

# UCFRB RESTORATION GRANTS

## 2009 APPLICATION REVIEW GUIDELINES

### Introduction

The January 2007 *UCFRB Restoration Plan Procedures and Criteria (RPPC)* provides the framework for expending Restoration funds and describes the criteria to be used to evaluate Restoration Grant Projects. To help in these evaluations, the NRDP developed the following Application Review Guidelines based on the *RPPC*. These Guidelines categorize the likely manner in which restoration projects meet or address a particular criterion. For example, for technical feasibility, projects are categorized as reasonably feasible, uncertain feasibility, or not feasible. These categories provide a framework to assist in evaluating and comparing projects consistently. Reviewers should note that it is the explanatory text for each criterion provided in the detailed Project Criteria Narratives, not the titles provided in this guidance to categorize projects that forms the basis of judging how well a project addresses a particular criterion. The titles/headers should not be misconstrued to denote a certain level of ranking or adequacy in meeting the *RPPC* criteria. In addition, certain projects may have unique aspects for a certain criterion for which none of the broad categories provided herein are appropriate.

### STAGE 1 CRITERIA REQUIRED BY LEGAL CONSIDERATIONS

#### 1. TECHNICAL FEASIBILITY

**General Considerations:** Reviewers should bear in mind that the ultimate question to be answered under this criterion is: To what degree is the project likely to achieve its objectives? As per DOI regulations, “Are the technology and management skills necessary to implement the project well known and does each element of the plan have a reasonable chance of successful completion in an acceptable period of time?” To evaluate both the technology aspects and management aspects, the application asks for a scope of work as well as information regarding successful application of the selected technology to similar sites. We are not just evaluating whether a particular technology has been successfully applied in the past, but also whether it will work as applied to this particular project as planned by the applicant.

**Reasonably Feasible:** The following descriptions apply to a project that is “Reasonably Feasible.”

- The project employs well-known and accepted technology in design, engineering and implementation components of the project, and/or;
- The project applicant demonstrates that any innovative technologies proposed in the project are reasonably likely to achieve their stated objectives.
- Any uncertainties/issues requiring future resolution associated with the project are insignificant.

- There is a reasonable degree of confidence that the technologies proposed to be utilized in the project (whether well-known and accepted or experimental or innovative) can be applied to the project site to achieve their stated objectives.
- The project applicant demonstrates management skills necessary to implement the technologies at the project site in an acceptable period of time.

Based on these findings, the project is “Reasonably Feasible,” and is therefore reasonably likely to achieve its objectives.

**Potentially Feasible:** Projects in this category have a few uncertainties that could be significant but it appears they can be resolved and the project can achieve its objectives.

**Uncertain Feasibility:** If any of the following descriptions apply to a project that otherwise satisfies the description of a “Reasonably Feasible” project, then the project is of “Uncertain Feasibility.”

- It is uncertain whether any innovative or experimental technologies proposed in the project are likely to achieve their stated objectives.
- There are many significant uncertainties associated with the project that require future resolution.
- It is uncertain whether the technologies proposed to be utilized in the project (whether well known and accepted or experimental or innovative) can be applied to the project site to achieve their stated objectives.
- It is uncertain whether the project applicant demonstrates management skills necessary to implement the technologies at the project site in an acceptable period of time.

Based on these findings, the project is of “Uncertain Feasibility,” and therefore the likelihood of the project achieving its objectives is uncertain.

**Not Feasible:** The conclusion that a project is “Not Feasible” may be based on one or more of several possible findings, including:

- Technologies (or a technology) proposed in the project are (is) not likely to achieve their (its) stated objectives.
- The project applicant does not demonstrate management skills necessary to implement the technologies (technology) at the project site in an acceptable period of time.

Based on these findings, the State concludes that the project is “Not Feasible,” and therefore not likely to achieve its objectives.

## **2. RELATIONSHIP OF EXPECTED COSTS TO EXPECTED BENEFITS**

**General Consideration:** Pursuant to this criterion, reviewers should evaluate to what extent a project’s costs are commensurate with the benefits it provides. All costs and benefits, both direct and

indirect, should be considered in this evaluation. Costs include monetary and other costs associated with the project. Because some project benefits and costs may be hard to quantify, reviewers should not attempt to assign a monetary value to all costs and benefits.

*Note: Because this criterion involves a weighting of all public natural resource and service benefits expected to be derived from a project against all costs associated with the project, it is suggested that reviewers undertake this evaluation only after completing all other Stage 1 and Stage 2 criteria evaluations. If the project is part of a larger project, reviewers should evaluate the costs/benefits from the perspective of the benefits the project achieves by itself and its costs, as well as the benefits of the larger project and its costs. This criterion will ultimately be used to relatively compare projects. At this stage, however, the evaluation is confined to assessing the degree to which the project's costs are commensurate with the project's benefits.*

**High Net Benefits:** Project benefits significantly outweigh/exceed costs associated with the project.

**Net Benefits:** Project benefits outweigh/exceed costs associated with the project.

**Commensurate Benefits and Costs:** Project benefits are generally commensurate with, or proportionally equal to, costs associated with the project.

**Net Costs:** Project costs outweigh/exceed benefits to be gained from the project.

**High Net Costs:** Project costs significantly outweigh/exceed benefits to be gained from the project.

**Uncertain:** There are some uncertainties to the project that lend variability to the cost:benefit relationship or there is an insufficient basis upon which to judge this relationship.

### **3. COST-EFFECTIVENESS**

**General Consideration:** The analysis of cost effectiveness evaluates whether a particular project accomplishes its goals the least costly way possible, or whether there is a better alternative. For example, if the project replaces a service, is this the most cost-effective way to replace that service? In our application guidelines, we asked applicants to provide:

1. A description of alternatives to the proposed project that were considered, including the no-action alternative;
2. A comparison of the benefits and costs of each alternative (to the extent possible); and
3. Justification for the selection of the preferred alternative.

*Note: Whereas the previous criterion compared all of the costs and benefits associated with the project as proposed by the applicant, this criterion requires reviewers to compare the project as proposed with alternative methods of accomplishing the same or substantially similar goals. Reviewers should not limit this evaluation to the alternatives discussed by applicants. If the applicant does not discuss an obvious alternative, reviewers should consider that alternative in reaching their conclusions on cost-effectiveness.*

**Cost Effective:** The applicant provides a complete and thorough analysis and the selected alternative is most cost-effective.

**Likely Cost Effective:** Although the applicant only provided a limited analysis of alternatives, based on available information, the State concludes that the selected alternative is likely to be cost-effective.

**Potentially Cost Effective:** There are some unknowns regarding the project such that the State can not definitively conclude whether it is or is not cost-effective.

**Not Cost Effective:** A suitable alternative exists that will produce the same or similar level of benefits, but at significantly lower costs.

**Uncertain:** Insufficient information is available to conclude that the selected alternative is likely to be cost-effective.

#### **4. ENVIRONMENTAL IMPACTS**

**General Consideration:** To what degree will the project adversely impact the environment? Reviewers will evaluate to what degree the applicant has properly identified and addressed any potential short-term or long-term adverse impacts that significantly affect the quality of the human environment. For Montana Environmental Policy Act (MEPA) compliance, we will need to assure that all adverse environmental impacts and reasonable alternatives have been adequately characterized and considered during decision-making. If this assurance is uncertain, we may conduct some further evaluation or seek supplemental information.

*Note: In the application, we divided our information requests to applicants regarding the impacts to the human environment into “environmental impacts” and “human health and safety” components. In this section, reviewers should consider applicant responses in the “environmental impacts” section as set forth in the application. In the following section, reviewers should consider applicant responses in the “human health and safety” section as set forth in the application. For assistance with MEPA terminology, please refer to Attachment A.*

**No Adverse Impacts:** Without mitigation, the project presents no potential adverse impacts, either significant or minor, to the environment.

**No Significant Adverse Impacts:** Without mitigation, the project presents no potential significant adverse impacts to the environment. The project involves the potential for some minor adverse environmental impacts that do not rise to the level of significance.

**Short-Term Adverse Impacts with Mitigation:** The project presents potential significant short-term adverse environmental impacts. Mitigation measures, however, are included in the project that reduce otherwise significant adverse environmental impacts to below the level of significance. Mitigation that reduces significant adverse environmental impacts to below the level of significance results in a finding of no significant adverse impacts.

**Long-Term Adverse Impacts with Mitigation:** The project presents potential significant long-term adverse environmental impacts. Mitigation measures, however, are included in the project that reduce otherwise significant adverse environmental impacts to below the level of significance.

Mitigation that reduces significant adverse environmental impacts to below the level of significance results in a finding of no significant adverse impacts.

**Significant Adverse Impacts with Insufficient Mitigation:** The project presents potential significant adverse environmental impacts, either short-term or long-term, and includes no (or insufficient) mitigation measures to reduce the otherwise significant impacts to below the level of significance.

## **5. HUMAN HEALTH AND SAFETY IMPACTS**

**General Consideration:** To what degree will the project have an adverse impact on human health and safety? If this is uncertain, further evaluation may be conducted or supplemental information may be gathered.

**No Adverse Impacts:** Without mitigation, the project presents no potential adverse impacts, either significant or minor, to human health and safety.

**No Significant Adverse Impacts:** Without mitigation, the project presents no potential significant adverse impacts to human health and safety. The project involves the potential for some minor adverse human health and safety impacts that do not rise to the level of significance.

**Short-Term Adverse Impacts with Mitigation:** The project presents potential significant short-term adverse human health and safety impacts. Mitigation measures, however, are included in the project that reduce otherwise significant adverse human health and safety impacts to below the level of significance. Mitigation that reduces significant adverse human health and safety impacts to below the level of significance results in a finding of no significant adverse impacts.

**Long-Term Adverse Impacts with Mitigation:** The project presents potential significant long-term adverse human health and safety impacts. Mitigation measures, however, are included in the project that reduce otherwise significant adverse human health and safety impacts to below the level of significance. Mitigation that reduces significant adverse human health and safety impacts to below the level of significance results in a finding of no significant adverse impacts.

**Significant Adverse Impacts with Insufficient Mitigation:** The project presents potential significant adverse human health and safety impacts, either short-term or long-term, and includes no (or insufficient) mitigation measures to reduce the otherwise significant impacts to below the level of significance.

## **6. RESULTS OF SUPERFUND RESPONSE ACTIONS**

(Readily Available Information)

**General Consideration:** This criterion considers the results, either existing or anticipated, of completed, planned, or anticipated (if there is a reasonable measure of confidence in the anticipated action) UCFRB Superfund response actions. To what degree would the project be consistent with, augment or, alternately, interfere with or duplicate the results of such actions, including Superfund investigations and evaluations?

*Note: A finding of inconsistency with response actions will usually, but not always, mean that the action is inappropriate or unjustifiable. As stated in the RPPC, the State will tend to favor projects that augment response actions rather than undo a response action. If, however, the State considers a response action to be ineffective and non-beneficial, then interference or inconsistency with the response action may positively improve restoration of natural resources to baseline. This should be assessed on a case-by-case basis. If necessary, reviewers should utilize the form attached as Attachment B to record any additional information pursuant to this criterion not included in the application and required for complete evaluation of the project.*

**Positive Coordination:** The project coordinates with and augments the results of an effective Superfund action(s).

**Consistent:** The project may or may not augment the results of an effective Superfund response action(s), but it will not interfere with or duplicate the results of such an action(s).

**Inconsistent but Potentially Beneficial:** The project would interfere with or duplicate the results of an ineffective Superfund action(s).

**Inconsistent:** The project would interfere with or duplicate the results of an effective Superfund action(s).

## **7. RECOVERY PERIOD AND POTENTIAL FOR NATURAL RECOVERY**

(Readily Available Information)

*Note: If necessary, reviewers should utilize the form attached as Attachment B to record any additional information pursuant to this criterion not included in the application and required for complete evaluation of the project.*

**General Consideration:** Will the proposed restoration project affect the time frame for recovery of the injured resource and if so, to what degree? In addition to information presented by the project applicant, reviewers should rely on the 1995 Restoration Determination Plan and backup injury assessment reports to estimate natural recovery potential for injured resources addressed by the project. For projects that involve actual restoration of natural resources and, consequently, services, this criterion aims at determining just how well the project enhances the recovery period – does it significantly hasten that recovery? This criterion also evaluates the potential for natural recovery of an injured resource. If a resource is expected, on its own, to recover in a short period of time, a restoration action may not be justified.

*Note: Given that the State recovered damages for past lost value of natural resources and services, it is not critical that all replacement projects consider the potential for recovery of the injured resource or services being replaced. This consideration may be relevant, however, when comparing replacement projects and relatively weighing the necessity of replacing one service or resource over another. For example, one project may replace services that will recover naturally in one year, while another project replaces services that will not recover naturally for 500 years. Depending on the service or natural resource replaced, the State may favor one of these projects over the other, based on the fact that the services or natural resources replaced will naturally recover in a short period of time for one project and not the other. For this reason, reviewers should consider recovery potential in the context of replacement projects.*

**Reduces the Recovery Period:** The project enhances recovery potential of the injured resource and/or services provided there by reducing the time in which they will recover to baseline.

*Note: This is a qualitative evaluation that should be assessed on a scale ranging from slight enhancement to complete restoration/replacement to baseline.*

**May Reduce the Recovery Period:** It is possible but not certain that the project may reduce the time in which the injured resources and/or services provided thereby will recover to baseline.

**No Effect on Recovery Period:** The project most likely will not change the time frame for recovery.

**Increases Recovery Period:** The project diminishes recovery potential of the injured resource and/or services provided thereby by lengthening the time in which they will recover to baseline.

## **8. APPLICABLE POLICIES, RULES AND LAWS**

(Readily Available Information)

**General Consideration:** To what degree is the project consistent with all applicable policies of state, federal, local and tribal government, including the *RPPC*, and in compliance with applicable laws and rules, including the consent decree?

The application requested information from applicants regarding four sub-issues: (1) permits obtained and any other permits required to complete the project, including pertinent dates; (2) deeds, easements or right-of-way agreements required to complete the project; (3) communication and coordination with local entities; and, (4) the effect, and consistency/ inconsistency with other laws, rules, policies, or consent decree requirements. The State may supplement applicant's information to the extent necessary to assess consistency with applicable policies and compliance with applicable laws and rules.

*Note: For this criterion, applicants for projects over \$10,000 were only required to submit readily available information. Applicants for projects of \$10,000 or under were not required to address this criterion. Thus, the State may need to supplement information to evaluate this criterion. If necessary, reviewers should utilize the form attached as Attachment B to record any additional information pursuant to this criterion not included in the application and required for complete evaluation of the project.*

**Consistent/Sufficient Information Provided:** The applicant has provided sufficient information to make the following determinations:

- All permits necessary to complete the project on schedule are identified and obtained, or reasonable assurance is provided that they will be obtained.
- All deeds and easements or rights-of-way necessary to complete the project on schedule are identified and obtained, or reasonable assurance is provided that they will be obtained.

- As necessary, the applicant has demonstrated that communication and coordination with local entities has occurred, or reasonable assurance is provided that such communication and coordination will occur.
- The applicant has demonstrated measures taken to comply with, and that the project is otherwise consistent with, other laws, rules, policies, or consent decree requirements.

**Consistent/Insufficient Information Provided:** Based on information provided by applicant and supplemented by the State on Attachment B, it has been demonstrated that the project is consistent as described above.

**Inconsistent:** After supplemental information has been obtained by the State (if necessary), the State concludes that the project may not be implemented consistent with policies of state, federal, local and tribal government, including the *RPPC*, or in compliance with applicable laws and rules, including the consent decree.

## 9. RESOURCES OF SPECIAL INTEREST TO THE TRIBES AND DOI

(Readily Available Information)

**General Consideration:** Are any of the following located in the vicinity of the proposal? This criterion will require NRDP consultation with Tribes and DOI. For affirmative response, indicate whether the project may have a positive or negative impact on Tribal cultural resources or Tribal religious sites (as defined in the MOA) and/or natural resources of special environmental, recreational, commercial, cultural, historical, or religious significance to the Tribes or DOI. Projects of potential negative impact require special consideration according to the provisions of the MOA. If necessary, reviewers should utilize the form attached as Attachment B to record any additional information pursuant to this criterion not included in the application and required for complete evaluation of the project.

**Beneficial Impact:** Project will have or may have beneficial impacts on these special sites/resources.

**No Impact:** Project has no adverse impacts on these special sites/resources.

**Minor Adverse Impact:** Project has potential minor adverse impacts on these special sites/resources but protective measures have been integrated or can be easily integrated without significant project changes.

**Major Adverse Impact:** The project has potential major adverse impacts on these special sites/resources that will require further consideration under terms of the MOA.

## STAGE 2 CRITERIA REFLECTING MONTANA POLICIES

### 10. PROJECT LOCATION

**General Consideration:** This criterion requires evaluation of the geographic proximity of the project to the injured resources it proposes to restore or replace. The *RPPC* and application instructions express a preference for restoration (or replacement) projects that occur at or near the site

of injury, with the exception of Big Blackfoot River native trout restoration or replacement activities (see specific instructions below). There is no absolute scale of distance to determine proximity. Rather, proximity may be judged independently for each project, depending on a number of factors including the natural resource injury addressed and the geographic extent of benefits that may accrue from the project.

*Specific instructions regarding Big Blackfoot River native trout restoration or replacement activities: For projects on the Big Blackfoot River watershed outside of the Milltown Dam area that an applicant states are intended to restore native trout that cannot, from an economic or practical standpoint, be restored in the UCFRB, categorize the project into the “Big Blackfoot Exception” below. Analyses conducted pursuant to other criteria will determine whether the project will actually accomplish what it says it will. For the purposes of the “Big Blackfoot Exception” only, rely on applicant’s statement for this criterion.*

**Within Basin and Proximate:** All or most of the restoration or replacement activities associated with this project will be conducted at or reasonably near the site of natural resource injury to be addressed through the project.

**Within Basin and Proximate/Other:** Some of the restoration or replacement activities associated with this project will be conducted at, or reasonably near, the site of natural resource injury to be addressed through the project. Some of the restoration or replacement activities associated with this project will be conducted at other locations away from the site of natural resource injury to be addressed through the project.

**Within Basin:** All or most of the restoration or replacement activities associated with this project will be conducted at a location that is within the UCFRB but away from the site of natural resource injury to be addressed through the project.

**Outside But Serves the Basin:** While the project is located outside the Basin, it services users inside the Basin.

**Big Blackfoot Exception:** Applicant states that this project proposes native trout restoration or replacement activities located in the Big Blackfoot River watershed which cannot, due to practical or economic considerations, be conducted within other areas of the UCFRB.

**Not Applicable:** The project is a research or monitoring project.

## **11. ACTUAL RESTORATION OF INJURED RESOURCES**

**General Consideration:** The *RPPC* states that actual restoration of the resources that are injured should be given priority. This criterion requires evaluation of whether, and to what extent, the project will restore injured natural resources that were the subject of the Montana v. ARCO lawsuit.

*Note: The term “restore” under this criterion is used in its specific meaning, i.e., actions are designed to return injured resources and services provided thereby to baseline conditions or accelerate the natural recovery process.*

**Restoration:** All aspects of the project are intended to accomplish restoration of an injured natural resource.

**Restoration/Other:** Some aspects of the project are intended to accomplish restoration of an injured natural resource.

**Contributes to Restoration:** Although the project is not intended to directly accomplish restoration of an injured natural resource, some aspects of the project contribute to the restoration of an injured natural resource.

**May Contribute to Restoration:** Although the project is not intended to directly accomplish restoration of an injured natural resource, some aspects of the project may contribute to the restoration of an injured natural resource.

**No Restoration:** The project is not intended to accomplish restoration of an injured natural resource, nor is it likely to contribute to restoration of an injured natural resource.

## **12. RELATIONSHIP BETWEEN SERVICE LOSS AND SERVICE RESTORATION**

**General Consideration:** The *RPPC* states that proposed restoration projects (general sense) that closely link the services that are the project's focus with the service flows that have been impaired, will be favored over projects that do not. To address this criterion, reviewers should examine the connection between the services that a project seeks to provide or augment and the services lost or impaired as a result of natural resource injuries.

*Note: Complex projects may involve a combination of the following categories. Reviewers should note which aspects of each project fall into each of the categories.*

**Same/Substantially Similar:** The services restored or augmented by the project are the same or substantially equivalent to services lost or impaired due to natural resource injury.

**Similar:** The services restored, augmented, or replaced by the project are not the same or equivalent to, but are similar to those lost or impaired due to natural resource injury.

**Dissimilar:** There is no connection between the services lost or impaired and the services provided or augmented by the project.

## **13. PUBLIC SUPPORT**

**General Consideration:** What is the extent of public support for the project demonstrated in the application?

For this criterion, the State will identify the number of letters received by the State in either support or opposition to the project and identify the entities providing these letters. The evaluation conducted pursuant to these instructions is based exclusively on information available at the time of the evaluation, which is primarily the letters of support provided in an application. Subsequently, public support may be demonstrated throughout the funding selection process (e.g., at the pre-draft and draft review stages). This evaluation will need to be updated at each stage in the funding selection process. Public comment may demonstrate further support, opposition, or a mixture of support and opposition.

## **14. MATCHING FUNDS**

**General Consideration:** To what extent does the project entail cost sharing?

For this criterion, the State will identify the amount of matching funds and indicate how much are cash contributions and how much are in-kind contributions. The State will calculate matching funds by determining the percentage of the total project costs for activities under the project's scope of work to be funded by other sources besides Restoration funds. For projects that are part of a larger project for which future funding will be sought, the State will only consider the matching funds dedicated to the phase of the project that is to be funded by Restoration funds. For land acquisition projects, the State will accept as matching funds payments or donations that make up the difference between the funding request and the appraised value.

*Note: If necessary, reviewers will need to consult matching fund entities to determine the likelihood of matching funds. The State's determination of matching funds will not always match the applicant's determination.*

## **15. PUBLIC ACCESS**

**General Consideration:** This criterion evaluates whether a project will affect public access and the positive or negative aspects of any increased or decreased public access associated with the project. Public access is not required of every project, nor is it relevant to all projects.

**Increased Access Beneficial:** The benefits from the new or enhanced public access created by the project outweigh the adverse impacts associated with this increased access.

**Increased Access Detrimental:** The adverse impacts associated with new or enhanced public access created by the project outweigh the benefits associated with increased access.

**No Access Beneficial:** While public access is relevant and could have been a project component, increased access would have been detrimental to the restoration of injured or replacement natural resources in the long-term.

**No Access Change:** The existing acreage and methods of public access would not change as a result of the project.

**Not Relevant:** Public access is not a component of the project, nor is it relevant to the project.

## **16. ECOSYSTEM CONSIDERATIONS**

**General Consideration:** This criterion examines the relationship between the project and the overall resource conditions of the UCFRB. The State will favor projects that fit within a broad ecosystem concept in that they improve a natural resource problem(s) when viewed on a large scale, are sequenced properly from a watershed management approach, and are likely to address multiple resource problems.

**Positive:** The project positively fits within a broad ecosystem concept in that it improves a natural resource problem when viewed on a large scale, and/or is sequenced properly from a watershed management approach, and/or addresses multiple resource problems. This category would apply to

projects in the Silver Bow Creek watershed that are consistent with the priorities established in the *Silver Bow Creek Watershed Restoration Plan*.

**Negative:** The project does not fit within or is inconsistent with a broad ecosystem concept and this makes it less likely to be effective in the long-term. The project is one that should wait from an ecosystem standpoint until certain environmental conditions occur. For example, problems in the upper portion of a watershed may need to be corrected first before work is conducted downstream. This category would apply to projects in the Silver Bow Creek watershed that are inconsistent with the priorities established in the *Silver Bow Creek Watershed Restoration Plan* and for which insufficient justification has been provided on why it should be funded anyway.

**Not Relevant:** The project is a service project for which ecosystem considerations are not relevant.

## **17. COORDINATION AND INTEGRATION**

**General Consideration:** How well is the project planned to integrate with other ongoing or planned actions in the UCFRB? This criterion addresses coordination with other projects besides remedial actions, which is addressed under Criterion #6. Restoration projects that can be efficiently coordinated with other actions may achieve cost savings.

**Coordinates/Integrates:** The project coordinates and achieves efficiencies not otherwise possible through coordination with other actions (besides remedial actions).

**None:** The project does not coordinate/integrate with other actions.

**Conflicts:** Project may interfere with significant, beneficial on-going or planned actions or is one with missed coordination opportunities.

## **18. NORMAL GOVERNMENT FUNCTIONS**

(Readily Available Information)

**General Consideration:** The *RPPC* states those activities, for which a governmental agency would normally be responsible or that would receive funding in the normal course of events, (absent the UCFRB Restoration Fund) will not be funded. The Restoration Fund may be used, however, to augment funds normally available to government agencies to perform a particular project if such cost sharing would result in implementation of a restoration project that would not otherwise occur through normal agency function. For this criterion, reviewers should determine whether the project is intended to accomplish activities that would otherwise not occur through normal agency function.

*Note: If necessary, reviewers should utilize the form attached as Attachment B to record any additional information pursuant to this criterion not included in the application and required for complete evaluation of the project.*

**Outside Normal Government Functions:** The project does not involve activities normally conducted by government agencies or obligations of governmental entities under law for which they receive funding or for which they are responsible for securing funding.

**Within but Augments Normal Government Functions:** The project involves activities that are normally conducted by governmental agencies, but it augments such activities beyond a level required by law and for which funding is presently insufficient to implement the project. This category would apply to activities for which government agencies typically seek funds outside of their normal operating funds, such as supplemental grant funds.

**Replaces Normal Government Functions:** The project involves activities that are typically funded through a government's normal operating funds or obligations of governmental entities under law.

## **STAGE 2 CRITERIA – LAND ACQUISITION PROPOSALS ONLY**

### **19. DESIRABILITY OF PUBLIC OWNERSHIP**

**General Consideration:** This criterion assesses the potential benefits and detriments associated with putting privately owned land, or interests in land, under public ownership. Although the State has established a policy that favors actions that actually improve the condition of injured resources and services, land acquisition may be an appropriate replacement alternative.

**Restoration Beneficial:** The benefits of the acquisition to restoration of injured natural resources and services are considered major and the detrimental aspects of public ownership, if any, are considered minor.

**Replacement Beneficial:** The benefits of the acquisition to replacement natural resources and services are considered major and the detrimental aspects of public ownership, if any, are considered minor.

**Detrimental:** The detrimental aspects of putting privately owned lands into public ownership outweigh the benefits derived to public natural resources and services derived from the project.

### **20. PRICE**

**General Consideration:** To what extent is the land/interest being offered for sale at fair market value?

**Below Fair Market Value:** Documentation indicates property is being acquired below fair market value.

**At Fair Market Value:** Documentation indicates the property is being acquired at fair market value.

**Above Fair Market Value:** Documentation indicates property is being acquired above market value.

**Uncertain:** Insufficient information is available at this time for comparison to fair market value.

## **STAGE 2 RESEARCH AND MONITORING CRITERIA**

These criteria apply to any research activity, whether or not it constitutes the entire project or a portion of the project. These criteria also apply to projects for which monitoring is a significant focus

of the project, but not to projects that simply have a monitoring component tied to judging the project's effectiveness. Through minimum qualification determinations, we have already established that the proposed research or monitoring project pertains to restoration of injured natural resources in the UCFRB. These two criteria are designed to distinguish the level of benefits these projects will have on restoration of injured natural resources.

## **21. OVERALL SCIENTIFIC PROGRAM**

**General Consideration:** To what extent is the monitoring or research project coordinated or integrated with other scientific work in the UCFRB?

**Coordinates:** The project will augment and not duplicate past and on-going scientific work, focusing on existing data gaps. The applicant has also demonstrated thorough knowledge of and coordination with other scientific work in the Basin.

**Does not Coordinate:** The project does not involve any coordination or integration with other scientific work in the Basin or may be duplicative.

**Uncertain:** Insufficient information has been provided to determine the level of coordination/integration with other scientific work in the UCFRB.

## **22. ASSISTANCE WITH RESTORATION PLANNING**

**General Consideration:** To what extent will this project assist with future restoration efforts of either injured resources or replacement natural resources?

**Major Benefits:** The project will be of major benefit to future restoration efforts in terms of needed information on the status and condition of natural resources and recovery potential/ constraints or assistance with restoration project planning, selection, implementation, and monitoring.

**Moderate Benefits:** The project will be of moderate benefit to future restoration efforts in terms of needed information on the status and condition of natural resources and recovery potential/constraints or assistance with restoration project planning, selection, implementation, and monitoring.

**Minor Benefits:** The project will be of minor benefit to future restoration efforts in terms of needed information on the status and condition of natural resources and recovery potential/ constraints or assistance with restoration project planning, selection, implementation, and monitoring.

## ATTACHMENT A

### MEPA Terminology

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The Montana Environmental Policy Act (“MEPA”), Mont. Code Ann. § 75-1-101 through § 75-1-324, requires state agencies to carry out the policies in part 1 of MEPA through the use of a systematic, interdisciplinary analysis of state actions that have an impact on the human environment. To this end, MEPA has two central requirements: agencies must consider the effects of pending decisions on the environment and on people prior to making each decision; and, agencies must ensure that the public is informed of and participates in the decision-making process. Through the “Environmental Impacts” and “Human Health and Safety” analyses, reviewers accomplish this first important requirement of MEPA. This appendix provides basic information regarding MEPA with which reviewers should be familiar before undertaking their analyses of “Environmental Impacts” and “Human Health and Safety” criteria statements.

1. Terminology used in the *RPPC*: short-term, long-term, direct and indirect adverse impacts.

The *RPPC* states that **short-term**, **long-term**, **direct** and **indirect** adverse impacts will be evaluated. “Short-term” and “long-term” adverse impacts are not specifically discussed in MEPA. These terms, however, should be used by reviewers to subjectively categorize the duration of adverse impacts potentially presented by a project.

The Montana EQC guide to MEPA provides the following definitions of “direct” and “secondary” (rather than indirect) impacts.

- **Direct impacts** are those that occur at the same time and place as the action that triggers the event.
- **Secondary impacts** are those that occur at a different location and/or later time than the action that triggers the effect.

2. MEPA evaluations apply to the “human environment.”

Reviewers should be aware that the MEPA analysis of adverse impacts applies to the “**human environment**.” The MEPA definition of the term “human environment” includes, but is not limited to “biological, physical, social, economic, cultural, and aesthetic factors that interrelate to form the environment...[E]conomic and social impacts do not by themselves require an EIS...” but when an EIS is prepared, “economic and social impacts and their relationship to biological, physical, cultural and aesthetic impacts must be discussed.” MEPA Model Rule II (12).

3. What is a “significant” adverse impact, and what is a “minor” adverse impact?

The determination of the “**significance**” of an adverse impact on the human environment involves the consideration of several factors, as set forth in MEPA Model Rule IV. The standard

set forth in this rule is somewhat subjective, and reviewers should be familiar with the rule to make a determination of the significance of adverse environmental impacts. Additionally, there is a library-full of case law (speaking metaphorically) on what constitutes a “significant adverse environmental impact.” Questionable or borderline determinations should be referred for a legal opinion.

MEPA Model Rule IV sets forth the following criteria for determining the significance of an impact on the quality of the human environment:

- (a) the severity, duration, geographic extent, and frequency of occurrence of the impact;
- (b) the probability that the impact will occur if the proposed action occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur;
- (c) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;
- (d) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values;
- (e) the importance to the state and to society of each environmental resource or value that would be affected;
- (f) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or a decision in principle about such future actions; and
- (g) potential conflict with local, state or federal laws, requirements or formal plans.

“**Minor**” adverse environmental impacts are adverse environmental impacts that do not rise to the level of significance.

#### 4. “Mitigation” under MEPA.

**Mitigation** reduces or prevents the undesirable impacts of an action. Mitigation measures must be enforceable. MEPA Model Rules II(14) and V(2)(h) define mitigation as: avoiding an impact by not taking certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of an action and its implementation; rectifying an impact by repairing, rehabilitating, or restoring the affected environment; or, reducing or eliminating an impact over time by preservation and maintenance operations during the life of an action or the time period thereafter that an impact continues. Examples of mitigation include designs, enforceable controls, or stipulations to reduce the otherwise significant impacts to below the level of significance.

## **ATTACHMENT B**

### **Supplemental Information Form (to be utilized by reviewers)**

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#### **Results of Superfund Response Actions – Supplemental Information**

#### **Recovery Period and Potential for Natural Recovery – Supplemental Information**

#### **Applicable Policies, Rules and Laws – Supplemental Information**

- Additional permits necessary to complete the project on schedule.
- Additional deeds, easements or rights-of-way necessary to complete the project on schedule.
- Additional communication and coordination with local entities necessary to complete the project on schedule.
- Additional measures necessary for compliance and consistency with other laws, rules, policies, or consent decree requirements.

#### **Resources of Special Interest to the Tribes and DOI – Supplemental Information**