

**PROPOSED REGULATION OF THE ADMINISTRATOR
OF THE DIVISION OF STATE LANDS OF THE STATE
DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES**

LCB File No. R186-03

February 10, 2004

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§1-34, Section 2 of Assembly Bill No. 9 of the 17th Special Session of the Nevada Legislature, Chapter 6, Statutes of Nevada 2001, 17th Special Session, at page 105.

Section 1. Chapter 321 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 34, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 34, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 27, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Acquisition” means the securing of the right of public use of real property by the purchase or donation of an interest in that real property.*

Sec. 4. *“Administrator” means the Administrator of the Division.*

Sec. 5. *“Carson River corridor” includes, without limitation, the 100-year floodplain of the Carson River, land adjacent to the 100-year floodplain of the Carson River, sloughs or ponds of the Carson River and old meanders and oxbows of the Carson River.*

Sec. 6. *“Conservation and Resource Protection Grant Program” or “Program” means the conservation initiative that was created by Assembly Bill No. 9 of the 17th Special Session*

of the Nevada Legislature, chapter 6, Statutes of Nevada 2001, 17th Special Session, at page 104, and approved by the voters.

Sec. 7. *“Construction” means those activities directly related to the creation of a new recreational trail or to improvements made to an existing recreational trail that cause the trail to comply with a desired standard as determined by the Administrator.*

Sec. 8. *“Division” means the Division of State Lands of the State Department of Conservation and Natural Resources.*

Sec. 9. *“Easement for conservation” has the meaning ascribed to it in NRS 111.410.*

Sec. 10. *“Greenbelt” means an open area of real property that is cultivated or maintained in a natural or semi-natural state and used:*

- 1. As a buffer between land uses;*
- 2. To mark the edge of an urban or developed area, or a natural feature, such as a stream or lake; or*
- 3. To create a linear corridor for the provision of trails or other amenities.*

Sec. 11. *“Habitat conservation plan” means a plan to protect or enhance a wildlife habitat for an endangered species or other species that needs special protection, or a plan to protect or enhance essential habitat for biodiversity. The plan may include a procedure for compliance with the Endangered Species Act of 1973 (16 U.S.C. §§ 1531 et seq.).*

Sec. 12. *“Historic or cultural resources” means any surviving evidence that relates to the history of the use of the land from the earliest human occupation to recent historical activities. Surviving evidence may include, without limitation, sites, structures, districts, objects, artifacts and historic documents associated with or representative of peoples, cultures, and human activities and events from any period of time, including, without limitation, the present.*

Sec. 13. *“Matching contribution” includes money or anything of value, including, without limitation, the use of personnel, materials or equipment that is expended on a project.*

Sec. 14. *“Municipality” means an incorporated city, an unincorporated town created pursuant to chapter 269 of NRS or a general improvement district created pursuant to chapter 318 of NRS.*

Sec. 15. *“Nonprofit conservation organization” means a nonprofit organization that has as part of the mission of the organization the acquisition of property for conservation purposes.*

Sec. 16. *“Nonprofit organization” means an entity or organization that is exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3).*

Sec. 17. *“Open-space plan” means an inventory of undeveloped and semi-developed land or resources with a plan for the long-term preservation and conservation of that land. The plan may include a provision for dispersed recreational opportunities on the land.*

Sec. 18. *“Project” includes, without limitation, preparation of an open-space plan, preparation of a habitat conservation plan, acquisition or development of a land or water interest, construction of a recreational trail, protection or enhancement of a wildlife habitat, protection of sensitive or unique vegetation, historical or cultural resources, riparian corridors or wetlands, enhancement and restoration of the Carson River corridor, development of the path system in the Lake Tahoe area and other environmental activities.*

Sec. 19. *“Public benefit” means the outcome of a project or acquisition that obtains, protects or preserves the benefits of property or natural resources within the State of Nevada for the public.*

Sec. 20. *“Recreational facility” means a facility for the use and enjoyment of an outdoor recreation area that provides an opportunity for the observation, interpretation or enjoyment of natural resources.*

Sec. 21. *“Recreational trail” means a trail, pathway or similar area for walking, hiking, bicycling, horseback riding, exercising, paddling, swimming or any other recreational activity if the activity does not have an adverse impact on a threatened or endangered species, wetland, riparian corridor, wildlife habitat, sensitive or unique vegetation or other important natural resource.*

Sec. 22. *“Riparian corridor” means land related to or located on the bank of or adjacent to a natural or artificial waterway including, without limitation, a river, an intermittent or permanent creek or stream, a gully where surface water collects, a wetland, a lake or a ditch.*

Sec. 23. *“Sensitive or unique vegetation” means any species, cluster of species or type of habitat designated as sensitive or unique vegetation by an appropriate federal or state agency, any species of vegetation in a declining trend, any species of vegetation that has characteristics that have been identified as worthy of special consideration or any species of vegetation that is highly restricted in distribution or that occurs only in a very specialized habitat.*

Sec. 24. *“State agency” means any agency, department or division of the Executive Department of this state and includes the University and Community College System of Nevada.*

Sec. 25. *“Wetland” means land having a water table at, near or above the land surface, or land that has been saturated with water for a period of time long enough to promote*

wetland or aquatic processes indicated by hydric soil, hydrophytic vegetation and other biological activity adapted to a wet environment.

Sec. 26. *“Wildlife habitat” means a diverse area with a combination of necessary resources and environmental conditions that promotes a population of at least one wildlife species and allows that species to flourish and reproduce.*

Sec. 27. *“Wildlife species” means any species of animal including, without limitation, insects, amphibians, reptiles, and other vertebrates and invertebrates.*

Sec. 28. 1. *The Division will award grants of money from the sale of general obligation bonds of this state to counties, municipalities, state agencies, nonprofit organizations or any combination thereof. The money will be distributed as follows:*

(a) Not more than \$7,250,000 to a state agency, county, municipality, nonprofit organization or any combination of those persons to carry out projects for the construction of recreational trails. A recreational trail constructed with money awarded pursuant to this paragraph may include signs, markings, access points, staging areas, trailheads and directly related improvements such as restrooms and shade structures. Such a recreational trail may also include landscaping or revegetation with any associated irrigation equipment but only in an area around an improvement that requires landscaping or revegetation for slope stabilization as a direct result of the construction of the improvement.

(b) Not more than \$5,000,000 to a state agency, county, municipality, nonprofit organization or any combination of those persons to carry out projects for the acquisition of land and water or interests in land and water for urban parks or greenbelts.

(c) Not more than \$3,000,000 to a state agency, a county with a population of less than 100,000, a municipality within a county with a population of less than 100,000 or any

combination of those persons to carry out projects for the development of habitat conservation plans.

(d) Not more than \$250,000 to a county with a population of less than 100,000, a municipality within a county with a population of less than 100,000 or any combination of those persons to carry out projects for the development and adoption of open space plans.

(e) Not more than \$20,000,000 to a county, a municipality within a county, or any combination of those persons to carry out projects for the acquisition of land and water or interests in land and water to protect and enhance wildlife habitat, sensitive or unique vegetation, historic or cultural resources, riparian corridors, wetlands and other environmental resources pursuant to an adopted open space plan.

(f) Not more than \$10,000,000 to Churchill County, Douglas County, Lyon County, Carson City, a municipality located within those counties or any combination of those persons to carry out projects to enhance and restore the Carson River corridor. Money awarded pursuant to this paragraph must be used to:

(1) Acquire and develop land and water rights;

(2) Provide recreational facilities;

(3) Provide access to and along the Carson River, including, without limitation, parking areas; or

(4) Restore the Carson River corridor.

(g) Not more than \$5,000,000 to Douglas County, Washoe County, Carson City, a municipality located within those counties or any combination of those persons to enhance and develop the path system in the Lake Tahoe area.

2. The Division may enter into contracts or agreements with nonprofit conservation organizations in an amount not to exceed \$15,000,000 to carry out projects to acquire land and water or interests in land and water for the public benefit to protect and enhance wildlife habitat, sensitive or unique vegetation, historic or cultural resources, riparian corridors, floodplains and wetlands and other environmental resources.

3. The Administrator may use advisory committees to make recommendations for grants awarded pursuant to subsection 1 or contracts or agreements entered into pursuant to subsection 2.

4. The Administrator will coordinate with the Division of State Parks of the State Department of Conservation and Natural Resources for any grant awarded pursuant to paragraph (b) of subsection 1.

5. The Administrator will coordinate with the Division of Wildlife of the State Department of Conservation and Natural Resources and the Nevada Natural Heritage Program for any grant awarded pursuant to paragraph (c) of subsection 1.

6. The Administrator will determine the boundaries of the Carson River corridor for any grant awarded pursuant to paragraph (f) of subsection 1.

7. An urban park for which land and water or an interest in land and water was acquired pursuant to paragraph (b) of subsection 1 must be open to the public.

Sec. 29. 1. The Administrator will periodically:

(a) Solicit applications from counties, municipalities, state agencies and nonprofit organizations for grants of money from the sale of general obligation bonds issued pursuant to chapter 349 of NRS;

(b) Solicit applications from nonprofit conservation organizations to carry out contracts or agreements; and

(c) Establish deadlines for the submission of applications solicited pursuant to paragraphs (a) and (b).

2. An application for a grant, contract or agreement pursuant to subsection 1 or 2 of section 28 of this regulation must be submitted to the Administrator and must include, without limitation:

(a) A completed application on a form provided by the Administrator;

(b) The total projected cost of the project including, without limitation, as appropriate, the estimated costs for planning, design, acquisition and construction, and a description of the manner in which each estimated cost was calculated;

(c) The amount of money requested for the project;

(d) A detailed description of the project and the manner in which the project meets the intent of the Program;

(e) Documentation that the project was commenced on or after July 1, 2000;

(f) A proposed schedule for the project that must include the planned phasing and implementation of the project;

(g) Documentation of the qualifications of the nonprofit organization, if applicable;

(h) A detailed description of matching contributions that will be provided by the applicant;

(i) Proof that the applicant has title to, or a lease or easement on, land that is required to carry out the project or a letter of intent between the property owner and the applicant concerning the acquisition of the property by the applicant;

(j) Proof that the applicant is willing to sell or donate land and proof that there is a person who is willing to purchase or receive the land, if applicable;

(k) If the application is submitted by a nonprofit conservation organization and includes the acquisition of land or water or an interest in land or water, the most current financial statement of the organization and specific details concerning the manner in which the money of the State will be secured by an interest in the property;

(l) A map of the location and a plan of the site of the project indicated in an appropriate scale;

(m) A statement from an appropriate local, regional, state or federal agency that the project conforms to all applicable local, regional, state and federal plans;

(n) Documentation and a statement by the applicant that the applicant notified all property owners within a one-mile radius of the subject property boundary or the closest 10 property owners, whichever number of property owners is greater, about the proposal before the submission of the proposal to the Division, unless the Administrator requires different information on a case-by-case basis;

(o) A statement from any local jurisdiction affected by the proposal that details any issues or concerns about the proposal and whether the local jurisdiction supports or opposes the proposal;

(p) A completed Environmental Impacts Checklist on the form provided by the Division and, if applicable as a result of a potential adverse impact to the environment, a summary of a proposed plan to mitigate the potential impact of the project on the environment; and

(q) A summary of the proposed plan for operation and maintenance of the project for a period of not less than 20 years including, without limitation, the identity of the person who will operate the project and provide the maintenance.

Sec. 30. *Before a county, municipality, state agency or nonprofit organization submits an application for a proposed project, the county, municipality, state agency or nonprofit organization may submit a preapplication to the Division for an initial determination of the eligibility of the project for a grant under the Program. In making a determination of the eligibility of a project, the Administrator will consider, without limitation, the following criteria:*

- 1. Whether the county, municipality, state agency or nonprofit organization is eligible to apply for a grant;*
- 2. Whether the proposed project is eligible pursuant to section 28 of this regulation; and*
- 3. Whether the proposed project provides a public benefit as determined by the Administrator.*

Sec. 31. *1. The Administrator will rank applications made pursuant to section 29 of this regulation in order of their importance. The Administrator will award grants for projects or acquisitions that, based on the application, are most appropriate for the receipt of a grant within the overall purpose of the Program. The Administrator will use a point system as outlined in the Administrative Guidelines of the Division to rank each application. The Administrator will award points based on the following factors:*

(a) The extent of environmental significance of the project and the degree of conservation and protection of natural resources including, without limitation, the preservation of a

natural, scientific, cultural, archaeological, agricultural, paleontological or historical site, or a wetland or riparian resource;

(b) The extent of the public benefit including, without limitation, an overall advancement in the conservation and protection of the natural resources of the state, an enhancement to recreational opportunities, increased public access to lands and waters and the achievement of goals identified in adopted open-space plans;

(c) The objectives of the project are clearly stated in the proposal, and the applicant has the ability to carry out those objectives;

(d) The detail and design of the project is adequate and includes a detailed plan for management of the project that specifies the manner in which the project will be maintained and the manner in which the project will remain consistent with the purpose of the Program;

(e) The projected budget and associated costs of the project are reasonable and detailed, the amount and sources of matching contributions are listed and the project will meet the stated objectives in a cost-effective manner;

(f) The fact that the project is a cooperative effort with other agencies, organizations or persons and the extent of the support for the project from counties, municipalities and other public entities; and

(g) Any other factor that the Administrator considers to be important in the ranking process including, without limitation:

(1) The urgency of the need for the project;

(2) That the applicant provides for matching contributions that exceed the matching contributions required in section 32 of this regulation;

(3) The application for acquisition of land includes the acquisition of water rights or another interest that will remain with the land in perpetuity;

(4) The existence of a local need for the project that warrants special attention for the project due to a lack of similar opportunities in the local area; and

(5) If the project does not include the acquisition of fee simple title to land, the applicant proposes an easement for conservation or a remainder after a life estate.

2. The factors of environmental significance, as described in paragraph (a) of subsection 1, and public benefit, as described in paragraph (b) of subsection 1, are worth more points than the other factors in subsection 1.

3. The Administrator may use an advisory committee to review applications and make recommendations to the Administrator. The Administrator may consider a recommendation by an advisory committee when awarding points pursuant to subsection 1.

4. The decision of the Administrator is final. An application that is not selected by the Administrator to receive a grant may be resubmitted for a grant to be awarded at a future date.

Sec. 32. 1. *To receive a grant pursuant to the Program, an applicant must provide for an eligible matching contribution as follows:*

(a) For a grant awarded pursuant to paragraph (a) or (b) of subsection 1 of section 28 of this regulation, not less than 25 percent of the total cost of the project;

(b) For a grant awarded pursuant to paragraph (c) or (d) of subsection 1 of section 28 of this regulation, not less than 5 percent of the total cost of the project;

(c) For a grant awarded pursuant to paragraph (e) of subsection 1 of section 28 of this regulation, if the population of the county:

(1) Is 100,000 or more, not less than 50 percent of the total cost of the project; or

(2) Is less than 100,000, not less than 25 percent of the total cost of the project;

(d) For a grant awarded pursuant to paragraph (f) or (g) of subsection 1 of section 28 of this regulation, not less than 50 percent of the total cost of the project; and

(e) For a grant awarded pursuant to subsection 2 of section 28 of this regulation, not less than 50 percent of the cost of the acquisition.

2. A matching contribution is eligible for the purposes of this section if the matching contribution is for a project initiated on or after July 1, 2000, if it is directly related to the project or acquisition and if it includes:

(a) Cash;

(b) Planning, labor, including volunteer labor, appraisals, equipment rental and material costs;

(c) Federal contributions;

(d) Any costs associated with required environmental information for the project or acquisition, the documentation of which must be submitted with the application;

(e) Costs incurred for the establishment of a monitoring program to monitor the success of a project;

(f) Any other matching contribution not listed in subsection 3, subject to the approval of the contribution by the Administrator; or

(g) Any combination of paragraphs (a) through (f), inclusive.

3. The following matching contributions, without limitation, do not qualify as eligible matching contributions for the purposes of this section:

(a) Costs associated with the preparation of the application;

(b) In-kind services that do not relate to the project or the purpose of the Program;

- (c) Money expended before the initiation of the project, or July 1, 2000, whichever is later;*
- (d) Other money granted pursuant to the Program; and*
- (e) Any other matching contribution that the Administrator determines is an inappropriate matching contribution.*

Sec. 33. *The Division and the recipient of any money pursuant to a grant, contract or agreement made pursuant to section 28 of this regulation shall enter into an agreement that:*

1. Authorizes the recipient to use the money from the grant, contract or agreement to pay for:

(a) All expenses related directly to the project or acquisition including, without limitation, expenses related to the planning, design and construction of the project which must be calculated based on actual costs; and

(b) The documented administrative costs of the project, not to exceed 5 percent of the total cost of the project.

2. Prohibits the recipient from using the money from the grant, contract or agreement to pay for:

(a) Any planning activity that is not directly related to the design and engineering of the project;

(b) The purchase of new equipment, unless the Administrator has determined that the new equipment is necessary as a one-time purchase specific to the project;

(c) Any work required by a public agency as mitigation or as a condition of the approval of any other project;

(d) Any component of the project that the Administrator determines does not benefit the public;

(e) Any project or portion of a project that has already been completed; or

(f) Any other expenses that the Administrator determines are not necessary to carry out the purposes of sections 2 to 34, inclusive, of this regulation, or that are not in compliance with the intent of the Program.

Sec. 34. *The Division and the recipient of any money pursuant to a grant, contract or agreement pursuant to section 28 of this regulation shall enter into an agreement that requires the recipient to:*

1. Provide a matching contribution of not less than the amount specified in section 33 of this regulation.

2. Provide an operation and maintenance plan for the project for not less than 20 years after the project is completed.

3. Agree to:

(a) Ownership of a full or partial interest in any property that is necessary for the project;

(b) Include pertinent nonrevocable deed restrictions and appropriate reversionary clauses to ensure that at all times the land is maintained in a manner consistent with the purpose of the Program; and

(c) Include a stewardship statement that addresses maintenance, monitoring and enforcement of weed control, dust control and other related issues.

4. Agree to any additional conditions that the Administrator determines are necessary to carry out the purposes of sections 2 to 34, inclusive, of this regulation or the intent of the Program including, without limitation, the posting of a performance bond by the recipient.

5. Obtain such easements for conservation or other interests in land in perpetuity, or as otherwise approved by the Administrator, as are necessary to carry out the project. The

Administrator must approve the easements. The Administrator may require that the easement for conservation or other interest in land be held by the State.

6. Acknowledge that any interest in land or water acquired by the State or a nonprofit organization pursuant to the Program must:

(a) Be acquired and held by the Division pursuant to chapter 321 of NRS; and

(b) Not be acquired by condemnation or the power of eminent domain.

7. Maintain an accurate accounting of all expenditures made from money received pursuant to the Program and allow the Division to review the accounting upon request.

8. If the recipient requests that the entire grant amount or a portion thereof be provided in advance, demonstrate an extraordinary need and enter into an agreement with the Division that delineates the specific reporting methods that will be used including, without limitation, quarterly expenditure reports and a project status report that details the timeliness of the project.

9. Provide the Division with detailed invoices on a consistent basis as agreed upon by the Division and the recipient to ensure timely and accurate disbursement of grant money.