Park
- Identify areas of the Park that will be made accessible to the disabled, and provide the minimum level of paved or hard surfaces necessary for the provision of disabled accessibility
- Establish, post and publicize Park hours, rules, limitations, etc.

Goal:

Provide the level of recreational and service facilities necessary for safe public use of the Park while limiting the need for intensive operation and maintenance activity

Objectives:

- Develop a set of design, maintenance and operation guidelines
- Develop partnerships for maintenance and operation of the Park
- Identify specific approaches to address resource protection within the operation and maintenance programs
- Establish an emergency helipad location
- Eliminate or avoid introducing attractive nuisances that will be used for unintended and unwanted purposes

Park Boundary and Protected Areas Demarcation

The Park property currently exists as three separate abutting tax parcels. The northerly 6-acre parcel, PINS #14-117-23 34 0001 is within the Minnetonka School District (276). The central 46-acre parcel, PINS #23-117-23 21 0001, and the westerly 5-acre parcel, PINS #23-117-23 22 0001, are within the Orono School District (278).

Park external boundaries are primarily defined by the shoreline, with the exception of the westerly boundary which is within the narrow neck of land abutting the Three Rivers Park District's Big Island Regional Park property. The need for park boundary signage along the shoreline should be considered. Such signage at the westerly land terminus of the property would be appropriate.

Two management zones have been designated within the Park - a Recreation Area and a Natural Area, with differing characteristics in terms of allowed uses and maintenance practices. The need for visually defining the boundary between the Recreation Area and the Natural Area may become more acute as public use of the Park increases. For the visiting public, low impact signage along the boundary may be considered; however, other options will be explored if and when the need arises. It is incumbent upon the City to ensure that its employees and agents can readily identify the limits beyond which certain maintenance practices may not be employed.

At this time there are no plans to expand the Park via acquisition of additional property. The only abutting property is owned by Three Rivers Park District as part of its Big Island Regional Park.

Mapping, Survey Needs

An ALTA/ACSM Land Title Survey of the property was completed for the Minnehaha Creek Watershed District in 2006 to facilitate and document the elements of the Conservation Easement. The survey includes 2-foot contour topography, delineated wetland boundaries, and floodplain boundaries, as well as the location of then-existing buildings and structures, walking trails, surface evidence of utility lines, and other man-made features.

Electrical wiring was buried in 2009(?) but has not been accurately mapped. Other buried infrastructure includes remnants of a water distribution system which is currently not in service and not mapped; and septic system components, also not in service, for which fairly detailed design and location data is available but not surveyed.

Americans with Disabilities Act (ADA) Requirements

(To be researched and addressed)

Buildings

At the time of City acquisition the site contained 13 buildings and one house trailer in various states of repair, depicted and numbered on the ALTA survey, as follows:

- 1) South hill picnic shelter - wood frame, 30'x50'
- 2) South hill toilet building - wood frame, 12'x12'
- 3) Northwest picnic shelter/toilet building - wood frame, 30'x75'
- 4) Entrance office building - wood frame, 10'x10'
- 5) Storage building - concrete block, 30'x28'
- 6) Storage building - concrete block, 24'x26'
- 7) Storage building - concrete block, 22'x24'
- 8) Shed - wood frame, 16'x16'
- 9) Main dining hall - wood frame, 90'x100'

- 10) Cabin - wood frame, 20'x20'
- 11) Cabin - wood frame, 24'x24'
- 12) Cabin - wood frame, 16'x18'
- (13) Storage building - 20'x20' (depicted on ALTA survey but not numbered)
- (14) A 12'x36' trailer house was also located adjacent to building (8)

Status of Buildings

The City determined shortly after purchasing the property that some existing buildings would be removed while others would be retained and renovated. Buildings intended to remain on the site included the two picnic shelters, the south hill toilet building, and the small office building at the entrance (Buildings 1, 2, 3 and 4) as well as one of the north hill cabins (12). Two of the block buildings (6 and 7) were also considered for retention. Hazardous materials surveys for the buildings to be removed were conducted by Peer Engineering in 2006. These buildings were subsequently demolished as noted in the following table:

ALTA Map #	Building Description	Year Demolished
5	<u>Block Storage Building</u>	2006
8	<u>Shed</u>	2006
9	<u>Main Dining Hall</u> - The premier building on the site was the main dining hall which was originally constructed in the 1920s, but by the late 1990s had fallen into severe disrepair, and consequently had been boarded up and unused for a number of years prior to the City purchase. At the time of acquisition, there was some discussion regarding attempting to save the structure, but the cost of refurbishing it for public use was prohibitive, and retaining it "as-is" was a liability from a safety perspective. After completion of a hazardous materials survey by Peer Engineering, the dining hall was razed in June 2006. The site was graded to match the surrounding topography.	2006
10	<u>Cabin</u>	2006
11	<u>Cabin</u>	2006
(13)	<u>Storage Building</u>	2006
(14)	<u>Caretaker Trailer</u>	2011

The remaining buildings were initially kept as-is or renovated to the extent needed to make them functional for continued use. In the ensuing years, various factors resulted in removal of most of these structures. Following is a summary of the current status of each of the buildings originally intended to remain:

South Hill Picnic Shelter (1). ***(Destroyed by fire 2011)*** This building was intended to be retained. It served as the base of operation for the Orono Schools Big Island Summer Institute during 2006-2010. It suffered roof damage from a storm in July 2008 which was subsequently repaired. On January 27, 2011 the shelter burned to the ground in what was deemed to be an arson fire.

South Toilet Building (2). (***Demolished 2008***) The building was renovated as necessary to make it functional in 2006. In summer 2008 the facility was vandalized and sanitary fixtures were destroyed. The Big Island Committee in August 2008 concluded that due to the City's lack of ability to ensure the security of the facility, the toilet building should be demolished as it had no further function and would become an attractive nuisance. The septic system is still intact should a future decision be made to build a new facility.

Northwest Picnic Shelter/Toilet Building (3). (***Demolished 2011***) Intended to remain in use, this structure was renovated in 2006 to make it functional. However, vandalism to the toilet facilities during the winter of 2007-8 convinced the City to consider actions to "armor" the building by replacing existing wood frame walls with concrete block walls and secure lockable doors. Building materials were delivered in March 2008 before ice-out, with actual renovation expected later that year. Continuing vandalism in 2008 destroyed virtually all fixtures within the building before actual construction was begun. The Committee reviewed the alternatives and concluded that even if the sanitary facilities were reconstructed in a bunker-like fashion, vandalism was likely to continue. In August 2008 the construction was called off, after the conclusion was reached that efforts to continue to provide sanitary facilities would be futile. The building subsequently remained unlocked and minimally functional for public picnic use, with no sanitary facilities in place. In January 2011 additional vandalism destroyed the remaining sanitary fixtures in the building. The inability to secure this building made it an attractive nuisance, and upon recommendation of the Committee, the City Council in February 2011 ordered it razed.

Entrance Office (4). This 16' x 16' building with its 300 s.f. attached deck is the only structure remaining on the property. Moved to its current location in 1997-98, it is currently in disrepair with windows broken and door non-functional. To be usable for its intended purpose as an entry point to the Park will require substantial renovation.

Block Storage Buildings (6 and 7). (***Demolished 2011***) The Big Island Committee in November 2011 noted that these two buildings were in complete disrepair, could not be economically renovated to provide for secure storage, and had no intrinsic historic value, and recommended that they be demolished.

North Hill Cabin (12). (***Demolished 2011***) This was initially intended to serve as an example of the type of cabins used by the veterans when they operated the camp. In reviewing the status of all buildings on the site after the 2011 shelter fire, the Committee concluded that this cabin was in a condition such that it could not reasonably be secured from future vandalism and was likely to become a liability if allowed to remain in place. The Committee subsequently recommended its removal.

The 2011 fire that destroyed the south picnic shelter was perhaps "the straw that broke the camel's back" in the City's attempts to maintain buildings and infrastructure on the Park property. The history of vandalism to the Park property had time and again been discussed by the Committee over the prior three years, and had gradually resulted in a consensus that maintaining structural facilities at the Park was no longer a reasonable expectation. The costs of repairing, replacing and providing security for the structural elements of the park were seen as outweighing their value to the public. Removing the structures would be consistent with the City's vision of Big Island Nature Park as a passive natural recreation area. The Committee recommendation in February 2011 to remove all remaining structures save for the entrance office was not reached lightly, and was tempered by the fact that significant efforts had been

made by the City over the previous 5 years to retain and make appropriate use of the existing facilities, but it appeared to be a losing proposition.

In addition, the Committee recommended that the electrical transformer be removed and electrical lines be deactivated and abandoned. The Committee also concluded that no purpose would be served by maintaining the well and septic systems on the site.

Transportation Facilities

It is the intent of the City of Orono to provide public accessibility to Big Island Nature Park. The Park is part of an island completely surrounded by Lake Minnetonka, and as such can only be accessed by water or air. Bridges to the mainland do not exist and are neither intended nor proposed. The Park is not large enough to accommodate landing facilities for fixed-wing aircraft, and provision of facilities for public access by helicopter other than for emergency services would be in conflict with the intent of the Park and the provisions of the Conservation Easement. Therefore, the primary access to the Park is via watercraft during the spring, summer and fall seasons. Access to the perimeter of the Park via motorized vehicles during the winter when the lake is frozen is feasible, but use of motorized vehicles within the Park property is prohibited.

Docks, Lake Access

Access to the Park via watercraft will be accommodated via the use of public docks installed on a seasonal basis at designated locations. At certain locations along the shoreline of the park where lake bottom conditions are suitable, beaching of watercraft will be allowed. It should be determined whether such locations should be identified by signage, and whether there are locations where such use should be prohibited.

Existing Docks. During 2006-2007, a floating dock on loan from Minnetonka Portable Dredging was installed at the property to accommodate the ongoing work at the Park as well as recreational visitors. The City at that time determined it would be appropriate to provide dockage suitable for use by the steamer Minnehaha.

In early 2008 the City surveyed the shoreline at the landing site and processed a variance application for installation of 4 concrete bulkheads to which floating docks with ramps could be attached. The bulkheads and the main dock and pilings (plus a smaller ancillary dock) were installed in spring 2008, and the initial visit to the Park by the Minnehaha occurred on June 25, 2008. In 2009 the City installed a second large floating dock. Although bulkheads have been installed to accommodate as many as 4 docks, it is undetermined at this time whether more than two docks are necessary. Signage was added to the docks in 2009 prohibiting fishing from the docks.

Dock Storage. Winter storage for the docks has been handled by floating them to a protected cove southeast of the landing area. During the spring of 2010 the docks were unleashed from their winter mooring by vandals and only because of favorable prevailing winds they did not end up floating around the bay. The City should investigate whether suitable alternatives exist for winter storage of the docks to avoid this issue in the future.

Dock Maintenance. Installation of docks and tie-up posts will occur in the spring, and removal of docks and posts in the fall to a suitable winter storage location. Necessary repairs and maintenance of the docks and their associated land-based bulkheads, signage, etc. will be reviewed and completed on an as-needed basis. Dock installation and maintenance will be one of the primary ongoing costs associated with operation of the Park.

Emergency Access by Air

An emergency helicopter landing zone has been established directly north of the main dock area at the south end of the Park. Emergency service providers have been advised of the GPS coordinates of the site, and power lines have been buried to eliminate overhead lines as a hazard.

Trail and Walkway System

Pedestrian access within the Park is primarily via unimproved trails and a few areas of deteriorated asphalt or concrete walkways, in some instances being the remains of the promenades that served the Big Island Amusement Park a century ago. The locations of the major trails were mapped on the 2006 ALTA survey.

Existing Trails. Approximately 1.7 miles of informal trails wind throughout the Park, most of which are unmarked but are readily identifiable by worn pathways. A majority of the trail system has not been improved other than occasional removal of overhanging branches or downed trees blocking the pathways. While the remnants of former paved walkways are generally located on gentle grades, the unpaved trails follow the existing topography and have not been graded. As a result, there are sections of informal trail that are relatively steep and winding, accessible to pedestrian travel but not suited for wheelchairs. In addition, a few sections of these trails have been eroded or are fairly near bluff areas, and may require future attention to maintain accessibility or ensure their continued usability. Along the southeast shore a section of the trail crosses a small drainageway which incorporates a culvert that will have to be maintained on a regular basis.

Proposed Trail Improvements. One of the primary goals for Big Island Nature Park is to improve access to and mobility within the Park. Because motorized vehicles and bicycles are not allowed on the property, the primary need for trails is for pedestrian access. To that extent, the existing trail system generally provides pedestrian access to all portions of the Park property; therefore, construction of additional trails is not warranted at this time.

Wheelchair accessibility via the existing trails is severely limited because only short segments of trail, mostly near the boat landing, are paved. Most of the paved sections are very old and in poor condition.

A majority (80%) of the existing trail system is within the Natural Area as defined in the MCWD Conservation Easement, and is subject to certain restrictions that limit the degree of repair or improvement that is allowed. The Easement allows unpaved paths or foot trails to be established and maintained in the Natural Area for non-motorized recreational uses in a manner that does not negatively impact the conservation values of the Park. Selected trails may be constructed of crushed limestone or similar all weather surface capable of supporting handicapped access. As existing paved trails deteriorate, the existing surface materials are

allowed to be replaced with nonbituminous materials such as crushed limestone or similar all weather surface capable of supporting handicapped access.

The Conservation Easement allowed the existing partial concrete sidewalk/trail leading from the dock area up a steep slope to the south hill picnic shelter building, to be reconstructed and/or expanded within the existing trail corridor with concrete or similar material to prevent erosion on the steep slope and/or to provide handicap access to the pavilion building. Since that pavilion has been removed, the basis for trail reconstruction with bituminous or concrete materials may no longer exist.

The portion of the trail system (20%) within the defined Recreation Area is subject to a somewhat less restrictive set of limitations. Existing trails may be maintained or improved but may not be widened, lengthened, or relocated without the prior written approval of the MCWD. Additional unpaved paths or foot trails may be established in the Recreation Area for recreational uses.

Installation of benches or picnic tables along the trails is not anticipated due to maintenance and vandalism concerns.

Motorized Vehicles Policy

While motorized vehicles (automobiles, 4-wheelers, snowmobiles, etc.) are generally unable to directly access the Park during ice-free months, winter frozen lake conditions make the property readily accessible to automobiles as well as snowmobiles and other recreational conveyances. This accessibility is problematic in that, although the vestiges of old concrete or asphalt walkways remain, there are no paved roads or designated snowmobile trails in the Park. The topography and wooded character of the park are natural features which tend to be

The use of motorized vehicles on all platted streets on Big Island was prohibited by an action of the City Council in 1971, based on the inability of the City to provide adequate police to protect the public safety; the lack of ability for Orono to maintain and plow roads; and the lack of need of the public to use motorized vehicles on the island. While signage warning of this prohibition was subsequently placed on the platted rights-of-way on the island, the action was never documented by a formal resolution of the Council nor was it codified as a City ordinance. The action also did not prohibit use of motor vehicles on private property.

attractive to motorized recreational vehicle users. Uncontrolled use of motor vehicles within the park property could be expected to have severe detrimental effects on the natural features intended to be protected via the Conservation Easement.

For these reasons, operation of motorized vehicles within the park property must be curtailed to the greatest extent possible. Upon acquisition of the property as parkland, the Big Island Nature Park became subject to Orono’s general park ordinances, which have prohibited the use of motorized vehicles for many decades. Additionally, the regulations adopted by the City Council specifically for Big Island Nature Park via City Ordinance No. 74, 3rd Series on June 28, 2010 prohibit the operation and use

of motorized vehicles in the park, with the exception that the City or its designees may utilize such vehicles as necessary for park operations, maintenance, emergency vehicles or handicap accessibility.

Despite ordinances that prohibit motorized vehicles, ongoing vandalism activity suggests that motorized vehicles provide a level of winter access that enables such activity to occur

relatively unhindered. The 8,000 feet of shoreline provide many locations where vehicles are able to access the property from the Lake. Erection of a barrier along the shoreline sufficient to deter vehicular access would be cost-prohibitive. Limited financial resources make it impossible for the City to provide a level of police presence sufficient to discourage all motorized vehicle activity. Even with the assistance of the Hennepin County Sheriff's Water Patrol and MnDNR Conservation Officers, the Park cannot be under constant monitoring.

Options for discouraging innocent as well as ill-intended motorized vehicle activity in the Park should be investigated, and may include use of one or more of the following:

- Public education via local media
- Additional signage along the park perimeter
- Establishment and publication of steep penalties for violations

Sanitation Facilities

Big Island Nature Park is not served by municipal sewer or water services, as these utilities have never been extended to any properties on Big Island from either of the two adjacent cities from which such service might originate. The high cost of installing sewer or water lines beneath the lake bed, the relatively few properties that could be assessed for those costs, and the difficulty of maintaining such facilities without service vehicle access, are factors which make such installation financially impractical.

Sanitation facilities in the Park at the time of City acquisition included a 6" diameter, 376' deep water well terminating in Jordan sandstone; water distribution system to a number of buildings; and two functional septic systems, one constructed in 1991 serving the shelter/toilet building northwest of the dock area with a design capacity of 1250 gallons per day, and a second constructed in 1999 serving the south hill toilet building with a design capacity of 1260 gallons per day.

The existing well was sealed in 2006 and a new 4" diameter, 143' deep well terminating in gray sand was drilled in 2006 to replace it. The new well is located adjacent to the former site of the northwest picnic shelter building. This well was initially connected to an existing underground water distribution system which in 2006 was revised to serve just the northwest picnic shelter, the south hill toilet building, and the caretaker's cabin. However, at the time the south hill toilet building was razed, all water distribution lines were removed except for the direct connection to the adjacent shelter toilets. In 2010 the well was shut off due to damage to the shelter toilet facilities from vandalism. A final determination as to the future of the well has not been determined. The options are to maintain it in a functional condition, which would require electrical functionality and a secure structure to house the pressure tank; obtain a well maintenance permit from the Minnesota Department of Health but not keep the well in service; or properly abandon it.

The two septic systems on the property each include septic tanks discharging to gravelless trench drainfield systems. While at this time the systems remain intact and are assumed to be suitable for continued use should they be needed in the future, the tanks will have to be inspected, pumped, and a determination made as to whether they should be filled with sand and abandoned in place.

Utilities and Other Infrastructure

At the time the remaining buildings were demolished in 2011 a determination was made to deactivate the electrical lines serving the property. The main line serving the property was deactivated in March 2011 and the electric meter returned to Xcel. There is no electrical service to the Park at this time. Electrical service could be reestablished in the future if necessary. The property is not served by telephone service, natural gas, or cable television.

Site and Facilities Security

Buildings. The City initially intended to permanently retain the two main pavilions or park shelter buildings, the toilet building on the south hill, one or two storage buildings, and the small entrance building by the docks. By 2007 these basic facilities had been placed in serviceable condition, the north pavilion and its toilet facility were operational, the south toilet building had functional facilities, and the south pavilion was serving the Big Island Institute as a base of operation.

Unfortunately, during the winter of 2007-8 the Park facilities began to experience what was to become ongoing vandalism. The toilet facilities in the north pavilion were ransacked in 2008, and the City made plans to ‘armor’ that portion of the building by replacing the wood frame walls with concrete blocks and an impenetrable doorway system. Before that work could be commenced, the south toilet building was trashed. After many debates over the long-term feasibility of maintaining sanitary facilities at the Park, the City eventually determined that provision of permanent toilet facilities was no longer a possibility, and the potential for use of portable toilets was seen as an open invitation to vandalism and not advisable. All toilet facilities were subsequently removed, and the south toilet building demolished.

The feasibility of maintaining the remaining buildings continued to be a constant concern. The entry building near the docks had its windows broken; the pavilions were left open to discourage vandalism. Over the winter of 2009-10, picnic tables on the property were dragged out onto the lake, where they became a hazard and had to be retrieved. Many other tables have disappeared over the years.

The fire that destroyed the south shelter in 2011 resulted in decisions to remove all remaining buildings at the park, with the exception of the small office structure near the docks. That building is not currently secured, and its future use as an entry portal to the Park remains to be established.

An additional item of concern has been how to preserve historical man-made and architectural elements remaining on the property. The most visually prominent remnant is the promenade staircase near the docks, the original entryway to the Amusement Park constructed more than a century ago. The concrete staircase is deteriorating badly due in part to vandalism by vehicles as well as the ravages of time. Future discussions are expected to consider whether and how this should be restored.

Fencing. The only area of the Park that has fencing is at the bluff on the south hill. Bluff erosion over many decades left the original fence at the precipice rather than setting some distance back from it. Through efforts of the Minnehaha Creek Watershed District the bluff underwent a vegetative restoration program in 2009-10 which is expected to minimize future erosion. In 2010 the City replaced the fence at the top of the bluff with a higher fence set back 10-15' from the edge to enhance safety for park visitors.

Signage. In 2009 the City erected a variety of regulatory signs on the property, primarily at the two entry points. These signs are intended to inform visitors of Park rules. In the spring of 2010 it was found that many of the signs installed the previous year had been vandalized or pulled out of the ground (along with their concrete bases) likely by chaining or roping them to a snowmobile or other vehicle. These signs are being re-installed with more substantial footings with a goal of avoiding this problem in the future. Future interpretive signage for the Park will be considered as the Management Plan is implemented.

Grounds Maintenance. After the initial cleanup of the property which was ongoing into 2008, grounds maintenance has included minor clearing of brush encroaching the trails, removal of selected dead trees, and occasional mowing of the main promenade area that is not within the Conservation Easement. The City in 2009 hired a part-time Community Service Officer (CSO) to provide an authoritative presence on the Island during peak visitor times and assist in necessary ongoing maintenance, trash removal, etc. The City also purchased a boat for transporting the CSO to and from the Island. While having a CSO at the Park was generally a positive experience, the value of continuing this practice for future years was reconsidered after the 2009 season, given that there was not enough activity to justify that position, and no CSO was hired for the 2010 or 2011 seasons.

At the current time there is no dedicated maintenance shop or equipment storage facility on the property. All maintenance equipment and supplies must be brought in and removed by boat or barge, which results in increased maintenance costs and added man-hours. Consideration should be given to the provision of a securable storage unit on site, such as a small steel cargo container.

Ongoing Site and Facilities Maintenance

Big Island Nature Park requires a variety of ongoing maintenance activities in order to ensure public accessibility and safety as well as to enhance visitors' recreational experience. These activities include but are not limited to:

- Annual installation of docks and pilings in the spring
- Ongoing monitoring of dock condition, addressing maintenance issues as needed
- Removal of docks/pilings in the fall and providing for their winter storage
- General trash cleanup on at least a weekly basis or more often as necessary during the boating season
- Mowing specified areas on a weekly or as-needed basis
- Trail maintenance
- Trimming or removal of hazardous trees within the parameters of the Conservation Easement

- Cleanup after storms
- Maintenance of any beach facilities provided, such as buoys or signage
- Maintenance of general signage throughout the Park
- Potential buckthorn and poison ivy management (to be determined)
- Maintenance of office structure near docks - painting, repair as needed, etc.
- Water well maintenance (per future determination)
- Shoreline and inland erosion control as necessary
- Other undefined maintenance

Site and Facilities Management Recommendations

- 1) An assessment of the need for Park boundary signage should be made - along the western land boundary with Big Island Regional Park, and along the shoreline.
- 2) A system of demarcating the boundary between the Recreation Area and the Natural Area should be devised to ensure employees and agents of the City can readily identify the limits beyond which certain maintenance practices may not be employed.
- 3) A determination should be made regarding whether ADA requirements are applicable for maintenance of existing facilities and for facility improvements.
- 4) The existing well and septic system should be assessed for potential future use, and either properly abandoned or made safe and secure until they are needed in the future.
- 5) The potential locations around the Park perimeter where boats are likely to be beached should be identified and assessed as to appropriateness for that use; signage prohibiting beaching should be considered at locations where beaching would not be appropriate.
- 6) Park usage levels and dock access demand should be monitored on an ongoing basis to determine when or whether additional docks should be installed.
- 7) Consideration should be given to whether the current method of winter storage of docks is acceptable or if alternatives exist.
- 8) Existing trail conditions should be regularly monitored and appropriate actions taken to maintain trail accessibility and ensure their continued usability. Where necessary and where allowed by the Conservation Easement, trails should be provided with appropriate surface materials to allow for continued safe usage.
- 9) Installation of benches or picnic table is not anticipated due to maintenance and vandalism concerns; any benches or tables installed should be constructed in a manner that minimizes the potential for vandalism.
- 10) Options for discouraging motorized vehicle activity in the Park should be investigated and implemented, such as public education via local media, additional signage along the park perimeter, establishment and publication of steep penalties for violations, or other methods.
- 11) Restoration of the concrete promenade entry staircase near the docks should be considered, taking into account its historic value as well as its relationship to the current intent for use of the Park.

- 12) Consideration should be given to the provision of a securable storage unit on site, such as a small steel cargo container, for storage of maintenance equipment and supplies.
- 13) The City should establish a budget for ongoing maintenance and improvements of Big Island Nature Park, and formally establish staff responsibility for ensuring performance of all necessary management and maintenance activities.
- 14) The City should not rely strictly on volunteer efforts for general maintenance activities such as trash removal, etc.

Acknowledgement

Former Orono Mayor Gabriel Jabbour coordinated the initial cleanup efforts at the time Big Island Park was acquired by the City, and with the assistance of many volunteers completed



new well and water systems, refurbished restroom facilities, removed unsafe structures and equipment, and removed many tons of general debris. The amount of debris accumulated throughout the 57-acre property over many decades was far in excess of that anticipated. Care was taken to avoid disturbance of the natural amenities of the site during demolition and debris removal. The significant contributions of volunteers who donated their time, talents, effort and equipment toward improving Big

Island Nature Park totaled the equivalent of more than \$350,000 in value.

VII. PARTNERSHIPS AND PUBLIC INVOLVEMENT

Partnerships

Many opportunities exist for partnering with the community to protect, preserve and improve Big Island Nature Park and enhance the visitor experience. Current partnerships include:

- Partnership with the Minnehaha Creek Watershed District (MCWD) to accomplish acquisition and protection of the Park, including joint management of the Park's natural resources via a Conservation Easement which prohibits activities that could be detrimental to those resources. Projects in which the MCWD has either coordinated or been involved include shoreline stabilization using rock rip-rap and native vegetation establishment; biological control of leafy spurge via flea beetle release in partnership with Hennepin County Environmental Services (HCES); and planning for potential wetland restoration.
- Partnering with the Museum of Lake Minnetonka, operators of the historic steamboat *Minnehaha*, in providing visitor access to Big Island Nature Park for its grand opening in June 2008 as well as for additional events.
- Working with the Hennepin County Sheriff's Water Patrol in providing enhanced enforcement at the Park.
- Lake Minnetonka Conservation District
- Minnetonka Portable Dredging
- Clean-up crews organized by Gabriel Jabbour
- Minnesota Department of Natural Resources
- Three Rivers Park District

Volunteer Opportunities

Big Island Nature Park has the potential to provide a number of opportunities for volunteer projects and community stewardship. At the same time, the remote location of the Park adds a level of complexity to the coordination of volunteer efforts. Following are general guidelines for future management of volunteer activities within the Park:

1. Building on the current Big Island support network, formally establish a volunteer organization (such as "Friends of Big Island Nature Park") with key persons who will assist the City staff in identifying and coordinating volunteer-appropriate projects.
2. Utilize volunteers and partnerships as much as possible. Their assistance can provide a valuable service to the park, allowing for projects to be completed that could not be done by City staff alone, and producing long-term benefits to the Park and its resources.
3. Project assessment and review should be completed by City staff and subject to City Council and MCWD approval. If a project is not appropriate, staff should work with volunteers to modify it if possible. Occasionally a project may be turned down due to limited time, funding, inappropriateness, or other reasons. The City should prepare a list of suggested or approved volunteer projects.

4. As part of formalizing a program for use of volunteers, the City should assess the risks and legal liabilities involved and take appropriate measures.
5. Project coordination, whether by City staff or a volunteer project manager, should include appropriate direction to volunteers, provision of any special training or background information to successfully complete the project, and reporting of project status on a regular basis.
6. The City should consider a Volunteer Recognition Program as an incentive or reward for volunteer efforts.
7. Special emphasis should be given to involving schools, local civic groups and environmental organizations in any volunteer programs.
8. The City should not rely strictly on volunteer efforts for general maintenance activities such as trash removal, etc.

Tourism

As a passive recreation area, Big Island Nature Park can fulfill only a limited level of visitor needs for a variety of recreational activities. Management of visitor expectations will result in a better visitor experience and assist in preserving the natural resources of the Park. Other public and private facilities in the area that can meet the more active recreational needs of Lake Minnetonka visitors should be promoted. Actions to accomplish this include City staff recommendation of other facilities, and finding ways of cooperating with operators of those facilities; cooperating with area chambers and other local tourism groups to promote the Park's amenities; and promotion of the Park's features and limitations via Lake Minnetonka marinas and other lake-related businesses.

VIII. ADMINISTRATION AND OPERATION

Staffing

Maintenance

The City of Orono owns and manages more than 20 parks and recreation facilities located throughout the City. Other than the Orono Municipal Golf Course, Orono's parks are not staffed, and park maintenance is performed by the Public Works Department staff or via private maintenance contracts.

The City of Orono is committed to protecting the Big Island Nature Park's natural resources, providing appropriate recreational and educational opportunities, and ensuring a safe user experience. The remote location and limited accessibility of Big Island Nature Park, while being highly attractive to the public, present a variety of operational challenges in fulfilling this commitment. These challenges include the provision of necessary basic ongoing services such as litter collection and trash removal, maintenance of grounds and other facilities, and emergency repairs. While the removal of nearly all Park buildings has significantly reduced the need for ongoing building maintenance, other maintenance activities generally have been performed on as-needed basis rather than on a regular schedule.

Additionally, to date the City has relied to a certain extent on volunteer efforts to accomplish basic maintenance services. However, it is not in the City's best interests to continue indefinitely to rely solely on volunteer efforts. While opportunities for volunteerism should be encouraged with regard to interpretive programs or specific Park improvement projects, volunteers should not be relied on for basic Park maintenance. The City should consider establishment of and provision of budgeting for dedicated staffing to ensure that Big Island Nature Park continues to be maintained on a regular basis. That staffing could be in the form of additional part-time or temporary staff, or could simply be a formal assignment or re-distribution of duties among existing Public Works employees.

Programs/Activities/Projects

Public use of Big Island Nature Park is essentially self-directed by Park visitors, as there are no programmed activities requiring staffing. The limitations on individual and group activities imposed by City ordinances and by the Conservation Easement (**see Appendices A and C**) are intended to promote passive recreational uses that generally require minimal if any program staffing. All recreational uses of the Park are expected to be self-sustaining. To the extent that organized activities are allowed, permitted or organized by the City, short-term program staffing needs will be dealt with on a case-by-case basis. Programs or projects involving the use of volunteers will require some level of City coordination and direction.

Funding and Revenue

Big Island Nature Park is operated as an element of the City of Orono park system. The administration, operation and maintenance costs for the Park are funded from the City's general park maintenance budget. Initial operating and cleanup funding for the Park was obtained from proceeds of the original bond sale used to purchase the property in 2005. This

source of funding has in the ensuing years been completely expended. Because there are no program fees or user fees associated with the Park, the Park generates no revenue.

Operating expenses for the Park have not been separately budgeted in the past, although there are certain fixed costs that will recur annually, such as dock installation/removal and trash pickup and removal. The cost of boat rental or owning & maintaining a boat for transportation to and from the Park must also be factored into the budgeting process for annual operations.

Enforcement

The location of Big Island Nature Park on an island not accessible to land based vehicles presents a number of unique regulatory challenges. Activity on the property is difficult or impossible to monitor via normal policing methods. Unless additional equipment and resources are provided to the Orono Police Department to allow for a regular presence on or around the Park, the City must rely on partnerships with outside authorities who are regularly patrolling Lake Minnetonka, such as the Hennepin County Sherriff's Water Patrol. Additional resources may include Minnesota DNR Conservation Officers and Three Rivers Parks Police.

IX. APPENDICES

Appendix A: Park Rules & Regulations

Appendix B: ALTA Survey

Appendix C: Conservation Easement Agreement between City of Orono and
Minnehaha Creek Watershed District

Big Island Park Management Plan
APPENDIX A - PARK REGULATIONS

The following rules and regulations for Big Island Nature Park were adopted by the Orono City Council as Ordinance No. 74, Third Series, on June 28, 2010 and codified as Orono Municipal Code Chapter 22, Article IV, Special Regulations for Big Island Nature Park:

ARTICLE IV. SPECIAL REGULATIONS FOR BIG ISLAND NATURE PARK

Sec. 22-102. Purpose

Through mutual collaboration between the City of Orono and the Minnehaha Creek Watershed District, Big Island Nature Park is intended to be preserved, maintained and improved as a passive recreational, ecological and educational asset to the Lake Minnetonka community and its visitors. A Conservation Easement has been established over the Park property that restricts the level of improvements and activities to ensure these goals are accomplished.

The rules within this Article are established as written guidelines for the use of Big Island Nature Park. These rules are intended to ensure that visitors to the Park enjoy a safe and positive experience, while protecting and preserving its natural and cultural amenities.

Sec. 22-103. Regulation of Public Use

- (a) Park Hours. Big Island Nature Park shall be open to the public from 6:00 a.m. to 10:00 p.m. daily. It shall be unlawful for any person to enter or remain in the Park between 10:00 p.m. and 6:00 a.m.
- (b) Closed Areas. Any section or part of the Park may be declared closed to the public by the City of Orono at any time and for any interval of time, either temporarily or at regular and stated intervals (daily or otherwise) and either entirely or merely to certain uses as the City shall find reasonably necessary. It shall be unlawful for any person to enter an area in the Park posted as "Closed to the Public".
- (c) Reservations. No facilities within Big Island Nature Park shall be reserved nor designated for exclusive use by any individual, group or organization.
- (d) Special Events, Private Events, Large Assemblies. No activity for which a permit is required per the provisions of Chapters 38 or 66 of the Orono Municipal Code shall be allowed unless such permit is obtained.

Sec. 22-104. Regulation of General Conduct

- (a) Alcohol. The sale, possession or consumption of alcoholic beverages in the Park is prohibited.
- (b) Gambling. It shall be unlawful for any person to gamble or participate in any game of chance in the Park.

- (c) Nuisance. It shall be unlawful commit any act within the Park that constitutes a nuisance as defined by the City Code or State Statute.
- (d) Littering & Sanitation. It is unlawful to litter or dump trash in the Park. Garbage and recyclables shall remain in the possession of the Park user and shall be removed from the Park upon leaving the Park property.
- (e) Glass Containers. Glass beverage containers are prohibited in the Park.
- (f) Dangerous Weapons/Fireworks. Explosives, slingshots, bows and arrows, and paintball guns are prohibited in the Park at all times. Discharge of firecrackers or fireworks or detonation of explosive devices of any kind in the Park is prohibited.
- (g) Interference with Employee Performance of Duty. It is unlawful for any person to impersonate a park employee or City official or to interfere with, harass, or hinder any employee or City official in the discharge of his/her duties.

Sec. 22-105. General Park Operation Regulations

- (a) Commercial Activity. No person shall sell or by any means advertise for sale any goods, wares, merchandise, liquids, edibles or services of any kind, nature or description in the Park.
- (b) Sign Posting. The posting, distribution and display of private signs, notices, posters or advertisements is prohibited within the Park property.
- (c) Noise/Amplification of Sound. The operation or use of loudspeakers, sound amplifiers, or other devices for the production or reproduction of sound is prohibited in the Park. The operation or use of any radio, phonograph, television or other machine or device for the production or reproduction of sound in such a manner as to be disturbing or a nuisance to reasonable persons of normal sensitivity within the area of audibility is prohibited in the Park. Live bands are prohibited in the Park.
- (d) Fires. Open fires are prohibited everywhere in the Park including the swimming beach. Open fires include campfires and charcoal grills. Propane grills are allowed.
- (e) Motorized Vehicles. The operation and use of motorized vehicles in the Park is prohibited. The City or its designees may utilize motorized vehicles as necessary for park operations, maintenance, emergency vehicles or handicap accessibility.
- (f) Bicycles. The operation of mountain bikes or other bicycles within the Park is prohibited.
- (g) Engine-powered Models and Toys. It shall be unlawful for any person to start, fly or use any fuel- or battery-powered model aircraft, model car, or rocket or like powered toy or model within the Park.
- (h) Animals & Pets. Animals and pets brought into the Park shall be under the owner's physical control and effectively restrained by means of a leash or chain no more than six (6) feet in length, and shall be kept from disturbing persons, wild animals and wildfowl. Animals and pets are prohibited in the swimming beach area. The owner of an animal or pet shall have in his possession at all times equipment for the removal of any feces deposited by such pet; and, upon such deposit being made, shall use such equipment for the immediate removal and sanitary disposition of such feces. Animals

and pets shall not be tethered to a tree, plant, building or park equipment nor left unattended. Horses are prohibited within the Park.

(i) Regulation of Recreation Activity.

- (1) Camping. Overnight camping within the Park is prohibited.
- (2) Picnicking. Picnicking in the Park is allowed subject to the following:
 - (i) No person or group shall assume exclusive use of a picnic site or shelter.
 - (ii) No person or group shall set up temporary shelters, tents, tarps, canopies and other such devices without authorization by permit.
- (3) Swimming. Swimming in Lake Minnetonka is at the individual's own risk. Life guards are not provided.
- (4) Boating & Dock Use. It shall be unlawful to land a watercraft or leave a watercraft unattended except at locations designated for that purpose. The docks at the main landing area are intended solely for the purpose of loading and unloading boats. No overnight docking is allowed. It shall be unlawful to fish, lounge, sunbathe or otherwise loiter on said docks. It shall be unlawful to dive or jump from the docks. It shall be unlawful to use the docks in a manner so as to disturb or endanger any other person.
- (5) Hunting & Fishing. Hunting and trapping are prohibited in the Park at all times. Shore fishing is allowed except in the designated swimming beach area. Fishing from the boat docks at the main landing area is prohibited. It is unlawful to fish in an area designated as a "no fishing" area.
- (6) Golf Practice. Hitting golf balls in the Park is prohibited.
- (7) Research Activity. Research activity within the Park shall be by permit only.

Sec 22-106. Protection of Property, Structures and Natural Resources

- (a) Vandalism. The intentional defacement, destruction, alteration, injury, removal or disturbance of any Park property is prohibited. It is unlawful to intentionally deface, destroy, cover, damage, tamper with or remove any placard, notice or sign, or parts thereof, whether permanent or temporary, posted or exhibited by the City or by the Minnehaha Creek Watershed District.
- (b) Disturbance of Natural Resources.
 - (1) Plant Life. All plant life within the boundaries of Big Island Nature Park is protected. Patrons shall not intentionally alter, mutilate, cut, prune, trim, injure, destroy, or remove any live or dead tree, shrub, vine, wildflower, grass, sedge, fern, moss lichen, fungus or any other member of the plant kingdom or portion thereof, except upon approval by the City of Orono and the Minnehaha Creek Watershed District. No person shall collect or harvest dead wood or plants, or portions thereof, except upon written approval. Introduction of non-native species is prohibited. This section shall not apply to employees or designees of the City of Orono or the Minnehaha Creek Watershed District performing property maintenance or invasive species control under an approved management plan.

- (2) Wildlife. All wildlife within the boundaries of Big Island Nature Park is protected. No person may kill, harm, harass, pursue, hunt, trap, remove, feed or in any manner disturb or caused to be disturbed any species of wildlife, except fishing in designated areas pursuant to the State game laws, except upon written approval of the City of Orono and the Minnehaha Creek Watershed District. No person shall intentionally remove, alter, injure, or destroy habitat used by any species, including but not limited to nests, dams or burrows. No person shall allow a pet to act in violation of these regulations.
 - (3) Harmful or foreign substances. No use of pesticides or biocides is allowed, including insecticides, fungicides, rodenticides, herbicides, or “bug-zappers”, except that this limitation shall not apply to employees or agents of the City of Orono or the Minnehaha Creek Watershed District performing invasive species control under an approved management plan. No person shall place any debris, pollutant or other agent in or upon the Park or adjacent waters. No person shall discharge wastewater or any other wastes in the Park except into designated containers or receptacles, except as authorized by the City or the Minnehaha Creek Watershed District.
 - (4) Topography. No alteration of topography is allowed, including ditching, draining, diking, filling, excavation, dredging, mining, drilling, or removal of earth materials except as minimally necessary to effect a permitted use.
- (c) Interference with Park Property.
- (1) Cultural resources. All sites, objects, buildings, artifacts, implements, and locations of historical, archaeological, geologic, scientific or educational interest of every character located in, on, or under the surface of Big Island Nature Park are protected. No person may remove, excavate, take, dig into, or destroy any site, object, building, artifact, implement or location of archaeological, geological, scientific or historical interest without having first obtained written permission from the City of Orono.
 - (2) Fences, gardening, etc. It shall be unlawful for any person to encroach on Park property with such items as fences or gardens, or to disturb the natural landscape, vegetation, or structures on Park property or otherwise use Park property for private use.

Sec. 22-107. Enforcement

- (a) Compliance Required. All persons shall comply with the Park signs and markers installed by the City of Orono or Minnehaha Creek Watershed District.
- (b) Enforcement Authority. Designated City officials and law enforcement authorities shall have the jurisdiction to enforce any violation of these rules and any state or local laws which occur on Park property.
- (c) Violation a Misdemeanor. Any infraction of a duly adopted Park Rule constitutes a misdemeanor and is punishable by law.
- (d) Permit Revocation. The City shall have the right and authority to immediately revoke for good cause any permit issued for use of the Park.

Big Island Park Management Plan

APPENDIX B - ALTA SURVEY

Big Island Park Management Plan

APPENDIX C - CONSERVATION EASEMENT

CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted by the City of Orono, a political subdivision of the State of Minnesota, ("Orono") to the Minnehaha Creek Watershed District, a governmental body created under Minnesota Statutes Chapter 103D (the "District").

RECITALS:

- A. **ORONO.** Orono is the current fee owner of three adjacent parcels totaling approximately 56.461 acres located in the City of Orono, Hennepin County, Minnesota. That real property is more fully described below as the "Protected Property."
- B. **PROTECTED PROPERTY.** The Protected Property is that real property legally described in Exhibit A and generally depicted on the "Property Map" in Exhibit B. Both exhibits are attached to this Easement and incorporated by this reference.

The Protected Property is currently used for low impact recreational use and nature observation. Existing improvements on the Protected Property include those structures shown on Exhibit B and noted on Exhibit C.

- C. **MINNEHAHA CREEK WATERSHED DISTRICT.** The Minnehaha Creek Watershed District is a governmental body created and operated exclusively for the purposes of water resource protection, conservation and management, including the protection, conservation, and management of related lands. The District is an organization qualified to hold conservation easements under Minnesota law and Section 170(h) of the Internal Revenue Code and related regulations.
- D. **CONSERVATION VALUES.** The Protected Property has the following natural, scenic and open space qualities of significant importance:
- i. Approximately 7,500 feet of undeveloped frontage on Lake Minnetonka, that help protect the water quality of the Lake from impacts of non-point source pollution and provide habitat for flora and fauna. Lake Minnetonka is an important natural resource and recreation area in the Twin Cities metropolitan area;
 - ii. Approximately 7.59 acres of wetlands providing valuable habitat and also deemed important by the District for the protection and enhancement of water quality in Lake Minnetonka;
 - iii. Undeveloped vegetated buffers and uplands, including significant stands of maple-basswood forest, that provide habitat for flora and fauna and protect the property's wetlands from non-point source pollution impacts that could be associated with future development, or other uses of surrounding land including the Protected Property;

- iv. A bald eagle nesting site. Bald eagles are considered a Minnesota Special Concern Species by the Minnesota Department of Natural Resources. and
- v. Offers the general public opportunities to experience, appreciate, and learn about the natural environment through sustainable outdoor recreation and educational opportunities.

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

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

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

- i. 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.
- ii. The Metropolitan Surface Water Act, Minnesota Statutes Section 103B, which specifically identifies the importance of protecting the natural surface waters and groundwaters of the Metropolitan Area.
- iii. Minnesota Statutes Section 103D which provides for the establishment of watershed districts to conserve the natural resources of the State.
- iv. Minnehaha Creek Watershed District Comprehensive Water Resources Management Plan (January 1997 and as amended) which includes the following policies, programs, and projects implementing the Metropolitan Surface Water Act:
 - a. Land Conservation Program (Section IV. H.)
 - b. Regional Wetland Restoration (p.159)
- v. In May, 1972, the Orono Village Council declared via Resolution No. 446 that "the long range highest and best use of Big Island is for park purposes". The 1980 Orono Comprehensive Plan again encouraged public ownership of Big Island for park use. The 2000-2020 Comprehensive Plan supports the passive character of the existing Three Rivers Park District's wildlife sanctuary on Big Island, and suggests that any expansion of parkland on the Island be for the purpose of park uses that are more passive than active.

vi. Suburban Hennepin Regional Park District Master Plan for a System of Parks (adopted July 23, 1998) which calls for public use of the Protected Property.

- F. **CONSERVATION INTENT.** Orono and the District 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 in perpetuity upon the current owner and all future owners of the Protected Property and that conveys to the District the right to protect and preserve the Conservation Values of the Protected Property for the benefit of this generation and generations to come.

CONVEYANCE OF CONSERVATION EASEMENT:

Pursuant to the laws of the State of Minnesota and in particular Minnesota Statutes Chapter 84C and in consideration of the facts recited above and the mutual covenants contained herein and in further consideration of the sum of eight hundred fifty thousand dollars (\$850,000) and other valuable consideration, Orono hereby conveys to the District a perpetual conservation easement over the Protected Property. This conservation easement consists of the following rights, terms and restrictions (the "Easement"):

1. **CONSERVATION PURPOSE.** The purpose of this Easement is to preserve and protect in perpetuity the Conservation Values of the Protected by confining the development, management and use of the Protected Property to activities that are consistent with the preservation of these Conservation Values, by prohibiting activities that significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Easement.

The terms of this Easement are specifically intended to provide a significant public benefit, including, but not limited to:

- a. The protection of a relatively natural habitat of fish, wildlife, and plants as that term is used in section 170 (h) of Internal Revenue Code and related regulations;
- b. The protection of the water quality of Lake Minnetonka, pursuant to the public policies set forth above.
- c. Preserving the open and natural character of the Protected Property for scenic enjoyment by the general public including from Lake Minnetonka and substantial parts of its shoreline.

2. **EASEMENT AREAS.** For purposes of creating land use restrictions and identifying permitted uses on the Protected Property, the Protected Property has been divided into two (2) areas. These are:

- a. "Recreation Area", consisting of those improvements shown on Exhibit B and noted on Exhibit C for which Orono prohibited and permitted uses are described herein in Sections 3, 4.3, and 5; and

- b. "Natural Area", consisting of natural upland, open space, and wetland areas outside of the Recreation Area, for which Orono prohibited and permitted uses are described herein in Sections 3, 4.4, and 5.

These Areas are specifically depicted on the "Property Map" attached hereto as Exhibit B and incorporated herein by reference.

3. **LAND USE RESTRICTIONS.** Except for affirmative rights retained by District under Section 6 of this Easement for the protection and enhancement of the Conservation Values of the Protected Property, the following constraints shall apply to the use of the Protected Property and to Orono and all persons acting under authority or control of Orono.

Specifically, any activity on or use of the Protected Property that would contribute to the destruction of the Conservation Values is prohibited.

Except as specifically permitted in Sections 4 and 5 below and without limiting the general prohibition above, restrictions imposed throughout the entirety of the Protected Property expressly include the items listed immediately below. Additional Orono land use restrictions are further enumerated by Easement Area in Section 4 of this Easement.

- 3.1. Industrial Activity. No industrial use of the Protected Property is allowed.
- 3.2. Events. No organized events may take place which could impair the Conservation Values of the Protected Property. Limitations on organized events may be further developed in the Management Plan, as described in section 4.1.
- 3.2. Residential Development. No residential use or development is allowed except as specifically permitted in Section 4 below.
- 3.3. Introduction Of Non-Native Animals. No introduction of non-native animals or unconfined household pets is allowed. This does not apply to pastured domesticated animals such as horses or other livestock subject to a Management Plan approved by the District in writing. Dogs may be allowed as permitted and conditioned in a Management Plan approved by the District and the City of Orono in writing.
- 3.4. Right of Way. No right of way shall be granted across the Protected Property in conjunction with any use of any land other than the Protected Property.
- 3.5. Mining. No mining, drilling, exploring for or removing of any minerals from the Protected Property is allowed. Land disturbance is permitted as reasonably necessary to prepare a site for an improvement permitted under this Conservation Easement.

- 3.6. Subdivision. The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel, regardless of whether it consists of or was acquired as separate parcels or is treated as separate parcels for property tax or other purposes. This provision does not, however prohibit the division of the Protected Property when a portion of the Protected Property is being conveyed to a conservation organization described in paragraph 9.1 of this Easement.
- 3.7. Density. No portion of the Protected Property may be used to satisfy land area requirements for property other than the Protected Property for purposes of calculating building density, lot coverage or open space under otherwise applicable laws, regulations or ordinances controlling land use. No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission of the District, this Section shall not preclude such transfer of development rights resulting from the voluntary extinguishment of any reserved development rights as provided for in Section 4.1 of this Easement.
- 3.8. Water. There shall be no pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, wetland, subsurface water or any other water bodies, nor shall there be activities conducted on the Protected Property that cause erosion or which would be detrimental to water quality or purity, or which could alter natural water level and/or flow in or over the Protected Property, except as follows:
- a. Activities approved in writing by District that restore or enhance wildlife habitat or native biological communities or that improve or enhance the function and quality of existing wetlands and water bodies on and off of the property.
 - b. Activities undertaken in the exercising of rights reserved under item 4.1 of this Easement that might cause erosion or impact water quality on a temporary basis, provided that efforts are undertaken to limit the impacts of those activities. This does not allow activities that alter natural water bodies, lakes, ponds, marshes or wetlands. All activities permitted hereunder remain subject to the permitting requirements of the District and other governmental bodies.
 - c. Activities approved in writing by District for the repair, construction, and/or replacement of wells and septic systems pursuant to section 5.3 below. However prior approval shall not be required in the case of maintenance and/or repair of existing wells and septic systems that do not materially alter the size and/or design of said systems.
- 3.9. Dumping. No trash, non-compostable garbage, hazardous or toxic substances or unsightly material may be dumped or accumulated on the Protected Property.

This does not prohibit burning, composting, or placement of excess brush or other plant material resulting from activities permitted by this Easement provided that said burning or composting is located at least seventy-five feet from the edge of any wetland or lakeshore and is consistent with the property Management Plan.

3.10. Storage Tanks. There shall be no placement of underground storage tanks on, in, or under the Protected Property.

4. **PERMITTED AND PROHIBITED USES:** Orono and all persons acting under authority or control of Orono; all lessees, agents, personal representatives, successors and assigns; and all other parties entitled to possess or use the Protected Property are subject to the following terms regarding use of the Protected Property.

4.1 Permitted Uses Limited. Permitted uses on the Protected Property are limited to those uses specifically and explicitly permitted in this Conservation Easement, as those uses may be elaborated and conditioned in a written Management Plan agreed to and executed by Orono and the District, which plan may be revised or supplemented from time to time ("Management Plan"). Any Management Plan will be consistent with the following principles:

- a. The Management Plan will authorize no activity that would materially impair a Conservation Value set forth in Recital D.
- b. The Management Plan will authorize no activity prohibited by this Conservation Easement.
- c. The Protected Property will be open to the general public for public uses consistent with the Conservation Values set forth in Recital D, specifically including passive, low-impact and non-motorized recreation; watercraft access; and public education.
- d. Structures and other improvements reasonably necessary for permitted uses, including facilities for access by water, will be accommodated, provided they are designed to avoid material impairment to a Conservation Value set forth in Recital D.
- e. Orono or its designee will retain the responsibility and authority to manage and maintain the Protected Property on a day-to-day basis, and the Management Plan will accommodate activities and improvements reasonably required by Orono to do so.
- f. Orono and the District will work cooperatively and in good faith to develop any Management Plan.

4.2 Existing Improvements. Exhibits B and C to this Conservation Easement, attached and incorporated herein, locate and specify existing improvements on the Protected Property and Orono's rights and responsibilities relating to the

maintenance, replacement and removal of those improvements. Orono has the right to maintain and replace, without increase in dimension, any improvement not listed in Exhibit C and not otherwise explicitly addressed in this Conservation Easement.

4.3 Permitted and Prohibited Uses in Recreation Area.

- a. New structures. New structures may be constructed, maintained and replaced within the Recreation Area only in accordance with the terms of a Management Plan. Said Management Plan shall specifically allow the construction of a single office/residence for a property caretaker which shall not exceed a building footprint of 1,500 square feet.
- b. Roads and Trails. Existing trails may be maintained or improved but may not be widened, lengthened, or relocated without the prior written approval of the District. Unpaved paths or foot trails may be established in the Recreation Area for recreational uses. No other roads or other rights of way may be established or constructed on the Protected Property without the prior written approval of the District and in accordance with the terms of a Management Plan.
- c. Fences. Fences may be constructed, maintained, improved, replaced or removed within the Recreation Area.
- d. Docks. Pursuant to the Management Plan, docks are permitted within the dock envelope identified in Exhibit B.
- e. Additional Structures and Improvements. No temporary or permanent buildings, structures, roads or other improvements of any kind may be placed or constructed on the entire Protected Property except as specifically set forth in this Section and as consistent with the terms of a Management Plan.
- f. Vehicles. Within the Recreation Area there shall be no operation of mountain or other bicycles, dune buggies, motorcycles, all-terrain vehicles, snow mobiles, hang gliders, aircraft, or any other types of motorized vehicles. This prohibition shall also not apply to the use of vehicles in the Recreation Area by the City or its designees as necessary for park operations and maintenance. Nor shall this prohibition apply to the use of emergency vehicles for matters of safety. This provision shall also not apply to the use of personal motorized handicapped vehicles, such as those that would be considered durable medical equipment, on all weather trails as may be permitted in a Management Plan. A golf cart-type vehicle may be operated for handicapped access only on the concrete trail referred to in 4.4 b. above and noted on Exhibit B, pursuant to any limitations set forth in the Management Plan.

- g. Notice. Orono will give the District notice as set out in Section 9.8 of this Easement before beginning any construction activities permitted under this Section 4.3.

4.4 Permitted and Prohibited Uses in Natural Area.

- a. Agricultural Use. No agricultural use is allowed within the Natural Area. This includes tilling, plowing, commercial cultivation of row crops, livestock or horse grazing or production, haying, feedlots, or gardening. Grazing animals may be used as a habitat management tool if pursuant to a property Management Plan approved in writing by the District.
- b. Roads and Trails. If pursuant to a Management Plan, unpaved paths or foot trails may be established and maintained in the Natural Area for non-motorized recreational uses in a manner that does not negatively impact the Conservation Values of the Protected Property. Pursuant to a Management Plan, selected trails may be constructed of crushed limestone or similar all weather surface capable of supporting handicapped access. As existing paved trails deteriorate, Orono may replace the existing surface material with non-bituminous materials such as crushed limestone or similar all weather surface capable of supporting handicapped access. The existing partial concrete sidewalk/trail leading from the planned dock area up a steep slope to the pavilion building, as noted on Exhibit B, may be reconstructed and/or expanded within the existing trail corridor with concrete or similar material to prevent erosion on the steep slope and/or to provide handicap access to the pavilion building. No other roads or other rights of way may be established or constructed within the Natural Area.
- c. Fences. Within the Natural Area, fences may be constructed and maintained, improved, replaced or removed to mark boundaries, to secure the Protected Property, or as needed in carrying out activities permitted by Section 4.2 of this Easement. Notwithstanding, no fences may be located or constructed in a manner that interferes with the use of the Protected Property as habitat for flora and fauna.
- d. Structures and Improvements. With the exception of fences pursuant to paragraph 4.2.c above, and utilities pursuant to paragraph 5.3 below, no temporary or permanent buildings, structures, roads, rights of way, parking areas, effectively impervious surfaces, or other improvements of any kind may be placed or constructed in the Natural Area.
- e. Vegetation Management. Within the Natural Area, the Protected Property may be used to maintain, restore or enhance habitat for wildlife and native biological communities in accordance with a Management Plan. Orono may remove timber and other wood products and otherwise manage the vegetation within the Natural Area in accordance with said Management Plan, except that such approval shall not be required in the case of emergency fire breaks.

Beyond the foregoing, there shall be 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 within the Natural Area except as follows:

- i. In conjunction with a Management Plan as specifically provided for above;
- ii. As reasonably required, subject to District prior and written approval per Section 9.8 of this Easement, to prevent or control insects, noxious weeds, invasive vegetation, or disease. However, said Management Plan shall not be required in the event of emergency situations; or
- iii. As reasonably required to prevent fire, personal injury, or property damage.

f. Topography and Surface Alteration. No alteration or change in the topography of the surface of the Protected Property is allowed within the Natural Area. This includes no ditching, draining, diking or filling and no excavation, dredging, mining or drilling, or removal of soil, sand, gravel, rock, minerals, or other materials, except to the degree absolutely necessary in order to effect a use permitted under Section 4.2 of this Easement. Notwithstanding, with prior written approval of the City and the District, archeological digs may occur in a manner that does not impair the Conservation Values.

g. Vehicles. Within the Natural Area there shall be no operation of mountain or other bicycles, dune buggies, motorcycles, all-terrain vehicles, snow mobiles, hang gliders, aircraft, or any other types of motorized vehicles. This prohibition shall also not apply to the use of vehicles for habitat restoration and property management subject to a Management Plan. Nor shall this prohibition apply to the use of emergency vehicles for matters of safety. This provision shall also not apply to the use of personal motorized handicapped vehicles, such as those that would be considered durable medical equipment, on all weather trails as may be permitted in a Management Plan. A golf cart-type vehicle may be operated for handicapped access only on the concrete trail referred to in 4.4 b. above and noted on Exhibit B, pursuant to any limitations set forth in the Management Plan.

h. Chemicals. Except as specifically authorized for habitat restoration and management in a Management Plan, within the Natural Area there shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, and no use of devices commonly known as "bug-zappers".

i. Notice. Orono will give the District notice as set out in Section 9.8 of this Easement before beginning any construction activities permitted under this Section 4.4.

5. **RESERVED RIGHTS.** Orono retains all rights associated with Ownership and use of the Protected Property that are not expressly restricted or prohibited by this Easement. Orono may not, however, exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property. Additionally, Orono must give notice to the District before exercising any reserved right that might have an adverse impact on the Conservation Values associated with the Protected Property.

Without limiting the generality of the above, the following rights are expressly reserved throughout the entirety of the Protected Property and Orono may use and allow others to use the Protected Property as enumerated immediately below. Additional reserved rights are further enumerated by Easement Area in Section 4 of this Easement.

- 5.1. Right to Convey. Orono may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property, provided written notice is provided to the District in accordance with Section 9.8 of this Easement.
- a. Any conveyance or encumbrance of the Protected Property is subject to this Easement.
 - b. Orono will reference or insert the terms of this Easement in any deed or other document by which Orono conveys title to all or a portion of the Protected Property. Orono will also specify to what extent reserved rights have been exercised, if at all, and are no longer available for use by the new Orono and which reserved rights are specifically allocated to the property being conveyed in accordance with other provisions of this Easement.

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

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

- 5.2. Recreational and Educational Uses. The Protected Property may be used for hiking, cross-country skiing, camping, nature observation or study, and other similar low impact, non-motorized, recreational and educational programs or activities.
- 5.3. Utilities. Utility systems and facilities may be installed, maintained, repaired, extended and replaced within the Protected Property only to serve uses and activities on the Protected Property specifically permitted by this Easement. This includes, without limitation, all systems and facilities necessary to provide power, fuel, water, waste disposal and communication.

The location of all wells and septic systems, including future replacement wells and septic systems, shall require the approval of the District, said approval not to

be unreasonably withheld. Utility systems and facilities shall be installed or constructed with minimal grading and disturbance to vegetation. Following installation or construction, the surface shall be timely restored to a condition consistent with the conservation purposes of this Easement.

6. **DISTRICT'S RIGHTS AND REMEDIES.** In order to accomplish the purposes of this Easement, the District has the following rights and remedies. The District may not; however, exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property.

6.1. Preserve and Protect Conservation Values. The right to preserve and protect the conservation values of the Protected Property through the rights and remedies set forth below.

6.2. Right to Enter. The District, its agents, and authorized representatives, 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, to monitor compliance with the terms of this Easement, and to enforce 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. Any survey or boundary demarcation completed under this provision will be at the District's expense.
- d. To make scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by Orono.
- e. The right to manage the wetlands, shoreland, and waterbodies on the Protected Property subject to applicable laws and regulations. Said management may consist of, but not be limited to: vegetative maintenance and management and hydrologic modifications. The District shall provide Orono with advance notice of any need to utilize heavy equipment for such management.

In addition to any rights of entry it has under statute, the District and its authorized agents shall have, in perpetuity, the right at reasonable times to cross and recross, on foot or by vehicle, and to transport equipment across the Protected Property or otherwise to exercise any right or responsibility under this Easement. The District will pay for or repair any actual damage to the Protected Property caused by its exercise of rights under this Section.

6.3. Right of Enforcement. The District has the right to prevent or remedy violations of this Easement through appropriate judicial action brought against Orono or other responsible party in any court of competent jurisdiction.

- a. Notice. The District may not initiate judicial action until Orono has been given notice of the violation, or threatened violation, of this Easement and the time in which to correct the situation has been provided and has elapsed. This provision shall not apply if, in the sole discretion of the District, immediate judicial action is necessary to prevent or mitigate significant damage to the Protected Property or if reasonable, good faith efforts to notify Orono are unsuccessful.
- b. Remedies. Remedies available to the District in enforcing this Easement include the right to request temporary or permanent injunctive relief for any violation or threatened violation of this Easement, to require restoration of the Protected Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement, to seek specific performance or declaratory relief and to recover damages resulting from a violation of this Easement or injury to any Conservation Values protected by this Easement.

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

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

Notwithstanding Section 6.2.c, if such court determines that Orono has failed to comply with this Conservation Easement, Orono shall reimburse District for any reasonable costs of enforcement, including costs of restoration, court costs, in addition to any other payments ordered by such court. If such court determines that Orono has not failed to comply with this Conservation Easement, District shall reimburse Orono for any court costs, in addition to any other payments ordered by such court.

- c. Discretionary Enforcement. Enforcement of the terms of this Easement is solely at the discretion of the District. The District does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement by any delay or prior failure of the District in discovering a violation or initiating enforcement proceedings.
- d. Acts Beyond Orono's Control. The District may not bring any action against Orono for any change to the Protected Property resulting from causes beyond

Orono's control, such as changes caused by fire, flood, storm, natural deterioration or the unauthorized acts of persons other than Orono or Orono's agents, employees or contractors or resulting from reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.

- e. **Right to Report.** In addition to other remedies, the District has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.

6.4. **Signs.** The District has the right to place on the Protected Property signs that identify the land as protected by this Easement and/or advise of limitations on public use in accordance with applicable law. The number and location of any signs are subject to Orono's approval, such approval shall not be unreasonably withheld.

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

7. **PUBLIC ACCESS.** The Protected Property shall be open to the general public on a non-discriminatory basis for public uses consistent with this Conservation Easement. Orono shall remain responsible for the management and maintenance of the Protected Property and public use thereof, and in its discretion may prescribe terms for the times, locations and conditions of public use, provided they are consistent with this Conservation Easement.

8. **DOCUMENTATION.** The current uses of the Protected Property, the state of any existing improvements, and the specific Conservation Values of the Protected Property that are briefly described in this Easement are more fully described in a property report, titled Easement Documentation Report – Big Island, City of Orono and dated February 8, 2006, on file at the office of the District. Orono and the District acknowledge that this property report accurately represents the condition of the Protected Property at the time of this conveyance and may be used by the District in monitoring future uses of the Protected Property, in documenting compliance with the terms of this Easement and in any enforcement proceeding. This property report, however, is not intended to preclude the use of other information and evidence to establish the present condition of the Protected Property in the event of a future controversy.

9. **GENERAL PROVISIONS.**

9.1. **Assignment.** If the District finds that it has become impractical or impossible to hold, monitor, and/or enforce this Easement, this Easement may be assigned or

transferred by the District with concurrence of the City, which shall not be unreasonably withheld, or through court order. Such assignment or transfer shall only be to a conservation organization which is a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and which is authorized to hold conservation easements under Minnesota law. Any future holder of this Easement shall have all of the rights conveyed to the District by this Easement. As a condition of any assignment or transfer, the District shall require any future holder of this Easement to continue to carry out the conservation purposes of this Easement in perpetuity.

The District will inform Orono in writing of a potential interest in assignment at least 90 days before an assignment is effective, and thereafter will meet with Orono at the request of either party to discuss issues related thereto. Orono will communicate its decision on concurrence to the District within 45 days of written notice from the District of an intent to assign that includes the identity and address of the assignee. Orono's failure to respond within 45 days will be deemed concurrence.

- 9.2. Amendment. Under appropriate circumstances, this Easement may be modified or amended. However, no amendment or modification will be allowed if, in the sole and exclusive judgment of the District, it: (i) does not further the purposes of this Easement, (ii) will adversely impact the Conservation Values protected by this Easement, (iii) affects the perpetual duration of the Easement, or (iv) affects the validity of the Easement under Minnesota law or under Section 170(h) of the Internal Revenue Code.

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

- 9.3. Extinguishment. This Easement may be extinguished only through judicial proceedings and only under the following circumstances:
- a. This Easement may be extinguished only (i) if unexpected change in the conditions of or surrounding the Protected Property makes the continued use of the Protected Property for the conservation purposes set out above impossible or impractical or (ii) pursuant to the proper exercise of the power of eminent domain.
 - b. Orono recognizes that uses of the Protected Property prohibited by this Easement may, in the future, become more economically viable than those uses permitted by the Easement. Orono also recognizes that neighboring properties may, in the future, be put entirely to uses not permitted on the Protected Property by this Easement.

Orono and the District believe that such changes will increase the public benefit provided by this Easement. Therefore, such changes are not

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

- 9.4. Proceeds. Orono hereby agrees that at the time of the conveyance of this Easement to the District, this Easement gives rise to a real property right, immediately vested in the District, with a fair market value of said Easement as of the date of the conveyance that is at least equal to the proportionate value that this Easement at the time of the conveyance bears to the fair market value of the Protected Property as a whole at that time. If this Easement is extinguished or terminated in whole or in part, the District is entitled to a portion of any proceeds of a sale, exchange or involuntary conversion in an amount determined on the basis of the proportion of value that the easement bears to the remaining fee interest at the time the easement is conveyed. The District shall use its share of any proceeds in a manner consistent with the conservation purposes of this Easement.
- 9.5. Warranties. Orono represents and warrants as follows:
- a. Orono is the sole Orono of the Protected Property in fee simple and has the right and ability to convey this Easement to the District.
 - b. The Protected Property is free and clear of all encumbrances other than those subordinated to this Easement, including but not limited to mortgages.
 - c. Orono has no actual knowledge of any use or release of hazardous waste or hazardous substances on the Protected Property for which a landowner may be subject to liability under the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, or Minnesota Statutes 115B.02 (collectively referred to herein as "Hazardous Substances") except as may be indicated in the Phase I Environmental Site Assessment prepared for the Big Island Board of Governors by Braun Intertec Corporation dated February 2, 2005, attached as Exhibit C to the Purchase Agreement governing this transaction. Orono warrants that it has no actual knowledge of any underground storage tanks located on the Protected Property. Orono will unconditionally defend, indemnify and hold the District harmless from and against and shall reimburse the District with respect to any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses (including attorneys' fees and costs) asserted against or incurred by the District by reason of or relating to the presence of Hazardous Substances on the Protected Property.
- 9.6. Real Estate Taxes. Orono shall pay all real estate taxes and assessments levied against the Protected Property, including any levied against the interest of the District created by this Easement. The District may, at its discretion, pay any outstanding taxes or assessments and shall then be entitled to reimbursement from Orono.

If Orono becomes delinquent in payment of said taxes or assessments, such that a lien created against the land is to be executed upon, the District, at its option, shall, after written notice to Orono, have the right to purchase or acquire Orono's interest in said Protected Property by paying funds to discharge said lien or delinquent taxes or assessments, or to take such other actions as may be necessary to protect the District's interest in the Protected Property and/or to assure the continued enforceability of this Conservation Easement.

9.7. Ownership Costs and Liabilities. Orono retains all responsibilities and shall bear all costs and liabilities of any kind related to the Ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage. The preceding sentence shall not apply to any improvements constructed by the District under Section 6.2. Orono shall be responsible for the day-to-day management and maintenance of the Protected Property with respect to, but not limited to, its public use. Orono agrees to release, hold harmless, defend and indemnify District from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which District may suffer or incur as a result of or arising out of the activities of Orono on the Protected Property. District agrees to release, hold harmless, defend and indemnify Orono from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which Orono may suffer or incur as a result of or arising out of the activities of District on the Protected Property. Orono shall keep the District's interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Orono. Nothing in this paragraph 9.7 of this Easement creates any right in any third party, or waives or otherwise affects any protections or immunities of Orono or the District with respect to any claims of third parties.

9.8. Notice and Approval. Any notice or request for approval required by this Easement must be written and is subject to the following:

- a. Delivery. Any required notice or request for approval must be delivered personally or sent by first class mail or other nationally recognized delivery service to the appropriate party at the following addresses (or other address specified in writing):

To Orono:
City Administrator
City of Orono
2750 Kelley Parkway
Crystal Bay, MN 55323

To the District:
Minnehaha Creek Watershed District
18202 Minnetonka Boulevard
Deephaven, MN 55391

- b. **Timing.** Unless otherwise specified in this Easement, any required notice or request for approval must be delivered at least 30 days prior to the date proposed for initiating the activity in question.
- c. **Content.** The notice or request for approval must include sufficient information to allow the District to make an informed decision on whether any proposed activity is consistent with the terms and purposes of this Easement. At a minimum this would include (i) the location, nature and scope of the proposed activity, (ii) the proposed use, design and location of any building, structure or improvement and (iii) the potential impact on the Conservation Values of the Protected Property.
- d. **Approval.** District's consent for activities otherwise prohibited under Sections 3 and/or 4 above, or for any activities requiring District's consent under this Easement, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in Sections 3 and/or 4 above are deemed desirable by Orono and District, District may, in its sole discretion, give permission for such activities, subject to the limitations herein. District may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the purpose of this Conservation Easement and (2) either enhance or do not impair any significant conservation interests associated with the Protected Property. The District may condition its approval on Orono's acceptance of modifications, which would, in the District's judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns. Notwithstanding the foregoing, the District and Orono have no right or power to agree to any activities that would result in the termination of this Conservation Easement or to allow any residential, commercial or industrial structures or any commercial or industrial activities not provided for above.

- 9.9. **Binding Effect.** This Easement shall run with and burden the Protected Property in perpetuity. The terms of this Easement are binding and enforceable against the current owner of the Protected Property, its lessees, agents, personal representatives, successors and assigns, and all other parties entitled to possess or use the Protected Property.

This Easement creates a property right immediately vested in the District and its successors and assigns that cannot be terminated or extinguished except as set out herein. The fair market value of the District's interest is at least equal to the proportionate value that the easement at the time of the donation bears to the value of the unrestricted property as a whole at the time of the conveyance of the easement, and this proportionate value shall remain constant.

- 9.10. **Subsequent Transfers.** Orono agrees that the terms, conditions, restrictions and purposes of this grant or reference thereto will be inserted by Orono in any subsequent deed or other legal instrument by which Orono divests either the fee

simple title or possessory interest in the Protected Property; and Orono further agrees to notify District of any pending transfer at least thirty (30) days in advance.

- 9.11. Merger. Orono and District agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Protected Property.
- 9.12. Definitions. Unless the context requires otherwise, the term “Orono” includes, jointly and severally, the current owner or owners of the Protected Property identified above and their personal representatives, heirs, successors and assigns in title to the Protected Property. The term “District” includes the Minnehaha Creek Watershed District and its successors or assigns to its interest in this Easement.
- 9.13. Termination of Rights and Obligations. A party’s rights and obligations under this Easement terminate upon the transfer or termination of that party’s interest in this Easement or the Protected Property, provided, however, that any liability for acts or omissions occurring prior to the transfer or termination will survive that transfer or termination.
- 9.14. Recording. The District will record this Easement in a timely manner in the official records for the county in which the Protected Property is located. The District may re-record this Easement or any other documents necessary to protect its rights under this Easement or to assure the perpetual enforceability of this Easement. Orono will cooperate as necessary to accomplish and effectuate acts of recordation under this Section.
- 9.15. Controlling Law and Construction. This Easement shall be governed by the laws of the State of Minnesota and construed to resolve any ambiguities or questions of validity of specific provisions in favor of giving maximum effect to its conservation purposes and to the policies and purposes of Minnesota Statutes Chapter 84C.
- 9.16. Permits and Applicable Laws. Orono and District acknowledge that the exercise by Orono of any reserved right enumerated herein or uses of the Protected Property even if consistent with the conservation purposes of this Easement shall not relieve Orono from complying with or obtaining any permit from any applicable governmental authority, including the District, prior to the exercise thereof.
- 9.17. Severability. A determination that any provision or specific application of this Easement is invalid shall not affect the validity of the remaining provisions or any future application.

- 9.18. Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.
- 9.19. Additional Documents. Orono agrees to execute or provide any additional documents reasonably needed by the District to carry out in perpetuity the provisions and the intent of this Easement, including, but not limited to any documents needed to correct any legal description or title matter or to comply with any federal, state, or local law, rule or regulation.
- 9.20. Entire Agreement. This document sets forth the entire agreement of the parties with respect this Easement and supersedes all prior discussions or understandings.

IN WITNESS WHEREOF, Orono has voluntarily executed this Conservation Easement on the 23rd day of March, 2006.

ORONO:

Barbara Peterson

Barbara Peterson, Mayor

STATE OF MINNESOTA)
) ss
 COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 23rd day of March, 2006, by Barbara Peterson, the Mayor of the City of Orono.

Linda S. Vee
 Notary Public
 My Commission Expires: Jan. 31, 2010

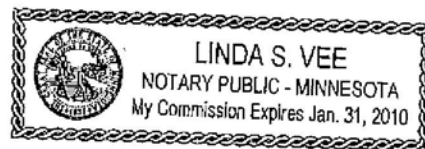


Exhibit A
Property Description

Government Lot One (1), Section Fourteen (14), Township One Hundred Seventeen (117), Range Twenty-three (23);
Government Lot Two (2), Section Twenty-three (23); Township One Hundred Seventeen (117) Range Twenty-three (23); and that part of Government Lot Three (3), Section Twenty-Three (23), Township One Hundred Seventeen (117), Range Twenty-three (23), commencing at the Northeast corner of said Government Lot Three (3), Section Twenty-three (23); thence Southwesterly along the lake shore to the Northeast corner of Lot A, Morse Island Park; thence South 350 feet to Lake Minnetonka; thence East along the shore of Lake Minnetonka to the East line of said Lot Three (3); thence North to the place of beginning.

Hennepin County, Minnesota.

Abstract Property.

Having Property Identification Numbers:

PID 14-117-23-34-0001 (approx. 46.123 acres)
PID 23-117-23-21-0001 (approx. 5.668 acres)
PID 23-117-23-22-0001 (approx. 4.67 acres)

Exhibit B
Property Map

Exhibit C
Existing Improvements

Improvement #	Description	Retention Plan
1	South Pavilion	Keep
2	Bathroom	Keep
3	North Pavilion	Keep
4	Office	Keep
5	Barn 1	Keep only 1 of three sheds – which one to be determined
6	Barn 2	Keep only 1 of three sheds – which one to be determined
7	Barn 3	Keep only 1 of three sheds – which one to be determined
8	Temporary Trailer	Keep – consider relocating
9	Mess Hall	Remove
10	Cottage	Remove
11	Cottage	Remove
12	Cottage	Remove



12.1

Old Republic Title Building
400 South Second Avenue
Suite 1200
Minneapolis, MN 55401
(612) 344-1400 tel

www.smithpartners.com

MEMORANDUM

TO: Minnehaha Creek Watershed District Board of Managers
Lars Erdahl, District Administrator

FROM: Louis N. Smith

DATE: August 8, 2017

RE: Big Island Conservation Easement: Review of Assignability

I. Introduction

At its meeting of July 27, 2017, the Board of Managers received a request from Mr. Gabriel Jabbour that the District explore sharing the Big Island conservation easement with another party such as the Minnesota Land Trust. The Board of Managers requested our review of the conservation easement to assist the Board in considering this request.

II. Terms of Conservation Easement

Section 9.1 of the Conservation Easement provides that

[if] the District finds that it has become impractical or impossible to hold, monitor, and/or enforce this Easement, this Easement may be assigned or transferred by the District with the concurrence of the City, which shall not be unreasonably withheld, or through court order.

The Easement further provides that the transfer shall only be to a qualified conservation organization, which shall have all of the rights conveyed to the District and shall be required to carry out the conservation purposes of the Easement in perpetuity. *Id.* The District is required to inform Orono of a potential assignment with at least 90 days prior notice. The City is to communicate its decision on

Big Island Easement Assignability
August 8, 2017

concurring with this assignment within 45 days of receiving such written notice, and failure to respond within 45 days is deemed concurrence. Id.

Section 9.2 of the Conservation Easement provides that the Easement may be amended or modified "under appropriate circumstances," but places important conditions on such changes to preserve the purposes and conservation values of the Easement in the "sole and exclusive judgment of the District." A copy of the Easement is attached to this memorandum for reference.

III. Discussion

There is no suggestion that the District has found it "impractical or impossible to hold, monitor, and/or enforce" the Easement, which is the precondition of a potential assignment. Nevertheless, the terms of the Easement would not preclude a proposed assignment of a non-exclusive interest in the Easement to a qualified conservation organization for the purposes of promoting ongoing attention to the Easement's purposes and conservation values. Any communication to the City about such an assignment would of course explain the intent and purpose of such a non-exclusive conveyance.

A conservation organization such as Minnesota Land Trust acquires conservation easements, creates a baseline property report to record the benchmark condition of the conservation property, and then conducts regular inspection (typically annually) to confirm ongoing compliance with the terms of the easement. There may be costs incurred for such documentation and monitoring.

The District has done extensive restoration work at Big Island, and continues a regular inspection program at the site through its project maintenance and land management program. It would be important for the District and the City to evaluate the costs and benefits of assigning a non-exclusive interest in the Conservation Easement to an organization such as the Land Trust.

We would be pleased to provide any further information you may require.

CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted by the City of Orono, a political subdivision of the State of Minnesota, ("Orono") to the Minnehaha Creek Watershed District, a governmental body created under Minnesota Statutes Chapter 103D (the "District").

RECITALS:

- A. **ORONO.** Orono is the current fee owner of three adjacent parcels totaling approximately 56.461 acres located in the City of Orono, Hennepin County, Minnesota. That real property is more fully described below as the "Protected Property."
- B. **PROTECTED PROPERTY.** The Protected Property is that real property legally described in Exhibit A and generally depicted on the "Property Map" in Exhibit B. Both exhibits are attached to this Basement and incorporated by this reference.

The Protected Property is currently used for low impact recreational use and nature observation. Existing improvements on the Protected Property include those structures shown on Exhibit B and noted on Exhibit C.

- C. **MINNEHAHA CREEK WATERSHED DISTRICT.** The Minnehaha Creek Watershed District is a governmental body created and operated exclusively for the purposes of water resource protection, conservation and management, including the protection, conservation, and management of related lands. The District is an organization qualified to hold conservation easements under Minnesota law and Section 170(h) of the Internal Revenue Code and related regulations.
- D. **CONSERVATION VALUES.** The Protected Property has the following natural, scenic and open space qualities of significant importance:
- i. Approximately 7,500 feet of undeveloped frontage on Lake Minnetonka, that help protect the water quality of the Lake from impacts of non-point source pollution and provide habitat for flora and fauna. Lake Minnetonka is an important natural resource and recreation area in the Twin Cities metropolitan area;
 - ii. Approximately 7.59 acres of wetlands providing valuable habitat and also deemed important by the District for the protection and enhancement of water quality in Lake Minnetonka;
 - iii. Undeveloped vegetated buffers and uplands, including significant stands of maple-basswood forest, that provide habitat for flora and fauna and protect the property's wetlands from non-point source pollution impacts that could be associated with future development, or other uses of surrounding land including the Protected Property;

- iv. A bald eagle nesting site. Bald eagles are considered a Minnesota Special Concern Species by the Minnesota Department of Natural Resources, and
- v. Offers the general public opportunities to experience, appreciate, and learn about the natural environment through sustainable outdoor recreation and educational opportunities.

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

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

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

- i. 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,
- ii. The Metropolitan Surface Water Act, Minnesota Statutes Section 103B, which specifically identifies the importance of protecting the natural surface waters and groundwaters of the Metropolitan Area.
- iii. Minnesota Statutes Section 103D which provides for the establishment of watershed districts to conserve the natural resources of the State.
- iv. Minnehaha Creek Watershed District Comprehensive Water Resources Management Plan (January 1997 and as amended) which includes the following policies, programs, and projects implementing the Metropolitan Surface Water Act:
 - a. Land Conservation Program (Section IV. H.)
 - b. Regional Wetland Restoration (p.159)
- v. In May, 1972, the Orono Village Council declared via Resolution No. 446 that "the long range highest and best use of Big Island is for park purposes". The 1980 Orono Comprehensive Plan again encouraged public ownership of Big Island for park use. The 2000-2020 Comprehensive Plan supports the passive character of the existing Three Rivers Park District's wildlife sanctuary on Big Island, and suggests that any expansion of parkland on the Island be for the purpose of park uses that are more passive than active.

vi. Suburban Hennepin Regional Park District Master Plan for a System of Parks (adopted July 23, 1998) which calls for public use of the Protected Property.

- F. **CONSERVATION INTENT.** Orono and the District 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 in perpetuity upon the current owner and all future owners of the Protected Property and that conveys to the District the right to protect and preserve the Conservation Values of the Protected Property for the benefit of this generation and generations to come.

CONVEYANCE OF CONSERVATION EASEMENT:

Pursuant to the laws of the State of Minnesota and in particular Minnesota Statutes Chapter 84C and in consideration of the facts recited above and the mutual covenants contained herein and in further consideration of the sum of eight hundred fifty thousand dollars (\$850,000) and other valuable consideration, Orono hereby conveys to the District a perpetual conservation easement over the Protected Property. This conservation easement consists of the following rights, terms and restrictions (the "Easement"):

1. **CONSERVATION PURPOSE.** The purpose of this Easement is to preserve and protect in perpetuity the Conservation Values of the Protected by confining the development, management and use of the Protected Property to activities that are consistent with the preservation of these Conservation Values, by prohibiting activities that significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Easement.

The terms of this Easement are specifically intended to provide a significant public benefit, including, but not limited to:

- a. The protection of a relatively natural habitat of fish, wildlife, and plants as that term is used in section 170 (h) of Internal Revenue Code and related regulations;
 - b. The protection of the water quality of Lake Minnetonka, pursuant to the public policies set forth above.
 - c. Preserving the open and natural character of the Protected Property for scenic enjoyment by the general public including from Lake Minnetonka and substantial parts of its shoreline.
2. **EASEMENT AREAS.** For purposes of creating land use restrictions and identifying permitted uses on the Protected Property, the Protected Property has been divided into two (2) areas. These are:
- a. "Recreation Area", consisting of those improvements shown on Exhibit B and noted on Exhibit C for which Orono prohibited and permitted uses are described herein in Sections 3, 4.3, and 5; and

- b. "Natural Area", consisting of natural upland, open space, and wetland areas outside of the Recreation Area, for which Orono prohibited and permitted uses are described herein in Sections 3, 4.4, and 5.

These Areas are specifically depicted on the "Property Map" attached hereto as Exhibit B and incorporated herein by reference.

3. **LAND USE RESTRICTIONS.** Except for affirmative rights retained by District under Section 6 of this Easement for the protection and enhancement of the Conservation Values of the Protected Property, the following constraints shall apply to the use of the Protected Property and to Orono and all persons acting under authority or control of Orono.

Specifically, any activity on or use of the Protected Property that would contribute to the destruction of the Conservation Values is prohibited.

Except as specifically permitted in Sections 4 and 5 below and without limiting the general prohibition above, restrictions imposed throughout the entirety of the Protected Property expressly include the items listed immediately below. Additional Orono land use restrictions are further enumerated by Easement Area in Section 4 of this Easement.

- 3.1. Industrial Activity. No industrial use of the Protected Property is allowed.
- 3.2. Events. No organized events may take place which could impair the Conservation Values of the Protected Property. Limitations on organized events may be further developed in the Management Plan, as described in section 4.1.
- 3.2. Residential Development. No residential use or development is allowed except as specifically permitted in Section 4 below.
- 3.3. Introduction Of Non-Native Animals. No introduction of non-native animals or unconfined household pets is allowed. This does not apply to pastured domesticated animals such as horses or other livestock subject to a Management Plan approved by the District in writing. Dogs may be allowed as permitted and conditioned in a Management Plan approved by the District and the City of Orono in writing.
- 3.4. Right of Way. No right of way shall be granted across the Protected Property in conjunction with any use of any land other than the Protected Property.
- 3.5. Mining. No mining, drilling, exploring for or removing of any minerals from the Protected Property is allowed. Land disturbance is permitted as reasonably necessary to prepare a site for an improvement permitted under this Conservation Easement.

- 3.6. Subdivision. The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel, regardless of whether it consists of or was acquired as separate parcels or is treated as separate parcels for property tax or other purposes. This provision does not, however prohibit the division of the Protected Property when a portion of the Protected Property is being conveyed to a conservation organization described in paragraph 9.1 of this Easement.
- 3.7. Density. No portion of the Protected Property may be used to satisfy land area requirements for property other than the Protected Property for purposes of calculating building density, lot coverage or open space under otherwise applicable laws, regulations or ordinances controlling land use. No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission of the District, this Section shall not preclude such transfer of development rights resulting from the voluntary extinguishment of any reserved development rights as provided for in Section 4.1 of this Easement.
- 3.8. Water. There shall be no pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, wetland, subsurface water or any other water bodies, nor shall there be activities conducted on the Protected Property that cause erosion or which would be detrimental to water quality or purity, or which could alter natural water level and/or flow in or over the Protected Property, except as follows:
- a. Activities approved in writing by District that restore or enhance wildlife habitat or native biological communities or that improve or enhance the function and quality of existing wetlands and water bodies on and off of the property.
 - b. Activities undertaken in the exercising of rights reserved under item 4.1 of this Easement that might cause erosion or impact water quality on a temporary basis, provided that efforts are undertaken to limit the impacts of those activities. This does not allow activities that alter natural water bodies, lakes, ponds, marshes or wetlands. All activities permitted hereunder remain subject to the permitting requirements of the District and other governmental bodies.
 - c. Activities approved in writing by District for the repair, construction, and/or replacement of wells and septic systems pursuant to section 5.3 below. However prior approval shall not be required in the case of maintenance and/or repair of existing wells and septic systems that do not materially alter the size and/or design of said systems.
- 3.9. Dumping. No trash, non-compostable garbage, hazardous or toxic substances or unsightly material may be dumped or accumulated on the Protected Property.

This does not prohibit burning, composting, or placement of excess brush or other plant material resulting from activities permitted by this Easement provided that said burning or composting is located at least seventy-five feet from the edge of any wetland or lakeshore and is consistent with the property Management Plan.

3.10. Storage Tanks. There shall be no placement of underground storage tanks on, in, or under the Protected Property.

4. **PERMITTED AND PROHIBITED USES:** Orono and all persons acting under authority or control of Orono; all lessees, agents, personal representatives, successors and assigns; and all other parties entitled to possess or use the Protected Property are subject to the following terms regarding use of the Protected Property.

4.1 Permitted Uses Limited. Permitted uses on the Protected Property are limited to those uses specifically and explicitly permitted in this Conservation Easement, as those uses may be elaborated and conditioned in a written Management Plan agreed to and executed by Orono and the District, which plan may be revised or supplemented from time to time ("Management Plan"). Any Management Plan will be consistent with the following principles:

- a. The Management Plan will authorize no activity that would materially impair a Conservation Value set forth in Recital D.
- b. The Management Plan will authorize no activity prohibited by this Conservation Easement.
- c. The Protected Property will be open to the general public for public uses consistent with the Conservation Values set forth in Recital D, specifically including passive, low-impact and non-motorized recreation; watercraft access; and public education.
- d. Structures and other improvements reasonably necessary for permitted uses, including facilities for access by water, will be accommodated, provided they are designed to avoid material impairment to a Conservation Value set forth in Recital D.
- e. Orono or its designee will retain the responsibility and authority to manage and maintain the Protected Property on a day-to-day basis, and the Management Plan will accommodate activities and improvements reasonably required by Orono to do so.
- f. Orono and the District will work cooperatively and in good faith to develop any Management Plan.

4.2 Existing Improvements. Exhibits B and C to this Conservation Easement, attached and incorporated herein, locate and specify existing improvements on the Protected Property and Orono's rights and responsibilities relating to the

maintenance, replacement and removal of those improvements. Orono has the right to maintain and replace, without increase in dimension, any improvement not listed in Exhibit C and not otherwise explicitly addressed in this Conservation Easement.

4.3 Permitted and Prohibited Uses in Recreation Area.

- a. New structures. New structures may be constructed, maintained and replaced within the Recreation Area only in accordance with the terms of a Management Plan. Said Management Plan shall specifically allow the construction of a single office/residence for a property caretaker which shall not exceed a building footprint of 1,500 square feet.
- b. Roads and Trails. Existing trails may be maintained or improved but may not be widened, lengthened, or relocated without the prior written approval of the District. Unpaved paths or foot trails may be established in the Recreation Area for recreational uses. No other roads or other rights of way may be established or constructed on the Protected Property without the prior written approval of the District and in accordance with the terms of a Management Plan.
- c. Fences. Fences may be constructed, maintained, improved, replaced or removed within the Recreation Area.
- d. Docks. Pursuant to the Management Plan, docks are permitted within the dock envelope identified in Exhibit B.
- e. Additional Structures and Improvements. No temporary or permanent buildings, structures, roads or other improvements of any kind may be placed or constructed on the entire Protected Property except as specifically set forth in this Section and as consistent with the terms of a Management Plan.
- f. Vehicles. Within the Recreation Area there shall be no operation of mountain or other bicycles, dune buggies, motorcycles, all-terrain vehicles, snow mobiles, hang gliders, aircraft, or any other types of motorized vehicles. This prohibition shall also not apply to the use of vehicles in the Recreation Area by the City or its designees as necessary for park operations and maintenance. Nor shall this prohibition apply to the use of emergency vehicles for matters of safety. This provision shall also not apply to the use of personal motorized handicapped vehicles, such as those that would be considered durable medical equipment, on all weather trails as may be permitted in a Management Plan. A golf cart-type vehicle may be operated for handicapped access only on the concrete trail referred to in 4.4 b. above and noted on Exhibit B, pursuant to any limitations set forth in the Management Plan.

- g. Notice. Orono will give the District notice as set out in Section 9.8 of this Easement before beginning any construction activities permitted under this Section 4.3.

4.4 Permitted and Prohibited Uses in Natural Area.

- a. Agricultural Use. No agricultural use is allowed within the Natural Area. This includes tilling, plowing, commercial cultivation of row crops, livestock or horse grazing or production, haying, feedlots, or gardening. Grazing animals may be used as a habitat management tool if pursuant to a property Management Plan approved in writing by the District.
- b. Roads and Trails. If pursuant to a Management Plan, unpaved paths or foot trails may be established and maintained in the Natural Area for non-motorized recreational uses in a manner that does not negatively impact the Conservation Values of the Protected Property. Pursuant to a Management Plan, selected trails may be constructed of crushed limestone or similar all weather surface capable of supporting handicapped access. As existing paved trails deteriorate, Orono may replace the existing surface material with non-bituminous materials such as crushed limestone or similar all weather surface capable of supporting handicapped access. The existing partial concrete sidewalk/trail leading from the planned dock area up a steep slope to the pavilion building, as noted on Exhibit B, may be reconstructed and/or expanded within the existing trail corridor with concrete or similar material to prevent erosion on the steep slope and/or to provide handicap access to the pavilion building. No other roads or other rights of way may be established or constructed within the Natural Area.
- c. Fences. Within the Natural Area, fences may be constructed and maintained, improved, replaced or removed to mark boundaries, to secure the Protected Property, or as needed in carrying out activities permitted by Section 4.2 of this Easement. Notwithstanding, no fences may be located or constructed in a manner that interferes with the use of the Protected Property as habitat for flora and fauna.
- d. Structures and Improvements. With the exception of fences pursuant to paragraph 4.2.c above, and utilities pursuant to paragraph 5.3 below, no temporary or permanent buildings, structures, roads, rights of way, parking areas, effectively impervious surfaces, or other improvements of any kind may be placed or constructed in the Natural Area.
- a. Vegetation Management. Within the Natural Area, the Protected Property may be used to maintain, restore or enhance habitat for wildlife and native biological communities in accordance with a Management Plan. Orono may remove timber and other wood products and otherwise manage the vegetation within the Natural Area in accordance with said Management Plan, except that such approval shall not be required in the case of emergency fire breaks.

Beyond the foregoing, there shall be 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 within the Natural Area except as follows:

- i. In conjunction with a Management Plan as specifically provided for above;
- ii. As reasonably required, subject to District prior and written approval per Section 9.8 of this Easement, to prevent or control insects, noxious weeds, invasive vegetation, or disease. However, said Management Plan shall not be required in the event of emergency situations; or
- iii. As reasonably required to prevent fire, personal injury, or property damage.

f. Topography and Surface Alteration. No alteration or change in the topography of the surface of the Protected Property is allowed within the Natural Area. This includes no ditching, draining, diking or filling and no excavation, dredging, mining or drilling, or removal of soil, sand, gravel, rock, minerals, or other materials, except to the degree absolutely necessary in order to effect a use permitted under Section 4.2 of this Easement. Notwithstanding, with prior written approval of the City and the District, archeological digs may occur in a manner that does not impair the Conservation Values.

g. Vehicles. Within the Natural Area there shall be no operation of mountain or other bicycles, dune buggies, motorcycles, all-terrain vehicles, snow mobiles, hang gliders, aircraft, or any other types of motorized vehicles. This prohibition shall also not apply to the use of vehicles for habitat restoration and property management subject to a Management Plan. Nor shall this prohibition apply to the use of emergency vehicles for matters of safety. This provision shall also not apply to the use of personal motorized handicapped vehicles, such as those that would be considered durable medical equipment, on all weather trails as may be permitted in a Management Plan. A golf cart-type vehicle may be operated for handicapped access only on the concrete trail referred to in 4.4 b. above and noted on Exhibit B, pursuant to any limitations set forth in the Management Plan.

h. Chemicals. Except as specifically authorized for habitat restoration and management in a Management Plan, within the Natural Area there shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, and no use of devices commonly known as "bug-zappers".

i. Notice. Orono will give the District notice as set out in Section 9.8 of this Easement before beginning any construction activities permitted under this Section 4.4.

5. **RESERVED RIGHTS.** Orono retains all rights associated with Ownership and use of the Protected Property that are not expressly restricted or prohibited by this Easement. Orono may not, however, exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property. Additionally, Orono must give notice to the District before exercising any reserved right that might have an adverse impact on the Conservation Values associated with the Protected Property.

Without limiting the generality of the above, the following rights are expressly reserved throughout the entirety of the Protected Property and Orono may use and allow others to use the Protected Property as enumerated immediately below. Additional reserved rights are further enumerated by Easement Area in Section 4 of this Easement.

- 5.1. Right to Convey. Orono may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property, provided written notice is provided to the District in accordance with Section 9.8 of this Easement.
- a. Any conveyance or encumbrance of the Protected Property is subject to this Easement.
 - b. Orono will reference or insert the terms of this Easement in any deed or other document by which Orono conveys title to all or a portion of the Protected Property. Orono will also specify to what extent reserved rights have been exercised, if at all, and are no longer available for use by the new Orono and which reserved rights are specifically allocated to the property being conveyed in accordance with other provisions of this Easement.

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

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

- 5.2. Recreational and Educational Uses. The Protected Property may be used for hiking, cross-country skiing, camping, nature observation or study, and other similar low impact, non-motorized, recreational and educational programs or activities.
- 5.3. Utilities. Utility systems and facilities may be installed, maintained, repaired, extended and replaced within the Protected Property only to serve uses and activities on the Protected Property specifically permitted by this Easement. This includes, without limitation, all systems and facilities necessary to provide power, fuel, water, waste disposal and communication.

The location of all wells and septic systems, including future replacement wells and septic systems, shall require the approval of the District, said approval not to

be unreasonably withheld. Utility systems and facilities shall be installed or constructed with minimal grading and disturbance to vegetation. Following installation or construction, the surface shall be timely restored to a condition consistent with the conservation purposes of this Easement.

6. **DISTRICT'S RIGHTS AND REMEDIES.** In order to accomplish the purposes of this Easement, the District has the following rights and remedies. The District may not, however, exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property.

- 6.1. Preserve and Protect Conservation Values. The right to preserve and protect the conservation values of the Protected Property through the rights and remedies set forth below.
- 6.2. Right to Enter. The District, its agents, and authorized representatives, 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, to monitor compliance with the terms of this Easement, and to enforce 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. Any survey or boundary demarcation completed under this provision will be at the District's expense.
 - d. To make scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by Orono.
 - e. The right to manage the wetlands, shoreland, and waterbodies on the Protected Property subject to applicable laws and regulations. Said management may consist of, but not be limited to: vegetative maintenance and management and hydrologic modifications. The District shall provide Orono with advance notice of any need to utilize heavy equipment for such management.

In addition to any rights of entry it has under statute, the District and its authorized agents shall have, in perpetuity, the right at reasonable times to cross and recross, on foot or by vehicle, and to transport equipment across the Protected Property or otherwise to exercise any right or responsibility under this Easement. The District will pay for or repair any actual damage to the Protected Property caused by its exercise of rights under this Section.

- 6.3. Right of Enforcement. The District has the right to prevent or remedy violations of this Easement through appropriate judicial action brought against Orono or other responsible party in any court of competent jurisdiction.
- a. Notice. The District may not initiate judicial action until Orono has been given notice of the violation, or threatened violation, of this Easement and the time in which to correct the situation has been provided and has elapsed. This provision shall not apply if, in the sole discretion of the District, immediate judicial action is necessary to prevent or mitigate significant damage to the Protected Property or if reasonable, good faith efforts to notify Orono are unsuccessful.
 - b. Remedies. Remedies available to the District in enforcing this Easement include the right to request temporary or permanent injunctive relief for any violation or threatened violation of this Easement, to require restoration of the Protected Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement, to seek specific performance or declaratory relief and to recover damages resulting from a violation of this Easement or injury to any Conservation Values protected by this Easement.

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

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

Notwithstanding Section 6.2.c, if such court determines that Orono has failed to comply with this Conservation Easement, Orono shall reimburse District for any reasonable costs of enforcement, including costs of restoration, court costs, in addition to any other payments ordered by such court. If such court determines that Orono has not failed to comply with this Conservation Easement, District shall reimburse Orono for any court costs, in addition to any other payments ordered by such court.

- c. Discretionary Enforcement. Enforcement of the terms of this Easement is solely at the discretion of the District. The District does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement by any delay or prior failure of the District in discovering a violation or initiating enforcement proceedings.
- d. Acts Beyond Orono's Control. The District may not bring any action against Orono for any change to the Protected Property resulting from causes beyond

Orono's control, such as changes caused by fire, flood, storm, natural deterioration or the unauthorized acts of persons other than Orono or Orono's agents, employees or contractors or resulting from reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.

- e. **Right to Report.** In addition to other remedies, the District has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.

6.4. **Signs.** The District has the right to place on the Protected Property signs that identify the land as protected by this Easement and/or advise of limitations on public use in accordance with applicable law. The number and location of any signs are subject to Orono's approval, such approval shall not be unreasonably withheld.

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

7. **PUBLIC ACCESS.** The Protected Property shall be open to the general public on a non-discriminatory basis for public uses consistent with this Conservation Easement. Orono shall remain responsible for the management and maintenance of the Protected Property and public use thereof, and in its discretion may prescribe terms for the times, locations and conditions of public use, provided they are consistent with this Conservation Easement.

8. **DOCUMENTATION.** The current uses of the Protected Property, the state of any existing improvements, and the specific Conservation Values of the Protected Property that are briefly described in this Easement are more fully described in a property report, titled Easement Documentation Report – Big Island, City of Orono and dated February 8, 2006, on file at the office of the District. Orono and the District acknowledge that this property report accurately represents the condition of the Protected Property at the time of this conveyance and may be used by the District in monitoring future uses of the Protected Property, in documenting compliance with the terms of this Easement and in any enforcement proceeding. This property report, however, is not intended to preclude the use of other information and evidence to establish the present condition of the Protected Property in the event of a future controversy.

9. **GENERAL PROVISIONS.**

9.1. **Assignment.** If the District finds that it has become impractical or impossible to hold, monitor, and/or enforce this Easement, this Easement may be assigned or

transferred by the District with concurrence of the City, which shall not be unreasonably withheld, or through court order. Such assignment or transfer shall only be to a conservation organization which is a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and which is authorized to hold conservation easements under Minnesota law. Any future holder of this Easement shall have all of the rights conveyed to the District by this Easement. As a condition of any assignment or transfer, the District shall require any future holder of this Easement to continue to carry out the conservation purposes of this Easement in perpetuity.

The District will inform Orono in writing of a potential interest in assignment at least 90 days before an assignment is effective, and thereafter will meet with Orono at the request of either party to discuss issues related thereto. Orono will communicate its decision on concurrence to the District within 45 days of written notice from the District of an intent to assign that includes the identity and address of the assignee. Orono's failure to respond within 45 days will be deemed concurrence.

- 9.2. Amendment. Under appropriate circumstances, this Easement may be modified or amended. However, no amendment or modification will be allowed if, in the sole and exclusive judgment of the District, it: (i) does not further the purposes of this Easement, (ii) will adversely impact the Conservation Values protected by this Easement, (iii) affects the perpetual duration of the Easement, or (iv) affects the validity of the Easement under Minnesota law or under Section 170(h) of the Internal Revenue Code.

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

- 9.3. Extinguishment. This Easement may be extinguished only through judicial proceedings and only under the following circumstances:
- a. This Easement may be extinguished only (i) if unexpected change in the conditions of or surrounding the Protected Property makes the continued use of the Protected Property for the conservation purposes set out above impossible or impractical or (ii) pursuant to the proper exercise of the power of eminent domain.
 - b. Orono recognizes that uses of the Protected Property prohibited by this Easement may, in the future, become more economically viable than those uses permitted by the Easement. Orono also recognizes that neighboring properties may, in the future, be put entirely to uses not permitted on the Protected Property by this Easement.

Orono and the District believe that such changes will increase the public benefit provided by this Easement. Therefore, such changes are not

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

- 9.4. Proceeds. Orono hereby agrees that at the time of the conveyance of this Easement to the District, this Easement gives rise to a real property right, immediately vested in the District, with a fair market value of said Easement as of the date of the conveyance that is at least equal to the proportionate value that this Easement at the time of the conveyance bears to the fair market value of the Protected Property as a whole at that time. If this Easement is extinguished or terminated in whole or in part, the District is entitled to a portion of any proceeds of a sale, exchange or involuntary conversion in an amount determined on the basis of the proportion of value that the easement bears to the remaining fee interest at the time the easement is conveyed. The District shall use its share of any proceeds in a manner consistent with the conservation purposes of this Easement.
- 9.5. Warranties. Orono represents and warrants as follows:
- a. Orono is the sole Orono of the Protected Property in fee simple and has the right and ability to convey this Easement to the District.
 - b. The Protected Property is free and clear of all encumbrances other than those subordinated to this Easement, including but not limited to mortgages.
 - c. Orono has no actual knowledge of any use or release of hazardous waste or hazardous substances on the Protected Property for which a landowner may be subject to liability under the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, or Minnesota Statutes 115B.02 (collectively referred to herein as "Hazardous Substances") except as may be indicated in the Phase I Environmental Site Assessment prepared for the Big Island Board of Governors by Braun Intertec Corporation dated February 2, 2005, attached as Exhibit C to the Purchase Agreement governing this transaction. Orono warrants that it has no actual knowledge of any underground storage tanks located on the Protected Property. Orono will unconditionally defend, indemnify and hold the District harmless from and against and shall reimburse the District with respect to any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses (including attorneys' fees and costs) asserted against or incurred by the District by reason of or relating to the presence of Hazardous Substances on the Protected Property.
- 9.6. Real Estate Taxes. Orono shall pay all real estate taxes and assessments levied against the Protected Property, including any levied against the interest of the District created by this Easement. The District may, at its discretion, pay any outstanding taxes or assessments and shall then be entitled to reimbursement from Orono.

If Orono becomes delinquent in payment of said taxes or assessments, such that a lien created against the land is to be executed upon, the District, at its option, shall, after written notice to Orono, have the right to purchase or acquire Orono's interest in said Protected Property by paying funds to discharge said lien or delinquent taxes or assessments, or to take such other actions as may be necessary to protect the District's interest in the Protected Property and/or to assure the continued enforceability of this Conservation Easement.

9.7. Ownership Costs and Liabilities. Orono retains all responsibilities and shall bear all costs and liabilities of any kind related to the Ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage. The preceding sentence shall not apply to any improvements constructed by the District under Section 6.2. Orono shall be responsible for the day-to-day management and maintenance of the Protected Property with respect to, but not limited to, its public use. Orono agrees to release, hold harmless, defend and indemnify District from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which District may suffer or incur as a result of or arising out of the activities of Orono on the Protected Property. District agrees to release, hold harmless, defend and indemnify Orono from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which Orono may suffer or incur as a result of or arising out of the activities of District on the Protected Property. Orono shall keep the District's interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Orono. Nothing in this paragraph 9.7 of this Easement creates any right in any third party, or waives or otherwise affects any protections or immunities of Orono or the District with respect to any claims of third parties.

9.8. Notice and Approval. Any notice or request for approval required by this Easement must be written and is subject to the following:

- a. Delivery. Any required notice or request for approval must be delivered personally or sent by first class mail or other nationally recognized delivery service to the appropriate party at the following addresses (or other address specified in writing):

To Orono:
City Administrator
City of Orono
2750 Kelley Parkway
Crystal Bay, MN 55323

To the District:
Minnehaha Creek Watershed District
18202 Minnetonka Boulevard
Deephaven, MN 55391

- b. **Timing.** Unless otherwise specified in this Easement, any required notice or request for approval must be delivered at least 30 days prior to the date proposed for initiating the activity in question.
- c. **Content.** The notice or request for approval must include sufficient information to allow the District to make an informed decision on whether any proposed activity is consistent with the terms and purposes of this Easement. At a minimum this would include (i) the location, nature and scope of the proposed activity, (ii) the proposed use, design and location of any building, structure or improvement and (iii) the potential impact on the Conservation Values of the Protected Property.
- d. **Approval.** District's consent for activities otherwise prohibited under Sections 3 and/or 4 above, or for any activities requiring District's consent under this Easement, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in Sections 3 and/or 4 above are deemed desirable by Orono and District, District may, in its sole discretion, give permission for such activities, subject to the limitations herein. District may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the purpose of this Conservation Easement and (2) either enhance or do not impair any significant conservation interests associated with the Protected Property. The District may condition its approval on Orono's acceptance of modifications, which would, in the District's judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns. Notwithstanding the foregoing, the District and Orono have no right or power to agree to any activities that would result in the termination of this Conservation Easement or to allow any residential, commercial or industrial structures or any commercial or industrial activities not provided for above.

- 9.9. **Binding Effect.** This Easement shall run with and burden the Protected Property in perpetuity. The terms of this Easement are binding and enforceable against the current owner of the Protected Property, its lessees, agents, personal representatives, successors and assigns, and all other parties entitled to possess or use the Protected Property.

This Easement creates a property right immediately vested in the District and its successors and assigns that cannot be terminated or extinguished except as set out herein. The fair market value of the District's interest is at least equal to the proportionate value that the easement at the time of the donation bears to the value of the unrestricted property as a whole at the time of the conveyance of the easement, and this proportionate value shall remain constant.

- 9.10. **Subsequent Transfers.** Orono agrees that the terms, conditions, restrictions and purposes of this grant or reference thereto will be inserted by Orono in any subsequent deed or other legal instrument by which Orono divests either the fee

simple title or possessory interest in the Protected Property; and Orono further agrees to notify District of any pending transfer at least thirty (30) days in advance.

- 9.11. Merger. Orono and District agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Protected Property.
- 9.12. Definitions. Unless the context requires otherwise, the term "Orono" includes, jointly and severally, the current owner or owners of the Protected Property identified above and their personal representatives, heirs, successors and assigns in title to the Protected Property. The term "District" includes the Minnehaha Creek Watershed District and its successors or assigns to its interest in this Easement.
- 9.13. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon the transfer or termination of that party's interest in this Easement or the Protected Property, provided, however, that any liability for acts or omissions occurring prior to the transfer or termination will survive that transfer or termination.
- 9.14. Recording. The District will record this Easement in a timely manner in the official records for the county in which the Protected Property is located. The District may re-record this Easement or any other documents necessary to protect its rights under this Easement or to assure the perpetual enforceability of this Easement. Orono will cooperate as necessary to accomplish and effectuate acts of recordation under this Section.
- 9.15. Controlling Law and Construction. This Easement shall be governed by the laws of the State of Minnesota and construed to resolve any ambiguities or questions of validity of specific provisions in favor of giving maximum effect to its conservation purposes and to the policies and purposes of Minnesota Statutes Chapter 84C.
- 9.16. Permits and Applicable Laws. Orono and District acknowledge that the exercise by Orono of any reserved right enumerated herein or uses of the Protected Property even if consistent with the conservation purposes of this Easement shall not relieve Orono from complying with or obtaining any permit from any applicable governmental authority, including the District, prior to the exercise thereof.
- 9.17. Severability. A determination that any provision or specific application of this Easement is invalid shall not affect the validity of the remaining provisions or any future application.

- 9.18. Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.
- 9.19. Additional Documents. Orono agrees to execute or provide any additional documents reasonably needed by the District to carry out in perpetuity the provisions and the intent of this Easement, including, but not limited to any documents needed to correct any legal description or title matter or to comply with any federal, state, or local law, rule or regulation.
- 9.20. Entire Agreement. This document sets forth the entire agreement of the parties with respect this Easement and supersedes all prior discussions or understandings.

IN WITNESS WHEREOF, Orono has voluntarily executed this Conservation Easement on the 23rd day of March, 2006.

ORONO:

Barbara Peterson
Barbara Peterson, Mayor

STATE OF MINNESOTA)
) ss
COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 23rd day of March, 2006, by Barbara Peterson, the Mayor of the City of Orono.

Linda S. Vee
Notary Public
My Commission Expires: Jan. 31, 2010

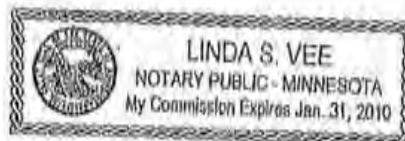


Exhibit A
Property Description

Government Lot One (1), Section Fourteen (14), Township One Hundred Seventeen (117), Range Twenty-three (23);

Government Lot Two (2), Section Twenty-three (23); Township One Hundred Seventeen (117) Range Twenty-three (23); and that part of Government Lot Three (3), Section Twenty-Three (23), Township One Hundred Seventeen (117), Range Twenty-three (23), commencing at the Northeast corner of said Government Lot Three (3), Section Twenty-three (23); thence Southwesterly along the lake shore to the Northeast corner of Lot A, Morse Island Park; thence South 350 feet to Lake Minnetonka; thence East along the shore of Lake Minnetonka to the East line of said Lot Three (3); thence North to the place of beginning.

Hennepin County, Minnesota.

Abstract Property.

Having Property Identification Numbers:

PID 14-117-23-34-0001 (approx. 46.123 acres)

PID 23-117-23-21-0001 (approx. 5.668 acres)

PID 23-117-23-22-0001 (approx. 4.67 acres)

Exhibit B
Property Map

Exhibit C
Existing Improvements

Improvement #	Description	Retention Plan
1	South Pavilion	Keep
2	Bathroom	Keep
3	North Pavilion	Keep
4	Office	Keep
5	Barn 1	Keep only 1 of three sheds – which one to be determined
6	Barn 2	Keep only 1 of three sheds – which one to be determined
7	Barn 3	Keep only 1 of three sheds – which one to be determined
8	Temporary Trailer	Keep – consider relocating
9	Mess Hall	Remove
10	Cottage	Remove
11	Cottage	Remove
12	Cottage	Remove



August 15, 2017

Victoria Seals, Council Member
City of Orono
P.O. Box 66
Crystal Bay, MN 55323

Council Member Seals,

Thank you for the opportunity to participate in the Big Island Committee meeting on Tuesday, August 8, 2017. In your role as Council Member and chair of the Big Island Committee for the City of Orono, we appreciate your consideration of conservation values for Big Island Nature Park as you explore options to promote public access and enjoyment of the property through passive, low impact and non-motorized recreational use and nature observation. The Minnehaha Creek Watershed District (MCWD) greatly values its past, current and future collaboration with the City of Orono to protect and preserve this important local and regional natural resource.

As part of the acquisition of Big Island Nature Park, the MCWD invested \$850,000 of public funds to purchase the conservation easement over the entire 56-acre property. This easement defines the conservation purpose "to preserve and protect in perpetuity the Conservation Values of the Protected Property by confining the development, management and use of the Protected Property to activities that are consistent with the preservation of these Conservation Values, by prohibiting activities that significantly impair or interfere with these Conservation Values and by providing for remedies in the event of any violation of this Easement."

To fulfill its obligations to fully enforce the conservation easement and to protect its significant investments in the property, the MCWD specifically restricts certain activities within the easement area, including removal of vegetation and the placement of structures. The vegetation clearing that has recently taken place in Big Island Nature Park is prohibited by the easement and its associated Management Plan and threatens the habitat improvement, shoreline stabilization, and water quality projects completed by MCWD and Three Rivers Park District at costs exceeding \$700,000. MCWD staff have documented that trees, branches, understory vegetation, and shoreline plantings have been cut and piled throughout the easement area. This piled material must be removed from the site as soon as possible to prevent smothering of the remaining vegetation and to help prevent prohibited bonfires by park users. As an immediate follow-up, MCWD staff will conduct a full assessment of the property.

No additional vegetation cutting is allowed. The MCWD looks forward to coordinating with City of Orono staff regarding any requests to perform allowed vegetation management, which is restricted to removal and treatment of invasive species and mowing of established trails as

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described in the Management Plan. Staff will also work together to address the need to store tools within the easement area.

As the Big Island Committee planning process progresses, from the MCWD perspective, it will be important to document and track maintenance and planning efforts and to better understand the preferred paths for official communication, decision-making and coordination between MCWD and the City of Orono, whether that should involve the Big Island Committee, Planning or Park Commission, city staff, individual Council Members, Mayor, and/or the City Council.

Please feel free to contact me with any questions or concerns. MCWD staff are dedicated to working with City of Orono staff to quickly remedy existing issues and move forward to protect this highly-valued natural resource.

Sincerely,



Lars Erdahl
District Administrator

copy via email: Orono Big Island Committee, Orono City Council, Orono City Administrator,
MCWD Board of Managers





August 17, 2017

Doug Reeder, Interim City Administrator
City of Orono
P.O. Box 66
Crystal Bay, MN 55323

SENT VIA EMAIL
dreeder@ci.orono.mn.us

RE: Big Island Nature Park Easement Inspection Report

Dear Mr. Reeder,

In fulfillment of the Minnehaha Creek Watershed District's (MCWD) obligations to enforce the conservation easement held on the City of Orono's property at Big Island Nature Park, MCWD staff perform annual inspections of the property. Inspections determine the condition of the protected land, compliance with easement terms, need for restoration due to natural or human disturbance, encroachment by adjoining property owners, adequacy of signage, and response to landowner concerns.

An inspection was completed by Laura Domyancich, MCWD Project and Land Technician, on August 15, 2017. Below is a summary of the inspection's findings and required actions by the landowner to come into compliance with easement terms:

1. Condition of protected land: The general condition of the protected land is good. The presence of two significant invasive species, common buckthorn and leafy spurge, are abundant in localized areas within the easement area. Steep slopes on the north and east shorelines that have sustained historical erosion have been primarily stabilized. Native vegetation planted to stabilize the shoreline and rip rap around the dock area has been cut or pulled, but remains in adjacent areas. Trails are in good condition.
2. Compliance with easement terms: As was noted in MCWD District Administrator, Lars Erdahl's letter of August 15, violations of the easement terms have occurred. Approximately 200 healthy, mature sugar maple, basswood, cottonwood, ironwood, and hackberry trees have had lower limbs removed by saw (Photo 1). The cut material has been left to lay covering desirable understory vegetation (Photo 2). Plantings including river bulrush, false indigo, blue vervain, and sandbar willow installed in the rip rap areas around the dock area have been cut or pulled and piled along the shoreline (Photo 3). These actions violate easement terms. The easement requires that any vegetation management be in accordance with the approved Management

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Plan. The management plan states that “[n]o alteration of vegetation is allowed in the natural areas except as described herein for restoration, plant establishment or maintenance.” The only removal of woody plants allowed by the management plan is for dead trees that are diseased or causing a safety hazard or for management of common buckthorn or other woody invasive species. The recent removal of limbs and shoreline vegetation and piling of brush removed plants is not allowed under the Management Plan.

3. Need for restoration due to natural or human disturbance: Brush piles resulting from the recent tree limb cutting need to be removed from the easement area to prevent smothering of desirable understory vegetation and to prevent the burning of cut material in prohibited bonfires. Mr. Erdahl’s earlier communication noted the City’s responsibility for this clean-up. *MCWD staff may be able to coordinate with City of Orono staff to remove this material with the goal of minimal site disturbance.*

A burn scar from a recent bonfire near the dock area needs to be cleaned up and reseeded (Photo 4).

Piled plant material pulled from the shoreline rip rap near the dock needs to be removed. The need for replacement of these plantings will be determined during the 2018 easement inspection.

4. Encroachment by adjoining property owners: None.
5. Adequacy of signage: Only two Conservation Easement signs were visible during the easement inspection. The easement states that the number and location of signs are subject to the City of Orono’s approval, which shall not be unreasonably withheld. MCWD desires to place additional signage within the easement area and will coordinate with City of Orono staff to seek approval to install additional permanent signage.
6. Response to landowner concerns: MCWD continues to coordinate with City of Orono staff in management of the easement area. A request to place a permanent maintenance equipment storage container within the Recreation Area of the easement area has been approved in a separate correspondence. MCWD is also aware of the City’s desire to support volunteer stewardship activities within Big Island Nature Park. In accordance with the easement and Management Plan, all such activities must first gain approval by MCWD. Based on the existing conditions of the site, a worthwhile volunteer activity would be a “buckthorn pull” employing volunteers to hand-pull seedling- and sapling-size buckthorn under moist soil conditions to minimize disturbance. Larger buckthorn could be cut by trained personnel, but must be immediately treated with appropriate herbicide to prevent resprouting. Herbicide applications must be completed by a licensed pesticide applicator.

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A follow-up easement inspection will be performed before September 29, 2017. A site visit to Big Island that will include MCWD staff, City of Orono staff, and possibly representatives from the Orono City Council has been discussed. This would provide an opportunity to look at the site first-hand and establish clear objectives for management. If you or other staff have any questions or concerns regarding the information in this inspection report, or if you would benefit from further technical assistance, please do not hesitate to contact me. Thank you in advance for your prompt attention to remedy these issues and your willingness to seek approval for future management within the easement area.

Regards,

A handwritten signature in black ink that reads "Laura M. Domyancich". The signature is written in a cursive style and is centered within a light gray rectangular box.

Laura Domyancich
Project and Land Technician

CC: Adam Edwards, Director of Public Works / City Engineer

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Photo 1

We collaborate with public and private partners to protect and improve land and water for current and future generations.



Photo 2

We collaborate with public and private partners to protect and improve land and water for current and future generations.



Photo 3

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Photo 4

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CONSERVATION EASEMENT MONITORING REPORT

Site: _____ Staff: _____

Tract: _____ Date: _____

Fee Owner & Address: _____

Date of last monitoring visit: _____

Owner contacted prior to visit?: Y/N Owner accompany on visit? Y/N

Has ownership transferred since last visit? Y/N

If yes, to whom? _____

Present Land Use: How is the protected land currently being used by the landowner?

Residential use? _____

Agricultural use? _____

Forestry use? _____

Other uses or management activities? _____

Condition of Protected Land: Has the property been altered by human activity since it was last monitored (e.g., new buildings, road construction, trails, fences, timber harvesting, excavation?) Y/N

If yes, describe the activity and indicate the location on the monitoring map. Document changes by photo.

Has the property been altered by natural causes (e.g., flood, fire, windstorm, erosion)? Y/N

If yes, describe the changes and indicate the location on the monitoring map. Document changes by photo?

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CONSERVATION EASEMENT MONITORING REPORT

Landowner Concerns: Does the landowner have any questions or concerns? Please list the questions and any responses given by staff.

Are all signs posted and in good shape? Y/N

Are additional signs required? Y/N

Easement Compliance: Identify any potential problems or specific areas of concern. Please reference baseline property report and conservation easement. Give as much detail as possible, and take photographs, if helpful.

Permanent Structures:

Encroachment Issues:

Vegetation:

Erosion:

Other areas of concern:

Restoration Needs: Describe any work that is needed to address disturbance:

Adjoining Properties: Identify any activities on adjacent properties that might cause erosion, siltation, or disturbance on the protected property (only what is visible from protected property, roads, or authorized areas.)

Comments and other Observations:

Documentation Attached:

Additional Site Visit Needs: Note any needs for additional monitoring visits prior to one year from now:

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