

September 13, 2018

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

Re: Acquiring Land with DNR Trout Stream Easement

Dear Mr. Johnson:

The Trust for Public Land is in the process of acquiring approximately 140 acres of land in Fillmore County. The land will be transferred to the MN DNR as an addition to the Choice WMA. Approximately 3,290 feet of Maple Creek, a tributary of the Root River with a heritage brook trout population, flows through the property. The property includes approximately 24 acres of grassy floodplain where the creek flows through the tract from the northwest corner to the southeast corner. Above that floodplain there is hardwood forested hillside and bluff and some upland grassland, most of which drains into the creek. This project is being funded through the following grants: Southeast Minnesota Protection and Restoration Phase V, ML 2017, Chapter 91, Article 1, Sec. 2, Subd. 3(c); and Southeast Minnesota Protection and Restoration Phase VI, ML 2018, Ch. 208, Art. 1, Sec. 2, Subd. 3(b).

The issue we are bringing to your attention for discussion is that the property includes an existing trout stream easement held by the State of Minnesota. The easement covers approximately 3,290 feet of stream and streambank on both sides of the creek covering approximately 9.9 acres. The easement was taken into consideration by the appraiser. This easement covers a narrow corridor 66 feet on either side of the centerline of the creek and only covers about 7% of the entire 140 acre property. Due to the state-held easement the project may fall under the "Lands in Public Domain" statute as it relates to Outdoor Heritage Funds.

Section 97A.056, Subd. 9 of Minnesota Statutes states:

Money appropriated from the outdoor heritage fund shall not be used to purchase any land in fee title or a permanent conservation easement if the land in question is fully or partially owned by the state of Minnesota or a political subdivision of the state, unless: (1) the purchase creates additional direct benefit to protect, restore, or enhance the state's wetlands, prairies, forests, or habitat for fish, game, and wildlife; and (2) the purchase is approved by an affirmative vote of at least nine members of the council.

The Trust for Public Land is seeking the approval of at least 9 members of the Lessard-Sams Outdoor Heritage Council to proceed with the protection of this unique conservation tract.

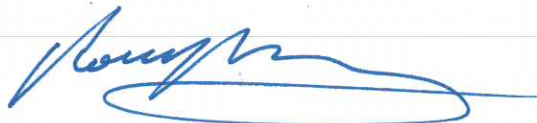
The project allows The Trust for Public Land and the Minnesota Department of Natural Resources to protect existing native habitat while restoring grasslands, pasture, floodplain and stream channels to benefit fish and wildlife on the property. Protecting habitat on the property also improves fishing habitat and water quality downstream.

Additional Benefit:

The Lands in Public Domain statute requires that the purchase creates additional direct benefit to protect, restore, or enhance the state's wetlands, prairies, forests, or habitat for fish, game and wildlife. The current easement obtained by the state from a previous owner permits the development of fish habitat, erosion control and allows for public fishing only access. Protection of the larger 140 acre tract will protect and improve water quality and fish habitat in the stream above and beyond the protection provided by the narrow easement. Protection and restoration of the forested hillsides and grasslands that drain into the stream will help insure quality fish habitat and water quality. And the protection of that forested bluffland and upland grassland will provide excellent habitat for both game and nongame wildlife, especially the deer and turkeys that currently thrive there. A further benefit is that all of the land will now be open to public hunting, as opposed to currently only being open to fishing in a narrow corridor.

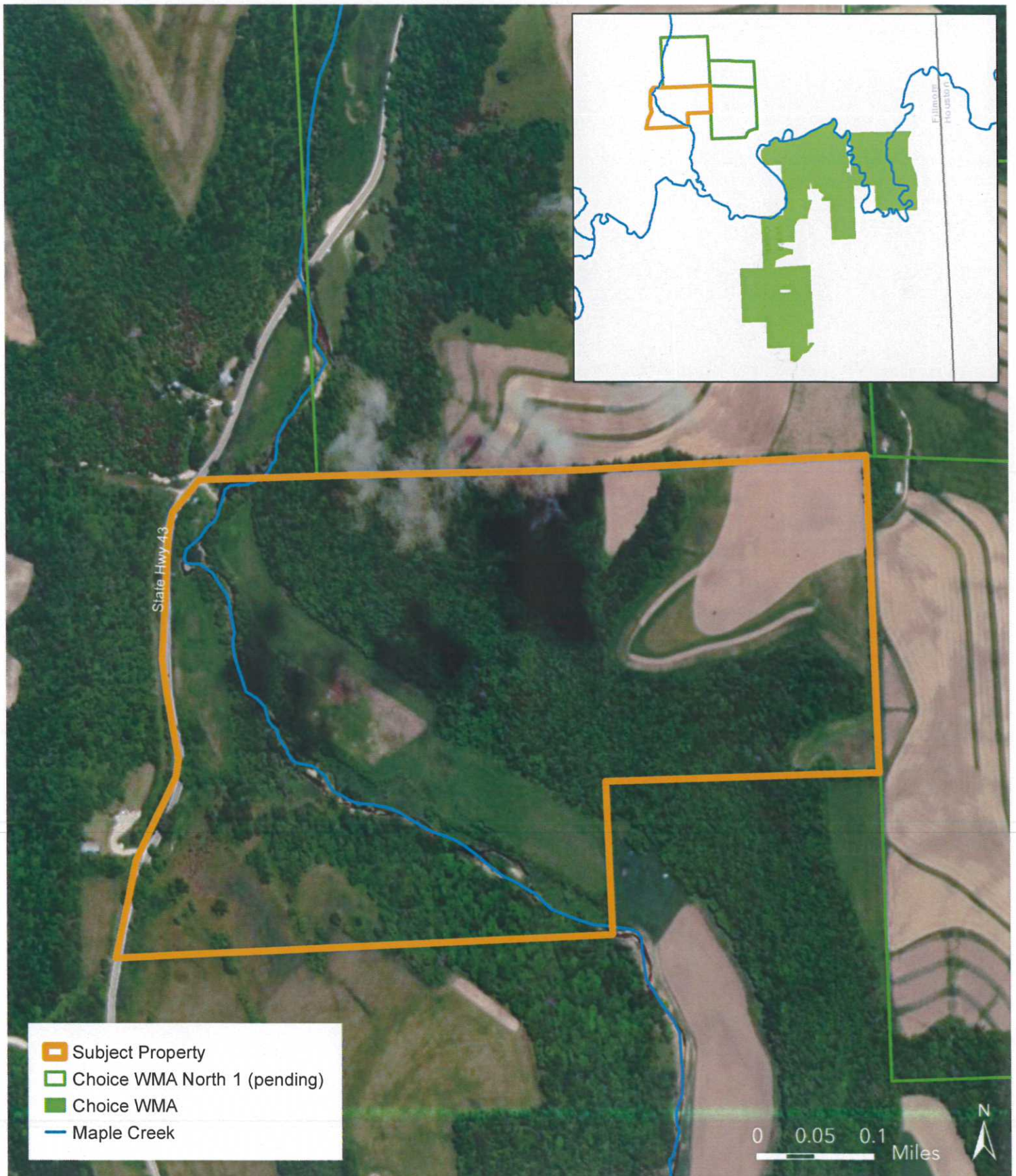
Thank you for consideration of our request.

Sincerely,



Robert J. McGillivray
Senior Project Manager

Enclosures: Map of Proposed Acquisition
Copy of trout stream easement



Choice WMA North 2

Fillmore County, MN

September 13, 2018

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COUNTY RECORDER OFFICE
FILLMORE COUNTY MINN
I hereby certify that the within instrument was filed on

SEP 23 2003

11:15 O'clock P M
BY Notary Public, Susan Phillips
Held

G&F 13309

EASEMENT

THIS INDENTURE, made this 9th day of September, 2003, between JUDITH BROWN, a single person; DONALD L. SMITH and MARLENE K. SMITH, husband and wife; J&M FARMS, a partnership under the laws of the state of Minnesota; and J&W FARM, a partnership under the laws of the state of Minnesota, GRANTORS, and STATE OF MINNESOTA, a sovereign body, Grantee.

WITNESSETH, that the Grantors, in consideration of the sum of THIRTY-THREE THOUSAND, SIX HUNDRED FIFTY-TWO AND 89/100 DOLLARS (\$33,652.89) them in hand paid by the Grantee, the receipt whereof is hereby acknowledged, do hereby convey and warrant unto the Grantee, its successors and assigns, a perpetual easement in land lying and being in the County of Fillmore and State of Minnesota, described as follows, to wit:

A strip of land lying in the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) and the Southeast Quarter of the Northeast Quarter (SE 1/4 NE 1/4) of Section Four (4), Township One Hundred Two (102) North, Range Eight (8) West, AND the Northwest Quarter of the Northwest Quarter (NW 1/4 NW 1/4) AND the Southwest Quarter of the Northwest Quarter (SW 1/4 NW 1/4) of Section Three (3), Township One Hundred Two (102) North, Range Eight (8),

Said strip being 132 feet in width and lying 66 feet on either side of the center line of Maple Creek as it flows across the J&W Farm Partnership ownership.

THE PURPOSE AND INTENT OF THIS EASEMENT IS TO:

1. Permit fish stocking and the development of fish habitat in the above-described area, including tree planting, fencing, erosion control, installation of instream structures, posting of signs and other improvements as are deemed necessary.

2. Permit angling by the public in the above described area.

ALSO, unto the Grantee, its successors and assigns, ingress and egress to and from said stream at some point over and across the Northeast Quarter of the Northeast Quarter (NE 1/4

NE 1/4) AND the Southeast Quarter of the Northeast Quarter (SE 1/4 NE 1/4) of Section Four (4), Township One Hundred Two (102) North, Range Eight (8) West, AND the Northwest Quarter of the Northwest Quarter (NW 1/4 NW 1/4) AND the Southwest Quarter of the Northwest Quarter (SW 1/4 NW 1/4) of Section Three (3), Township One Hundred Two (102) North, Range Eight (8) West, ALL IN Fillmore County, by employees of the Grantee for fish management purposes, compatible with current use. Established access routes shall be used whenever feasible. In the event that there are no established routes or, if such established routes are impossible to use, the Grantee shall discuss with and come to agreement on, with the Grantor, any proposed route.

FURTHER COVENANTING, THE GRANTORS, FOR THEMSELVES, THEIR HEIRS, SUCCESSORS AND ASSIGNS:

A. Shall not place or erect any structure or building in the easement area without written approval of the Grantee.

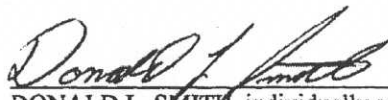
B. Agree to cooperate in the maintenance and enhancement of fishing in the above-described area by doing no excavating, filling, dumping, tree cutting, burning or changing of the stream course, without prior written approval of the Grantee. A change in the stream course also requires a special permit issued by the Division of Waters of the Department of Natural Resources.

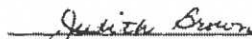
C. Agree that existing tillage be set back in accordance with the Fillmore County Shoreland Standards for agricultural lands along water bodies designated by the Commissioner of the Department of Natural Resources as trout waters and that no new tillage be initiated within the above-described set back corridor.

THE GRANTORS RESERVE TO THEMSELVES, THEIR HEIRS, SUCCESSORS AND ASSIGNS:

The right to use the above-described land, including the right of angling in said stream, the right to cross said stream and the right to use the water in said stream for domestic purposes, including watering cattle and other stock, consistent with the rights and privileges granted in this easement.

TO HAVE AND TO HOLD THE SAME, to the State, its successors and assigns, forever.


DONALD L. SMITH, individually and as
partner in J&M Farms


JUDITH BROWN, individually and as
partner in J&M Farms


MARLENE K. SMITH

J&W FARM, a partnership under the laws of
the state of Minnesota

By:

James D. Biddle
A partner

And:

Wayne Ouellette
A partner

STATE OF Iowa)

COUNTY OF Black Hawk) ss.

The foregoing instrument was acknowledged before me this 19 day of
September, 2003, by JUDITH BROWN, a single person, individually and as partner in
J&M Farms, Grantor.



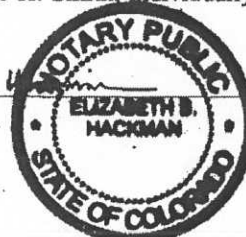
Lynne Longseth
Notary Public

STATE OF Colorado)

COUNTY OF Larimer) ss.

The foregoing instrument was acknowledged before me this 9th day of
September, 2003, by DONALD L. SMITH, spouse of Marlene K. Smith, individually and
as partner in J&M Farms, Grantor.

Elizabeth S. Hackman
Notary Public



My Commission Expires May 19, 2006

STATE OF Colorado)

COUNTY OF Larimer) ss.

The foregoing instrument was acknowledged before me this 9th day of
September, 2003, by MARLENE K. SMITH, spouse of Donald L. Smith, Grantor.

Elizabeth S. Hackman
Notary Public

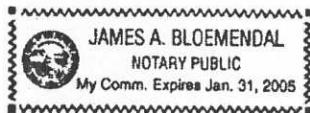


My Commission Expires May 19, 2006

334461

STATE OF MINNESOTA)
) ss.
COUNTY OF FILLMORE)

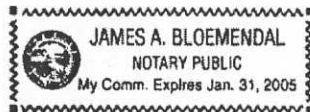
The foregoing instrument was acknowledged before me this 23 day of SEPTEMBER, 2003, by JIMMY D. BIDSER, a partner in J&W FARM, a partnership under the laws of the state of Minnesota, on behalf of the partnership, Grantor.



James A. Bloemendal
Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF FILLMORE)

The foregoing instrument was acknowledged before me this 23 day of SEPTEMBER, 2003, by WAYNE OUELLETTE, a partner in J&W FARM, a partnership under the laws of the state of Minnesota, on behalf of the partnership, Grantor.



James A. Bloemendal
Notary Public

This instrument was drafted by:
DULCIE M. BRAND
Assistant Attorney General
445 Minnesota Street, #900
St. Paul, MN 55101-2127

AG: #877005-v1

