

No. A09-495

STATE OF MINNESOTA
IN SUPREME COURT

Dennis Larson,

Petitioner,

vs.

State of Minnesota and County of Douglas,

Respondents.

STATE OF MINNESOTA'S RESPONSE BRIEF

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	2
STATEMENT OF FACTS.....	2
ARGUMENT	8
I. STANDARD OF REVIEW.	8
II. DISMISSAL OF LARSON’S CLAIM, MADE UNDER MINNESOTA STATUTES SECTION 117.225, WAS WARRANTED BECAUSE THE UNDISPUTED FACTS SHOW THAT THE COMMISSIONER USES THE EASEMENT FOR HIGHWAY PURPOSES.	10
A. The Commissioner’s Multiple, Overlapping Highway Uses Preclude Discharge Under Section 117.225.	10
B. The Commissioner’s Hold On The Highway 29 Corridor Lands, Including Parcel 11, Is A Highway Purpose Sanctioned By Minnesota Statutes Section 161.20.	13
C. The Commissioner’s Use Of The Easement As A Rest Area Is For A Highway Purpose.	14
D. Statutes Governing Public Agreements, If Violated, Do Not Give Rise to Discharge Under Section 117.225.....	17
1. Because the Agreement between the Commissioner and the County is a limited use permit, not a lease, there can be no violation of section 161.431 (lease statute).	17
2. Because the rest area is a highway use and the replacement restroom building by the terms of the permit is not permanent, there is no violation of section 161.434 (limited use permit statute).	19
3. Because under the Legislature’s public outdoor recreation system Rest Areas are different from Parks, the Commissioner of Transportation does not violate the Parks statute when establishing and operating a rest area.	20
E. Parcel 11 Is Used For Highway Purposes, Thus Summary Judgment Is Proper Because Discharge Is Available Only If Parcel 11 Is Not Being Used For Highway Purposes.....	22
F. The Term “Highway Purpose” Is Not Static And Thus The Commissioner May Expand The Activities Allowed Within Highway Easements.....	24

III. SECTION 117.225 DOES NOT PERMIT DISCHARGE OF PORTIONS OF EASEMENTS.	25
A. Condemnations By The Commissioner Are Not Subject to Heightened Review Because the Commissioner Condemns As The Sovereign.	26
B. Consideration Of The Language Of Minnesota Statutes Section 161.43 Is Proper To Rebuff Larson’s Attempts To Expand The Scope Of Section 117.225 Beyond Its Plain Meaning.	28
C. Even If Section 117.225 Is A Remedial Statute, Liberal Rules of Construction Do Not Apply Here Because The Statute is Unambiguous.	30
D. The Words “Just And Equitable” In Section 117.225 Modify The “Terms” When Discharge Is Warranted, But They Do Not Expand The Availability Of Discharge.	31
E. Public Policy Favors The Commissioner’s Reading of Section 117.225.	31
F. Even If Section 117.225 Applies To Portions Of Easements, The Undisputed Facts Here Preclude Discharge Of The Portion Indicated By Larson.....	33
IV. LARSON’S EFFORTS HERE ARE BARRED BY RES JUDICATA AND COLLATERAL ESTOPPEL.	34
A. To Affirm Summary Judgment, This Court Can Consider Issues Not Decided By The District Court Or Court Of Appeals.	34
B. Larson's Previous Action Regarding Adverse Property Claims Precludes His Present Action To Discharge The Commissioner's Adverse Property Claim	35
CONCLUSION	38
APPENDIX	Mn.A.1-Mn.A.69

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF AUTHORITIES

	Page
STATE CASES	
<i>Bjerke v. Johnson</i> , 742 N.W.2d 660 (Minn. 2007)	8
<i>Blankholm v. Fearing</i> , 22 N.W.2d 853 (Minn. 1946)	30
<i>Brecht v. Schramm</i> , 266 N.W.2d 514 (Minn. 1978)	8, 34
<i>Brooks Investment Co. v. City of Bloomington</i> , 232 N.W.2d 911 (Minn. 1975)	16
<i>Burnquist v. Cook</i> , 19 N.W.2d 394 (Minn. 1945)	27
<i>Care Ins., Inc.-Roseville v. County of Ramsey</i> , 612 N.W.2d 443 (Minn. 2000)	36
<i>Cater v. Northwestern Tel. Exch. Co.</i> , 63 N.W. 111 (Minn. 1895)	24
<i>City of Mankato v. Hilgers</i> , 313 N.W.2d 610 (Minn. 1981)	15
<i>County of Blue Earth v. Stauffenberg</i> , 264 N.W.2d 647 (Minn. 1978)	15
<i>DLH, Inc. v. Russ</i> , 566 N.W.2d 60 (Minn. 1997)	9
<i>Fairchild v. City of St. Paul</i> , 49 N.W.2d 325 (Minn. 1891)	27, 28
<i>Haeussler v. Braun</i> , 314 N.W.2d 4 (Minn. 1981)	24, 25

<i>Hauschildt v. Beckingham</i> , 686 N.W.2d 829 (Minn. 2004)	37
<i>Hebert v. City of Fifty Lake</i> , 744 N.W.2d 226 (Minn. 2008)	27
<i>Hunt v. IBM Mid Am. Employees Fed. Credit Union</i> , 384 N.W.2d 853 (Minn. 1986)	9
<i>Kelmar v. Dist. Court of Fourth Judicial Dist. Hennepin County</i> , 130 N.W.2d 228 (1964)	33
<i>La Bere v. Palmer</i> , 44 N.W.2d 827 (Minn. 1950)	30
<i>LaSalle Cartage Co., Inc., v. Johnson Brothers Wholesale Liquor Co.</i> , 255 N.W.2d 233 (Minn. 1974)	18
<i>Mortenson v. State</i> , 446 N.W.2d 674 (Minn. App. 1989)	29
<i>Ohern v. Big Lake Ice Co.</i> , 270 N.W. 133 (Minn. 1937)	29
<i>O'Malley v. Ulland Bros.</i> , 549 N.W.2d 889 (Minn. 1996)	9
<i>Parker v. City of St. Paul</i> , 50 N.W. 247 (Minn. 1891)	23
<i>PMH Properties v. Nichols</i> , 263 N.W.2d 799 (Minn. 1978)	9
<i>Sentinel Mgmt. Co. v. Aetna Cas. & Sur. Co.</i> , 615 N.W.2d 819 (Minn. 2000)	8
<i>State v. Christopher</i> , 170 N.W.2d 95 (Minn. 1969)	14, 27, 28
<i>State v. Joseph</i> , 636 N.W.2d 322 (Minn. 2001)	37

<i>State v. Ohman,</i> 116 N.W.2d 101 (Minn. 1962)	14
<i>State v. Severson,</i> 261 N.W. 469 (Minn. 1935)	27
<i>Thiele v. Stich,</i> 425 N.W.2d 580 (Minn.1988)	34
<i>Vlahos v. R & I Constr. of Bloomington, Inc.,</i> 676 N.W.2d 672 (Minn. 2004)	32

FEDERAL STATUTES

Highway Beautification Act, 23 U.S.C. 131 (1965)	21
--	----

STATE STATUTES

Minn. Stat. § 86A.04 (2008)	20
Minn. Stat. § 86A.05 (2008)	passim
Minn. Stat. § 86A.08 (2009 Supp.)	21
Minn. Stat. § 117.225 (2008)	passim
Minn. Stat. § 160.262 (2008)	11
Minn. Stat. § 160.272 (2008)	20
Minn. Stat. § 160.2745 (2008)	20
Minn. Stat. § 161.20 (2008)	11, 13, 14
Minn. Stat. § 161.43 (2008)	28, 29
Minn. Stat. § 161.431 (2008)	17,18,19
Minn. Stat. § 161.434 (2008)	17, 19
Minn. Stat. § 174.02 (2008)	12

Minn. Stat. § 471.167 (2008)	17, 20
Minn. Stat. § 645.17 (5) (2008).....	23,30

LEGAL ISSUES

I. Does the Commissioner of Transportation use a permanent highway easement for “highway purposes” when the uses of the easement consist of: (1) constructing and maintaining the traveled lanes of the highway; (2) maintaining slopes for support of the road surface; (3) providing for drainage of water from the road surface; (4) development of bicycle paths; (5) holding the easement for future highway development based on a pending study; and (6) providing for a rest area maintained by the County, a portion upon which is also a public beach?

(a) **How the issue was raised at trial:** Respondents and Appellant raised the issue in their summary judgment pleadings.

(b) **District court’s ruling:** That the easement was used for highway purposes.

(c) **Preserved for appeal:** Appellant appealed the January 9, 2009, district court order on March 3, 2009. This issue was addressed in Appellant’s Statement of the Case to the Court of Appeals, by the Court of Appeals in its December 22, 2009 opinion, and in Appellant’s Petition for Review.

(d) **Most apposite cases:** *State v. Christopher*, 170 N.W.2d 95 (Minn. 1969); *State v. Ohman*, 116 N.W.2d 101 (Minn. 1962).

II. Did the district court properly refrain from adding the terms “or portions of an easement” to the plain language of Minnesota Statutes section 117.225?

(a) **How the issue was raised at trial:** Respondent State of Minnesota and Appellant raised the issue in their summary judgment pleadings.

(b) **District court’s ruling:** That the statute did not apply to portions of easements.

(c) **Preserved for appeal:** Appellant appealed the January 9, 2009, district court order on March 3, 2009. The December 22, 2009 Court of Appeals opinion and Appellant’s Petition for Review address this issue.

(d) **Most apposite cases:** *Vlahos v. R & I Constr. of Bloomington, Inc.*, 676 N.W.2d 672 (Minn. 2004).

III. Under the doctrine of res judicata and collateral estoppel, can a party challenge the Commissioner’s claim to an easement based on facts known or knowable for decades when three years prior to filing the present action that same party litigated all adverse claims and agreed to the validity of the entire easement in an action that included the Commissioner?

(a) **How the issue was raised at trial:** Respondent State of Minnesota raised this issue in its summary judgment pleadings.

(b) **District court’s ruling:** The District court did not address this issue.

(c) **Preserved for appeal:** This issue may be considered as an alternate basis for affirming the district court’s grant of summary judgment.

(d) **Most apposite cases:** *Care Ins., Inc.-Roseville v. County of Ramsey*, 612 N.W.2d 443 (Minn. 2000); *Hauschildt v. Beckingham*, 686 N.W.2d 829 (Minn. 2004).

STATEMENT OF THE CASE

Appellant Dennis Larson brought a statutory action in 2008, pursuant to Minnesota Statutes section 117.225 (2008), to discharge a portion of the State of Minnesota's permanent highway easement over land that Larson recently purchased. Larson claims that section 117.225 permits release of a portion of an easement when the Commissioner allegedly exceeds the authorized use. The district court for Douglas County, Seventh Judicial District, the Honorable David R. Battey, granted the motions for summary judgment of Respondents State of Minnesota, Department of Transportation (hereinafter "Commissioner of Transportation" or "Commissioner"), and County of Douglas, dismissing Appellant Larson's action on the grounds that the disputed portion of the easement is used for a highway purpose, a rest area, and that the statute does not apply to portions of easements. The Minnesota Court of Appeals affirmed the district court on December 22, 2009, on the grounds that the statute does not apply to portions of easements. Neither court reached the Commissioner's argument for dismissal based on estoppel and res judicata. Larson has appealed the decision of the court of appeals.

STATEMENT OF FACTS

A. Initial Condemnation of Subject Property.

In 1956, the Commissioner began condemnation proceedings, *State v. Sarah Patty, et al.* and *State v. Robert J. Jelsing, et al.*, Douglas County Court File number 10746-7, to acquire permanent highway easements ("right-of-way") necessary for the construction of

Trunk Highway 29 in Douglas County Minnesota. (Mn.A.2, 47-48.¹) The Commissioner condemned “Parcel 11,” from the Howard family. (*Id.*) Parcel 11 was taken from a 21.60-acre parcel that includes the isthmus between Lake Geneva and Lake Le Homme Dieu. (*Id.*)

The property was divided by a railroad line, which also travels the isthmus, into an east section and a west section. (*Id.*) The taking was entirely from the western section and consisted of 5.45 acres in permanent highway easement and 0.77 acres in temporary easement, which expired by its own terms. (*Id.*) The permanent highway easement extends from the southerly side of the west section of the subject property northeasterly until it expands westerly to Lake Le Homme Dieu and then continues northerly up the isthmus to a point where the western edge along the lake tapered to the railroad property line at the northern tip of the west section of the subject property. (*Id.*) There is a portion of remainder property southwest of the permanent easement taking and a strip of remainder property in the middle between the highway and railroad. (*Id.*) On December 7, 1956, the district court issued its order approving public purpose and necessity for the public’s easements and ordering transfer of title. (Mn.A.48.) On January 5, 1957, court-appointed condemnation commissioners awarded damages in the amount of \$7,400. (*Id.*) On March 11, 1957, a jury returned a verdict of damages in the amount of \$7,885 in favor of the Howard family. (Mn.A.48-49.)

¹ “Mn.A.” = “Respondent State of Minnesota’s Appendix.”

As they cross Parcel 11² southwesterly toward Alexandria, the traveled lanes of the highway rise in elevation. (Mn.A.48.) The land is generally level at the shoreline and then extends upward to the traveled lanes at the north end on the isthmus. (*Id.*) Heading southward, the incline becomes progressively steeper and taller to form a bluff along the lanes and then turns westerly toward the lake. (*Id.*) On top of this bluff there is a generally level portion of Parcel 11 upon which the Commissioner constructed a scenic overlook facing Lake Le Homme Dieu in 1957. (*Id.*) The Commissioner also constructed a rest area in 1957 on the portion of Parcel 11 that extends from the bottom of the bluff to the shoreline of Lake Le Homme Dieu. (*Id.*) Rest areas within state highway easements often include facilities where travelers can exercise, relax, and revive themselves. (Mn.A.49.) Rest area facilities include: dog walking areas, walking paths, picnic tables, restrooms, or playground equipment. (Mn.A.52.) Also, the Commissioner provided for the drainage of water away from the traveled lanes of the highway down the bluff across the rest area to the lake. (Mn.A.3, 48, 52.) In 1974, the Commissioner constructed a restroom building within the rest area. (Mn.A.48.)

The Commissioner memorialized the taking of the permanent highway easement in Parcel 11 in the Final Certificate, which was dated July 8, 1966, and recorded on August 11, 1966, in Book 87 of Deeds, Page 391, in the Office of the Douglas County

² “Parcel 11” was the designation given to the permanent easement and temporary easement acquired from the subject property in 1957. Because the temporary construction easement expired years ago, the designation “Parcel 11” is used now for only the permanent highway easement.

Recorder. (Mn.A.49.) As a matter of record, the permanent highway easement through Parcel 11 has not been modified in any way since. (*Id.*)

B. Limited Use Permits from the Commissioner to the County.

In 1977, the Commissioner and the County entered into the first of four consecutive limited use permits allowing the County to operate a beach within the rest area portion of Parcel 11. (Mn.A.49.) The Commissioner and County entered into the fourth limited use permit in 1995 for a twenty-five year term. (Mn.A.15-23, 49-50; A.A.15-16.³) The Commissioner and County labeled their 1995 agreement a “Limited Use Permit” and cite the limited use permit statute, Minnesota Statutes 161.434, as statutory authority. (A.A.15-16.) They included the following terms in the permit: (1) cancellation upon thirty days notice; (2) “[a]ny use permitted by this instrument shall remain subordinate to the rights of the Minnesota Department of Transportation in and to the real estate;” (3) “the permit does not grant any interest in land whatsoever;” (4) the permit does not establish a permanent park, recreation area, or wildlife area; (5) the County is responsible for all maintenance, repair, and operational costs; and (6) “[n]o permanent buildings shall be constructed.” (*Id.*) The 1995 limited use permit by its terms did not convey property interests, expressly limited the permissible uses, and did not provided for rent payments. (*Id.*) The County then constructed for the Commissioner a new restroom structure that is similar in functionality to the original structure built in 1974. (Mn.A.48.) The Commissioner has also entered into a limited use permit with the City of Alexandria for a bicycle trail within a portion of Parcel 11. (Mn.A.3, 50.)

³ “A.A.” = “Appellant’s Addendum.”

C. Larson's Purchase of the Subject Property.

In 2005, Appellant Dennis Larson and his brother Roger Larson, through a company they own, purchased a portion of the western remainder of Parcel 11 upon which was a motel that they converted into condominiums. (Mn.A.50.) Also, in 2005, Dennis and Roger Larson purchased from the Howard family⁴ the fee rights under Parcel 11. (*Id.*) The Larsons paid approximately \$18,000 for the fee beneath Parcel 11 even though the assessed value of that land was \$268,500. (*Id.*) Roger Larson later sold his interest to Dennis Larson. (*Id.*)

The Commissioner denied Larson's request to exchange some land in 2005 because high traffic counts on Highway 29 triggered the process to bring the design of the highway up to the level of use. (Mn.A.51-53.) Until completion of a study analyzing the Commissioner's options and then a subsequent decision, it was prudent to retain all public property in the corridor. (*Id.*) A significant issue for the Commissioner to consider when determining the future of the Highway 29 corridor in the vicinity of Parcel 11 is how to treat under modern clean water standards the highway run-off water before it reaches the lake. (*Id.*) Such standards did not apply when the highway was first constructed, but any upgrade to Highway 29 would require the construction of new filtration ponds, likely within the rest area portion of Parcel 11. (Mn.A.1, 51-53.)

⁴ For the sake of simplicity, the Commissioner refers to the various iterations over time of the Howard family (surviving members, deceased members, and lawful heirs) collectively as the "Howard family."

D. Larson's 2005 Adverse Claims Action.

In 2005, Dennis and Roger Larson sued the Howard family, the Commissioner, the County, and others, in an action to determine adverse claims and quiet title in Douglas County District Court, file number C1-05-1135. (Mn.A.4-14, 28-42, 51-52.) In their 2005 Complaint, the Larsons acknowledged all of Parcel 11 as described in the Final Certificate and sought relief that ultimately would not discharge, but rather perpetuate, the entire easement. (*Id.*) Because the Larsons' 2005 Complaint protected Parcel 11, the Commissioner did not file an answer or otherwise appear. (Mn.A.5.) In its Findings of Fact, Conclusions of Law, and Order for Judgment and Judgment, both of which were filed December 2, 2005, the district court found the Larsons and their company to be the fee simple owners of the lands underlying Parcel 11 subject to:

- A. Final Certificate in favor of the State of Minnesota dated July 8, 1966, recorded August 11, 1966, in Book 87 of Deeds, Page 391, in the Office of the Douglas County Recorder.

(Mn.A.28-42.) The Court did not make a finding that the Commissioner had abandoned or misused the property nor did it in any way limit or reduce the permanent highway easement. (*Id.*)

E. The Commissioner's Use of the Subject Property.

Presently, the Commissioner uses the easement, Parcel 11, for the traveled lanes of Highway 29, a rest area, and for draining water from the highway and other impervious surfaces to the lake. (Mn.A.3, 52.) Also, the public now uses the scenic overlook portion of Parcel 11 for rest area parking. (*Id.*) Finally, the Commissioner is considering the future of Highway 29 due to high traffic counts. (Mn.A.2, 52-53.) If the Commissioner

reconstructs and upgrades the highway, the Commissioner will need additional space for the construction and for filtration ponds to clean the highway run-off. (*Id.*) After the highway improvement project, the Commissioner will no longer be able to drain water directly into the lake, but must first direct the water to a pond, where the water will be filtered before it discharges into the lake. (*Id.*) Such ponds were not mandated when the corridor was created but now are required by clean water standards. (*Id.*) The Commissioner now holds the entirety of Parcel 11 for highway expansion if the highway is reconstructed within its present route. (*Id.*) Finally, the Commissioner is participating with the County and other governmental entities for the creation of a bicycle trail. (Mn.A.53.) The trail will pass through Parcel 11 and use the rest area and parking facilities. (*Id.*)

ARGUMENT

I. STANDARD OF REVIEW.

An appellate court's "standard of review for summary judgment is de novo." *Sentinel Mgmt. Co. v. Aetna Cas. & Sur. Co.*, 615 N.W.2d 819, 827 (Minn. 2000). The reviewing court asks "(1) whether there exists a genuine issue of material fact; and (2) whether the district court erred in its application of the law." *Bjerke v. Johnson*, 742 N.W.2d 660, 664 (Minn. 2007). Appellate courts should affirm the district court's grant of summary judgment if it can be sustained on any ground. *See Brecht v. Schramm*, 266 N.W.2d 514, 520 (Minn. 1978). The party opposing summary judgment must point the

reviewing court to the specific, admissible record evidence to create a material fact dispute:

In order to successfully oppose a motion for summary judgment [on the basis of a genuine issue of disputed material fact], a party cannot rely upon mere general statements of fact but, rather, must demonstrate at the time the motion is made that specific facts are in existence which create a genuine issue for trial.

Hunt v. IBM Mid Am. Employees Fed. Credit Union, 384 N.W.2d 853, 855 (Minn. 1986).

For the first requirement, that an issue be a “genuine” issue of material fact, the evidentiary record must contain conflicting evidence on the issue. *See PMH Properties v. Nichols*, 263 N.W.2d 799, 803 (Minn. 1978) (stating, “when the evidence is conflicting, [an issue] presents a question of fact for the trier of fact”). A mere scintilla of evidence will not create a genuine issue:

There is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.

DLH, Inc. v. Russ, 566 N.W.2d 60, 71 (Minn. 1997). Instead, to establish that a “genuine” issue exists as to a material fact, the party opposing the motion must be able to point to evidence in the record that would “permit reasonable persons to draw different conclusions.” *Id.*

For the second requirement, “[a] fact is material if its resolution will affect the outcome of a case.” *O’Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

The rules also establish that a party opposing summary judgment on the basis that a genuine issue exists as to a material fact must rely on evidence, and not mere allegations:

When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or denials of the adverse party's pleading but must present specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Minn. R. Civ. P. 56.05.

II. DISMISSAL OF LARSON'S CLAIM, MADE UNDER MINNESOTA STATUTES SECTION 117.225, WAS WARRANTED BECAUSE THE UNDISPUTED FACTS SHOW THAT THE COMMISSIONER USES THE EASEMENT FOR HIGHWAY PURPOSES.

A. The Commissioner's Multiple, Overlapping Highway Uses Preclude Discharge Under Section 117.225.

Larson claims he is entitled to an order discharging all or part of the highway easement, Parcel 11. The Commissioner's use of Parcel 11, including the disputed portion, precludes discharge under section 117.225. This section provides in part:

Whenever claiming that an easement acquired by condemnation is **not being used for the purposes for which it was acquired**, the underlying fee owner may apply to the district court of the county in which the land is situated for an order discharging the easement, upon such terms as are just and equitable.

Minn. Stat. § 117.225 (2008) (emphasis added). Section 117.225 requires the party seeking discharge to prove that the easement "is not being used for the purposes for which it was acquired." It is undisputed that the easement was acquired for "highway purposes." Thus, under the plain language of section 117.225, there is only one question to be resolved on this issue: "Is Parcel 11 used for highway purposes?" If the answer is

“yes,” then the district court may not discharge the easement under section 117.225. If the answer is “no,” then the district court may discharge the easement “under terms that are just and equitable.” Here as a matter of undisputed fact, the answer is “yes,” the Commissioner uses the highway easement for various statutorily-sanctioned highway purposes: the travelled lanes, drainage, and slopes (Minn. Stat. § 161.20 (2008)); bicycle trails (Minn. Stat. § 160.262 (2008)); rest area (Minn. Stat. § 86A.05, subd. 12 (2008)); and future highway expansion (Minn. Stat. § 161.20 (2008)). These undisputed, overlapping trunk highway uses cover the entire parcel and preclude discharge here.

As a matter of undisputed fact, Parcel 11 has been, is, and will be used for highway purposes. Larson alleges without citation or support that “the majority of the affected property is not being used for the purposes originally granted.” (A.Br.9.⁵) Larson cites no record evidence to support this allegation and this assertion is contrary to the undisputed facts of record here. Larson admits the Commissioner constructed on Parcel 11 the traveled lanes of Highway 29, a scenic overlook facing Lake Le Homme Dieu, and the rest area and parking area along the shoreline. (A.Br.5.) Larson does not dispute the Commissioner’s evidence that the Commissioner also constructed the means for water to drain from the highway westward across the rest area portion of Parcel 11 to the lake. (Mn.A.3, 48, 52.) Larson did not offer or cite to any evidence to dispute the Commissioner’s evidence that these highway uses have continued since construction in 1957. (*Id.*) Larson did not offer or cite to any evidence to dispute the Commissioner’s evidence that the Commissioner is also including Parcel 11 in a system of bicycle trails

⁵ “A.Br.” = “Appellant’s Brief.”

and now holds all of Parcel 11 for future highway expansion due to increased traffic counts and modern water pollution standards. (Mn.A.1, 52-53.) Further, Larson did not offer or cite to any evidence to dispute the fact that the beach activities do not replace, but have been in addition to, the other highway uses. (Mn.A.49.)

People have been using a portion of Parcel 11 for swimming activities since at least 1962. (A.Br.5.) Fifteen years after the public began swimming from Parcel 11 (twenty years after the acquisition), the County approached the Commissioner for permission to utilize the rest area also as a public swimming beach. (Mn.A.49.) While the parties dispute whether permitting swimming at a highway rest area is a permissible highway use, it is undisputed that the County's use of a portion of Parcel 11 for a public swimming beach does not interfere with the other ongoing highway uses of Parcel 11. (Mn.A.49-50.) In fact, by virtue of the limited use permits granted by the Commissioner to Douglas County, the County has maintained and improved the public facilities on Parcel 11 for the Commissioner, subject to immediate removal upon the Commissioner's request. Such cooperation between the Commissioner and County to further highway purposes on Parcel 11 demonstrates an efficient and intelligent use of public resources, which implicitly has always been part of the Commissioner's mission and expressly has been part of the Commissioner's mission since 1995. *See* Minn. Stat. § 174.02, subd. 1a(4) (2008).

B. The Commissioner's Hold On The Highway 29 Corridor Lands, Including Parcel 11, Is A Highway Purpose Sanctioned By Minnesota Statutes Section 161.20.

The Commissioner's decision to hold all of Parcel 11 for future highway expansion, by itself, precludes application of section 117.225. As a matter of undisputed fact, Highway 29 is not designed for the volume of vehicles that now use the highway. In response to the increased traffic counts on TH 29, the Commissioner commissioned a study of the corridor and in good faith determined to hold all land until the study is completed and a clearer vision for the future of the corridor emerges. (Mn.A.52-53.) The legislature delegated authority over the trunk highway system, in part, in section 161.20, subdivision 2, which authorizes the Commissioner:

[T]o acquire . . . by eminent domain proceedings as provided by law, in fee or such lesser estate as the commissioner deems necessary, all lands and properties necessary in *preserving future trunk highway corridors* or in laying out, constructing, maintaining, and improving the trunk highway system.

Minn. Stat. § 161.20, subd. 2 (1) (2008) (emphasis added). Larson offered no evidence that the Commissioner's decision is arbitrary, capricious, or discriminatory. That highway purpose, preserving future trunk highway corridors, by itself shows that all of Parcel 11 is being used for a highway purpose notwithstanding the other uses. The other concurrent and overlapping uses further confirm the ongoing, legitimate use of Parcel 11. Because the undisputed facts of record here demonstrate that the entire easement is being used for various statutorily-sanctioned highway activities, the trial court correctly granted summary judgment to Respondents. That judgment should be affirmed.

C. The Commissioner's Use Of The Easement As A Rest Area Is For A Highway Purpose.

The district court correctly ruled that section 117.225 does not apply to the disputed portion of Parcel 11 because it is used for a highway purpose, a rest area. Under well-settled Minnesota law, the decisions of the Commissioner of Transportation with respect to the lands needed for the trunk highway system are given great deference and subject to review under an “arbitrary and capricious” standard. *State v. Christopher*, 170 N.W.2d 95, 98-99 (Minn. 1969). The legislature delegated authority over the trunk highway system to the Commissioner. Minn. Stat. § 161.20, subd. 2 (1). The trunk highway system includes rest areas. Highway rest areas often include dog walking areas, walking paths, picnic tables, restrooms, exercise areas, or playground equipment. (Mn.A.49.) The facilities included within a rest area are within the discretion of the Commissioner of Transportation, who has broad, plenary authority to determine the uses to which the public highway property will be put. *See State v. Ohman*, 116 N.W.2d 101, 104 (Minn. 1962) (“[T]he courts may not interfere with the determination of the [Commissioner], acting for the state in its sovereign capacity if his determinations have reasonable basis and are not arbitrary, capricious, or discriminatory.”). Consistent with the legislature’s delegation of authority over highway rest areas to the Commissioner, the rest area established on a portion of Parcel 11 is a highway use and the decision to permit swimming there is consistent with the Commissioner’s duty to promote enjoyment of “features of interest” that are located at the rest area. Minn. Stat. § 86A.05, subd. 12. When located near local “features of interest,” such as Lake Le Homme Dieu, the

Commissioner “shall provide” rest areas with “facilities,” such as a restroom and lifeguard stands, “to promote . . . enjoyment of the features.” Minn. Stat. § 86A.05, subd. 12 (c). Moreover, the Commissioner’s decision to permit the County to manage swimming at the rest area bolsters the trunk highway system by shifting the operating costs for the rest area to the County. The first limited use permit in 1977 created a de jure beach within the rest area precisely where the public had already created a de facto beach fifteen years earlier. Larson provided no evidence that the Commissioner’s decision to officially recognize the public’s enjoyment of the existing feature of interest at the rest area was arbitrary or capricious.

The Commissioner constructed the rest area in 1957, the year of acquisition, as part of the initial highway plans. Section 117.225 does not provide a means to collaterally attack a fifty-three year old condemnation action. The court-appointed condemnation commissioners made their award on January 5, 1957, a Douglas County jury rendered its verdict of just compensation on March 11, 1957, and the Commissioner recorded a final certificate for the taking that included a rest area on August 11, 1966. No owner can now challenge the size, shape, or necessity of the rest area. *See City of Mankato v. Hilgers*, 313 N.W.2d 610, 612-13 (Minn. 1981) (Only time to contest amount and estate of land taken is prior to submission to condemnation commissioners.); *County of Blue Earth v. Stauffenberg*, 264 N.W.2d 647, 649-50 (Minn. 1978) (Prior to 1978, necessity determination could be appealed only through a direct appeal after final certificate or a discretionary appeal before final certificate.). This Court should reject any

effort by Larson to seek section 117.225 discharge by challenging the size, shape, estate, or necessity of the fifty-three year old condemnation.

Any claim for inverse condemnation or right to challenge the 1956 condemnation order belongs to the Howard family. The undisputed record evidence reveals that the rest area use existed without swimming for five years. Fifteen years after members of the public began swimming at the rest area, the first of four consecutive limited use permits from the Commissioner to the County officially sanctioned the swimming. Twenty-eight years later, Larson purchased the underlying fee from the Howards at a steep discount. Larson purchased the underlying fee for Parcel 11 subject to the easement and the limited use permit, both public documents. Therefore, only the Howard family owns any right to make a claim that the swimming or limited use permits constitute a de facto taking for which compensation is owed. *See Brooks Investment Co. v. City of Bloomington*, 232 N.W.2d 911, 920-21 (Minn. 1975) (when de facto taking occurs prior to sale, buyer purchases subject to taking and seller alone has rights to condemnation claim). This Court should reject any effort by Larson to seek section 117.225 discharge based on the absence of formal condemnation proceedings for activities that began on the property forty-three years before Larson purchased Parcel 11 subject to those conditions.

To support his claim that a portion of the easement is not used for the purposes for which the easement was acquired, Larson merely points to the concurrent beach activities, thereby implicitly arguing that beach activities are mutually exclusive of rest area use. As part of his summary judgment motion, the Commissioner produced evidence that the entire easement is used for a highway purpose and that the concurrent

beach activities do not interfere with these various, overlapping highway uses, but rather, serves a highway use and supports the trunk highway system. (Mn.A.49-50.) Larson offered no evidence to rebut the Commissioner's evidence. As a matter of undisputed fact, the beach activities occur within the rest area. The Commissioner's undisputed use of part of Parcel 11 for a highway rest area precludes application of section 117.225 to that part, even where beach activities also occur.

D. Statutes Governing Public Agreements, If Violated, Do Not Give Rise to Discharge Under Section 117.225.

To support his claim for discharge of a portion of Parcel 11, Larson now cites to three statutes governing public agreements: the lease statute (Minn. Stat. § 161.431 (2008)); the limited use permit statute (Minn. Stat. § 161.434 (2008)); and the department of natural resources park creation statute (Minn. Stat. § 471.67 (2008)). None of these statutes provide discharge as a remedy for violations. Moreover, Larson failed to introduce facts sufficient to create a material fact dispute as to violations of any of these statutes. Therefore, summary judgment against Larson is warranted.

1. Because the Agreement between the Commissioner and the County is a limited use permit, not a lease, there can be no violation of section 161.431 (lease statute).

In his factual recitation Larson calls the agreement between the Commissioner and the County a "limited use permit" and "license." (A.Br.5.) Throughout his argument, however, Larson calls the limited use permit a "lease" and alleges violation of the lease statute, section 161.431. (A.Br.11-12.) The permit is labeled a "Limited Use Permit" and cites section 161.434, the limited use permit statute, as statutory authority. (AA.15)

The 1995 limited use permit expressly did not convey any property interests whatsoever. (AA.15-16.) To the contrary, the permit merely allows limited uses subject to the highway uses and subject to rapid termination. (*Id.*) Additionally, the limited use permit contains no provision for rent payments by the County. (*Id.*) Therefore, as a matter of undisputed fact, the parties intended to create a license, not a lease. See *LaSalle Cartage Co., Inc., v. Johnson Brothers Wholesale Liquor Co.*, 255 N.W.2d 233, 236 (Minn. 1974) (“The answer to whether the arrangement between the parties was a month-to-month tenancy or a license depends on the intention of the parties.”). Moreover, consistent with the fact that the County only holds a permit, the Commissioner also permitted the City of Alexandria to use for a bicycle path some of the same property covered by the County’s permit. (Mn.A.3, 52.) Thus, the 1995 agreement with the County is a permit, not a lease.

Larson correctly notes that “there is no evidence that the State ever offered the leased land to Larson prior to entering leases with the County.” (A.Br.12.) As a matter of undisputed fact, the most recent limited use permit is dated 1995 – ten years before Larson purchased his interest in the subject property. Even if the 1995 agreement with the County is a lease (it is not) and Mn/DOT violated section 161.431 in 1995 by not offering the Howard family first refusal then (it did not), Larson does not prevail because section 161.431 is not enforced through section 117.225. If the Court finds there was a lease and thus the Commissioner should have offered that lease to the Howard family first in 1995, Larson offers no citation to legal authority or to facts in the record that would establish standing for Larson to assert such a claim, that would allow Larson to assert that statutory claim thirteen years after the Commissioner and the County entered

the 1995 limited use permit, or that would allow a court to order the Commissioner to now make the offer for such a lease to Larson now. At most, a violation of section 161.431 would result only in rescission of a lease and never in discharge of the public's easement.

2. Because the rest area is a highway use and the replacement restroom building by the terms of the permit is not permanent, there is no violation of section 161.434 (limited use permit statute).

Larson next alleges a violation of section 161.434, which allows the Commissioner to grant limited use permits. Larson alleges that the 1995 limited use permit violates section 161.434 because the statute limits uses to highway purposes and the permittee cannot erect permanent buildings. (A.Br.12.) First, the rest area is a highway purpose pursuant to section 86A.05, subdivision 12. Second, the only building constructed by the County is the replacement restroom building. The County built the replacement restroom building for the Commissioner to replace the Commissioner's 1974 restroom with equivalent, but modern toilet facilities. Under the terms of the permit, the replacement building is not permanent. Finally, nothing in section 161.434 allows section 117.225 to be used as a sanction for a 161.434 violation. Larson did not plead a section 161.434 violation and only his section 117.225 claim remains. (Mn.A.54-61.) Even if the Court finds that the Commissioner has violated section 161.434, Larson cites to no authority or facts in the record that would establish standing for Larson to assert such a claim. Nothing would allow Larson to assert that statutory claim so long after the alleged violations, or that would allow a court to order the Commissioner to now make

the offer for such a limited use permit to Larson now. At most, any permit granted in violation of statute should result only in rescission of the permit, not discharge of the public's easement.

3. Because under the Legislature's public outdoor recreation system Rest Areas are different from Parks, the Commissioner of Transportation does not violate the Parks statute when establishing and operating a rest area.

The last statutory violation alleged by Larson involves the statute for creation of parks, section 471.67, through agreements between the commissioner of the department of natural resources ("DNR") and cities. (A.Br.12-13.) The 1995 limited use permit is an agreement between the Commissioner of Transportation and Douglas County, which, by its express terms, did not create a park. (AA.15-16.) Although most aspects of Minnesota's outdoor recreation system are managed by the DNR, the Minnesota Legislature delegated responsibility for the creation and management of some aspects of the outdoor recreation system to the Commissioner of Transportation, including rest areas. *See* Minn. Stat. §§ 86A.04 and 86A.05, subd. 12 (2008).

Section 471.67 does not regulate rest areas created by the Commissioner along trunk highways, section 86A.05, subdivision 12 (2008) regulates rest areas. *See also* Minn. Stat. §§ 160.272 to 160.2745 (2008) (additional rest area regulations within chapter covering general roads provisions). The Commissioner must design rest areas to "promote a safe, pleasurable, and informative travel experience along Minnesota highways" and must locate them "adjacent to or in near proximity to trunk or interstate highway." Minn. Stat. § 86A.05, subd. 12 (a) and (b)(2). The Commissioner does

maintain a system of rest areas along Minnesota highways. *See* public website describing rest area system and containing a non-exclusive list of rest areas at <http://www.dot.state.mn.us/restareas/>. The Commissioner is required to provide facilities to promote enjoyment of the adjacent features. Minn. Stat. § 86A.05, subd. 12 (c). The same analysis applies to the scenic overlook portion of Parcel 11. The purpose of Minnesota laws regarding the enjoyment of natural features as part of state highways is similar to the purpose of provisions of federal law regulating adjacent billboards as part of the federal interstate and primary highway systems. *See* Highway Beautification Act, 23 U.S.C. 131 (1965) (purpose of act is to “promote the safety and recreational value of public travel, and preserve natural beauty”). Moreover, the Commissioner may authorize other outdoor recreation uses within rest areas provided the other use is “consistent with the purposes and objectives of the respective units.” Minn. Stat. 86A.08, subd. 1 (2009 Supp.). Therefore, as a matter of law, the legislature has placed “rest areas” within the scope of a highway purpose and delegated responsibility to the Commissioner of Transportation for the creation, maintenance, use, and shared use of rest areas.

Any alleged violation of statutory authority arising from rest areas must come from Minnesota Statutes Chapters 86A or 161. Larson does not explain how the Commissioner of Transportation can violate the DNR’s parks statute. Larson offered no evidence that there is a substantive difference between a motorist relaxing on a picnic blanket versus on a beach blanket, or between a bathroom break at a rest area without a beach versus at a rest area with a beach, or between a child burning excess energy before resuming a long trip by swimming and playing in the sand versus climbing on a jungle

gym or walking on a path. Even if the Commissioner of Transportation allowing a rest area to also feature a beach somehow results in the accidental formation of a park, violation of section 471.67 does not result in discharge of public easements.

E. Parcel 11 Is Used For Highway Purposes, Thus Summary Judgment Is Proper Because Discharge Is Available Only If Parcel 11 Is Not Being Used For Highway Purposes.

The undisputed highway uses on Parcel 11 preclude discharge of the highway easement even if the Commissioner also permits an additional use that exceeds highway purposes. The legitimacy of swimming at a rest area was not and need not be litigated here to resolve this case. Swimming may be legitimately permitted at a rest area under section 85A.05, subdivision 12, and thus there is only highway use on Parcel 11 and Larson's claim fails. Even if swimming is not a legitimate activity to permit at a rest area, then there are dual uses here: the undisputed legitimate rest area use and the concurrent beach activities. Under the unambiguous language of section 117.225, merely showing that an unauthorized use exists concurrently with the use of the property for the purposes for which the land was acquired is insufficient to discharge the easement.

It is undisputed that the disputed portion of Parcel 11 concurrently is used for the non-swimming aspects of the rest area (restroom, parking, picnic, and resting), drainage area, future bicycle trail area, and future highway expansion. (Mn.A.2-3, 52-53.) Larson did not offer evidence that any beach activity interferes with rest area activities, drainage, bicycle trail, or future expansion. (Mn.A.62-69.) Larson offered no evidence to rebut the Commissioner's evidence that the disputed portion of Parcel 11 is used for highway purposes. Discharge is available under section 117.225 only when the easement "is not

used for the purposes for which it was acquired.” If used for the purposes for which it was acquired, the easement cannot be discharged under this plain language, even if other, excessive uses also exist. Even if Larson is correct that use as a swimming beach exceeds highway purposes, the concurrent, undisputed trunk highway uses preclude application of § 117.225 here.

Larson’s interpretation of section 117.225, that excessive use of a portion triggers discharge of the easement even as other highway uses continues on that portion, would produce harsh results contrary to the court’s traditional protection of public lands. Additionally, Larson’s interpretation of section 117.225 is contrary to the presumption that legislation is intended to favor public interests over private interests. Minn. Stat. § 645.17 (5) (2008) (“[T]he legislature intends to favor public interests as against any private interest.”). Furthermore, the courts have consistently provided greater protections to public lands because such lands are not guarded as jealously as are private lands. *See Parker v. City of St. Paul*, 50 N.W. 247, 248 (Minn. 1891).

Under Larson’s interpretation, public highway easements could be subject to discharge in every location where someone has used the right-of-way primarily for a purpose other than travel: where mourners erect private memorials to a victims of a traffic accidents in the ditch; where hunters park their vehicles within state right-of-way to enter hunting lands; where people fish from roadsides and bridges; and where communities use portions of highways through towns for parades, street dances, or festivals. Such harsh results should not be inferred from language that is not in the statute.

Additional public uses on public easements may exceed the public's property rights and thus result in a successful inverse condemnation case by the fee owner at the time of the taking. However, when such excessive use occurs concurrently with the original uses on that same land, it does not trigger discharge under section 117.225 because that easement is still undeniably being used for the purposes for which it was acquired.

F. The Term "Highway Purpose" Is Not Static And Thus The Commissioner May Expand The Activities Allowed Within Highway Easements.

Even if some of the present activities permitted within the easement were not originally contemplated at the time of the initial taking (such as the now anticipated highway expansion, use of the site in connection with the bicycle path, and permitting the swimming beach as part of the rest area), the Commissioner has discretion to add, subtract, or modify the activities that occur on trunk highway easements, provided those activities relate to or further the trunk highway system. *See e.g., Haeussler v. Braun*, 314 N.W.2d 4 (Minn. 1981) (the Commissioner can use preexisting right-of-way to construct noise walls, which previously were not required). In *Haeussler*, this Court quoted from its prior opinion in *Cater v. Northwestern Tel. Exch. Co.*, 63 N.W. 111, 112 (Minn. 1895) to emphasize that:

[T]he [Commissioner's] easement is not limited to the particular methods of use in vogue when the easement was acquired, but includes all new and improved methods, the utility and general convenience of which may afterwards be discovered and developed in aid of the general purposes for which highways are designed. And it is not material that these new and improved methods of use were not contemplated by the owner of the land

when the easement was acquired, and are more onerous to him than those in use.

Haeussler, 314 N.W.2d at 7-8.

The record here shows that the rest area was part of the 1957 taking and construction project. Like every other aspect of the trunk highway system, rest areas have and will change with the times such as adding dog walking trails, playgrounds, internet access, walking paths, flush toilets, etc. Larson failed to offer or cite to any evidence that the Commissioner's decisions to enhance rest area activities, to incorporate a bicycle trail, or to hold the corridor for future expansion were arbitrary or capricious. The public had already begun to use the beach on Parcel 11, traffic counts warrant improvement of the corridor, clean water laws now require filtration ponds, and bicycle paths are another legitimate mode of transportation. Therefore, summary judgment was proper and the district court and court of appeals should be affirmed.

III. SECTION 117.225 DOES NOT PERMIT DISCHARGE OF PORTIONS OF EASEMENTS.

Both the district court and court of appeals held that Larson's claim, for discharge of a portion of Parcel 11, is beyond the scope of section 117.225. As a matter of law, section 117.225 does not apply to "portions" of an easement for which a fee owner desires discharge. Section 117.225 in relevant part provides as follows:

Whenever claiming that *an easement* acquired by condemnation is not being used for the purposes for which it was acquired, the underlying fee owner may apply to the district court of the county in which the land is situated for an order discharging *the easement*, upon such terms as are just and equitable.

Id. (emphasis added).

As discussed above, the statute simply asks the question: “Is the easement used for the purposes for which it was acquired?” The statute does not refer to subparts or portions of the easement.⁶ Thus, discharge under section 117.225 is available only when *the easement* is not used for the purposes for which it was acquired. Larson attempts to subvert the plain meaning of section 117.225 by arguing that courts may expand the scope of the statute beyond its plain meaning because it involves condemned lands, because other statutes illustrating the plain meaning should not be considered, and because the statute is remedial. (A.Br.13-18.) Larson also impermissibly attempts to use the “terms that are just and equitable” clause from section 117.225 to modify the statute. (A.Br.16.) None of these arguments support expanding section 117.225 beyond its plain meaning. Furthermore, public policy and the undisputed facts here preclude discharge of the portion Larson identified.

A. Condemnations By The Commissioner Are Not Subject to Heightened Review Because the Commissioner Condemns As The Sovereign.

Because the Commissioner condemns lands as the sovereign, limitations placed on other condemners do not apply to the Commissioner. Despite the Commissioner’s role as the sovereign and without any analysis of that role, Larson nevertheless argues that the Court may expand the remedies under section 117.225 beyond the statute’s plain language because Parcel 11 allegedly was condemned in “derogation” of the common law. (A.Br.13-14.)

⁶ In contrast, the Minnesota Legislature has a bill before it this year adding “or portions of an easement” to section 117.225. S.F. No. 2602, 1st Engrossment, 86th Legislative Session (2009-10).

The two cases Larson cites to support this argument do not involve the Commissioner (or anyone else acting as the sovereign) and are contrary to numerous state condemnation cases, including *Christopher*, 170 N.W.2d at 98-99. *Christopher* involved a taking of park property “for trunk highway purposes” against the wishes of the park board where a highway was then built through the park. *Id.* at 96 This Court analyzed the Commissioner’s authority to condemn and noted that “the power of eminent domain is an inherent attribute of sovereignty.” *Id.* at 98 (citations omitted).⁷ As an “inherent” attribute, the sovereign’s eminent domain power exists as a matter of common law (not in derogation of common law) and is restricted, not granted, by the Constitution. *Id.*, see also, *State v. Severson*, 261 N.W. 469, 470 (Minn. 1935) (Eminent domain “is an inherent and essential attribute or prerogative of sovereignty. It is not conferred by the Constitution. ... The right is restricted only by the Constitution.”); and *Burnquist v. Cook*, 19 N.W.2d 394, 401 (Minn. 1945) (Strict construction of the nature or extent of the Commissioner’s right of eminent domain does not apply “for the reason that such right is a very part of the sovereignty itself, existing from the beginning. ... prior to constitutions and statutes.”).⁸ (quotations and citation omitted)

⁷ Larson also argues that the condemnation of park land in *Christopher*, precludes cooperation with the County to manage the rest area. (A.Br.10.) *Christopher* in no way limits the Commissioner’s discretion to create rest areas or cooperate with local units of government to maintain and share rest areas. Larson’s argument is thus unavailing.

⁸ The *Christopher* and *Burnquist* rule of limited review of the Commissioner’s section 161.20 takings does not conflict with *Hebert v. City of Fifty Lake*, 744 N.W.2d 226, 231 (Minn. 2008) (“We have said, however, that ‘statutes conferring compulsory powers to take private property are to be strictly construed.’”) (quoting *Fairchild v. City of St. Paul*, 49 N.W. 325, 326 (Minn. 1891)). *Hebert* and *Fairchild* involve statutes conferring condemnation powers to municipalities (conferring to a third party), not the sovereign

The delegation of “plenary and final power” to the Commissioner “in all that relates to the location, construction, and maintenance of the trunk highway system in order to obtain the best results” limits review of his decisions. 170 N.W.2d at 98. A reviewing court must only determine whether the Commissioner acted “arbitrarily and capriciously” because “it is for the highway commissioner to say what land is necessary to the establishment and maintenance of the highway system.” *Id.* Reliance on cases analyzing condemnation by a non-sovereign is thus misplaced. *Id.* at 99 (“Not all condemners in the hierarchy of entities having the power of eminent domain enjoy the same rights and powers. The powers of the state are preeminent because of the state’s sovereign authority.”). Thus, condemnations by the Commissioner are not in derogation of the common law. The fact that the public obtained Parcel 11 through condemnation by the sovereign does not allow expansion of the scope of section 117.225.

B. Consideration Of The Language Of Minnesota Statutes Section 161.43 Is Proper To Rebuff Larson’s Attempts To Expand The Scope Of Section 117.225 Beyond Its Plain Meaning.

Under its plain meaning, section 117.225 discharge applies only to “an easement” that is unused. Minn. Stat. § 117.225. The plain language does not mention “portion of an easement.” *Id.* Larson attempts to move beyond this plain language to also include portions and asks this Court to ignore another statute where the Legislature expressly included portions of easements within the text of the statute. (A.Br.15-17.)

(delegating to a co-equal branch within the same government). Moreover, as with all of Chapter 117, section 117.225 does not confer any power to take private property so the *Fairchild* rule is inapplicable. If the *Fairchild* rule did apply here, it would defeat Larson’s argument for liberal construction of section 117.225.

Section 161.43 provides the exclusive method for discharging less than an entire highway easement: “The commissioner of transportation may relinquish and quitclaim to the fee owner an easement *or portion of an easement. . .*” Minn. Stat. § 161.43. (2008) (emphasis added). When the legislature intends a statute to apply only to an easement, it uses the word “easement” alone and when the legislature intends a statute to apply to an easement or some smaller part of that easement it uses the words “easement or portion of an easement.”

Section 117.225 generally applies to all easements regardless of use or managing entity. Section 161.43 applies only to highway easements or portions of highway easements controlled by the Commissioner. The court of appeals has interpreted this statute to create for the owner of the underlying fee only the right to an offer to purchase at fair market value if the Commissioner decides to sell:

The statute provides that the “commissioner of transportation *may* relinquish and quitclaim to the fee owner an easement owned but no longer needed. . . .” Minn. Stat. § 161.43 (1988) (emphasis added). The statute vests discretion in the Commissioner of Transportation regarding the decision to sell the easement. The only right the statute creates in favor of the fee owner is the right to receive an offer for the sale of the property at an appraised value.

Mortenson v. State, 446 N.W.2d 674, 677-78 (Minn. App. 1989).

Section 161.43, as interpreted by the court of appeals, makes release of a portion of an easement exclusively within the discretion of the Commissioner of Transportation. The Commissioner’s supervision and control of the state highway system extends to the entire parcel not just the traveled surface. *Ohern v. Big Lake Ice Co.*, 270 N.W. 133, 135 (Minn. 1937). Considering the Commissioner’s plenary authority over highway lands, it

is not surprising that the legislature provides for the discharge of portions of easements only in the discretion of the Commissioner. Larson's attempt to misapply section 117.225 subverts the statutory scheme for the maintenance and preservation of the trunk highway system. Because section 117.225 does not provide for the relief Larson seeks under the uncontested facts of this case, summary judgment for the defendants was appropriate. The district court and court of appeals should be affirmed.

C. Even If Section 117.225 Is A Remedial Statute, Liberal Rules of Construction Do Not Apply Here Because The Statute is Unambiguous.

The plain meaning of an unambiguous statute must be given effect without additional terms even if the statute is remedial. Liberal construction of remedial statutes is available only when the statute is ambiguous. *Blankholm v. Fearing*, 22 N.W.2d 853, 855 (Minn. 1946) (limiting remedy afforded to that “which the language of the act indicates that the legislature intended to grant.”) and *La Bere v. Palmer*, 44 N.W.2d 827, 829 (Minn. 1950) (liberal construction when “remedial statute is not free from ambiguity in its application to a particular state of facts”). As discussed above, section 117.225 is not ambiguous so these cases do not apply. If section 117.225 is ambiguous, the rule of liberal construction (to the extent it even applies to Larson's attempt to secure a windfall here) would not permit insertion of the term “or portions of easements” into the statute in light of the legislature's unmistakably clear decision to not use that phrase here as it did in section 161.43, and in light of the rule of construction that statutes are to be construed in favor of public interests over private interests. Minn. Stat. § 645.17 (5) (“[T]he

legislature intends to favor public interests as against any private interest.”). The rule of liberal construction of remedial statutes does not support reversal.

D. The Words “Just And Equitable” In Section 117.225 Modify The “Terms” When Discharge Is Warranted, But They Do Not Expand The Availability Of Discharge.

The “terms that are just and equitable” clause of section 117.225 does not permit expansion of the scope of the statute. Under the plain language of the statute, the words “just and equitable” modify the word “terms.” The “terms” only apply when discharge is warranted. Larson argues that the “terms that are just and equitable” clause provides the district court with power that “is not limited.” (A.Br.16.) That assertion is patently incorrect. At the very least, the district court’s authority under the statute is limited by the language of the statute creating that authority, which in this case limits discharge to “the easement,” no more and no less. Larson suggests that, using this unlimited power, the district court could: “discharge the entire easement and create a new easement for the existing highway and right-of-way.” (A.Br.7.) Nothing in section 117.225 can possibly confer power greater than the statute itself. Therefore, discharge of highway easements on active highways, such as Highway 29, can never occur. Discharge of the entire easement is not possible under the undisputed facts here and partial discharge is not available under the plain language of the statute or the undisputed facts here. Thus, the “terms that are just and equitable” clause does not apply.

E. Public Policy Favors The Commissioner’s Reading of Section 117.225.

By its plain meaning, section 117.225 does not apply to an easement that is used for the purposes for which it was acquired. Larson admits that Highway 29 is built on

Parcel 11, but nevertheless seeks discharge. To do so, Larson seeks to expand the scope of section 117.225 to also include any unused “portions” of easements, even if the rest of the easement is in proper use and even if the very spot in question is undisputedly used concurrently for other proper highway uses. The Court should decline Larson’s invitation to supply additional words and terms to the statute. *See Vlahos*, 676 N.W.2d at 681 (“We will not supply words that the legislature either purposely omitted or inadvertently left out.”). The statute accomplishes the legislature’s objective without the additional terms Larson seeks because it is reasonable to believe that by passing this statute, the legislature sought to deal with the problem of takings for projects never built or when a completely different project is built.

For example, if a unit of government condemns a right-of-way for road purposes but then because of lack of funds or loss of political support for the project does not build the road, the underlying fee owner typically is left without a remedy by the common law. The city council can simply refuse to open the street or release the easement. It is logical to conclude that this is the odious situation for which the legislature carved out a remedy for the underlying fee owner. This is not the situation in the present case.

Here, the undisputed evidence shows that upon acquiring the highway easement in 1957, the Commissioner promptly constructed the highway and rest area, eventually added to the highway uses, and reasonably now expects to improve and expand the highway again because of its heavy use. It is not reasonable to believe that when the legislature passed section 117.225 it intended it to apply to unused portions of highways. The courts give great deference to the Commissioner to establish the highway right-of-

way. See *Kelmar v. Dist. Court of Fourth Judicial Dist., Hennepin County*, 130 N.W.2d 228, 232 (1964) (“It may be further noted that it is not necessary for the [commissioner] to show an absolute or indispensable necessity, but only that the proposed taking is reasonably necessary or convenient for the furtherance of a proper purpose.”). Under Larson’s interpretation of the statute, every owner of fee under state highway easements would be eligible to come into court piecemeal and ask the court to discharge any miniscule portion of an easement that the owner thinks the government does not use. The courts would use one standard to grant the Commissioner’s condemnation petition but then turn around and give portions of the property back under a different standard. Larson produced no evidence and made no argument to show that the legislature intended to create such potential for chaos.

F. Even If Section 117.225 Applies To Portions Of Easements, The Undisputed Facts Here Preclude Discharge Of The Portion Indicated By Larson.

Under the undisputed facts here, section 117.225 does not apply to the portion of Parcel 11 now indicated by Larson. At the summary judgment hearing Larson described the portion to be discharged as the yellow triangle on the Commissioner’s Current Uses Map. (Mn.A.3, 44-45.) The undisputed facts show that all of Parcel 11, which would include the yellow triangle, is currently being held for future highway expansion. As such, it is not eligible for discharge. (Mn.A.52-53.) Further, the yellow triangle is the rest area, which is available for use by highway travelers and bicyclists. (Mn.A.3.) Finally, the drainage way from the traveled lanes of the highway to the lake bisects the yellow triangle. (*Id.*) Even if section 117.225 applies to portions of easements, such as

the yellow triangle, discharge is not available because under the undisputed facts here, the Commissioner utilizes the yellow triangle for the rest area, drainage, current and future bicycle trails, and future highway expansion. These past, present, and future highway uses of that portion of the highway easement preclude discharge. Summary judgment was proper and the district court and court of appeals should be affirmed.

IV. LARSON'S EFFORTS HERE ARE BARRED BY RES JUDICATA AND COLLATERAL ESTOPPEL.

A. To Affirm Summary Judgment, This Court Can Consider Issues Not Decided By The District Court Or Court Of Appeals.

The issues of res judicata and collateral estoppel were argued to the district court. But the district court did not reach these issues because the court's conclusions on the other issues already warranted entry of summary judgment. Likewise, the court of appeals did not consider this issue either, although it was raised. It is generally true that this Court will not *reverse* the district court based on issues that the district court did not consider. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn.1988). However, that general rule does not apply with regard to issues that support *affirmance* of the district court. *See Brecht v. Schramm*, 266 N.W.2d at 520.

Accordingly, because the res judicata/collateral estoppel issues (which were briefed and argued to the district court and briefed to the court of appeals) supports *affirmance* of the district court, the *Thiele v. Stich* rule against reversing based on issues that the district court did not consider does not apply and does not prevent affirmance on the res judicata/collateral estoppel issues.

B. Larson's Previous Action Regarding Adverse Property Claims Precludes His Present Action To Discharge The Commissioner's Adverse Property Claim.

Larson argues that section 117.225 provides landowners with "a cause of action to challenge easements." (A.Br.13.) Larson already brought a cause of action against the Commissioner and County to challenge adverse claims, including easements, three years before filing the present action. In 2005, Larson brought an action to determine adverse claims, wherein he obtained a judgment from the district court that recognized the validity of the entire permanent highway easement as described in the Final Certificate, Parcel 11. When Larson brought his action to determine adverse claims, all of the information that he now claims constitutes grounds for discharge was available or known to Larson. Nevertheless, the issue of the Commissioner's claim to the lands was conclusively established and recognized in the judgment Larson obtained against the Commissioner, the County, and others. Further, Larson secured the Commissioner's cooperation in the action to determine adverse claims by preserving the Commissioner's entire easement as described in the Final Certificate.

Had Larson challenged Parcel 11 in 2005 claiming that the easement was dischargeable under section 117.225 because permitting swimming at a rest area exceeds "highway purposes," the Commissioner could have countered that to the extent the swimming is unauthorized, this use has actually, openly, exclusively, and adversely continued uninterrupted since 1962 and thus a prescriptive swimming easement was created. Moreover, if Larson is correct that government sanctioning of swimming exceeds the highway use allowed within Parcel 11, then a de facto taking may have

occurred. Larson obtained an uncontested judgment in 2005 by splitting his claims. And Larson now collaterally attacks his own adverse claims determination judgment.

In the 2005 action, the Court determined that Larson and his brother owned the various components of the subject property, but their ownership was subject to the Final Certificate, which describes the public's interest over the subject property as Parcel 11. All facts Larson alleges as evidence to support discharge in the present case predate his 2005 action to determine adverse claims. Larson is barred under collateral estoppel and res judicata from bringing the present case.

Collateral estoppel bars a party from bringing a second claim for the same issue litigated in a case already decided:

For the doctrine of collateral estoppel to apply, each of the following elements must be met: 1) the issue must be identical to one in a prior adjudication; 2) there was a final judgment on the merits; 3) the estopped party was a party or was in privity with a party to the prior adjudication; and 4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Care Ins., Inc.-Roseville v. County of Ramsey, 612 N.W.2d 443, 448 (Minn. 2000).

Collateral estoppel applies to those issues actually litigated in the prior action. *Id.* The action to determine adverse claims litigated the issue of which claims adverse to the Larsons' ownership of the subject property survived. The court decided the 2005 action to determine adverse claims on its merits. Each of the parties in the present action was a party to the 2005 case and had a full and fair opportunity to be heard. Further, Larson secured the Commissioner's absence in the 2005 action by perpetuating then the same

public property interest that he attacks now. The doctrine of collateral estoppel bars Larson from re-litigating whether any part of the public's easement should survive.

Res judicata is broader than collateral estoppel, because it also precludes a party from raising subsequent claims in a second action that could have been raised previously when:

- (1) [T]he earlier claim involved the same set of factual circumstances;
- (2) the earlier claim involved the same parties or their privities;
- (3) there was a final judgment on the merits;
- (4) the estopped party had a full and fair opportunity to litigate the matter.

Hauschildt v. Beckingham, 686 N.W.2d 829, 840 (Minn. 2004). Res judicata applies equally to claims actually litigated and to claims that could have been litigated in the earlier action. *State v. Joseph*, 636 N.W.2d 322, 327 (Minn. 2001).

When comparing the 2005 action to determine adverse claims to the present action, res judicata applies: both cases involved the factual circumstances necessary to determine whether adverse claims (Parcel 11 in particular) to Larson's fee title survive as a matter of law; the parties to the present case (Larson, the Commissioner, and the County) were parties to the action to determine adverse claims too; the matter was decided on the merits; and Larson had a full and fair opportunity to litigate the issue of his unfettered ownership of Parcel 11. When asking the district court to conclusively ascertain the adverse property interests of all parties in 2005, Larson was obligated to raise all claims and present all facts to the court that affect the property interests of the parties to the action. Larson cannot attempt to litigate now what he could have litigated

then. Accordingly, Larson's present action should be dismissed under the doctrine of res judicata.

It is undisputed that Larson's 2005 action reaffirmed the validity of the entire easement. In this case, Larson ultimately seeks a judgment under section 117.225 that will discharge some of the same easement, an adverse property claim considered in the 2005 action. Larson's acknowledgement of the validity of the entirety of Parcel 11 in 2005 and his claim for discharge of a portion of Parcel 11 based on pre-2005 facts are mutually exclusive, contradictory claims. The 2005 action resolves which one of these two claims is correct: the public's easement remains valid — the entire easement as described in the Final Certificate. Therefore, affirmation of the district court's grant of summary judgment is warranted on the basis of collateral estoppel and res judicata.

CONCLUSION

The entire easement is being used for highway purposes. The undisputed facts in the record showed the following uses: constructing and maintaining the traveled lanes of Trunk Highway 29, maintaining slopes for support of the road surface, providing for drainage of water from the road surface, creating bicycle trails, holding the easement for future highway development, and providing for a rest area, which includes permitted swimming. Even if swimming exceeds highway purposes, section 117.225 does not apply because the statute applies only when the land is not used for the intended purpose at all. Summary judgment against Larson is warranted because, as a matter of undisputed fact, the entire parcel, including the beach, is being used for one or more of the above-listed highway uses.

Additionally, section 117.225 by its terms, applies to “an easement.” Because the legislature did not apply section 117.225 to “portions of an easement,” as a matter of law, application of the uncontested facts in the record to the unambiguous statute requires affirmation of the court of appeals and district court.

Finally, although neither court reached this issue, this Court may affirm on any basis. Under the doctrine of res judicata and collateral estoppel, Larson cannot relitigate the validity of the public’s easement after conceding the validity of that easement during the 2005 litigation. Therefore, the court of appeals and district court should be affirmed.

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