

## Lessard-Sams Outdoor Heritage Council

**MEMO:** Agenda Item #8  
**DATE:** March 11, 2016  
**SUBJECT:** MS 97A.056, Subd. 8. Revenues  
**PRESENTER:** Joe Pavelko, Assistant Director, LSOHC

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### **Suggested Action:**

Council should discuss issues related to Outdoor Heritage Fund (OHF) generated revenues and determine if changes to the current revenues language in 97A.056 would be beneficial. Council could then direct LSOHC staff to work with LSOHC Legislative members and staff to develop an amendment to 97A.056, Subd. 8 that addresses the wishes of the council related to revenues.

### **Background:**

Occasionally OHF recipients have generated income/revenue as a result of OHF appropriations. The income/revenue can be defined as directly generated by a supported/approved activity or earned as a result of the OHF appropriation during the appropriation period.

Examples of how OHF recipients have or could generate revenue include, but are not limited to:

1. *Farm Leases (row crop, grazing, haying, etc.).* Often utilized when preparing fields for restoration or enhancement.
2. *Federal Farm Bill Payments (CRP, EQIP, etc.).* Existing contracts on acquired properties.
3. *Timber Leases/Sales.* Common practice for tree removal projects as well as forest management.
4. *Sale of native prairie seed.*
5. *Sale of existing buildings on acquired parcels.* After acquisition, buildings with value are sold.
6. *Sale of minerals (gravel, soil, etc.).* After acquisition, minerals such as soil or gravel may be sold for various reasons related to the restoration or enhancement of the site.

### **Current OHF Requirements Related to Revenues:**

Existing Revenue Language: 97A.056 Subd. 8. Revenues

(a) When a parcel of land that was previously purchased with money from the outdoor heritage fund is transferred to the state, the owner of the land shall disclose to the council and commissioner of natural resources:

(1) all revenues generated from activities on the land from the time the land was purchased with money from the outdoor heritage fund until the land was transferred to the state;

(2) all holding costs associated with managing the land between the time of purchase with money from the outdoor heritage fund and the time the land was transferred to the state; and

(3) the total net revenues as determined by subtracting the costs described in clause (2) from the revenues described in clause (1).

(b) The owner of the land shall submit the total net revenues determined under paragraph (a), clause (3), to the state no later than 60 days after the land is transferred to the state.

### Why Addressing the Issue of Revenue is Needed

Current OHF requirements only apply to non-state OHF recipients (predominantly nonprofit organizations) that acquire land and subsequently transfer that land to the state (see 97A.056 Subd. 8 language above). This activity constitutes only a fraction of the overall OHF for each year. As evidenced from the list above, there are many other ways revenue can be generated that current OHF language does not address.

Except for the specific activity addressed in 97A.056 Subd. 8, there is no guidance or requirements in place that address allowable uses of OHF generated revenues and how to report/account for OHF generated revenues.

Some OHF recipients have approached LSOHC staff looking for clarification in dealing with these revenues.

- Can OHF generated revenues be spent? If so, on what? What are the allowable activities and costs those funds can pay for? Are they restricted or unrestricted dollars?
- Do OHF recipients have to report and account for revenues? How should they report on revenues? What does DNR grants management require?

Some of the nonprofit OHF recipients have recommended that OHF revenue requirements could closely follow federal income/revenue requirements contained in OMB Circular A-110 (2 CFR section 215.2) (see Attachment A). Many of the nonprofit organizations already adhere to these federal requirements and have existing internal processes in place.

### **Questions the Council Should Consider**

Currently, it can be interpreted that unless the requirement in 97A.056 applies, revenues are considered unrestricted monies with the ability for the OHF recipient to spend as they see fit.

Questions to consider:

1. Does the existing language in 97A.056 adequately address the issue of revenues?
2. Is it appropriate to generate revenue from OHF and allow unrestricted use of those funds?
3. Is it appropriate to not require OHF recipients to report on revenues generated?

LSOHC staff believes the council should consider developing overall rules/guidance on all revenues for all involved with OHF. In doing so, OHF recipients will be confident they are adhering to OHF requirements. In addition, transparency will increase and any potential for inappropriate uses of OHF generated revenues can be prevented.

## Potential Draft Guidance on how to Address OHF Generated Revenues:

1. Revenues should be added to the OHF appropriation and may be used to further eligible project or program objectives during the appropriation period. This will allow programs to do more (additive) work and produce more outputs to further conservation in Minnesota.
2. Revenues may only be used to pay for direct and necessary costs as outlined in the approved accomplishment plan during the appropriation period.
3. Revenue requirements/rules apply to all OHF recipients during the appropriation period. Implementing these requirements in perpetuity would be unreasonable and create an unnecessary administrative burden on OHF recipients. Once a final report has been submitted and approved the requirements for revenues no longer apply. Example: OHF recipient utilizes a farm agreement to prepare degraded planted prairie for restoration on an OHF funded acquisition 5 years after the completion of the appropriation. Revenues generated are not required to be reported to LSOHC and can be used at the discretion of the land management entity.
4. All net revenues unspent at completion of final report must be returned to the Outdoor Heritage Fund.

### Intent is Important

Rules/Requirements would apply to all OHF recipients, unless specified in their accomplishment plan. The goal is to implement a baseline set of rules and requirements, but still allow creative or different uses of revenues.

Example of an exception: Nonprofit Land Ownership – Previous OHF funded projects have been designed to allow nonprofit organizations retain ownership of fee-title acquisitions and employ numerous techniques to generate revenues from the acquisitions to defray the costs of ownership and property taxes. Nonprofit land ownership prevents further PILT obligation to the state. Because the intent of the program is such, and has been approved within the accomplishment plan, the new revenue rules/requirements as stated above would not apply to a program like this. The OHF recipient is already required to report on their revenues and that requirement is also noted in the appropriation language.

### Attachments

- A. Federal OMB Circular A-110 (2 CFR Section 215.2 and 215.24)
- B. LCCMR Revenue Requirements



Attachment A

**Federal OMB Circular A-110 (2 CFR Section 215.2 and 215.24)**

CHAPTER II—OFFICE OF MANAGEMENT AND  
BUDGET CIRCULARS AND GUIDANCE

Uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations (OMB Circular A-110)

OMB Circular A-110 (2 CFR section 215.2 (program income definition),

(x) Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 215.24(e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

2 CFR section 215.24 (program income))

215.24 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income 2 CFR Ch. II (1-1-06 Edition) related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

- (1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.
- (2) Used to finance the non-Federal share of the project or program.
- (3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply

automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 215.14.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (see § 215.30 through § 215.37).

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

Attachment B

**LCCMR requirements for Revenues/Incomes:**

**116P.10 ROYALTIES, COPYRIGHTS, PATENTS, AND SALE OF PRODUCTS AND ASSETS.**

(a) This section applies to projects supported by the trust fund and the oil overcharge money referred to in section [4.071, subdivision 2](#), each of which is referred to in this section as a "fund."

(b) The fund owns and shall take title to the percentage of a royalty, copyright, or patent resulting from a project supported by the fund equal to the percentage of the project's total funding provided by the fund. Cash receipts resulting from a royalty, copyright, or patent, or the sale of the fund's rights to a royalty, copyright, or patent, must be credited immediately to the principal of the fund. Receipts from Minnesota future resources fund projects must be credited to the trust fund. The commission may include in its legislative bill a recommendation to relinquish the ownership or rights to a royalty, copyright, or patent resulting from a project supported by the fund to the project's proposer when the amount of the original grant or loan, plus interest, has been repaid to the fund.

(c) If a project supported by the fund results in net income from the sale of products or assets developed or acquired by an appropriation from the fund, the appropriation must be repaid to the fund in an amount equal to the percentage of the project's total funding provided by the fund. The commission may include in its legislative bill a recommendation to relinquish the income if a plan is approved for reinvestment of the income in the project or when the amount of the original grant or loan, plus interest, has been repaid to the fund.