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SARAH B. HELWIG
NATHAN J. BETTS

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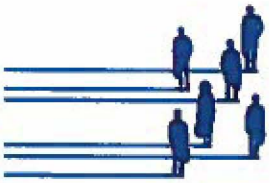


Rudy, Gassert, Yetka, Pritchett & Helwig, P.A.
ATTORNEYS • AT • LAW

February 21, 2014

Mr. Jason Meyer
Land and Minerals Department
320 West 2nd Street, GSC 607
Duluth, MN 55802

Re: Alleged Prescriptive Easement over the land of:
Daniel B & Kelly M Lundquist
parcel #662-0010-02850
RD-ID-28160 T55-R15-S19 Lots 1 & 2

Dear Mr. Meyer,

Our firm represents the Lundquists and we are assisting them with regard to issues related to the alleged prescriptive easement identified above. Let me first preface this letter by stating that the Lundquists desire to remain on good terms with the St. Louis County Land and Minerals Department (County), however, they are not willing to stand by and allow an unjust claim to be made against their property by the County.

It appears from the January 22, 2014, notice of intent to claim prescriptive easements, that the County may hold a misunderstanding of the application of Minn. Stat. § 282.041, when indicating that the County is able to acquire a prescriptive easement by the recording of a map pursuant to that statute. This is not true. MS § 282.041 simply provides that the recording of a map of prescriptive easements which are held by the County is an alternative means of putting those easements of record, without the need to record a centerline legal description for each easement. Recording the map does not *create* a prescriptive easement where the County has not already *acquired* one. According to the plain language of the statute the County needs to already hold a prescriptive easement prior to putting it on the map for recording.

To obtain a prescriptive easement requires a claimant to prove by clear and convincing evidence their use of the property in an actual, open, continuous, exclusive, and hostile manner for the requisite period of 15 years, inconsistent with the rights of the owner, and only grants easement rights to the width of actual use (including ditches and back slopes), and only for the type and amount of use previously made in establishing the easement. The documents provided by the County to establish such use have been reviewed and the following has been found in that regard:

813 CLOQUET AVE. • CLOQUET, MINNESOTA 55720-1613 • TELEPHONE (218) 879-3363 • FAX: (218) 879-4033 • E-mail: office@cloquetlaw.com

* Also Licensed to Practice in Wisconsin
[†] Real Property Specialist, Certified by the Minnesota State Bar Association
** Also Admitted in Texas
[††] Patent Attorney, Registered to Practice before the U.S. Patent & Trademark Office
*** Also Admitted in Virginia

RD-ID-28160

With regard to Road RD-ID-28160, the County has provided 2 documents via their website as proof to establish a prescriptive easement by use. The documents consist of 2 Timber Contracts. There are no road construction contracts or road maintenance reports included. RD-ID-28160 is actually a trail through the woods which connects to Bobcat Creek Road to the West of the Lundquist parcel.

- The first Timber Contract indicated for RD-ID-28160, dated June 27, 1994 (Attached), is for timber harvesting on parcels to the West, North and Northeast of the Lundquist parcel, with access directly from Bobcat Creek Road to the West. There is no indication of any use of the portion of RD-ID-28160 which crosses the Lundquist property or of any use of RD-ID-28160 whatsoever. It should also be noted that the Lundquist parcel is clearly demarcated on the Map by a cutting boundary with the parcel being marked as private, and although Bobcat Creek Road is clearly marked on the Map, there is no indication made of RD-ID-28160. What is obvious from the map is that access to the cutting parcels was from Bobcat Creek Road, that cutting was allowed up to the boundary of what is now the Lundquist parcel, but that there was to be no cutting upon or access to that private parcel. This document therefore does not apply to a claimed prescriptive easement over the Lundquist parcel.

- This leaves only *one* Timber Contract dated September 27, 1999 (Attached), for timber harvesting to the West and East of the Lundquist parcel indicating access to cross the Lundquist parcel at that time. The map shows Bobcat Creek Road clearly delineated as a Road and providing access to all parcels to the West of the Lundquist parcel for timber harvesting under this contract. RD-ID-28160 is drawn across the Lundquist parcel as a dashed line, indicating it is a trail through the woods and not a maintained road, and is shown as the means of access to only 1 cutting area in this contract, which same area was accessed in 1994 without crossing the Lundquist parcel as discussed above (see 1994 Timber Contract above), indicating that the County does not require RD-ID-28160 for access to those parcels, it may simply be a more convenient access. The map also indicates that Potlatch Corporation (Potlatch) was in ownership of the Lundquist parcel at that time.

The Lundquists purchased the above parcel of land directly from Potlatch approximately five years ago. It has been a well known general policy of County Foresters that they will request permission for access to private lands ***before*** any entry is made upon those lands. It has also been a well known general policy of Potlatch Foresters, that out of professional courtesy permission will be given to County Foresters for access to Potlatch lands upon request. The reason for this reciprocal policy between the County and Potlatch is because the County often needs access across Potlatch lands, and Potlatch often needs access across County lands, so the policy is mutually beneficial.

Therefore, any use made of the Lundquist parcel by County Foresters (or loggers under contract with the County) while the parcel was under ownership by Potlatch was permissive, and cannot be used to establish a prescriptive easement. And furthermore, since their purchase of the above parcel, the Lundquists have not been aware of any use of their property by the County, including any use of the portion of the trail (RD-ID-28160) that crosses their property by the County, either for crossing or maintenance purposes.

CONCLUSION

Only one of the two documents provided by the County are applicable to their claim, which is clearly insufficient to establish the use required by Minn. Stat. § 282.041. A single use in 1999 of that portion of trail (RD-ID-28160) which crosses the Lundquist parcel is a far cry from the 15 years of actual, open, continuous, exclusive, and hostile use necessary to establish a prescriptive easement. Furthermore, the Lundquists will argue that the one time use by the County in 1999 cannot possibly be considered continuous for any amount of time, and even if the County is able to later establish some additional use, the Lundquists will argue that all such use by the County was permissive, and therefore the County cannot establish the element of 15 years of hostile use.

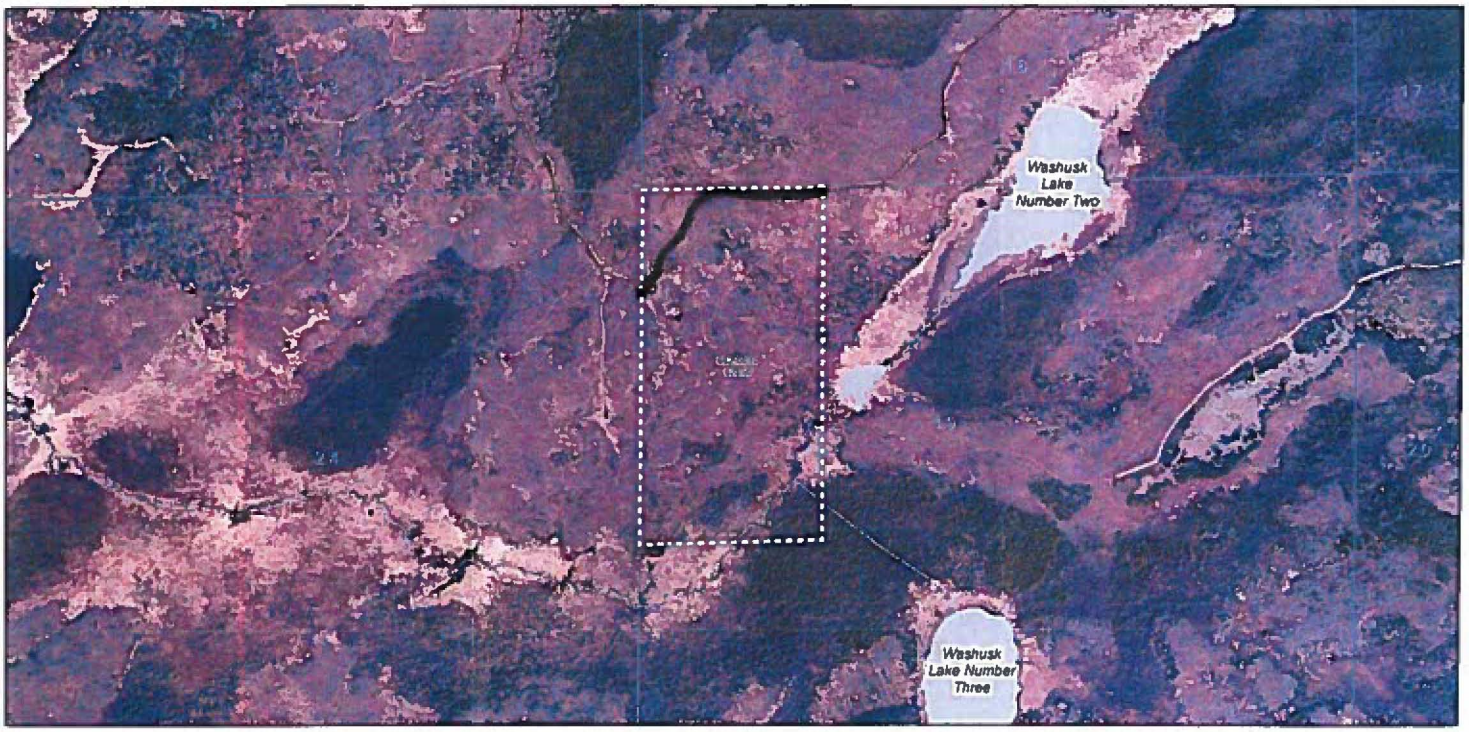
Thank you very much in advance for your careful and prompt consideration. The Lundquists would certainly like to remain on good terms with the County and hopes that the County feels the same way.

Respectfully submitted,

Bill Helwig

William T. Helwig
Rudy, Gassert, Yetka, Pritchett & Helwig, P.C.

WTH/bph



St. Louis County, MN
Prescriptive Easement
Pursuant to Minn. Statutes
282.041 and 89.715

Affected Road Segment

Affected Parcel

Legend

RD-ID-28160

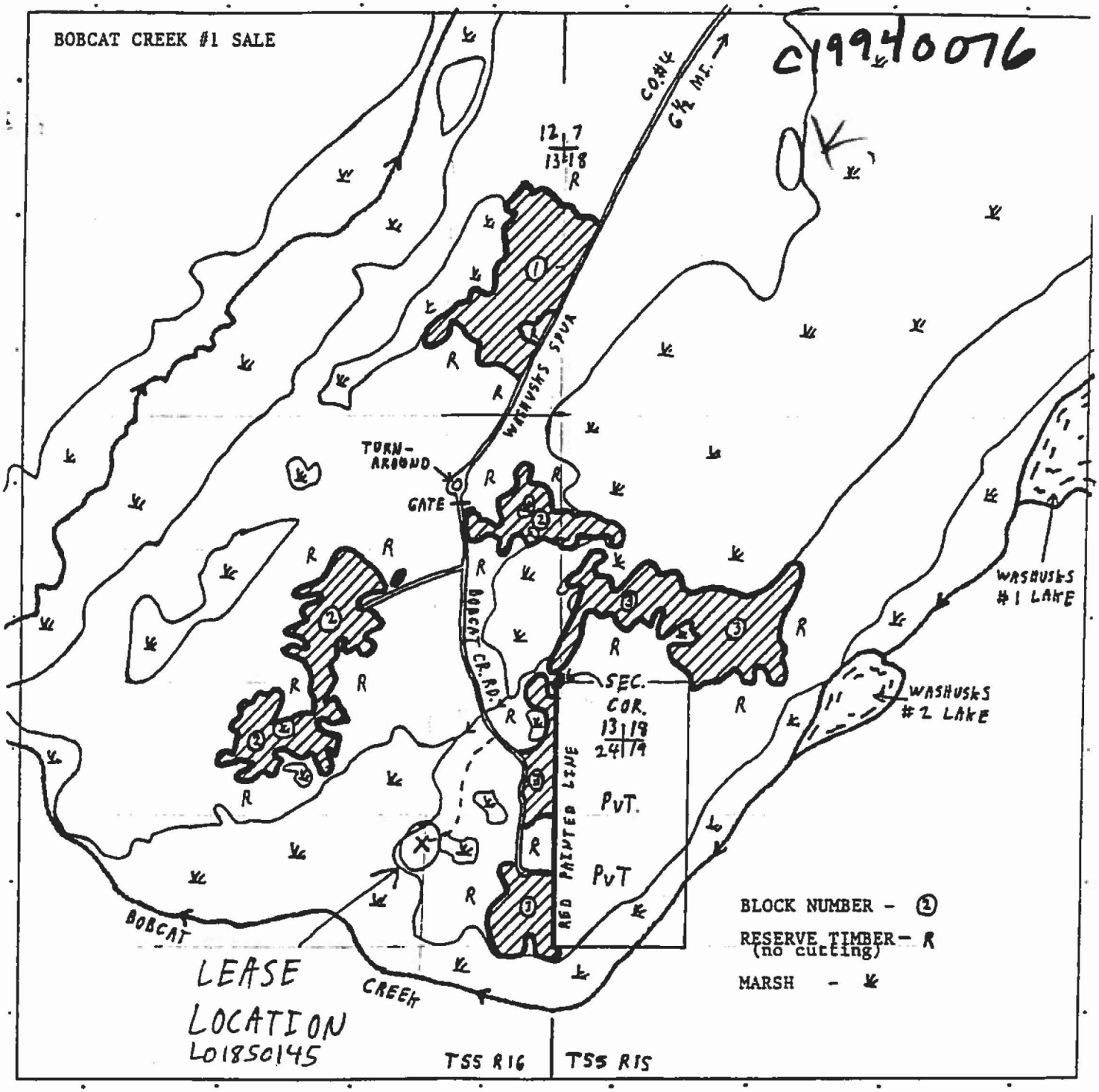
N

0 0.25 0.5
Miles

This drawing is provided by the St. Louis County Land Department solely as a courtesy to facilitate information exchange. The data is provided "as is" without warranty of any kind, either expressed or implied, including, but not limited to, accuracy, reliability, omissions, completeness and currency. St. Louis county shall not be liable for any claim for damages, including lost profits or other consequential, exemplary, incidental, indirect or special damages, relating in any way to the drawing or other data. This is NOT a survey. The content of this drawing may change without notice.

Form 9-49

ST. LOUIS COUNTY LAND DEPARTMENT



SECS. 18-55-15; 13/24-55-16

TWP. ____ RGE. ____

SCALE: 4" = 1 MILE

UNIT: D DATE 6-27-94

PREPARED BY J LARSON

N

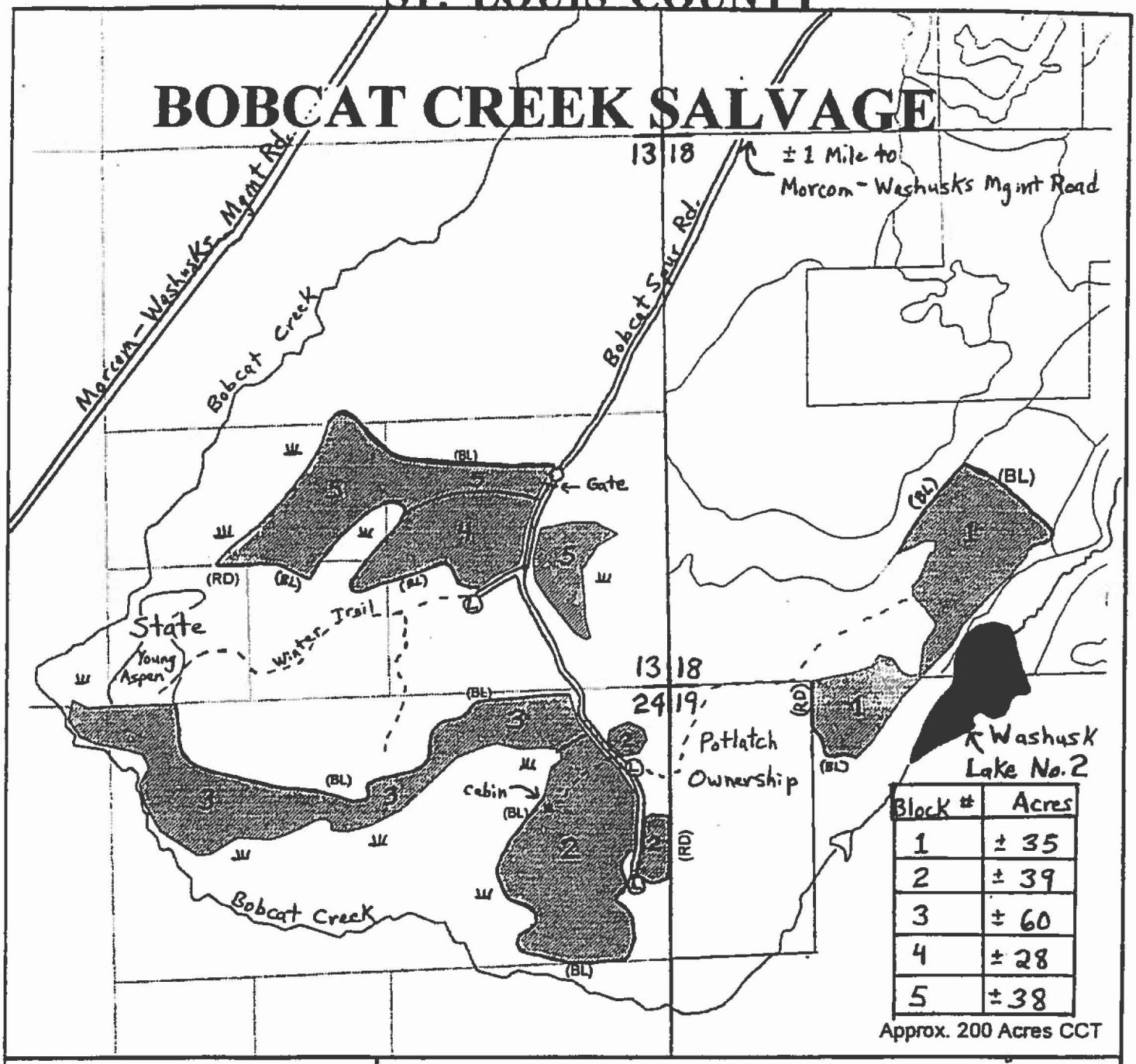
LEGEND

CUTTING BOUNDARY (blue painted line) -

DESIGNATED SPECIES REMOVAL - (reserve all conifers and ash west of roads reserve all non-merchantable conifers and ash east of roads)

ST. LOUIS COUNTY

BOBCAT CREEK SALVAGE



Block #	Acres
1	± 35
2	± 39
3	± 60
4	± 28
5	± 38

Approx. 200 Acres CCT

LEGAL: SECTIONS 13 & 24, T55N R16W and SECTIONS 18 & 19, T55N R15W

DATE: 9-27-99

PREPARED BY: JOHN MUHICH

This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. This drawing is a compilation of recorded information and data located in various city, county, state, federal offices, and other sources affecting the area and is to be used for the intended purpose only. St. Louis County is not responsible for any inaccuracies herein. If inconsistencies are found, please contact this office.

4 inches = 1 mile

1/4 mile

CLEARCUT AREA -
(BL) blue or (RD) red painted boundry

Landing Area - Ⓛ

Swamp - ⅄

Block #

ST. LOUIS COUNTY
TIMBER HARVESTING CONTRACT
C19990147

3. Purchaser shall accept total responsibility and accountability for complete harvest of and payment for the total volume of species and timber commodities identified as follows:

ITEM	PROD	VOLUME	UNIT	UN.PRC	VALUE
ASH	SD ON E	60	CDS	$ 1.0500	$ 63.00
ASPEN	SD ON E	3035	CDS	$ 7.3500	$ 22307.25
BIRCH	SD ON E	230	CDS	$ 2.1000	$ 483.00
BALM OF GILEAD	SD ON E	30	CDS	$ 7.3500	$ 220.50
MAPLE-RED	SD ON E	255	CDS	$ 1.0500	$ 267.75
PINE-NORWAY	P/B	5	CDS	$ 21.0000	$ 105.00
SPRUCE-WHITE	P/B	10	CDS	$ 10.5000	$ 105.00
BALSAM FIR	PULP	155	CDS	$ 7.3500	$ 1139.25
SPRUCE-BLACK	PULP	125	CDS	$ 10.5000	$ 1312.50

TOTAL SALE VALUE: $ 26003.25

(See Exhibit "A" for tabulation by block.)

4. Harvesting and tract cleanup shall be completed by MARCH 9TH, 2001, at which time this Contract shall expire. Requests for extensions of the expiration time must be made in writing and shall be granted by the Land Commissioner, in his discretion.

5. Any extensions of time under this Contract or modifications of terms of this Contract shall be in writing, executed by the parties and attached to the original Contract for incorporation.

6. All communications or correspondence occurring under this Contract shall be directed to _____, on behalf of Purchaser, and to _____, on behalf of Seller, at the addresse above stated.

IN WITNESS WHEREOF the parties hereto have set their hands the day and date first above shown.

ST. LOUIS COUNTY AUDITOR,

BY: John L. Mulich
Land Commissioner Representative

DATE: 12-29-99

BIRCHEM LOGGING

BY: _____
Its: President