

**Programs, Projects & Operations
Subcommittee Meeting
April 12, 2011
6:30 p.m.
Agenda**

Programs, Projects & Operations:

John Conley, Chairman
Fred Conley, Vice-Chairman
David Klug
Rich Tesar
Jim Thompson

Alternate Members: Gus Erickson
Tim Fowler

Staff Liaison: Gerry Bowen
Martin Cleveland
Amanda Grint
Ralph Puls
Dick Sklenar *

1. Meeting Called to Order – Chairperson John Conley
2. Notification of Open Meetings Act Posting and Announcement of Meeting Procedure – Chairperson John Conley
3. Quorum Call
4. Adoption of Agenda
5. Proof of Publication of Meeting Notice
6. Review and Recommendation on Papillion Creek Bank Stabilization Project Bids – Martin Cleveland
7. Review and Recommendation on Bids – Jerry Herbster
 - a. Elkhorn Crossing Rec Area Site Improvement
 - b. Graske Crossing River Access Area Site Improvement
8. Review and Recommendation on Urban Cost Share Programs:
 - a. Recreation Area Development Program – Gerry Bowen
 - b. Urban Drainageway Program – Gerry Bowen
 - c. Urban conservation Assistance Program – Gerry Bowen
 - d. Trails Assistance Program – Gerry Bowen
 - e. Stormwater BMP – Lori Laster

9. Review and Recommendation on Approval of Engineering Services with Lamp Rynearson for Big Papio Channel Gabion Repair project at 105th and Pacific – Martin Cleveland
10. Discussion of Transfer of Funds from the Silver Creek Project into the CAP Programs – Director Japp
11. Review and Recommendation on Mopac Trail (Highway 50 to Chalco) Public Hearing Requirements – Gerry Bowen and Paul Peters
12. Adjourn

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

FROM: Martin P. Cleveland, Construction Engineer

SUBJECT: Papillion Creek Bank Stabilization Project Bids (Project 529K)

DATE: March 31, 2011

Attached are location maps and a typical cross-section for the referenced creek bank stabilization project. The work consists of placing rock riprap along the creek bank of Big Papillion and West Branch Papillion at 4 locations in Omaha, and Bellevue, NE. The work includes the furnishing of the labor, materials, equipment, tools and incidentals necessary to install approximately 8,400 tons of rock riprap bank protection along approximately 2,860 linear feet of creek bank. The contract provides for 50 working days to complete the project.

A bid summary is attached for your consideration. The apparent low bidder is Midwest Dumpers, Inc. with a bid as follows:

SITE	EST. TONS	UNIT PRICE	TOTAL COST
A	1,600	\$34.60	\$55,360
B	2,000	\$34.90	\$69,800
C	1,800	\$34.95	\$62,910
D	3,000	\$34.75	\$104,250
TOTAL	8,400	\$NA	\$292,320

Based on the estimated total riprap quantity of 8,400 tons the total project cost (total base bid) would be \$292,320. The Engineer's estimate for total project cost is \$300,000.

This work will be funded via funds included in Project Maintenance General Contract Work (Account 0103591 4479). As of February 28, 2011 remaining funds in this account was \$424,912.80. It is anticipated that this project will be partially completed in Fiscal Year 2011.

- **It is Management's recommendation that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute a contract for rock riprap bank stabilization work at four (4) sites on the Papillion Creek System with Midwest Dumpers, Inc., for their total base bid of \$292,320.**

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

SUBJECT: Elkhorn Crossing and Graske Recreation Area Projects
Site Improvements

FROM: Jerry Herbster, Park Superintendent

DATE: April 1, 2011

On March 17, 2011 at 2pm bids were open at the Natural Resource Center headquarters at 8901 S. 154th Street, Omaha NE on the site improvements for projects Elkhorn Crossing Recreation Area and Graske Crossing Recreation Area. The site improvement projects were brought about by the extensive flooding in the Spring of 2010.

There were a total of 12 bidders for the 2 projects (5 for Graske, 7 for Elkhorn). After review of the bids by NRD staff and engineering at Big Muddy Workshop, it was determined that the lowest and best bids were as follows:

Summary of Bid Proposals

Project: Elkhorn and Graske Crossings Recreation Area's Site Improvements

Opening: March 31, 2011 at 2:00 p.m.

	Thompson Construction	Andersen Construction
Elkhorn Crossing Rec. Area, Base	\$95,700.00	---
Alt. 1	\$9,800.00	No Alt.
Graske Crossing Rec. Area		\$59,905.00
Total Base Bid	\$105,500.00	\$59,905.00

Apparent Low Bidder is: Elkhorn Crossing – Thompson Construction \$105,500.00

Apparent Low Bidder is: Graske Crossing – Andersen Construction \$59,905.00

Engineer's Estimate for Elkhorn Crossing: \$162,200

Engineer's Estimate for Graske Crossing: \$87,300

Note: FEMA funds were requested for these 2 projects and as of this date we have been notified that the 75% cost share for these projects has been approved and forth coming.

- **The staff recommends to the Subcommittee Board of Directors that low and best bids of Thompson Construction bid of \$105,500.00 for Elkhorn Crossing and Andersen Construction bid of \$59,905.00 for Graske Crossing site improvements be approved and sent to the full Board for their approval.**

Memorandum

To: Programs, Projects, and Operations Subcommittee

Subject: FY 2012 Urban Cost Share Programs

- Recreation Area Development Program
- Urban Drainageway Program
- Urban Conservation Assistance Program
- Trails Assistance Program

Date: April 11, 2011

From: Gerry Bowen

The District solicited applications for the urban cost share programs from the various units of government in the District for the upcoming fiscal year. The following applications were received.

Recreation Area Development

The Recreation Area Development Program (RAD) cost shares with units of government to develop and improve recreation areas within their jurisdiction. The cost share rate is 50%. On projects requesting more than \$20,000, the Policy Manual requires Board approval. On all others, Management has approval authority.

The following applications have been approved by Management.

- The City of Dakota City has requested assistance to assist in rehabilitation measures in the Dakota City Depot Project to be used as a trailhead. The estimated cost of the improvements is \$190,240. The local share is 20% of this amount, or \$38,048. They are requesting 50% of this amount, or **\$19,024** in cost share assistance.
- The Winnebago Tribe (through its Ho Chunk Community Development Corporation) has requested assistance to improve its Veterans Memorial Park Campground. Specifically, they are requesting assistance on grading and landscaping the site, and improvements to restroom/shelter in the park. The total estimated cost of all improvements is \$308,582. They are requesting **\$15,059** in cost share from the District.

The following application requires Board approval.

- The City of Omaha has requested assistance to relocate a shade structure from Rosenblatt Stadium to Youngman Park (Site 13). The project includes site preparation and a parking lot to serve the area. The total cost of the project is estimated at \$198,062. They are requesting the maximum under the program, or **\$50,000**.
- The City of Omaha has requested assistance to replace an undersized road culvert (36") in Ta-Ha-Zouka Park in Elkhorn with an arched pipe (21' x 8'). This park road is the only access to the west side of the park. The total estimated cost of the project is \$252,586. They are requesting the maximum under the program, or **\$50,000**.

The following table summarizes the RAD project requests for FY 2012. The FY 2011 budget for this program was \$307,633.

Sponsor	Total Estimated Cost	Cost Share Requested by Sponsor	FY 12 Cost Share Recommended by Management
Dakota City (trailhead)	\$190,420	\$19,024	\$19,024
Winnebago Tribe (Veterans Park)	\$308,582	\$15,059	\$15,059
Omaha (Youngman Shelter)	\$198,062	\$50,000	\$50,000
Omaha (Ta-Ha-Zouka Park)	\$252,586	\$50,000	\$50,000
Total	\$949,650	\$134,083	\$134,083

- Management recommends that the Subcommittee recommend to the Board that the applications from the City of Dakota City for \$19,024, the Winnebago Tribe for \$15,059, the City of Omaha (Youngman Park) for \$50,000, and the City of Omaha (Ta-Ha-Zouka Park) for \$50,000 be approved, for a total of \$134,083, subject to funding in the FY 2012 budget.

Urban Drainageway Program

The Urban Drainageway Program (UDP) cost shares with units of government to solve erosion, flooding, and other stormwater management concerns on major drainageways within their jurisdiction. The program guidelines were revised by the Board in January. The revisions encourage projects aimed at restoration and rehabilitation (greener solutions) with the cost share rate varying between 40% for Level 3 projects (predominantly hard armoring techniques), 60% for Level 2 projects (combination of hard armoring and bioengineering), and 75% for Level 1 projects (full restoration). Board approval is required on all applications. (*NOTE: The new program guidelines require that an application be made to either the Nebraska Environmental Trust or NDEQ's 319 program. This was waived the first year since the sponsors will not have an opportunity to apply before this fall. However, sponsors have been notified that projects anticipated for FY 13 and beyond will have to meet this requirement.*)

Two projects were approved for funding by the District prior to the changes made in the program in 2011 and will have components in FY 12.

- Millard Park (Sarpy County SID #162) (167th & Harrison) has requested assistance to stabilize a drainageway (Mission Creek, a tributary of the South Branch Papillion Creek) with a combination of grade stabilization structures and streambank lining. This multi-phased project was approved (prior to the revisions to the program in 2011) for funding by the Board in 2009 at a cost share rate of 60%. At that time, it was estimated that the cost of all phases would be \$600,840, with the cost share at \$360,500 (60% for all phases). Phase 1 was originally estimated to cost \$105,500 (cost share \$63,300). After final design of Phase 1, the estimated cost increased to \$329,200 and the Board approved increasing the cost share to \$197,460. Eventually, Phase 1 was completed in 2009 at a total cost of \$258,123 (District share \$154,874). The remaining four phases of the project have been re-estimated to a total cost of \$1,303,100, making the overall estimated cost of the project \$1,561,223. The SID is now requesting 60% of this amount, or \$936,734. Further, in FY 12, the SID is requesting cost share assistance on Phase 2 of the project. The total estimated cost of Phase 2 is \$281,300, with a cost share request of 60%, or **\$168,780**.
- The City of LaVista was approved in 2010 under the old UDP program at the 60% level. They did not plan to construct the project until FY 12, so no funds were included in the FY 11 budget. The project is ready to proceed. The total estimated cost of the project is \$431,500. They are requesting 60% of this amount, or **\$258,900**.

The District received the following applications under the new Urban Drainageway Program.

- The Douglas County, serving as the lead agency on a multi-jurisdiction (Sarpy County, City of LaVista, Brookhaven (Douglas SID #294), Brookhaven West (Douglas SID #435), Brook Valley (Sarpy SID #59) and the City of Omaha) project to stabilize a portion of Hell Creek. The project sponsors have requested Level 2 funding, or 60%. Management concurs with this request. The project is intended to stabilize the area surrounding the Harrison Street Bridge with a combination of hard armoring in places and stream restoration techniques in others. The project is anticipated to have a total of three phases to be applied for in future years, but with a different combination of sponsoring agencies. The current project is planned for construction in 2011-12 and is estimated to cost \$1,477,300. The request is for 60% of this amount, or **\$886,400**.
- The City of Omaha has requested assistance in stabilizing a portion of Saddle Creek located near 54th & Center. The project involves both open channel and an enclosed storm sewer to handle the anticipated runoff. They are requesting assistance on the open channel portion only. The total cost of the channel improvements is estimated to cost \$1,352,300. The city is requesting Level 2 funding, or 60% of this amount, or **\$811,380**. Management concurs with Level 2 funding. Further, the City is requesting that this amount be paid over a three year period making the FY 12 portion **\$270,460**. An interlocal agreement outlining this proposal will be presented to the Board at a later date.
- The City of Omaha has requested assistance in stabilizing a portion of Rockbrook Creek located near 115th & Frederick. This portion of the creek currently has a concrete lined channel that is being undercut and threatening public improvements and private residences in the area. They propose to remove the concrete liner and replace it with a natural channel configuration. They propose Level 2 funding, or 60%. Management concurs with this level of funding. The total estimated cost of the project is \$1,188,800. The City is requesting 60% of this amount, or **\$713,280**. Further, the City is requesting that this amount be paid over a three year period making the FY 12 portion **\$237,760**. An interlocal agreement outlining this proposal will be presented to the Board at a later date.
- The City of Omaha has requested assistance for a channel restoration project in the Sterling Ridge Development (former Ironwood Golf Course Property located SE of 132nd & Pacific) on behalf of the developer, Bella Terra, LLC. Since the property is within the city limits, an SID cannot be formed. Therefore, the City is the sponsor and they plan to execute an agreement with the developer to satisfy the operation and maintenance requirements of the program. The total cost of the project is estimated to be \$1,099,506. The City is requesting Level 1 funding on the project, or 75%. Management does not agree with this funding level and instead is recommending Level 2 funding, or 60% of the estimated cost, or **\$659,704**.
- Huntington Park (Douglas SID #374) has requested assistance to rehabilitate a channel in the subdivision located northwest of 156th & Blondo. The existing channel is degrading and the project is intended to stabilize the channel grade and to correct streambank erosion problems throughout the reach. The total estimated cost of the project is \$1,939,784. The SID has requested Level 2 funding, or 60%. Management does not agree with this, and is recommending Level 3, or 40% of the estimated cost, or **\$775,914**.
- The City of Bellevue has requested assistance in solving a flooding problem near the VFW Post located near 25th Street and Gilmore Lake Road. The District shared the cost of the engineering study with Bellevue to evaluate alternative solutions to the problem. The proposed solution would install a larger box culvert under Gilmore Lake Road, clean out of the channel above the culvert, and construct a diversion for runoff eastward around the VFW Post. The estimated cost of the project is \$185,394. They have requested Level 2 funding, or 60%. Management does not agree with this funding level and is recommending Level 3 funding, or 40% of the estimated cost, or **\$74,158**.

The following table summarizes the applications for FY 2012. The FY 2011 Budget included \$2,476,212 for this program.

Sponsor	Total Estimated Cost	Cost Share Requested by Sponsor	FY 12 Cost Share Recommended by Management
Millard Park (Sarpy SID #162)	\$1,561,223	\$936,734	\$168,780 ¹
LaVista (Applewood Creek)	\$431,500	\$258,900	\$258,900
Douglas County (Hell Creek)	\$1,477,300	\$886,400	\$886,400
Omaha (Saddle Creek)	\$1,352,300	\$811,380	\$270,460 ²
Omaha (Rockbrook Creek)	\$1,188,800	\$713,280	\$237,760 ³
Omaha (Sterling Ridge)	\$1,099,506	\$824,629	\$659,704 ⁴
Huntington Park (Douglas SID #374)	\$1,939,784	\$1,163,875	\$775,914 ⁵
Bellevue (Gilmore Lake Road)	\$185,394	\$111,236	\$74,158 ⁶
Grand Total	\$9,235,807	\$5,706,434	\$3,332,076

1 The SID has requested an increase in overall project funding; \$168,780 for Phase 2 is the FY 12 portion.

2 The City has requested payment over three fiscal years; \$270,260 is the FY 12 portion.

3 The City has requested payment over three fiscal years; \$237,760 is the FY 12 portion.

4 Management recommends Level 2 funding, rather than Level 1 requested.

5 Management recommends Level 3 funding, rather than Level 2 requested.

6 Management recommends Level 3 funding, rather than Level 2 requested.

- **Management recommends that the subcommittee recommend to the Board that the applications from Millard Park (Sarpy SID #162) for \$936,734, the City of LaVista for \$258,900, Douglas County for \$886,400, the City of Omaha (Saddle Creek) for \$811,380, the City of Omaha (Rockbrook Creek) for \$713,280, the City of Omaha (Sterling Ridge) for \$659,704, Huntington Park (Douglas SID #374) for \$775,714, and the City of Bellevue for \$74,158, for a total of \$5,706,434 be approved, subject to funding in the FY 2012 Budget.**

Urban Conservation Assistance Program

The Urban Conservation Assistance Program (UCAP) cost shares with units of government to solve relatively minor erosion, flooding, and stormwater management problems in their jurisdiction. Construction costs only are eligible. The Policy Manual calls for Management approval of all applications. Management intends to approve the following applications.

- The City of Omaha has requested assistance to stabilize two areas along the Big Papio Trail at 105th Street and Pacific Street, both involve preventing erosion and sedimentation under the bridges at these locations. The estimated cost of the Pacific Street project is \$31,500, and the 105th Street project is \$22,500. They are requesting 60% of these costs, or a total of **\$32,400** for both projects (\$18,900 at Pacific Street and \$13,500 at 105th Street).

The FY 2011 Budget for this item was \$128,600. The following table summarizes the FY 12 applications.

Sponsor	Total Estimated Cost	Cost Share Requested by Sponsor	FY 12 Cost Share Recommended by Management
Omaha (105 th Street)	\$22,500	\$13,500	\$13,500
Omaha (Pacific Street)	\$31,500	\$18,900	\$18,900
Total	\$54,000	\$32,400	\$32,400

- **It is recommended that the Subcommittee recommend to the Board that the applications from the City of Omaha for \$32,400 be approved, subject to funding in the FY 2012 budget.**

Trails Assistance Program

The Trails Assistance Program cost shares with sponsors on trail projects approved for funding under the Transportation Enhancement Program, either by NDOR or NGPC. The cost share rate is 50% of the local share. All projects require Board approval.

- The City of LaVista was approved for funding under this program in 2008. At that time, the total estimated cost of the project was \$349,109, and the cost share request was for 50% of the local share, or \$52,367. The project went inactive due to changes in procedures at NDOR and FHWA. The City has been informed that the project will be bid this spring and have asked that the cost share funds be included in the FY 12 Budget. The total estimated cost of the project has increased to \$356,202. However, NDOR has also increased the cost share rate from 70% to 80%. Therefore, the District's share is reduced to \$44,530.

The FY 2011 Budget for this item was \$80,728.

- **It is recommended that the Subcommittee recommend to the Board that the revised application from the City of LaVista for \$44,530 be approved, subject to funding in the FY 2012 budget.**

Memorandum

To: Program Projects and Operations Subcommittee
Re: Stormwater Best Management Practices Program FY2012 Applications
From: Lori Laster, Stormwater Management Engineer
Date: April 4, 2011

The District received 5 eligible applications for Fiscal Year 2012 for the Stormwater Best Management Practices Program.

- SID #202, Lincoln Place – Stormwater BMPs – SID #202, Lincoln Place will install native vegetation along with natural structures that will act as grade control on three outlots in the SID. They are requesting a cost share of \$10,000, the maximum of this program.
- SID #444, Bridlewood – Rain Garden – SID #444 will install a rain garden adjacent to an existing parking lot. They are requesting a cost share of \$7,500.
- City of Ralston – Ralston Sports and Entertainment Center Rain Garden – The City of Ralston will construct rain garden adjacent to the proposed parking lot for the new Ralston Sports and Entertainment Center. They are requesting a cost share of \$10,000, the maximum of this program.
- Millard Public Schools – Sandoz Elementary School Rain Garden – Millard Public Schools will install a rain garden as part of an outdoor classroom space for students. They are requesting a cost share of \$10,000, the maximum of this program.
- SID #197, Heartland Hills – Rain Garden – SID #197, Heartland Hills will install a rain garden to address stormwater prior to entering a natural drainageway. They are requesting a cost share of \$10,000, the maximum of this program.

The FY 2011 budget for this program was \$115,000.

Project Name	Total Project Cost	Cost Share Requested
Lincoln Place BMPs	\$37,950	\$10,000
Bridlewood Rain Garden	\$15,000	\$7,500
Ralston Sports and Entertainment Center Rain Garden	\$50,000	\$10,000
Sandoz Elementary School Rain Garden	\$59,000	\$10,000
Heartland Hills Rain Garden	\$22,434	\$10,000
Total	\$2,110,384	\$47,500

- **Staff recommends that the Subcommittee recommend to the Board of Directors that the District approve the the Lincoln Place BMP application for \$10,000, the Bridlewood Rain Garden application for \$7,500, the**

Ralston Sports and Entertainment Center Rain Garden application for \$10,000, the Sandoz Elementary School Rain Garden application for \$10,000, and the Heartland Hills Rain Garden application for \$10,000, a total of \$47,500 for District Program 17.41, Stormwater BMP Program, subject to funding the in Fiscal Year 2012 budget.

Agenda Item 9.

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

FROM: Martin P. Cleveland

SUBJECT: Big Papio Channel Gabion Repair Project (105th and Pacific Street)

DATE: April 5, 2011

In summer 2010, the referenced area experienced a number of high water events that overtopped the gabion wall system that serves as a channel erosion resistant boundary. These gabions were installed in 2002 as part of the Big Papio Channel Project, to ensure that possible channel erosion did not destabilize an adjacent steep slope that is 50 ft. above creek level and contains a row of houses.

Thiele Geotech Inc. was hired by Management to evaluate the gabion system and provide recommendations for a possible solution and their March 23, 2011 report is enclosed. As a result of the Thiele report, it has been concluded that the repair project may be fairly extensive and require some specialized structural design for possible sheet pile wall.

Enclosed is a proposal from Lamp Rynearson and Associates, (with Thiele as a sub-consultant) to provide engineering services for the referenced project.

Management recommends that the District waive its consultant selection procedures and hire Lamp Rynearson and Associates for these engineering services due to the time sensitive nature of the gabion failure, upcoming high water season and need of design to secure FEMA cost share funding. FEMA has verbally indicated that this repair may be eligible for 75% construction cost share, if the project design meets their expectations of a permanent solution.

- **It is Management's recommendation that the Subcommittee recommend to the Board that the District waive its consultant selection procedures and the General Manager be authorized to execute a professional engineering services agreement for the Big Papio Channel Gabion Repair Project with Lamp Rynearson and Associates with a maximum not to exceed cost of \$85,000 subject to charges deemed necessary the General Manager, and approval as to form by District legal counsel.**

Agenda Item 10

From: Scott Japp <sjapp@huntel.net>
Sent: Monday, March 28, 2011 9:28 AM
To: Winkler, John <jwinkler@pacionrd.org>
Subject: John

John

Put on the agenda for April's board meeting to transfer funds from the Silver Creek project into the CAP programs.

I suggest the \$200,000 of funds need to be transferred so the program has enough funds until next years budget is finalized. This fund has been reduced over the last 5 years form \$1.4 million to \$800,000. There is a need for these funds and a demand from land owner to install conservation practices.

Scott Japp

Memorandum

To: Programs, Projects and Operations Subcommittee

Re: Conservation Assistance Program (CAP) Funding

Date: April 5, 2011

From: Ralph Puls, Land/Water Programs Coordinator

Director Japp has requested that the Board transfer \$200,000.00 from the Silver Creek Watershed Site #11 Dam Project into the Conservation Assistance Program (CAP) so that CAP has enough funds to continue approving applications until funds are available in Fiscal Year 2012. At their November 2010 meeting the Finance, Expenditure and Legal Subcommittee voted not to approve a similar request from Director Japp.

The current status of cost-sharing funds is shown below:

- 1) All of the \$800,000 in CAP have been approved plus 10% more for a total of \$885,022.32
- 2) All \$130,683.25 Nebraska Soil and Water Funds have been approved
- 3) Total combined funds allocated is \$1,015,705.57
- 4) Additional request for funds pending approval: \$99,186.95

Enclosed is a report showing the conservation contractors who have constructed conservation practices in the P-MRNRD and the amount of conservation cost-sharing funds spent in each county from July 1, 2010 through March 30, 2011.

In Fiscal Year 2011, \$700,000 has been budgeted for construction of Silver Creek Dam Site #11. The District has acquired the necessary 404 Permit from the Corps of Engineers. On April 8 and 15, 2011, the project will be advertised for bids in the Omaha World-Herald. The schedule calls for the Programs, Projects and Operations Subcommittee to review bids on May 10, and make a recommendation to the Board at their May 12 meeting. With Board approval, a contract could be awarded on May 13, 2011. However, it is expected that no contractor invoices will be received for payment in FY 2011. For budgetary purposes, it is inadvisable to transfer funds from the Silver Creek Project this Fiscal Year. If dollars for the construction of Silver Creek Site #11 are transferred to CAP, the Silver Creek Project will have to be fully funded in FY 2012. The cash carryover will be less and those funds will have to be made up with tax revenue next year.

Management has recommended previously this fiscal year that funds not be transferred, and the Board has overwhelmingly accepted that recommendation. It is management's recommendation that Silver Creek funds not be transferred to CAP this spring.

Attachment: List of Conservation Contractors

Paul F. Peters, P.C., L.L.O.
Taylor, Peters & Drews
Suite 940 Omaha Tower
2120 South 72nd Street
Omaha, NE 68124-2374
(402) 391-3712 FAX (402) 391-3714
E-mail: paul.peters@mindspring.com

To: John Winkler, General Manager
Gerry Bowen, Project Manager
Papio-Missouri River Natural Resources District

Date: April 8, 2011

Subject: MOPAC (Hwy 50 to Chalco) Trail Project; compliance with LB 1010

As requested, this reports on steps the District must take to satisfy the requirements of LB 1010, 2010 Session, in establishing the subject project.

All of the provisions of LB 1010 are attached hereto for convenient reference. My impression of this set of statutes is that, by imposing a series of confusing, redundant and onerous regulations, it seems to be intended to discourage natural resources districts from establishing further trails in Nebraska.

The first step is to “establish” the project by resolution of the Board of Directors. Following is a proposed resolution for that purpose.

Resolution

WHEREAS, in accordance with Section 2-3234.04, and prior to establishing the MOPAC (Hwy 50 to Chalco) Trail project, the District held a public hearing on April 14, 2011, and considered all of the following, to-wit:

- (1) The proposed route for the trail, including maps and illustrations, and the mode of travel to be permitted;
- (2) The areas adjacent to such route to be utilized by the district for scenic, historic, natural, cultural, or developmental purposes;
- (3) The characteristics that make the proposed route suitable as a trail;
- (4) The plans for developing, operating, and maintaining the proposed trail;
- (5) Any anticipated problems enforcing the proper use of the proposed trail or hazards to private real property adjacent to such trail;

(6) The current status of the real property ownership and current and potential use of the real property in and along the proposed route;

(7) The estimated cost of acquisition of the real property, or an interest therein, needed for the proposed route; and;

(8) The extent and type of private real property interest needed to establish the proposed trail, the right-of-way acquisition process to be followed, and the circumstances under which eminent domain may be utilized.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Papio-Missouri River that, having followed the procedure under Section 2-3234.04, Neb. Rev. Stat., the Board of Directors hereby determines that the District should establish, develop and maintain the MOPAC (Hwy 50 to Chalco) Trail project and, for that purpose, the District should acquire private real property and interests therein by attempting to negotiate with the private real property owners affected by the trail, and should proceed in good faith to negotiate agreements with such owners for the private real property, or interests therein, needed for such purposes.

BE IT FURTHER RESOLVED by the Board of Directors that, in accordance with Section 2-3252, Neb. Rev. Stat., the Board of Directors does hereby also and further determine that the MOPAC (Hwy 50 to Chalco) Trail Project will be of predominantly general benefit to the District, with only an incidental special benefit, and should be developed and executed using any available funds of the District, including but not limited to those from the tax levied pursuant to Section 2-3225, Neb. Rev. Stat.

Particular attention is directed to Sections 2-3234.04 and 2-3234.05, on the attached.

It is seen that after first establishing the project by a majority of the Board in accordance with Section 2-3234.04, and after attempts to negotiate with landowners have been made, Section 2-3234.05 requires a super-majority of the Board for approval of a resolution permitting the exercise of eminent domain. It is evident that by the time eminent domain is sought the District will already have invested substantial sums on the project. Thus, it will be a practical necessity that, barring changes in membership of the Board, there likely should be a super-majority of the Board in favor of the project in the first instance.