

Lessard-Sams Outdoor Heritage Council

Agenda Item Memo

DATE March 18, 2011

SUBJECT: Council Operating Procedures Amendment: Land Acquisition Restrictions

Background

ML 2009, Ch. 172, Art. I, Section 2, Subd. 14 and ML 2010, Ch. 361, Art. I, Sec. 2, Subd. 13 require the L-SOHC to “establish procedures to review requests from recipients to alter the use of or convey interest in real property.” The Council currently does not have an established procedure. Adopting this draft procedure will fulfill the legislative requirement and be incorporated into the Council’s operating procedures.

The attached complete Council Operating Procedures is attached for review, discussion and amendment.

Suggested Motion

“Motion to approve the changes to the Council Operating Procedures as presented .”

Suggested Procedure

Once motion is before the Council, it is up for discussion, amendments and final passage.

Operating Procedures of the Lessard-Sams Outdoor Heritage Council ("COUNCIL")

Adopted: December 17, 2008

Revisions: May 26, 2010, March 18, 2011

Section I. "COUNCIL" Established

A. Powers

The COUNCIL is in the legislative branch of government. The COUNCIL exercises the authorities and powers designated in Minnesota Statutes, section 97A.056 (Exhibit 2). The COUNCIL also exercises powers granted through periodic state laws usually relating to appropriations and the associated programs or issues.

B. Membership and Organization

Membership and terms are defined in Minnesota Statutes, section 97A.056, subd. 2 (a).

A vacancy on the COUNCIL may be filled by the appointing authority for the remainder of the unexpired term. (Minnesota Statutes, section 97A.056, subd. 2 (f)).

Compensation and removal of public members are as provided in Minnesota Statutes, section 15.0575. (Minnesota Statutes, section 97A.056, subd. 2 (f)).

C. Duties

1. Recommendations: The COUNCIL shall recommend an annual legislative bill for appropriations from the outdoor heritage fund established pursuant to Article XI, Section 15, of the Minnesota Constitution and Minnesota Statutes, section 97A.056, subd. 1:

Minnesota Statutes, section 97A.056, Subd. 1. Outdoor heritage fund. An outdoor heritage fund, under article XI, section 15, of the Minnesota Constitution, is established as an account in the state treasury. All money earned by the outdoor heritage fund must be credited to the fund. At least 99 percent of the money appropriated from the fund must be expended to restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife.

In so doing, the COUNCIL shall consider:

... the outcomes of, including, but not limited to, the Minnesota Conservation and Preservation Plan, that directly relate to the restoration, protection, and enhancement of wetlands, prairies, forests, and habitat for fish, game, and wildlife, and that prevent forest fragmentation, encourage forest consolidation, and expand restored native prairie. (Minnesota Statutes, section 97A.056, subd. 3(a))

The council is directed to establish a conservation partners program, to encourage local conservation efforts, open to local, regional, state, and national organizations. (Minnesota Statutes, section 97A.056, subd. 3(b))

Approval of the recommended legislative bill requires an affirmative vote of nine members of the COUNCIL. (Minnesota Statutes, section 97A.056, subd. 3(b))

- 2. Periodic Organization:** Officers, Make up of Executive committee, Election of officers (how often), Nominations for officers and executive committee.

Membership Structure:

An executive committee structure will be made up of the following officers with members serving 2-year terms.

- Chair (1)
- Vice Chair (1)
- Secretary (1)
- Treasurer (1)
- Legislative Member (1)

Election of Officers:

- a. Nominations for executive committee position - by written sign-up by member or nomination by another member. Executive committee positions shall be nominated and elected in the following order: chair (1); vice chair (1); secretary (1); treasurer (1); legislative member (1).
- b. Officer's terms are through the first Monday in January of the odd numbered year or until the date of the next election. Elections are to be held in January of the odd numbered year. The chair, vice chair, secretary, and treasurer serve until a successor has been elected.
- c. Distribution of officers among appointing authorities:
 - 1. The chair will be elected from among the appointees of all appointing authorities (Governor, House and Senate).
 - 2. The vice chair will be elected from among the remaining appointees not appointed by the appointing authority of the chair.
 - 3. The secretary will be elected from among the remaining appointees not appointed by the appointing authorities of the chair and the vice chair.
 - 4. The treasurer will be elected from among all appointees
 - 5. The legislative member will be from either House or the Senate. If prior elections of officers yield an odd number of legislators as officers, then the legislative member's legislative affiliation will balance representation of the legislative bodies.
- d. Nomination and election of officers will be by the entire COUNCIL membership.
- e. A majority vote of the members present for each position is required.
- f. Elections will be by written ballot.
- g. Proxy: Members may vote by proxy for election of Executive Committee members only. If a member wishes to vote by proxy he/she shall provide his/her proxy to the COUNCIL staff and indicate the member he/she wishes to have the signed proxy given to.
- h. Vacancies in council offices will be filled by election within 45 days of receipt by the Council of written notification of vacancy.

D. Operations

1. Duties:

- a. The COUNCIL shall recommend appropriations for expenditures from the outdoor heritage fund.
- b. Additional duties prescribed in law.

2. Reportability:

- a. In addition, and in pursuit of D. 1, above, the COUNCIL reviews and acts upon information provided from the following sources: chair, executive committee, COUNCIL members, subcommittees, staff, Legislature, state, federal and local agencies, citizens and private sector.
- b. The recommendations, findings, and observations of the COUNCIL are forwarded to the appropriate agencies or entities under the signature of the chair or executive director. This includes approving proposed amendments to project accomplishment plans.

3. Quorum requirements

The quorum requirement for the COUNCIL is half of the qualified members plus one. (Minnesota Statutes, section 97A.056, subd. 5 (a)) A majority of the qualified members of any council committee constitutes a quorum. Minnesota Statutes, section 645.09

4. Conflicts of Interest Prohibitions and Procedures

Governing conflict of interest:

The COUNCIL is bound by Minnesota Statutes, section 97A.056, subd. 4, "Conflict of Interest" as follows:

- a. A COUNCIL member may not be an advocate for or against a COUNCIL action or vote on any action that may be a conflict of interest. A conflict of interest includes direct or indirect personal financial benefit from a request for funding or funded project. A conflict of interest must be disclosed as soon as it is discovered. The COUNCIL shall follow the policies and requirements related to conflicts of interest developed by the Minnesota Department of Administration Office of Grants Management under Minnesota Statutes, section 16B.98. (See Procedures Regarding Conflict of Interest below)
- b. For the purposes of this section, a "conflict of interest" exists when a person has an organizational conflict of interest or direct financial interests and those interests present the appearance that it will be difficult for the person to impartially fulfill the person's duty. An "organizational conflict of interest" exists when a person has an affiliation with an organization that is subject to COUNCIL activities, which presents the appearance of a conflict between organizational interests and COUNCIL member duties. An "organizational conflict of interest" does not exist if the person's only affiliation with an organization is being a member of the organization.

In addition to the above a COUNCIL member may not serve as a project manager for a request for funding pending before the COUNCIL.

Conflict of Interest to be Managed Through Procedures:

Members of the COUNCIL have been appointed because of their legislative duties, interest, expertise, or knowledge of the science, policy, or practice of restoring, protecting, and enhancing wetlands, prairies, forests and habitat for fish, game and wildlife. Therefore, certain affiliations may constitute a conflict of interest that must be managed by the COUNCIL, including:

- receipt of personal financial benefit from a proposing organization or request for funding being reviewed.
- serving as an employee or governing board member of a proposing organization whose request for funding is being reviewed.
- having a family relationship with someone requesting funds or a staff or board member of a requesting organization.

Procedures regarding conflict of interest:

A conflict of interest must be identified before or during the initial request for funding review process. The member must complete the Lessard-Sams Outdoor Heritage Council Conflict of Interest Disclosure Form and file it in the COUNCIL office. If a conflict of interest is recognized during the course of a meeting the member must declare the conflict at the first opportunity. Declaring a conflict of interest means that a member may not advocate for or against the request for funding, or vote on the request for funding. In addition, existing law and institutional policies on conflict of interest cover the COUNCIL members and staff and other legislative staff.

5. Rules of Order

The COUNCIL will use Mason’s Manual of Legislative Procedure as the rules of order for the COUNCIL.

6. Open Meetings and Transparency

The COUNCIL will conduct open meetings as described in Minnesota Statutes, section 97A.056, subd. 5, summarized as follows:

- a. Meetings of the COUNCIL and other groups the COUNCIL may establish are subject to Minnesota Statutes, chapter 13D “Open Meeting Law,” including provision of public copies of members’ materials.
- b. Meetings shall be recorded. Meeting records shall be made available to the public in text or other accessible formats.
- c. Meeting schedules, agendas, and materials shall be made available to the public in advance on-line and via Listserv. The COUNCIL shall establish a Listserv and a web site for the purpose of communicating with the public.
- d. The COUNCIL may make use of video-conferencing to facilitate participation by its members and by those asked to present information to the COUNCIL.

7. Audits

Every two years, the COUNCIL will conduct financial and program audits of the expenditure of appropriations from the Outdoor Heritage Fund and the uses to which they are put to ensure consistency with the Constitutional mission of the Fund, consistent with M.S. 97A.056, Subd. 6:

The legislative auditor shall audit the outdoor heritage fund expenditures, including administrative and staffing expenditures, every two years to ensure that the money is spent to restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife.

8. Land Acquisition Restrictions – Council Process

1. Duties of Land Holders

Holders of an interest in real property must submit a written application to alter land at least 60 days prior to a proposed change occurring. The application will describe the land being altered, the parties involved and any replacement plans.

2. Council Process

- a. **Minor conversions or conveyances.** The executive director of the L-SOHC is granted the discretion to approve applications for minor conversions or conveyances and report minor approvals to the council and the proposed replacement plans. The chairs and ranking

minority members of the committees with jurisdiction over the Outdoor Heritage Fund must be notified 15 business days before issuing such approval.

- b. **Condemnations.** The executive director will notify council members and the chairs and ranking minority members of the committees with jurisdiction over the Outdoor Heritage Fund upon learning of condemnation of Outdoor Heritage Fund property. In the case of condemnation, the condemnation process will proceed without council consideration. Following the completion of the condemnation proceedings, the condemned party will notify the council of the settlement terms and replacement plans. The council may a) accept the replacement plans; or b) instruct the condemned party to deposit the state's share of the proceeds of condemnation in the Outdoor Heritage Fund.
 - c. **All Other Conversions or Alterations.** In the case of major conversions or conveyances, the executive director will forward the application to the council for review and approval and notify the chairs and ranking minority members of the committees with jurisdiction over the Outdoor Heritage Fund that the council will consider of the alteration and any replacement plans at the next meeting of the council 15 business days from the date of notification.
3. **Replacement Plans and Recordation.** The council must consider and approve the alteration or conveyance and any replacement as a whole. The replacement plan must include an appraisal of the land to be altered or conveyed and if appropriate, an appraisal of the land to be replaced for the altered or conveyed land. The replacement plan must meet the following criteria: (1) the interest is at least equal in fair market value, as certified by the commissioner of natural resources, to the interest being replaced; (2) the interest is in a reasonably equivalent location and has a reasonably equivalent useful conservation purpose compared to the interest being replaced, taking into consideration all effects from fragmentation of the whole habitat. The applicant must complete the replacement plan and makes notice of funding restriction to the appropriate local government office or repay the Outdoor Heritage Fund within one calendar year of decision.
 4. **Non-Approval.** If the action is not approved, LSOHC will provide applicant an explanation for decision, including, incomplete information, inappropriate exchange, lack of timely notification, and/or improper land use alteration.

Section II. Duties of COUNCIL Officers

A. Chair:

1. Presides at Council and Executive Committee meetings
2. Serves as primary spokesperson for the Council
3. Provides direction to staff
4. The chair or the chair's designee authorizes travel:
 - a. Authorizes travel, outside of travel for regular Council or committee business meetings, for Council members in response to a written request from a Council member that specifically states the date, location, time, purpose, benefit to the Council and State of Minnesota and estimated expense of the travel. This member travel request will be submitted to Council staff for review with the Chair.
 - b. Council staff, per the authorization from the Chair and consultation with the Legislative member of the Executive Committee authorized to sign reimbursement forms, will approve or deny the travel request in writing.
 - c. All travel requests, outside of regular council business, must complete the authorization process 30 days prior to travel date. The member traveling will submit a written summary of the

- learning experience to be shared with council members and submit it with their expense reimbursement form.
- d. Out-of-State travel requires the concurrence of LCC policies.
 - e. Expense vouchers to be submitted after authorized travel, pursuant to guidelines established by the council, on the following basis:
 - i. For public members, per the expense policy of the Commissioner's Plan, Chapter 15 (Exhibit 3)
 - ii. Public members are authorized to collect per diem spent on authorized council activities, as provided in Minnesota Statutes 15.075, subd. 3.
 - iii. For COUNCIL staff, consistent with Commissioner's Plan.
5. Sets time, place and date of and thereby authorizing travel for:
- a. Executive Committee meetings
 - b. COUNCIL meetings
The chair will be responsible for working with staff to develop an agenda.
 - c. Authorizes council and committee meetings and travel (time, place and date set by council or committee chair)

B. Vice Chair

- 1 Performs duties of chair in absence of chair.
- 2 Member of Executive Committee

C. Secretary

- 1 Performs the duties of the vice chair in absence of vice chair
- 2 Member of the Executive Committee

D. Treasurer

- 1 Performs the duties of the secretary in absence of secretary
- 2 Member of the Executive Committee
- 3 Prepares reports on the balance and projected revenue in the Outdoor Heritage Fund in conjunction with staff
- 4 Tracks the operating budget and reports to the council on the expense throughout the year.
- 5 Works with staff to develop annual operating budgets.

E. Legislative Member

- 1 Performs the duties of the secretary in absence of secretary
- 2 Authorizes legislator travel
- 3 Provides primary communications link with the other legislative bodies
- 4 Member of the Executive Committee

F. Minutes

Any COUNCIL member, except the chair, may move approval of the minutes. The chair of the meeting at which minutes were approved will sign the minutes.

Section III. Committees

A. Executive Committee

The Executive Committee:

1. Reviews and acts upon matters brought forth by the chair and Executive Committee members, discussion material provided by executive director.
2. Recommends action to full COUNCIL
3. Reviews and recommends COUNCIL Administrative Budget to the Council.
4. Approves accomplishment plans and periodic payment authorization for conduct of COUNCIL recommended projects and programs. And reports such approvals to the council.
5. Gives policy and program direction to COUNCIL operations.
6. Oversees audits and compliance
7. Recommends statutory changes to the COUNCIL.

B. Personnel Committee

Annually reviews performance of the Executive Director and recommends candidates for the position.

C. Other Committees of the Lessard Council

The Chair may appoint other committees.

Section IV. Staff

A. Executive Director

1. The executive director serves at the pleasure of the Council. The Council selects and recommends the individual who will serve as the COUNCIL's Executive Director to the Legislative Coordinating Commission.
2. Duties of the executive director are to:
 - a. Hire, fire, organize, supervise, and otherwise administer the regular staff, within the budget and staffing limit authorized by the COUNCIL.
 - b. Hire temporary staff and interns outside the limits above, subject to budget availability.
 - c. Administer all COUNCIL affairs.
 - d. Interacts with the Minnesota Legislature and legislative staff.
 - e. Bring to attention of Chair and or COUNCIL, matters relevant to COUNCIL programs.
 - f. Administer the COUNCIL budget. Reviews for approval all non-member expenses.
 - g. Make corrections consistent with an approved accomplishment plan.
 - h. Review current COUNCIL programs.
 - i. Develop new programs at the direction of the chair.
 - j. Maintain communications with the legislature, private sector, non-governmental, federal, state and local government agencies.
 - k. Make preparations required for all COUNCIL meetings.
 - l. Provide staff needed by COUNCIL and COUNCIL subcommittees.
 - m. Serve as exclusive liaison between consultants and Chair, COUNCIL and committees thereof.
 - n. Approve accomplishment plans changes, which will help achieve the intended effect of any appropriation. Significant accomplishment plans amendments judged by relative size of the proposed amendment or by the significance of the impact on the intended effect of the program, must be reported to COUNCIL for information.
 - o. Manage auditors responsible for auditing the uses of the Fund.
 - p. Assign responsibility and delegates authority to other staff as appropriate.
 - q. Direct preparation of annual reports on COUNCIL activities and accomplishments.

Attached Exhibits

Exhibit 1	Minnesota Constitution, Article XI, Section 15
Exhibit 2	Minnesota Statutes 2009, 97A.056
Exhibit 3	Expense Reimbursement (excerpt from Commissioner's Plan)
Exhibit 4	Minnesota Statutes 15.0575 – Administrative Boards and Agencies Compensation
Exhibit 5	Minnesota Statutes, Chapter 13D, Open Meeting Law
Exhibit 6	Minnesota Statutes, 3.055 and 13D.06 Enforcement of Open Meeting Law
Exhibit 7	MN Department of Administration, Office of Grants Management Operating Procedures, Policy 08-01