



COLORADO

**Department of Public
Health & Environment**

**Suncor Energy (U.S.A.) Incident
Natural Resource Damages**

Solicitation for Project Proposals

May 2018

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OVERVIEW OF THIS SOLICITATION FOR PROJECT PROPOSALS

INTRODUCTION

The purpose of this Solicitation for Project Proposals (SPP) is to solicit project proposals that seek to restore, replace, or acquire the equivalent of natural resources injured by the release of oil from the Suncor Refinery in Commerce City, Colorado (Incident) using the Natural Resource Damages (NRD) money received as settlement from Suncor for natural resource injuries. Projects accepted pursuant to this SPP, must restore, replace or acquire the equivalent of the natural resources and services injured as a result of the Incident.

ELIGIBILITY

To be eligible, agencies and organizations submitting a project proposal (Project Proponent) must be one of the following:

- A public or private non-profit entity possessing a tax exempt status under section 501 (c)(3) of the IRS code; or
- A local, state or federal governmental agency, or
- A combination of the above organizations; or
- An entity capable of showing they have access to other funding sources to cover costs associated with a proposed project not reimbursable from the NRD funds.

Project Proponents must have the financial and technical capability to successfully complete a restoration project, and must have experience with project management and contracting.

AVAILABLE FUNDING

The Trustee Council intends to allocate the \$1,230,000 that remains available from the Suncor NRD settlement for restoration projects roughly in proportion to the damages for resources injured by the Incident, which are as follows:

Riparian/Aquatic Habitat	\$ 33,000
Wetland Habitat	\$373,000
Waterfowl	\$229,000
Groundwater	\$595,000
TOTAL	\$1,230,000

ACRONYMS AND INITIALISMS

CDPHE	Colorado Department of Public Health and Environment
EPA	Environmental Protection Agency
HMWMD	Hazardous Materials and Waste Management Division
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NRD	Natural Resource Damages
OPA	Oil Pollution Act
RP/EA	Restoration Plan/Environmental Assessment
SPP	Solicitation for Project Proposals

SELECTED DEFINITIONS

Federal Trustee

The U.S. Department of the Interior through the U.S. Fish and Wildlife Service, Region 6's Regional Director.

In-Kind Services: In-Kind Services are contributions of donated time and effort, real and personal property, and goods and services. The worth of the contributed service is its fair market value.

Matching Funds: Matching funds include in-kind services, partner contributions or cash funds. Other funds from NRD settlements cannot be used as in-kind or matching support. Matching funds cannot include Federal or State funds for pre-existing projects.

Project Proponent: A party submitting, or offering, a proposed project or projects in response to this Solicitation for Project Proposals.

State Trustees: Individuals holding offices designated by the governor pursuant to CERCLA and the Oil Pollution Act to work on behalf of Colorado regarding injuries to state natural resources. Also known as the Colorado Natural Resource Damages Trustees, or State of Colorado trustees for natural resources damages. Specifically, they are the Colorado Attorney General, the Executive Director for the Colorado Department

of Public Health and the Environment, and the Executive Director for the Department of Natural Resources, or their delegates.

Trustees: The State and Federal Trustees collectively.

Trustee Council: The Trustee Council is comprised of representatives of the Federal and State Trustees.

Suncor Energy (U.S.A.), Natural Resource Damages **Solicitation for Project Proposals**

I. SOLICITATION AND TIMELINE

A. Issuing Office: This Solicitation for Project Proposals (SPP) is offered by the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (HMWMD). The HMWMD will be the point of contact regarding this SPP.

B. Invitation to submit proposals: The State of Colorado is posting this SPP so that Project Proponents who have an interest may submit a proposal in accordance with this SPP. Please read and be aware of the information included in this document.

C. Timeline of Activities

Activity	Date
Initiation of Solicitation for Project Proposals, Advertise SPP	May 15, 2018
Project Proponents Working Meeting for Q&A	June 18, 2018
Proposal Submission Deadline	June 30, 2018
Initial Screening Review of Proposals by Trustee Council	July 31, 2018
Presentations/Project Site Visits as Determined by Trustee Council	August 2018
Evaluation of Proposals by Trustee Council (if necessary)	August 2018
Trustee Council Issuance of Draft RP/NEPA Compliance	November 2018
Public Notice and Comment Period Regarding Draft RP/EA	Mid-November 2018
Evaluation of and Response to Public Comments by Trustee Council	TBD
Recommendations to State and Federal Trustees	TBD
Final Decision on RP/EA by Trustee Council	TBD

Publish Final RP/EA	TBD
Contract Award and Notice to Proceed	TBD

D. Written Inquiries, Registration Forms and Proposals shall be directed to:

Susan Newton
Suncor Energy (U.S.A.) NRD Project Manager
Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530
Phone: (303) 692-3321
Email: susan.newton@state.co.us

E. Obtain the Solicitation for Project Proposals:
TBD (need to insert CDPHE’s website)

II. BACKGROUND

A. THE INCIDENT

Suncor owns and operates a refinery in Commerce City, Colorado (Suncor Refinery or Refinery) that produces gasoline, diesel fuel, and paving-grade asphalt. In November 2011, oil was discovered discharging into Sand Creek near its confluence with the South Platte River and not far from the Suncor Refinery. It was subsequently determined the discharge was the result of oil leaking from a subsurface pipe at the Refinery. The oil released from the pipe entered groundwater under the Suncor Refinery, where it commingled with an existing plume of contaminated groundwater and migrated offsite, ultimately leading to the discharge of oil into Sand Creek and the South Platte River. This same contaminated groundwater plume was also responsible for a discharge of oil into a wetland located on the Suncor Refinery property in February 2011 that resulted in waterfowl mortalities. In response to the discovery of the discharge to Sand Creek, Suncor took various actions pursuant to direction from the Environmental Protection Agency and the Colorado Department of Public Health and Environment to limit, prevent and remediate the discharge of oil to Sand Creek, the South Platte River and their adjoining shorelines.

As described in more detail below, the Incident and related response activities resulted in injuries to natural resources, including aquatic and riparian habitats, wetland habitat, waterfowl, and groundwater.

B. THE TRUSTEES’ RESPONSE TO THE INCIDENT

Pursuant to the Oil Pollution Act (OPA), 33 U.S.C. § 2701 *et seq.*, and its implementing regulations, 15 C.F.R. Part 990, the party responsible for a discharge or substantial threat of discharge of oil into or upon navigable waters or adjoining shorelines is liable for injuries to natural resources that result from such an incident and cleanup and similar activities taken in response to it. Damages for injuries to natural resources and the services they provide, including the reasonable costs of assessing the damages, may be recovered on behalf of the public by the federal or state trustee(s) for the injured natural resources. Any damages recovered by the federal or state trustees for injury to natural resources must be spent to restore, replace, or acquire the equivalent of the injured natural resources.

The Governor of the State of Colorado has designated the Attorney General of the State of Colorado, the Executive Director of the Colorado Department of Public Health and the Environment, and the Executive Director of the Colorado Department of Natural Resources to act on behalf of the public in protecting Colorado's natural resources.

The Federal Trustee acting on behalf of the public is the U.S. Department of the Interior through the U.S. Fish and Wildlife Service.

Pursuant to their authorities under OPA, the Federal and State Trustees agreed to work together to investigate and respond to potential injuries to natural resources caused by the Incident. Accordingly, shortly after the Incident, the Trustees entered into a Memorandum of Understanding (MOU) that provided the framework for them to coordinate and cooperate in assessing any natural resource damages resulting from the Incident, in pursuing a claim against Suncor if appropriate, and in planning and implementing any restoration or related activities following a successful claim. One aspect of this framework was the creation of the Trustee Council, comprised of representatives of the Federal and State Trustees, to coordinate the Trustees' activities in accordance with the MOU and OPA requirements.

C. PREASSESSMENT

The first action of the Trustee Council was to conduct a "preassessment" of potential natural resource injuries caused by the Incident, as provided in OPA's regulations (15 C.F.R. §§ 990.40-990.45). One purpose of this early assessment was to allow the Trustees to determine whether injury to natural resources had resulted from or was likely to result from the Incident and, if so, whether restoration actions were available to address these injuries.

This early assessment resulted in the Trustee Council's determination the Incident injured four categories of natural resources and related services: (1) aquatic and riparian habitat, (2) wetland habitat, (3) waterfowl, and (4) groundwater. The Trustee Council further determined restoration actions were available to address these injuries, and in preparation for both settlement negotiations and restoration planning, the Trustees compiled a list of restoration project concepts that could potentially be implemented to restore, replace, or

acquire the equivalent of the natural resources injured and services injured as a result of the Incident. These project concepts are attached as Appendix A to this SPP.

The Department of the Interior and the State of Colorado are co-trustees with respect to the injured aquatic and riparian habitat, wetland habitat and waterfowl resources. The State of Colorado is the sole trustee with respect to the injured groundwater resource.

D. SETTLEMENT

The Trustees, acting through the Trustee Council, initiated settlement negotiations with Suncor during the preassessment. As a result of these negotiations, the Trustees reached a settlement with Suncor that required Suncor to pay \$1,887,000 in damages for natural resource injuries caused by the Incident and the response to it. The terms of the settlement were memorialized in a Consent Decree, a written agreement, which was lodged with the U.S. District Court for the District of Colorado and made available for public comment prior to being approved by the Court on February 27, 2014. The settlement amount represents a settlement of claims alleging natural resource damages and is not a fine or penalty.

The Consent Decree required Suncor to pay the United States \$691,268 of the \$1,887,000 settlement amount and the State of Colorado the remaining \$1,195,732. From each of these settlement amounts, the Consent Decree required that a portion be allocated to reimbursing each Trustee for its assessment costs (\$165,833 for the United States and \$166,418 for the State) and further required that a portion be allocated for the Trustees' oversight and monitoring of restoration projects implemented as a result of the settlement (\$207,916 for the United States and \$116,833 for the State). Thus, the amount available to implement projects to restore, rehabilitate, replace or acquire the equivalent of the natural resources and related services injured as a result of the Incident is approximately \$1,230,000.

III. RESTORATION PLANNING PROCESS

Based on the Trustee Council's determination that natural resources and related services were injured as a result of the Incident and that restoration actions were available to address these injuries, the Trustee Council determined it was appropriate to proceed with restoration planning in accordance with OPA's regulations (15 C.F.R. § 990.42(a)). The goal of the restoration planning process is for the Trustees to develop a plan for restoring, replacing or acquiring the natural resources and related services injured as a result of the Incident.

A. NOI/SCOPING COMPLETED

As the first step in the restoration planning process, the State and Federal Trustees developed a Notice of Intent to Conduct Restoration Planning and Scoping Document for Restoration Planning (NOI/Scoping Document). The NOI/Scoping Document is a federal document, that (1) provides the public with notice of the Trustees' intent to conduct restoration planning and the basis for that determination, in compliance with OPA's NRDAR regulations as required by 15 C.F.R. § 990.44; and (2) helps the Trustees develop a reasonable range of restoration alternatives, in accordance with 15 CFR § 990.53 of OPA's NRDAR regulations and the National Environmental Policy Act (NEPA), to be included in the draft Restoration Plan/Environmental Assessment (RP/EA).

The NOI/Scoping Document was finalized on August 7, 2017 and a public meeting to discuss the NOI/Scoping Document was held on October 10, 2017. The public was given until November 30, 2017 to submit comments. During the public meeting and comment period, the Trustees received two comments from Groundwork Colorado and one restoration alternative from Ducks Unlimited. The comments and restoration alternative are attached to this SPP as Appendix B.

B. SOLICITATION FOR PROJECT PROPOSALS

The purpose of this SPP is consistent with the goal of the restoration planning process which is to solicit project proposals that seek to restore, replace, or acquire the equivalent natural resources injured by the release of oil from the Suncor Refinery in Commerce City, Colorado using funds from the Suncor NRD settlement. Projects accepted pursuant to this SPP, must restore, replace, or acquire the equivalent of the natural resources injured as a result of the Incident (see Section IV., below).

In developing this SPP, the Trustee Council has taken the restoration project concepts developed by the Trustee Council during the preassessment and settlement process into consideration (see Appendix A). The Trustee Council has also evaluated the comments and restoration alternative received from the public through the NOI/Scoping Document and incorporated them into this SPP (see Appendix B).

1. FUND INFORMATION

The Trustee Council intends to allocate the \$1,230,000 that remains available from the NRD settlement fund for restoration projects roughly in proportion to the damages for resources injured by the Incident, which are as follows:

Riparian/Aquatic Habitat	\$ 33,000
Wetland Habitat	\$373,000
Waterfowl	\$229,000
<u>Groundwater</u>	<u>\$595,000</u>

TOTAL

\$1,230,000

The Trustee Council will be tasked with evaluating and reviewing the proposals received in response to this SPP. The Trustee Council will prefer projects for which the Project Proponent has arranged the maximum matching funds from other funding sources; in an effort to maximize beneficial use of the NRD recovered funds.

To this end, the trustees will show preference for projects that are shovel-ready with administrative/engineering/design costs that are covered by other funding sources. Projects through which engineering and design work is not covered by NRD funds work will be preferred.

NRD funds shall not be used for responsibilities assumed under other regulatory programs, such as reimbursements or repayments of pre-existing obligations.

The dollar amount stated above for projects cannot be exceeded.

The number of projects to be funded and the level of funding will be based on how well each proposal addresses the restoration objectives described in this SPP and meets the evaluation criteria as well as on the availability of funds for the proposal. A Project Proponent may submit a proposal for more than one project. A proposal may contain projects in several categories. Each project proposal will be evaluated separately and ranked relative to other projects addressing the same restoration goal. If a Proponent is submitting a proposal for projects that are substantially different from one another, they should be submitted as separate proposals or in a format that will allow separate evaluation of the different projects. The Trustee Council will not accept multiple proposals from one Proponent that are substantially similar (e.g. different variations of the same project).

NRD funds may be used to augment existing or on-going projects. However, the activities funded by these awards shall be used only for work performed and commencing after the date of the Notice to Proceed. In such a proposal, the Proponent must state how the activities described in the proposal expand the existing activities, do not duplicate current activities, and address the restoration objectives stated in this SPP.

Those Proponents who are proposing to use a mixture of funding sources (matching funds) are responsible for securing all such funds. Should the Project Proponent fail in attempts to secure matching funds, the project may be put on hold for a designated time period (to give the Project Proponent additional time to secure other funds), or the NRD funding may be cancelled in total or the Trustee Council may determine that the NRD-funded portion of the project can continue.

2. ELIGIBILITY

a. Project Proponents

Suncor Energy (U.S.A.) Incident
Solicitation for Project Proposals

- i. To be eligible, Project Proponent agencies and organizations submitting a project proposal must be one of the following:
 - A public or private non-profit entity possessing a tax exempt status under section 501 (c)(3) of the IRS code; or
 - A local, state or federal governmental agency, or
 - A combination of the above organizations; or
 - An entity capable of showing they have access to other funding sources to cover costs associated with a proposed project not reimbursable from the NRD funds.
 - ii. Project Proponents must have the financial and technical capability to successfully complete a restoration project, and must have experience with project management and contracting.
- b. More than one organization may apply for funding with other organizations. In this instance, one organization must assume the responsibility of prime contractor. The other organizations in the collaborative effort will be considered subcontractors to the prime contractor. The relationship between the organizations, the lines of communication, and the responsible parties in each organization must be described in addition to the information required in Section V.B. "Description of the Project Proponent's Organization".
 - c. Project Proponents must show commitments for a minimum of 50% of the overall NRD funds requested from non-NRD sources, either with dollars or in-kind services, and the non-NRD funds must buy down the cost of the project.

IV. NATURE OF PROJECTS SOUGHT BY THIS SOLICITATION FOR PROJECT PROPOSALS

The Trustees' objective for the NRD money obtained in this case is to select project proposals that restore, rehabilitate, protect, or enhance areas that are related to, proximal to, or have an ecological nexus to, the natural resources and related services injured as a result of the Incident.

A. TARGET NATURAL RESOURCES

The following natural resources and related services were injured, destroyed or lost as a result of the Incident:

1. Aquatic and Riparian Habitat.

The spill of petroleum-related substances into Sand Creek and subsequent response activities resulted in approximately 1-acre of injury to aquatic and riparian habitat. Resources of concern in these urban, yet ecologically important areas include fish, resident wildlife, including migratory birds, and aquatic/riparian habitats that support fish and wildlife.

2. Wetlands Habitat.

In early 2012, Suncor filled in a 1.4 acre wetland on its property in order to implement interim corrective measures in response to the Incident. This wetland was the site of the early 2011 waterfowl mortality event described below. This action eliminated the habitat the wetland provided.

3. Waterfowl.

As a result of the discharge of petroleum-related products to the wetland referenced above, a total of 48 dead birds, primarily waterfowl, were recovered from the wetland over a two-week period in early 2011. This included 24 mallards, 10 gadwalls, seven green-winged teal, two hooded mergansers, one American widgeon, one Wilson's snipe, and three unidentified birds.

4. Groundwater.

As a result of operations by Suncor and previous Refinery owners and operators, numerous petroleum and other discharges originating at the Refinery occurred prior to the subsurface release of oil that caused the Incident. Petroleum-related substances, including benzene, toluene, ethyl-benzene, and xylene, had been detected above Colorado state water quality criteria in groundwater underneath and in the vicinity of the Suncor Refinery. Oil released as part of the Incident commingled with this pre-existing groundwater contamination and, in some instances caused it to remobilize and migrate off the Refinery property, towards Sand Creek. In 2012, the contaminated groundwater plume beneath and around the Suncor Refinery was approximately 190 acres, which is equivalent to 930 acre-feet of groundwater.

B. CATEGORIES OF PROJECTS

Projects must include one or more of the following categories:

Restoration/Rehabilitation: Proposals may address any of the natural resources contained in the list Target Natural Resources provided above. An injured resource can be included in the project even if the impact to it occurred from some other cause than the Incident.

Replacement/Acquisition: Proposals may address the replacement of or acquisition of (or both) natural resources equivalent to those injured or lost as a result of the Incident.

V. SUBMITTING A PROPOSAL

A. INTRODUCTION

This section describes the information that must be furnished by the Project Proponent and it describes the format in which it must be presented. The Project Proponent must clearly and concisely state and discuss how they will accomplish the work described in the Statement of Work. The proposal must include the information as described in the ‘Content and Format Required’ section below. The proposal must not exceed 20 pages (excluding budget and attachments such as resumes, proof of organizational status and registrations with regard to eligibility requirements, letters of public support, and design documents and maps), and must be double-sided and single-spaced. If any proposals exceed 20 pages in length, only the first 20 pages will be read and the entire evaluation will be based on those 20 pages. Each Project Proponent must submit two hard copies of each proposal, together with an original electronic and *.pdf format on flash drive.

A copy of the Project Proponent Registration Form must be attached to the front of each proposal. The purpose of this registration is to enable the HMWMD to keep all Project Proponents informed of changes and/or provide clarification should questions arise regarding this document. A copy of the Project Proponent Registration Form is attached as Appendix C to this SPP.

The cover page (the first of 20 pages following the Project Proponent Registration Form) of each proposal should contain the following:

- Project Name
- Project Description
- Project Project Proponent
- Point-of-Contact Name, Address, Phone and FAX Number, and Email Address
- Total Project Cost
- Amount of NRD Funding Requested
- Matching Fund Sources, Type, Value and Status
- Signature of an Authorized Representative of the Project Proponent

B. CONTENT AND FORMAT REQUIRED

Description of the Project Proponent's Organization: (Suggested limit: one page)
Describe prior experience with projects of similar scope and complexity. Describe previous experience with regard to each proposed project category or collaboration with organizations that have expertise in those areas. Provide evidence that the Project Proponent possesses the necessary financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them. Provide evidence that the organization meets the eligibility requirements of Section III.B.2.

1. Project Proponent agencies, organizations, and individuals must meet the following standards of responsibility:
 - a. The Project Proponent selected must be responsible for project costs including personnel, fringe benefits, supplies, operating expenses, travel, equipment, and capital items. The Project Proponent must provide the necessary financial, material, equipment, facility, personnel resources, and expertise, to meet all contractual requirements, and provide all services requested herein. Project Proponent must provide evidence that it possesses the necessary resources; or must present acceptable plans to subcontract for them; or must document commitment from, or an explicit arrangement with, a satisfactory source to provide them.
 - b. The Project Proponent must present a resume indicating experience with analogous projects and/or the capacity to perform the scope of work. The resume shall include the project description and objectives, the contracting entity, the cost of the project, the schedule for implementation, cost overruns and technical difficulties encountered. In addition, the Project Proponent shall indicate its experience with developing funding sources for matching with the NRD funds.

2. Response to Statement of Work Requirements

- a. Target Natural Resource(s): (Suggested limit: One page)
State the target natural resource(s) to be affected by or included in the proposal.
 - ii. Describe how the natural resources/sites were chosen for inclusion in the proposal.
 - iii. Describe how owners/managers of the target natural resource(s) will be/have been involved in proposal planning and implementation.
 - iv. Describe how the proposal will restore, replace or acquire the equivalent of injured natural resources, and how the

development, design, implementation and restored site can be made available for public benefit.

- v. Provide a detailed description of the area (acreage, linear footage, etc.) of natural resources to be restored in the proposal.
- b. Objectives: Provide clear, measurable, realistic, time-phased, objective(s) for the work proposed in each category.
- c. Operational Plan: Submit an operational plan that describes the proposal.
- i. Describe in detail how the work described in each category will be implemented.
 - ii. Describe who the Project Proponent will collaborate with to accomplish the scope of work; include letters of support from those agencies you will be collaborating with, as well as community letters of support.
 - iii. Describe the type, donors and equivalent dollar amount of matching funds.
 - iv. Provide construction designs and drawings, if applicable, maps of proposed restoration location(s), and a schedule and/or time line for the completion of major project components. For proposals that require an engineering design, prior to construction final design documents must be submitted with appropriate professional engineer stamp or certification of design documents. Following construction completion surveyed as-builts documents will be required. The submittals shall be provided in hardcopy, original electronic and *.pdf format.
 - v. Describe to what degree the proposal described in the operational plan matches the goal of NRD fund expenditure.
 - vi. Describe how the proposal will be coordinated with complimentary, similar existing or other proposed restoration in the area, if any.
 - vii. Describe the Operation, Maintenance and Monitoring (OMM) requirements and the entity(ies) accepting those responsibilities for the duration of the project and a minimum of 10 years thereafter, if applicable. Describe the 6 and 12 month warranty

inspections required following substantial completion of the proposed project. Detail the funding source, cost and entity responsible for conducting the long- term operation, maintenance and monitoring. This shall include an Annual Report documenting the OMM.

- viii. Permits/Approvals/Certifications: Describe all permits, licenses, approvals, professional engineers' stamps of engineering design and as-built documents that^{AL11} will be required to complete the project and describe current status/progress towards obtaining these permits/approvals.
- ix. Project Schedule: Provide a timeline with identification of projects phases, milestones, midpoint and pre-final inspections.
- x. Monthly Invoice and Status Report: Describe which activities outlined in the operational plan will be tracked, how they will be counted and how they will be reported in the monthly invoice.
- xi. Project Documentation and Deliverables: Provide a list of documentation and deliverables that will be supplied for the proposed project and throughout the duration of the project including the OMM phase.

3. Cost/Price Data: Describe the total dollar amount requested for the project. Break out the total amount requested by budget categories (personnel, fringe benefits, travel, equipment, supplies, contractual, and operating expenses). Detail those costs that will be claimed as in-kind match, including but not limited to engineering, planning and administration. Cost data shall be supplied separately for each substantially different proposal component. (For example, land acquisition costs will be presented separately from habitat restoration costs.)

Describe and justify what will be obtained with the funds. List key staff members that will be assigned to the proposed work, how much time they will work on the project (how many hours per week), and brief descriptions of duties. Describe all private and public (local, state, and federal) funds by budget category that may be expended in the completion of this proposal. Detail the type, donors and dollar equivalent of matching funds obtained to complete or compliment this proposal, if applicable. Estimated prices are not acceptable.

The Cost/Price data should be presented in a format similar to the example template provided with this SPP (Appendix D)).

4. Public Communication Strategy: Demonstrate steps to be taken to collaborate and coordinate with the community impacted. Describe what process(es) will be used to demonstrate inclusiveness, communication, and opportunities for public input over the course of the project. Demonstrate your track record in consensus building and in community development in past projects.
5. Relationship to the Ranking Criteria: Provide a summary of how this project meets each of the objectives indicated by the Ranking Criteria contained in Section VI.B.1, VI.B.2, and VI.B.3 below.
6. Project Fact Sheet: Proposals must include a one-page summary of their Proposal for use at public meetings, dispersal to community and the State's web page. This Project Fact Sheet shall be submitted in reproducible black and white 8.5" by 11" (both hardcopy, original electronic and *.pdf format).
7. Application/Assurances: If applicable, provide proof of organizational status and if the Project Proponent claims non-profit tax-exempt status under section 501 (c)(3) of the IRS code, then the Project Proponent shall submit proof of registration.

Proposals will be evaluated based only on the materials presented. Therefore, Project Proponents should recognize there will be no opportunity for revision or augmentation.

VI. EVALUATION OF PROPOSALS

A. EVALUATION PROCESS

1. The Trustee Council will judge the merits of proposals received in accordance with the evaluation factors stated herein. The State Trustee representatives and the Federal Trustee representatives will make a recommendation to the State Trustees and Federal Trustee, respectively, for final decision.
2. The Trustee Council may request review of the proposals by outside agencies, local governments and subject matter experts at their discretion. The Trustee Council will consider review comments during the Evaluation Process. The Trustee Council may request modifications to proposals based on review comments.
3. Failure of the Project Proponent to provide any information requested herein in the time prescribed may result in the disqualification of the proposal. This responsibility is that of the Project Proponent. The Trustee Council reserves the right to ask individual Project Proponents for additional or explanatory information.

4. Proposals may be funded in whole or in part. For example, a proposal may contain several components; but only the Trustee Council could approve some of those components.
5. If applicable, the Trustee Council may request a site visit with the Project Proponent to allow the Project Proponent to show the Trustee Council the location and the work sought to be performed. A site visit is discretionary on the part of the Trustee Council.
6. The Trustee Council will evaluate all proposals unless there is a conflict of interest. If a member of the Trustee Council has a conflict of interest or is otherwise affiliated with a project and/or Project Proponent, then that Trustee Council member must recuse him/herself from evaluating that proposal.

B. EVALUATION CRITERIA

The Trustees will determine the number of projects to be funded and the level of funding based on how well each proposal meets the evaluation criteria. The Trustee Council has developed criteria it will use in analyzing potential restoration projects for natural resources injured as a result of the Incident. These criteria are organized in the following three sub-sets, Threshold, Initial Screening, and Additional Screening, each with specific requirements or considerations:

1. THRESHOLD CRITERIA

Restoration project proposals must meet the following criteria in order to be further considered and evaluated using the criteria set forth in the Initial and Additional Screening Criteria sections. If a project proposal does not meet the Threshold Criteria, it will not be given further consideration by the Trustee Council.

- a. Consistency with Trustees' Restoration Goals. Project proposals must meet the Trustees' intent to restore, replace, or acquire the equivalent of the natural resources and services injured as a result of the Suncor spill incident.
- b. Technical Feasibility. Project proposals must be technically feasible. The level of risk or uncertainty associated with a project proposal and the success of past projects utilizing similar or identical techniques will be taken into consideration.
- c. Procedural Viability. Project proposals must be procedurally viable.

2. INITIAL SCREENING CRITERIA

The following initial screening criteria will be used to determine preferred project proposals from non-preferred ones. Preferred project proposals will be subject to further review using the criteria set forth in the Additional Screening Criteria section that follows. No additional consideration will be given to proposals the Trustee Council determines are non-preferred.

d. Relationship to the Injured Natural Resources and Services and the Area Impacted by the Suncor Spill Incident. All project proposals must demonstrate an ecological nexus to the natural resources and related services injured as a result of the Incident. Restoration projects in the vicinity of the natural resources and services impacted by the Incident are preferred, but not required.

e. Avoid Adverse Impacts. Proposed projects should avoid or minimize adverse impacts to the environment and associated natural resources. In addition, proposed projects should not interfere with ongoing response actions at the site, including ongoing environmental monitoring. Adverse impacts may be caused by collateral injuries when implementing, or as a result of implementing, the project. The Trustee Council shall weigh the long-term benefits a project proposal may provide against any potential injuries to the environment and associated natural resources that may be caused by the proposed project.

f. Likelihood of Success. In determining the likelihood for success, the following will be taken into consideration: (a) the capability and feasibility of individuals and/or organizations expected to implement and monitor the proposed project; (b) the ability of the individuals and/or organizations expected to implement the proposed project to correct problems that may arise ; (c) whether the proposed project can be reasonably monitored and have benefits that can be measured and verified; and (d) the level of expected return of the injured natural resources and services.

g. Benefits to Multiple Injured Natural Resources and Services. Consider the extent to which a proposed project has the ability to provide benefits to more than one of the injured natural resources and services. The potential benefits of a proposed project will be evaluated in terms of the quantity and associated quality of the types of natural resources and services expected to benefit from the project.

h. Time to Complete Project. Consider the length of time it will take for a proposed project to be completed.

i. Time to Provide Benefits. Consider the length of time it may take from when the proposed project is completed for the benefits to the injured natural resources and

services to be realized. Project proposals capable of minimizing interim resource loss will be given preference.

j. Duration of Benefits. Consider the expected duration of benefits to the injured natural resources and services a proposed project has the potential to provide. Project proposals capable of providing long-term benefits are preferred.

3. ADDITIONAL SCREENING CRITERIA

The following additional screening criteria shall be used to further evaluate and ultimately select restoration projects for inclusion in the DARP/EA. The selected restoration projects shall be identified in the DARP/EA as the preferred restoration alternative(s).

k. Compliance with Applicable Federal, State, and Local Laws and Policies. A project proponent must demonstrate their proposed project complies with all applicable laws and policies.

l. Public Health and Safety. A project proponent must demonstrate their proposed project does not pose a threat to public health and safety.

m. Protection of Implemented Project. Consider the opportunities to protect the implemented project and resulting benefits over time. Project proposals involving fee title acquisition of property for open space should identify the fee title owner and include a commitment to grant a conservation easement or other mechanism allowing the Trustees to ensure the project provides continued natural resource restoration. If a grant of a conservation easement is proposed, the project proponent must include a draft of the conservation easement with the application. Project proposals involving the acquisition of an easement should identify the easement holder. Project proposals that afford long-term protection will be given preference.

Furthermore, consider 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.

n. Opportunities for Collaboration. Consider the possibility of coordinating a proposed project with other ongoing or proposed projects. Project proposals that allow for collaboration and involve multiple partners are preferred.

o. Cost-Effectiveness. Consider the relationship between the expected cost of a proposed project to the expected benefit to the injured natural resources and services. Project proposals that cost less, but deliver an equivalent or greater amount and type of benefits will be given preference.

p. Estimated Total Cost of Proposed Restoration Project and Accuracy of Estimate. An Project Proponent is required to prepare and submit an estimate of the total cost of the proposed restoration project. The total cost estimate should include, among other things, costs to design, implement, monitor, and manage the project. The validity of the cost estimate is determined by the completeness, accuracy, and reliability of the methods used to estimate the costs, as well as the credibility of the person or entity submitting the estimate. An Project Proponent shall specify where the funds will be coming from. The total cost estimate will be evaluated to determine whether the estimated costs are reasonable and feasible.

q. Comprehensive Range of a Proposed Project. Consider the extent to which the proposed project contributes to the more comprehensive restoration package and the degree to which it utilizes multiple approaches (restoration, replacement and acquisition). Evaluate the project for the degree to which it benefits any otherwise uncompensated spill injuries.

r. Project Consistency with Regional Planning. Project proposals that are consistent with applicable area land and resource management plans can be incorporated into a holistic land and natural resource management plan, and/or that take advantage of partnerships with local community groups will be given preference.

s. Matching Funds. Consider an Project Proponent's ability to demonstrate they can obtain matching funds from other funding sources, in-kind services, or volunteer assistance. A project proponent that is able to demonstrate a 50% match or higher to requested NRD funds will be given preference over a project that equally meets all other selection criteria.

t. Public Comment. Any public comments received throughout the restoration planning process that may apply to certain restoration project proposals under consideration of the Trustee Council may be used to assist the Trustee Council in determining which restoration project(s) to select when other criteria are equal.

4. Project Analysis under the National Environmental Policy Act (NEPA)

Selected projects from this SPP process will undergo environmental analyses in compliance with NEPA as part of a restoration plan of the Incident. NEPA analysis must be complete and a decision document rendered prior to the Contract and Notice to Proceed.

VI. CONTRACT AND DISBURSEMENT OF FUNDS

Project Proponents with approved projects must secure a contract with the State. The Trustee Council will provide the Project Proponent with a Notice to Proceed once a contract is in place.

The Trustees will not provide NRD funding to an Project Proponent until after the Project Proponent has completed a contract with the State and received a Notice to Proceed. Under the contract, staff from the Colorado Department of Public Health and Environment or the Colorado Department of Natural Resources will monitor use of the funds and reimburse actual incurred costs, not to exceed the contract value.

END

APPENDIX A

Suncor Energy (U.S.A.) Incident

**Notice of Intent to Conduct Restoration Planning and
Scoping Document for Restoration Planning**

August 7, 2017

**Prepared by
Suncor Trustee Council
U.S. Fish and Wildlife Service
Colorado Department of Natural Resources
Colorado Department of Public Health and Environment
Colorado Attorney General's Office**

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INTRODUCTION

This Notice of Intent to Conduct Restoration Planning (NOI) and Scoping Document for Restoration Planning (Document) was prepared by the trustees (Trustees) for natural resources injured by the release of oil from the Suncor Refinery in Commerce City, Colorado (Incident). Pursuant to the Oil Pollution Act (OPA), 33 U.S.C. § 2701 et seq., and its implementing regulations, 15 C.F.R. Part 990, the Trustees are the U.S. Department of Interior through the U.S. Fish and Wildlife Service (the Federal Trustee), and the State of Colorado through the Executive Director of the Colorado Department of Public Health and the Environment (CDPHE), the Executive Director of the Colorado Department of Natural Resources (CDNR), and the Colorado Attorney General (AGO) (collectively, the State Trustees).

The Trustees' purpose in this Document is to:

- (1) provide the public with information regarding the facts of the Incident and the Trustees' actions to date with respect to it;

- (2) provide notice to the public of the Trustees' intent to develop a plan for restoring natural resources injured by the Incident in accordance with OPA's implementing regulations;**
- (3) provide information regarding how the Trustees will conduct this restoration planning; and**
- (4) solicit public involvement in the Trustees' restoration planning.**

I. BACKGROUND

A. The Incident

Suncor owns and operates a refinery in Commerce City, Colorado (Suncor Refinery or Refinery) that produces gasoline, diesel fuel, and paving-grade asphalt. In November 2011, oil was discovered discharging into Sand Creek near its confluence with the South Platte River and not far from the Suncor Refinery. It was subsequently determined the discharge was the result of oil leaking from a subsurface pipe at the Refinery. The oil released from the pipe entered groundwater under the Suncor Refinery, where it commingled with an existing plume of contaminated groundwater and migrated offsite, ultimately leading to the discharge of oil into Sand Creek and the South Platte River. This same contaminated groundwater plume was also responsible for a discharge of oil into a wetland located on the Suncor Refinery property in February 2011 that resulted in waterfowl mortalities. In response to the discovery of the discharge to Sand Creek, Suncor took various actions pursuant to direction from the Environmental Protection Agency and the Colorado Department of Public Health and Environment to limit, prevent and remediate the discharge of oil to Sand Creek, the South Platte River and their adjoining shorelines.

As described in more detail below, the Incident and related response activities resulted in injuries to natural resources, including aquatic and riparian habitats, wetland habitat, waterfowl, and groundwater.

B. The Trustees' Response to the Incident

Under OPA, the party responsible for a discharge or substantial threat of discharge of oil into or upon navigable waters or adjoining shorelines is liable for injuries to natural resources that result from such an incident and cleanup and similar activities taken in response to it. Damages for injuries to natural resources and the services they provide, including the reasonable costs of assessing the damages, may be recovered on behalf of the public by the federal or state trustee(s) for the injured natural resources. As described above, DOI, acting through USFWS, is the federal trustee for the natural resources injured as a result of the Incident, while the State of Colorado, acting through the AGO, CDPHE and CDNR, is the state natural resource trustee for these resources. Pursuant to OPA, any damages the Trustees recover for injury to natural resources must be spent to restore, rehabilitate or acquire the equivalent of the injured natural resources.

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Pursuant to their authorities under OPA, the Federal and State Trustees agreed to work together to investigate and respond to potential injuries to natural resources caused by the Incident. Accordingly, shortly after the Incident the Trustees entered into a Memorandum of Understanding (MOU) that provided the framework for them to coordinate and cooperate in assessing any natural resource damages resulting from the Incident, in pursuing a claim against Suncor if appropriate, and in planning and implementing any restoration or related activities following a successful claim. One aspect of this framework was the creation of the Trustee Council, comprised of representatives of the Federal and State Trustees, to coordinate the Trustees' activities in accordance with the MOU and OPA requirements.

C. Preassessment and Summary of Injured Natural Resources and Services

The first action of the Trustee Council was to conduct a “preassessment” of potential natural resource injuries caused by the Incident, as provided in OPA’s regulations (15 C.F.R. §§ 990.40-990.45). One purpose of this early assessment was to allow the Trustees to determine whether injury to natural resources had resulted from or was likely to result from the Incident and, if so, whether restoration actions were available to address these injuries.

This early assessment resulted in the Trustee Council’s determination that the Incident injured four categories of natural resources and related services: (1) aquatic and riparian habitat, (2) wetland habitat, (3) waterfowl, and (4) groundwater. In summary, the Trustees determined that the injury to each of these resources and related services was as follows:

1. Aquatic and Riparian Habitat.

The spill of petroleum-related substances into Sand Creek and subsequent response activities resulted in approximately 1-acre of injury to aquatic and riparian habitat. Resources of concern in these urban, yet ecologically important areas include fish, resident wildlife, including migratory birds, and aquatic/riparian habitats that support fish and wildlife.

2. Wetlands Habitat.

In early 2012, Suncor filled in a 1.4 acre wetland on its property in order to implement interim corrective measures in response to the Incident. This wetland was the site of the early 2011 waterfowl mortality event described below. This action eliminated the habitat the wetland provided.

3. Waterfowl.

As a result of the discharge of petroleum-related products to the wetland referenced above, a total of 48 dead birds, primarily waterfowl, were recovered from the wetland over a two-week period in early 2011. This included 24 mallards, 10

gadwalls, seven green-winged teal, two hooded mergansers, one American widgeon, one Wilson's snipe, and three unidentified birds.

4. Groundwater.

As a result of operations by Suncor and previous Refinery owners and operators, numerous petroleum and other discharges originating at the Refinery occurred prior to the subsurface release of oil that caused the Incident. Petroleum-related substances, including benzene, toluene, ethyl-benzene, and xylene, had been detected above Colorado state water quality criteria in groundwater underneath and in the vicinity of the Suncor Refinery. Oil released as part of the Incident commingled with this pre-existing groundwater contamination and, in some instances caused it to remobilize and migrate off the Refinery property, towards Sand Creek. In 2012, the contaminated groundwater plume beneath and around the Suncor Refinery was approximately 190 acres, which is equivalent to 930 acre-feet of groundwater.

The Department of the Interior and the State of Colorado are co-trustees with respect to the injured aquatic and riparian habitat, wetland habitat and waterfowl resources. The State of Colorado is the sole trustee with respect to the injured groundwater resource.

D. Settlement Negotiations and Consent Decree

The Trustees, acting through the Trustee Council, initiated settlement negotiations with Suncor during the preassessment. As a result of these negotiations, the Trustees reached a settlement with Suncor that required Suncor to pay \$1,887,000 in damages for natural resource injuries caused by the Incident and the response to it. The terms of the settlement were memorialized in a Consent Decree, a written agreement, which was lodged with the U.S. District Court for the District of Colorado and made available for public comment prior to being approved by the Court on February 27, 2014. The settlement amount represents a settlement of claims alleging natural resource damages and is not a fine or penalty.

The Consent Decree required Suncor to pay the United States \$691,268 of the \$1,887,000 settlement amount and the State of Colorado the remaining \$1,195,732. From each of these settlement amounts, the Consent Decree required that a portion be allocated to reimbursing each Trustee for its assessment costs (\$165,833 for the United States and \$166,418 for the State) and further required that a portion be allocated for the Trustees' oversight and monitoring of restoration projects implemented as a result of the settlement (\$207,916 for the United States and \$116,833 for the State). Thus, the amount available to implement projects to restore, rehabilitate, replace or acquire the equivalent of the natural resources and related services injured as a result of the Incident is approximately \$1,230,000.

The Trustee Council intends to allocate natural resource damage settlement funds for restoration projects roughly in proportion to the damages for resources injured by the Incident, which are as follows:

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Riparian/Aquatic Habitat	\$ 33,000
Wetland Habitat	\$373,000
Waterfowl	\$229,000
Groundwater	\$595,000
TOTAL	\$1,230,000

The Trustee Council retains the ultimate authority and responsibility to use the settlement funds to fund projects that will restore, replace, rehabilitate or acquire the natural resources and related services injured as a result of the Incident. The Trustee Council will allocate funds for implementation of specific projects as provided in a Restoration Plan that will be prepared and implemented jointly by the Trustees based, among other things, on its consideration of public comments received in response to this Document and a draft Restoration Plan that will be made available for public comment later in the restoration planning process (see Section III. below). Use of the settlement funds by the Trustee Council will be in accordance with applicable law, the Consent Decree, the Trustees' MOU and any other memorandum of agreement between them.

II. NOTICE OF INTENT TO CONDUCT RESTORATION PLANNING

Pursuant to OPA's regulations, the Trustees may proceed with restoration planning at the conclusion of the preassessment if they determine they have jurisdiction to pursue restoration planning under OPA and that it is appropriate to do so. If the Trustees do intend to proceed with restoration planning, they must provide the public with notice of their intent to proceed with restoration planning based on these findings. Section II. of this Document is intended to provide this notice.

A. Determination of Jurisdiction

In accordance with OPA regulation 15 C.F.R. § 990.41(a)(1), the Trustees determined they have jurisdiction to pursue restoration under OPA based upon the following findings:

1. An incident occurred.

Natural resource injuries arose from the release of oil from a subsurface dead leg pipe, which was discovered post-release to be connected to a pipe from Tank 70 to the gasoline blending manifold and located in the vicinity of Tank 55 at Suncor's Refinery in Commerce City, Colorado. This release led to the discharge of oil into the groundwater under the Refinery, created a substantial threat of discharge of oil to Sand Creek, the South Platte River and adjoining shorelines, and ultimately led to the discharge of oil to these navigable waters and/or adjoining shorelines on or about November 27, 2011. Prior to the discharge of oil into the identified navigable waters, during the period in which it was migrating towards Sand Creek and thus posed a substantial threat of discharging oil to navigable waters, the release of oil resulted in the discharge of oil into a wetland located on the Suncor Refinery site,

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resulting in avian mortalities. The Trustees determined the series of occurrences constituted an incident as defined in 15 C.F.R. § 990.30.

2. The Incident was not permitted pursuant to federal, state, or local law; was not from a public vessel; and was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act.

Suncor's release of oil to the subsurface and ultimately to navigable waters was not from a public vessel or an onshore facility subject to the Trans-Alaska Pipeline Authority Act and was not permitted by any federal, state or local law.

3. Natural resources or services under the trusteeship of the trustee may have been, or may be, injured as a result of the incident.

The Incident caused injury to natural resources under the trusteeship of the Trustees, namely: (a) aquatic and riparian habitat at, near, and downgradient of the point of discharge to Sand Creek; (b) wetland habitat located on the Suncor Refinery site; (c) waterfowl associated with the former wetland on the Suncor Refinery site; and (d) groundwater.

As a result of the foregoing findings, the Trustees have jurisdiction to pursue restoration under OPA.

B. Determination to Conduct Restoration Planning

In accordance with OPA regulation 15 C.F.R. § 990.42(a), the Trustees have decided it is appropriate to proceed with restoration planning based on the following findings:

1. Injuries have resulted, or are likely to result, from the Incident.

Observations made and data collected during the preassessment demonstrated that injuries to natural resources and their related services resulted from the Incident. As described above, the Trustees identified several categories of injured and potentially injured resources, including aquatic/riparian habitats, waterfowl, wetlands, and groundwater.

2. Response actions have not adequately addressed, or are not expected to address, the injuries resulting from the Incident.

Response actions were initiated soon after the discovery of the discharge to Sand Creek, as well as after the discovery of avian mortalities at the former wetland. The nature and location of the Incident, however, prevented recovery of all of the oil and precluded prevention of injuries to some natural resources. In addition, certain response efforts caused additional injuries to natural resources. Therefore, the response actions did not adequately address, and are not expected to address, the natural resource injuries resulting from the Incident.

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3. Feasible restoration actions exist to address injuries resulting from the Incident.

In preparation for both settlement negotiations and restoration planning, the Trustees compiled a list of restoration project concepts that could potentially be implemented to restore, rehabilitate, replace, or acquire the equivalent of the natural resources and services injured as a result of the Incident.

Based upon the foregoing findings, it is appropriate for the Trustees to proceed with restoration planning. Therefore, consistent with 15 C.F.R. § 990.44 of OPA's implementing regulations, the Trustees, through this Document, are providing the public with notice of the Trustees' intent to proceed with restoration planning.

III. THE RESTORATION PLANNING PROCESS

A. Overview

As noted earlier, any damages the Trustees recover for injury to natural resources must be spent to restore, rehabilitate or acquire the equivalent of the injured natural resources. The goal of the restoration planning process described in this Document is for the Trustees to develop a plan for restoring, rehabilitating, replacing or acquiring the natural resources and related services that were injured as a result of the Incident. As the first step in the development of this plan, the Trustees are initiating "scoping" with this Document.

The purpose of scoping is to get the public involved early in the restoration planning process. As described in more detail in Section IV. below, during scoping the Trustees are seeking public input on the merits of the concepts for restoration projects that the Trustees developed in the preassessment and utilized in settlement negotiations with Suncor. In addition, the Trustees are at this time soliciting other restoration project alternatives that members of the public believe may better meet the project selection criteria set forth in Section III. B. below.

The Trustee Council will evaluate all public input received through scoping and will then develop and issue a Solicitation for Project Proposals (SPP) to the public. The SPP will request the public to submit restoration project proposals for the Trustee Council's consideration in its preparation of a draft Restoration Plan. Only restoration project proposals submitted through the SPP will be considered for inclusion in the draft Restoration Plan.

In developing the SPP, the Trustee Council has agreed that it will take the following into consideration:

- Restoration project concepts developed by the Trustee Council during the preassessment and settlement process, as identified in Section IV. of this Document;
- Any restoration alternatives received from the public through this Document; and
- All comments received from the public through this Document.

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Following the SPP process, the Trustee Council will prepare a draft Restoration Plan, referred to as the “RP/EA,” that will also include a draft Environmental Assessment (EA) of restoration alternatives, as required of the Federal Trustee by the National Environmental Policy Act (NEPA). The draft RP/EA will identify and evaluate the following:

- **Restoration project proposals received through the SPP;**
- **Restoration project concepts identified in Section IV of this Document that are incorporated in a project proposal submitted in response to the SPP; and**
- **All comments and suggested restoration alternatives received from the public through this Document, including any suggested alternatives that are subsequently incorporated in a project proposal submitted in response to the SPP.**

All restoration project proposals submitted through the SPP process will be evaluated by the Trustee Council using the selection criteria set forth in Section III. B. below, for the purpose of determining which restoration project proposal(s) will be identified in the draft RP/EA as the preferred restoration alternative(s). As part of its evaluation, the Trustee Council may request presentations from restoration project proponents and/or may schedule site visits relating to a particular proposal, if necessary and/or appropriate.

In accordance with OPA’s regulations, the draft RP/EA will set forth: (1) a range of restoration alternatives, (2) the relative effectiveness of alternative actions in achieving restoration goals based upon the criteria listed in Section III. B. below, and (3) the estimated costs of the restoration alternatives. The draft RP/EA will be released for public review and comment. Following the close of the public comment period, the Trustee Council will consider all comments received and prepare a final RP/EA that, among other things, identifies the restoration project(s) the Trustee Council has selected for funding and responds to public comments. The selected restoration projects will then be implemented in accordance with the final RP/EA, the Trustees’ MOU and OPA’s implementing regulations.

B. Project Selection Criteria

OPA and other applicable laws require the Trustee Council to use the settlement money received from Suncor for restoring, replacing, rehabilitating, and/or acquiring the equivalent of the natural resources injured and services lost as a result of the Incident.

The Trustee Council will consider a reasonable range of restoration alternatives before selecting preferred alternatives in the draft RP/EA and the final restoration project(s) in the RP/EA. Each restoration alternative should address one or more specific natural resource injury associated with the Incident.

The Trustee Council has compiled criteria it will use in analyzing potential restoration projects for natural resources injured as a result of the Incident. These

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criteria are organized in the following three sub-sets, Threshold, Initial Screening, and Additional Screening, each with specific requirements or considerations:

THRESHOLD CRITERIA

Restoration project proposals must meet the following criteria in order to be further considered and evaluated using the criteria set forth in the Initial and Additional Screening Criteria sections. If a project proposal does not meet the Threshold Criteria, it will not be given further consideration by the Trustee Council.

- a. **Consistency with Trustees' Restoration Goals.** Project proposals must meet the Trustees' intent to restore, rehabilitate, replace, or acquire the equivalent of the natural resources and services injured as a result of the Suncor spill incident.
- b. **Technical Feasibility.** Project proposals must be technically feasible. The level of risk or uncertainty associated with a project proposal and the success of past projects utilizing similar or identical techniques will be taken into consideration.

- c. **Procedural Viability.** Project proposals must be procedurally viable.

INITIAL SCREENING CRITERIA

The following initial screening criteria will be used to determine preferred project proposals from non-preferred ones. Preferred project proposals will be subject to further review using the criteria set forth in the Additional Screening Criteria section that follows. The Trustee Council will give no further consideration to all project proposals it identifies as non-preferred.

- d. **Relationship to the Injured Natural Resources and Services and the Area Impacted by the Suncor Spill Incident.** All project proposals must demonstrate an ecological nexus to the natural resources and related services injured as a result of the Incident. Restoration projects in the vicinity of the natural resources and services impacted by the Incident are preferred, but not required.

- e. **Avoid Adverse Impacts.** Proposed projects should avoid or minimize adverse impacts to the environment and associated natural resources. In addition, proposed projects should not interfere with ongoing response actions at the site, including ongoing environmental monitoring. Adverse impacts may be caused by collateral injuries when implementing, or as a result of implementing, the project. The Trustee Council shall weigh the long-term benefits a project proposal may provide against any potential injuries to the environment and associated natural resources that may be caused by the proposed project.

- f. **Likelihood of Success.** In determining the likelihood for success, the following will be taken into consideration: (a) the capability and feasibility of individuals and/or organizations expected to implement and monitor the proposed project; (b) the ability of the individuals and/or organizations expected to implement the proposed project to correct problems that may arise ; (c) whether the proposed project can be reasonably monitored and have benefits that can be measured and verified; and (d) the level of expected return of the injured natural resources and services.

g. Benefits to Multiple Injured Natural Resources and Services. Consider the extent to which a proposed project has the ability to provide benefits to more than one of the injured natural resources and services. The potential benefits of a proposed project will be evaluated in terms of the quantity and associated quality of the types of natural resources and services expected to benefit from the project.

h. Time to Complete Project. Consider the length of time it will take for a proposed project to be completed.

i. Time to Provide Benefits. Consider the length of time it may take from when the proposed project is completed for the benefits to the injured natural resources and services to be realized. Project proposals capable of minimizing interim resource loss will be given preference.

j. Duration of Benefits. Consider the expected duration of benefits to the injured natural resources and services a proposed project has the potential to provide. Project proposals capable of providing long-term benefits will be given preference.

ADDITIONAL SCREENING CRITERIA

The following additional screening criteria shall be used to further evaluate and ultimately select restoration projects for inclusion in the DARP/EA. The selected restoration projects shall be identified in the DARP/EA as the preferred restoration alternative(s).

k. Compliance with Applicable Federal, State, and Local Laws and Policies. A project proponent must demonstrate their proposed project complies with all applicable laws and policies.

l. Public Health and Safety. A project proponent must demonstrate their proposed project does not pose a threat to public health and safety.

m. Protection of Implemented Project. Consider the opportunities to protect the implemented project and resulting benefits over time. Project proposals involving fee title acquisition of property for open space should identify the fee title owner and include a commitment to grant a conservation easement or other mechanism allowing the Trustees to ensure the project provides continued natural resource restoration. If a grant of a conservation easement is proposed, the project proponent must include a draft of the conservation easement with the application. Project proposals involving the acquisition of an easement should identify the easement holder. Project proposals that afford long-term protection will be given preference.

Furthermore, consider 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.

n. Opportunities for Collaboration. Consider the possibility of coordinating a proposed project with other ongoing or proposed projects. Project proposals that allow for collaboration and involve multiple partners are preferred.

o. Cost-Effectiveness. Consider the relationship between the expected cost of a proposed project to the expected benefit to the injured natural resources and services. Project proposals that cost less, but deliver an equivalent or greater amount and type of benefits will be given preference.

p. Estimated Total Cost of Proposed Restoration Project and Accuracy of Estimate. A project proponent is required to prepare and submit an estimate of the total cost of the proposed restoration project. The total cost estimate should include, among other things, costs to design, implement, monitor, and manage the project. The validity of the cost estimate is determined by the completeness, accuracy, and reliability of the methods used to estimate the costs, as well as the credibility of the person or entity submitting the estimate. A project proponent shall specify where the funds will be coming from. The total cost estimate will be evaluated to determine whether the estimated costs are reasonable and feasible.

q. Comprehensive Range of a Proposed Project. Consider the extent to which the proposed project contributes to the more comprehensive restoration package and the degree to which it utilizes multiple approaches (restoration, replacement and acquisition). Evaluate the project for the degree to which it benefits any otherwise uncompensated spill injuries.

r. Project Consistency with Regional Planning. Project proposals that are consistent with applicable area land and resource management plans can be incorporated into a holistic land and natural resource management plan, and/or that take advantage of partnerships with local community groups will be given preference.

s. Matching Funds. Consider a project proponent's ability to demonstrate they can obtain matching funds from other funding sources, in-kind services, or volunteer assistance. A project proponent that is able to demonstrate a 50% match or higher to requested NRD funds will be given preference over a project that equally meets all other selection criteria.

t. Public Comment. Any public comments received throughout the restoration planning process that may apply to certain restoration project proposals under consideration of the Trustee Council may be used to assist the Trustee Council in determining which restoration project(s) to select when other criteria are equal.

IV. SCOPING AND PUBLIC PARTICIPATION

The Trustee Council is seeking public involvement early in the restoration planning process by initiating scoping with this Document. The scoping process is intended to provide an opportunity for the public to comment on and participate in the

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Trustees' development of restoration alternatives that may be included in the Solicitation for Project Proposals (SPP) and the draft RP/EA. The Trustee Council will also hold at least one public meeting or open house as part of the scoping process to provide information and answer questions regarding restoration planning. The public will have additional opportunities to participate in restoration planning during the public comment period on the draft RP/EA, as described in Section III.A. above.

A. Request for Public Comments

As part of the scoping process, the Trustee Council is soliciting public comments regarding three subject areas, which will be reviewed to help inform the Trustee Council in its preparation of the SPP and draft RP/EA. These three subject areas are:

- 1. The Trustees' preliminary restoration project concepts.**

As part of their preassessment and settlement negotiations, the Trustees developed preliminary restoration project concepts that it used to help determine the monetary damages resulting from the injuries to natural resources and related services caused by the Incident. A restoration project concept identifies a category or type of restoration project that would restore the injured natural resource; however, a restoration project concept does not identify specific restoration projects or include all the details necessary for implementation of a restoration project. For example, a restoration project concept for injury to groundwater could be to increase the quantity of groundwater, a concept that could then be developed in the SPP process into one or more specific restoration projects, such as replacing existing turf with water-wise grasses, removing tamarisk, increasing surface water infiltration, and/or reducing groundwater pumping.

The preliminary restoration concepts considered by the Trustee Council to date are described in Section IV. B. below. The Trustees seek public input on the merits of these restoration project concepts, as well as their effectiveness in addressing the natural resource injuries arising from the Incident.

- 2. Additional restoration alternatives (restoration project concepts or specific restoration projects) for the Trustees' consideration.**

In addition, the Trustees are interested in other restoration alternatives that members of the public believe are more cost effective or better meet the objective of restoring resources injured by the Incident and that may better meet the project selection criteria set forth above. As described above, the Trustee Council will consider restoration alternatives, whether project concepts or specific proposed projects, in preparing an SPP for restoration projects to address the natural resources injured as a result of the Incident.

Please note that any specific projects proposed in response to this Document will also need to be submitted during the SPP process, and include all of the information that will be specified in the SPP, in order for that restoration project to be evaluated by the Trustee Council in its preparation of the draft RP/EA. Similarly, any additional restoration project concepts submitted by the public during this scoping process will need to be developed into project proposals and submitted in accordance with the SPP in order to be considered in the draft RP/EA.

Any additional restoration alternatives proposed in response to this request for public comments should address one or more of the natural resources and associated services injured as a result of the Incident. As described earlier in this Document, these injured natural resources are: aquatic and riparian habitat; wetlands, waterfowl, and groundwater. Please see Sections I.C. and I.D. for additional information regarding these injured resources, available funds for restoration projects addressing these resources, and the criteria the Trustee Council will use in evaluating restoration projects.

3. General comments on restoration planning for the Incident.

The Trustees also seek public comment on any other issues relating to restoration planning for the Incident that the public wishes to bring to their attention.

B. Restoration Project Concepts Considered to Date

The Trustee Council developed the following restoration project concepts during the preassessment and utilized them during the settlement negotiations with Suncor to help determine the monetary damages resulting from the injuries to natural resources and related services caused by the Incident. The Trustee Council consulted various experts in aquatic and riparian habitat restoration, wetland enhancement/restoration, waterfowl restoration, and groundwater restoration in developing these project concepts. The Trustee Council is considering these project concepts for inclusion in the draft RP/EA, subject to further development into proposed restoration projects pursuant to the SPP process described earlier. As noted above, the Trustees seek public input on the merits of these restoration project concepts and the effectiveness of these restoration project concepts in addressing the injuries caused by the Incident to natural resources and related services.

INJURY: Aquatic/Riparian Habitat

Restoration Project Concept

Restore/Enhance Native Vegetation along Sand Creek and/or the South Platte River

This project concept encompasses projects that would enhance and/or restore native riparian plant vegetation along Sand Creek and/or the South Platte River. Riparian habitat enhancement/restoration will provide increased stability to stream banks,

thus decreasing sedimentation and improving water quality, as well as providing improved habitat for fish and wildlife.

INJURY: Wetland Habitat

**Restoration Project Concept
Restore/Enhance Wetland Habitat**

This project concept covers projects that would enhance and/or restore wetland habitats in the Sand Creek and/or South Platte Watershed. Wetland enhancement and/or restoration will provide improved habitat for fish and wildlife as well as improve water quality, increase stormwater protection and potentially create additional floodplain and/or other ecological services associated with wetlands.

INJURY: Waterfowl

**Restoration Project Concept
Restore waterfowl to the Central Flyway**

This project concept would encompass projects that restore waterfowl to the Central Flyway population by improving ecological functions of existing wetlands, creating new wetlands, and/or restoring native grasses and forbs of wetland buffer areas as well as establishing conservation easements in the Prairie Pothole Region. Waterfowl that frequented the former Suncor wetland were members of this population and the most significant breeding area in the flyway is Prairie Pothole Region. Although waterfowl do breed in Colorado, data are lacking regarding acres of wetlands/upland buffers needed to recruit specific numbers of waterfowl into the population. Enhancement of habitat in the Prairie Pothole Region will, therefore, help recruit waterfowl to this population, thereby replacing the migratory waterfowl lost as a result of the Incident. USFWS has decades of data from the Prairie Pothole Region for the acres of habitats (wetland and upland buffer) needed to successfully and cost efficiently recruit waterfowl into the Central Flyway population.

INJURY: Groundwater

**Restoration Project Concept
Restore/Improve Groundwater Quality**

This project concept would include projects that improve groundwater quality by addressing contaminated groundwater plumes and preventing future releases of oil-related contaminants and infiltration of brine.

**Restoration Project Concept
Restore/Improve Groundwater Quantity**

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The project concept would encompass projects that increase the quantity of groundwater by creating programs to replace existing turf with water-wise grasses, removing tamarisk, increasing surface water infiltration, and reducing groundwater pumping.

C. How to Submit Comments

The Trustee Council encourages the public to submit written comments regarding the three subject areas identified in Section IV. A. All written public comments and proposed restoration alternatives are due to the Trustee Council by November 30, 2017. Comments and restoration alternatives must be received by that date to be considered by the Trustees in developing the SPP.

Comments will be considered a matter of public record and releasable under the Freedom of Information Act. Please send or email comments and/or project concepts to the agency contact below.

**Laura Archuleta
Suncor NRDAR Project Manager
US Fish & Wildlife Service
46525 Highway 114
Saguache, CO 81149
719-655-6121
laura_archuleta@fws.gov
D. Public Meeting(s) and Outreach**

The Trustees will hold a public meeting/open house to provide information and answer questions regarding restoration planning for the Incident at Commerce City Recreation Center, 6060 Parkway Drive, Commerce City Colorado, 80022, on October 10th, 2017, at 2:00PM.

Further information on this public meeting and other activities of the Trustees will be distributed from <https://www.colorado.gov/pacific/cdphe/superfund-sites> and through press releases. Please call the agency contact below if you wish to be added to the mailing list.

Responsibility for conducting public participation activities lies with the Trustee Council.

APPENDIX B

Public Comments Received During the Suncor Energy (U.S.A.) Incident Notice of Intent to Conduct Restoration Planning and Scoping Document for Restoration Planning Comment Period

1. Comments/Questions from Scoping

a. Can any of the settlement money allocated to waterfowl go to organizations that rehabilitate injured ducks?

This is basically a response-related expense, not restoration; therefore, this would not be a project type we would fund.

b. Can any of the settlement money allocated to groundwater go to green infrastructure and/or green gardens?

Yes, we would fund these types of projects – the project must have a nexus to the injured natural resource (e.g. groundwater) and it needs to be identified in the project proposal.

APPENDIX C

Ducks Unlimited

Proposed Suncor Restoration/Enhancement Projects

As the scoping document rightly points out, the damages to public resources resulting from the incident are not localized. Waterfowl are migratory species whose abundance and recruitment rates are determined by habitat conditions on continental scales. Impacts to groundwater quality and quantity in one part of the South Platte River inevitably impact those same factors in other – especially lower – parts of the river valley. Any restoration effort should take these ecological and geomorphic scales into account. Our proposal that follows attempts to just that.

WATERFOWL: In order to redress damages to waterfowl populations caused by the Suncor incident on Sand Creek and the South Platte River, DU proposes a “life-cycle” approach to restoration planning and delivery. DU will utilize settlement funds to acquire, restore, enhance and develop waterfowl habitats within breeding, migration and wintering habitats known to be utilized by ducks that frequent the South Platte basin in northeastern Colorado.

WETLAND HABITAT: We propose funding of projects that will target the food resources, roosting sites, and thermal cover required by the ducks during their spring and fall migrations through the South Platte watershed. Projects may include fee acquisition, conservation easement acquisition, wetland restoration, wetland enhancement and, in some cases, wetland creation on at least three tracts. Projects will focus on restoring hydrology and plant community function to shallow-water wetland habitats such that forage, thermal cover and roosting sites are maintained for migratory birds and for the resident species of wildlife that rely on these declining habitats.

GROUNDWATER: DU is also poised to address some of the impacts to the South Platte’s groundwater resource caused by the incident. For more than 15 years, DU has worked with municipal, agricultural and environmental-oriented water users to augment groundwater supplies in the basin. Our groundwater recharge sites – while aimed at providing additional migratory bird habitat – ensure that water users in Colorado and in downstream states have ample supplies to meet current and future needs. This means that many farms can continue to farm, it eases administration of water portfolios for many of the largest municipalities along the Front Range, it contributes to Colorado’s obligations under the Platte River Recovery Implementation Program and it ensures that ecological function and habitat values provided by groundwater discharge and flow into the Platte’s channel are maintained. Groundwater recharge sites also provide additional consumptive and nonconsumptive wildlife recreation sites in close proximity to the major urban centers of the state. We propose that DU’s groundwater augmentation and storage program within the South Platte watershed will have appropriate

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recharge, storage and other projects benefitting the citizens of the state to consider for Suncor NRD funding.

APPENDIX D

Hazardous Materials and Waste Management Division

**Suncor Natural Resource Damages
Request for Application**

Offeror Registration Form

This form will allow the Project Manager to notify potential Offerors of changes to or clarification of the Request for Application. Failure to submit this form may prevent an Offeror from submitting an acceptable offer.

1. Offeror

2. Type of Organization (i.e. non-profit, government or private entity)

3. Name and Position of Contact

4. Address

5. Phone number

6. Email address

Please return this form to:

susan.newton@state.co.us

Susan Newton
Suncor NRD Project Manager
Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530

This form must be received by June 18, 2018.

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