

MINUTES

Nebraska Environmental Trust Board
Third Quarter Meeting
August 3, 2023
1:30 p.m.

1. Call to Order

Chairman Quandahl called the third quarter meeting of the Nebraska Environmental Trust Board (NET) to order at 1:30 p.m. in Suite 310 at 2077 N St, Lincoln, Nebraska.

Advanced notice of the meeting and public hearing was published in the Lincoln Journal Star on July 27, 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.

Members Present (10):

District I: Mr. Jeff Kanger, Lincoln; Mr. James Hellbusch, Columbus.

District II: Chairman Mark Quandahl, Omaha; Mr. Felix Davidson, Valley.

District III: Mr. Josh Andersen, Edgar; Mr. Rod Christen, Steinauer.

State Agency Representatives: Vice-Chairman Jim Macy, Director, Nebraska Department of Environment and Energy; Ms. Charity Menefee, Director, Nebraska Department of Health and Human Services; Mr. Tom Riley, P.E., Director, Nebraska Department of Natural Resources; Ms. Sherry Vinton, Director, Nebraska Department of Agriculture.

Members Absent (1):

State Agency Representative: Mr. Tim McCoy, Director, Nebraska Game & Parks Commission.

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 July 11, 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. Christen, "I move to approve the consent agenda."

Voting Aye: Hellbusch, Davidson, Andersen, Christen, Menefee, Riley, Vinton, Macy, Kanger, Quandahl

Absent: McCoy

10 Voted Aye. Motion carried.

3. Public Comment

Mr. Alex McKiernan, Nebraska Grazing Lands Coalition (NGLC), commented on the accomplishments and benefits of the NGLC grant funded by NET.

4. Consider Nebraska Environmental Trust Policy Section V: Grant Applications, Item N. Internal Procedural Guidance for Evaluation of Applications Regarding Prohibition of Directly Funding Regulatory Programs or Funding Actions Mandated by Regulations

Background on Agenda Item 4

Board policy does not provide clear procedural instructions concerning the prohibition of directly funding regulatory programs or funding actions mandated by regulations as referenced in Neb. Rev. Stat. § 81-15,176(2)(a). The proposed policy reflects efforts to provide clarity and transparency to the forms and instructions for the grants process developed by the Trust.

Proposed Board Policy:

Section V: Grant Applications

N. Internal Procedural Guidance for the Evaluation of Applications Regarding Prohibition of Directly Funding Regulatory Programs or Funding Actions Mandated by Regulations

Method Used to Determine Neb. Rev. Stat. § 81-15,176(2)(a) Eligibility:

To make a determination as to whether an application would directly fund a regulatory program or fund an action mandated by regulations, staff and board members shall utilize the following decision tree to evaluate an application:

1. Is the grant providing direct assistance to a regulatory program?
 - a. Is the applicant a governmental entity? (If yes, proceed to b. If no, the grant does not provide direct assistance to a regulatory program, skip to 2.)
 - b. Is the program being funded regulatory in nature? (If yes, proceed to c. If no, the grant does not provide direct assistance to a regulatory program, skip to 2.)
 - i. Regulatory means to control, direct, or govern. Generally, this means statutes, rules, regulations, or ordinances that direct or require some other entity or person to do something. (Definition from Title 137)
 - c. Is the applicant being funded the one in control of the program? (If yes, funding is prohibited. If no, the grant does not provide direct assistance to a regulatory program, skip to 2.)
2. Is the grant funding the implementation of actions mandated by regulations?
 - a. Is the grant funding an activity the applicant is required to do? (If yes, proceed to b. If no, grant is permissible.)
 - b. Is the requirement in regulation? (If yes, proceed to c. If no, grant is permissible.)
 - i. Note: regulations means only those rules codified in the Nebraska Administrative Code or the Code of Federal Regulations. (Definition from Title 137)
 - c. Is the grant for remediation? (If yes, grant is permissible. If no, grant is funding the implementation of actions mandated by regulations and is not permissible.)

If it is determined that an application fails either Question 1 or Question 2 above, it is not eligible for funding.

Motion by Mr. Macy, seconded by Mr. Andersen, "I move to approve the NET Policy Section V: Grant Applications, N. Internal Procedural Guidance for the Evaluation of Applications Regarding Prohibition of Directly Funding Regulatory Programs or Funding Actions Mandated by Regulations as presented."

Discussion: Mr. Christen confirmed that the policy helped address concerns raised at a previous meeting about noxious and invasive weed programs being funded.

Voting Aye: Davidson, Andersen, Christen, Menefee, Riley, Vinton, Macy, Kanger, Hellbusch, Quandahl

Absent: McCoy

10 Voted Aye. Motion carried.

5. Grant Project Extension Request – Project #22-162

Motion by Mr. Riley, seconded by Ms. Vinton, "I move to approve the City of Papillion's request to extend project 22-162-2 for one year."

Discussion: Ms. Vinton expressed appreciation that the grantee was working ahead in a situation beyond their control.

Voting Aye: Andersen, Christen, Menefee, Riley, Vinton, Macy, Kanger, Hellbusch, Davidson, Quandahl

Absent: McCoy

10 Voted Aye. Motion carried.

6. Set NET Board Meeting Calendar for 2024 and Grant Application Deadline

Background of NET Board meeting calendar and grant application date

The NET is required to meet quarterly, establish an annual calendar, and set a grant application date as per Neb. Rev. Stat. § 81-15,172, 81-15,175(1), and NET Bylaws Article III, Section 4.

Motion by Mr. Davidson, seconded by Mr. Christen, "I move to approve the 2024 NET Grant application and meeting calendar as follows:

Thursday, January 4, 2024, Public Hearing and Grant Awards for 2024

Thursday, February 1, 2024, 1st Quarter Board meeting

Thursday, May 2, 2024, 2nd Quarter Board meeting

Thursday, August 1, 2024, 3rd Quarter Board meeting

Thursday, November 7, 2024, 4th Quarter Board meeting,

and Grant Application deadline September 3, 2024."

Discussion: Mr. Hellbusch noted that the Board previously held August meetings at a different location and conducted a grant project site visit. Planning a site visit in conjunction with the August 2024 meeting was suggested. Mr. Christen stated it was an opportunity for the Board to see how some grant projects are progressing or being completed.

Voting Aye: Christen, Menefee, Riley, Vinton, Macy, Kanger, Hellbusch, Davidson, Andersen, Quandahl

Absent: McCoy

10 Voted Aye. Motion carried.

7. Grant Application Cycle 2023/2024

a. Authorization for Technical Advisory Committee

Motion by Ms. Menefee, seconded by Mr. Hellbusch, "I move to establish a Technical Advisory Committee to assist NET staff with evaluation of grant proposals and authorize NET staff to seek reviews as appropriate for the 2024 grant applications."

Discussion: None.

Voting Aye: Menefee, Riley, Vinton, Macy, Kanger, Hellbusch, Davidson, Andersen, Christen, Quandahl

Absent: McCoy

10 Voted Aye. Motion carried.

8. Election of Officers

Background on Election of Officers

Neb. Rev. Stat. § 81-15-172 requires the Board to elect a chairperson from among its citizen members annually. NET Bylaws, Article II, states the vice-chairperson will be selected from the agency directors and sets out the procedures for electing a chairperson and vice-chairperson.

The office of the chairperson rotates each year by Congressional district. Since there are vacant positions on the Board, only two members are eligible from District I.

a. Chairman

Motion by Mr. Kanger, "I move to nominate Jim Hellbusch for Chairman from Congressional District 1."

Discussion: None. There were no further nominations.

Voting Aye: Menefee, Riley, Vinton, Macy, Kanger, Hellbusch, Davidson, Andersen, Christen, Quandahl

Absent: McCoy

10 Voted Aye. Motion carried.

b. Vice-Chairman

Motion by Mr. Hellbusch, "I move to nominate Sherry Vinton for Vice-Chairperson."

Discussion: None. There were no further nominations.

Voting Aye: Riley, Macy, Kanger, Hellbusch, Davidson, Andersen, Christen, Menefee, Quandahl

Abstained: Vinton

Absent: McCoy

9 Voted Aye. 1 Abstained. Motion carried.

As per Article II, Section 3 of NET's Bylaws, the new officers will begin their terms of office at the close of the meeting.

9. Title 137 Committee Update

Committee Chairman Andersen outlined the timeline of the Title 137 Committee to revise the Board's rules and regulations. In May of 2022, the NET Board created the Title 137 Committee. The Committee members were named after the election of Board officers in August 2022. In September 2022, the Committee met to establish a process to meet the statutory requirements for promulgating the rules and regulations. A listening session was held to obtain public input in each Congressional district. A fourth session was offered virtually for those who could not attend in person. The Committee met on six occasions between January and March of 2023 to review and consider public comments and discuss potential changes to Title 137. The final recommendations were provided to the Board. The Attorney General approved the proposed regulations after additional steps were made to move the rules through the revision process. A determination from the Governor on the proposed rules is currently pending.

Executive Director Elmshaeuser noted significant effort had been put into the proposed regulations. The proposed revisions are a response to a culmination of almost two years of effort by several persons inside and outside of NET. The Title 137 Committee, the Chairman, and the Board were acknowledged for their time and effort. If the Governor does not approve the proposed regulations, NET will continue to operate under the current rules. If approved, the proposed regulations will be forwarded to the Secretary of State and become law five days after receipt. The grant cycle will be opened for applications as soon as possible. Since the statute requires a determination from the Board at least 90 days before the submission deadline, the September 5, 2023, application deadline cannot be postponed to a later date.

Chairman Quandahl noted the rules and regulations had not been updated often, and the proposed revisions to the rules and regulations are a step to move the Trust to the future. The regulations will continue to be reviewed for possible improvements.

10. Director's Report

a. Review of new NET office space

Executive Director Elmshaeuser described the collaborative efforts to furnish and move into the new office space using available appropriation from the FY 2022-23 fiscal year, ending on June 30, 2023. He stated that the Board's investment clarifies that the Nebraska Environmental Trust is here to stay and will operate according to the provided rules and regulations, and statutes. The objective is to distribute the available funds to eligible grantees that are held accountable for their projects.

11. Report and Recommendation of the Executive Committee with recommendations for the Executive Director

Background of Executive Director Performance Evaluation

The NET Executive Committee must conduct an annual performance evaluation of the Executive Director as per NET Bylaws, Article IV, Committees, Section 1A: Executive Committee, Duties. Procedures for the annual evaluation of the executive director are outlined in the Board Policies, Section IX: Trust Staff, C.

Chairman Quandahl reported that the Executive Committee met with Executive Director Elmshaeuser and set four primary goals for completion in Fiscal Year 2022-23. All four goals were achieved. In June 2023, evaluations were sent to Board members and staff to rate the performance of the Executive Director. The performance reviews from Board members and staff were summarized into

an average assessment and presented to the Executive Committee before the Board meeting. The average overall score for the performance review was 4.571 out of 5. The Executive Committee recommended a merit-based salary increase of 7% and a bonus for the Executive Director to recognize his performance. Staff will gather more information about the state's bonus requirements for an at-will employee.

Motion by Mr. Davidson, seconded by Mr. Andersen, "I move that the executive director is granted a 7% merit-based increase in salary effective July 1, 2023, and to evaluate other alternatives for compensation to be discussed at a later date."

Discussion: The Board discussed the amount for the salary increase. It was noted that a memo emailed to agencies from State Personnel in June 2023 stated there would be no "market" or "cost of living" increases. State Personnel guidelines called for appointing authorities to offer merit-based salary increases between 0-7% for discretionary/non-classified employees.

Voting Aye: Vinton, Macy, Kanger, Hellbusch, Davidson, Andersen, Christen, Menefee, Riley, Quandahl

Absent: McCoy

10 Voted Aye. Motion carried.

Executive Director Elmshaeuser presented Chairman Quandahl with a token gift to commemorate his service to the Nebraska Environmental Trust Board.

12. Next Meeting

Thursday, November 2, 2023, Telegraph Lofts West, 2077 N St, Suite 310, Lincoln, Nebraska, 1:30 p.m.

13. Adjourn

Chairman Quandahl adjourned the meeting at 2:32 p.m.



Karl L. Elmshaeuser
Executive Director