

Memorandum

To: Programs, Projects and Operations Subcommittee

Subject: Tern and Plover Conservation Partnership – Request for Funding

Date: January 26, 2007

From: Gerry Bowen

At the December meeting, the Board considered a funding request from the Tern and Plover Conservation Partnership (TPCP), a cooperative venture, including the University of Nebraska-Lincoln (UNL) and the Nebraska Game and Parks Commission (NGPC). Their mission is to protect the endangered least tern and the threatened piping plover, and to prevent and resolve conflicts with the sand and gravel industry. The species use the sand and gravel mining areas for nesting. The request was for a contribution of \$5,000 in 2007 to help fund seasonal personnel to monitor tern and plover nesting sites along the Platte and Elkhorn Rivers, and to help resolve conflicts as they arise throughout the year.

In January, the Board raised questioned the legality of the District cost-sharing with the University Of Nebraska on this and other projects. District Legal Counsel Paul Peters has responded (see attached memo) regarding this issue. His conclusion is that there were no statutes that prevented the District from cost sharing on this project.

Management recommends that the Subcommittee recommend to the Board that the District provide financial assistance in the amount of \$5,000 to support the 2007 program activities of the Tern and Plover Conservation Partnership.

Paul F. Peters, P.C., L.L.O.
Taylor, Peters & Drews
Suite 640 Omaha Tower
2120 South 72nd Street
Omaha, NE 68124-2374
(402) 391-3712 FAX (402) 391-3714
E-mail: paul.peters@mindspring.com

To: Board of Directors and General Manager
Papio-Missouri River Natural Resources District

Date: January 23, 2007

Subject: Tern and Plover Conservation Partnership Funding

At its January 7, 2007 meeting, the Board of Directors tabled a recommendation that the District provide financial assistance of \$5,000 to support the 2007 program activities of the Tern and Plover Conservation Partnership.

My opinion was requested at that time as to whether the District could lawfully provide such funding for what were viewed by some directors as University of Nebraska expenditures.

I have reviewed what I believe are the relevant authorities and have failed to find any that appeared to be a prohibition against the District making a payment to the University of Nebraska of District property tax funds that will be expended in the manner provided for by the partnership arrangement in question.

The most-applicable Nebraska statute appears to be the Interlocal Cooperation Act (Sections 13-801 to 13-827) R.R.S. Neb. A reading of the following sections of that Act encourages me in the belief that agencies such as the University and the NRD may cooperate in funding activities that both deem to be appropriate public projects, as in the partnership arrangement in question.

13-802. Purpose of act. It is the purpose of the Interlocal Cooperation Act to permit local governmental units to make the most efficient use of their taxing authority and other powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best

with geographic, economic, population, and other factors influencing the needs and development of local communities.

13-803. Terms, defined. For purposes of the Interlocal Cooperation Act:

(1) Joint entity shall mean an entity created by agreement pursuant to section 13-804;

(2) Public agency shall mean any county, city, village, school district, or agency of the state government or of the United States, any drainage district, sanitary and improvement district, or other municipal corporation or political subdivision of this state, and any political subdivision of another state;

(3) Public safety services shall mean public services for the protection of persons or property. Public safety services shall include law enforcement, fire protection, and emergency response services; and

(4) State shall mean a state of the United States and the District of Columbia.

13-804. Public agencies; powers; agreements. (1) Any power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by the Interlocal Cooperation Act upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the Interlocal Cooperation Act. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The general organization, composition, and nature of any separate legal or administrative entity created by the agreement together with the powers delegated to the entity;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(f) The manner of levying, collecting, and accounting for any tax authorized under sections 13-318 to 13-326 or 13-2813 to 13-2816; and

(g) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items enumerated in subsection (3) of this section, contain the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, the public agencies party to the agreement shall be represented; and

(b) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(5) No agreement made pursuant to the Interlocal Cooperation Act shall relieve any public agency of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance by a joint board or other legal or administrative entity created by an agreement made pursuant to the act, which performance may be offered in satisfaction of the obligation or responsibility.

(6) In the event that an agreement made pursuant to this section creates a joint entity, such joint entity shall be subject to control by its members in accordance with the terms of the agreement; shall constitute a separate public body corporate and politic of this state, exercising public powers and acting on behalf of the public agencies which are parties to such agreement; and shall have power (a) to sue and be sued, (b) to have a seal and alter the same at pleasure or to dispense with its necessity, (c) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and (d) from time to time, to make, amend, and repeal bylaws, rules, and regulations, not inconsistent with the Interlocal Cooperation Act and the agreement providing for its creation, to carry out and effectuate its powers and purposes.

(7) No entity created by local public agencies pursuant to the Interlocal Cooperation Act shall be considered a state agency, and no employee of such an entity shall be considered a state employee.

(8) Any governing body as defined in section 13-503 which is a party to an agreement made pursuant to the Interlocal Cooperation Act shall provide information to the Auditor of Public Accounts regarding such agreements as required in section 13-513.

13-807. Public agencies; contracts authorized; contents. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which at least one of the public agencies entering into the contract is authorized by law to perform. Such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully as provided in the Interlocal Cooperation Act the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

13-827. Act, liberal construction. The Interlocal Cooperation Act is necessary for the welfare of the state and its inhabitants and shall be construed liberally to effect its purposes.

My opinion, therefore, is that an arrangement such as that in question is authorized by Nebraska law.

Please advise if I can provide any further information.