



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

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802



218-730-5580



planning@duluthmn.gov

File Number	PL 23-051	Contact	Kyle Deming	
Type	Vacation of Drainage and Utility Easement	Planning Commission Date		April 11, 2023
Deadline for Action	Application Date	March 9, 2023	60 Days	N/A
	Date Extension Letter Mailed	N/A	120 Days	N/A
Location of Subject		South side of Grand Avenue near Bessemer Street (Riverside)		
Applicant	River West Vacation Homes, LLC	Contact	Brad Johnson	
Agent		Contact		
Legal Description		Part of Lot 2, Block 1, Kayak Bay Plat (see attached Exhibit A)		
Site Visit Date		March 31, 2023	Sign Notice Date	March 28, 2023
Neighbor Letter Date		March 23, 2023	Number of Letters Sent	8

**Proposal:** Vacation of part of a drainage and utility easement in preparation for site development.

**Staff Recommendation**

Approval of the vacation, with conditions.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	MU-P Mixed Use-Planned	Vacant	Neighborhood Commercial
<b>North</b>	P-1 Park	Vacant	Neighborhood Commercial
<b>South</b>	R-P	Munger Trail	Open Space
<b>East</b>	MU-P Mixed Use-Planned	Vacant	Neighborhood Commercial
<b>West</b>	MU-P Mixed Use-Planned	Creek	Open Space

**Summary of Code Requirements**

Vacation of public rights of way and/or easements require a Planning Commission public hearing with a Recommendation to City Council. City Council action is to approve or deny by resolution. Resolutions approving either a full or partial vacation require a 6/9's vote of the council.

UCD Sec. 50-37.6.C – The Planning Commission shall review the proposed vacation, and Council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway, or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles, or pedestrians or the efficient supply of utilities or public services in the city;
2. Is not otherwise needed to promote the public health, safety, or welfare of the citizens of Duluth.

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

### Governing Principles and Policies:

The following Imagine Duluth 2035 Governing Principles should be considered when reviewing the request:

- Governing Principle #7 – Create and maintain connectivity. The proposed vacation will reduce options for future public utility connectivity overall, but as site development details are now clearer, this easement will not be needed for public utilities.
- Governing Principle #8 – Encourage a mix of activities, uses, and densities. Vacation will facilitate site development consistent with the MU-P regulating plan with the vision for creating a mixed-use neighborhood.
- Governing Principle #9 – Support private actions that contribute to the public realm. Vacation will allow for the site development consistent with the MU-P regulating plan.

### Future Land Use

- Neighborhood Commercial: Small- to moderate-scale commercial, serving primarily the adjacent neighborhood(s). May include specialty retail; community-gathering businesses such as coffee shops or lower intensity entertainment; offices.

### Zoning

- Mixed Use-Planned: Provides a flexible development option for mixed use projects that integrate creative site design, provide a variety of building types, provide unique on-site amenities, conserve natural features, increase pedestrian connectivity, or otherwise result in a final product that provides a greater level of public benefit than would be required under the existing zone district. Each MU-P district requires approval of an MU-P regulating plan that includes the location, type, and intensity of proposed development and a description of public amenities or benefits included.

### History:

- February 13, 2017, City Council approval of UDC Map Amendment to MU-P (PL 16-105) for Kayak Bay Village.
- March 14, 2017, Planning Commission approval of Preliminary Plat (PL 17-028).
- July 10, 2018, Planning Commission approval of Final Plat (PL 18-078).
- September 15, 2022, Land Use Supervisor approval of regulating plan amendment affecting Lot 2, Block 1, Kayak Bay.

## **Review and Discussion Items**

Staff finds:

1. The proposal is to vacate the existing drainage and utility easement to facilitate development of Lot 2, Block 1, Kayak Bay. The original purpose for the drainage and utility easement was for the placement of a storm water basin to serve development on Lot 2, Block 1, Kayak Bay and to preserve a small wetland.
2. The original concept for development of Lot 2 was a single building and parking outside the easement area with a storm water basin in the eastern portion of the “L” and a small wetland to be preserved in the western portion of the “L” (see “Wetland Impacts Exhibit” within the attached Regulating Plan). Revised plans (attached) show the eastern part of the easement area as parking and private utilities and the western part as a storm water basin.
3. The revised plan’s storm water basin will impact a small isolated wetland (estimated 1,300 sq. ft.), which will require mitigation by filing of an amended wetland replacement plan and purchasing wetland credits before construction.
4. A general development stream, 84<sup>th</sup> Ave. W. Creek, flows approximately 25 feet west of the easement area and has a 50-foot-wide naturally-vegetative buffer along it. There is a wetland at the bottom of the creek ravine as well as a floodplain area that are located in the “jog” in the western boundary of the vacation area in order that these features may continue to be preserved.
5. City storm water engineer Tom Johnson commented, “The stormwater management requirements for the River West Development will be accomplished via privately owned stormwater management facilities that do not need to be in an easement. The facilities will need to be designed and constructed to City requirements and will be reviewed and approved. The drainage easement vacations will keep in place an easement over wetlands to be protected and for a drainage way that is mapped for FEMA Floodplain.”
6. The drainage and utility easement is not needed for its original purpose as the private storm water basin does not need to be located in a public drainage and utility easement. The portion of the easement remaining will still protect the wetland and drainage way in the 84<sup>th</sup> Ave. W. Creek ravine. The approximately 1,300 sq. ft. isolated wetland will be mitigated by purchase of wetland credits.
7. Separate from the drainage and utility easement that is subject to this vacation application there exists along the

southerly property boundary of Lot 2, Block 1, Kayak Bay, a 20-foot-wide utility easement recorded on Torrens Doc. No. 1003989. A gas main and a power line are currently installed within that easement and it is not the intention of this vacation action to extinguish that easement. Staff is working with City attorney and property staff on clarifying this for the Council resolution.

8. Separate from the drainage and utility easement that is the subject of this vacation application there exists at the northwest corner of Lot 2, Block 1, Kayak Bay, a 35-foot by 60-foot utility easement in favor of the State of MN. There are no City-maintained utilities located within that easement and it is not the intention of this vacation action to extinguish that easement. Staff is working with City attorney and property staff on clarifying this for the Council resolution.
9. MN Power commented on the need to maintain their power line located within the easement recorded on the Torrens document in #7 above. No other comments have been received on the proposed vacation.
10. Vacations of rights of way and easements lapse unless the vacation is recorded with the county recorder within 90 days after final approval. The vacation recording is facilitated by the City of Duluth.

**Staff Recommendation:**

Based on the above findings, staff recommends that Planning Commission recommend to City Council approval of the easement vacation, as petitioned, with the following condition:

1. The Council approve the vacation with at least a 6/9's vote.
2. Applicant must present a vacation exhibit meeting the City Engineer's requirements within 90 days of Planning Commission's recommendation or the application will be denied.
3. The vacation must be recorded within 90 days of final approval by City Council, or such approval will lapse.





PL 23-051  
Easement Vacation  
Riverwest Vacation Homes, LLC

### Area Map

- Legend**
- Zoning Boundaries
  - Streams**
    - Other Stream (GPS)
  - Trails**
    - Bike/Hike
    - Hiking
    - Multi-Use - Paved
    - XC
    - Multi-Purpose Snowmobile
  - Subdivision Boundaries

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.







PL 23-051  
Easement Vacation  
Riverwest Vacation Homes, LLC

## Future Land Use Map

**Legend**

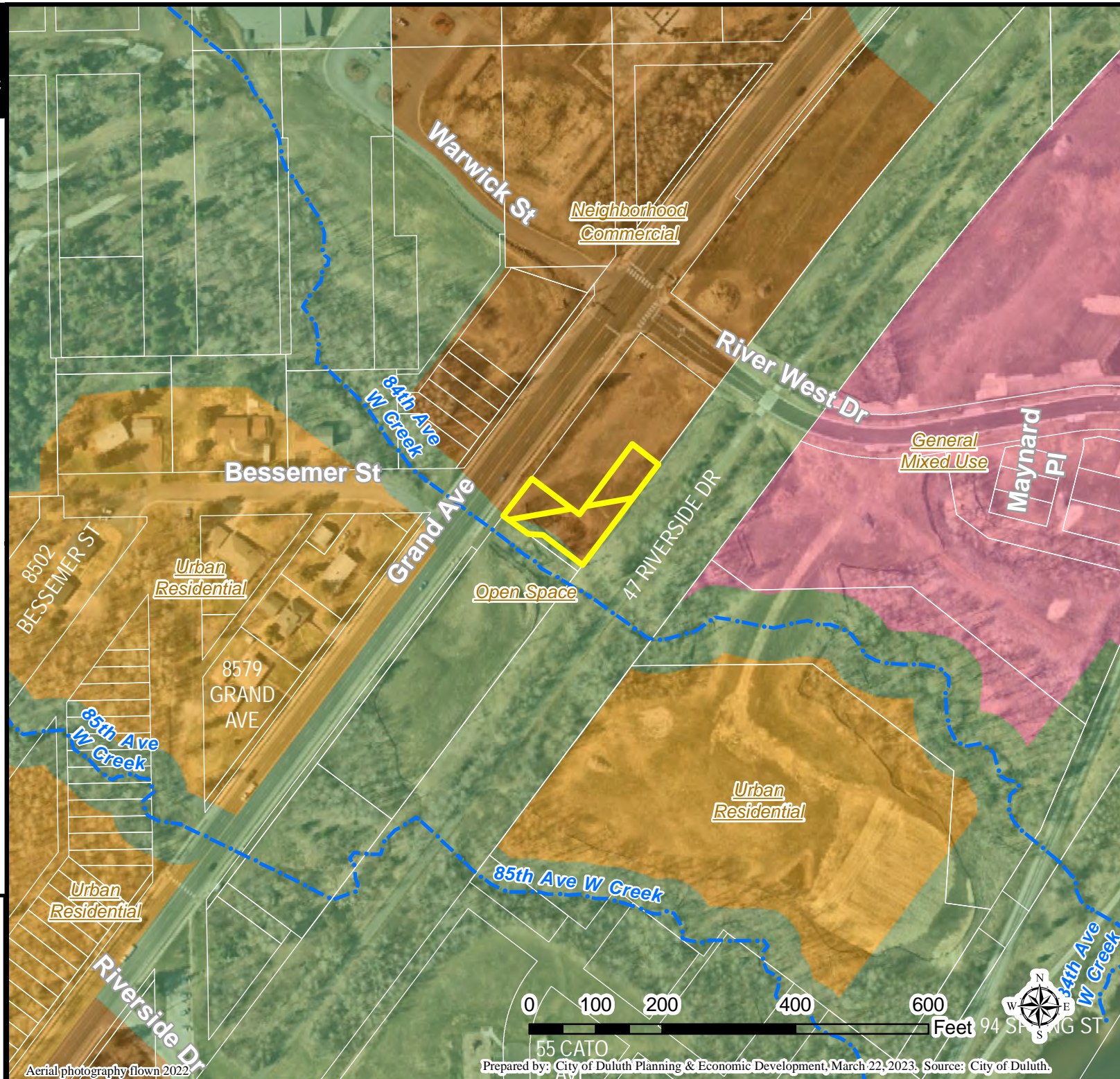
**Streams**

- Other Stream (GPS)

**Future Land Use**

- Open Space
- Urban Residential
- Neighborhood Commercial
- General Mixed Use

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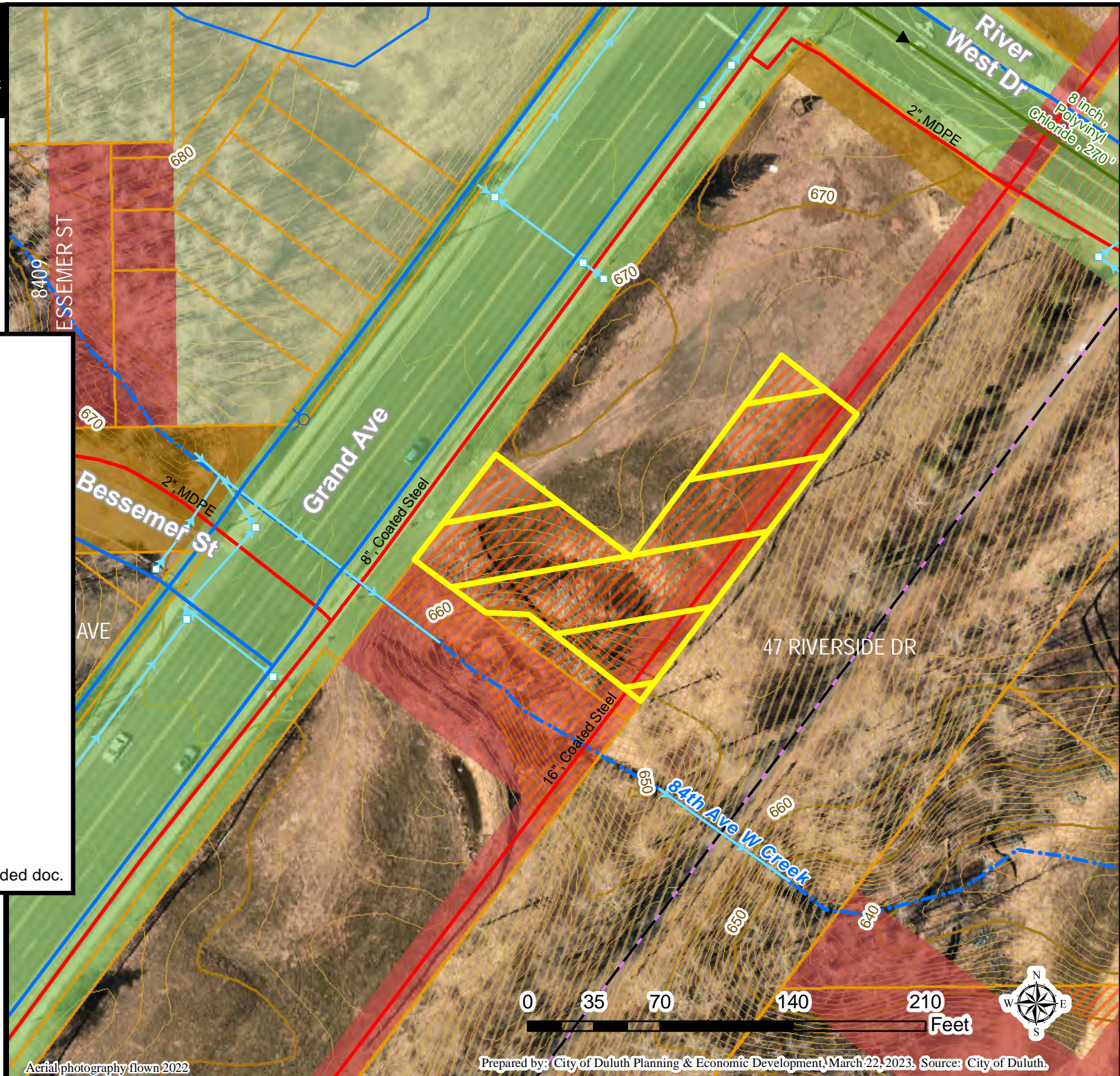
PL 23-051  
Easement Vacation  
Riverwest Vacation Homes, LLC

## Site Map

### Legend

- Streams**
  - Other Stream (GPS)
- Parcels**
  -
- Trails**
  - XC
  - Multi-Purpose Snowmobile
- Distribution Main**
  - Water Main
  - Hydrant
  - Gas Main
- Sanitary Sewer Mains**
  - City of Duluth
- Storm Sewer Mains**
  - Storm Sewer Pipe
  - Storm Sewer Catch Basin
- Elevation**
  - 1 Ft contour
  - 10 Ft contour
  - Undefined ROW Status
- ROW Status**
  - Utility, Active
  - Railroad, Active
  - Road, Active - currently in use
  - Road, Vacated - vacated
  - Conservation, Vacated - via recorded doc.

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Aerial photography flown 2022

Prepared by: City of Duluth Planning & Economic Development, March 22, 2023. Source: City of Duluth.



# KAYAK BAY

being a portion of IRONTON FIRST DIVISION and GOVERNMENT LOT 1  
Section 23, Township 49 North, Range 15 West of the 4th Principal Meridian  
City of Duluth, St. Louis County, Minnesota

CURVE TABLE				
CURVE	RADIUS	CENTRAL ANGLE	ARC LENGTH	CHORD BEARING
C1	1389.92	3°50'51"	93.34	S25°32'55"W
C2	1389.92	7°09'12"	173.53	S31°02'57"W
C3	1339.92	13°51'58"	324.27	N29°12'38"E
C4	267.00	37°19'33"	173.94	S80°37'32"E
C5	332.99	31°45'04"	184.53	S83°24'47"E
C6	267.00	27°57'20"	130.27	N85°18'39"W
C7	332.99	39°07'35"	227.40	N79°43'32"W
C8	1434.92	2°23'08"	69.75	S34°33'52"W
C9	1434.92	2°39'43"	66.67	S37°05'18"W
C10	1434.92	2°32'40"	63.73	S39°41'29"W
C11	1429.92	3°08'47"	78.52	S42°32'17"W
C12	5654.65	4°25'33"	436.80	N39°32'25"E
C13	5654.65	2°01'35"	200.00	N42°49'11"E
C14	5804.65	6°05'06"	616.48	S40°22'11"W
C15	5944.65	6°21'55"	660.42	N40°30'36"E
C16	5994.65	6°41'00"	699.25	N40°40'08"E

City of Duluth  
Slopes or Retaining Walls & Fills  
Easements

Slopes or Retaining Walls & Fills Easement  
within 50 feet of centerline Grand Avenue, a.k.a.  
Trunk Highway Number 23 (T.H. 23), are within  
the limits of an easement for highway purposes  
running in favor of the State of Minnesota  
pursuant to Documents No. 154863 (Torrens)  
and 611688 (Abstract). In addition, these  
easements are subject to right of access to  
the State of Minnesota for T.H. 23 as containd  
in Document No. 172934 (Torrens).

✱ Slopes & Fills Easement  
Doc No. 158334

✱ Slopes & Fills Easement  
Doc No. 158335

Proposed  
Vacation

- LEGEND**
- PLAT BOUNDARY LINE
  - PLAT BLOCK LINE
  - PLAT LOT LINE
  - PLATTED BLOCK LINE
  - PLATTED LOT LINE
  - SECTION LINE
  - QUARTER SECTION LINE
  - SIXTEENTH SECTION LINE
  - ROAD RIGHT-OF-WAY LINE
  - RAILROAD RIGHT-OF-WAY LINE
  - EXISTING EASEMENT LINE
  - DRAINAGE EASEMENT (THIS PLAT)
  - 5/8" x 30" REBAR WITH ALUMINUM  
CAP INSCRIBED "MINNESOTA PLS  
44075", SET THIS SURVEY
  - COMPUTED POSITION, NO MONUMENT  
FOUND OR SET
  - FOUND SQUARE IRON ROD
  - FOUND P.K. NAIL
  - FOUND REBAR
  - FOUND STONE MONUMENT
  - FOUND IRON PIPE
  - DELINEATED WET LAND
  - (R) RECORD DISTANCE
  - (f.k.a.) FORMALLY KNOWN AS
  - C1 SEE CURVE TABLE FOR INFORMATION

(SCALE IN FEET)  
Basis of Bearing is Grid North,  
St. Louis County Transverse Mercator  
NAD 83 (1996) Coordinate System.



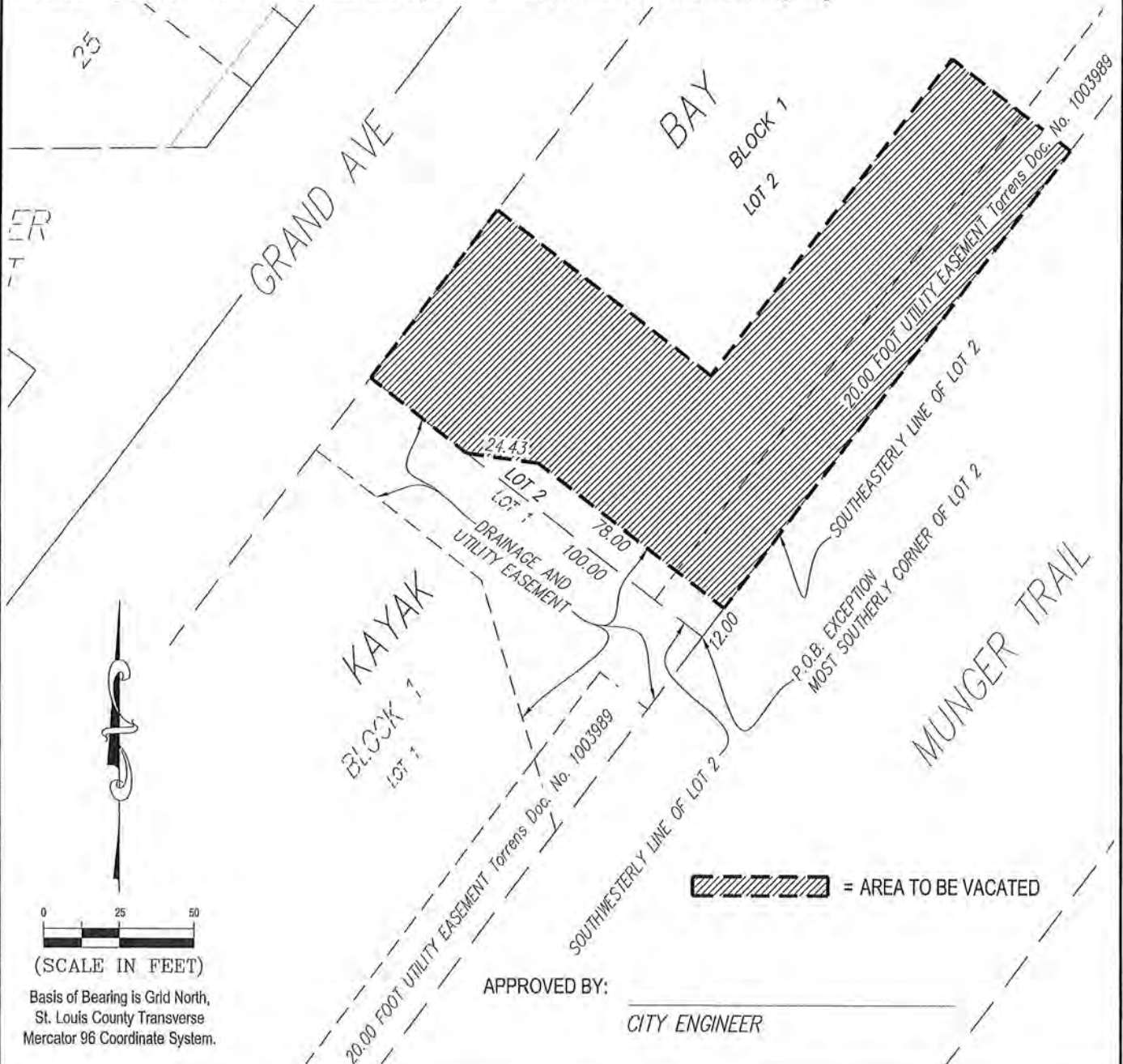
# EXHIBIT B

## VACATION EXHIBIT

### VACATION DESCRIPTION:

All of a Drainage and Utility Easement per plat of KAYAK BAY, Saint Louis County, Minnesota, affecting Lot Two (2), Block One (1), said KAYAK BAY except that part described as follows:

Beginning at the most southerly corner of said Lot 2; thence northeasterly along the southeasterly line of said Lot 2, a distance of 12.00 feet; thence northwesterly parallel with the southwesterly line of said Lot 2, a distance of 78.00 feet; thence 24.43 feet westerly to said southwesterly line distant 100.00 feet from the Point of Beginning; thence southeasterly 100.00 feet along said southwesterly line 100.00 feet to the Point of Beginning.



I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Print Name: Paul A. Vogel

License # 44075

Signature: \_\_\_\_\_

Date: 3/06/2023

DATE PREPARED: 3/06/23

PROJ NO: 221375

FILE: 220857\_Part1

SHEET 1 of 1 SHEETS



PERFORMANCE  
DRIVEN DESIGN.  
LHBcorp.com

21 W. Superior St., Ste. 500 | Duluth, MN 55802 | 218.727.8446



## EXHIBIT A

### VACATION DESCRIPTION:

All of a Drainage and Utility Easement per plat of KAYAK BAY, Saint Louis County, Minnesota, affecting Lot Two (2), Block One (1), said KAYAK BAY except that part described as follows:

Beginning at the most southerly corner of said Lot 2; thence northeasterly along the southeasterly line of said Lot 2, a distance of 12.00 feet; thence northwesterly parallel with the southwesterly line of said Lot 2, a distance of 78.00 feet; thence 24.43 feet westerly to said southwesterly line distant 100.00 feet from the Point of Beginning; thence southeasterly 100.00 feet along said southwesterly line 100.00 feet to the Point of Beginning.

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Paul A. Vogel

Signed \_\_\_\_\_



Date 03/06/2023 License No. 44075



# Revised Development Plan for Lot 2

## GENERAL NOTES

1. NOTE TO STUD FOR EROSION CONTROL DEVICES TO BE IN PLACE BEFORE GRADING DISTURBANCE BEGINS.

## LEGEND

CONSTRUCTION LIMITS  
POLE CONSTRUCTION DISTANCE  
PILE PROTECTION  
SILT FENCE  
EROSION CONTROL BLANKET

## WARNING

LOCATION OF ALL UNDERGROUND UTILITIES SHALL BE VERIFIED BY THE CONTRACTOR. CALL BEFORE DIGGING.

MINNESOTA  
ONE-CALL SYSTEM  
1-800-252-1166  
REQUIRED BY  
MN STATUTE 218D



2110 Green Rd., St. Louis, MO 63103-1212

CONSULTANT #1 NAME

ADDRESS #1

ADDRESS #2

CONSULTANT #2 NAME

ADDRESS #1

ADDRESS #2

CLIENT

NAME

CLIENT

ADDRESS

THIS SCALE APPLIES UP TO 4" ON PAPER SHEETS

DATE SIZE

DATE REVISION

**PRELIMINARY**  
NOT FOR CONSTRUCTION  
12/06/2022

COPYRIGHT 2022 BY LHB, INC. ALL RIGHTS RESERVED.

PROJECT NAME

RIVER WEST

PROJECT

ADDRESS

DATE

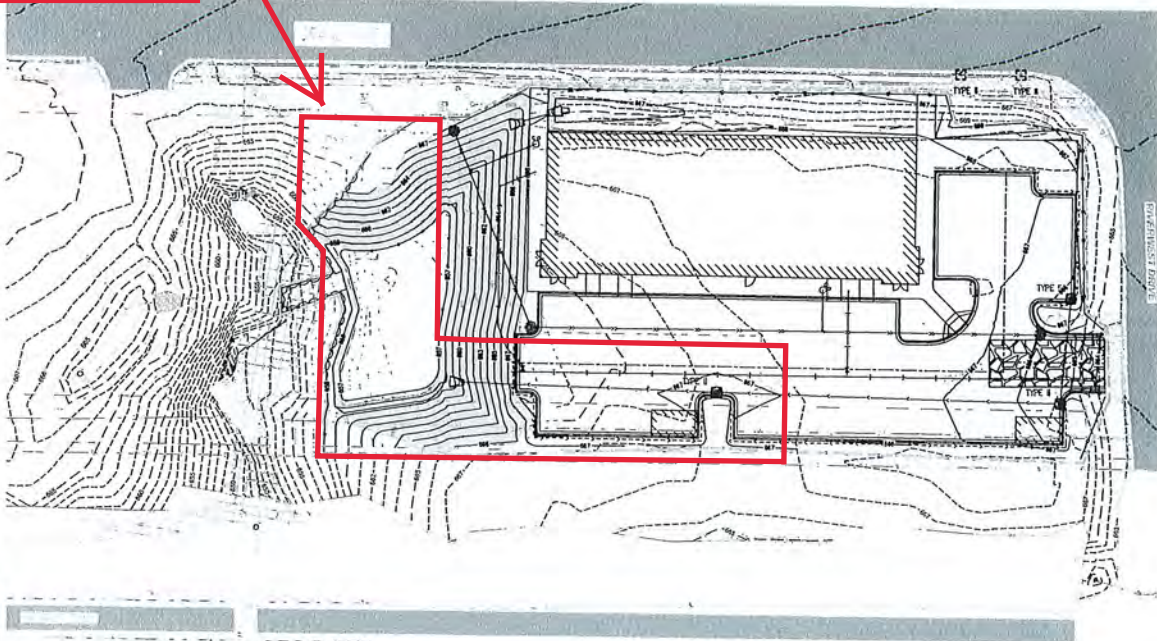
PROPOSED EROSION

CONTROL PLAN

DRAWN BY JPS  
CHECKED BY JPS  
DESIGNED BY JPS  
DATE 12/06/2022

C111

Proposed  
Vacation







## River West

### Retail

### Preliminary Only

Duluth, MN 55802  
Feb. 10, 2023

## Site Plan



JAY P. NELSON  
ARCHITECT  
AIA, LEED AP, NCARB, CID



7001 WYAZATA BOULEVARD,  
SUITE 210  
ST. LOUIS PARK, MN 55424  
jpn@jpnarchitect.com

True  
North



Working  
North





# RIVERWEST DEVELOPMENT MU-P REGULATING PLAN

On Grand Avenue Corridor  
Duluth, MN

City of Duluth, MN  
Planning Department Submittal  
August 31, 2022

<i>This plan has been reviewed and approved by the City of Duluth Land Use Supervisor.</i>	
	
Land Use Supervisor Signature	Date

Prepared for:  
Spirit Valley Land Company LLC

LHB Project:150444



PERFORMANCE  
DRIVEN DESIGN.

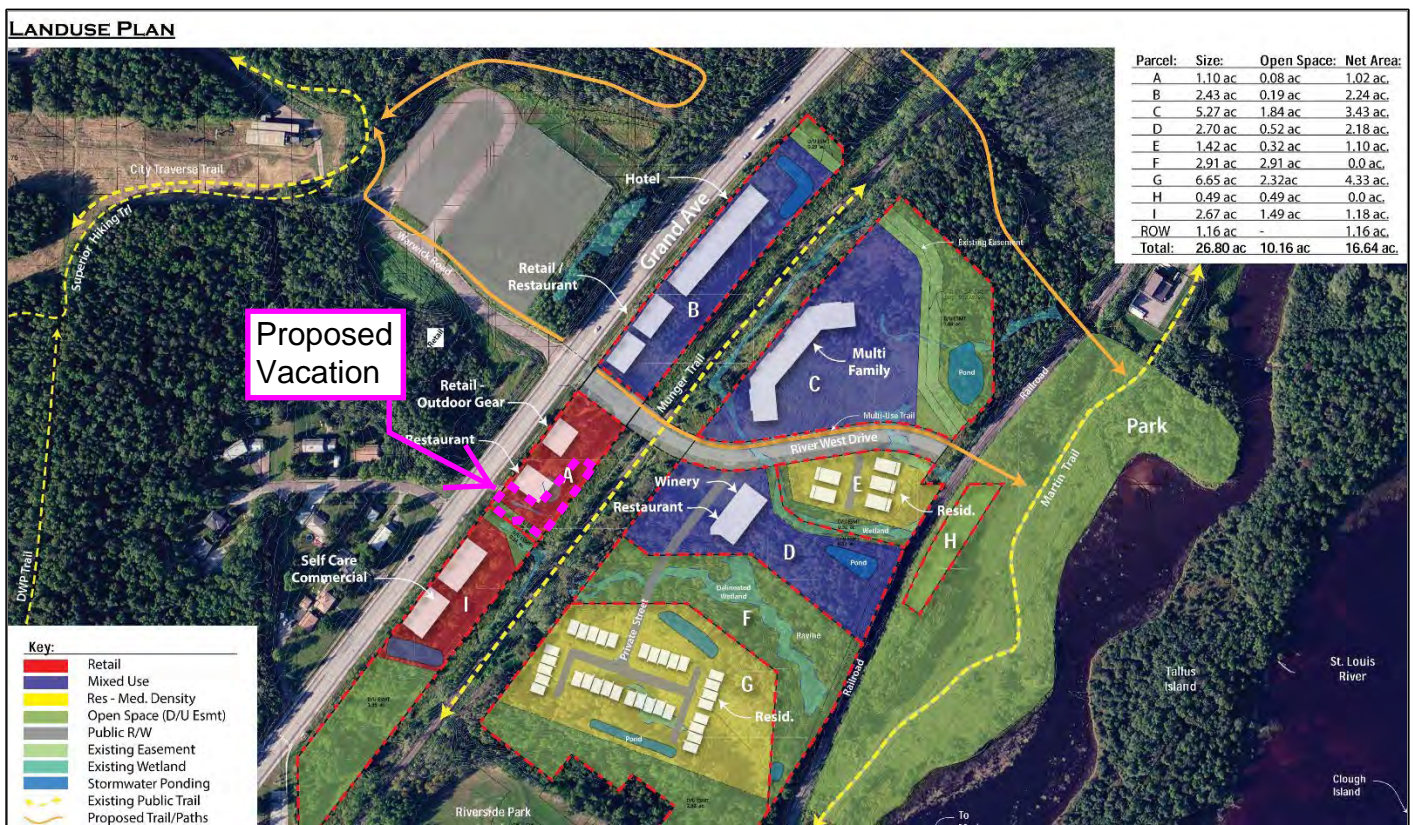
LHB Inc.  
21 West Superior Street  
Suite 500  
Duluth, MN 55802



## A. Development Land Use Plan

Below is a master plan illustrating the general layout of development areas and building parcels in relation to the natural features to remain, the proposed road and trails circulation systems, and proposed land use for each parcel. All regulation and code related items are included in the following pages.

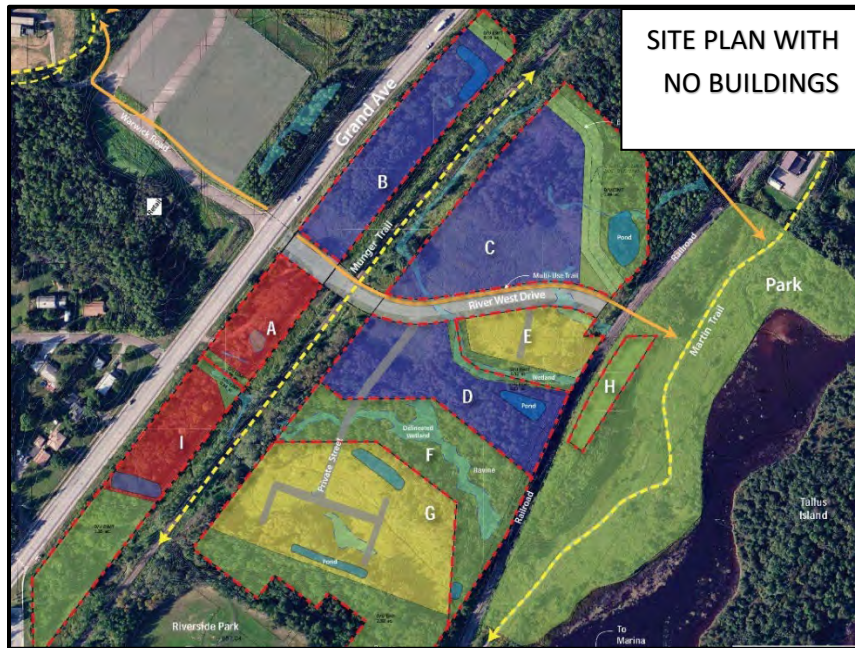
Please note, if any code-related item is not specifically called out in the following pages, it is assumed that the code-related item will comply with the City of Duluth's UDC. All signage and site lighting will comply with the UDC standards. All landscaping, including parking lot landscaping, will also be in accordance with UDC standards.





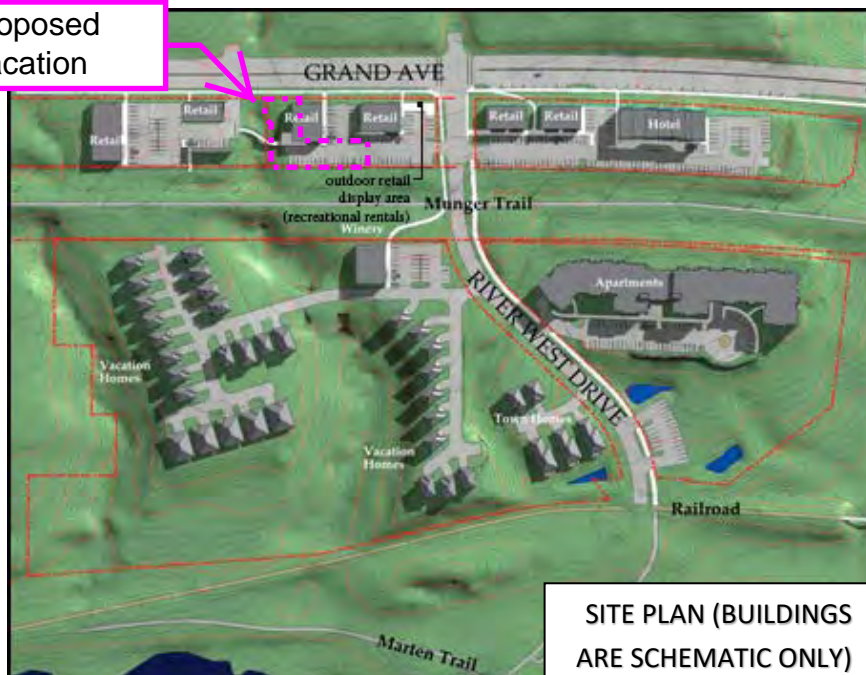
## A1. Potential Site Plan Layout

Below are two site plan layouts illustrating the most recent potential development scheme. Each lot will need to go through a detailed site plan review so what is illustrated below is preliminary and subject to change.



Please note, the two access points into the development off of Grand Avenue shown below were already installed by MnDOT in 2021 as part of the Trunk Highway 23 roadway improvements project. Building placements are for schematic purposes only and will change during site plan review. Outdoor retail display area for recreational rentals, such as bikes and kayaks, are illustrated below for potential outdoor adventure retailer.

Proposed  
Vacation





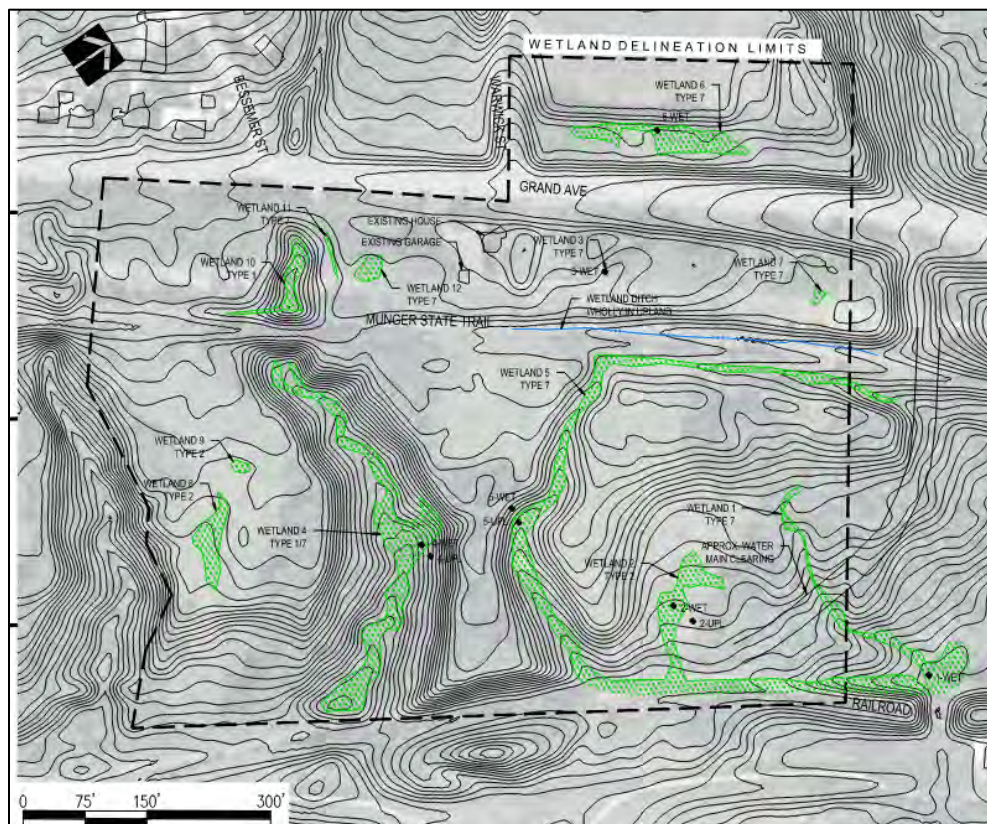
## F. Natural Resources Inventory

Prior to a conceptual plan being created, a wetland delineation and comprehensive tree survey were conducted to mark natural resources within the site. With that information in hand, the overall concept plan was designed with sustainability in mind, as most wetlands have been avoided to the best extent possible and the preservation of mature vegetation and natural drainage ways have also been taken into consideration. The placement of future buildings have been sited to minimize earth-moving activities and take advantage of certain viewsheds to the river, as well as climatic conditions such as western exposures for daylighting and solar heat gain.

Approximately 16.64 acres (or 62%) of the MU-P property are planned for mixed-use development out of the total 26.80 acres of land. The balance of the site, which is approximately 10.16 acres (or 38%) will remain in its natural condition and/or will be designated as open green space, and consists of mature wooded vegetation and wetlands on varied topography. The majority of the ravines and naturally occurring wetlands will be undisturbed, allowing the diverse landscape to continue to act as a rich ecological feature benefiting local wildlife, and the surrounding environment.

Below is a wetland delineation exhibit showing the natural drainage ways that drain from Grand Avenue towards the St. Louis River. The majority of these wetlands and drainage ways will be preserved in the RiverWest development project as evidenced on the Wetland Impacts Exhibit on the following page.

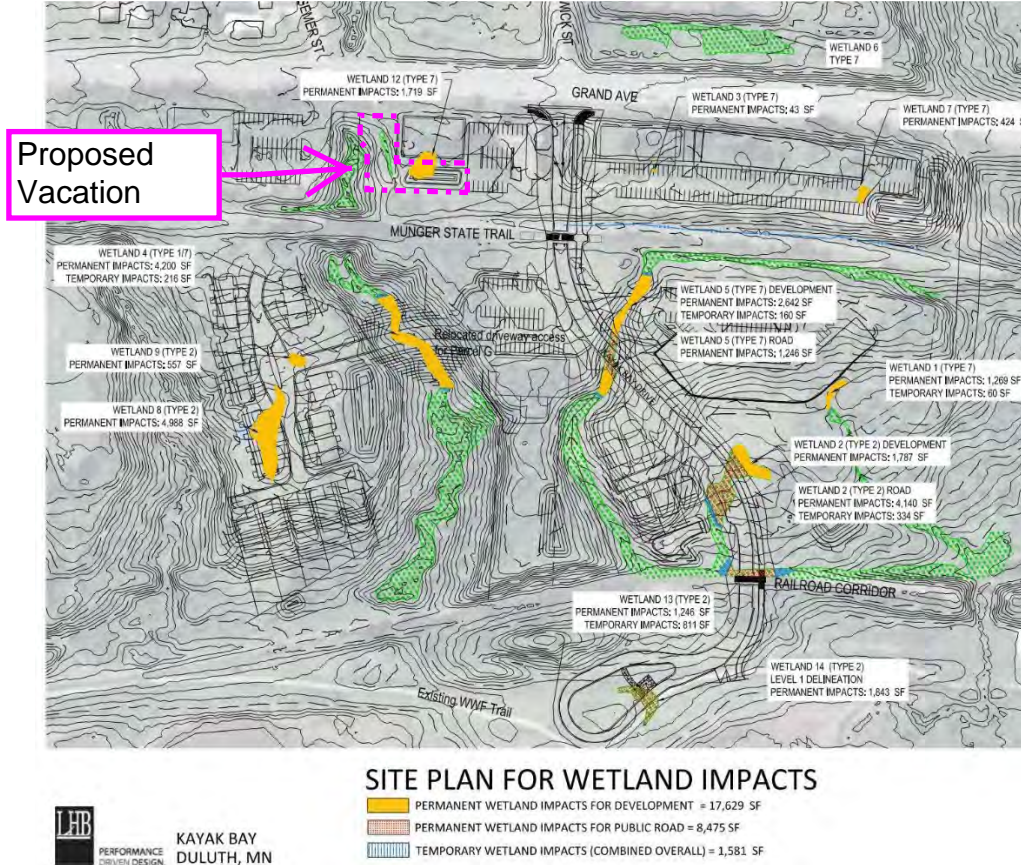
### WETLAND DELINEATION EXHIBIT





# Original Development Concept

## WETLAND IMPACTS EXHIBIT



As part of the project requirements, the development must contract with a certified professional to perform post road/grading site inspection to verify that wetland impacts and tree preservations were done in accordance with the proposed plans. In accordance with these requirements, the public road that was already installed by the City, was built per plan and field inspected by MSA Professional Services, Inc, and the mass grading and utility work that occurred as part of the site preparation was done per plan and inspected by LHB during the 2021 construction season.

## G. Common Open Space

The RiverWest MU-P Regulating Plan strives to maximize the natural beauty and ecological features of the site while also providing new public amenities to the St. Louis River Corridor community and nearby neighborhoods. Public access will be allowed but will be limited to access via trail and/or the public road. The areas shown in green on the concept plan are considered common open space and total 38% of the total land area (this only includes areas outside of the right-of-ways). Protection and maintenance of the open spaces will be the responsibility of the private landowners.

Lot A (1.10 ac) = Total common open space is **.08 acres (or 7%)**

Lot B (2.43 ac) = Total common open space is **.19 acres (or 7.8%)**

Lot C (5.27 ac) = Total common open space is **1.84 acres (or 35%)**

Lot D (2.70 ac) = Total common open space is **.52 acres (or 19%)**

Lot E (1.42 ac) = Total common open space is **.32 acres (or 23%)**

Lot F (2.91 ac) = Total common open space is **2.91 acres (or 100%)**

*\*includes stormwater pond for adjacent parcels D & G*

Lot G (6.65 ac) = Total common open space is **2.32 acres (or 35%)**

Lot H (0.49 ac) = Total common open space is **.49 acres (or 100%)**

*\*includes storage /parking/temporary service areas*

Lot I (2.67 ac) = Total common open space is **1.49 acres (or 56%)**



## H. Permitted and Special Uses

Below is a list of permitted uses within the MU-P by Parcel:

### **Parcels A & I (Retail/Commercial)**

- Dwelling: townhouse, multi-family, live-work, single-family
- Bank
- Office
- Medical or Dental Clinic
- Lodging (Hotel or Motel)
- Restaurant (less than 5,000 sf with or without drive-thru)
- Restaurant (5,000 sf or more with or without drive-thru)
- Retail store less than 10,000 sf
- Filling Station (with or without convenience store)
- Garden Material Sales
- Personal Services or Repair, large more than 10,000 sf
- Personal Services or Repair, small less than 10,000 sf
- Event Center
- Preschool
- Parking Lot
- Personal Care

### **Parcels B, C, & D (Mixed-Use)**

- Dwelling: townhouse, multi-family, live-work, single-family
- Bank
- Office
- Medical or Dental Clinic
- Lodging (Hotel or Motel)
- Vacation Dwelling Community\*
- Restaurant (less than 5,000 sf with or without drive-thru)
- Restaurant (5,000 sf or more with or without drive-thru)
- Retail store less than 10,000 sf
- Filling Station (with or without convenience store)
- Garden Material Sales
- Winery/Brewery
- Personal Services or Repair, large more than 10,000 sf
- Personal Services or Repair, small less than 10,000 sf
- Event Center
- Preschool
- Parking Lot
- Personal Care