

## Community Development Committee

For the Metropolitan Council meeting of December 11, 2013

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**Subject:** Schedule Public Hearing to Amend the 2030 Regional Parks Policy Plan for Park Acquisition Opportunity Fund Grant Rules

### Proposed Action

That the Metropolitan Council:

1. Conduct a public hearing on February 18, 2014 as part of its Community Development Committee meeting regarding amending the *2030 Regional Parks Policy Plan* to:
  - a. Replace the Park Acquisition Opportunity Fund Grant rules, found in Chapter 4 of the *2030 Regional Parks Policy Plan*, to those outlined in attachment B.

The hearing record shall remain open until 4:30 p.m., Friday, February 28, 2014.

2. Direct staff to publish public hearing notices and distribute copies of the proposed amendments to the *2030 Regional Parks Policy Plan* under the Council's administrative procedure for public hearings.

### Summary of Committee Discussion/Questions

The Metropolitan Parks and Open Space Commission liaison, Council member Wulff, informed the Committee by that she was concerned about the eminent domain clauses in the proposed new rules. She felt that the Council should not financially support acquiring park land via the eminent domain process. She made a motion to have those clauses stricken from the proposed rules. It did not pass. Council member Commers suggested that the issue should be vetted through the public hearing process.

The Community Development Committee recommended approval of the proposed action at its November 18 meeting, with one dissenting vote from Council member Wulff.

## Community Development Committee

Meeting date: November 18, 2013

**Subject:** Schedule Public Hearing to Amend the 2030 Regional Parks Policy Plan for Park Acquisition Opportunity Fund Grant Rules

**District(s), Member(s):** All

**Policy/Legal Reference:** Minnesota Statute 473.147; 2030 Regional Parks Policy Plan

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

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

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2. Direct staff to publish public hearing notices and distribute copies of the proposed amendments to the *2030 Regional Parks Policy Plan* under the Council's administrative procedure for public hearings.

### Background

The Metropolitan Council is required by Minnesota Statute 473.147 to prepare and adopt a long-range system policy plan for regional recreation open space as part of the Council's Metropolitan Development Guide. At least every four years, the Council shall engage in a comprehensive review of the policy plan, and update if necessary. The Metropolitan Council adopted the updated *2030 Regional Parks Policy Plan* in December 2010, and adopted amendments to it in 2012 and 2013.

Minnesota Statute 473.147, Subdivision 2, indicates that an amendment to the policy plan may be proposed by the Council or the parks and open space commission. The Council is required to hold a public hearing on the proposed policy plan and amendments to it.

The *2030 Regional Parks Policy Plan* states that the Metropolitan Council will amend the policy plan only if a substantial revision is proposed. A substantial revision is defined as (1) a proposed revision that is intended to or could have the effect of changing the direction or intent of adopted Council policy; (2) addition or deletion of a policy; or (3)

addition or deletion of a system element. A Council decision to amend the plan will be preceded by a finding that a substantial revision is proposed.

At the July 9<sup>th</sup> 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 grant fund 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 the consensus recommendation that includes changes in the acquisition opportunity fund grant rules.

### **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**

The Metropolitan Parks and Open Space Commission (MPOSC) discussed the request to establish a public hearing to consider the proposed amendment to the *2030 Regional Parks Policy Plan* at its November 12, 2013 meeting. MPOSC voted 5-2 to recommend approval of the proposed action; Commission Member Nyanwleh and Piper voted against the recommendation.

## Metropolitan Parks and Open Space Commission

Meeting date: November 12, 2013

**Subject:** Schedule Public Hearing to Amend the 2030 Regional Parks Policy Plan for Park Acquisition Opportunity Fund Grant Rules

**District(s), Member(s):** All

**Policy/Legal Reference:** Minnesota Statute 473.147; *2030 Regional Parks Policy Plan*

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

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

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### Proposed Action

That the Metropolitan Council:

1. Conduct a public hearing on February 18, 2014 as part of its Community Development Committee meeting regarding amending the *2030 Regional Parks Policy Plan* to:
  - a. Replace the Park Acquisition Opportunity Fund Grant rules, found in Chapter 4 of the *2030 Regional Parks Policy Plan*, to those outlined in attachment B.

The hearing record shall remain open until 4:30 p.m., Friday, February 28, 2014.

2. Direct staff to publish public hearing notices and distribute copies of the proposed amendments to the *2030 Regional Parks Policy Plan* under the Council's administrative procedure for public hearings.

### Background

At the June 4<sup>th</sup> MPOSC meeting, the Commission requested Metropolitan Council staff to consult with regional park implementing agency staff in an effort to prepare an analysis of anticipated acquisition opportunity fund grant requests to present at the July 9<sup>th</sup> MPOSC meeting. At the July 9<sup>th</sup> meeting, staff reported that the anticipated acquisitions among the park implementing agencies, for fiscal years of 2014 and 2015, exceeded the available funds in the park acquisition opportunity grant fund 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. Metropolitan Council staff met with regional park implementing agency staff on July 17 and August 21, 2013. Input was also obtained by Metropolitan Council legal staff and representatives from Trust for Public Land, Parks and Trail Council of Minnesota, and Conservation Fund. One of the consensus recommendations put forward required a revision to the acquisition

opportunity grant fund rules. Several other consensual changes to the rules manifested over the course of the discussions, beyond those necessary to address the projected funding shortfall.

The overarching objectives of the rule changes are to:

1. Allow for reimbursement of land acquisitions from newly appropriated funding, when funding is not available in the acquisition opportunity grant fund account at the time of the grant request.
2. Provide guidance for working with third parties to acquire land when Metropolitan Council does not have funds available in the acquisition opportunity fund accounts.
3. Provide appropriate acquisition procedures required in eminent domain proceedings.
4. Require the use of any available acquisition funds from its share of a regional capital improvement program before a grant request to the park acquisition opportunity fund can be made.
5. Provide appropriate documentation specifications for environmentally contaminated lands.

Given the extent of changes proposed, the current rules found in the *2030 Regional Parks Policy Plan* (See Appendix A) would be struck and replaced in entirety with new text (See Appendix B).

The Metropolitan Council is required by Minnesota Statute 473.147 to prepare and adopt a long-range system policy plan for regional recreation open space as part of the Council's Metropolitan Development Guide. At least every four years, the Council shall engage in a comprehensive review of the policy plan, and update if necessary. The Metropolitan Council adopted the updated *2030 Regional Parks Policy Plan* in December 2010.

Minnesota Statute 473.147, Subdivision 2, indicates that an amendment to the policy plan may be proposed by the Council or the parks and open space commission. The Council is required to hold a public hearing on the proposed policy plan.

The *2030 Regional Parks Policy Plan* states that the Metropolitan Council will amend the policy plan only if a substantial revision is proposed. A substantial revision is defined as (1) a proposed revision that is intended to or could have the effect of changing the direction or intent of adopted Council policy; (2) addition or deletion of a policy; or (3) addition or deletion of a system element. A Council decision to amend the plan will be preceded by a finding that a substantial revision is proposed.

## **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. State Statute requires the Council to hold a public hearing to amend its *Regional Parks Policy Plan*. The Council's procedures regarding public hearings require the Council to establish a public hearing date 45 days prior to holding the public hearing. The public input period remains open for 10 calendar days following the hearing. Based on this process and the schedule of Community Development Committee and Metropolitan Council meetings, a public hearing could be scheduled for Tuesday, February 18, 2014, as part of the Community Development

Committee meeting. The hearing record would remain open 10 calendar days (until 4:30 pm February 28, 2014). A hearing report, which summarizes the testimony and recommends action, would be considered by the Metropolitan Parks and Open Space Commission on March 11; by the Community Development Committee on March 17; and by the Metropolitan Council on March 26, 2014. The adopted rules would go into effect one day after the Metropolitan Council adopted them.

## **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 Fund appropriations from the Land and Legacy Amendment. The remaining 40% is financed with Metropolitan Council bonds.

## **Known Support / Opposition**

As of October 25, 2013, the regional park implementing agency staff provided their unanimous support for the rule changes as proposed in Appendix B.

## Appendix A: Current Park Acquisition Opportunity Grant Fund Rules 2030 Regional Parks Policy Plan



*Como Regional Park, St. Paul*

[MN Statute 473.315](#) authorizes the Metropolitan Council with the advice of the MPOSC to make grants from any funds available to it to the regional park implementing agencies to cover the cost, or any portion of the cost, of acquiring and developing the regional park system in accordance with the parks policy plan. Following are summaries of how these grants are funded and managed:

### Park Acquisition Opportunity Fund Grant Rules

Rule 1: The Park Acquisition Opportunity Fund grant may finance up to 75% of the costs to acquire land and related costs as described in Rule 2. The land must be within Metropolitan Council approved master plan boundaries for regional parks, park reserves, regional trails and special recreation features. The cumulative amount a park agency could be granted in a State fiscal year (July 1 to June 30) is:

- \$1.7 million from the Environment and Natural Resources Trust Fund Acquisition Account for acquisitions of undeveloped land with high natural resource values to comply with State law.
- \$1.7 million from the Parks and Trails Legacy Fund Acquisition Account for acquisition of land that does not qualify for funding from the Environment and Natural Resources Trust Fund Acquisition Account.

The acquiring regional park implementing agency must finance up to 25% of the acquisition costs as a local match. The 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 with Metro Council bonds 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 \$567,000 any costs incurred by the park agency above the \$567,000 and paid for with park agency funds for grant eligible expenses as defined in Rule 2 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 requirements 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.

For example, the certified appraised value of the land and associated costs is \$1 million, but the seller donates \$50,000 of that value and thus the actual cost to obtain the land is \$950,000. The \$50,000 land value donation is credited towards the 25% match to the Park Acquisition Opportunity Fund grant. To be consistent in applying this policy regardless of a land value donation or not, the Park Acquisition Opportunity Fund grant and 25% match is calculated as follows:

\$1,000,000 purchase agreement price based on a certified appraised value of land and associated costs

Minus \$50,000 land donation by seller value, this is credited towards 25% match

Equals \$950,000 actual cost of acquisition

75% of \$1,000,000 total of purchase agreement price based on a certified appraised value of land and associated costs equals \$750,000 Park Acquisition Opportunity Fund Grant.

25% of \$1,000,000 purchase agreement price based on a certified appraised value of land and associated costs equals \$250,000 minus the \$50,000 documented land value donation equals \$200,000 cash match

Here's an example where land is obtained by a municipality via its parkland dedication ordinance and transferred to the regional park implementing agency at the same time as the park agency obtains other land for that regional park or trail from the same landowner. Assume that the appraised value of the dedicated land is \$50,000 and the value and associated acquisition costs for other land is \$950,000 for a total of \$1 million. The \$50,000 appraised value of the dedicated land is credited towards the 25% match to the Park Acquisition Opportunity Fund grant. To be consistent in applying this policy regardless of a land dedication/transfer or not, the Park Acquisition Opportunity Fund grant and 25% match is calculated as follows:

\$1,000,000 total appraised value and associated costs of land obtained via parkland dedication ordinance and additional land purchased at the same time from the same landowner.

Minus \$50,000 certified appraised value land obtained via parkland dedication ordinance, which is credited towards 25% match.

Equals \$950,000 actual cost of acquisition

75% of \$1,000,000 total appraised value and associated costs of land obtained via parkland dedication ordinance and additional land purchased at the same time from the same landowner equals \$750,000 Park Acquisition Opportunity Fund Grant.

25% of \$1,000,000 total appraised value and associated costs of land obtained via parkland dedication



ordinance and additional land purchased at the same time from the same landowner equals \$250,000 minus the \$50,000 documented land value of dedicated parkland equals \$200,000 cash match

**Rationale for Rule 1:** Allowing the cash match of regional park implementing agency money to be eligible for reimbursement with Metropolitan Council bonds from the park agency's share of future regional park capital improvement programs allows the park agency to recover its local cash contribution to the land acquisition. This is optional. Some park agencies may wish to seek reimbursement and some may not. Since the reimbursement is financed with a portion of that park agency's share of the regional parks capital improvement program, the reimbursement does not affect the amount granted to other park agencies.

Allowing the value of a land donation by the seller to be counted as part of the 25% local match to the Park Acquisition Opportunity Fund grant recognizes the donor's contribution, and treats that donation in the same way as a cash match to the grant. Land value donations are done voluntarily by sellers. Such donations provide tax benefits to the seller. Requiring a third party field appraisal review assures the Metropolitan Council that the purchase agreement price was determined at the highest standard of appraisal practice, and therefore the value of the land donation is legitimate. The cost of the appraisal review is a grant eligible expense because it helps the Metropolitan Council carry out due diligence in verifying the market value of the property and the value of the land donation as part of the 25% match.

Allowing the value of land obtained via parkland dedication and transferred to the regional park implementing agency at the same time other land is acquired by the park agency from the same landowner to be counted as part of the 25% local match to the Park Acquisition Opportunity Fund grant recognizes the dedicated land's value, and treats that dedicated land value in the same way as a cash match to the grant. Requiring a third party field appraisal review assures the Metropolitan Council that the value of the dedicated land was determined at the highest standard of appraisal practice, and therefore the value of the dedicated land is legitimate. The cost of the appraisal review is a grant eligible expense because it helps the Metropolitan Council carry out due diligence in verifying the market value of the property and the value of the dedicated land as part of the 25% match.

**Rule 2:** 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 in Rule 3.
- e. Legal services and closing costs to the park agency for costs associated with the purchase
- 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 (MS 473.341)
- j. Negotiated purchase price for the parcel
- k. Relocation costs to the seller under conditions of applicable State law
- l. Land stewardship costs as 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. 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.

**Rationale for Rule 2:** The minimal access development costs would be evaluated by the Metropolitan Council to determine what costs would be grant-eligible. The premise is to primarily use the Park Acquisition Opportunity Fund to buy land—not to develop it for recreational use that could be financed from other sources. But in cases where new parks or trails are being created, it is reasonable to provide some access to land as it is acquired.

Documenting the grant eligible costs with the grant request allows the Metropolitan Council to determine the accuracy of any calculations that went into determining the size of the grant, the size of the local match, and it provides a paper trail for any audit of the grant beyond the reimbursement expenditure reports used to document the justification to disburse grant proceeds.

**Rule 3:** Soil contamination remediation necessary to correct pre-existing environmental contamination known at the time of purchase, and the remediation effort is 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 Uniform Standards of Professional Appraising Practice (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 that absolves the regional park implementing agency from any future liability of pollution caused by the contaminated soil or contaminated groundwater.

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 Environment 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 Minnesota Pollution Control Agency.
- 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.

For example, the certified appraised value of the land is \$1 million, but the actual costs to obtain the land and remediation is \$900,000. The \$100,000 difference is credited towards the 25% match to the park agency. The grant is calculated as follows:

\$1,000,000 certified appraised value of land  
Minus \$100,000 difference between certified appraised value and actual costs of remediation and acquisition  
that is credited towards park agency's 25% match  
Equals \$900,000 actual costs of acquisition and remediation

75% of \$1,000,000 certified appraised value of land equals \$750,000 Park Acquisition Opportunity Grant.

25% of \$1,000,000 certified appraised value of land equals \$250,000 minus \$100,000 difference between appraised value and actual remediation and acquisition costs equals \$150,000 local match by the park agency

**Rationale for Rule 3:** This rule recognizes that funding for environmental contamination remediation of park lands may not be available because those programs (e.g. Tax Base Revitalization Account) require the land to be put back on the tax rolls. But, this rule limits the use of Park Acquisition Opportunity Fund grants for cases where the remediation costs and acquisition costs are less than the certified market value of the land. These conditions will allow the grant to buy contaminated land in a comparable way to land that has no contamination.

Documenting the grant eligible costs with the grant request allows the Metropolitan Council to determine the accuracy of any calculations that went into determining the size of the grant, the size of the local match, and it

provides a paper trail for any audit of the grant beyond the reimbursement expenditure reports used to document the justification to disburse grant proceeds.

**Rule 4:** 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 Environment and Natural Resources Trust Fund (ENRTF) Account and qualify for funding from the Parks and Trails Legacy Fund (PTLF) Account. For example, lot(s) must contain high quality natural resources with no structures on them to qualify for ENRTF financing, and lot(s) that do not contain high quality natural resources or they 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.

For example, a 40 acre lakeshore parcel containing one home, and the rest of the land could be legally subdivided into other lots, is considered for acquisition. The appraisal determines the market value of each lot to determine the market value for the entire parcel. The value of the lot with the house on it and related acquisition costs is \$600,000, and the value of the other undeveloped lots and related acquisitions costs is \$400,000 for a total of \$1 million. The Park Acquisition Opportunity Grant is calculated as follows:

75% of \$600,000 cost of house lot equals \$450,000 which is financed from the PTLF account.  
75% of \$400,000 cost of the undeveloped lots equals \$300,000 which is financed from ENRTF account for a combined grant total of \$750,000. If there was less than \$300,000 of ENRTF account money available, the PTLF account could be used to finance the remainder to reach the \$300,000 level for that portion of the grant.

**Rationale for Rule 4:** Some parcels can be subdivided into lots. And to determine the fair market value of the land, the value of each lot is determined in the appraisal process. In those cases, the lots that qualify for funding from the ENRTF account should be purchased with that account and the lots that qualify for funding from the PTLF account should be purchased with that account. Since the PTLF account is about twice as large as the ENRTF account and the PTLF account can be used to acquire any land and structures, it is reasonable to use PTLF account money to help fully fund a grant. This was done in the acquisition of a 43 acre parcel for Grey Cloud Island Regional Park in 2010 that had a total acquisition cost of \$1.96 million. There was no formal rule in place at the time, but the conclusion of the Metropolitan Council and permission by the Legislative Citizens Commission on Minnesota Resources that recommends appropriations from the ENRTF was that it was a reasonable approach to take since it was consistent with the purposes of both accounts. Creating this rule provides guidance for future acquisitions that meet these conditions.

**Rule 5:** If requests from several regional park implementing agencies are submitted for consideration by the 15th day of the month preceding the next Metropolitan Parks and Open Space Commission meeting, and the total requests exceeds the amount of grant funds available at that time, award grants to all requests that are proportional to the amount requested. For example, three regional park implementing agencies submit requests that total \$1 million, but there is only \$800,000 available. Three grants would be awarded with the amount proportional to the request. For example, if Agency 1's request was \$500,000 out of the \$1 million total (50%), the grant would be 50% of the available funds—in this example the grant would be \$400,000.

**Rationale for Rule 5:** This rule guides the Metropolitan Council in determining how to fund multiple grants that are considered at the same time when the amount requested exceeds the grant funds available. The deadline of the 15th of the month for submitting a request allows Council staff time to fully analyze the requests to verify the accuracy of each, and in turn the proportional amount of available grant funds that should be awarded.

**Rule 6:** 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.

**Rationale for Rule 6:** The time limit on the grant is to insure that actions to acquire the land and carry out other grant eligible activities is done in a timely manner and definitely before the expiration of the State appropriation that financed the grant. Since the grants are made on estimated as well as actual costs, and grant funds are not disbursed until actual costs are documented, there are situations where not all encumbered grant funds are needed. These remaining funds can then be unencumbered and used on other grants up until the applicable State appropriation expires. Since the grant is financing activities beyond the acquisition of land, there may be cases where additional time is needed to complete those activities. For example, if the grant is financing soil remediation costs and those remediation activities cannot be completed in 12 months due to bad weather, an extension to the grant's duration is appropriate. Consequently, the grant term may be extended for cause in these situations. However, the grant extension cannot exceed the availability of the State funds financing the grant.

**Rule 7:** One year prior to the expiration of the State appropriation to each Park Acquisition Opportunity Fund Grant account [i.e. the Park and Trails Legacy Fund Acquisition Account (PTLF) and the Environment and Natural Resources Trust Fund Acquisition Account (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.

**Rationale for Rule 7:** This rule allows the Metropolitan Council to collaborate with the regional park implementing agencies and Metropolitan Parks and Open Space Commission on proposing ways to spend the remaining State appropriations in each account before they expire. These variances to the rules would insure that the State appropriations that partially finance these accounts are fully utilized to meet the objective of acquiring as much land as possible with the funds available.

### Capital Improvements financed with State bonds and Metropolitan Council bonds

The Parks CIP must, in accordance with [MN Statute 473.147](#), include "criteria and priorities for the allocation of funds". Capital projects proposed for funding must be consistent with Metropolitan Council approved regional park or trail master plans. Projects proposed by each regional park implementing agency are prioritized by that agency. Each park agency has unique capital needs, which that park agency can best determine.

Since 2008, the Metropolitan Council has used a formula to determine how much of the CIP would be allocated to each regional park implementing agency. The formula balances two factors:

- The population of each park implementing agency compared to the region's population. This factor is weighted 70%.
- The amount of visits a park agency hosted from persons who live outside the park agency's jurisdiction (non-local visits). This factor is weighted 30%.

The population factor recognizes the need to provide funds for park capital improvements to serve every person in the region relatively equally. The non-local visits factor recognizes that these regional parks serve a regional and state-wide population. Therefore a combination of both factors is accounted for in the CIP formula.

The results of this formula determine the amount each regional park implementing agency could request/receive from the CIP. For example if Anoka County's share of the CIP is 10%, then 10% of appropriations for the CIP would be granted to Anoka County for its projects in the CIP.

**Appendix B:  
Proposed Revised Rules for the Park Acquisition Opportunity Fund Grant  
Rules**

**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.