

**NORTHERN COUNTIES LAND USE COORDINATING BOARD**  
**Minutes**  
**Thursday, March 5, 2009**  
**Iron Range Resource Center, Chisholm, MN**

Call to Order: The meeting was called to order at 9:35 a.m. by Chairman Fink with the following in attendance. (All actions of the Board were supported unanimously unless otherwise indicated.)

All Member Counties Present:

Commissioner Brian Napstad, Aitkin  
Commissioner Jim Johnson, Cook  
Commissioner Charles Lepper, Koochiching  
Commissioner Todd Beckel, Lake of the Woods  
Commissioner Jack Swanson, Roseau  
Commissioner Dennis Fink, St. Louis  
Commissioner Steve Raukar, St. Louis

Others Present:

Craig Engwall, Department of Natural Resources  
Elanne Palcich, citizen  
Bob Tammen, citizen  
Pat Tammen, citizen  
Douglas Skrief, NCLUCB Staff

Introductions

Administrative Actions

1. Approval of the agenda with the following additions:

- 1) Local: Permitting issues (Swanson)
- 2) State: Stimulus and budget (Fink)
- 3) State: Watersheds (Lepper)
- 4) Federal: Land Trust for Native Americans  
m. Beckel s. Johnson

2. Approval of Minutes: February 12, 2009 meeting

m. J. Swanson s. Lepper

The Chair recommended that similar thorough minutes be kept. The Board asked that drafts be distributed to them when completed.

3-4. Financial Report and Bills:

Treasurer Raukar reported a general account balance of \$90,897.98, including \$13,750.00 in dues payments, and a Land Use Conflict Management balance of \$15,005.28. Total accounts balance, after payment of approved expenses: \$105,903.26

m. Raukar s. Napstad

The Executive Director submitted an invoice for \$852.94 for one month of professional services and expense reimbursement.

m. Raukar s. Napstad

Correspondence

1. The Chair distributed for information a copy of a reference to NCLUCB and himself as contained on the user-written Wikipedia website entry devoted to Wise Use. Under the heading "Fringe groups associated with Wise Use" there appears the wording "In Northeastern Minnesota, the Northern Counties Land Use Coordinating Board has a history of ties with wise use, as does St. Louis County Commissioner Dennis Fink." The Chair recalled a past tendency of the Board to lean to the side of concern over individual property rights as opposed to strong environmental interests that urged more public

ownership. The current Board has moved again to the middle of the road, addressing, as they come up, issues that affect counties. The term “fringe group” may still be of concern. Comm. Beckel noted that under the previous Director, the Board was a reactionary “fringe group” but now sits at the table with input of outside agencies. The low credibility of Wikipedia was noted by Comm. Raukar who added that as anyone can add to the site there may be an opportunity to list accomplishments and correct a misperception. The Chair said that he would add, as a corrective, the mission statement for Northern Counties to the Wise Use entry.

The Director passed out a proposal for services to design and maintain a website for NCLUCB from North Star Interactive. Comm. Swanson remarked on the relative low cost for the services listed, especially that of updating. Links would be included. Other organizations can link to the Board site at their discretion.

Motion: to give authority to the Chair and the Executive Director to enter into a two-year contract not to exceed \$2000 over two years with North Star Interactive Web Design and Multimedia for the following services: 1) Build a 5-page website for a one-time \$400 fee; 2) Register a domain name and host the site for two years at a rate of \$139 per year; 3) Maintain the site and do unlimited updates of materials supplied by NCLUCB for a flat \$540 annual fee for two years. While a previous website was paid for from the Conflict Management Fund while the conflict process was active, a consensus of the Board agreed the current use will be more general, and that funds should come from the general account. Comm. Napstad asked that the promised 24-hour turn-around time on updates be tracked so that alternatives may be used should there prove to be a lag time.

m. Fink s. Napstad

The Director asked for Board review of content. Comm. Napstad recommended a closed-site review by the whole board before it is opened for public viewing.

## Discussion Issues

### LOCAL

#### 1. Economic Stimulus Package, and the State Budget Forecast as announced by Governor

Pawlenty: The Chair reported that the Governor had announced state transportation projects to be funded by the federal stimulus package; no local projects were yet included. The Chair distributed a one-page handout by John Ongaro that reviewed the effect on the state’s projected \$6.4 billion-deficit of \$1.8 billion in stimulus funds. The matter is complicated by a newer state law that requires the state government to balance the projected budget for the following biennium as well as the current one. The 2012-2013 budget, with a projected \$9.7 billion deficit, points to a potential need for structural change.

As a starting point for discussion, Comm. Napstad referenced the \$236 million surplus projected for 2009; does this mean unallotments will stop for this year or will there be a second round? The Chair said his county was under the impression that no new unallotments will take place, but that the Governor will reserve the right to make June payments in July, which would move problems to 2010. The county would add an extra month of carrying costs. Comm. Napstad argued that there are some long-term inherent structural problems. Public meetings heavily attended by government employees arguing for increases rather than cuts pointed out disparity of priorities. While the Governor has, with dated projections, figured in the stimulus, the Legislature has not voiced its interests. The Governor’s budget may now be on the table, thought the Chair, adding that the Governor is recommending no new taxes while all government levels will have to share the burden. The Governor will not approve revenue increases. Sen. Tom Bakk has indicated, on the other hand, that there will be new sources of revenue.

Comm. J. Swanson stated that he had testified at the Town Hall session in Bemidji in which 72 out of 75 of the people attending were providing or receiving services and asking that those services be expanded and that they favored an income tax increase to pay for them. A large number of others are against such measures. The AMC redesign concept addressing structural issues is a problem because the state is so tremendously and almost equally divided.

Comm. Raukar witnessed similar responses at another Town Hall meeting. While the Governor has asked for no new taxes, information from a tax study group that analyzes the taxing situation points to the need for a review of the situation in which fees replace taxes and, in a poor economy, in turn result in disappearing revenue streams. This information should be shared for better understanding.

The Chair recalled a presentation to the AMC Board of Directors by Jeff Van Wicken who has been asked to participate in a redesign program. Also noted was a legislative listening session in the Duluth area at which Comm. O’Neil testified on social programs significant to the area. Sen. Solon, Rep. Huntley and Rep. Reinert hosted a group at which medical and social service attendees asked that their programs

not be cut. Rep. Huntley responded to criticism of not supporting the Marty Bill by pointing out that the cost of health care in Minnesota is \$50 billion a year while the biennial budget is \$32-24 billion; support of the Marty Bill to cover health care costs of everyone demands a national solution; we would have to double income tax. Some in audience demanded that it be done. The population is divided. Comm. Raukar, commenting on listening sessions, suggested that representatives may be looking for political cover to attack the governor while on the path to costly, less efficient government by referendum.

Comm. Napstad commented that in making a trip to solicit citizen comment in several counties he found no demand for increased taxes; a "silent majority" exists. Facing NCLUCB and counties is the specter of decreasing numbers of "651s" or "612s" who currently pay 72 percent of the levy in Aitkin County; many are looking at selling their second homes that will lead to a depression of property values. There may be a point where levies are not going to be paid by 612s and 651s and people will see dramatic fall in property values while assessments increase. Related to this is that many Board counties that have tourism in their areas also face the loss of land from private tax roles. Mr. Engwall noted that in seeking refinancing Itasca residents were finding that the appraised values of property were ten to twenty-five percent below the assessed value. The reduction is after the fact, added the Chair, in that it takes the sale of properties to establish, later, the assessment value.

2. Permitting Comm. J. Swanson introduced a conversation between the City of Roseau and Roseau County of an attempt at collaboration in the delivery of services. This led, at a meeting of the Roseau watershed district board, to discussion of the cost of engineering services. The consulting engineer to the district estimated that 30 to 50 percent of their cost is related to permitting issues with BWSR, PCA, the Army Corps of Engineers and others. The engineering costs of a project about ready to go to bid in Roseau County are \$900,000 of which, according to a consulting engineer, 40 percent is devoted to permitting. The engineer opined, "There is too much authority in each agency and no accountability." Discussion followed that if counties are being asked to collaborate, should the counties not be able to ask for some collaboration of state and federal agencies to streamline their permitting. Would AMC propose this as a platform?

The Chair replied that Michigan, as a Section 404 Clean Water Act permitting organization, is considering giving its authority back to the federal government because of a lack of staff and onerous costs. Environmental groups and governmental interests argued for retention, because the state has better control and shorter response time. AMC probably cannot take this on this year. The NACo land use committee, of which the Chair is a member, might be approached.

In a specific example facing the Roseau watershed district, Comm. Swanson related that a relatively small on-channel water impoundment project has gained DNR and BWSR approval but that a Fisheries representative will argue against it. This will lead to increased costs as alternatives are sought. Should one entity have a right to end a project or increase costs beyond available means, he asked. Comm. Beckel raised caution in the context of collaboration as to who will move a project forward and who will be in charge. Comm. Raukar noted that while permitting is a necessary part of checks and balances, attention must be paid to related increases in costs to those seeking projects and the dependence of agencies that may grow dependent on the revenue stream provided by the permitting process; this needs close attention. Board counties might bring more examples to build a case. The Chair could bring a resolution to the July meeting of NACo, but that would require putting a case together by May 15. Basic information, for a policy of nature, can be sufficient to initiate deeper NACo policy consideration.

Comm. Napstad related that Aitkin County has been awarded, due to the federal stimulus package, two shovel-ready bridge projects for \$1 and \$1.5 million. One bridge project may be in jeopardy due to the historical context of the construction of the Aitkin County Diversion Channel and the related bridge, due to a recent finding of an option to deny by the State Historical Preservation Office. This is a dangerous bridge that needs replacing. Mr. Engwall offered to make comment to SHPO. He related that in the creation of the Hill Annex State Park in 1988 note was made that mining had taken place and, separately, that it might occur again. Stockpiles of mining waste can now be sources of iron creation, and companies now are interested in their use, but historic interests say no to disturbance.

3. Watershed Comm. Lepper related content of a letter from the Red Lake Watershed to Koochiching County in opposition to a legislative proposal that would require county approval of watershed budgets, and seeking support of opposition as it would end or slow some projects. The watershed district is limited in what it can spend. Koochiching County Board tabled the issue awaiting other input. Roseau Watershed District would take a similar position to Red Lake opposition, Comm. Swanson said. The Roseau County Board holds that it would, with the involvement of commissioners, politicize the process and stall progress of projects. The proposal spun off from a proposal last year to tax a whole

watershed basin, noted Comm. Beckel. Because watersheds cover numerous counties, approval would be a problem, added Comm. Swanson.

Comm. Napstad distinguished two issues, one being the basin-level management issue, which concerns relying on political boundaries for water management. On the other, AMC has a general policy that non-elected people should not have levy authority, therefore AMC's position is that county boards should have budgetary approval capability because they are closest to an elected body in regards to the watershed organization. There is no law that caps a watershed's levy authority. The county board would not be asked to approve individual projects but only a budget. From a mechanical standpoint, a district would note its last budget and ask for approval of the next year's budget.

Comm. Lepper noted that the watershed district is required to hold public meetings on its annual budget proposals. They can levy a maximum of \$250,000 a year. The Chair suggested a compromise position in which a watershed board be comprised in part of elected officials from the communities affected. A parallel may be the Governor's proposed social service directives that would set up organizations external to county boards. At what point, asked the Chair, is a new additional level of non-elected government created and taxing authority allowed? Regional development agencies have elected officials while also having levying authority.

Comm. Swanson commented that, as it regards water issues, having elected officials involved may not be best. SWCDs, for example, are elected but do not have levy authority. The Chair noted three controlling factors of quality in the country: land, water and air issues. To give up one would be significant.

The issue would be handled on a policy issue level at AMC and to table a decision might be best at present, urged Comm. Napstad. The issue – House File Number 109 and Senate File 266 - will be on the Board's next agenda.

## STATE

1. Lessard Outdoor Heritage Council Mr. Engwall reported on an upcoming meeting of the council, recalling that there are twelve members, with four legislators and eight citizens, and a super majority of nine is needed to recommend project funding. They have six meetings to decide the distribution of \$70 million. The administrator is creating allocation spreadsheets on projects that have seven supporting votes. Related to this, the council has asked Mr. Engwall about the Blandin project to take place over the next two years. He has presented to the Itasca County Board and can address other affected boards.

Comm. Johnson suggested that if a project is going to affect particular counties that those counties be invited to be part of the discussion. Consultation, mindful of local experience, can reveal what is working presently, leading to better redesign. Mr. Engwall concurred, noting that in the unique Blandin forest project he had consulted with the Land Commissioners group.

The Director reported that he had extended an invitation to LOHC member Les Bensch, and that while conflicts did not allow him to attend the present meeting he was very interested in meeting with the Board in the near future. Mr. Engwall asked after the two-thirds of the funding not included in the LOHC portion. Comm. Johnson said he had put his name in for nomination and had not heard back. The same happened to Dick Brenner from Aitkin County, the Chair added. Structure similar to the LOHC does not exist on the other fronts.

A question arises as to whether the governor may wish to make use of some of these funds to support other agency work without violating the law, commented the Chair. Legislators sitting on the LOHC have put bills forward.

Comm. Napstad asked if a Board policy need be in place before a presentation by the LOHC, especially considering that Board counties have representatives that have been on both supportive and not supportive of the amendment that created it. The Chair recommended starting with research. Comm. Johnson advocated working now toward representation on the council in the future.

2. Shoreland Rules Comm. Napstad reported the rule committee is now at the point of moving from policy discussion to draft language in eight sections. He commented on the proposal to combine wild and scenic rivers ordinance into the shoreland rules. Discussions revolved around different definitions of "wild and scenic": there is a Federal Wild and Scenic Rivers Act, encompassing for example the St. Croix River. There is a state wild and scenic designation; and there is a wild and scenic designation that covers the upper 400 miles of the Mississippi River. Local, state and federal rules are different. The combining of the state wild and scenic rules into the shoreland rules does not change the rules, though it creates a larger document to read. The Chair said his county staff is concerned that in using the same language it will be difficult to determine where rules apply only to wild and scenic rivers and where to shorelands. There

might be a “point” that identifies when the designation refers to one or the other. The issue, while now confined to the Kettle River, may apply to northern counties in the future.

Comm. Napstad reported that there will be a four-year, rather than the usual two-year, period for county adoption after rule finalization. Legislation is presently being proposed to suspend the creation of new rules until funds are available to enact them. In other matters, there have been clarifications, for example, as to whether local governments “must” have sufficient staff. Suggested was that county boards or administrators approve overhead costs estimates so as to include the full cost of employees. The DNR will have to put together a SONAR statement, though it is not clear that the DNR will include in the document that the state will fund it. County representatives are pushing back to protect property tax dollars.

The rule committee has adopted “lots of record”. A shoreland owner who wishes to maintain the status quo of their property will not be affected by the rule changes. If a lot is to be developed in the future it will not make the lot obsolete but it will restrict change, such as regarding impervious surfaces. Developers will have to have larger lot sizes or conservation easements or dedications to the public - some level of guaranteed green space so property is not overdeveloped. Common open space shall be dedicated to and maintained by local governments; language has been added that local government will maintain if it has approval authority to do so. Developers will have to provide some funding mechanism to cover these costs. The committee did consider the ownership of easements. Historically parts of developments were dedicated to common use, though they have been built on since. The committee determined that these dedications be held by the plat.

The next and final statewide policy committee meeting will continue draft language review. A joint meeting with the LGU committee will follow to flesh out language as it pertains to enforcement.

The Chair distributed a document listing members of the Statewide External Advisory Committee (SEA), the Local Government Unit Advisory Committee (LGU), and the Grand Rapids Geographically Focused Input Advisory Committee. The St. Louis County planning department, the Chair reported, brought up additional points, including language on the banning of new boathouses and allowing repair of existing structures; there might be language included as to dimensional limits based on modern standards of housed craft. Another concern is local responsibilities, for example, that local governments are to implement an incentive, marketing, or educational program to encourage riparian property owners to protect and restore natural shoreline buffers – with minimums, including monitoring and evaluating every three years. This would demand two or three staff people in St. Louis County.

Comm. Napstad noted that in regards to restoration of shoreland buffers, mandatory language was modified. Experience in Minnetonka, where a township refused to comply, encouraged the more pragmatic approach of educating shoreland owners, a step seen as successful in Aitkin County. In the latest rule language, buffer restoration will be encouraged. A marketing program will be developed by the DNR while local governments will use funds from block grants to distribute the information to the public. The Chair noted that without new money other uses of these funds would be shortchanged. Mr. Engwall suggested that Erica Rivers might address this issue for the Board as she has experience in promoting education for voluntary buffer creation. Comm. Napstad added that monitoring is to track the effects of education. Perhaps “evaluating the effectiveness” might be better than “monitoring”. Comm. Johnson commented that the Fire Wise program helps to distribute information. Neighborhood or association monitoring, it was pointed out, can lead to frictions, as can official monitoring.

3. State PILT payments. A permanent twenty percent cut has been proposed in the governor’s line item budget. There is a question as to how more land might be acquired by the state when taxes are not to be paid. The DNR is asking how it can manage more land without more resources to do so. The Chair noted that of a \$350 million St. Louis County budget, the \$2 million PILT payment allows for flexibility. Comm. Beckel pointed out that the PILT payment represents 42 percent of the Lake of the Woods budget. While cuts are going to have to be made, PILT is not on a formula. He argued that selling off twenty percent of the land is not fiscally responsible if taxes cannot be paid on the land already held. The county is not being informed as to what land will be sold; the land will be jointly managed. The Chair noted that forty-two counties are less than one percent publicly owned and eleven are greater than fifty percent. This percentage is seventy percent federal land and twenty percent state land in Cook and eighty percent public land in Koochiching. St. Louis County has sixty-three percent publicly owned land.

Comm. Swanson said that Roseau would support Comm. Beckel’s position. Comm. Beckel responded that his county is unique at the extreme while eight other counties are in the seventeen-to-twenty percent category. Comm. Raukar commented that it is a matter of principle no matter the percentages: should the state be buying land when it cannot support the obligations on the land it has? Comm. Napstad

asked if this might also apply to dedicated Lessard funds. Would the resolution apply to all acquired land? The Chair called the question back to the proposal to reduce payments by twenty percent.

Mr. Engwall added that the DNR will have some land purchase funds from bonding and perhaps from the LOHC. Counties have some veto power over some acquisitions. The Chair asked for distinction between the several issues and the position that the Board does not support the reduction in payments. Comm. Beckel argued that the state should be held at the same standard as private citizens. Con-con ditch payments are also to change, which changes drainage authority benefits.

Comm. Swanson noted that the position may be similar to advocates at Town Hall meetings who claim that there should be no cuts in programs. Supporting argumentation must be supplied. Comm. Beckel reiterated that it should be proposed that it is not acceptable that private citizens not pay their taxes; if they do not pay their taxes, they lose their land; we are to hold state government to the same level that it holds its citizens. If you do not pay your taxes, what is to be done, he asked. This is akin to the issue of the state acquiring more land. Comm. Beckel intimated that legislators are not addressing the issue. The Chair asked if comment is to be made on this issue and found consensus.

## FEDERAL

1. Lynx Critical Habitat The Federal Register reported on February 25 that a new critical habitat for the Canada lynx would be enacted March 27, 2009, reported Comm. Johnson. In the plan, tribal units were removed from designation due to Native sovereignty, and attempts to increase the proposed range locally were dropped. Deadline constraints led to not including a recovery plan. NACo will be addressing endangered species, including those distinct populations that also exist in Canada. The lynx range dips into the United States in five areas while the animal roams over half of North America. The economic impacts over twenty years were limited to \$1.49 million in costs to interagency consultation, down from \$175-883 million estimated two years ago. A math issue in Cook County was resolved. Fifty pages of GPS coordinates take the place of a useful map, leaving counties unable to advise people with questions. A correction was made to an error concerning land ownership in Koochiching County. Trust in government was eroded due to the litigation that led to the admitted political influence that Under Secretary Julie McDonald had exercised in the earlier habitat designation. Comm. Johnson will bring the issue to the NACo Steering Committee on Public Lands.

The Chair added that the impact on timber management was determined to be within reason in St. Louis County. Mr. Engwall noted that the Forest Service set aside 1700 acres beside the BWCAW from harvesting because of the lynx habitat and to minimize noise to visitors to the wilderness area. The Chair added that there was comment concerning potential impacts of the lack of a recovery plan.

2. Transfer of taxable land to trust status The Chair recalled that after St. Louis County in a workshop setting to discuss transfer of taxable land to Indian trust status representatives of Fond du Lac Reservation protested at not having been able to contribute to the discussion. The issue has been the loss of revenue that has been generated by the loss of taxable lands. In St. Louis County the amount of transfer was of concern. Processes and procedures were found wanting. Bois Fort and Fond du Lac were notified that some lands, purchased up to a dozen years ago and including 41 parcels on Fond du Lac, had not been transferred and would be considered taxable for 2008. The broader question is about Federal Indian policy. A proposal put forward at a Finances and Intergovernmental Affairs Steering Committee at NACo says that counties are unable to collect property taxes on Indian properties held in trust by the federal government and so that the federal government ought to look at a device like PILT to make payments for that loss of revenue. An article in "County News" by a Bennett County, SD commissioner points out that their revenue stream has become so small that they are not able to balance their budget without tax income on land put in trust or reservation land. This is not a reservation to county issue but the federal government's responsibility to local units of government, including the tribes and its inconsistency nationwide. The Chair reviewed treaty history of establishment of reservations and the Dawes Act that gave land to individuals. Individuals used property as they saw fit. The reorganization of tribal government in 1934 is also at issue. Again, this is not a county to tribal issue, but one of federal government to federal Indian policy.

Comm. Napstad added that Mahnomen County may be the first county in the state to go into receivership. Half of the county is now in White Earth Reservation tribal trust. Mahnomen County has canceled a large number of water plan projects as taxable dollars have shrunk. Demand for services has not diminished while people paying taxes have decreased in number. A lawsuit demanding restitution may award funds beyond the county budget. While it may be a government-to-government issue, it impacts counties as a third party.

The Chair noted cases in federal court in a large number of states, including Minnesota. State Supreme Courts are also discussing land ownership and rights. The Mille Lacs Equal Rights Foundation wrote an amicus brief in a case between the State of Minnesota and David Michael Davis concerning a reservation officer stopping Davis speeding on Highway 169 and Davis claiming that the state government cannot collect fines because the land was originally Indian country. Comm. Lepper commented that sovereignty may demand payment for infrastructure.

3. Northern Counties Conflict Management Copies of the NCLUCB report to the Minnesota Legislature on Land Use Authority Conflicts and Land Use and Environmental Decision Processes as well as a chart for Reaching Better Land Use Decisions were distributed for discussion at the April meeting. The Board briefly recalled the significant benefits of the conflict management process to improved relations in the district among the Board and agencies.

Meeting adjourned at 12:30 p.m.

Next Meeting Date and Location

**Next meeting: April 2, 2009, 9:30 a.m. Kootasca Senior Center, Northome, MN.**

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