

## METROPOLITAN COUNCIL

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**DATE:** July 31, 2012 (**Updated August 30, 2012**)

**TO:** Metropolitan Parks and Open Space Commission (MPOSC)

**FROM:** Arne Stefferud, Acting Manager—Regional Parks and Natural Resources Unit  
(651-602-1360)

**SUBJECT:** Proposed Rule Changes for Park Acquisition Opportunity Fund Grants

***This memorandum has been updated to reflect proposals discussed at the August 7<sup>th</sup> Metropolitan Parks and Open Space Commission meeting and discussion with regional park implementing agencies on August 20<sup>th</sup>. The public hearing schedule is also revised to reflect the continued discussion on this item. All revisions are highlighted in yellow.***

### INTRODUCTION

At the June 5<sup>th</sup> MPOSC meeting, the Commission began an analysis of changing the rules for disbursing Park Acquisition Opportunity Fund Grants. The Commission asked Metropolitan Council staff to meet with regional park implementing agency staff on developing a consensus recommendation on any changes to the rules. Those meetings occurred on July 11 and July 23. There was also input provided by Metropolitan Council legal staff, other Council staff and a land acquisition specialist from the Trust for Public Land. **On August 7, the Commission discussed the proposed rules and suggested revisions. On August 20, the regional park implementing agencies discussed the suggested revisions and proposed additional revisions.**

The objectives for the rule changes are to:

1. Acquire as much land as possible with the State appropriations and Metro Council bonds that finance the grants during the time frame when such appropriations are available.
2. Acknowledge land value donations by sellers as part of the 25% local match to the Metropolitan Council's Park Acquisition Opportunity Fund grant.
3. **Acknowledge the value of land that is obtained by a municipality under its park land dedication ordinance and subsequently used for regional trail or park purposes as part of the 25% local match to the Metropolitan Council's Park Acquisition Opportunity Fund grant. This would apply if the regional park agency acquires additional land for a regional trail or park at the same time as the land dedication and the park agency obtains fee title ownership or a permanent easement on the dedicated land.**
4. **Require a local benefits contribution of 10% of actual acquisition costs when application of the other local match rules would result in the Park Acquisition Opportunity Fund grant financing all the actual costs.**

5. Address the acquisition of contaminated lands in a way that is comparable to land that is not contaminated.
6. **Allow an acquisition grant to be extended beyond one year for cause.**

The memorandum also contains a proposed change to “System Protection Strategy 3” regarding funding for soil contamination remediation so that it aligns with the rules for Park Acquisition Opportunity Fund grants.

There is one policy issue with two options for consideration by the MPOSC and the Metropolitan Council. That issue is how to verify the use of Park Acquisition Opportunity Fund grants to partially finance the costs of remediating environmental contamination when the total cost of remediation and acquisition is below the certified appraised market value. Option 1 would increase the amount of the Park Acquisition Opportunity Grant compared to Option 2 and in turn, Option 1 would decrease the local match amount compared to Option 2.

The memorandum concludes with a recommendation for the Community Development Committee to conduct a public hearing on these changes as an amendment to the *2030 Regional Parks Policy Plan* at its November 5<sup>th</sup> meeting. The tentative date for Metropolitan Council approval of the amendment after the hearing would be January 9, 2013, and effective date of the amendment would be January 10, 2013.

### **Existing Rules for Park Acquisition Opportunity Fund Grants**

Here are the existing rules as found in Chapter 4 Finance of the *2030 Parks Policy Plan*:

*Financing land acquisition and capital improvements of the Metropolitan Regional Park System: Land Acquisition*

....

*A. Grants from the Park Acquisition Opportunity Fund may only be awarded to finance a portion of the cost to acquire land within Metropolitan Council-approved master plan boundaries, and only after the requesting regional park implementing agency has used available acquisition grant funds previously provided by the Metropolitan Council.*

*B. Any interest cost on a contract for deed or other timed payment plan is not eligible for grant funding. The value of a discounted sale (i.e. the difference between the appraised value and a reduced sale price) is not counted as part of the cost to acquire land and is not included as part of a local match to the grant.*

*C. Grants from the Park Acquisition Opportunity Fund may finance a portion of the actual cost to acquire land after deducting any Metropolitan Council grants and other grants used to finance a portion of the cost as follows:*

*The Park Acquisition Opportunity Fund Grant finances 75% of the net cost of acquiring the land which is defined as the purchase price—not the appraised value; legal fees, appraisal costs and other closing costs incurred by the park agency; the property tax equivalency payment due to the city or township; and stewardship costs.*

*A contribution of 25% of the net cost of acquiring the land up to \$567,000 that is financed by regional park implementing agency funds or other sources is not eligible for reimbursement consideration by the Metropolitan Council. Seventy-five percent (75%) of a contribution above \$567,000 that is financed with regional park implementing agency funds only is eligible for reimbursement consideration by the Metropolitan Council.*

*D. The maximum grant(s) available to a park agency is \$1.7 million from the Environment and Natural Resources Trust Fund Acquisition Account and \$1.7 million from the Parks and Trails Legacy Fund Acquisition Account during the July 1 to June 30 time period.*

Following are the proposed rules which encompass parts of the existing rules and additions/changes. The rationale for the changes is also stated.

**Proposed Changes to Park Acquisition Opportunity Fund Grant Rules and Rationale for the Rule (highlights of rule changes are underlined)**

**Rule 1:** The Park Acquisition Opportunity Fund grant may finance up to 75% of the costs to acquire land and related costs as described in Rule 2. The land must be within Metropolitan Council approved master plan boundaries for regional parks, park reserves, regional trails and special recreation features. The cumulative amount a park agency could be granted in a State fiscal year (July 1 to June 30) is:

- a. \$1.7 million from the Environment and Natural Resources Trust Fund Acquisition Account for acquisitions of undeveloped land with high natural resource values to comply with State law.
- b. \$1.7 million from the Parks and Trails Legacy Fund Acquisition Account for acquisition of land that does not qualify for funding from the Environment and Natural Resources Trust Fund Acquisition Account.

The acquiring regional park implementing agency must finance up to 25% of the acquisition costs as a local match. The match may be one or a combination of the following:

- a. Non-State funds and non-Metro Council funds provided by the regional park implementing agency. If the cash contribution is financed with regional park implementing agency money (i.e. the agency's general fund or other account, but not a grant from another entity such as a watershed district), that contribution is eligible for reimbursement with Metro Council bonds as part of that park agency's share of a future regional parks capital improvement program. Based on this rule, if the maximum grant of \$1.7 million was awarded and the park agency provided a match of \$567,000 any costs incurred by the park agency above the \$567,000 and paid for with park agency funds for grant eligible expenses as defined in Rule 2 is also eligible for reimbursement consideration from that park agency's share of future metropolitan regional parks capital improvement programs.
- b. The value of a land donation by the seller. The value of the donation is the difference between the agreed upon purchase price based on a certified appraised value of the property and the lower amount the seller agrees to

accept as payment for the land. The certification of the appraised value of the property will be based on a third party review appraisal, where the third party appraiser will perform a field review of the appraisal and determine if the appraisal met the requirements of the Uniform Standards of Professional Appraising Practice (USPAP). Both the appraisal and the review appraisal must be submitted to the Metropolitan Council as part of the grant request. The cost of the third party appraisal review is a grant eligible item.

- c. The value of land that is obtained by a municipality under its park land dedication ordinance and transferred to a regional park implementing agency under a fee title or permanent easement agreement at the same time that the regional park implementing agency acquires additional land for that park or trail from the same landowner. The value of the dedicated land is based on a certified appraisal of the property. The certification of the appraised value will be based on a third party review appraisal, where the third party appraiser will perform a field review of the appraisal and determine if the appraisal met the requirements the Uniform Standards of Professional Appraising Practice (USPAP). Both the appraisal and the review appraisal must be submitted to the Metropolitan Council as part of the grant request. The cost of the third party appraisal review is a grant eligible item.

For example, the certified appraised value of the land and associated costs is \$1 million, but the seller donates \$50,000 of that value and thus the actual cost to obtain the land is \$950,000. The \$50,000 land value donation is credited towards the 25% match to the Park Acquisition Opportunity Fund grant. To be consistent in applying this policy regardless of a land value donation or not, the Park Acquisition Opportunity Fund grant and 25% match is calculated as follows:

\$1,000,000 purchase agreement price based on a certified appraised value of land and associated costs

Minus \$50,000 land donation by seller value, this is credited towards 25% match  
Equals \$950,000 actual cost of acquisition

75% of \$1,000,000 total of purchase agreement price based on a certified appraised value of land and associated costs equals \$750,000 Park Acquisition Opportunity Fund Grant.

25% of \$1,000,000 purchase agreement price based on a certified appraised value of land and associated costs equals \$250,000 minus the \$50,000 documented land value donation = \$200,000 cash match

Here's an example where land is obtained by a municipality via its park land dedication ordinance and transferred to the regional park implementing agency at the same time as the park agency obtains other land for that regional park or trail from the same landowner. Assume that the appraised value of the dedicated land is \$50,000 and the value and associated acquisition costs for other land is \$950,000 for a total of \$1 million. The \$50,000 appraised value of the dedicated land is credited towards the 25% match to the Park Acquisition Opportunity Fund grant. To be consistent in applying this policy regardless of a land dedication/transfer or not, the Park Acquisition Opportunity Fund grant and 25% match is calculated as follows:

$\$1,000,000$  total appraised value and associated costs of land obtained via parkland dedication ordinance and additional land purchased at the same time from the same landowner  
Minus  $\$50,000$  certified appraised value land obtained via parkland dedication ordinance, which is credited towards 25% match.  
Equals  $\$950,000$  actual cost of acquisition

75% of  $\$1,000,000$  total appraised value and associated costs of land obtained via parkland dedication ordinance and additional land purchased at the same time from the same landowner equals  $\$750,000$  Park Acquisition Opportunity Fund Grant.

25% of  $\$1,000,000$  total appraised value and associated costs of land obtained via parkland dedication ordinance and additional land purchased at the same time from the same landowner equals  $\$250,000$  minus the  $\$50,000$  documented land value of dedicated parkland equals  $\$200,000$  cash match

**Rationale for Rule 1:** Allowing the cash match of regional park implementing agency money to be eligible for reimbursement with Metropolitan Council bonds from the park agency's share of future regional park capital improvement programs allows the park agency to recover its local cash contribution to the land acquisition. This is optional. Some park agencies may wish to seek reimbursement and some may not. Since the reimbursement is financed with a portion of that park agency's share of the regional parks capital improvement program, the reimbursement does not affect the amount granted to other park agencies.

Allowing the value of a land donation by the seller to be counted as part of the 25% local match to the Park Acquisition Opportunity Fund grant recognizes the donor's contribution, and treats that donation in the same way as a cash match to the grant. Land value donations are done voluntarily by sellers. Such donations provide tax benefits to the seller. Requiring a third party field appraisal review assures the Metropolitan Council that the purchase agreement price was determined at the highest standard of appraisal practice, and therefore the value of the land donation is legitimate. The cost of the appraisal review is a grant eligible expense because it helps the Metropolitan Council carry out due diligence in verifying the market value of the property and the value of the land donation as part of the 25% match.

Allowing the value of land obtained via parkland dedication and transferred to the regional park implementing agency at the same time other land is acquired by the park agency from the same landowner to be counted as part of the 25% local match to the Park Acquisition Opportunity Fund grant recognizes the dedicated land's value, and treats that dedicated land value in the same way as a cash match to the grant. Requiring a third party field appraisal review assures the Metropolitan Council that the value of the dedicated land

was determined at the highest standard of appraisal practice, and therefore the value of the dedicated land is legitimate. The cost of the appraisal review is a grant eligible expense because it helps the Metropolitan Council carry out due diligence in verifying the market value of the property and the value of the dedicated land as part of the 25% match.

**Rule 2:** The following items are eligible in calculating the total costs of the acquisition:

- a. Appraisal cost for the acquiring regional park implementing agency
- b. Appraisal review cost needed to verify the value of a land donation, or the value of land obtained via parkland dedication ordinance and subsequently transferred to the regional park implementing agency when other land is obtained from the same landowner.
- c. Phase 1 environmental site assessment
- d. Environmental contamination remediation costs if consistent with the conditions in Rule 3.
- e. Legal services and closing costs to the park agency for costs associated with the purchase
- f. State deed tax/Conservation Fee
- g. Title Insurance
- h. Pro-rated share of all property taxes/assessments due on the parcel at the time of closing that is borne by the park agency
- i. 1.8 times the city or township property tax due on the parcel in the year the land is acquired. This is the property tax equivalency payment, which is paid to the city or township at closing (MS 473.341)
- j. Negotiated purchase price for the parcel
- k. Relocation costs to the seller under conditions of applicable State law
- l. Land stewardship costs as defined as follows: costs for boundary fencing or marking; stabilizing or rehabilitating natural resources to aid in the reestablishment of threatened natural resources or to prevent non-natural deterioration thereof; preventing the deterioration of structures that will be re-used for park purposes; removal of unneeded structures, dangerous land forms or attractive nuisances including capping abandoned wells as required under MS 103I.301; and closing unneeded road(s) which provided access to the acquired land.
- m. Development of the land to provide minimal access to it for public recreational use as reviewed and approved by the Metropolitan Council in consideration of the grant. Such development must be consistent with the applicable Metropolitan Council approved master plan and may include the cost of an access road and/or trail, parking lot, and signage.

All costs shall be documented with appropriate information/data and submitted to the Metropolitan Council with the grant request.

**Rationale for Rule 2:** The minimal access development costs would be evaluated by the Metropolitan Council to determine what costs would be grant eligible. The premise is to primarily use the Park Acquisition Opportunity Fund to buy land—not to develop it for recreational use that could be financed from other sources. But in cases where new parks or trails are being created, it is reasonable to provide some access to land as it is acquired.

Documenting the grant eligible costs with the grant request allows the Metropolitan Council to determine the accuracy of any calculations that went into determining the size of the grant, the size of the local match, and it provides a paper trail for any audit of the grant beyond the reimbursement expenditure reports used to document the justification to disburse grant proceeds.

**Rule 3:** Soil contamination remediation necessary to correct pre-existing environmental contamination known at the time of purchase, and the remediation effort is to the level needed to allow the land to be used for park and recreation purposes, and/or capping abandoned wells that have contaminated their groundwater aquifer are grant eligible land acquisition expense under the following condition: The aggregate cost of acquiring the land and remediation does not exceed the certified appraised value of the land at the time of purchase. The certification of the market value of the property will be based on a third party field review of the appraisal. The appraisal review must determine that the appraisal followed Uniform Standards of Professional Appraising Practice (USPAP). The appraisal review must be submitted to the Metropolitan Council. The cost of the third party appraisal review is a grant eligible item. In addition to the certification of the market value of the parcel, the park agency must submit documentation of the costs for remediation as listed below. The difference between the actual acquisition and remediation costs compared to the certified market value of the land prior to clean up may be applied towards the park agency's local match requirement.

The regional park implementing agency has an agreement with the party that will remediate/clean up the contamination or cap an abandoned well that absolves the regional park implementing agency from any future liability of pollution caused by the contaminated soil or contaminated groundwater.

Grant eligible expenses for soil remediation and well capping include:

- a. Costs to prepare Phase 1, and Phase 2 Environmental Site Assessments, the Quality Assurance Project Plan, Remediation Action Plan and the Environment Engineer's Estimate.
- b. Minnesota Pollution Control Agency (MPCA) Voluntary Investigation Cleanup (VIC) service charges.
- c. Costs to implement the remediation action plan and secure appropriate assurances from the Minnesota Pollution Control Agency.

Documentation of these remediation costs plus other costs associated with the acquisition must be submitted to the Metropolitan Council as part of the grant request.

For example, the certified appraised value of the land is \$1 million, but the actual costs to obtain the land and remediation is \$900,000. The \$100,000 difference is credited towards the 25% match to the park agency. The grant could be calculated in two ways as follows:

***(At the August 7<sup>th</sup> meeting, the MPOSC recommended Option 2 to make the grant calculation in their review of this policy)***

**Option 1**

\$1,000,000 certified appraised value of land

Minus \$100,000 difference between certified appraised value and actual costs of remediation and acquisition that is credited towards park agency's 25% match

Equals \$900,000 actual costs of acquisition and remediation



75% of \$900,000 actual costs equal \$675,000 plus \$100,000 to offset the credit to the park agency's \$100,000 discounted value equals \$775,000 Park Acquisition Opportunity Grant.

25% of \$900,000 actual costs equal \$225,000 minus \$100,000 credit for discounted value equals \$125,000 local match by the park agency.

### **Option 2**

\$1,000,000 certified appraised value of land

Minus \$100,000 difference between certified appraised value and actual costs of remediation and acquisition that is credited towards park agency's 25% match

Equals \$900,000 actual costs of acquisition and remediation

75% of \$1,000,000 certified appraised value of land equals \$750,000 Park Acquisition Opportunity Grant.

25% of \$1,000,000 certified appraised value of land equals \$250,000 minus \$100,000 difference between appraised value and actual remediation and acquisition costs equals \$150,000 local match by the park agency

**Rationale for Rule 3:** This rule recognizes that funding for environmental contamination remediation of park lands may not be available because those programs (e.g. Tax Base Revitalization Account) require the land to be put back on the tax rolls. But, this rule limits the use of Park Acquisition Opportunity Fund grants for cases where the remediation costs and acquisition costs are less than the certified market value of the land. These conditions will allow the grant to buy contaminated land in a comparable way to land that has no contamination.

Documenting the grant eligible costs with the grant request allows the Metropolitan Council to determine the accuracy of any calculations that went into determining the size of the grant, the size of the local match, and it provides a paper trail for any audit of the grant beyond the reimbursement expenditure reports used to document the justification to disburse grant proceeds.

**Rule 4:** In cases where the resulting calculation of 25% local match would have resulted in zero cash contribution by the regional park implementing agency, a local benefit contribution of 10% of actual acquisition costs will be assessed. If the local benefit contribution is financed with regional park implementing agency money (i.e. the agency's general fund or other account, but not a grant from another entity such as a watershed district), that contribution is eligible for reimbursement with Metro Council bonds as part of that park agency's share of a future regional parks capital improvement program.

For example, the total appraised value and related acquisition costs of a parcel equal \$1 million. A land value donation is made that is \$500,000. The land value donation of \$500,000 exceeds 25% of the \$1 million total. Crediting the land value donation towards the 25% local match would have resulted in no contribution by the regional park implementing agency. Under this rule, the regional park implementing agency would have to provide a 10% match of the actual costs. In this case ten percent of \$500,000 equals \$50,000. The Park Acquisition Opportunity Grant would be \$450,000.



**Rationale for Rule 4:** Every land acquisition has some local benefit as well as regional benefit. It is therefore reasonable for the regional park implementing agency to contribute some level of match to the acquisition in cases where the value of land donation, or value of dedicated land, or the difference between the appraised value of contaminated land and the costs to acquire the land and remediate the contamination are greater than 25% of total costs.

**Rule 5:** For parcels that can be subdivided into lots and the value of those lots is used to determine the fair market value of the parcel, such acquisitions may qualify for financing from both the Environment and Natural Resources Trust Fund (ENRTF) Account and qualify for funding from the Parks and Trails Legacy Fund (PTLF) Account. For example, lot(s) must contain high quality natural resources with no structures on them to qualify for ENRTF financing, and lot(s) that do not contain high quality natural resources or they have structures on them qualify for PTLF financing. The amount from each account shall be proportional to the appraised market value of the lots. However, the Metropolitan Council may grant additional funds from the PTLF Account to finance a portion of the costs of land that qualifies for financing from the ENRTF Account if there is not sufficient money in the ENRTF Account to fully fund the grant.

For example, a 40 acre lakeshore parcel containing one home, and the rest of the land could be legally subdivided into other lots, is considered for acquisition. The appraisal determines the market value of each lot to determine the market value for the entire parcel. The value of the lot with the house on it and related acquisition costs is \$600,000, and the value of the other undeveloped lots and related acquisitions costs is \$400,000 for a total of \$1 million. The Park Acquisition Opportunity Grant is calculated as follows:

75% of \$600,000 cost of house lot = \$450,000 which is financed from the PTLF account. 75% of \$400,000 cost of the undeveloped lots = \$300,000 which is financed from ENRTF account for a combined grant total of \$750,000. If there was less than \$300,000 of ENRTF account money available, the PTLF account could be used to finance the remainder to reach the \$300,000 level for that portion of the grant.

**Rationale for Rule 5:** Some parcels can be subdivided into lots. And to determine the fair market value of the land, the value of each lot is determined in the appraisal process. In those cases, the lots that qualify for funding from the ENRTF account should be purchased with that account and the lots that qualify for funding from the PTLF account should be purchased with that account. Since the PTLF account is about twice as large as the ENRTF account and the PTLF account can be used to acquire any land and structures, it is reasonable to use PTLF account money to help fully fund a grant. This was done in the acquisition of a 43 acre parcel for Grey Cloud Island Regional Park in 2010 that had a total acquisition cost of \$1.96 million. There was no formal rule in place at the time, but the conclusion of the Metropolitan Council and permission by the Legislative Citizens Commission on Minnesota Resources that recommends appropriations from the ENRTF was that it was a reasonable approach to take since it was consistent with the purposes of both accounts. Creating this rule provides guidance for future acquisitions that meet these conditions.

**Rule 6:** If requests from several regional park implementing agencies are submitted for consideration by the 15<sup>th</sup> day of the month preceding the next Metropolitan Parks and Open Space Commission meeting, and the total requests exceeds the amount of grant funds available at that time, award grants to all requests that are proportional to the

amount requested. For example, three regional park implementing agencies submit requests that total \$1 million, but there is only \$800,000 available. Three grants would be awarded with the amount proportional to the request. For example, if Agency 1's request was \$500,000 out of the \$1 million total (50%), the grant would be 50% of the available funds—in this example the grant would be \$400,000.

**Rationale for Rule 6:** This rule guides the Metropolitan Council in determining how to fund multiple grants that are considered at the same time when the amount requested exceeds the grant funds available. The deadline of the 15<sup>th</sup> of the month for submitting a request allows Council staff time to fully analyze the requests to verify the accuracy of each, and in turn the proportional amount of available grant funds that should be awarded.

**Rule 7:** The effective term of the acquisition opportunity fund grant is no more than 12 months or the expiration date of the State appropriation which finances the grant, whichever is less. A grant may be extended beyond the initial term of 12 months for cause. However the length of the extension cannot exceed the availability of the State funds financing the grant.

**Rationale for Rule 7:** The time limit on the grant is to insure that actions to acquire the land and carry out other grant eligible activities is done in a timely manner and definitely before the expiration of the State appropriation that financed the grant. Since the grants are made on estimated as well as actual costs, and grant funds are not disbursed until actual costs are documented, there are situations where not all encumbered grant funds are needed. These remaining funds can then be unencumbered and used on other grants up until the applicable State appropriation expires. Since the grant is financing activities beyond the acquisition of land, there may be cases where additional time is needed to complete those activities. For example, if the grant is financing soil remediation costs and those remediation activities cannot be completed in 12 months due to bad weather, an extension to the grant's duration is appropriate. Consequently, the grant term may be extended for cause in these situations. However, the grant extension cannot exceed the availability of the State funds financing the grant.

**Rule 8:** One year prior to the expiration of the State appropriation to each Park Acquisition Opportunity Fund Grant account [i.e. the Park and Trails Legacy Fund Acquisition Account (PTLF) and the Environment and Natural Resources Trust Fund Acquisition Account (ENRTF)], the Metropolitan Council in consultation with the Regional Park Implementing Agencies and the Metropolitan Parks and Open Space Commission will conduct a review of these rules to determine if additional steps should be taken to increase the likelihood that the balance of the expiring State appropriation will be granted and spent before its expiration date. An example of such a step would be to allow a park agency which has received the maximum amount allowed [\$1.7 million from the ENRTF Account or \$1.7 million from the PTLF Account in a State Fiscal Year (July 1 to June 30)] to be eligible to receive an additional grant. Another step could be that 60 days prior to a State appropriation's expiration date, that grants are awarded to partially reimburse the local match of grants awarded from the applicable acquisition account that were initially financed with that State appropriation and matching Metro Council bonds. The total amount of these reimbursement grants would consume the remaining State appropriation and applicable Metro Council bond match. The amount of each reimbursement grant should be proportionate to the local match amount initially funded by each park agency—not with other funding sources the park agency used as their match. And these reimbursement grants would only be for grants initially financed from that soon to expire State appropriation and applicable Metro Council bond match. If there was still funds

remaining, reimbursement grants for the local matches on other acquisitions could be considered that were initially financed from that acquisition account, but from an earlier appropriation.

Such variances to the rules for these situations would be considered by the Metropolitan Council without undertaking a public hearing process since the vetting of the changes is made by the park agencies affected by the proposed change, and the change is only in effect until the expiration of the applicable appropriation for that account.

**Rationale for Rule 8:** This rule allows the Metropolitan Council to collaborate with the regional park implementing agencies and Metropolitan Parks and Open Space Commission on proposing ways to spend the remaining State appropriations in each account before they expire. These variances to the rules would insure that the State appropriations that partially finance these accounts are fully utilized to meet the objective of acquiring as much land as possible with the funds available.

### **Proposed changes to System Protection Strategy 3 regarding funding for soil contamination remediation**

The *2030 Regional Parks Policy Plan* contains a policy on the conditions for financing the costs of contaminated soil remediation under System Protection Strategy 3. This policy should be changed to align with Rule 3 for Park Acquisition Opportunity Fund Grants. Following is the Strategy in its current form, and then the proposed changes with ~~stricken language~~ and new language

#### **Current Strategy**

#### **System Protection Strategy 3: The Council will reimburse implementing agencies for contamination cleanup only when there is no real alternative for the park or trail function.**

The Metropolitan Council will not consider funding soil contamination cleanup or capping abandoned wells that have contaminated their ground water aquifer on regional park land unless all of the following criteria are met:

- The land is already under regional park implementing agency ownership or control via a joint powers agreement or lease, and was acquired or was under the park implementing agency's control before Phase 1 environmental audits were required.
- The land is essential to make the regional park or trail function as intended according to a Council-approved master plan, and no reasonable alternative exists to relocate the park or trail facilities elsewhere.
- The park or trail is essential in contributing to strengthening neighborhood vitality consistent with the *2030 Regional Development Framework*. The cost of cleanup is not eligible to receive federal or state soil contamination cleanup funds or abandoned well-capping funds from any other program or funding has been denied.
- The regional park implementing agency has an agreement with the party that will remediate/clean up the contamination or cap an abandoned well that absolves the regional park implementing agency from any future liability of pollution caused by the contaminated soil or contaminated groundwater.

## Changes to Strategy

### **System Protection Strategy 3: The Council will reimburse implementing agencies for contamination cleanup ~~only when there is no real alternative for the park or trail function~~ under certain conditions.**

The Metropolitan Council will ~~not~~ consider funding soil contamination cleanup (remediation) or capping abandoned wells that have contaminated their ground water aquifer on regional park land ~~unless all of~~ if the following criteria are met:

#### **A. For lands already under regional park implementing agency control:**

A regional park implementing agency may use its share of regional park capital improvement funds for financing soil contamination remediation or capping abandoned wells that have contaminated their ground water aquifer on regional park land if the following conditions are met:

1. The land is already under regional park implementing agency ownership or control via a joint powers agreement or lease, and was acquired or was under the park implementing agency's control before Phase 1 environmental audits were required.
2. The land is essential to make the regional park or trail function as intended according to a Council-approved master plan, and no reasonable alternative exists to relocate the park or trail facilities elsewhere.
3. The park or trail is essential in contributing to strengthening neighborhood vitality consistent with the *2030 Regional Development Framework*. The cost of cleanup is not eligible to receive federal or state soil contamination cleanup funds or abandoned well-capping funds from any other program, or funding has been denied.
4. The regional park implementing agency has an agreement with the party that will remediate/clean up the contamination or cap an abandoned well that absolves the regional park implementing agency from any future liability of pollution caused by the contaminated soil or contaminated groundwater.

#### **For lands proposed to be acquired by a regional park implementing agency:**

A regional park implementing agency may request a Park Acquisition Opportunity Fund grant to partially finance soil contamination clean up (remediation) or capping abandoned wells that have contaminated their ground water aquifer on land that is proposed for acquisition if the following conditions are met:

1. Soil remediation necessary to correct pre-existing environmental contamination known at the time of purchase, and the remediation effort is to the level needed to allow the land to be used for park and recreation purposes, and capping abandoned wells that have contaminated their groundwater aquifer are grant eligible land acquisition expense under the following condition: The aggregate cost of acquiring the land and remediation does not exceed the certified appraised value of the land at the time of purchase. The certification of the market value of the property will be based on a third party field review of the appraisal. The appraisal review must determine that the appraisal followed Uniform Standards of Professional Appraising Practice (USPAP). The appraisal review must be submitted to the Metropolitan

Council. The cost of the third party appraisal review is a grant eligible item. In addition to the certification of the market value of the parcel, the park agency must submit documentation of the costs for remediation as listed below. The difference between the actual acquisition and remediation costs compared to the certified market value of the land prior to clean up may be applied towards the park agency's local match requirement.

Grant eligible expenses for soil remediation and well capping include:

- a. Costs to prepare Phase 1, and Phase 2 Environmental Site Assessments, the Quality Assurance Project Plan, Remediation Action Plan and the Environment Engineer's Estimate.
- b. Minnesota Pollution Control Agency (MPCA) Voluntary Investigation Cleanup (VIC) service charges.
- c. Costs to implement the remediation action plan and secure appropriate assurances from the Minnesota Pollution Control Agency.

Documentation of these remediation costs plus other costs associated with the acquisition must be submitted to the Metropolitan Council as part of the grant request.

2. The regional park implementing agency has an agreement with the party that will remediate/clean up the contamination or cap an abandoned well that absolves the regional park implementing agency from any future liability of pollution caused by the contaminated soil or contaminated groundwater.

For example, the certified appraised value of the land is \$1 million, but the actual costs to obtain the land and remediation is \$900,000. The \$100,000 difference is credited towards the 25% match to the park agency. The grant could be calculated in two ways as follows:

**(To be consistent with the MPOSC discussion on August 7<sup>th</sup>, Option 2 is recommended to make the grant calculation for this policy)**

#### **Option 1**

\$1,000,000 certified appraised value of land  
Minus \$100,000 discounted value credit towards park agency's 25% match  
Equals \$900,000 actual costs of acquisition and remediation

75% of \$900,000 actual costs equal \$675,000 plus \$100,000 to offset the credit to the park agency's \$100,000 discounted value equals \$775,000 Park Acquisition Opportunity Grant.

25% of \$900,000 actual costs equal \$225,000 minus \$100,000 credit for discounted value equals \$125,000 local match by the park agency.

#### **Option 2**

\$1,000,000 certified appraised value of land  
Minus \$100,000 discounted value credit towards park agency's 25% match  
Equals \$900,000 actual costs of acquisition and remediation

75% of \$1,000,000 certified appraised value of land equals \$750,000 Park Acquisition Opportunity Grant.

25% of \$1,000,000 certified appraised value of land equals \$250,000 minus \$100,000 difference between appraised value and actual remediation and acquisition costs equals \$150,000 local match by the park agency

## **AMENDING the 2030 REGIONAL PARKS POLICY PLAN**

The *2030 Regional Parks Policy Plan* states that the Metropolitan Council will amend the policy plan only if a substantial revision is proposed. A substantial revision is defined as (1) a proposed revision that is intended to or could have the effect of changing the direction or intent of adopted Council policy; (2) addition or deletion of a policy; or (3) addition or deletion of a system element. A Council decision to amend the plan will be preceded by a finding that a substantial revision is proposed.

The changes to the rules for Park Acquisition Opportunity Fund grants and System Protection Strategy 3 are a substantial revision to the *2030 Regional Parks Policy Plan* because they change the direction and intent of adopted Council policy.

### **Public Hearing Process/Schedule**

State law requires the Metropolitan Council to hold a public hearing to amend its *Regional Parks Policy Plan*. The Council's procedures regarding public hearings require the Council to establish a public hearing date 45 days prior to holding the public hearing. The public input period remains open for 10 calendar days following the hearing. Based on this process, and the assumption that the Metropolitan Council approves scheduling the public hearing at its September 26<sup>th</sup> meeting, a public hearing could be scheduled for Monday, November 19, 2012 as part of the Community Development Committee meeting. The hearing record would remain open 10 calendar days (until 4:30 pm November 30, 2012). A hearing report, which summarizes the testimony and recommends action, would be considered by the Metropolitan Parks and Open Space Commission on December 11 (special meeting to replace regular meeting on December 4); by the Community Development Committee on December 17; and by the Metropolitan Council on January 9, 2013. The adopted rules would go into effect one day after the Metropolitan Council adopted them.

### **CONCLUSIONS**

1. The proposed changes to rules for Park Acquisition Opportunity Fund grants and System Protection Strategy 3 constitutes a substantial revision and requires an amendment to the *2030 Regional Parks Policy Plan*. The Council must hold a public hearing for an amendment to the *2030 Regional Parks Policy Plan*. The public hearing date could be scheduled for Monday, November 5, 2012 if the Metropolitan Council approves scheduling the hearing at its September 12<sup>th</sup> meeting.
2. Approval of the proposed changes to rules for Park Acquisition Opportunity Fund grants and System Protection Strategy 3 as an amendment to the *2030 Regional Parks Policy Plan* would go into effect one day after the Metropolitan Council adopted them. Based on the assumption that the Metropolitan Council approved scheduling the hearing at its September 12<sup>th</sup> meeting, the amendment could be adopted on January 9, 2013 and go into effect on January 10, 2013. The existing rules and System Protection Strategy 3 would remain in effect until then.



## RECOMMENDATIONS

That the Metropolitan Council:

1. Conduct a public hearing on **November 19,** 2012 as part of its Community Development Committee meeting regarding amending the *2030 Regional Parks Policy Plan* to:
  - Replace the rules for Park Acquisition Opportunity Fund Grants found in Chapter 4 Finance of the *2030 Regional Parks Policy Plan* with those described in this memorandum; and
  - Replace System Protection Strategy 3 of the *2030 Regional Parks Policy Plan* as described in this memorandum.

The hearing record shall remain open until 4:30 p.m., **November 30,** 2012.

2. Direct staff to publish public hearing notices and distribute copies of the proposed amendment to the *2030 Regional Parks Policy Plan* under the Council's administrative procedure for public hearings.