John W. Suthers
Attorney General
Cynthia H. Coffman
Chief Deputy Attorney General
Daniel D. Domenico
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

Natural Resources and Environment Section

Ralph L. Carr
Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, Colorado 80203
Phone (720) 508-6000

AGENDA

Colorado Natural Resources Trustees Meeting
February 27, 2014, 2:00 pm

Attorney General's Office, Room 1D
1300 Broadway Street, Denver, CO

1. Review and approval of Minutes (John Suthers) - 5 minutes – **see attachment**

2. West Creek Preassessment Update (Jennifer Robbins) - 5 minutes

3. Suncor Update (Emily Jackson, Ken Vogler) - 5 minutes

4. Shattuck Update by Gordon Robertson/Jeff Shoemaker/Denver Parks/Greenway Foundation (David Banas, Susan Newton) – 10 minutes – **see attachment**

5. Legislation Regarding Funding of OPA Cases (Casey Shpall) – 5 minutes

6. Cotter Update and Request to Expend Funds (Ken Vogler) – Action Item: Request to adopt resolution approving expenditure of funds – 10 minutes – **see attachment**

7. Uravan Update and Request to Expend Funds (Doug Jamison) – Action Item: Request to adopt resolution approving expenditure of funds – 10 minutes – **see attachment**

8. Summitville Update (Doug Jamison) – 5 minutes

9. Natural Resource Damages Fund Administration Guidance (David Kreutzer, Susan Newton) – Action Item: Request to adopt guidance –10 minutes – **see attachment**

10. Rocky Mountain Arsenal – Foundation Fund – Denver Montbello Revised Proposal (David Banas, Susan Newton) – 10 minutes, may require executive session – **see attachment**

11. Rocky Mountain Arsenal – Recovery Fund – Northeast Greenway Corridor Presentation (David Banas, Susan Newton) – 15 minutes, may require executive session **– see attachment**

12. Rocky Mountain Arsenal – Recovery Fund – Don Summer Presentation (David Banas, Susan Newton) – 10 minutes, may require executive session

13. Executive Session - 30 minutes

    - Rocky Mountain Arsenal – Foundation Fund – Denver Montbello Revised Proposal Request – 15 minutes
    - Rocky Mountain Arsenal – Recovery Fund Proposals – 15 minutes

14. Action Items from Executive Session – 5 minutes
    - Rocky Mountain Arsenal – Foundation Fund – Denver Montbello Revised Proposal Request – Vote on Proposed Resolution
    - Rocky Mountain Arsenal – Recovery Fund Proposals - Discussion

ITEM #1

Minutes of Meeting
Colorado Natural Resource Trustees
October 8, 2013

In attendance:
TRUSTEES
John Suthers, Attorney General
Bob Randall, DNR
Martha Rudolph, CDPHE

STAFF and OTHERS
Casey Shpall, DAG, NR
David Kreutzer, First Asst. AG, NR
David Banas, AGO, NR
Emily Jackson, AGO, NR
Jennifer Robbins, AGO, NR
Susan Newton, CDPHE
Monica Sheets, CDPHE
Mark Viera, DNR
Doug Jamison, CDPHE
Howard Kenison, NEGC
Kate Kramer, NEGC
Hillary Merritt, Trust for Public Lands
Pat Schuler, Aurora
Michael Brown, Commerce City
Gordon Robinson, Denver

John Suthers called the meeting to order at 9:35 a.m., Tuesday, October 8 2013. The meeting's purpose was to brief the Trustees on the current status and issues relating to NRD sites and to request direction and/or approval for various actions.

Mr. Suthers requested approval of the June 5, 2013 and August 8, 2013 meeting minutes. Ms. Rudolph moved to approve the minutes, and Bob Randall seconded the motion. The minutes were unanimously approved.

West Creek Potential NRDs Investigation

Jennifer Robbins updated the Trustees regarding the West Creek site stating the PRP, Groendyke Transport, Inc. has agreed to pay initial pre-assessment costs in the amount of $165,000 to the DOI and the State of Colorado. The agreement is memorialized in a letter from DOI to Groendyke dated August 5, 2013.

Mr. Suthers asked if the $165,000 would be enough money and Ms. Robbins responded the amount in the Groendyke letter was vetted with DOI and the State to determine an estimated budget for pre-assessment and this amount should be enough for now. Mr. Randall noted there is a re-opener in the letter for more money if required.

Parachute Creek NRDs Investigation

Ms. Robbins informed the Trustees the parties involved, Bargath, LLC and Williams Energy are cleaning up the contamination and preliminary investigations so far indicate there will not be any significant damage to the environment from the spill at this site.

Lowry Landfill Projects

Ms. Robbins introduced a Resolution for the remaining Lowry project for the Bluff Lake Nature Center for Trustees approval and explained the need for a separate resolution was based on a slight change in the matching fund allocation. The total NRD money to be given is $501,481.14 and the Nature Center will be required to obtain matching funds in the amount of $250,000.

Suncor NRD Update

Emily Jackson updated the Trustees on the status of Suncor natural resource damages settlement. Fish and Wildlife service and the Solicitor's Office of the Department of the Interior have both received concurrences on the Consent Decree. The State is waiting on both Suncor and the federal government to sign the consent decree so we can file the settlement with the court. Suncor has threatened to make their signature contingent on review and possibly approval of any press releases that may be issued concurrently with filing the complaint and consent decree. Mr. Suthers stated the Attorney General's Office does not let private industry dictate messaging in press releases, but the AG's office has given companies an opportunity to comment on what we plan to say in the past. The Trustees delegated resolution of this issue to staff. The Department of Justice needs to sign the Consent Decree on behalf of the federal government. This has been delayed because the attorney suffered flooding in Boulder and is currently furloughed because the federal government shut-down.

Shattuck

Susan Newton updated the Trustees on the status of the $1.7 million they approved for improvements to the South Platte River Corridor. Ms. Newton informed the Trustees the NRD monies spurred various other contributions and the project was now a huge success – well beyond original expectations - with improvements from Dartmouth all the way to Vanderbilt Park. Ms. Newton suggested for the next Trustee meeting Gordon Robinson (Denver) and Jeff Shoemaker (?) give a presentation with more complete details of the project's success.

Ms. Suthers asked about the completion date for the project and Mr. Gordon responded they had hoped to start in January 2014, but because of the flooding it would probably not be until September 2014.

Ms. Rudolph commended the group for a job well done.

California Gulch/Leadville

Doug Jamison gave an update of the progress of restoration at the California Gulch site. He

noted the restoration has been going on since 2008/2009 and the center piece of the restoration was the in-stream restoration being accomplished with the NRD monies and some private entities assisting. He also stated some properties had been acquired – either outright or by conservations easement in order to perform erosion control and wildlife fencing activities. Mr. Jamison added the Tier 3 projects would be looked at later.

Mr. Suthers asked about the land issue with the City of Aurora and Mr. Jamison responded most of those issues had been resolved or would be resolved soon.

OPA Cases – Long and Short Term Funding

Dave Kreutzer reported since the last Trustee meeting there is now $10,000 in a litigation fund and an MOU between CDPHE and the AGO to use this money for OPA/NRD investigation. At this point, there is no need for the money, but we will have it if new issues present themselves.

Mr. Kreutzer also mentioned we needed to work on some amendment to statute and they were working with David Blake.

Mr. Suthers asked if our tweaking the statute would upset industry. Ms. Rudolph stated yes you will. She said anytime someone tries to amend the HSRF you will have problems from industry. She said we will have to involve the stakeholders and make sure they understand the purpose of the amendment.

Mr. Randall asked how the Trustees could support and amendment – whether it should come from the AG's office or from all three agencies and Mr. Suthers said it would look better if any requests came from all three agencies.

Rocky Mountain Arsenal Foundation Fund

City of Aurora Foundation Fund Project

Hillary Merritt (Trust for Public Land) and Pat Schuler (City of Aurora) gave a presentation on the status of the City of Aurora Foundation Fund Projects. When the Master Plan was approved, negotiations were still in progress for some of the properties and since that time the appraisal on one property came in significantly lower and the appraisal on the other property came in higher. The question for the Trustees is whether they can now use the money saved on the lower appraisal for the property that will cost more than anticipated.

If the Trustees approve this change it will leave a remaining balance of $300,000 and they are requesting the Trustees approve "in concept" the use of these funds to acquire additional properties. The Arapahoe County Open Space and GOCO have agreed to matching funds for this. The request is of course contingent on the State NRD staff touring the property and approving the acquisition.

Commerce City Foundation Fund Projects

Mike Brown (Commerce City) updated the Trustees on the Sand Creek 1 and 2 projects. At the time the Master Plan was approved, negotiations were still in progress and the proposals approved were therefore vague. Now that appraisals have been completed, Commerce City would like to combine the restoration and remediation of both properties into one project, allowing for the funds not being used on acquisition, be used for remediation and restoration. Matching funds from Commerce City will still be used for the project.

City and County of Denver Foundation Fund

Gordon Robinson provided the Trustees with an update of the First Creek Restoration Project, stating they have completed 75% of the creek restoration to date and will end up not having to use approximately $500,000. The request before the Trustees is to move the $500,000 not needed for this project to the Grant-Frontier Restoration Project. The Grant-Frontier project has encountered significant environmental issues associated with the removal of the dam structure at Florida Avenue and the additional funds could be used to improve the local fishery/in-stream aquatic habitat values.

Mark Viera of DNR recommended the Trustees approve all three of the requests, with the caveat the NRD staff people tour the properties prior to any changes. Susan Newton also recommended the proposals and David Banas agreed and presented the Trustees with a resolution approving all the changes. The Trustees had no questions and signed the Resolution.

Rocky Mountain Arsenal Recovery Fund

Howard Kenison and David Banas discussed the continuing issues with using the interest monies from the Recovery Fund and whether we could use the funds and ask the legislature for forgiveness. Several ideas were suggested such as preparing a projects proposal contingent on monies being released and hoping the projects would encourage private money to reimburse the HSRF. Mr. Kenison asked the Trustees for guidance on whether an RFP was needed prior to preparing a proposal. Mr. Suthers asked if it was a legal NRD requirement to which Mr. Banas responded no. Mr. Suthers said he was not tied to the RFP process.

Ms. Rudolph said she was not in favor of asking the legislature for forgiveness as it brought up a whole set of unnecessary problems. Ms. Rudolph suggested the cities might be more willing to fund projects if the projects have been vetted by staff and approved by the Trustees contingent on funding. Mr. Suthers said he was amenable to this idea and would be willing to discuss it further.

Mr. Suthers asked if there was any more discussion. Hearing none he asked for a motion to adjourn. The motion was made by Ms. Rudolph and seconded by Mr. Randall and the meeting was adjourned at 10:48 a.m.

ITEM #4

South Platte River Vision
NRD Trustee Summary

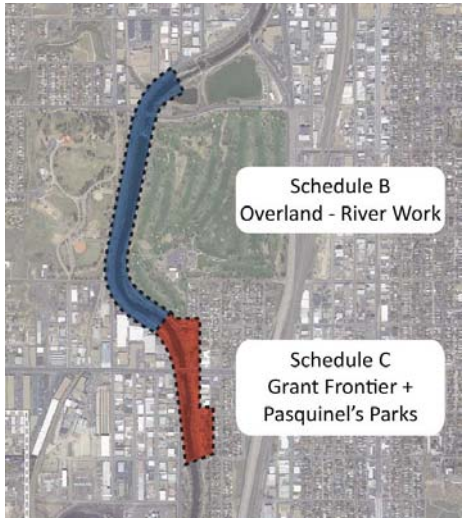
DENVER
THE MILE HIGH CITY

THE GREENWAY FOUNDATION
SINCE 1974

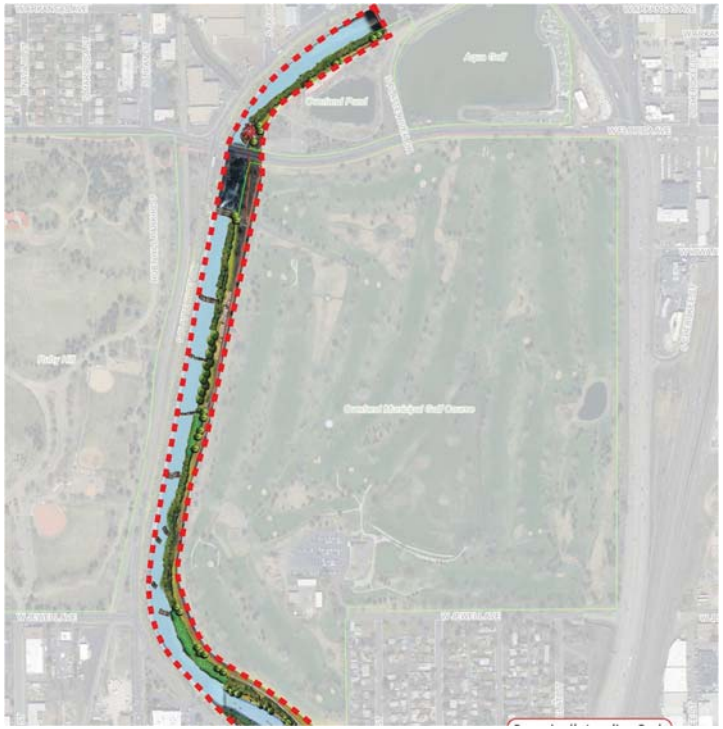
GREATER AURORA AND TRI-COUNTY CONSERVANCY

February 12, 2014

Item #4



Grant Frontier to Overland Pond
Project Keymap



Illustrative Plan

Project Summary

- Reconstruction of existing 7' Florida drop structure into multiple, smaller drop structures upstream to improve hydrology and enhance habitat opportunities
- Establishment of sinuous, low-flow channel and emergent floodplain benches
- Construction of in-river aquatic habitat structures to increase diveristy
- Bank stabilization and riparian revege-tation
- Removal of invasive species

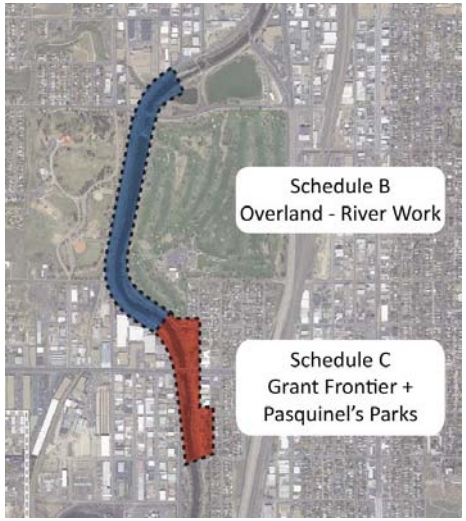
Proposed Florida Drop
Structure Rendering

Schedule B: Project Budget		
FUNDING SOURCE	Funds Available	Total Funding ($)
Great Outdoors Colorado (GFO)	NOW	$ 800,000.00
Great Outdoors Colorado (Trails)	NOW	$ 200,000.00
TGF -Shattuck NRDS Funds	NOW	$ 1,569,237.00
TGF -CWCB WSRA - 2	NOW	$ 218,750.00
TGF -CWCB WSRA - 3	NOW	$ 306,250.00
UDFCD 2013	NOW	$ 539,090.04
CCD - 2013 CIP	NOW	$ 23,088.38
CCD - 2014 CIP	NOW	$ 84,468.78
CCD - Better Denver Bond	NOW	$ 18,857.00
CCD - CW_Various DPR Sources	NOW	$ 139,110.00
UDFCD 2014	NOW	$ 208,570.00
CCD - 2015 CIP	Jan-15	$ 294,130.00
Total		**$ 4,401,551.20**
Design Fees		**$ 270,145.25**
Construction Budget		**$ 3,499,045.82**
Owners Contingency 10%		**$ 350,000.00**
Other Soft Costs		**$ 282,360.13**

NRD Funds

RIVER VISION: Schedule B - Overland River Work

February 12, 2014

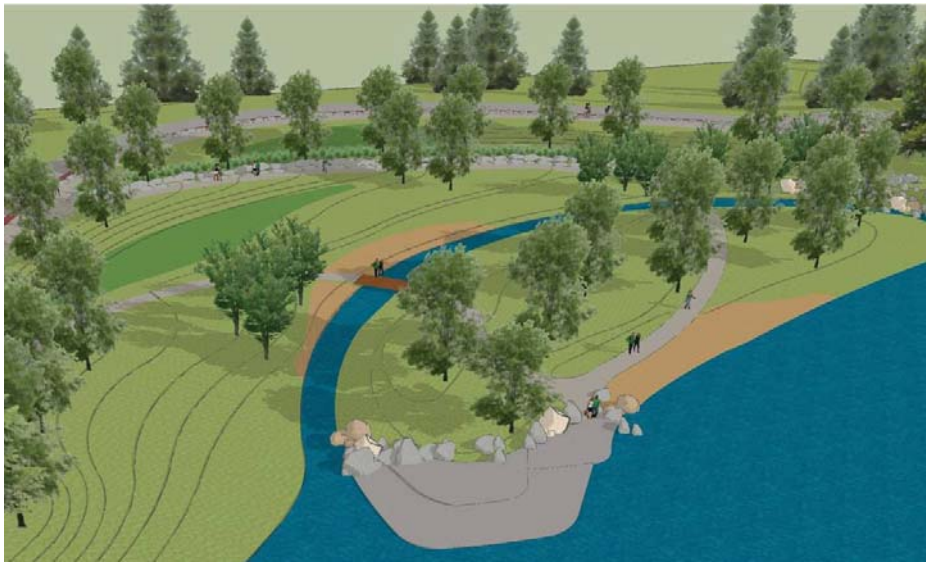


Grant Frontier to Overland Pond
Project Keymap

Illustrative Plan

Project Summary

- Excavation of park areas to remove historic fill material and expand floodplain and riparian areas
- Construction of secondary channels and islands to maximize riparian habitat
- Regrading of parks to create emergent, riparian and upland habitat terraces
- Bank stabilization and riparian revegetation
- Removal of invasive species
- Development of environmental play, education + interpretation features



Pasquinel's Landing Park
3D Rendering

Schedule C: Grant Frontier + Pasquinel's Landing Parks		
FUNDING SOURCE	Funds Available	Total Funding ($)
Great Outdoors Colorado (GFO)	NOW	$ 1,120,909.00
Great Outdoors Colorado (Trails)	NOW	$ 433,595.00
TGF -CWCB WSRA - 2	NOW	$ 218,750.00
UDFCD 2014	NOW	$ 241,430.00
CCD - 2013 CIP	NOW	$ 23,088.38
CCD - Better Denver Bond	NOW	$ 18,857.00
CCD - GW_Various DPR Sources	NOW	$ 767,610.00
Rocky Mountain Arsenal - NRD	Mar-14	$ 1,500,000.00
DOW/ Fishing is Fun	Mar-14	$ 76,000.00
CCD - 2015 CIP	Jan-15	$ 705,870.00
sub-total		**$ 5,106,109.38**
Design Fees		**$ 270,145.25**
Construction Budget		**$ 4,000,434.00**
Owners Contingency 10%		**$ 400,000.00**
Other Soft Costs		**$ 435,530.13**

NRD Funds

RIVER VISION: Schedule C - Grant Frontier + Pasquinel's Parks

February 12, 2014

ITEM # 6

Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division

INTEROFFICE COMMUNICATION

To: Martha Rudolph, Bob Randall, and John Suthers

Through: Monica Sheets, Gary Baughman

From: Ken Vogler, Susan Newton

Date: February 7, 2014

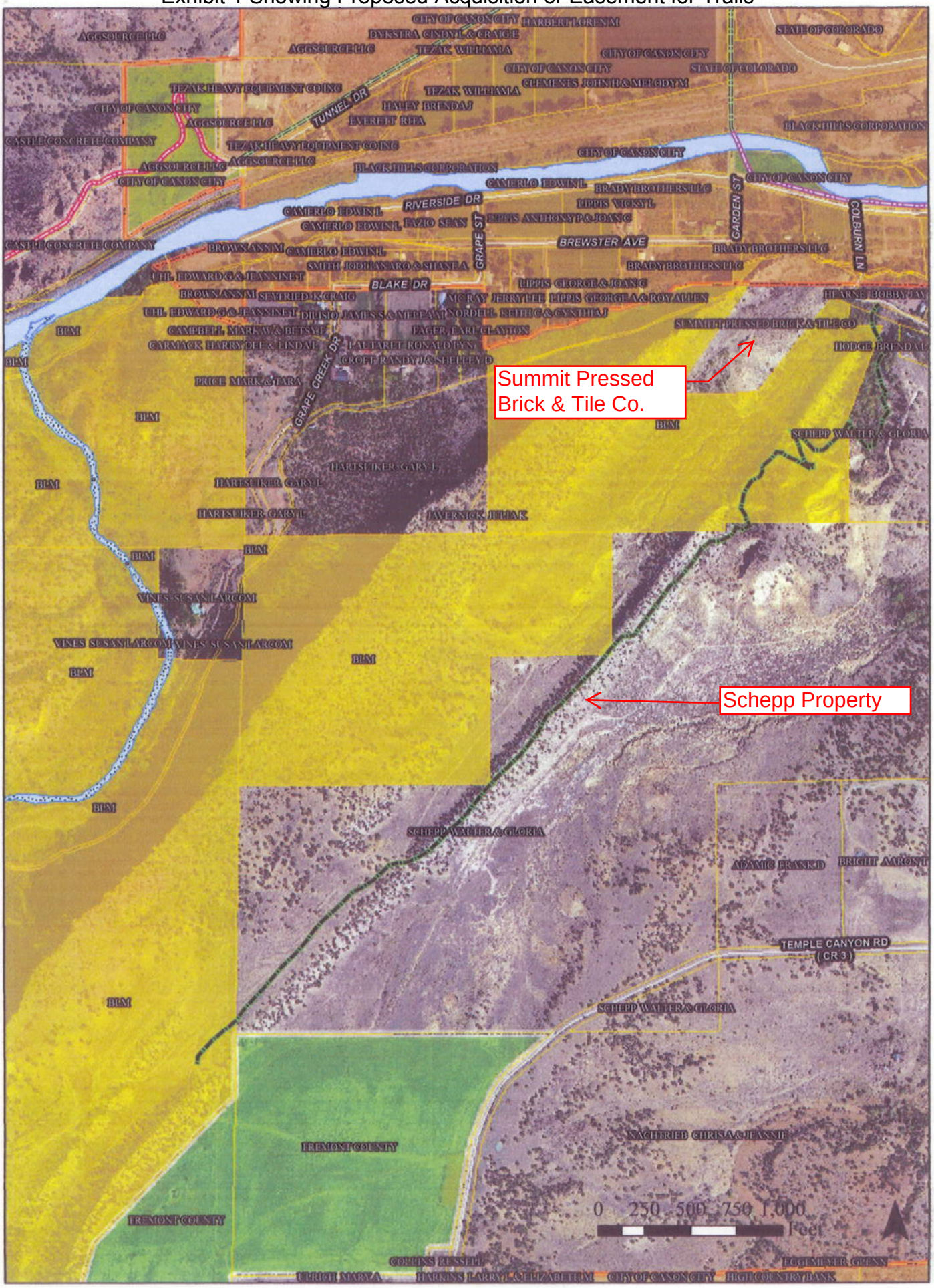
Subject: Expenditure of Residual Funds for Cotter Natural Resources Damage Recovery Fund (NRDF) Phase II

On October 24, 2005 the Trustees authorized Phase II of the Cotter Natural Resources Damages Recovery Funds. The authorization was for $1,123,000 to be spent on projects as set forth in the October 19, 2005 memorandum letter from Philip S. Stoffey, Cotter On-site Coordinator. The proposed projects were submitted by a partnership of the City of Canon City, Fremont County, the Canon City Area Metropolitan Recreation and Parks District "District", the Town of Brookside, and the City of Florence. Mr. Stoffey's letter described the 34 proposed projects, of which 14 were to use NRDF. Seven of the projects involved property acquisition and the remaining involved riverbank restoration, land restoration, riprap restoration, wetlands expansion, and removal of noxious weeds. The Cotter NRDF Work Group recommended approval of the projects and recommended if funds remain they be used for riverbank restoration, noxious weed removal, or revegetation.

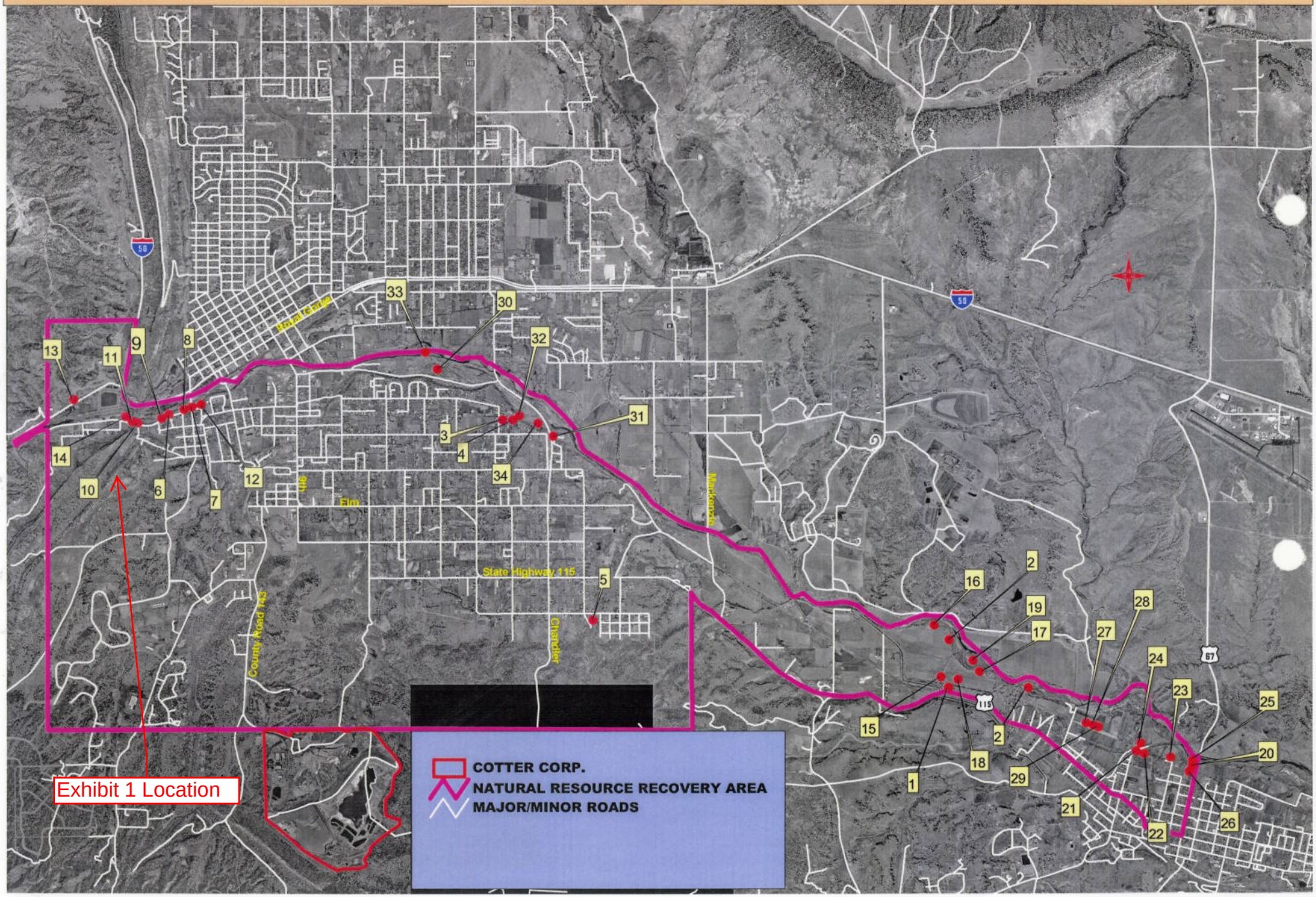
Approximately $17,000 of the Phase II funds remains. In October 2013, the District requested using these residual funds to help acquire property or easements to expand the trails that connect some of the Phase II project areas. These properties are located within and at the west end of the Natural Resource Recovery Area. The Recovery Area, project locations, and properties considered for easement or acquisition are shown on the attached exhibits.

The use of the residual funds is consistent with Phase II of the Cotter Natural Resources Damages Recovery Funds. We recommend the funds be authorized for this purpose.

Exhibit 1 Showing Proposed Acquisition or Easement for Trails



NATURAL RESOURCE RECOVERY PROJECTS
EXHIBIT "D



COLORADO NATURAL RESOURCE TRUSTEE
RESOLUTION February 27, 2014
CONCERNING THE REQUEST FROM THE CANON CITY AREA METROPOLITAN RECREATION AND PARKS DISTRICT TO USE THE REMAINING FUNDS IN THE COTTER PHASE II NATURAL RESOURCES DAMAGES RECOVERY FUNDS

WHEREAS, the Colorado Natural Resource Trustees are responsible for the management and direction of Colorado's natural resource damages program;

WHEREAS, on October 24, 2005 the Trustees approved Phase II of the Cotter Natural Resources Damages Recovery Fund for the remaining amount of $1,123,000 to be used for a set of projects submitted in partnership by the City of Canon City, Fremont County, the Canon City Area Metropolitan Recreation and Parks District, the Town of Brookside, and the City of Florence;

WHEREAS, the Cotter Natural Resources Damages Workgroup reviewed, evaluated and recommended approval of the submitted projects as more fully set forth in the October 19, 2005 memorandum letter from Philip S. Stoffey, Cotter On-Site Coordinator;

WHEREAS, the approved projects included property acquisition, purchase of easement, as well as restoration work;

WHEREAS, the Workgroup recommended that if additional funds remain they be used for restoration;

WHEREAS, approximately $17,000 has remained in the Fund since 2011;

WHEREAS, on October 24, 2013 the Canon City Area Metropolitan Recreation and Parks District requested using the remaining funds for property acquisition or purchase of easement to expand trails that connect some of the Phase II project areas;

WHEREAS, the proposed properties and easements are within the Cotter Natural Resource Recovery Area and described as "Schepp Walter & Gloria" and "Summit Pressed Brick & Tile Co" on the documents submitted by Canon City Area Metropolitan Recreation and Parks District;

NOW THEREFORE, the Colorado Natural Resource Trustees resolve as follows:

The Trustees do hereby approve the remaining funds for the Canon City Area Metropolitan Recreation and Parks District request pursuant to the following terms and conditions:

(1) The remaining funds will be used only for the requested acquisition or easement for the purpose of trail expansion or for restoration as originally intended;

(2) The partnership of the City of Canon City, Fremont County, the Canon City Area Metropolitan Recreation and Parks District, the Town of Brookside, and the City of Florence all agree to the District's proposal or submit a proposal on how the remaining money will be divided for restoration purposes.

(3) Reimbursement for any land acquisition will be subject to a conservation easement approved by Trustee staff;

(4) The funds will be available on a reimbursement basis and remitted pursuant to the State's NRDs fund distribution policy and standard State contracting procedures;

(5) This approval is valid for five years from February 27, 2014.

_____	_____
John Suthers, Colorado Attorney General	Date
_____	_____
Martha Rudolph, Director of Environmental Programs, CDPHE	Date
_____	_____
Robert Randall, Deputy Director, DNR	Date

1720 Brookside Ave. Brookside, CO 81212
Office: 719-276-3436 Fax: 719-276-3436
townhallbrookside@bresnan.net
www.colorado.gov/townofbrookside

Town of Brookside

CC: Doug Jamison
Remediation Program
Hazardous Materials and Waste Management Division
Colorado Department of Public Environment and Health
4300 Cherry Creek Dr. S
Denver CO 80246-1530

February 11, 2014

Jim Hoar
Canon City Recreation District
575 Ash St.
Canon City, CO 81212

To Jim Hoar and to all else whom it may concern:

The Town of Brookside has received the email request from Jim Hoar requesting that all concerned parties agree that the Canon City Recreation District receive the remaining approximately $17,000 of the Cotter Natural Resource Damage and Recovery Funds. The Town of Brookside would like to request that the remaining monies be equally divided among the local partner agencies. We present the following items to consider in making this decision:

- The original amount of Phase 2 was $1.1 million. The Town of Brookside believes that the Canon City Recreation District already has received, by a significant margin, the largest share of these funds.
- To date, the total amount that the Town of Brookside received of all of these Damage and Recovery Funds is the purchase price of the property for our park: $93,000.
- The location of the Town of Brookside places it close to the Super Fund site with the most likelihood of residue damage. We have re-seeded the grounds in our park with native grasses three times, and yet the grass struggles to grow.
- The Town of Brookside is part of the Canon City Recreation District. The property owners in Brookside are assessed each year to support the Rec District.
- Our Town is a small entity with little income; yet, since we belong to the Canon City Recreation District, the Rec District already receives half of our Conservation Trust Funds.
- The Town of Brookside's 2013 Conservation Trust Fund income was $1,335.62. That is our total income for maintaining our park.
- The Canon City Recreation District's 2013 CTF Fund income was $145,084.36. Beyond this amount, they receive the mill levies assessed to all property owners within the Canon City Recreation District boundaries.
- The Town of Brookside maintains its 18-acre trails park without any support from the Canon City Recreation District, even though we share our Conservation Trust Funds with them each year.
- The Town of Brookside could make very good use of additional funds for park maintenance.
- The Town believes that the budgets of other partner entities are also extremely limited and that each entity would be eager to receive some extra funds to use toward their specific needs.
- The original plans for the use of the NRD funds included an extension from the Arkansas River Walk to Brookside's Spring Creek Park; however, that phase of the project seems to be being ignored.

- Also, The Town of Brookside questions whether or not the Summit Brick and Schepp properties lie within the Original Recovery Project boundaries. And whether or not the Rec District is going to be able to reach the needed agreements with the property owners along the route to the Pathfinder Park.

For these reasons, the Town of Brookside suggests that the remaining Cotter Natural Resource Damage and Recovery Funds be divided equally among the partner agencies. The smaller the entity the larger the need is for additional income.

Sincerely,

David K. Boden, Mayor of the Town of Brookside

Enclosed: Email received from Jim Hoar, 2014 02 06

Conservation Trust Fund Distribution, Fremont County, 2013 Calendar Year Report

Natural Resource Recovery Projects Exhibit D

Please visit our website for pictures of Brookside's Spring Creek Park:
http://www.colorado.gov/cs/Satellite/TownofBrookside/CBON/1251627225379

ITEM #7

COLORADO NATURAL RESOURCE TRUSTEE
RESOLUTION February 27, 2014
CONCERNING THE URAVAN NATURAL RESOURCE DAMAGE FUND

WHEREAS, the Colorado Natural Resource Trustees are responsible for the management and direction of Colorado's natural resource damages program;

WHEREAS, the Uravan natural resource damages ("NRDs") settlement established a fund of $2,021,000 to restore natural resources impacted by the Uravan Mill Site near Naturita Colorado

WHEREAS, on February 09, 2005, the Trustees approved four resource restoration projects as outlined in Phil Stoffey's December 09, 2004 letter to the Colorado Natural Resource Trustees

WHEREAS, one of the projects approved by the Trustees was the Uravan Mine Restoration Project, proposing restoration of abandoned mines in the Club Mesa, Eagle Basin and Long Peak areas. Following Trustee approval, CDPHE contracted with DRMS who began work on this project in 2007 and complete the work in 2011

WHEREAS, approximately $270,000 remains in the Uravan Natural Resoure Damage fund and CDPHE has proposed that remaining funds be used to perform additional restoration of abandoned mines in the same project areas, and use of these funds will fulfill the same restoration purposes as the project approved by the Trustees on February 04, 2005; Specifically, the project is designed to remove mine wastes from intermittent drainages that flow through the project sites and stabilize mine wastes with vegetation to minimize wind and water erosion, while returning the land to the beneficial uses of range land and wildlife habitat. This phase of work, which could be characterized as Phase IV of the project will be conducted in the Dolores Bench area which is adjacent to previous project areas to the north and west of the Uravan Mill.

WHEREAS, DRMS will contribute approximately $50,000 of matching funds by implementing the "Lucky Dog" mine safeguarding project that will close 10 mine openings in the project area. DRMS will contribute matching funds by provided inventories of potential project sites and assisting with project management.

NOW THEREFORE, the Colorado Natural Resource Trustees resolve as follows:

The Trustees do hereby approve the application of remaining funds in the amount of $271,533 to the Uravan Mine Restoration Project Phase IV as described above.

_____	_____
John Suthers, Colorado Attorney General	Date
_____	_____
Martha Rudolph, Director of Environmental Programs, CDPHE	Date
_____	_____
Robert Randall, Deputy Director, DNR	Date

STATE OF COLORADO

Bill Owens, Governor
Douglas H. Benevento, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
TDD Line (303) 691-7700
Located in Glendale, Colorado

Laboratory Services Division
8100 Lowry Blvd.
Denver, Colorado 80230-6928
(303) 692-3090

http://www.cdphe.state.co.us

Colorado Department of Public Health and Environment

December 9, 2004

The Honorable Ken Salazar
Colorado Attorney General
Attorney General's Office
1525 Sherman Street, 7th Floor
Denver, Colorado 80203

Mr. Russell George
Director
Department Of Natural Resources
1313 Sherman Street
Denver, Colorado 80203

Mr. Douglas H. Benevento
Director
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Subject: Uravan Natural Resource Damage Fund Distribution Trustee Meeting

Dear Mr. Benevento, Attorney General Salazar and Mr. George:

The working group for the Uravan Natural Resource Damage Recovery Fund (NRDF) has completed the process set forth in the *Guidance for Administration of the Natural Resource Damage Recovery Fund* and decided upon the recommendations to make to the Colorado Natural Resource Trustees regarding which projects should be funded. Of the eight proposals submitted, the Working Group recommends funding four of the projects as discussed below. Attached is Appendix A of Project Summaries for each of the eight Proposals and the Process by which the Uravan Work Group members evaluated the proposals.

Uravan Mine Restoration Project

This proposal by the Colorado Division of Minerals and Geology requested $1,561,185.00 to address the hazards and environmental problems that arise from abandoned mines. It is anticipated that there would be $ 933,653 in matching funds. The

area where mine restoration would be implemented would be adjacent to the Uravan site on Club Mesa, Eagle Basin, and Long Peak. The Working Group recommends that $813,00 be used on this project for abandoned mine reclamation and $39,360 for stream restoration adjacent o the Uravan ball park for a total of **$852,360**. Work should only be done on uranium mines.

Uravan Ball Park/Campground

The Western Colorado Interpretive Association in partnership with The Unaweep/Tabeguache Byway Council proposed to convert the six to eight acre existing Uravan ballpark into a campground. This would be consistent with the plans to revitalize the west end of Montrose County. The project proposal included vegetation clean up (non-native plant removal and replacement with native species) of the site, a well for running water, running power out to the site, camping facilities such as grills and picnic tables, and a boat launch.

The proposers requested $96,100 with a match of $158,665. The Working Group recommends against several items in the proposal that were for non-natural resource items, such as a road closure gate, electric lines and water lines, and picnic tables. The Working Group recommends that $8,200 be used for a well. Uravan may contribute an existing well that could be used at this site. The group also recommends that $28,000 be used for non-native plant removal and $16,000 for native plant reseeding for a total of **$52,200**.

Uravan Cooperative Weed Management Plan

The Uravan Cooperative Weed Management Plan was proposed by Montrose County in partnership with the Bureau of Land Management and The Nature Conservancy. The objective of the proposal is to restore the native plant communities within the project area near Uravan by controlling and managing non-native, invasive weeds including tamarisk and other non-native species along the San Miguel River and its tributaries. The proposer requested $900,000 with $311,333 in matching funds. The Working Group recommends that the Trustees approve **$200,000** for tamarisk removal and an additional **$550,000** for noxious weed management in partnership with the U.S.D.A. Forest Service (see below) for a total of **$750,000**.

Uncompahgre Plateau Restoration

This proposal was by the U.S. D.A. Forest Service to treat noxious weeds and improve and conserve streams for Colorado River cutthroat trout in areas that include National Forest System lands on the Uncompahgre Plateau east of Naturita, Colorado and northwest of Norwood, Colorado. The proposer requested $582,888 of NRD funds with a match of $112,000. The work group recommends that $84,000 be used for riparian

pasture fencing along Clear Creek for fishery habitat improvement and reforestation in Red Canyon; and potentially $375,000 for noxious weed/invasive plant inventory and treatment and revegetation. Montrose County and the Forest Service have formed a partnership to work on the weed control in Western Montrose County. The total NRD funds approved by the Working Group would be **$84,000,** with an additional $375,000 in reserve for weed control.

Total funds recommended by the Working Group would be **$1,188, 560** with $925,000 available for the Forest Service and Montrose county partnering for weed control. Total of all requests granted would be **$2,113,560**. There is approximately **$2,021,000**in an interest bearing account for the Uravan NRDF as of June 30, 2004. Money will not be available until the next State fiscal year, at which time interest earned on the account would fully fund the proposals.

The Uravan Work Group would like the opportunity to present their recommendations to the Trustees for your decision. They would be happy to meet with you at your convenience.

If you have any questions or need more information, I suggest that you talk to your respective representative on the working group: Phil Stoffey of CDPHE, Jerry Goad of the AGO or Jim Garner of the DNR in the Montrose Office.

Please contact me by December 23 with a time or times that we could meet in January or early February. I can be reached at 303.692.3452, e-mail at Philip.Stoffey@state.co.us, or at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division.

Sincerely,

Philip S. Stoffey
Uravan On-site Coordinator
Colorado Department of Public Health and Environment

Attachment: Appendix A

Cc: Mary Helen DeKoevend, Mayor of Nucla
Jim Garner, Colorado Department of Natural Resources
Jerry Goad, Colorado Attorney General's Office
Leo Large, Montrose County Commissioner
Cameron Riley, Mayor of Naturita.

APPENDIX A

Summary of Proposals for Uravan Natural Resource Damage Recovery Fund (NRDF) Trustees Review.

The work group for the Uravan NRDF was organized in early 2003 consistent with the *Guidance for Administration of the Natural Resource Damage Recovery Fund* (Guidance).

Work Group members consisted of the following people:

Mary Helen DeKoevend, Mayor of Nucla
Jim Garner, Colorado Department of Natural Resources
Jerry Goad, Colorado Attorney General's Office
Leo Large, Montrose County Commissioner
Cameron Riley, Mayor of Naturita.
Phil Stoffey, Colorado Department of Public Health & Environment.

The Work Group met periodically and established criteria for submitting proposals. This included limiting the area for proposals to western Montrose County in the San Miguel and Dolores River basins and establishing criteria to evaluate the proposals.

The process for administering the NRDF described in the Guidance was followed. Solicitation for proposals was initiated January 12, 2004. Sixteen respondents met the written inquiry deadline and eight (8) responders submitted proposals on March 22, 2004. After a screening process that eliminated one proposer, site visits, a public meeting, and review of written public comments, the work group met on June 22, 2004 and made their final evaluation. Members of the Working Group who submitted proposals were recused from evaluating their own proposals. Each member evaluated each proposal in accordance to the ranking criteria discussed in the *Uravan Mill Natural Resource Damage Fund Solicitation for Project Proposals* and completed the Evaluation Sheet included with the solicitation for project proposals. The first four projects described below ranked the highest. Following are brief descriptions of the projects and the recommendations by the work group.

1. Uravan Mine Restoration Project

Colorado Department of Minerals and Geology in partnership with the Bureau of Land Management, Colorado Division of Wildlife, Umetco, and Mesa State College submitted

a proposal which included doing an inventory of abandoned mines, a bat survey, monitoring, stream restoration, three phases of reclamation construction of abandoned

mines, and cultural resources for a requested amount of $1,561,187 from the Natural Resource Damage Fund (NRDF). They had $933,363 in matching funds. The area where the work would occur would be adjacent to the Uravan site and stream restoration by the Uravan ballpark.

The Working Group evaluated pros and cons for each project. The pros for this project were numerous and included nexus to Uravan (uranium mines that provided uranium ore to the Uravan Mill), proximity to the mill, likelihood of success, matching funds, pollution/erosion control, permanence and collaboration with other agencies. The negative side was the high cost.

The Working Group decided to recommend to the Trustees to fund $852,360 for two phases of abandoned mine reclamation and stream restoration. They do not recommend the requested $22,837 to do a bat survey, $40,360 to inventory the mines, $1,250 for post construction monitoring, and $30,000 for cultural resource interpretation. In evaluating this proposal the Working Group ranked it the highest with an average score of 122 out of a possible 150.

2. Uravan Ball Park/Campground

The Western Colorado Interpretive Association in partnership with The Unaweep/Tabeguache Byway Council proposed to convert the six to eight acre existing Uravan ballpark into a campground submitted this proposal. This would be consistent with the plans to revitalize the west end of Montrose County. The project proposal included vegetation clean up (non-native plant removal and replacement with native species) of the site, a well for running water, running power out to the site, camping facilities such as grills and picnic tables, and a boat launch.

The Working Group evaluated pros and cons for each project. The pros for this proposal were proximity to Uravan, public access, coordination with DMG on their proposal, matching funds, benefits to the community, duration as the weeds would be manageable for the small site and public acceptance. Cons would be O&M.

In evaluating this proposal the Working Group ranked it with an average score of 108 out of a possible 150.

The proposers requested $96,100 with a match of $158,665. The Working Group recommended against several items in the proposal were for non-natural resource items, such as a road closure gate, electric lines and water lines, and picnic tables and grills. The Working Group recommended that $8,200 be used for a well. Uravan may

contribute an existing well that could be used at this site. The group also recommended that $28,000 be used for non-native plant removal and $16,000 for native plant reseeding for a total of **$52,200**.

3.Uravan Cooperative Weed Management Plan

The Uravan Cooperative Weed Management Plan was proposed by Montrose County in partnership with the Bureau of Land Management (BLM) and The Nature Conservancy (TNC). The objective of the proposal is to restore the native plant communities within the project area near Uravan by controlling and managing non-native, invasive weeds including tamarisk and other non-native species along the San Miguel River and its tributaries. The entire project area consists of 237,747 acres, including public and private lands surrounding Uravan. The Working Group would like the area around Uravan to be emphasized, especially in the disturbed mining areas. Tamarisk removal would be along 10 miles of the San Miguel River.

The proposer requested $900,000 with $311,333 in matching funds. BLM would use $150,000 for inventory monitoring and implementation of its integrated weed management strategy. TNC would use $200, 000 of NRDF money for tamarisk control. Montrose County would implement its weed management program in western Montrose County with $450, 000 of NRDF funds. A private landowner cost-share program would be developed at a cost of $100,000 to assist, train and educate private landowners to use treatment safely and responsibly. This program would be similar to existing programs in La Plata and San Miguel Counties. The Working Group did not approve the $150,000 for doing an inventory. Pros for this proposal are improvement to the ecology, public acceptance, and matching funds. Cons would be duration and success.

In evaluating this proposal the Working Group ranked it with an average score of 84 out of a possible 150.

The Working group recommended that the Trustees approve **$200,000** for tamarisk removal, an additional **$450,000** for noxious weed management in partnership with the U.S.D.A. Forest Service and **$100,000** for the private landowner cost share program for a total of **$750,000**.

4. Uncompahgre Plateau Restoration

This proposal was by the U.S. D.A. Forest Service with no partners to treat noxious weeds and improve and conserve streams for Colorado River cutthroat trout in areas that include National Forest System lands on the Uncompahgre Plateau east of Naturita, Colorado and northwest of Norwood, Colorado. The proposer requested $582,888 of NRD funds with a match of $112,000. The proposer requested that $84,000 be used for riparian pasture fencing along Clear Creek for fishery habitat improvement and

reforestation in Red Canyon; and potentially $375,000 for noxious weed/invasive plant inventory and treatment and revegetation. Montrose County and the Forest Service are

working on forming a partnership to work on the weed control in Western Montrose County. The work group did not approve $150,000 for inventory and $3000 for road removal.

Pros for this proposal are improvement to the ecology including riparian and aquatic environments. Cons would be questionable duration and success of the weed control, distance from the Uravan site, and lack of partnership. Leo Large, Montrose County Commissioner, is working with the U.S. Forest Service and Montrose County to partner on the weed control.

In evaluating this proposal the Working Group ranked it with an average score of 87 out of a possible 150.

The work group recommends that **$84,000** be used for riparian pasture fencing along Clear Creek for fishery habitat improvement and reforestation in Red Canyon; and potentially **$375,000** for noxious weed/invasive plant inventory and treatment and revegetation.

5. Silver Hawk Ranch

This proposal was by the The Nature Conservancy to purchase a five-mile conservation easement along the San Miguel River at the Silver Hawk Ranch in partnership with the landowners. The total project cost would be approximately $1,000, 000 with $600,000 coming from NRDF. Matching funds would be $415,000 potentially from GOCO, BLM of NFWF, and $11,500 from The Nature Conservancy.

Pros for this proposal were permanence and enhancement of wildlife. Cons would be denial of public access and public acceptance.

In evaluating this proposal the Working Group ranked it with an average score of 71 out of a possible 150.

The work group recommends that no funds be used for this proposal.

6. **DOW Habitat Acquisition**

This proposal was by the Colorado Department of Wildlife (CDOW) for Habitat Acquisition. No partners were included, but CDOW would seek commitments from other partners including The Nature Conservancy and the Rocky Mountain Elk Foundation. Specific information on the tract or tracts of land that may be involved in the proposal

could not be provided. The acquisition of habitat would primarily address the "acquire" and "replacement" goals set forth in the Solicitation for Project Proposal. The total cost of the Project would be $2.0 million with $1.5 million coming from NRDF. It is

estimated that matching funds would be $500,000 with a 10% match of $150,000 coming from CDOW.

Pros for this proposal were likelihood of success, enhancement of wildlife, and public access. Cons would be uncertainty of locations undefined and undetermined, O&M, matching funds, and public acceptance.

In evaluating this proposal the Working Group ranked it with an average score of 70 out of a possible 150.

The work group recommends that no funds be used for this proposal.

7. **San Miguel River Restoration Project- CCC Ditch Diversion Site.**

The San Miguel Watershed Coalition in partnership with the Colorado Cooperative Company, the Bureau of Land Management and the Colorado Division of Wildlife submitted this proposal. The proposal was for reconstruction of the CC Company Ditch diversion structure and integrating a fish bypass. Stream bank restoration and weed control would also be included. The project would cost $600,000 with $450,000 of NRDF money. Matching funds would be $150,000.

Leo Large brought a letter to the meeting from the Colorado Cooperative Company dam group withdrawing the submittal. The Work Group thus did not evaluate the proposal.

8. Hanging Flume Restoration

The proposal by the Western Colorado Interpretive Association to replace the hanging flume was immediately rejected, as the hanging flume was not a natural resource.

Total funds recommended by the Working Group would be $1,188, 560 with $925,000 available for the Forest Service and Montrose county partnering for weed control. Total of all requests granted would be **$2,113,560**. There is approximately **$2,021,000**in an interest bearing account for the Uravan NRDF as of June 30, 2004. Money will not be available for this project until the next State fiscal year, and interest earned by that time will fully fund the amount recommended.

URAVAN NATURAL RESOURCE DAMAGES

The Natural Resources Trustees of the State of Colorado, appointed by the Governor of the State of Colorado and pursuant to their authority under the Comprehensive Environmental Response, Compensation and Liability Act, having considered the recommendations of the Uravan Natural Resources Damages Workgroup, approve the following projects to be funded with natural resource damages funds in the following amounts as more fully set forth in the December 9, 2004 letter from Philip S. Stoffey, Uravan On-site Coordinator:

1. Uravan Mine Restoration Project, $852,360.00

2. Uravan Ball Park/Campground, $52,200.00

3. Uravan Cooperative Weed Management Plan, $750,000.00

4. Uncompahgre Plateau Restoration, $84,000.00

Dated this 9th day of February, 2005.

John W. Suthers
Attorney General

Douglas H. Benevento
Executive Director
Department of Public
Health & Environment

Ronald W. Cattany
Director, DMG
Department of Natural
Resources

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ITEM #9

GUIDANCE

COLORADO NATURAL RESOURCE DAMAGES RESTORATION PROJECT SELECTION PROCESS AND ADMINISTRATION OF THE COLORADO NATURAL RESOURCE DAMAGE RECOVERY FUND

Approved by the Colorado Natural Resources Trustees on [date].

I. Introduction

Colorado may recover monetary compensation for injuries to its natural resources through legal claims brought under CERCLA[1] and OPA[2]. This compensation is known as Natural Resource Damages, or NRDs. CERCLA and OPA require the NRD recoveries be used to restore, replace, or acquire the equivalent of the injured natural resources. This guidance is intended to assist state employees in selecting NRD Restoration Projects for recommendation to the Trustees and to administer the funds recovered for natural resource damages. This guidance is also intended to inform interested citizens about the process. The guidance sets forth a general procedure, which may vary depending upon site-specific factors.

II. Key Players

a. Trustees.

Under CERCLA and OPA, Colorado may bring claims for Natural Resource Damages through its governor-designated trustees.[3] In 1990, Governor Roy Romer designated the following officers as NRD Trustees (Trustees) for actions under CERCLA[4]:

1. Attorney General of the State of Colorado
2. Executive Director of the Colorado Department of Public Health and Environment

[1] In 1980, Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C.A. §§ 1601 - 9675 (CERCLA §§ 101 – 405)), otherwise known as CERCLA or Superfund. While it is best known for providing for clean-up of hazardous substances following an unauthorized release, CERCLA also gives state governments the authority to seek compensation for resulting injuries to state natural resources.

[2] The Federal Water Pollution Prevention and Control Act, commonly known as the Clean Water Act (CWA), included compensable reimbursement for costs and expenses incurred by the State for the restoration or replacement of natural resources injured or destroyed as a result of a discharge of oil or a hazardous substance. In 2006, the Oil Pollution Act (OPA, 33 U.S.C.A. §§ 2701 – 2762), amended the CWA to provide compensation for injuries to state natural resources resulting from the release of oil or petroleum into state waters.

[3] 42 U.S.C.A. 9607(f)(2)(B), 33 U.S.C.A. 2706(b)(3).

[4] January 19, 1990 letter from Governor Roy Romer to Robert F. Stewart, U.S. Department of Interior.

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3. Executive Director of the Colorado Department of Natural Resources

In 2006, Governor Bill Owens designated the same officers to serve as trustees under OPA.[5]

The Trustees establish policy and direction for the NRD program. The Trustees are responsible for the final decisions related to funding from the Natural Resource Recovery Fund including the approval or disapproval of restoration projects submitted in response to the Solicitation for Project Proposals. The Trustees remain the final authority on site actions, such as approval of Fund expenditures and restoration decisions. The Trustees may delegate their responsibilities.

b. Trustee Representatives.

Each Colorado NRD trustee agency will designate one point of contact for its Trustee, who will coordinate NRDs efforts within the agency. These are the Trustee's Representatives. These Trustee Representatives meet periodically to review the overall NRDs Program. In addition, the three Trustee Representatives will, as a group, decide which potential NRDs claims to seek Trustee approval to pursue. The Trustee's Representatives assign a Project Manager to specific NRDs claims.

c. Project Managers.

Project Managers are agency employees assigned by their agency's Trustee Representative, responsible for the day-to-day management of each case. Project Managers have two main responsibilities. First, to represent the Trustees during the solicitation for project proposals and, in coordination with the Trustee Representatives, make recommendations to the Trustees regarding the eligible project proposals for the Trustees to approve. Second, to provide project management and act as the point of contact throughout the NRD process.[6]

A. *Project Managers Responsibilities Related to the Work Group*.

Project Managers are responsible for establishing a Work Group (defined below), providing notice to local government(s) and other interested parties of the existence of the Work Group, its purpose, and requesting a designated contact person or office, steering the Work Group though drafting a Solicitation for Project Proposals (SPP), publishing the SPP, and holding public meetings.

[5] January 31, 2006 letter from Governor Bill Owens to Jan Lane, United States Coast Guard.

[6] At some sites, a federal or tribal trustee may also have made a claim and recovered damages for injuries to its natural resources, possibly in a joint effort with Colorado. The Trustees should determine whether joining with a non-Colorado trustee group, usually called the "site council" in federal cases, will serve Colorado's interests.

B. *Project Manager Responsibilities Related to the Project Proposals*.

In conjunction with the Work Group, Project Managers are responsible for defining restoration goals for the site; coordinating with contracts administration staff to ensure the solicitation and procurement process is consistent with Colorado Department of Public Health and Environment ("CDPHE") policy and procedures, shaping and facilitating the project selection process including the development of the project's scoring matrix; providing a description of the injuries; and advertising for restoration projects. After the proposal submission deadline, the Project Managers determine the procedure for evaluating the proposals in accordance with this guidance. Techniques vary but usually include project presentations from the applicants, site visits, evaluation of written project descriptions/qualifications and oral presentations using a screening/selection matrix, interviews of applicants, review of public comment. Ultimately, the Project Managers are responsible for shaping the application and selection process.

C. *Project Manager Responsibilities to the Trustees*.

Through Trustee Representatives, the Project Managers keep the Trustees apprised of the NRD selection process. Trustee Representatives are responsible for making a recommendation of the eligible and appropriate NRD Restoration Project(s) based on the Project Managers' evaluation.

d. The Work Group.

The role of the Work Group is to assist the Project Managers regarding the selection of appropriate restoration projects. The Work Group is usually comprised of representatives of local interests, including members of local governments, citizen groups that have been involved with the original Superfund site and cleanup, etc., or other interested parties. The Work Group may seek assistance from other agencies with an interest in the site, or persons with useful expertise. Members of the Work Group typically act as a liaison to their communities: keeping them apprised of progress and bringing any community concerns to the Project Managers.

Once established, the Work Group assists the Project Managers by providing input about environmental restoration needs within the community, helping define the nature of the project(s) to be solicited, discussing needs for the Solicitation for Project Proposals (SPP), helping to draft the SPP document, assisting with the distribution of the SPP in the community, and attending public meetings. Work Group members also are involved in the project evaluation process, attend presentations from the project proponents, attend site visits, and provide feedback to the Project Managers regarding community needs and preferences for project selection.

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The Work Group assists the Project Managers in evaluating the project proposals and ultimately assists the Project Managers in formulating a recommendation for the Trustees when the evaluation process is complete.

e. Project Proponent.

Project Proponents are the recipients of the NRD Fund disbursements. Project Proponents respond to the SPP and bid for and implement selected NRD Restoration Projects.

Typically, the Work Group considers proposals from governmental entities or not-for-profit Internal Revenue Code 501(c)(3) corporations. Project design, engineering and planning costs are not eligible for funding from the NRD Funds, so whether the Project Proponent is a non-governmental organization or a government entity, Proponents must have access to other funding sources to cover these costs. Projects proposed by parties responsible for the injury to natural resources at the site are generally not eligible to serve as Project Proponents, but if they do submit a project, it may receive extra scrutiny to ensure there is no conflict of interest. Project Proponents must have the financial and technical capability to successfully complete a restoration project, and must have experience with project management and contracting.

III. Work Group Duties

a. Restoration Project Identification.

Under the leadership and auspices of the Project Managers, the Work Group defines the type of project that should be considered for application of the NRD settlement (in accordance with Trustee policy, any settlement agreement or court order, and within the scope of what is defined and allowable by CERCLA). The Work Group's participation and input is important for the Project Managers, because local interests often have a clearer perspective about environmental restoration needs in the affected community.

While shaping a vision for the project, the Work Group must take into account the eligibility requirements (listed below) established by CERCLA, OPA, and the Trustees.

Eligibility criteria for NRD projects are:

1. project must restore, replace or acquire the equivalent of the natural resources injured;
2. be located in the vicinity of the injured resources or demonstrate a geographical or ecological nexus to the injured natural resources;
3. comply with all applicable Federal, State, and local laws, including local ordinances and zoning;
4. not pose a threat to the health and safety of the public;
5. not interfere with ongoing response actions at the site, including ongoing environmental monitoring;

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6. include alternate funding sources for operation and maintenance of the completed project[7];
7. meet any site-specific requirements established by the Work Group or the Trustees; and
8. projects involving acquisition of property for open space should include a commitment to grant a conservation easement or other mechanism that will allow the trustees to ensure that the project provides continued natural resource restoration. If a grant of conservation easement is proposed, the proponent must include a draft of the conservation easement with the proponent's application.

The Trustee's Representatives should make the final decision regarding any significant deviations from the above criteria. A sample Solicitation for Project Proposals ("SPP") is included as an Appendix to this document.

b. Solicitation for Project Proposals

Once the Work Group, led by the Project Managers, has established a general vision for the project, the Project Managers draft the SPP to identify the desired projects in the community that need funding. Drafting the SPP should be coordinated with the State Contracts Officer and also with the State Public Affairs Coordinator. In addition to the eligibility requirements listed above, the following elements should be included in the SPP:

1. description of the site;
2. description of injured natural resources;
3. explanation of litigation or settlement and amount of money available;
4. restoration goals;
5. scope and criteria for evaluating proposals (as detailed in Part III, above);
6. requirements for project proposals, including:
   A. location of project;
   B. description of injured natural resources that will benefit from the proposed project;
   C. description of any other natural resources that will benefit from the proposed project;
   D. criteria for judging the project's effectiveness;
   E. a description of any long-term maintenance or operation the project will require and identification of a funding source;
   F. a description of proponent's ability to successfully implement the proposal;
   G. budget, which includes an itemization of the amount of funds needed to complete the proposed project and the amount of money being requested from the Fund;
   H. an explanation of matching funds being sought; and
   I. the time-frame for the project to begin and be completed;

[7] NRD funding is not available for operation and maintenance costs.

7. proposal process and schedule, including dates for:
   A. release of SPP;
   B. public information meeting;
   C. proposal submission, possibly preceded by screening level proposal;
   D. public comment period;
   E. final proposal submission; and
   F. anticipated Trustee decision date

The Project Manager publishes the SPP. Typically, this is done by the CDPHE Project Manager through CDPHE's public affairs coordinator. Project Managers and the public affairs coordinator should notify press representatives for their respective agencies of the publication of the SPP. The Work Group members will also notify local and other community groups, as appropriate, that have indicated an interest in the SPP's release and will often hold a public meeting to describe the nature of the funding source and the projects desired, describe the process for selection of projects, and give the public an opportunity for early input. A mailing list for the project may be developed from the public meeting attendees.

c. Scoring Matrix.

In addition to identifying a vision for the project, and drafting and publishing the SPP, the Work Group and/or the Project Managers should develop a site-specific project scoring matrix for ranking all project proposals that are determined to have met the eligibility requirements, using both the eligibility requirements listed above, any additional elements, and some or all of the following:

1. applicant's ability to obtain matching funds from other funding sources;
2. technical feasibility and procedural viability of the project, based on the applicant's technical and management abilities;
3. the likelihood that the project can be successfully completed in an acceptable period of time;
4. project benefits versus the expected costs;
5. long-term project benefits versus any short-term injuries to the environment caused by implementing the project;
6. feasibility of the project's long-term operation, maintenance, and sustainability plan;
7. consistency of the project with existing state, regional and local resource management and development plans;
8. the likelihood the project will benefit more than one resource or service;
9. the likelihood the project can be reasonably monitored and have benefits that can be measured and verified;
10. whether the project provides actual resource improvements rather than only conservation of open space, unless development threats are imminent or the conservation opportunity is of an advantageous scale or timing;
11. the cost-effectiveness of the project relative to other projects that would benefit the same natural resource(s);

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12. the degree to which project utilizes multiple approaches (restoration, replacement and acquisition);
13. the degree to which the project involves multiple partners and is collaborative; and
14. the likelihood of the project being funded through other mechanisms, or whether implementation of the project would free funding sources to finance other restoration projects.

In some cases, the Project Managers may decide to seek approval of the project matrix from the Trustees prior to issuing a Solicitation for Project Proposals.

d. Matching Funds

Project proponents must provide at least a 50% match for projects considered for NRD funding. For example, if a proponent asks for $1,000,000.00 for a project, they must provide a match of $500,000.00. The match must be described in the proponent's proposal. At least half of the match must be for NRD-related work and any non-NRD related match funds must not undermine the NRD component of the project.

The match may be a combination of in-kind services and actual dollar costs for activities related to the project. The procurement of design and engineering work not covered by NRD funding but secured by another source of funding may be included as the non-NRD component of match dollars. Likewise, improvements to the site that cannot be funded by NRD dollars may be included as part of the non-NRD portion of the match.

Proposals should have a match breakout separating NRD-related match money from non-NRD-related match money. When in-kind services serve as a portion of the match, the proposal should specifically state how the value of the in-kind services was derived using either a calculation based on Federal Emergency Management Agency labor cost index or by stating which part of the project budget will be performed via in-kind services.

In scoring the projects, the Work Group will give preferential consideration to those projects with better match conditions.

e. Evaluation and Selection of NRD Restoration Project Proposals.

Once the deadline published in the SPP has been reached and the projects submitted to the Project Managers, the Work Group turns its attention to evaluating the received proposals. Typically, at this stage, the Project Managers and the Work Group schedule presentations with Project Proponents whose projects meet the eligibility requirements and do not present a conflict of interest. Project Managers will schedule site visits if feasible, and encourage the Work Group members to participate. Project presentations and pre-selection site visits are encouraged because they often provide a great deal of information and perspective that is not always ascertainable from a proposal. If there are too many proposals, it may be necessary to screen projects in advance to develop a 'short list'.

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The Project Managers should present proposals for public comment. This is best accomplished by placing copies on CDPHE's website for 30 days and notifying interested parties.

Once the Work Group or the Project Managers have completed all presentations, site visits, and all public comments have been received, the Project Managers and the Work Group, if available, evaluate the proposals using the site-specific project matrix established for the site and either select a project or prepare a preferred list of proposals. At that time, the Project Managers, may request more information from proponents of a project to complete the evaluation.

If a member of the Work Group also represents the interests of an entity that has submitted a project proposal, or the Work Group member submits a proposal, that Work Group member may participate on the Work Group in the evaluation of the project proposals, unless the Project Managers collectively determine such participation would substantially adversely affect the evaluation process.

The Project Managers may need to contact the site's Responsible Parties under the Consent Decree or Court Order to evaluate any effect the project proposals may have on cleanup activities. In all cases, the Project Managers, together with the Work Group must determine if a proposal has a proponent who can satisfactorily complete the project. Ultimately, the project will be selected from the scoring matrix results and any other mitigating relevant factors, as directed by the Project Managers in coordination with the Trustee Representative.

Project Proponents who are not selected should be notified by telephone and letter or email.

IV. Approval of the Restoration Project(s)

The Project Managers (usually the Project Manager representing the AGO) will prepare a Project Recommendation Memorandum for the Trustees. Depending on the amount of funds available for a site, the memorandum will either recommend certain projects, or present restoration alternatives that employ a collection of projects.[8] Generally, the Project selected for approval will be presented by the Project Proponent to the Trustees at a NRD Trustee's Meeting. It is advisable for the Work Group members to be present as well, to answer questions and provide feedback to the Trustees.

The Trustees will review the Project Recommendation Memorandum as well as any other information presented at a publically noticed Trustee meeting and by a majority vote, approve or disapprove a restoration project. Approval of a selected NRD restoration project will be memorialized through a written resolution of the Trustees.

[8] The Trustee Staff may publish the memorandum for public review before approving a restoration plan.

V. Funding and Performance

a. Funding from the Natural Resource Damage Recovery Fund.

Funding for NRD projects can only be disbursed through a contract between the Project Proponent (Proponent) and the State. All NRD projects are paid through a cost reimbursement model, which means contractor invoices are paid on a regular basis after submittal[9]. Because the Hazardous Materials and Waste Division ("HMWMD") of CDPHE manages the Fund, contracts must be established through the CDPHE contracting office. Once the Trustees approve the NRD Restoration Project, the CDPHE Project Manager, along with oversight from the AGO and DNR Project Managers, if necessary, is responsible for the contracting process.

The following steps ensure that money is available to implement the approved NRD projects as directed by the Trustees.

1. HMWMD Remediation Program Manager (the Trustee Representative for CDPHE) must have already obtained the necessary legislative spending authority, as part of the CDPHE's annual legislative budget process. This should be done prior to commencing the Work Group effort.

2. The CDPHE Project Manager provides the Contracts Officer a Contracts Authorization Request Form (CAR Form) and initiates the contracting process by contacting HMWMD's contracts officer. The Remediation Program Fiscal Manager must confirm funding availability by identifying a grant budget line (GBL) and signing the CAR.

3. HMWMD Contracts Officer establishes contracts with the party receiving the money for the restoration project according to State and CDPHE contracting requirements and processes.

4. The CDPHE Project Manager oversees the projects, receives the invoices, reviews, approves each expenditure, and ranks the contractor through the State's Contract Monitoring System (CMS).

5. Remediation Program Fiscal Manager monitors the balance of the NRD recovery funds by site.

b. Background Information Regarding Annual Appropriations Process

The state legislature annually appropriates the amount of money State agencies can spend, including the amount from specific funds such as the Natural Resources Damage Recovery Fund. HMWMD operates under a strict timeline to ensure money from the Fund is available, or appropriated, for NRD projects. NRD appropriations are typically

[9] The exception to this is a land purchase, in which case, the funds are wired at closing.

considered "capital construction expenditures," which means the authorization to spend the funds is valid for three years.[10]

In late June or early July, CDPHE requests authority from the legislature to spend the amount needed from the Fund for each site in the following fiscal year. HMWMD's request is first considered by the Capital Development Committee, which will make its recommendation to the Joint Budget Committee (JBC) for its consideration in February. If the JBC approves, it will recommend the appropriation to the full legislature. Upon legislative approval, the request will be included in the budget submitted to the governor in May. Assuming the governor approves the budget, the money will then be available in July, which is a year after HMWMD makes its request.

To successfully manage the Fund within this system, HMWMD fiscal managers request legislative appropriation for new sites as soon as a settlement or litigation is complete. HMWMD may, or may not request spending authority for all the money in the Fund for a particular site during that budget cycle.

c. Project Implementation and Fund Disbursement

A. Before Work Begins.

The agency administering the NRD Fund (typically CDPHE) will be responsible for monitoring work, approving invoices, and assuring completion of each project. A staff member of that implementing agency will be the Project Manager and the point of contact for the assigned project.

All contracts must follow CDPHE procurement, contracting, contract monitoring system (CMS), and disbursement processes, as identified by the State Controller. It is recommended the Project Manager receive training on procurement, contract management and the CMS. Contracts are initiated through a CAR (Contractual Agreement Request Form) available on HMWMD's intranet. The Trustee Resolution approving the expenditure needed for the project is provided to the Contracts Officer as an attachment to the CAR.

The Trustee's Representative or Project Manager will coordinate with the CDPHE contracts officer prior to the solicitation phase. The contract solicitation and delivery mechanisms are variable and must be tailored to the site-specific needs of each project, typically requiring several meetings between the CDPHE contracts office and the Project Manager.

[10] It is possible, in extraordinary situations, to make a supplemental budget request, such as when there is an emergency, a technical error in a previous appropriation having a substantial effect on the program, or new information that results in substantial changes in funding needs. Staff should never rely on this possibility, because CDPHE is reluctant to use this mechanism and it is unlikely the JBC would approve the expenditure. That said, supplemental requests are usually made in October or November and affect current year appropriations.

B. After Work Begins.

Proponents will implement their projects in accordance with the budgets and schedules submitted in their proposals. Significant changes to projects must be approved by the Trustees, and must still meet the criteria for project selection. In addition, significant changes approved by the Trustees may require amendment of the contract. Consultation with the CDPHE contracts officer will be necessary to determine if a contract amendment is required.

As projects are implemented, the Project Manager will ensure the project is completed according to the proposal and the contract, approve contractor invoices, and document activities for the project.

C. Fund Disbursement.

The CDPHE Project Manager must approve all invoices submitted for reimbursement of the cost of a project using the Invoice Checklist Form, available on the CDPHE Intranet. This may be through periodic approval of reimbursements, such as for sub-contractors, throughout implementation of a project, or one reimbursement after a project is completed, as defined in the CAR. The CDPHE Project Manager is responsible for tracking invoices and monitoring the budget. In the case of land acquisition, the contracts officer can arrange for funds to be available at closing. All payments to a Proponent will be after it has incurred costs for the project.

To be reimbursed, a Proponent must submit invoices according to the process outlined in its contract for reimbursement.

D. Project Completion.

The Trustee's Representative or Project Manager will determine when a project is complete. Projects are considered complete when the project Proponent has completed all activities described in the proposal and met all the requirements of the contract. The Project Manager should not approve final payment under the contract until the Proponent has fulfilled all contract requirements, including submission of any required Completion Reports and/or As-built drawings.

E. Project Files.

The CDPHE Trustee Representative or Project Manager is responsible for maintaining a site NRD file. The file should include copies of proposals approved for funding, Trustee Resolution, contract documents, invoices and other project-related documentation/correspondence. The file, either project or contract, should include all the procurement documentation (e.g., notices, SPP, project matrix, proposals received, scoring documentation, notice of award, etc.).

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F. *Monitoring.*

Trustee Representatives will require a project monitoring component where appropriate. Monitoring may include interim and final restoration goal evaluation based on performance standards determined by Trustee's Representatives. If monitoring is required, the Project Manager is responsible for ensuring the monitoring takes place and that the Proponent submits any required reports or data. Such reports and data should be placed in the site file and copies should be provided to the other Trustee Representatives. If monitoring data indicates a project has failed or is in need of maintenance, the Project Manager should inform the other Trustee Representatives and should contact the Project Proponent for resolution of any problems identified.

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ITEM #10

Northeast Greenway Corridor's Second Supplemental Request to the NGC Master Plan First Presented on July 31, 2012

Foundation Fund Project – Montbello Natural Area

When the Regional Restoration Master Plan was created, the original Montbello Natural Area proposal was unclear regarding the property size, what portion of the property would become a natural area, and how the adjacent property will be used. The original proposal cited a 5.5-acre site and then mentioned that Denver wished to use the $500,000 NRD funds to acquire 4 acres. To clarify, the City will be acquiring a 5.5 acre-site, of which 4.5 acres will be the future natural area as originally described. As requested by the Trustees, the City will convey a conservation easement that permanently protects the 4.5-acre portion of the property. As originally planned, the matching funds will include a $350,000 GOCO Local Government grant, and $263,000 from private foundations. The total purchase price remains $1,113,000 and the existing appraisal indicates a fair market value of $1,270,000.

The one-acre site adjacent to the future natural area is planned for a future environmental education center that will be owned by the City and County of Denver. At this time, the plan is for the City to lease the future building and the surrounding 5.5 acres to a non-profit partner, Environmental Learning for Kids (ELK). ELK is bringing considerable benefit to the City and community by fundraising for the land acquisition, the future environmental education center, and the restoration of the site to a native prairie habitat. The anticipated activities on the property remain consistent with the original proposal. Denver has a long history of partnering with private, non-profit organizations to leverage limited public funding and expand the level of programming and services delivered to the community.

<u>Other Examples of Denver Partnerships with Non-Profit Organizations</u>

- Denver Zoo – Denver owns City Park and leases a portion to the Denver Zoo, a private 501(c)3 organization.
- Museum of Nature and Science - Denver owns City Park and leases a portion to the Museum, a private 501(c)3 organization.
- Denver Children's Museum – Denver leases a portion of the public park to the Museum.
- Sand Creek Greenway- Provides stewardship of the greenway including fundraising, natural resource enhancement activities, and volunteer clean up projects on behalf of Denver.
- Greenway Foundation - Provides stewardship of the greenway including fundraising, natural resource enhancement activities, and volunteer clean up projects on behalf of Denver and leases a portion of a public park for youth environmental education activities.
- Police Activities League – PAL provided funding to completely renovate Val Verde Sports Park and in return has "homefield" use the facility providing youth sports programming to inner city youth.

The Northeast Greenway Corridor Working Group officially voted to approve this minor modification at their meeting on November 13, 2013 and forward to the Trustees for their review and approval.

COLORADO NATURAL RESOURCE TRUSTEE
RESOLUTION February 27, 2014
CONCERNING THE NORTHEAST GREENWAY CORRIDOR'S PROPOSED AMENDMENTS TO THE APPROVED FOUNDATION FUND MONTBELLO PROJECT

WHEREAS, the Colorado Natural Resource Trustees are responsible for the management and direction of Colorado's natural resource damages program;

WHEREAS, the Rocky Mountain Arsenal ("RMA") natural resource damages ("NRDs") settlement established a fund of $10 million for Northeast Greenway Corridor projects ("Foundation Fund") and a fund of $17.4 million for NRDs projects ("Recovery Fund");

WHEREAS, on July 31, 2012, the Trustees approved an integrated set of resource restoration projects ("Master Plan") proposed by the Northeast Greenway Corridor Advisory Committee ("NGC") for the Foundation Fund monies;

WHEREAS, during the contracting phase of these approved projects, the details of the Denver/Montbello project have changed so significantly that the NGC now requests the Trustees approve amendments to the approved project list;

WHEREAS, the amended project proposed by Denver through the NGC meets the same restoration purposes as the project approved by the Trustees on July 31, 2012;

NOW THEREFORE, the Colorado Natural Resource Trustees resolve as follows:

The Trustees do hereby approve the NGC's amended project proposal for Foundation Fund money pursuant to the following terms and conditions:

(1) The funds will be used only for the land acquisition and environmental restoration projects outlined in the NGC's " Northeast Greenway Corridor's Second Supplement Request to the NGC Master Plan First presented on July 31, 2012" document;

(2) The NGC and the NGC jurisdictions will continue to consult with Trustee staff during drafting of contracts and development of construction documents;

(3) Reimbursement for any land acquisition will be subject to a conservation easement approved by Trustee staff;

(4) The funds will be available on a reimbursement basis and remitted pursuant to the State's NRDs fund distribution policy and standard State contracting procedures;

(5) The NGC and/or the NGC jurisdictions shall provide periodic updates to the Trustees on the progress of the projects;

(6) This approval is valid for five years from July 31, 2012.

_____	_____
John Suthers, Colorado Attorney General	Date
_____	_____
Martha Rudolph, Director of Environmental Programs, CDPHE	Date
_____	_____
Robert Randall, Deputy Director, DNR	Date

ITEM #11

Memorandum

To: Colorado Natural Resource Damages Trustees
John Suthers; Martha Rudolph; and Bob Randall

From: Northeast Greenway Corridor Recovery Fund Working Group

Date: February 13, 2014

Re: Proposal that the Trustees Clarify the Scope of Projects to be Considered for Funding

The Northeast Greenway Corridor Recovery Fund Working Group (NGC RF Working Group) is continuing its process, begun in 2009, with the goal of developing a consensus package of projects to propose for funding from the $17.4 million Rocky Mountain Arsenal NRDS Recovery Fund. A key threshold issue is how to define the universe of projects to be considered in this effort. The Working Group has discussed this issue with the State representatives from the Department of Natural Resources, Department of Public Health and Environment, and the Attorney General's Office, as well as within the Working Group. The Working Group requests that the Trustees approve the Working Group's recommendation that those Recovery Fund project proposals submitted in 2012 that received an initial Tier 1 or Tier 2 rating be used as the set of projects considered for Recovery Fund funding.

The 2012 process was an open, public process in which all interested persons had an opportunity to submit proposed RMA Recovery Fund projects. The 15 project proposals submitted were evaluated by the State agency representatives and based on this preliminary assessment were grouped into the following three categories:

Tier 1: Meets Screening and Evaluation Criteria; Well Developed.
Tier 2: Projects are Conceptual; More Info or Discussion Needed.
Tier 3: Project Does Not Meet Screening Criteria.

As a result of the preliminary assessment: 6 projects were placed in Tier 1; 6 projects in Tier 2; and 3 projects in Tier 3. The total initial funding request for the Tier 1 and 2 projects was a little less than $21 million. Because the primary focus of the 2012 effort was on the Foundation Fund projects, the Trustees were not briefed about the Recovery Fund projects at that time and to date have not been asked to take any action regarding these Recovery Fund project proposals.

Because the 2012 process for initial Recovery Fund project proposals was a fair and open process, and because that process was concluded less than two years ago, the Tier 1 and 2 projects from that process provide a reasonable set of projects for further funding consideration. To start the process all over with a new request for proposals at this time would be costly and time-consuming, as well as duplicative of the process that has already occurred. It is substantially less likely that the development and approval of a full set of Recovery Fund projects can be completed this year if there is a need to start over in soliciting project proposals.

It is fair and efficient to proceed based on the Tier 1 and 2 projects already submitted, without further consideration of the Tier 3 projects. Because the Tier 3 projects did not meet the NRDS screening criteria, changes at this stage to meet those criteria would be substantial enough that any such submissions would essentially be new and different project proposals.

A key assumption in this proposal is that the projects considered going forward would be substantially the same Tier 1 and 2 projects submitted and assessed in 2012. Recognizing that with the passage of time some circumstances will have changed, to rely on the 2012 Tier 1 and 2 submissions as the universe of projects to be considered going forward a necessary assumption is that the projects included in a package of proposals for Recovery Fund funding would be substantially the same projects as previously submitted. If these project proponents were allowed to submit new and substantially different project proposals, it would seem fair and reasonable for others to have an opportunity to submit new proposals as well.

In 2011, the Trustees endorsed the NGC's approach to solicit projects for both the Foundation Fund and Recovery Fund monies. The NGC RF Working Group now requests confirmation from the Trustees that proceeding in this manner is still acceptable. If the Trustees do not believe that this approach is appropriate, the Working Group would appreciate alternative direction regarding how to proceed.

Memorandum

To: Colorado Natural Resource Damages Trustees;
John Suthers; Martha Rudolph; and Bob Randall

From: Northeast Greenway Corridor Recovery Fund Working Group

Date: February 13, 2014

Re: Proposal that the Trustees Approve an Alternative Mechanism for Repayment of Rocky Mountain Arsenal NRDS Litigation Expenses

Summary

There is a statutory requirement that certain funds borrowed from the state General Fund and the Hazardous Substances Response Fund to cover litigation costs associated with the Rocky Mountain Arsenal natural resources damages (NRDS) lawsuit be repaid before the state distributes the $17.4 million in the RMA Recovery Fund for NRDS projects. As of June 30, 2013, the remaining balance to be repaid was approximately $1.4 million. The original concept was that these funds would be repaid by interest earned on investment of the Recovery Fund principal. However, legislation passed in 2013 allows flexibility for the Trustees to approve an alternative repayment mechanism. The Northeast Greenway Corridor Recovery Fund Working Group (Working Group) is proposing an alternative repayment mechanism and seeks the Trustees' approval, as addressed below.

The Problem

The RMA Recovery Fund monies cannot be used for natural resource mitigation projects until the litigation costs are repaid. The current projection is that accumulated interest alone would not produce enough money to fully repay the two state funds for another five to seven years. The Working Group believes that it is in the interest of project proponents and the state for Recovery Fund projects to begin sooner than that, since the purchasing power of this money will decline over time and important opportunities for natural resources preservation may be lost if there is a delay of five to seven years for all projects.

The Northeast Greenway Corridor Recovery Fund Working Group (NGC RF Working Group) is a collaborative effort that includes the local governments and non-governmental organizations that proposed Recovery Fund projects during the 2012 public solicitation of interest in advancing such projects. Following extensive discussions within the NGC RF Working Group, including input from the state representatives of the three Trustee state agencies, the working group is seeking the Trustees' approval of the repayment approach set forth below.

Proposal

The repayment approach proposed by the Working Group would be structured as follow:

The total repayment obligation would be divided among all Recovery Fund project proponents – the five governmental jurisdictions and the four NGO's. The allocation of repayment obligations would be proportional to the percentage of the total Recovery Fund monies that each entity's project

represents. Each entity's repayment would be considered a part of the "match" provided for project funding. (Note: it is not assumed that these monies would be the full "match" for a project; the state representatives plan to clarify the "match" requirements or expectations for Recovery Fund projects.)

Example: Community X proposes a project that would receive a $2 million Recovery Fund grant. This project is approved by the Trustees as part of the overall $17.4 million package of projects. Community X would be responsible for 2 ÷ 17.4 = approximately 11.5 percent of the repayment obligation. This dollar amount would be set based on the repayment balance due at the time of Trustee approval of the full set of projects. E.g., if that approval happened by about July 1 of this year, it is estimated that the repayment balance due at that time may be about $1.2 million. So, Community X would be responsible for a repayment total of approximately $138,000. This $138,000 payment would be required as part of the project match for Community X's project, prior to distribution of its $2 million grant.

For projects not proceeding immediately, their identified portion of the Recovery Fund monies – based on the approved set of projects – would continue to stay in the bank and accumulate interest. Their proportionate share of the interest accumulated on the remaining principal would reduce their repayment responsibility whenever they proceed with their project. If an entity were unable or chose not to provide its portion of the repayment sooner, it would have the option of waiting until enough interest had accumulated to cover its repayment obligation before proceeding with its project(s). This assumes that the state would be able to contract with each project proponent at the time that the full set of projects is approved by the Trustees, so that each entity would have a legal assurance that it will still be entitled to the approved Recovery Fund grant, so long as it proceeds with the approved project(s) within a stated timeframe; e.g., seven years.

Considerations in Advancing This Proposal

This approach still assures that the repayment of the two state funds occurs before allocation of the corresponding portion of the Recovery Fund principal. State fiscal staff confirmed that the interest rate earned on money remaining in the Recovery Fund after some of the fund has been distributed would not be affected by the size of the remaining principal. Therefore, project proponents that might need to wait before proceeding with their project would be no worse off than if all entities were waiting for interest accumulation to cover the cost of repayment. Similarly, the state would be no worse off; i.e., because the remaining principal after a partial allocation of funds continues to accumulate interest at the same rate, the state is "kept whole" and the accumulation of interest to cover repayment for any project's portion for which repayment did not occur earlier (as part of the project match) would not be delayed compared to the current status quo.

Because this approach assumes that individual approved projects may provide their repayment portion, receive their Recovery Fund grant, and proceed at different times, the state would need to have a mechanism in place to track the remaining Recovery Fund balance, interest accumulation and remaining repayment obligations for each of the entities, including tracking each entity's share of the interest accumulated, to accurately identify each entity's repayment obligation at the time that it is ready to proceed. We have discussed this option with state fiscal staff and they have indicated that this is feasible.

Some of the state representatives expressed concern that this option may have an appearance of inequity – allowing those with greater resources to proceed with projects more quickly, while requiring

those with lesser resources (in particular NGOs) to wait to proceed with projects. Some NGOs may be able to obtain foundation grant funds and/or assistance from their local communities to cover their share of the repayment obligation. Some NGOs are uncertain whether that will be feasible. However, the NGOs (and anyone else not coming up with the repayment "match") would have the option of waiting for the Recovery Fund principal to accumulate enough interest to cover their repayment portion, if they are unable to provide their portion of the repayment sooner. This would leave them in essentially the same position that would result if there is no early repayment agreement, and everyone is waiting for the interest accumulation. Therefore, no entity would be worse off than under the current status quo, and some projects (if not eventually all projects) would move forward more quickly than under the current status quo. Bluff Lake Nature Center in particular has raised some concern about the probability that the funds will still be available for their project 5-7 years from now, if other interested parties have withdrawn their funds and fewer stakeholders are interested in protecting those funds from the legislature. However, Bluff Lake is willing to live with a contractual agreement if its project is approved by the Trustees.

Before settling on the option described here, the NGC RF Working Group had extensive discussion of an option that would have involved all of the local government entities involved sharing and fully covering the repayment costs. After consideration, there was a strong feeling that this option would not be successful within some of the local governments for two principal reasons. First, in contrast to the option set forth here, this option would involve a payment to the state not tied to an individual project and therefore which could not be easily identified as a project "match" contribution. There was a strong feeling that structuring the repayment contributions as project match would make such payment easier to support within local government financing systems. The second, related concern from local governments was that some would have difficulty within their respective systems achieving support for paying a portion of the repayment monies to allow other entities' projects to go forward, particularly if those projects were in another jurisdiction.

Although the repayment option that the Trustees are being asked to approve was not the first choice of every NGC RF Working Group participant, there is a consensus within the group that this repayment approach represents the best feasible option that is likely to be successful. In particular, Bluff Lake Nature Center has stated that it would strongly prefer a repayment option whereby the full repayment obligation was covered by the local governments involved in this effort, although it can live with the option described here to keep the process moving forward.

Because of the different approval processes that apply internally for each of the individual Working Group participants, some may not have received final confirmation of their decision-makers' support for this option at the time of the requested Trustees' approval. However, all Working Group project proponent representatives have indicated that they would support or can live with this option. Because of the importance of moving this overall process forward expeditiously, the Working Group is seeking the Trustees' approval of this approach at this time, to help define the parameters for all to move forward with the NRDS project process.

Alternative Scenarios

If the Trustees should decide not to approve this proposed repayment approach, it is unclear what would occur relative to the issue of repayment of the two state funds and distribution of the Recovery Fund money. This option is advanced because of the group consensus that it is most likely to be a feasible option that can receive final approval by the full set of Working Group participants. There is

substantial skepticism that the primary alternative early repayment options identified would be acceptable to all participants. In particular, any early repayment option that is not tied to the set of approved projects creates challenges for approval within the local governments, as described above.

Of course, if this proposed repayment approach is not approved by the Trustees, the default alternative is that all project proponents would need to wait the five to seven years estimated for interest accumulation. And, all assume that if there is a delay of that magnitude, the state would need to start over at some later date with the process of soliciting proposed Recovery Fund projects. Therefore, the NGC RF Working Group believes that the most constructive path forward would be for the Trustees to approve this repayment approach at this time.

Thank you for your time and consideration.