

Community Development Committee

For the Metropolitan Council meeting of July 26, 2017

Subject: Parks Acquisition Opportunity Fund Grant for Nine Mile Creek Regional Trail, Three Rivers Park District, (NSP/5309 70th Street West)

Proposed Action

That the Metropolitan Council:

1. Approve a grant of up to \$38,687 to Three Rivers Park District to acquire an easement on a parcel at 5309 70th Street West for the Nine Mile Creek Regional Trail;
2. Authorize the Community Development Director to execute the grant agreement and restrictive covenant on behalf of the Council;
3. Consider reimbursing Three Rivers Park District for up to \$12,893 from its share of a future Regional Parks Capital Improvement Program for costs associated with acquisition of this easement; and
4. Inform Three Rivers Park District that the Council does not under any circumstances represent or guarantee that future reimbursement will be granted and expenditure of local funds never entitles a park agency to reimbursement.

Summary of Committee Discussion/Questions

At its meeting on July 17, 2017, the Community Development Committee recommended approval of the proposed action as part of the consent agenda.

Community Development Committee

For the Community Development Committee meeting of July 17, 2017

For the Metropolitan Council meeting of July 26, 2017

Subject: Parks Acquisition Opportunity Fund Grant for Nine Mile Creek Regional Trail, Three Rivers Park District, (NSP/5309 70th Street West)

District(s), Member(s): 5 – Steve Elkins

Policy/Legal Reference: MN Statutes §85.53 Subd. 3(4) and MN Statutes 473.315

Staff Prepared/Presented: Deb Streets Jensen, Senior Parks Finance Planner 651-602-1554

Division/Department: Community Development Division / Regional Parks & Natural Resources

Proposed Action

That the Metropolitan Council:

5. Approve a grant of up to \$38,687 to Three Rivers Park District to acquire an easement on a parcel at 5309 70th Street West for the Nine Mile Creek Regional Trail;
6. Authorize the Community Development Director to execute the grant agreement and restrictive covenant on behalf of the Council;
7. Consider reimbursing Three Rivers Park District for up to \$12,893 from its share of a future Regional Parks Capital Improvement Program for costs associated with acquisition of this easement; and
8. Inform Three Rivers Park District that the Council does not under any circumstances represent or guarantee that future reimbursement will be granted and expenditure of local funds never entitles a park agency to reimbursement.

Background

Regional Park Implementing Agency. This grant was requested by Three Rivers Park District on October 16, 2016. Because the Council's land acquisition appropriation for state fiscal year 2017 from the Parks and Trails Legacy Fund was exhausted by the request date, this request was delayed until a new appropriation was available. A copy of the Agency's request is attached to this item. The acquisition is located in Edina, in Hennepin County.

Policy. Strategy Two of the Siting and Acquisition policy from the *2040 Regional Parks Policy Plan* states that "*priorities for land acquisition are set by regional park implementing agencies in Council-approved master plans.*"

Funding sources. The Council's Park Acquisition Opportunity Fund (PAOF) provides resources to purchase property and easements via two state sources: the Parks and Trails Legacy Fund (PTLF) and the Environment and Natural Resources Trust Fund (ENRTF). The Council contributes further by matching every \$3 in state funds with \$2 in Council bonds proceeds. Between them, state and Council funds contribute 75% of the purchase price and eligible costs; the Regional Park Implementing Agency (Agency) contributes the remaining 25% as local match. This grant would be funded through PTLF and Council match.

Council review. Staff from the Council's Regional Parks and Natural Resources work unit:

- reviews each PAOF request to ensure that the proposed acquisition complies with state statute and Council policy;
- ensures that all necessary documentation is in place and that the appraisal is reasonable and appropriate; and
- processes requests on a first-come-first-served basis.

Subject property. The subject 7,052-square foot easement area is within the Council-approved boundaries of the regional trail. The property is located at 5309 70th Street West in Edina and is owned by Xcel Energy. Although the property contains the buildings for an Xcel substation, the easement acquisition does not touch or affect the buildings in any way.

Acquisition details. The Park District received a federal transportation grant in the amount of \$6.16 million to construct the east segment of the Nine Mile Creek Regional Trail. The funding was contingent upon the Park District securing and paying for the property rights – or being in the process of condemnation – by June 1, 2015.

If this were a typical easement acquisition, the Council would have approved the grant first, and the Agency would close after the grant was awarded. In condemnation proceedings, the *2040 Regional Parks Policy Plan* provides that *with prior approval from the Council*, an Agency may proceed with condemnation, close on the property, and then request the grant after the final costs have been determined. After preliminary negotiations to purchase the easement were unsuccessful, the Park District notified the Council on March 6, 2015 of its intent to acquire the easement through condemnation. A copy of the notification is attached.

During the course of the condemnation proceedings, an purchase agreement was reached, and the condemnation process was dropped. At the time the agreement was reached, there were no PTLF acquisition funds available, and the Council does not accept PAOF applications unless funds are available. Because the Park District stood to lose the federal funds if it delayed the acquisition, it proceeded and later submitted an application for state fiscal year 2018 PTLF funding.

Therefore, this acquisition represents a sort of 'hybrid' between a typical acquisition and a condemnation. While the *2040 Regional Parks Policy Plan* does not specifically address a 'hybrid' acquisition, staff believes issuing a grant in this situation would be in keeping with the spirit of the Policy Plan: the Park District moved forward with the acquisition in good faith after having received the Council's approval to reimburse them following the condemnation process, and the risk of losing federal funding precluded them from waiting for fiscal year 2018 funding. Staff believes it is in the public interest to make acquisitions from willing sellers whenever possible, and to withhold a grant because an agreement was reached with the seller seems contrary to that interest.

Rationale

This acquisition is consistent with:

- The 2040 Regional Parks Policy Plan;
- Appropriation requirements;
- The Nine Mile Creek Regional Trail master plan, approved by the Council on December 11, 2013 ([business item 2013-313](#)); and
- All requirements of PTLF.

Thrive Lens Analysis

This request is consistent with Thrive’s Livability outcome because it will facilitate construction of a regional trail that will eventually span the communities of Hopkins, Minnetonka, Edina, Richfield, and Bloomington.

Funding

Project budget. When a Regional Park Implementing Agency acquires an easement through condemnation, an appraisal is used to aid in determining the “damages” that will occur when the owner surrenders rights to a portion of the property. The appraised value of the expected damages is \$54,900. The administrative settlement amount was \$49,364. The grant request also includes the cost of the legal services and closing, both of which are eligible costs according to the *2040 Regional Parks Policy Plan*.

Budget item	Requested amount	
Purchase price	\$49,364	
Legal and closing costs	<u>2,207</u>	
Total costs	\$51,571	
Grant structure		
State FY 2018 PTLF PAOF	\$23,207	
Council bonds	15,471	
Grant amount not to exceed		\$38,678
Local match	<u>12,893</u>	
Project total	\$51,571	

Fund balance.

As of July 1, 2017, the combined balance available for PTLF PAOF and Council match was \$2,764,577. There are two other PTLF grant requests before the Metropolitan Parks and Open Space Commission on July 11, 2017. If all three grants are approved, the balance in the fund will be \$2,302,211.

Future reimbursement consideration. The Park District is also requesting that the Council consider reimbursing the Park District’s \$12,893 local match for this acquisition at some point in the future as a part of a regular Capital Improvement Program (CIP). When each Regional Parks Implementing Agency (Agency) prepares its CIP proposals for state bonding cycles, their proposal comprises capital projects that will be accomplished during the grant term; the proposal may also include a request for reimbursement of some of their match dollars from past projects. A request for “future reimbursement consideration” is the mechanism used to obtain the Council’s conditional approval to include the match for this easement acquisition in a future CIP cycle. Because the Council issues bonds to cover exactly 40% of CIP costs for a given state bonding cycle, such reimbursements are limited. The Council is under no obligation to reimburse this amount.

Known Support / Opposition

There is no known opposition. A Metropolitan Parks and Open Space Commissioner questioned whether the acquisition would be subject to legal challenge because it doesn’t conform exactly to the *2040 Regional Parks Policy Plan*. Jonathan Vlaming of Three Rivers Park District and Steve Sullivan of

Dakota County Parks explained that the title to the property passed during the condemnation process, but the valuation portion of the transaction occurred outside of court, with a willing seller.

Metropolitan Parks and Open Space Commission

Meeting date: July 11, 2017

For the Community Development Committee meeting of July 17, 2017

For the Metropolitan Council meeting of July 26, 2017

Subject: Parks Acquisition Opportunity Fund Grant for Nine Mile Creek Regional Trail, Three Rivers Park District, (NSP/5309 70th Street West)

MPOSC District: C – Margie Andreason

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Known Support / Opposition

There is no known opposition.

Exhibit List

- Exhibit 1: Three Rivers Park District grant request letter
- Exhibit 2: Images
- Exhibit 3: Grant application
- Exhibit 4: Board approval to request grant
- Exhibit 5: Purchase agreement
- Exhibit 6: Appraisal excerpt
- Exhibit 7: Notice of Condemnation and Intent to Request PAOF