

Lessard-Sams Outdoor Heritage Council

Action Agenda Item Memo

DATE: December 12, 2013

SUBJECT: Progression of draft accomplishment plan FA-01 Preventing Forest Fragmentation and Protecting and Restoring Lake and Stream Habitat in the St. Louis River Watershed

PRESENTER: Thomas Howes

Background:

At its Nov. 14, 2013 meeting, the council voted to have the draft accomplishment plan re-submitted for review and progression at its Dec. 12, 2013 meeting. The council requested that additional information be provided regarding the Fond du Lac Band of Lake Superior Chippewa's hunting and fishing policies. The following links, describing the Band's hunting and fishing plans, are provided in the draft accomplishment plan.

2012-13 Hunting and Trapping Season:

<http://www.fdlrez.com/newnr/2012-2013%20Seasons%20and%20Limits.pdf>

2013 Fishing Season and Limits:

<http://www.fdlrez.com/newnr/2013%20Fishing%20Seasons%20and%20Limits.pdf>

2013 Spring Turkey Season and Limits:

<http://www.fdlrez.com/newnr/2013%20Spring%20Turkey%20Seasons.pdf>

Suggested Motion:

No motion suggested.

Suggested Procedure:

Draft accomplishment plan is placed before the council for discussion.

Attachment: FA-01 revised draft accomplishment plan

Agenda Item: 6b

Lessard-Sams Outdoor Heritage Council

Laws of Minnesota 2014 Accomplishment Plan

Date: December 06, 2013

Program or Project Title: Preventing Forest Fragmentation and Protecting and Restoring Lake and Stream Habitat in the St. Louis River Watershed

Funds Recommended: \$ 2,800,000

Manager's Name: Thomas Howes

Title: Natural Resources Manager

Organization: Fond du Lac Band of Lake Superior Chippewa

Street Address: 1720 Big Lake Road

City: Cloquet, MN 55720

Telephone: 218.878.7163

E-Mail: thomashowes@fdlrez.com

Organization Web Site: www.fdlrez.com

Legislative Citation:

Appropriation Language:

County Locations: St. Louis

Ecological Planning Regions:

- Northern Forest

Activity Type:

- Protect in Fee

Priority Resources Addressed by Activity:

- Forest
- Habitat
- Prairie
- Wetlands

Abstract:

This project will prevent forest fragmentation and protect and restore lake and stream habitat in the St. Louis River watershed through the fee acquisition of 956 acres and the restoration and enhancement of 271 acres of forests, prairie, and wetlands.

Design and Scope of Work:

The Fond du Lac Band of Lake Superior Chippewa is pleased to present this proposal to prevent forest fragmentation and to protect and restore lake and stream habitat in the St. Louis River watershed through the fee acquisition of 956 acres and the restoration and enhancement of 271 acres of forests, prairie, and wetlands. This project includes acquisition of a 440-acre priority property containing an 80-acre lake, acquisition of 280 acres along a tributary to the St. Louis River, and acquisition of 236 acres with 2,000 feet along the St. Louis River. This project will protect the water quality of the St. Louis River, provide opportunities for public fishing and hunting, and prevent forest fragmentation.

I. Acquiring the 440-Acre Priority Property: Chi-wizo zaaga'iganing (Simian Lake)

The priority for this project is the acquisition of a 440-acre property ("Priority Property"), which is one of the largest privately owned properties within the Fond du Lac Reservation and is being marketed by a real estate broker. The Priority Property contains 83 acres of wetlands and an 80-acre lake, Chi-wizo zaaga'iganing (also known as Simian Lake), which is classified as a high-priority fishery and drains into the St. Louis River. Preventing development of this lake will contribute to the restoration efforts of the St. Louis River by eliminating potential sources of sediment and nutrient loads. By purchasing the Priority Property in its entirety, the Fond du Lac Band will prevent fragmentation of the 194 acres of forest habitat on the Property.

II. Restoring and Enhancing Forests, Prairie, and Wetlands on the Priority Property

The Fond du Lac Band will perform extensive restoration and enhancement activities to improve the quality of the forests, prairie, and wetlands on the Priority Property. Two hundred twenty acres of uplands will be restored or enhanced as forests or prairie. Twenty-one acres of wetlands will be restored and another 30 acres of wetlands will be enhanced by improving the hydrologic flow by filling in ditches and removing compacted soil impeding waterflow. The wetlands will be managed to control invasive species.

III. Acquiring 280 Acres Along the Simian Creek Riparian Corridor

Simian Creek flows north from the Priority Parcel for approximately 3.6 miles before its confluence with the St. Louis River. For 1.8 miles, Simian Creek flows through several properties in private ownership (the "Riparian Properties"). Protecting the Riparian Properties will provide public control of the entire riparian corridor to the confluence with the St. Louis River. This will facilitate the management of the watershed to reduce sediment and nutrient loads into the St. Louis River.

IV. Acquiring 236 Acres Along the Main Stem of the St. Louis River

The Fond du Lac Band will also acquire 236 acres containing 2,000 feet along St. Louis River. This acquisition will further consolidate public ownership and facilitate restoration efforts along the St. Louis River.

V. The Fond du Lac Band Has Substantial Expertise in Land Management

The Fond du Lac Reservation's boundary encompasses more than 101,000 acres, including 3,000 acres of lakes, nearly 44,000 acres of wetlands, 96 miles of rivers and streams, and over 28,000 acres of forests. The Fond du Lac Band has an annual budget of \$4 million to manage and conserve its natural resources. In 2008, the Fond du Lac Band adopted an Integrated Resource Management Plan to guide its work and establish priorities. This project addresses the priorities of this Plan.

VI. Fee-to-Trust Process

After the Fond du Lac Band acquires the project properties, it will seek to transfer the land from "fee land" to "trust land" in which the fee title is held by the United States government, while the Fond du Lac Band retains the beneficial use of and full management responsibilities for the land. Should the Secretary of Interior approve a trust application for the parcels contained in our proposal, the terms and conditions contained in Minnesota law, specifically Minn. Stat. § 97A.056, subds 15-16, and the Accomplishment Plan would not be impacted and would remain in force.

The most salient issue for the Secretary's decision would likely be the reverter of title pursuant to Minn. Stat. § 97A.056, subds 15-16. It is critical to recall that the reverter only applies should the Band not comply with the grant agreement or Accomplishment Plan or restrictions are placed on the land that preclude its use for the intended conservation purposes. In some cases trust applications that included a title reverter have been denied, but this was when the acquiring entity planned to make permanent improvements on the property. Our proposal does not contemplate any permanent improvements and therefore we do not believe that the reverter will be a barrier to approval. In any event, the terms and conditions to which the Band and the State of Minnesota agree will follow the land whether it is held in fee or transferred to trust.

It is important to note that this land acquisition proposal and planned trust application is not without precedent in Minnesota. This proposal and planned trust application is nearly identical to the joint venture between the State of Minnesota and the Grand Portage Band for the creation of the Grand Portage State Park. In that case, the Band purchased state land for the park and applied to put those parcels into trust. Pursuant to Minn. Laws 1989, Ch. 259,

§ 7, a reverter of title provision was included in the sale in the event that the land was not used for a state park. The U.S. Attorney General and Dept. of Interior determined that trust status was appropriate subject to the reverter. The Attorney General's opinion was based, in part, on the fact that the land did not contain any permanent improvements.

The controlling legal authority on this issue has not changed since the Grand Portage application was approved. We believe it is likely that this land acquisition would be treated similarly.

Planning:

MN State-wide Conservation Plan Priorities:

- H2 Protect critical shoreland of streams and lakes
- H3 Improve connectivity and access to recreation
- H4 Restore and protect shallow lakes
- H5 Restore land, wetlands and wetland-associated watersheds
- H7 Keep water on the landscape
- LU8 Protect large blocks of forest land

Plans Addressed:

- Lower St. Louis River Habitat Plan
- Managing Minnesota's Shallow Lakes for Waterfowl and Wildlife
- Minnesota DNR Strategic Conservation Agenda
- State Comprehensive Outdoor Recreation Plan
- 2008 Integrated Resource Management Plan, Fond du Lac Band of Lake Superior Chippewa

LSOHC Statewide Priorities:

- Are ongoing, successful, transparent and accountable programs addressing actions and targets of one or more of the ecological sections
- Produce multiple enduring conservation benefits
- Provide Minnesotans with greater public access to outdoor environments with hunting, fishing and other outdoor recreation opportunities

LSOHC Northern Forest Section Priorities:

- Protect shoreland and restore or enhance critical habitat on wild rice lakes, shallow lakes, cold water lakes, streams and rivers, and spawning areas
- Restore forest-based wildlife habitat that has experienced substantial decline in area in recent decades

Relationship to Other Constitutional Funds:

- No Relationships Listed

Accelerates or Supplements Current Efforts:

A LSOHC grant will not displace existing Fond du Lac Band funding for conservation and natural resource management. Instead, the LSOHC grant will enable the Band to accelerate and expand its conservation efforts. Since the 1990s, the Fond du Lac Band has done extensive conservation work near the Chi-wizo zaga'iganing (Simian Lake) project area to protect the Stoney Brook sub-watershed of the St. Louis River. This conservation work includes restoring hundreds of acres of wild rice habitat on nearby lakes and is detailed in the Band's 2008 Integrated Resource Management Plan. Receiving the LSOHC grant will enable the Band to seize the unique opportunity that was created when the 440-acre property encompassing Chi-wizo zaaga'iganing (Simian Lake) was put up for sale. The Band will continue with its current restoration efforts on wild rice lakes and its other conservation efforts in the Stoney Brook sub-watershed.

Sustainability and Maintenance:

The Fond du Lac Band has the personnel and financial resources to manage properly the 956 acres that will be acquired, restored, and enhanced through this project. The Fond du Lac Band has a \$4 million annual budget for natural resources management. Its natural resources staff includes 62 full-time employees and 30-40 seasonal staff, who are responsible for managing 100,000 acres within the Fond du Lac Reservation and for providing conservation services throughout historic Chippewa territories in Wisconsin and Michigan. The existing staff will be able to integrate the responsibilities for the project area into its work assignments.

The Band's staff includes a Forester, Fisheries Biologist, Wildlife Biologist, Wetlands Specialist, Watershed Specialist, and Natural Resources Manager, who together will develop a stewardship plan for the project area, including protocol for controlling invasive species and conducting prescribed burns. In addition to its own funds, the Band will seek grants from NRCS, FWS, and U.S. EPA, which have awarded the Fond du Lac Band grants in the past for conservation work.

Government Approval:

Will local government approval be sought prior to acquisition? - **Yes**

Permanent Protection:

Is the land you plan to acquire free of any other permanent protection? - **Yes**

Hunting and Fishing Plan:

Is this land open for hunting and fishing? - **Yes**

The Fond du Lac Band's culture is strongly linked to hunting and fishing. Hunting and fishing will be regulated on the properties to be acquired the same way these activities are regulated throughout northeast Minnesota. In this region, there is a shared DNR-tribal system of regulations where tribal members are subject to tribal regulations and non-tribal members are subject to DNR regulations. This shared system is the result of hunting, fishing, and gathering rights that the Band retains under treaties with the federal government.

The Fond du Lac Band is deeply committed to sustainably managing natural resources. Below is a link to the Band's Resource Management Division webpage where annual seasons and limits as well as information on all applicable harvest regulations for Fond du Lac Band Members can be found:

<http://fdlrez.com/newnr/main.htm>

The Fond du Lac Band understands and respects the diversity of perspectives on wolf hunting. The Fond du Lac Band also understands and respects the constitutional requirement that land acquired with Outdoor Heritage Fund monies be open to public fishing and hunting unless otherwise provided by law. We believe that a balanced approach to this issue requires respecting traditional Ojibwe culture as well as local law. All lands acquired by this project will be off limits to wolf hunting and trapping as the properties are within the boundaries of the Fond du Lac Reservation and would be subject to Fond du Lac Band of Lake Superior Chippewa Ordinance #07/12 "Ma'iingan Protection".

Accomplishment Timeline

	Approximate Date
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Activity	Approximate Date Completed
Negotiate with the landowners of the 440-acre Priority Property encompassing Chiwizo zaagaiganing (Simian Lake) and the St. Louis River Main Stem Property and enter into purchase agreements	August 1, 2014
Complete due diligence for the acquisition of the Priority Property and St. Louis River Main Stem Property	November 1, 2014
Negotiate with the landowners of the Riparian Properties and enter purchase agreements	December 1, 2014
Acquire fee title to the Priority Property and the St. Louis River Main Stem Property	February 1, 2015
Complete due diligence for the acquisition of the Riparian Properties	April 1, 2015
Develop Forest, Prairie, and Wetland Restoration and Enhancement Plan for the Priority Property	June 1, 2015
Begin implementing the Restoration and Enhancement Plan for the Priority Property	September 1, 2015
Acquire fee title to the Riparian Properties	December 1, 2015
Complete implementation of the Restoration and Enhancement Plan for the Priority Property	July 1, 2018

Outcomes

Programs in the northern forest region:

- Forestlands are protected from development and fragmentation *The nearly 400 total acres of forestland at the project sites will be measured against a baseline year as to age classification and diversity of tree types.*
- Healthy populations of endangered, threatened, and special concern species as well as more common species *Periodic surveys will be conducted at Simian Lake, Simian Creek, and upland areas to evaluate the size and biodiversity of plant and animal populations.*
- Improved aquatic habitat indicators *Fisheries surveys on a 5 year cycle, benthic macroinvertebrate community composition sampled annually, and water quality sampling four times per year will be continued at Simian Lake and Simian Creek along with existing sampling of the St. Louis River and compared to existing baseline data.*
- Increased availability and improved condition of riparian forests and other habitat corridors *The age class and diversity of tree types in the riparian corridor will be measured against a baseline year.*
- Greater public access for wildlife and outdoors-related recreation *Number of visitors will be measured by car counts in parking lots, school visits, and game harvest registrations.*

Budget Spreadsheet

Budget reallocations up to 10% do not require an amendment to the Accomplishment Plan

Total Amount of Request: \$ 2800000

Budget and Cash Leverage

Budget Name	LSOHC Request	Anticipated Leverage	Leverage Source	Total
Personnel	\$0	\$557,400	Fond du Lac Band,Fond du Lac Band,Fond du Lac Band,Fond du Lac Band,Fond du Lac Band,Fond du Lac Band,Fond du Lac Band,Fond du Lac Band	\$557,400
Contracts	\$146,000	\$0		\$146,000
Fee Acquisition w/ PILT	\$0	\$0		\$0
Fee Acquisition w/o PILT	\$2,637,000	\$0		\$2,637,000
Easement Acquisition	\$0	\$0		\$0
Easement Stewardship	\$0	\$0		\$0
Travel	\$0	\$0		\$0
Professional Services	\$17,000	\$17,000	FDL Band	\$34,000
Direct Support Services	\$0	\$0		\$0
DNR Land Acquisition Costs	\$0	\$0		\$0
Capital Equipment	\$0	\$0		\$0
Other Equipment/Tools	\$0	\$0		\$0
Supplies/Materials	\$0	\$0		\$0
DNR IDP	\$0	\$0		\$0
Total	\$2,800,000	\$574,400		\$3,374,400

Personnel

Position	FTE	Over # of years	LSOHC Request	Anticipated Leverage	Leverage Source	Total
Fisheries Biologist	0.20	5.00	\$0	\$54,000	Fond du Lac Band	\$54,000
Wildlife Biologist	0.20	5.00	\$0	\$54,000	Fond du Lac Band	\$54,000
Natural Resources Program Manager	0.15	5.00	\$0	\$58,500	Fond du Lac Band	\$58,500
Forester	0.15	5.00	\$0	\$45,000	Fond du Lac Band	\$45,000
Fire Crew Supervisor	0.20	5.00	\$0	\$38,400	Fond du Lac Band	\$38,400
Fire Crew (3)	0.60	5.00	\$0	\$90,000	Fond du Lac Band	\$90,000
Watershed Specialist	0.20	5.00	\$0	\$42,000	Fond du Lac Band	\$42,000
Conservation Officers (3)	0.20	5.00	\$0	\$126,000	Fond du Lac Band	\$126,000
Wetland Specialist	0.30	5.00	\$0	\$49,500	Fond du Lac Band	\$49,500
Total	2.20	45.00	\$0	\$557,400		\$557,400

Output Tables

Table 1. Acres by Resource Type

Type	Wetlands	Prairies	Forest	Habitats	Total
Restore	0	0	0	0	0
Protect in Fee with State PILT Liability	0	0	0	0	0
Protect in Fee W/O State PILT Liability	83	26	436	411	956
Protect in Easement	0	0	0	0	0
Enhance	0	0	0	0	0
Total	83	26	436	411	956

Table 1b. How many of these Prairie acres are Native Prairie?

Type	Native Prairie
Restore	0
Protect in Fee with State PILT Liability	0
Protect in Fee W/O State PILT Liability	0
Protect in Easement	0
Enhance	0
Total	0

Table 2. Total Requested Funding by Resource Type

Type	Wetlands	Prairies	Forest	Habitats	Total
Restore	\$0	\$0	\$0	\$0	\$0
Protect in Fee with State PILT Liability	\$0	\$0	\$0	\$0	\$0
Protect in Fee W/O State PILT Liability	\$361,000	\$113,000	\$1,445,000	\$881,000	\$2,800,000
Protect in Easement	\$0	\$0	\$0	\$0	\$0
Enhance	\$0	\$0	\$0	\$0	\$0
Total	\$361,000	\$113,000	\$1,445,000	\$881,000	\$2,800,000

Table 3. Acres within each Ecological Section

Type	Metro Urban	Forest Prairie	SE Forest	Prairie	N Forest	Total
Restore	0	0	0	0	0	0
Protect in Fee with State PILT Liability	0	0	0	0	0	0
Protect in Fee W/O State PILT Liability	0	0	0	0	956	956
Protect in Easement	0	0	0	0	0	0
Enhance	0	0	0	0	0	0
Total	0	0	0	0	956	956

Table 4. Total Requested Funding within each Ecological Section

Type	Metro Urban	Forest Prairie	SE Forest	Prairie	N Forest	Total
Restore	\$0	\$0	\$0	\$0	\$0	\$0
Protect in Fee with State PILT Liability	\$0	\$0	\$0	\$0	\$0	\$0
Protect in Fee W/O State PILT Liability	\$0	\$0	\$0	\$0	\$2,800,000	\$2,800,000
Protect in Easement	\$0	\$0	\$0	\$0	\$0	\$0
Enhance	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$2,800,000	\$2,800,000

Table 5. Target Lake/Stream/River Miles

16 miles

Parcel List

For restoration and enhancement programs ONLY: Managers may add, delete, and substitute projects on this parcel list based upon need, readiness, cost, opportunity, and/or urgency so long as the substitute parcel/project forwards the constitutional objectives of this program in the Project Scope table of this accomplishment plan. The final accomplishment plan report will include the final parcel list.

Section 1 - Restore / Enhance Parcel List

No parcels with an activity type restore or enhance.

Section 2 - Protect Parcel List

St. Louis

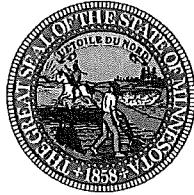
Name	TRDS	Acres	Est Cost	Existing Protection?	Hunting?	Fishing?
Priority Property (Simian Lake Property)	05017229	440	\$1,750,000	No	Limited	Full
Riparian Properties	05017220	280	\$439,000	No	Limited	Full
St. Louis River Shoreline Property	05017218	236	\$448,000	No	Limited	Full

Section 2a - Protect Parcel with Bldgs

No parcels with an activity type protect and has buildings.

Section 3 - Other Parcel Activity

No parcels with an other activity type.



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

November 20, 2013

Chair Karen R. Diver, Chairwoman
Fond du Lac Band of Lake Superior Chippewa
1720 Big Lake Road
Cloquet, MN 55720

Dear Chairwoman Diver,

In a letter to you dated September 14, 2012, the Lessard-Sams Outdoor Heritage Council requested that the Fond du Lac Band of Lake Superior Chippewa agree to the Notice of Funding Restriction attached to the land deed (Minnesota Statutes 2012, Chapter 97A.056, Subd. 15) and the annual reporting requirements and transfer of requirements procedure (Minnesota Statutes 2012, 97A.056, Subd. 16) prior to an appropriation from the outdoor heritage fund to acquire the Chi-wizo-zaaga'iganing and related properties. You responded to the council on September 19, 2012 stating that the Fond du Lac Band understood and agreed to these requirements. We thank you for this correspondence.

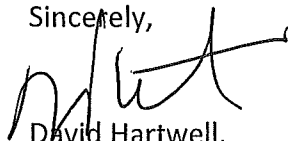
The Lessard-Sams Outdoor Heritage Council is poised to recommend an appropriation in Laws of Minnesota 2014 to the Fond du Lac Band to acquire Chi-wizo-zaaga'iganing and related properties. The Band has acknowledged in its draft accomplishment plan for this recommendation the funding restrictions on the land title and that the restrictions will continue to be in place after the land is in trust status. As part of our due diligence, we seek assurance from the Bureau of Indian Affairs that as trustee it is willing to accept the terms and conditions outlined in Minnesota Statutes 2012, Chapter 97A.056, subdivisions 15 and 16. We are hoping that you and solicitors from the Bureau of Indian Affairs and/or the Department of Interior would meet with us to discuss this issue prior to the delivery of the Outdoor Heritage Fund bill

Page 2 of 2
Chairwoman Karen Diver
November 20, 2013

containing L-SOHC's recommendations. The recommendations are statutorily due to legislative leadership on January 15, 2014.

Thank you for your patience as we work our way through these issues and we await your response as to when we may meet.

Sincerely,



David Hartwell,
Chair, Lessard-Sams Outdoor Heritage Council

Encl: Sept. 14, 2012 letter from D. Hartwell to K. Diver
Sept. 19, 2012 letter from K. Diver to D. Hartwell

Cc:

Reginald DeFoe, Director of Resource Management
Thomas Howes, Fond du Lac Natural Resources Manager
Bill Becker, Lessard-Sams Outdoor Heritage Council

Fond du Lac Band of Lake Superior Chippewa

Reservation Business Committee

1720 Big Lake Rd.
Cloquet, MN 55720
Phone (218) 879-4593
Fax (218) 879-4146

December 6, 2013



Mr. David Hartwell, Chairman
Lessard-Sams Outdoor Heritage Council
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 95
St. Paul, MN 55155

Chairwoman
Karen R. Diver

Re: Grant Application of the Fond du Lac Band of Lake Superior Chippewa

Secretary/Treasurer
Ferdinand Martineau, Jr.

Chairman Hartwell:

Dist. I Representative
Wally Dupuis

I am writing in response to your letter of November 20, 2013 and questions raised regarding our project at the Lessard-Sams Outdoor Heritage Council ("LSOHC") meeting of November 14, 2013. Specifically, you and the Council sought clarification concerning the fee-to-trust process, and its impact on the terms and conditions of our grant agreement. Also, questions were raised concerning the City of Duluth's litigation against the Band. I believe that many of these issues have been addressed in the past 18 months that this proposal has been before the Council for consideration, none the less, I have provided this response to again clarify any outstanding questions.

Dist. II Representative
David R. Tiessen, Jr.

Dist. III Representative
Kevin R. Dupuis, Sr.

Executive Director,
Tribal Programs
Chuck Walt

I. The Trust Application Will Not Impact Minnesota Law Or The Terms and Conditions Of The Accomplishment Plan.

Executive Director,
Enterprises
Michael Himango

Should the Secretary of Interior approve a trust application for the parcels contained in our proposal, the terms and conditions contained in Minnesota law, specifically Minn. Stat. § 97A.05, subds 15-16, and the Accomplishment Plan would not be impacted.

The most salient issue for the Secretary's decision would likely be the reverter of title pursuant to Minn. Stat. § 97A.056, subds 15-16. It is critical to recall that the reverter only applies should the Band not comply with the Accomplishment Plan or restrictions are placed on the land that preclude its use for the intended conservation purposes.. In some cases trust applications that included a title reverter have been denied, but this was when the acquiring entity planned to make permanent improvements on the property. Our proposal does not contemplate any permanent improvements and therefore we do not believe that the reverter will be a barrier to approval of a trust application. If the land is taken into trust, the title reverter would remain in place. If the Secretary concludes that the reverter is too onerous the federal government would simply deny the trust application. In any event, the terms

and conditions to which the Band and State of Minnesota agree will follow the land whether it is held in fee or transferred to trust.

It is important to note that this land acquisition proposal and planned trust application is not without precedent in Minnesota. In fact, this proposal is nearly identical to the joint venture between the State of Minnesota and the Grand Portage Band for the creation of the Grand Portage State Park. In that case, the Band purchased some state land for the park and applied to put those parcels into trust. Pursuant to Minn. Laws 1989, Ch. 259, § 7, a reverter of title provision was included in the sale in the event that the land was not used for a state park. The United States Attorney General and Department of Interior determined that trust status was appropriate subject to the reverter. The Attorney General's opinion was based, in part, on the fact that the land did not contain any permanent improvements.

The federal and state controlling legal authority on this issue has not changed since the Grand Portage application was approved. We believe it is likely that this land acquisition would be treated similarly. We have sent a letter to the Bureau of Indian Affairs seeking confirmation of our analysis, and we will forward the Bureau's reply to you when it is received.

II. Fond du Luth Litigation

We understand that some Council members had questions concerning the City of Duluth's suit against the Fond du Lac Band over the Fond du Luth Casino. There have been various news articles covering this suit - some accurate, some not. As the litigation is ongoing, we cannot comment in detail about various aspects of the suit. Any conversation of this litigation requires an acute appreciation of the unique federal law controlling Indian gaming. The federal government retains exclusive jurisdiction and oversight over Indian gaming operations, and we are subject to its rulings and potential penalties.

It is important to remember how this matter originated. In 2009, the Band and the City had a dispute over certain aspects of a casino operating agreement. Instead of negotiating a mutually acceptable agreement, the City chose to sue the Band for breach of contract. During the litigation, the federal regulator of Indian gaming, the National Indian Gaming Commission (NIGC), determined that the Fond du Luth Agreement was in violation of federal law and the obligation for future payments was therefore void. The NIGC then ordered the Band to cease making payments to the City. If the Band did continue to make payments it would be subject to federal penalties. In short, the City sued the Band, the Band defended itself (as any party would), and the federal government determined that the City was not entitled to a percentage of Band revenues as a matter of federal law. Certain issues still remain on appeal in the federal courts.

No doubt the Band is not the first applicant to the Lessard Sams Outdoor Heritage Council to have been involved in litigation. We strongly object to any suggestion that defending ourselves against the suit brought by the City of Duluth makes the Band in any way untrustworthy. To the contrary, the history of the Band clearly demonstrates that no one need explain to us the importance of contractual commitment and the bond of promises made. More recently, the Band's history of operating various businesses with many partners and executing a multitude of contracts with various vendors speaks to our integrity. It is unfortunate that one of the Band's partners chose to litigate, but they are only one of the many entities (both public and private) with which the Band interacts on a daily basis. Any suggestion that the Band defending itself in the Fond du Luth litigation is indicative of our lack of commitment is wholly without merit, offensive, and beneath the dignity of a Council of the State of Minnesota. Even in spite of this unfortunate litigation one fact remains, neither the Band nor the City is going anywhere. Therefore, the Band hopes the City can accept what a federal agency and two federal courts have already told it and let the two governments get back to finding ways to work together going forward. The Band is committed to its lands in Duluth and the over 200 employees that it supports with benefits in the City now and into the future.

III. For the Past Eighteen Months, the Fond du Lac Band Followed the Council's Procedures and Criteria for Securing Funding, and we Expect that the Council will follow its Procedures Going Forward.

For the past eighteen months, the Fond du Lac Band has made a sustained, good-faith effort to secure OHF monies by satisfying the criteria for these funds and following the Council's process. As you recall, our first proposal was submitted in June of 2012.

On September 6, 2012, the Fond du Lac Band's Natural Resource Manager testified at the LSOHC hearing in support of our project. At that hearing, we were disappointed that the attention did not focus on the merits of the project based on the criteria identified in the Council's call for funding request but instead focused on unrelated issues, such as the shared system of hunting and fishing regulations for tribal and non-tribal members that would apply to the project area.

Following that hearing, on September 14, 2012, a letter was sent from LSOHC Chairman David Hartwell to me. Mr. Hartwell asked whether the Fond du Lac Band would agree to adhere to the OHF deed restrictions and the LSOHC annual reporting requirements. In my letter of September 19, 2012 to Mr. Hartwell, I unambiguously answered in the affirmative to both of these questions. I testified at the September 21, 2012 hearing of the LSOHC and reiterated that the Fond du Lac Band agrees to adhere to the terms of the OHF grant agreement. At this hearing, the attention of some LSOHC members was not on the

conservation impact and habitat protection values of the Fond du Lac Band's project, but on unrelated issues, including the wolf hunt, hunting and fishing treaty rights, and the collection of sales taxes on the Fond du Lac Reservation. At this meeting the Council voted not to recommend funding for our project.

On September 28, 2012, I sent a letter to Chairman Hartwell highlighting that the Council's decision was not based on an evaluation of the factors that the LSOHC is required to use, as noted above. I also proposed a constructive path for moving forward, including funding the Fond du Lac Band's project, should additional monies become available to the LSOHC, following revisions in revenue projections.

Following that letter, at its November 13, 2012 meeting, the LSOHC voted not to fund our project, even if revenue projections increased sufficiently to provide funds for the project. Among the reasons put forth at that time for this decision was that the LSOHC had voted at its September meeting to make recommendations to fund projects and that re-opening these recommendations at the November meeting was too late and would undermine the LSOHC process. As it turned out, State revenues did increase sufficiently so that our project could have been fully funded.

In June 2013, the Fond du Lac Band once again applied to the LSOHC for funding for our worthy conservation project. Our project was essentially the same as in 2012, except that the new proposal also included the acquisition of 236 acres with 2,000 feet along the St. Louis River that had been put up for sale within the vicinity of the original project site.

On September 4, 2013, the Fond du Lac Band's Natural Resource Manager once again testified before the LSOHC regarding our conservation project. As in previous LSOHC hearings, the focus of many of these questions was on the wolf hunt and hunting and fishing rights under treaty obligations. However, at the September 20, 2013 meeting, the LSOHC voted to recommend funding the Fond du Lac Band's project in the amount of \$2,800,000. We are heartened by the LSOHC's actions and look forward to securing an OHF grant to advance conservation in Minnesota at our project site.

During the November 14, 2013 meeting, some LSOHC members expressed a desire to undo the recommendations of the September 20, 2013 meeting with respect to the Fond du Lac Band's project. This effort is in direct contrast to the treatment of our project at the November 13, 2012 LSOHC meeting in which reconsideration of our project was deemed to be untimely and would interfere with the LSOHC process. As at previous LSOHC meetings, there was little or no attention directed at the merits of our project, but instead attention was focused on the wolf hunt, hunting and fishing treaty rights, and other illegitimate issues.

Mr. David Hartwell

December 6, 2013

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The Band has followed the Council's process and has responded, repeatedly to questions both within and without the evaluation criteria. We sincerely hope that the Council is not developing a special evaluation process for our proposal, or any proposal that may come from an Indian Tribe. We hope that the Council will follow its own procedure and not now reconsider funding our proposal. Simply, if reconsideration was not permissible last year, it should not now be an option. We look forward to completing this process and making our project proposal a reality.

Sincerely,

A handwritten signature in cursive script that reads "Karen R. Diver".

Karen R. Diver
Chairwoman