

Minutes of a Meeting of the Outdoor Heritage Fund Advisory Board
Held on October 12, 2021 at 9:00 a.m.
ND Dept. of Career & Technical Education Conference Room, 15th Floor State Capitol

Present: Randy Bina, OHF Advisory Board Chairman
Brian Amundson, OHF Advisory Board
Tom Claeys, OHF Advisory Board
Patsy Crooke, OHF Advisory Board
David Dewald, OHF Advisory Board
Tyler Dokken, OHF Advisory Board
Jay Elkin, OHF Advisory Board
Tom Hutchens, OHF Advisory Board
Rhonda Kelsch, OHF Advisory Board
Randy Kreil, OHF Advisory Board
Robert Kuylen, OHF Advisory Board
Daryl Lies, OHF Advisory Board
Rachel Retterath, OHF Advisory Board
Jeb Williams, OHF Advisory Board

Also

Present: A complete list of attendees is available in the Commission files

Chairman Randy Bina called the meeting of the Outdoor Heritage Fund Advisory Board (“Board”) to order at 9:00 a.m. with a quorum being present. Brad Erickson and Cody Schultz were absent.

Introduction of the new Board members

Ms. Patsy Crooke is representing conservation-at-large and is a retired USACE employee who held the position of project manager for permitting projects.

Mr. Brian Amundson is a Stutsman County 4th generation rancher/farmer with a focus on grazing management, cow/calf feedlot, and heifer development. He is representing North Dakota Stockmen’s Association.

Mr. Jeb Williams is the new Game and Fish Department Director. He has worked for the department for 22 years.

Mr. Wayde Sick, Director of the North Dakota Career & Technical Education (CTE) provided welcoming comments. The North Dakota Career & Technical Education provides the funding and technical assistance to offer programs in local high schools and colleges that train students for in-demand occupations such as agriculture, education, trade industry, culinary art, information technology, etc.

It was moved by Mr. Lies and seconded by Ms. Retterath to approve the June 10, 2021 and June 15, 2021 minutes as presented. The motion carried unanimously.

Ms. Fine provided the financial summary which included the history of the funding for the Outdoor Heritage Fund since it was established in 2013, the awards that have been made each grant round, the revenues that have been received each biennium and provided the following report on the current biennium. As of August 31, 2021 no additional revenues had been received—the first deposit in the new biennium is made in September. As of August 31, the cash balance was \$35.5 million with \$32.6 million of outstanding commitments leaving a cash balance of approximately \$3 million available for the Grant Round 19 awards. (A copy of the complete financial summary is available in the Industrial Commission files.)

Outdoor Heritage Fund (294)
Financial Report - Cash Balance
2021-2023 Biennium

October 19, 2021 Industrial Commission Meeting

| | Cash Balance | |
|---|--------------|----------------------|
| July 1, 2021 Balance | \$ | 36,056,487.97 |
| Interest Revenue through August 31, 2021 | \$ | 2,146.00 |
| Revenues through August 31, 2021 | \$ | - |
| Returned funds | \$ | - |
| Grant Expenditures through August 31, 2021 | \$ | (472,440.48) |
| Administrative Expenditures through August 31, 2021 | \$ | - |
| | \$ | 35,586,193.49 |
| Outstanding Administrative Expenses (Estimated) | \$ | (200,000.00) |
| Outstanding Project Commitments as of August 31, 2021 | \$ | (32,451,492.02) |
| Balance | \$ | 2,934,701.47 |

Mr. Bina called on the first applicant to make their ten-minute presentation.

19-3 (A) ND Department of Trust Lands: ND Trust Lands Survey and Boundary Identification Project, \$90,000

Project Summary: Improve manageability of surface assets and provide additional clarification of location of Trust Lands by updating geospatial data and boundary markings.

Mr. Derek Lowstuter gave a presentation (A copy of the PowerPoint presentation is available in the Commission files.)

In response to questions, the applicant stated:

- What percentage of the total land is already surveyed? There is not a record of what has been physically surveyed. All the boundaries for the tracts were digitized on a computer versus physically going out to survey. As a requirement for construction of a well pad, some tracts in oil and gas country were physically surveyed, but that information has not been uploaded to the GIS hub because that was a private contractor from the oil and gas company. This project is starting from the beginning with trying to find out how much land has been surveyed along with surveying as requested by lessees.
- Has any research been done at the County courthouse to figure out how many of these tracts have already been surveyed? This started because lessees can request assistance in citing fences. Based on land use and GIS, the department can complete an estimate, but each individual tract is looked up on a case-by-case basis. The department has not looked through every single county for every single tract because it has yet to be warranted. If the lessee requests assistance, then the department will look back at prior surveys.
- Without the research, how is the department deciding which tracts will be surveyed? The tracts are prioritized according to already known and existing issues, such as encroachments or access issues. The problem is not that there will be a shortage of potential projects, because they will come on a case-by-case basis. When issues arise, instead of providing an estimate, the department can go out and complete a survey which will improve accuracy.

- In the last 2-3 years, there has been an increase in requests for assistance by new lessees as a result of new lease ownership? There has been a stable level of requests by the lessees. Recently, because of the drought, issues have been more contentious which has increased turnover.
- Is the department unable to pay for these surveys in-house based upon revenues per biennium of \$6.3M along with revenues from leased lands and over 700K acres of property? The department does manage a considerable amount of assets, but this project will also benefit the state in terms of lessees, sportsmen events, and an improved GIS database.
- Is it not the responsibility of the landowner to know their own property lines? Yes, and that is what this project is trying to accomplish.
- How large are these survey monument tags? The tags are medium size and visible along the section lines versus a post in the middle of a pasture.
- If funded for this project, would the intent be to request continued funding? It depends on the success of this pilot project. With the RFP, a lot of great surveying companies submitted proposals. Surveys have also been conducted based on deliverables deemed beneficial to both the department and state. The current data set is too small, so the intent is to fund for three years. Surveys will then be conducted to better ascertain the success and if additional funding is needed or should be allocated in a future biennium.
- Would this information regarding property lines be accessible for hunters? This information would be made available on the GIS Hub for both internal and external users.
- Will this cause issues since most property lines have already been well established over the years? Trust land is not subject to adverse possession, so an encroachment does not become someone else's property. If the lessee has a fence that is off the property line, it does not become their property. Even if a fence has been on the property for numerous years, the ownership does not change.
- It was noted that 1% of the land is restricted access for such things as grazing from the Trust Lands. What percentage of properties are landlocked due to restricted access along section lines? The percentage is difficult to determine because a lot of the access depends upon relationships with neighbors. A lot of the land is landlocked via ownership, but the adjacent neighbor is usually the lessee and there is an agreement allowing access to that private property. Some tracts do go unleased because the adjacent owner might own all the surrounding land and puts up a fence to not allow access which then would not be a priority for being surveyed. As long as someone has authorization from a private landowner to access that land for recreational use and not grazing then it would be sufficient.
- Are the trust land tracts in the PLOTS book? Yes.
- How accurate are the surveys identified in the PLOTS book? All the public land is surveyed under the same methodology so +/- between 80-90% confidence. The purpose of this proposal is stay ahead versus create conflicts. Whenever the department is requested by lessees or the public for access is how these funds will be prioritized.

Mr. Randy Kreil noted that he works part-time for the ND Trust Lands Department doing field inspections so he will be recusing himself from voting on this proposal due to a conflict of interest. It was indicated that he could vote on the project application.

19-6 (B) ND Department of Agriculture: ND Department of Agriculture's Soil Health Cover Crop Grant Program, \$400,000

Project Summary: A directive by the 67th Legislative Assembly to provide financial incentives to approximately 1,000 producers through a lottery system for producers to plant cover crops.

Mr. Shaun Quissel and Mr. Tom Bodine gave a presentation (A handout is available in the Commission files.)

In response to questions, the applicant stated:

- Was the Agriculture Department asked by the Legislature to create a cover crop program without any funding? No, the Department received \$300K from the Bank of North Dakota (BND). The Legislature also directed that a grant for \$400K be submitted to the Outdoor Heritage Fund (OHF).
- What was the reasoning for not funding this program with the full \$700K? Originally, the Legislature wanted to transfer \$400K from the OHF to this cover crop program, but then it was decided to go through the application process to protect the integrity of the grant program.
- Has this project been completed before or is it a new program? It is a new program, and the Department budget consists of one-time funding with the possibility of an additional appropriation.
- There are numerous other program options for producers to utilize that offer higher payments for maintaining cover crops. Aside from varying program rules, what was the thought process of the Legislative body to devise this program? Was there a need that was not being serviced? The belief was that there were some areas in need that were not being covered by the other programs.
- In the Dawson/Steele area, rye is extremely popular, but the issue is that it draws in nested birds and then is harvested early. Are there any harvest deadline pushbacks included in this program? Rye can be planted before May 20. If a producer plants it in the fall, it will qualify as long as it ties in with an NRCS approved mix.
- Back in September of this year, the Soil Conservation District received an email in regard to this program of having a deadline of October 1st to utilize the \$300K from BND.
- This was brought up in the Legislature because some of the Soil Conservation Century Codes and avenues for funding were questioned. Some of the people that testified indicated a need for a stronger soil health program. Also, there was miscommunication regarding soil conservation districts receiving funding from the OHF when it is only specific soil conservation projects that are funded with OHF dollars.
- Regarding the Natural Resources Conservation Service (NRCS) program, if a producer is using it for grazing then setting the date ahead, if applicable, is ideal for the cover crops in their farming operation. If the cover crop is going to be used for grazing, a completion date of August 31st can be a challenge due to the weather.
- For payments to be made, will there be spot checks or a type of verification such as taking pictures to document that the cover crop is still standing? Spot checks will be completed. Viability has not been discussed, but a \$15 seed cost will be assessed for auditing purposes.
- The first deadline which was October 1st for the \$300K got pushed to December 1st due to the implementation of an online application along with a couple of emergency programs which took precedence.
- How much demand or applications have been submitted for the program? The program will open up next week which will better establish the need.
- The request is for \$400K for next year, but before actual OHF dollars are sent to the landowners the practice will already have been started. Is that an issue for the OHF that the practice was already started without being accepted as an approved proposal for funding. Is it acceptable that a project be funded when it has already started and the landowner is notified of the cost share because with most projects nothing is started on that project before OHF dollars are spent? Because \$300K has already been allocated, the project will be utilizing those funds for payments. If the \$400K is awarded, those funds will not be drawn upon until next year. Any OHF money will be used for seeding in the Spring of 2022. Any money spent by the landowner will already have been spent before being made aware of whether funding was approved. Previously, prior to any money being spent by the landowner, they were made aware of whether the project was approved. These are new

projects that landowners would complete next year. This would have been an issue if the application deadline was still October 1st and not December 1st. Because the Department has not initiated the application yet, matching funds have not received any activity by the OHF and would not meet the criteria of extenuating circumstances.

- Was this project pushed by the Department of Agriculture to the Legislature? This was not initiated by the Department, but rather requested by the Legislature. Was the Legislative body educated about NRCS and that Soil Conservation Districts would be a more appropriate channel since it is an already well-established program versus trying to create a new system. The Department has received compliments on a lot of the programs from landowners who have received assistance. This program is not trying to take anything away from the Soil Conservation Districts, but rather provide additional incentive for landowners to seed cover crops. This program was authorized by the Legislature.
- If a producer is already receiving cost-share from NRCS, are they eliminated from the lottery pool because according to these guidelines they would not be eliminated? A good example is the hay transportation program which consists of \$2.5M to assist eight producers. The project was put on pause because another department was offering the same assistance. This was done so producers could not receive compensation twice for the same service. How would that be determined when producers have confidential rights regarding contracts? Audits would be conducted, but there are also searches that could be done to verify.
- Rye has become a popular cover crop, but this proposal states rye must be planted before May 20th. If rye is planted in the fall, would that qualify? As long as it ties in with an NRCS approved mix, it qualifies.
- Cover crops are good for both wildlife and agriculture, but from a producer standpoint will adding another entity to the cover crop program add complications? The Commissioner has always been about incentivizing practices and the more options producers have, the better it makes the environment, wildlife, and the industry. The intent was to trade options for landowners and that is what was asked of the Department by the Legislative body. There are still lots of saline areas that need new growth and the more partners and money available, the better soil health will be in the future. Also, the Department of Agriculture will advertise this as another option for producers that may not know where to receive cover crop help. Although there are a lot of entities that offer cover crop assistance, not every producer fits into every pool or initiative, so this is a good program. There is also a lot of misinformation out there about which entities have programs. Marketing improvements are needed so that the state can work cohesively together to share programs. Also, USDA programs can be very cumbersome for some producers.
- Will there be a question on the application stating if the landowner is requesting supportive funds from another program? Yes, it is a great suggestion and will be implemented along with spot checks.
- Will this be a one-time or multiple batching period per year program for producers to sign-up because with USDA, if it is EQIP, those deadlines have now passed? If a later date is offered, it would be a good alternative for those that missed the EQIP deadline. Usually between January and February, the contracts are notified to move forward. If a later date was offered, it would allow those who missed the program through Equip to apply for your program.
- The intent of this program is to have one pool of money and an application deadline of December 1st of each year whether a producer plants in the Spring or Fall.
- The Department of Agriculture did work with all entities in state government and listed all entities dealing with drought, so it is a one-stop page of information for the producer. Would also like to do something similar for a cover crop program.
- The application will be a one-page fillable form where you attach the proper receipts.

- EQIP is a great program, but it is short funded. A lot of producers would like to participate in the program but cannot get in or do not meet the funding criteria. With 50 acres, producers will go out and seed cover crops and then be able to see the impacts to the land of greater water absorption, which is educational. This allows a lot of producers the ability to try out this program and see the impacts to the land.
- The Department of Agriculture hopes to be back in a couple of years for additional funding if the program is successful.

19-1 (B) Burleigh County Water Resource District: McDowell Dam Supplemental Supply Project, \$696,223

Project Summary: Construct a supplemental water supply for the McDowell Dam Reservoir to prevent potential degradation of the natural habitat and loss of a valuable recreational resource during periods of continued drought.

Mr. Travis Johnson and Mr. James Landenberger gave a presentation (A copy of the PowerPoint presentation is available in the Commission files.)

In response to questions, the applicant stated:

- What is the annual operating costs? It will depend on the amount of water pumped through the city. For a normal year, it would be 50 acre per feet or \$18,900 and for the full 300 acre feet it would be \$35,400 in costs. Housekeeping and lawn duties could potentially be completed by existing park staff in that area.
- What is the life expectancy of the intake? The pump and concrete structure could last up to 50 years with the pump needing to be replaced sooner. PVC pipe underground can sometimes last indefinitely.
- What is the cost of the pump? Approximately \$75,000 and there is no backup. A duplex system could be installed that would achieve the same flow rate with the capacity to run at 50% if one of the pumps was offline or the pump was ran at a reduced rate.
- Will the Burleigh County Water Resource District set aside funds for maintenance and repair so it is not needed from the property tax payers, district or the state? Those costs would need to be budgeted similar to what is done with other projects. Currently funds come from the Bismarck Parks & Recreation.
- Will this increase budget needs if funds are received? Yes, but it also depends on usage.
- This excess water will eventually be dumped into the Missouri River, correct? Yes.
- Has there been consideration for taking the water out downstream for producers to use for other purposes such as livestock? Agricultural purposes are not permitted. There are some other permitted uses for taking water from Apple Creek. Even after the permitted uses are taken from the river there will still be an adequate base flow to satisfy additional uses.
- What would the consequences be of taking the maximum 300-acre feet downstream? This is addressed in the permit received from the State Water Commission and the State Engineer's Office. There is a base of eight cubic feet per second and currently there is less than one cubic feet per second in the river. Because agricultural purposes are not permitted, livestock producers are usually just left with what is remaining.
- Who determines after all the permitted uses that a base of 8 cubic feet per second is adequate? Part of the application analysis is ensuring downstream users have an adequate flow.
- A better analysis of the needs of producers located in that area needs to be done.
- When will pumping occur? Sufficient flow within the stream is sometime between March 1st -June 30th. During those peak run-off times is the only time significant amounts of water would be pumped. Water would not be pumped during a drought, but rather the following Spring.

- Is there an ideal minimum or maximum level for functioning? Typical elevation is 1,724 and this is the goal, but it also varies according to other factors.
- Does the district need permission from the owners five miles above and below? Yes.
- How deep is the dam? The deepest spot is approximately 40 feet.
- Is water quality an issue? Yes, the district is always trying to improve both the elevation and quality for the fish population.
- What is the current water source for McDowell Dam? It is a tributary that comes off Apple Creek with its own drainage station above the reservoir.

19-4 (C) ND Natural Resources Trust: Working Grassland Partnership 5, \$985,000

Project Summary: Assist landowners in transitioning expired CRP into agricultural production through a one-time lease payment and cost-sharing for both fencing and water developments.

Mr. Terry Allbee gave a presentation (A copy of the PowerPoint presentation is available in the Commission files.)

In response to questions, the applicant stated:

- Of the 100,000 acres that were transitioning from CRP, what percentage went into grass/forage use and what went into Federal cropland? The Trust does not have that data from FSA.
- The goal is to transition 16,000 acres which will be exceeded.
- Lease payments from the budget are \$140,000, correct? Yes, and the payments would be funded through the Natural Resources Trust. The lease payments are a one-time payment of \$50 per acre.
- Is the Trust paying for perimeter fencing on adjacent land that has already been in a grazing situation? No, the only form of fencing that is paid for is boundary fencing that did not exist. Some were never fenced and others have been in CRP for numerous years so there is not adequate fence for reliable water on these tracts. Boundary is only provided on those tracts.
- How many producers were not in livestock/agriculture that are now in this program? There is a small handful, but traditionally it is existing ranchers that are expanding and trying to add capacity because they have purchased new land.
- Does this project include enhancement of species development? The project does not provide funding for reseeding of acres. This is typically handled through the management of those tracts, but there are some tracts that may need to be reseeded to a native grass species.
- Are there any other resources available to the Trust that will assist producers in reseeding beyond just grazing management? The Trust tries to do it right with cattle and management first. If reseeding is necessary, the Trust would redirect that producer to additional funding sources.
- Parks and Recreation has a specific program that would pay for reseeding and the costs of rejuvenation.

19-5 (C) ND Petroleum Foundation: ND Petroleum Foundation Planting for the Future, \$371,000

Project Summary: To support a habitat and conservation program that provides trees and shrubs for large-scale planting projects to private landowners and city and county parks. Anticipated to plant approximately 70,000 trees and/or complete 25 projects per year for the next three years.

Ms. Tessa Sandstrom gave a presentation (A copy of the PowerPoint presentation is available in the Commission files.)

In response to questions, the applicant stated:

- What percentage of the plantings are going towards scalping? The majority of proposals, including this one, involve a knifing project with fabric. Most of the projects were done on broken grasslands adjacent to missing tree rows or with trees that needed replacement.
- What is the percentage of tree plantings on native grasslands? A consultant stated between 10% - 15% adjacent to farmland.

19-2 (D) City of Coleharbor: Playground Equipment Replacement, \$10,000

Project Summary: Improve the city park with new commercial grade playground equipment, renovated picnic shelters, permanent garbage receptacles, benches, and picnic tables. The space is located on Main Street and will be highly visible from US HWY 83.

Ms. Amy Ones gave a presentation (A copy of the PowerPoint presentation is available in Commission files.)

In response to a question, the applicant stated:

- Will the City of Coleharbor complete a budget for operation and maintenance once the equipment is installed? Yes, property taxes have increased from \$6,000 to \$9,800 so these funds will be used for operation and maintenance. If approved, these funds will be allocated in the 2023 budget. Also, it is easy to work with the playground company.

There was general discussion by the OHF Advisory Board on Grant Round 19 applications as follows:

19-3 (A) ND Department of Trust Lands: ND Trust Lands Survey and Boundary Identification Project, \$90,000

- Concern was expressed as to whether this is a good use of OHF funds. The Department receives millions from energy companies along with rental fees. This survey should be paid for out of the Department's operating income just like any landowner should pay for a survey completed on their land.
- Proposed public access signs for the Department of Trust Lands could be difficult to see based upon location. Survey signs are very small and enhancement to the public on officially knowing property lines is questionable.
- Concern about sections that would be landlocked. There would be no benefit of signage if it can't be accessed.

19-6 (B) ND Department of Agriculture: ND Department of Agriculture's Soil Health Cover Crop Grant Program, \$400,000

- Like that this adds another option because there are many reasons why producers choose to participate in programs. It is also a simple and easy program which is nice. Do have issue with how OHF was approached, but the focus should be on the end user. This has been a difficult year for producers so this program could really be a benefit.
- The OHF was established as an advisory committee to the Industrial Commission. Now, legislatively speaking, control about how funds are spent has been taken away from the committee and the process is not being followed.
- Dislike the Legislature taking \$400,000 away from the OHF to spend on projects that have not been evaluated appropriately.
- The Legislature was concerned about whether a program similar to the Soil Conservation Districts could be achieved because there was a lot of misinformation. Like that it is another tool option for producers, but the delivery of this program is of concern. As a statewide program, there has been no coordination with other local outside entities. For practices to get paid, there needs to be visits

done versus randomly choosing a producer for audit purposes. Even though this program is 50 acres, it would be beneficial to have a way to verify whether these acres were already in a program. Hope is that this program will enable better communication.

- If this project is not funded, the Legislative body might directly appropriate the funds.
- Past projects have been passed with a requirement for cash, such as screening applicants against double-dipping and delaying payment. Cover crops are so important agriculturally that it is hard to understand why compensation is needed.
- During the last Legislative session, there was a lot of misinformation regarding the OHF. Sometimes not funding one specific project in a certain county was misinterpreted into not funding any throughout the state. The Legislature could be trying to turn the OHF into a mandated Board.
- It was frustrating that only negative issues with OHF were being brought to the Legislature versus all the good that has been done throughout the state.
- This past Legislative session, several bills were brought forth by a number of out-of-state organizations regarding soil health. This project was incorporated into the Department of Agriculture's bill by the Agricultural Committee because when it was a stand-a-lone there was no support for the budget.

19-1 (B) Burleigh County Water Resource District: McDowell Dam Supplemental Supply Project, \$696,223

- Need to consider how OHF funded project will impact operating budgets for the recipients in the future. The OHF needs to consider the stress of those future budgets and whether there are contingency and replacement plans. A lot of projects have been denied receiving OHF funds because of an irresponsible budget. Government entities need to hire contractors to do assessments on projects which costs money. Repairs need to be completed within an entities current budget or time frame. Also, the easements have not been obtained. If there are nutrient, algae, and sediment problems, why are those issues not being addressed currently.
- Can this applicant be invited back to complete more research and address these problems? Yes, OHF has asked this of other applicants.
- The district is coming to OHF during a drought cycle. If there is a substantial downpour or a wet cycle it will be full and the pumps will not be needed for years. Everyone in the state could be asking to pump from the Missouri River to fill up their dam for recreational purposes so not sure if mitigating this issue is a huge concern.
- Why has the district not applied to the State Water Board? Permitted vs. unpermitted people take precedence for water. Would liked to have seen in the application comments from all the people located along this corridor.
- How valuable is the fishery in that location? Suppose the water continues to drop and the district does not receive this added water, is this a concern for the Game & Fish Department? All fisheries throughout the years have both ebbed and flowed. The goal with this project was to maintain the proper calibration to avoid those ebbs and flows. Any fishery around the Bismarck-Mandan area receives a lot of usage and is the recreational component.
- If water levels continue to drop, it means there was no natural flow and there will not be any water taken out of Apple Creek. No water can be given that is not available. When the district does not have excess water available in its watershed, neither does Apple Creek.
- During Spring of each year where higher flows are more likely, the water will be stored and then utilized at a later date.
- The water received will be pumped between March-May. If the watershed did not produce enough water, the reservoir will be filled with what is available. If Apple Creek does not flow, there will not be water available. However, there is opportunity to fill this reservoir in the Spring for recreational uses in a highly used area. This is a project that both provides and maintains outdoor

recreation and should be funded. Although there are issues with permits, those are being addressed and the project will be completed.

- The Bismarck Parks & Recreation manages this area. The benefits and return on investment need to be considered such as the catch and release ice fishing program because this is such a highly used area. To fully support this project would be contingent upon securing all those easements.
- If that area is not available, it will put pressure on neighboring areas that might not be able to handle the overflow of non-recreational uses.

19-4 (C) ND Natural Resources Trust: Working Grassland Partnership 5, \$985,000

- Has this changed from the other phases of the project? No, it started out trying to save CRP land from going back to farmland. The project is about turning CRP into grass and for wildlife.
- Demand for these types of projects are strong. This project is about creating opportunities for more grazing lands. Also, the funds from other phases have been obligated which shows it is a successful and positive program.

19-5 (C) ND Petroleum Foundation: ND Petroleum Foundation Planting for the Future, \$371,000

- Concern over the trees and shrubs planted on this grassland. Planting more is counterproductive to the nesting birds so cannot support that portion of the project.
- Verified that between 10-15% of the plantings will be on native grasslands.
- Concern over the cost of contract and consulting fees of \$165,000. Prior infrastructure costs have had a 60/40% cost share and trees and fabrics should be included as infrastructure which then amounts to more than the 60/40% cost share. Adding contingencies in the contract for native prairie will be beneficial.
- Overall, this program has been very successful for the state and should be supported.
- The grasslands are next to existing tree rows or roadways.
- Plantings took place in small, fragmented parcels which means the nestings have already been affected and are experiencing encroachment of invasive non-native grass species or noxious weeds and are near or adjacent to fields, farmsteads, existing tree rows, and shelterbelts. As a result, out of that 10-15%, some plantings could end up on a larger parcel.
- Historically, the tree match was a 60/40% cost share, but in the application requirement for a grant submission, only a 25% match is required so now it has shifted to a 75/25 cost share. In the beginning of the OHF, the 60/40% cost share was developed for consistency, but then there was confusion over the 319 program also having a 60/40% cost share along with the NRCS cost share rate. As a result, it was changed to best agricultural practices being a 60/40% cost share for an accounting and auditing standpoint. Also, the 319 program and NRCS rates were averaged together for a 60/40% cost share.

19-2 (D) City of Coleharbor: Playground Equipment Replacement, \$10,000

- Expressed dislike over playground equipment applications.
- This is a rural community park and the plan was put together well.
- Taking a kid outside to play and breathe fresh air is always positive.
- A grant of \$10,000 does not even cover the cost of a good playground anymore, but that is the OHF limit.
- The city is also included in the budget to help with maintenance.

Chairman Bina asked the voting Board members to complete all scoring sheets and turn them in to Ms. Fine and Ms. Pfennig.

Ms. Pfennig noted that Mr. Dokken had a conflict of interest regarding 19-05 ND Petroleum Foundation: ND Petroleum Foundation Planting for the Future. Mr. Bina noted that he had filed a conflict of interest regarding the Burleigh County Water Resource District project even though he is no longer employed by the Bismarck Park Board.

Chairman Bina listed the applications that received less than seven votes for funding which include application numbers: 19-1, 19-3, and 19-6.

It was moved by Mr. Lies and seconded by Mr. Dokken that the following applications are not forwarded to the Commission for funding:

- 19-1 (B) Burleigh County Water Resource District: McDowell Dam Supplemental Supply Project, \$696,223
- 19-3 (A) ND Department of Trust Lands: ND Trust Lands Survey and Boundary Identification Project, \$90,000
- 19-6 (B) ND Department of Agriculture: ND Department of Agriculture's Soil Health Cover Crop Grant Program, \$400,000

It was moved by Mr. Dewald and seconded by Ms. Retterath that the motion be amended and applications 19-1 and 19-6 be considered separately. Motion withdrawn.

Concern was expressed regarding considering the applications separately because these two applications did not meet the threshold for funding with an affirmative vote and were already discussed, but if a member wants to add a point or ask a question, they are allowed. Amendments can be considered for a project(s) to be reviewed individually, but that was before the Legislature mandated a vote of seven for funding.

19-6

- Suggest that the OHF match what was received from the BND because there are a lot of benefits to cover crops.
- Could support if there were contingencies on the restriction of haying and that money could not be received from more than one source.
- Since this project was proposed by the Legislature, not approving could be negatively perceived.

19-1

- Suggest funding because it is a good project that should be approved by the OHF.
- Did this project not pass because the easements were not in line? Yes, it was a factor.
- How much time is allowed before these funds need to be expended after awarded? It is up to the Board because there is a continuing appropriation, and it does not have to go back to the General Fund after two years. There could be a contingency that the easements have to be secured either prior to contract or disbursement of funds. The applicant could also be advised to amend the proposal for another grant round.

Considerable discussion was held regarding the appropriate course of action. During the discussion it was noted that the Advisory Board can recommend revisions to an application for a future submission. After the Advisory Board meeting, applicants are notified that their project was not approved and also afforded feedback on the reasons for non-approval. Century Codes states the Advisory Board may not forward a grant application to the Commission unless the application is for funding activities that fulfill the purposes of this chapter, and the application receives a favorable recommendation from a majority (seven) of the Advisory Board members. It was not clarified that funding or not funding was a surrogate for voting. The

protocol should be changed so that everyone of these projects is voted upon individually. As the Board moves forward, there are policy issues that need clarification.

On a roll call vote, Amundson, Dokken, Elkin, Kuylen, and Lies voted yes, and Bina, Crooke, Dewald, Hutchens, Kreil and Retterath voted nay. The motion failed, 5-6.

It was moved by Mr. Dewald to reconsider the action of the Board and reconsider funding for 19-6. After discussion the motion was withdrawn.

It was stated that if there is no motion to recommend funding to the Commission for a project then the project does not move forward.

19-2 (D) City of Coleharbor: Playground Equipment Replacement, \$10,000

It was moved by Mr. Kuylen and seconded by Ms. Retterath that Playground Equipment Replacement, submitted by City of Coleharbor be recommended to the Industrial Commission for Outdoor Heritage Fund funding in the amount of \$10,000. On a roll call vote, Bina, Crooke, Dewald, Dokken, Elkin, Erickson, Hutchens, Kreil, Kuylen, and Retterath voted yes; Amundson and Lies voted nay. The motion carried.

19-4 (C) ND Natural Resources Trust: Working Grassland Partnership 5, \$985,000

It was moved by Mr. Dewald and seconded by Mr. Hutchens that Working Grassland Partnership 5, submitted by ND Natural Resources Trust be recommended to the Industrial Commission for Outdoor Heritage Fund funding in the amount of \$985,000.

- Discussion was held about the \$12,500 for staffing included in the budget. It is a very small amount for the project. Staffing is allowed, but it needs to be justified in the application. This project will require a lot of time for correspondence, coordinating, and cultural screenings. Staffing costs are justified within the application. Once an application is approved with staffing costs, all those costs for tasks need to be verified.
- The OHF has funded staffing costs in the past, but it has not been consistent.

On a roll call vote, Bina, Amundson, Crooke, Dewald, Dokken, Elkin, Hutchens, Kreil, Kuylen, Lies, and Retterath voted yes; no one voted nay. The motion carried unanimously.

19-5 (C) ND Petroleum Foundation: ND Petroleum Foundation Planting for the Future, \$371,000

It was moved by Mr. Dokken and seconded by Mr. Elkin that ND Petroleum Foundation Planting for the Future, submitted by ND Petroleum Foundation be recommended to the Industrial Commission for Outdoor Heritage Fund funding in the amount of \$371,000.

- There was a suggestion that this project be funded at the 60/40% cost share in the amount of \$331,000.
- Concern was expressed about planting trees on native grasslands. The 10-15% that are affecting native grasslands should not be funded.

On a roll call vote, Bina, Dokken, Elkin, Hutchens, Kuylen, Lies, and Retterath voted yes; Amundson, Crooke, Dewald, and Kreil voted nay. The motion carried.

OHF Board member, Senator Elkin, left the meeting at this time.

Mr. Ryan Taylor, Ducks Unlimited, provided an overview of previously funded projects from a variety of recipients. A successfully completed project from each directive was reviewed by showing a video.

Mr. David Ripplinger, NDSU, discussed a potential economic impact study with the Board. He noted that the no formal proposal has been submitted because the number of projects completed is substantial and many projects do not have an immediate financial measure. Because of this, he is looking for feedback on areas of focus.

Discussion was held about possible areas to focus. Some members would like to see information on the economic benefit to outdoor recreation funded through the OHF. The recreational benefits are significant, but hard to measure because there is not a market transaction. Valuation of ecosystem services and quantifying the value of clean air and water was another potential area mentioned.

It was noted that every five years, the Game & Fish Department works with NDSU on economic return analysis for hunting and fishing. There is a potential to partner with those efforts in the future. Some of the projects between OHF and Game & Fish Department are very similar, and it would help the employees that complete the analysis to leverage their time.

On the agricultural front, a lot of work has been done for the Agricultural Products Utilization Commission (APUC). A question was raised as to whether there were metrics from APUC that could be used. It was noted that APUC would be challenging because of all the diversity and minimal reporting.

Some projects involve removing cattle from the water and moving water sources away from the water to minimize washouts from cattle. How does that value get determined? Mr. Ripplinger noted that NDSU does have a water economist but was unsure if that kind of analysis has been done at NDSU. There is also reliance placed on experts in other states who have completed this kind of analysis. The work that has been done by OHF for farmers, ranchers, animals, and the land is hard for the Legislature to understand because it has not been visualized. Also, working with the SCD's and FSA's on a number value is also important.

A question was raised as to whether the scope could be on the four directives and the importance of each one. This analysis could be done, but it would need to be narrowed down. Also, need to be cautious on what is selected because then people will only focus on what has been analyzed and see no value in the other projects. The goal is to have some results to take to the next Legislative session to show what the OHF has accomplished. If a proposal was submitted soon, an analysis could be completed by late next Fall.

It was noted that there has been discussion in the past about marketing the OHF program to showcase its value. Even though numerous projects have been funded throughout the state, there is still some misunderstanding about the OHF and what is accomplished through the program. There is allocated funds that have been set aside to complete an economic study.

The consensus of the Board was that they would like to receive a proposal from NDSU to review at the next OHF meeting. A special meeting could be conducted for discussion on the contents of the proposal. In a community, people want quality of life amenities to move here and become part of the workforce. And there is a workforce shortage within the state. This study could be analyzed from so many different directions. Carbon sequestration will also be a huge factor in the future.

Mr. David Thiele, Ethics Commission, gave a presentation. The OHF Advisory Board falls within the Ethics Commission jurisdiction. He reviewed a variety of issues, including:

- Complaints and how they are handled.

- Rules regarding gifts. The Constitution states a public official may not accept anything of value from a lobbyist and a lobbyist may not give anything of value to a public official. If serving on multiple Boards, those duties are separate. For gifts, anything of value was changed to a \$10 exemption.
- Rules regarding lobbying.
- The process for a conflict of interest. The process is as follows:
 - Discuss the conflict.
 - Vote as a group to determine whether a Board member should vote. The biggest issue is whether there is a direct financial impact. Recusal is serious because Board members are appointed to serve a duty. Board members cannot recuse themselves if it will eliminate the ability of the Board to act.
 - Ensure the conflict is on record. The Ethics Commission is in the process of drafting rules regarding conflicts of interest and now has the authority to issue formal advisory opinions which offers protection against any civil or criminal offenses.

A question was raised regarding whether the Ethics Commission will review the financial implications of a project being approved for funding. Mr. Thiele indicated that the Industrial Commission has a code of ethics that includes conflicts which should be the starting point. The financial interest must be substantial. It was noted that Board members have utilized projects after they have been funded and a question was raised as to if this is acceptable. Mr. Thiele indicated it is acceptable to take advantage of programs that impact an entire industry, but not acceptable to take advantage of a program that impacts a Board member alone. A lot of the Board members are on these commissions because of their backgrounds.

Ms. Annique Lockard, Attorney General's Office, provided a presentation regarding Open Meeting Laws. Discussion included how to identify and avoid common open meeting violations.

Ms. Rhonda Kelsch provided an update on the Conservation Marketing Project. This project has received federal funds and includes a variety of partners. There will be a web-based platform and an e-campus to this grant. This will be used by both the OHF and all the individual programs. The goal is to connect the landowner to the correct resource for that specific conservation practice along with providing cost-share assistance. There will also be media deliverables which includes PSA's, digital ads, newspaper and radio ads, and direct mailings. Testimonial videos on the importance of agriculture in North Dakota and who to get into contact with for these various programs will be available on YouTube. A statewide media campaign will disburse the deliverables across the multiple channels so there will just be one main information source in North Dakota.

Discussion was held on policies and procedures. It was noted that there is a goal that at a minimum, 15% of the funding received for a biennium will be given priority for recreation projects. Since the program started, directive D projects are at 12% which is less than the goal. This percentage includes only the primary directive as D for a total of \$7.9 million. For projects with multiple directives that include D, the total spent has been \$7.16 million. Tree plantings, best management practices, and water projects are separate categories. A lot of projects do fall into more than one directive, but recreational is typically viewed as trails and winter/water sport activities. The 15% recommendation for directive D was suggested by the Industrial Commission.

While some things are stated specifically in Century Code about appropriate uses of the funds, definitions such as maintenance costs, buildings, and a comprehensive conservation plan can be changed by the Board. There is a lot of confusion from smaller political subdivisions on the definition of a comprehensive conservation plan and what needs to be provided for the plan.

To recommend a building be funded, it would have to be part of a comprehensive conservation plan. The biggest issue for the Board has been the funding of bathroom facilities for projects that involve, for example, a boat ramp or fish cleaning station to enhance those areas which are currently not eligible for funding as written. Even though fish cleaning stations do not have four walls, some have been turned down because there was no comprehensive conservation plan. Game and Fish has a fish cleaning station program. All year-round buildings are not eligible for funding, but that could be changed to exempt bathroom facilities.

The definition could also be changed to include seasonal buildings such as a picnic area and fish cleaning stations which do not have four walls but are permanently affixed to the ground. What is the definition of a short-term and long-term building structure regarding continuing maintenance? For maintenance, there should be a minimum of ten years, but it should be built to last 50 years. Playgrounds should be built to last 15 years.

It was suggested that a comprehensive conservation plan template could be developed so applicants know what needs to be provided utilizing the OHF partners. A lot of small communities do not have a strategic plan and focus on completing one portion of the project at a time because that is all the resources available.

It was noted that the term comprehensive conservation plan is confusing in relation to a building. A lot of the projects that have been funded go towards conservation so that is why it was included in order for a building to be approved for funding. One suggestion is to move buildings into a maintenance versus conservation plan for recreational purposes. There could be some confusion among the applicants regarding recreation in wildlife areas.

It was moved by Amundson and seconded by Lies to approve a recommendation for the Industrial Commission that the definition of a Comprehensive Conservation Plan is amended as follows:

A detailed plan that has been formally adopted by the governing board which includes goals and objectives--both short and long term, must show how this building will enhance the overall conservation goals of the project and the protection or preservation of ~~wildlife and fish habitat or~~ natural areas and outdoor recreation.

On a roll call vote, Amundson, Bina, Crooke, Dewald, Dokken, Hutchens, Kreil, Kuylen, Lies, and Retterath voted yes; no one voted nay. The motion carried unanimously.

Discussion was held regarding the 60/40% cost share on fencing that is currently used. The 60/40% cost share was initially devised to remain consistent and not double up on programs. Consistency is hard because costs are continually increasing, and more shortages are occurring. By law, only state agencies, political subdivision, tribal entities, and nonprofits are eligible to apply, so these larger organizations are needed to submit proposals on behalf of the producers. Also, these larger organizations have a lot more resources available than producers. Within the NRCS field office technical guide, there are defined standards and specifications for cross and perimeter fencing, and the cost is a flat rate.

By law, OHF funds can only be used for 25% of playground costs and OHF funds cannot exceed \$10,000.

The consensus was that goal is to look at the areas where there is inconsistency and devise a list which could be looked at during a future meeting to determine if any changes need to be made. The playground threshold and labor costs should also be included in that list.

A request was made to reconsider the ND Department of Agriculture's Soil Health Cover Crop Grant Program. Discussion was held regarding the request, and it was noted that the project originated legislative

intent. There are concerns about timing for project completion if the project is delayed until March. An extenuating circumstance does apply to this application.

It was suggested that in the future each application will be considered individually to avoid confusion and more discussion can occur if needed.

It was moved by Mr. Kuylen and seconded by Mr. Dewald that ND Department of Agriculture's Soil Health Cover Crop Grant Program, submitted by ND Department of Agriculture be recommended to the Industrial Commission for Outdoor Heritage Fund funding in the amount of \$400,000.

Discussion was held as follows:

- A delayed harvest contingency was encouraged because there are no programs that pay for cover without delayed harvest.
- It was noted that clarification regarding how this was added to the Department of Agriculture appropriations bill would be helpful. It feels like a forced project from the Legislature.
- There was confusion expressed about the process.
- At \$750 per acre, that is not enough to put a producer in practice. If this project is funded, the Legislative body could state more entities come to the OHF for additional earmarked funds.
- A suggestion was made to match the \$300,000 from the BND.
- If this program is approved and is not as successful as anticipated by the Legislature, it could afford more confidence in the OHF Board.

It was moved by Mr. Dewald and seconded by Mr. Hutchens that ND Department of Agriculture's Soil Health Cover Crop Grant Program, submitted by ND Department of Agriculture be recommended to the Industrial Commission for Outdoor Heritage Fund funding in the amount of \$300,000. On a roll call vote, Bina, Crooke, Dewald, Dokken, Hutchens, Kreil, Kuylen, and Retterath voted yes and Amundson and Lies voted no. The amendment carried.

Discussion was held regarding the amended motion as follows.

- Could a coalition of both agricultural and conservation groups be formed during the next Legislative session to talk to the Legislators about the importance of letting Board members provide the expertise on whether projects are funded? Board members spend time reviewing applications thoroughly to determine its applicability to the OHF and the integrity of the process should be maintained.
- Cover crops have been funded in the past and the end user of this program is a producer which could prompt them to start utilizing this practice even though it is only 50 acres. Focus should be whether this is of value to the producer and not how it was initiated because the producer will not know.
- The amount of \$300,000 was for applications received this year, but it was placed on hold due to the water and haying programs. A lot of the USDA programs with cover crops in the contracts received extensions.
- If this project would have been presented without the Legislative intent, it would have passed on its own merits.

On a roll call vote of the amended motion, Bina, Crooke, Dewald, Dokken, Hutchens, Kuylen, and Retterath voted yes and Amundson, Kreil, and Lies voted no. The motion carried.

Under other business, discussion was held regarding whether meetings should be scheduled one year in advance. Some members indicated they liked method used, which includes a survey with multiple options.

A recommendation was made to choose a date at least six months in advance. For next year's March grant round deadline, a date of April 20th or April 21st could be selected based upon the next Industrial Commission meeting. Some members felt that it is easier to reserve a date than find a date at a later time.

It was noted that some Board members are very knowledgeable about Robert's Rules of Order. A suggestion was made that staff follow up with the Attorney General's office to get information on the official rules the Board is supposed to use. The Legislature utilizes the Masonic rules of order for meetings. This Board has not adopted any specific rules of order.

With no further business, Chairman Bina adjourned the meeting at 5:09 p.m.

A handwritten signature in cursive script that reads "Randy Bina".

Randy Bina, Chairman