

Lessard-Sams Outdoor Heritage Council Meeting
Meeting Summary
June 29, 2016

Members Present

Bob Anderson, Chair
Julie Blackburn
David Hartwell
Sen. Bill Ingebrigtsen

Jane Kingston
Rep. Leon Lillie
Rep. McNamara
Susan Olson

Sen. Tom Saxhaug
Barry Tilley
Elizabeth Wilkens

Members Absent

Ron Schara

Call to Order: Call to order at 8:10 a.m. A quorum was present.

Review and Approve Agenda

Motion by Rep. McNamara to approve the agenda for June 29, 2016 as presented. Motion adopted.

Review and Approve Minutes – March 11, 2016

Motion by Ms. Kingston to approve the minutes. Motion adopted.

Conflicts of Interest:

No new conflicts were noted.

(00:01:56) Executive Director’s Report

Executive Director Mark Johnson reviewed a legislative summary of the 2016 session. Mr. Johnson reviewed information provided to members regarding outcomes reporting and the Outdoor Heritage Fund (OHF). He asked the council for approval to provide a recommendation on how to move forward at the August 4, 2016 council meeting. Members discussed the topic and consented generally to having staff provide a recommendation on proceeding with outcomes reporting at the August 4 meeting.

Mr. Johnson reviewed two minor land conveyances/conversions. Mr. Johnson provided an update on the all-terrain vehicle trail application by Crow Wing County impacting OHF project Mississippi River Northwoods Habitat Complex Protection (ML 2012, Ch. 264, Art. 1, Sec. 2, Subd. 3(b)) (MRNW). Members discussed the trail application’s implications for wildlife habitat. Ms. Kingston stated the MRNW project managers referred to snowmobile and bike trails in their accomplishment plan, but never referred to ATVs, nor listed ATV clubs as partners. Mr. Johnson suggested the conversation be continued under the next agenda item.

(00:39:03) Accomplishment Plan Amendment: ML 2014, Ch. 256, Art. 1, Sec. 2, Subd. 6(d), High-Priority Pre-Transaction Service Acceleration for LSOHC

Mr. Johnson reviewed the status of the MRNW trail application and Crow Wing County’s intention to request a land exchange involving a portion of the MRNW property acquired with OHF. Mr. Hartwell asked if it is within the council’s purview to request the Attorney General’s office issue an opinion about whether the county has violated the terms of their accomplishment plan. Janelle Taylor, Legislative Analyst with the House of Representatives, recommended the council make a request to the MN Department of Natural Resources (DNR) to examine the issue on behalf of the state, or the council could work with the Legislative Coordinating

Commission (LCC) to hire legal representation. Mr. Hartwell stated the focus of such an inquiry should be the fact that neither the project request nor the accomplishment plan included ATV trails on the property in question, and, ask now that the county would like to implement ATV trails, can they legally do so? What are the consequences of violating their agreement? Members discussed the issue at length.

Ms. Kingston stated the listing of some forms of vehicle use on the property but not ATVs implies a limit to the vehicle types written into the agreement and an exclusion of everything else not actually listed. She stated the Executive Committee of the council should be represented in any negotiations staff undertakes with the county, with a preference for any members present during the testimony given by project managers. Members continued to discuss the issues. Ms. Wilkens recommended moving quickly to bring in legal expertise as the county is actively moving forward with their activities.

(00:56:43) Mr. Pavelko reviewed the accomplishment plan amendment before the council for ML 2014 6(d), High-priority Pre-transaction Service Acceleration for the LSOHC, pertaining to Crow Wing County's land exchange proposal. Mr. Hartwell stated he will not vote in favor of a land exchange for the county while the ATV issue is outstanding. Mr. Pavelko confirmed that since there is a funding restriction on the property in question, the council has final say over the transaction, however, it is complicated by the presence of tax-forfeit lands which would involve the DNR and the Land Exchange Board. Rep. McNamara suggested the council request the DNR not approve any grants to Crow Wing County pertaining to trails on the MRNW property while the council considers all the related issues. He also suggested that staff provide a summary of legal options available to the council at their August 4 meeting. Member discussion continued.

(01:08:35) Susan Damon, Transaction Manager for the DNR Division of Lands and Management, reviewed the accomplishment plan amendment before the council for ML 2014 6(d), and the land exchange process as it pertains to tax-forfeited lands.

Ms. Blackburn requested legal advice on the ATV issue be obtained and presented at the August 4 council meeting. Ms. Olson further suggested the opinion obtained need not wait to be presented at the next council meeting but should be sent to members and published publically on the LSOHC website as soon as available.

(01:20:30) Motion by Ms. Olson to deny the accomplishment plan amendment for ML 2014 6(d). Members discussed the motion.

(01:30:50) Roll call vote requested on Ms. Olson's motion:

Bob Anderson, Chair - No
Julie Blackburn - Yes
David Hartwell – Yes
Sen. Bill Ingebrigtsen - No

Jane Kingston - Yes
Rep. Leon Lillie - Yes
Rep. Denny McNamara - No
Sue Olson - Yes

Sen. Tom Saxhaug - No
Barry Tilley - Yes
Elizabeth Wilkens - Yes

Motion adopted (7-yes, 4-no).

(01:33:50) Motion by Mr. Hartwell requesting that staff seek legal advice from DNR or the Attorney General on Crow Wing County's MRNW accomplishment plan as it relates to the constitutionality and appropriateness, etc. of their ATV trails initiative. Ms. Blackburn offered a friendly amendment that requests DNR engages in no additional effort regarding trail development or grants. Mr. Hartwell accepted Ms. Blackburn's amendment.

Rep. McNamara requested division of the two parts. Members considered the first part, that staff seek legal advice. Motion adopted.

(01:36:33) Motion by Ms. Blackburn to request DNR engage in no additional effort or expenditure regarding trail development or grants with Crow Wing County on the property in question. Motion adopted.

(01:38:00) Motion by Rep. McNamara to request Crow Wing County stop any activities related to moving forward with appraisals and the land exchange process activity on the property in question.

(01:40:50) Roll call vote requested on Rep. McNamara's motion:

Bob Anderson, Chair - Yes

Julie Blackburn - Yes

David Hartwell – Yes

Sen. Bill Ingebrigtsen - Yes

Jane Kingston - Yes

Rep. Leon Lillie - Yes

Rep. Denny McNamara - Yes

Sue Olson - Yes

Sen. Tom Saxhaug - Yes

Barry Tilley - Yes

Elizabeth Wilkens - Yes

Motion adopted (11-yes, 0-no).

(01:41:36) Savage Fen Land Conveyance for ML 2010 Metro Big Rivers 97A Subd. 15(b)

Peggy Booth, Scientific Natural Areas (SNA) Supervisor, MN DNR, provided an update on the status of pending construction of a bicycle and pedestrian trail in the Savage Fen SNA on lands acquired in part with OHF. Members discussed Ms. Booth's testimony.

(01:51:12) Public Taking of Fish and Game Policy

Mr. Pavelko reviewed the Conservation Partners Legacy (CPL) Grant Program's policy on the public taking of fish and game and differences in interpretation of the language. Jessica Lee, CPL Grant Program Coordinator, MN DNR, testified that CPL has only allowed fee acquisitions under the program that were open to all taking of fish and game, without exception. Members discussed the issue.

(01:54:48) Motion by Mr. Hartwell to support the DNR moving the CPL program to a policy of following the constitutional language with regard to the taking of fish and game. Members discussed the motion. Grant Wilson, DNR liaison to the council, clarified that the DNR does not currently consider CPL proposals for acquisition that would not allow the taking of fish and game and they are seeking direction from the council as to whether to continue interpreting the appropriation law in this way. Members discussed the motion further. Motion adopted.

(02:12:54) Accomplishment Plan Amendment, ML 2014, Ch. 256, Art. 1, Sec. 2, Subd. 3(a), Preventing Forest Fragmentation and Protecting and Restoring Lake and Stream Habitat in the St. Louis River Watershed
Sandy Smith, LSOHC Project Analyst Manager, reviewed the amendment. Thomas Howes, Natural Resources Manager, Fond du Lac Band of Lake Superior Chippewa, answered questions from members about the amendment.

(02:31:00) Motion by Sen. Saxhaug to approve the acquisition of land in the public domain as the purchase creates additional direct benefits sought by the OHF, the purchase will protect forest fragmentation and enable better management of fish and wildlife in the St. Louis River watershed area. Motion adopted by unanimous voice vote (11 members present).

(02:33:44) Accomplishment Plan Amendment, ML 2013, Ch. 137, Art. 1, Sec. 2, Subd. 5(b), Dakota County Habitat Protection/Restoration, Phase IV

Mr. Johnson reviewed the accomplishment plan amendment. Lisa West, Senior Project Manager, Dakota County Environmental Resources Department updated the council on the status of the project. Members discussed the project. Al Singer, Land Conservation Manager, Dakota County, responded to member questions. Rep. McNamara clarified with Mr. Singer that current agricultural leases on the property in question will expire at the end of this year and the land would be restored to habitat. Rep. McNamara confirmed with Mr. Singer that gun training classes would be taking place on the property should the project move forward. Mr. Singer stated it is the easement holder's responsibility to post signage appropriately, however, should the county enter into an option to acquire the fee title, the county would post appropriate signs. Mr. Singer stated ATVs will be used on the land in question for educational and natural resources purposes, and any trails will not be paved. The public will not be able to use motorized vehicles on trails. Members discussed various aspects of the project at length.

(03:37:54) Motion by Rep. McNamara to accept the easement and instruct Dakota County to negotiate with the Grannis family to move the educational building within 5 years to the north east corner of the easement near the road. The boundaries of the easement would stay the same, and the restrictions in the current easement would stay the same. Ms. Wilkens asked that a natural resources management plan come before the council for approval as part of the motion, and that without council approval of the management plan, the project could not move forward. Rep. McNamara accepted the addition of the natural resources management plan approval by the council, i.e., the LSOHC would be a third signatory on the final version of section 4.5 of the Permanent Natural Area Conservation Easement being considered on the property in question.

(03:56:20) Ms. Kingston asked to see the current natural resources management plan. Mr. Singer was not able to provide the plan immediately.

(03:57:12) Motion by Rep. McNamara to table the motion. Motion to table adopted by unanimous voice vote (11 members present). Mr. Singer stated he would provide the current management plan to staff to be distributed to council members.

(03:59:00) Accomplishment Plan Amendment: ML 2015, First Special Session, Ch. 2, Art. 1, Sec. 2, Subd. 4(d) Accelerated Shallow Lakes and Wetland Enhancement, Phase VII

Ms. Smith reviewed the amendment and Ricky Lien, Wetland Habitat Team, MN DNR, and Capt. Tom Buker, MN DNR Enforcement Chief Pilot were available to provide testimony.

(03:59:35) Motion by Ms. Kingston to approve the accomplishment plan amendment. Motion adopted.

Lunch Break

(04:08:10) Presentation: Buffer Regulations

Dave Weirens, Assistant Director for Programs and Policy, BWSR provided the council with an overview of the new MN buffer/riparian protection/water quality law.

(04:33:25) Presentation: Seeing Forests and Wildlife through the Trees: A Primer on Forest Restoration and Habitat Management

Jim Manolis, The Nature Conservancy, Chris Dunham, Forest Manager, The Nature Conservancy

and Mike Larson, Wildlife Research Group Leader, MN DNR gave a presentation on forest management and wildlife.

(05:17:30) Staff Report on Revenues and the Outdoor Heritage Fund

Mr. Pavelko reviewed a staff report on revenues generated by OHF projects. Members discussed the report.

(05:39:20) Motion by Mr. Hartwell to have staff seek guidance from the Office of the Legislative Auditor (OLA) on the appropriate way to handle revenues generated with OHF. Motion adopted.

(05:39:57) ML 2016 Accomplishment Plan Approval

Ms. Smith reviewed the final accomplishment plans for ML 2016/FY 2017. Members discussed the plans.

(05:42:10) Motion by Mr. Hartwell to approve all the ML 2016/FY 2017 final accomplishment plans.

Ms. Kingston requested an explanation from DNR regarding their lower Direct Support Services (DSS) for their programs. Mr. Wilson testified that they did not include "Division Support" costs in their program budgets due to a recent finding by the OLA, reducing for now the DNR's budgets for DSS.

Mr. Hartwell asked ML 2016, Ch. 172, Art. 1, Sec. 2, Subd. 2(i), Grassland Conservation Partnership - Phase II to justify how planned acquisition is expanding for the program into Kittson County, despite their allocation being lower than the amount they requested. Steve Hobbs, The Conservation Fund, testified that a desirable parcel in Kittson County became available which they intend to pursue while staying within the appropriation. Emilee Nelson of The Conservation Fund provided additional testimony.

(05:48:40) Ms. Wilkens asked if legislative action or council decisions effectively change a policy, e.g., trail language, farming activities, local government approval, etc., how are current and past accomplishment plans affected? Greg Knopff, Senate Lead Analyst, stated generally, legislative action is prospective and would not apply to prior appropriations unless specified. Mr. Hartwell suggested the council adopt a trail policy to improve clarity for program managers. Members discussed the issue. Ms. Kingston asked to hear from program managers who did not answer the trails question in their accomplishment plan. Mr. Hartwell asked to hear from the Minnesota Deer Hunters Association (MDHA) regarding trails on their program, ML 2016, Ch. 172, Art. 1, Sec. 2, Subd. 3(b) Jack Pine Forest/Crow Wing River Watershed Habitat Acquisition. Craig Engwall, Executive Director, MDHA, testified that Hubbard and Cass Counties will hold any lands acquired using the appropriation, and not MDHA, therefore, county management policy would apply. Mr. Hartwell asked to see the county trail policies in question. Members discussed the issue.

(06:09:35) Motion by Mr. Hartwell to approve the ML 2016 accomplishment plans with the exception of pending program manager clarification of answers to the trail policy question:

ML 2016, Ch. 172, Art. 1, Sec. 2, Subd. 3(b) Jack Pine Forest/Crow Wing River Watershed Habitat Acquisition

ML 2016, Ch. 172, Art. 1, Sec. 2, Subd. 3(f) Protect Key Forest Lands in Cass County - Phase VII

Ms. Kingston asked that ML 2016, Ch. 172, Art. 1, Sec. 2, Subd. 5(c) Mississippi Headwaters Habitat Corridor Partnership - Phase II also be included in the exception. Mr. Hartwell accepted the addition. Members discussed the motion at length. Ms. Wilkens asked to hear testimony from program managers who used the

term “utmost flexibility” in their accomplishment plans in their answer to the trails question. Members continued to discuss the motion.

Mr. Hartwell asked ML 2016, Ch. 172, Art. 1, Sec. 2, 3(d), Southeast Minnesota Protection and Restoration - Phase IV why the program is considering an acquisition outside the bluff land area of MN. Rich Biske, The Nature Conservancy, testified that the parcel in question is in Rice County, is representative of bluff land as opposed to prairie, and contains Dwarf Trout Lilies, a globally imperiled species. Members discussed the program.

(06:30:10) Mr. Pavelko stated programs using the “utmost flexibility” language in their accomplishment plans are those in which the Board of Water and Soil Resources (BWSR) is involved. Wayne Ostlie, Director of the Minnesota Land Trust, testified he stands by the trail language in ML 2016, Ch. 172, Art. 1, Sec. 2, Subd. 4(d), Wetland Habitat Protection Program - Phase II. Tim Kohler, BWSR, provided testimony to address the members concerns over the language in programs ML 2016, Ch. 172, Art. 1, Sec. 2, Subd. 2(g) Reinvest In Minnesota (RIM) Buffers for Wildlife and Water - Phase VI, Subd. 3(c), Camp Ripley Partnership - Phase VI and Subd. 4(c), RIM Wetlands Partnership - Phase VII. BWSR will work with staff to update the language.

(06:43:18) Motion to approve the ML 2016 accomplishment plans with the exception of 3(b), 3(f) and 5(c) adopted.

(06:44:00) FY 2018/ML 2017 Proposal Overview

Ms. Smith briefly reviewed the proposal evaluation process.

(06:45:48) Opportunity for Public to Address the Council

Ray Bohn, representing the All-Terrain Vehicle Association of Minnesota, provided public comment to the council regarding the council’s discussions of trails and trail policy. Members discussed the issue.

Meeting adjourned at 4:10 p.m.

APPROVED:

Bob Anderson, Chair

Date:

David Hartwell, Secretary

Date: