

STATE OF COLORADO

Colorado General Assembly

Natalie Castle, Director
Legislative Council Staff

Colorado Legislative Council
200 E. Colfax Ave., Room 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@coleg.gov



Ed DeCecco, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 E. Colfax Ave., Room 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Email: olls.ga@coleg.gov

MEMORANDUM

TO: Jessica Presso and Brian Porter

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: Wednesday, June 25, 2025

SUBJECT: Proposed initiative measure 2025-2026 #98, concerning the establishment of a wildlife and ecosystem conservation commission

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

An earlier version of this proposed initiative, proposed initiative 2025-2026 #82, was the subject of a memorandum dated April 30, 2025. Proposed initiative 2025-2026 #82 was discussed at a public meeting on May 2, 2025. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To establish a wildlife and ecosystem conservation commission (commission), including specifying the membership of the commission;
2. To authorize the commission to exercise certain powers, including designating state-specific endangered species and "keystone species," establishing a statewide network of wildlife corridors, approving or disapproving public and private infrastructure projects and land-use practices, imposing and collecting fines and fees, seeking and expending grants from public and private sources, and adopting rules;
3. To establish property tax reductions to incentivize landowners to designate property for participation in the statewide network of wildlife corridors;
4. To enact new requirements and prohibitions for public and private infrastructure projects and land-use practices in order to protect wildlife; and
5. To establish revenue sources to fund the activities of the commission.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado Constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. The initiative describes both a "Landscape Connectivity Commission" (see sections 33-8.5-102 (2)(a) and 33-8.5-104 (3) of the proposed initiative) and a "wildlife and ecosystem conservation commission" (see sections 33-8.5-103 (1) and 33-8.5-104 (1) of the initiative). However, only the latter commission is actually created in the initiative. Do the proponents intend to create one commission or two? If the answer is one, then the proponents should refer to the new commission consistently.

Similarly, the initiative references both a habitat stewardship network and wildlife corridor network. It is unclear whether these are the same network. If so, proponents should consider using one term and possibly include a definition for the term. Since "wildlife corridor" is already a defined term, consider whether it could be incorporated into a new definition for "wildlife corridor

- network." In addition, section 33-8.5-105 (4) of the initiative refers multiple times to "protected areas." Consider either defining the term or, if appropriate, replacing it with the term "wildlife corridor" or "wildlife corridor network."
3. Section 33-8.5-103 (5)(e) of the initiative defines the term "habitat degradation" to include "[s]uppression of natural ecological processes, such as fire or flooding." This language appears to potentially include public and private efforts to prevent and mitigate wildfires as well as the creation and operation of dams and other flood prevention devices. Do the proponents intend to include such efforts and devices in the definition of "habitat degradation"?
 4. Section 33-8.5-103 (6) of the initiative defines the term "harm." However, five of the eight instances of the term "harm" that appear in the initiative are preceded by modifiers: "[S]ignificantly harm" appears twice, "material harm" appears twice, and there is one instance of "ecological harm."
 - a. What is the difference between "significantly harm" and "material harm"?
 - b. The proponents may consider either using the term "harm" consistently, providing definitions for each of the variations on this term that are used in the initiative, or striking the definition of "harm" that appears in section 33-8.5-103 (6) of the initiative.
 5. The last sentence of the definition of "[m]itigation" in section 33-8.5-103 (8) of the initiative reads as follows:

Monetary impact fees may only be used when on-site ecological mitigation is infeasible and must be based on full ecological equivalency.

It is not clear what this sentence means (what is "ecological equivalency"?) or why it is located here in this definition. The "impact fee" is mentioned again in section 33-8.5-105 (5) of the initiative but is not explained further. Typical drafting practice is to place operative language setting forth rights and responsibilities outside of a dedicated definitions section, such as section 33-8.5-103 of the initiative.
 6. In the section 33-8.5-104 (1)(a) of the initiative, it is unnecessary to include the text "referred to in this article 8.5 as the 'commission'" because the word "commission" is defined at 33-8.5-103 (1) of the initiative for the entire article 8.5.

7. The phrase "reintroduction program" is defined in section 33-8.5-104 (10); however, it is not used in the initiative. The word "reintroduction" is used numerous times and the word "reintroduction plan" is used once, in section 33-8.5-107 of the initiative. Consider defining "reintroduction" instead of "reintroduction program."

8. Section 33-8.5-104 (1)(a) of the initiative states the following:

The commission **shall operate with decision-making autonomy and be protected from financial or political interference**, but shall remain administratively housed within the department of natural resources in accordance with section 22 of article IV of the state constitution. [Emphasis added.]

It is unclear what the bold text is intended to mean. Can the proponents provide an example of an existing state commission within an executive branch department that has "decision-making autonomy and [protection] from financial or political interference"?

9. In section 33-8.5-104 (1)(b) of the initiative, the proponents have updated the language concerning the membership of the commission so the language identifies the entities that appoint the commission members. However, each of the commission members appointed pursuant to subsections (1)(b)(I), (1)(b)(II), (1)(b)(V), and (1)(b)(VI) are to be appointed from a list of nominees that is provided by a "panel" of generally described organizations. Section 33-8.5-104 (1)(f) of the initiative describes this "[n]omination panel formation," which requires an appointing authority to issue a call for participation and allows "[e]ligible institutions [to] self-nominate to serve on [a] panel." It is unclear, though, how or whether an appointing authority (or any other entity) may determine whether an institution is, in fact, eligible to serve on such a panel. It is also unclear whether there is any limit to the number of institutions that may serve on a panel or any limit to how many nominees an institution may provide for consideration.

10. Section 33-8.5-104 (1)(e) of the initiative describes the circumstances under which a member of the commission may be removed, but it is unclear regarding who has the authority to remove a commission member. Do the proponents intend that each appointing authority (e.g., the executive director of the department of natural resources) may remove the members that the appointing authority appointed? If so, the proponents should consider stating that "each

appointing authority" may remove for cause a member that they have appointed.

11. Section 33-8.5-104 (2)(a) of the initiative states that the commission is "an enforcement body," and section 33-8.5-107 of the initiative describes penalties for violators of the initiative's provisions concerning wildlife and the enforcement of these penalties. This language concerning penalties and enforcement appears to address behavior that is already addressed in article 6 of title 33, C.R.S., ("Law Enforcement and Penalties - Wildlife") and which may conflict with provisions in article 6. For example:

- a. Section 33-6-110 (1)(a), C.R.S., allows the division of wildlife to bring a civil action to recover possession or value, or both, of any wildlife taken in violation of law. The minimum value of a member of an endangered species is \$1,000.
- b. Section 33-6-113 (2), C.R.S., states that a person who knowingly sells or purchases wildlife or solicits another person in the illegal hunting or taking of wildlife for the purposes of monetary or commercial gain or profit commits a class 5 felony if the wildlife is endangered; and
- c. Section 33-6-117 (1)(b)(I), C.R.S., states that it is a class 5 felony to hunt or take wildlife that is an endangered species and that a violator must pay, "in addition," a fine of at least \$1,000 and no more than \$20,000.

Have the proponents considered the extent to which the enforcement provisions in the proposed initiative may overlap with these existing statutory provisions?

12. Subsections (2)(c)(I) and (2)(d) of section 33-85-104 of the initiative authorize the commission to designate species as endangered in Colorado, and subsection (2)(d) states that such designation "shall complement, and not conflict with, protections established under the federal Endangered Species Act of 1973." Do the proponents intend to authorize the commission to designate a species as endangered in Colorado regardless of whether the species is designated as endangered by federal law?

13. Article 2 of title 33, C.R.S., the "Nongame, Endangered, or Threatened Wildlife and Rare Plant Conservation Act," authorizes the division of parks

and wildlife and the parks and wildlife commission to manage and protect endangered species in Colorado. The initiative appears to authorize the new wildlife and ecosystem conservation commission to perform functions relating to the management of wildlife that are very similar, if not identical in some cases, to the existing functions of the division of parks and wildlife and the parks and wildlife commission. Specifically:

- a. Section 33-2-103 (1), C.R.S., defines "management" as:

...the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels. The term includes the entire range of activities that constitute a modern, scientific resource program including, but not limited to, research, census, law enforcement, habitat acquisition and improvement, and education. Also included within the term, when and where appropriate, is the periodic or total protection of species or populations. "Management" may include artificial propagation to maintain threatened or endangered species populations, in concert with the exercise of water rights, and may also include restriction of stocking of species which are in competition with threatened or endangered species for the available habitat.

- b. Section 33-2-104, C.R.S., requires the division to conduct investigations and issue regulations regarding the management of nongame wildlife;¹
- c. Section 33-2-104.6, C.R.S., requires the division to conduct investigations and surveys of invertebrates to obtain information about population, distribution, habitat needs, limiting factors, and other biological and ecological data in order to determine appropriate conservation and management measures that ensure the continued ability of invertebrates to perpetuate themselves;
- d. Section 33-2-105, C.R.S., requires the parks and wildlife commission to "establish a list of those species and, where necessary, subspecies of

¹ Nongame wildlife" is defined in section 33-1-102 (29), C.R.S., as "all native species and subspecies of wildlife which are not classified as game wildlife by rule or regulation of the [parks and wildlife] commission."

wildlife indigenous to this state which are determined to be endangered or threatened within this state" and review and update the list at least every five years. This section also prohibits the taking, possession, transporting, exporting, processing, selling or offering for sale any wildlife that is on the commission's list of endangered species.

- e. Section 33-2-105.5, C.R.S., concerns the reintroduction of endangered species in Colorado and requires the general assembly to pass a bill before any such species may be reintroduced;
- f. Section 33-2-105.7, C.R.S., concerns the introduction and reintroduction of other species in Colorado and requires the department of natural resources to report to the general assembly regarding such matters;
- g. Section 33-2-105.8, C.R.S., concerns the reintroduction of grey wolves in Colorado;
- h. Section 33-2-105.9, C.R.S., concerns the reintroduction of wolverines in Colorado;
- i. Section 33-2-106, C.R.S., requires the division of parks and wildlife to establish programs for the management of nongame, endangered, or threatened wildlife; and
- j. Section 33-2-107, C.R.S., requires the parks and wildlife commission to adopt rules for the implementation of article 2 of title 33.

Have the proponents reviewed article 2 of title 33, C.R.S., and considered the extent to which the functions of the new commission would overlap with the existing functions of the division of parks and wildlife and the parks and wildlife commission regarding wildlife management?

- 14. Section 33-8.5-105 (3) of the initiative lists incentives for landowners that voluntarily participate in a wildlife corridor network, including a state income tax credit, grant funding, and priority consideration for enrollment in future state conservation incentive programs. The proposed initiative, however, does not establish the parameters of the state income tax credit, grant program, or priority enrollment mechanism indicating how and by whom they would be

administered. For example, tax credits are generally administered by the department of revenue based on specific statutory language concerning parameters such as the credit amount authorized, the taxpayers eligible for the credit, and whether the tax credit would be refundable or would carry forward into future years if the taxpayer does not need to claim the tax credit.² The proponents might consider adding such details into the proposed initiative itself to allow for administration of the tax credit, grant program, and priority enrollment mechanism.

15. Section 33-8.5-107 of the initiative establishes penalties for violations of the proposed initiative based on a person acting "knowingly and willfully" pursuant to subsection (1) of the section or "knowingly and recklessly" pursuant to subsection (2)(a) of the section.

- a. What is the difference between acting "knowingly and willfully" and acting "knowingly and recklessly"?
- b. Subsection (2)(b) provides that penalties for damage "resulting from gross negligence" may be reduced under certain circumstances. Unlike "knowingly and willfully" and "knowingly and recklessly", however, "gross negligence" is not listed as a basis for finding a violation pursuant to section 33-8.5-107 of the initiative. Do you intend that a person acting with gross negligence could be found in violation of the proposed initiative? If so, what specific conduct would amount to a violation if the person engaging in the conduct acted with "gross negligence"?

16. Section 33-8.5-108 (2) of the initiative provides that a statewide sales tax of 0.05% is "hereby established, subject to voter approval" and that "any required ballot language shall clearly state the tax rate and its intended use." Likewise, section 33-8.5-108 (7) of the initiative provides that the sales tax "authorized by this article shall not take effect unless and until approved by a majority of voters at a statewide election."

- a. Do you intend that voter approval of this proposed initiative would itself establish the statewide sales tax? If so, you should remove the "subject to voter approval" and "any required ballot language" portions of the language in subsection (2) of the initiative.

² See part 5 of article 22 of title 39, C.R.S., for examples of state income tax credits.

- b. If you do not intend that voter approval of this initiative would itself establish the statewide sales tax, who is tasked with proposing a ballot measure to establish such statewide sales tax and when must they propose the measure?
17. Section 33-8.5-108 (4) of the initiative provides that civil fines collected for violations of the proposed initiative shall be deposited into the conservation and biodiversity protection fund, which fund the commission would administer to implement the proposed initiative. Often, to avoid an appearance that an agency is assessing penalties for the purpose of raising its own revenue stream, civil penalties are instead credited to the general fund. The proponents might consider having the civil fines credited to the general fund to avoid an appearance that the commission's motivation in assessing fines is to raise revenue for itself.
18. Section 33-8.5-108 (6) of the initiative requires a \$5 million appropriation from the general fund to be used solely for specified purposes, including rule-making. However, the proposed initiative does not authorize the commission to engage in rule-making. Do the proponents intend the commission to have rule-making authority? If so, the proponents should consider adding language expressly authorizing the commission to adopt rules.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. It is standard drafting practice to use SMALL CAPITAL LETTERS to show new language being added to the Colorado Revised Statutes. To find small capital letters in Microsoft Word, go to the Home tab, click the arrow in the bottom right corner of the Font group, and in the Font dialog box, check the Small Caps checkbox under "Effects." The headnotes should remain in lowercase letters.
2. The "SECTION 1." that begins the proposed initiative should be rendered in bold (i.e., **SECTION 1.**). Similarly, in the amending clause, the word "add" should be in bold.

SECTION 1. In Colorado Revised Statutes, **add** article 8.5 to title 33 as follows:

3. The proponents should consider whether initiative sections could be further divided for better readability. It is standard drafting practice to break up a section, paragraph, or subparagraph that has a list of items or multiple discrete parts into additional subsections as needed.

Additionally, no lines of text should appear that are not labeled as a section, paragraph, subparagraph, or sub-subparagraph. Thus, the provision in section 33-8.5-104 of the initiative beginning with "A nomination panel is valid..." should to be incorporated as a paragraph, subparagraph, or sub-subparagraph. The language appears to be intended to continue subsection (1)(b). If this is the intended placement, the language should be identified as subsection (1)(b)(II), which would require some reorganization, as shown below.

(b) **Membership.** (I) THE COMMISSION CONSISTS OF THE
FOLLOWING NINE MEMBERS:
 (A) THREE ACADEMIC ...;
 ...
 (F) ONE WILDLIFE MANAGEMENT EXPERT
(II) A NOMINATION PANEL IS VALID

4. **Punctuation.**

- a. Consider hyphenating the phrase "land use" for clarity when it modifies a noun. For example:
- b. In section 33-8.5-104 (2)(c)(III) of the initiative, hyphenating "land-use" in the phrase "any proposed land use, infrastructure, or development project" helps the reader understand that "land-use," just like "infrastructure" and "development," is modifying the word "project"; and
- c. In section 33-8.5-105 (3)(d)(II) of the initiative, hyphenating "land-use intensity" ensures that is how the readers will understand "land-use" is meant to modify "intensity."

Please review sections 33-8.5-102 (2)(e), 33-8.5-105 (3)(d)(III), and 33-8.5-106 (2) for other examples.

5. **Style.** The following comments concern drafting conventions particular to the Colorado Revised Statutes:

- a. It is unnecessary to include the words "but not limited to" in the definition of "habitat degradation" in section 33-8.5-103 (5) of the initiative and in the criminal penalties provision in section 33-8.5-107 (1)(b) of the initiative

because the language is preceded by the word "including," which itself indicates a nonexhaustive list.

- b. To comply with standard drafting practice, the proponents may refer to "the state" or "Colorado" rather than "the State of Colorado" as currently used in section 33-8.5-104 (2)(b) of the initiative. Additionally, in subsection (2)(b), do not capitalize the word "governor." See technical comment #5 for more information.
- c. It is standard drafting practice to not capitalize common nouns and to only capitalize proper nouns, such as "Colorado." Additionally, do not capitalize the names of governmental agencies. The first letter of the first word of a sentence should be capitalized, regardless of what the word is.

- i. It is unnecessary to use capital letters in the headnotes for any word besides the first word in section 33-8.5-105 of the initiative and for the internal headnotes for each subsection of section 33-8.5-108 of the initiative, but the headnotes should all be in boldface type:

33-8.5-105. Colorado habitat stewardship network – establishment – incentives – requirements. (1) Conservation and biodiversity protection fund created. There is hereby created ...

- ii. In sections 33-8.5-102 (2)(a) and 33-8.5-104 (3) introductory portion of the initiative, do not capitalize the name of the commission;
 - iii. In sections 33-8.5-102 (2)(c) and 33-8.5-105 (1) and (3) of the initiative, do not capitalize the name of the network. Instead, refer to it as the "Colorado habitat stewardship network" or the "wildlife corridor network," whichever term the proponents choose.
 - iv. In sections 33-8.5-103 (7), 33-8.5-104 (2)(d), and 33-8.5-106 (3) of the initiative, only capitalize the words "United States" when citing the United States fish and wildlife service;
 - v. In section 33-8.5-106 (3) of the initiative, only capitalize "Colorado" in Colorado parks and wildlife. Consider also being more specific – do you mean the parks and wildlife commission? Or the division of parks and wildlife?
 - vi. In sections 33-8.5-104 (1)(f) and 33-8.5-107 (3) of the initiative, do not capitalize attorney general. Additionally, in section 33-8.5-104 (1)(f) of the initiative, do not capitalize the name of the department of natural resources or the office of the governor.

- vii. In subsections 33-8.5-108 (1), (2), and (7)(c) of the initiative, do not capitalize the name of the fund; and
- viii. In section 33-8.5-108 (6) of the initiative, do not capitalize general fund.
- d. It is standard drafting practice to use the singular form of a noun whenever possible.
 - i. In section 33-8.5-104 (1)(e) of the initiative, consider using "a commissioner" instead of "commissioners";
 - ii. In section 33-8.5-105 (4) of the initiative, consider using "an incentive" instead of "incentives";
 - iii. In section 33-8.5-105 (5)(c) of the initiative, consider using "An impact fee" instead of "Impact fees";
 - iv. In section 33-8.5-107 (1)(b) of the initiative, consider using "A criminal penalty" instead of "Criminal penalties"; and
 - v. In sections 33-8.5-103 (4), (6), (7), (9), and (10); 33-8.5-104 (1)(d); 33-8.5-105 (3)(b) and (3)(e); 33-8.5-106 (2); and 33-8.5-107 (1), (2)(a), and (4) of the initiative, consider using the more appropriate "a" instead of "any." For example:

"Reintroduction program" means an effort to reestablish ...

An appointee shall not have a financial interest ...

A person who knowingly ...

- e. It is standard drafting practice to avoid beginning a sentence with "No".
 - i. In section 33-8.5-104 of the initiative:
 - 1. In subsection (1)(c), consider changing "No member may" to "A member shall not...";
 - 2. In subsection (1)(d), consider changing "No appointee may" to "An appointee shall not..."; and
 - 3. In subsection (1)(e), consider changing "No commissioner may" to "A commissioner shall not...".

See Technical Comment #6 for an explanation of the suggestions to change "must" to "shall" in these examples.

- ii. In section 33-8.5-105 of the initiative:
 - 1. In subsection (3)(a), consider changing "No landowner is required" to "A landowner is not required..."; and
 - 2. In subsection (3)(c), consider changing "No landowner may" to "A landowner shall not..."
- f. Consider using "money" instead of "funds" in section 33-8.5-108 (5) and (6) of the initiative. Since funds are where money is transferred and held, the word "money" is preferred in the context of those subsections.
- g. In section 33-8.5-106 (2) of the initiative, consider writing "ninety days after receipt," to use more specific time-based language, instead of "ninety days of receipt."
- 6. **Shall vs. Must.** For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), C.R.S., and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), C.R.S., "means that a person or thing is required to meet a condition for a consequence to apply." "'Must' does not mean that a person has a duty." Furthermore, use of the word "may" means that the action, condition, or requirement described is optional, not mandatory.
 - a. In section 33-8.5-103 (8) of the initiative, the proponents should consider whether the use of monetary impact fees described is optional or mandatory.
 - b. In section 33-8.5-104 of the initiative:
 - i. In the last sentence of subsection (1)(c), because a duty cannot be imposed upon "vacancies," proponents should consider changing "Vacancies shall" to "Vacancies must";
 - ii. In subsection (1)(e), if proponents intend that commissioners cannot be removed without cause, proponents should consider changing "may" to " shall." For this section, see also Technical Comment #5e regarding not beginning sentences with a negative.
 - iii. In the last sentence of subsection (2)(b), because a duty cannot be imposed on "authority," proponents should consider changing "shall not extend" to "does not extend"; and
 - iv. In subsections (2)(c) and (2)(d), proponents should consider whether the intention is to impose duties or convey powers to the commission

and ensure the correct usage of "shall" and "may" accordingly. Also, in subsection (2)(d), the second sentence should be changed to "Such designations must complement."

- c. In section 33-8.5-108 (4) of the initiative, the proponents should consider changing the second sentence to: "The penalties must be proportional..."

7. **Consistency.** It is standard drafting practice to use consistent terms where possible.

- a. The initiative references both a habitat stewardship network and wildlife corridor network. It is unclear whether these are the same network. If so, proponents should consider using one term and possibly include a definition for the term.
- b. In section 33-8.5-104, the appointees to the commission are referred to as "members" (in subsection (1)(b)) and "commissioners" (in subsection (1)(e)).
- c. "Department" and "executive director" are defined for the entire title 33 in section 33-1-102, C.R.S. Proponents can use the defined terms throughout the initiative instead of spelling out "department of natural resources" and "executive director of the department of natural resources."

8. **Lists.** Proponents should consider following standard drafting conventions when incorporating lists in the initiative.

- a. The words "and" and "or" should be added at the end of the penultimate item in a list. Please consider adding "and" or "or," as appropriate, throughout the initiative. However, if the provision includes within it a complete sentence with a period, the provision should end in a period, not a semicolon.

For example, section 33-8.5-102 (1)(d) of the initiative should end with a period rather than a semicolon, because that subsection (1)(d) marks the end of the list. Section 33-8.5-104 (2)(c)(III) of the initiative should also end in a period, rather than a semicolon, because it has two sentences. The same issue occurs in section 33-8.5-107 (1)(a).

- b. Proponents should consider adding "and" or "or" to sections 33-8.5-104 (3)(c), 33-8.5-108 (1)(c), 33-8.5-108 (3)(c) (see the suggested change in Technical Comment #8cII for more information), and 33-8.5-109 (1)(c) of the initiative.
- c. An introductory portion is a sentence fragment that leads into a list to form a complete sentence. An introductory portion should be able to read

together with each separate paragraph, subparagraph, or sub-subparagraph that flows from the introductory portion as if each one is a separate sentence.

i. In section 33-8.5-105) of the initiative:

1. In subsection (3)(b), landowner eligibility for incentives is addressed in both the introductory portion and the subparagraphs that flow from it. Proponents may want to consider reworking this subsection as follows:

(b) A PRIVATE LANDOWNER WHO DESIGNATES AT LEAST THIRTY PERCENT OF THEIR PROPERTY FOR PARTICIPATION IN THE WILDLIFE CORRIDOR NETWORK IS ELIGIBLE FOR ONE OR MORE OF THE FOLLOWING INCENTIVES:

...

(II) GRANT FUNDING OR COST-SHARE ASSISTANCE, SUBJECT TO AVAILABILITY AND COMMISSION APPROVAL; AND

2. Subsection (3)(d) is structured like an introductory portion, but subsection (3)(d) does not end in a colon. Because this subsection does not appear to need an introductory portion, it should be slightly reorganized, as shown below:

(d) (I) ELIGIBILITY FOR INCENTIVES IS SUBJECT TO ANNUAL VERIFICATION BY THE COMMISSION. VERIFICATION MAY INCLUDE ON-SITE INSPECTION, THIRD-PARTY DOCUMENTATION, OR SELF-CERTIFICATION.

(II) SELF-CERTIFICATION SHALL BE ACCEPTED ONLY IF ACCOMPANIED BY PHOTOGRAPHIC, GEOSPATIAL, OR OTHER VERIFIABLE EVIDENCE SUFFICIENT TO DEMONSTRATE CONTINUED COMPLIANCE WITH CORRIDOR PROTECTION STANDARDS.

(III) THE COMMISSION MAY ALLOW SIMPLIFIED REPORTING REQUIREMENTS IN AREAS IT DETERMINES TO BE LOW-RISK, BASED ON ECOLOGICAL PRIORITIZATION MAPS, [LAND-USE] INTENSITY, AND SPECIES SENSITIVITY.

(IV) IN SUCH LOW-RISK AREAS, LANDOWNERS MUST STILL SUBMIT DOCUMENTATION SUFFICIENT TO CONFIRM THAT NO MATERIAL CHANGES IN LAND USE OR HABITAT CONDITION HAVE OCCURRED THAT WOULD UNDERMINE THE PURPOSES OF THIS ARTICLE [8.5].

3. In subsection (4), the introductory portion ends "in accordance with the following conditions," and what follows are requirements of the landowner, their property, and how they can use it. However, subsection (4)(g) is structured differently and should be changed to match the structure of

the rest of the paragraphs in the list. Consider simply adding the word "as" as the fix, as shown below:

Additional implementations guidelines as may be developed and published by the commission; and

- ii. In section 33-8.5-107 (1)(b) of the initiative, proponents may want to consider the following change to ensure that the language flows off the introductory portion in subsection (1) of that section:

(1) A PERSON WHO KNOWINGLY OR WILLFULLY KILLS, INJURES, OR OTHERWISE CAUSES MATERIAL HARM TO A DESIGNATED ENDANGERED OR KEYSTONE SPECIES, OUTSIDE OF AN APPROVED MITIGATION OR REINTRODUCTION PLAN, IS SUBJECT TO:

(b) A CRIMINAL PENALTY IF THE CONDUCT DESCRIBED IN THIS SECTION ALSO CONSTITUTES A VIOLATION OF APPLICABLE CRIMINAL LAW...

- d. Once a list following an introductory portion is complete, there should be no additional paragraphs, subparagraphs, or sub-subparagraphs flowing from the introductory portion. To comply with this drafting practice, proponents should consider restructuring section 33-8.5-108 of the initiative to ensure subsection (1)(e) does not flow from the introductory portion meant for the list that precedes it. An example of how to accomplish this is:

33-8.5-108. Funding – revenue sources – fund administration – TABOR compliance. (1) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE [C]ONSERVATION AND [B]IODIVERSITY [P]ROTECTION [F]UND, TO BE ADMINISTERED BY THE COMMISSION. THE FUND MAY RECEIVE REVENUE FROM THE FOLLOWING SOURCES:

(I) A VOTER-APPROVED STATEWIDE SALES TAX DEDICATED TO CONSERVATION;

FINES AND PENALTIES ASSESSED UNDER THIS ARTICLE [8.5];

(II) PUBLIC OR PRIVATE GRANTS AND DONATIONS; [AND]

(III) OTHER LAWFUL, NON-TAX SOURCES AUTHORIZED UNDER THIS ARTICLE [8.5].

(b) ALL MONEY IN THE FUND SHALL BE USED SOLELY FOR PURPOSES CONSISTENT WITH THIS ARTICLE AND SHALL BE SUBJECT TO ANNUAL AUDIT BY THE STATE AUDITOR. THE COMMISSION SHALL PUBLISH AN ANNUAL REPORT DETAILING FUND REVENUES AND EXPENDITURES.

Similarly, proponents should consider restructuring section 33-8.5-108 of the initiative, because subsection (3)(e) does not read successfully from the introductory portion.

(3)(a) **Allocation of fund resources.** The commission shall ... advance the following public objectives:

(I) Effective operation ...

...

(III) Habitat restoration ...; and

(IV) Publication education

(b) The commission shall adopt an annual budget

9. **Citations.** Please consider using standard drafting conventions when citing the following:

a. In each place where the initiative language refers to "this article," the proponents should add "8.5" so the language reads "this article 8.5."

b. In section 33-8.5-104 of the initiative:

i. In subsection (1)(c), the reference to "subsection (1)(b)" should read "subsection (1)(b) of this section." When referring to a different subsection, we add "of this section." If we were referring to the same subsection, we would use "this subsection (1)(c)."

ii. In subsection (2)(c)(I):

1. The words "under Colorado law" are unnecessary; and

2. The reference to section 33-8.5-104 (2)(d) should be changed to "subsection (2)(d) of this section." See Technical Comment #9b for more information.

iii. In subsection (2)(d), the citation to the federal Endangered Species Act should be:

the federal "Endangered Species Act of 1973", 16 U.S.C. sec. 1531 et seq.,

iv. In subsection (3)(b), the proponents should consider changing the reference to "Colorado Open Meetings Law" to "the open meetings law set forth in section 24-6-402;"

c. In section 33-8.5-105 of the initiative:

i. In subsections (3)(c) and (3)(d), references to the incentives are current phrased very broadly; they are referred to simply as "incentives." It would benefit readers for proponents to refer to the incentives with more specific references, which should be stated as "the incentives listed in subsections (3)(b)(I) to (3)(b)(III) of this section."

- ii. In subsection (4) introductory portion, the reference to subsection (3)(b) should be updated to "subsection (3)(b) of this section". See Technical Comment #9b for more information.
- d. If, in section 33-8.5-105 (5)(b) of the initiative, the referenced requirements are those set forth in subsection (5)(a) of that section, then subsection (5)(b) should cite to (5)(a) as follows:

THE COMMISSION MAY EXEMPT A PROJECT FROM THE REQUIREMENTS
SET FORTH IN SUBSECTION (5)(a) OF THIS SECTION ONLY IF ...

- e. In section 33-8.5-108 (2) of the initiative, the reference to TABOR should be updated to read:

section 20 of article X of the state constitution, known as "TABOR"

The reference in section 33-8.5-108 (7)(b)(IV) should also be updated to read:

section 20 of article X of the state constitution

10. Definitions.

- a. The terms "wildlife corridor" and "corridor" are used interchangeably throughout the initiative, as "public or private infrastructure projects" and "projects" appear to be as well. Consider adding the shortened form of the defined term to the official definition.

"Wildlife corridor" or "corridor" means ...

- b. In sections 33-8-105 (5)(a) and 33-8.5-107 (2)(a) of the initiative, the word "designated" in the phrase "designated wildlife corridor" appears to be superfluous because "wildlife corridor" is defined as " a designated ... ecological passage."
- c. Consider adding a definition of the conservation and biodiversity protection fund, as the shortened term is used throughout section 33-8.5-108 of the initiative.

"Fund" means the conservation and biodiversity protection fund created in section 33-8.5-108 (1).