

Agenda Item: 6.a.

**Paul F. Peters, P.C., L.L.O.**  
Suite 640 Omaha Tower  
2120 South 72nd Street  
Omaha, NE 68124  
(402) 391-3712 FAX (402) 391-3714  
E-mail: paul.peters@mindspring.com

To: John Winkler, General Manager  
Papio-Missouri River Natural Resources District

Copy: Gerry Bowen, Project Manager  
Richard A. Drews, Esq.

Date: November 6, 2007

Subject: ROW acquisition from Nebraska Board of Educational Lands and  
Funds for MOPAC Trail Project

---

Following is an amended proposed resolution that I recommend be presented to the November 6, 2007, meeting of the NRD'S Finance, Expenditure and Legal Subcommittee.

The proposed resolution would amend the September 14, 2006, resolution of the Board of Directors of the NRD that was cited in the NRD'S application to the Nebraska Board of Educational Lands and Funds ("BELF") for MOPAC Trail ROW, the amendments principally changing the acquisition of trail ROW from fee title to permanent easement, and resolving language differences between the NRD and BELF concerning who has the right-of-way at trail/road intersections.

In negotiations with the NRD, L. Jay Gildersleeve, General Counsel of BELF, over these changes in the terms of the NRD'S acquisition of ROW from BELF, he implied that the original resolution would have a serious negative effect on the value of BELF'S remainder, and that the following new resolution language, which he now has approved, will minimize the eminent domain damages that the NRD will pay for MOPAC Trail ROW across BELF'S parcel.

**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, should be, and is hereby, amended as follows:

## RESOLUTION

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, ~~the fee simple title to~~ permanent trail easements over Parcels ED-A, ED-B and ED-H; 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 8, 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, ~~the fee simple title to~~ permanent trail easements over Parcels ED-A, ED-B and ED-H; 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 ~~the fee title to~~ permanent trail easements over Parcels ED-A, ED-B and ED-H the DISTRICT acquires the following permanent rights (and reserves in the STATE BOARD and its

successors and assigns, the following easement reserved rights) over Parcels ED-A, ED-B and ED-H:

~~—— Reserved easement: The permanent, full, and free right, liberty and authority to enter upon and use, for ingress and egress to and from public road right-of-way, the driveway(s) and field entrance(s), constructed by the DISTRICT in Parcels ED-A, ED-B that intersect with the public trail improvements constructed by the DISTRICT in such described parcel of land; provided, that such reserved right includes the STATE BOARD'S right to remove snow and ice from such driveway(s) and field entrance(s) but does not include any duty on the part of the STATE BOARD to maintain or repair such trail improvements, driveway(s) or field entrance(s); and, does not include any right on the part of the STATE BOARD to park vehicles on or otherwise obstruct the public use of such trail improvements; and,~~

Permanent Trail Easement: The DISTRICT hereby acquires the permanent, right, liberty and authority to enter Parcels ED-A, ED-B and ED-H 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 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 yield the right-of-way; 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 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.