

Environmental Services

County Board Agenda Staff Report for T 02/19/2019

Old Business:

- **Shoreland Management Ordinance, proposed Amendment 19**

Enclosed Document(s):

- Draft Shoreland Management Ordinance, Amendment 19 w/legal counsel recommended edits

Legal counsel was able to review the draft. Recommended edits on items that counsel felt it had sufficient information as to the Board's intent and that fell within the agreed-upon scope of counsel's review/cost estimate are included in the attached draft.

Below is a summary of counsel's comments:

The definition was reorganized to improve its readability. Counsel recommends that the Board make sure the definition exactly encompasses the Board's objective and leaves room for other things to be included, while clearly excluding the motorized activities meant to be prohibited. Counsel also advises calling it a use rather than a facility.

In Section 402, Special Provisions, the intro was shortened and reworded to use words more commonly used to discuss performance standards for uses.

- In A, counsel said it does not hurt to say (i.e. it is cheap insurance) the use may only consist of outdoor activities and that they are conducted on or in the enumerated type of lots.
- In C, a clause was added to make it clear people could not stay overnight even if they brought their own accommodations such as an RV or tent. See further comment below regarding concerns with C.
- In D, the change is stylistic.
- B, E, F, and G were left as they were.

Other comments:

- Item C's overnight accommodations provision poses a problem as it impacts preexisting commercial uses—most likely resorts—that provide such accommodations as the language would result in a resort not being able to add an outdoor recreational use, even something as minor as a hiking trail, which seems to go against what the County is trying to accomplish and comments shared by some Board members. Counsel advises that this is something the Board will need to discuss. A possible solution is to deal with such uses in a dual manner. There could be one set of requirements for adding an outdoor recreational use to an existing commercial outdoor use and another set of requirements that apply when establishing a stand-alone outdoor recreational use.
- As this draft reads, all such uses require a conditional use permit (CUP). Counsel asks if this is something the Board wants across the board? Such a use could be made an accessory use to a preexisting resort or other type of outdoor commercial facility for which no CUP is required. Then, a CUP could only be required for a stand-alone outdoor recreational use. If such an approach is chosen, the proposed language would have to be substantially, and probably wholly rewritten as a set of provisions that a preexisting commercial use would need to meet if they add an outdoor recreational use would be needed. For example, certain things would need to be reported or provided to the Env. Services Dept. and certain standards such as setbacks would need to be met as a simple walking trail would not be a big deal, but an athletic field complex would be. Also, there is the consideration that without such documentation/standards for an existing use, it could be viewed as having a competitive advantage over a stand-alone outdoor recreational use. As this issue was not included in the original scope of counsel's review estimate and counsel does not know how the Board wants to handle it, counsel did not draft language to address the issue, but is willing to do so if the Board so desires.

- Regarding the definition, counsel asks if other types of activities such as miniature golf, horseback riding (which counsel added to the def.), tennis/handball/pickle ball courts, paintball games, etc. have been considered and ought to be listed? Are these things people do now that have not been looked at as needing a permit? If so, does the definition need to be changed?

Are there other definitions that ought to be considered/added such as defining a recreational purpose? Or are there indoor recreational activities the Board wants to touch upon (e.g. escape rooms, axe throwing, etc.)? If the purpose is to create more “things to do” and thus a bigger draw for resorts and the area in general, listing such activities could be beneficial.

Lastly, counsel recommended the Board consider the implication of what is being proposed in the draft and then determine what it is that really is the goal to accomplish.

New Business:

- **Minnesota Department of Natural Resources Delegation Agreement – Aquatic Invasive Species Prevention of Water-related Equipment**

Enclosed Document(s):

- MN DNR Delegation Agreement – AIS Program

Statute does not give counties the authority to carry out AIS inspection programs. Thus the Department of Natural Resources (DNR) developed and utilizes the enclosed delegation agreement to properly extend its statutory AIS inspection authority to counties. Our initial delegation agreement ran through 2018. Thus, a new agreement is needed. The agreement can run for one, two, or three years. Staff recommends going with three years as that minimizes the amount of administration time spent renewing agreements and should the State adjust the agreement template language in unfavorable ways in the next two years, we are at least locked in for three years if the Board finds this language acceptable. The County Attorney reviewed the agreement, which has some language changes from the previous agreement, and approved it as to form. Section 2.H as originally proposed was initially a concern, but Jonathan and DNR counsel were able to reach agreement on the amended language in the attached agreement. I thus respectfully request approval of the agreement which will allow our AIS inspector program to operate for the next three years.

- **2019 Always There Staffing Agreement**

Enclosed Document(s):

- 2019 Always There Staffing Agreement

Always There Staffing (ATS) provides our contracted AIS Program watercraft inspectors and handles all related HR aspects such as scheduling, unemployment, workers comp, etc. The attached agreement uses the same template as past years and Jonathan has reviewed and approved it as to form. I thus respectfully request approval of the agreement which will allow ATS to start the inspector recruitment process in March.

Other:

Shoreland Management Ordinance – proposed Amendment 19

Section 111. Definitions as Used in this Ordinance

Outdoor recreational use facility: A private commercial, recreational, outdoor use, that is primarily conducted for purposes of pleasure, rest and/or relaxation, that incorporates and/or uses mimics on-land features, and that derives its principal benefit from being located in natural surroundings. Examples of such uses include but are not limited to aerial zip lines, rope courses, biking trails, skiing trails, hiking trails, horse riding trails, athletic fields, and other outdoor athletic facilities. Outdoor recreational uses are privately owned and may be operated with or without the intention of earning a profit by providing outdoor recreational activities for members of the public, private groups or private member clubs or organizations. The definition does not include any and does not incorporate directly into outdoor recreational activities that involve any form of mechanical propulsion, such (e.g. dirt bikes, go-cart tracks, ATV trails, or any similar mechanized activities conducted on or off of courses, tracks or trails, etc.) of patrons. Acceptable, but not limited to, uses include aerial zip lines, rope courses, biking trails, skiing trails, hiking trails, and athletic fields.

Section 401. Permitted, Conditional, Special, and Non-Permitted Uses

Table 1 – Use by Public Waters Classification

Use	Public Waters Classification					All Other River Segments		
	NE	RD	GD	SP				
Outdoor recreational <u>uses and facilities</u>				N	C	N	N	N

Section 402. Special Provisions

14. Outdoor recreational uses require a conditional use permit and are subject to the following standards facilities must be consistent with the following provisions:

An outdoor recreational facilities use requires a conditional use permit.

- A. An outdoor recreational facilities uses may only be conducted outdoors can only occur on and in Non-riparian lots located within Tiers 2, 3, and/or 4 from the ordinary high water mark of a lake, pond or flowage and only in 2nd, 3rd and 4th tiers of shoreland zone.
- B. No mechanical propulsion activities for patrons are allowed.
- C. No overnight accommodations or facilities for patrons are allowed. No patrons may be allowed to stay overnight.
- D. Outdoor recreational uses may not involve No public waters-related activities, are allowed.
- E. Accessory buildings structures must fit into the natural and neighborhood environment.

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- F. Appropriate septic/sewage [treatment](#), parking, lighting, hours of operation, fencing, signage, vegetative buffering, and stormwater management [must](#) be addressed in any [conditional use permit \(CUP\)](#) application.
- G. One (1) caretaker/manager residence may be allowed. The residence is to be used strictly for the caretaker and his/her family members. The caretaker residence shall be accessed via the access road to the [outdoor recreational area or facility](#).

DELEGATION AGREEMENT
Aquatic Invasive Species (AIS) Prevention
Inspection of Water-related Equipment

This agreement is made by and between the Department of Natural Resources (referred to as DNR), an administrative agency of the State of Minnesota and

Hubbard County, Minnesota

(referred to as Governmental Unit), a local government unit (individually referred to generally as a Party or together as Parties). This agreement is entered into under authority granted to DNR pursuant to Minnesota Statutes section 84D.105.

WHEREAS AQUATIC INVASIVE SPECIES (AIS) are nonnative species that cause or may cause economic or environmental harm or harm to human health or threatens or may threaten natural resources or the use of natural resources in the state;

WHEREAS DNR has been authorized and charged with responsibility by the state legislature to establish a statewide program to prevent and manage the spread of AIS in coordination with other governmental entities; DNR has in its employ conservation officers trained and authorized to enforce the state invasive species laws; and DNR has developed AIS inspection protocols;

WHEREAS pursuant to Minnesota Statutes section 84D.105, Subdivision 2(a), Governmental Unit is a Tribal or local government that agrees to assume legal, financial, and administrative responsibilities for inspection programs on some or all public waters within their jurisdiction; and

WHEREAS DNR and Governmental Unit are committed to the following three core principles:

- Coordination of their authority and resources to develop a reasonable and effective water-related equipment inspection requirement to stop the spread of AIS in the state and prevent the introduction of new AIS;
- a collaborative, cooperative approach to AIS management and prevention;
- ensuring continued access to public waters.

NOW, THEREFORE it is mutually agreed by and between the Parties as follows:

1. PURPOSE. The purpose of this agreement is to enhance Minnesota's capacity to prevent the spread of AIS by enabling local governmental entities to perform AIS inspections and manage access to water resources in keeping with the three principles stated above.

2. TASKS AND RESPONSIBILITIES.

A. DNR or its delegee will provide training of individuals employed by Governmental Unit and/or individuals working for contractors to Governmental Unit as inspectors and, upon successful completion of training and testing requirements, the DNR will certify individuals as authorized inspectors in accordance with Minnesota Statutes section 84D.105, subd. 2(a). DNR will assume all obligation for training to the extent set forth in Minnesota Statutes section 84D.105.

B. When requested by a law enforcement agency, DNR Enforcement will provide AIS training to licensed peace officers

C. Governmental Unit will work with their local city and county law enforcement to ensure that local licensed peace officers are available to support Governmental Unit inspectors. Governmental Unit inspectors shall utilize local city and county law enforcement agencies as their primary law enforcement support when inspection stations are operated. DNR Conservation Officers may assist with support if a local agency officer is unavailable and there is an egregious violation.

D. Governmental Unit will design and implement an AIS inspection program, detailed in a Watercraft Inspection Program Plan, which must be approved by DNR, on some or all public waters within their jurisdiction utilizing existing authorities and the authority granted to inspectors under Minnesota Statutes sections 84D.105, subd. 2(b) and 84D.10, subd. 3(a), clauses 1, 3, and 4 (the Program). The program must comply with all requirements in Minnesota Statutes section 84D.105 and in DNR Watercraft Inspection Program procedures and manuals.

E. Governmental Unit will designate individuals employed by the Governmental Unit and/or individuals working for contractors to Governmental Unit to serve as inspectors for the Program and ensure that these individuals complete the required training and certification in paragraph 2A of this agreement prior to performing inspections. Governmental Unit will help coordinate training of licensed peace officers as provided under paragraph 2B of this agreement.

F. Governmental Unit will provide one or more inspection stations established under the Program with trained and certified inspectors, who will exercise inspection authorities in accordance with current DNR procedures and manuals. General inspection procedures include:

- i. Visually and tactilely inspecting water-related equipment to determine whether aquatic invasive species, aquatic macrophytes, or water is present;
- ii. Instructing persons on how to comply with AIS laws by removing AIS, draining, decontaminating, or treating AIS and water-related equipment to prevent the transportation and spread of aquatic invasive species, aquatic macrophytes, and water;
- iii. Issuing verbal orders to prohibit placing water-related equipment, that has AIS attached or water that has not been drained, into waters of the state;
- iv. With owner's consent, assisting with the removal of AIS and decontamination of water-related equipment; and
- v. Contacting local law enforcement or Conservation Officers if a person transporting watercraft or water-related equipment refuses to take corrective actions to remove AIS or fails to comply with requirements to drain water prior to leaving the water access.

G. Governmental Unit will support education and outreach projects and programs designed to increase public awareness and knowledge of the risks AIS pose to water resources and public capacity to contribute to the effort to prevent and manage the spread of AIS.

H. Governmental Unit assumes legal, financial, and administrative responsibilities for their staff and/or individuals working for contractors and the actions of their staff/contractors and will bear costs incurred in completing the tasks and responsibilities herein, except that DNR will provide, at its sole expense, staff and/or contracted professionals to coordinate and conduct the training described herein. The foregoing does not preclude the Governmental Unit from requiring indemnification from its contractors relating to work undertaken pursuant to this delegation agreement.

I. Governmental Unit and DNR will regularly meet or consult with each other to collaboratively develop the above-described elements of Governmental Unit AIS Program and potential models that

could be used by other local government entities to help the prevent the spread of AIS, guided by the three core principles stated above.

J. Governmental Unit must submit an End-of-Season Watercraft Inspection Report to the DNR summarizing the results and issues related to implementing the inspection program.

3. LIABILITY. Each Party to this agreement shall be liable for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its agents, volunteers or employees. It is understood and agreed that liability and damages arising from the Parties' acts and omissions are governed by the provisions of the Municipal Tort Claims Act, Minnesota Statutes Chapter 466, the Minnesota Tort Claims Act, Minnesota Statutes section 3.736, and other applicable laws.

4. TERM AND TERMINATION. The agreement becomes effective on the date of final signature. This agreement expires on December 31; 2021. The agreement may be terminated with or without cause by 30-day written notice to the other Party.

5. ENTIRE AGREEMENT. This agreement supersedes any prior or contemporaneous representations or agreements, whether written or oral, between DNR and Governmental Unit, and contains the entire agreement with regard to the subject matter herein.

6. AMENDMENTS. This agreement may be amended only by the mutual consent of the Parties in writing, signed by each of the Parties.

7. NOTICE. Any written communication required under this agreement will be addressed to the other Party as follows, except that any Party may change its representative and/or address for notice by so notifying the other Party in writing:

To DNR:

Watercraft Inspection Program Coordinator
Minnesota Department of Natural Resources
500 Lafayette Road, Box 25
St. Paul MN 55155-4025

To Governmental Unit:

Name/Title: County Board Chair, c/o: Hubbard County Coordinator

Governmental Unit: Hubbard County, Minnesota

Address: 301 Court Avenue

Address: Park Rapids, MN 56470

8. GOVERNING LAW AND VENUE. This agreement will be governed by and interpreted in accordance with the laws of the State of Minnesota. Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

9. WAIVERS. The waiver by DNR or Governmental Unit of any breach or failure to comply with any provision of this agreement by the other Party will not be construed as nor will it constitute a continuing

waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this agreement.

10. STATE AUDITS. Under Minnesota Statutes section 16C.05, subd. 5, Governmental Unit books, records, documents, and accounting procedures and practices relevant to this agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this agreement.

11. GOVERNMENT DATA PRACTICES. Governmental Unit and DNR must comply with the Minnesota Government Data Practices Act, Minnesota Statute Chapter 13, as it applies to all data provided by DNR under this agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Governmental Unit under this agreement. The civil remedies of Minnesota Statute section 13.08 apply to the release of the data referred to in this clause by either Governmental Unit or DNR.

If Governmental Unit receives a request to release the data referred to in this Clause, Governmental Unit must immediately notify the DNR’s Data Practices Compliance Official. The Governmental Unit’s response to the request shall comply with applicable law.

The state complies with Minnesota Government Data Practices Act regarding the released of any data created, collected, received, stored, used, maintained, or disseminated by the respective party under this agreement. The state and the Governmental Unit shall let each other know when a data request has been received.

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereto execute and deliver this agreement.

DEPARTMENT OF NATURAL RESOURCES

By: _____

Title: Director, Division of Ecological and Water Resources

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____

Title: _____

Date: _____

GOVERNMENTAL UNIT: Hubbard County, Minnesota

By: _____

Title: County Board Chair

Date: _____



Quality & Convenience for Clients/Respect & Opportunity for Associates

GENERAL AGREEMENT

Always There Staffing, Inc. located at 2522 Hannah Ave NW Bemidji MN 56601 ("Staffing Firm"), and Hubbard County, 301 Court Avenue, Park Rapids, MN 56470 ("Client") agree to the terms and conditions set forth in this General Agreement (the "Agreement").

Staffing Firm's Duties and Responsibilities

1. Staffing Firm will
 - a. Recruit, screen, interview, hire and assign employees ("Assigned Employees"¹) to perform the type of work described on Exhibit A to this Agreement at the locations specified on Exhibit A;
 - b. Pay Assigned Employees' wages and provide them with the benefits that the Staffing Firm offers to them; and
 - c. Pay, withhold, and transmit payroll taxes; provide unemployment insurance and workers' compensation benefits; and be solely responsible for unemployment and workers' compensation claims involving Assigned Employees.

Client's Duties and Responsibilities

2. Client will
 - a. Not change Assigned Employees' job duties without Staffing Firm's express prior written approval; and
 - b. Exclude Assigned Employees from Client's benefit plans, policies, and practices, and not make any offer or promise relating to Assigned Employees' compensation or benefits.
 - c. Provide Assigned Employees with all supplies and equipment necessary to perform the work described in Exhibit A. All non-consumable supplies and equipment shall be returned to the Client at the end of the assignment.

¹ The term "Assigned Employee" refers to individuals hired and employed by the Staffing Firm, not by Hubbard County. Assigned Employees are not County Employees.

Payment Terms, Bill Rates, and Fees

3. Client will pay Staffing Firm for its performance at the hourly billing rates set forth below. Staffing Firm will invoice Client for services provided under this Agreement on a weekly basis. Payment is due every two weeks. Invoices will be supported by the pertinent time sheets. Client's signature (or authorized representative) on the work time submitted for Assigned Employees certifies that the documented hours are correct and authorizes Staffing Firm to bill Client for those hours. If a portion of any invoice is disputed, Client will pay the undisputed portion.

Hourly Billing Rates

Job Title	Hourly Bill Rate
Watercraft Inspectors	\$20.10
Lead Inspector	\$22.78
On-Call	\$59.00

4. The Staffing firm will comply with all terms of the Fair Labor Standards Act.
5. Client agrees not to directly or indirectly utilize, offer to hire, hire or engage as an independent contractor any Assigned Employee during the Assigned Employee's first 620 hours continuous working hours.
6. The Client will not indemnify or hold harmless Staffing Firm from and against any claims, losses, judgments, liabilities or claims for attorney's fees incurred from Assigned Employee's actions.
7. The Staffing Firm will document and maintain accurate and complete records of all miles traveled by the Lead Inspector from site to site in the performance of the duties under this Agreement. The Client will be billed for the mileage at the rate of \$.58 per mile.

Additional Understandings

8. Client shall immediately notify Staffing Firm of the completion or termination of an Assigned Employee's assignment.
9. Staffing Firm shall provide workers' compensation insurance coverage for our Assigned Employees, but the Client retains the right to direct and control the work of said Assigned Employees. The Staffing Firm will direct the Assigned Employees to contact the Staffing Firm to notify it of any injury or accident or any claim for worker' compensation, and will direct Assigned Employees to complete and return any necessary workers' compensation directly to the Staffing Firm.
10. The Client acknowledges that the Staffing Firm is an Equal Opportunity Employer.

11. The Client acknowledges that the Staffing Firm in accordance with federal and state discrimination laws prohibits discrimination and harassment in the workplace. If the Client becomes aware of any discrimination or harassment of an Assigned Employee by another Assigned Employee, member of the public, or employer of the Client on the basis of race, color, sex, national origin, religion, age, disability, or other protected status, the Client will promptly report such discrimination or harassment to the Staffing Firm within 24 hours of the Client becoming aware of such conduct. Prohibited harassment includes, but is not limited to the following:

- Verbal harassment (oral or written)
- Physical harassment
- Sexual harassment

12. If the Client determines that any Assigned Employee is not meeting the Client's expectations for any reason, the Client may contact the Staffing Firm and request that the Assigned Employee be removed from the assignment. The Staffing Firm will then promptly remove the Assigned Employee and replace him or her with another qualified Assigned Employee.

13. The parties must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by under this agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the parties under this agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of data referred to in this clause by either of the parties.

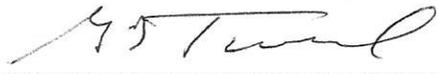
Term of Agreement

14. This Agreement will be in effect between March 1, 2019 and November 30, 2019. The Agreement may be terminated by either party upon 5 days written notice to the other party.

Authorized representatives of the parties have executed this Agreement below to express the parties' agreement to its terms.

Always There Staffing, Inc.

Dated: 2-7-19



Greg Tweed

Hubbard County

Dated: _____

By: _____

Its: _____

EXHIBIT A – Duties

1. Watercraft Inspection for aquatic invasive species at various lakes located in Hubbard County in accordance with training provided by the Minnesota Department of Natural Resources.
2. Decontamination of watercraft at the Hubbard County Watercraft Decontamination Station, 812 Henrietta Avenue S, Park Rapids, MN 56470 and other possible mobile locations within Hubbard County in accordance with training provided by the Minnesota Department of Natural Resources.
3. Traffic counters at public water access.
4. On-Call Assigned Employees of the Staffing Agency responsible for decontamination shall be required to provide phone numbers where they can be reached during on-call hours and respond to calls during those times.
5. Other duties as assigned, consistent with AIS program.