

Metropolitan Parks and Open Space Commission

Meeting date: February 4, 2014

For the Community Development Committee meeting of February 18, 2014

For the Metropolitan Council meeting of February 26, 2014

Subject: Restrictive covenant agreement replacement on property acquired for Bruce Vento Nature Sanctuary

District(s), Member(s): MPOSC District G, Carrie Wasley. Metropolitan Council District 13, Richard Kramer

Policy/Legal Reference: MS 473.315

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

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

Proposed Action

That the Metropolitan Council approves the restrictive covenant agreement replacement on property acquired for the Bruce Vento Nature Sanctuary as depicted in Attachment 3 and authorizes the Regional Administrator to execute the agreement.

Background

In 2008, the Metropolitan Council approved a master plan amendment to the Bruce Vento Regional Trail which added the Bruce Vento Nature Sanctuary as part of the trail (Referral number 20232-1, Agenda Item 2008-119).

The Metro Council also approved a Park Acquisition Opportunity Fund grant to the City of St. Paul to help it acquire land for the nature sanctuary (Grant SG-2008-061). One of the parcels included a 4-story building which the master plan amendment stated could be used as an interpretive center for the nature sanctuary. (See Attachment 1 for "Map of Bruce Vento Interpretive Center Property Acquisition in context of Bruce Vento Nature Sanctuary and Bruce Vento Regional Trail" and Attachment 2 for "Map of parcels acquired with Grant SG-2008-061 for Bruce Vento Interpretive Center")

A restrictive covenant agreement on the land is a condition of the grant. That covenant limits use of the land for regional recreation open space purposes.

The City is considering either renovating the 4-story building or replacing it with something smaller, since the interpretive center would not consume the entire building. If the building is renovated, the City would like to house other park and recreation related uses (e.g. a gymnasium) that do not support the Bruce Vento Nature Sanctuary and/or Bruce Vento Regional Trail. These other uses would not be allowed under the existing restrictive covenant agreement. Since the building (renovated or replacement) is needed for the interpretive center as called for in the master plan, Metro Council staff and City of St. Paul staff drafted a replacement restrictive covenant agreement as summarized below:



- 1) City of St. Paul shall not lease, license or use the Property for park purposes other than regional recreational open space without the Metropolitan Council's express consent.
- 2) In exchange for allowing a wider use of the Property, the City of St. Paul agrees it will not seek funding from the Metropolitan Council via the Metropolitan Council's Regional Parks Capital Improvement Program for either the renovation of the vacant building, or the construction of a new building for the interpretive center and other park related uses (e.g. a gymnasium) that do not support the Bruce Vento Nature Sanctuary and/or Bruce Vento Regional Trail. The Metropolitan Council may be the fiscal agent for State funds appropriated to the City of St. Paul for renovation of the vacant building, or the construction of a new building for the interpretive center and other park related uses (e.g. a gymnasium) that do not support the Bruce Vento Nature Sanctuary and/or Bruce Vento Regional Trail.
- 3) If the Metropolitan Council approves an amendment to the Bruce Vento Regional Trail master plan that states that only the interpretive center and ancillary uses that support the Bruce Vento Nature Sanctuary and/or Bruce Vento Regional Trail will be constructed on the Property, the City may request funding for the interpretive center's construction from the City's share of the Metropolitan Council's Regional Parks Capital Improvement Program.

The restrictive covenant agreement replacement is depicted in Attachment 3.

Rationale

The "System Protection" section of the *2030 Regional Parks Policy Plan* states that the Metropolitan Council has in place several mechanisms that protect the integrity of the regional parks system and individual parts of the system. One of those mechanisms is restrictive covenant agreements. Regional park implementing agencies are required to place restrictive covenants on lands purchased with regional funds to ensure that all land in the system remains in regional recreation open space unless a change is agreed to by the Council. This replacement restrictive covenant implements that statement.

Funding

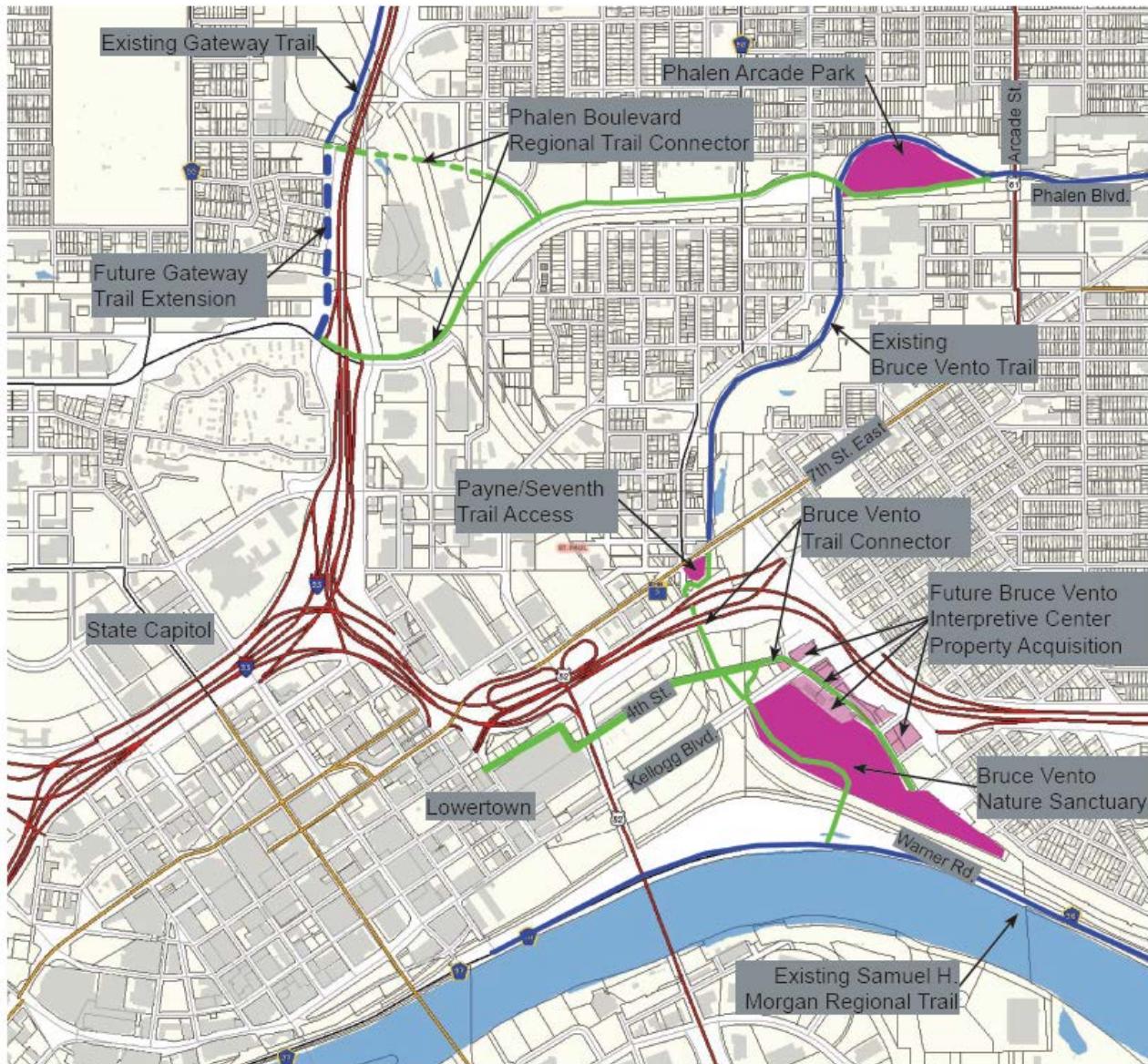
There is no grant funding proposed in this action. As noted in the Background section above, points 2) and 3) stipulate how funding to renovate the existing building or replacing it for the interpretive center would be managed.

Known Support / Opposition

Staff from the City of St. Paul and Metropolitan Council collaborated on drafting the restrictive covenant agreement replacement. They support its approval and execution.

Attachment 1:

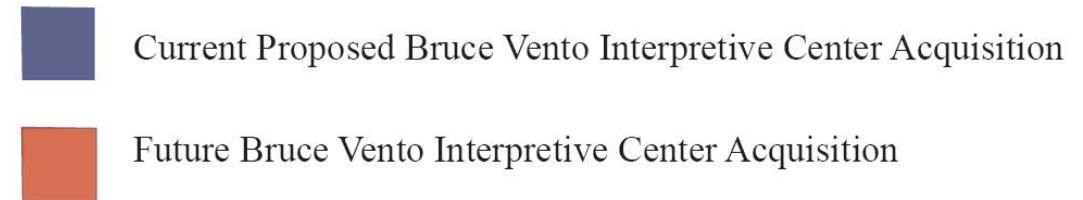
Map of Bruce Vento Interpretive Center Property Acquisition in context of Bruce Vento Nature Sanctuary and Bruce Vento Regional Trail



Attachment 2:

**Map of parcels acquired with Grant SG-2008-061 for Bruce Vento Interpretive Center depicted as
“Current Proposed Bruce Vento Interpretive Center Acquisition”**

Fig. 2A



Attachment 3:

**Restrictive Covenant Agreement Replacement on Property Acquired for Bruce Vento
Nature Sanctuary**

**AMENDED AND RESTATED
AGREEMENT AND RESTRICTIVE COVENANT**

THIS AMENDED AND RESTATED AGREEMENT AND RESTRICTIVE COVENANT is made and entered into this _____ day _____, 2014, by and between the City of Saint Paul (“Grantee”) and the Metropolitan Council, a political subdivision of the State of Minnesota (“Grantor”).

RECITALS

1. Pursuant to grant agreement number SG-2008-061 entered into by and between the parties, the Grantor contributed tax-exempt bond proceeds toward the acquisition of three parcels of land to be included in the Bruce Vento Regional Trail, which land is described as follows:

See attached **Exhibit A**, hereinafter referred to as the “Property.”
2. Grantee acquired the Property for, among other things, the Bruce Vento Nature Sanctuary, and for the construction of an interpretive center.
3. The Property is improved with a vacant 4-story building that could be renovated and used for the interpretive center as called for in the Master Plan Amendment to the Bruce Vento Regional Trail (Referral No. 20232-1) approved by the Metropolitan Council on May 28, 2008.
4. In accordance with the parties’ grant agreement, Grantee and Grantor entered into an Agreement and Restrictive Covenant, dated December 2, 2009, which Agreement restricted the rights of the Grantee to use, convey or encumber the Property. The restrictions limited Grantee’s use of the Property for regional recreation open space purposes in order to protect the tax-exempt status of the bonds issued for the acquisition and to ensure that the Property is used exclusively for regional park purposes.

5. In 2013, the Grantee proposed using the Property and the vacant building for a mixture of uses in addition to the interpretive center as a way to generate lease revenue from the other uses to sustain the building's operations and maintenance costs.
6. The parties desire to amend and restate the Agreement and Restrictive Covenant to allow for wider latitude in the use of the Property while still preserving the tax-exempt status of the bonds used to acquire the Property and still preserving the intent of the grant: The use of the Property for the construction and use of an interpretive center at the Bruce Vento Nature Sanctuary.

NOW, THEREFORE, in consideration of the grant agreement SG-2008-061 made by the Grantor to Grantee and in consideration of the mutual agreements and covenants contained in this Amended and Restated Agreement, the parties agree as follows:

1. The parties agree that this Amended and Restated Agreement and Restrictive Covenant shall supersede the Agreement and Restrictive Covenant entered into on December 2, 2009, by and between the parties and upon execution of this Amended and Restated Agreement, the former Agreement shall have no further force and effect.
2. The Grantee agrees to construct an interpretive center on the Property either in the current vacant building or in a replacement building in accordance with the Master Plan Amendment to the Bruce Vento Regional Trail (Referral No. 20232-1) approved by the Metropolitan Council on May 28, 2008. Grantee agrees to only use the interpretive center for the Bruce Vento Nature Sanctuary in perpetuity.
3. Specifically excluding the interpretive center, other uses of the Property and building as renovated or constructed may be acceptable provided that the uses of the Property and building comply with the provisions of grant agreement SG-2008-061 and all applicable state and federal laws, rules, and regulations pertaining to the use of bond proceeds as detailed below. Grantee shall not use the Property or building in any way that would cause the bonds used to acquire the property to be classified as Arbitrage Bonds under the Internal Revenue Code.
4. Grantee shall not sell or mortgage the Property, or any portion thereof, nor create any easement, restriction, or other encumbrance against the Property unless the written approval of the Grantor or its successors is duly filed and recorded at the time of the filing and recording of the instrument to which such approval pertain. In addition, Grantee shall not lease, license or use the Property for park purposes other than regional recreational open space without the Grantor's express consent.
5. Grantee shall not be obligated to refund any portion of the grant funds provided for the acquisition of the Property provided however Grantee's use of the Property remains consistent with this Amended and Restated Agreement.

6. In exchange for allowing a wider use of the Property, Grantee agrees it will not seek funding from the Grantor via the Metropolitan Council's Regional Parks Capital Improvement Program for either the renovation of the vacant building, or the construction of a new building for the interpretive center and other park related uses (e.g. a gymnasium) that do not support the Bruce Vento Nature Sanctuary and/or Bruce Vento Regional Trail. The Grantor may be the fiscal agent for State funds appropriated to the Grantee for renovation of the vacant building, or the construction of a new building for the interpretive center and other park related uses (e.g. a gymnasium) that do not support the Bruce Vento Nature Sanctuary and/or Bruce Vento Regional Trail.
7. If the Grantor approves an amendment to the Bruce Vento Regional Trail master plan that states that only the interpretive center and ancillary uses that support the Bruce Vento Nature Sanctuary and/or Bruce Vento Regional Trail will be constructed on the Property, the Grantee may request funding for the interpretive center's construction from the Grantee's share of the Metropolitan Council's Regional Parks Capital Improvement Program.
8. Provided that conveyance of such easement or easements is consistent with the Approved Master Plan, the Grantee agrees to convey to the Grantor, its successors or assigns, a permanent easement or easements, hereinafter referred to as "Wastewater Facilities Easement[s]" for future regional wastewater conveyance corridors on the Property. Upon written request by and at no cost to the Grantor, Grantee will execute and deliver to the Grantor the Wastewater Facilities Easement[s] substantially in the form of the Easement attached hereto and incorporated herein as **Exhibit B** for the location or locations described by the Grantor in its written request to Grantee. The Grantor may exercise this contractual right to the Wastewater Facilities Easement[s] on one or more occasions.

The Grantor agrees to work cooperatively with Grantee to locate the Wastewater Facilities Easement[s] and the regional wastewater conveyance facilities on the Property in a manner which minimizes the impact on existing and planned park system facilities on the Property and natural resources. As further consideration for the conveyance of the Wastewater Facilities Easement[s], the Grantor agrees to waive the Sewer Availability Charge for the Property.

The Grantor may at any time after execution of this Agreement, provide to Grantee written notification of the proposed location of a future regional wastewater conveyance corridor on the Property. Grantee agrees not to place or allow to be placed any restrictions, conditions, or encumbrances on the Property within the proposed future regional wastewater conveyance corridor without the written consent of the Grantor.

This Amended and Restated Agreement and Restrictive Covenant may be enforced by the Grantor or its successors, as then defined, by appropriate action in the courts of the State of Minnesota.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in their respective names all as of the date first above written.

METROPOLITAN COUNCIL

By: _____

Its: Regional Administrator

Dated: _____

Approved as to form

Office of the General Counsel

STATE OF MINNESOTA)
)
) ss

COUNTY OF RAMSEY)

On the _____ day of _____, 2014, before me a notary public within and for the County of Ramsey, personally appeared Patrick Born, the Regional Administrator of the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota and acknowledged that he executed said instrument on behalf of the Metropolitan Council by authority of its Board.

Notary Public

CITY OF ST. PAUL

By: _____

Its: _____

Date: _____

STATE OF MINNESOTA)
)
) ss
COUNTY OF RAMSEY)

On the _____ day of _____, 2014, before me a notary public within and for the County of Ramsey, personally appeared _____, the _____ for the City of St. Paul and acknowledged that (s)he executed said instrument on behalf of the City of St. Paul by authority of its Board.

Notary Public

DRAFTED BY:

Peter A. Hanf
Associate General Counsel
Metropolitan Council
390 N. Robert Street
St. Paul, MN 55101
(651) 602-1749

EXHIBIT A

Property Description

Lots 1 and 2, Block 30, Lyman Dayton's Addition, except that part of vacated Canal Street which accrued to said lots by the vacation of said Street.

Lot 5, Block 31, Lyman Dayton's Addition, except the East 25 feet thereof.

Lots 6, 7, 8, 9 and 10, Block 31, Lyman Dayton's Addition.

Lot 1, Block 1, Commercial Street Addition.

Torrens Property

Torrens Certificate No. 563479

EXHIBIT B

EASEMENT

THIS INSTRUMENT, MADE THIS _____ day of _____, 20_____, by and between _____, of the County of _____, State of Minnesota, Grantor(s), and the Metropolitan Council, a public corporation and political subdivision of the state (successor to the Metropolitan Waste Control Commission), Grantee;

WITNESSETH, that Grantor(s), in consideration of One Dollar and other good and valuable consideration to _____ in hand paid by Grantee, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey to Grantee, its successors and assigns, the following described easement for sanitary sewer and utility purposes:

[Insert]

Said temporary easement to expire on or before _____.

The above described easement includes the rights of grantees, its contractors, agents and employees to do whatever is necessary for enjoyment of the rights granted herein including the right to enter the easement for purposes of constructing, operating, maintaining, altering, repairing, replacing, and/or removing said sewers and utilities.

Grantor(s), _____ heirs, successors and assigns, will not erect, construct, or create any building, improvement, obstruction or structure of any kind, either above or below the surface, or stockpile soils, construction debris, or construction equipment or change the grade thereof, without the express written permission of the Grantee.

Notwithstanding the aforementioned provision, the following improvements by Grantor(s), heirs, successors, and assigns do not require Grantee's written approval: fences, parking lots, street and/or roadways,

landscaping, bushes, shrubs. However, Grantor(s) hereby agree(s) that Grantee will not be responsible for and will not pay for the loss of or any damage to, or replace or restore the following items within the easement area: fences, trees, shrubs, bushes or other plantings, other than grass or sod.

Grantor(s) covenant(s) that _____ is/are the Owner(s) and is/are in possession of the above described premises and has/have lawful right and authority to convey and grant the easement described herein.

IN WITNESS WHEREOF, the said Grantor(s) has/have caused this Easement to be executed as of the date noted above.

By: _____

Its: _____

By: _____

Its: _____

STATE OF _____)

) ss

COUNTY OF _____)

On the _____ day of _____, 20_____, before me a notary public within and for said County, personally appeared _____, named in the foregoing instrument, and that said instrument was signed on behalf of said _____, a _____, by authority of its Board and _____ acknowledged said instrument to be the free act and deed of said _____.

Notary Public

DRAFTED BY: