



COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

NUMBER: **DC-2410XX-X**

IN THE MATTER OF: CASTLE PINES NORTH METROPOLITAN DISTRICT
UNPERMITTED
DOUGLAS COUNTY, COLORADO

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act ("Act") §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of Castle Pines North Metropolitan District ("CPNMD"). The Division and CPNMD may be referred to collectively as the "Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are:
 - a. To establish compliance requirements and criteria for the continued operation of CPNMD's wastewater collection system ("Sewer System"); and
 - b. To resolve, without litigation, the civil penalties associated with alleged violations cited herein and in the Notice of Violation / Cease and Desist / Clean-up Order, Number: DO-230808-1 ("NOV/CDO/CUO"), that the Division issued to CPNMD on August 8, 2023.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding CPNMD, the Sewer System, and CPNMD's compliance with the Act.
3. At all times relevant to the alleged violations cited herein, CPNMD was a special district formed in Douglas County, Colorado, pursuant to the Special District Act, §§32-1-101 et seq and 32-4-501 et seq, C.R.S.
4. CPNMD is a "person" as defined by the Act, §25-8-103(13), C.R.S.

5. CPNMD owns and/or operates the Sewer System, which was designed to collect and convey municipal sewage to the Plum Creek Water Reclamation Authority Wastewater Treatment Facility, located at approximately 39.4236, -104.9042, south of the City of Castle Pines, Douglas County, Colorado ("Facility").
6. Between November 17, 2018 and June 22, 2023, CPNMD reported multiple sanitary sewer overflow ("SSO") events, during which municipal sewage was spilled, released, or diverted from the Sewer System to the ground and/or state waters, to the Department's Office of Emergency Preparedness and Response ("OEPR"). The Division received the following self-reported SSO spill reports from CPNMD:

CPNMD SSO AND SPILL EVENTS NOVEMBER 17, 2018 - JUNE 22, 2023					
Date(s) of Event	OEPR Incident Case Number	Location Provided	Cause of Release	Affected Media	Estimated Volume Released
11/17/2018	2018-0608	7650 Monarch Blvd	Lift station power surge / power failure	Ground (storm retention pond)	8,000 - 10,000 gallons
10/23/2020	2020-0481	7650 Monarch Blvd	Attempted lift station bypass / pump failure	Ground (drainage area with connection to Cherry Creek)	20,000 gallons
2/3/2021	2021-0471	39.4884, -104.8968	Sewer System force main break and 2 lift station backups	Ground (storm retention ponds)	70,000 gallons
2/28/2021	2021-0069	7650 Monarch Blvd	Lift station power failure / equipment failure	Ground (storm retention pond)	30,000 gallons
11/1/2021	2021-0526	259 Crossing Cir	Clogged lift station	Ground	300 - 500 gallons
11/23/2021	2021-0578	7650 Monarch Blvd	Lift station pump failure	Ground (storm channel with connection to Cherry Creek)	4,500 gallons
3/19/2022	2022-0111	750 Hidden Point Blvd	Lift station level sensor failure	Ground (drainage area with connection to Cherry Creek)	25,000 gallons
6/22/2023	2023-0455	8100 Monarch Blvd	Lift station pipe burst due to heavy rainfall and infiltration	Ground (Happy Canyon Creek drainage canal)	40,000 gallons

Unauthorized Discharge to State Waters

7. Pursuant to §25-8-501(1), C.R.S., no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.
8. Municipal sewage contains, among other substances, biochemical oxygen demand ("BOD"), total suspended solids ("TSS"), ammonia, fecal coliform, and *E. coli*.
9. BOD, TSS, ammonia, fecal coliform, and *E. coli* are "pollutants," or indicators thereof, as defined by §25-8-103(15), C.R.S.
10. The retention ponds and drainage areas identified in Paragraph 6 above, Happy Canyon Creek, and Cherry Creek are "state waters" as defined by §25-8-103(19), C.R.S.
11. Each SSO location along CPNMD's Sewer System, as it relates to each event identified in Paragraph 6 above, is a "point source" as defined by §25-8-103(14), C.R.S.
12. Each SSO event identified in Paragraph 6 above that reached state waters constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.
13. CPNMD does not have any permits authorizing the SSO events identified in Paragraph 6 above into state waters.
14. CPNMD's unauthorized discharge of municipal sewage from the Sewer System into state waters, as identified in Paragraph 6 above, constitutes violations of §25-8-501(1), C.R.S.

Unauthorized Land Application

15. Pursuant to 5 CCR 1002-61, §61.14(1)(a), a Colorado Discharge Permit System ("CDPS") permit shall be required for all land application discharges unless the discharge meets the specific exemption criteria outlined in 5 CCR 1002-61, §61.14(1)(a)(i) through (v).
16. CPNMD's discharges of pollutant-containing municipal sewage from the Sewer System to the ground, as identified in Paragraph 6 above, constitutes "land application" as defined by 5 CCR 1002-61, §61.2(48).
17. CPNMD's land application of municipal sewage from the Sewer System, as identified in Paragraph 6 above, does not meet any of the exemption criteria of 5 CCR 1002-61, §61.14(1)(a)(i) through (v), and, therefore, is subject to CDPS permit requirements.
18. CPNMD does not have any permit authorizing the land application of municipal sewage from the Sewer System.
19. CPNMD's land application of municipal sewage from the Sewer System, as identified in Paragraph 6 above, constitutes violations of 5 CCR 1002-61, §61.14(1)(a).

ORDER AND AGREEMENT

20. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the NOV/CDO/CUO, the Division orders CPNMD to comply with all provisions of this Consent Order, including all requirements set forth below.
21. CPNMD agrees to the terms and conditions of this Consent Order. CPNMD agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and, C.R.S., and is an enforceable requirement of the Act. CPNMD also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by CPNMD against the Division:
 - a. The issuance of this Consent Order;
 - b. The factual and legal determinations made by the Division herein; and
 - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
22. Notwithstanding the above, CPNMD does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by CPNMD pursuant to this Consent Order shall not constitute evidence of fault and liability by CPNMD with respect to the conditions of the Sewer System. CPNMD expressly reserves its rights to deny any of the Division's factual or legal determinations or defend itself in any other third party proceeding relating to the information identified in this Consent Order.

Compliance Requirements

23. CPNMD shall implement the Lift Station Upgrades Project ("Project") to achieve and maintain compliance with the Act. CPNMD will implement the Project in two phases. Scope A comprises improvements to Lift Stations 1, 2, and 5, including consolidation of Lift Station 2 with Lift Station 5 and eliminating Lift Station 2. Scope B comprises improvements to Lift Stations 3, 4, 6, and 7. As of the date of this Order, CPNMD has already submitted a site location application request for each lift station identified in Scope A. CPNMD shall implement the rest of Project in accordance with the following schedule:
 - a. By December 1, 2024, or within 30 days of Scope A's site application approval from the Division, whichever occurs later, CPNMD shall submit to the Division for approval the final design of each lift station identified in Scope A in accordance with §25-8-702, C.R.S. and 5 CCR 1002-22.
 - b. By December 1, 2024, CPNMD shall submit to the Division a complete site location application request for each lift station identified in Scope B in accordance with §25-8-702, C.R.S. and 5 CCR 1002-22.
 - c. By March 1, 2025, or within 60 days of receipt of all necessary engineering approvals associated with Scope A, whichever occurs later, CPNMD shall notify the Division it has commenced construction of the approved Scope A.
 - d. By April 1, 2025, or within 30 days of Scope B's site application approval from the Division, whichever occurs later, CPNMD shall submit to the Division for approval the

final design of each lift station identified in Scope B in accordance with §25-8-702, C.R.S. and 5 CCR 1002-22.

- e. By July 1, 2025, or within 60 days of receipt of all necessary engineering approvals associated with Scope B, whichever occurs later, CPNMD shall notify the Division it has commenced construction of the approved Scope B.
 - f. By March 1, 2027, or within two years of the date of the notification provided in Paragraph 23c above, whichever occurs later, CPNMD shall complete construction of Scope A and provide written notification to the Division.
 - g. By July 1, 2027, or within two years of the date of the notification provided in Paragraph 23e above, CPNMD shall complete construction of Scope B and provide written notification of Project completion to the Division.
24. CPNMD shall submit quarterly progress reports to the Division outlining efforts taken to achieve compliance with this Consent Order. The first report shall be submitted to the Division on or before December 31, 2024 and by the last day of the calendar quarter thereafter. At a minimum, each report shall outline activities undertaken in the current quarter and planned activities for the next quarter to remain in compliance with this Consent Order.
25. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required. No plan submitted for Division approval under this Consent Order may be implemented unless and until written approval is received from the Division. Any approval by the Division of a plan submitted under this Consent Order is effective upon receipt by CPNMD. All approved plans, including all procedures and schedules contained in the plans, are hereby incorporated into this Consent Order, and shall constitute enforceable requirements under the Act.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

26. In addition to all other funds necessary to comply with the requirements of this Consent Order, CPNMD shall pay \$130,978.00 in the form of expenditures on a Supplemental Environmental Project ("SEP") in order to achieve settlement of this matter.
27. CPNMD shall perform the SEP identified below. CPNMD's total expenditure for the SEP shall be not less than \$130,978.00. CPNMD shall include the following language in any public statement, oral or written, making reference to the SEP: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for violations of the Colorado Water Quality Control Act."
28. CPNMD shall undertake the following SEP, which the Parties agree is intended to secure significant environmental or public health protection and improvements:
- a. CPNMD shall make payment to the Douglas County Conservation District in the amount of \$130,978.00. The funds will be used to supplement and augment an existing SEP-funded project (East Plum Creek Stabilization). Specifically, CPNMD's SEP contribution will fund bank stabilization and revegetation efforts in East Plum Creek in Douglas County, Colorado. A copy of the executed SEP Agreement is attached to this Order as Attachment A. CPNMD shall make

the payment of \$130,978.00 to Douglas County Conservation District within 30 days of the effective date of this Consent Order. The payment shall include a cover letter identifying the donation to Douglas County Conservation District and be sent to:

Douglas County Conservation District
C/o Zak Humbles, P.E.
100 Third Street
Castle Rock, Colorado 80104

CPNMD shall provide the Division with a copy of the cover letter and check within 30 calendar days of the effective date of this Consent Order.

- b. CPNMD shall not deduct the payment of the SEP donation described above for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.
- c. CPNMD hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEP. CPNMD further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEP. In the event that CPNMD has, or will receive credit under any other legal obligation for the SEP, CPNMD shall pay \$130,978.00 to the Division as a civil penalty within 30 calendar days of receipt of a demand for payment by the Division. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Jocelyn Brink
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

SCOPE AND EFFECT OF CONSENT ORDER

- 29. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations cited herein and in the NOV/CDO/CUO.
- 30. This Consent Order is subject to the Division's "Public Notification on Administrative Enforcement Actions Policy," which includes a 30-day public comment period. The Division and CPNMD each reserve the right to withdraw consent to this Consent Order if comments received during the 30-day period result in any proposed modification to the Consent Order.
- 31. This Consent Order constitutes a final agency order or action upon a determination by the Division following the public comment period. Any violation of the provisions of this Consent Order by CPNMD, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to \$64,326 per day for each violation.
- 32. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this

Consent Order as of the date of approval by the Division.

33. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.
34. Notwithstanding Paragraph 22 above, the violations described in this Consent Order will constitute part of CPNMD's compliance history.
35. CPNMD shall comply with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

36. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the NOV/CDO/CUO. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
37. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
38. CPNMD reserves its rights and defenses regarding the Sewer System other than proceedings to enforce this Consent Order.
39. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of the Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.
40. CPNMD releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims or for any injuries or damages to persons or property resulting from acts or omissions of CPNMD, or those acting for or on behalf of CPNMD, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. CPNMD shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by CPNMD in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

OFFSITE ACCESS

41. To the extent any plan submitted by CPNMD requires access to property not owned or controlled by CPNMD, CPNMD shall use its best efforts to obtain site access from the present owners of such

property to conduct required activities, and to allow Division access to such property to oversee such activities. In the event that site access is not obtained when necessary, CPNMD shall notify the Division in writing regarding its best efforts and its failure to obtain such access.

SITE ACCESS AND SAMPLING

42. The Division shall be permitted to oversee any and all work being performed under this Consent Order. The Division shall be permitted access to the Sewer System at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining CPNMD's compliance with the Act, the Regulations, and this Consent Order. The Division shall be permitted to inspect work sites, operating and field logs, contracts, manifests, shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview CPNMD personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the Project area.
43. The Division may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by CPNMD. CPNMD shall notify the Division in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of 72 hours prior to the sampling being conducted, and shall provide split samples to the Division upon request.
44. CPNMD shall notify the Division in writing of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of 72 hours prior to beginning the excavation, construction, or required activity. CPNMD shall provide the Division any blue print, diagram, construction or other permits for any construction activity undertaken pursuant to this Consent Order upon request.

FORCE MAJEURE

45. CPNMD shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of CPNMD, and which cannot be overcome by due diligence.
46. Within 72 hours of the time that CPNMD knows or has reason to know of the occurrence of any event which CPNMD has reason to believe may prevent CPNMD from timely compliance with any requirement under this Consent Order, CPNMD shall provide verbal notification to the Division. Within seven calendar days of the time that CPNMD knows or has reason to know of the occurrence of such event, CPNMD shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.
47. The burden of proving that any delay was caused by a force majeure shall at all times rest with CPNMD. If the Division agrees that a force majeure has occurred, the Division will so notify CPNMD. The Division will also approve or disapprove of CPNMD's proposed actions for mitigating the delay.

If the Division does not agree that a force majeure has occurred, or if the Division disapproves of CPNMD's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to CPNMD. Pursuant to the Dispute Resolution section, within 15 calendar days of receipt of the explanation, CPNMD may file an objection.

48. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, CPNMD shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

DISPUTE RESOLUTION

49. If the Division determines that a violation of this Consent Order has occurred; that a force majeure has not occurred; that the actions taken by CPNMD to mitigate the delay caused by a force majeure are inadequate; or that CPNMD's Notice of Completion should be rejected pursuant to Paragraph 23g, the Division shall provide a written explanation of its determination to CPNMD. Within 15 calendar days of receipt of the Division's determination, CPNMD shall:
 - a. Submit a notice of acceptance of the determination; or
 - b. Submit a notice of dispute of the determination.

If CPNMD fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

50. If the Division disapproves or approves with modifications any original or revised plan submitted by CPNMD pursuant to this Consent Order, the Division shall provide a written explanation of the disapproval or approval with modifications. Within 15 calendar days of receipt of the Division's approval with modifications or disapproval of the plan, CPNMD shall:
 - a. In the case of an approval with modifications only, submit a notice of acceptance of the plan as modified and begin to implement the modified plan;
 - b. In the case of a disapproval only, submit a revised plan for Division review and approval. CPNMD may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by CPNMD; or
 - c. Submit a notice of dispute of the disapproval or approval with modifications.

If CPNMD fails to do any of the above within the specified time, CPNMD shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

51. If CPNMD submits a revised plan, the plan shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The Division may determine that failure to respond adequately to each of the issues raised in the Division's written explanation constitutes a violation of this Consent Order. The Division shall notify CPNMD in writing of its approval, approval with modifications, or disapproval of the revised plan. If the Division disapproves the revised plan, it may include in its disapproval a plan for implementation by CPNMD. Such disapproval and plan shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S. ("APA"), unless CPNMD submits a notice of dispute, pursuant to Paragraph 50 above, of the Division's disapproval and plan for implementation. All requirements and schedules of the

Division's plan shall not become effective pending resolution of the dispute.

52. If CPNMD files any notice of dispute pursuant to Paragraph 49 or 50 above, the notice shall specify the particular matters in the Division's determination that CPNMD seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by CPNMD. The Division and CPNMD shall have 30 calendar days from the receipt by the Division of the notice of dispute to reach an agreement. If agreement cannot be reached on all issues within this 30 calendar day period, the Division shall confirm or modify its decision within an additional 14 calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the APA.

NOTICES

53. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Jocelyn Brink
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303-692-2840
E-mail: jocelyn.brink@state.co.us

For CPNMD:

Nathan Travis, District Manager
Castle Pines North Metropolitan District
7404 Yorkshire Dr
Castle Pines, CO 80108
Telephone: 303-242-3262
E-mail: nathan@cpnmd.org

OBLIGATIONS UNAFFECTED BY BANKRUPTCY

54. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by CPNMD of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. CPNMD agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for CPNMD to achieve and maintain compliance with State law.

MODIFICATIONS

55. This Consent Order may be modified only upon mutual written agreement of the Parties.

COMPLETION OF REQUIRED ACTIONS

56. CPNMD shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject CPNMD's Notice of Completion in writing within 30 calendar days of receipt. If the Division rejects CPNMD's Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. CPNMD shall, within 15 calendar days of receipt of the Division's rejection, either:
- a. Submit a notice of acceptance of the determination; or
 - b. Submit a notice of dispute.

If CPNMD fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

NOTICE OF EFFECTIVE DATE

57. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon notice from the Division following closure of the public comment period referenced in Paragraph 30.

BINDING EFFECT AND AUTHORIZATION TO SIGN

58. This Consent Order is binding upon CPNMD and its elected officials, employees, agents, representatives, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. CPNMD agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within 30 calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order. The Parties agree that this Consent Order may be electronically signed. The Parties agree that the electronic signatures appearing on this Consent Order are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

FOR CASTLE PINES NORTH METROPOLITAN DISTRICT:

_____ Date: _____
Nathan Travis, District Manager
Castle Pines North Metropolitan District

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ Date: _____
Kelly Morgan
Clean Water Compliance & Enforcement Section Manager
WATER QUALITY CONTROL DIVISION

Attachment A

 	<p>Third Party Supplemental Environmental Project (SEP) Proposal / Agreement Third Party Liable (Revised 5/19/2022)</p>
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Document is completed by the third party SEP administrator.

The third party SEP administrator, identified below, submits the following SEP agreement proposal to the Colorado Department of Public Health and Environment (the department) for consideration. If the application is approved, it shall be signed by appropriate representatives of the department. If the approved document is then signed by the applicant, it shall serve as the SEP agreement for the project(s) at issue.

Enforcement action information

Regulated entity name: Castle Pines North Metropolitan District

Enforcement case no.: DO-230808-1

Castle Pines North Metropolitan District's (CPNMD's) SEP proposal serves to supplement and augment an existing SEP-funded project (Flatiron-AECOM, LLC- Enforcement Case Numbers: SO-190529-1 and SO-200115-1). This proposal identifies where CPNMD's funds will be allocated in the project and establishes independent budgeting, reporting, and deliverables from the Flatiron-AECOM, LLC SEP.

Third party SEP administrator

Zachary Humbles, PE IV
Douglas County Public Works
100 Third Street
Castle Rock, CO 80104
720-673-4030 (o)
720-498-4144 (c)
zhumbles@douglas.co.us

Type of organization

Government

*If nonprofit, please attach a copy of your 501c(3) exemption to this SEP Agreement.

Department SEP coordinator

Alex Scherer
720-556-5474
alex.scherer@state.co.us

Geographic area served

Douglas County

Project title

East Plum Creek Stabilization

Vicinity of Colorado Agricultural Leadership Foundation (CALF)

Project type

Third party

SEP category

Environmental Restoration - Stream Channel and Riparian Area Stabilization

Project summary

Stabilize East Plum Creek to reduce bank wasting, improve wetland habitat, and provide an educational exhibit for property owners and managers faced with similar channel issues.

Project description

Problem Statement: East Plum Creek is incised, braiding, and has wasting vertical banks, which causes substantial sediment loading, reduced wetland flora/fauna, and unstable hydraulics during higher flows. These issues are largely due to a perched and undersized culvert installed as an emergency repair on the southern boundary of the project circa 2013.

Project Goals and Objectives: The project goals will focus primarily on stabilizing the most geomorphically unstable portion of the reach - the southernmost third of the channel - followed in prioritized order by other segments showing indications of vertical propagation. The successful end state includes the installation of grade controls that prevent further vertical migration of the channel thalweg that are fish passable, stabilized banks throughout the southern and central segments (Phase I already completed the northern segment), and recontoured channel sections to promote improved wetland flora/fauna. The successful end state will also include a crossing site solution to the currently undersized and perched culvert, which will include a grade control to protect upstream wetlands that have developed because of the culvert's backwater influence. Due to high, intense flows in Spring 2023 and a beaver dam, the main culvert conveying East Plum Creek was entirely blown out during the original design phase of Flatiron-AECOM, LLC SEP, which necessitated a redesign. The redesign eliminated the need for grade control structures at a cost benefit to the project and presented the opportunity to further improve water quality by adding additional bank stabilization and vegetation. This additional in-scope work aligns seamlessly with the spirit of the project, SEP funding, and the collective interest of the CALF and Douglas County (DC).

This project has numerous objectives to achieve its goals; the highest priority being the southernmost channel reconstruction and bank stabilization. After reference reach data is

collected and analyzed, full channel recontour will occur by applying a design section that greatly enhances wetland areas only where necessary to reduce total impact and risk to the floodplain stability. The intense flows in Spring 2023 created and/or exacerbated the current vertical banks and afforded the channel mere inches of wetland. The project aims to provide 10 or more feet of vertical banks adjacent to the two (2) year channel where best practicable while also reducing native upland vegetation disruption.

The stabilization effort for the reconstructed channel involves multiple organizations, volunteers, and resources and the revegetation effort is an undertaking led by the CALF and Douglas County Conservation District (DCCD). Douglas County measured the success of Phase 1 (northernmost third of the channel project area) and determined the vegetation species diversity improved 10-fold. Douglas County will continue to perform extensive revegetation work to augment the hydraulic design and reinforce key design elements such as drop structures using hardy, resilient, and locally sourced native species. This theme and practice will extend throughout the reach segments (all thirds, all phases). Following successful establishment of the vegetation, habitat improvement and augmentation will occur. The education component, meant to instruct property owners and managers on common and economical means to stabilize channels on their own parcels, consists of developing interpretive stations* and communicating design intents, practice, and related to the staff at CALF and DCCD for an enduring awareness.

*interpretive station: The Douglas County Conservation District, in conjunction with Colorado Agricultural Leadership Foundation (CALF) have planned to install visual information panels to communicate to future visitors the types of stabilization methods applied and their purpose. This effort keeps with the intent to educate and inform private landowners about economical and feasible options to stabilize their own channels, large or small, and reduce bank wasting and incision. These stations are conceptual at this point in time (July 2024), but discussion has indicated something akin to other panels present throughout Douglas County open spaces and particularly at heritage and historical sites. QR code and similar additional access to information is expected, which provides alternative information delivery means for those that may need or prefer it. The structure of these panels has historically been a steel frame with steel plating, printed vinyl media applied with epoxy adhesives provide a very resilient finished station. The station is mounted in concrete akin to a gate post or similar.

Due to the substantial channel reconstruction and stabilization in Phase III, a no-rise certification has been submitted and approved in compliance with FEMA requirements to enable the work. The USACE NWP (nationwide permit) 27 covers the entire project area and has been granted. Work to date has complied with the terms and conditions of USACE NWP 27. Construction erosion control permits will be secured to ensure full compliance. Economical, practicable, and accessible stabilization methods are a dominant driving goal in the execution of the project since its partial purpose is to be a demonstration for private landowners who have wasting or incised channels.

Project Need & Community Impact: The East Plum Creek channel system on the CALF parcel was unstable and showing signs of incision and related side effects. By itself, the environmental impacts are well documented. This project is unique, as in addition to the stabilization work, it aims to serve as an educational resource for Front Range property

owners facing similar conditions on their parcels. Current best practices generally accepted by local and state governments default to Mile High Flood District (MHFD) criteria, which are often inaccessible to the public due to the enormous cost and complexity. The cost and complexity of MHFD solutions are almost exclusively sought by tax funded organizations. In an effort to develop sound, practicable, and sensible guidance for channel stabilization, this project offers alternative solutions that blend some of the best experience across multiple agencies and consultant designs to develop economical options that provide similar performance.

Technical Information: The project is divided into three phases: Phase 1, Phase 2, and Phase 3. Phase I was completed by applying the design cross section but without any change to the 2-year channel alignment or thalweg elevation; the wetland bench was greatly expanded; and substantial revegetation was completed. As a part of the Phase I work, old junk cars and broken concrete were removed from the banks and hauled off; however, there are still cars visible in the banks of East Plum Creek, north of the CALF parcel boundary.

Phase II is in progress and its goal is the stabilization of vertical wasting banks throughout the middle third of the channel, which is the longest segment at approximately 2,000 linear feet. Work progresses in very small, targeted areas when funds become available. Revegetation efforts, including staking willows and planting native seed mixes and native flowers, are continuing. Trash and debris such as tires and appliances in the channel are being removed. The existing channel thalweg and 2-year channel are not disturbed. The design section is used to guide the bank layback effort but not to an extent where greater impact to the resource would occur as a compromise to costly heavy earth moving while still reducing hydraulic forces.

Phase III design is complete and work has commenced with the receipt of funding from the Flatiron-AECOM, LLC SEP. Phase III comprises approximately 800 linear feet of the southernmost third of the channel and involved substantial reconstruction of the channel. The 2-year channel will be reconstructed where required to emulate the reference reach with very little vertical adjustment due to the 2023 storms and subsequent culvert failure. A repurposed railroad flatcar bridge will be emplaced to keep vehicular and agricultural vehicles out of the channel. Furthermore, Phase III includes bank stabilization as well as riparian area and wetland beach augmentation through implementing the design section where least damaging to established native vegetation and channel morphologic tendencies. This approach is modular since treatment methods are meant to be simple, cost effective, and scalable. The work will prioritize the most unstable areas and any savings or efficiencies will go toward performing additional work. The revegetation plan is a collaborative effort between professional design planners, volunteers, and/or contractors. Based on the integration and state of Phase II, it may be resourceful and efficient to complete Phase II and Phase III simultaneously. There was very little damage to Phase I and Phase II during the Spring 2023 storms, which greatly underscored the success of the design section and approach to the channel stabilization.

Please reference the Flatiron-AECOM, LLC SEP proposal and modifications for plans, details, and additional information regarding the approach and project.

Project Partners & Roles: The project has a myriad of partners, including DCCD, the Natural Resources Conservation Service (NRCS), CALF, AmeriCorps, ERO Consultants, RESPEC Engineers, Matrix Engineers, and DC (public works & open space).

DC, DCCD, and CALF are the leaders for the project and collectively make decisions, pursue funding, organize work and volunteers, and grow and/or source locally available vegetation for the project.

Similar services or projects in the area: MHFD criteria is the prevalent approach for Front Range channel stabilization projects; however, there is a significant accessibility gap between individual citizen scale channel work and government scale channel work. There are few feasible alternatives for a citizen when faced with trying to stabilize privately owned channels in the Front Range. There are some reference materials and resources but no known demonstration project with the intent to educate, demonstrate, and inform the public on the ground and in person, free of charge. Additionally, most plan reviews through applicable first line review authorities will default to the MHFD criteria, which is largely inaccessible to private landowners due to the requirement of costly design elements and extremely conservative hydrology, which may be moot in a residential/private application. These barriers financially disincentivize permitted work which may cause unintended damage to the channel system(s). To demonstrate alternative, holistic, economical solutions, this project aims to demonstrate a feasible approach.

CPNMD funds will be allocated towards additional bank stabilization and (re)vegetation in Phase III of the project, through the entire 800' reach. Following the heavy rains during Spring 2023, the original perched culvert failed catastrophically due to overtopping from a beaver dam that was constructed immediately upstream of the pipe inlet. Prior to the failure of the culvert, a fording site (aka 'low water crossing') would have been constructed to restore vehicular passage to the southwest portion of the parcel for agricultural and ranch traffic. This type of crossing can be harmful to water quality and mobilize sediments during use. The culvert failure afforded the opportunity to redesign and money was allocated to fund a bridge structure that will permanently remove equipment out of the channel. CPNMD's funds, in addition to the Flatiron-AECOM, LLC SEP funds, will enable additional bank stabilization* and revegetation of the project area. The redesign called for applying Flatiron-AECOM SEP funds to the bridge element to mitigate the low water crossing; this reduced the funds available for bank stabilization in the original agreement. The CPNMD SEP will restore the original project capacity regarding bank stabilization and vegetation, while enabling the project to also separate vehicular traffic from the channel flow.

*Examples of expanded bank stabilization activities funded through the CPNMD funds includes but is not limited to:

- Recontouring wasting (vertical) bank(s) to the design section, generating approximately 7.4' of wetland bench
- Installing willow mattress where high-energy hydraulics exist, coupled with resilient vegetation plantings and/or willow rows
- Installation of root wads, log vane, and log groin structures to improve bank resilience to high-frequency seasonal flows
- Installation of stones (boulders) in over bank flow areas or where wetland bench is not feasible due to overburden

- Restoration of failed bank and vegetation from catastrophic culvert failure, using brush mats and willow staking
- Filling scour holes and grading (contouring) bank to support natural hydraulic through the channel.

Expected environmental and/or public health benefits:

The environmental benefits from expanding bank stabilization efforts and revegetation through the use of CPNMD SEP funds are as follows:

- 1) Increased wetlands - Phase I added 4,895 square feet of wetlands. Phase II and III will add at least 10,018 square feet of wetlands. At the conclusion of the project DC will provide a final calculation of total wetlands added.
- 2) Diversify flora and fauna - Phase I has already contributed to a 10-fold increase in native species diversity. At the conclusion of the project, DC will provide an estimated value for the increase in native species diversity from Phase II and III of the project.
- 3) Additional invasive species management.
- 4) Additional removal of trash and waste from the stream and bank.
- 5) Additional reductions in bank wasting and incision.
- 6) Additional reductions in sediment loading.
- 7) Education component - The bank stabilization methods being applied represent an excellent opportunity to demonstrate an economical alternative to owners that helps reduce or immobilize sediments. Multiple regulatory entities, including the USFS, USDA, DOI, BLM, and NPS, have launched efforts to improve channel resilience, capacity, and health.

Project budget

Complete the summary table below and itemize expenses according to the budget categories provided. Add lines as necessary. Documentation of all expenditures is required as part of the completion report. (Estimates Shown)

Category	Description	SEP Funds	Matching Funds (if applicable)	Total cost
Other Direct Costs	Construction Contractor (53 Corporation - Prime)	\$130,978.00	\$418,874.00*	\$549,852.00
Totals:		\$130,978.00	\$418,874.00	\$549,852.00

*SEP Funds from the Flatiron-AECOM, LLC SEP.

Please note: Any categorical changes exceeding 10% of the total budget require prior written approval from CDPHE through a SEP Modification.

Budget discussion

This proposal details how CPNMD's SEP donation will be allocated within an ongoing project. CPNMD's SEP donation will fund additional channel stabilization, within the scope of the project, existing design, and contract. CPNMD is interested in applying the SEP donation to additional stabilization elements as shown in the original design. The original Flatiron-AECOM, LLC SEP will be modified to include CPNMD's funding and to augment the budget to additional stabilization elements that align with the project intent, purpose, and scope. That modification will be submitted in conjunction with this proposal as they are interdependent.

The original design work for Phase III began in November 2019 with Matrix Engineers. They developed a probable cost of \$442,634 for the Phase III work, which is well under the current market rates. To compensate for this discrepancy, the contracted construction cost was revised to the amount shown above. Originally it was thought to permit the work through FEMA (floodplain permit), a conditional letter of map revision (CLOMR) will be required using the Matrix design model. Douglas County Public Works Engineering solicited proposals in April 2020 and RESPEC was the low-cost winner. The cost shown in the table is their fee to secure the CLOMR and enable the work to proceed. During design, two high intensity spring storms required a re-design of the proposed stabilization and realized a significant efficiency in the project by mitigating the need for the LOMR, driving a no rise certification instead. These additional design funds were then able to shift to a crossing to remove vehicular traffic from the stream, further demonstrating best practices in channels and improving water quality.

The channel crossing item shown reflects the need to replace the undersized and perched culvert with something appropriate for the hydrology and hydraulics of the location. This is an instrumental component of the project as it serves as an interface between the upstream existing wetlands, the FRT crossing point, and the project area with the most extensive channel section reconstruction. CPNMD's funds, in addition to the Flatiron-AECOM, LLC SEP funds, will enable more bank stabilization in the reach and adjacent to the FRT crossing. This augmentation of the existing project will greatly expand the extent of bank treatment and revegetating the storm and flood damaged areas as well as newly built wetland benches.

DC PWE has previously and will continue to provide support in multiple forms to the project. Previously Douglas County has funded and contracted efforts to remove junk cars, manage invasive vegetation, and match CALF/DCCD grants. DC PWE has also provided equipment and operators to achieve hybrid (contractor + Douglas County) efforts on the project. Those items shown above are meant to indicate that without a cost to the project.

To align with the project goals, Douglas County will maximize funding by streamlining efforts and identifying efficiencies. Phase III is the most difficult and costly portion of the project and, therefore, the highest priority given the opportunity to fund it. Stretching what remains of the budget into Phase II bank stabilization work would be the intuitive obligation and application of the in-scope resources. In discussions with the Department, applying SEP funding to best improve water quality and reducing non-native sediment mobility within the reach or watershed is encouraged to capitalize on efficiencies in construction and supports the spirit of the funding, project, and constituents.

Project work plan

Please specify project activities or deliverables below, as well as completion dates associated with project milestones and reports. Status reports are required biannually for projects 1 year in duration or longer. For projects under one year, a status report is required approximately half way through the project. Add rows as needed.

Activities / Deliverables	Staff responsible	Due date
Proposed implementation start date Based on funding receipt (Day 0)	Zak Humbles, DC PWE	July 31, 2024
Issue NTP to prime contractor to purchase Materials and Commence work		September 15, 2024
Status Report	Zak Humbles, DC PWE	January 31, 2025
Stabilization completion date	Zak Humbles, DC PWE	August 30, 2025
SEP completion report due	Zak Humbles, DC PWE	September 31, 2025

Photos or maps related to the project:

Reference original project proposal for supporting information and plans.

Other relevant information

The project is an example of proactive watershed improvement on the part of local organizations, federal, and county governments. Partner organizations are working collectively to identify best practices to economically enable private landowners and managers to address channel issues on private lands all while remaining fully compliant with applicable regulation. These efforts will enable education in Douglas County and beyond to improve watershed health. The bridge element provides a very unique, efficient, and cost-effective channel crossing option for private and governmental land owners. The project team is very pleased and grateful to be able to demonstrate the option to repurpose waste materials in such a productive and effective manner.

Reporting requirements

Biannual status reports

The SEP administrator will submit a biannual project status report to the department's SEP coordinator. Status reports will include, at a minimum, the following information and be submitted using the department's status report form:

- A description of activities completed to date;
- A budget summary table listing funds expended to date by budget category; and
- A discussion of any anticipated changes to the project scope or timeline.

SEP completion report

The SEP administrator will submit a SEP completion report to the department's SEP coordinator within 30 days of project completion and contain at a minimum:

- A detailed description of the project as implemented;
- A summary table identifying project deliverables and tasks along with the associated completion date;
- A description of any operating problems encountered and the solutions thereto;
- A full expense accounting including itemized costs, documented by copies of purchase orders, contracts, receipts or canceled checks;
- Certification and demonstration that the SEP has been fully implemented pursuant to the provisions of the settlement agreement and this SEP agreement;
- A description of the environmental and public health benefits resulting from implementation of the SEP along with **quantification** of the outcomes and benefits;

Additional information will include:

- Examples of brochures, educational or outreach materials developed or produced as part of the SEP; and
- Photographs documenting the project.

Third party SEP administrator conditions and requirements

Only qualified tax-exempt 501(c)(3) nonprofits or governmental organizations are eligible to serve as the SEP administrator. The SEP administrator agrees to the following SEP conditions and requirements:

- I. Maintain the SEP funds paid by the regulated entity in an independent SEP account and draw funds from the account as-needed for the purposes outlined in this SEP agreement.
- II. Communicate issues and concerns related to the SEP promptly to the department SEP coordinator.
- III. If the SEP administrator elects to publicize the name of a violator in connection with the SEP either orally or in writing, the SEP administrator must also include the following statement: *"This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for violations of environmental laws and regulations"*.
- IV. Complete the SEP as described in this SEP agreement


- a. Any changes to the approved project scope or timeline must receive prior written approval from the department.
 - b. Budget reallocations of up to 10% of the total SEP payment amount may be made without prior authorization. Budget reallocations of over 10% must first receive written prior authorization from the department.
- V. Complete the SEP within the time frame(s) indicated in this SEP agreement. If the SEP administrator is unable to meet the SEP agreement time frame(s) for the completion of the SEP, the SEP administrator may request a deadline extension in writing from the department no later than 30 days prior to the deadline.
- VI. In any of the following situations, all funds remaining in the SEP account shall be released to the department within 30 days of the department's written request:
- a. The SEP administrator fails to complete the project or submit the SEP completion report;
 - b. The project has been fully implemented and there are still funds remaining in the SEP account; or
 - c. The department terminates the SEP for failure of the third party SEP administrator to adhere to this SEP agreement.
- VII. Make available, at the department's request, all records pertaining to the SEP.
- a. The SEP administrator shall maintain a complete file of all records, documents, communications, and other materials that pertain to the operation of the SEP or the delivery of services under the SEP agreement. Such files shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies and services.
 - b. The SEP administrator authorizes the department to perform audits and/or inspections of its SEP records, at any reasonable time during the implementation of the project and for a period of one (1) year following the completion of the project.



Failure to adhere to any of the above conditions and requirements may result in the termination of the SEP and/or no further SEP referrals.

This section to be completed in the event of a SEP agreement only


Certification statement


I, Chair, Board of County Commissioners of the County of Douglas, certify on behalf of Douglas County, that Douglas County is not required or has not previously committed to perform this project and agrees to the SEP conditions and requirements detailed in this document.


Signed by:

9/26/2024
E5CD14592431405...
George Teal

Signed by:

ATTEST
Signed by:

/27/2024
768E2E33E002495...
Hayley Hall
Clerk to the Board

Chair, Board of County Commissioners of the County of Douglas

DocuSigned by:

9/16/2024
573DD015549D4F7...
Chris Pratt
Sr. Asst. County Attorney

Signed by:

2024
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Andrew Copland
Director of Finance

Signed by:

9/16/2024
B5C95B8DCFA84AA...
Doug Debord
County Manager

Department use only

This SEP has been reviewed and approved by the Colorado Department of Public Health and Environment.

Nathan T. Moore

Digitally signed by Nathan T. Moore
Date: 2024.09.03 12:36:43 -06'00'

Signed and dated
Nathan Moore, Clean Water Program Manager, Water Quality Control Division
Colorado Department of Public Health and Environment

Alex Scherer

Digitally signed by Alex Scherer
Date: 2024.09.03 12:55:06 -06'00'

Signed and dated
Alexander Scherer, Supplemental Environmental Projects Coordinator
Division of Environmental Health and Sustainability
Colorado Department of Public Health and Environment

Appendix (if needed)