



Board of County Commissioners Agenda Request

3B

Agenda Item #

Requested Meeting Date: 1/10/2017

Title of Item: Joint Powers Agreement with MN DNR - peat leasing

<input checked="" type="checkbox"/> REGULAR AGENDA <input type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	Action Requested: <input type="checkbox"/> Approve/Deny Motion <input checked="" type="checkbox"/> Adopt Resolution (attach draft) <i>*provide copy of hearing notice that was published</i>	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing*
Submitted by: Land Commissioner		Department: Land Department
Presenter (Name and Title): Mark Jacobs		Estimated Time Needed: 15-minutes
Summary of Issue: <p>American Peat Technologies LLC (APT) of Aitkin, MN has requested two peat leases on County administered tax-forfeited and State administered land in Kimberly township and Seavey/Idun/Pliny townships.</p> <p>The attached resolution signifies that Aitkin County will enter into a joint powers agreement (attached) with MN DNR regarding the administration of the two potential peat leases. The JPA allows MN DNR to be the lease administrator and facilitate the environmental review process prior to an issuance of a permit for peat harvesting.</p> <p>Once the JPA is approved the lease terms are negotiated and once agreed upon a public hearing must be held per MS 282.04. If the leases are approved, APT will pay per-acre lease fees to Aitkin County on the County administered land.</p> <p>This is the first step in this process. Pending a favorable environmental review process, MN DNR may issue a peat harvesting permit and the County would then receive a per-ton royalty payment in addition to the lease payments.</p> <p>All payments received from the leasing of County Tax-Forfeited lands are distributed to the local taxing districts (County/School/Township) where the leases occur.</p>		
Alternatives, Options, Effects on Others/Comments: 		
Recommended Action/Motion: Because of DNR staff expertise related to the mining process, staff recommends approving the JPA by County Board resolution.		
Financial Impact: <i>Is there a cost associated with this request?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No <i>What is the total cost, with tax and shipping? \$</i> <i>Is this budgeted?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Please Explain:</i>		

Legally binding agreements must have County Attorney approval prior to submission.

Whereas, American Peat Technologies LLC has requested two peat leases involving State and County administered lands in Kimberly Township (known as the Rossburg Bog Area) and Seavey/Pliny/Idun Townships (known as the Seavey Bog Area) and

Whereas, MN Statute 282.04 allows 25-year peat leases on County Tax Forfeited land and

Whereas, on leases involving County and State administered lands, joint powers agreements may be entered into where MN DNR staff will administer the lease and

Whereas, MN DNR staff has considerable expertise and experience involving peat mining,

Therefore the Aitkin County Board of Commissioners resolves to enter into a joint powers agreement with MN DNR for the administration of peat leases in the Rossburg and Seavey Bog areas (described in Exhibit A)

Exhibit A

Rossburg Bog Area

East Half of Southwest Quarter (E1/2-SW1/4), and Lot 4 in Section Eighteen (18),

Southwest Quarter of Northeast Quarter (SW1/4-NE1/4), East Half of Northwest Quarter (E1/2-NW1/4), and Lot 2, Nineteen (19),

all in Township Forty-seven (47) North, Range Twenty-five (25) West.

Seavey Bog Area

Northeast Quarter (NE1/4), East Half of Northwest Quarter (E1/2-NW1/4), Lot 1, Lot 2, Lot 3, North Half of Southeast Quarter (N1/2-SE1/4), and Southeast Quarter of Southeast Quarter (SE1/4-SE1/4) in Section Nineteen (19),

Northwest Quarter (NW1/4) and West Half of Southwest Quarter (W1/2-SW1/4) in Section Twenty (20),

Southwest Quarter of Northwest Quarter (SW1/4-NW1/4) and Southwest Quarter (SW1/4) in Section Twenty-nine (29),

Northeast Quarter of Northeast Quarter (NE1/4-NE1/4), South Half of Northeast Quarter (S1/2-NE1/4), Lot 2, Southeast Quarter of Northwest Quarter (SE1/4-NW1/4), East Half of Southwest Quarter (E1/2-SW1/4), Lot 3, Lot 4, and Southeast Quarter (SE1/4) in Section Thirty (30),

Northeast Quarter (NE1/4), East Half of Northwest Quarter (E1/2-NW1/4), Lot 1, Lot 2, East Half of Southwest Quarter (E1/2-SW1/4), Lot 3, Lot 4, North Half of Southeast Quarter (N1/2-SE1/4), and Southwest Quarter of Southeast Quarter (SW1/4-SE1/4) in Section Thirty-one (31),

all in Township Forty-four (44) North, Range Twenty-three (23) West.

North Half (N1/2), North Half of Southwest Quarter (N1/2-SW1/4), and North Half of Southeast

Southeast Quarter (SE1/4) in Section One (1),

Northeast Quarter (NE1/4) and South Half in Section Twelve (12),

South Half of Northeast Quarter (S1/2-NE1/4), West Half (W1/2), and Southeast Quarter (SE1/4) in Section Thirteen (13),

Northeast Quarter of Northeast Quarter (NE1/4-NE1/4), South Half of Northeast Quarter (S1/2-NE1/4), Northwest Quarter (NW1/4), North Half of Southwest Quarter (N1/2-SW1/4), Southwest Quarter of Southwest Quarter (SW1/4-SW1/4), and Southeast Quarter (SE1/4) in Section Fourteen (14),

East Half of Northeast Quarter (E1/2-NE1/4) in Section Twenty-two (22),

North Half (N1/2) and North Half of Southeast Quarter (N1/2-SE1/4) in Section Twenty-three (23),

North Half (N1/2), North Half of Southeast Quarter (N1/2-SE1/4), and Southeast Quarter of Southeast Quarter (SE1/4-SE1/4) in Section Twenty-four (24),

Northeast Quarter of Northeast Quarter (NE1/4-NE1/4), South Half of Northeast Quarter (S1/2-NE1/4), Southeast Quarter of Northwest Quarter (SE1/4-NW1/4), South Half (S1/2), and Northwest Quarter of Northeast Quarter (NW1/4-NE1/4), except 3 acres described as follows: Starting at the Northwest corner of Northwest Quarter of Northeast Quarter (NW1/4-NE1/4), going South along the line 900 feet, then East along a line 145 feet, then North along a line 900 feet, then West along a line 145 feet to the point of beginning, in Section Twenty-five (25),

South Half (S1/2) of Section Twenty-six (26),

All of Section Thirty-five (35),

all in Township Forty-four (44) North, Range Twenty-four (24) West.

MS 282,04 Subdivision 1 (h)

The county auditor may, with the approval of the county board, and without first offering at public sale, grant leases, for a term not exceeding 25 years, for the removal of peat and for the production or removal of farm-grown closed-loop biomass as defined in section 216B.2424, subdivision 1, or short-rotation woody crops from tax-forfeited lands upon the terms and conditions as the county board may prescribe. Any lease for the removal of peat, farm-grown closed-loop biomass, or short-rotation woody crops from tax-forfeited lands must first be reviewed and approved by the commissioner of natural resources if the lease covers 320 or more acres. No lease for the removal of peat, farm-grown closed-loop biomass, or short-rotation woody crops shall be made by the county auditor pursuant to this section without first holding a public hearing on the auditor's intention to lease. One printed notice in a legal newspaper in the county at least ten days before the hearing, and posted notice in the courthouse at least 20 days before the hearing shall be given of the hearing.

American Peat Technology, LLC

36203 350th Ave • Aitkin, MN, 56431
Office - 218.927.7888 • Fax - 218.927.3272
www.AmericanPeatTech.com

Mark Jacobs
Aitkin County Land Commissioner
209 2nd St. NW – Room 206
Aitkin, MN 56431

22 July 2016

Dear Mr. Jacobs,

American Peat Technology (APT) would like to start the process to enter into a lease agreement with the Aitkin County for two peat deposits located within the county. Since its incorporation in 2003, APT has been harvesting reed-sedge peat and manufacturing value-added products that are ultimately sold in the agronomy and water remediation markets. Currently, APT works under a permit to mine on a prior-converted peatland located primarily in Section 22 of Spencer Township in Aitkin County. Given the steady and substantial success of APT, however, the need for additional peat resources is on the horizon.

We believe that the proposed leases will benefit both APT and Aitkin County. American Peat will obviously gain the assurance that comes with having additional resources on hand. Initially, the County will benefit from the revenue stream that the leased land produces, but later on, however, once harvest starts on the bogs, the benefits to the county and local community will be amplified as APT generates additional jobs in order to meet the demands of the growing peat industry.

The County will also benefit by aiding the expansion of American Peat Technology as opposed to an outside party that may express interest in the peatlands. American Peat is a company that is local to Minnesota and Aitkin County. We live here; we care about the community and natural environment. We are already experimenting with the best practices to restore our current harvest area to a peat-producing wetland, and we will apply that same diligence to subsequent harvest areas. We are committed to fostering positive relationships with our community, and we are building the case that APT is a robust, environmentally-friendly business that is good for economic development in this rural area.

For purposes of conversation, APT uses the term “Rossburg bog” to refer to the deposit primarily located in east central Spencer Township and west central Kimberly Township. That lease request includes 293 acres of county-owned land. The term “Seavey bog” refers to the deposit primarily located in eastern Seavey Township, western Pliny Township and northeast Idun Township, and that lease request includes 7,675 acres of county-owned land. We are concurrently approaching the State of Minnesota to enter into a lease agreement for the state-controlled parcels in the two peatlands.

The descriptions of the parcels in the lease requests are attached to this letter in an Excel file. In addition, we have attached maps of the two deposits, generated by the Aitkin County GIS Department, which shows the county- and state-owned parcels that are included in the requests. The parcel maps are layered over digitized maps, developed by the DNR in 1981, which classifies the peat inventory by deposit depth. Please let us know if additional information is needed in order to complete this lease request.

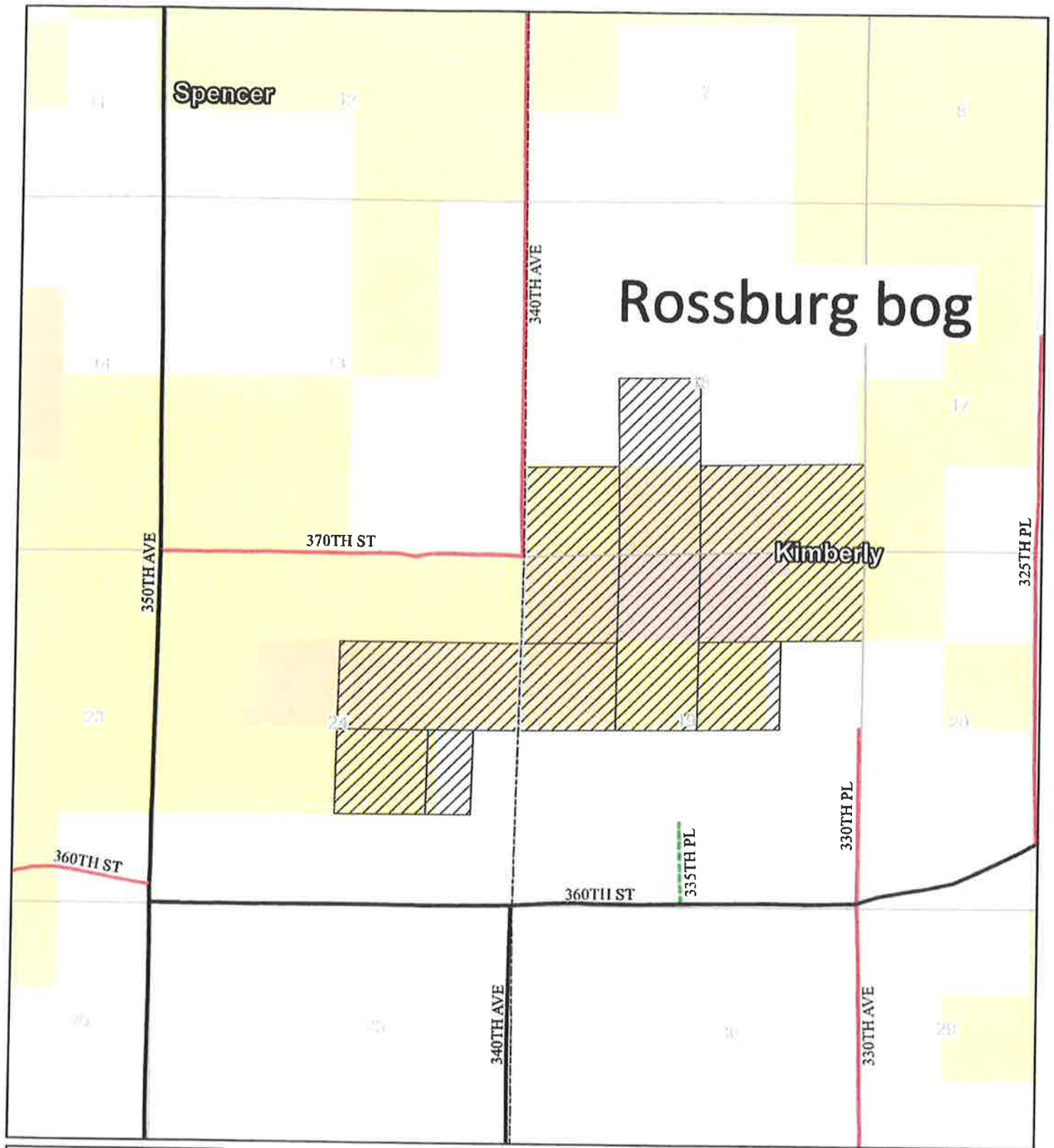
We look forward to hearing your response and working together to complete the lease transactions. Thank you for your time and interest.

Sincerely,


A handwritten signature in cursive script, appearing to read "Douglas Green".

Douglas Green, CEO





Copy: Victoria Sellner, DNR Minerals, Hibbing Office



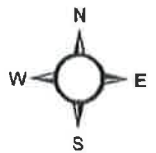
Legend

 Public Land Parcel

TOTAL DEPTH OF PEAT

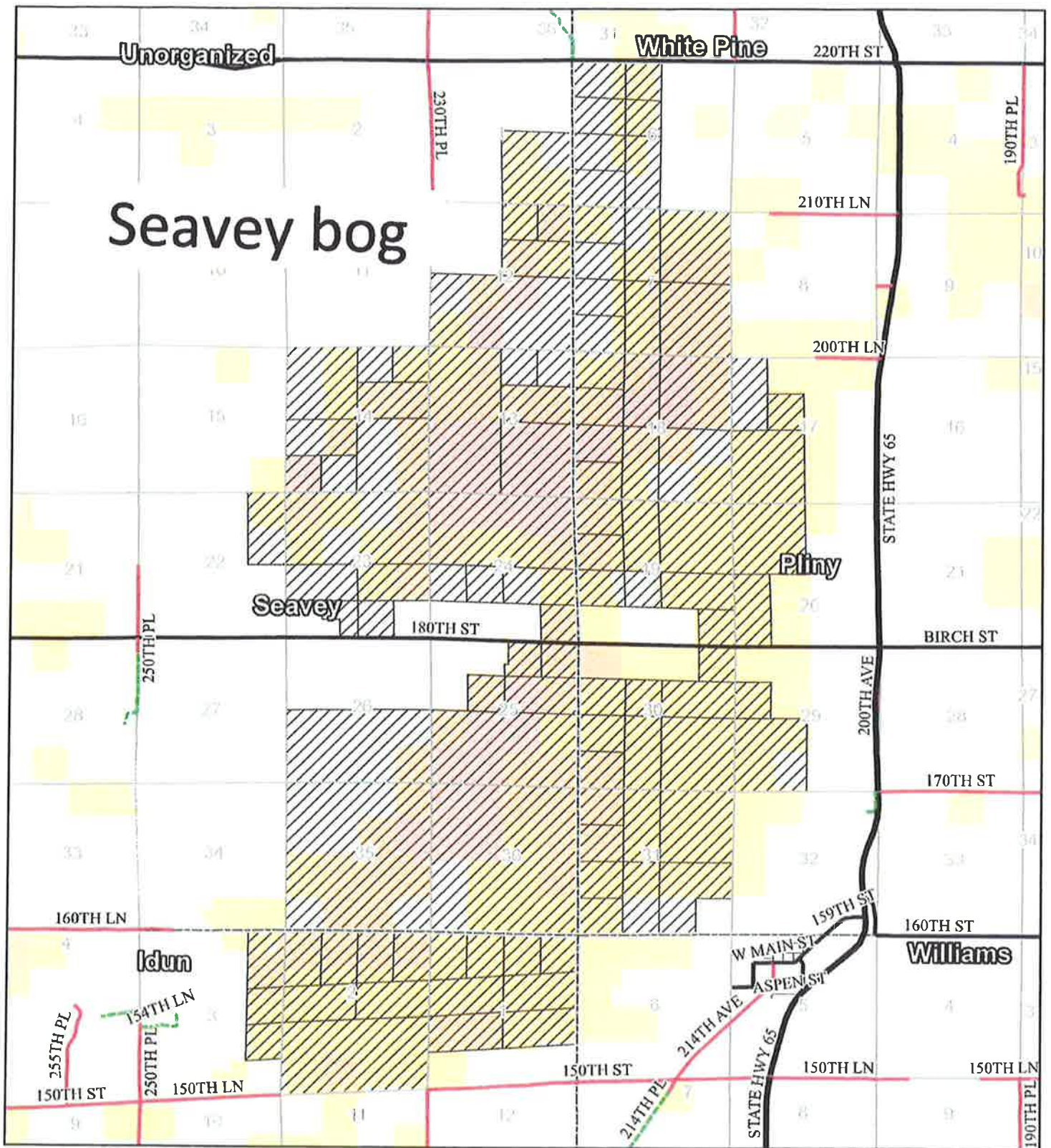
-  0-150 cm
-  151-300 cm
-  301-450 cm
-  451-600 cm

Aitkin County, MN



Map prepared by Aitkin County GIS for graphic display purposes only
 Aitkin County assumes no liability for any errors, omissions or inaccuracies herein contained

Date: 7/5/2016



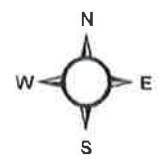
Legend

Public Land Tax Parcel

TOTAL DEPTH OF PEAT

- 0-150 cm
- 151-300 cm
- 301-450 cm
- 451-600 cm

Aitkin County, MN



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Date: 7/1/2016

JOINT POWERS PEAT LEASING AGREEMENT

This AGREEMENT, made this _____ day of _____, 2017, between the STATE OF MINNESOTA, acting by and through its Commissioner of Natural Resources, hereinafter referred to as the “Commissioner”, and the COUNTY OF AITKIN, MINNESOTA, acting by and through its County Board, hereinafter referred to as “Aitkin County”;

WITNESSETH:

WHEREAS, Minnesota Statutes 2015, Section 92.50, provides that the Commissioner of Natural Resources may lease any state-owned lands under his jurisdiction for the purpose of removing peat for a term not exceeding 25 years, and

WHEREAS, Minnesota Statutes 2015, Section 282.04, subd.1(h), provides that the county auditor may, with the approval of the county board and the Commissioner of Natural Resources, grant leases, for a term not exceeding 25 years, for the removal of peat from tax-forfeited lands upon such terms and conditions as the county board may prescribe, and

WHEREAS, Minnesota Statutes 2015, Section 471.59, provides for the joint exercise of powers common to contracting governmental units, and authorizes contractual agreements by which one governmental unit may exercise such powers on behalf of the other contracting governmental units.

NOW THEREFORE, IT IS MUTUALLY AGREED between the parties hereto as follows:

1. Aitkin County hereby authorizes the Commissioner to lease the tax-forfeited lands as described in the attached “Exhibit A” and made part of this Agreement, for the removal of peat in the same manner as other state-owned property under the jurisdiction of the Commissioner except as provided elsewhere in this Agreement and pursuant to Minnesota Statutes 2015, Section 282.04, subd. 1(h) and the Commissioner hereby accepts this authority.

This authority includes the authority to engage in the leasing of lands owned by the parties for the removal of peat, together with the necessarily related authority to grant temporary easements, permits and licenses, collect rents and royalties, pay necessary expenses, apportion net revenues, and such other authority deemed necessary to the leasing of the lands by the parties.

- a. The annual rental for any land which is leased pursuant to this Agreement shall be determined by the Commissioner prior to the time of lease, following consultation with, and approval by, the County Auditor of Aitkin County. Rental shall be payable as specified in the lease.
- b. The minimum royalty per ton of sphagnum peat moss and the minimum royalty per ton of reed-sedge peat to be paid by the lessee shall be determined by the Commissioner prior to the time of lease, following consultation with, and approval by, the County Auditor of Aitkin County. Royalty shall be escalated pursuant to a formula to be established by the Commissioner following consultation with, and approval by, the County Auditor of Aitkin County.

4. All assignments, agreements, or contracts affecting any lease issued pursuant to this Agreement shall not be valid until approved in writing by the Commissioner, following consultation with, and approval by, the County Auditor of Aitkin County. Each party shall be responsible for any other legal work, including but not limited to litigation, together with costs relating to any other legal work, involving lands owned by Aitkin County in the absence of any agreement for such services between Aitkin County and the Minnesota Attorney General.

5. The Commissioner, in issuing a lease, may not authorize a lessee to invade or trespass upon any minerals therein or upon any interest in land located within the area described by the lease that is owned by anyone other than the State or Aitkin County.

6. Tort liability of counties is governed by Minnesota Statutes 2015, Chapter 466, and related laws. Tort liability of the State is governed by Minnesota Statutes 2015, Section 3.736, and related laws. Each party to this Agreement shall be responsible to the extent authorized by law for its own acts and those of its officers, employees, and agents. Any lease issued pursuant to this Agreement shall contain a provision to indemnify the parties and hold them harmless from all damages or losses caused directly or indirectly by activities undertaken pursuant to the lease, whether to land, timber, minerals, growing crops, or buildings, or to any person or other property.

7. The duration of this Agreement is coterminous with the lease or leases issued pursuant to this Agreement. This Agreement may be amended from time to time in regard to any provision which does not alter the terms of the lease or leases by the mutual agreement of the parties hereto. Official notices required under this Agreement shall be directed as follows: for Aitkin County -- Aitkin County Auditor, Aitkin County Courthouse, 209 Second Street NW, Room 202, Aitkin, MN 56431; for the State -- Commissioner of Natural Resources, State of Minnesota, 500 Lafayette Road, Box 45, St. Paul, MN 55155-4037.

APPROVED:

DEPARTMENT OF NATURAL RESOURCES

By _____
Jess Richards, Director
Division of Lands and Minerals

Date: _____, 2017

COUNTY BOARD OF AITKIN
By resolution dated:

_____, 2017
(certified copy attached)

COUNTY OF AITKIN

Kirk Peysar, County Auditor

Exhibit A

Rosburg Bog Area

East Half of Southwest Quarter (E1/2-SW1/4), and Lot 4 in Section Eighteen (18),

Southwest Quarter of Northeast Quarter (SW1/4-NE1/4), East Half of Northwest Quarter (E1/2-NW1/4), and Lot 2, Nineteen (19),

all in Township Forty-seven (47) North, Range Twenty-five (25) West.

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all in Township Forty-four (44) North, Range Twenty-three (23) West.

North Half (N1/2), North Half of Southwest Quarter (N1/2-SW1/4), and North Half of Southeast Quarter (N1/2-SE1/4) in Section One (1),

All of Section Two (2),

East Half of Northeast Quarter (E1/2-NE1/4) and Northeast Quarter of Southeast Quarter (NE1/4-SE1/4) in Section Three (3),

all in Township Forty-three (43) North, Range Twenty-four (24) West.

Southeast Quarter (SE1/4) in Section One (1),

East Half of Northeast Quarter (E1/2-NE1/4) in Section Twenty-two (22),

North Half (N1/2) and North Half of Southeast Quarter (N1/2-SE1/4) in Section Twenty-three (23),

North Half (N1/2), North Half of Southeast Quarter (N1/2-SE1/4), and Southeast Quarter of Southeast Quarter (SE1/4-SE1/4) in Section Twenty-four (24),

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