

Community Development Committee

Meeting date: May 19, 2014

For the Metropolitan Council meeting of May 28, 2014

Subject: 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 an amendment to the *2030 Regional Parks Policy Plan* to replace the Park Acquisition Opportunity Fund Grant Rules currently found in Chapter 4 with rules that were considered through the February 18, 2014 public hearing with additional language to the rules as shown below:

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 or as part of a condemnation settlement/award consistent with applicable provisions of Minnesota Statute Chapter 117; ...
- e. Legal services and closing costs to the park agency for costs associated with the purchase or condemnation settlement/award including 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; ...
- j. Negotiated purchase price for the parcel or condemnation settlement/award consistent with applicable provisions of Minnesota Statute Chapter 117; ...
- k. Relocation costs to the seller consistent with Minn. Stat. § 117.52 and Minn. Stat. § 473.315; ...

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 settlement/award and associated grant-eligible costs under applicable provisions of Minnesota Statute Chapter 117 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. The notification to the Metropolitan Council should be in a letter that contains the park agency's authorization to file its petition and the accompanying documents containing its appraisal of the land. In condemnation matters, the final settlement/award and final certificate should be submitted to the Council in lieu of a signed purchase agreement.

(The complete set of rules with this language is shown in Attachment 1, on pages 9-14)

Background

In 2001, the Metro Council created a Park Acquisition Opportunity Fund Grant program—hereafter called Acquisition Opportunity Fund (AOF) grants. The purpose of the AOF grants is to help regional park agencies acquire land to create regional parks and trails. The lands acquired with the AOF grants must be identified in a regional park or trail master plan that has been prepared by the park agency and approved by the Metropolitan Council.

Since land acquisitions are dependent on a settlement between the land owner and the park agency regarding compensation for the land, rules were created that allow a park agency to request an AOF grant when a purchase agreement is reached. Other rules limit the amount an AOF grant will finance, what are grant eligible costs, and what match the requesting park agency must provide.

At the July 9, 2013 Metropolitan Park and Open Space Commission (MPOSC) meeting, staff reported that anticipated land acquisitions among the regional 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 park agency staff to put forward a consensus recommendation on revising the AOF grant rules that would address the projected shortfall issue. Consultation with park agency staff led to a consensus recommendation to revise the AOF grant rules to address the projected shortfall issue. They also recommended revising the rules to allow AOF grants to finance condemnation acquisitions.

In November 2013, the Metropolitan Parks and Open Space Commission (MPOSC) and the Community Development Committee (CDC) of the Metropolitan Council considered scheduling a hearing on revisions to the AOF grant rules. There were concerns raised by two MPOSC members and Council member Wendy Wulff that no AOF grants should help finance condemnation acquisitions, or there should be limits on some costs associated with condemnation acquisitions—specifically paying for the land owner's attorney fees, expert witness fees and litigation costs when the condemnation award was 20% or more than what the acquiring agency had offered as required under Minnesota Statute 117.031. However, a majority of MPOSC and CDC members recommended that the revised rules allowing those costs to be grant eligible should be considered through the public hearing process.

A public hearing on the revised rules was conducted by the CDC on February 18, 2014. The hearing report on the revised rules included testimony from three park agencies that supported adopting the rules as proposed at the public hearing. (See Appendix, Document 1 on pages 21-32).

At the March 11, 2014 MPOSC meeting, the MPOSC considered and recommended changing the revised rules by prohibiting AOF grant funding to pay for the land owner's attorney fees, expert witness fees and litigation costs when the condemnation award was 20% or more than what the acquiring agency had offered as required under Minnesota Statute 117.031. (See Appendix, Document 2 on pages 33-44).

On March 17, 2014 the CDC referred the matter back to the MPOSC and requested that the following policy question be analyzed: “What, if any, limits should Park Acquisition Opportunity Fund grant rules place on funding costs associated with condemnation proceedings?”

The March 17 CDC discussion on this topic specifically asked, “What are the average ‘soft costs’ incurred in acquiring property via condemnation proceedings and what are the average ‘soft costs’ incurred in acquiring property via negotiated purchases”?

The CDC members defined ‘soft costs’ as the legal services costs and other costs necessary to obtain the property for both acquisition approaches. The CDC members asked this question because they wanted to know the magnitude of any difference between these costs. They wondered if it would be appropriate to place a limit dollar wise or percentage wise on these costs.

To respond to the CDC directive, a white paper has been prepared in consultation with park agency staff plus the Council’s legal staff (Attachment 2 on pages 15-19).

The white paper covers the following topics:

- 1) Condemnation process, what it is, and why it is used
- 2) Possible phases of condemnation process and describes the costs associated with the condemnation process that are prescribed in Minnesota law (Chapter 117)
- 3) Analysis of condemnation acquisition ‘soft costs’ in context of total costs

This analysis:

- Reviews ‘soft costs’ of condemnations for four regional park/trail acquisitions – the only data available as condemnation is rarely used to acquire land for park/trail purposes. The ‘soft costs’ ranged from \$0 to \$85,000 in these cases for an average of \$27,475. Those soft costs as a percentage of total costs ranged from 0% to 21.5%. But with so few cases this is not a representative average cost. These are additional costs that negotiated purchases don’t incur. But they are part of just compensation to the owner under Minnesota law.
- Reviews ‘soft costs’ for 430 Minnesota Department of Transportation acquisitions acquired through condemnation proceedings. The average ‘soft cost’ is \$13,800 for these acquisitions.

4) Concludes with the following findings:

- a. Condemnation is a tool in obtaining right of way to create a viable regional trail system or to acquire critical parcels for a regional park. State law (Minnesota Statute Chapter 117) defines the process and associated costs that are necessary to determine just compensation to owners for property taken for a public purpose.
- b. To prohibit AOF grant funding entirely or to limit grant funding of some costs associated with condemnation acquisitions would contradict implementation of Council approved master plans for regional parks and trails.

- c. The condemnation process allows just compensation to be determined through negotiations between the owner and the acquiring entity called a “settlement”. Or just compensation can be determined through a judicial process called an “award”. A negotiated settlement between the parties is comparable to a negotiated purchase from a willing seller. Consequently the AOF grant rules should acknowledge condemnation settlements as well as condemnation awards.
- d. There may be changes to Minnesota Statute Chapter 117 over time regarding the condemnation process. Because the law may change, the revised AOF grant rules should comply with applicable provisions of Minnesota Statute Chapter 117.
- e. If a park agency decides to initiate condemnation proceedings to acquire land, the revised AOF grant rules require the park agency to inform the Metro Council that they are initiating a condemnation proceeding and will request an AOF grant once a settlement or award is reached. The rules should also require the park agency to include its appraised value of the land it intends to condemn as part of that notification to the Council since that is required by law as part of the condemnation initiation process.

On May 6, the Metropolitan Parks and Open Space Commission considered this item and discussed:

1. Recommending a limit on a percentage basis of grant eligible costs for attorney fees associated with condemnation acquisitions. They chose not to recommend any limitation for grant eligible costs of attorney fees associated with condemnation beyond what is limited in Minnesota Chapter 117.
2. Recommending eliminating litigation expenses associated with condemnation acquisitions as a grant eligible expense. They chose not to eliminate litigation expenses associated with condemnation acquisitions as a grant eligible expense.
3. Refining the rule regarding the value of land obtained by a municipality under its park land dedication ordinance under part C of “Park Implementing Agency 25% Local Match” on page 11. This issue needed further analysis and may or may not require a change to the rules. The Commission requested that it be considered as part of the hearing process for preparing the 2040 Regional Parks Policy Plan.

Known Support / Opposition

The support/opposition of part of the rules dealing with condemnation proceedings is described in the Background section of this memorandum. A draft of this memorandum was reviewed by Regional Park Implementing Agencies. Two agencies (Anoka County and Dakota County) submitted comments supporting the proposed action shown on pages 1 and 2. Other park agencies did not submit any comments in support or opposition of the proposed action.

On May 6, the Metropolitan Parks and Open Space Commission unanimously approved the recommendation to adopt the grant rule changes as depicted on pages 9 to 14 as an amendment to the 2030 Regional Parks Policy Plan.

Metropolitan Parks and Open Space Commission

Meeting date: May 6, 2014 (Deferred from April 22, 2014 meeting to May 6, 2014 meeting)

For the Community Development Committee of May 19, 2014

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- 4) Concludes with the following findings:
 - a. Condemnation is a tool in obtaining right of way to create a viable regional trail system or to acquire critical parcels for a regional park. State law (Minnesota Statute Chapter 117) defines the process and associated costs that are necessary to determine just compensation to owners for property taken for a public purpose.
 - b. To prohibit AOF grant funding entirely or to limit grant funding of some costs associated with condemnation acquisitions would contradict implementation of Council approved master plans for regional parks and trails.
 - c. The condemnation process allows just compensation to be determined through negotiations between the owner and the acquiring entity called a “settlement”. Or just compensation can be

determined through a judicial process called an “award”. A negotiated settlement between the parties is comparable to a negotiated purchase from a willing seller. Consequently the AOF grant rules should acknowledge condemnation settlements as well as condemnation awards.

- d. There may be changes to Minnesota Statute Chapter 117 over time regarding the condemnation process. Because the law may change, the revised AOF grant rules should comply with applicable provisions of Minnesota Statute Chapter 117.

- f. If a park agency decides to initiate condemnation proceedings to acquire land, the revised AOF grant rules require the park agency to inform the Metro Council that they are initiating a condemnation proceeding and will request an AOF grant once a settlement or award is reached. The rules should also require the park agency to include its appraised value of the land it intends to condemn as part of that notification to the Council since that is required by law as part of the condemnation initiation process.

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**Attachment 1:
Revised Rules for Park Acquisition Opportunity Fund Grants
Proposed for Adoption based on White Paper (Attachment 2)**

Language that is different from February 18, 2014 public hearing version of the rules [pages 23-28] is 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 or as part of a condemnation settlement/award consistent with applicable provisions of Minnesota Statute Chapter 117;
- 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 or condemnation settlement/award including 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 settlement/award consistent with applicable provisions of Minnesota Statute Chapter 117;
- k. Relocation costs to the seller consistent with Minn. Stat. § 117.52 and Minn. Stat. § 473.315;
- 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 Minn. Stat. § 1031.301; 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 settlement/award and associated grant-eligible costs under applicable provisions of Minnesota Statute Chapter 117 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. The notification to the Metropolitan Council should be in a letter that contains the park agency's authorization to file its petition and the accompanying documents containing its appraisal of the land. In condemnation matters, the final settlement/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.

Attachment 2

White Paper: What, if any, limits should Park Acquisition Opportunity Fund grant rules place on funding costs associated with condemnation proceedings?

1) Eminent domain process—what it is and why it is used

What is eminent domain?

Eminent domain is the power to take private property by a governmental unit or other entity authorized to exercise functions of public character such as a public utility, provided just compensation is paid to the owner of the taken property. The power of eminent domain was created to authorize the government or the condemning authority, called the condemner to acquire the property for the common welfare. Just compensation is required in order to ease the financial burden incurred by the property owner for the benefit of the public. In Minnesota the process of taking the property and determining just compensation under eminent domain power is governed under Minnesota Statute Chapter 117.

Why is the power of eminent domain used?

The reason why the power of eminent domain is used is to determine just compensation when the acquiring entity and the land owner can't reach agreement on the compensation amount. The compensation amount is determined through a judicial process.

2) Possible phases of condemnation process

There are three possible phases in the condemnation process. They are:

Phase 1: Acquiring entity and owner consider appraisals on the property and cannot agree on the just compensation amount. Condemnation proceedings are begun by the acquiring entity by petitioning the district court. The parties may continue to negotiate and reach a settlement without a hearing before a condemnation panel appointed by the district court. The terms and conditions of the settlement agreement are met and the case is closed either by dismissal or an award based upon the settlement.

Phase 2: The district court appoints a 3-person condemnation panel to determine the just compensation amount. The condemnation panel is comprised of professionals knowledgeable in various aspects of real property such as sales and appraisal professionals. The condemnation panel considers evidence from both parties and determines the just compensation amount called a condemnation award. Terms and conditions of the award are met and the case is closed.

Phase 3: The acquiring entity or the land owner can appeal the condemnation panel's award in phase 2 and the district court or a jury considers the case. Each party may request and is entitled to a jury trial. Judgment is entered upon the verdict or decision by the court. The verdict or judgment remains in effect with respect to the condemning authority and all other parties,

successors and assigns unless reversed or modified by the court. The terms and conditions of the award are met and the case is closed.

The condemnation process is used to balance the interests of the property owner and the public's interests. Like negotiated purchases, the goal is to reach a settlement that justly compensates the property owner. The settlement/award takes into account the following factors and associated costs. Applicable State law which defines those costs are referenced as "MS—Minnesota Statutes"

1. **Price for property.** If the acquisition only includes a portion of the property, this may include severance damages or damages to the remaining property.
2. **Other potential land costs:**
 - a. **Relocation and reestablishment expenses** if the owner has to relocate. (MS 117.052)
Note: This cost is grant eligible under existing AOF grant rules. It is required under Metro Council law (MS 473.315)
 - b. **Loss of going concern** if a business or trade is destroyed by the taking, and the loss cannot be reasonably prevented by relocating the business or trade in the same or similar and reasonably suitable location as the property that was taken. Or the loss can't be prevented by taking steps and adopting procedures that a reasonably prudent person of a similar age and under similar conditions as the owner would take and adopt in preserving the going concern of the business or trade. (MS 117.186);
 - c. **Minimum compensation** if the owner must relocate, the award must be at a minimum sufficient to purchase a comparable property in the community and no less than the acquiring entity's appraised value of the property being taken. (MS 117.187); and
 - d. **Costs listed in MS 117.031:** If the condemnation award from phase 2 or 3 of the condemnation process is between 20% and less than 40% more than the acquiring entity's last written offer before initiating the condemnation, the court may require the acquiring entity to pay costs incurred by the owner that are listed in the sub points which follow. If the award is 40% or more than the acquiring entity's last written offer before initiating the condemnation, the court shall require the acquiring entity to pay the following costs incurred by the owner.
 - i. **Reasonable Attorney Fees.** A recent Minnesota Supreme Court case defined what "reasonable attorney fees" are. The Lodestar method must be used: reasonable number of hours X reasonable hourly rate. It can't be based on a contingent fee arrangement in which the attorney fee is a percentage of the award.
 - ii. **Litigation Expenses.** This could include: preparation of exhibits, copying costs, court reporter fees, filing fees, etc.
 - iii. **Appraisal Fees.** This is in addition to the reimbursement of appraisal expenses the acquiring entity must pay under MS 117.036 as described in point "f" below. In this case there is no cap on the appraisal fee.
 - iv. **Expert Fees.** This could include a business consultant, real estate broker, engineer, geotechnical expert, land planner, etc. who provide expert witness testimony for the case.

- v. **Other Costs:** Compensation for condemnation panel commissioner's time, travel and parking expenses.
- e. **Prepayment Penalty on Mortgage.** (MS 117.087) If acquiring property in fee title and the owner has a prepayment penalty on the mortgage, the acquiring entity must pay that pre-payment penalty on the mortgage.
- f. **Reimbursement of Landowners Appraisal:** (MS 117.036) The owner may obtain an appraisal on the property. If so, the acquiring entity must compensate for the cost of the appraisal up to \$1,500 for residential single or two family properties and properties that are valued at less than \$10,000. For other properties, the appraisal reimbursement is limited to \$5,000. (Note: This applies to negotiated purchases as well as settlements on properties acquired through eminent domain proceedings).
- g. **Jury Trial Costs.** (MS 117.175) If the condemnation panel's award is appealed to a trial, the court may in its discretion require the acquiring entity to pay for reasonable expert witness and appraisal fees plus the reasonable costs and disbursements of the owner. No expert witness fees, costs and disbursements shall be awarded to the acquiring entity regardless of which party prevailed in the appeal.
- h. **Interest on award.** (MS 117.195 and MS 549.09) The acquiring entity must pay interest costs on the funds held by the court for the award amount that are incurred while the case is being resolved.

3) Analysis of costs of condemnation acquisitions in context of negotiated purchase acquisitions

The March 17 CDC discussion on this topic specifically asked, "What are the average 'soft costs' incurred in acquiring property via condemnation proceedings and what are the average 'soft costs' incurred in acquiring property via negotiated purchases"?

The CDC members defined 'soft costs' as the legal services costs and other costs necessary to obtain the property for both acquisition approaches. The CDC members asked this question because they wanted to know the magnitude of any difference between these costs. They wondered if it would be appropriate to place a limit dollar wise or percentage wise on these costs.

In response to this question, both types of land acquisition incur many of the same soft costs: relocation costs, legal fees for document drafting and negotiation; appraisal; title work; environmental review; property taxes; and closing costs. What condemnation adds to this list are: appraisal reimbursement cost to the owner, court costs, and some or all of the owner's legal fees, and other costs incurred in phase 2 or 3 of a condemnation proceeding.

In attempting to determine average soft costs for condemnation acquisitions for park or trail acquisition, compared to negotiated purchase acquisitions, there is very limited cost data on condemnation acquisitions for regional park purposes. Only four properties were acquired through condemnation proceedings that could be analyzed. All four cases were settled in phase 1 of the condemnation process. Table 1 itemizes the costs of each settlement and depicts the soft costs relative to total costs.

Table 1: Condemnation Settlements for Regional Trail and Park Purposes

Settlement 1 for trail right of way easement	
Permanent Trail easements	\$ 20,000
Temporary construction easement	\$ 1,500
Severance damages based on \$10,000 for each of 3 residential building site eligibilities payment made at beginning of condemnation process).	\$ 30,000
Appraisal reimbursement on 2 appraisals up to statutory amount	\$ 2,970
Attorney's fees	\$ 10,000
Total	\$ 4,900
Subtotal Appraisal Reimbursement and Attorney's Fees (Soft Costs)	\$ 69,370
% of Appraisal Reimbursement and Attorney's Fees as part of Total	21.5%
Settlement 2 for trail right of way easement	
Permanent Trail easement and temporary construction easement	\$ 12,500
Damages for loss of 25 mature trees in easement area	\$ 6,500
Appraisal reimbursement	\$ -
Attorney's fees	\$ -
Total	\$ 19,000
Subtotal Appraisal Reimbursement and Attorney's Fees (Soft Costs)	\$ -
% of Appraisal Reimbursement and Attorney's Fees as part of Total	0.0%
Settlement 3 for trail right of way easement	
Permanent Trail easements and temporary construction easement	\$ 7,000
Severance damages based on \$10,000 for each of 2 residential building site eligibilities	\$ 20,000
Cost to cure for an improved fence	\$ 10,000
Damage amount	\$ 7,363
Estimated interest on \$19,363 over 3 years (unpaid amount in excess of quick take payment made at beginning of condemnation process).	\$ 2,388
Appraisal reimbursement on 1 appraisal up to statutory amount	\$ 5,000
Attorney's fees	\$ 5,000
Total	\$ 56,751
Subtotal Appraisal Reimbursement and Attorney's Fees (Soft Costs)	\$ 10,000
% of Appraisal Reimbursement and Attorney's Fees as part of Total	17.6%
Settlement 4 for trail right of way and partial acquisition of other land for regional park	
Fee title on 1.8 acres	\$ 86,000
Permanent conservation easement on 6.6 acres with owner conveying right of first refusal to acquiring entity to purchase remaining fee interest in 2034. Payment for fee acquisition will be 20% of appraised fee value at time option is exercised.	\$ 250,000
Appraisal reimbursement	
Attorney's fees	\$ 85,000
Total	\$ 421,000
Subtotal Appraisal Reimbursement and Attorney's Fees (Soft Costs)	\$ 85,000
% of Appraisal Reimbursement and Attorney's Fees as part of Total	20.2%

Note that the 'soft cost' of appraisal reimbursement, which is required in State law (MS 117.036), and attorney fees in these cases ranged from \$0 to \$85,000 for an average of \$27,475. Those soft costs as a percentage of total costs ranged from 0% to 21.5%. But with so few cases this is not a representative average cost. These are additional costs that negotiated purchases don't incur. But they are part of just compensation to the owner under Minnesota law.

In order to look at the magnitude of the condemnation soft costs in a larger data set, the Minnesota Department of Transportation tracks costs for each acquisition. The average cost for appraisal reimbursement and attorney fees and other legal costs is \$13,800 on 430 cases over Fiscal Years 2010-2014.

Conclusions

- a. Condemnation is a tool in obtaining right of way to create a viable regional trail system or to acquire critical parcels for a regional park. State law (Minnesota Statute Chapter 117) defines the process and associated costs that are necessary to determine just compensation to owners for property taken for a public purpose.
- b. To prohibit AOF grant funding entirely or to limit grant funding of some costs associated with condemnation acquisitions would contradict implementation of Council approved master plans for regional parks and trails.
- c. The condemnation process allows just compensation to be determined through negotiations between the owner and the acquiring entity called a "settlement". Or just compensation can be determined through a judicial process called an "award". A negotiated settlement between the parties is comparable to a negotiated purchase from a willing seller. Consequently the AOF grant rules should acknowledge condemnation settlements as well as condemnation awards.
- d. There may be changes to State law over time regarding the condemnation process. Because the law may change, the revised AOF grant rules should comply with applicable provisions of Minnesota Statute Chapter 117.
- e. If a park agency decides to initiate condemnation proceedings to acquire land, the revised AOF grant rules require the park agency to inform the Metro Council that they are initiating a condemnation proceeding and will request an AOF grant once a settlement or award is reached. The rules should also require the park agency to include its appraised value of the land it intends to condemn as part of that notification to the Council since that is required by law as part of the condemnation initiation process.

Appendix

Document 1: Business Item 2013-314 Public Hearing Report Regarding Park Acquisition Opportunity Fund Grant Rule Changes as Amendment to 2030 Regional Parks Policy Plan, memorandum to Metropolitan Parks and Open Space Commission by Raintry Salk (pages 17-28)

Document 2: Business Item 2013-314 Public Hearing Report Regarding Park Acquisition Opportunity Fund Grant Rule Changes as Amendment to 2030 Regional Parks Policy Plan, memorandum to Community Development Committee by Arne Stefferud (pages 29-40)

Document 1

Business Item No. 2013-314

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: Rainry 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 (pages 23-28).

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 led to a 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 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 as shown in Attachment A (pages 19-22).

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.

Document 2

Business Item No. 2013-314

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 [pages 35-40] 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 [pages 23-28] 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 [pages 19-22] indicates, all public comment received was in favor of the proposed amendment shown in Attachment B [pages 23-28]. 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 [pages 32-34]). 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 [pages 23-28] 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 [pages 23-28] 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 [pages 32-34]. 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 [pages 23-28]
(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 [pages 23-28])
—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:

- 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 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.