

## Lessard-Sams Outdoor Heritage Council

**MEMO:** Agenda Item #9  
**DATE:** June 12, 2024  
**SUBJECT:** DNR Request for Federal Encumbrance on 450 ac. parcel within Keystone Woods WMA  
**PRESENTER:** Ann Pierce (Parks & Trails Director), Sarah Wennerberg (Parks & Trails Grants Specialist), Dave Olfelt (Fish & Wildlife Division Director)

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### **Suggested Motion:**

Motion by Member XX to approve/deny DNR placing federal Land & Water Conservation Fund (LWCF) encumbrance on deed of OHF acquired north 450 acre parcel of Keystone Woods WMA.

### **Items for Council Consideration:**

Council review of the request from DNR for placing federal Land & Water Conservation Fund (LWCF) encumbrance upon northern 450-acre parcel within Keystone WMA. Council to receive additional testimony, review documentation, and consider:

- a) Potential OHF Notice of Funding Restriction (NOFR) conflicts: Is the LWCF encumbrance in any way antagonistic to or not congruent with the OHF NOFR or OHF intent of the WMA acquisition?
- b) Supplanting: Would Council approval of the LWCF encumbrance on Keystone Woods WMA be considered a supplanting (with regards to Outdoor Heritage Funds) of the State's obligation to replace Upper Sioux Agency Park lands? Is OHF being used to facilitate a net loss of public lands?
- c) Precedence: If approved, would OHF use be considered as facilitating a net loss of public lands and could the Council be setting precedence for loss of future public lands through the spending of OHF?

(Staff Note - Pittman Robertson – Dingle Johnson (PR-DJ) federal funds (aka WSRF) also carry a federal encumbrance and are placed on some OHF acquired WMAs. PR-DJ encumbrances are uniquely specific and have been in use for several years. LSOHC staff, Nonpartisan legal staff, and DNR staff will be jointly reviewing PR-DJ encumbrances further this summer/fall to determine if any guidance is advised in that regard.)

### **Background:**

**LSOHC staff note** - The information provided below by DNR details use of a federal Land and Water Conservation Fund (LWCF) encumbrance that derives from federal funding via the National Park Service. The information lists the use of a "conversion." For clarity sake, "conversion" is simply the act of removing the LWCF encumbrance from one parcel and placing it upon another parcel.

### **Information provided from DNR**

In 2023, the Legislature directed Minnesota Department of Natural Resources (MN DNR) to transfer ownership of all state-owned lands within Upper Sioux Agency State Park (USASP) to the Upper Sioux Community (USC). Federal Land and Water Conservation Fund (LWCF) designation had been placed on 1,026.38 acres of the park.

The change from public to tribal ownership triggered a LWCF conversion, in which LWCF is lifted from its original boundary and re-designated onto new property, under the approval of the National Park Service (NPS). This designation is consistent with the established practice of placing federal Wildlife Sport Fish Restoration (WSFR) interest on OHF acquired properties. This practice does not convey property interest to the federal government.

In May, MN DNR determined Phase I of the upcoming acquisition of Kelley Farms Cattle Co by Division of Fish and Wildlife had potential to serve as suitable LWCF replacement in terms of value and usefulness. Conversations and correspondence with NPS led to the determination the federal restrictions of LWCF will not impose limitations to management goals of Keystone Woods as WMA nor is LWCF designation counter to OHF funding. NPS allowed a “conversion with delayed replacement” so that DNR could complete the conversion and ownership transfer of USASP by March 15, 2024. We are now working on a replacement package to submit to NPS detailing the alignment of Keystone Woods WMA Phase 1 to LWCF’s goals of public outdoor recreation.

Additional details:

- MN DNR plans to replace USASP LWCF designation on Phase I ONLY
- Sole LWCF restriction: “Activities within the LWCF boundary must support outdoor recreation into perpetuity.” Changes in use would trigger a conversion.
- The appraised value of Keystone Woods Phase 1 exceeds the appraised value of USASP. If LWCF conversions of other properties occur within the next 5 years, the excess value of Keystone Woods Phase 1 could be used to satisfy the conversions without changing (expanding) the LWCF boundary.
- LWCF is made available to states through the Department of Interior’s (DOI) National Park Service (NPS) for land acquisition and/or development of public outdoor recreation systems. Federal restrictions are placed upon parks receiving LWCF assistance, ensuring public outdoor recreation is maintained into perpetuity. Any land undergoing land-use changes within the LWCF boundary must undergo “conversion”, lifting LWCF status from the property and moving it to another property to be maintained for public outdoor recreational use into perpetuity.
- Consistent with implementing regulations 36 CFR 800, NPS authorizes the DNR to act as its agent to assist in meeting the requirements of Section 106 of the National Historic Preservation Act (NHPA) of 1966.
- Typically conversions lift LWCF and immediately encumber new replacement land in one full package. USASP-Keystone Woods conversion is known as a *Conversion with Delayed Replacement*, as allowed by NPS
- Replacement land must be newly acquired land that has not been used for public outdoor recreation previously
- Replacement land must be of equal or greater (federally) appraised value to satisfy the conversion
- Replacement land of greater (federally) appraised value than converted property can be used to satisfy multiple conversions within a 5 year period
- NPS does not obtain ownership interest in any LWCF-designated lands.

## **OHF Statutory Requirements:**

**M.S. 97A.056, Subd. 15** requires that all conversions and conveyances of OHF interests in acquired lands must be approved by the Council and “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.”

### **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:**

- National Park Service Acknowledgement
- Keystone Woods Map
- DNR OHF Use of Funds Memo
- DNR Pittman-Robertson OHF Reimbursement Memo
- Upper Sioux Agency State Park Transfer Map