

Lessard-Sams Outdoor Heritage Council

MEMO: Agenda Item #6
DATE: Wednesday, November 15, 2018
SUBJECT: OHF Enforcement – overview & potential actions.
PRESENTER: LSOHC Staff

Background:

At the Sept 27, 2018 Council meeting, staff was asked to bring to the November meeting a recommended course of action regarding enforcement for potential Council considerations. A request was also made for staff to provide language for potential bill inclusion.

Current Legal considerations regarding enforcement:

1. Under current OHF law and contractual agreements, the following provisions are present:

- a) While an appropriation is open (prior to acceptance of the final report), legal restrictions on the use of OHF funds are enforceable through contract and/or statutory prescription.
- b) Once an appropriation is closed and the Final Report is accepted, the Notice of Funding Restrictions (NOFR) provides legal restrictions with specific reference to statutory compliance and to compliance with terms and conditions of the Accomplishment Plan. (97A.056, subd.15(c)4, (NOFR language)

2. Guidance from representatives of the MN Attorney General Office (MN AG) provided the following:

- a) The Council should direct enforcement recommendations to DNR. DNR will engage appropriate enforcement actions which may include involvement by the MN AG.
- b) With recommendations for enforcement action, the Council should also consider recommending a source of funding for said action

3. Currently, OHF law and legal agreements are unclear as to the following:

- a) Relevant statute (MS 97A.056) is unclear about who has primary enforcement responsibility and does not delineate specific enforcement mechanisms.
- b) Currently, procedure neither mandates nor details funding steps for Council recommended enforcement actions.

4. Statutorily, the LSOHC fulfills the role of a recommending body to “...make recommendations to the legislature on appropriations of money from the Outdoor Heritage Fund...” (97A.056, subd.3, attached).

Potential Options of Action – Investigation/Enforcement Process

Several options are available for Council consideration, such as the following:

1. No Immediate Action - The Council continues to forward investigation/enforcement recommendations to DNR as situations arise. Upon assessment, DNR can request funding from the Council or legislature as appropriate.
2. Minimal Funding Action – Council could recommend minimal funding for preliminary investigation and enforcement actions. This could be similar to the High Priority Transaction appropriation, or could add to or expand the Contract Management appropriation.
3. Funding and Statutory Language Action – Council could recommend a combination of #2 with some clarifying statutory language.
4. More Extensive Action –This would be a more involved process than #3 that could include funding (with or without a dedicated account) as well as suggested statutory language that expressly provides DNR with the primary authority to investigate/enforce OHF related violations and directs DNR to work with the AG as needed.

Language for potential inclusion

Here are four basic areas for Council consideration regarding adjusting statutory language.

1. Identified in previous examination efforts, MS 97A.056 subd. 15 contains areas that could be better defined through technical changes. (attachment)
2. New subdivisions could be added (eg. Subd. 15a, Subd. 15b) to direct “investigation and enforcement” and/or direct “funds” for investigation and enforcement of land acquisition and use restriction violations.” Subdivisions could direct who investigates/enforces, when the AG becomes involved, who funds actions, and where investigation/enforcement funds come from.
3. Previous discussion of including enforcement language in the OHF bill have shown a variety of Council member views. Council can, and has in the past, provided language within OHF bills amending law. However, some appear to feel that such language may be “creating policy” as opposed to simply “making recommendations.”

Attachments:

ML97A.056, subd. 3.

ML97A.056, subd.15 (sample clarifying technical language)

Sample clarifying language:

“Subd. 15. Land acquisition and use restrictions. (a) ~~An interest~~ Money appropriated from the outdoor heritage fund may be used to acquire a permanent interest in real property, including, but not limited to, an easement or fee title, that is acquired with money appropriated from the outdoor heritage fund must but only if the land will be used in perpetuity ~~or for the specific term of an easement interest~~ for the purposes for which the appropriation was made. Money appropriated from the outdoor heritage fund shall not be used to purchase interests in real property that are not permanent. The ownership of the interest in real property transfers to the state if: (1) the original holder of the interest in real property or a successor in interest fails to comply with the terms and conditions of the appropriation, grant agreement or, accomplishment plan, this section, or the Minnesota Constitution; or (2) restrictions are placed on the land that precludes its use for the intended purpose as specified in the appropriation.”

97A.056 OUTDOOR HERITAGE FUND; LESSARD-SAMS OUTDOOR HERITAGE COUNCIL.

Subd. 3. **Council recommendations.** (a) The council shall make recommendations to the legislature on appropriations of money from the outdoor heritage fund that are consistent with the constitution and state law and that will achieve the outcomes of existing natural resource plans, including, but not limited to, the Minnesota Statewide 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. In making recommendations, the council shall consider a range of options that would best restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife. The council's recommendations shall be submitted no later than January 15 each year. The council shall present its recommendations to the senate and house of representatives committees with jurisdiction over the environment and natural resources budget by February 15 in odd-numbered years, and within the first four weeks of the legislative session in even-numbered years. The council's budget recommendations to the legislature shall be separate from the Department of Natural Resource's budget recommendations.

(b) To encourage and support local conservation efforts, the council shall establish a conservation partners program. Local, regional, state, or national organizations may apply for matching grants for restoration, protection, and enhancement of wetlands, prairies, forests, and habitat for fish, game, and wildlife, prevention of forest fragmentation, encouragement of forest consolidation, and expansion of restored native prairie.

(c) The council may work with the Clean Water Council to identify projects that are consistent with both the purpose of the outdoor heritage fund and the purpose of the clean water fund.

(d) The council may make recommendations to the Legislative-Citizen Commission on Minnesota Resources on scientific research that will assist in restoring, protecting, and enhancing wetlands, prairies, forests, and habitat for fish, game, and wildlife, preventing forest fragmentation, encouraging forest consolidation, and expanding restored native prairie.

(e) Recommendations of the council, including approval of recommendations for the outdoor heritage fund, require an affirmative vote of at least nine members of the council.

(f) The council may work with the Clean Water Council, the Legislative-Citizen Commission on Minnesota Resources, the Board of Water and Soil Resources, soil and water conservation districts, and experts from Minnesota State Colleges and Universities and the University of Minnesota in developing the council's recommendations.

(g) The council shall develop and implement a process that ensures that citizens and potential recipients of funds are included throughout the process, including the development and finalization of the council's recommendations. The process must include a fair, equitable, and thorough process for reviewing requests for funding and a clear and easily understood process for ranking projects.

(h) The council shall use the regions of the state based upon the ecological sections and subsections developed by the Department of Natural Resources and establish objectives for each region and subregion to achieve the purposes of the fund outlined in the state constitution.

(i) The council shall develop and submit to the Legislative Coordinating Commission plans for the first ten years of funding, and a framework for 25 years of funding, consistent with statutory and constitutional requirements. The council may use existing plans from other legislative, state, and federal sources, as applicable.

(j) By July 1 each year, the council shall provide counties with a list of project proposals that include potential fee title land acquisitions in the county that is based on that year's funding requests received by the council from nongovernmental organizations.