

Lessard-Sams Outdoor Heritage Council

MEMO: **Agenda Item #10**
DATE: January 19, 2022
SUBJECT: Conversion / Conveyance of OHF Protected Lands - ML2017, Ch. 91, Art. 1, Sec. 2, subd. 5(g) – Shell Rock River Watershed Habitat Restoration Program, Phase VI
PRESENTER: Andy Henschel, Shell Rock River Watershed District
 Courtney Phillips, Shell Rock River Watershed District
 Tom Austin, MN Department of Transportation

Suggested Motion:

Motion by Member XX to approve/not approve the Minnesota Department of Transportation living snow fence easement pursuant to M.S. 97A.056, Subd. 15 on the Outdoor Heritage Funded parcel as presented.

Background:

The Shell Rock River Watershed is requesting Council approval to record a Minnesota Department of Transportation living snow fence easement on a parcel that was acquired in fee with Outdoor Heritage Funds (ML2017, Ch. 91, Art. 1, Sec. 2, subd. 5(g) – Shell Rock River Watershed Habitat Restoration Program, Phase VI). The parcel is located adjacent to Interstate 90 in Freeborn County, MN. MNDOT has determined that a living snow fence would improve highway safety in an area that has a history high vehicle crash rates. Approval from the Council would allow MNDOT to construct the snow fence (MN native plant species) and allow MNDOT to manage the snow fence in perpetuity.

Council must follow M.S. 97A.056, subd. 15 due to the parcel having been acquired with Outdoor Heritage Funds and a Notice of Funding Restriction (NOFR) recorded on the deed.

From M.S. 97A.056

Subd. 15. Land acquisition restrictions.

(a) An 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 be used in perpetuity or for the specific term of an easement interest for the purpose for which the appropriation was made. The ownership of the interest in real property transfers to the state if:

(1) the holder of the interest in real property fails to comply with the terms and conditions of the grant agreement or accomplishment plan; or

(2) restrictions are placed on the land that preclude its use for the intended purpose as specified in the appropriation.

(b) A recipient of funding that acquires an interest in real property subject to this subdivision may not alter the intended use of the interest in real property or convey any interest in the real property

acquired with the appropriation without the prior review and approval of the Lessard-Sams Outdoor Heritage Council or its successor. The council shall notify the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over the outdoor heritage fund at least 15 business days before approval under this paragraph. The council shall establish procedures to review requests from recipients to alter the use of or convey an interest in real property. These procedures shall allow for the replacement of the interest in real property with another interest in real property meeting the following criteria:

(1) the interest must be at least equal in fair market value, as certified by the commissioner of natural resources, to the interest being replaced; and

(2) the interest must be in a reasonably equivalent location and have a reasonably equivalent useful conservation purpose compared to the interest being replaced, taking into consideration all effects from fragmentation of the whole habitat.

(c) A recipient of funding who acquires an interest in real property under paragraph (a) must separately record a notice of funding restrictions in the appropriate local government office where the conveyance of the interest in real property is filed. The notice of funding agreement must contain:

(1) a legal description of the interest in real property covered by the funding agreement;

(2) a reference to the underlying funding agreement;

(3) a reference to this section; and

(4) the following statement: "This interest in real property shall be administered in accordance with the terms, conditions, and purposes of the grant agreement controlling the acquisition of the property. The interest in real property, or any portion of the interest in real property, shall not be sold, transferred, pledged, or otherwise disposed of or further encumbered without obtaining the prior written approval of the Lessard-Sams Outdoor Heritage Council or its successor. The ownership of the interest in real property transfers to the state if: (1) the holder of the interest in real property fails to comply with the terms and conditions of the grant agreement or accomplishment plan; or (2) restrictions are placed on the land that preclude its use for the intended purpose as specified in the appropriation."

Attachments:

- Map
- Letter from Shell Rock River Watershed District
- Crash Data
- Draft Easement Language