

Legislative-Citizen Commission on Minnesota Resources

MEMO: Agenda Item #6

DATE: November 18, 2020

SUBJECT: Update and Possible Action: M.L. 2019, First Special Session, Chp. 4, Art. 2, Sec. 2, Subd. 09e
"National Loon Center", National Loon Center Foundation

Summary

The National Loon Center received ENRTF funding in M.L. 2019 to design and build a new National Loon Center on land owned by the Army Corps of Engineers in Cross Lake, Minnesota. The project includes several outdoor/shoreline features as well as construction of an approximate 15,000 square foot building. Several "safety valves" were put in place in appropriation law and the workplan to mitigate risk associated with the project. We have asked the National Loon Center to provide an update on their efforts to the commission today. Staff are also seeking commission guidance on whether an appropriation condition has been met and whether a requested 2-year extension should be advanced to the legislature at this time. Staff also wishes to update members on some conflict of interest issues we are working with the Loon Center and the DNR Grants Unit to resolve.

Appropriation language

The full appropriation reads as follows:

\$4,000,000 the first year is from the trust fund to the commissioner of natural resources for an agreement with the National Loon Center Foundation, in partnership with a fiscal agent to be approved by the Legislative-Citizen Commission on Minnesota Resources, to construct an approximately 15,000-square-foot National Loon Center in Cross Lake dedicated to loon survival, loon habitat protection and research, and recreation. Of this amount, up to \$1,449,000 is for planning, design, and construction of approximately six outdoor demonstration learning kiosks, interpretive trails, boardwalks and boat docks, a fishing dock, and native landscaping along approximately 3,100 feet of shoreline. Any remaining funds are for planning, engineering, and constructing the building and indoor exhibits. A land lease commitment of at least 25 years and fiscal sponsorship must be secured before any trust fund money is spent.

This project requires a match of at least \$6,000,000. At least \$2,000,000 of this match must come from non-state sources. If naming rights will be conveyed, the National Loon Center Foundation must include a plan for this in the work plan. All matching funds must be legally committed before any trust fund money may be spent on planning activities for or construction of the building and indoor exhibits. Net income generated from admissions, naming rights, and memberships to the National Loon Center as a result of trust fund contributions may be reinvested in the center's long-term loon conservation efforts as described in the work plan approved by the Legislative-Citizen Commission on Minnesota Resources according to Minnesota Statutes, section 116P.10.

The general funding breakdown is as follows:

	Outdoor Features (Work plan Activity 1)	Building & Indoor Features (Work plan Activity 2)	Total
Planning and Design	\$ 107,000	\$ 472,000	\$ 579,000
Construction	\$ 1,342,000	\$ 2,079,000	\$ 3,422,000
Total	\$ 1,449,000	\$ 2,551,000	\$ 4,000,000

Legislative-Citizen Commission on Minnesota Resources

Issue #1: Has the 25-year lease condition been met to allow spending on the award?

The appropriation language requires “A land lease commitment of at least 25 years...must be secured before any trust fund money is spent.” Once the lease is obtained, the funds for the “outdoor features” would become available.

The Loon Center successfully secured a 25-year lease, however the lease is only for the building envelope. They have also secured a 5-year lease, together with a Cooperative Agreement, on the area of land where the “outdoor features” would be installed.

The 5-year lease is automatically renewed unless cancelled and cannot exceed the duration of the Cooperative Agreement, which also has a 5-year renewable term and which can be terminated at any time.

The 5-year lease (as well as the 25-year lease) contains a “restoration” clause that may require removal of all (ENRTF-funded) improvements before expiration, revocation, or termination of the lease.

15. RESTORATION

On or before the earlier of expiration, revocation, or termination date of this Lease, the Lessee shall vacate the Premises, remove the property of the Lessee, including all Lessee-improvements, and restore the Premises to a condition satisfactory to the Lessor. If, however, this Lease is terminated by the Lessor because the Lessee is in default with any of the material terms of this Lease, the Lessee shall vacate the Premises, remove said property and Lessee-improvements, and restore the Premises to the aforesaid condition within such time as the Lessor may designate. In either event, if the Lessee shall fail or neglect to remove said property and Lessee-improvements and restore the Premises, or, at the sole specific discretion of the Lessor, title to all or part of said property shall pass to the United States without compensation therefor in lieu of some or all Lease restoration requirements under this clause. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this Lease in restoring the Premises, or any sums expended by the United States for restoration (including, but not limited to environmental responses) of or damages to any other property or any person as a result of the Lessee’s operations on the Premises.

The leases may be non-renewed or terminated if the National Loon Center is not in compliance with other terms of the lease, including fulfilling the Lessee Responsibilities, which have not yet been written.

39. NON-COMPLIANCE

Failure, on the part of the Lessee, to satisfactorily correct any substantial or persistent non-compliance findings within the timeframe specified by the Real Estate Contracting Officer shall be grounds for closure of all or part of the Premises, temporary suspension of National Loon Center Foundation operations, or revocation of the Lease, after notice in writing of such intent.

34. LESSEE RESPONSIBILITIES – FACILITY OPERATION AND MAINTENANCE

As of the of date of issuance of this Lease, **Exhibit B – Lessee Responsibilities** has not been prepared. **Exhibit B** will be prepared by the Lessee, and approved by the Lessor, prior to allowing any member of the general public to utilize the facilities being provided under this Lease or the Agreement. **Exhibit B** will outline the Lessee responsibilities associated with all facility operation and maintenance (O&M) requirements and will be provided to the Lessor no less than thirty (30) days in advance of the official opening of the facilities. The Lessee shall also furnish the Lessor with any supplemental O&M agreements that may be entered into, by and between, the Lessee and any other facility supporting organizations or entities.

Legislative-Citizen Commission on Minnesota Resources

Since this appropriation is via a pass-through agreement with the Department of Natural Resources (DNR), the DNR is seeking guidance from the LCCMR on the interpretation of the appropriation language.

Commission action: *Consensus/motion to write a letter to DNR stating LCCMR opinion that the 25-year lease contingency in the appropriation language has/not been met.*

Issue #2: Request for two-year legislative extension beyond 2022

The appropriation expires June 30, 2022. The Loon Center has requested a two-year extension beyond this time (to 2024). LCCMR typically considers legislative extension requests the year in which they expire rather than the year before the appropriation expires. Most extensions are for one year.

Commission action: *Consensus/motion to request two-year extension from the legislature at this time or defer decision until this time next year.*

Issue #3: Conflict of Interest and staffing capacity management

The Loon Center is primarily a volunteer organization. Board member Leah Heggerston has been serving as LCCMR project manager but will soon no longer be serving in that role. They have requested that Mike Angland serve as LCCMR project manager. LCCMR and DNR Grants Unit have registered concern with the Loon Center about this arrangement. Mr. Angland has been elected to the Loon Center board of directors and works for a firm that has been granted a sole source contract to design and engineer the National Loon Center. Serving in all three roles (project manager overseeing project work and reporting on finances of the project; engineer performing project work for approval by project manager & board; and member of board that approves work of engineer and also has influence on scope of work and contracting) presents several vectors of conflict of interest. We have discussed this with the project team and they are now considering in which two (rather than three) roles Mike will continue to serve, as well as proposing a plan to mitigate the conflicts of interest that would remain.

Commission action: *No commission action needed at this time; LCCMR and DNR Grants Management Staff are working with Loon Center on this issue*

Materials

- 5-year lease of “outdoor features” area
- 5-year cooperative agreement that operates in conjunction with the 5-year lease
- 25-year lease of building envelope