

NORTHERN COUNTIES LAND USE COORDINATING BOARD

Minutes

Thursday, March 4, 2010

IRR Mining Reclamation Classroom, Chisholm, Minnesota

Call to Order: The meeting was called to order at 9:30 a.m. by Chairman Dennis Fink with the following in attendance and introduced. (All actions of the Board were supported unanimously unless otherwise indicated.)

Member Counties Present:

Commissioner Brian Napstad, Aitkin
Commissioner Bob Fenwick, Cook
Commissioner Jim Johnson, Cook
Commissioner Rich Sve, Lake
Commissioner Todd Beckel, Lake of the Woods
Commissioner Don Jensen, Pennington
Commissioner Oliver "Skip" Swanson, Pennington
Commissioner Jack Swanson, Roseau
Commissioner Dennis Fink, St. Louis

Others Present:

Tom Tri, Barr Engineering
Mark Jacobson, Barr Engineering
Dale Krystosek Board of Water and Soil Resources
Aaron Spence, Board of Water and Soil Resources
Craig Engwall, Department of Natural Resources
Elanne Palcich, Chisholm resident
Bob Tammen, Soudan resident
Pat Tammen, Soudan resident
Douglas Skrief, NCLUCB Staff

Administrative Actions

1. Approval of Agenda with the following additions:

- 1) PILT (Local)
- 2) Minnesota Center for Environmental Advocacy Lawsuit (State)
- 3) Secure Rural Schools Funding Phase Out (Federal)
- 4) Biomass Definition in Forest Cutting (Federal)
- 5) Hubbard County Suit on DNR Veto Authority (State)
m. Beckel s. J. Swanson

2. Approval of Minutes: February 4, 2010 meeting

m. Napstad s. Beckel

3-4. Financial Report and Bills:

Comm. Napstad, in the absence of the Treasurer, reported a general account balance of \$80,487.07 and a Land Use Conflict Management balance of \$15,005.28. Total accounts balance, after receipt of \$21,250.00 in dues and payment of approved expenses of \$1,087.79: \$100,649.28.35.

The Executive Director submitted an invoice for \$913.58 for one month of professional services and expense reimbursement.

m. Napstad s. Sve

Correspondence

1. A letter was received from William H. Becker, the Executive Director of the Lessard-Sams Outdoor Heritage Council, responding to an invitation to attend a NCLUCB meeting. Mr. Becker would be able to attend the June 3 meeting. He will inform the board of future meetings of the council. The next

L-SOHC meeting will be May 26 and 27 in St. Paul. The Chair reported that he had spoken to Mr. Becker by telephone and Mr. Becker offered to attend at an earlier date in the case of an emergency, a response, suggested the Chair, to testimony by the Chair at a hearing in front of Rep. Mary Murphy's House committee. The Chair added for discussion a letter from his office to Rep. Murphy regarding that testimony. The Chair had spoken to Rep. Murphy about issues pertaining to northern counties, that is, the north was not well represented on the Lessard-Sams council and that land acquisition is a goal of the legislation and that a member of the council in addressing NCLUCB indicated that the north was a prime target of purchase. The Chair related that he had expressed a desire for criteria to be established by the oversight committee, and that this would not be just about the economics of the purchase of land but also about social and environmental impacts of purchases of land in specific locations. Rep. Murphy allowed for a broad range of questions at the hearing.

A third "file letter" to the NCLUCB Exec. Director from the Chair reviewed the conversation in the committee meeting. Issues on the table at that meeting included information on and a map portraying public land ownership in Minnesota, revealing nine counties with 50%+ publicly owned land. Forty-eight counties have 0-3% publicly owned lands. The map was the focal point of the committee conversation, reported the Chair, adding that the Association of Minnesota Counties presented the issue of PILT to the committee. PILT payments, now at about \$22 million, are projected at \$26.2 million in 2012. AMC suggested that with the purchase of public lands, monies from Lessard-Sams be used to create a PILT trust fund. It was argued that to divide PILT payments into two categories might in the future jeopardize both. More desirable would be the placing of all PILT funds into one fund – to be defended collectively. Following questions, Department of Natural Resources Assistant Commissioner Bob Meier next spoke and, according to the Chair, responded in defense of a decade-long positive relationship between the DNR and the counties, including pre-project discussions and the sharing of overall goals. Lobbyist John Ongaro and the Chair after this testimony conversed with Comm. Meier. Rep. Murphy later related to the Chair that Comm. Meier had not been forewarned about county testimony.

The Chair also distributed a November 9, 2009, AMC/Minnesota Association of Soil and Water Conservation Districts/Minnesota Association of Watershed Districts Roundtable position statement on the Outdoor Heritage Fund for the information of the Board. The Chair distributed a near-final Draft House Legislative Guide for Constitutional Amendment Expenditures that reflects House guiding principles on how funds should be spent. The document has not been widely circulated. The definition of "preserve, conserve and protect" is alluded to. Former Rep. Bob Lessard understands the amendment was about the improvement of habitat, noted the Chair, while the Guide indicates these concerns are secondary to protecting land from development. Other definitions of interest include those for "acquisition" and "protection" and their potential equivalency.

The Chair added that Mr. Becker was left with concerns over the testimony. The Chair related to Mr. Becker subsequently that a member of the L-S Council had related to NCLUCB that northern counties were prime targets of land acquisition. Minutes were sent to Mr. Becker. Mr. Becker called the Chair and related that only the Chairman and he might speak on behalf of the Council and that the Council is intending to subsidize state agencies involved in activities that would meet the objectives of the Council. Mr. Engwall recalled that means to "restore, enhance, and protect" as stated in law can range from acquisition to easements to restoration projects. The Chair recited that the amendment includes language that land acquisition by fee with money deposited in the outdoor heritage fund must be open to the public taking of fish and game.

Comm. J. Swanson asked if NCLUCB had an overall position against acquisition. The Chair said he had argued that that was not the case, but that the availability of cheap land was not sufficient cause without also identifying social and economic benefit. Comm. Beckel recalled a NCLUCB position on No Net Loss/No Net Gain. The Chair related a process between the DNR and St. Louis County that is approaching Not Net Loss, while in SLC there is a loss of 16,000 acres annually from all sources,

Comm. Napstad provided a personal opinion about "land acquisition", noting that various locally-driven land acquisitions may call for specific support but that a top-down acquisition might trigger No Net Loss discussion. The argument with L-SOHC is that there is not a representative to push for the interests of locally-driven projects. The Chair added that the DNR will sometimes acquire land through transfer from another party. Comm. J. Swanson added concern over the delicacies of "Not In My Backyard" positions.

Comm. Napstad brought the discussion back to representation on the L-SOHC and PILT payments, asking if there is a means to influence decisions. The Chair recalled that a discussion with Sen. Bakk revealed that the Governor is considering a 20% reduction in PILT; another recommendation was a 32% reduction to help reduce the state's budget deficit. Defense of what is already received might be a priority over arguing against acquisitions that might occur. There are no sizeable acquisitions on the L-

SOHC list this year. Mr. Engwall noted expiring terms on the L-SOHC. L-SOHC meetings do begin with an open comment period, the Chair recalled, noting an interest in NCLUCB attendance.

The Board agreed to invite Mr. Becker to the June meeting. Before then, the Board will itemize areas of particular interest to forward to Mr. Becker.

Discussion Issues

LOCAL

1. PILT: Comm. Beckel raised the issue as to the Governor's plan to reduce PILT (above); the latest amount he was aware of was a proposed reduction of six percent. The Chair recalled his discussions of the evening before (see above) with Sen. Bakk who indicated that a much larger figure, proposed by a legislator, was under consideration and that he would be in contact about the matter should he need assistance. The six percent figure, noted Comm. Napstad, may refer to a proposed overall percentage reduction of general fund expenditures.

2. Environmental Protection Agency criticism of PolyMet draft Environmental Impact Statement: News articles were distributed regarding the EPA's finding "unsatisfactory and inadequate" the EIS statement prepared by the Minnesota DNR and the U.S. Army Corps of Engineers. The Chair related that he had spoken with Brad Moore who relayed to the Chair that all but one item had been fully vetted as the EPA required. The synopsis may be rewritten. Mr. Engwall concurred there may be some land use issues in the EIS needing further discussion.

3. Lake Vermillion State Park legislation introduced: News releases were distributed recounting that the Senate Environment and Natural Resources committee introduced a bill to allow the DNR to supercede spending limit guidelines. Mr. Engwall explained that the funding would come from bonding money for acquisition with some funds remaining for development. To create a flagship park would take tens of millions of dollars. Comm. Beckel asked if any recent parks projects had failed due to a lack of funding. Mr. Engwall explained that some projects because of high appraisals may be immediately dropped. This particular project had more public visibility, support of the Governor, and a bonding appropriation before the deal was completed. The Chair recalled that because the land could have been developed there seems to be extra effort to stop the development, a policy that should not be the standard. He added that in discussions at Forests for the Future over the potential of parcelization, one criteria for moving expeditiously was that a project might have moved far enough along to cause concern, language which was removed though the concept may remain as a factor in the minds of decision makers.

STATE

1. Legislative Auditor report on Natural Resource Land due out March 5: The Chair noted the Office of the Legislative Auditor was to release its findings on natural resource lands in the state. Copies were to be available at the auditor's office or on-line. Comm. Napstad asked who was involved in the issue devoted to state payments in lieu of taxes and the adequate compensation of local governments. Mr. Engwall recalled that while he was interviewed for many hours, PILT was a negligible part of the discussion. Comms. J. Swanson and Beckel and the Chair as well as AMC attendees had also been interviewed.

2. President Obama's Great Lakes Plan: The Chair noted a handout on warm public reception of the Great Lakes Restoration Initiative plan but noted a reduction of \$250 million in funding.

3. Presentation: Northeast Minnesota Wetland Mitigation Phase II Update: Tom Tri, Barr Engineering, Mark Jacobson, Barr Engineering, Dale Krystosek Board of Water and Soil Resources Aaron Spence, Board of Water and Soil Resources: Mr. Krystosek presented an overview of the project, recalling that in 2007 the Minnesota legislature appropriated \$375,000 for an inventory of wetland mitigation potential in the eighteen counties of the state with 80%+ of pre-settlement wetlands. A full report will go to the BWSR Board in March. Mr. Tri introduced Mr. Jacobson who has worked for two years on the project.

Mr. Jacobson related that overarching concerns included an overall lack of banking credits, lack of sustainable credits and high demand. Annual deficits have amounted to 235 acres relative to a potential demand for 300-400 acres.

In the second phase, Phase I, completed in 2008, was evaluated. Also, a mitigation siting process was facilitated and a GIS tool for public use was developed. Four main sectors of the economy dealing with wetland mitigation were evaluated: mining, road building, residential/commercial development, and institutional land use. Challenges identified unique circumstances of the region. The search for mitigation opportunities in the region was examined for restoration, preservation, enhancement and creation of wetlands potential. Potential areas were identified by GIS layering – looking at historical location of

wetlands and evidence of ditching, farming and other effects on wetlands. Applying potential credits, which vary from 12% to 100% by category, reduces the total credits by half. In addition, field checking for technical feasibility reduced potential mitigation sites to 45,000 acres. Visits with local landowners across the sample area revealed only ten percent were interested in pursuing mitigation; 40 percent were not informed about the program so could not give a good sense of their interest. Of the 45,000 acres of potential credit, restorations of drained wetland represents the largest portion followed by restoration of farmed wetlands. There are mixes of public and private opportunities. Partially drained wetlands are mostly on public land, for example – these are mostly peatlands in Beltrami and Red Lake area where there remains uncertainty about the potential of full restoration and the granting of easements. Eligibility on state and federal lands requires unique or exceptional values, such as the harboring of threatened species, under demonstrable threat. A question of double dipping arises when there is potential for public subsidy of wetland loss.

Five recommendations came out of Phase II: 1) Develop an interagency committee to carry forward the recommendations – to include consistency of siting requirements, mitigation priorities, guidance documents, and consideration of higher credit percentages certification early in the process; 2) Review a Northeast Regional Mitigation Cooperative – a public entity to promote cooperation, seek funding of \$750,000; sales income would revolve; to develop mitigation based on priorities; 3) Promotion of a watershed based wetland management planning – obtain funding for planning; identify three priority watersheds; identify wetland protection areas; develop a watershed and ecosystem based framework 4) Develop a Northeast Wetland Mitigation Registry – to serve as a communication tool providing information to interested landowners ; 5) Develop BWSR Programs to promote mitigation projects in the area – develop target training for LGUs, consider impact on roads and public lands; consider shorter application process and review; conduct a study to evaluate the history of tax forfeiture on bank sites.

Mr. Krystosek noted that there is a proposed acceptance of the report as created, short of approval of the recommendations proposed. Comm. Napstad added that this would release funds for the project, not endorse the findings. The challenge, he noted, is to identify losses where none have taken place. Mr. Krystosek suggested the report might emphasize the relative lack of credits available in the area and shift focus to the western part of the state where losses have occurred. The Chair suggested that the study may lead to studies in other parts of the state to identify where mitigation needs to be accomplished; state and federal rules say mitigation will be done as close to a site of impact; the study may suggest it is not possible in some areas. Mr. Tri noted a different set of concerns from PCA which weighs in on credit projects with an eye to water quality and other matters; other agencies, in short, weigh in, leading to a rougher process.

Mr. Spence demonstrated the interactive tool, to be housed at the BWSR website, for research of sites – the Northeast Minnesota Potential Wetland Mitigation Finder. Searches can be done using various criteria, including overall potential for mitigation. Concern was raised by Comm. Beckel on broadcasting of information on landowner interests – or disinterest. There has been discussion about how to conceal landowner intentions, there is no landowner information, and the system is protected behind a firewall. A regional cooperative might address some of these policy issues as it relates to the science of the study.

Comm. J. Swanson asked if other parts of the state would be studied. The Chair recalled that initial funding was in part motivated by the promise of creating a model for other areas of the state. Discussion ensued on the future of mining and other needs for mitigation that may focus attention on northeast Minnesota; perhaps the study may be used to prove a need to move beyond that focus. Mr. Krystosek added that mining is basically project-specific; recommendations may indicate a need to go elsewhere or, if there is a cooperative it might be a source of a solution. A discussion is occurring around public versus private mitigation. Multiple hurdles exist on use of partially drained wetlands. The Chair expressed concern about the availability of information to the public, upon whom it is incumbent to defend themselves in the case of violations while agencies and units of government hold data.

Comm. Napstad summarized that the study proves the point that northeast Minnesota is not the place to do mitigation, that that is now quantified, that credits must be sought on public land and that it is now time to create policy. The Chair thanked the presenters.

(STATE) 4. Reinventing Environmentalism Leadership Conference: The Chair reported that the conference, at which he was scheduled to present, is rescheduled for October 1.

5. Exchange of BWCAW trust fund lands with Federal Government: Mr. Engwall reported that the trust fund committee of the state legislature is considering exchange of lands. The DNR manages 90,000 acres of trust fund land within the BWCA. There would be payments to the trust in addition to acreage. The U.S. Forest Service is interested in consolidation of holdings. The exchange would have to be done through Congress. The Chair added that this is a new initiative that does not include the counties. The

St. Louis County land commissioner is a former federal land commissioner and has been invited to the table to provide technical information; this is not to be construed as that the county will have its land piggy backed on the exchange. The trust fund committee and the legislature are pushing the issue in a search for funds, Mr. Engwall noted, adding that the DNR has had an interest in the exchange for some years.

6. User Deed Law Update: The Chair noted a handout in members' packets.

7. Minnesota Center for Environmental Advocacy: Comm. Swanson reported that MCEA is suing Kittson and Roseau Counties over a fact-based argument over the maintenance of a ditch, alleging there has not been a history of maintenance and that the county put spoil on a DNR wetland. The repercussions of a successful suit may be that the county would not be able to maintain any ditches next to state land. The response to the counties' attorney is that MCEA wants all ditches filled in, which would be an assault on agriculture. This suit relates to a Wetlands Conservation Act rule that stipulates that a ditch not maintained for 25 years cannot be touched. The threshold for maintenance is low.

8. Hubbard County and the St. Croix River. Mr. Engwall reported that for years DNR rules stipulated that it must certify local government decisions on a variance in a wild and scenic river setting. A dispute went to the Supreme Court which ruled that the DNR rule, which had given veto power over local governments on shoreland variance in a wild and scenic river area, was not valid. This issue could be reflected in wild and scenic rivers legislation.

FEDERAL

1. President's Great Lakes Plan Initiative funding. See above.

2. NACo and Biomass Definition: The Chair reported that a NACo public lands committee resolution is being proposed that addresses the definition of renewable biomass in federal legislation. It would support the definition from Titles I & III of the 2008 Farm Act for federal and non-federal lands - meaning byproducts of preventive treatments could be counted as biomass. The Arrowhead quarterly inter-governmental agency land use committee has addressed this issue; federal representatives brought it up; counties and states concurred that whole trees should be considered biomass. Comm. Johnson added that there are two related resolutions coming up before NACo, including one that promotes use of wood coming off federal lands for energy. One question is consideration of the whole tree, and brush, as biomass, which influences land management. Mr. Engwall commented that this could be an economic driver in instances like the former Ainsworth plant whose new owners have planned for annual use of 130,000 cords of ground wood, some from public land. Comm. Napstad added that a countervailing argument may be that certain amounts of biomass must be left behind for regeneration; after considering the whole tree as biomass, there can be local decision making as to what proportions of trees are to be left for regeneration.

3. Clean Water Restoration Act: The Chair reported that an Oregon-initiated resolution in support of the CWRA might come forth at the July meeting of NACo.

4. Secure Rural Schools: Comm. Johnson reported that in county news from NACo it was reported that SRS is to be cut one-quarter annually for the next four years and may be discontinued. This will come up at NACo. These are funds first awarded in 1999 to counties in the West in which endangered species legislation curtailed logging and thus the payments from federal timber sales to local schools. This was an approach to uncouple revenue from forests so that the Treasury would pay local units of government based on a three-year average of timber harvest. A second issue is that the federal government receives twenty percent of this revenue stream for restoration of forests in the affected counties. St. Louis, Lake and Cook Counties that have been directed up to 15 percent of those funds toward restoration of the Superior National Forest.

NCLUCB

1. Teleconferencing: The Chair postponed setting a trial teleconference meeting date.

Adjournment at 12:20 p.m.

Next meeting: April 1, 2010, 9:30 a.m. KOOTASCA Senior Center, Northome, MN

Respectfully submitted by Douglas Skrief, Administrator and Exec. Dir.