

AGENDA

Nebraska Environmental Trust Board
Special Meeting
Thursday, June 22, 2023
1:00 PM CST
Via Zoom

Ferguson House
700 South 16th Street, Lincoln, NE

The public may attend the meeting at the physical address or via Zoom at <https://outdoornebraska.zoom.us/j/91021615025> or call 312-626-6799, Meeting ID: 910 2161 5025.

1. Call to Order
 - a. Roll call
 - b. Verify Quorum
 - c. Notice of Meeting; Published Monday, June 12, 2023
 - d. Notification of Open Meetings Act Posting
2. Approval of May 4, 2023, Board Meeting Minutes
3. No Public Comment - Comments were provided by the petitioners on May 4, 2023, at the Title 137 Hearing. Neb. Rev. Stat. § 84-1412(2), “A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.”
4. Jordan Anderson petition for Title 137 Negotiated Rulemaking from May 4, 2023
5. Bob Wickersham petition for Rulemaking from May 4, 2023
6. Next Meeting; Thursday, August 3, 2023, Location and Time TBD
7. Adjourn

****This agenda contains a list of subjects known at the time of its distribution on June 8, 2023. A current copy is kept on file at the offices of the Nebraska Environmental Trust, 700 S 16th Street, Lincoln, NE 68508. Except for items of an emergency nature, the agenda will not be altered later than 24 hours before the scheduled commencement of the meeting.**

MINUTES

Nebraska Environmental Trust Board
Second Quarter Meeting
May 4, 2023
1:00 p.m.

1. Call to Order

Chairman Quandahl called the second quarter meeting of the Nebraska Environmental Trust Board (NET) to order at 1:00 p.m. in LL Room 031 at 245 Fallbrook Blvd., Lincoln, Nebraska.

Advanced notice of the meeting and public hearing was published in the Lincoln Journal Star on April 22, 2023. The agenda and documents to be considered at the meeting were provided. The Open Meetings Act was posted near the meeting room entrance and on the Nebraska Environmental Trust (NET) website.

Roll call was conducted, and a quorum was present. Executive Director Elmshaeuser noted that the terms of three members of NET's 14-member Board have expired. The Board currently has 11 members. Six members are required for a quorum. A majority vote of those present and attending is required to take action.

Members Present (8):

District I: Mr. James Hellbusch, Columbus. **District II:** Chairman Mark Quandahl, Omaha; Mr. Felix Davidson, Valley. **District III:** Mr. Josh Andersen, Edgar.

State Agency Representatives: Vice Chairman Jim Macy, Director, Nebraska Department of Environment and Energy; Mr. Tim McCoy, Director, Nebraska Game & Parks Commission; Mr. Tom Riley, P.E., Director, Nebraska Department of Natural Resources; Ms. Sherry Vinton, Director, Nebraska Department of Agriculture.

Members Absent (3):

District I: Mr. Jeff Kanger, Lincoln. **District III:** Mr. Rod Christen, Steinauer.

State Agency Representative: Ms. Charity Menefee, Director, Nebraska Department of Health and Human Services.

Staff Present:

Mr. Karl Elmshaeuser, Executive Director; Ms. Holly Adams, Grants Administrator; Ms. Madison Moe, Grants Assistant; and Ms. Sandra Weaver, Administrative Specialist.

2. Consent Agenda

Background on Consent Agenda Items

The consent agenda included the February 2, 2023, Board Meeting Minutes, financial reports, approval to set financials aside for audit, the Grant Disbursement Report, Nebraska Lottery Proceeds Allocation Report, and the Grant Administration Report.

Motion by Mr. Riley, seconded by Mr. Vinton, "I move to approve the consent agenda."

Voting Aye: Hellbusch, Davidson, Andersen, McCoy, Riley, Vinton, Macy, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

3. Public Comment

Mr. Bob Wickersham, Friends of the Nebraska Environmental Trust, expressed concern about the proposed amendments to the Board's policies and asked the Board to consider the public comments on the proposed rule changes to Title 137.

Mike Murphy, Middle Niobrara Natural Resources District, requested consideration of the NRD's modification requests for projects 20-104, 21-133, and 20-150-3 because of issues occurring causing undue delays.

David Rich, Nebraska Public Power District (NPPD), commented on the reasons for submitting an extension request for grant project 23-156.

4. UN-L Senior Design Team Update on Grants Portal Inspections

Background on Agenda Item 4

As a result of NET's state audits in 2021, the Board's Trust 22 Committee has been working with the Center for Operational Excellence (COE) to improve processes within NET's statutes, bylaws, rules and regulations, and policies. Grant monitoring was identified as a separate and significant project. Following the COE sessions, it was determined that the NET Grants Portal would provide a suitable platform for grant input, tracking, and notifications. An update project was contracted to Gregory Consulting, Inc. and the UN-L School of Computing Senior Design Capstone Program.

The UN-L Senior Design team presented the Grants Portal updates to the Board. The project is scheduled for completion by June 30, 2023. Contractual services from outside inspectors will be possible as of July 2023.

5. Board Development – Legislative informational reviews

Executive Director Elmshaeuser reminded the Board about the current requirements in the Open Meetings Act for agenda items and public comment.

If successful, LB 637, carried by Senator Albrecht, would require public comment at every meeting subject to the Open Meetings Act. Senator Hunt introduced AM 616 to amend LB 637 to state, "A body shall not limit public participation in any meeting at which citizens are allowed to speak." Senator Hunt later introduced AM 617, which adds, "unless a member or members of such public body are found or declared to be too tired to hear citizen testimony."

6. Title 137 Committee Report and Amendments to Title 137 for Consideration

Title 137 Committee Chair Andersen reported that the proposed changes represented a culmination of two years of effort inside and outside the Environmental Trust. The July 2021 Operational Assessment from the Department of Administrative Services identified multiple findings, including a lack of clarity and consistency in grant administration. The key areas were eligibility, rating, and ranking of the grant applications. Property tax concerns and implications from grant funding also needed to be addressed. In May of 2022, the NET Board created the Title 137 Committee to recommend procedures, policies, and alignment of Title 137 with state statutes. Public listening sessions were held in each congressional district in the state, and a remote session was held in Lincoln to take comments from the public. The comments were shared with the Title 137 Committee before deliberation began on proposed revisions to Title 137.

Motion by Mr. Macy, seconded by Mr. Davidson, "I move to adopt the amendments to Title 137 as proposed, to authorize the Executive Director to sign the Certificate of Adoption, and forward the applicable and appropriate documents for processing as required."

Discussion: Mr. Davidson thanked the Committee for its work in the proposed Title 137 revisions. Mr. Hellbusch noted there was a lot of inconsistency in the past, and this was the first step to clarification. Both positive and negative comments were received. Mr. McCoy stated there was public concern about portions removed from the proposed rules, but many of these revisions removed duplication and inconsistencies with the statutes. He noted NET's rules and regulations will continue to evolve.

Voting Aye: Davidson, Andersen, McCoy, Riley, Vinton, Macy, Hellbusch, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

7. Public Hearing on Proposed Ranking Systems for Grant Applications

As presiding officer, Chairman Quandahl opened the public hearing at 1:33 p.m. to accept testimony on the proposed Project Ranking Systems for grant applications under consideration by the Nebraska Environmental Trust Board, pursuant to Neb. Rev. Stat., Sections 81-15,167 through 81-15,176.

Hearing Testimony

Mr. Bob Wickersham, Friends of the Nebraska Environmental Trust (Friends), submitted a report containing comments on the proposed scoring criteria for the Project Ranking System prepared for the Friends by Teresa Wanser-Ernst, Ph.D. Mr. Wickersham outlined his concerns about the Project Ranking System scoring criteria.

Ms. Sandy Scofield, Friends of the Nebraska Environmental Trust, commented on the clarity of the proposed scoring criteria and the possibility of losing grant funds if not used.

Mike Murphy, Middle Niobrara Natural Resources District, commented on concerns with the proposed scoring criteria questions.

Shelly Kelly, Sandhills Task Force, commented on concerns with the proposed scoring criteria questions and the impact on smaller organizations.

Kristal Stoner, Audubon Nebraska, commented on the proposed scoring criteria and the impact on organizations.

The hearing concluded at 1:51 p.m.

8. Consideration of Project Ranking Systems for Grant Applications for Adoption

Background on Agenda Item 6

Pursuant to Neb. Rev. Stat. § 81-15,175 and Title 137, the Executive Director shall prepare Project Ranking Systems to rank all eligible applications. An affirmative vote of the Board approves the Project Ranking Systems after a public hearing.

Executive Director Elmshaeuser reminded the Board that Neb. Rev. Stat. § 81-15,175 (2) requires the Board to establish rating systems for ranking proposals that meet the environmental categories and other criteria and include the considerations listed in (a) through (g). The ten questions are based on statutory requirements. All of the questions are the same as last year except number 3. Last year, the criteria for the questions were based on six ratings: a. Does not meet criteria, b. Low, c. Below Average, d. Average, e. Above Average, and f. High. As a result of the listening sessions, feedback from grantees, and other sources, an attempt was made to help the Grant Committee members to differentiate between average and below average when reviewing grant applications.

Motion by Mr. Macy, seconded by Mr. Davidson, "I move to approve the new Project Ranking Systems for Grant Applications using the 10-question format that follows Title 137 and allows up to five points per question as presented. The new Project Ranking Systems is to be effective as of July 1, 2023, pending the approval and posting of the amendments to Title 137 by the Nebraska Secretary of State."

Discussion: It was clarified that applicants would not be penalized if a 15-Day Notice was resolved and that direct environmental impact outcomes would not be required to be verified. Ms. Vinton noted the questions were an effort to quantify what had been subjective in the past but also pointed out that the counties in question 5 could vary significantly in size.

Voting Aye: Andersen, McCoy, Vinton, Macy, Hellbusch, Davidson, Quandahl

Voting Nay: Riley

Absent: Christen, Kanger, Menefee

7 Voted Aye. 1 Voted Nay. Motion carried.

See Appendix A of the minutes for the Project Ranking Systems 10-question format document.

9. Grant application cycle 2023/2024

a. Point Allocation for Geographic Distribution

Points may be awarded to projects in specific areas if it becomes apparent that the area receives funding for proportionately fewer projects than other areas of the state. In the NET 2022 Annual Report, a map showed the geographic mix of project funding by county. Based on this information, it appears that additional points for specific geographical areas are not needed for the upcoming Grant Cycle.

Motion by Mr. Andersen, seconded by Mr. Hellbusch, "I move that the Board does not use additional points for specific geographical areas for the 2023/2024 grant cycle."

Discussion: Mr. Davidson noted geo points were not used last year after a review revealed the geographic mix was balanced.

Voting Aye: Riley, Vinton, Macy, Hellbusch, Davidson, Andersen, Quandahl

Abstaining: McCoy

Absent: Christen, Kanger, Menefee

7 Voted Aye. 1 Abstained. Motion carried.

b. Annual Priorities within Funding Categories

Pursuant to Neb. Rev. Stat. § 81-15,176, the Board may establish annual priorities within the five-year categories. If the NET Board wants to consider making it an annual priority, public meetings would need to be conducted in each of the three congressional districts. The NET Board may provide guidance for this activity for the 2024 Grant Cycle and would need to decide at the August 2023 meeting. The determination would occur after the grant applications for 2024 were opened. Sufficient notice needs to be given to applicants if the Board is considering a priority category.

Motion by Mr. Andersen, seconded by Mr. Davidson, "I move that the Board does not set priorities for the upcoming 2023/2024 grant cycle."

Discussion: Executive Director Elmshaeuser clarified this action is not about establishing funding categories but prioritizing them.

Voting Aye: McCoy, Riley, Vinton, Macy, Hellbusch, Davidson, Andersen, Quandahl
Absent: Christen, Kanger, Menefee
8 Voted Aye. Motion carried.

10. Grants Portal annual Grants Management System Service Agreement

The Board reviewed the proposed service agreement between the Nebraska Environmental Trust and Gregoire Consulting, Inc. for FY 2023-24 maintenance services for the Grants Management System. Pricing is based on a monthly service fee of \$2,400 for the 12-month duration of the agreement.

Motion by Mr. Davidson, seconded by Mr. Riley, "I move to approve the Grants Management System service agreement with Gregoire Consulting, Inc. and authorize the Executive Director to sign the contract in the amount of \$28,800.

Discussion: Mr. Davidson noted the grants portal was a powerful tool during his time on the Grants Committee. Ms. Adams stated the Portal is crucial for her job as the Grants Administrator. Updates are constantly being made to make the grants portal more user-friendly for staff and grant applicants. Executive Director Elmshaeuser reported the Trust hosts the software. Discussions have occurred about what a transition would look like in the future. The state's Office of the Chief Information Officer (OCIO) and the Game and Parks Commission assist with ensuring adequate security. The next planned internal project is to create another tab in the grants portal to allow public access. The update would allow the public to search for final reports of grants that occurred in the past. Mr. Riley thanked the staff for continuing to find ways to improve transparency and availability.

Voting Aye: Riley, Vinton, Macy, Hellbusch, Davidson, Andersen, McCoy, Quandahl
Absent: Christen, Kanger, Menefee
8 Voted Aye. Motion carried.

A meeting break was taken from 2:18 p.m. to 2:25 p.m.

11. Grant Modification Requests: 19-146-3, 20-103-3, 21-173, 23-156, 22-174, 20-174-3, 20-123-2, 20-139-3, 19-104-3, 20-153-3, 22-173, 20-175-3, 21-205-2, 20-189-3, 19-162-3, 20-127-3, 19-123-3, 20-104, 21-133, and 20-150-3

Motion by Ms. Vinton, seconded by Mr. Riley, "I move to approve Bazile Groundwater Management Area's request to move funds from the Travel Category into their Equipment/Monitoring, Project Assistant, and Advertising/Education Categories for project 19-146-3."

Discussion: None.

Voting Aye: Riley, Vinton, Hellbusch, Davidson, Andersen, McCoy, Quandahl
Abstaining: Macy
Absent: Christen, Kanger, Menefee
7 Voted Aye. 1 Abstained. Motion carried.

Motion by Mr. Riley, seconded by Mr. Davidson, "I move to approve Nebraska Academy of Sciences' request to extend project 20-103-3 for one year."

Discussion: Mr. Quandahl stated he would vote against the extension since the request was outside the grant's time frame, and another grant could be obtained.

Voting Aye: Vinton, Macy, Hellbusch, Davidson, McCoy, Riley
Voting Nay: Andersen, Quandahl
Absent: Christen, Kanger, Menefee
6 Voted Aye. 2 Voted Nay. Motion carried.

Motion by Ms. Vinton, seconded by Mr. Riley, "I move to approve the Girl Scout's request to extend project 21-173 for one year."

Discussion: The Grants Administrator clarified that grantees are typically asked to request a six-month or one-year extension for accounting purposes. Mr. Macy suggested adding this topic to a future Board discussion.

Voting Aye: Macy, Hellbusch, Davidson, Andersen, McCoy, Riley, Vinton, Quandahl
Absent: Christen, Kanger, Menefee
8 Voted Aye. Motion carried.

Motion by Mr. Hellbusch, seconded by Mr. McCoy, "I move to approve NPPD's request to extend project 23-156 for one year."

Discussion: Executive Director Elmshaeuser noted a contract had not been signed yet for the approved grant project. The grantee wished to extend the contract end date to resolve an unforeseen delivery issue. Mr. Hellbusch and Mr. Davidson agreed that supply chain issues remain problematic.

Voting Aye: Hellbusch, Davidson, Andersen, McCoy, Riley, Vinton, Macy, Quandahl
Absent: Christen, Kanger, Menefee
8 Voted Aye. Motion carried.

Motion by Mr. Andersen, seconded by Mr. Davidson, "I move to approve Nebraska Farm Bureau Foundation's request to extend project 22-174 for six months."

Discussion: Concern was expressed about whether the project could be completed in six months. Ms. Adams noted the grantee requested a six-month extension to allow the new middle school ag mag issues to be printed and promoted in September and mailed at the beginning of the school year. The extension would enable teachers to use the series of four readers for the entire year. Mr. Andersen noted he favored the modification because granting flexibility would result in a better return for the investment.

Voting Aye: Hellbusch, Davidson, Andersen, McCoy, Riley, Vinton, Macy, Quandahl
Absent: Christen, Kanger, Menefee
8 Voted Aye. Motion carried.

Motion by Mr. Davidson, seconded by Mr. Riley, "I move to approve Beyond School Bells' request to extend project 20-174-3 for six months."

Discussion: Chairman Quandahl noted that based on past performance, he did not see evidence that the grantee could accomplish what was set out in the project using an extra six months.

Voting Aye: Davidson, McCoy, Riley, Vinton, Macy
Voting Nay: Andersen, Hellbusch, Quandahl
Absent: Christen, Kanger, Menefee
5 Voted Aye. 3 Voted Nay. Motion carried.

Motion by Ms. Vinton, seconded by Mr. Davidson, "I move to approve UN-L's request to extend project 20-123-2 for one year."

Discussion: Mr. Davidson noted if successful, the project could benefit Nebraska's beef industry and air quality. Mr. Quandahl stated that he did not see anything in the letter that would lead him to believe the project would successfully get usable data.

Voting Aye: McCoy, Riley, Vinton, Macy, Hellbusch, Davidson

Voting Nay: Andersen, Quandahl

Absent: Christen, Kanger, Menefee

6 Voted Aye. 2 Voted Nay. Motion carried.

Motion by Mr. Riley, seconded by Mr. Davidson, "I move to approve UN-L's request to extend project 20-139-3 for one year."

Discussion: Because of a 2020 university-wide hiring freeze, a project coordinator was not hired until 2021. Mr. Hellbusch noted he would vote no because it had already been two years.

Voting Aye: McCoy, Riley, Vinton, Macy, Davidson

Voting Nay: Hellbusch, Andersen, Quandahl

Absent: Christen, Kanger, Menefee

5 Voted Aye. 3 Voted Nay. Motion carried.

Motion by Mr. Macy, seconded by Mr. Hellbusch, "I move to deny the Nebraska Pharmacists Association's request to extend project 19-104-3 for one year."

Discussion: Nebraska MEDS also received unanticipated grant funding from the Nebraska Department of Health and Human Services (DHHS) through federal funding. The funds from DHHS were utilized ahead of the funding from NET. The project has already received an extension.

Voting Aye: McCoy, Riley, Vinton, Macy, Hellbusch, Davidson, Andersen, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

Motion by Mr. Riley, seconded by Mr. Macy, "I move to approve Northern Prairies Land Trust's request to extend project 20-153-3 for one year."

Discussion: None.

Voting Aye: Riley, Vinton, Macy, Hellbusch, Davidson, Andersen, McCoy, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

Motion by Mr. Riley, seconded by Mr. McCoy, "I move to approve the City of Lexington's request to extend project 22-173 for six months."

Discussion: None.

Voting Aye: Riley, Vinton, Macy, Hellbusch, Davidson, Andersen, McCoy, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

Motion by Mr. McCoy, seconded by Mr. Davidson, "I move to approve Lewis and Clark NRD's request to extend project 20-175-3 for six months."

Discussion: Chairman Quandahl indicated he would vote no since COVID was used as the reason for delayed goals and tasks involving in-person interactions.

Voting Aye: Vinton, Hellbusch, Davidson, McCoy, Riley

Voting Nay: Macy, Andersen, Quandahl

Absent: Christen, Kanger, Menefee

5 Voted Aye. 3 Voted Nay. Motion carried.

Motion by Mr. Riley, seconded by Mr. Davidson, "I move to approve the Bird Conservancy of the Rockies' request to extend project 21-205-2 for six months."

Discussion: In the last grant cycle, Bird Conservancy of the Rockies applied for a grant (23-151) to continue the bird banding in project 21-205-2. Because funding was not awarded for 23-151, the residual funds in 21-205-2 would be used to continue bird banding if an extension were granted.

Voting Aye: Riley

Voting Nay: Macy, Hellbusch, Davidson, Andersen, Vinton, Quandahl

Abstaining: McCoy

Absent: Christen, Kanger, Menefee

1 Voted Aye. 6 Voted Nay. 1 Abstained. Motion failed.

Motion by Mr. Riley, seconded by Mr. Davidson, "I move to approve UN-L's request to extend project 20-189-3 for one year."

Discussion: Chairman Quandahl noted he would be voting no since he did not see they could accomplish what was set out. Mr. Hellbusch pointed out that the reason for not completing interviews was travel restrictions, but platforms such as Zoom could have been used.

Voting Aye: Riley

Voting Nay: Hellbusch, Davidson, Andersen, McCoy, Vinton, Macy, Quandahl

Absent: Christen, Kanger, Menefee

1 Voted Aye. 7 Voted Nay. Motion failed.

Motion by Mr. Davidson, seconded by Mr. Andersen, "I move to deny UN-L's request to extend project 19-162-3 for one year."

Discussion: It was noted that the grant was issued four years ago.

Voting Aye: Hellbusch, Davidson, Andersen, Vinton, Macy, Quandahl

Voting Nay: McCoy

Abstaining: Riley

Absent: Christen, Kanger, Menefee

6 Voted Aye. 1 Voted Nay. 1 Abstained. Motion carried.

Motion by Mr. Riley, seconded by Mr. Davidson, "I move to approve the Nature Conservancy's request to extend project 20-127-3 for one year."

Discussion: Prescribed fires were limited in the last few years because of drought.

Voting Aye: Davidson, Andersen, McCoy, Riley, Vinton, Macy, Hellbusch, Quandahl
Absent: Christen, Kanger, Menefee
8 Voted Aye. Motion carried.

Motion by Mr. Riley, seconded by Mr. Davidson, "I move to approve the Nature Conservancy's request to extend project 19-123-3 for one year."

Discussion: None.

Voting Aye: Riley, Davidson
Voting Nay: Andersen, McCoy, Vinton, Macy, Hellbusch, Quandahl
Absent: Christen, Kanger, Menefee
2 Voted Aye. 6 Voted Nay. Motion failed.

Motion by Mr. Andersen, seconded by Mr. Davidson, "I move to deny Middle Niobrara NRD's request to extend projects 20-104 and 21-133 for one year."

Discussion: A series of extensions for Middle Niobrara NRD projects were reviewed. A Board motion on December 7, 2021, approved a one-time extension of one year for project 20-104. It was noted that multiple grants are still open.

Voting Aye: Hellbusch, Davidson, Andersen, Quandahl
Voting Nay: McCoy, Riley, Vinton
Abstaining: Macy
Absent: Christen, Kanger, Menefee
4 Voted Aye. 3 voted Nay. 1 Abstained. Motion carried.

Motion by Mr. Andersen, seconded by Mr. Davidson, "I move to deny Middle Niobrara NRD's request to extend project 20-150-3 for one year and to move \$215,915.23 from their Technical Assistance and Equipment categories into the Information and Education Category."

Discussion: The request includes items (the education and project coordinators and Heartland Scenic Studies) proposed in their 2023 Phase 2 application (23-120), which was not awarded. Phase 1 (20-150-3) has been completed.

Voting Aye: Vinton, Macy, Hellbusch, Davidson, Andersen, Quandahl
Voting Nay: McCoy, Riley
Absent: Christen, Kanger, Menefee
6 Voted Aye. 2 Voted Nay. Motion carried.

12. Closeout Report of Grants

Background on Agenda Item 6

When a project contract reaches its end date, the grantee must submit a final report. NET staff reviews reports, disbursement requests, and balances of projects when the contract date ends. If a grant project breaches the contract, the executive director sends a written 15-day notice. Failure by the grantee to comply may result in a revocation of the grant. The staff creates a summary report for the Board to review the final status of each grant project before closing them in the Grants Portal.

Executive Director Elmshaeuser reported that some unfinished grant projects were included on the Closeout Report because responses were not received for notices or audits. Grant project 19-186-3 is included on the closeout list because an earlier request for an extension was denied, and the project was not completed. A final report for the project was not received, although it expired on

December 31, 2022. A reimbursement request for grant project 19-186-3 was emailed to NET on May 3, 2023. A final report was attached.

Motion by Mr. Riley, seconded by Mr. Davidson, "I move to approve the grant closeout report provided and presented by NET staff on May 4, 2023, except for 19-186-3, for the closeout of the projects presented in the report."

Discussion: None.

Voting Aye: Riley, Vinton, Macy, Hellbusch, Davidson, Andersen, McCoy, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

Motion by Mr. Riley, seconded by Mr. Davidson, "I move to accept the final report for 19-186-3, and not approve any additional funds for reimbursement."

Discussion: None.

Voting Aye: Riley, Vinton, Macy, Hellbusch, Davidson, Andersen, McCoy, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

13. Sale of property with conservation easement from Grant 09-134-3

Background on Agenda Item 13

The Nebraska Environmental Trust received a notification letter from an attorney representing the owner that a property with a conservation easement was planning to be sold. The conservation easement will remain in place with no modifications. The property/easement was acquired in part with grant funds provided by NET in Grant 09-134-3. Section 9. Notice of Approvals. 9.1 (b) and Section J. of the grant contract require the landowner to receive prior written permission from the NET before the sale of the property.

Motion by Mr. Andersen, seconded by Mr. McCoy, "I move to approve the transfer of the property in Grant 09-134-3."

Discussion: Mr. Riley verified that the motion authorized Executive Director Elmshaeuser to send a notification.

Voting Aye: Vinton, Macy, Hellbusch, Davidson, Andersen, McCoy, Riley, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

14. Nebraska Environmental Trust Policy Amendments

Background on Agenda Item 14

As a result of process improvement meetings and the review of Title 137, additional policy items need updating. The proposed policy amendments listed below are a result of requirements already in statute, redundancy, discontinued or updated practices, grant portal updates, and clean-up.

a. Section II: Committees, C. Grants Committee, amend/delete

C: Grants Committee

~~Notice of all meetings of the Grants Committee will be published.~~

Proposed Date: 11/14/2001

Legislative Program Evaluation Unit

Adopted Date: 11/14/2001

Revised Date: 07/31/2003

~~Members of the Grants Committee who visit a site where an application is filed and under consideration for funding shall report on the visit to the Committee at the next meeting following the visit.~~

~~Adopted Date: 04/03/2002~~

Records Policy:

~~1. Staff recommendations will be part of the grant file and provided to applicants upon request only.~~

~~2. Committee members will sign their score sheets so that they can be returned to them. Staff will record the individual scores and retain them, as well as the average score, in order to substantiate the average if questioned. Committee member abstentions will be recorded with each vote concerning a grant where a possible conflict of interest is noted.~~

~~3. Staff will retain working documents of the Committee for one year following issue of recommendations. Committee members will retain their own notes and voting records at their own discretion.~~

~~Proposed Date: 11/01/2002~~

~~Grants Committee~~

~~Adopted Date: 11/01/2002~~

Policy on "Additional Funds" Available Prior to Grant Awards:

~~1. The Grants Committee will have a "goal" not to carryover more than \$200,000 to the next grants cycle. The Committee will also strive to provide better lottery transfer projections and to avoid tie rankings.~~

~~Proposed Date: 07/20/2007~~

~~Grants Committee~~

~~Adopted Date: 07/20/2007~~

~~Board Action~~

Motion by Mr. Andersen, seconded by Mr. Davidson, "I move to delete all of Section II: Committees, C. Grant Committee policies that are currently in place."

Discussion: Mr. McCoy noted that the policy change removes redundancy for what is already required in statute for every state board and commission. Mr. Riley noted it is easier to keep laws up to date, so these items are not at the policy level.

Voting Aye: Macy, Hellbusch, Davidson, Andersen, McCoy, Riley, Vinton, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

b. Section V: Grant Applications, A. Duplication of Grant Awards, amend

A. Duplication of Grant Awards with other agencies. NDEE*

To prevent duplication of grant awards by the Nebraska Environmental Trust and other agencies the Nebraska Department of Environment & Energy, Trust staff will:

1. Provide a full list of applications submitted to the program following each application deadline to the other agencies agency for review.

2. All Nebraska Environmental Trust recycling grants will be provided to the NDEE staff for technical review.

3. The rank order and draft recommended funding list will be provided to NDEE staff as soon as available for review.

Proposed Date: Interagency Agreement

Adopted Date: 07/20/1999

Motion by Mr. Davidson, seconded by Mr. Andersen, "I move to amend Section V: Grant Applications A. Duplication of Grant Awards as presented."

Discussion: Ms. Vinton verified that "agencies" in the policy included both code and non-code.

Voting Aye: Hellbusch, Davidson, Andersen, McCoy, Riley, Vinton, Macy, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

c. Section V: Grant Applications, G. Public Notice of Applications Received and Rank Order List, amend/delete

G. Public Notice of Applications Received and Rank Order List

~~After all grant applications for a given year have been received and processed, staff will post the summary report of applications on the Internet, issue a press release advising the public that the report is available.~~

Documents being considered at the Grants Committee or NET Board meetings are provided to the public as required by the Open Meetings Act.

Motion by Mr. Davidson, seconded by Mr. Hellbusch, "I move to amend Section V: Grant Applications G. Public Notice of Applications Received and Rank Order List as presented since that information can be provided through the Nebraska Open Meetings Act."

Discussion: None.

Voting Aye: Hellbusch, Davidson, Andersen, McCoy, Riley, Vinton, Macy, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

d. Section V: Grant Applications, H. Comment Process on Grant Applications and Rank Order List, amend/delete

H. Comment Process on Grant Applications and Rank Order List

~~When the Grants Committee reports the results of its ranking process to the Chairperson, staff shall issue a press release of the rank order list. The list will be posted on the Internet and be made available via U.S. mail upon request. Written public comment will be accepted until one week prior to the vote to award. Any correspondence and other documents (not part of the application) will be forwarded to the full Board by November meeting or put in the February and/or April meeting 14 days prior to the board meetings. Materials not withstanding revisions or subsequent L of this section. Only materials submitted for hearing. All materials will not be made part of record for the public hearing. A public hearing will be scheduled for the meeting at which the Board votes to award grants.~~

Proposed Date: 11/14/2001 Legislative Program Review Committee

Adopted Date: 04/03/2002

Documents being considered at the Grants Committee or NET Board meetings are provided to the public as required by the Open Meetings Act.

Motion by Mr. Andersen, seconded by Mr. Hellbusch, "I move to amend Section V: Grant Applications H. Comment Process on Grant Applications and Rank Order List as presented since that information can be provided through the Nebraska Open Meetings Act."

Discussion: None.

Voting Aye: Davidson, Andersen, McCoy, Riley, Vinton, Macy, Hellbusch, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

e. Section V: Grant Applications, I. Recognition Grant, amend/delete

I. Recognition Grant

~~The Board may approve a simplified application form to facilitate applications for grants of less than \$15,000.~~

Proposed Date: 12/13/1994 Public Hearing
Adopted Date: 02/07/1995

Motion by Mr. Andersen, seconded by Mr. McCoy, "I move to delete the Section V: Grant Applications I. Recognition Grant policy."

Discussion: None.

Voting Aye: Andersen, McCoy, Riley, Vinton, Macy, Hellbusch, Davidson, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

f. Section V: Grant Applications, J. Statement of Intent, amend

J. Statement of Intent

The Grants Committee may issue multi-year grant awards in total from funds on account or may issue statements of intent to fund projects for up to two years forward, pending available funds and satisfactory progress and compliance with grant conditions.

~~Second year statements of intent may not exceed 40% (25% new and 15% carried forward) of the total amount available to be awarded in a given year and third year intents may not exceed 15% of that total.~~

Proposed Date: 08/11/1997
Adopted Date: 08/12/1997
Revised Date: 04/03/2002

Motion by Mr. Andersen, seconded by Mr. Hellbusch, "I move delete the second paragraph of Section V: Grant Applications J. Statement of Intent as presented."

Discussion: None.

Voting Aye: McCoy, Riley, Vinton, Macy, Hellbusch, Davidson, Andersen, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

g. Section V: Grant Applications, L. Application Submission Requirements, amend

L. Application Submission Requirements

1. All essential components including partner letters must be submitted by the deadline, with the original application filing.

2. ~~The email version of the application and the paper version must be identical, with no material changes to the nature, scope or components of the project.~~ Only electronic applications through the NET Grant Portal System will be accepted.

Proposed Date: 04/17/2006
Adopted Date: 04/17/2006

Motion by Mr. Andersen, seconded by Mr. Hellbusch, "I move to delete the email and paper application versions of Section V: Grant Applications L. Application Submission Requirements as presented and only allow electronic grant applications through the NET Grant Portal System."

Discussion: Mr. Riley asked if the motion would meet the state's requirement for access. Staff will confirm whether there is an issue with only allowing electronic grant applications.

Voting Aye: McCoy, Riley, Vinton, Macy, Hellbusch, Davidson, Andersen, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

h. Section VI: Grantee Conditions, F. Payment of Tax on Real Property, amend

Executive Director Elmshaeuser noted the amendment to Policy Section VI: F is contingent on the proposed changes in Title 137 successfully going through the regulation process to become law.

F. Payment of Tax on Real Property

The Nebraska Environmental Trust recognizes the importance of maintaining the property tax base to local communities. All government grantees are required to pay taxes or payments in-lieu of taxes in accordance with applicable state or federal laws on real property acquired with Trust funding. All private grantees, for-profit or non-profit, are required to pay property taxes on real property acquired with Trust funding in full in perpetuity.

~~Grants issued for the purpose of acquiring title to real property to a grantee(s) which does not have the statutory ability to pay property taxes shall be accompanied by a one-time payment to the county (ies) affected. The payment shall be 15 (fifteen) times the amount of the total property tax due in the last calendar year, less the levy amount which would have been due to the grantee(s).~~

Proposed Date: 10/27/1999 Ad-Hoc Committee on Property Tax Abatement

Adopted Date: 11/09/1999

Revised Date: 04/07/2005

Motion by Mr. Riley, seconded by Mr. Davidson, "I move to delete the second paragraph of Section VI: Grantee Conditions, F. Payment on Tax on Real Property as presented with an effective date that coincides with the Secretary of State's posting of the approval of the amendments to Title 137."

Discussion: None.

Voting Aye: Riley, Vinton, Macy, Hellbusch, Davidson, Andersen, McCoy, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

i. Section IX: Trust Staff, B. Staff Supervision, amend

B. Staff Supervision

The Executive Director approves all routine activities for Trust staff. The Executive Director approves operating expenditures within the guidelines established by the Trust Board and within authority granted by the Nebraska Legislature. ~~The Director of the Nebraska Game and Parks Commission approves routine activities for the Executive Director.~~

Proposed Date: 12/27/2001 Legislative Program Evaluation Unit

Adopted Date: 02/13/2002

Motion by Mr. Andersen, seconded by Mr. McCoy, "I move to amend Section IX: Trust Staff, B. Staff Supervision as presented, removing the reference to the Director of the Nebraska Game and Parks Commission, to be in alignment with the state statute."

Discussion: None.

Voting Aye: Riley, Vinton, Macy, Hellbusch, Davidson, Andersen, McCoy, Quandahl

Absent: Christen, Kanger, Menefee

8 Voted Aye. Motion carried.

15. Director's Report

Executive Director Elmshaeuser reported that 273 reimbursement requests were received for grant projects from July 1, 2022, through March 27, 2023. A total of 173 requests were rejected or withheld. Payments were withheld because of a shortage in a required match or because the reports were overdue, which would require more documentation. As a result of audits, 15-day notices, and closeouts, the Trust is recapturing \$1,787,874.05 in funds. Grantees do not always use all or part of the funds awarded. Historically, funds coming back to the Trust have never been related back to the Governor's Office or appropriations side to offset the total appropriation for spending. During this fiscal year, \$5,628,360.75 additional revenue has been received with no offsetting appropriations. This amount is above the 20 million appropriated. This issue has been occurring over time, causing a significant increase in the cash fund.

Ms. Madison Moe was introduced to the Board. She filled the Grants Assistant vacancy in late February.

A picture of the Trust's new office building in Lincoln's Telegraph District was presented. A sign identifying the Nebraska Environmental Trust will be installed on the exterior. The move will be funded within existing appropriations and is anticipated to occur near the end of the fiscal year.

16. Next Meeting

Thursday, August 3, 2023, Location TBA, Lincoln, Nebraska, 1:30 p.m.

17. Adjourn

Chairman Quandahl adjourned the meeting at 4:19 p.m.

Karl L. Elmshaeuser
Executive Director

APPENDIX A

Project Number:

Sponsor:

Project Name:

Scoring Criteria:

1. Does the project conform to the funding categories?
 - a. 0 – Does not meet criteria – Outside of scope
 - b. 1 – Low – Undefined project, just lists the category
 - c. 2 – Below Average – Lacks clarity of purpose
 - d. 3 – Average – Meets one category objective
 - e. 4 – Above Average – Two categories well defined
 - f. 5 – High – Three or more categories well defined
2. Does the project produce a commitment of funds from other funding sources?
 - a. 0 – Does not provide any match
 - b. 1 – Provides 5% - 24% match
 - c. 2 – Provides 25% - 49% match
 - d. 3 – Provides 50% - 74% match
 - e. 4 – Provides 75% - 99% match
 - f. 5 – Provides 100% match
3. Evaluation of performance looking back the last 3 grant cycles.
 - a. 0 – Received a 15 Day Notice that was enforced
 - b. 1 – Final Report was late
 - c. 2 – Two Quarterly Reports were late
 - d. 3 – New Applicant
 - e. 4 – All Quarterly Reports and Final Report submitted on time
 - f. 5 – All Reports submitted on time, no extensions or modifications requested
4. Does the project result in a public-private partnership?
 - a. 0 – Not a requirement/Encouragement only
 - b. 1 – Low – Solo project
 - c. 2 – Below Average – One
 - d. 3 – Average – Two
 - e. 4 – Above Average - Three
 - f. 5 – High – Four or more
5. Does this project attain a geographic mix that provides funding for a diverse area?
 - a. 0 - Does not meet criteria – Majority of funding for project not used in NE
 - b. 1 – Low – One to two counties impacted
 - c. 2 – Below Average – Three to four counties impacted
 - d. 3 – Average – Five to six counties impacted
 - e. 4 – Above Average – Seven to eight counties impacted
 - f. 5 – High – Nine or more counties impacted

6. Is the project cost effective? (Formula: Operations/(NET Funds requested – Administration))
 - a. 0 – 12% or higher
 - b. 1 – 10 to 11.99%
 - c. 2 – 7 to 9.99%
 - d. 3 – 4 to 6.99%
 - e. 4 – 2.01 to 3.99%
 - f. 5 – 0 to 2.00%

7. Does the project have economic impacts?
 - a. 0 – Does not meet criteria – No data provided
 - b. 1 – Low – Lack in clarity in project scope
 - c. 2 – Below Average – Generalization of goals to be accomplished
 - d. 3 – Average – Increases in opportunities or mitigation of hazards well defined
 - e. 4 – Above Average – Proposed measurements provided
 - f. 5 – High – Outcomes can be verified independently

8. Does the project produce direct environmental impacts?
 - a. 0 – Does not meet criteria – No data provided
 - b. 1 – Low – Lack of clarity in project scope
 - c. 2 – Below Average – Generalization of goals to be accomplished
 - d. 3 – Average – Direct environmental impacts are well defined
 - e. 4 – Above Average – Proposed measurements provided
 - f. 5 – High – Outcomes can be verified independently

9. Does the project produce long term environmental benefits for the general public?
 - a. 0 – Not sustainable, less than one year
 - b. 1 – One year
 - c. 2 – Two years
 - d. 3 – Three years
 - e. 4 – Four to nine years
 - f. 5 – Ten years or more

10. Does the project have a plan for evaluating the results of the expenditure of grant funds?
 - a. 0 – No plan provided
 - b. 1 – Tangible and/or intangible benefits provided
 - c. 2 – Goals, objectives, and outcomes provided
 - d. 3 – Baseline measurement, target, and improvement provided
 - e. 4 – Measurable real time value provided
 - f. 5 – Independent validation process of data provided

Petition for Negotiated Rulemaking

NET Board Agenda Materials

Item #: 4

Object: To make a determination on the petition request.

Contact Person: Mark Quandahl, Karl Elmshaeuser

For: Action

Attachments: 3 pages

BACKGROUND

Nebraska State Statute

81-15,173.

Board; powers and duties.

The board shall have and may exercise the following powers and duties:

(2) Keep records, conduct hearings, and adopt and promulgate rules and regulations to carry out its duties and implement the Nebraska Environmental Trust Act;

(7) Establish ad hoc advisory boards and subcommittees;

EXPLANATION

Title 137 covers the Rules and Regulations Governing Activities of the Nebraska Environmental Trust. They were last amended May 8, 2018.

During the Trust 22 Committee's work with the Center of Operational Excellence, several issues were discovered that required additional efforts to resolve. It was recommended to establish a dedicated ad hoc committee to work over the next year to further identify, propose and resolve these issues through the formal process to amend Title 137.

A Title 137 Committee was established on May 19, 2022, to focus on a review of Title 137 to determine and recommend procedures, policies, and efficiencies as well as alignment with state statutes to the NET Board. The Committee consists of five board members appointed by the Chairman.

A petition requesting the use of Negotiated Rulemaking was received at the Hearing for the Title 137 proposed amendments while following the Nebraska Administrative Procedures Act on May 4, 2023.

The Negotiated Rulemaking Act is in Neb. Rev. Stat. §§ 84-921 to 84-932. [Nebraska Legislature](#)

- Neb. Rev. Stat. § 84-924(1) states that the agency may establish a negotiate rulemaking committee if the agency director determines that the negotiated rulemaking procedure is in the public interest and provides the criteria for evaluation.

- Neb. Rev. Stat. § 84-922 states that the negotiated rulemaking process may be used prior to the commencement of the formal rulemaking process of the Administrative Procedure Act.
- Neb. Rev. Stat. § 84-922 states that Negotiated rulemaking is not a substitute for the requirements of the Administrative Procedures Act.
- Neb. Rev. Stat. § 84-925 states that within sixty days after submission of a petition, the agency shall either deny the petition in writing stating the reasons or initiate the negotiated rulemaking procedure.

At the time of the petition, the NET was already working through the formal rulemaking process which included changes to the sections listed in the petition. As part of that rulemaking process, the NET formed a specific Title 137 Committee on May 19, 2022, to examine the regulations and make recommendations for changes to the full Board. Listening sessions were held in all three Congressional Districts in addition to an online Zoom meeting during which the committee received input on changes to the regulations.

The regulation amendments which were noticed on April 3, 2023, and had a hearing on May 4, 2023, were the result of those efforts and included input from the various interested individuals and entities in the state including the Nebraska Chapter of the Sierra Club on December 5, 2022. The participation of the affected interests from the Sierra Club addressed three main issues, ranking criteria, private benefit, and transparency. All of those issues were considered in the development of the proposed amendments to Title 137.

Given that the recently approved amendments to the regulations are not yet finalized, and that there has not been sufficient time to evaluate whether these changes have had the desired effect, additional changes to the regulations are not required at this time. In addition, beginning another round of formal rulemaking at this time would bring uncertainty to the 2023 grant cycle.

PROPOSAL

Recommended motion, "I move to (approve/deny) the petition for negotiated rulemaking and direct the Executive Director to notify the petitioner in writing as required."



BEFORE THE NEBRASKA ENVIRONMENTAL TRUST
STATE OF NEBRASKA

In the Matter of) Petition for Negotiated
The Nebraska Environmental Trust Act) Rulemaking

COMES NOW the petitioner, Jordan Robert Anderson, according to the Nebraska Negotiated Rulemaking Act and according to the rules and regulations for Petitions for Negotiated Rulemaking, and requests that the Nebraska Environmental Trust Board establish a negotiated rulemaking committee as set forth in this Petition.

In support of this request, the Petitioner states as follows:

- 1. The Nebraska Environmental Trust Board administers the provisions of 81-15,168 to 81-15,81-15,176, and is responsible for development of rules and regulations to implement those statutes.
- 2. Petitioner seeks a negotiated rulemaking procedure to: develop new rules for and to amend existing rules, in Title 137 NAC chapters 4, 5, 6, 7 and 8.
- 3. A negotiated rulemaking committee should be established to negotiate and develop rules on each of the following issues concerning the regulations:

Current rules are indefinite in various respects and require additional definitions.

Current rules do not conform to the statutory language.

Current rules do not provide a sufficient direction for preparation, submission, and evaluation of applications for grants or meet the parameters specified by statute.

- 4. The facts surrounding each of the issues listed in paragraph 3 above are as follows:

The Board in its last three grant cycles has acted arbitrarily and capriciously to fund ineligible grants, to deem eligible grants ineligible, to restrict funding available to eligible grantees, and to erect barriers to applications for small grant requests.

- 5. Establishment of a negotiated rulemaking committee would be in the public interest under each of the following criteria based upon the information the Petitioner hereby submits. There is a need for rulemaking on the issue(s) identified above because:

A. A proposal for modification of the rules has been submitted to the Board at its request. That proposal has not been considered. The Board has instead proposed a modification of Title 137 that will restrict applications which is contrary to intent and the spirit of the law;

B. There are a number of identifiable interests that will be significantly affected by the rule, including the following interests and entities:

Friends of the Nebraska Environmental Trust

Nebraska Chapter of the Sierra Club

The Nature Conservancy Nebraska Chapter

Audubon Great Plains

Ducks Unlimited

Nebraska Natural Resources Districts

Sandhills Task Force

League of Women Voters of Nebraska

C. There is a reasonable likelihood that a negotiated rulemaking committee can be convened with a balanced representation of people (1) who can adequately represent the interests identified above and (2) are willing to negotiate in good faith to reach a consensus on the proposed rule.

D. There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time because there is a need to provide guidance for the 2023 grant cycle of the Board.

E. The use of this procedure will not unreasonably delay formal rulemaking and issuance of a final rule because the issues are well known and good faith proposals have already been submitted.

F. The Nebraska Environmental Trust Board should commit its resources, including technical assistance, to such a committee because it has already committed resources to a proposal and can continue that commitment.

G. The Nebraska Environmental Trust Board should, to the maximum extent possible consistent with its legal obligations, use a consensus of such a committee as the basis for a rule to be adopted under the Administrative Procedure Act because its proposals are controversial and far reaching and have created controversy and uncertainty.

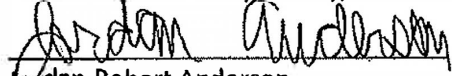
6. The following persons will be significantly affected by any rule which might result from the negotiated rulemaking procedure which is the subject of this Petition.

All grant applicants for the 2020, 2021, and 2022 grant cycles of the agency, the names and addresses of which are known to the agency.

7. The following persons may be willing and qualified to represent the interests that will be significantly affected by any rule which might result from the negotiated rulemaking procedure which is the subject of this Petition:

Persons submitting applications during the 2020, 2021, and 2022 grant cycles of the agency and others who can be identified if a negotiated rulemaking process is initiated.

Dated this fourth day of May, 2023.

A handwritten signature in black ink, appearing to read "Jordan Robert Anderson", written over a horizontal line.

Jordan Robert Anderson

6733 South 191st

Omaha, NE 68135

402 841 7229

Petition for Rulemaking

NET Board Agenda Materials

Item #: 5

Object: To make a determination on the petition request.

Contact Person: Mark Quandahl, Karl Elmshaeuser

For: Action

Attachments: 13 pages

BACKGROUND

Nebraska State Statute
81-15,173.

Board; powers and duties.

The board shall have and may exercise the following powers and duties:

- (2) Keep records, conduct hearings, and adopt and promulgate rules and regulations to carry out its duties and implement the Nebraska Environmental Trust Act;
- (7) Establish ad hoc advisory boards and subcommittees;

EXPLANATION

Title 137 covers the Rules and Regulations Governing Activities of the Nebraska Environmental Trust. They were last amended May 8, 2018.

During the Trust 22 Committee's work with the Center of Operational Excellence, several issues were discovered that required additional efforts to resolve. It was recommended to establish a dedicated ad hoc committee to work over the next year to further identify, propose and resolve these issues through the formal process to amend Title 137.

A Title 137 Committee was established on May 19, 2022, to focus on a review of Title 137 to determine and recommend procedures, policies, and efficiencies as well as alignment with state statutes to the NET Board. The Committee consists of five board members appointed by the Chairman.

A petition requesting Rulemaking was received at the Hearing for the Title 137 proposed amendments while following the Nebraska Administrative Procedures Act on May 4, 2023.

The petition to adopt rulemaking is in Neb. Rev. Stat. § 84-907.08

Petition to adopt a rule or regulation; form; procedure.

Any person may petition an agency requesting the adoption of a rule or regulation. Each agency shall prescribe by rule or regulation the form of the petition and the procedure for its submission, consideration, and disposition. Within sixty days after submission of a petition, the agency shall (1) deny the petition in writing, stating its reasons therefor, (2) initiate rulemaking or

regulationmaking proceedings in accordance with the Administrative Procedure Act, or (3) if otherwise lawful, adopt a rule or regulation.

At the time of the petition, the NET was already working through the formal rulemaking process which included changes to the sections listed in the petition. As part of that rulemaking process, the NET formed a specific Title 137 Committee on May 19, 2022, to examine the regulations and make recommendations for changes to the full Board. Listening sessions were held in all three Congressional Districts in addition to an online Zoom meeting during which the committee received input on changes to the regulations.

The petitioner, Bob Wickersham, provided the same documents in the petition that were submitted as part of the listening session on Dec. 5, 2022. The Title 137 Committee took those comments into consideration and utilized some of the proposed language provided to develop the proposed amendments to Title 137.

The regulation amendments which were noticed on April 3, 2023, and had a hearing on May 4, 2023, were the result of those efforts and included input from the various interested individuals and entities in the state.

Given that the recently approved amendments to the regulations are not yet finalized, and that there has not been sufficient time to evaluate whether these changes have had the desired effect, additional changes to the regulations are not required at this time. In addition, beginning another round of formal rulemaking at this time would bring uncertainty to the 2023 grant cycle.

PROPOSAL

Recommended motion, "I move to (approve/deny) the petition for negotiated rulemaking and direct the Executive Director to notify the petitioner in writing as required."

BEFORE THE NEBRASKA ENVIRONMENTAL TRUST

STATE OF NEBRASKA

In the Matter of) Petition for
The Nebraska Environmental Trust Act) Rulemaking



COMES NOW the petitioner, William R. Wickersham, pursuant to Neb. Rev. Stat. 84-907.08 and requests that the Nebraska Environmental Trust Board repeal and adopt new provisions in Title 137 NAC.

In support of this request, the Petitioner states as follows:

- 1. The Nebraska Environmental Trust Board administers the provisions of 81-15,168 to 81-15,81-15,176, and is responsible for development of rules and regulations to implement those statutes.
- 2. Petitioner seeks repeal of Chapters 4,5,6, 7, and 8 of Title 137 and adoption of new chapters within Title 137 as described in the attached documents denominated as

- Application Process
- Eligibility
- Feasibility
- Rating and Ranking

together with an conforming amendments which may be identified.

- 3. The changes are sought because the current rules are indefinite in various respects and require additional definitions, various rules while relying on the language of a statue do not accurately quote the statutory language, and the current rules do not provide a sufficient direction for preparation, submission, and evaluation of applications for grants withing the parameters specified by statute.:

Dated this 4 day of May, 2023.

William R. Wickersham
William R. Wickersham
611 Pier 2 Lincoln, NE 68528
402 435 3543

Attachment to Petition for Rule Making

Application Process

A new chapter in Title 137.

The board shall adopt and promulgate rules and regulations and publish guidelines governing allocations from the fund. 81-15,175(7)

The board shall make annual allocations from the Nebraska Environmental Trust Fund and may make annual allocations each fiscal year from the Nebraska Environmental Endowment Fund for projects which conform to the environmental categories of the board established pursuant to section 81-15,176 and to the extent the board determines those projects to have merit. 81-15,176(1)

Subject to subsection (3) of ~~this section~~ 81-15,176(3), the board shall establish environmental categories of projects eligible for funding by the trust. The board, after allowing opportunity for public comment, shall designate as categories those environmental goals which most affect the natural physical and biological environment in Nebraska, including the air, land, ground water and surface water, flora and fauna, prairies and forests, wildlife and wildlife habitat, and areas of aesthetic or scenic values. In designating environmental categories, the board shall attempt to focus on the areas which promise the greatest opportunities for effective action to achieve and preserve the future environmental quality in the state. 81-15,176(1)

The board shall provide for public involvement in developing the categories for such five-year periods and any priorities within these categories, including, but not limited to, public meetings in each of the three congressional districts. 81-15,176(1)

The board may establish annual priorities within the five-year categories. 81-15,176(1)

The board may establish a subcommittee to rate grant applications. If the board uses a subcommittee, the meetings of such subcommittee shall be subject to the Open Meetings Act. 81-15,175(5)

The Board shall annually review the prior year's rating system and adopt a rating system for the current grant cycle.

The subcommittee shall (a) use the rating systems established by the board ~~under 81-15,176(2)~~, ~~subsection (2) of this section~~, (b) assign a numeric value to each rating criterion, combine these values into a total score for each application, and rank the applications by the total scores, (c) recommend an amount of funding for each application, which amount may be more or less than the requested amount, and (d) submit the ranked list and recommended funding to the board for its approval or disapproval. 81-15,175(5),

The board shall establish a calendar annually for receiving and evaluating proposals and awarding grants. 81-15,176(1)

At least 90 days prior to the final date for submission of a grant application the board shall publish its grant application form together with its criteria for determining eligibility and its rating system for ranking proposals.

Prior to the final date for submission of grant applications the Board will cause members of the Grants Committee to be trained in the following areas of grant award practices: understanding of the criteria that will be used to determine eligibility, understanding of the factors of the rating system, how to avoid bias, and conflicts of interest.

The Executive Director shall review each application submitted by the filing deadline and shall determine whether the application is complete for initial review.

Prior to submission of any grant application deemed complete for any further review the Executive Director will assign a discrete identifying number to each application and all information that might indicate the identity of the applicant shall be redacted. The identity of applicants will be restored after the grant applications are funded.

Each applicant will be advised of the review number assigned to their application.

The Executive Director will cause each complete application to be reviewed for economic, financial, and technical feasibility by an advisory group as provided in Chapter _____.

The Executive Director will submit the applications which, after review, are deemed economically, financially, and technically feasible to the Grants Committee of the Board for its eligibility review.

The Executive Director may seek additional information from the applicant to determine if an application is complete and will seek additional information as requested by any member of the Board or any member of an advisory group.

Eligibility Findings. The Grants Committee will make recommendations to the Board on project eligibility in accordance with Chapter _____.

Grants Committee Action. The Grants Committee shall make the following recommendations to the Board:

A recommendation of approval or rejection of the project for funding eligibility.

Any conditions which the Grants Committee recommends be placed on the project to ensure its consistency with the objectives of the Trust Fund and with other state policies, plans, and programs.

Required Findings. Prior to making any recommendation to the Board for approval of a project for funding eligibility, the Grants Committee shall determine that the project is consistent with the requirements of Chapter 5 of these rules.

~~*Eligibility Findings. The Grants Committee shall make the recommendations to the Board on project eligibility in accordance with this chapter*~~

The Board may adopt or revise and adopt the eligibility recommendations of the Grants Committee.

Grant applications determined to be eligible for funding by the Board shall reviewed by the Grants Committee for rating pursuant to Chapter _____.

The Grant Committee shall recommend funding for each ~~ranked~~ rated grant application.

The Grant Committee may recommend funding for more than one year of the project described in an application.

Upon completion of its ~~ranking rating~~ and funding review the Grant Committees recommendations ~~shall~~ will be provided for review to the Board. The report shall indicate the results of the ranking process with the highest scoring project at the top of the list along with the number of points scored and the amount of funding recommended to be approved. Lower ranked projects shall follow in sequential order showing the same information for each.

Upon receipt of the Grants Committee report, the Chairperson ~~shall~~ will call a meeting of the Board to adopt or revise and adopt the Committee report and schedule a public hearing on the proposed funding list.

The board may commit funds to multiyear projects, subject to available funds and appropriations. No commitment shall exceed three years without formal action by the board to renew the grant or contract. Multiyear commitments may be exempt from the rating process except for the initial application and requests to renew the commitment. 81-15,175(6)

After the public hearing is conducted on the proposed funding list, the Board may take action on actual funding. If the Board decides that any proposed project does not have sufficient merit to justify funding from the Trust, the Board may choose not to fund the project ~~notwithstanding its consistency with eligibility criteria or its final ranking. The proposed list may be revised after the public hearing only with the approval of a majority of Board members present.~~

Attachment to Petition for Rule Making

Eligibility

A new Chapter in Title 137.

The board shall establish criteria for determining the eligibility of projects for grant assistance, which criteria shall include the following:

(1) All projects for grant assistance must meet eligibility requirements (a) through (e) of this section:

- (a) The grants shall not provide direct assistance to regulatory programs or to implement actions mandated by regulations except remediation; 81-15,176 (2)

For purposes of this section

Direct assistance to a regulatory program is a payment to the public body issuing a rule or regulation for the administration of its rule or regulation. Direct assistance to implement actions mandated by a rule or regulation is a payment which reduces the cost of compliance.

Remediation is the stopping or mitigation of environmental damage.

- (b) No more than sixty percent of grant allocations in any year shall assist remediation of soils or ground water, and no grants for this purpose shall occur unless all other available sources of funding are, in the opinion of the board, being substantially utilized; 81-15,176 (2)

Whether or not a grant application complies with this criterion will be determined after the board adopts a ranking order and funding recommendations.

- (c) The grants shall not pay for projects which provide primarily private benefits or relieve private liability for environmental damage; 81-15,176 (2)

Compensation at fair market value for contributions made to components of a project, such as land or land rights, shall does not constitute payment for private benefits.

The fund shall will not relieve private liability for environmental damage or, except for projects for remediation of soils or ground water, provide assistance to projects in order to relieve such liability. For purposes of this section, "private liability" shall mean means liability to of a person or entity and shall include includes fines or penalties imposed by a governmental entity.

- (d) The grants shall not pay for projects which have direct beneficiaries who could afford the costs of the benefits without experiencing serious financial hardship; 81-15,176 (2)

For purposes of this section, "direct beneficiaries" shall not be deemed to do not include a person who receives incidental benefits from a project which primarily benefits the general public.

The beneficiaries of a public entity are the persons on whose behalf the entity is acting. Allowing payment to a public entity for all or part of the cost of a project which would be prohibitive for any one individual or organization to bear is not prohibited.

(ei) The grants shall not pay for land or easements acquired without the full and express consent of the landowner. 81-15,176 (2)

(2) In addition to meeting all criteria in subsection (1), a grant application must also meet one or more of the criteria of this section to be deemed eligible

(ea) The grants should assist those projects which offer the greatest environmental benefits relative to cost; 81-15,176 (2)

Environmental benefit is the contribution of assets and services that will enhance the capability of communities and individuals to conserve, enhance, and restore the natural physical and biological environment in Nebraska including the air, land, ground water and surface water, flora and fauna, prairies and forests, wildlife and wildlife habitat, and natural areas of aesthetic or scenic values.

The projects which offer the greatest environmental benefits relative to costs are those which are economically, financially, and technically feasible and address one or more of the Board's five categories for funding.

(fb) The grants should assist those projects which provide clear and direct environmental benefits; 81-15,176 (2)

A project will be considered to have clear and direct environmental benefits if the realization of those benefits can be reasonably expected, as a result of the project and if those benefits will be obvious, even if not quantifiable. The application will need to describe the environmental benefits anticipated as a result of the project and how those benefits will be clearly and directly attained. Educational projects may be considered to have clear and direct environmental benefits.

(gc) The grants should assist those projects which will make a real contribution to achieving the board's environmental categories; 81-15,176 (2)

A real contribution is a contribution that affects the natural physical and biological environment in Nebraska including the air, land, ground water and surface water, flora and fauna, prairies and forests, wildlife and wildlife habitat, and areas of aesthetic or scientific values in a way that is consistent with the environmental goals of the Trust.

(hd) The grants should assist those projects which offer the greatest public benefits; and 81-15,176 (2)

A public benefit is a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

The projects which offer the greatest public benefits are those which are economically, financially, and technically feasible and address one or more of the Board's five categories for funding.

~~(i) The grants shall not pay for land or easements acquired without the full and express consent of the landowner. 81-15,176 (2)~~

Attachment to Petition for Rule Making

Feasibility

A new chapter in Title 137.

To evaluate the economic, financial, and technical feasibility of proposals, the board may establish subcommittees, request or contract for assistance, or establish advisory groups. 81-15,175 (1)

Economic Feasibility. A project is economically feasible if projected environmental benefits exceed the anticipated costs. A precise quantification of projected environmental benefits is not necessary. It is necessary to provide a narrative that will allow the reviewer to conclude that the projected environmental benefits exceed the costs.

Existing Reg

Financial Feasibility. A project is financially feasible if sufficient funds can be made available to complete the project and if sufficient annual revenues can be obtained to operate, maintain, and replace the project as applicable. Each applicant shall submit a project budget identifying the nature and amount of each source of funds to be used for the project; a schedule indicating when such funds will be received; and a schedule indicating when the funds available will be expended for project purposes. The remaining financial data supplied by the applicant will depend upon the type of applicant.

SUGGESTED CHANGE

Financial Feasibility. A project is financially feasible if sufficient ~~funds-resources~~ can will be made available to ~~complete-carry out~~ the project as described in the application and to maintain and operate any tangible component of the project for its useful life or until disposed of, ~~and if sufficient annual revenues can be obtained to operate, maintain, and replace the project as applicable.~~ Each applicant shall will submit a project budget identifying the nature and amount of each source of funds each resource to be used for to carry out the project; a schedule indicating when such funds-resources will be received available; and a schedule indicating when the funds-available-resources will be expended used for project purposes to carry out the project.

~~The remaining~~ Additional financial data may be supplied by the applicant, will depend upon the type of applicant.

LANGUAGE IF CHANGE IS ADOPTED

Financial Feasibility. A project is financially feasible if sufficient resources will be made available to carry out the project as described in the application and to maintain and operate any tangible component of the project for its useful life or until disposed of. Each applicant will submit a project budget identifying the nature and amount of each resource to be used to carry out the project; a schedule indicating when resources will be available; and a schedule indicating when the resources will be used to carry out the project.

Additional financial data may be supplied by the applicant.

Technical Feasibility. A project that is structural in nature ~~shall be considered~~ is technically feasible when it can and will be designed, constructed, and operated to accomplish the purpose(s) for which it was

planned utilizing accepted engineering and other technical principles and concepts. A project which is nonstructural in nature shall be considered to be is technically feasible when it can and will be designed and carried out to accomplish the purpose(s) for which it was planned.

Each member of an advisory group will review all applications submitted to it. The results of the review will be summarized and submitted to the Executive Director in accordance with the calendar established by the Board.

Attachment to Petition for Rule Making

Rating and Ranking

A new Chapter in Title 137.

The board shall establish rating systems for ranking proposals which meet the board's environmental categories and other criteria. The rating systems shall include, but not be limited to, the following considerations: 81-15,176(2)

The Board may determine a single rating system is applicable to all environmental categories.

(a) Conformance with categories established pursuant to section 81-15,176; 81-15,176(2)

A Grant application is not expected to conform to all the categories. The degree to which a grant application conforms to more than one category will be recognized in scoring for this criterion. A score of one fifth of the maximum score for each category the application conforms to is suggested.

(b) Amount of funds committed from other funding sources; 81-15,176(2)

The amount of funds committed includes the value of in-kind match. Funds committed from other funding sources include funds and the value of in-kind match supplied by the applicant and partner(s). The score for this criterion will be a percentage of the maximum score for this criterion multiplied by the percentage of the project that is funded from other sources. Fractional points may be awarded for this criterion.

(c) Encouragement of public-private partnerships; 81-15,176(2)

if a public-private partnership or partnerships are more than incidental to the project the maximum number of points available for scoring this criterion will be awarded.

(d) Geographic mix of projects over time; 81-15,176(2)

The Board will annually review the geographic mix of projects for the preceding 5 years. If an imbalance is perceived by the Board, it will develop a score for this criterion to encourage projects in an area. Projects that do not achieve a score equal to more than 25% of the maximum points allowed for all other criterion will not be eligible for this criterion.

(e) Cost-effectiveness and economic impact; 81-15,176(2)

A project is cost-effective if projected environmental benefits exceed the anticipated costs.

Economic impact is both the direct economic impact resulting from spending related to the project described in an application and the indirect economic effects such as increased real property valuations, mitigation of environmental hazards to the natural physical and biological environment in Nebraska, an improvement of or increase in habitat, increased recreational opportunities, and other contributions to the wellbeing of the area affected by the project.

If a project is deemed to be cost effective and to have a positive economic impact it will receive one-fifth of the maximum number of points available for scoring this criterion.

Additional points may be awarded if the positive economic impact is more than de minimis.

(f) Direct environmental impact; 81-15,176(2)

Direct environmental impacts are those changes to the natural, physical, and biological environment caused by the project occurring at the time and in the place the project is carried out, even if not quantifiable. If a project is deemed to have any positive direct environmental impact it will receive one-fifth of the maximum number of points available for scoring this criterion.

Additional points may be awarded if the positive direct environmental impact is more than de minimis.

(g) Environmental benefit to the general public and the long-term nature of such public benefit 81-15,175(2)

Environmental benefit to the general public is the contribution a project makes to conserving, enhancing, and restoring the natural, physical, and biological environment in Nebraska, including the air, land, ground water and surface water, flora and fauna, prairies and forests, wildlife and wildlife habitat, and natural areas of aesthetic or scenic values that accrue to the public at large.

A long-term benefit is one that exceeds 10 years in duration.

If a project will have environmental benefit to the general public and the long-term nature of such public benefit is shown it will receive one-fifth of the maximum number of points available for scoring this criterion will be awarded.

Additional points may be awarded if the environmental benefit to the general public is more than de minimis and the benefit period exceeds 10 years.

(h) Economic Feasibility.

A project is economically feasible if projected environmental benefits exceed the anticipated costs. A precise quantification of projected environmental benefits is not necessary. It is necessary to provide a narrative that will allow the reviewer to conclude that the projected environmental benefits exceed the costs.

(i) Financial Feasibility.

Existing reg

A project is financially feasible if sufficient funds can be made available to complete the project and if sufficient annual revenues can be obtained to operate, maintain, and replace the project as applicable. Each applicant shall submit a project budget identifying the nature and amount of each source of funds to be used for the project; a schedule indicating when such funds will be received; and a schedule indicating when the funds available will be expended for project purposes. The remaining financial data supplied by the applicant will depend upon the type of application.

SUGGESTED CHANGE

Financial Feasibility. A project is financially feasible if sufficient ~~funds~~ resources can will be made available to ~~complete~~ carry out the project as described in the application and to maintain and operate

~~any tangible component of the project for its useful life or until disposed of, and if sufficient annual revenues can be obtained to operate, maintain, and replace the project as applicable. Each applicant shall will submit a project budget identifying the nature and amount of each source of funds each resource to be used for to carry out the project, a schedule indicating when such funds resources will be received, available, and a schedule indicating when the funds available resources will be expended used for project purposes to carry out the project.~~

~~The remaining Additional financial data may be supplied by the applicant, will depend upon the type of applicant.~~

LANGUAGE IF CHANGE IS ADOPTED

Financial Feasibility. A project is financially feasible if sufficient resources will be made available to carry out the project as described in the application and to maintain and operate any tangible component of the project for its useful life or until disposed of. Each applicant will submit a project budget identifying the nature and amount of each resource to be used to carry out the project, a schedule indicating when resources will be available, and a schedule indicating when the resources will be used to carry out the project.

Additional financial data may be supplied by the applicant.

(j) Technical Feasibility.

A project that is structural in nature shall be considered is technically feasible when it can and will be designed, constructed, and operated to accomplish the purpose(s) for which it was planned utilizing accepted engineering and other technical principles and concepts. A project which is nonstructural in nature shall be considered to be is technically feasible when it can and will be designed and carried out to accomplish the purpose(s) for which it was planned.

(k) Sustainability

If the project described in an application is intended to extend beyond 3 years in duration and can show that it will be sustainable without support from the Trust after that period, the maximum number of points available for scoring this criterion will be awarded.

(l) Innovation

Some projects may be unable to quantify benefits or even the likelihood of benefits with the precision that may be sought. Precision however should not be the whole objective. If a project calls for untested but well-defined approaches and presents reasonable risks of success or failure, a reviewer may award points for innovation. This criterion is intended to permit the Trust to encourage experimentation and development of new knowledge, methodologies, and technologies. Such proposals will be science based with qualified partners. No more than 10% of available funds will be allocated to such proposals.

The subcommittee shall will

(a) use the rating systems established by the board

(b) assign a numeric value to each rating criterion, combine these values into a total score for each application, and rank the applications by the total scores,

(c) recommend an amount of funding for each application, which amount may be more or less than the requested amount, and

(d) submit the ranked list and recommended funding to the board for its approval or disapproval. 81-15,175 (5)

The score and rank each application will be determined as follows:

- (i) each reviewer will assign a numeric value to each rating criteria applicable to the application;
- (ii) the assigned numeric values will be summed for each application;
- (iii) the summed values will be arrayed highest to lowest for each application;
- (iv) the highest and lowest sum in the application's array will be removed. In the event of a tie one of the tied sums will be removed;
- (v) the remaining values for the application will be totaled;
- (vi) the total of the useable scores for the application will be divided by the number values used to obtain the total to obtain the average with the result expressed to not less than 4 decimal places;
- (vii) applications will then be ranked highest to lowest by their average scores.

The Grants Committee may recommend commitment of funds to multiyear projects.

The Board may commit funds to multiyear projects, subject to available funds and appropriations. No commitment shall exceed three years without formal action by the board to renew the grant or contract. 81-15,175(6)

An application that receives fewer than 25% of the maximum points before award of points pursuant to (d) will not be funded.

All rated applications, except those excluded from funding pursuant to ____ (25% rule), will be funded in rank order until all funds allocated for the grant cycle are committed.