

Metropolitan Parks and Open Space Commission

Meeting date: November 7, 2019

For the Community Development Committee meeting of November 18, 2019

For the Metropolitan Council meeting of December 11, 2019

Subject: Park Acquisition Opportunity Fund Grant for Nine Mile Creek Regional Trail (Wanner), Three Rivers Park District

MPOSC District, Member: District C, Margie Andreason

Council District, Member: 5, Molly Cummings

Policy/Legal Reference: Minn. Const. art. XI, sec. 15; Minn. Stat. § 473.315; *2040 Regional Parks Policy Plan*, Chapter 4, Siting and Acquisition Policy- Strategy 4; Chapter 5, Planning Policy- Strategy 1; Chapter 8, Finance Policy- Strategy 7.

Staff Prepared/Presented: Jessica Lee, Senior Parks Planner (651-602-1621)

Division/Department: Community Development

Proposed Action

That the Metropolitan Council:

1. Approve a grant of up to \$71,250.00 to Three Rivers Park District for the 2,305 square-foot easement located at 7125 Ohms Lane in the City of Edina for 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 \$23,750 from its share of a future Regional Parks Bonding Program for costs associated with their local match.
4. Inform Three Rivers Park District that the Council does not under any circumstances represent or guarantee that the Council will grant future reimbursement and that expenditure of local funds never entitles a park agency to reimbursement.

Background

Regional Park Implementing Agency (Agency) and Location

Three Rivers Park District requested this grant on August 6, 2019. A copy of the Agency's request is attached to this item as Exhibit 3. Nine Mile Creek Regional Trail is in Hennepin County and travels from Hopkins east to Edina, Richfield, and Bloomington (see Exhibit 1, Figure 1).

Acquisition via eminent domain

This easement has been acquired via eminent domain, and the Agency is requesting reimbursement of its acquisition costs as well as their associated legal costs. A normal acquisition with the Park Acquisition Opportunity Fund (PAOF) program involves a negotiation between an Agency and a willing seller. In the normal course of an acquisition, the Agency must request a PAOF grant before it closes on the property. In contrast, the condemnation process requires that the Agency pay a pre-determined amount to the seller at the beginning of the court proceedings, then it finalizes the award amount through the court. The Agency must pay the balance when the court process is complete. Because these actions must be finished before the total project amount can be determined, the Council's process allows the Agency to request a grant at the end of the process.

The Agency notified the Council of its intent to begin condemnation proceedings in March of 2015 after negotiations with the seller failed. The Agency paid the seller \$19,400 in May 2015 and took possession of the easement. The court proceedings have since been finalized, and the Agency is working with the landowner to pay the balance of the award amount. A copy of the original notification and the Agency's formal grant request are attached as Exhibits 3 and 4, respectively.

Funding sources

The Council's Park Acquisition Opportunity Fund (PAOF) program 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 up to 75% of the purchase price and eligible costs; the Regional Park Implementing Agency (Agency) contributes the remaining 25% as local match. ENRTF funds cannot be used for properties acquired through eminent domain proceedings; therefore, the Council will fund this grant through PTLF and Council match.

Council review

Council staff conduct review of each PAOF request on a first-come-first-served basis under the following standards:

- the proposed acquisition complies with state statute and Council policy
- all necessary documentation for the acquisition is in place
- the appraisal is reasonable and appropriate

Subject property

The easement is within the Council-approved boundary of Nine Mile Creek Regional Trail, in the Edina East segment. The easement runs parallel to Ohms Lane, along the side of a business. The building and parking lot for the existing business were not affected by the easement, and the trail has already been constructed at this location (see Exhibit 1, Figure 3). This easement was the last one needed to complete the Edina East and Edina West segments of the regional trail.

Rationale

This acquisition is consistent with:

- The *2040 Regional Parks Policy Plan*
 - Planning Policy Strategy 1 requires that before an Agency can receive a grant for acquisition, the proposed project must be consistent with a Council-approved master plan. The Council approved the Nine Mile Creek Regional Trail Master Plan for this regional trail in 2013 (Business Item 2013-313).
 - Siting and Acquisition Strategy 4 requires that new regional trails serve a regional audience and provide connections between regional park units without duplication. The recommended easement will establish a needed link for the regional trail without duplication, thereby providing uninterrupted trail access to serve a regional audience.
 - Finance Strategy 7 authorizes the use of PAOF as the funding mechanism for the acquisition of Regional Park lands and matching every \$3 in state funds with \$2 in Council bonds.
- All requirements of PTLF and the 2019 appropriation. This funding aligns with the goals of the Parks and Trails Legacy Fund strategic pillar of "Acquire land – create opportunities."

Thrive Lens Analysis

This request is consistent with Thrive’s Livability outcomes because the Council’s investment in the Regional Trail will provide access to outdoor recreation, enhance quality of life, and offer opportunities for increased health and wellness.

Funding

Project budget

Once a party commits to acquisition through eminent domain, it is not uncommon that the cost of the property or easement, plus the associated legal and closing costs, may be higher than the original appraised acquisition price. The appraised value is \$28,700, and the Agency has paid the seller 255.75% of the appraised amount plus closing and other costs as shown below.

Budget item	Requested amount
Purchase price	\$73,400
Due diligence (appraisal and appraisal review)	\$9,600
Legal services and closing costs	\$12,000
<hr/>	
Total costs	\$95,000
Grant structure	
State FY 2020 PTLF PAOF	\$42,750
Council bonds	\$28,500
Grant amount not to exceed	\$71,250
Local match	\$23,750

Future reimbursement consideration

The Agency is also requesting that the Council consider reimbursing its local match of \$23,750 for this acquisition at some point in the future through the Regional Parks Bonding Program. A request for “future reimbursement consideration” is the first step in a process Agencies may use to request repayment of their match amount in a future bonding cycle. The Council is under no obligation to reimburse this amount.

Known Support / Opposition

There is no known opposition.

Exhibit List

- Exhibit 1: Images
- Exhibit 2: Notice of intent to pursue eminent domain
- Exhibit 3: Grant request letter
- Exhibit 4: Grant application
- Exhibit 5: Board approval to purchase property
- Exhibit 6: Finalized agreement
- Exhibit 7: Appraisal excerpt

Exhibit 1 – Images

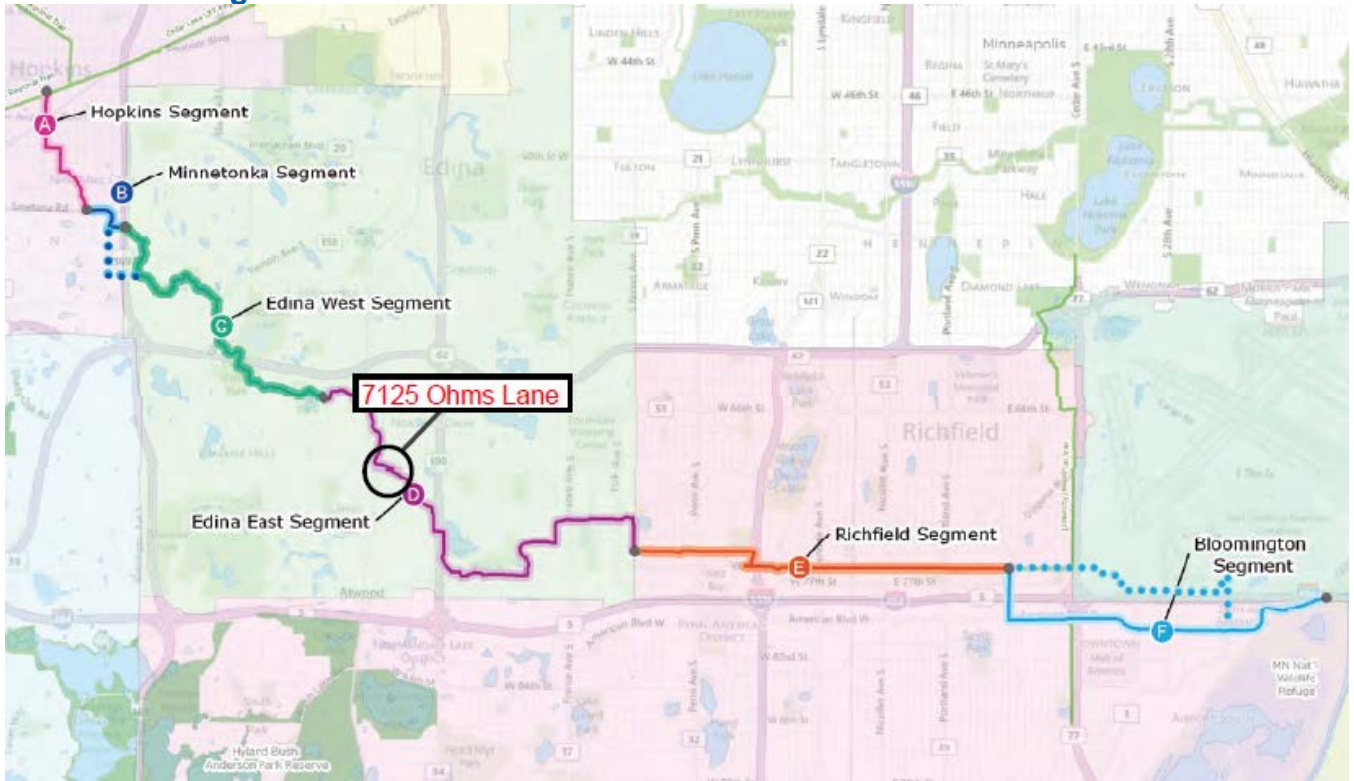


Figure 1. Nine Mile Creek Regional Trail, with subject parcel circled.

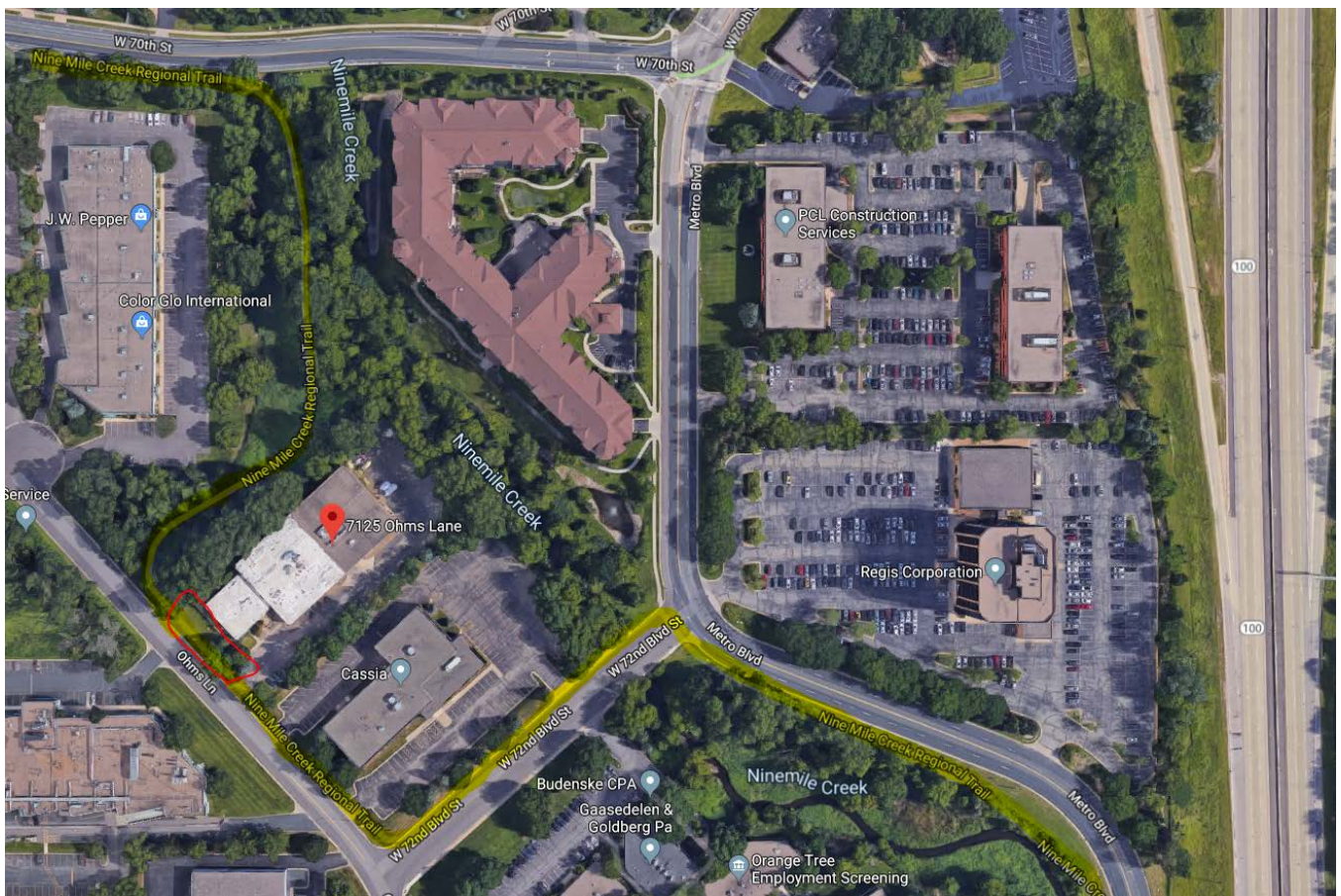


Figure 2. Aerial of subject parcel (circled in red) showing Nine Mile Creek Regional Trail (highlighted in yellow).



Figure 3. Google image of subject parcel showing completed trail.



March 6, 2015

Three Rivers
Park District
Board of
Commissioners

Penny Steele
District 1

Jan Youngquist, Manager
Regional Parks and Natural Resources Unit
Community Development Division
390 North Robert Street
St. Paul, MN 55101

Jennifer DeJournett
District 2

RE: Nine Mile Creek Regional Trail - Notice of Condemnation and Intent to Request
a Park Acquisition Opportunity Fund Grant at a Future Date

Dear Jan,

Daniel Freeman,
Vice Chair
District 3

This letter serves as Three Rivers Park District's notification to the Metropolitan Council of its intent to pursue condemnation of four public trailway easements for Nine Mile Creek Regional Trail in the City of Edina and to seek an Acquisition Opportunity Fund Grant at a later date.

John Gunyou,
Chair
District 4

Immediate Request

Please review this request and, at your earliest convenience, confirm receipt and inform me of any concerns. In addition, please review with your legal counsel the Park District's request to potentially seek a retroactive grant if willing seller settlement agreements are reached prior to the completion of the condemnation proceedings and notify me of his/her recommendation.

John Gibbs
District 5

Condemnation Need and Affected Properties

The associated \$6.16 million Federal Surface Transportation Grant requires that all right-of-way is secured and paid for by June 1, 2015. If this requirement is not met, the Park District is at risk of losing the grant and ultimately not being able to fund construction of the Nine Mile Creek Regional Trail: Edina East Segment. As such the Park District has commenced condemnation for regional trail easements across the properties listed on the following page.

Larry Blackstad
Appointed
At Large

Steve Antolak
Appointed
At Large

Cris Gears
Superintendent

Administrative Center, 3000 Xenium Lane North, Plymouth, MN 55441-1299

Parcel	Location	Description
Parcel 11	5400 70th Street West, Edina, MN 55439 PID 08-116-21-11-0018	4,919 square feet of permanent easement
Parcel 16	4900 77th Street West, Edina, MN 55435 PID 31-028-24-33-0009	7,228 square feet of permanent easement
Parcel 22	5309 70th Street West, Edina, MN 55439 PID 08-116-21-11-0029	7,052 square feet of permanent easement
Parcel 27	7125 Ohms Lane, Edina, MN 55439 PID 09-116-21-22-0028	2,305 square feet of permanent easement

Park Acquisition Opportunity Fund Grant Requirements

In accordance with the Park Acquisition Opportunity Fund Grant Rules, I am attaching the documentation listed below and will forward the final settlement/award, certificate, and other required documents upon settlement.

- 1) Agency's authorization to file condemnation petition
- 2) Condemnation petition and intent to file condemnation
- 3) Associated appraisals, appraisal reviews, and offer letters

Settlement Prior to Condemnation Completion

The Park District is still actively negotiating with property owners to reach settlement agreements on a willing seller basis. As such, it is possible that the Park District will reach settlement agreements before the completion of the condemnation. If this happens, the Park District may not be able to reasonably obtain Metropolitan Council approval prior to purchasing the regional trail easement due to the federal grant which requires payment for the easement no later than June 1, 2015. The Park District will keep the Metropolitan Council apprised of any successful negotiation efforts and respectfully requests an opportunity to submit a retroactive grant request should this situation arise.

I would appreciate if you would confirm receipt and inform me of any concerns regarding this notification by the end of next week. As always, thank you for your assistance with the above matter.

Sincerely,



Kelly Grissman
Director of Planning

Enclosures

- C: Boe Carlson, Superintendent
Jonathan Vlaming, Associate Superintendent
Eric Nelson, Senior Manager of Engineering



August 6, 2019

**Three Rivers
Park District
Board of
Commissioners**

Mr. Emmett Mullin, Manager
Regional Parks and Natural Resources Unit
Community Development Division
390 North Robert Street
St. Paul, MN 55101

Penny Steele
District 1

RE: Park Acquisition Opportunity Grant Fund Request
Nine Mile Creek Regional Trail: Parcel 27 – Minnesota Wanner Company

Jennifer DeJournett
District 2

Dear Emmett,

Three Rivers Park District respectfully requests a Park Acquisition Opportunity Grant for Nine Mile Creek Regional Trail in the amount of \$71,250.00 for acquisition of one easement located in Edina and acquired through condemnation. Please process this request and forward to the Metropolitan Parks Open Space Commission, Community Development Committee, and Metropolitan Council for consideration and approval.

Daniel Freeman,
Vice Chair
District 3

Reimbursement Request Reference Number

For communication and tracking purposes, this request is designated as Nine Mile Creek Regional Trail Parcel 27.

John Gunyou,
Chair
District 4

Background

The Park District received a federal transportation grant in the amount of \$6.16 million to construct the east segment of Nine Mile Creek Regional Trail in the City of Edina. This funding source required that all property rights be secured and paid for, or in the process of being condemned, no later than June 1, 2015.

John Gibbs
District 5

Due to preliminary unsuccessful negotiations, and as required by the federal grant, the Park District commenced condemnation in spring 2015 on four public trailway easements, including Parcel 27. The Metropolitan Council was notified of the Park District's intent to utilize condemnation and seek an Acquisition Opportunity Fund Grant at a later date on March 6, 2015.

Larry Blackstad
Appointed
At Large

We recently completed all the condemnation proceedings for Parcel 27 and are requesting reimbursement for associated costs.

Steve Antolak
Appointed
At Large

Easement Payment

In accordance with the condemnation process, the Park District has already issued payment to the easement property owner. As such, this grant request is for expenses generally already incurred by the Park District and as allowed by the Park Acquisition Opportunity Grant rules.

Cris Gears
Superintendent

Previously Submitted Documentation

The following documentation was previously conveyed to the Metropolitan Council:

- Notification of intent to pursue condemnation (July 2016)
- Park District authorization to file condemnation petition
- Notice of Intention to Take Title and Possession of Property
- Petition and Motion for An Order Authorizing Transfer of Title
- Appraisals

Please process this request in accordance with the Metropolitan Council's standard review and approval processes. In addition, please notify me of the tentative review and approval meetings.

Thank you for your continued assistance through this process.



Heather Kuikka
Planning Administrative Specialist

Enclosures

C: Jonathan Vlaming, Associate Superintendent
Kelly Grissman, Director of Planning

Exhibit 4: Grant application



Application

10851 - 2019 Parks Acquisition Opportunity Fund

12575 - Nine Mile Creek Regional Trail - Wanner Property

Parks Grants Acquisition

Status: Under Review
Submitted Date: 08/08/2019 2:08 PM

Primary Contact

Name:* Ms. Heather Kuikka
Salutation First Name Middle Name Last Name

Title: Administrative Specialist - Planning

Department:

Email: Heather.Kuikka@threeriversparks.org

Address: 3000 Xenium Lane N

***** Plymouth Minnesota 55441
City State/Province Postal Code/Zip

Phone:* 763-559-9000
Phone Ext.

Fax:

What Grant Programs are you most interested in? Parks Grants Acquisition

Organization Information

Name: THREE RIVERS PARK DISTRICT

Jurisdictional Agency (if different):

Organization Type:

Organization Website:

Address: RESERVATIONS
3000 XENIUM LN N

* PLYMOUTH Minnesota 55441-2661
City State/Province Postal Code/Zip

County: Hennepin

Phone:* 763-559-6700
Ext.

Fax:

PeopleSoft Vendor Number 0000057347A1

Project description

PAOF grants are limited to a single park or trail. Do not mix properties from more than one park or trail on a single request.

Park or trail name Nine Mile Creek RT-Three Rivers Park District

Master plan

An acquisition request will not be considered complete until the property is included in a Council-approved master plan.

Is the project consistent with a Council-approved master plan? Yes

If yes, name of master plan and date of Council approval Nine Mile Creek Regional Trail 12/11/2013
Name of master plan Council approval date - Format: mmddyyyy
(Do not enter any punctuation.)

If no, has a master plan amendment been submitted to the Council for review and approval?

Acquisition method

Acquisition method Condemnation

If the acquisition method is anything other than routine, provide more detail.

*This question seeks a general description of the acquisition method - is this a routine purchase, or does it involve a land donation, park dedication fees, condemnation, or some combination? Please use this space to describe the overall acquisition **project**.*

The Park District received a federal transportation grant in the amount of \$6.16 million to construct the east segment of Nine Mile Creek Regional Trail in the City of Edina. This funding source required that all property rights be secured and paid for, or in the process of being condemned, no later than June 1, 2015.

Due to preliminary unsuccessful negotiations, and as required by the federal grant, the Park District commenced condemnation in spring 2015 on four public trailway easements, including Parcel 27. The Metropolitan Council was notified of the Park District's intent to utilize condemnation and seek an Acquisition Opportunity Fund Grant at a later date on March 6, 2015.

Does this acquisition involve eminent domain? Yes

Eminent domain

If eminent domain is being used:

(1) you must upload a copy of the notice your Agency provided to the Council that the petition to the Court was filed.

(2) Include documentation of your governing body's authorization (on the Other Acquisition Attachments web page).

When was the Council notified of your intention to use eminent domain? 03/06/2015

Date the petition was filed. 05/18/2015

Settlement date

Public domain

Note that ENRTF funding cannot be used for acquisitions of property already in the public domain unless a minimum of 12 LCCMR commissioners approve the transaction. If this is a public domain acquisition and if you propose using ENRTF, be sure your closing schedule accommodates planning to be included on a future LCCMR agenda.

Is any portion of the property currently in the public domain? No

If yes, describe/name the entity and the portion of the property it owns, as well as why this public-to-public transfer is necessary.

Closing date

*The Council will process all acquisition requests expeditiously, but we do not guarantee that the approval process will be completed to meet your requested closing date. This date will be considered an **estimate** only. However, the acquisition must be completed during the standard one-year grant term unless prior approval is obtained from the Council or the grant term is amended.*

Estimated closing date

Format: mmdyyy (Do not enter any punctuation.)

Type of agreement Settlement

i.e., purchase agreement, offer letter, etc.

Date agreement expires

Format: mmdyyy (Do not enter any punctuation.)

Relocation costs

Payment of relocation costs is required by both state and federal law, unless the seller waives those rights. Please consult with Agency attorneys to determine applicability for this acquisition. If the seller has waived relocation rights, you must upload an executed copy of the waiver.

Does the requested grant amount include relocation costs? No

Appraisal

*The appraisal must have an effective date within one year of the date the purchase agreement is signed. The appraisal **MUST** list the Metropolitan Council as an intended user, and the intended use must include "negotiation and grant reimbursement."*

Appraisal effective date

Appraised value \$28,700.00

Amount being offered the seller (net of closing and other costs) \$73,400.00 255.75%
% of appraised value

Who performed the appraisal? Day Group

Who contracted for the appraisal (i.e., was it done at arms' length)? Short Elliott & Hendrickson

Survey

Was a survey done? No

Quality of natural resources - is the property...

...undeveloped?

Fully Partially

...wooded?

Fully Partially

...shoreline?

Fully Partially

Describe the existing natural resources it contains

This property is approximately 90 percent developed and contains an office buildings and parking lot. There are a few trees along the northeastern, which is floodplain and western side of the property, none of which the trail easement runs through. Nine Mile Creek runs along the northeastern boundary, the trail easement is not in this area.

Known opposition

Is the Agency aware of any opposition to this acquisition? No

If yes, explain:

Encumbrances

To your knowledge, are there any current or anticipated assessments or liens on property? No

If yes, describe.

Are there easements or other encumbrances on any part of the property? No

If yes, describe

Clear title

To your knowledge, does the current owner have clear title to the property? Yes

If not, what must be done to clear the title, and when will that be completed?

Suggested funding source

For guidance, see the PAOF rules in the 2040 Regional Parks Policy Plan at <http://metro council.org/Parks/Publications-And-Resources/POLICY-PLANS/2040-Regional-Parks-Policy-Plan.aspx>; for **ENRTF fee title acquisition project requirements**, see http://www.lccmr.leg.mn/pm_info/enrtf_fee-title-acquisition-project-requirements.pdf

The Council will review your project specifics and work with you to determine the optimal funding source(s).

Anticipated funding source PTLF Legacy / Council match

Select as many as apply

Funding source comments, if desired

Structures currently on the property

Does the property contain ANY structures? Yes

If yes, are there any habitable structures? No

Does the property currently contain any revenue-generating businesses?

Yes

If yes, what is the plan for the structure(s)?

The easement does not affect the buildings, as the trail runs along the road and only crosses the entrance. Therefore, the buildings will remain as is.

If there are habitable structures, could they be relocated? If yes, how? If no, why not?

No. The structure is an office building.

If the property contains habitable structures or revenue-generating businesses, describe:

For ENRTF funding only

If this will use ENRTF funding, LCCMR rules require that you describe the selection process used to identify these proposed parcels.

NOTICE: ENRTF funding has specific requirements for disseminating information to the public when property is purchase through the Trust Fund. It is the agency's responsibility to meet those requirements and to provide documentation to the Council BEFORE payment will be made.

Stewardship and minimal access

Describe the stewardship plan.

The easement will be maintained as a regional trail corridor focusing on user safety (maintaining trail clearance zones).

How will the stewardship implementation be funded?

Any stewardship work is envisioned to be funded through Three Rivers general operation budget/tax revenue unless part of a greater creek restoration project which, if particularly funded by Three Rivers, could be funded through a wide variety of funding options including both tax revenue and grants.

Are you requesting funds to provide minimal access to the property (prior to it being open to the public) as part of this grant request? No

If yes, how will those funds be used?

Site Description

Land Use History

Current land uses

Commercial

Select as many as apply

Previous land uses

Commercial

Select as many as apply

Adjacent land uses

Commercial

Select as many as apply

Inspection

Does the property contain any of the following?

Select as many as apply

Sellers and parcels

Seller name	Parcel addresses	PID	Acres (SF for easements)	Date PA signed	Habitable structures?	MN House district	City	County	Met Council district	MPOSC	Latitude	Longitude	
Excelsior Arms Corporation	7125 Ohms Lane, Edina, MN 55439	0911621220028	0		No	49A	Edina	Hennepin	5	C	44.873380	-93.355350	
			0										

Local match

Source of local match

Three Rivers Go Bonds or Land Acquisition Development Betterment Fund.

Will you be requesting consideration for future reimbursement of any part of your local match? Yes

If yes, how much? \$23,750.00

Grant agreement signatories

Full name	Title	If this is an attorney, is the signature 'for form only'?
Boe R. Carlson	Superintendent and Secretary to the Board	

Acquisition Costs

Cost Items	Amount
Purchase price	
Negotiated purchase price	\$73,400.00
Appraisal expenses	
Appraisal	\$9,000.00
Appraisal review	\$600.00
Environmental expenses	
Phase I environmental site assessment	\$0.00
Phase II environmental site assessment	\$0.00

Environmental contamination remediation	\$0.00
Holding expenses	
Interest	\$0.00
Land stewardship	\$0.00
Land development	\$0.00
Pro-rated share of all property taxes/assessments	\$0.00
Legal services and closing costs	\$12,000.00
Property tax equivalency payment-473.341	\$0.00
Relocation costs to seller	\$0.00
State deed tax/conservation fee	\$0.00
Title insurance	\$0.00
Well disclosure statement	\$0.00
Other holding	\$0.00
Other expenses	
Other expenses	\$0.00
Totals	\$95,000.00

Total Estimated Acquisition Costs

Totals	Total acquisition cost	Total paid with state funds	Total paid with metro funds	Total paid by agency	Total grant amount
Total Estimated Acquisition Cost (calculated after costs above are entered)	\$95,000.00	\$42,750.00	\$28,500.00	\$23,750.00	\$71,250.00

Required Attachments - Acquisition

Exhibit 5: Board approval to purchase property

REQUEST FOR BOARD ACTION

Meeting Date: 07/18/19 Business Item: Current Item Number: **6A**

Division: Superintendent's Office Originating Source: Boe Carlson, Superintendent

Agenda Item: Nine Mile Creek Regional Trail Acquisition Settlement Agreement

Superintendent's Recommendation:

MOTION TO APPROVE *"Three Rivers Park District – Wanner Stipulation of Settlement"*
AGREEMENT WITH FUNDING FROM THE 2014 GENERAL OBLIGATION BOND FUND.

The following information was prepared by Jonathan Vlaming, Eric Quiring and Howard Koolick.

Background:

The Edina-East segment of the Nine Mile Creek Regional Trail required trail easements on several properties. To meet the requirements of the federal grant for the project, all easements required for trail construction needed to be secured prior to construction. To meet the federal deadline, the Park District was forced to use eminent domain to acquire the property rights needed from the Minnesota Wanner Company (MCW) at 7125 Ohms Ln, Edina, MN 55424 (**Reference 6A-1**). The Park District's most recent appraised value of the easement was \$28,700.

A negotiated settlement amount of \$73,400 to cover the value of the easement and any and all costs incurred by the property owners was recently reached. Three Rivers was represented by David Zoll of Lockridge-Grindal-Nauen. Mr. Zoll, Mr. Quiring and Park District staff conferred and agreed that the \$73,400 figure represented a reasonable settlement amount in consideration of the significant risk associated with the potential for a Commissioner Hearing award that could result in the Park District bearing responsibility for significant additional legal fees and costs.

Staff recommends approval of the Settlement (**Reference 6A-2**).

With the successful conclusion of this easement, all land rights for the Nine Mile Regional Trail – Edina-East and Edina-West segments have been secured and finalized.

Funding:

The total cost of this acquisition will likely be about \$100,000, which includes the settlement amount of \$73,400 and the Park District's legal and appraisal costs. All of these costs qualify for 75 percent funding through the Metropolitan Council's Parks Acquisition Opportunity Fund (PAOF). The PAOF funding is estimated at \$75,000. The Park District's share (25 percent) is estimated at \$25,000. As part of the initial eminent domain process, the Park District was required to put \$19,400 into escrow for the easement acquisition. That amount counts as part of the \$73,400 settlement. The balance of \$54,000 is due within 10 days of signing of the Settlement.

The balance due will be funded by the 2014 General Obligation Bond Fund which has funds remaining that need to be spent. PAOF funds from the Met Council for this acquisition will be directed back into the LADB once received.

Relationship to the Vision Plan

The Request for Action supports the following element(s) of the Vision Plan:

- Inspire people to recreate
- Collaborate across boundaries

Relationship to the Policy Statement

The Request for Action supports the following element(s) of the Policy Statement:

- VII. – Land Acquisition
 - A. Method of Acquisition

Reference 6A-1

**NINE MILE CREEK REGIONAL TRAIL
ACQUISITION SETTLEMENT AGREEMENT**

EASEMENT EXHIBIT

Click below to view/print agreement.

[2019 Board References\07-18 Nine Mile Creek Regional Trail - Easement Exhibit.docx](#)

Reference 6A-2

**NINE MILE CREEK REGIONAL TRAIL
ACQUISITION SETTLEMENT AGREEMENT**

Click below to view/print agreement.

[2019 Board References\07-18 Nine Mile Creek Regional Trail - Easement Settlement Agreement.docx](#)

6. **CURRENT BUSINESS**

A. **Nine Mile Creek Regional Trail Acquisition Settlement Agreement**

MOTION by Kay, seconded by Freeman, TO APPROVE "*Three Rivers Park District – Wanner Stipulation of Settlement*" AGREEMENT WITH FUNDING FROM THE 2014 GENERAL OBLIGATION BOND FUND.

All ayes, no nays, MOTION ADOPTED

CASE TYPE: 2
CONDEMNATION

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Three Rivers Park District,

Court File No.: _____

Petitioner,

v.

**STIPULATION OF SETTLEMENT
Parcel 27**

Minnesota Wanner Company n/k/a MWC,
Inc.,

Respondent.

THIS STIPULATION is made by and between Petitioner Three Rivers Park District (“Park District”) and Respondent Minnesota Wanner Company n/k/a MWC, Inc.¹ (“Respondent” or “MWC, Inc.”).

RECITALS

1. The following recitals are a part of the parties’ stipulation.
2. Respondent MWC, Inc. is the fee owner of real property identified as Parcel 27 on *Exhibit A* to the Park District’s February 11, 2014 Petition in this matter (“the Property”). A copy of the applicable part of *Exhibit A* is attached and incorporated herein.
3. The Park District commenced this condemnation action to acquire a permanent easement and a temporary construction easement over portions of the Property (“Subject

¹ Respondent Minnesota Wanner Company amended its Articles of Incorporation to adopt the name MWC, Inc. on January 13, 2017.

Interests”) as described in *Exhibit A*, in order to construct the Nine Mile Creek Regional Trail (“Project”).

4. On or about May 29, 2015, the Park District deposited its approved appraisal value for the damages caused by the taking, \$19,400, with the District Court pursuant to Minn. Stat. § 117.042 (“Deposit”). Pursuant to the Court’s Order dated May 18, 2015, the Subject Interests vested in the Park District on May 29, 2015.

5. The Park District and Respondent (“Parties”) have reached a full and final settlement and compromise of the matters in dispute.

AGREEMENT

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, it is hereby stipulated and agreed between the Parties as follows:

1. **Settlement Amount.** The Park District and Respondent agree to a full and final settlement of all claims of Respondent with respect to the Park District’s acquisition of the Subject Interests for the total amount of \$73,400.00 (“Settlement Amount”). The Settlement Amount shall be determined to be the just compensation due and owing by the Park District inclusive of interest and any fees and costs to which Respondents may have been entitled pursuant to Minn. Stat. § 117.031.

2. **Payment.** Within 10 business days of the execution of this Agreement, the Park District shall pay \$54,000 which represents the balance of the Settlement Amount less the amount of the 2015 Deposit with the Court.

3. **Deposit.** Respondent may apply to the Court at any time after execution of this Agreement for disbursement of the Deposit to Respondent, together with any interest that has accrued thereon. The Park District and Respondent agree to entry of a Court order directing

disbursement to Respondent alone of the \$19,400 Deposit, together with any interest that has accrued thereon.

4. Other Considerations. The parties agree to the following additional terms:

- a. Respondent MWC, Inc. acknowledges that MWC, Inc. will not have to, and does not intend to, relocate as a result of the Project.
- b. Respondent MWC, Inc. acknowledges that MWC, Inc. did obtain its own appraisal in connection with the condemnation action.

5. Full and Final Compromise. Respondent and the Park District acknowledge that the terms and conditions of this Stipulation of Settlement constitute a full and final compromise of all matters in dispute with respect to Parcel 27. In consideration of the Settlement Amount and other terms and conditions of this Stipulation of Settlement, Respondent waives any and all claims Respondent may have against the Park District in connection with this condemnation action, including without limitation, just compensation, statutory remedies, any other damages, interest, relocation benefits, appraisal fees, attorney fees, and costs and disbursements to which Respondent may otherwise be entitled.

6. Condemnation Action. The Park District shall file this Stipulation of Settlement with the District Court. After payment of the balance of the Settlement Amount pursuant to Paragraph 2 of this Agreement, the Park District will file a Final Certificate in this action with respect to Parcel 27. Each of the parties will bear its own costs in connection with this action. The District Court shall retain jurisdiction to enforce the terms of this Stipulation of Settlement.

7. Entire Agreement. The undersigned state and represent that they have fully read this Stipulation of Settlement, and that they each know and understand the consequences and legal

effect thereof. The Stipulation of Settlement contains the entire agreement of the parties with regard to the matters set forth herein.

8. Execution. The parties agree that this Stipulation of Settlement may be executed in separate counterparts which, taken together, shall be and comprise one agreement.

9. Authority. The persons signing this Stipulation of Settlement in their representative capacities represent and warrant by signing this Agreement that it is their intent to bind their respective principals and/or clients to the terms and conditions set forth herein, that the persons signing in their representative capacity have been authorized to bind their respective principals and/or clients to such terms, and that it is the respective principals' and/or clients' intent to be so bound.

Dated: July 19, 2019

Dated: July __, 2019

THREE RIVERS PARK DISTRICT

MWC, INC.

By: 

By: _____

Its: Board Chair

Its: _____

8. Execution. The parties agree that this Stipulation of Settlement may be executed in separate counterparts which, taken together, shall be and comprise one agreement.

9. Authority. The persons signing this Stipulation of Settlement in their representative capacities represent and warrant by signing this Agreement that it is their intent to bind their respective principals and/or clients to the terms and conditions set forth herein, that the persons signing in their representative capacity have been authorized to bind their respective principals and/or clients to such terms, and that it is the respective principals' and/or clients' intent to be so bound.

Dated: July __, 2019

THREE RIVERS PARK DISTRICT

By: _____

Its: _____

October 28

Dated: ~~July~~ __, 2019

MWC, INC.

By: Thomas J. Warner

Its: President

EXHIBIT A
PROPERTY TO BE TAKEN

EXHIBIT A

Parcel No. 27: Property I.D. No. 09-116-21-22-0028

Property Address: 7125 Ohms Lane, Edina, MN 55424

Description of Subject Property:

That part of Lot 17 lying North of the South line of Government Lot 1, Section 9, Township 116, Range 21, Block 1, EDINA INTERCHANGE CENTER THIRD ADDITION.

("Parcel No. 27").

Description of Easements to be Taken:

A permanent easement for trail purposes over, under, and across Parcel No. 27 described as follows:

The southwest 12.00 feet of Lot 17, Block 1, EDINA INTERCHANGE CENTER THIRD ADDITION, according to the plat thereof on file and of record in the office of the County Recorder, Hennepin County, Minnesota. The northeasterly side of said southwesterly 12.00 feet is parallel with the easterly line of Ohms Lane, as dedicated in said plat.

Together with a temporary easement for construction purposes over, under, and across Parcel No. 27 lying westerly of the following described line:

Commencing at the most westerly corner of said Lot 17; thence North 47 degrees 09 minutes 08 seconds East, assumed bearing, along the north line of said Lot 17 a distance of 13.64 feet to the point of beginning of the line to be described; thence South 41 degrees 58 minutes 34 seconds East a distance of 108.08 feet to a point on the east line of the above described 12.00 foot wide permanent trail easement; thence South 42 degrees 50 minutes 52 seconds East coincident with the east line of the above described permanent easement a distance of 74.85 feet, thence South 55 degrees 17 minutes 53 seconds East a distance of 9.36 feet to the south line of said Lot 17, and said line there terminating.

Excepting out the above described 12.00 foot wide permanent trail easement.

Said temporary easement for construction purposes shall commence on June 1, 2015 and terminate on November 30, 2016.

The permanent trail easement encompasses 2,305 SF of PID 09-116-21-22-0028.
The temporary construction easement encompasses 90 SF of PID 09-116-21-22-0028.

CASE TYPE: 2
CONDEMNATION

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Three Rivers Park District,

Court File No.: 27-CV-15-2291

Petitioner,

Judge Susan M. Robiner

v.

RELEASE OF CLAIM

Parcel 27

Minnesota Wanner Company n/k/a MWC,
Inc.,

Respondent.

Northern States Power Company hereby releases any claim it may have to any funds to be paid to Respondent Minnesota Wanner Company n/k/a MWC, Inc. as compensation for the taking of a permanent easement and a temporary construction easement over portions of Parcel 27 as identified in the Park District's February 11, 2014 Petition in this matter.

Dated: August 28th, 2019

Northern States Power Company


By: 
Timothy G. Rogers
Siting & Land Rights
Xcel Energy Services Inc.
An Authorized Agent for Northern States
Power Company, a Minnesota corporation
d/b/a Xcel Energy

Exhibit 7: Appraisal excerpt



Fernbrook Business Center
14232 23rd Avenue North
Plymouth, MN 55447
763.205.6966
Fax 763.208.3928
www.daygroupmn.com

September 3, 2015

Jeffrey Brauchle, General Counsel
Three Rivers Park District
3000 Xenium Lane North
Plymouth, MN 55441

RE: 2015 Just Compensation Appraisal Report - Partial Acquisition
Minnesota Wanner Company
7125 Ohms Lane
Edina, Minnesota 55439
Owner is Minnesota Wanner Company

Dear Mr. Brauchle:

In accordance with your request, an inspection and a market value appraisal analysis on the referenced property have been completed. We have considered the relevant factors relating to the subject property and the current market forces. The attached report contains the summary of the analysis completed, commentary, and value conclusions. The client and intended user is Three Rivers Park District; there are no other intended users. The intended use of the appraisal is for just compensation partial taking purposes for the Nine Mile Creek Regional Trail project. Before and after acquisition values have been developed. The appraisal as developed and reported is only for the stated intended use and user. Day Group LLC assumes no responsibility for any unintended uses or users of the appraisal. The date of value is June 1, 2015, the fee simple interest has been appraised based upon its "as-is" status. No personal property has been included in the valuations.

The subject property is a 1-story, 24,914-sf single-user light industrial building having front office and rear manufacturing/warehouse space, built in 1969. It is located on a 1.98-acre interior site within an established average industrial district in Edina. There is 2804 sf (11%) of front office finishing and 22,110 sf (89%) is warehouse/manufacturing space. The warehouse portion contains 1 loading dock, 1 drive-in door, good power, typical lighting and a 14.5-foot clear height. There have been few recent major replacements, and the overall condition is rated below average. The age of the roof covering is unknown, yet is reported to have some older portions. See the body of the report for details on the subject features.

To facilitate the new Nine Mile Creek Regional Trail, acquired was a 12-foot-wide strip of land containing 2305 sf along the front of the property as a permanent trail easement, plus an adjacent 90-sf temporary 18-month construction easement. Both before and after the acquisition, the subject will be a typical light-industrial facility having adequate market appeal and value.

This appraisal has been made in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP), applicable local, state and federal regulations pertaining to appraisal practice and procedure, and the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute. Attached is an "Appraisal Report" as defined by USPAP, with additional supporting data retained in our workfile.

We have completed a credible appraisal analysis consistent with the intended use of the appraisal, the requirements of the intended user, and within conformity of the Scope of Work Rule per USPAP. Please refer to the body of the attached report for descriptions of assignment conditions and the details of the scope of work employed in our development of the conclusions. The analysis includes development of all valuation approaches. The appraisal is subject to the general limiting conditions, extraordinary assumptions and hypothetical conditions contained on pages 9 and 10 (please review these before any of the values or conclusions are relied upon). The valuation date is prior to our inspection date; it is assumed that all physical and economic elements of the subject were the same. Continuous subject access during the construction period is assumed.

Neither our employment to make this appraisal nor the compensation received is contingent upon the conclusions or values reported herein. Based upon our investigation and analysis, it is our opinion that the subject had fee simple market values, subject to limitations and conditions as hereinafter stated, in the amounts shown below:

BEFORE-TAKING MARKET VALUE:	\$1,495,000
AFTER-TAKING MARKET VALUE:	<u>\$1,466,300</u>
DIFFERENCE (JUST COMPENSATION):	\$ 28,700

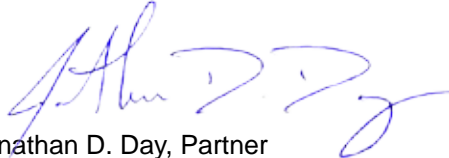
The diminution in value is largely attributed to the land encumbrance, plus the elimination of some trees and vegetation. There is no impact to the subject building or other site improvements. Overall, the value impact is minor. This is supported by conversations with real estate market participants, plus a recent past Trail Impact Study completed by our firm, including trail crossings. It has been a pleasure to serve you in this manner. Feel free to contact us if you have any questions or concerns.

Respectfully submitted,

DAY GROUP LLC



Thomas J. Day, MAI, SRA, Senior Partner
Minnesota Certified General Real Property Appraiser #4000814



Jonathan D. Day, Partner
Minnesota Certified General Real Property Appraiser #20480945