

C Community Development Committee

REVISED
SW 2007-147

For the Metropolitan Council meeting of August 22, 2007

ADVISORY INFORMATION

Date Prepared: August 20, 2007

Land exchange request of 2.89 acres to replace 1.48 acres on Nicollet Island in Central Mississippi Riverfront Regional Park, Minneapolis Park &

Subject: Recreation Board

Recommendation:

“That the Metropolitan Council deny the April 30, 2007, request of the Minneapolis Park and Recreation Board (MPRB) that the Metropolitan Council release the restrictive covenant on the 1.48-acre Grove Street Nicollet Island parcel in exchange for the MPRB obtaining title to and placing a restrictive covenant on a 2.89-acre parcel located on the West Bank of the Mississippi Riverfront North of Plymouth Avenue because the 2.89-acre parcel:

1. is subject to a dedication for park and walkways purposes; and
2. does not appear to be sufficient to satisfy the ‘equally valuable land’ provision of Strategy 5(b) of the 2030 Regional Parks Policy Plan.”

Recommendation:

“That the Metropolitan Council that the Chair and Regional Administrator be authorized to negotiate, and execute, with the Minneapolis Park and Recreation Board (MPRB) an agreement whereby the Metropolitan Council would release the restrictive covenant on the 1.48-acre Grove Street Nicollet Island parcel only after:

1. the Council’s restrictive covenants are recorded against the 2.89-acre parcel located on the West Bank of the Mississippi Riverfront North of Plymouth Avenue, and
2. the MPRB provides a binding commitment, *within thirty (30) days*, to provide additional acreage not currently encumbered as open space, that is deemed by the Chair as acceptable for inclusion in the regional park system and sufficient to satisfy and “equally valuable land” provision of Strategy 5(b) of the 2030 Regional Parks Policy Plan, and which will be subject to the Council’s restrictive covenant, by no later than March 1, 2009.”

C Community Development Committee Item: SW 2007-147

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Land exchange request of 2.89 acres to replace 1.48 acres on Nicollet Island in Central Mississippi Riverfront Regional Park, Minneapolis Park &

Subject: Recreation Board

Summary of Committee Discussion:

The Committee heard from the following persons who spoke in favor of the recommendations:

- Brian Rice, Counsel for the Mpls Park & Recreation Board
- Michael Collin, President of DeLaSalle High School
- John Derus, Citizen
- Eric Galatz, Counsel for DeLaSalle High School
- Judy Vlasik, Parent of two DeLaSalle High School students who play soccer

The Committee heard from the following persons who spoke against the recommendations:

- Irene Jones, Friends of the Mississippi Riverfront
- Tom Basting, Counsel for Friends of the Riverfront (**Exhibit 1: Summary of Appraiser's Report and Exhibit 2: Application of Strategy 5(b) Under Met Council's 3 Criteria**)
- Arlene Fried, Minneapolis Park Watch (**Exhibit 3: August 20, 2007 letter to Members of Met Council's Community Development Committee**)
- Paul Labovitz, National Park Service Supt. of Miss. National River and Recreation Area
- John Anfinson, National Park Service staff
- Edna Brazaitis, Friends of the Riverfront
- Sharon Stevens, Sierra Club of Minnesota
- State Representative Phyllis Kahn (**Exhibit 4: Undated letter to Metropolitan Council, Community Development Committee**)

The Committee had two questions of staff:

1. Claims had been made that the Mpls Park Board did not have fee title ownership to the 2.89-acre parcel and that the parcel was subject to an existing 'dedication'. Staff counsel replied that the proposed action before the Metropolitan Council was conditioned on the Mpls Park Board obtaining fee title to the 2.89-acre parcel and placing a restrictive covenant on it by March 1, 2008. If the Park Board was unable to obtain title to the land, then there would be no basis for the Council and the Park Board to place a restrictive covenant on it and the release of the restrictive covenant on the 1.48-acre parcel would not occur.

2. Was a similar appraisal technique done on the 2.89-acre parcel and the 1.48-acre parcel? Staff replied that it appeared that different appraisal techniques and assumptions were used since they were done by different persons. Staff concluded that the Park Policy doesn't use market value appraisals as the basis to determine whether an exchange meets the policy requirements. In this case the 2.89-acre parcel had equal or better natural resource and recreational values because the 2.89-acre parcel was river frontage while the 1.48-acre parcel was not; the 2.89 acre parcel provided space for a river-oriented trail while the 1.48-acre parcel did not include a river oriented trail but was near it; and finally the 2.89-acre parcel was almost twice as large as the 1.48-acre parcel.

The Committee unanimously approved the following recommendations.

Recommendations:

1. That the Metropolitan Council release the restrictive covenant on the 1.48-acre Grove Street Nicollet Island parcel in exchange for the Minneapolis Park & Recreation Board obtaining title and placing a restrictive covenant on the 2.89-acre West River Road property as shown on Figure 1.
2. That the Metropolitan Council request the Minneapolis Park & Recreation Board to implement the land exchange by March 1, 2008 so the restrictive covenant violation is remedied in a timely manner.

Exhibit 1: Summary of Appraiser's Report submitted by Counsel for Friends of the Riverfront

SUMMARY OF APPRAISER'S REPORT

I, J. Scott Renne, MAI, the undersigned, hereby certify that I have reviewed the subject property and pertinent market data. A personal on-site inspection of the property listed below was considered necessary. I further certify that all improvements, structures, appurtenances, the determinations made as to various classes to types of real and personal property found therein, as well as other elements of value thereon and thereunder, were appraised in accordance with recognized appraisal practices. Any exceptions will be noted below.

Three parcels of vacant land totaling 7.03 acres located on the west side of the Mississippi River from Plymouth Avenue to +/- 24th Avenue North

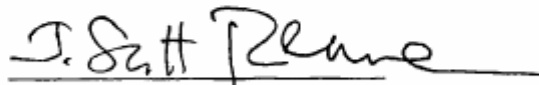
APPRAISAL: J. Scott Renne, MAI, Interim CPED Staff Appraiser – \$230,000

Based upon my valuation analysis of the subject properties, it is my opinion that a fair re use value for the subject is:

Project	Parcel	Name & Address of Owner	Fair Re-Use Value
Above the Falls	15-029-24-42-0010	City of Minneapolis	\$230,000
	15-029-24-43-0009		
	15-029-24-13-0013		

Comments: The subject parcels are zoned FP/Floodplain Overlay District; I1/Light Industrial District; MR/Miss River Critical Area Overlay; SH/Shoreland Overlay District. The three properties appear to be unbuildable and thus comparables that were also unbuildable or used for park or open space were selected. The reconciled value recognizes the very limited market for property with a highest and best use as open space.

The reconciled value was \$0.75 per square foot. Application is 306,227 square feet x \$0.75 psf equals a rounded \$230,000.



J. Scott Renne, MAI
 Interim Staff Appraiser
 Comm. Planning & Economic Development
 105 Fifth Avenue South, Suite 600
 Minneapolis, Minnesota 55401-2538
 (612) 673-5034

Date: June 13, 2006



Exhibit 2: Application of Strategy 5(b) Under Met Council's 3 Criteria submitted by Counsel for Friends of the Riverfront

**Application of Strategy 5(b)
Under Met Council's 3 Criteria**

	Above the Falls	Nicollet Island
Size		
Physical Area	2.98 acres	1.48 acres
In Flood Plain	Yes	No
Buildable Acres	0	1.48 acres
Natural Resources Value	<p>Protected park land since 1971. Can only be used for parks and walkways. Covenant adds no value to current protections.</p> <p>Part of 72 miles of shoreline in MNRRA.</p> <p>Parcel contains only the slope. Most of trail not on the parcel being offered for trade.</p> <p>On river 20 to 30 yards from shore.</p> <p>In industrial area. Not heavily populated.</p> <p>Reclaimed railroad ROW. Pollution uncertain.</p>	<p>Without Covenant property is under immediate threat of massive re-grading and inappropriate development. Covenant is of immense value.</p> <p>Unique. The last Island of St Anthony Falls.</p> <p>In the center of the park in what appears to be the center of the city in a National Historic District.</p> <p>On river 30 yards from shore.</p> <p>Near heavy population base where open space is rare.</p> <p>Integral to UM Tree Study.</p> <p>Irreplaceable cultural and archaeological value.</p>
Economic Value		
Appraised Value	\$ 94,416 (City Appraisal)	\$ 2,050,000 (Integra)
Buildable	No. (City Appraisal)	Yes. very desirable high demand area.

Exhibit 3: August 20, 2007 letter to Members of Met Council's Community Development Committee submitted by Arlene Fried, Minneapolis Parks Watch

August 20, 2007

Members of the Met Council's Community Development Committee:

For the record, I do not live on Nicollet Island. I am a co-founder of Minneapolis Park Watch, an ad hoc citizens' watch dog group. For the past four years I--and others--have been monitoring the Minneapolis Park Board and posting our concerns on our website--mplsparkwatch.org.

The Minneapolis Park & Recreation Board staff is proposing a land exchange so that the regional parkland across the street from DeLaSalle High School on Nicollet Island can be made available for a football field.

Because the parkland under discussion today is regional parkland, I am going to take a regional perspective.

The state believed that creating a regional riverfront park was so important that in the 1980's it authorized the acquisition of private land using eminent domain to take land and businesses from unwilling owners to create the Central Mississippi Riverfront Regional Park. The cost of acquisition and development was in the \$20 million range.

The investment in this regional park helped lead to the revitalization of the entire downtown riverfront. \$299 million in public money was leveraged into over \$1.56 billion in private/non-profit investment.

This investment has been accompanied by a massive influx of new residents to the condo developments that have proliferated along the downtown riverfront. These new residents moved to the area to live in the denser housing encouraged by the Met Council because of amenities like the Riverfront Regional Park. Natural open space in the midst of a densely urbanized area should be valued, preserved and enhanced--not converted to an athletic facility.

It is important to remember that this particular parcel of land, formerly Twin City Tile and Marble, was acquired at great cost with public monies of over \$1 million. It was acquired so that it could become parkland. It should never have become tennis courts and it should certainly never become a football field.

There are other viable options for DeLaSalle, including the recently completed new \$1.2 million artificial turf football field at Parade Stadium. This is a state-of-the art field and there is ample parking available.

Land exchanges should only be done for extraordinary circumstances. The Park Board's failure to follow the Met Council's rules for open space is not an "extraordinary circumstance."

The removal of parkland from this unique urban regional park so that it can be used as a special purpose athletic facility would be a significant loss for urban park lovers. Isn't the right thing to do to take out the tennis courts, keep this parcel for regional parkland--as it was intended--and restore it to natural open space which can be enjoyed by wild life, birds and park lovers.

It is important to point out that Superintendent Jon Gurban and his administrative staff are circumventing Park Board procedures in asking you to approve this \$2 million land exchange and deed restriction transfer which have never been voted on by the Park Commissioners who are the Park Board's governing body.

There is no Park Board record of any such action by the Board. Furthermore, there's no direction in the Reciprocal Use Agreement (RUA) for Park Board staff to submit this request to the Met Council, as Don Siggelkow states in a recent memo.

For the Metropolitan Council to approve this request would be to ratify and reward irresponsibility on the part of the Park Board. And this is not an isolated instance of the Park Board's not following the rules when it comes to the Regional Parks.

As concerned taxpayers, we ask that you turn down this land exchange and order the Park Board to remove the tennis courts and restore the site to its original intended purpose of natural open space so that it can be enjoyed by all who appreciate the beauty and benefits of nature. It should continue to be protected by the covenant that was placed on it by your predecessors when it was acquired.

The Mississippi River is known the world over. A park on an island in the Mississippi is a very rare thing. It needs to be protected and preserved for the enjoyment of future generations. Thank you.

Arlene Fried
1109 Xerxes Ave. S.
Minneapolis, MN 55405

Exhibit 4: Undated letter to Metropolitan Council, Community Development Committee submitted by State Representative Phyllis Kahn

TO: Metropolitan Council, Community Development Committee
FROM: State Representative Phyllis Kahn

I wish to provide these additional comments to this committee concerning the proposed land exchange in the Central Riverfront Regional Park.

I would first point out the comments I already made to the Metropolitan Parks and Open Space Commission (Exhibit C, p. 14, in your materials).

I believe that the decision of MPOSC to not approve the staff recommendation was correct and I would like to re-emphasize their reasons, as I understood the discussion:

1. The exchange is not equal. If it goes through you would facilitate the destruction (for regional park purposes) of an area that local, state, and national historic preservation groups have said to be important and you will ignore strong recommendations of successive superintendents of the Mississippi National River and Recreation Area. The regional park gets an area already owned by the MPRB and suitable for nothing except regional park purposes. (There are no nearby industrial takeover threats.)
2. This land is being transferred from one regional park unit to another ("Central Riverfront" to "Above the Falls"). Page 4 of the staff memo, quoting from Strategy 5(b) of the Regional Parks Policy Plan, says that this should be done only under "exceptional circumstances". The circumstances listed seem to be that DeLaSalle and MPRB have existing tennis courts that are already in violation of regional parks policy.

The way to deal with this violation should not be to reward the negligent parties by allowing further violation, but to require restoration of the land to regional park use, i.e. green space and passive recreation.

3. In addition, the misuse of regional parks land for parking unrelated to regional park use is not irrelevant. It is another example of contempt shown by MPRB for the regional park system and will be further exacerbated by projected use of this site.
4. Should you decide that the degradation of the Central Riverfront Park is not important, as stewards of the regional parks system you should require a much more valuable package for the exchange. If you reject this approval today, that could be a suggestion to the MPRB to advance a new proposal with a more valuable addition.

Finally, many believe that with the increasing urbanization of the metropolitan region, the pressure to convert passive parkland to venues for organized athletics will only increase and, should you approve this today, this action could be a precedent that you or future Councils will regret.

ADVISORY INFORMATION

Date:	August 14, 2007
Subject:	Land exchange request of 2.89 acres to replace 1.48 acres on Nicollet Island in Central Mississippi Riverfront Regional Park, Minneapolis Park & Recreation Board
District(s), Member(s):	District 7, Annette Meeks and District 8, Lynette Wittsack
Policy/Legal Reference:	Park Policy Strategy 5(b)
Staff Prepared/Presented:	Arne Stefferud, Planning Analyst–Parks (651-602-1360)
Division/Department:	Community Development/Regional Systems Planning and Growth Strategy, Parks

Proposed Action/Motion

1. That the Metropolitan Council release the restrictive covenant on the 1.48-acre Grove Street Nicollet Island parcel in exchange for the Minneapolis Park & Recreation Board obtaining title and placing a restrictive covenant on the 2.89-acre West River Road property as shown on Figure 1.
2. That the Metropolitan Council request the Minneapolis Park & Recreation Board to implement the land exchange by March 1, 2008 so the restrictive covenant violation is remedied in a timely manner.

Issue(s)

Is an exchange of 1.48 acres on Nicollet Island in Central Mississippi Riverfront Regional Park proposed to be replaced with 2.89 acres of land within the master plan boundary of the Above the Falls Regional Park consistent with Strategy 5(b) of the *2030 Regional Parks Policy Plan*?

The Metropolitan Parks and Open Space Commission considered this issue and the staff recommendation at its August 7, 2007 meeting but did not adopt the motion by a vote of 3 to 4.

Overview and Background

The Minneapolis Park & Recreation Board (“Mpls Park Board”) has submitted a request in which 1.48 acres of regional park land on Nicollet Island in Central Mississippi Riverfront Regional Park would be replaced with 2.89 acres of land owned by the City of Minneapolis* on the west bank of the Mississippi River north of Plymouth Avenue as part of the Above the Falls Regional Park. (See **Figure 1: Parcels Proposed for Exchange Map** in the attached July 30, 2007 memorandum to the Metropolitan Parks and Open Space Commission).

* When the Mpls Park Board submitted its request, the Council was informed that the 2.89-acre parcel was owned by the City of Minneapolis. At the Metropolitan Parks and Open Space Commission's August 7 meeting, representatives of the Mpls Park Board indicated the property was owned by the City of Minneapolis. On August 10, Council staff conducted an electronic search of Hennepin County property records. That search indicated the property was owned by the City of Minneapolis. However, in an August 13, 2007 e-mail to Council staff, a Mpls Park Board representative stated that "we [the Mpls Park Board] do now own the land along the Miss. River, just north of Plymouth Ave. bridge."

The 1.48-acre parcel currently has three tennis courts on it that violate the restrictive covenant agreement between the Council and the Mpls Park Board. The proposed end use of the 1.48-acre parcel as an athletic field currently is the subject of litigation, and an organization of Nicollet Island residents and park users has filed with the Council a Notice of Intervention under the Minnesota Environmental Rights Act ("MERA"). (See **Attachment 2**: May 21, 2007 letter from Lisa Hondros and **Attachment 3**: Verified Pleading under MERA by Friends of the Riverfront at the end of this memorandum). This analysis does not consider the proposed athletic field issues that are the subject of the litigation but instead responds to the Mpls Park Board's land exchange request and addresses, from a regional parks policy perspective, the merits of replacing the 1.48-acre parcel with a 2.89-acre parcel as a way to remediate the restrictive covenant violation of the tennis courts on the 1.48-acre parcel. The MERA issues are addressed in the attached memorandum dated July 30, 2007 to the Metropolitan Parks and Open Space Commission.

At the Metropolitan Parks and Open Space Commission's August 7, 2007 meeting the following persons spoke in opposition to the proposed land exchange:

1. Paul Labovitz, Superintendent of Mississippi National River and Recreation Area
2. Irene Jones, Friends of the Mississippi River (**Exhibit A**: letter dated August 7, 2007 to Glen Skovholt from Irene Jones)
3. Bonnie McDonald, Preservation Alliance of Minnesota and National Trust for Historic Preservation (**Exhibit B**: letter dated Aug. 6, 2007 to Glen Skovholt from Christina Morris)
4. State Representative Phyllis Kahn (**Exhibit C**: letter dated Aug. 6, 2007 to Metropolitan Parks and Open Space Commission from State Representative Kahn)
5. Edna Burzaitis, Sierra Club (**Exhibit D**: photo/map "Location of Illegal DeLaSalle Everyday School Parking" and **Exhibit E**: photo "28 Cars in a 15 Space Lot—Ordinary School Day")
6. Arlene Fried, Minneapolis Park Watch
7. Lisa Hondros, Friends of the Mississippi Riverfront (**Exhibit F**: February 16, 2007 email from Arne Stefferud to Ann Beckman and **Exhibit G**: January 29, 2005 letter to Whom it May Concern from P. Victor Grambsch)

The following persons spoke at the meeting in support of the proposed land exchange:

1. Roger Scherer, Metropolitan Council District 1
2. Eric Galatz, attorney representing DeLaSalle High School
3. John Derus, member of DeLaSalle Board of Trustees
4. Christine Vickin, parent of DeLaSalle student
5. Nicki Carlson, parent of DeLaSalle student

6. Judy Valsik, parent of DeLaSalle student

The *2030 Regional Parks Policy Plan* states that the Council may permit the conversion of regional parks system lands to other uses if specified criteria are met. Strategy 5(b) of the *Parks Policy Plan* (pp. 38-39) states:

Strategy 5(b): Conversion of regional parks system lands to other uses

Lands in the regional parks system will only be converted to other uses if approved by the Metropolitan Council through an equally valuable land or facility exchange as defined below.

“Equally valuable land” is defined in this context as land that is contiguous to the regional parks system unit containing the land proposed to be exchanged (that is, only add and take away land in the same park/trail unit) and/or, the land has comparable or better natural resource characteristics and could provide comparable or better recreation opportunities as what is being exchanged. In exceptional circumstances, the Metropolitan Council may accept as equally valuable land the addition of land to another unit of the regional parks system where that replacement land has comparable or better natural resource characteristics and comparable or better recreation opportunities than the land being converted and all other provisions of this policy can be met.

“Equally valuable facility” is defined as an exchange of land for facilities when recreational benefits and/or natural resource benefits are increased as a result of the exchange. For example, some land in a regional trail corridor may be exchanged to widen a highway if a highway department constructs a trail overpass or underpass of the widened road at no cost to the regional park implementing agency.

Regional parks system lands are protected through restrictive covenants when land is acquired. These covenants ensure that the land is used only for regional parks system purposes and cannot be broken or amended unless the Metropolitan Council approves. The only restrictive covenant amendments approved by the Council in which no land was exchanged were for small strips of land needed for public highway improvements. The land was needed to make roads safer and there was no alternative. In addition, such projects improved access to the adjacent regional parks system unit. The Metropolitan Council will consider land exchanges for other uses if the criteria listed below have been met so as not to harm the regional parks system.

The following criteria will be used to determine whether regional parks system land may be exchanged for other parkland. For those changes that represent a potential system impact, the Council will use a process comparable to the 90-day review period for plan amendments with a potential impact on the regional system. For conversions such as small exchanges of land to provide right-of-way for access, an expedited review comparable to the 10-day waiver will be used.

Council staff applied this strategy and its listed criteria to the Mpls Park Board’s land exchange request and concluded replacing the 1.48-acre parcel with the 2.89-acre parcel is consistent with Strategy 5(b). As part of its deliberations, the Commission and others suggested several issues should be analyzed or clarified. The following are responses to those questions:

QUESTION 1: Who owns the 2.89-acre parcel proposed to replace the 1.48-acre parcel?

When the Mpls Park Board made its land exchange request, the 2.89 acre parcel was owned by the City of Minneapolis and Council staff were told that the Mpls Park Board intended to obtain the property from the City. As recently as August 10, an examination of property tax records indicated the 2.89-acre parcel was owned by the City of Minneapolis. A Mpls Park Board representative recently informed staff that the Mpls Park Board has acquired ownership of the 2.89-acre parcel.

The fact that the Minneapolis Park Board owns the 2.89-acre parcel does not affect Council staff's recommendation because, from a regional park perspective, the important element of this proposed exchange is the restrictive covenant that would commit the 2.89-acre parcel to the regional park system. A similar situation recently occurred in the City of Bloomington (Agenda Item 2006-330). In that case the City proposed a land exchange in which a small amount of regional park land needed for street improvements was replaced with City-owned land located within the boundary of the Hyland-Bush-Anderson Lakes Park Preserve. The Metropolitan Parks and Open Space Commission concluded the Bloomington land exchange was consistent with the requirements of park policy Strategy 5(b), and the Council approved that exchange.

QUESTION 2: Would the exchange result in a net loss to the Regional Park System land base?

Some questioned whether this land exchange would provide a net acreage benefit to the Regional Park System because the 2.89-acre parcel is within the Council-approved boundary of the Above the Falls Regional Park. Strategy 5(b) of the *2030 Regional Parks Policy Plan* and the Council-adopted criteria under which land exchanges are considered do not require either a net acreage increase or a "no net loss" of acreage of the Regional Park System when land exchanges occur. The Council has approved similar land exchanges in the past under Strategy 5(b). For example, in 2004 (Agenda Item 2004-57) 12.2 acres of regional park land were exchanged for 15.5 acres of MnDOT-owned land to accommodate a MnDOT highway project. In addition to other considerations, MnDOT also provided funds to acquire a 17-acre parcel that was not yet part of the regional park system but was located within the approved boundary of Lake Minnetonka Regional Park.

The *2030 Regional Parks Policy Plan* calls for "equally valuable land" and/or recreation facilities as defined in Strategy 5(b):

"Equally valuable land" is defined in this context as land that is contiguous to the regional parks system unit containing the land proposed to be exchanged (that is, only add and take away land in the same park/trail unit) and/or, the land has comparable or better natural resource characteristics and could provide comparable or better recreation opportunities as what is being exchanged. *In exceptional circumstances, the Metropolitan Council may accept as equally valuable land the addition of land to another unit of the regional parks system where that replacement land has comparable or better natural resource characteristics and comparable or better recreation opportunities than the land being converted and all other provisions of this policy can be met.* (emphasis added)

The land exchange policy does not require a “no net loss of park land” because Council approval of a master plan boundary of a park does not create regional park land within the boundary; nor does mere acquisition of the land. Potential park land becomes a part of the regional park system when a restrictive covenant is placed on the land. Furthermore, although the 2.89-acre parcel currently is included within an approved master plan boundary, that fact does not necessarily guarantee the property actually will become part of the regional park system in the future because the Council has amended park boundaries to exclude land once proposed for acquisition. A recent example occurred in May of this year when the Council approved the Cedar Lake Farm Regional Park Acquisition Master Plan (Agenda Item 2007-163) but in doing so amended the park boundary by excluding a 2.8-acre parcel. Consequently, even though the 2.89-acre parcel is within the approved master plan boundary for the Above the Falls Regional Park, the parcel is eligible as replacement land for the 1.48-acre parcel under park policy Strategy 5(b) because the Council and the Mpls Park Board have not placed a restrictive covenant on the parcel. Finally, if 2.89 acres is added to the regional park system land base and protected with a restrictive covenant and if 1.48 acres is removed from the park system land base, the net effect is a gain of 1.41 acres.

Some indicated the 2.89-acre parcel only can be developed for park uses suggesting the regional park system would not realize a real benefit from the exchange. The land currently is zoned for industrial use. Even with the restrictions of the Mississippi River Critical Area, the land could be acquired by adjacent industrial land owners and used for private purposes. An example of this occurred in 2006 when the Kondirator Corporation acquired the 3.3-acre Holcim Cement site in Minneapolis. The Holcim Cement site also is located within the approved master plan boundary for the Above the Falls Regional Park.

QUESTION 3: Should the Council consider the appraised value of the 1.48-acre parcel?

Opponents to the proposed land exchange stated that the 1.48-acre parcel was appraised at \$2,050,000 in April 2006, and some questioned whether the two properties have equal monetary value. The 2006 appraisal was a “Market Value Appraisal” of a 1.69-acre parcel that includes the 1.48-acre site containing the three tennis courts. The appraisal noted that the highest and best use of the property is condominium/townhome use and assumed the land can be developed with a 34-unit condominium/townhome project. The appraisal also noted that the parcel is subject to a restrictive covenant.

Strategy 5(b) of the *2030 Regional Parks Policy Plan* and its criteria do not require that exchanged lands have equal monetary or market value, and the Council has not used appraisals when it considered land exchange requests in the past because Strategy 5(b) requires the Council to consider whether the replacement land has equal or better recreational opportunities or natural resource value. Applying the Council’s approved criteria, staff concluded from its analysis that the 2.89-acre parcel has equal or better recreational and natural resource value than the 1.48-acre parcel for the following reasons:

- The 2.89-acre parcel is river frontage and has better natural resource values than the 1.48-acre parcel which is surrounded by streets and a railroad track located away from the river.

- The 2.89-acre parcel can accommodate a river-oriented trail system—the primary recreational feature of all regional park land adjacent to the Mississippi River —while the 1.48-acre parcel does not accommodate the river-oriented trail system.
- In addition to its riverfront location, the 2.89-acre parcel has almost twice as much acreage as the 1.48-acre parcel.

QUESTION 4: Did the Council approve the construction of a future athletic field and tennis courts on Nicollet Island when it approved the development master plan for Central Mississippi Riverfront Regional Park?

The Council did not approve the construction of a future athletic field and tennis courts. The Council’s review of the master plan and subsequent approval of that plan in May 1983 did not include approval of an agreement between the Mpls Park Board and the Minneapolis Community Development Agency. Rather the review of that agreement specifically included the following comment from then chief legal counsel John Hoeft:

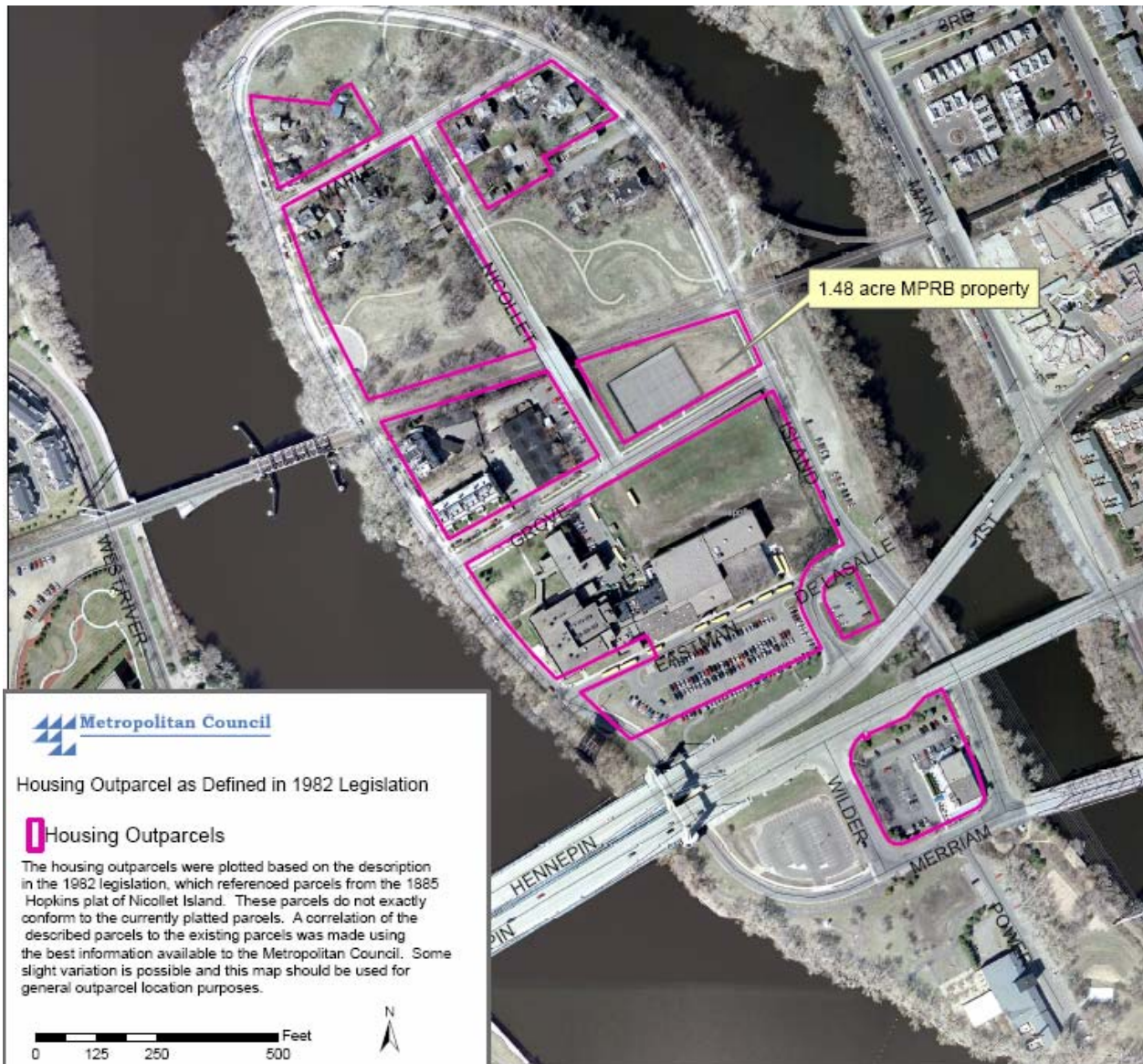
Paragraph 1.02 of the agreement requires the [Mpls] park board to use its best efforts to construct an outdoor stadium and two tennis courts adjacent to DeLaSalle High School and enter into an agreement with DeLaSalle for their use of the facilities.... At a minimum, no regional [park] funds could be used for this construction because the construction of a football field and tennis courts as a neighborhood recreational facility would not be consistent with regional park uses and would not be considered regional park development. Similarly regional park funds could not be used to acquire the land upon which the facility is located. (emphasis added)

QUESTION 5: What did legislation in 1981, 1982 and 1983 authorize or permit?

The 1981 legislation (1981 Minn. Laws ch. 304, sec. 2) appropriated \$12.49 million of State bonds to finance capital improvement grants for the regional park system consistent with the Council’s regional parks capital improvement program. The following rider language from the appropriation refers to Nicollet Island:

With respect to grants for acquisition in the central riverfront regional park, the [metropolitan] council shall, to the maximum extent possible, require acquisition of non fee interest in the housing out parcel on Nicollet Island where consistent with continued housing use and the overall development of the park.

The 1982 legislation (1982 Minn. Laws ch. 577, sec. 15) described the location of the housing out parcel on Nicollet Island as shown on the map below.



The 1983 legislation (1983 Minn. Laws ch. 344, sec. 4(e)) included the same rider language for regional park capital improvement grants financed with State bonds as the 1981 legislation with regard to acquisition grants for Nicollet Island.

The housing out parcel as described and shown on the map above included the 1.48-acre parcel (highlighted on the map), but the Mpls Park Board acquired fee title to this land in 1986—not a non fee interest as the land was the former site of Twin City Tile and Marble. There was no housing use on the parcel. As noted above, the 1981 and 1983 legislation directed the Council to require acquisition of non fee interest on Nicollet Island where “consistent with continued housing use and the overall development of the park.”

QUESTION 6: Are parking lots associated with DeLaSalle High School and other areas on Nicollet Island being considered?

Opponents of the proposed land exchange who spoke at the Commission meeting and submitted statements raised concerns that parking lots shown for DeLaSalle High School were not accurately depicted on Figure 5 of the July 30 memorandum to the Metropolitan Parks and Open Space Commission. **Exhibit D:** photo/map “Location of Illegal DeLaSalle Everyday School Parking” and **Exhibit E:** photo “28 Cars in a 15 Space Lot – Ordinary School Day” were submitted with statements that the parking associated with the proposed athletic field will not be adequate.

The statements about inadequate or improper parking on the island relate to issues associated with the proposed athletic field or current uses of land on the island . Those issues are not germane to the land exchange request or relevant to the matter pending before the Council: whether the Council should approve the Mpls Park Board’s request to replace a 1.48-acre parcel of regional park land on Nicollet Island in Central Mississippi Riverfront Regional Park with a 2.89-acre parcel located on the west bank of the Mississippi River.

Exhibit A: letter dated August 7, 2007 to Glen Skovholt from Irene Jones



Friends of the Mississippi River

360 North Robert Street • Saint Paul, MN 55101 • 651/222-2193 • fax 651/222-6005 • www.fmr.org

Working to protect the Mississippi River and its watershed in the Twin Cities area

August 7, 2007

Glen Skovholt, Chair
Metropolitan Parks and Open Space Commission
390 North Robert Street
St. Paul, MN 55101

Dear Chair Skovholt,

Friends of the Mississippi River is a leading citizen organization that works to protect and enhance the Mississippi River and its watershed in the Twin Cities metropolitan area. I am here today representing FMR's 1,400 members and than 3,100 volunteers who participate in our river events, activities and programs.

FMR respectfully asks that you deny the Minneapolis Park & Recreation Board request to release the protective covenant on 1.48 acres of land on Nicollet Island in exchange for placing a covenant on 2.89 acres of land along the Mississippi River north of Plymouth Ave.

The 1.48 acres on Nicollet Island is in the center of one of the most unique and unusual regional parks in the entire system. The Central Riverfront Regional Park is located in the heart of downtown and serves the highest density residential neighborhood in the entire metro area. Nicollet Island is part of a locally and nationally designated historic district, and it is the only remaining island of more than a dozen that once existed in the gorge and around the falls.

The 2.89 acres of land north of Plymouth is also of great value to the regional park system. FMR is a founding member of the Above the Falls Citizen Advisory Committee, and I served on the Park Board's citizen task force that helped to develop the park plan for the 2.89 acres in question. We are strong supporters of implementing the approved plan for this park and look forward to seeing continuous trails and open space on both sides of the river north of downtown Minneapolis.

We are not, however, supportive of the proposed exchange, because we believe it is a bad deal for regional park users and taxpayers.

1. The land on Nicollet Island is unique and irreplaceable. It is at in the center of the Central Riverfront Regional Park, and changing its use will impact the entire park. In addition to the tennis courts, the 1.48 acres also includes open space with native plantings and trails. Although less than ideal, the land can be accessed by the public at any time in its current configuration.

2. The land on Nicollet Island is threatened by development that is inappropriate for a historic district and regional park. This land will essentially be privatized, an important street will be vacated, and there will be additional light and noise pollution. All of these things threaten the surrounding regional park and the quality of regional park users' experience. Because of these threats, a covenant is essential on the Nicollet Island property.
3. The Above the Falls 2.89 acres is already owned by MPRB, and it already has a Met Council approved park plan. In fact MPRB is moving forward with development of parks, trails and open space at this location, in part with funding from Regional Parks. This park is not threatened and therefore a covenant would provide far less value to the regional park system as a whole than it would on Nicollet Island. This park is located between the West River Road and the Mississippi River, much of which could not be developed because of shoreland and critical area regulations. Furthermore, development planned along West River Road is contingent upon the promise of this park. Coloplast, a Danish company, is locating its international headquarters on West River Road across from this land with the expressed purpose of giving their employees access to a regional park and international destination – the Mississippi River.
4. FMR is opposed to this exchange because it is a bad deal for the river, the regional park system and the residents of Minnesota. MPRB is asking the public to give up a valuable and protected piece of land in exchange for one that is already in the regional park system, and for all intents and purposes is protected from inappropriate development. This is basically a shell game designed to dupe you into giving away an asset that clearly has significant value to the State of Minnesota.

FMR puts great value on the regional park system and all that it has done to protect and enhance the Mississippi River. We implore that you consider the context within which this request is being made. You have been asked to look at this in an extremely narrow way, but that is not your only responsibility. It is also your responsibility to ensure that the vision and reality of our regional parks are protected and managed for all Minnesotans to enjoy.

Thank you for your time and consideration.

Sincerely yours,

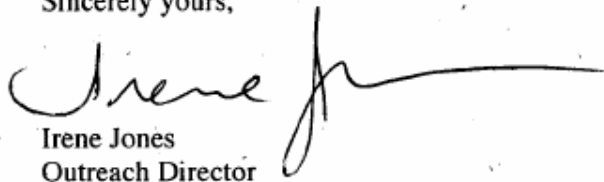

Irene Jones
Outreach Director

Exhibit B: letter dated Aug. 6, 2007 to Glen Skovholt from Christina Morris



August 6, 2007

Mr. Glen Skovholt, Chair
Metropolitan Parks and Open Space Commission
230 East Fifth Street
Mears Park Centre
St. Paul, MN 55101

Re: Land Exchange Request on Nicollet Island in the
Central Mississippi Riverfront Regional Park

Dear Chair Skovolt:

The National Trust is a private, nonprofit membership organization dedicated to protecting the irreplaceable. The Trust was founded in 1949 and provides leadership, education, and advocacy to save America's diverse historic places and revitalize communities. Its Washington, D.C. headquarters staff, eight regional offices, and 28 historic sites work with the Trust's 270,000 members and thousands of local community groups in all 50 states.

On behalf of the Midwest Office of the National Trust, I urge the Metropolitan Parks and Open Space Commission to reject the request for a land exchange of 2.89 acres for the 1.48-acre parcel on Nicollet Island. We are deeply concerned about the preservation of historic and cultural resources within the Mississippi National River and Recreation Area (MNRRA), which is a unique and valuable unit of the National Park system located within the heart of Minneapolis; the Mississippi River Critical Area corridor; and the St. Anthony Falls National Register Historic District. Given its prominent geographic and historic position in all of these systems, Nicollet Island is an incredibly unique and precious resource for Minneapolis, which should be utilized by the Minneapolis Park and Recreation Board (MPRB) in a manner that makes the best use of its prime location, natural features, and historic character for the benefit of all the citizens of Minneapolis.

As the Metropolitan Council has recognized in their comments of September 13, 2006 for the Environmental Assessment Worksheet (EAW) for The Wave Project, development in and around the St. Anthony Falls has the potential for considerable negative impact, not only on the historic, natural, and archaeological resources that would be disturbed and lost through inappropriate new construction, but also the appreciation and enjoyment of those

Protecting the Irreplaceable

MIDWEST OFFICE

(312) 939-5547 • FAX (312) 939-5651 • <http://www.nationaltrust.org>
53 West Jackson Boulevard, Suite 350, Chicago, IL 60604
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resources by the public. Both the EAW completed for the proposed DeLaSalle athletic facility and the Minneapolis Heritage Preservation Commission *Staff Report for the Certificate of Appropriateness for the DeLaSalle Athletic Facility Project* (July 3, 2007) found:

that there is a high potential for the area to contain intact pre-contact (pre-Anglo-European) and historical archaeological resources that may be eligible for listing on the National Register of Historic Places. These potential historically significant archaeological resources include Native American occupation sites, as well as features associated with the homes of Nicollet Island residents. Three of the potential historical archaeological sites (Bassett/Nimocks, Calladine, and DeLaitre homes), and the area of highest pre-contact archaeological potential (Lot 2 of Auditor's Subdivision No. 92), *are located on Minneapolis Park and Recreation Board parcels...* (emphasis added)

Given their location on land that was acquired by the MPRB for public use, these resources should be preserved and interpreted as a means of expanding the park system, not traded away and discarded in exchange for another site that may not offer equivalent opportunities. Your own comments on the Wave project are equally relevant here:

the...archaeological evaluation report clearly document[s] that the project will destroy irreplaceable historic and archaeological resources. Large capital investments have been made to develop the regional and local park systems to accentuate the area's rich local history and leave a legacy for future generations. Opportunities for preservation of artifacts...are ripe, considering the property is currently under public ownership. Due to the close proximity to Mill Ruins Park as well as the Mississippi Central Riverfront Regional Park, Grand Rounds National Scenic Byway and the historic Stone Arch Bridge, the use of this site for historic preservation and interpretation could complement the existing park system.

The 1983 Master Plan for the Central Mississippi Riverfront Regional Park (CMRRP), approved by the Metropolitan Council, clearly recognizes the importance of Nicollet Island as a significant asset for the park system, "Nicollet Island is one of the few islands in the Mississippi River and it is in a major area of the central riverfront. It has a periphery of approximately 1-1/2 miles – roughly half the circumference of one of the city's lakes. As such it can offer, in addition to its historic aspects and general open space, an opportunity for a walking or bicycling experience comparable to one of the city's lakes and at a scale in keeping with usage by a large daytime downtown population." The three Key Master Plan concepts outlined in the Plan for development of the Park acknowledge not only the recreational opportunities afforded by Nicollet Island, but also the educational opportunities derived from its historic role in the development of St. Anthony Falls area:

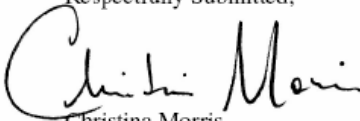
1. Providing Regional Open Space Facilities that meet regional recreational needs and are appropriate to their urban setting.
2. Establish a Regional Trail Corridor providing for continuation of the "great river road" on the west bank, and the "parkway" on the east bank, including motorways, bicycleways, and pedestrian paths, and
3. Establish an Interpretive System for the central riverfront area, including interpretive displays and plaques *recording for educational purposes, the rich heritage of the area.* (emphasis added)

Glen Skovholt, Chair
Metropolitan Parks and Open Space Commission
August 6, 2007
Page 3

All of these goals easily could be accommodated through the retention and appropriate utilization of the existing 1.48-acre parcel, and the use of this site for preservation and interpretation of both historic and pre-contact resources could complement and enhance the existing park system. The presence of three tennis courts on the parcel, which were added by the MPRB without approval or consideration of the existing easement on the property, does not negate the value of the site in meeting the goals of the Master Plan.

Given the Metropolitan Council's interest in promoting the heritage of Minneapolis through the park system, and your previous strong stance on the protection of the proposed Wave project site within the same historic and geographic context, we strongly encourage you to adopt a similar approach to the protection and preservation of the important resources on Nicollet Island by rejecting the proposed land exchange. Thank you for your consideration of our comments in making your decision. Please do not hesitate to contact me if you have any questions.

Respectfully Submitted,



Christina Morris
Minnesota Program Officer

cc: Arne Stefferud, Planning Analyst, Metropolitan Parks and Open Space Commission
Bonnie McDonald, Preservation Alliance of Minnesota
Lisa Hondros, Friends of the Riverfront
Michael Smith, Assistant General Counsel, National Trust

Exhibit C: letter dated Aug. 6, 2007 to Metropolitan Parks and Open Space Commission from State Representative Kahn

August 6, 2007

TO: Metropolitan Parks and Open Space Commission
FROM: State Representative Phyllis Kahn

I wish to provide these comments to the Metropolitan Parks and Open Space Commission, with respect to the memo of July 30, concerning the proposed land exchange in the Central Riverfront Regional Park.

My concern is that the land exchange policy is inadequate in general and particularly for this site.

Issues

Even the existing Park Policy Strategy 5(b) requires an "exchange of equally valuable land". Although the acreage ration seems reasonable the value is totally different.

1. The new (north of Plymouth) land is not really being added. That was totally planned for regional park purposes and is not suitable for anything else. It is a strip of land in a floodplain between a street and the river, clearly unbuildable. If nothing happens that land will still retain its value for migratory birds, wildlife and recreational shore fishing.
2. The Parks and Open Space Commission should consider the construction in light of its degradation of the value of the land. Historic preservation is an environmental issue and the actions of the vacation of the street and the degradation of the St. Anthony Falls Historic District have been deplored by local, state and national historic preservation groups.
3. The importance of this site in the National Mississippi River Recreation Area has not been considered. (See testimony of two local heads of that agency to this point.) The importance and uniqueness of a National Park in a central city has been ignored.
4. The value of this parcel in terms of usage needs to be factored in. This is a green space in the central city within walking distance of big population concentrations as opposed to the proposed substitute site. The importance of the distance may not be as apparent to people whose major mode of transportation is the car but one parcel is an easy walk from the center city and new housing, while the proposed exchange parcel isn't.
5. By denigrating the value of the 1.48 acre parcel by saying that it contains tennis courts in violation of the Metropolitan Regional Parks Policy, the Metro Council essentially rewards the Minneapolis Park Board for its insolence in not getting permission (or doing a land exchange) to construct the courts. It should be noted that the use of the courts is far less destructive to the passive recreation use of the area than a stadium would be.
6. The document lists two areas as De La Salle parking. This is not entirely accurate. De La Salle built part of the school parking lot on regional parkland without ever getting that covenant released. This represents a creeping destruction of value of regional parks.

I further urge members to look at the usage of the Island occurring in ways that probably were never conceived by park planners, including Segway tours, horse drawn carriages and art classes (or individual artists).

I conclude by repeating part of my opening statement: Your decision today could set a precedent for future land use in an increasing populated metropolitan area where passive recreation green space will be the most difficult to protect.

Exhibit D: photo/map “Location of Illegal DeLaSalle Everyday School Parking”

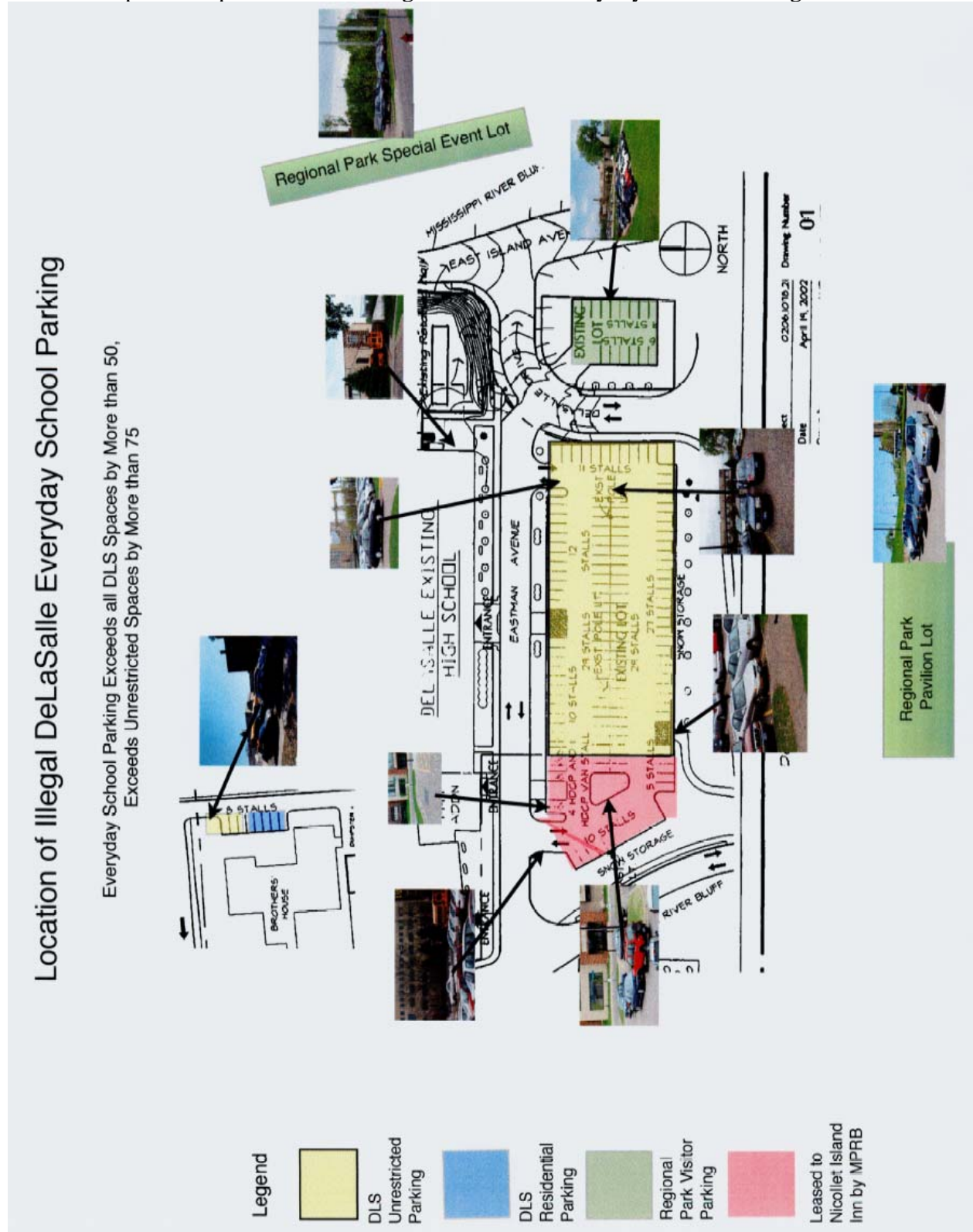
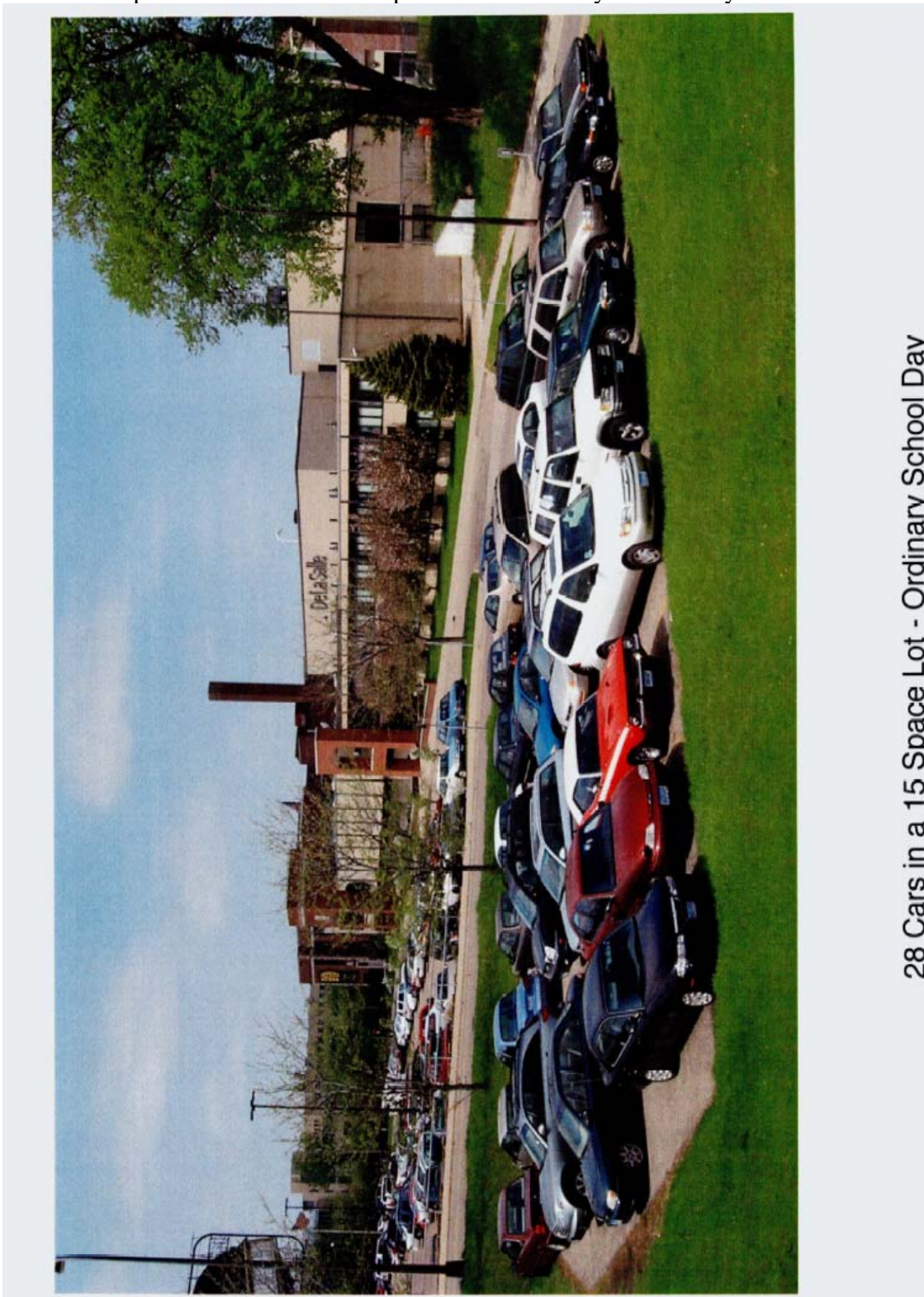


Exhibit E: photo “28 Cars in a 15 Space Lot – Ordinary School Day”

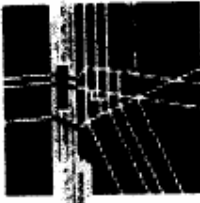


28 Cars in a 15 Space Lot - Ordinary School Day

Exhibit F: February 16, 2007 email from Arne Stefferud to Ann Beckman

From: Arne Stefferud
To: Ann Beckman
Date: 2/16/07 12:26PM
Subject: Past Metro Council actions/correspondence on DeLaSalle football field proposal

1. Metro Council approved a development master plan for the park in 1983. That plan review specifically noted that the MPRB/MCDA agreement requiring the MPRB to build an outdoor stadium and tennis courts adjacent to DeLaSalle High School could not be on regional park land because it would be inconsistent with regional park uses of that land.
2. The Metropolitan Council never received and therefore never considered the 1996 Nicollet Island plan which proposed tennis courts on regional park land. Council staff became aware of the tennis courts when it did a site visit in September 2005 when the DeLaSalle football field issue was brought up. The Council could require the MPRB to remove the tennis courts since it violates the restrictive covenant.
3. The Metropolitan Council has consistently required the MPRB to provide land to replace the proposed football field land as a condition of releasing the restrictive covenant. A letter by Peter Bell to Jon Olson--MPRB president dated March 23, 2006 and a letter by Tom Weaver to Jon Gurban--MPRB superintendent dated May 4, 2006 included this requirement. This land exchange requirement is consistent with Council park policy going back to the mid 1990's. Prior to that no restrictive covenants were released on regional park land.



**Nicollet Island – East Bank
Neighborhood Association (NIEBNA)**

132 Bank St SE
Minneapolis, MN 55414
612-331-3302
www.niebna.org

Date: January 29, 2005

To: Whom it May Concern

RE: Opposition to De La Salle's proposal for an athletic complex on Nicollet Island

At its January 24, 2005 meeting, after a full discussion with De La Salle representatives about their proposal for an athletic complex adjacent to the existing school building on Nicollet Island, the NIEBNA Board of Directors unanimously adopted the following resolutions:

Resolved: NIEBNA opposes the conveyance of park land on Nicollet Island, or the vacation of any portion of Grove Street, for the purpose of developing the proposed De La Salle athletic complex. Further, NIEBNA opposes use of Nicollet Island park land inconsistent with the Island's status as a regional and City Park, a National Historic District, and the master plan and master lease agreements governing appropriate uses of land on the Island.

Resolved: While NIEBNA is opposed to the specific proposal made by De La Salle at the meeting, we recognize that having appropriate athletic facilities near the school is desirable. We are interested in continuing the dialog with De La Salle on this matter. We hereby offer our good offices to explore with the Minneapolis Park Board, adjacent neighborhood groups, Hennepin County, the Metropolitan Council and others alternate nearby locations for the athletic facilities that would be acceptable to all parties.

Please contact me with any questions.

For the Nicollet Island – East Bank Neighborhood Association

/s/ P. Victor Grambsch

P. Victor Grambsch
President

Email: pvictor@evudaemonics.com
Voice: 612-331-3302

cc NIEBNA Board

METROPOLITAN COUNCIL
390 North Robert Street, St. Paul, Minnesota 55101-1805
Phone (651) 602-1000 TDD (651) 291-0904

DATE: July 30, 2007

TO: Metropolitan Parks and Open Space Commission

FROM: Arne Stefferud, Planning Analyst--Parks (651-602-1360)

SUBJECT: (2007-147) Land exchange request of 2.89 acres to replace 1.48 acres on Nicollet Island in Central Mississippi Riverfront Regional Park, Minneapolis Park & Recreation Board

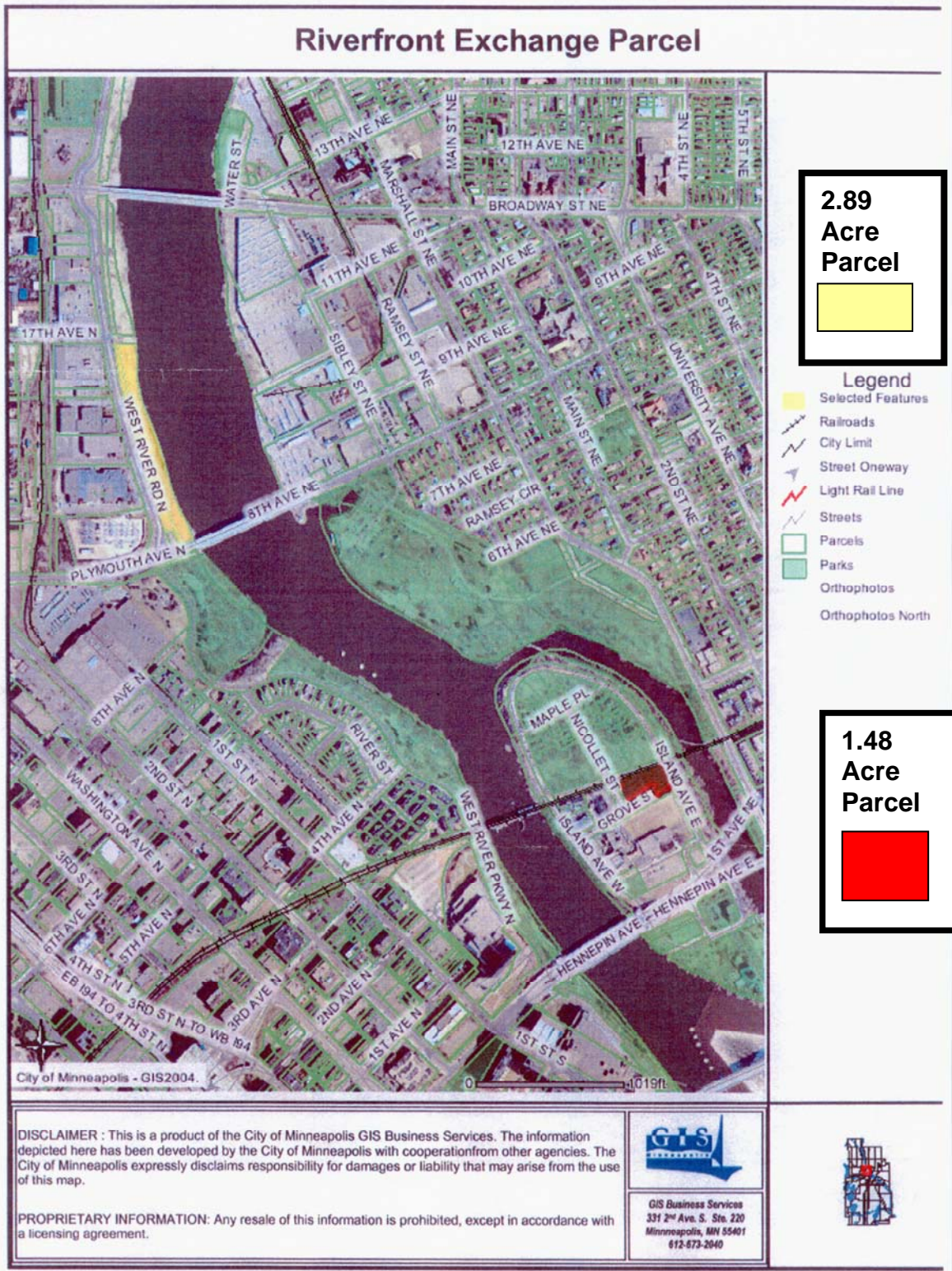
INTRODUCTION:

The Minneapolis Park & Recreation Board (“Mpls Park Board”) has submitted a request in which 1.48 acres of regional park land on Nicollet Island in Central Mississippi Riverfront Regional Park would be replaced with 2.89 acres of land owned by the City of Minneapolis on the west bank of the Mississippi River north of Plymouth Avenue as part of the Above the Falls Regional Park. (See **Figure 1: Parcels Proposed for Exchange Map** below and **Attachment 1**, April 30 letter from Judd Reitkerk requesting approval of land exchange).

The 1.48-acre parcel currently has three tennis courts on it that violate the conditions of the restrictive covenant agreement between the Metropolitan Council and the Mpls Park Board. The proposed end use of the 1.48-acre parcel as an athletic field currently is the subject of litigation, and an organization of Nicollet Island residents and park users has filed with the Council a Notice of Intervention under the Minnesota Environmental Rights Act (“MERA”). (See **Attachment 2:** May 21, 2007 letter from Lisa Hondros and **Attachment 3:** Verified Pleading under MERA by Friends of the Riverfront) This analysis does not consider the proposed athletic field issues that are the subject of the litigation but instead addresses, from a regional parks policy perspective, the merits of replacing the 1.48-acre parcel with a 2.89-acre parcel as a way to remediate the restrictive covenant violation of the tennis courts on the 1.48-acre parcel. The MERA issues are addressed in this memorandum.

Regardless of the outcome of the litigation on the end use of the 1.48-acre parcel, this memorandum recommends that an exchange of land to replace the 1.48-acre parcel with the 2.89-acre parcel is consistent with Strategy 5(b): Conversion of Regional Park System Lands to Other Uses in the *2030 Regional Park Policy Plan*.

Figure 1: Parcels Proposed for Exchange Map
 1.48 acre parcel shown in red replaced with 2.89 acre parcel shown in yellow



AUTHORITY TO REVIEW:

Regional park land proposed to be converted to another use can only be converted if the Metropolitan Council agrees to the conversion under the conditions in Park Policy Strategy 5(b), and agrees to release a restrictive covenant agreement on the land proposed to be converted. Park Policy Strategy 5(b) requires an exchange of equally valuable land and/or facilities to occur as a condition of approving the land use conversion and releasing the restrictive covenant.

ANALYSIS:

Background on 1.48-acre parcel

Beginning in 1979, the Metropolitan Council has provided grants to acquire and develop the 156-acre Central Mississippi Riverfront Regional Park. The park encompasses Nicollet Island except for DeLaSalle High School and a residential outparcel. Together they encompass 13.99 acres. An updated acquisition master plan and a development master plan for the park were approved by the Metropolitan Council in May 1983 (Referral No. 9226-2 and Referral Report No. 83-55). The updated acquisition plan included the acquisition of 4.04 acres of land on the northern end of Nicollet Island that contained homes. Under an agreement between the Minneapolis Community Development Agency and the Mpls Park Board approved in May 1983, the Mpls Park Board purchased this land for \$1 per parcel and then leased it back to the Minneapolis Community Development Agency for \$1/parcel per year for 99 years. The homes on this land were then rehabilitated by individuals.

In regard to the agreement between the Mpls Park Board and the Minneapolis Community Development Agency, the Metropolitan Council's then chief legal counsel John Hoeft had the following comment in the Council's review of the park's master plan in 1983 cited above:

Paragraph 1.02 of the agreement requires the [Mpls] park board to use its best efforts to construct an outdoor stadium and two tennis courts adjacent to DeLaSalle High School and enter into an agreement with DeLaSalle for their use of the facilities.... At a minimum, no regional [park] funds could be used for this construction because the construction of a football field and tennis courts as a neighborhood recreational facility would not be consistent with regional park uses and would not be considered regional park development. Similarly regional park funds could not be used to acquire the land upon which the facility is located. (emphasis added)

Central Mississippi Riverfront Regional Park also encompasses land on both banks of the Mississippi River between Plymouth Avenue downstream to the I-35W bridge. About 85 acres upstream of the Central Mississippi Riverfront Park is another regional park called "Above the Falls Park." The Council approved an acquisition and development concept master plan for the Above the Falls Park on February 13, 2002.

DeLaSalle High School and the Mpls Park Board have entered into a reciprocal use agreement in which an athletic field for football/soccer plus bleachers for 750 fans would be built north of the high school. The 1.48-acre parcel of Mpls Park Board land is proposed for the northern half of the field. This parcel was acquired with Council grant 7902. The grant was financed with State bonds. The cost of acquiring this parcel—which included the relocation of the business on it (Twin City Tile and Marble)—was \$1,065,000. The acquisition occurred in 1986.

In compliance with the requirements of Metropolitan Council grant 7902, the Mpls Park Board and the Council entered into a restrictive covenant agreement on September 2, 1992 regarding the 1.48-acre parcel and other land in Central Mississippi Riverfront Regional Park. The restrictive covenant states in part:

No sale, lease, mortgage or other conveyance, nor the creation of any easement, restriction or other encumbrance against the above-described real property shall be valid for any purpose unless the written approval of the Metropolitan Council or its successors is duly filed and recorded at the time of the filing and recording of the instrument to which such approval pertains, nor shall said real property be used for any purpose except regional recreation open space purposes as those purposes are from time to time defined by the Metropolitan Council or its successors unless the Metropolitan Council or its successors shall consent to such other use or uses by instrument in writing duly filed and recorded and designating the nature, extent and duration of the use for which such consent is given. (emphasis added)

The *2030 Regional Parks Policy Plan* (Park Policy Strategy 1(a)) and state law (Minnesota Statutes section 473.121, subdivision 14) define “regional recreation open space” as:

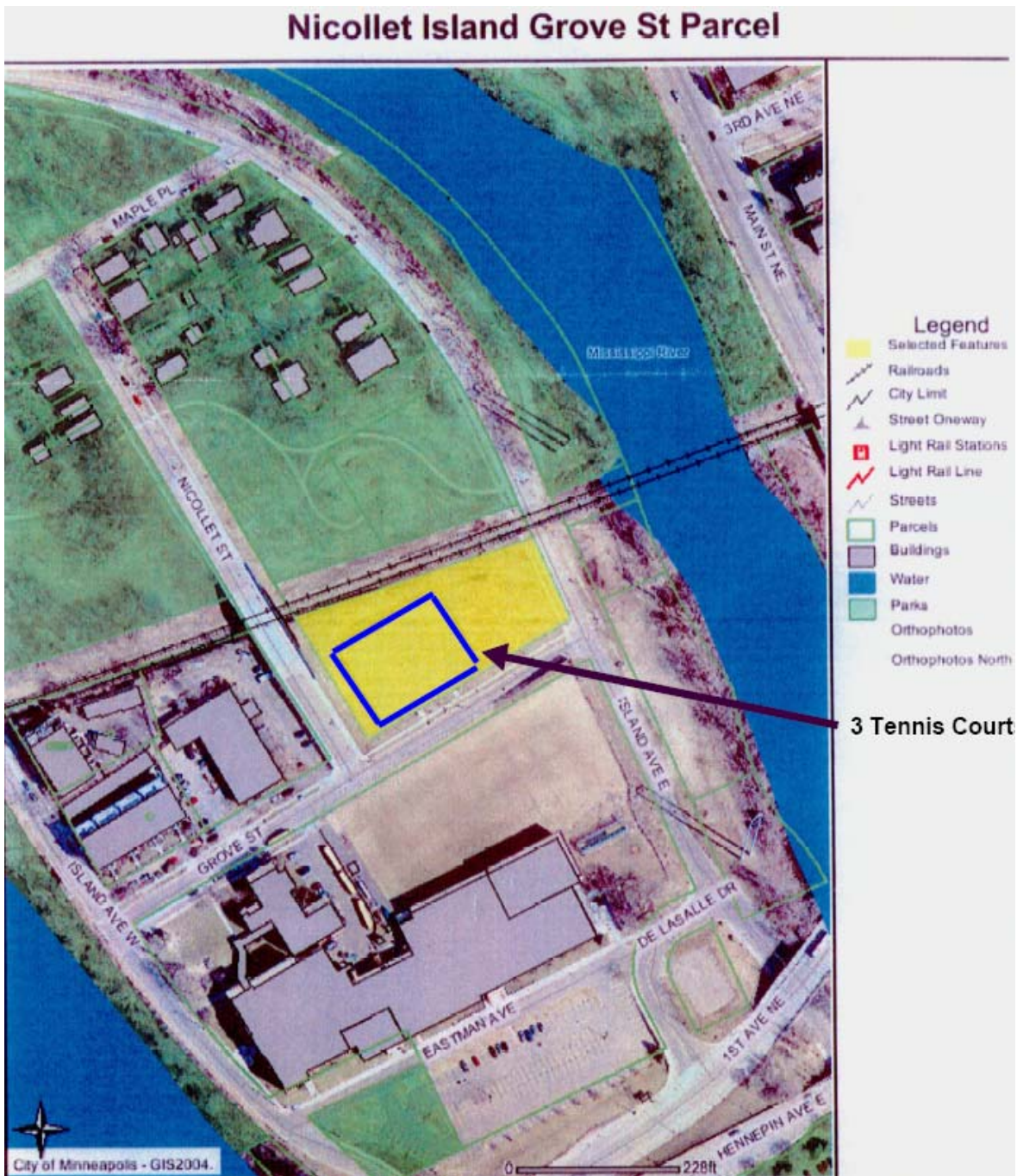
land and water areas, or interests therein, and facilities determined by the Metropolitan Council to be of regional importance in providing for a balanced system of public outdoor recreation for the metropolitan area, including but not limited to park reserves, major linear parks and trails, large recreation parks, and conservatories, zoos and other special use facilities.

The *2030 Regional Parks Policy Plan* and state law are intended to provide the region with natural resource-related recreational opportunities.

In 1996, the Mpls Park Board constructed three tennis courts on the 1.48-acre parcel. As noted earlier in the review of the Mpls Park Board/MCDA agreement, constructing tennis courts on land purchased with a Council grant intended for regional recreation open space purposes violates the restrictive covenant.

A map of the 1.48-acre parcel titled **Figure 2: Nicollet Island Grove Street Parcel** illustrates the parcel and the outline of the three tennis courts currently on the land.

Figure 2:

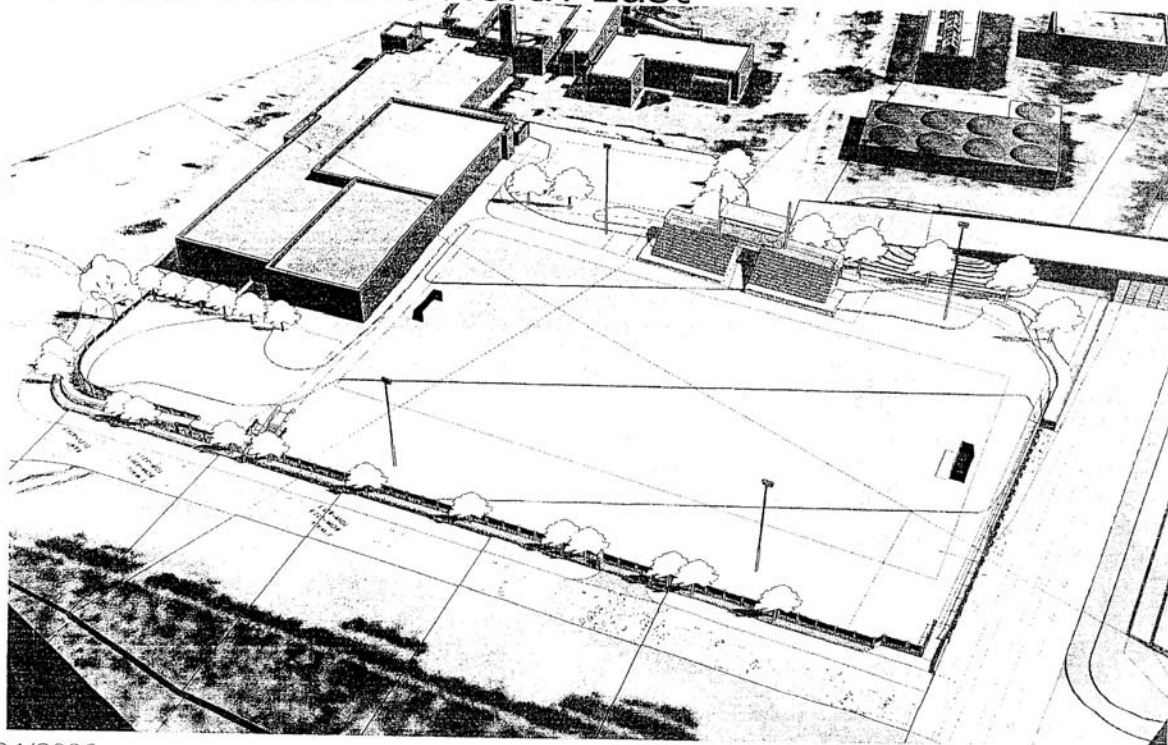


A schematic drawing of the proposed athletic field titled **Figure 3: Design Images, View from the Northeast** illustrates the proposed field in relation to the high school. The 1.48-acre parcel is the right half of field.

Figure 3:

Design Images

◆ View from the North East

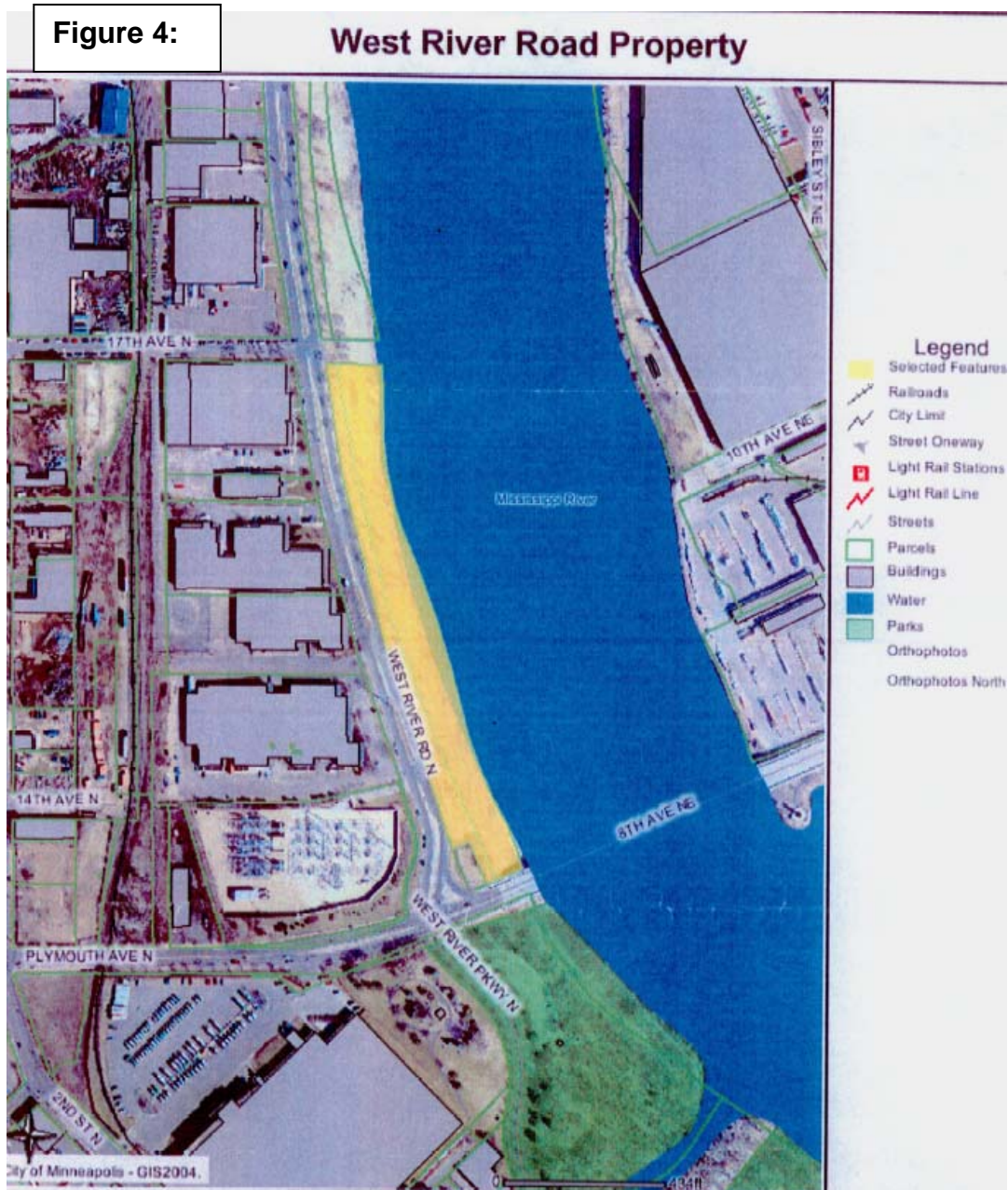


7/74/2006

Background on 2.89-acre parcel proposed to replace the 1.48-acre parcel

The City of Minneapolis owns the 2.89 acres proposed to be exchanged for the 1.48-acre parcel. It was acquired from the Canadian Pacific Railroad in the early 1970's. The address of the parcel is 1-17th Avenue North. The land is included within the Council-approved boundary for the Above the Falls Regional Park (Referral No. 18499-1). The Council approved that master plan on February 13, 2002.

A map of the parcel titled **Figure 4: West River Road Property** illustrates the location of this parcel.



Metropolitan Council Park Policy Strategy 5(b)

Park Policy Strategy 5(b) contains the issues to be considered in determining whether or not the Council should approve the proposed exchange and release the restrictive covenant on the 1.48-acre parcel:

Strategy 5(b): Conversion of regional parks system lands to other uses

Lands in the regional parks system will only be converted to other uses if approved by the Metropolitan Council through an equally valuable land or facility exchange as defined below.

“Equally valuable land” is defined in this context as land that is contiguous to the regional parks system unit containing the land proposed to be exchanged (that is, only add and take away land in the same park/trail unit) and/or, the land has comparable or better natural resource characteristics and could provide comparable or better recreation opportunities as what is being exchanged. In exceptional circumstances, the Metropolitan Council may accept as equally valuable land the addition of land to another unit of the regional parks system where that replacement land has comparable or better natural resource characteristics and comparable or better recreation opportunities than the land being converted and all other provisions of this policy can be met.

“Equally valuable facility” is defined as an exchange of land for facilities when recreational benefits and/or natural resource benefits are increased as a result of the exchange. For example, some land in a regional trail corridor may be exchanged to widen a highway if a highway department constructs a trail overpass or underpass of the widened road at no cost to the regional park implementing agency.

Regional parks system lands are protected through restrictive covenants when land is acquired. These covenants ensure that the land is used only for regional parks system purposes and cannot be broken or amended unless the Metropolitan Council approves. The only restrictive covenant amendments approved by the Council in which no land was exchanged were for small strips of land needed for public highway improvements. The land was needed to make roads safer and there was no alternative. In addition, such projects improved access to the adjacent regional parks system unit. The Metropolitan Council will consider land exchanges for other uses if the criteria listed below have been met so as not to harm the regional parks system.

The following criteria will be used to determine whether regional parks system land may be exchanged for other parkland. For those changes that represent a potential system impact, the Council will use a process comparable to the 90-day review period for plan amendments with a potential impact on the regional system. For conversions such as small exchanges of land to provide right-of-way for access, an expedited review comparable to the 10-day waiver will be used. (pp. 38-39)

Analyzing land exchange against Park Policy

In order to determine whether the proposed exchange is consistent with this policy, the following questions are considered:

- 1. How well can the park system unit (Central Mississippi Riverfront Regional Park) continue to meet Council site and site attribute standards established for the particular type of park system unit (regional park, park reserve, trail or special recreation feature)?**

The *2030 Regional Parks Policy Plan* contains the following policy strategy regarding site attributes for the regional park system.

Strategy 1(a): Siting criteria for units of the regional parks system

Future Metropolitan Council designation of lands for the regional parks system should primarily stress lands with important natural resource features, lands that include or provide access to water bodies and lands with natural resource features that enhance outdoor recreation. Geographic balance or proportionate distribution tied to population distribution patterns can be given weight when natural resource features can be provided through restoration. (p. 8)

The *2030 Regional Parks Policy Plan* (p. 46) also contains the following regarding site attributes for regional parks as a park type.

Regional Parks

Areas selected for regional parks should contain a diversity of nature-based resources, either naturally occurring or human-built. The recreational quality of a regional park is measured by the presence or absence of outstanding resources and the ability to provide adequately for a wide range of natural resource-related recreational opportunities. Access to water bodies suitable for recreation—such as swimming, boating and fishing—is particularly important and most of the regional parks are focused on lakes, rivers or streams.

A regional park should be large enough to accommodate a variety of activities, preserve a pleasant natural aspect, and buffer activity areas from each other and from surrounding areas. This is interpreted as 200 to 500 acres of land. Occasionally, because of the quality of the resource, an exception may be made and a regional park may be as small as 100 acres. Experience has shown this to be the minimum size acceptable for the range and type of activities expected to be accommodated.

The implementation potential is also important in selecting a candidate for regional park status. Implementation potential is measured by the reasonable availability of the site, by the opportunity to acquire and protect key resources, by the support of the host community and other local groups and by the interest of the regional park implementing agency that will own and operate the park.

The Metropolitan Council approved an acquisition master plan for the Central Mississippi Riverfront Regional Park in 1978 (Referral No. 2839B) because it was “consistent with the policies of the Recreation Open Space Policy Plan, particularly in providing regional recreation opportunity within the fully developed area of downtown Minneapolis.”

The Council’s approval of the acquisition master plan also stipulated that, “The Minneapolis Park and Recreation Board submit, as soon as possible, a more detailed acquisition schedule, including methods for conveying existing public-owned land to regional recreation purposes/and Park Board ownership.”

In May 1983, the Metropolitan Council reviewed and approved a development master plan for the park and an increase to acquisition grant 7902 for the park (Referral No. 9226-2). That Council action considered the non-regional park uses on the island (single and multi-family residential, DeLaSalle High School and conversion of the former Island Sash and Door Company building into a restaurant/inn). Furthermore, 1981 Minnesota Laws, Chapter 304, Section 2, placed the following condition on grants for acquiring land for the park:

With respect to grants for acquisition in the central riverfront regional park, the [Metropolitan] council shall, to the maximum extent possible, require acquisition of non fee interest in the housing out parcel on Nicollet Island where consistent with continued housing use and the overall development of the park.

Based on the requirement of this legislation, and the Council approval of the park's mixed uses in the development master plan, staff concludes that the loss of 1.48 acres for the proposed athletic field will not diminish the park's ability to meet regional park site and site attribute standards. In addition, as noted in the introduction to this memorandum, regardless of whether or not the proposed athletic field is built, the three tennis courts on the 1.48-acre parcel are in violation of the restrictive covenant on that land. If the tennis courts remain as the end use of the land instead of the football field, the regional park remaining can meet park site and site attribute standards. But, the land must be replaced in order to mitigate the covenant violation.

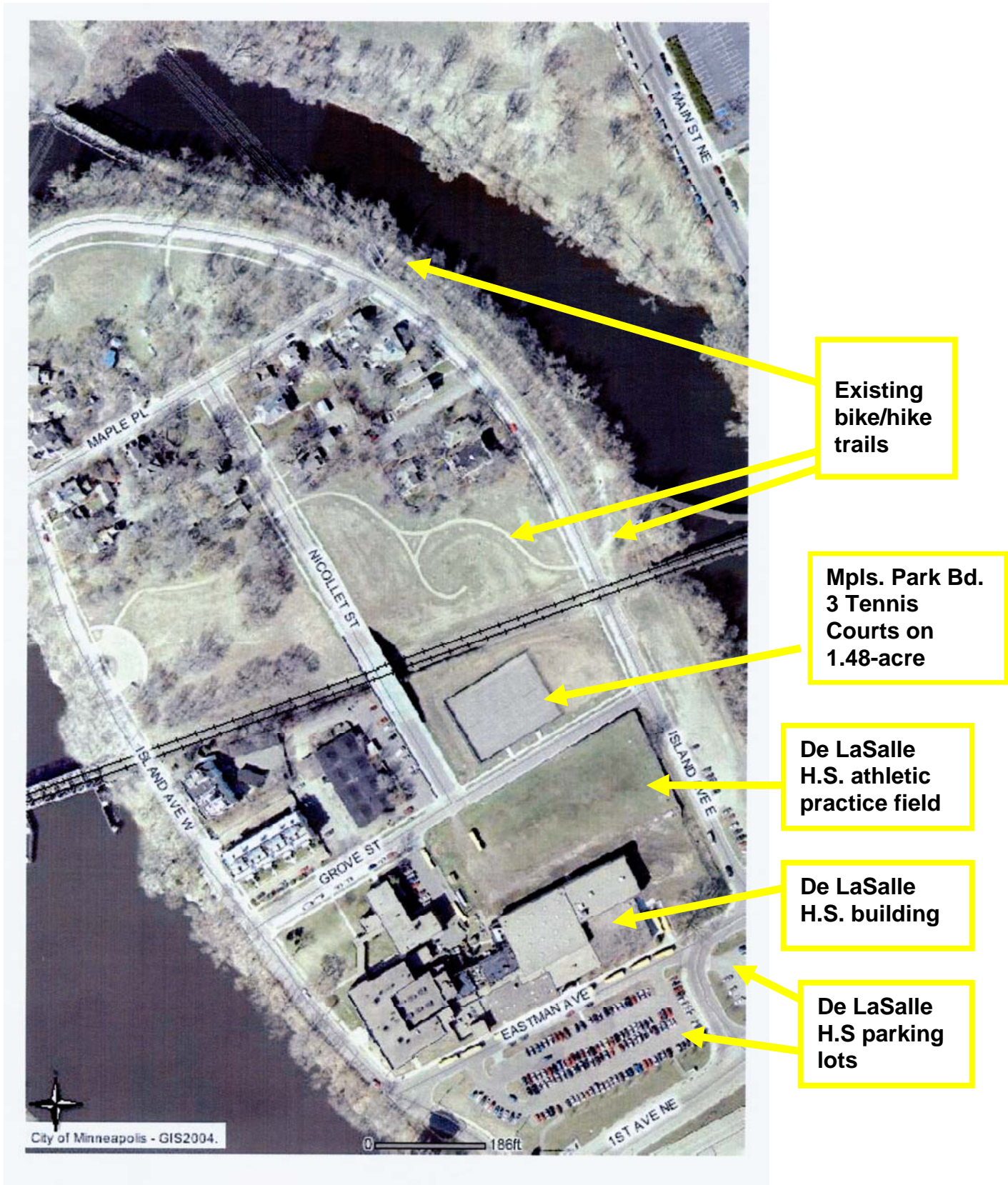
2. Can the park system unit (Central Mississippi Riverfront Regional Park) continue to function as the Council intended?

In order to respond to that question, the proposed athletic field was compared to the master plan the Council has approved. The most recent plan the Council approved for this part of the park was the 1983 plan cited previously. However, in reviewing the findings of the Environmental Assessment Worksheet for this project, reference was made to The Nicollet Island Master Plan prepared in 1996. The Nicollet Island Plan was never submitted to the Metropolitan Council and consequently never considered by the Council for approval. The Nicollet Island plan proposed "tennis courts or multi-use recreational space...to accommodate for active uses such as softball games" in the 1.48-acre parcel. As noted earlier, the tennis courts would not have been considered a regional park facility under the review of the 1983 master plan. The courts were constructed on this parcel and are in violation of the restrictive covenant agreement.

The answer as to whether the regional park can continue to function with the creation of the proposed athletic field is subject to wide interpretation. On the one hand, an athletic practice field on the north side of DeLaSalle High School currently exists as part of the high school/residential outparcel area. The practice field and the tennis courts are shown on the following **Figure 5: Aerial photo of DeLaSalle High School athletic practice field and Mpls. Park Board tennis courts**. There are also bike/hike trails in the area, which are also shown in the photograph.

The 1996 Nicollet Island master plan proposed extending the bike/hike trail south along East Island Avenue on a 6-foot bituminous circumferential trail due to the physical constraints of other land uses and the current location of the streets. The trail could be constructed on the east side of East Island Avenue.

Figure 5: Aerial photo of DeLaSalle High School athletic practice field and Mpls. Park Board tennis courts



The debate regarding the proposed athletic field centers in part on the scale of the proposed field, which is larger than the current field. With the associated bleachers, the field and bleachers would run in a general north/south direction and consume the 1.48-acre parcel and cross over Grove Street as shown below in **Figure 6: General Boundary of Area proposed for athletic field and bleachers** below.

Figure 6: General Boundary of Area Proposed for Athletic Field and Bleachers



The field and associated bleachers would not significantly affect the circumferential trail around the northern end of Nicollet Island called for in the 1983 master plan and proposed again in the 1996 Nicollet Island plan. Trails to the north that cross the island from east to west as shown in the photographs would not be affected either. The athletic field proposal includes a 4-foot wide pathway along the northern edge of the field and adjacent to the active railroad tracks to replace the pedestrian utilization of Grove Street. But, that pathway's width as stated in the EAW should be widened to meet Americans with Disabilities Act requirements.

Because the proposed athletic field does not change the circumferential recreational trails called for in this part of the regional park, staff concludes that the park can continue to function as planned if the athletic field is constructed as proposed.

3. What will happen to use of the park system unit?

The existing circumferential trails would remain regardless of the end use of the 1.48-acre parcel. Based on the analysis in point 2, the use of the park will not change substantially. The park includes land and recreational amenities beyond the northern end of Nicollet Island. Access to those amenities via the trail system is unchanged regardless of the end use of the 1.48-acre parcel.

4. Will environmental features (wildlife habitat, water quality) be adversely affected? Can they (environmental features) be protected with the new use?

The Environmental Assessment Worksheet for the proposed athletic field included concerns about runoff from the field and any adjacent parking. The Council submitted the following comments on November 15, 2005 regarding the Environmental Assessment Worksheet for that proposed project.

As proposed, the project would most likely result in an increase in surface water runoff to the Mississippi River. While some impervious surface will be eliminated, an extensive drain tile system is proposed to be installed beneath the playing field. All site irrigation and rainfall would be expected to infiltrate into the tile system and be routed to the City's existing storm water system. The Council recommends the incorporation of Low Impact Development (LID) techniques like rainwater gardens and infiltration trenches through which this flow could first be routed, to help reduce surface water runoff volumes and rates (to the Mississippi River) to the degree possible. The Metropolitan Council's *Urban Small Sites BMP Manual* includes detailed information on 40 best management practices that make sense in an urban small-site, cold-climate setting. ...

Additional environmental issues raised by opponents to construction of an athletic field on Nicollet Island are the subject of pending litigation which will address or resolve those issues.

5. Can any loss of site or function be made up through acquisition of a site with comparable characteristics adjacent to or in the immediate area of the current location? Is there a need to replace for comparable uses in a comparable location? Would the system benefit from a different park system unit in a different location? Does the park system unit benefit from a facility in exchange for land?

As noted the 1.48-acre parcel currently contains three tennis courts. The 1996 Nicollet Island master plan proposed location of the courts there. However, the Metropolitan Council never reviewed that plan. Had the Council reviewed the 1996 Nicollet Island Plan the proposed tennis courts would have been in violation with the restrictive covenant on that land. Either the tennis courts would need to be removed or the covenant would need to be released in exchange for other equally valuable land.

The 2.89-acre parcel proposed as an exchange in this case would extend the trail system along West River Parkway upriver from Central Mississippi Riverfront Regional Park. **Figures 7 and 8** below illustrate the trails, rain gardens, plaza and picnic areas proposed for this land, which is consistent with the Council-approved master plan for the Above the Falls Regional Park.

Figure 7: Northern half of 2.89-acre parcel proposed for exchange.

Illustration shows the master plan recreational amenities for this land (From *Above the Falls Phase One-West Bank*, page 37)



Figure 8: Southern half of 2.89-acre parcel proposed for exchange.

Illustration shows the master plan recreational amenities for this land (From *Above the Falls Phase One-West Bank*, page 40)



6. Will all costs of relocation be covered by nonregional recreation funds?

This question is not applicable in this case. If the tennis courts are removed and an athletic field is constructed on the 1.48-acre parcel, the tennis courts likely will be replaced on other Mpls Park Board land but not on regional park land. The cost of replacing the courts will be borne by DeLaSalle High School.

7. Are there mitigating measures that may be preferable to land exchange, particularly with respect to minor conversions? Is the need for the conversion, as in the instance of transportation improvements, generated by the recreational park system unit?

There are no mitigating measures preferable to a land exchange in this case since the tennis courts are currently in violation of the restrictive covenant. If an athletic field is constructed it would be in violation of the restrictive covenant. In order for the restrictive covenant to be removed on the 1.48-acre parcel, replacement land must be provided to remediate the restrictive covenant violation from the tennis courts or to accommodate an athletic field or other use of the parcel.

Issues with respect to the alternative use:

1. What are the land area needs of the proposed project?

With regard to the tennis courts, they consumed about half of the 1.48-acre parcel as shown in **Figures 2 and 5**. As noted above, the athletic field and associated bleachers would consume all of the 1.48 acres of land currently under a restrictive use covenant as shown in **Figure 6**.

2. What are the specific site requirements for the proposed project and how unique is it to the area proposed for conversion?

The specific site requirements for the tennis courts, which currently occupy a portion of the 1.48-acre parcel, are shown on **Figures 2 and 5**. The specific site requirements for the proposed athletic field are the subject of pending litigation and may be subject to modification, and therefore not reviewed in this analysis.

3. What is the duration of the proposed projects?

The joint use agreement for the athletic field has a term of 30 years with two possible extensions of 20 years each for a total maximum term of 70 years.

4. Is the proposed project consistent with Council policies?

Neither the three existing tennis courts nor the proposed athletic field is consistent with the terms of the restrictive covenant on the 1.48-acre parcel. Replacing this land with 2.89 acres of river frontage to be developed as part of the Council-approved master plan for the Above the Falls Regional Park meets the requirements of "Equally Valuable Land" and "Equally Valuable Facility" in Park Policy Strategy 5(b).

5. Is the proposed project of greater benefit to the region than continuance of the regional park system unit?

As discussed above the proposed project (land exchange) would have negligible impact on continuance of the regional park system on Nicollet Island and would provide considerable benefit to the Above the Falls Regional Park.

ADDITIONAL CONSIDERATIONS

According to section 16B.09, subdivision 1 of the Minnesota Environmental Rights Act (“MERA”), any person, association, or organization having members who reside in Minnesota may intervene in any “administrative, licensing, or similar proceeding” by filing a “verified pleading asserting that the proceeding... involves conduct that has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state.” Pursuant to MERA, Friends of the Riverfront (“Friends”), an organization that objects to construction of the proposed athletic facility, submitted a verified Notice of Intervention in response to Mpls Park Board’s land exchange request. (See **Attachment 2:** May 21, 2007 letter from Lisa Hondros and **Attachment 3:** Verified Pleading under MERA by Friends of the Riverfront).

Assuming without deciding that the Metropolitan Council’s consideration of the Mpls Park Board’s request constitutes a “proceeding” subject to MERA, the land exchange request does not involve “conduct that has caused or is likely to cause pollution, impairment or destruction of the air, water, land or other natural resources located within the state.” Contrary to Friend’s assertion or suggestion, the Mpls Park Board’s request does not seek approval for the construction of an athletic field, and a Council decision granting the land exchange request would not condition the exchange on the eventual construction of an athletic field. The Mpls Park Board merely requests approval to exchange land pursuant to the Council’s adopted *2030 Regional Parks Policy Plan* and still will need to acquire the 2.89-acre parcel from the City of Minneapolis. An exchange of land, in and of itself, cannot cause pollution, impairment, or destruction of natural resources. Therefore, MERA does not preclude the Council from granting the Mpls Park Board’s land exchange request.

Whether construction of the proposed athletic facility on Nicollet Island might violate MERA is an issue that will be decided in the pending litigation between Friends and the City of Minneapolis and DeLaSalle High School. The MERA issues are beyond the scope of the Council’s purview in this instance.

CONCLUSIONS:

1. The 1.48-acre parcel on Nicollet Island currently is used for three tennis courts. This use violates the restrictive covenant agreement on that parcel between the Metropolitan Council and the Minneapolis Park & Recreation Board.
2. Exchanging the 1.48-acre parcel for the 2.89 acres of riverfront land shown in **Figures 4, 7 and 8** would mitigate the effects of the tennis courts and meets the requirements of “Equally Valuable Land” and “Equally Valuable Facility” in Park Policy Strategy 5(b).
3. Regardless of the outcome of litigation regarding the proposed construction of an athletic facility on Nicollet Island, exchanging the 2.89-acre riverfront property for the 1.48-acre parcel on Nicollet Island would benefit the Above the Falls Regional Park.

RECOMMENDATION:

(1) That the Metropolitan Council release the restrictive covenant on the 1.48-acre Grove Street Nicollet Island parcel in exchange for the Minneapolis Park & Recreation Board obtaining title and placing a restrictive covenant on the 2.89-acre West River Road property as shown on **Figure 1**.

(2) That the Metropolitan Council request the Minneapolis Park & Recreation Board to implement the land exchange by March 1, 2008 so the restrictive covenant violation is remedied in a timely manner.

Attachment 1: Electronic version. Original on file at Metropolitan Council office



April 30, 2007

Arne Stefferud
Metropolitan Council
390 North Robert Street
St. Paul, MN 55101

RE: Transferring deed restriction from Nicollet Island Parcel

Dear Mr. Stefferud:

As you may know, the Minneapolis Park and Recreation Board (MPRB) has negotiated a Reciprocal Use Agreement (RUA) with DeLaSalle High School to construct an athletic field on a portion of MPRB property located on Nicollet Island. The MPRB is requesting that the Metropolitan Council authorize exchanging its deed restriction on this 1.48 acre parcel of land on Nicollet Island in the Central Riverfront Regional Park for 2.89 acres of land located on the West Bank of the Mississippi Riverfront north of Plymouth Avenue. The goals are to provide expanded access to athletic facilities for inner city youth by removing existing hard surface improvements and overlaying the open space with a natural turf or an artificial turf athletic field and to move forward on implementing the Above the Falls Master Plan by restricting the riverfront parcel for regional park uses.

The land identified as the replacement land for this transfer is located at 1-17th Ave N in Minneapolis. The land is currently owned by the City and is being transferred to the Park Board to facilitate the implementation of Phase I of the Above the Falls plan. The riverfront parcel is larger than the Nicollet Island parcel and is located directly on the river. (See the attached maps)

Issues with respect to the existing park system unit (Central Riverfront RP):

- 1. How well can the park system unit continue to meet Council site and site attribute standards established for the particular type of park system unit (regional park, park reserve, trail or special recreation feature)?**

The park system unit will continue to function in the same manner as in the past. The proposed reuse does not convey ownership; it reduces the amount of hard surfaces in the park, and remains open to the public. The terms of the RUA terminate at the same time as the leases on the residential properties that are also in the RP as a special consideration.

2. Can the park system unit continue to function as the Council intended? How will use of the park system unit be affected?

Yes, the system unit can continue to function as the Council intended. Traffic that now accesses East and West Island Avenues via Grove Street will use Nicollet Street.

3. Will environmental features (wildlife habitat, water quality) be adversely affected? Can they be protected with the new use?

The impacts to the environment include removal of existing hard surface improvements and better storm water runoff controls. The parcel is internal to the island and on the west abuts the main BN Rail line that crosses the island and on the east DeLaSalle high School. The perimeter road system isolates the parcel from the shoreline. There are no trails associated with this parcel of land.

4. Can any loss of site or function be made up through acquisition of a site with comparable characteristics adjacent to or in the immediate area of the current location?

The transfer property has site characteristics that make up for those lost at the existing Nicollet Island site. The riverfront parcel is a large open space with direct access to the river.

5. Is there a need to replace a site or function for comparable uses in comparable location?

No, the site is not lost to the RP system and it will not restrict access to the RP on the Island.

6. Would the system benefit from a different park system unit in a different location?

Yes, the Nicollet Island site has three tennis courts on it today that are used by DeLaSalle. The replacement site is unencumbered open space at this time. The Park Board is planning to extend the riverfront bike and pedestrian trail system through this site.

7. Does the park system unit benefit from a facility in exchange for land?

- The Riverfront land allows for the extension of the bike trails along the Mississippi.
- Riverfront shoreline stabilization will improve water quality conditions along the River.
- The River corridor will be protected for the future.

The RP's mission to protect natural resources will be expanded.

8. Will all costs of relocation be covered by non-regional recreation funds?

There is no relocation cost associated with this action.

9. Are there mitigating measures that may be preferable to land exchange, particularly with respect to minor conversions? Is the need for the conversion, as in the instance of transportation improvements, generated by the recreational park system unit?

No

Issues with respect to the alternative use:

1. What are the land area needs of the proposed project?

The area needed for the project is about 1.48 acres.

2. What are the specific site requirements for the proposed project and how unique are they to the area proposed for conversion?

The site requirements are controlled by the size of the proposed facility and the need to be adjacent to the existing facilities of DeLaSalle High School.

3. What is the duration of the proposed project?

The project will take nine months to complete construction.

4. Is the proposed project consistent with Council policies?

An active sports facility project is not permitted in the RP under the current Met Council guidelines

Is the proposed project of greater benefit to the region than continuance of the regional parks system unit?

The replacement land is of higher natural resource value and more accessible than the Nicollet Island parcel. The riverfront parcel is larger, extends RP bike and pedestrian trails, contributes to better water quality, and protects and preserves a significant natural resource.

The MPRB is seeking approval to convert the existing parkland as described above and replace the land with a higher quality natural resource adjacent to the Mississippi River. As mentioned above, the land is located at 1-17th Ave N in Minneapolis.

Sincerely,



Judd Rietkerk Director
Planning and Project Management
Minneapolis Park and Recreation

Friends of the Riverfront

P.O. Box 580545, Minneapolis, MN 55458-0545

Tel: 612.379.4524 Fax: 612.379.1066 info@ourbeautifulriver.org

May 21, 2007

Arne Stefferud
Senior Park Planner
Metropolitan Council
390 North Robert Street
St. Paul, MN 55101

Re: Intervention under Minnesota Environmental Rights Act into Metropolitan Council Proceedings Regarding Minneapolis Park and Recreation Board (MPRB) Request for Waiver of Deed Restriction and Conversion of Regional Parkland on Nicollet Island for use of DeLaSalle Athletic Facility

Dear Mr. Stefferud:

Friends of the Riverfront (Friends), a group of concerned citizens and park users, is working to conserve, protect, and enhance the historic, cultural and natural resources of the Central Mississippi Riverfront Regional Park. The park is part of the Mississippi National River and Recreation Area, and within its boundaries is the St. Anthony Falls National Historic District. More than 1,000 citizens support our mission.

Friends submits this letter in opposition to MPRB's Request for Waiver of Deed Restriction and Conversion of Regional Parkland on Nicollet Island (Request). Attached you will find Friends' Verified Minn. Stat. §116B.09 Notice of Intervention under the Minnesota Environmental Rights Act (MERA).

A. METROPOLITAN COUNCIL MUST APPLY MERA'S REQUIREMENTS

Hennepin County Judge Marilyn Rosenbaum recently ruled that an intervention under Minn. Stat. § 116B.09 imposed MERA's requirements upon Minneapolis Heritage Preservation Commission proceedings. Neither the City nor DeLaSalle appealed this portion of Judge Rosenbaum's determination. Rather, the City and DeLaSalle conceded the same. Friends' intervention under MERA into this Metropolitan Council proceeding thus requires the Metropolitan Council to likewise address MERA's requirements in determining whether to approve the MPRB Request.

B. MERA'S REQUIREMENTS

MERA provides protections for two distinct claims: (1) the actual or threatened violation of an environmental protection, and (2) the actual or threatened material impairment or destruction of a natural resource. Minn. Stat. § 116B.09. "Natural resources shall include, but not be limited to, all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources. Scenic and esthetic resources shall also be considered natural resources when owned by any governmental unit or agency." Minn. Stat. § 116B.02, subd. 4 (emphasis added).

As a result, when a party intervenes into a proceeding under MERA, the statute provides that no conduct be approved that (1) threatens to violate an environmental protection, or (2) is likely to impair natural resources "so long as there is a feasible and prudent alternative consistent with the

reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land, and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct." Minn. Stat. §116B.09, subd. 2 (emphasis added).

1. **MERA requires that the Metropolitan Council determine whether the proposal is likely to violate the governing environmental protections**

The area affected by DeLaSalle's proposed stadium is one of Minnesota's most protected areas. The affected area is within the Minnesota National River and Recreation Area (MNRRA), which runs coextensive with the Mississippi River Critical Area Corridor (Critical Area Corridor), and it is thus part of the "regional recreational open space system." Minn. Stat. § 473.302. The affected area is also within the St. Anthony Falls Historic District. Nicollet Island is itself a legislatively-protected "historic place." Minn. Stat. § 138.164, subd. 64. As such, the affected area is protected by a confluence of river protection and historic preservation restrictions.

In order to comply with MERA, the Metropolitan Council must make a detailed analysis and determine whether the proposal is likely to violate the applicable environmental protections, including without limitation the following:

- (1) Minneapolis Community Development Agency (MCDA) now known as Minneapolis Community and Economic Development Department's (CPED) Nicollet Island & East Bank Urban Renewal Plan (Agency Plan);
- (2) Minneapolis Park and Recreation Board's (MPRB) Central Recreation Open Space Master Plan (Board Plan);
- (3) Executive Order 79-19;
- (4) Comprehensive Management Plan (CMP) for MNRRA;
- (5) Minneapolis 2006 Mississippi River Critical Corridor Plan (2006 Critical Area Plan);
- (6) Minneapolis Plan (2000);
- (7) MPRB's 1996 master plan for the area (1996 Master Plan);
- (8) St. Anthony Falls Historic District Guidelines (District Guidelines); and
- (9) Metropolitan Council's 2030 Regional Parks Plan (2030 Regional Parks Plan).

The Metropolitan Council has already concluded that DeLaSalle's proposal is inconsistent with the 2030 Regional Parks Plan. In a letter dated March 23, 2006, Metropolitan Council Chair Peter Bell advised MPRB President Jon Olson that DeLaSalle's proposed athletic facility on the Grove Street site "would not be consistent with regional park uses and would not be considered regional park development." (emphasis added) Metropolitan Council has, likewise, advised MPRB that DeLaSalle's proposed athletic facility on the Grove Street site is "inconsistent with the Metropolitan Council approved master plan for the regional park and the restrictive covenant." (emphasis added).

The City has determined that DeLaSalle's proposal would violate the District Guidelines. On April 27, 2007, the Minneapolis City Council adopted Staff Finding No. 6: "The Press Box building does not meet the District guidelines in that it is not aligned with the street, but is perpendicular to, and will be constructed on top of Grove Street."

In connection with the proposed Wave condominium development, the Metropolitan Council recently considered such environmental protections and concluded that the Wave project "as proposed raises significant regional concerns particularly regarding the impact of the project on the regional park system and the Mississippi Critical Area." (See attached letter from Phyllis Hanson to Michael Orange dated September 13, 2006.) Regional concerns included destruction of historic resources, adverse visual impacts to park users, and conflicts with applicable plans and regulations. The Metropolitan Council concluded that, "while housing can be provided in many locations, the Mississippi River and its related historic resources are unique."

Likewise, Grove Street and the adjacent open space parkland are important components of the St. Anthony Falls Historic District and regional parkland in the Mississippi Critical Area. The Metropolitan Council should apply the same principles to conclude that an athletic facility could be provided in many locations, but the Mississippi River and its related natural and historic resources are unique.

MPRB's Request threatens several protected natural resources. For example, in addition to destroying a historic property, granting the Request would destroy trees essential to research being done by the University of Minnesota, surrounded by a reestablished native plant community. The Sierra Club has raised concerns that the proposed 70-foot stadium lights would interfere with the migratory routes of birds, noting that Nicollet Island is located along the migration route of over 60% of all North American bird species and over 40% of all North American waterfowl. The Audubon Society is concerned with noise and light pollution, as well as the environmental impacts of placing a parking lot on the banks of the Mississippi River. Increased traffic, loudspeakers and crowd noise would threaten quietude.

The inconsistency of the football stadium on Nicollet Island is supported by virtually every objective expert and agency to review the proposal. Those who have weighed in against the proposal constitute a verifiable who's who of historic and river protection advocates: Paul Labovitz and Steve Johnson of the National Park Service; Minnesota Historical Society; National Trust for Historic Preservation; Friends of the Mississippi River; Sierra Club; University of Minnesota Urban and Community Forestry Professor Gary Johnson; Audubon Society; Preservation Alliance of Minnesota; Paul Larson; Robert Mack; Judith Martin; Robert Roscoe; Charlene Roise; and Rhoda Gilman. See Expert Opinions Regarding Adverse Impacts on Natural Resources of DeLaSalle's Proposed Stadium on the CMRRP (attached).

Granting the MPRB Request would have impacts beyond the boundaries of the land in question to the character of the entire historic district and regional park. The proposed stadium with its associated lights, noise, traffic and parking would destroy unique natural resources and negatively impact the more than one million annual visitors to the Central Mississippi Riverfront Regional Park. Not surprisingly, then, the Metropolitan Council's approval of this incongruent use of coveted property for a private school's football stadium would put the Council on its own island. To date, no non-project affiliated entity has okayed this historic and river protection travesty. MPRB is a self-described co-applicant, rendering its approvals the embodiment of self-serving. The City is, of course, aligned with its park board. (Indeed any doubt about the City's lack of objectivity is illustrated by its City Council President Barbara Johnson's decision to preside in a quasi-judicial capacity over the project even though she has a fiduciary duty to the school to approve it because she is on the Executive Committee for DeLaSalle's Board of Trustees).

2. **MERA requires the Metropolitan Council to determine that there is no feasible and prudent alternative to the proposal that does not itself create extreme hardship**

On September 2, 2005, the Minneapolis City Council determined that the proposed athletic facility would destroy historic resources. This determination was not timely appealed, and it is now final and binding on the Metropolitan Council. The City Council reaffirmed this finding on April 27, 2007.¹

The Minnesota Supreme court has articulated the standard for determining whether there are "feasible and prudent" alternatives under MERA. In *Archabal v. County of Hennepin*, 495 N.W.2d 416 (Minn. 1993), the Court held that "a site may be more convenient, indeed may be more efficient, than alternative more remote sites, but that is simply not enough under MERA and our cases. Nothing in the reasons cited, nor the evidence underlying them, rises to the level of 'truly unusual factors' or 'community disruption of extraordinary magnitude.'"

The *Archabal* case concerned the proposed demolition of the Minneapolis National Guard Armory (Armory). Hennepin County purchased the Armory planning to tear it down and build a new jail. *Id.* at 417. The trial court agreed with the county that no feasible or prudent alternatives existed because the interests of public safety and efficiency demanded a site no more than two blocks away from the Hennepin County Government Center. *Id.* at 424-25. The Court reversed the trial court for ignoring "the state's paramount concern for the protection of its . . . natural resources." *Id.* at 424 (citing Minn. Stat. § 116B.04) (emphasis in the original). The Court concluded that "the County had to show that no alternative was available that did not itself create extreme hardship." *Id.* at 426 (emphasis added).

In this case, former Minneapolis Heritage Preservation Commission Chair Robert Roscoe has presented evidence identifying eight potential alternatives to the proposed athletic facility. These alternatives are as follows:

- (1) Parade Stadium;
- (2) B.F. Nelson;
- (3) Boom Island;
- (4) Webster School/St. Anthony Park;
- (5) Northeast Athletic Fields;
- (6) Elevated green roof field on DeLaSalle's property in front of its existing building;
- (7) Existing field with seating provided by movable bleachers placed on the eastern half of the historic Grove Street, which could be temporarily closed for DeLaSalle's 4-7 home football games per year; and
- (8) "No build."

In order to approve the MPRB Request for conversion on land, the Metropolitan Council must perform a detailed analysis addressing the advantages and disadvantages of the potential alternatives listed above and conclude that no alternative is available to the destruction of natural and historic resources.

C. PREMATURE REQUEST

¹ Finding No. 16: "The Modified Design will destroy the historic alignment of Grove Street which is a contributing resource to the District. The removal of this historic corridor will lessen the overall integrity of the District, since it represents the removal of a portion of the Island's original 1866 plat which retains its location and association."

Perhaps most critically, MPRB seeks to drag the Metropolitan Council into a legal battle that the Council, even if it supports the stadium, would be well advised to avoid. There are three appeals before the Court of Appeals addressing many of the very issues outlined above. If the Metropolitan Council acts on MPRB's request before the appeals are decided, then it will — no matter how it acts — be a part of the fourth appeal.

Worse yet, MPRB's obviously premature request is but a thinly-veiled attempt to politically force the Metropolitan Council into the litigation. MPRB has no legitimate basis for making its request before the Court of Appeals rules. MPRB cannot claim prejudice. Rather it is black letter law and common sense that the project cannot go forward while the appeals are pending.

D. REGARDLESS, THE REPLACEMENT SITE IS WHOLLY INADEQUATE

As you know, the regional parkland needed for the proposed stadium is part of the Central Mississippi Riverfront Regional Park and the St. Anthony Falls National Historic District. The Metropolitan Council has already concluded that the CMRRP and its related historical resources are "unique." The same significant regional concerns raised by the Wave project exist here. The project threatens irreplaceable historical resources. The project is inconsistent with existing plans and regulations. Adverse impacts on park users include disruption of park circulation patterns, lost views, as well as the traffic, lights and noise associated with the stadium. The threatened parkland is a rare piece of downtown recreational open space and its related historical resources are critical to maintaining the character of this unique regional park. The proposed inappropriate use is in the center of the park on the only remaining island in the District. What happens on Nicollet Island will be felt throughout the CMRRP and the St. Anthony Falls Historic District.

In exchange for permanent loss of unique resources and negative impacts on regional park users, the MPRB offers a parcel of land in front of its offices, a piece of land far from the park and without any historical resources. The Metropolitan Council must apply the same principles applied to the Wave project and conclude that an athletic facility could be provided in many locations, but the Mississippi River and its related natural and historic resources are unique.

The application of MERA standards to MPRB's Request requires a denial. The record simply does not support the factual findings required for approval.

Sincerely,



Lisa Hondros
Friends of the Riverfront

Attachs.

cc: Brian Rice, Counsel for MPRB

METROPOLITAN COUNCIL

In re Request by the Minneapolis Park and Recreation Board to the Metropolitan Council for Waiver of Deed Restriction and Conversion of Regional Parkland on Nicollet Island for use of DeLaSalle Athletic Facility located at 25 West Island Avenue and 201 East Island Avenue within the St. Anthony Falls Historic District, Central Mississippi Riverfront Regional Park, and Mississippi National River Recreation Area

FRIENDS OF THE RIVERFRONT'S
VERIFIED MINN. STAT. §116B.09
NOTICE OF INTERVENTION
UNDER THE MINNESOTA
ENVIRONMENTAL RIGHTS ACT
(MERA)

TO: METROPOLITAN COUNCIL AND APPLICANT MINNEAPOLIS PARK AND RECREATION BOARD (MPRB), THROUGH ITS COUNSEL

Friends of the Riverfront (Friends) for its verified Minn. Stat. §116B.09 intervention under the Minnesota Environmental Rights Act (MERA) alleges:

1. Friends is an “association” or “organization” under Minn. Stat. § 116B.09, subd. 1.
2. The above-entitled proceeding involves conduct that is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state.
3. MERA provides that “‘Natural resources’ shall include, but not be limited to, all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources. Scenic and esthetic resources shall also be considered natural resources when owned by any governmental unit or agency.” Minn. Stat. §115B.02 subd.4.
4. MPRB’s Request for Waiver of Deed Restriction and Conversion of Regional Parkland on Nicollet Island for use of DeLaSalle Athletic Facility (Request) seeks approval from the Metropolitan Council for conversion of a unique piece of regional parkland that will impair, pollute or destroy protected resources — *i.e.*, the entire one-block length of the eastern half of the historic Grove Street, its adjacent open space parkland and associated archeological resources — in order to make way for DeLaSalle High School’s proposed athletic facility.

5. The Minneapolis City Council has already finally determined that DeLaSalle's proposed athletic facility requires the destruction of the historic property.

6. The requested destruction of the historic property will materially impair the St. Anthony Falls Historic District (District) and the Central Mississippi Riverfront Regional Park (CMRRP).

7. In addition, the project will destroy, pollute or impair other natural resources, including but not limited to the land, wildlife, botanical, quietude, recreational, scenic and esthetic resources of the CMRRP.

8. MPRB has failed to satisfy what the Minnesota Supreme Court has described as an "extremely high standard" of proof that "there is no feasible and prudent alternative" to building a football stadium on Nicollet Island that would not "itself create extreme hardship." In fact, MPRB is currently constructing a new Parade Stadium in downtown Minneapolis that could be used by DeLaSalle. And DeLaSalle has never responded to the "no build" alternative, which has been proven to be viable for over 50 years.

9. The affected area is protected by a confluence of historic and river protection laws and regulations. Indeed the Executive Director of the Minneapolis Department of Community Planning and Economic Development (CPED) recently wrote in an Op.Ed. piece to the StarTribune that "[t]he 30-year revitalization of the Mississippi riverfront has been a commercial, environmental and historical success story, in large part because of the visionary plans and regulatory framework the city has put in place, which allow us to manage development in harmony with both historic and natural resources."

10. The "visionary plans and regulatory framework the city has put in place" include without limitation (a) the 2000 Minneapolis Plan, (b) City's 2006 Mississippi River

