

## Lessard-Sams Outdoor Heritage Council

**MEMO:**           **Agenda Item 4b - Executive Director Report**

**DATE:**           June 28, 2018

**SUBJECT:**       Update - ML2009/FY2010 Dakota County Protection, Ph. 1 – Ozmun parcel.  
Lisa West, Senior Project Manager, Dakota County Environmental Resources Dept.

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### **Suggested Procedure:**

Council members will receive an update from LSOHC staff regarding Dakota County easement lands involved in a conveyance approved by the staff on behalf of the Council per operating procedure 8.2.a.

### **Background:**

In 2011, Dakota County purchased a conservation easement from Michael Ozmun upon land in Waterford Township of Dakota County with OHF funds appropriated in ML2009, Ch 172, Art 1, Sec 2, Subd 5(d), "Dakota County Protection, Ph. 1." On March 16, 2018, LSOHC staff was alerted by Dakota County staff that during a recent private land transaction it had been discovered that the Ozmun easement inadvertently encompassed approximately 0.4 acres of land owned by two adjacent landowners. Consequently, Dakota County submitted a request for conveyance to vacate that portion of the easement.

Per LSOHC operating procedures, permission for the conveyance was granted and \$1,268.00 will be returned to the Outdoor Heritage Fund by Dakota County.

### **Attachments:**

Approval letter from LSOHC staff, LSOHC staff letter notifying legislative leadership, Dakota County letter requesting conveyance & attachments.



Lessard-Sams Outdoor Heritage Council  
The State of Minnesota

State Office Building, Room G95 100 Dr. Rev. Martin Luther King Jr. Blvd. Saint Paul, Minnesota 55155

April 16, 2018

Lisa West  
Senior Project Manager  
Dakota County Environmental Resources Department

Re: Partial Conservation Easement Vacation Involving State Grant Funds

Dear Ms. West:

Please note that on April 16, 2018, in accordance with the operating procedures of the Lessard-Sams Outdoor Heritage Council, I approved the partial vacation of a conservation easement located in Waterford Township in Dakota County. The state interest in the land was purchased by Dakota County with Outdoor Heritage Funds (MN Laws 2009, Ch. 172, Art. 1, Sec. 2, Subd. 5(d)). As per your letter dated March 16, 2018, 98.6 percent of the refund provided by the landowner will be refunded to the Outdoor Heritage Fund.

Please see the attached MS 97A.056, Subd. 15 which governs land purchases with Outdoor Heritage Fund monies. Having received no adverse comment from legislative committee leadership as of April 14, 2018 this letter serves as formal approval of the action.

Sincerely,

Mark Wm. Johnson  
Executive Director  
Lessard-Sams Outdoor Heritage Council

Cc LSOHC members

Encl. 3/20/2018 letter to Legislative Leadership, MS97A.056 Subd.15

## MS 97A.056, Subd. 15. Land acquisition restrictions.

(a) An interest in real property, including, but not limited to, an easement or fee title, that is acquired with money appropriated from the outdoor heritage fund must be used in perpetuity or for the specific term of an easement interest for the purpose for which the appropriation was made. The ownership of the interest in real property transfers to the state if: (1) the holder of the interest in real property fails to comply with the terms and conditions of the grant agreement or accomplishment plan; or (2) restrictions are placed on the land that preclude its use for the intended purpose as specified in the appropriation.

(b) A recipient of funding that acquires an interest in real property subject to this subdivision may not alter the intended use of the interest in real property or convey any interest in the real property acquired with the appropriation without the prior review and approval of the Lessard-Sams Outdoor Heritage Council or its successor. **The council shall notify the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over the outdoor heritage fund at least 15 business days before approval under this paragraph.** The council shall establish procedures to review requests from recipients to alter the use of or convey an interest in real property. These procedures shall allow for the replacement of the interest in real property with another interest in real property meeting the following criteria:

(1) the interest must be at least equal in fair market value, as certified by the commissioner of natural resources, to the interest being replaced; and

(2) the interest must be in a reasonably equivalent location and have a reasonably equivalent useful conservation purpose compared to the interest being replaced, taking into consideration all effects from fragmentation of the whole habitat.

(c) A recipient of funding who acquires an interest in real property under paragraph (a) must separately record a notice of funding restrictions in the appropriate local government office where the conveyance of the interest in real property is filed. The notice of funding agreement must contain:

(1) a legal description of the interest in real property covered by the funding agreement;

(2) a reference to the underlying funding agreement;

(3) a reference to this section; and

(4) the following statement: "This interest in real property shall be administered in accordance with the terms, conditions, and purposes of the grant agreement controlling the acquisition of the property. The interest in real property, or any portion of the interest in real property, shall not be sold, transferred, pledged, or otherwise disposed of or further encumbered without obtaining the prior written approval of the Lessard-Sams Outdoor Heritage Council or its successor. The ownership of the interest in real property transfers to the state if: (1) the holder of the interest in real property fails to comply with the terms and conditions of the grant agreement or accomplishment plan; or (2) restrictions are placed on the land that preclude its use for the intended purpose as specified in the appropriation."



Lessard-Sams Outdoor Heritage Council  
The State of Minnesota

State Office Building, Room G95 100 Dr. Rev. Martin Luther King Jr. Blvd. Saint Paul, Minnesota 55155

March 20, 2018

Sen. Bill Ingebrigtsen  
Minnesota Senate  
Minnesota Senate Bldg., Room 3207  
95 University Avenue W.  
St. Paul, MN 55155

Rep. Dan Fabian  
Minnesota House of Representatives  
359 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
Saint Paul, MN 55155

Sen. Carrie Rudd  
Minnesota Senate  
Minnesota Senate Bldg., Room 3233  
95 University Avenue W.  
St. Paul, MN 55155

Rep. Bob Gunther  
Minnesota House of Representatives  
563 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
Saint Paul, MN 55155

Pursuant to M.S. 97A.056, Subdivision 15, this letter notifies you that the Lessard-Sams Outdoor Heritage Council has received notice from Dakota County regarding the partial vacation of a conservation easement located in Waterford Township in Dakota County. The state interest in the land was purchased by Dakota County with Outdoor Heritage Funds (MN Laws 2009, Ch. 172, Art. 1, Sec. 2, Subd. 5(d)).

The attached letter from Lisa West, Senior Project Manager with Dakota County, describes the action. Also attached are maps of the easement area to be vacated and the estimated value of the vacated easement area.

Pursuant to statute and the council's approved operating procedures, and in the absence of disapproval by leadership or the council by April 14, 2018, I will approve the vacation and forward notification to Ms. West.

Please contact me if you have questions regarding this matter. I will withhold final notification until April 14, 2018 to hear from you, if you have concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Wm. Johnson".

Mark Wm. Johnson  
Executive Director  
Lessard-Sams Outdoor Heritage Council

cc: Sen. Chris Eaton, Sen. David Tomassoni, Rep. Rick Hansen, Rep. Leon Lille  
Ms. Lisa West, Members of the LSOHC

Attachment: Letter from Lisa West to LSOHC, Purpose and Background of Partial Ozmun Natural Area Conservation Easement Vacation (Attachment A), Easement Area to be Vacated (maps – Attachment B), Estimated Value of Vacated Easement Area (Attachment C)



March 16, 2018

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

Subject: Partial Conservation Easement Vacation Involving State Grant Funds

Dear Mark:

I am writing to you regarding a permanent, natural area conservation easement held by Dakota County, on property owned by Michael Ozmun (Ozmun Easement) located in Waterford Township in Dakota County. A portion of the Ozmun Easement must be vacated; because it was inadvertently positioned encompassing approximately 0.4 acres of land owned by two adjacent landowners (see additional detail in Attachment A and maps in Attachment B).

Outdoor Heritage Fund grant dollars were used to provide a majority of the payment to acquire the Ozmun Easement. Per Dakota County Easement Deed Section 7.7, if a portion of the easement is vacated, a proportionate amount of the easement value payment must be refunded to Dakota County by the landowner. Subsequently, a large percentage of this refund would be returned to the Outdoor Heritage Fund.

County staff has prepared revised documents to re-record the easement deed. The 0.4-acre reduction in the easement area is reflected in a revised legal description, in the document texts, and the map exhibits.

County staff has also calculated valuation figures for the refund owed by the landowner (see calculations – Attachment C). Based on the calculations and the approximate portion of the total costs of the acquisition paid using Outdoor Heritage Fund grant dollars, the LSOHC would receive 98.6 percent of the refund provided by the landowner, or \$1,268.

Please let me know if there is a need for County staff to appear before the Lessard-Sams Outdoor Heritage Council regarding this matter. Also, please let me know if you have questions or need additional information.

Sincerely,

Lisa M. West  
Senior Project Manager  
Dakota County Environmental Resources Department

Attachments

**Physical Development Division**

Dakota County  
Western Service Center  
14955 Galaxie Avenue  
Apple Valley, MN 55124-8579

952.891.7000  
Fax 952.891.7031  
[www.dakotacounty.us](http://www.dakotacounty.us)

**Environmental Resources**

Land Conservation  
Groundwater Protection  
Surface Water  
Waste Regulation  
Environmental Initiatives

**Office of Planning**

**Operations Management**

Facilities Management  
Fleet Management  
Parks

**Transportation**

Highways  
Surveyor's Office  
Transit Office



## **Purpose and Background of Partial Ozmun Natural Area Conservation Easement Vacation**

When Dakota County acquired a permanent natural area conservation easement on a portion of the Michael Ozmun property in 2011, we were aware of some property boundary gap/overlap issues with several adjoining land parcels. When land is sold, and legal descriptions are filed and recorded with property deeds, they are not reviewed against one another to reveal gaps or overlaps created by conflicting legal descriptions. Legal description discrepancies are often identified during the initial title search conducted for proposed County easement acquisitions. When possible, landowners are given the option to resolve legal description discrepancies with their neighbors, prior to County easement acquisition; or the County moves forward with an acquisition, ensuring that no areas of discrepancy are included within the easement boundary. In the case of the Ozmun easement acquisition, the County addressed existing legal description discrepancies by shifting the easement boundaries away from the disputed areas. County staff encouraged Mr. Ozmun to resolve the boundary issues with his neighbors in the near future, which he has decided to do, in part, seven years later, mainly resulting from the sale of an adjacent residential property.

During the sale of a residence adjacent to the Ozmun easement, it was discovered that the County did not shift the natural area easement boundary far enough to the north at the time of acquisition, in the area of the easement to accommodate opposing legal descriptions of at least two residential parcels. Because these two landowners are not interested in small portions of their backyards being restricted by a conservation easement, to which they were not participating parties, County staff believes the best way to resolve this issue is to vacate a small portion of the easement, involving the two adjacent residential properties shown on the Attachment B maps.

The Ozmun natural area easement is bordered on both sides by an Ozmun permanent agricultural easement. The gaps between the actual Ozmun property boundaries and visible fence, tree and residential lawn lines are apparent on the Attachment B aerial map. And, the gaps between the easement boundary and the property lines reflect the County's attempt to avoid these legal description discrepancies with adjoining land, as well as future road right-of-way along Canada Avenue. This property has been "off-set," for lack of a better term, with the adjacent land parcels for many years. However, these area landowners haven't seen a real need to make permanent adjustments and corrections until now.

Mr. Ozmun is working with his attorney to escrow funds; and County staff is working internally to provide the needed documents to complete this necessary easement boundary adjustment.

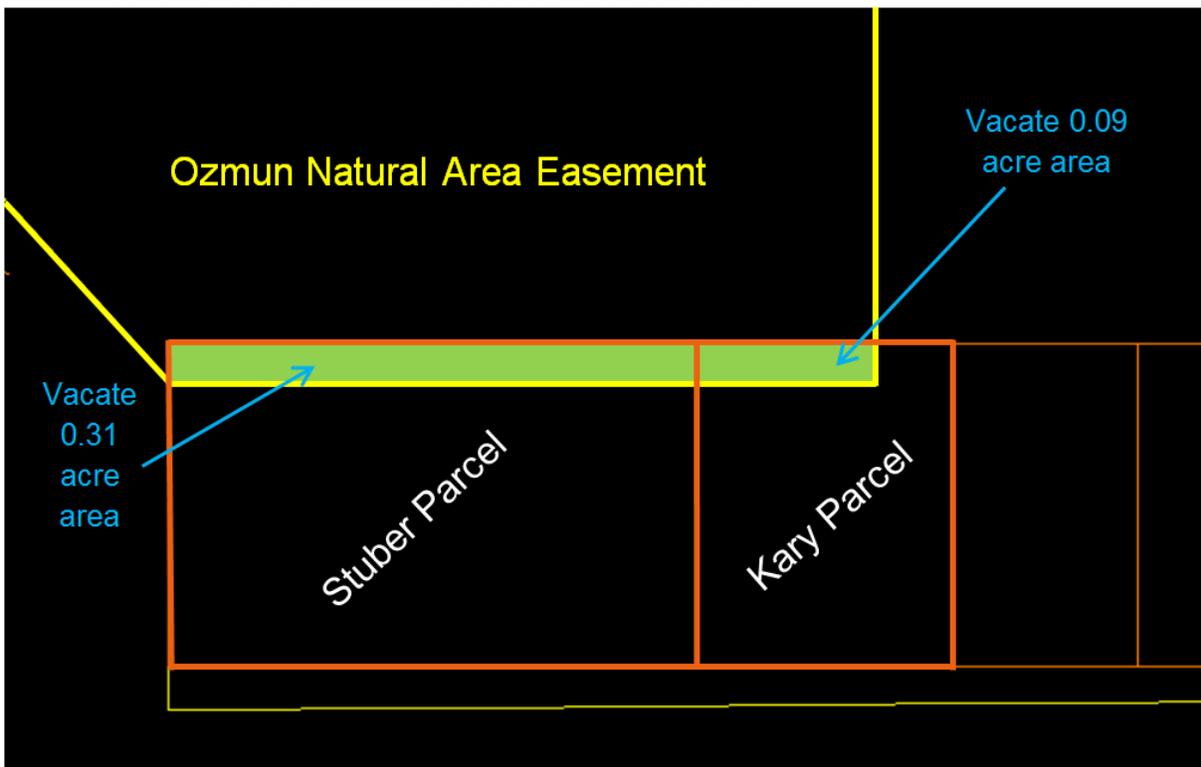
These documents and information have been revised to date:

- Permanent Natural Area Conservation Easement Deed
- Natural Area Easement Legal Description
- Natural Area Easement Map Exhibit (example – third map in Attachment B)
- Partial Easement Value Estimate Calculations
- Notice of Funding Restriction (available after the revised easement is recorded)

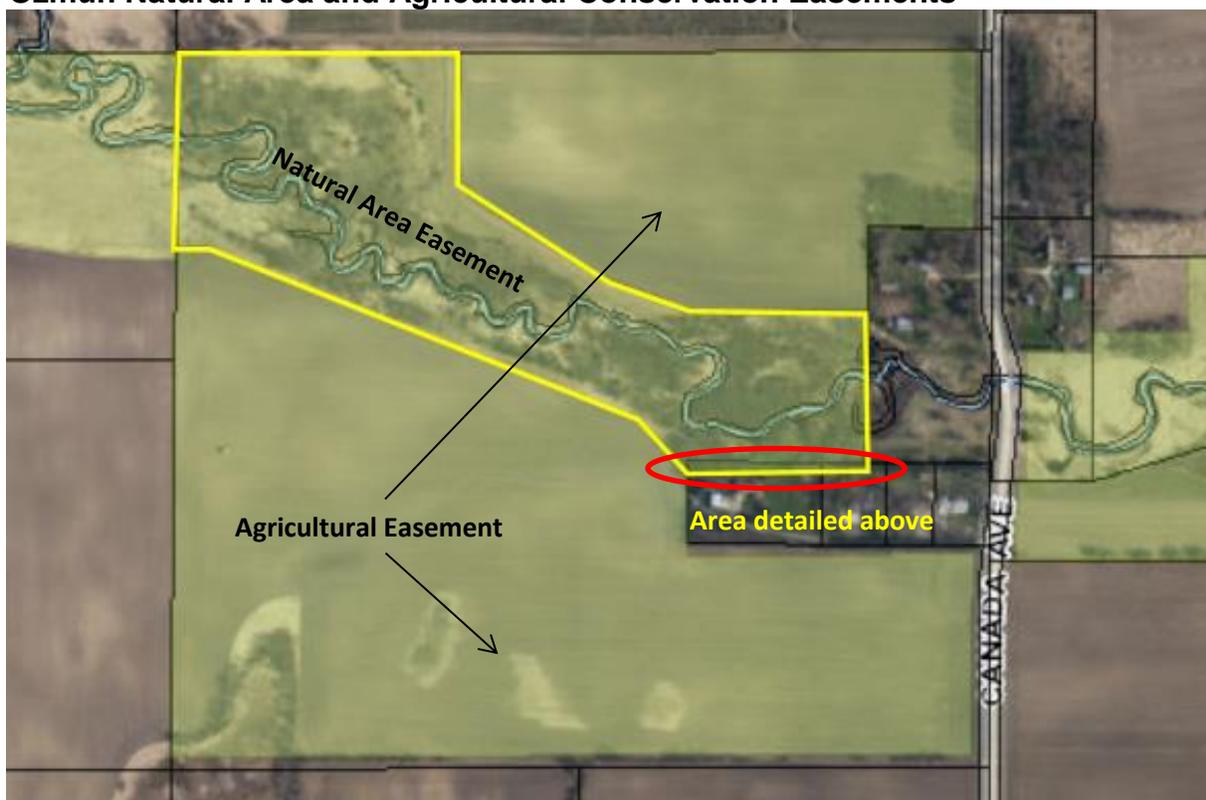
Revision of the original baseline Property Report and Natural Resource Management Plan are underway.

Because this easement acquisition involved partial payment with State grant funds, the County needs to return a large percentage of the required landowner refund payment to the Outdoor Heritage Fund, approximately \$1,268.

Ozmun Natural Area Easement Area to be Vacated



Ozmun Natural Area and Agricultural Conservation Easements

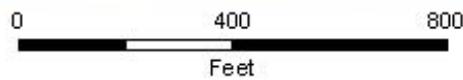


## Revised Ozmun Natural Area Easement Boundary and Acreage

Easement Area - 30.3 ac.



Date: 3/16/2018



 Easement Area



**Estimated Value of Vacated Ozmun Natural Area Easement Areas**

1. Indicate the Original Valuation Figures to Establish the Relative Value of the Easement Today

a. Before Value (from original appraisal) for Easement Valuation:	\$140,000
b. After Value (from original appraisal) for Easement Valuation:	\$65,000
c. Easement Valuation (\$2,329/acre):	\$75,000
d. Acquired Easement Valuation (based on reduced acreage):	\$71,506

2. Determine the Current Easement Value

a. The Tax Assessed Value for the Entire Property in 2009:	\$444,900
b. The Tax Assessed Value for the Entire Property in 2018:	\$613,700
c. The Increased Easement Value ( $\$614K / \$445K = 1.38 \times \$2,329/ac.$ )	\$3,214

3. Determine the Value of the Two Vacated Easement Areas

a. Easement Portion on the Kary Property (0.09 ac. x \$3,214)	\$289
b. Easement Portion on the Stuber Property (0.31 ac. x \$3,214)	\$996

**Total (to be refunded by the landowner) \$1,286**

LSOHC - 98.6 percent portion of refund: \$1,268

Dakota County - 1.4 percent portion of refund: \$18

*Note: Rounding in any of the above figures may cause some numbers to appear incorrect.*

Total Acquisition Cost	\$65,842.68
Grant Dollars Allocated	\$64,950.00
County Grant Match Dollars Allocated	\$892.68
Landowner Donation of Value	\$14,301.23
Landowner Easement Payment	\$57,204.90
Landowner Refund of Easement Payment	\$1,286.00