

## MEMORANDUM

To: Finance, Expenditures and Legal Subcommittee

Subject: MOPAC Trail Project; Board of Educational Lands and Funds easements

Date: February 5, 2008

From: Paul Peters, District Legal Counsel

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The Nebraska Board of Educational Lands and Funds ("BELF") has imposed an additional condition on the NRD'S acquisition of easements over BELF property for the referenced project, that is, BELF is now insisting that the NRD also acquire a permanent trail easement over lands now being used for public roads right of way, identified as Parcel ED-I in the project ROW drawings.

Accordingly, it is therefore recommended that the Board of Directors adopt the following resolution, to-wit:

### RESOLUTION

BE IT RESOLVED by the Board of Directors of the Papio-Missouri River Natural Resources District that the September 14, 2006, resolution of the Board of Directors, concerning the acquisition of MOPAC TRAIL right-of-way from the Nebraska Board of Educational Lands and Funds, as amended by resolution of the Board of Directors on November 8, 2007, should be, and is hereby, further amended as follows:

WHEREAS, on its own motion, the Papio-Missouri River Natural Resources District (hereinafter "the DISTRICT") has proposed the MOPAC Trail Project in Sarpy County, Nebraska (hereinafter "the PROJECT"); and,

WHEREAS, the DISTRICT has identified interests in certain lands and easements that are necessary to be acquired for the PROJECT, that is, permanent trail easements over Parcels ED-A, ED-B and ED-H and ED-I; permanent drainage easements over Parcels ED-C and ED-D; and, temporary construction easements over Parcels ED-E, ED-F and ED-G (all such interests hereinafter being referred to collectively as the PROPERTY); each such parcel being described in a respective document captioned "Description and Sketch," all marked in the DISTRICT'S files as Exhibits 1 through 89, and incorporated herein by reference, all such parcels comprising the PROPERTY presently being owned by the State of Nebraska Board of Educational Lands and Funds (hereinafter "the STATE BOARD"),

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the DISTRICT as follows, to-wit:

A. The PROJECT will be a public recreational pedestrian and bicycle trail, extending along the south side of State Highway 32, from Highway 50 to the former MOPAC RR bridge over the Platte River, and the PROJECT is a plan, facility, work and program relating to development and management of recreational and park facilities, within the contemplation of Section 2-3229, R.R.S., 1943; and, therefore, the DISTRICT is authorized to undertake the PROJECT;

B. The PROJECT is of a predominantly general benefit to the DISTRICT with only incidental special benefit, within the contemplation of Section 2-3252, R.R.S., 1943; and the PROJECT therefore should be carried out with any available funds of the DISTRICT,

C. For purposes of the PROJECT it is necessary that the DISTRICT acquire the PROPERTY described above, that is, permanent trail easements over Parcels ED-A, ED-B, ~~and ED-H~~ and ED-I; permanent drainage easements over Parcels ED-C and ED-D; and, temporary construction easements over Parcels ED-E, ED-F and ED-G; to-wit:

(1) In taking permanent trail easements over Parcels ED-A, ED-B, ~~and ED-H,~~ and ED-I, the DISTRICT acquires the following permanent rights (and reserves in the STATE BOARD and its successors and assigns, the following reserved rights) over Parcels ED-A, ED-B, ED-H and ED-I:

Permanent trail easement: The DISTRICT hereby acquires the permanent, right, liberty and authority to enter Parcels ED-A, ED-B, ~~and ED-H,~~ and ED-I and therein design, construct, operate, maintain, repair, replace, regulate and use public bicycle and pedestrian trail improvements; reserving, however, in the STATE BOARD, and its successors and assigns, the reserved right to use the portions of the road(s), driveway(s) and field entrance(s) in Parcels ED-A, ED-B, ~~and ED-H,~~ and ED-I that intersect with the public trail improvements constructed by the DISTRICT, and the reserved right to remove snow and ice from such portions of such roads, driveway(s) and field entrance(s), without any duty on the part of the STATE BOARD, its successors and assigns, to otherwise maintain or repair such trail improvements within such intersections; provided, however, such reserved rights do not reserve in the STATE BOARD, its successors and assigns, the right to park vehicles on such intersecting trail improvements or otherwise obstruct the public use of such intersections for trail purposes; and, provided, further, the DISTRICT shall not be deemed to have hereby acquired, for its trail users, any right-of-way over motorized vehicles using such road(s), driveway(s) or field entrance(s); and, the DISTRICT shall maintain signs, using language determined by the DISTRICT,

advising its trail users that such cross-traffic is not required to stop; and,

(2) In taking the permanent easements over Parcels ED-C and ED-D the DISTRICT acquires the following permanent rights, to-wit:

Permanent Drainage Easement: The permanent, full, and free right, liberty and authority to enter upon and use said Parcels ED-C and ED-D for purposes of construction, operation, maintenance, repair, replacement, and regulation of drainage improvements appurtenant to the Project, such drainage improvement easement rights hereby acquired including, without limitation, the construction, operation, maintenance, repair, replacement and regulation of drainage culverts and other conduits and extensions thereof, embankments, headwalls, channels, swales, erosion prevention measures and other surface water drainage improvements associated with and appurtenant to the Project; and,

(3) In taking the temporary easements over Parcels ED-E, ED-F and ED-G the DISTRICT acquires the following temporary rights, to-wit:

Temporary Construction Easement: The temporary, full, and free right, liberty and authority to enter upon and use said Parcels ED-E, ED-F and ED-G for ingress and egress; construction materials storage; equipment maintenance, storage and maneuvering; and, any for other lawful purposes necessary, convenient or incidental to the District's construction of the Project or the aforesaid drainage improvements, during the period of such construction.

D. The DISTRICT has retained a licensed real estate appraiser to appraise the fair market value of the PROPERTY; and, the DISTRICT, through its negotiators, has offered to the STATE BOARD an amount of money equal to the damages as appraised by such appraiser;

E. Economic and physical feasibility necessitate that the PROJECT be constructed on the PROPERTY; and,

G. Approvals by other agencies are not required.

BE IT FURTHER RESOLVED THAT the DISTRICT'S legal counsel should be and is hereby authorized and directed to initiate the filing of an amended application with the STATE BOARD, on behalf of the DISTRICT, for a hearing before the Board of Appraisers for Educational Lands and Funds, to ascertain and determine the damages from the DISTRICT'S taking of the PROPERTY, pursuant to the procedures provided by Sections 72-214, et seq., R.R.S., 2003.

**BE IT FURTHER RESOLVED THAT the General Manager should be and is hereby authorized and directed to prepare and install appropriate signs directing users of the MOPAC Trail to yield the right-of-way to motorized vehicles traveling on roads intersecting the MOPAC Trail.**