

# Dakota County

**TO: Lessard-Sams Outdoor Heritage Council**

**FROM: Al Singer, Dakota County**

**RE: Proposed Extinguishment of a Permanent Natural Area Conservation Easement on the Mikell D. Smith Irrevocable Trust Property in Lakeville**

**DATE: July 17, 2018**

## **Background**

On November 2, 2010, the Dakota County Board of Commissioners (County Board) approved the Vermillion River Corridor Plan, which includes a shared vision and strategies that integrate the protection and improvement of water quality and wildlife habitat, with increased opportunities for outdoor recreation throughout the Vermillion River watershed.

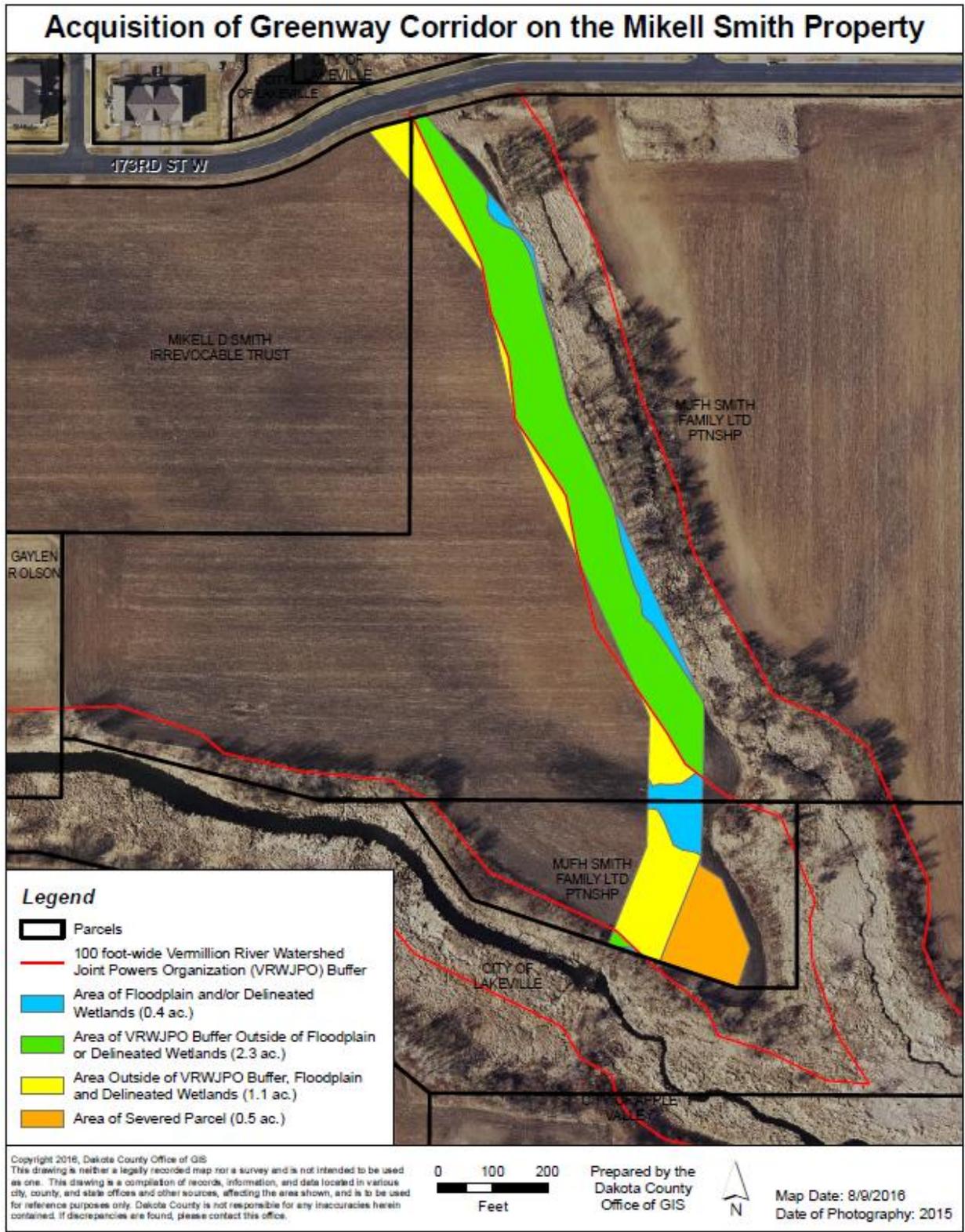
On October 18, 2011 (Resolution No. 11-517), the County Board adopted the North Creek Regional Greenway (Regional Greenway) Master Plan. North Creek is a tributary of the Vermillion River that connects Eagan, Apple Valley, Lakeville, Farmington and Empire Township. The 14-mile long Regional Greenway will connect important regional destinations, including Lebanon Hills Regional Park, the Minnesota Zoo, downtown Farmington, the Vermillion River, and Whitetail Woods Regional Park.

The Mikell D. Smith Irrevocable Trust (Smith Trust) and the MJFH Smith Family Limited Partnership owned approximately 103 acres of land (Smith Property) in the City of Lakeville. The Smith Property is bisected by a 1,500-foot long section of North Creek of the Vermillion River and a main tributary to North Creek. On July 8, 2014 (Resolution No.14-330), the County Board authorized an appraisal and negotiations with the Smith Trust for acquisition of a greenway corridor and an adjacent natural area conservation easement (Easement).

The appraisals for the separate Regional Greenway corridor and Easement area were based on different fair market values associated with different land use zoning:

- Designated wetland and floodplain: Not eligible for residential development, park dedication or density credits (essentially no fair market value)
- Vermillion River Watershed Joint Powers Organization (VRWJPO) 100-foot wide designated buffer from the channel outside of the delineated wetland/designated floodplain: Not eligible for development, but eligible for park dedication and density credits (market value based on credits could be negotiated with the city)
- Land outside the VRWJPO buffer: Eligible for development (highest market value)

The different appraised valuation components of the Regional Greenway corridor are depicted and calculated below:



The adjacent Easement area to the east of the Regional Greenway corridor is depicted below:

**Note: The two stream “channels” in the north portion of the Easement area.**

### Acquisition of the Conservation Easement on the MJFH Smith Family Limited Partnership Property

PLS Section 12, 114-20  
Total Easement Acres 7.4



N ○ Section Corner ● Quarter Corner ■ Easement Area ▨ Exception Area □ Access Easement ▭ Parcels — Roads

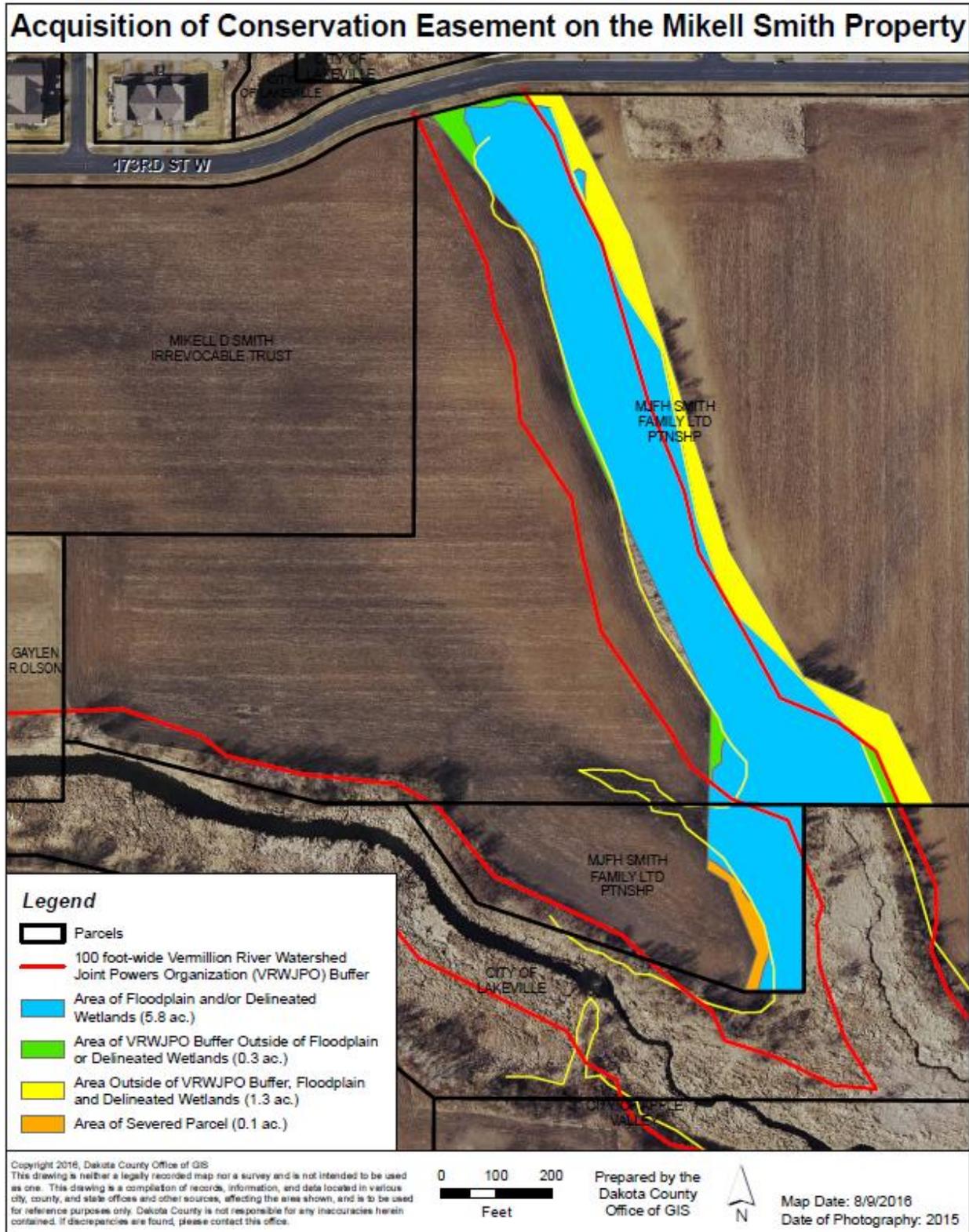


Map Date: 6/5/2017

1 inch = 250 feet

The different appraised valuation components of the Easement area are depicted and calculated below:

**Note:** The stream channel used as reference for establishing the 100-foot wide buffer was the “west “channel that was designated within the Vermillion River Watershed Plan and included in the County’s GIS data base.



On March 21, 2017 (Resolution No. 17-169), the County Board authorized the Physical Development Division Director to execute purchase agreements with the Smith Trust to acquire a 4.5-acre Regional Greenway corridor and an adjacent 7.4-acre Easement; authorized the County Board Chair to sign a Restrictive Covenant for the Regional Greenway corridor, the Easement deed and a Restrictive Covenant for the Easement area as required for state Outdoor Heritage (OH) funding; and authorized the expenditure of up to \$21,975 in Minnesota Law 2014 (ML14) OH funds.

On August 2, 2017, the County used its own funds to acquire the Regional Greenway corridor and the Easement from the Smith Trust. The County used a combination of Metropolitan Council and County funds to acquire the Regional Greenway corridor.

The Notice of Funding Restriction (NOFR) for the easement on the Smith Trust property was recorded as Document No. 3233592 on January 25, 2018.

### **Conservation Easement Valuation**

The appraised value of the 7.4-acre easement was \$27,300 with an estimated \$2,000 in closing costs. This valuation was based on:

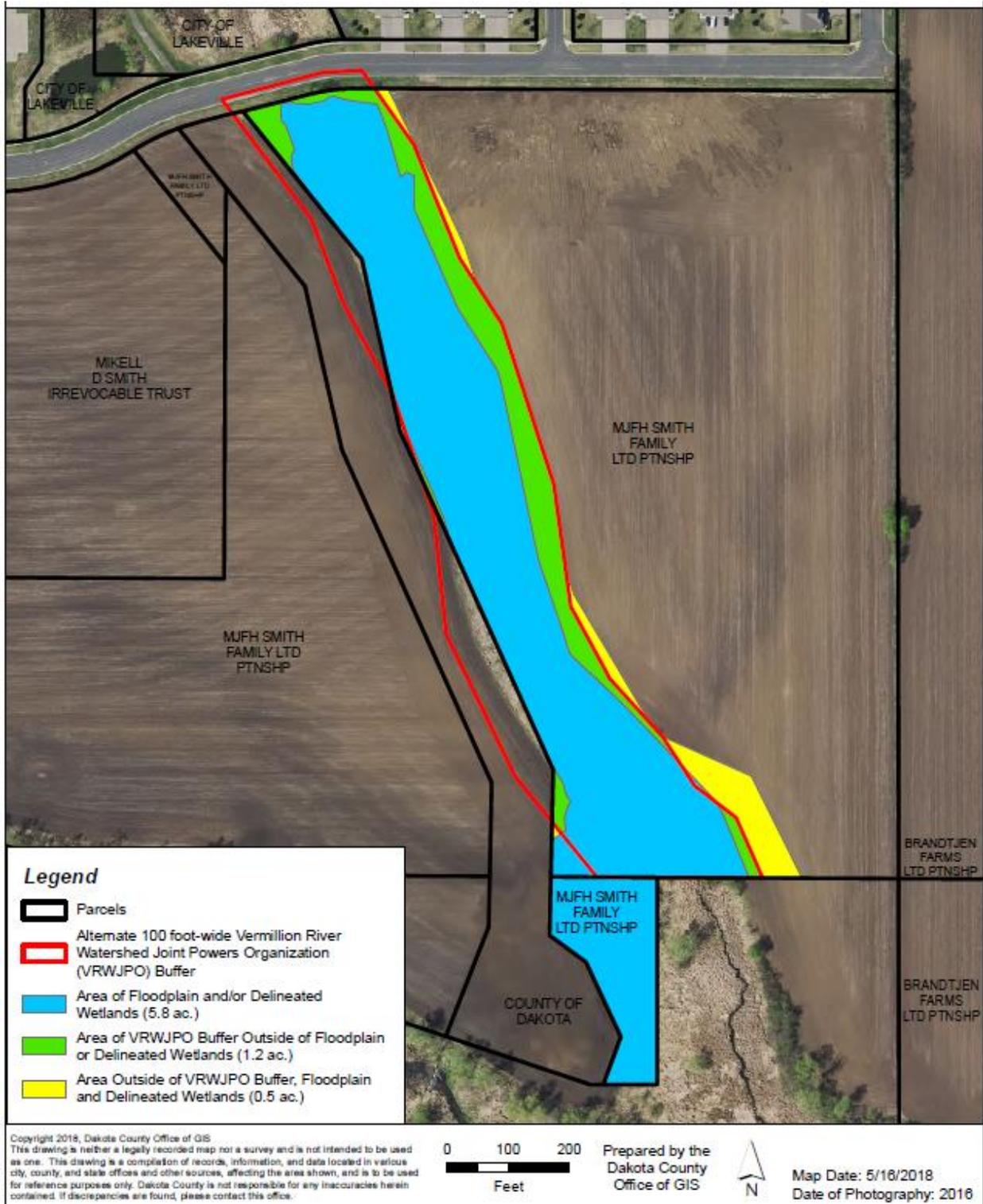
- 1.3 acres of non-restricted development land
- \$70,000 per acre Before Value for non-restricted development land
- 70 percent loss of value due to no residential development , but retention of park dedication and density credits resulting in a \$21,000 per acre Easement value
- \$21,000/acre x 1.3 acres = \$27,300

The Easement purchase agreement also included a provision for the Smith Trust or subsequent landowner to donate fee title to the Easement Area at the time of residential development.

**Natural Resource Management Plan** A Natural Resource Management Plan was completed for the Easement area with initial implementation scheduled for Spring 2018.

### **Proposed Extinguishment of the Easement**

In early 2018, the Smith Trust began discussions with a residential developer to acquire the Smith Trust property which included the Easement area. During the development planning process, the developer correctly noted that the 100-foot wide VRWJPO should have been based on the “east” stream channel which had become the more prominent flow of the two channels. This resulted in the buffer moving east and reducing the non-restricted development land from 1.3 acres to 0 .5 acres. See following Exhibit.



Using the same valuation method, the “new” value of the Easement should have been \$10,500, not \$27,300.

The Smith Trust has proposed the following:

- Extinguishing the existing Easement
- Return 100 percent of the County payment for the Easement
- Forego the \$10,500 value of the newly configured Easement
- Retain the same amount of acreage, but reduce the width of the existing Easement at the southern end and add equivalent acreage in the center of the Easement
- Donate fee title to the newly configured area

The County proposes the following:

- Extinguishing the existing Easement
- Accept donated fee title to 7.4 acres of a slightly reconfigured area from the Smith Trust
- Designate the 7.4 acres as a County Park Conservation Area with no improvements other than to implement the NRMP as originally intended.

The County has been very vigilant about upholding the permanence of conservation easements. However in this case, the proposed extinguishment of the Easement on the Smith Trust property would:

- Still result in the permanent protection of the same habitat area at essentially no public cost
- Avoid the issues associated with the same entity being the fee title owner and holding the easement.

**The County had prepared, but has not submitted a reimbursement request of \$21,975 to the Lessard-Sams Outdoor Heritage Council (LSOHC) for acquisition, closing, appraisal, and development of the NRMP.**

Since the County has not submitted nor received OH reimbursement funding for the Easement on the Smith Trust property, the County does not believe that the LSOHC has any role in extinguishing the Easement on the Smith Trust property. The County also believes that the OH-related terms of the Easement Extinguishment section of the Easement deed, such as disposition of the proceeds from the sale of the property or reimbursement of sale proceeds to the LSOHC, based on the proportional amount of initial OH funding, are not applicable.

However, LSOHC staff have indicated that since a NOFR for the Smith Trust was recorded, the LSOHC is required to notify the Legislature of its approval to rescind the NOFR, contingent on County Board approval, scheduled for August 7, 2018.

The County requests that the LSOHC approves rescission of the NOFR for the Easement on the Smith Trust property, contingent on County Board approval, and that it duly notify the Legislature as required.