



**Planning & Development Division**  
*Planning & Economic Development Department*

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802

218-730-5580

planning@duluthmn.gov

|                             |  |                                 |                          |                      |
|-----------------------------|--|---------------------------------|--------------------------|----------------------|
| <b>File Number</b>          | PL 19-168  | <b>Contact</b>                  | Steven Robertson         |                      |
| <b>Type</b>                 | Rezone to Extend Natural Resources Overlay (Shoreland) | <b>Planning Commission Date</b> | December 10, 2019        |                      |
| <b>Deadline for Action</b>  | <b>Application Date</b>                                |                                 | <b>60 Days</b>           | N/A City Application |
|                             | <b>Date Extension Letter Mailed</b>                    | N/A                             | <b>120 Days</b>          | N/A                  |
| <b>Location of Subject</b>  | Areas of the Riley Road and Midway Annexation Areas    |                                 |                          |                      |
| <b>Applicant</b>            | City of Duluth   | <b>Contact</b>                  | Planning and Development |                      |
| <b>Agent</b>                |  | <b>Contact</b>                  |                          |                      |
| <b>Legal Description</b>    | See Attached Map                                       |                                 |                          |                      |
| <b>Site Visit Date</b>      | November 25, 2019                                      | <b>Sign Notice Date</b>         |                          |                      |
| <b>Neighbor Letter Date</b> | November 25, 2019                                      | <b>Number of Letters Sent</b>   | 101                      |                      |

**Proposal**

The City is proposing to extend the Natural Resources Overlay into areas annexed by the City of Duluth (Riley Road and Midway Township/Becks Road), to allow for shoreland protections for East Branch Amity Creek and Mission Creek, Sargent Creek, Stewart Creek, and US Steel Creek.

**Staff Recommendation**

Staff is recommending approval of the proposed rezoning to extend the natural resources overlay.

|                | <b>Current Zoning</b> | <b>Existing Land Use</b> | <b>Future Land Use Map Designation</b> |
|----------------|-----------------------|--------------------------|--|
| <b>Subject</b> | Varies                |                          |  |
| <b>North</b>   | Varies                |                          |  |
| <b>South</b>   | Varies                |                          |  |
| <b>East</b>    | Varies                |                          |  |
| <b>West</b>    | Varies                |                          |  |

**Summary of Code Requirements**

- UDC Sec. 50-37.3.B: Planning Commission shall review the application, conduct a public hearing ... with public notice ... and make a written recommendation to council.
- UDC Sec. 50-37.3.C: The Planning Commission shall review the application, and Council shall approve the application or approve it with modifications, if it determines that the application: 1. Is consistent with the Comprehensive Land Use Plan; 2. Is reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use; 3. Is required by public necessity, convenience, or general welfare, or good zoning practice; 4. Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible.

## **Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):**

### Governing Principles

Principle #2 - Declare the necessity and secure the future of undeveloped places. Undeveloped areas are an essential part of Duluth's municipal fabric - urban plazas, neighborhood parks, large tracts of public ownership and private lands zoned for minimal development. These minimally or undeveloped areas collectively create an open space system. These areas contribute to Duluth's cultural, health, recreational, and economic value and community identity. This open space system provides vistas, encourages active recreation, provides natural infrastructure as storm water retention, plant and animal habitat and water quality, and is the strongest visual element defining Duluth's sense of place.

### Future Land Use

Open Space- High natural resource or scenic value, with substantial restrictions and development limitations. Primarily public lands but limited private use is anticipated subject to use and design controls. Examples include city parks and recreation areas, primary viewsheds, shorelands of the lake and streams, wetlands and floodplains, and high-value habitat.

Rural Residential-Areas of single-family lots of at least five acres. Limits the extension of municipal utilities for new development. Includes existing rural density areas with lots as small as an acre now served by municipal utilities but not planned for further subdivision.

## **Review and Discussion Items:**

- 1) The City is proposing to extend the Natural Resources Overlay into areas annexed by the City of Duluth (Riley Road and Midway), to allow for shoreland protections for East Branch Amity Creek and Mission Creek, Sargent Creek, Stewart Creek, and US Steel Creek.
- 2) The annexation areas near Riley Road and Becks Road contain five major waterways. The same shoreland protections that apply to waterways in the rest of Duluth also protect waterways in the two annexed areas. However, in order to update the Natural Resource Overlay map (the map that shows the shoreland protections), a rezoning process and public hearing is required.
- 3) The purpose of the Natural Resource Overlay is to promote, preserve and enhance the water resources and environment within the city and protect them from adverse effects caused by poorly sited or incompatible development. It is intended to implement the Minnesota Wetland Conservation Act (WCA), federal emergency management agency (FEMA) rules, and the Minnesota department of natural resources (DNR) shoreland and flood plain regulations. Waters in the city have been classified as general development waters (GD), natural environment waters (NE) or coldwater rivers (CW). The shoreland overlay applies to lands within 1,000 feet of Lake Superior or within 300 feet of rivers, creeks, streams and tributaries and floodplains, as designated on the NR-O map (Natural Resources Overlay). If a parcel or development lies only partially within a shoreland area, only the portion of the property within the shoreland is subject to additional standards.
- 4) US Steel Creek is designated as a Natural Environment Waters, while East Branch Amity Creek, Mission Creek, Sargent Creek, and Stewart Creek are Coldwater Rivers. Natural Environment Shorelands have a structure setback of 75 feet and an impervious surface setback of 50 feet, while Coldwater River Shorelands have a structure setback of 150 feet and an impervious surface setback of 75 feet.
- 5) No written correspondence has been received as of the date that this memo was printed (December 2, 2019). One citizen called and asked about potential development impacts or limitations on their property if shoreland protections are extended. A public information meeting is scheduled for the evening of December 5, and comments or questions from the public are anticipated at that meeting.

**Staff Recommendation:**

Based on the above findings, staff recommends that the Planning Commission recommend approval to the City Council of the rezoning of the Natural Resources Overlay.

- 1) The proposed shorelands are the most reasonably able to implement the objectives of the Comprehensive Plan related to the land use for these areas.
- 2) Material adverse impacts on nearby properties are not anticipated.



**Legend**

**Floodplain (UDC)**

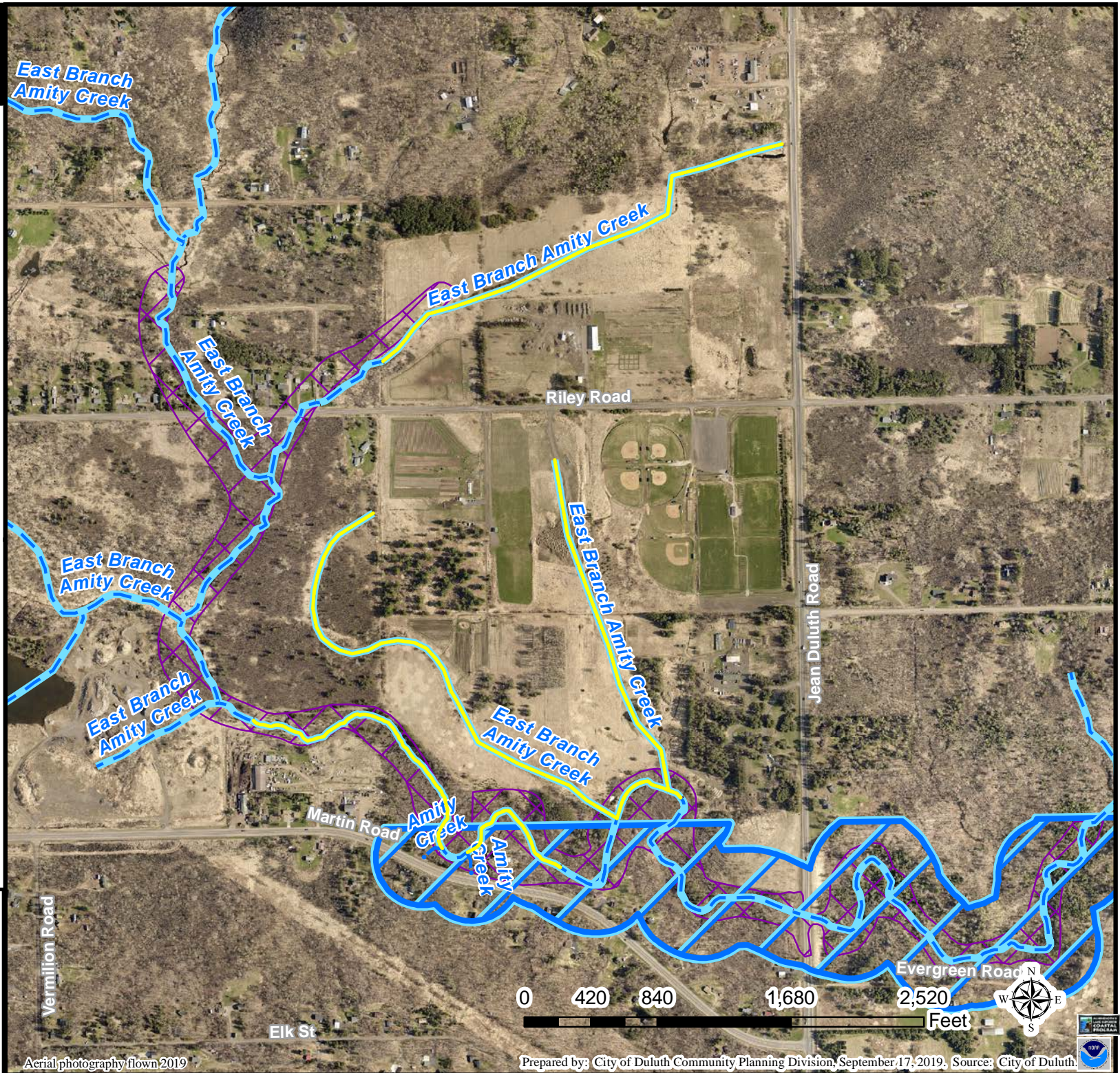
- General Flood Plain
- Flood Way
- Flood Fringe

**Shoreland (UDC)**

- Cold Water
- Natural Environment
- General Development

Trout Stream (GPS)

Other Stream (GPS)

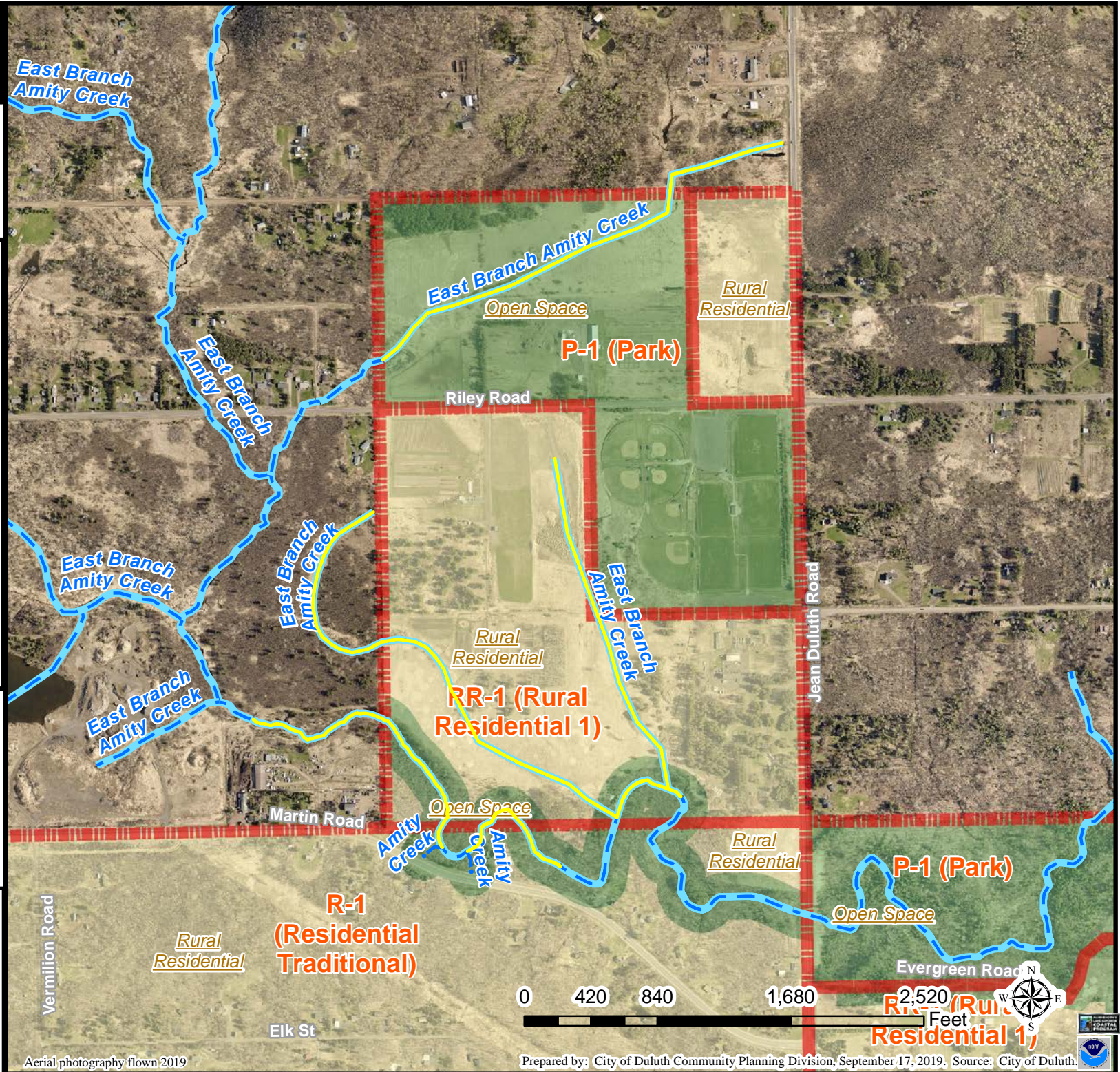


The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

Aerial photography flown 2019

Prepared by: City of Duluth Community Planning Division, September 17, 2019. Source: City of Duluth





**Legend**

- Zoning Boundaries
- Trout Stream (GPS)
- Other Stream (GPS)
- Open Space
- Open Space/Outside Duluth
- Rural Residential
- Low-density Neighborhood
- Traditional Neighborhood
- Urban Residential
- Neighborhood Commercial
- Central Business Secondary
- Central Business Primary
- Large-scale commercial
- Tourism/Entertainment District
- Commercial Waterfront
- General Mixed Use
- Neighborhood Mixed Use
- Light Industrial
- General Industrial
- Industrial Waterfront
- Business Park
- Transportation and Utilities
- Transportation and Utilities/Outside Duluth
- Medical District
- Institutional

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

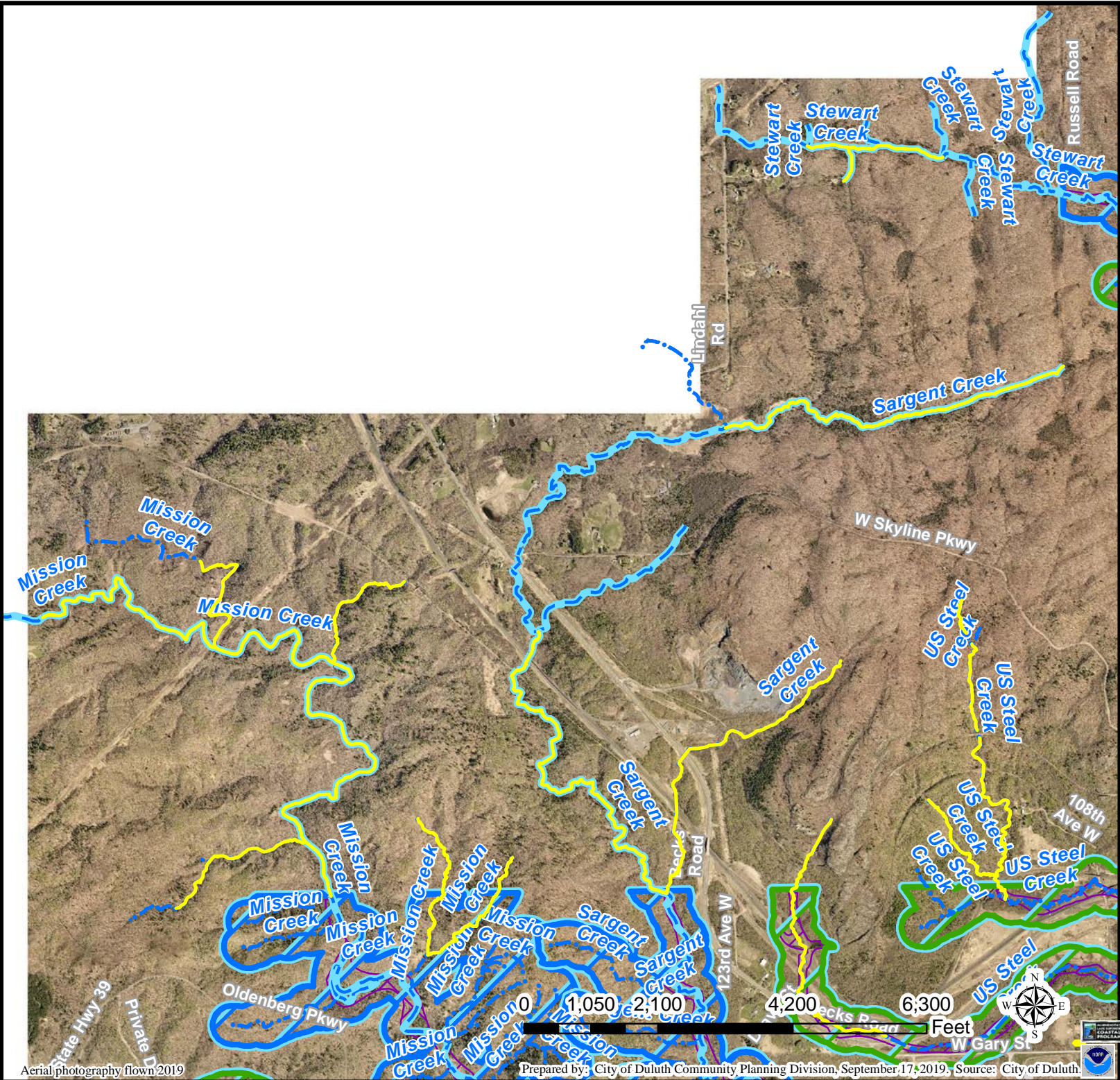
**Legend**

**Floodplain (UDC)**

- General Flood Plain
- Flood Way
- Flood Fringe

**Shoreland (UDC)**

- Cold Water
- Natural Environment
- General Development
- Trout Stream (GPS)
- Other Stream (GPS)



Aerial photography flown 2019

Prepared by: City of Duluth Community Planning Division, September 17, 2019, Source: City of Duluth

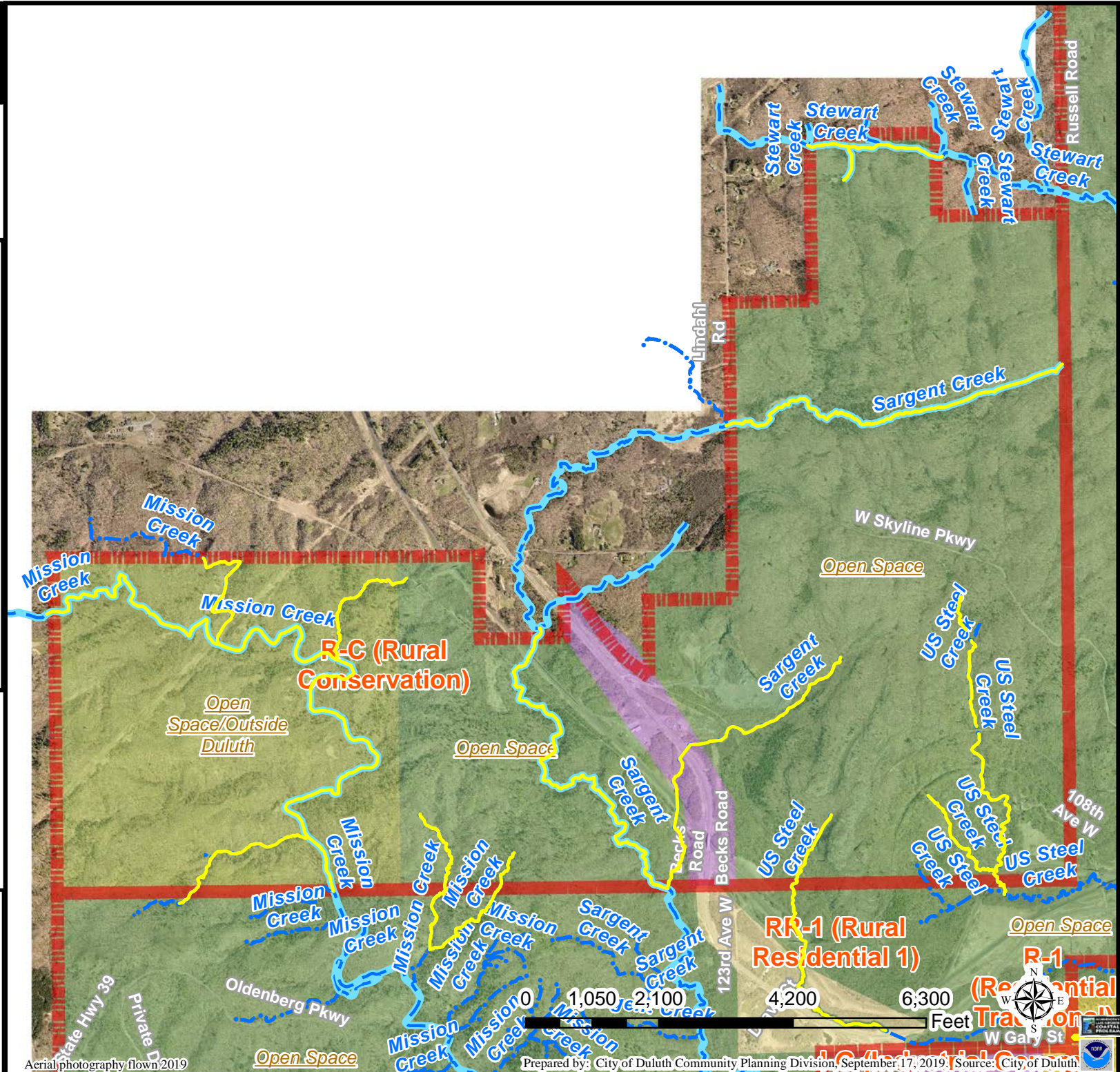
The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

### Legend

- Zoning Boundaries
- Trout Stream (GPS)
- Other Stream (GPS)
- Open Space
- Open Space/Outside Duluth
- Rural Residential
- Low-density Neighborhood
- Traditional Neighborhood
- Urban Residential
- Neighborhood Commercial
- Central Business Secondary
- Central Business Primary
- Large-scale commercial
- Tourism/Entertainment District
- Commercial Waterfront
- General Mixed Use
- Neighborhood Mixed Use
- Light Industrial
- General Industrial
- Industrial Waterfront
- Business Park
- Transportation and Utilities
- Transportation and Utilities/Outside Duluth
- Medical District
- Institutional

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

Aerial photography flown 2019



Prepared by: City of Duluth Community Planning Division, September 17, 2019; Source: City of Duluth

**D. Shorelands.**

In furtherance of the policies declared by the state legislature, waters in the city have been classified as general development waters (GD), natural environment waters (NE) or coldwater rivers (CW). The shoreland overlay applies to lands within 1,000 feet of Lake Superior or within 300 feet of rivers, creeks, streams and tributaries and floodplains, as designated on the NR-O map. If a parcel or development lies only partially within a shoreland area, only the portion of the property within the shoreland is subject to these provisions;

1. Shoreland permit required.

The following activities and structures require a shoreland permit if located within a shoreland:

- (a) All structures;
- (b) All grading, filling and excavating;
- (c) All construction of impervious surfaces, including roads, driveways, parking areas and trails;
- (d) All removal of natural vegetation;
- (e) Any construction activity that removes or disturbs natural beach grasses on Park Point;

2. Standards for shoreland permit.

- (a) Erosion and sediment control measures shall be required for any land disturbing activity;
- (b) Grading and filling of more than 250 square feet or placement of more than ten cubic yards of material within the shore impact zone shall only be permitted if a plan for erosion control, stormwater management and shoreline buffer restoration is approved by the city and effectively implemented;
- (c) Impervious surfaces shall be designed and constructed to minimize and control runoff and erosion into the regulated waters;
- (d) Any removal of natural vegetation shall be designed to prevent erosion into regulated waters and to preserve shoreland aesthetics;
- (e) Removal of trees or shrubs in a contiguous patch, strip, row or block is prohibited in shore impact zones;
- (f) The project does not result in the proposed building being located in a shore or bluff impact zone;
- (g) Natural vegetation buffers shall be restored to the extent feasible after any project is complete;

3. Dimensional standards.

- (a) No shoreland permit shall be approved unless the standards in Table 50-18.1.D-1 are met or a variance obtained pursuant to Article V;

**Table 50-18.1.D-1: Minimum Shoreland Area Standards**

| <b>Standards</b>  | <b>General Development Waters <sup>[1]</sup></b> | <b>Natural Environmental Waters</b> | <b>Coldwater River</b> |
|---|--|-------------------------------------|------------------------|
| Minimum setbacks from Ordinary High Water Level or highest known water level, whichever is higher                       |  |                                     |                        |
| <i>Structures</i>   | 50 ft.   | 75 ft.                              | 150 ft.                |
| <i>Commercial, mixed use, &amp; industrial structures in the harbor, shown in Figure 50-18.1.- 3</i>                    | 25 ft.   | N/A                                 | N/A                    |
| <i>Impervious surfaces in the Shore Impact Zone</i>   | 50 ft.   | 50 ft.                              | 75 ft.                 |
| Lowest floor elevation above Ordinary High Water Level or highest known water level, whichever is higher <sup>[2]</sup> | 3 ft.  |                                     |                        |
| Width of naturally vegetative buffer  | 50 ft.   |                                     |                        |

<sup>[1]</sup> All Lake Superior shoreland is classified as general development waters.

<sup>[2]</sup> For a structure located in an area where FEMA has established a base flood elevation, the structure is exempt from this shoreland elevation requirement, but must meet flood plain regulations.