

Legislative-Citizen Commission on Minnesota Resources

MEMO: Agenda Item 4

DATE: August 27, 2022

SUBJECT: Town of Crane Lake request to convey interest in land acquired with ENRTF funds

Summary

The Town of Crane Lake has received three appropriations from the Environment and Natural Resources Trust Fund totaling \$6,750,000 to acquire land, build a visitor center for Voyagers National Park and build a National Park campground. Approximately twenty-eight acres of land were acquired by the Town of Crane Lake in 2017. The land was acquired as a common interest community (CIC) with outstanding rights owned by a neighboring landowner. For the land to be developed as intended, the CIC needs to be terminated and the rights divided between the two parties accordingly. This involves conveyance of interests in the land acquired with ENRTF, which triggers the need for LCCMR approval.

In reviewing the Town's request for the conveyance, LCCMR & DNR Grants staff learned about environmental contamination issues affecting the property that pre-date the Town's acquisition of the land. Future action by the commission will be needed to convey interest in property for an environmental covenant and easement access. Although, no action by LCCMR is needed related to the contamination at this time, LCCMR staff felt it significant enough to warrant notifying the commission.

Given that the standard practice is that lands with outstanding ownership rights of this type and lands with recognized environmental conditions are not acquired prior to resolution of these issues, and that careful adherence to procedures for ENRTF - funded acquisitions should ensure this, further scrutiny may be needed for any future acquisitions proposed by the entities involved in this project.

Request to Convey an Interest in Land Acquired with ENRTF

Approximately twenty-eight acres of land were acquired on December 21, 2017, by the Town of Crane Lake with ENRTF funds for the purpose of building a visitor center for Voyagers National Park and a National Park campground. Two subsequent ENRTF appropriations were awarded in 2021 for the Town to design and construct the visitor center and campground.

The land was acquired by the Town as a CIC in which 14/15ths of the common interest elements were owned by the seller and 1/15th of the common interest elements was owned by a neighboring landowner. The result is that the Town of Crane Lake acquired the property but does not have full ownership and ability to develop and use the property as intended.

To move forward with the campground and visitor center project, Common Interest Community #84 needs to be terminated and the rights divided between the two parties accordingly. The Town's proposal, and request to LCCMR, is to convey to the neighboring property owner 0.1 acres of land, a road access easement, and an approximate 15' wide private dock access easement across land acquired with ENRTF funds. In exchange, the neighboring property owner would convey to the Town of Crane Lake the neighbor's 1/15th common elements ownership interest in the land acquired with ENRTF funds.

LCCMR has received assurance that the exchange of rights is consistent with the scenario contemplated in the appraisal that set the purchase price for the original acquisition. The value of the rights exchanged is likely below the threshold of needing a new appraisal per DNR appraisal guidelines. It is also assumed that the interests being exchanged are equal in value and thus no re-payment to the trust fund is needed.

Legislative-Citizen Commission on Minnesota Resources

The letter requesting the conveyance and additional materials are attached.

In compliance with statute M.S. 116P.15 Subd. 2 (b), the chairs and ranking minority members of House and Senate Environment Committees have been notified.

Environmental contamination issues affecting the property

While reviewing the request to convey land, staff became aware of environmental contamination on the site that had not been properly disclosed or addressed prior to acquisition. Based on information that has since been obtained from the Minnesota Pollution Control Agency (MPCA) and Town of Crane Lake, it is staff's conclusion that the environmental issues are now being adequately addressed in accordance with laws and regulations. Further, it is staff's understanding that ENRTF/LCCMR is not exposed to liability. While costs for Phase I and Phase II site assessments and a Response Action Plan are allowable project costs, staff have ensured verbally with the project team as well as in the work plan that no ENRTF funds are being spent for purposes of environmental compensation and liability under chapter 115B and response actions under chapter 115C, which are statutorily prohibited uses for ENRTF.

The following is a chronology and description of environmental issues and actions affecting the property:

- In 2010, petroleum contaminated soils were discovered and reported to the State. The release was attributed to the former Crane Lake Resort, which operated two gasoline aboveground storage tanks (ASTs), two gasoline underground storage tanks (USTs), and one UST with unknown product near the lakeshore on the northwest portion of the site. The tanks are thought to have been removed in 1993.
- In 2013, the Minnesota Pollution Control Agency (MPCA), began monitoring the Leak Site No. 18150 as part of the MPCA's Petroleum Remediation Program. (July 27, 2022 email MPCA)
- In 2017, a monitoring report indicated there was a threat to adjacent surface water including Crane Lake to the north and Camp Forty Creek to the west. Petroleum Volatile Organic Compounds (PVOC's) were identified from groundwater monitoring wells that exceed Minnesota Department of Health HRLs (Health Risk Limits) and Minnesota Class 2A Surface Water Quality Standards.
- In 2021, the extent of soil and groundwater impacts from the former storage tanks was defined, and cleanup using in-situ chemical oxidation (ISCO) remediation was identified to eliminate the discharge of petroleum contaminated groundwater to Crane Lake at concentrations that exceed surface water standards. The ISCO remediation will involve the injection of an oxygenating compound into monitoring wells and the removal of the compound along with petroleum product from these wells. (Remediation system detailed corrective action design (SCAD) report, MPCA, 9/20/2021)
- In April and May 2022, the Town of Crane Lake completed a Phase 1 and Phase 2 Environmental Site Assessment and Response Action Plan respectively, that were submitted to the MPCA.
- In June through August 2022, the Town of Crane Lake applied to the MPCA Brownfield Program, the MPCA provided a petroleum tank general release liability letter, and the MPCA approved the Response Action Plan/Construction Contingency Plan. Approval is contingent upon additional conditions and clarifications, including among other things: not developing the treatment area until after treatment completion date; not damaging monitoring wells; ensuring proper vapor mitigation system is installed in construction of the building; recording an environmental covenant and easement on the property to document the affirmative obligation to operate and maintain the vapor mitigation system and allow MPAC access to monitor the site, (this will require commission approval per 116P.15); guidance for handling petroleum impacted soil if discovered during construction; obtaining all other required state, federal, and local government permit; and providing to MPCA an implementation report describing completed response actions (Response Action Plan Approval Letter, August 3, 2022, MPCA).

Legislative-Citizen Commission on Minnesota Resources

As of July 27, 2022, the anticipated completion date for the cleanup is October 15, 2022. Post corrective action groundwater monitoring by MPCA will occur following completion and until the leak site file can be closed, estimated timeframe: one to three years after October completion date. (July 27, 2022, email MPCA)

Relevant appropriations

M.L. 2017, Chp. 96, Sec. 2, Subd. 09i Land Acquisition for Voyageurs National Park Crane Lake Visitors Center \$950,000

M.L. 2021, First Special Session, Chp. 6, Art. 5, Sec. 2, Subd. 09s Crane Lake Voyageurs National Park Campground \$3,100,000

M.L. 2021, First Special Session, Chp. 6, Art. 6, Sec. 2, Subd. 09n Voyageurs National Park Crane Lake Visitors Center Project \$2,700,000

Related Statutes

116P.15 LAND ACQUISITION RESTRICTIONS.

Subdivision 1. Scope.

A recipient of an appropriation from the trust fund or the Minnesota future resources fund who acquires an interest in real property with the appropriation must comply with this section. For the purposes of this section, "interest in real property" includes, but is not limited to, an easement or fee title to property.

Subd. 2. Restrictions; modification procedure

- (a) An interest in real property acquired with an appropriation from the trust fund or the Minnesota future resources 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 work 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 who acquires an interest in real property subject to this section 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 commission or its successor. The commission shall notify the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over the trust fund or Minnesota future resources fund at least 15 business days before approval under this paragraph. The commission 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:

Legislative-Citizen Commission on Minnesota Resources

"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 Legislative-Citizen Commission on Minnesota Resources 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 work plan; or (2) restrictions are placed on the land that preclude its use for the intended purpose as specified in the appropriation."

116P.08 TRUST FUND EXPENDITURES.

Subd. 2.Exceptions. Money from the trust fund may not be spent for:

- (1) purposes of environmental compensation and liability under chapter 115B and response actions under chapter 115C;

Attachments

- Request letter from Town of Crane Lake and exhibits
- Petroleum Tank General Release Liability Letter
- Response Action Plan/Construction Contingency Plan Approval Letter
- MPCA Environmental Covenant and Easement
- All documents referenced in the memo above are in LCCMR staff files and can be provided if requested.

Staff Note

Both the property rights and environmental issues should have been addressed by the Town of Crane Lake before the land was acquired. Although adequate solutions were possible in this case, issues like these introduce significant risk to a project and could prevent a project from moving forward as intended. Future acquisition projects from the entities involved in this project will need to include greater review to ensure situations like this are address proactively and not reactively.

Action

Future action will be required per 116P.15 after the Town of Crane Lake submits a request to convey interest in property rights for the environmental covenant and easement access. The environmental covenant and easement records, among other things: the contamination issue; affirmative obligations of the owner; activity and use limitations; and right of access to the property. This is a requirement identified in the MPCA Response Action Plan/Construction Contingency Plan Approval Letter.

If acceptable to the commission, the following motion could be considered:

Move to approve/deny the Town of Crane Lake's request to convey to a neighboring property owner 0.1 acres of land, a road access easement, and an approximate 15' wide dock access easement in exchange for the neighboring property owner to convey to the Town of Crane Lake the neighbor's 1/15th common elements ownership interest in the land acquired with ENRTF funds in 2017.