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DRAFT Land Policy

Planning Division
Frequency of Review: Every Five Years

Land Policy **DRAFT**

POLICY

The Minneapolis Park and Recreation Board (MPRB) is a legacy land steward. All real property held, owned and/or operated by MPRB should be held in perpetuity. Additional parkland shall be acquired for present and future generations when in accordance with MPRB plans.

On occasion individuals, institutions, and organizations, both public and private, have expressed and will continue to express interest in obtaining or using MPRB Land for other purposes, including roadways, driveways, walkways, cellular phone towers, power transmission lines, underground infrastructure, signs, billboards, and buildings. The Board of Commissioners generally opposes the use of MPRB parkland for such purposes.

Despite this opposition, the Board of Commissioners recognizes that MPRB Land exists as part of a dense urban core that is home to more than 400,000 people and countless plants and animals. Under certain circumstances, it will be appropriate and beneficial to parks and the city as a whole to use parkland and other MPRB Lands for purposes other than recreation and environmental protection. Examples of such use should be rare, carefully considered, and the result of collaborative efforts. They should provide layered benefits of multiple types and should help MPRB accomplish its own goals on behalf of the recreating public and natural world. MPRB should be appropriately compensated for such uses.

1. MPRB is charged to preserve and protect land for public use by the people of Minneapolis, the region, nation, and world; and by the non-human residents of the land, including plants and animals.
2. MPRB knows the land it owns has an ancient history and that the land will outlast uncountable generations of humans. MPRB shall bring that longevity perspective to its stewardship decisions.
3. MPRB shall continue to acquire land in areas identified in park master plans and the Comprehensive Plan, with a particular focus on removing disparities in parkland access and acreage in Minneapolis.
4. MPRB shall work creatively to acquire land at advantageous costs, using innovative and collaborative methods.
5. MPRB strongly opposes the disposition of parkland and other MPRB Lands, or any redirection of parkland to other uses.
6. All encroachments on MPRB Land shall possess a valid encroachment license approved by the Board of Commissioners. All such licenses shall be revocable by the Board of Commissioners.

SUPERINTENDENT APPROVAL: _____ **Date:** _____



DEFINITIONS

Easement: A permanent or temporary diversion of MPRB Land for a use detailed in a legal agreement with dimensions as typically specified in a legal description of the diverted land. A permanent easement is mapped and recorded in Hennepin County property records. Easements confer land rights with specific definitions, whereas licenses do not confer land rights.

Encroachment: An instance in which a property owner or lessor immediately adjacent to MPRB Land without permission alters, builds on, extends a structure onto, or otherwise uses on an ongoing basis, that MPRB Land. Encroachments may be licensed, in which case they possess a valid encroachment license, or be unlicensed, in which case a valid encroachment license does not exist. Unlicensed encroachments are considered a violation under MPRB policy and Ordinance.

Lease: A contract outlining the terms under which one party agrees to rent property owned by another party. It guarantees the lessee, also known as the tenant, use of an asset and guarantees the lessor, the property owner or landlord, regular payments for a specified period in exchange.

License: A diversion of MPRB Land directed to an entity—including but not limited to a business, private landowner, or public utility—for a specific use, which is described in mapping and narrative to the degree that its impact can be ascertained by MPRB staff. Licenses are revocable by the MPRB. The license also allows MPRB to require the use be relocated at a future time if the MPRB chooses. Licenses differ from permits, in that permits tend to be shorter in term and do not typically include long-term physical control, alteration, or use of MPRB Land.

MPRB Land: Any property for which MPRB retains site control via ownership and/or operation, maintenance lease agreements or by any other legal means. MPRB Land includes all parkland, as defined below, as well as other lands, including commercial properties, operations centers, vacant properties, and others.

Parkland: Any property owned and/or operated and/or maintained by the Minneapolis Park and Recreation Board.



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PROCEDURES

A. Land Acquisition.

MPRB recognizes there are historic inequities in parkland level of service across the Park System. The agency must work to acquire additional land that will increase park and water access to all residents of the city. Above all, creativity and a long-term view are encouraged in acquisition, in recognition of the agency's goals of innovation and legacy land stewardship. Acquisition may be accomplished through fee title transfer, donation, easement, long-term partnership, lease, park dedication, or any other means that provides public access to recreational and natural resource lands.

1. Acquisition Guidance: Land acquisitions shall focus on areas identified in adopted master plans, with priority areas as identified in the MPRB Comprehensive Plan.
2. Acquisition Costs: MPRB shall acquire land at the most advantageous cost for the organization. MPRB staff should seek innovative solutions in all land negotiations and may use any available means to establish and negotiate fair prices, including appraisals, documentation of recent sales, comparisons with similar properties, and other means. MPRB staff shall provide to the Board of Commissioners a summary of negotiation and a basis for the acquisition cost being proposed.
3. Land Donation: MPRB may accept the donation of real property, provided the transaction is similar to a fee title transaction in all due diligence and recording
4. Easements: MPRB may acquire easements for fee or accept them as donations. It is preferred that these be perpetual easements, though shorter terms are acceptable provided that MPRB ordinances, policies, and rules are enforced during the easement term, and provided that full public access is assured under MPRB ordinances and policies.
5. Parkland Dedication: Under Chapter 15 of the MPRB Code of Ordinances, MPRB may acquire fee title property and/or perpetual easements as fulfillment of park dedication requirements. Such activities require close collaboration between MPRB and a developer. When development sites are included as park acquisition areas in adopted master plans, MPRB has the option of identifying a fee title parcel for transfer to MPRB or working with a developer on a "private land maintained for public use" dedication. The approval of a private land dedication shall follow a defined procedure:
 - a. The applicant must request in writing consideration of private land dedication. This request must describe the overall project and the land proposed to be conveyed or eased to the MPRB. This request must include the following information:
 - i. Plan drawings of the proposed land offering and of any amenities proposed to be constructed by the applicant.
 - ii. A statement of the method of conveyance, the land value, and justification of that stated value.
 - iii. A statement of how the value of land and improvements satisfies the park dedication requirement as assessed for the applicant's development project.
 - iv. A statement of the specific park purpose of the property, including planned and expected uses of the property, neighborhoods served, and any unique features of the property. This statement must attest that the land to be dedicated shall remain



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- fully open to the public in perpetuity, without restrictions unique to the property, and shall be made available to all users according to MPRB's rules and Ordinances.
- v. A description of how the property would achieve MPRB goals for the park system as a whole, as stated in the Comprehensive Plan and other applicable area plans. (Available online at www.minneapolisparks.org.) A developer should be as specific as possible and relate the proposal directly back to Comprehensive Plan goals or other Master Plan elements.
 - vi. A detailed statement of the roles and responsibilities for construction and ongoing operations and maintenance of the property, as proposed by the applicant.
- b. The private land dedication request will be reviewed by MPRB Planning staff and at least the district commissioner in which the project is proposed.
 - c. Based on this discussion, Planning staff will recommend whether to finalize an agreement with the applicant, which would be brought before the MPRB Commissioners for official action.
6. Transparency: All MPRB parkland acquisitions shall be presented openly and transparently to the Board of Commissioners in a public meeting, as required under Charter, Board rules, Ordinance, and other applicable policies.
7. Policy Relationship: MPRB parkland acquisitions are not subject to the Community Engagement Policy.

B. Land Disposition

Because MPRB is a legacy land steward, MPRB strongly opposes the sale or transfer of MPRB Land, or other activities that would remove that land from public access, stewardship, or ownership. Any land disposition must meet criteria set forth in the MPRB Comprehensive Plan and shall follow processes set forth in the City of Minneapolis Charter, any applicable State legislation, and District Court requirements.

1. Land Swaps and Exchanges: Swaps and exchanges of real property for MPRB Land are permitted. Equivalent swaps/exchanges or those where MPRB receives more net total land in square footage require Board approval. Swaps/exchanges where MPRB is receiving less net total land in square footage are considered land dispositions.
2. Land Sale and Transfer: Sale of MPRB Land must be approved by the Board of Commissioners and the District Court. Proceeds from land sales or transfers shall be reserved for future land acquisition.
3. Condemnation: When another public body attempts to acquire MPRB Land the Board shall direct its staff to make an exhaustive and comprehensive study, analysis, and recommendation of the resultant effects on the entire Park System. If the Board, as a result thereof, determines the affected area is essential to the Park System, it shall work cooperatively with such agency to suggest alternate courses of action whereby taking of MPRB Land can be averted. If the condemning authority persists in its determination to take MPRB Land, the Board shall determine whether statutory authority exists for such taking, and if not, the Board shall take whatever action is necessary to resist the taking of its property.
4. Permanent Easements: When MPRB grants a permanent easement, it grants an interest in MPRB Land that also limits the MPRB's right to use that land. The easement is attached to the deed and



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continues to affect the land in perpetuity. Resultingly, a permanent easement is considered a quasi-disposition that must be approved by the Board of Commissioners. In some cases, the permanent easements may impact MPRB Land to a degree that District Court approval may be required.

C. Land Use and Stewardship

MPRB Land is entrusted to the MPRB for the enrichment of the public. Even MPRB Land that is not considered parkland is necessary for the overall benefit of park users, whether it be reserved for operational needs, is being held in trust for future park development, or is generating income to benefit the park system. As stewards of MPRB Land, the Board opposes use of that land by any individual, institution or organization, public or private, for any purpose other than that for which the lands were acquired. However, MPRB also recognizes that some use of MPRB Land by other parties may be necessary at certain times and under certain parameters.

1. Parameters for Evaluation: MPRB staff and commissioners shall consider several parameters when faced with recommending or approving park use by non-MPRB entities. These parameters shall be considered in total, and each request shall be evaluated on all parameters. Final approval or denial of requests shall be on a case-by-case basis, but shall be founded on responsiveness to these parameters:
 - a. Impact to the Recreating Public: The use should have a negligible or positive impact on the public's ability to recreate on public parkland
 - b. Environmental Impact: The use should not negatively impact, and should ideally have positive impact on, the natural environment of the park system, when considering water quality, runoff quantity, tree impacts, habitat impacts, views and viewsheds, and direct impacts on birds and wildlife
 - c. Health, Safety, and Welfare: The use should not negatively impact the safe and accessible use of the park system by the recreating public, and should ideally strive to mitigate known safety and accessibility issues
 - d. Existing Policies and Plans: The use should not conflict with other adopted MPRB policies, ordinances, and plans
2. Leases to Third Parties: MPRB may enter into leases with third parties to lease spaces within buildings, portions of parklands, or other MPRB assets, provided the parameters in C1 are considered. All leases shall be approved by the Board of Commissioners, except in cases where the Board has specifically delegated its authority.
3. Use Agreements: MPRB may enter into mutually beneficial use agreements with other entities, wherein MPRB may gain access to non-MPRB Land and provide access to its land in return. Such agreements should benefit the public, ideally providing additional recreation access beyond the park system and bringing new park users into the park system. Use agreements shall be approved by the Board of Commissioners, except in cases where the Board has specifically delegated its authority.
4. Easements to Private Parties: MPRB may create or have created and then duly record permanent and temporary easements with private or government entities, provided the parameters in C1 are considered. Perpetual easements for non-park uses are considered dispositions (see B4).
5. Temporary Park Use: MPRB may approve and issue permits for temporary use of MPRB Land, where the use period and purpose are in line with that established by the Board of Commissioners. Permits



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may be approved by MPRB staff under the parameters set forth by the Board of Commissioners. Permits that do not meet requirements established by the Board must be approved by the Board of Commissioners.

6. Construction Activities: MPRB may evaluate, approve and permit construction related activities on MPRB Land. Permits for use for a period of less than six months shall be approved by the Assistant Superintendent of Planning. Permits for use for a period of more than six months shall be approved by the Board of Commissioners. MPRB staff may choose to waive construction permit fees if the construction has direct benefits to MPRB Land or to the recreating public.
7. Utilities: The MPRB finds that uncontrolled and inadequately planned utility encroachments on Park Board properties adversely affects public access and enjoyment of parkland and further restricts future development for these purposes. In addition, extraordinary MPRB expenditures may be required for the administration, recording, and monitoring of utility encroachments on parkland. In some cases, public utilities are allowed access to MPRB parkland by Minnesota state law. Public and private utilities are defined differently under state law, and therefore MPRB adopts the state's definition and relates to them as different types of entities:
 - a. Public Utilities: MPRB shall work collaboratively with public utilities to document and record existing utilities within MPRB Land as easements or licenses, to determine the least impactful route and design of revised or new utilities, and to establish and collect appropriate fees for utility use of MPRB Land. MPRB staff shall have broad flexibility to ensure protection of MPRB Land while providing adequate access for public utilities, which are critical pieces of urban infrastructure.
 - b. Private Utilities: MPRB staff shall consider private utilities the same as any other private use of MPRB Land and shall follow the procedures outlined in this section.
8. Partnerships: When aligned with organizational goals and other aspects of this policy, MPRB will collaborate and partner with other public and private agencies to optimize use of MPRB Land, to provide improved access to parkland, and to address non-park infrastructural issues that affect the people of Minneapolis. Partnerships associated with land will be guided by the Comprehensive Plan. Key partners include the Minneapolis Public Schools, the City of Minneapolis, Hennepin County, the Metropolitan Council (including Metro Transit), and private non-profit service providers that are mission-aligned with MPRB. These key partners shall have priority when weighing various land use proposals under this policy.
9. Use of Parkways: MPRB Parkway were created for the use and enjoyment of park users. They are parkland and were never intended to function as city roads.
 - a. Commercial Transit Use: The parkways and park roads under the jurisdiction of the Minneapolis Park and Recreation Board (MPRB) were not designed or constructed to accommodate use by buses and commercial vehicles. The MPRB is not obligated to provide commercial bus and tourism transportation routes on its parkways and park roads. The commercial use of parkways and park roads conflicts with public access and recreational use of the park system. Non-park roads provide sufficient access to accommodate commercial transportation needs within the City of Minneapolis. Restricted commercial use of parkways and park roads is authorized only by permit issued by the MPRB superintendent.



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- b. **Public Transit Use:** Public Transit Systems may apply to the MPRB for a permit to operate on parkways and park roads if no other suitable non-park roads are available for essential public bus routes. The written application to the MPRB shall set forth the required necessity for the use of park roads by providing an explanation of the insufficiency of non-park roads for the essential public bus routes. The MPRB may, by a two-thirds majority, grant a permit to a Public Transit System if the use of the park roads is the only reasonable alternative for the necessary and essential use by the Public Transit System, and the use does not interfere with the public access to the parks or overburden park resources. Public transit system use is further governed by Pk. Bd. Ord. 2007-102.

D. ENCROACHMENTS

MPRB Land shall be held in perpetuity for the use and enjoyment of present and future generations. All encroachments on MPRB Land shall be licensed. Alternative use of, intrusion onto, and damage to and on MPRB Land shall not occur without MPRB's knowledge and approval. Where proposed diversions of MPRB Land appear to be in the best interest of the park system or where all other feasible alternatives have been exhausted, and only under these conditions, encroachment requests will be taken under consideration by the Board on an individual basis.

1. **Encroachment Types:** Any use of MPRB Land for any purpose by an adjacent landowner, lessor, or user is considered an encroachment. For the purposes of management, MPRB recognizes four types of encroachment, based solely on the location of the encroachment, not the use.
 - a. **Parkway Encroachments:** Encroachments that affect parkland associated with a parkway or park road, where the encroachment is connecting to public infrastructure associated with that parkway or park road, most commonly the roadway itself or a sidewalk on park property. Most commonly Parkway Encroachments are in the form of a pedestrian service walkway or vehicular driveway serving a residential use.
 - b. **Immediately Adjacent to Waterbody Encroachments:** Encroachments that affect MPRB Land where there is no parkway or park road between the owner/lessor/user's property and a water body, including a lake, stream, creek, river, or wetland; and where the encroachment exists at a distance equal to or less than 100 feet from the ordinary high-water line of the water body as defined by the Minnesota DNR or extends into or over the water body.
 - c. **Adjacent to Waterbody Encroachments:** Encroachments that affect MPRB Land where there is no parkway or park road between the owner/lessor/user's property and a water body, including a lake, stream, creek, river, or wetland; and where the encroachment exists at a distance greater than 100 feet from the ordinary high-water line of the water body as defined by the Minnesota DNR.
 - d. **General Encroachments:** Encroachments affecting any type or arrangement of MPRB Land not otherwise defined in D1 a, b, or c. This could include encroachments on neighborhood parks by properties sharing a property line, patios or fences extending backyards onto park land, even if a parkway is nearby, and many other instances.
2. **Encroachment Licensing:** All encroaching adjacent owners, lessors, or users must possess a valid encroachment license. An Encroachment License is the agreement that records MPRB's permission



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for the encroachment to exist on MPRB Land. MPRB Encroachment Licenses are the only sanctioned uses of MPRB Land for any purpose by an adjacent land-owner, -lessor, or -user.

- a. Requests for encroachment licenses must be made by the encroaching party according to MPRB's established procedures.
- b. Encroachment license requests shall be evaluated by MPRB staff according to the parameters delineated in Section C1 and the following:
 - i. Encroachments should be necessitated by conditions outside the adjacent land holder's control. Encroachments necessitated by conditions created by the requestor of the encroachment shall not be granted.
 - ii. To the greatest extent possible, the encroachment should be limited to the periphery of park property, should be unobtrusive in nature, and must minimize the amount of damage to the landscape.
 - iii. The licensee shall, at their own expense, restore any physical or natural property that was removed or damaged during construction of the encroachment or provide equivalent monetary compensation.
- c. The licensee shall pay a fee to MPRB based on the area of the encroachment and the assessed valuation of land in the area, along with an administrative fee. Betterments to MPRB Land executed as part of the encroachment, when constructed, may be considered a form of payment of the license fee, if true costs are clearly documented and if the fee reduction is approved by the Board of Commissioners.
- d. Parkway Encroachments: Because parkway roads often provide the primary or exclusive pedestrian and/or vehicular access to legal lots in Minneapolis, the following special considerations apply to this type of encroachment:
 - i. MPRB shall allow pedestrian access walkways between private lots and the parkway road, provided they are as narrow as practical and possess a valid encroachment license
 - ii. MPRB shall allow driveways between private lots and the parkway road only when no other feasible alternative to vehicular access to a lot exists—including but not limited to an alley or side street, provided also they are as narrow as permissible under other legal requirements and possess a valid encroachment license
 - iii. MPRB may allow low-growing groundcover plants or vegetative erosion control on MPRB Land adjacent to parkways, as an alternative to turfgrass, provided this landscaping is not irrigated after establishment, does not limit visibility on parkways, is maintained by the adjacent owner/lessor, and provides habitat benefit. This landscaping may be subject to removal without notice if it impedes typical MPRB maintenance activities, such as tree stewardship. Encroachment licenses are not required for landscaping as defined herein. Landscape encroachments are subject to MPRB staff review at any time, and modifications to species type, placement, size, height, and other factors must be made if directed by MPRB staff.
- e. Immediately Adjacent to Waterbody Encroachments, Adjacent to Waterbody Encroachments, and General Parkland Encroachments: These encroachment types shall be licensed only in the most rare and unusual circumstances. Because of the public's interest in protecting the



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waterbody and there will always be an alternate means of access to properties seeking these types of encroachments, such encroachments will almost always be unnecessary.

3. **Encroachment Discovery:** Due to the significant land area of the MPRB system, it is impossible for staff to keep constant watch over encroachments. Encroachments may come to the attention of MPRB's Real Property Administrator in a variety of ways. The Real Property Administrator will initiate contact with the encroaching party under the procedure outlined in D4. Discovery activities and response times are as follows:
 - a. **Systematic Analysis:** MPRB staff will evaluate, by the use of surveys and field observation, a portion of all MPRB lands each year. The portion evaluated each year shall align with staffing capacity and shall constitute a clearly defined area of MPRB Lands. The Real Property Administrator will initiate the process under D4 once each year for all encroachments discovered during that year's evaluation.
 - b. **Reports:** MPRB staff may receive reports of encroachments from other staff, community members, park users, and other interested parties. All such reports will be provided to the Real Property Administrator for evaluation. The Real Property Administrator will initiate the process under D4 as quickly as feasible after discovery.
 - c. **MPRB Construction Projects:** When MPRB makes capital improvements in parks, those improvements may encounter existing encroachments. When these are discovered, the staff member leading the capital project will notify the Real Property Administrator. These staff will work together to address the encroachment under D4 on a timeline that allows the construction project to proceed as originally planned.
4. **Violations:** All encroachments on MPRB Land shall possess a valid encroachment license. Encroachments without valid licenses must apply for one, following the procedures in Section D2. Failure to possess a valid license constitutes a violation of MPRB Ordinance. The procedure for remedying a violation is as follows:
 - a. MPRB staff shall notify the encroaching party by letter. The encroaching party shall be requested to either remove the encroachments or apply for an encroachment license. The encroaching party shall be provided a reasonable time period in which to comply.
 - b. Upon receipt of the letter, the encroaching party shall notify MPRB staff of their intention to either remove the encroachment or to apply for a license. During the process of applying for a license, the compliance time period may be extended, except in cases where an immediate safety concern exists.
 - c. If the encroaching party fails to comply after the reasonable time period has elapsed, MPRB may remove or contract for the removal/restoration of the encroachment. MPRB may bill the encroaching party for the cost of that removal/restoration and may execute all reasonable efforts to collect payment for the removal/restoration.