

Lessard-Sams Outdoor Heritage Council

MEMO: Agenda Item #7

DATE: March 13, 2015

SUBJECT: Accomplishment Plan amendment request: ML 2013, Ch. 137, Art. 1, Sec. 2, Subd. 3e
Critical Shoreline Habitat Protection Program, Ph. II

PRESENTER: Kris Larson, Minnesota Land Trust
John Brosnan, Minnesota Land Trust

Background:

MS 97A.056 Lands in the Public Domain requires that if lands are partially or wholly owned by the state, additional public benefit must be present in order for outdoor heritage funds to be used. The statute also requires that an affirmative motion of at least nine members is necessary. The Minnesota Land Trust wishes to acquire a conservation easement on land which currently has two state trout stream easements (1966 and 1977) that narrowly border the Sucker River. (Please see accompanying chart of easements and maps for reference.) The supplemental benefits of a conservation easement over the entire property will provide greater protection to the watershed by covering an additional 326 acres.

Suggested Motion:

Project manager makes the presentation and stands for questions.

Suggested Procedure:

Council votes on amendment. Nine votes are necessary for approval.

Attachments: Maps, accomplishment plan amendment, MLT letter, easement chart



MINNESOTA LAND TRUST

January 14, 2015

Mr. Mark Johnson
Executive Director
Lessard-Sams Outdoor Heritage Council
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 95
St. Paul, MN 55155

Dear Mr. Johnson,

This letter is intended to serve as follow up to the discussion John Brosnan and I had with you, Heather Koop and Sandy Smith during a meeting at your office on Monday, January 5, 2015. At that meeting, we discussed that Land Trust is pursuing a significant conservation easement on approximately 340 acres of high-quality forest and riparian wildlife habitat, which contains over 7,400 feet of shoreline on perennial streams and the Sucker River, one of the North Shore's most productive trout streams. This project is funded through the Minnesota Land Trust's Critical Shorelines Habitat Protection Program - Phase 2 (M.L. 2013).

The issue we brought to your attention for discussion was that the property includes two existing trout stream easements held by the State of Minnesota. These easements cover a narrow corridor along the Sucker River and total less than 5% of the entire 340 acres. As such, we have recognized that this project may fall under the "Lands in Public Domain" statute as it relates to Outdoor Heritage Funds.

Section 97A.056, Subd. 9., of the Minnesota Statutes states as follows:

"Lands in public domain. Money appropriated from the outdoor heritage fund shall not be used to purchase any land in fee title or a permanent conservation easement if the land in question is fully or partially owned by the State of Minnesota or a political subdivision of the state, unless: (1) the purchase creates additional direct benefit to protect, restore, or enhance the state's wetlands, prairies, forests, or habitat for fish, game, and wildlife; and (2) the purchase is approved by an affirmative vote of at least nine members of the council."

During our conversation we agreed that, while there are questions as to the nature of the trout stream easements (i.e., are these older access easements—completed in the 1960s and 70s—considered "permanent conservation easements" by today's standards), the Minnesota Land Trust would seek approval of at least nine members of the Outdoor Heritage Council to continue this important conservation project.

BACKGROUND:

This project, a 340-acre conservation easement on the Sucker River, represents significant public benefit by protecting the high-quality upland forest, wetlands, intermittent streams and the Sucker River itself through a perpetual conservation easement. The undeveloped, wooded and natural character of the property provides significant habitat for a variety of fish, wildlife and plants, including Species in Greatest Conservation Need such as bald eagle, peregrine falcon, red-shouldered hawk, Connecticut warbler, boreal owl, Canadian lynx, black bear, gray wolf, bobcat, fisher, marten, moose, wood turtle and Blandings turtle.

The Sucker River is considered one of the North Shore's premier trout streams due to its significant base flow and cool temperatures thanks in part the river's forested headwaters. Permanent protection of the property's wetlands and undeveloped river, stream and pond shoreline will help maintain the water quality of the Sucker River and the Lake Superior watershed and provide near-shore habitat for a variety of aquatic plants, animals and natural communities. However, the area around the Sucker has experienced significant rural development over the years as it is within easy commuting distance to the City of Duluth. Thus protection of such significant acreage on this important river represents a sound investment by the Outdoor Heritage Fund and meets squarely within the goals of the Land Trust Critical Shorelands grant.

ANALYSIS OF ADDITIONAL BENEFIT TO THE TROUT STREAM EASEMENTS:

As seen above, the statute states that the purchase must create additional direct benefit to protect, restore, or enhance the state's wetlands, prairies, forests, or habitat for fish, game, and wildlife. Our analysis of this transaction concludes that Minnesota Land Trust is creating significant and additional direct benefit to the wildlife habitat protections of the property by completing a conservation easement on the entirety of its 340 forested acres vs. the approximately 14 acres covered by the State's trout stream easements. The state's easements establish public access for trout fishing in and along the river and allow the state access to improve the trout habitat of the river. Beyond this access, they provide limited conservation protections which are confined only to the narrow corridor across the property.

The conservation easement the Land Trust is currently developing provides much more expanded conservation protections for the entirety of the 340 acres, the majority of which is in forest cover (see attached table comparing protection). These protections of the Land Trust's easement include restricting agricultural uses, prohibiting industrial uses, limiting division of the property, limiting residential and commercial uses, and requiring a habitat management plan for the property. In addition, once the Land Trust's easement is completed, we will monitor and enforce the terms of the easement across the entire property into perpetuity.

THE VALUE OF THE CONSERVATION EASEMENT

One of the questions which we anticipate is: how much did the landowner originally get paid for the trout stream easement and how much are we paying (thus avoiding the "double dipping" question). Because these trout stream easements were completed in the 1970s, the *current* landowner didn't get paid anything

for them. In fact, one of them was created when the property went tax forfeit prior to the current landowner's ownership.

The Land Trust will pay approximately 75% of the appraised value of the conservation easement, with the landowner contributing approximately 25% of the value. Thus the landowner is contributing 25% of the value and only 4.78% of the property is encumbered by the existing trout stream easements. Therefore, because the current landowner was not paid for these easements and is willing to donate significant value, we feel the question of "double dipping" is not a concern in this project.

CONCLUSION

In conclusion, we view the Minnesota Land Trust's habitat conservation easement as additive and beneficial to the public access provided by the State of Minnesota's trout stream easements. In fact, put more strongly, we feel that if we are to protect the health of Minnesota's trout streams, there is great merit to protecting the entire habitat of a property when possible in addition to the great public access provided by the State's angler access easements. The Land Trust proposes to reference and describe both of the trout stream access easements as part of the new conservation easement along with notice that the Land Trust's easement is subject to the preexisting trout stream easements, thereby protecting the State's interests.

We look forward to discussing this opportunity with the Council on January 30th. In the meantime, please call with any questions.

Sincerely,

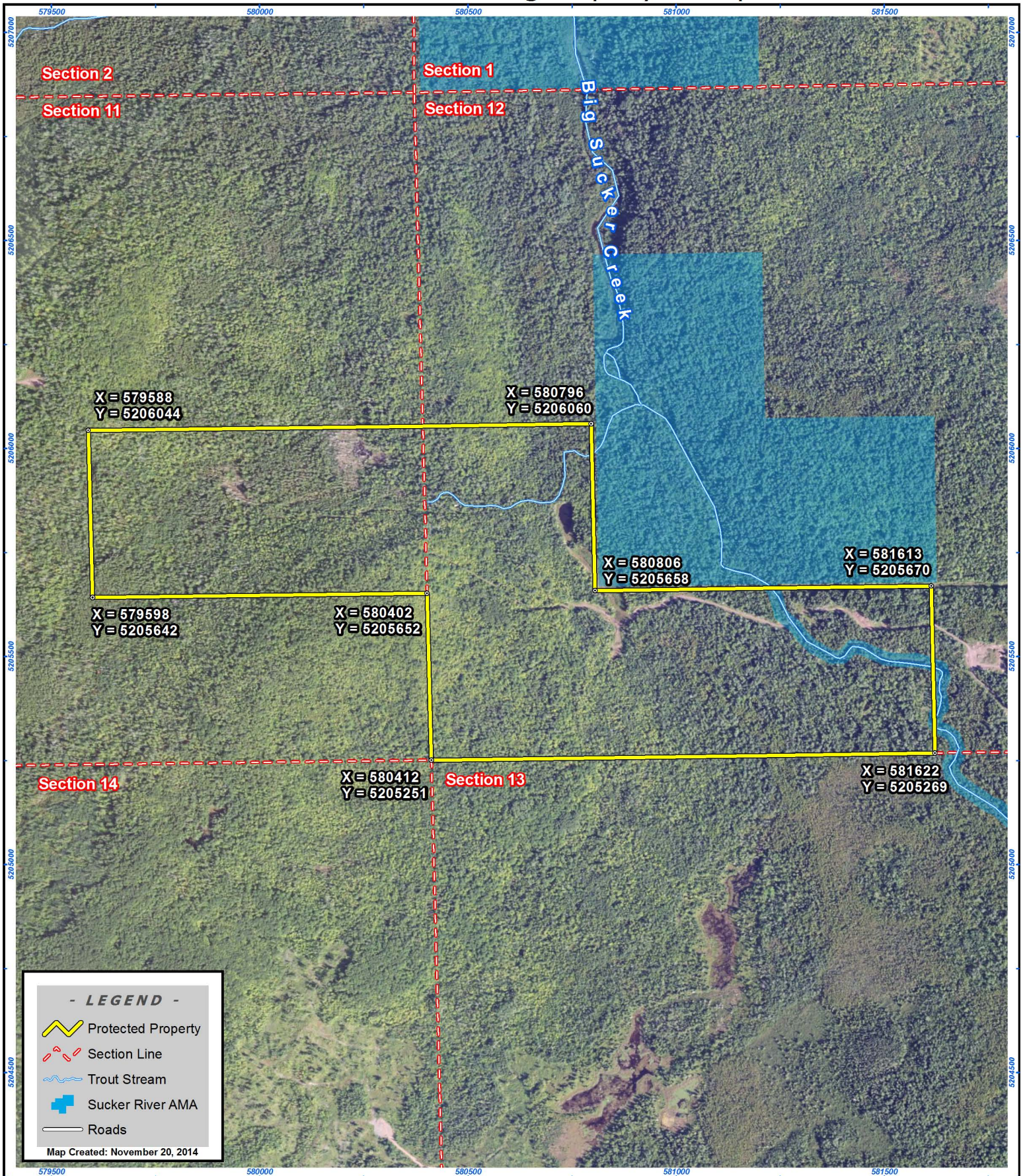


Kris Larsen
Executive Director

An analysis of the existing State of Minnesota trout stream access easements and the proposed Minnesota Land Trust conservation easement for the 340-acre Sucker River conservation easement project, St. Louis County, MN

Easement	1966 Trout Stream Access Easement	1977 Trout Stream Access Easement	Proposed 2015 Conservation Easement
Document Number	Document No. 61852	Document No. 398684	Proposed – Not Recorded
Holder	State of Minnesota (DNR)	State of Minnesota (DNR)	Proposed: Minnesota Land Trust
Land Area Affected	Approximately 8.8 acres	Approximately 6 acres	Approximately 340 acres
Rights and Restrictions	<p>Existing:</p> <ul style="list-style-type: none"> • Permitted: Angler access, State may access stream bed and a strip of land on both sides of the stream bank to do restoration work. • Not addressed: Rights reserved by the fee owner, limited or prohibited uses of the adjacent land, and whether additional obligations are imposed on the owner. 	<p>Existing:</p> <ul style="list-style-type: none"> • Permitted Angler access, State may access stream bed and a strip of land on both sides of the stream bank to do restoration work. • Prohibited: Constructing buildings, excavating, tree cutting, filling, dumping, and changing the course of the stream in the stream bed and a strip of land on both sides of the stream bank without prior written approval of the State. • Allowed: Tree planting, fencing, erosion control, installation of structures in the stream and other improvements by the State deemed necessary to develop fish habitat. 	<p>Proposed:</p> <ul style="list-style-type: none"> • Prohibited: Industrial use, dumping, and mining. • Limited: Commercial use, agricultural use, residential use, division of the property, new roads, utilities, rights of way, signs, fences, lighting, topography and surface alteration, vegetation management, and vehicle use. • Allowed, under an approved plan: Forest stewardship, habitat management and restoration (NOTE: As part of this project, MLT is working with the landowner to develop a habitat management plan for the entire 340 acres of the property).

Aerial Photography Map



- LEGEND -

- Protected Property
- Section Line
- Trout Stream
- Sucker River AMA
- Roads

Map Created: November 20, 2014

Map Resource Information

Protected Property & Section Lines created by Community GIS Services Inc. All data overlaid 2011 true color satellite imagery. Map & labeled coordinates use projection of: UTM, Zone 15, Datum NAD83

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

Site: Sucker River - Tract: Haensel A

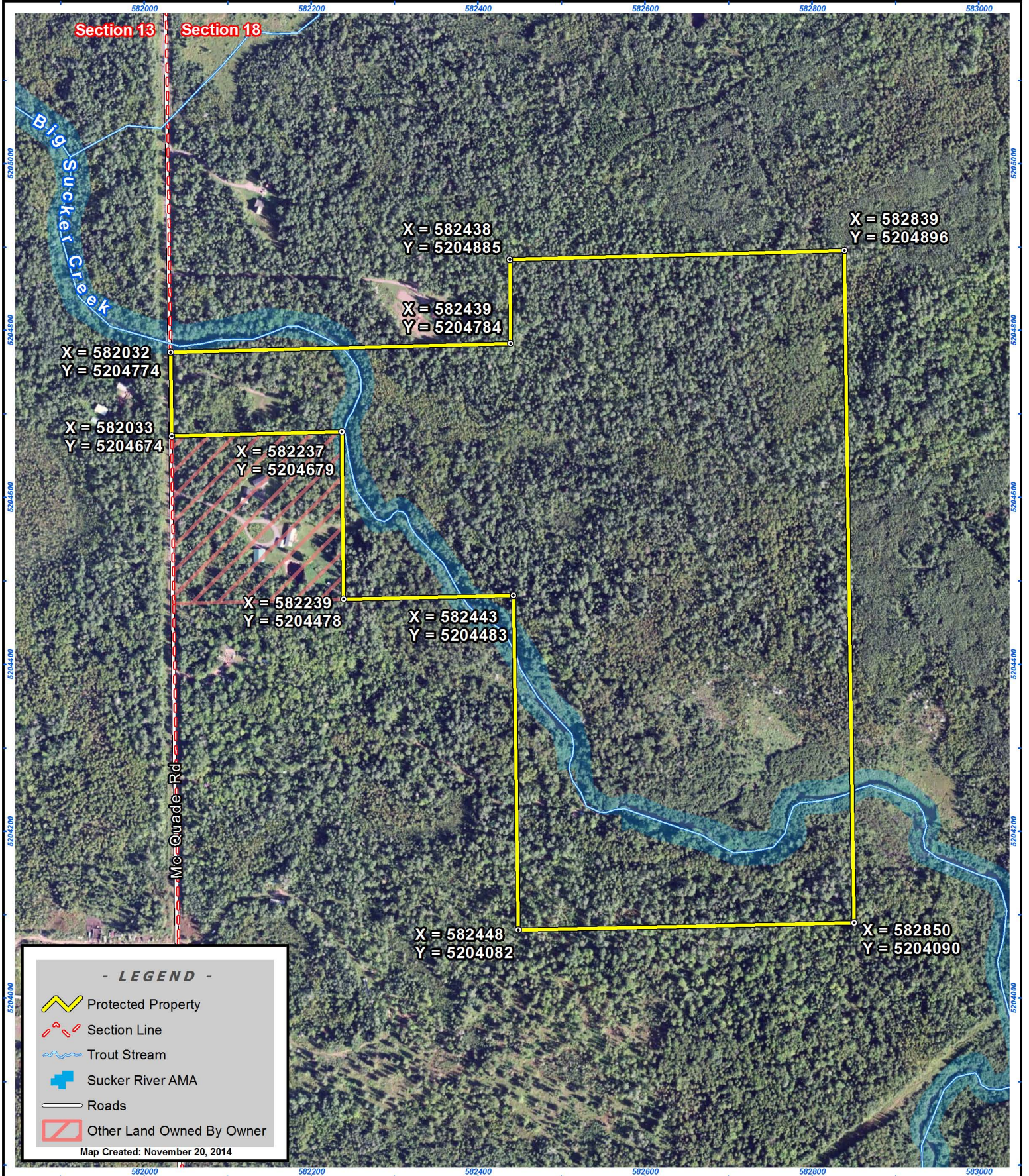
Saint Louis County - Twp. 52 N Rng. 13 W Sec 11 & 12



Scale:
1" = 1000'



Aerial Photography Map



Map Resource Information

Protected Property & Section Lines created by Community GIS Services Inc. All data overlaid 2011 true color satellite imagery. Map & labeled coordinates use projection of: UTM, Zone 15, Datum NAD83

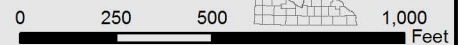
Users of this map agree and acknowledge that Community GIS Services Inc. and the Minnesota Land Trust cannot be held liable for accuracy of GIS material provided. GIS materials should not be relied upon to establish legal title, boundary lines, or locations of improvements.

Site: Sucker River - Tract: Haensel B

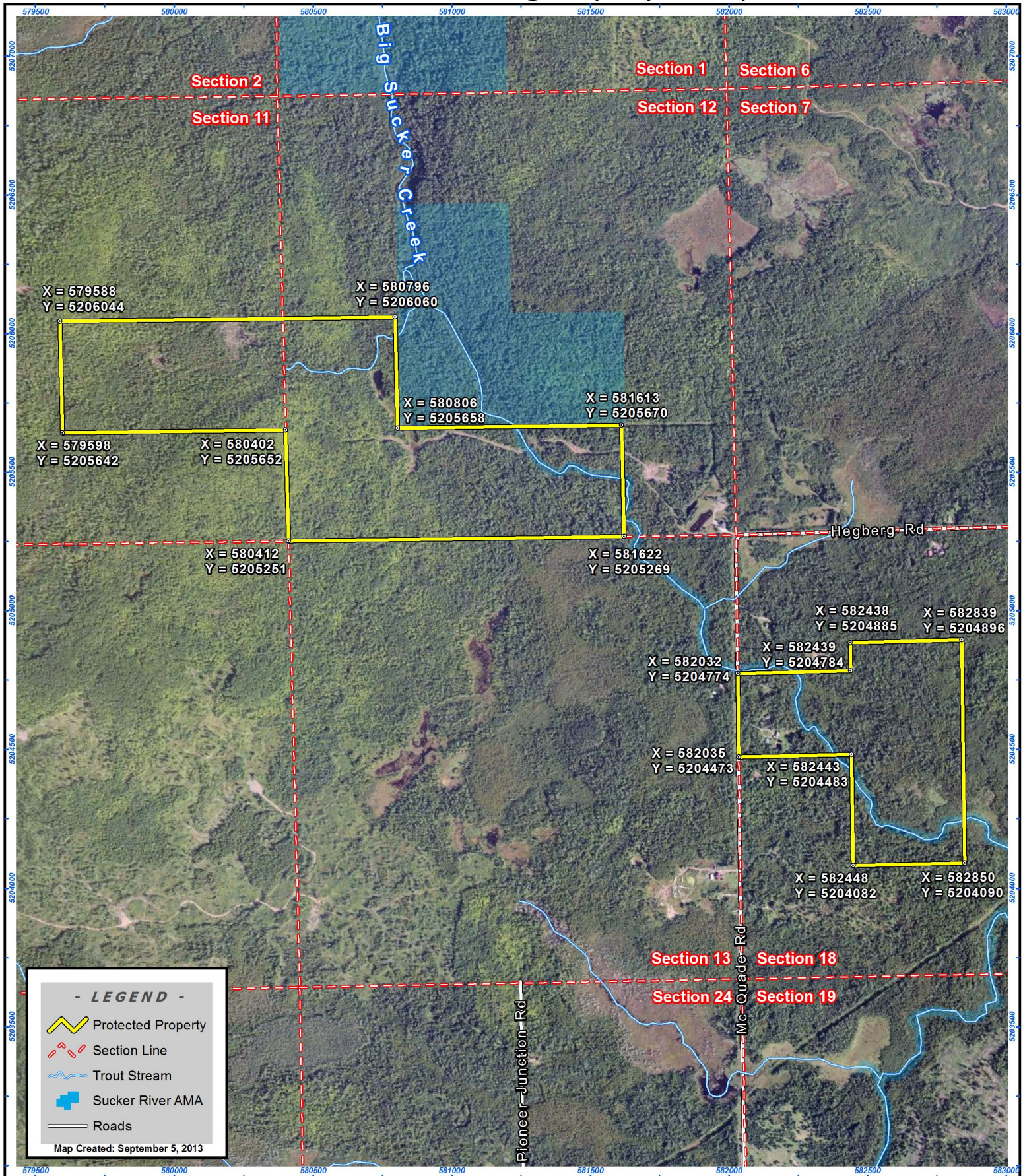
Saint Louis County - Twp. 52 N Rng. 12 W Sec.18



Scale:
1" = 500'



Aerial Photography Map



Map Resource Information

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Site: Sucker River - Tract: Haensel

Saint Louis County - Twp. 52 N Rng. 12 W Sec.18 &
Twp. 52 N Rng. 13 W Sec 11 & 12



Scale:
1" = 1500'



0 750 1,500 3,000 Feet