

Community Development Committee

Meeting date: March 17, 2014

Subject: Public Hearing Report Regarding Park Acquisition Opportunity Fund Grant Rule Changes as Amendment to 2030 Regional Parks Policy Plan

District(s), Member(s): All

Policy/Legal Reference: Minnesota Statute 473.147

Staff Prepared/Presented: Arne Stefferud, Manager-Regional Parks and Natural Resources (651) 602-1360

Division/Department: Community Development, Regional Parks and Natural Resources Unit

Proposed Action

That the Metropolitan Council adopt the amendment to the *2030 Regional Parks Policy Plan* to replace the Park Acquisition Opportunity Fund Grant Rules currently found in Chapter 4 with those shown in Attachment 2 as recommended by the Metropolitan Parks and Open Space Commission.

Background

At the July 9, 2013 Metropolitan Park and Open Space Commission meeting, staff reported that the anticipated land acquisitions among the park implementing agencies for fiscal years 2014 and 2015 exceeded the available funds in the park acquisition opportunity fund grant accounts. The Commission asked Metropolitan Council staff to meet with Regional Park implementing agency staff to put forward a consensus recommendation to address the projected shortfall. Consultation with Regional Park implementing agency staff, Council legal staff and other external stakeholder partners led to the consensus recommendation that included changes in the acquisition opportunity fund grant rules.

The acquisition opportunity fund grant rule changes were substantial and constituted a significant change in the *2030 Regional Parks Policy Plan*. The Metropolitan Council conducted a public hearing regarding the proposed amendment (shown in Attachment B) at its Community Development Committee meeting on February 18, 2014. The public record was held open until 4:30 PM on February 28, 2014. All testimony received was in favor of the proposed amendment.

Rationale

Changes to the rules for Park Acquisition Opportunity Fund grants are a substantial revision to the *2030 Regional Parks Policy Plan* because they change the direction and intent of adopted Council policy.

Funding

The Park Acquisition Opportunity Fund Grant is comprised of two accounts:

The first account is called the Environment and Natural Resources Trust Fund Acquisition Account, which is used to purchase land with high quality natural resource characteristics. No residential structures can be acquired with this account. The account is comprised of Environment and Natural Resources Trust Fund revenue and bonds issued by the Metropolitan Council as a 40% match to the State appropriation.

The second account is called the Parks and Trails Legacy Fund Acquisition Account, which is financed with 60% Parks and Trails Legacy Fund

appropriations, while the remaining 40% is financed with Metropolitan Council bonds.

Known Support / Opposition

As Attachment A indicates, the hearing record indicates all public comment received was in favor of the proposed amendment (Attachment B). At its meeting on March 11, the Metropolitan Parks and Open Space Commission (MPOSC) considered the hearing report which recommended adoption of the rules as proposed. The proposed amendment had been previously put forward for public hearing by MPOSC members in a vote of 6-2 in favor, as well as by the Community Development Committee in a vote of 6-1 in favor.

On March 11, the MPOSC also considered the attached memorandum titled “Proposed Revisions to Park Acquisition Opportunity Fund Grant Rules Regarding Eminent Domain Acquisitions” (Attachment 1). The staff memorandum addressed a concern raised by two former MPOSC members and Council member Wulff about the extra costs associated with acquiring land via condemnation proceedings when the MPOSC and Community Development Committee considered proposing the rules for public hearing.

The memorandum proposed revisions to the acquisition grant rules shown in Attachment B that would have the following effect:

1. The revision does not provide grant funding to help pay for attorney’s fees, litigation expenses, appraisal fees and other expert fees incurred by the owner of the land being condemned consistent with Minn. Stat. § 117.031 that the park agency may be required to pay as part of a condemnation action.

Minn. Stat. § 117.031 stipulates that if the final judgment or award for damages is at least 20 percent, but not more than 40 percent greater than the last written offer made by the condemning authority prior to filing the condemnation petition, the court may award to the owner his/her costs for litigation expenses, appraisal fees, other expert fees, and other related costs in addition to the compensation for the value of the property being condemned. If the final judgment or award for damages is more than 40 percent greater than the last written offer made by the condemning authority prior to filing the condemnation petition, the court shall award to the owner his/her costs for litigation expenses, appraisal fees, other expert fees, and other related costs in addition to compensation for the value of the property being condemned.

2. Provide grant funding to help pay for the condemnation award value of the land.

The reasons for these revisions to the rules proposed for adoption are:

1. The Metropolitan Council has limited funds to grant for park acquisition and can restrict what costs are grant eligible through its grant rules.
2. The Metropolitan Council has no control over the extra legal fees and other litigation expenses associated with condemnation proceedings. That cost should be borne solely by the park agency acquiring the land since the park agency is taking the action to acquire land through condemnation proceedings.

3. To avoid an arbitrary application of the grant rules, the condemnation award of the land's value remains grant eligible because that value is comparable to the negotiated purchase price from willing seller purchases.

The MPOSC considered the rules as proposed in Attachment B and the revisions described above. The MPOSC members questioned why the rules as supported from the hearing record should be revised since there was no basis from the hearing record to do so. The rules were developed as a consensus proposal of the regional park agencies in collaboration with Council staff and other external stakeholders. The MPOSC members considered but chose not to table the item. The MPOSC did not provide an opportunity for the regional park agency staff representatives to provide input on the proposed revisions.

The MPOSC voted 4 "yes", and 2 "no" to amend the original motion of recommending the rules as depicted in Attachment B by inserting revisions proposed in the March 11 memorandum. They voted 5 "yes", 1 "no" and 1 "abstention" to approve the amended motion as shown in Attachment 1. Four of the five "yes" votes were by new MPOSC members who had not been involved in crafting the rules considered through the public hearing. The "no" vote and the "abstention" vote were cast by MPOSC members who were involved in crafting the rules considered through the public hearing.

Attachment 1

Proposed Amendment to Attachment B (rules that were considered at the Public Hearing)

DATE: March 11, 2014
TO: Metropolitan Parks and Open Space Commission
FROM: Arne Stefferud, Manager—Regional Parks and Natural Resources
SUBJECT: Proposed Revision to Park Acquisition Opportunity Fund Grant Rules Regarding Eminent Domain Acquisitions

Background:

The public hearing report and recommendations to adopt revised Park Acquisition Opportunity Fund Grant Rules is being considered at today's Metropolitan Parks and Open Space Commission meeting (March 11). The hearing testimony supported the revised rules as proposed and consequently the staff recommendation is to adopt them.

During the MPOSC and Community Development Committee meetings to schedule the public hearing on the grant rules, concerns were raised about Metro Council grants helping to finance acquisition of park land through condemnation proceedings. Council staff met with the Council's attorney Don Muetting to discuss any legal implications that would affect what the Metropolitan Council could do in this situation.

Mr. Muetting's advice is that the Metropolitan Council can restrain/control how it grants funds to the regional park implementing agencies. That's what the proposed grant rules do. The rules however need to be rational and not be arbitrarily applied.

Consequently in response to concerns about the extra costs associated with acquiring land via condemnation proceedings, revising the rules as highlighted below is proposed for the MPOSC to consider:

Qualifying Land Acquisition Costs:

The following items are eligible in calculating the total costs of the acquisition:

- a. Appraisal cost for the acquiring regional park implementing agency;
- b. Appraisal review cost needed to verify the value of a land donation, or the value of land obtained via parkland dedication ordinance and subsequently transferred to the regional park implementing agency when other land is obtained from the same landowner;
- c. Phase 1 environmental site assessment;
- d. Environmental contamination remediation costs if consistent with the conditions specified in the special circumstances section below;
- e. Legal services and closing costs to the park agency for costs associated with the negotiated purchases from willing sellers are grant eligible. Attorney's fees, litigation expenses, appraisal fees and other expert fees consistent with Minn. Stat. § 117.031 that the park agency must pay as part of a condemnation action are not grant eligible;

- f. State deed tax/Conservation Fee;
- g. Title Insurance;
- h. Pro-rated share of all property taxes/assessments due on the parcel at the time of closing that is borne by the park agency;
- i. 1.8 times the city or township property tax due on the parcel in the year the land is acquired. This is the property tax equivalency payment, which is paid to the city or township at closing pursuant to Minn. Stat. § 473.341);
- j. Negotiated purchase price for the parcel or condemnation award **value of the parcel**;
- k. Relocation costs to the seller consistent with Minn. Stat. § 117.52;
- l. Land stewardship costs defined as follows: costs for boundary fencing or marking; stabilizing or rehabilitating natural resources to aid in the reestablishment of threatened natural resources or to prevent non-natural deterioration thereof; preventing the deterioration of structures that will be re-used for park purposes; removal of unneeded structures, dangerous land forms or attractive nuisances including capping abandoned wells as required under MS 103I.301; and closing unneeded road(s) which provided access to the acquired land;
- m. Development of the land to provide minimal access to it for public recreational use as reviewed and approved by the Metropolitan Council in consideration of the grant. Such development must be consistent with the applicable Metropolitan Council approved master plan and may include the cost of an access road and/or trail, parking lot, and signage;
- n. Interest costs to acquire the land can be counted as part of the park agency's 25% match to the grant. However, the interest costs are not eligible for reimbursement as part of that park agency's share of a future regional parks capital improvement program;
- o. Holding costs incurred by an outside third party who purchased the property to hold on behalf of the park implementing agency; and
- p. Other expenses not listed above that are directly related to the land acquisition.

All costs shall be documented with appropriate information/data and submitted to the Metropolitan Council with the grant request.

Eminent domain.

Occasionally a park agency may need to acquire land by exercising its power of eminent domain through the initiation of a condemnation proceeding. When land is acquired through the condemnation process, a Park Acquisition Opportunity Fund grant may be awarded; however, a grant is awarded at the end of the condemnation proceeding that is based on 75% of the final award and associated grant-eligible costs **excluding the attorney's fees, litigation expenses, appraisal fees and other expert fees consistent with Minn. Stat. § 117.031 that the park agency must pay as part of a condemnation action** to acquire the land, and **the grant must be** within the agency maximum for the fiscal year when the grant is awarded. The park agency should notify the Metropolitan Council prior to filing its petition in condemnation with the district court that it is acquiring land through condemnation and will be requesting a Park Acquisition Opportunity Fund grant when the final award is determined. In condemnation matters, the final award and final certificate should be submitted to the Council in lieu of a signed purchase agreement.

The revisions to the rules have the following impact:

1. They clearly allow the legal costs associated with negotiated purchases from willing sellers to be grant eligible. They clearly eliminate grant funding for the extra attorney's fees, litigation expenses, appraisal fees and other expert fees consistent with Minn. Stat. § 117.031 [eminent domain law] that the park agency must pay as part of a condemnation action.
2. They allow only the value of the land determined by condemnation proceedings to be grant eligible since that value is the fair compensation the landowner should receive for that property. It's comparable to the value a willing seller agrees to receive through a negotiated purchase.

The reasons for these proposed revisions to the rules are:

1. The Metropolitan Council has limited funds to grant for park acquisition and can restrict what costs are grant eligible through its grant rules.
2. The Metropolitan Council has no control over the extra legal fees and other litigation expenses associated with condemnation proceedings. That cost should be borne solely by the park agency acquiring the land since the park agency is taking the action to acquire land through condemnation proceedings.
3. To avoid an arbitrary application of the grant rules, the condemnation award of the land's value remains grant eligible because that value is comparable to the negotiated purchase price from willing seller purchases.

Attachment 2:

Proposed Rules for Park Acquisition Opportunity Fund Grants

Recommended by Metropolitan Parks and Open Space Commission

(Amendments to Attachment B—the rules not considered at public hearing are underlined)

Overview:

In 2001, the Metropolitan Council established a Park Acquisition Opportunity Fund grant program to assist regional park agencies in acquiring land for the Metropolitan Regional Park System.

The Park Acquisition Opportunity Fund is comprised of two accounts:

- The Environment and Natural Resources Trust Fund (ENRTF) acquisition account, which is financed with 60% State appropriations from the ENRTF as recommended by the Legislative Citizen Commission on Minnesota Resources. The remaining 40% of the account is financed with bonds issued by the Metropolitan Council.
- The Parks and Trails Legacy Fund (PTLF) acquisition account, which is financed with 60% Parks and Trails Fund appropriations from the Land and Legacy Amendment. The remaining 40% is financed with Metropolitan Council bonds.

Qualifying Lands:

All properties to be acquired must be within Metropolitan Council-approved master plan boundaries.

ENRTF acquisition requests must be for acquisitions of undeveloped land with high natural resource values to comply with Minnesota Constitution Art. XI, Sec 14 and Minn. Stat. Chapter 116P.

PTLF acquisition requests do not have any restrictions on the condition of lands within Metropolitan Council-approved master plan boundaries.

Qualifying Land Acquisition Costs:

The following items are eligible in calculating the total costs of the acquisition:

- a. Appraisal cost for the acquiring regional park implementing agency;
- b. Appraisal review cost needed to verify the value of a land donation, or the value of land obtained via parkland dedication ordinance and subsequently transferred to the regional park implementing agency when other land is obtained from the same landowner;
- c. Phase 1 environmental site assessment;
- d. Environmental contamination remediation costs if consistent with the conditions specified in the special circumstances section below;
- e. Legal services and closing costs to the park agency for costs associated with the negotiated purchases from willing sellers are grant eligible. Attorney's fees, litigation expenses, appraisal fees and other expert fees consistent with Minn. Stat. § 117.031 that the park agency must pay as part of a condemnation action are not grant eligible;
- f. State deed tax/Conservation Fee;
- g. Title Insurance;

- h. Pro-rated share of all property taxes/assessments due on the parcel at the time of closing that is borne by the park agency;
- i. 1.8 times the city or township property tax due on the parcel in the year the land is acquired. This is the property tax equivalency payment, which is paid to the city or township at closing pursuant to Minn. Stat. § 473.341);
- j. Negotiated purchase price for the parcel or condemnation award value of the parcel;
- k. Relocation costs to the seller consistent with Minn. Stat. § 117.52;
- l. Land stewardship costs defined as follows: costs for boundary fencing or marking; stabilizing or rehabilitating natural resources to aid in the reestablishment of threatened natural resources or to prevent non-natural deterioration thereof; preventing the deterioration of structures that will be re-used for park purposes; removal of unneeded structures, dangerous land forms or attractive nuisances including capping abandoned wells as required under MS 103I.301; and closing unneeded road(s) which provided access to the acquired land;
- m. Development of the land to provide minimal access to it for public recreational use as reviewed and approved by the Metropolitan Council in consideration of the grant. Such development must be consistent with the applicable Metropolitan Council approved master plan and may include the cost of an access road and/or trail, parking lot, and signage;
- n. Interest costs to acquire the land can be counted as part of the park agency's 25% match to the grant. However, the interest costs are not eligible for reimbursement as part of that park agency's share of a future regional parks capital improvement program;
- o. Holding costs incurred by outside third party who purchased the property to hold on behalf of the park implementing agency; and
- p. Other expenses not listed above that are directly related to the land acquisition.

All costs shall be documented with appropriate information/data and submitted to the Metropolitan Council with the grant request.

Grant Request Finance Amounts:

The Park Acquisition Opportunity Fund grant may finance up to 75% of the costs to acquire land and related costs or up to \$1.7 million per acquisition account (ENRTF and PTLF acquisition accounts) per State fiscal year (July 1 to June 30). The regional park implementing agency must finance at least 25% of the acquisition costs as a local match to the Park Acquisition Opportunity Fund grant.

Special circumstances may apply that could alter the amounts delineated above and the section below related to special circumstances should be consulted.

Park Implementing Agency 25% Local Match:

The park implementing agency local match may be one or a combination of the following:

- 1. Non-State funds and non-Metro Council funds provided by the regional park implementing agency. If the cash contribution is financed with regional park implementing agency money (i.e. the agency's general fund or other account), but not a grant from another entity such as

a watershed district or local government aid provided by the State of Minnesota, that contribution is eligible for reimbursement as part of that park agency's share of a future regional parks capital improvement program. Based on this rule, if the maximum grant of \$1.7 million was awarded and the park agency provided a match of \$566,667, any costs incurred by the park agency above the \$566,667 and paid for with park agency funds for grant-eligible expenses, is also eligible for reimbursement consideration from that park agency's share of future metropolitan regional parks capital improvement programs.

2. The value of a land donation by the seller. The value of the donation is the difference between the agreed upon purchase price based on a certified appraised value of the property and the lower amount the seller agrees to accept as payment for the land. The certification of the appraised value of the property will be based on a third party review appraisal, where the third party appraiser will perform a field review of the appraisal and determine if the appraisal met the requirements of the Uniform Standards of Professional Appraising Practice (USPAP). Both the appraisal and the review appraisal must be submitted to the Metropolitan Council as part of the grant request. The cost of the third party appraisal review is a grant-eligible item.
3. The value of land that is obtained by a municipality under its park land dedication ordinance and transferred to a regional park implementing agency under a fee title or permanent easement agreement at the same time that the regional park implementing agency acquires additional land for that park or trail from the same landowner. The value of the dedicated land is based on a certified appraisal of the property. The certification of the appraised value will be based on a third party review appraisal, where the third party appraiser will perform a field review of the appraisal and determine if the appraisal met the USPAP requirements. Both the appraisal and the review appraisal must be submitted to the Metropolitan Council as part of the grant request. The cost of the third party appraisal review is a grant-eligible item.

Grant Term:

The effective term of the Park Acquisition Opportunity Fund grant is no more than 12 months or the expiration date of the State appropriation which finances the grant, whichever is less. A grant may be extended beyond the initial term of 12 months for cause. However the length of the extension cannot exceed the availability of the State funds financing the grant.

Special Circumstances:

Lack of available acquisition opportunity funds.

If funds are not available to fully fund a grant during a given fiscal year, up to 60% of the next fiscal year appropriation and matching Metro Council bonds for Park Acquisition Opportunity Fund accounts will to be used to reimburse park agencies for up to 75% of the grant-eligible acquisition costs or \$1.7 million-- whichever is less-- the park agency incurred to buy land that would have qualified for a Park Acquisition Opportunity Fund grant under the rules. The park agency must request reimbursement consideration from the Metro Council by providing all data required for a Park Acquisition Opportunity Fund grant required by the rules and obtain Metro Council approval before it acquires the land. The 25% match is not grant-eligible for reimbursement from the Park Acquisition Opportunity Fund accounts. However, the park agency may request reimbursement of that match as part of its share of future park capital improvement programs.

Third party acquisitions.

When funds are not available in the Acquisition Opportunity Fund accounts, park implementing agencies may opt to work with third parties to acquire Metropolitan Council-approved master plan acquisitions, for which reimbursement from the Metropolitan Council would be pursued when funds are available. In this instance, the Metropolitan Council may consider acquisition with a bonafide deferred closing.

Excess of available acquisition opportunity funds.

One year prior to the expiration of the State appropriation to each Park Acquisition Opportunity Fund Grant account (i.e. PTLF and ENRTF), the Metropolitan Council in consultation with the Regional Park Implementing Agencies and the Metropolitan Parks and Open Space Commission will conduct a review of these rules to determine if additional steps should be taken to increase the likelihood that the balance of the expiring State appropriation will be granted and spent before its expiration date. An example of such a step would be to allow a park agency which has received the maximum amount allowed [\$1.7 million from the ENRTF account or \$1.7 million from the PTLF account in a State Fiscal Year (July 1 to June 30)] to be eligible to receive an additional grant. Another step could be that 60 days prior to a State appropriation's expiration date, that grants are awarded to partially reimburse the local match of grants awarded from the applicable acquisition account that were initially financed with that State appropriation and matching Metro Council bonds. The total amount of these reimbursement grants would consume the remaining State appropriation and applicable Metro Council bond match. The amount of each reimbursement grant should be proportionate to the local match amount initially funded by each park agency—not with other funding sources the park agency used as their match. And these reimbursement grants would only be for grants initially financed from that soon-to-expire State appropriation and applicable Metro Council bond match. If there was still funds remaining, reimbursement grants for the local matches on other acquisitions could be considered that were initially financed from that acquisition account, but from an earlier appropriation.

Such variances to the rules for these situations would be considered by the Metropolitan Council without undertaking a public hearing process since the vetting of the changes is made by the park agencies affected by the proposed change, and the change is only in effect until the expiration of the applicable appropriation for that account.

Acquisition funds delineated in Capital Improvement Fund.

The requesting regional park implementing agency must use any available acquisition funds from its share of a regional parks capital improvement program provided by the Metropolitan Council or a line item appropriation of State funds to buy land for a regional park/trail before it can request a grant from the Park Acquisition Opportunity Fund. A park agency's capital improvement program share that finances a reimbursement grant for the 25% local match to a previous Park Acquisition Opportunity Fund grant is excluded. The Park Acquisition Opportunity Fund grant may finance 75% of the gap between the total cost of an acquisition and the amount financed by the park agency's available acquisition funds from its share of a regional parks capital improvement program and/or a line item appropriation of State funds used for that parcel's acquisition.

Eminent domain.

Occasionally a park agency may need to acquire land by exercising its power of eminent domain through the initiation of a condemnation proceeding. When land is acquired through the condemnation process, a Park Acquisition Opportunity Fund grant may be awarded; however, a grant is awarded at

the end of the condemnation proceeding that is based on 75% of the final award and associated grant-eligible costs excluding the attorney's fees, litigation expenses, appraisal fees and other expert fees consistent with Minn. Stat. § 117.031 that the park agency must pay as part of a condemnation action to acquire the land and the grant must be within the agency maximum for the fiscal year when the grant is awarded. The park agency should notify the Metropolitan Council prior to filing its petition in condemnation with the district court that it is acquiring land through condemnation and will be requesting a Park Acquisition Opportunity Fund grant when the final award is determined. In condemnation matters, the final award and final certificate should be submitted to the Council in lieu of a signed purchase agreement.

Environmental contamination.

Soil contamination remediation necessary to correct pre-existing environmental contamination known at the time of purchase, the remediation effort to the level needed to allow the land to be used for park and recreation purposes, and/or capping abandoned wells that have contaminated their groundwater aquifer are grant-eligible land acquisition expenses under the following conditions:

- 1) The aggregate cost of acquiring the land and remediation does not exceed the certified appraised value of the land at the time of purchase. The certification of the market value of the property will be based on a third party field review of the appraisal. The appraisal review must determine that the appraisal followed USPAP. The appraisal review must be submitted to the Metropolitan Council. The cost of the third party appraisal review is a grant-eligible item. In addition to the certification of the market value of the parcel, the park agency must submit documentation of the costs for remediation as listed below. The difference between the actual acquisition and remediation costs compared to the certified market value of the land prior to clean up may be applied towards the park agency's local match requirement.
- 2) The regional park implementing agency has an agreement with the party that will remediate/clean up the contamination or cap an abandoned well. The agreement will include mutually agreed upon environmental assurances from the Minnesota Pollution Control Agency limiting future liability for pollution caused by the contaminated soil or contaminated groundwater and follow guidance set by the Minnesota Department of Health for sealing unused wells, if appropriate.

Grant-eligible expenses for soil remediation and well capping include:

- a. Costs to prepare Phase 1 and Phase 2 Environmental Site Assessments, the Quality Assurance Project Plan, Remediation Action Plan and the Environmental Engineer's Estimate;
- b. Minnesota Pollution Control Agency (MPCA) Voluntary Investigation Cleanup (VIC) service charges;
- c. Costs to implement the remediation action plan and secure appropriate assurances from the MPCA, and;
- d. Other costs not listed above which are directly related to soil remediation or well capping.

Documentation of these remediation costs plus other costs associated with the acquisition must be submitted to the Metropolitan Council as part of the grant request.

Subdivision of lots.

For parcels that can be subdivided into lots and the value of those lots is used to determine the fair market value of the parcel, such acquisitions may qualify for financing from both the ENRTF account

and PTLF account. For example, lot(s) must contain high quality natural resources without structures to qualify for ENRTF financing, and lot(s) that do not contain high quality natural resources or have structures on them qualify for PTLF financing. The amount from each account shall be proportional to the appraised market value of the lots. However, the Metropolitan Council may grant additional funds from the PTLF account to finance a portion of the costs of land that qualifies for financing from the ENRTF account if there is not sufficient money in the ENRTF account to fully fund the grant.

Metropolitan Parks and Open Space Commission

Meeting date: March 11, 2014

Subject: Public Hearing Report Regarding Park Acquisition Opportunity Fund Grant Rule Changes as Amendment to 2030 Regional Parks Policy Plan

District(s), Member(s): All

Policy/Legal Reference: Minnesota Statute 473.147

Staff Prepared/Presented: Raintry Salk, PhD, Senior Parks Researcher, (651) 602-1669

Division/Department: Community Development, Regional Parks and Natural Resources Unit

Proposed Action

That the Metropolitan Council adopt the amendment to the *2030 Regional Parks Policy Plan* to replace the Park Acquisition Opportunity Fund Grant Rules currently found in Chapter 4 with those shown in Attachment B.

Background

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The acquisition opportunity fund grant rule changes were substantial and constituted a significant change in the *2030 Regional Parks Policy Plan*. The Metropolitan Council conducted a public hearing regarding the proposed amendment at its Community Development Committee meeting on February 18, 2014. The public record was held open until 4:30 PM on February 28, 2014. All testimony received was in favor of the proposed amendment.

Rationale

Changes to the Park Acquisition Opportunity Fund Grant Rules were in response to changing conditions. The changes proposed constitute a substantial revision to the *2030 Regional Parks Policy Plan* because they change the direction and intent of adopted Council policy.

Funding

The Park Acquisition Opportunity Fund is comprised of two accounts:

The first account is called the Environment and Natural Resources Trust Fund Acquisition Account, which is used to purchase land with high quality natural resource characteristics. No residential structures can be acquired with this account. The account is comprised of Environment and Natural Resources Trust Fund revenue and bonds issued by the Metropolitan Council as a 40% match to the State appropriation.

The second account is called the Parks and Trails Legacy Fund Acquisition Account, which is financed with 60% Parks and Trails Legacy Fund appropriations, while the remaining 40% is financed with Metropolitan Council bonds.

Known Support / Opposition

Oral testimony in support of the amendment to the *2030 Regional Parks Policy Plan* was provided by representatives of Three Rivers Park District, Dakota County, and Scott County. There is no known opposition.

Attachment A:

Public Comment Report 2030 Regional Parks Policy Plan Amendment

ID	Organization	Name	Comment	Staff Response
1	Three Rivers Park District	Jonathan Vlaming, Associate Superintendant	<p>Mr. Vlaming provided oral testimony at the February 18th public hearing in support of the proposed amendment to revise and replace the existing park acquisition opportunity grant fund rules.</p> <p>Mr. Vlaming indicated that the acquisition opportunity fund permits a significant investment in the regional park system that provides benefits into perpetuity. He also indicated the fund serves as a significant funding stream for agencies to acquire regional park land. He noted the acquisition opportunity fund assisted with the major purchase of Kingswood Special Recreation Feature this past year. He expressed appreciation to staff and the Council, most notably for the additional \$1.5 million in funds for park acquisitions in October, 2013.</p> <p>Mr. Vlaming proposed that in the future, the Metropolitan Council should consider pulling the rules from the Regional Parks Policy plan to afford more fluidity, thereby providing greater opportunity to be more responsive to changing conditions.</p> <p>Mr. Vlaming closed by stating he is full support of the language changes proposed.</p>	<p>Support for the proposed amendment is acknowledged. No revisions to the proposed amendment are required.</p>

ID	Organization	Name	Comment	Staff Response
2	Dakota County	Steve Sullivan, Director of Parks Department	<p>Mr. Sullivan provided oral testimony at the February 18th public hearing in support of the proposed amendment to revise and replace the existing park acquisition opportunity grant fund rules.</p> <p>Mr. Sullivan began his remarks by introducing Committee members to Dakota County's regional park system, stating their park system is in an acquiring phase. He also commended staff for bringing park implementing agencies to a consensus on the proposed rule changes. He expressed his gratitude for the recent addition of \$1.5 million dollars of Council Bonds for the park acquisition accounts.</p> <p>Mr. Sullivan expressed full support of the language in the proposed amendment. Most notably, he supported the clarifying language related to eminent domain. He noted Dakota County has an expanding Greenway system, including Mississippi River Regional Trail and MN Riverway Regional Trail, which are both part of the 2030 Regional Parks Policy Plan. Dakota County has received \$12M in Federal grants that need to be expended in a certain timeframe. He noted Dakota County has already committed their required match to Federal dollars. Mr. Sullivan also noted over \$11 million dollars have been dedicated and earmarked to park improvements and 5,500 acres of parkland to</p>	Support for the proposed amendment is acknowledged. No revisions to the proposed amendment are required.

ID	Organization	Name	Comment	Staff Response
		Steve Sullivan, Director of Parks, continued	<p>date.</p> <p>Mr. Sullivan noted condemnation is very rarely used. He noted, in the rare cases it has been exercised, it is typically used for security purposes, to provide critical services, or access to utilities. He indicated it can also be used for other purposes. He noted, as an example, in Dakota County, with the extension of the Mississippi River Regional Trail, one missing link of the trail would result in an ineffectual trail system. He noted working with landowners is how they do business and that condemnation is viewed at the County as a last resort. Mr. Sullivan also pointed out that the Court must assess if there is a public need and therefore the proceeding is subject to judicial review. The proceeding also establishes just value of the land, such that a fair and just value of the property is assured.</p> <p>Mr. Sullivan closed by revisiting his support for the language proposed in the revised rules and the clarifying language related to eminent domain.</p>	

ID	Organization	Name	Comment	Staff Response
3	Scott County	Mark Themig, General Manager Regional Parks of Scott County	<p>Mr. Themig provided oral testimony at the February 18th public hearing in support of the proposed amendment to revise and replace the existing park acquisition opportunity grant fund rules.</p> <p>Mr. Themig noted that Scott County has acquired approximately 500 acres of land, with \$3.6 million of investments from park acquisition opportunity funds, matched with \$900,000 from Scott County. He noted the acquisition opportunity fund leverages County commitment to investment. Mr. Themig closed by expressing his support for the proposed rule changes.</p>	Support for the proposed amendment is acknowledged. No revisions to the proposed amendment are required.

Attachment B:
Proposed Revised Rules for Park Acquisition Opportunity Fund Grants
(Rules considered at the Public Hearing)

Overview:

In 2001, the Metropolitan Council established a Park Acquisition Opportunity Fund grant program to assist regional park agencies in acquiring land for the Metropolitan Regional Park System.

The Park Acquisition Opportunity Fund is comprised of two accounts:

- The Environment and Natural Resources Trust Fund (ENRTF) acquisition account, which is financed with 60% State appropriations from the ENRTF as recommended by the Legislative Citizen Commission on Minnesota Resources. The remaining 40% of the account is financed with bonds issued by the Metropolitan Council.
- The Parks and Trails Legacy Fund (PTLF) acquisition account, which is financed with 60% Parks and Trails Fund appropriations from the Land and Legacy Amendment. The remaining 40% is financed with Metropolitan Council bonds.

Qualifying Lands:

All properties to be acquired must be within Metropolitan Council-approved master plan boundaries.

ENRTF acquisition requests must be for acquisitions of undeveloped land with high natural resource values to comply with Minnesota Constitution Art. XI, Sec 14 and Minn. Stat. Chapter 116P.

PTLF acquisition requests do not have any restrictions on the condition of lands within Metropolitan Council-approved master plan boundaries.

Qualifying Land Acquisition Costs:

The following items are eligible in calculating the total costs of the acquisition:

- a. Appraisal cost for the acquiring regional park implementing agency;
- b. Appraisal review cost needed to verify the value of a land donation, or the value of land obtained via parkland dedication ordinance and subsequently transferred to the regional park implementing agency when other land is obtained from the same landowner;
- c. Phase 1 environmental site assessment;
- d. Environmental contamination remediation costs if consistent with the conditions specified in the special circumstances section below;
- e. Legal services and closing costs to the park agency for costs associated with the purchase. Attorney's fees, litigation expenses, appraisal fees and other expert fees consistent with Minn. Stat. § 117.031 that the park agency must pay as part of a condemnation action;
- f. State deed tax/Conservation Fee;
- g. Title Insurance;

- h. Pro-rated share of all property taxes/assessments due on the parcel at the time of closing that is borne by the park agency;
- i. 1.8 times the city or township property tax due on the parcel in the year the land is acquired. This is the property tax equivalency payment, which is paid to the city or township at closing pursuant to Minn. Stat. § 473.341);
- j. Negotiated purchase price for the parcel or condemnation award;
- k. Relocation costs to the seller consistent with Minn. Stat. § 117.52;
- l. Land stewardship costs defined as follows: costs for boundary fencing or marking; stabilizing or rehabilitating natural resources to aid in the reestablishment of threatened natural resources or to prevent non-natural deterioration thereof; preventing the deterioration of structures that will be re-used for park purposes; removal of unneeded structures, dangerous land forms or attractive nuisances including capping abandoned wells as required under MS 103I.301; and closing unneeded road(s) which provided access to the acquired land;
- m. Development of the land to provide minimal access to it for public recreational use as reviewed and approved by the Metropolitan Council in consideration of the grant. Such development must be consistent with the applicable Metropolitan Council approved master plan and may include the cost of an access road and/or trail, parking lot, and signage;
- n. Interest costs to acquire the land can be counted as part of the park agency's 25% match to the grant. However, the interest costs are not eligible for reimbursement as part of that park agency's share of a future regional parks capital improvement program;
- o. Holding costs incurred by outside third party who purchased the property to hold on behalf of the park implementing agency; and
- p. Other expenses not listed above that are directly related to the land acquisition.

All costs shall be documented with appropriate information/data and submitted to the Metropolitan Council with the grant request.

Grant Request Finance Amounts:

The Park Acquisition Opportunity Fund grant may finance up to 75% of the costs to acquire land and related costs or up to \$1.7 million per acquisition account (ENRTF and PTLF acquisition accounts) per State fiscal year (July 1 to June 30). The regional park implementing agency must finance at least 25% of the acquisition costs as a local match to the Park Acquisition Opportunity Fund grant.

Special circumstances may apply that could alter the amounts delineated above and the section below related to special circumstances should be consulted.

Park Implementing Agency 25% Local Match:

The park implementing agency local match may be one or a combination of the following:

- a. Non-State funds and non-Metro Council funds provided by the regional park implementing agency. If the cash contribution is financed with regional park implementing agency money

(i.e. the agency's general fund or other account), but not a grant from another entity such as a watershed district or local government aid provided by the State of Minnesota, that contribution is eligible for reimbursement as part of that park agency's share of a future regional parks capital improvement program. Based on this rule, if the maximum grant of \$1.7 million was awarded and the park agency provided a match of \$566,667, any costs incurred by the park agency above the \$566,667 and paid for with park agency funds for grant-eligible expenses, is also eligible for reimbursement consideration from that park agency's share of future metropolitan regional parks capital improvement programs.

- b. The value of a land donation by the seller. The value of the donation is the difference between the agreed upon purchase price based on a certified appraised value of the property and the lower amount the seller agrees to accept as payment for the land. The certification of the appraised value of the property will be based on a third party review appraisal, where the third party appraiser will perform a field review of the appraisal and determine if the appraisal met the requirements of the Uniform Standards of Professional Appraising Practice (USPAP). Both the appraisal and the review appraisal must be submitted to the Metropolitan Council as part of the grant request. The cost of the third party appraisal review is a grant-eligible item.
- c. The value of land that is obtained by a municipality under its park land dedication ordinance and transferred to a regional park implementing agency under a fee title or permanent easement agreement at the same time that the regional park implementing agency acquires additional land for that park or trail from the same landowner. The value of the dedicated land is based on a certified appraisal of the property. The certification of the appraised value will be based on a third party review appraisal, where the third party appraiser will perform a field review of the appraisal and determine if the appraisal met the USPAP requirements. Both the appraisal and the review appraisal must be submitted to the Metropolitan Council as part of the grant request. The cost of the third party appraisal review is a grant-eligible item.

Grant Term:

The effective term of the Park Acquisition Opportunity Fund grant is no more than 12 months or the expiration date of the State appropriation which finances the grant, whichever is less. A grant may be extended beyond the initial term of 12 months for cause. However the length of the extension cannot exceed the availability of the State funds financing the grant.

Special Circumstances:

Lack of available acquisition opportunity funds.

If funds are not available to fully fund a grant during a given fiscal year, up to 60% of the next fiscal year appropriation and matching Metro Council bonds for Park Acquisition Opportunity Fund accounts will to be used to reimburse park agencies for up to 75% of the grant-eligible acquisition costs or \$1.7 million-- whichever is less-- the park agency incurred to buy land that would have qualified for a Park Acquisition Opportunity Fund grant under the rules. The park agency must request reimbursement consideration from the Metro Council by providing all data required for a Park Acquisition Opportunity Fund grant required by the rules and obtain Metro Council approval before it acquires the land. The 25% match is not grant-eligible for reimbursement from the Park Acquisition Opportunity Fund accounts. However, the park agency may request reimbursement of that match as part of its share of future park capital improvement programs.

Third party acquisitions.

When funds are not available in the Acquisition Opportunity Fund accounts, park implementing agencies may opt to work with third parties to acquire Metropolitan Council-approved master plan acquisitions, for which reimbursement from the Metropolitan Council would be pursued when funds are available. In this instance, the Metropolitan Council may consider acquisition with a bonafide deferred closing.

Excess of available acquisition opportunity funds.

One year prior to the expiration of the State appropriation to each Park Acquisition Opportunity Fund Grant account (i.e. PTLF and ENRTF), the Metropolitan Council in consultation with the Regional Park Implementing Agencies and the Metropolitan Parks and Open Space Commission will conduct a review of these rules to determine if additional steps should be taken to increase the likelihood that the balance of the expiring State appropriation will be granted and spent before its expiration date. An example of such a step would be to allow a park agency which has received the maximum amount allowed [\$1.7 million from the ENRTF account or \$1.7 million from the PTLF account in a State Fiscal Year (July 1 to June 30)] to be eligible to receive an additional grant. Another step could be that 60 days prior to a State appropriation's expiration date, that grants are awarded to partially reimburse the local match of grants awarded from the applicable acquisition account that were initially financed with that State appropriation and matching Metro Council bonds. The total amount of these reimbursement grants would consume the remaining State appropriation and applicable Metro Council bond match. The amount of each reimbursement grant should be proportionate to the local match amount initially funded by each park agency—not with other funding sources the park agency used as their match. And these reimbursement grants would only be for grants initially financed from that soon-to-expire State appropriation and applicable Metro Council bond match. If there was still funds remaining, reimbursement grants for the local matches on other acquisitions could be considered that were initially financed from that acquisition account, but from an earlier appropriation.

Such variances to the rules for these situations would be considered by the Metropolitan Council without undertaking a public hearing process since the vetting of the changes is made by the park agencies affected by the proposed change, and the change is only in effect until the expiration of the applicable appropriation for that account.

Acquisition funds delineated in Capital Improvement Fund.

The requesting regional park implementing agency must use any available acquisition funds from its share of a regional parks capital improvement program provided by the Metropolitan Council or a line item appropriation of State funds to buy land for a regional park/trail before it can request a grant from the Park Acquisition Opportunity Fund. A park agency's capital improvement program share that finances a reimbursement grant for the 25% local match to a previous Park Acquisition Opportunity Fund grant is excluded. The Park Acquisition Opportunity Fund grant may finance 75% of the gap between the total cost of an acquisition and the amount financed by the park agency's available acquisition funds from its share of a regional parks capital improvement program and/or a line item appropriation of State funds used for that parcel's acquisition.

Eminent domain.

Occasionally a park agency may need to acquire land by exercising its power of eminent domain through the initiation of a condemnation proceeding. When land is acquired through the condemnation

process, a Park Acquisition Opportunity Fund grant may be awarded; however, a grant is awarded at the end of the condemnation proceeding that is based on 75% of the final award and associated grant-eligible costs to acquire the land and within the agency maximum for the fiscal year when the grant is awarded. The park agency should notify the Metropolitan Council prior to filing its petition in condemnation with the district court that it is acquiring land through condemnation and will be requesting a Park Acquisition Opportunity Fund grant when the final award is determined. In condemnation matters, the final award and final certificate should be submitted to the Council in lieu of a signed purchase agreement.

Environmental contamination.

Soil contamination remediation necessary to correct pre-existing environmental contamination known at the time of purchase, the remediation effort to the level needed to allow the land to be used for park and recreation purposes, and/or capping abandoned wells that have contaminated their groundwater aquifer are grant-eligible land acquisition expenses under the following conditions:

- 1) The aggregate cost of acquiring the land and remediation does not exceed the certified appraised value of the land at the time of purchase. The certification of the market value of the property will be based on a third party field review of the appraisal. The appraisal review must determine that the appraisal followed USPAP. The appraisal review must be submitted to the Metropolitan Council. The cost of the third party appraisal review is a grant-eligible item. In addition to the certification of the market value of the parcel, the park agency must submit documentation of the costs for remediation as listed below. The difference between the actual acquisition and remediation costs compared to the certified market value of the land prior to clean up may be applied towards the park agency's local match requirement.
- 2) The regional park implementing agency has an agreement with the party that will remediate/clean up the contamination or cap an abandoned well. The agreement will include mutually agreed upon environmental assurances from the Minnesota Pollution Control Agency limiting future liability for pollution caused by the contaminated soil or contaminated groundwater and follow guidance set by the Minnesota Department of Health for sealing unused wells, if appropriate.

Grant-eligible expenses for soil remediation and well capping include:

- a. Costs to prepare Phase 1 and Phase 2 Environmental Site Assessments, the Quality Assurance Project Plan, Remediation Action Plan and the Environmental Engineer's Estimate;
- b. Minnesota Pollution Control Agency (MPCA) Voluntary Investigation Cleanup (VIC) service charges;
- c. Costs to implement the remediation action plan and secure appropriate assurances from the MPCA, and;
- d. Other costs not listed above which are directly related to soil remediation or well capping.

Documentation of these remediation costs plus other costs associated with the acquisition must be submitted to the Metropolitan Council as part of the grant request.

Subdivision of lots.

For parcels that can be subdivided into lots and the value of those lots is used to determine the fair market value of the parcel, such acquisitions may qualify for financing from both the ENRTF account and PTLF account. For example, lot(s) must contain high quality natural resources without structures

to qualify for ENRTF financing, and lot(s) that do not contain high quality natural resources or have structures on them qualify for PTLF financing. The amount from each account shall be proportional to the appraised market value of the lots. However, the Metropolitan Council may grant additional funds from the PTLF account to finance a portion of the costs of land that qualifies for financing from the ENRTF account if there is not sufficient money in the ENRTF account to fully fund the grant.