



MEMO

From: City of Duluth Property, Parks, and Libraries Department

Re: Purpose and Process for Protecting State Tax Forfeited Lands Acquired by the City for Open Space and/or Public Use

Date: March 2, 2022 (approved by the Natural Resources Commission on March 2, 2022)

The City is working with the County to acquire tax forfeit parcels for long-term protection of natural resources.

The purpose of this memo is to characterize the following:

1. Level of protection desired for newly acquired tax forfeited lands;
2. City-imposed protection strategies the City administration intends to bring to City Council for approval;
3. Legal mechanisms that give force to those strategies; and
4. Time-limited protections that will be automatically imposed in association with federal funding and state statutes enabling the acquisitions.

Level of Protection

City administration intends to ask the City Council to protect land parcels acquired for open space and natural resource protection by making future sale and/or development *difficult* by imposing specific appropriately demanding conditions. The City administration does not wish to make it *impossible* for future City Councils to authorize sale and/or development of tax forfeited properties acquired under state statute.

City-Imposed Protection Strategy

The City administration's primary protection strategy is to make sale and/or development of the properties difficult by asking City Council to formally designate them for protection, fostering strong public support for permanent protection, and making their development and/or sale subject to rigorous public review and strong public approval.

The City administration intends to carry out this strategy in a number of linked steps:

1. Ask City Council to impose formal protective designations available under City Code and/or state statute that obligates public review and super-majority approval by City Council prior to any future sale;
2. Engage the public to name or rename the protected lands and eventually plan how they will be managed and used;

3. Conduct public events to acknowledge the protective designation and celebrate the new place names; and
4. Install prominent official signage identifying the property as protected.

Legal Basis for City-Imposed Protection Strategy

The City administration intends to ask the City Council to provide primary protection for the vast majority of newly acquired tax forfeit parcels by utilizing two protective designations:

1. **Park Designation** – Land can be dedicated as park property in a variety of ways. In 1955, the State of Minnesota Legislature passed a law outlining the conditions under which Duluth may sell land that has been dedicated as park property. The City is only authorized to sell park property it owns and holds in fee simple, and such sale must be pursuant to a public sale.

[1955 Minn. Laws, Chapter 82, Sec. 2](#), in part, states:

“Prerequisites for sale [of park property]. No sale of property authorized under this act shall be made unless it shall first receive the recommendation of the planning commission of such city, evidenced by a written resolution adopted by a three-fourths vote of such commission, and filed as a public record with the clerk of such city, and unless the governing body of such city, by a four-fifths vote thereof, shall duly adopt an ordinance authorizing such sale.”

The effect of this law is to require that the City of Duluth conduct a multi-step public review process prior to sale of any property designated as park and gain at least a three-fourths super-majority approval of sale by the Planning Commission and at least a four-fifths super-majority approval of sale by the Duluth City Council.

2. **Duluth Natural Area Designation** – Under [Article XXIX, Section 2-152 to 2-157](#) of the Duluth City Code, 1959, as amended, the City Council may designate lands of ecological significance for long-term protection under the Duluth Natural Areas Program (DNAP). The process for implementing the provisions of the DNAP in accordance with the Duluth City Code is provided in the [DNAP Guidelines](#)
3. **Proposed Future Protective Designation** – The Imagine Duluth 2035 Comprehensive Plan’s Open Space Chapter identifies the need to establish new mechanisms that can provide meaningful protection of open space properties for stormwater and floodwater management in order to provide improved community resiliency. This is supported by the following:

Open Space Policy #2 – “Examine the value and need for all of Duluth’s publicly owned open space” – Strategy #2 calls upon the City to:

“Identify a means to hold and maintain those ecologically important lands that are not needed for active park purposes and lands that are needed for natural disaster resiliency (i.e. floodplains and wetlands). Options to consider include a private nonprofit entity or a City land classification system.”

Open Space Policy Implementation Step 22 reiterates the need:

“Complete land transactions, gain easements, and pursue other methods to more permanently protect these lands.”

City administration intends that the Property, Parks, and Library Department, the Planning and Economic Development Department, and the Public Works Department stormwater utility will work together with the aim of devising and bringing forward a new protective designation that can fulfill the public interest in long-term protection of lands that are important for stormwater and floodwater management and resiliency, but are not suitable for park or natural area designations.

Time-Limited Federal and State Protections

Protection for newly acquired tax forfeit properties are reinforced by state and federal protections in association with the acquisition of lands using city and/or grant dollars. These include, but are not limited to the following:

1. Federal law 2 CFR § 200.311 Real property (Appendix 1)
2. Minnesota Statute §282.01, Subd. 1a.(e) that authorizes free conveyance of tax forfeit properties to local governments for specific authorized public uses (Appendix 2) and;
3. Minnesota Statute §282.01, Subd. 1a.(h) that authorizes sale of conservation land for less than its market value to local governments that intend to permanently protect the properties for one of three specific conservation purposes. Generally, these are properties that have significant environmental value but lack the existing or planned recreational uses necessary for the County to convey them to the City at no cost under §282.01, Subd. 1a.(e) (Appendix 3).

Application of the Land Protection Strategies: 2020-2022 Duluth Public Lands Project

Park Designation

The City administration intends to ask City Council to dedicate about 78%, or approximately 1,900 acres, of the newly acquired property as park property following acquisition and, in so doing, make future sale of any portion subject to the super-majority approval requirements of the 1955 state law. Maps depicting properties to be designated, and protected, as Park properties or as Duluth Natural Areas are shown in Figure 1 and the detailed maps that correspond to each project area (Figures 2 – 5).

Duluth Natural Area Designation

The City administration intends to ask the City Council to designate 14%, or approximately 347 acres, of the newly acquired property as a part of the St. Louis River Natural Area, including a requirement that the property may be conveyed or used in contravention with the terms of the DNAP designation only upon the affirmative vote of eight councilors. Maps depicting properties to be designated, and protected, as Park properties or as Duluth Natural Areas are shown in Figure 1 and the detailed maps that correspond to each project area (Figures 2 – 5).

Future Proposed Protective Designation:

About 7% of the acreage, or approximately 178 acres, to be acquired is not suitable for park or natural area designation and there are no other suitable protective designations available in City Code. Much of this acreage consists of relatively isolated lands essential for stormwater and floodwater management and resiliency. The lands have little or none of the recreational value to justify protection as designated park property. Nor do they have the exceptional environmental significance required for protection under the Duluth Natural Areas Program. Nonetheless, the public has a vital interest in long-term protection of the green infrastructure located on these properties.

Time-Limited Federal and State Protections:

Fortuitously, the City-imposed protection strategy for newly acquired tax forfeit properties is reinforced by current secondary protections that are automatically imposed in association with the federal funding used to acquire the properties and the state statutes that permit sale of the properties to the City for less than market value.

The federal and state protections each impose protections that include:

1. Inter-agency review and approval required prior to property development or sale; and
2. Imposition of financial penalties if the City gains approval to proceed with property development or sale.

All of the newly acquired acreage in the vicinity of the St. Louis River and some of the acreage in other areas of the City are being purchased with federal funding from the Environmental Protection Agency, Great Lakes National Program Office, under the Great Lakes Restoration Initiative. All of the acreage acquired with these funds will be subject to the following federal protections:

1. The properties may only be used for their authorized purpose (environmental protection) unless and until they are no longer necessary for that purpose.
2. The City may not dispose of the properties or encumber their titles so long as the properties are necessary for their authorized purpose.
3. If the City deems that the properties are no longer necessary for the authorized purposes and wishes to sell some or all of them, the City must gain EPA approval for disposition and follow EPA disposition instructions. EPA may, at its discretion, offer one of four courses:
 - a. EPA denies the request to dispose of the property.
 - b. The City retains title after compensating EPA for the value of the property.
 - c. The City sells the property and conveys the proceeds to EPA.
 - d. EPA requires transfer of the property to EPA or its designee for continued protection.

A summary of the federal protections is provided in Appendix 1.

All of the newly acquired and freely conveyed property will also be subject to protections that are automatically imposed by the state statutes that authorize their sale to the City at no cost or discounted cost.

Minnesota Statutes §282.01, Subd. 1a.(e) authorizes free conveyance of tax forfeit properties to local governments for specific authorized public uses. Over 75% of the acquired acreage is being conveyed to the City under this statute. Nearly all of this property is to be acquired for authorized public use as parks. A small minority of this property is to be acquired for the authorized public uses of trails and civic recreation.

All of the parcels acquired pursuant to this statute will be subject to the following protections for a period of 30 years following the transfers of ownership:

1. The City may only use the property for the specific authorized public use recited in the deed.
2. The City may not sell the property (except for a reconveyance to the State).

3. After three years from the date of the conveyance, if the City has failed to put the land to the authorized public use, or abandons that use, the City must: (1) with the approval of the St. Louis County Board, purchase the property for an authorized public purpose at the present market value as determined by the County Board, or (2) authorize the proper officers to convey the land, or the part of the land not required for an authorized public use, back to the State in trust for the taxing districts. Minn. Stat. § 282.01, subd. 1d. If the City purchases the property under clause (1), the City will reconvey the land subject to the conditional use deed to the State, and then the State will convey the property to the City by quitclaim deed free of a use restriction and the possibility of reversion or defeasement. Minn. Stat. § 282.01, subd. 1d. Note that this is a statutory requirement which the City has no authority to circumvent—the City cannot enter into any agreement or place any restrictive covenant on property it acquires that would interfere with this statutory mandate, and it cannot convey the property to a third party.

The City and St. Louis County agree that existing City uses of, and plans for, the properties acquired under this statute already satisfy the authorized public use requirements. As a result, the City is not required to take any further action following acquisition to retain the properties.

At the end of the 30-year period following acquisition of these properties, the use restrictions will terminate. However, the City's protection strategy for the vast majority of these properties (e.g., park or natural area designation) has no end date and will continue indefinitely.

A full description of the protections applied to properties acquired under §282.01, Subd. 1a.(e) is provided in Appendix 2.

The remaining (less than 25%) of the newly acquired property will be purchased for less than market value under a different state statute – Minnesota Statutes, §282.01, Subd. 1a.(h) – that authorizes sale of conservation land for less than its market value to local governments that intend to permanently protect the properties for one of three specific conservation purposes. Generally, these are properties that have significant environmental value but lack the existing or planned recreational uses necessary for the County to convey them to the City at no cost under §282.01, Subd. 1a.(e).

All of the parcels acquired pursuant to this statute will be subject to the following protections for a period of 30 years following the transfer of ownership:

1. The City may only use the properties for the specific conservation purpose stated in the deed.
2. The City may not sell the property (except for a reconveyance to the State).

At the end of the 30-year period following acquisition of the properties acquired pursuant to Minn. Stat. §282.01, Subd. 1a.(h) , the state use restrictions will terminate. For the major portion of these properties acquired through this statute that the City Council designates as parks, Duluth Natural Areas, or some new protective designation, the protections associated with the selected designation will survive the 30-year state protections and continue indefinitely. In contrast, those properties acquired through this statute that do not subsequently receive park, Duluth Natural Area, or a new protective designation will be more vulnerable to sale and development when the state protections lapse after 30 years.

A full description of the protections applied to properties acquired §282.01, Subd. 1a(h) is provided in Appendix 3.

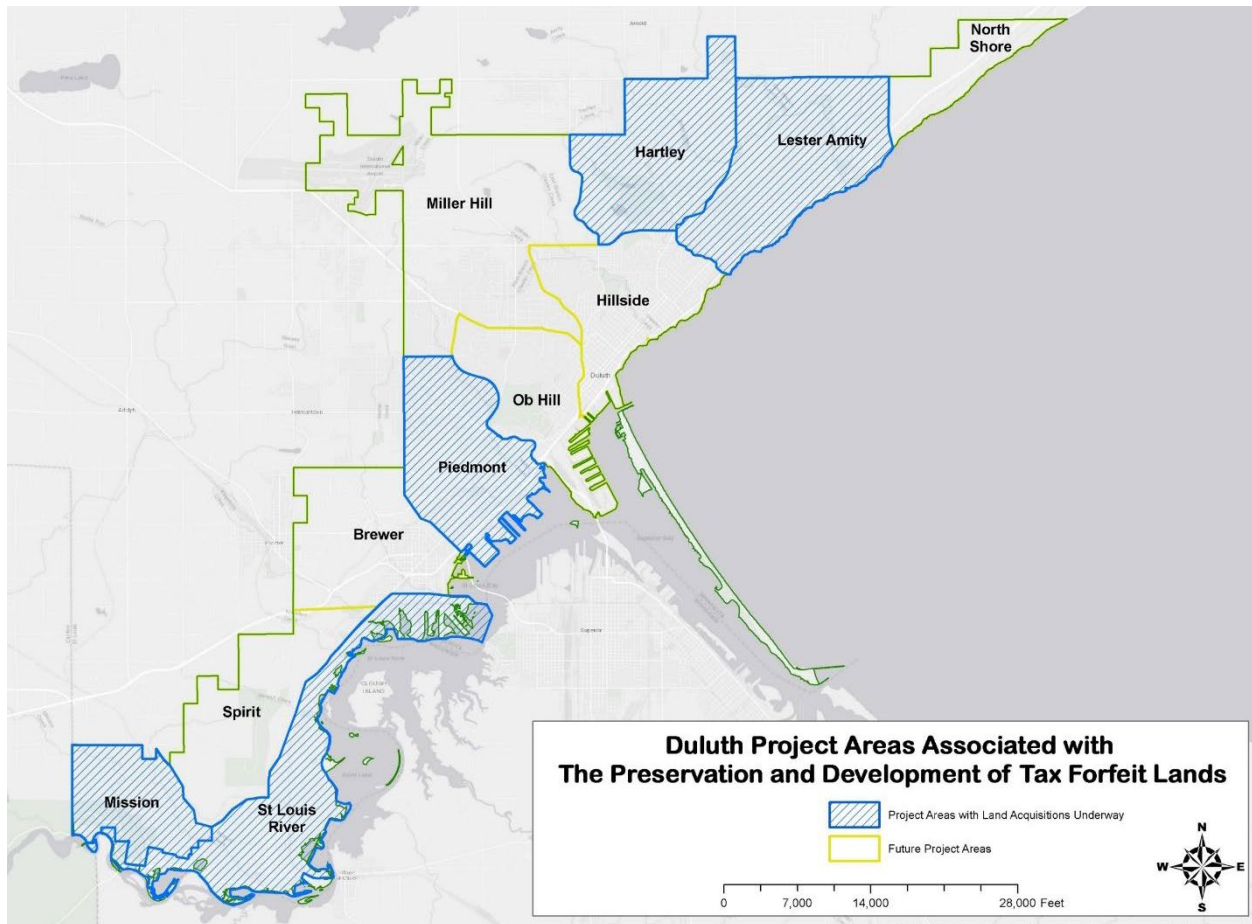
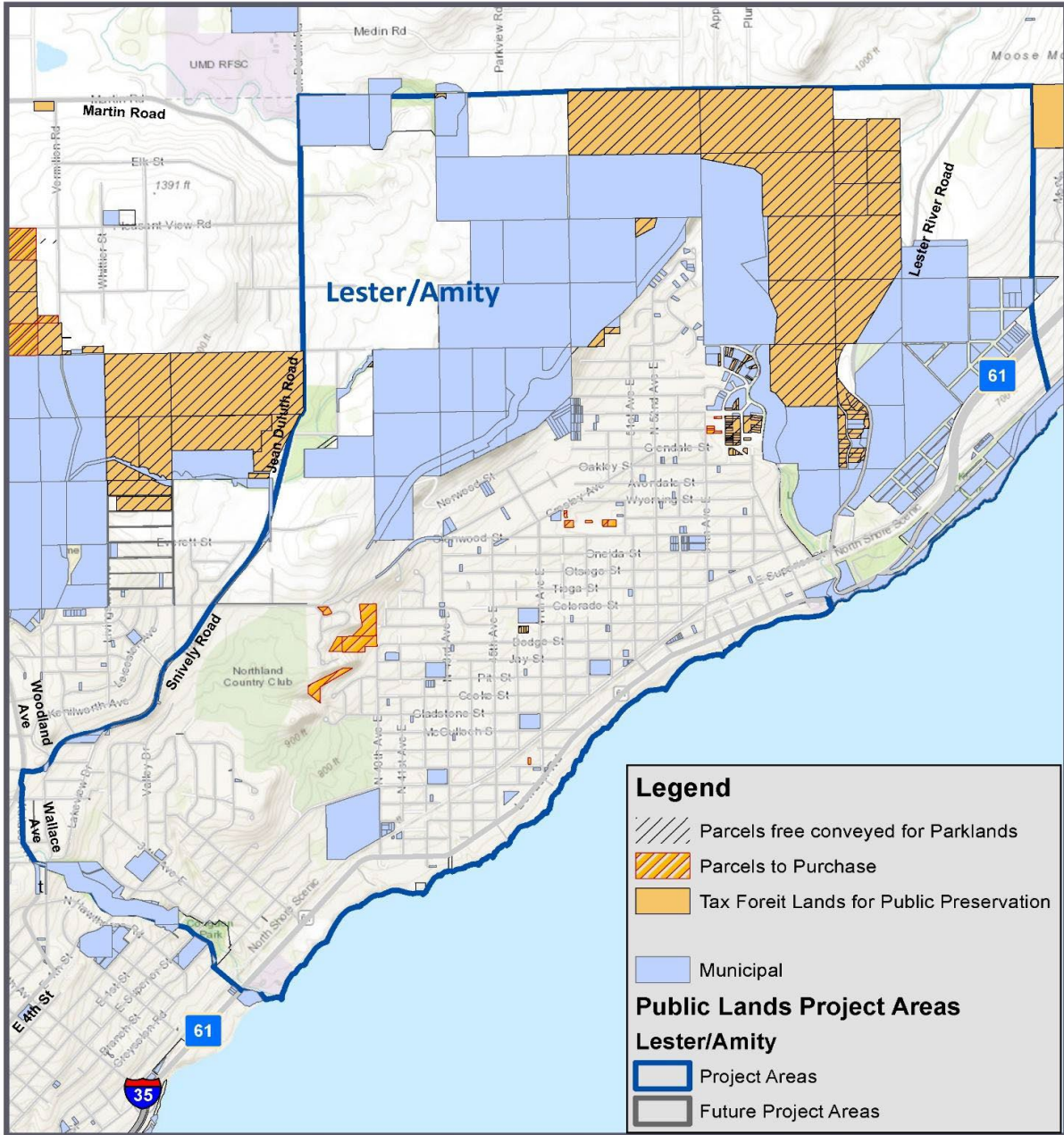


Figure 1. Areas associated with the 2020 -2022 Duluth Public Lands Project.



Date: 1/5/2022

Public Lands Project Area

City selected Tax Forfeit lands on the basis of the Guidelines for Selecting Tax Forfeit Open Space Parcels for City Ownership and Protection (Adopted by City Council August 17, 2020)

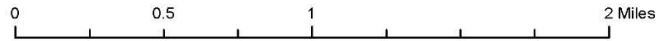
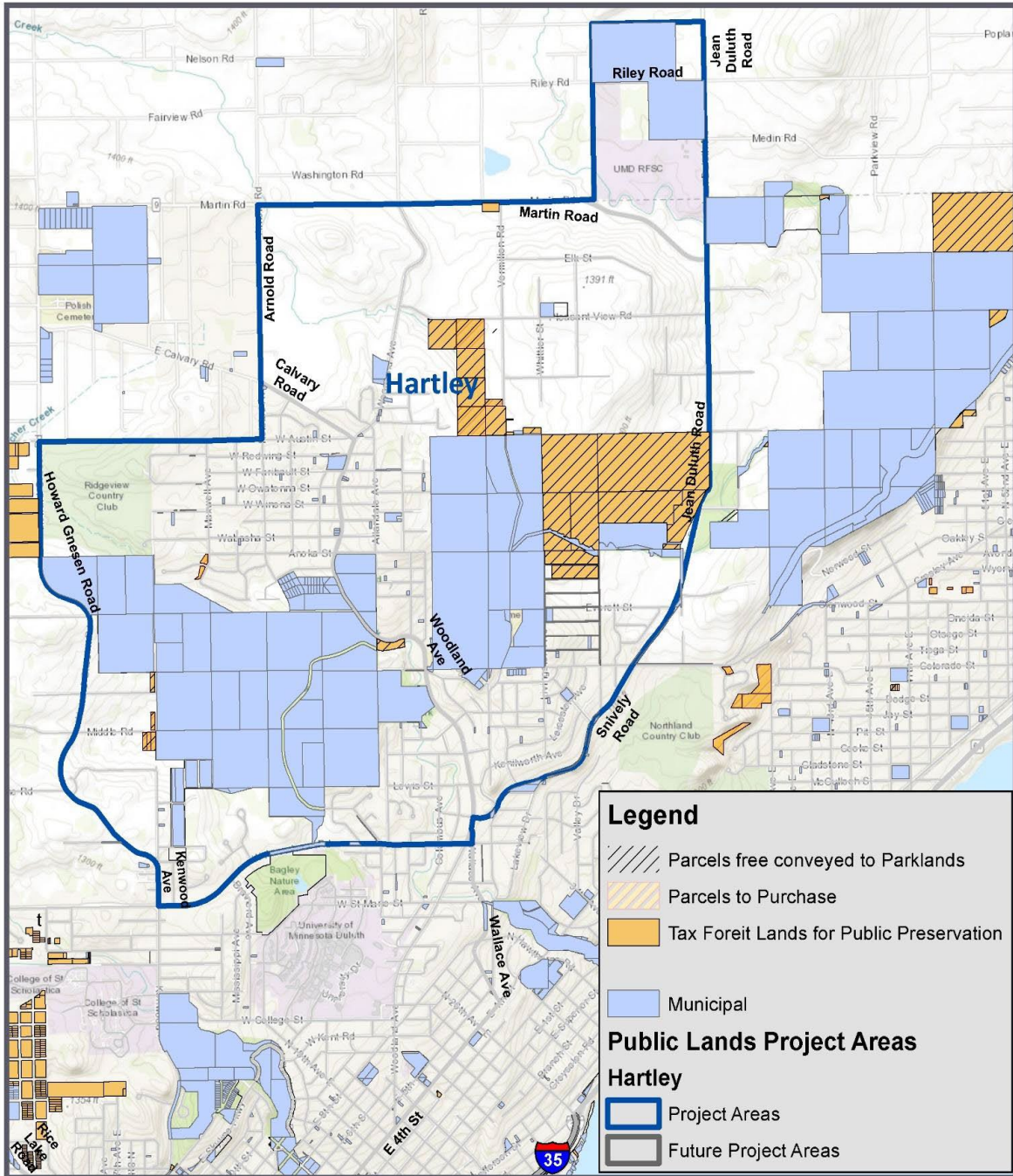


Figure 2. Lester/Amity Project Area associated with the 2020 -2022 Duluth Public Lands Project



Date: 1/5/2022

Public Lands Project Area

City selected Tax Forfeit lands on the basis of the Guidelines for Selecting Tax Forfeit Open Space Parcels for City Ownership and Protection (Adopted by City Council August 17, 2020)

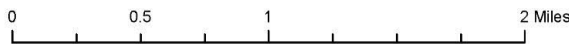
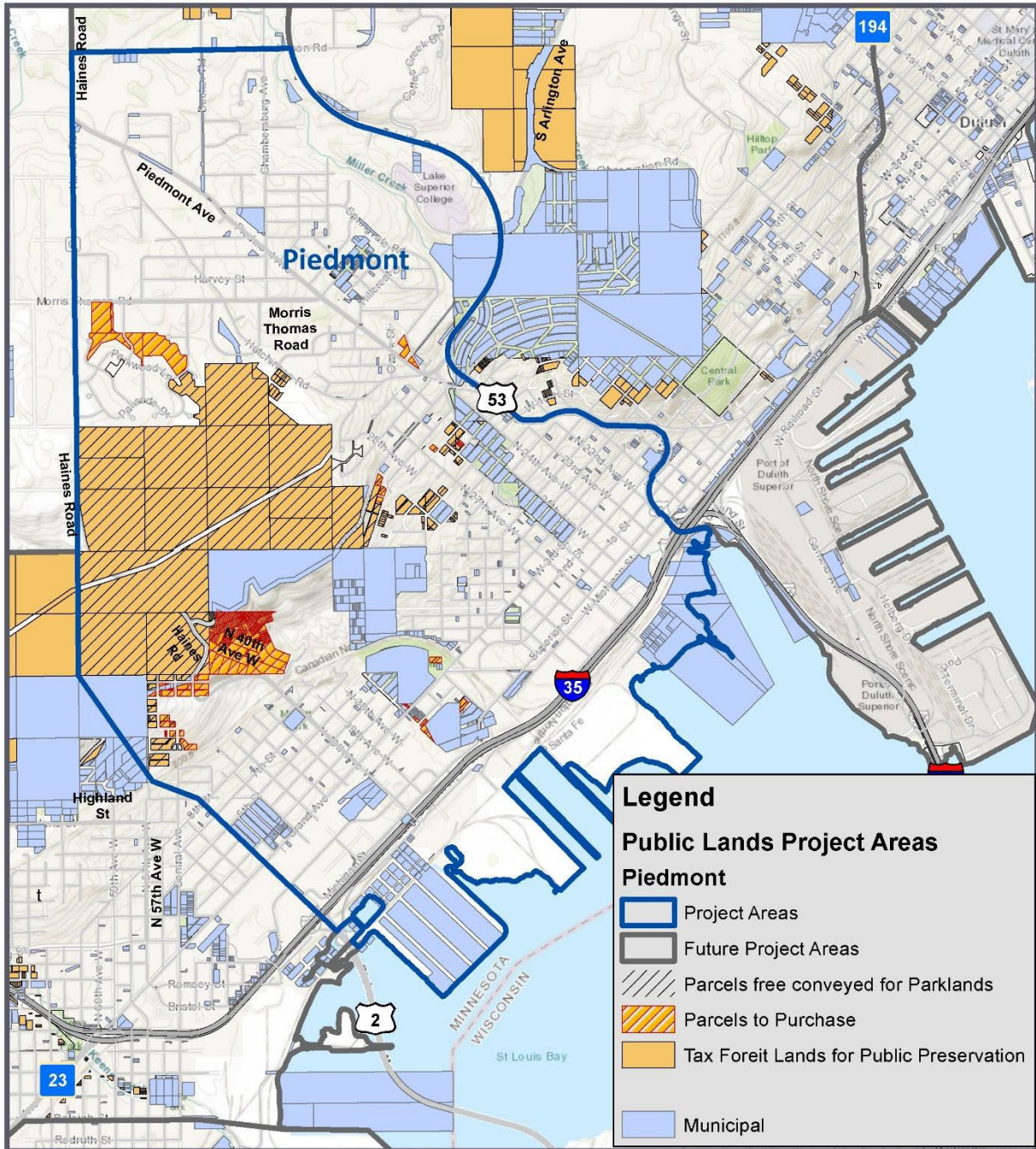


Figure 3. Hartley Project Area associated with the 2020 -2022 Duluth Public Lands Project



Date: 1/5/2022

Public Lands Project Area

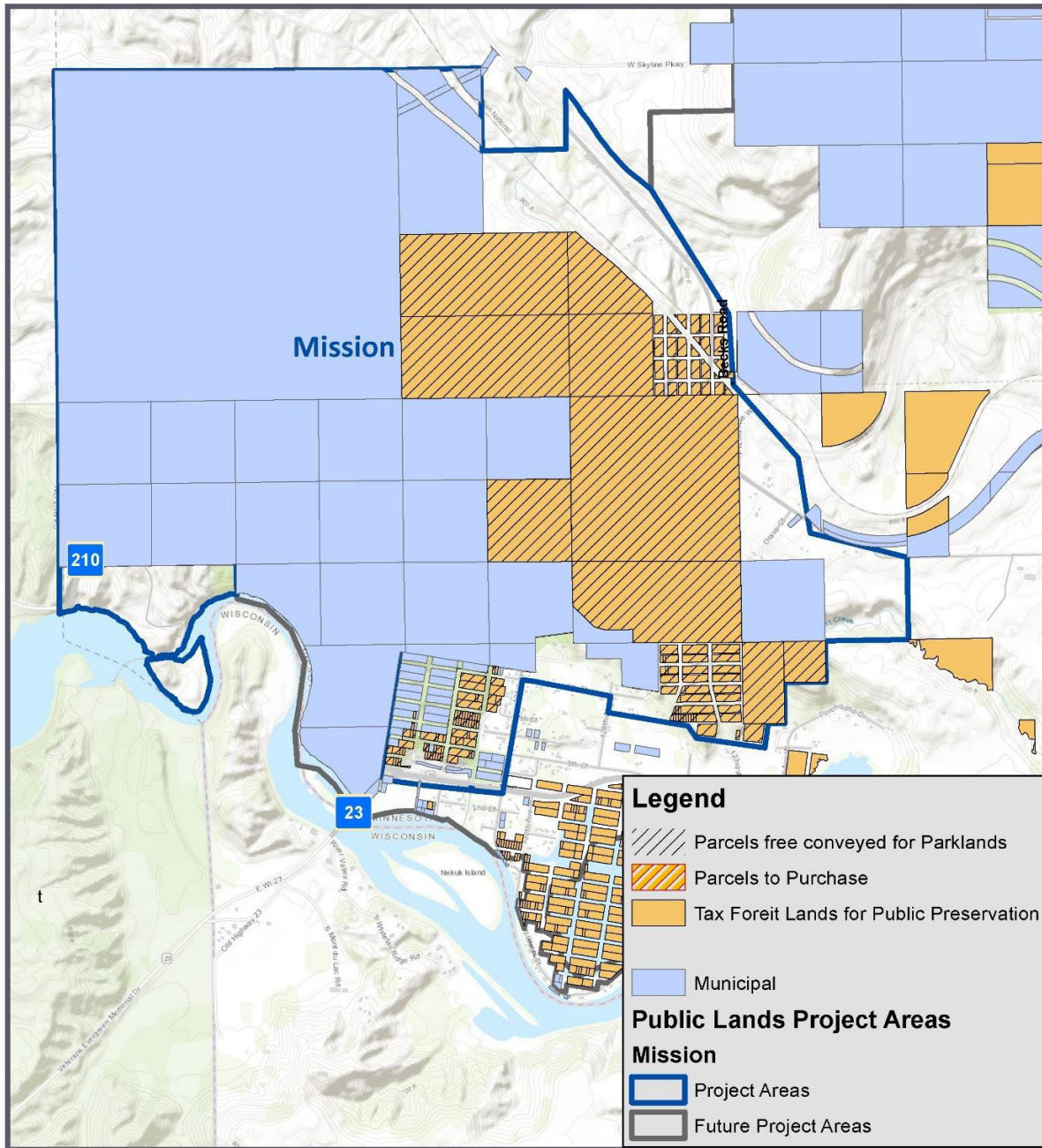
City selected Tax Forfeit lands on the basis of the Guidelines for Selecting Tax Forfeit Open Space Parcels for City Ownership and Protection (Adopted by City Council August 17, 2020)



0 0.5 1 2 Miles



Figure 4. Piedmont Project Area associated with the 2020 -2022 Duluth Public Lands Project



Date: 1/5/2022

Public Lands Project Area

City selected Tax Forfeit lands on the basis of the Guidelines for Selecting Tax Forfeit Open Space Parcels for City Ownership and Protection (Adopted by City Council August 17, 2020)

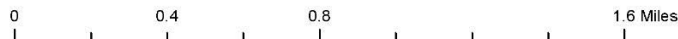
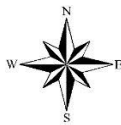
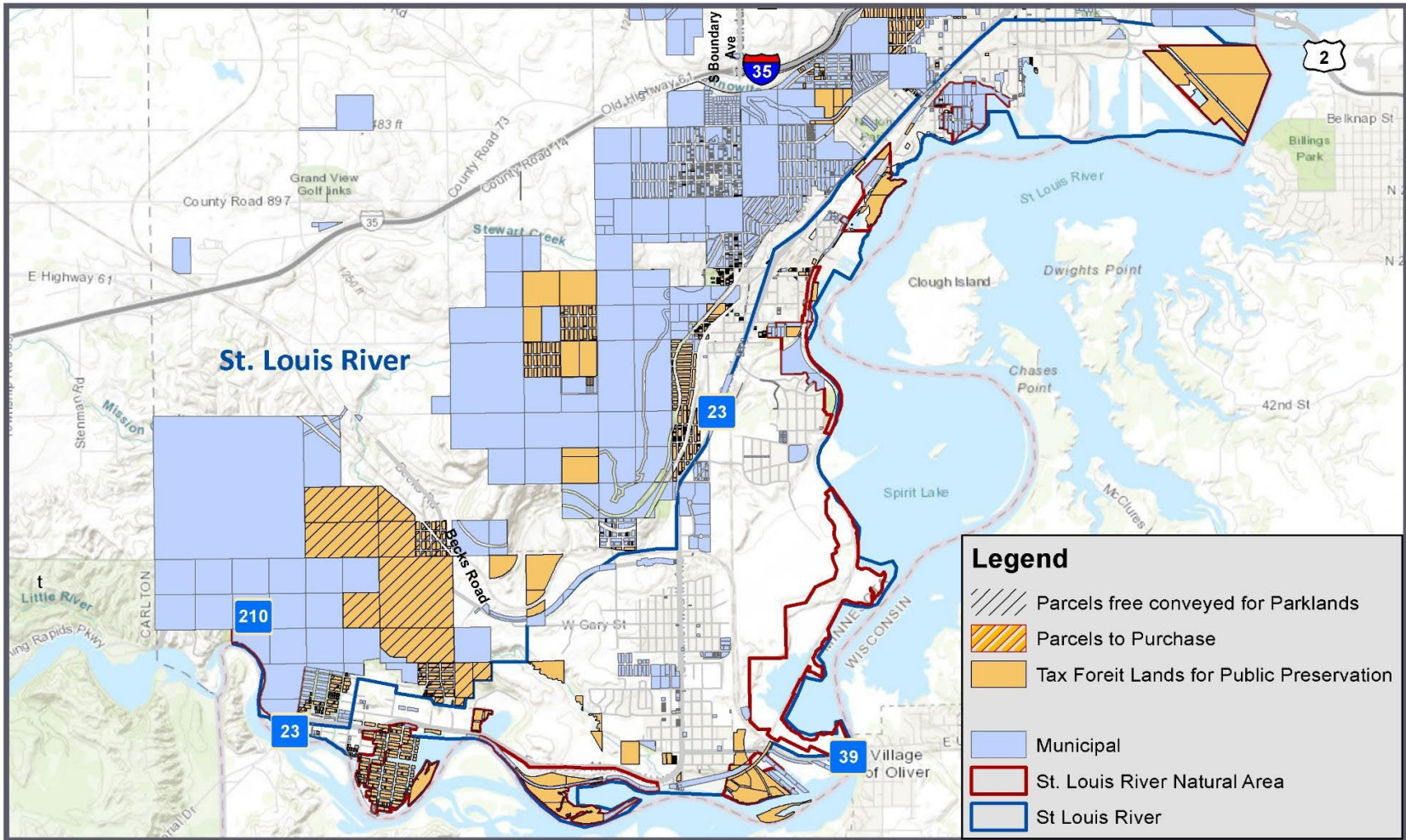


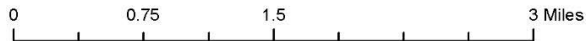
Figure 5. Mission Project Area associated with the 2020 -2022 Duluth Public Lands Project



Date: 1/5/2022

Public Lands Project Area

City selected Tax Forfeit lands on the basis of the Guidelines for Selecting Tax Forfeit Open Space Parcels for City Ownership and Protection (Adopted by City Council August 17, 2020)



Appendix 1

§200.311 Real property. –Federal Legal Requirements for St. Louis River Project Area Lands purchased through EPA GLRI Grant GL00E02384-1

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

(b) *Use.* Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:

(1) Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sell the property and compensate the Federal awarding agency. The amount due to the Federal awarding agency will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of

participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

Appendix 2

§282.01, Subd. 1a(e) Nonconservation Land Acquired for No Consideration - State Legal Requirements for free conveyance for a park or trail

These properties may be conveyed for an authorized public use as set forth in the statute (park/trails, etc.). The state deed conveying the property to the City will be a conditional use deed stating the authorized public use assigned to each parcel and will convey a defeasible estate. Minn. Stat. § 282.01, subd. 1c. The City may only use the property for the specific authorized public use stated in the deed. For 15 years from the date of the conveyance there is no failure to put the land to the authorized public use and no abandonment of that use if the City has a formal plan, including but not limited to a comprehensive plan or land use plan, that shows an intended future use of the land for the authorized public use. Minn. Stat. § 282.01, subd. 1d.

After three years from the date of the conveyance, if the City has failed to put the land to the authorized public use, or abandons that use, the City must: (1) with the approval of the county board, purchase the property for an authorized public purpose at the present market value as determined by the county board, or (2) authorize the proper officers to convey the land, or the part of the land not required for an authorized public use, back to the State in trust for the taxing districts. Minn. Stat. § 282.01, subd. 1d. If the City purchases the property under clause (1), the City will reconvey the land subject to the conditional use deed to the State, and then the State will convey the property to the City by quitclaim deed free of a use restriction and the possibility of reversion or defeasement. Minn. Stat. § 282.01, subd. 1d. Note that this is a statutory requirement which the City has no authority to circumvent—the City cannot enter into any agreement or place any restrictive covenant on property it acquires that would interfere with this statutory mandate, and it cannot convey the property to a third party.

Title to the land will automatically revert to the State if the City fails to put the land to the approved authorized public use as stated in the deed (or if the City abandons the authorized public use). Minn. Stat. § 282.01, subd. 1c. This automatic reversion is the method the State uses to get the property back in the event the City fails to comply with the reconveyance requirements set forth in Minn. Stat. § 282.01, subd. 1d. as outlined above. 2

The conditional use restriction contained in a state deed can be removed 15 years after the date of the state deed if:

- the City makes a finding it has no current plans to change the use of the land;
- the City submits an application to the State;

- the commissioner of revenue determines the City has put the land to the authorized public use; and
- the St. Louis County Board does not object to the conveyance within 60 days of inquiry by the commissioner of revenue.

Minn. Stat. § 202.01, subd. 1d(b). Since the City has to make a finding that it has no current plans to change the use of the land, this option won't allow the City to divert the property to another use.

Regardless of when the state deed was executed, the restrictions set forth in a conditional use deed from the State for tax-forfeit land will terminate 30 years from the date the deed was acknowledged, unless the State has recorded a declaration of reversion in the real estate records.

Appendix 3

§282.01, Subd. 1a(h) Conservation Land Acquired for less than Fair Market Value - State Legal Requirements for purchasing land for preservation, or restoration and preservation, of the land in its natural state or for drainage or storage of storm water

These properties may be conveyed for any of the following purposes: (1) creation or preservation of wetlands; (2) drainage or storage of storm water under a storm water management plan; or (3) preservation, or restoration and preservation, of the land in its natural state. The state deed will contain a restrictive covenant limiting the use of the land to one of these purposes for 30 years or until the property is reconveyed back to the State in trust.

The standard restrictive covenant language included in state deeds reads as follows:

The Grantee agrees to use the property for (drainage or storage of storm water under a storm water management plan.) This covenant will expire on the earlier of the thirtieth anniversary of the date of this deed or, if applicable, the date the Grantee reconveys the property to the State in trust.