

**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

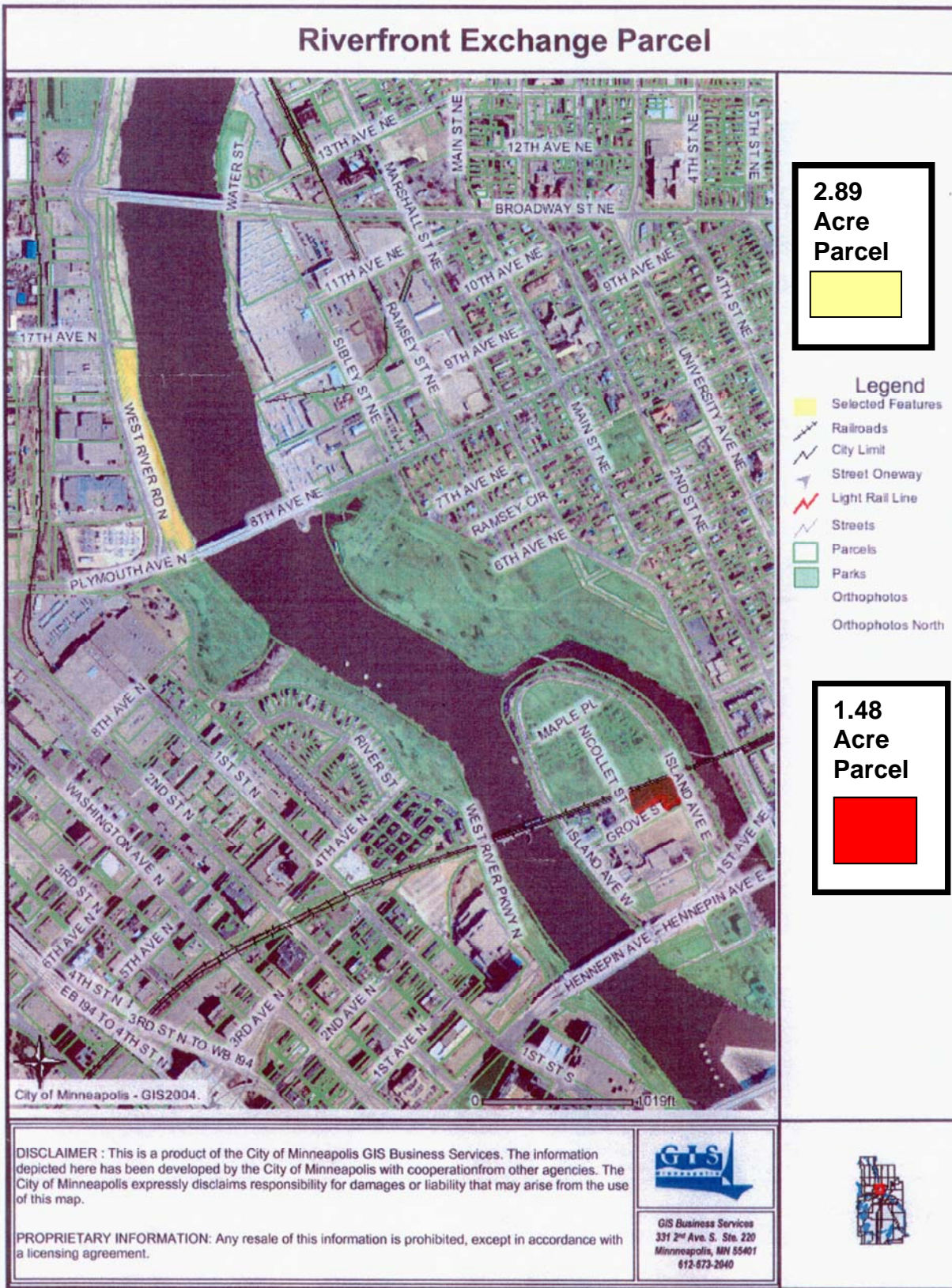
**INTRODUCTION:**

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.

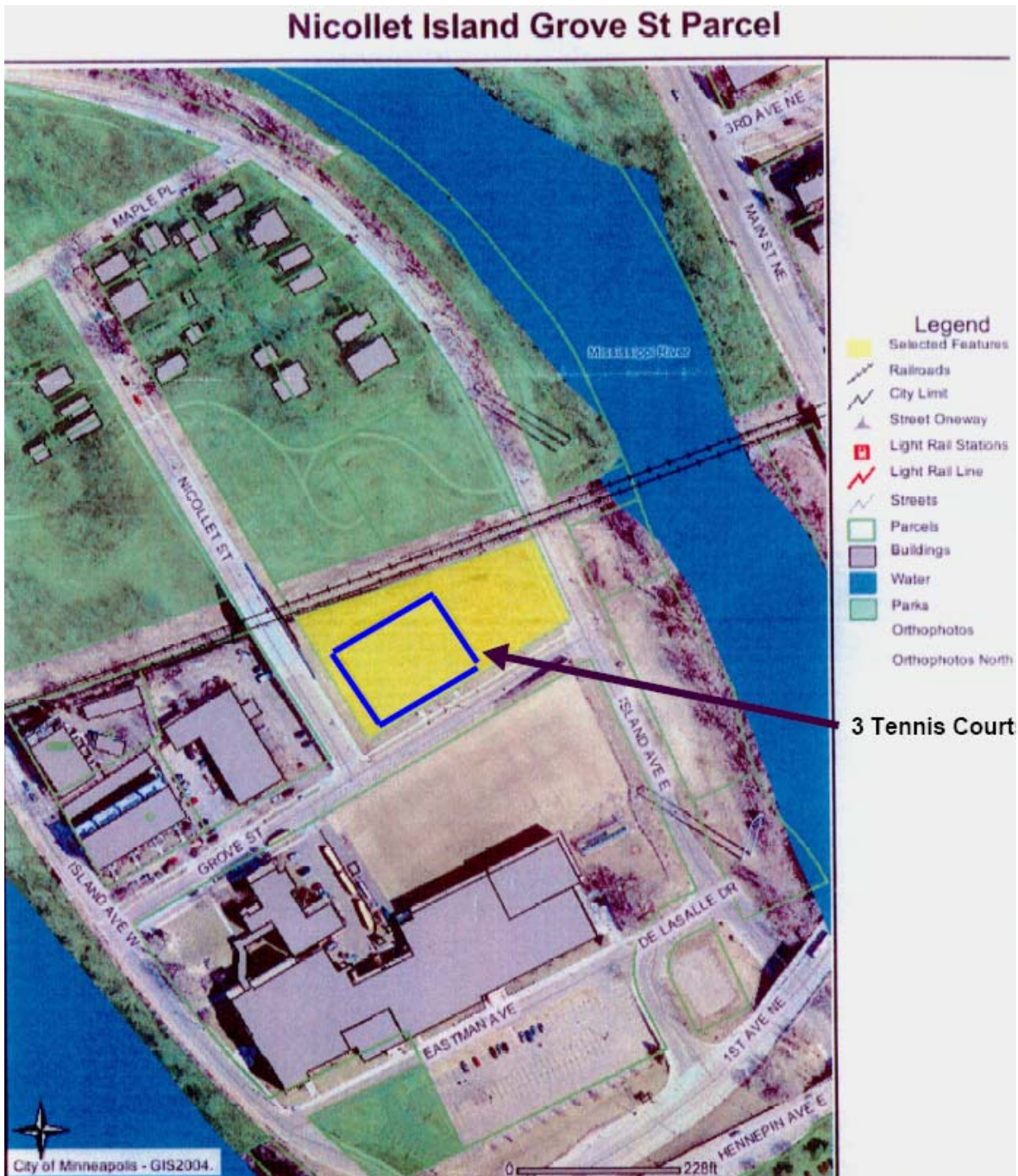
The *2030 Regional Parks Policy Plan* and state law are intended to provide the region with natural resource-related recreational opportunities.

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:

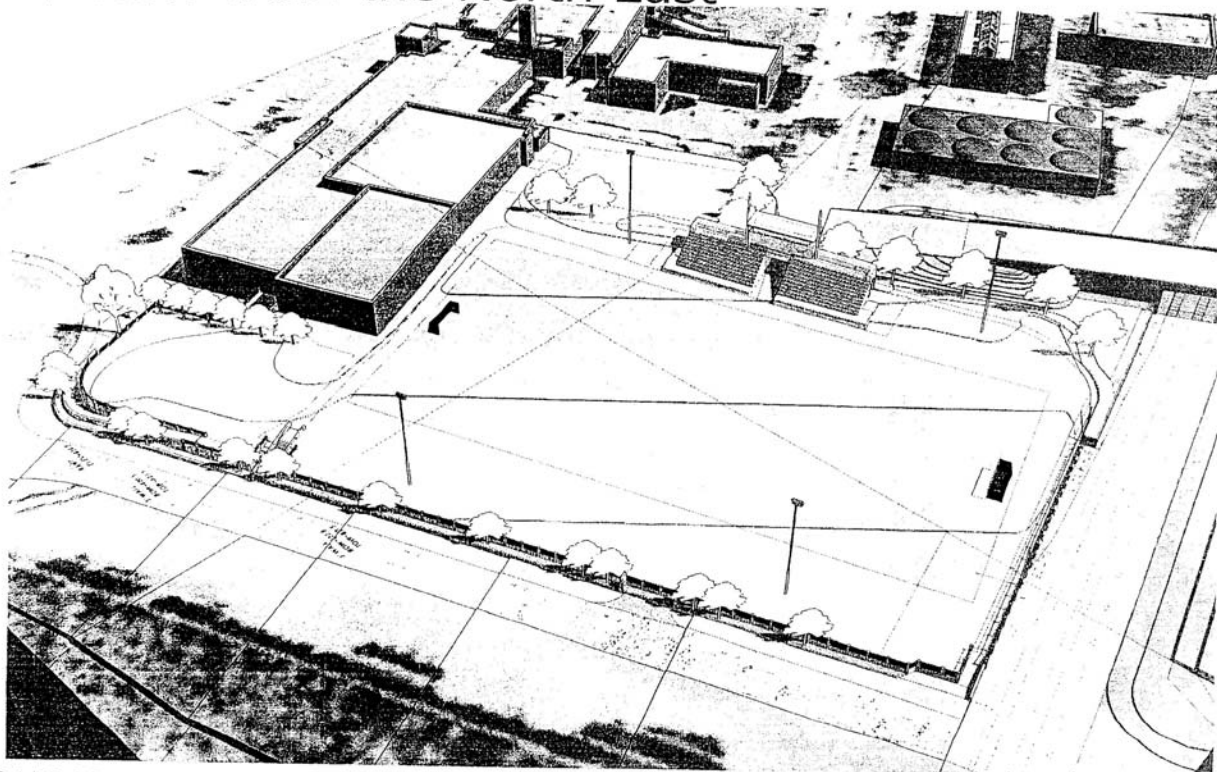


A schematic drawing of the proposed athletic field titled **Figure 3: Design Images, View from the Northeast** illustrates the proposed field in relation to the high school. The 1.48-acre parcel is the right half of field.

**Figure 3:**

## Design Images

### ◆ View from the North East



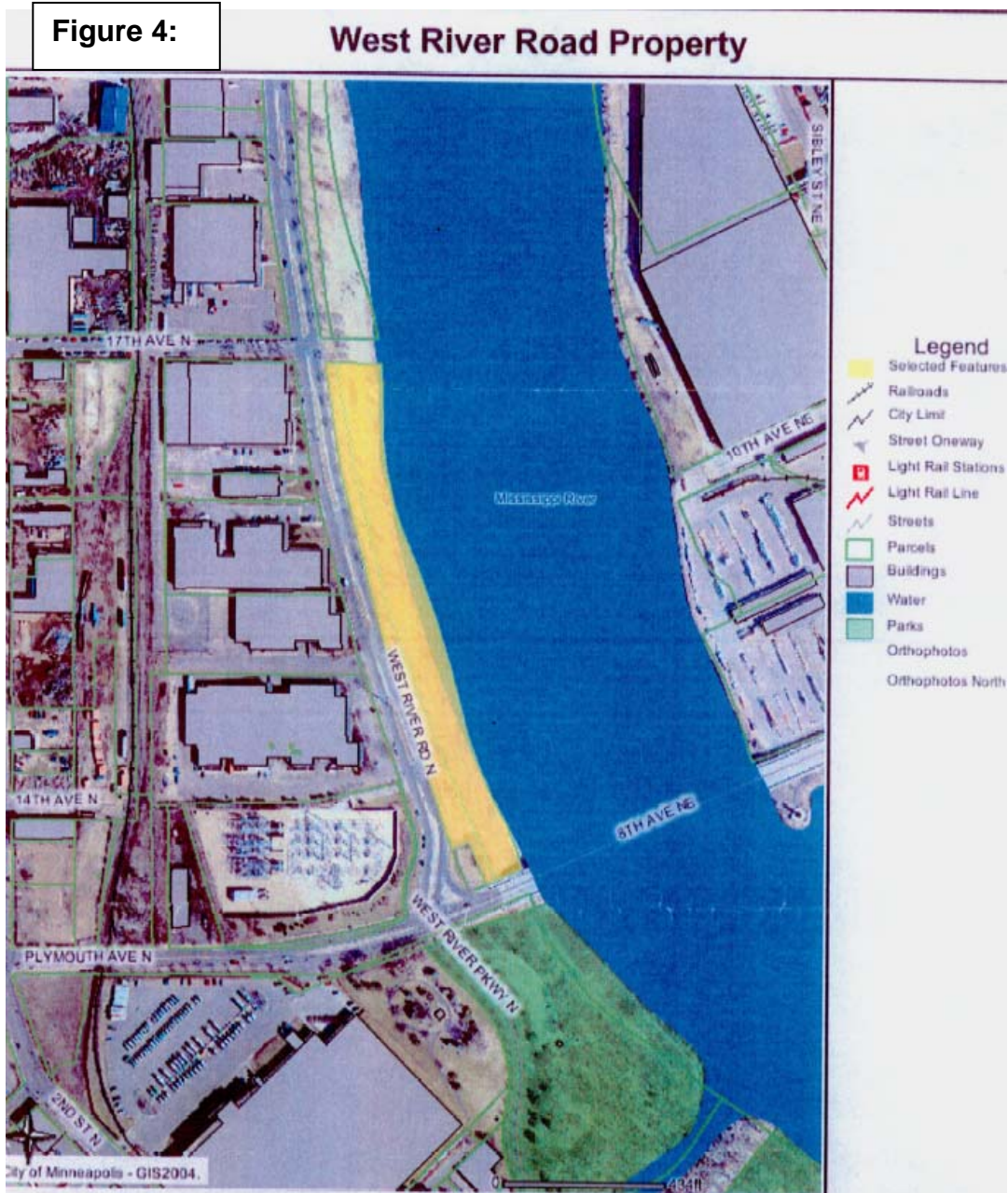
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Background on 2.89-acre parcel proposed to replace the 1.48-acre parcel

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.

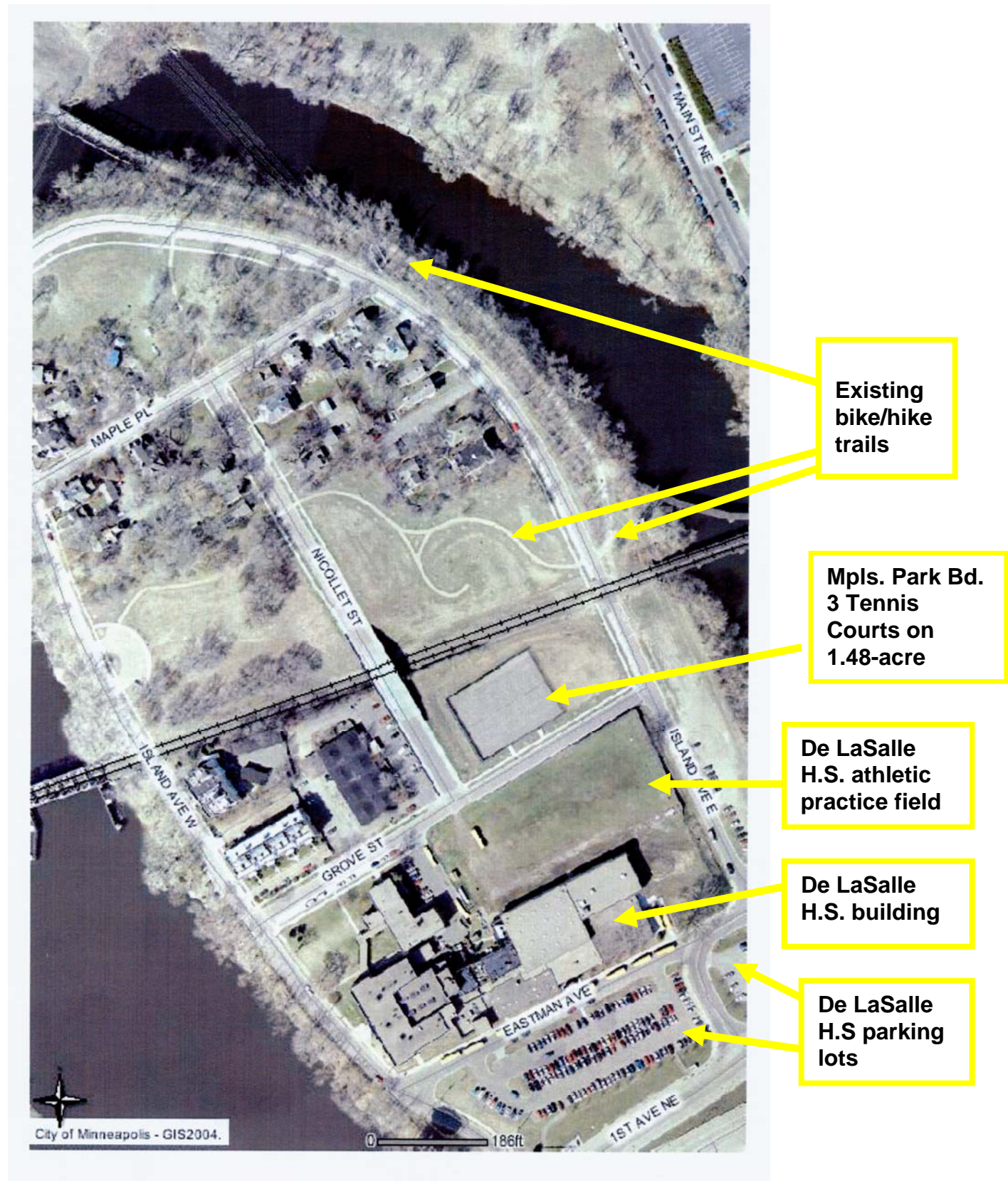
## **2. Can the park system unit (Central Mississippi Riverfront Regional Park) continue to function as the Council intended?**

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.

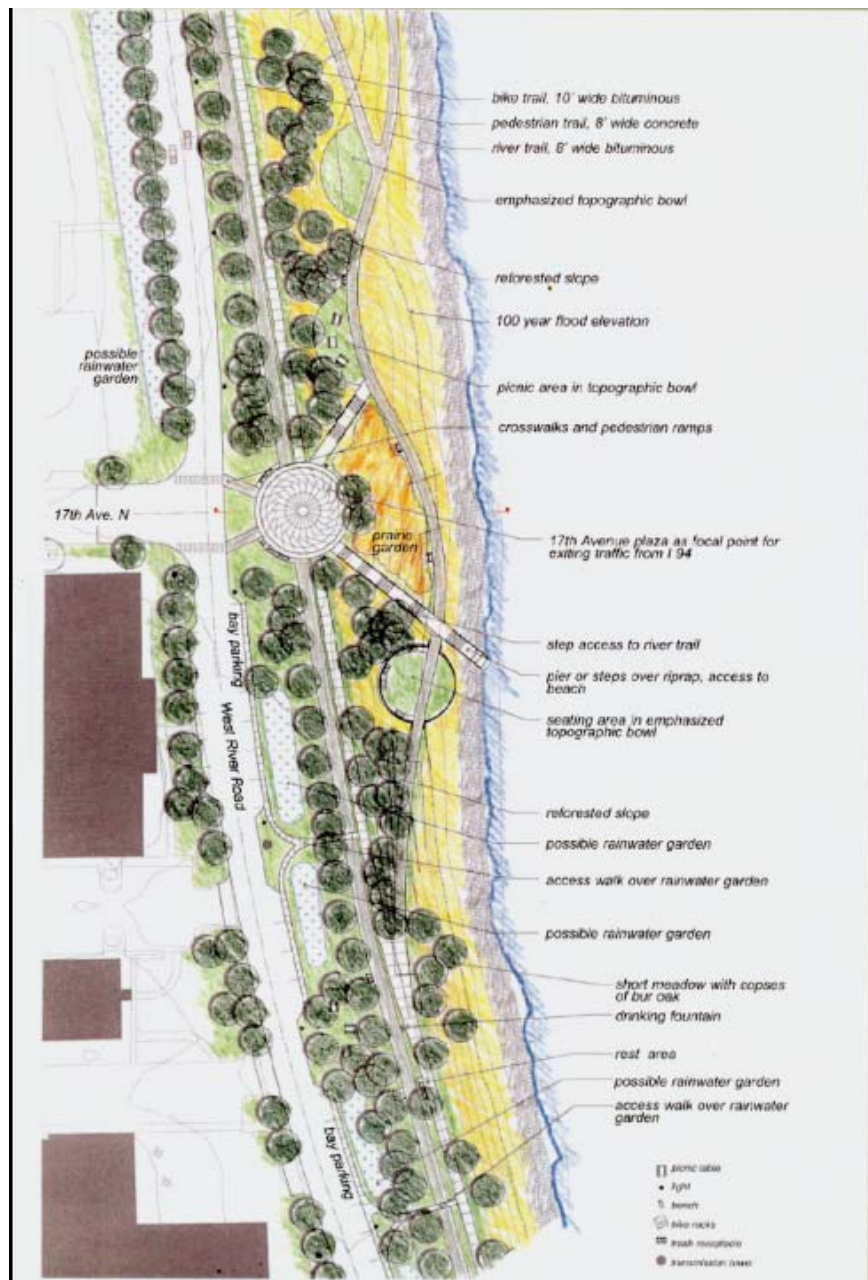
### **5. Can any loss of site or function be made up through acquisition of a site with comparable characteristics adjacent to or in the immediate area of the current location? Is there a need to replace for comparable uses in a comparable location? Would the system benefit from a different park system 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 1-17<sup>th</sup> 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 1-17<sup>th</sup> Ave N in Minneapolis.

Sincerely,



Judd Rietkerk Director  
Planning and Project Management  
Minneapolis Park and Recreation

# *Friends of the Riverfront*

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May 21, 2007

**Arne Stefferud**

**Senior Park Planner**

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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. **NERA 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.<sup>1</sup>

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**

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<sup>1</sup> 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."



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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

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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)

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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



