

- 1) **Definitions** – We need to define what Protect, Restore and Enhance mean.

Recommendation: Define “protect, restore and enhance as:

- a. *Protect – To support action to preserve natural systems and habitat*
- b. *Restore – To invest in efforts to bring back conditions more in line with natural systems prior to European settlement*
- c. *Enhance – To invest in actions to support natural systems*

Staff Comments: Page four of the draft strategy and process for 2009 contains similar definitions. The underlined text will bring them into better conformance with the Hartwell concepts.

Restore: *action to bring a habitat back to a former state of sustaining fish, game or wildlife, with an ultimate goal of restoring Pre-European settlement habitat conditions.*

Protect: *action to maintain the ability of habitat and related natural systems to sustain fish, game or wildlife.*

Enhance: *action to increase the ability of habitat and related natural systems to sustain and improve fish, game or wildlife in an ecologically sound manner*

- 2) **Objectives** – We need to define our objectives before we begin to consider how to recommend funds are spent.

Recommendation: *Divide the state into regions based on the DNR Ecological Zones (and in some cases sub zones) and develop for each zone, objectives for our three charges – Protect, Restore and Enhance – for each of the wildlife habitat areas we must consider – Wetlands, Prairies, Forests. (For example, in the zone with forests, we would want to define if we were interested in protection as purchase of fee or easement, if we wanted to actively support restoration or let nature take its course and how we might want to enhance the forest if at all)*

Staff Comments: The proposed strategy envisions this or a similar approach for recommendations to the 2010 legislature and beyond. See Geographic Focus of the LOHC Recommendations on page 3.

- 3) **Conservation Easement Term** – When using conservation easements as part of our protection strategy, we need to determine if we would consider any term easements. Term easements do not provide permanent protection that will be available for current and future residents of the state while permanent conservation easements do.

Recommendation: *Only fund conservation easement purchases and the transaction costs associated with them that are perpetual.*

Staff Comments: This is listed on page2 under Minimum Criteria For Funding Requests in the next to the last bullet. The council might want to add the phrase “, and fully fund the perpetual transaction costs associated with acquired LOHC permanent easements.” However this point is also addressed in the staff response to item 4 below.

- 4) **Conservation Easement Stewardship/Enforcement** – One of the challenges with conservation easements is that unlike fee ownership, there is a responsibility to insure the fee owner is in compliance with the terms of the easement in perpetuity. This involves both inspecting the property (national standards are for annual inspection) and where necessary, enforcing the terms of the easement up to and including legal action. The standard in the non profit world (and now being required by the IRS) is to set aside some funds, based on the annual estimated costs of monitoring and enforcement to endow this activity. The DNR and BWSR have done thousand of easements but have no funding in place to monitor or enforce them meaning that they do this work from their annual budgets. This essentially has left them with inadequate resources to do the monitoring of compliance and enforcement where necessary which means the protection afforded by the conservation easement is at risk. Many non profits, but not all, have done a far better job of establishing the necessary funding to support this long term obligation for protection.

Recommendation: *The Council should require part of any conservation easement we fund directly or indirectly, an appropriate amount be set aside in a dedicated fund to insure annual monitoring and enforcement where necessary. In the case of state agencies or local units of government, these funds should be placed in a permanent fund exclusively for this purpose and may include the use of community foundations to hold these funds (which would avoid any raiding of funds in tight times.*

Staff Comments: This was overlooked and could be added to page 2, Minimum Criteria For Funding Requests as follows:

Requests for funding for permanent easement acquisition must contain a viable plan for funding a perpetual permanent easement stewardship trust account and request OHF funding to seed the investment creating a stream of income to finance perpetual stewardship.

This also needs to be in language in the OHF appropriations bill and requires statutory language authorizing these trust funds.

- 5) **Use of Restoration or Enhancement Funds** – The Council has 25 years to fund projects that will permanently enhance the natural environment of the state. These are many opportunities to fund restoration and enhancement activity on property that has no permanent protection but the effect of that restoration or enhancement is then temporary.

Recommendation: *Funding of restoration and enhancement projects should only be provided where there is permanent protection of the property, either through fee or easement.*

Staff Comments: This can be incorporated into Minimum Criteria For Funding Requests as follows:

*Between the 5th and 6th bullet, add
restoration and enhancement projects must be limited to resources under permanent public protection of fee ownership or easement agreements.*

- 6) **Transfers of Ownership Interests** – There will be times where the ideal owner of a property funded with the Council financial support becomes different over time than at the time of the transaction. To insure the permanence of the protection, there should be some approval of the transfer to avoid any transfers for non conservation purposes.

Recommendation: *The Council requires where any funding is provided for fee or easement protection that it, or its designee if the Council ceases to exist, have the right to approve the transfer of the ownership interest.*

Staff Comments: This will require statutory language addressing transfers. The language should also address conversions to an unauthorized use. This language should be added to M.S. 97A. See M.S. 116P.15. for an example.

- 7) **Mineral Rights** – DNR is a dual purpose agency, both responsible for protecting the environment and generating income for the state through resource extraction (mining). The acquisitions they often do (fee or easement) for habitat, allow resource extraction if possible. From the Habitat Council’s standpoint, there is no mandate to help the state acquire rights for resource extraction. We need to address this issue before we start providing funding for any projects.

Recommendation: *Either require the acquisition and effective extinguishment of the mineral rights at the time of acquisition of an interest in any property or that if the minerals are mined under the protected property, that it be replaced with property of similar ecological and financial value on the basis of 10 acres for each acre permitted for mining and related activity.*

Staff Comments: While it is true there is no mandate for the OHF to be used to acquire mineral rights, the question of whether or not to prohibit mining on public OHF acquired land is complex. Staff suggests Council members meet with DNR Lands and Minerals and other jurisdictions’ representatives to fully explore this issue and then make a decision on the policy the council will recommend.

- 8) **Rural/Urban** – Wildlife habitat exists in both rural and urban settings. The Clean Water, Land and Legacy amendment was passed by voters from around the state who were interested in consumptive use of the wildlife habitat and those interested in the intrinsic value of having wildlife habitat as part of their

communities. All have an expectation of the “special places” in their lives be protected, restored and enhanced. Rural land is cheaper and therefore, protection efforts provide more acres for dollar invested. Urban land protection make our communities the majority of residents of the state live in more livable and provide a conduit for environmental appreciation and education which in tern makes land protection efforts in more distant parts of the state more of a priority for urban residents.

Recommendation: *Support protection, restoration and enhancement efforts throughout the state, not just in rural areas.*

Staff Comments: This can be handled with the following addition to the Criteria For Identifying Conservation Priorities at the bottom of page 2:

Provide an urban and rural balance in habitat and related protection ecosystem restoration and enhancement.

- 9) **Parks** – Land that is designated as a park is wildlife habitat but is generally not open for hunting although is generally open for fishing. There are some in the sporting community who do not view parks as wildlife habitat because it is not available for hunting. On the other hand, parks provide places for the general public to view and enjoy wildlife. It also provides preserves for wildlife, corridors of protected land and components of watersheds and other ecological resources.

Recommendation: *Consider all wildlife habitat eligible for funding regardless of and specific designation.*

Staff comments: the constitution restricts use of the OHF for acquisitions. “Land acquired by fee with money deposited in the outdoor heritage fund under this section must be open to the public taking of fish and game during the open season unless otherwise provided by law.” To implement this language the Council and the Legislature need to develop an understanding of the meaning of the term “open season” and the phrase “otherwise provided by law.” For example, if park acquisitions are open for bow hunting only, does that satisfy the phrase “open for public taking of fish and game during the open season”, or must the acquired lands also be open for firearms season? A related consideration is whether “otherwise provided by law” is limited to state statute, law and rule or includes local ordinances.

Habitat and ecosystem enhancement and restoration as well as park easements are constitutionally permitted.

- 10) **Restoration** – Funding of restoration projects is generally not a one year effort, but involves multiple years to complete. However, the Council’s funding can only be allocated one year at a time and must be approved each year by the legislature and current legislatures generally cannot bind future legislatures.

Therefore it is possible to fund part of a restoration effort but not then have the funds to complete the effort which in many cases is effectively wasting the funds.

Recommendation: *When the council funds restoration efforts, it should fund 100% of the estimated cost (or the councils estimated cost) of the effort that will take place over multiple years with an allowance for the effort to draw upon the funds over multiple years.*

Staff Comments: See page 2, Minimum Criteria For Funding Requests bullet number 7. The word identify could be changed to request or otherwise identify, making the criteria read: request or otherwise identify funding necessary to fully implement the project/programs(s).

- 11) **Matching funds** – While the Council’s resources are significant, they are not limitless and there will be more opportunities to spend out funds than we have funds available. At the same time, the use of the Council’s resources to leverage other funds would expand the reach and effectiveness of the available funding. Additionally, providing matching funds can build a culture of support for the goals of the Council’s mission in the local communities and with charitable donors if they get used to having to come up with matching funds to get projects done. In kind matching is great but there is nothing like actual dollars being invested along side other dollars to make the effort real and a priority. Ultimately, if the right type of matching program is put in place, the support of the types of projects supported for the 25 years of the dedicated funding will continue long beyond the life of the Council’s dedicated funding.

Recommendation: *All projects should have some matching requirement and wherever possible, hard dollar matching. Priority should be given to projects with leverage through matching of the Council’s resources.*

Staff Comments: See page 2, bottom, Criteria For Identifying Conservation Priorities, bullet 4 “have secured matching funds to supplement any OHF appropriations.”

- 12) **Signage** – The Council will fund many projects over the next 25 years with funds coming from the residents and businesses around the state. The work of the council should be recognized by the citizens of the state when they see it but unless there is signage identifying it as a project from the dedicated funding approved by the voters of Minnesota, they will not understand how the funds have been used.

Recommendation: *We should require appropriate signage on every project funded by the Clean Water, Land and Legacy Amendment that identifies it as one of the projects. The Council should establish design standards for the signage to insure consistency. The partner organization should accept the responsibility to maintain the signage in perpetuity.*

Staff Comments: Our signage requirements should be limited to works funded by the Outdoor Heritage Fund. This requirement should go into statute in the 2009 session.

- 13) **Capacity, Protection** – To the work of protection for the Council, we will generally be relying on a small number of partner organizations and agencies. Ducks Unlimited, Pheasants Forever, Nature Conservancy, Minnesota Land Trust, Trust for Public Land, DNR and BWSR would seem to be the most active and experienced in land acquisition. Perhaps the only one of these groups that has the infrastructure in place to handle significant increases in their acquisition (fee or easement) work is BWSR but they are stretched as well (and almost certainly will be after the next budget). It makes sense to have discussions with these groups once we have established our priorities for acquisition on a collective basis about the necessary infrastructure support the coming work. Looking at how we can get our partners to work together and avoid duplication and competition before the majority of the work begins would be a good thing.

Recommendation: *Pull together a round table discussion with our likely significant partners I would focus on collective efficiency and capacity instead of just how each can be bigger. Perhaps a round table discussion with them would be one way to do this. We could also ask them to get together and present us with their collective thoughts.*

Staff Comments: The question of capacity should be raised during the presentations for January 26th. See rough agenda outline on page 5 of the strategy paper reading "conservation delivery strategies."

- 14) **Capacity, Restoration** – Restoration (and enhancement) will contend with some of the same issues of capacity that acquisition will face. The Council needs to develop a strategy with our partners once we have identified our goals to determine how to most efficiently carry out restoration efforts on the scale we are likely to be undertaking. We have to look at how to most efficiently undertake these efforts and where should we expect or encourage partnerships from an efficiency standpoint.

- 15) **Recommendation:** *In conjunction with the roundtable suggested for protection, ask our likely significant partners in the restoration and enhancement areas to provide their suggestions on options we should consider for accomplishing our objectives.*

See above