

From: Ben Stanley <ben.stanley@mnsenate.gov>

Sent: Thursday, July 11, 2024 1:33 PM

To: Mark Johnson <mark.johnson@lsohc.mn.gov>

Cc: Joe Pavelko <Joe.Pavelko@lsohc.mn.gov>; Janelle Taylor <janelle.taylor@house.mn.gov>; Brad Hagemeyer <brad.hagemeyer@house.mn.gov>; Daniel Mueller <daniel.mueller@mnsenate.gov>

Subject: Follow Up Request Re: Keystone Woods

Mark,

This email is in response to your request for our opinion on whether placement of a Land and Water Conservation Fund (LWCF) designation on land acquired with outdoor heritage fund (OHF) money requires approval by the Lessard-Sams Outdoor Heritage Council (LSOHC) under M.S. 97A.056, subdivision 15, paragraph (b), which provides that “[a] recipient of funding that acquires an interest in real property subject to this subdivision may not...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.” For the reasons stated below, we believe that the statute does not require LSOHC approval in this situation.

Agreements affecting the use of real property can take the form of conveyances of interests in the property or contractual agreements. The former includes things like easements, which generally endure regardless of who owns the underlying property and must be recorded to be effective against subsequent purchasers. The latter are contracts between the parties to the agreement. They usually do not affect subsequent purchasers and are not recorded.

LWCF grant agreements have none of the indicia of a conveyance of an interest in real property. This can be seen by examining the 1970 Land and Water Conservation Fund Project Agreement (“grant agreement”) between the state of Minnesota and the federal government under which Minnesota received LWCF money to purchase the property for Upper Sioux Agency State Park. This nine-page agreement contains no language suggesting that an interest in real property is being conveyed. To the contrary, it provides on page 4 that “[t]he State of Minnesota will hold fee simple title to this property.” And this is consistent with federal law, which provides that when states receive federal grants to acquire real property “title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity” (2 C.F.R. 200.311). Nor as far as we know is this agreement recorded, as it must be under Minnesota law to be effective against subsequent purchasers. While the agreement, therefore, looks nothing like a conveyance of an interest in real property it looks very much like a grant agreement, which is a contract. Under that contract, Minnesota agreed to comply with the terms of the grant agreement as well as various LWCF statutory and regulatory requirements, including the requirement to seek federal approval before conversion the property to some other use.

Where, as here, OHF recipients enter into contracts with third parties that affect the conditions under which affected property can be disposed of, it “feels like” the LSOHC should have a say in the matter. But the relevant portion of 97A.056, as currently written, requires LSOHC approval only where an interest in real property is conveyed, which does not appear to be what is happening when DNR enters into LWCF grant agreements that are consistent with the applicable OHF appropriations and accomplishment plans.

Thank you,

Ben & Janelle