

Lessard-Sams Outdoor Heritage Council

MEMO: Agenda Item #7
DATE: Thursday, Sept 27, 2018
SUBJECT: Information: Report on OHF Enforcement discussion - potential inadequacies/remedies.
PRESENTER: LSOHC Staff

Background:

At its August 3, 2018 meeting, the Council asked staff to confer with nonpartisan legislative staff and DNR to discuss whether in fact there exists potential OHF enforcement inadequacies and, if so, what remedies may be available. On Aug, 20, a meeting was held that also included representatives from PF, DU, and TNC. From the meeting's discussion, following are points for Council consideration.

Consensus findings:

1. Legal restrictions on the use of OHF funds are enforceable, but the relevant statute is unclear about who has primary enforcement responsibility nor does it delineate specific enforcement mechanisms.
2. Funding - No procedure currently mandates nor details steps for financing of Council recommended enforcement actions.
3. Restrictions – Nothing precludes the Council from requesting OHF enforcement action nor from providing or recommending funding to finance OHF enforcement actions.

Options for clarification:

1. Session Law or Statutory amendment:
 - If deemed necessary for clarification, by the Council and/or the Legislature, MS97A.056 could be amended to:
 - Provide additional definition to Subd 15 "land acquisition restrictions"
 - Provide investigation and enforcement direction to DNR
 - Provide enforcement direction to the Attorney General
 - Create a designated funding path for council recommended enforcement funds
 - Staff is always available and willing to work with Legislative members of LSOHC, and in general, should law or statute clarifications or additions be deemed advisable.

2. Providing Finances for Enforcement Action Recommendations:

- Should the Council wish to provide funding for its recommendations of enforcement, the Council has several options available including, but not limited to, the following:
 - a) Wait and address actual funding needs as “enforcement actions” arise.
 - b) Pay for “enforcement actions” out of the LSOHC administrative Carry-forward funds and replace the funds with future administrative appropriations.
 - c) Designate within LSOHC’s annual administrative budget a set amount for “enforcement actions”
 - d) Designate within LSOHC Carry-forward administrative funds a set amount for “enforcement actions.”
 - e) Recommend a limited term appropriation within the OHF Bill to fund DNR “enforcement actions.” Similar to the “High Priority Account,” this appropriation could be written to DNR, or it could be written to LCC, for “emerging enforcement issues.”
 - f) Write an unlimited term appropriation, much the same as the individual easement stewardship monitoring & enforcement accounts provided within each easement acquisition appropriation.

(Staff note: Options 2e and 2f provide the advantage of having a formal public record before the legislature of the Council’s recognition that funding will be required if enforcement action is eventually needed)

Staff Recommendations:

Staff recommends the Council direct LSOHC and Legislative staff to work with legislative members on draft statutory language for possible inclusion in this year’s recommendation package. In addition, staff recommends that Council include up to \$250,000 in this year’s package for any emerging potential enforcement issue or actions necessary to protect the investments of the Outdoor Heritage Fund. Staff recommends that the appropriation be directed to LCC as the fiscal agent.