



**Request for City Council Committee Action
From the Department of Community Planning & Economic Development**

Date: August 17, 2005

To: Council Member Gary Schiff, Chair of the Zoning and Planning Committee of the City Council, and Committee Members

Prepared by: Michael Orange, Principal Planner, Department of Community Planning and Economic Development—Planning Division

Approved by: Barbara Sporlein, Director, Planning

Subject: Determination of the need for an Environmental Assessment Worksheet for the DeLaSalle High School athletic facility on Nicollet Island in response to a petition signed by more than 25 individuals and filed with the Minnesota Environmental Quality Board (EQB letter dated 8/10/05).

Previous Directives: None regarding the petition

RECOMMENDATION: The Department of Community Planning and Economic Development—Planning Division recommends that the Committee and the City Council do the following: 1) approve the accompanying findings; 2) order an Environmental Assessment Worksheet (EAW) pursuant to Minnesota Rules, Part 4410.4300, Subp. 31, Historical Places, for the DeLaSalle High School athletic facility on Nicollet Island (Project); 3) deny the Petition for an EAW for the Project pursuant to Minnesota Rules, Part 4410.1100; and 4) deny the request for an EAW pursuant to Minnesota Rules, Part 4410.4500 because the Petition and the request are moot since the Project is within a Mandatory EAW category under Minnesota Rules, Part 4410.4300.

Financial Impact: Not applicable

Community Impact: Not applicable

Ward: 5

Neighborhood Notification: None needed for this decision which is mandated by EQB Rules.

City Goals: Not applicable, this procedural decision was initiated and is mandated by the EQB rules.

Comprehensive Plan: Not applicable

Zoning Code: Not applicable

Living Wage/Job Linkage: Not applicable

End of 60/120 Day Decision Period: Not applicable

Other: Not applicable

Attention: If you want help translating this information, call - **Hmong** - Ceeb toom. Yog koj xav tau kev pab txhais cov xov no rau koj dawb, hu 612-673-2800; **Spanish** - Atención. Si desea recibir asistencia gratuita para traducir esta información, llama 612-673-2700; **Somali** - Ogow. Haddii aad dooneyso in lagaa kaalmeeyo tarjamadda macluumaadkani oo lacag la' aan wac 612-673-3500

Determination of the need for an Environmental Assessment Worksheet for the DeLaSalle High School athletic facility on Nicollet Island

Background and Supporting Information:

The Minnesota Environmental Quality Board (EQB) has received a petition signed by more than 25 individuals requesting the preparation of an Environmental Assessment Worksheet (EAW) on this Project. The EQB determined that the Petition is valid and that the City of Minneapolis is the appropriate governmental unit (the official term is Responsible Governmental Unit or RGU) to decide the need for the EAW (refer to Item 1 which includes the letter from the EQB dated 8/10/5 and the submission by the petitioners (Petitioners) received by the EQB). Ms. Edna C. Brazaitis is the petitioners' representative and Mr. John A. Cairns, an attorney with Briggs and Morgan Professional Association, is providing legal representation.

On 8/16/05, Mr. Eric Galatz, an attorney with Leonard Street and Deinard and representing DeLaSalle High School, submitted a letter stating, "DeLaSalle High School asks the City of Minneapolis to order a Discretionary EAW pursuant to Minnesota Rules section §4410.1000, Subp. 3.D, for the athletic field DeLaSalle High School proposes to design and construct on Nicollet Island, part of which will be on land owned by the Park and Recreation Board" (refer to Item 4d).

A. Project Description and Prior and Pending Agreements

DeLaSalle High School is proposing to develop an athletic facility on the north side of the high school, which is located in the central portion of Nicollet Island. DeLaSalle and the Minneapolis Park and Recreation Board (MPRB) are considering entering into an agreement, called the Reciprocal Use Agreement (RUA), which, among other things, provides site control to DeLaSalle for the facility. (Exhibit A in Attachment 1 of the Petition includes the RUA. The Petition is Item 1 in this report.) The MPRB is scheduled to consider the RUA at its meeting on 8/17/05. According to the RUA, the proposed facility will consist of athletic fields and related improvements to support the athletic fields and existing activities at the site, including the following components:

- An open field with one regulation sized football field/practice field; and one regulation soccer field imposed over the football field.
- Temporary or permanent goal posts and soccer goals, backstops and safety features common to physical education or athletic field development.
- Practice areas for other activities as may be accommodated by the fields.
- Permanent seating areas for up to 750 spectators in open bleacher seating, including facilities to accommodate persons with disabilities.
- Storage, refreshment, and sanitary considerations for public assembly.
- Landscape features to enhance the boundaries and additional features to enhance the image of the site consistent with the history of Nicollet Island.

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The facility will require the vacation of the eastern one-half of Grove Street. The required parking for the facility is planned for 1.3 acres on the far east side of the island between East Island Ave. and the river (refer to photos in Items 2 and 3).

The history for the development of the facility dates back to 1983 when the MPRB signed an agreement with DeLaSalle stating the following:

“The Board shall, at any time and with funds from any source deemed suitable by the Board, use its best efforts to construct upon property adjacent to the De La Salle Property an outdoor neighborhood recreational and athletic facility (the “Athletic Facility”), which at a minimum shall consist of a full (regulation) size football field and no less than two full (regulation) size tennis courts, provided, however, that the Board shall have no obligation to construct the Athletic Facility until a reciprocal agreement between the Board and owners of the De La Salle Property has been agreed to for the use of the Athletic Facilities and negotiated existing facilities of the De La Salle.”

According to an email from Mr. Eric Galatz, DeLaSalle’s attorney (Item 4c), “[T]here is no proposed design for the facility. DeLaSalle expects the Park Board to follow the 1983 Agreement and enter into the RUA before proceeding with the design. We see the RUA as securing ‘development rights’ to provide DeLaSalle some comfort before investing in the design process, as is generally the case with City of Minneapolis development agreements (e.g. Heritage Landings, Block E, Target Headquarters). DeLaSalle does not concede that an EAW is required, but will prepare one when the proposal has developed in sufficient detail to be a ‘project’ that can be reviewed, if the City requires it.”

As stated above, Mr. Eric Galatz, on behalf of DeLaSalle High School, requested the City prepare a Discretionary EAW on the Project in a letter dated 8/16/05 (refer to Item 4d). Item 4b includes information sent by Mr. Galatz that provides additional historical background on the Project.

B. The Petition

Item 1 includes the Petition.¹ Normally, the staff report would include a summary of the arguments of the Petitioners. However, in this case, staff believe the Petition is moot because staff have determined that the Project fits a Mandatory EAW category (per §4410.4300 Subp. 31. Historical Places).²

¹ The Petition included the entire “Guide to Minnesota Environmental Review Rules.” Item 1 does not include the entire Guide, which is available at: <http://www.eqb.state.mn.us/pdf/rulguid3.pdf>

² The Assistant City Attorney points out the following as regards EAW terminology: “It is legally erroneous to refer to an EAW pursuant to a petition under 4410.1100 as ‘Discretionary.’ While there is a great deal of discretion in the standard: “may have a potential for significant environmental effects,” an EAW pursuant to a petition under 4410.1100 is explicitly mandatory pursuant to 4410.1100, Subp. 6 if this standard is met. Professionals in this area loosely call these ‘Discretionary,’ nonetheless, for the purpose of distinguishing them from ‘Mandatory’ EAWs.”

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C. Request for a Discretionary EAW from DeLaSalle High School

As stated above, DeLaSalle High School has asked the City to order a Discretionary EAW for the Project. As with the Petition request, staff believe DeLaSalle's request for a Discretionary EAW is moot because staff have determined that the Project fits a Mandatory EAW category.

D. Issues before the City Council

- 1. Basis for the determination that it fits a Mandatory EAW category (per §4410.4300 Subp. 31. Historical Places):** Minnesota Rules at §4410.4300 Subp. 31: Historical Places calls for a Mandatory EAW, "For the destruction, in whole or part, or the moving of a property that is listed in the National Register of Historic Places or State Register of Historic Places." The U. S. Department of the Interior manages the National Register and the registration process, and the Department's report, "Guidelines for Counting Contributing and Noncontributing Resources for National Register Documentation" (revised 11/86) provides definitions for the various types of resources for listing on the Register. The definition of the term "structure" in the report "is used to distinguish from buildings those functional constructions made usually for purposes other than creating shelter." The listed examples of structures included highways, railroad grades, bridges, tunnels, and systems of paths and roadways.

The proposed Project is located on Nicollet Island, the entirety of which is located in the St. Anthony Falls Historic District. This District was listed on the National Register of Historic Places on March 11, 1971 and was designated by the State of Minnesota in 1971. The proposal calls for the complete removal and destruction of a one-block stretch of Grove Street, nearly half of the entire length of the street. This historic street existed during the period of significance for the District and has continued in its historic use, in its historic alignment for nearly 140 years.

Staff have concluded that the destruction of a significant stretch of this historic street meets the definition of the Mandatory EAW category pursuant to §4410.4300 Subp. 31. City staff sought the opinion of the staff of the Minnesota Historic Preservation Office (SHPO) but SHPO staff declined to comment on this Project and advised that the City should make its own determination.

- 2. Assertion by Friends of the Riverfront that the Project meets the Mandatory EAW category in §4410.4300 Subp. 30, Natural Areas:**

Representing the Friends of the Riverfront (Friends) in a letter dated 8/3/05, Mr. Jack Perry asserts that the Project meets the Mandatory EAW category in §4410.4300 Subp. 30, Natural Areas (the letter can be found in Attachment 1 of the Petition, which is Item 1 of this report). The Petitioners made this same assertion. This Mandatory EAW category is for projects "resulting in the permanent physical encroachment on

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lands within a national park . . . when the encroachment is inconsistent with laws applicable to or the management plan prepared for the recreational unit”

Since one of the questions in the EAW form requires a determination regarding the applicable part of the Rules which dictate the preparation of the EAW, the City should determine if this category applies to the Project. To make this case, the City would have to reach all of the following conclusions:

- **The project is a permanent encroachment:** It is.
- **This encroachment is on lands within a national park:** The Project is within the Mississippi National River and Recreation Area (MNRRA).
- **The encroachment must be “inconsistent” with laws applicable to the recreational area or the management plan prepared for it:** The management plan for the MNRRA, adopted 5/22/95, is the “Comprehensive Management Plan for the Mississippi National River and Recreation Area” (Plan). The boundaries of the MNRRA describe a narrow corridor of land on either side of the Mississippi River which encloses about 54,000 acres and 72 miles of river. The Plan contains no language of a level of specificity to enable staff to conclude that the Project is inconsistent with it. Instead, the Plan has the following self description: “The plan, as directed by the legislation, is a conceptual policy and program-level document concentrating on corridor-wide issues. It provides basic visions, broad concepts, and general policies that will be used to preserve resources, provide for visitor use, and manage land and water use throughout the corridor. Except for the proposed NPS facilities, it does not address site-specific issues” (p. iv of the Summary section of the Plan).

Mr. Perry also references the 1996 Nicollet Island Master Plan but provides no substantive argument as to why this plan should be considered either as a law “applicable to or the management plan prepared for the recreational unit,” nor how the Project is inconsistent with this plan.

Staff conclude that the “Comprehensive Management Plan for the Mississippi National River and Recreation Area” is the management plan for the MNRRA, that the Project is not inconsistent with this Plan, and that the Mandatory EAW category §4410.4300 Subp. 30, Natural Areas does not apply for the Project.

3. **Prohibition on final governmental actions:** The following are the relevant sections of the Rules per §4410.3100 Subp. 1 and 2:

“If an EAW or EIS is required for a governmental action under parts 4410.0200 to 4410.7500, or if a petition for an EAW is filed under part 4410.1100, a project may not be started and a final governmental decision may not be made to grant a permit, approve a project, or begin

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a project If a project subject to review under parts 4410.0200 to 4410.7500 is proposed to be carried out by or sponsored by a governmental unit, the governmental unit shall not take any action with respect to the project, including the acquisition of property, if the action will prejudice the ultimate decision on the project, until a petition has been dismissed, a negative declaration has been issued An action prejudices the ultimate decision on a project if it tends to determine subsequent development or to limit alternatives or mitigative measures.”

The EQB’s finding that the Petition was valid enacted a stay on final governmental actions for the Project. Items 4a and 4d describe the position on this matter from Eric Galatz, attorney for DeLaSalle, and Attachment 1 in the Petition presents the Petitioners’ point of view in this matter.

E. The Findings Required by the Rules of the EQB

The EQB Rules require the City to order the preparation of a petition-instigated Discretionary EAW if the evidence presented by the petitioners, proposers, and other persons or otherwise known to the City demonstrates that, because of the nature or location of the proposed Project, the Project may have the potential for significant environmental effects. The Rules require the City to deny the petition if the evidence presented fails to demonstrate the Project may have the potential for significant environmental effects. In deciding whether a project has the potential for significant environmental effects, the following factors shall be considered:

1. Type, extent, and reversibility of environmental effects.
2. Cumulative potential effects of related or anticipated future projects.
3. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority.
4. The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

As stated above, staff believe the Petition is moot because staff have determined that the Project fits a Mandatory EAW category. Accordingly, no further findings are required on the petition.

F. Staff Recommendation

The Department of Community Planning and Economic Development—Planning Division recommends that the Committee and the City Council do the following: 1) approve the accompanying findings; 2) order an Environmental Assessment Worksheet (EAW) pursuant to Minnesota Rules, Part 4410.4300, Subp. 31, Historical Places, for the DeLaSalle High

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School athletic facility on Nicollet Island (Project); 3) deny the Petition for an EAW for the Project pursuant to Minnesota Rules, Part 4410.1100; and 4) deny the request for an EAW pursuant to Minnesota Rules, Part 4410.4500 because the Petition and the request are moot since the Project is within a Mandatory EAW category under Minnesota Rules, Part 4410.4300.

Attached Items:

Item 1. Petition

Item 2. Project description

Item 3. Aerial photos and photos of the site and area

Item 4. Submissions and letters

- a. "Reciprocal Use Agreement between Minneapolis Park and Recreation Board and DeLaSalle High School;" Eric Galatz, Leonard Street and Deinard, dated 8/11/05
- b. "DeLaSalle High School: Project to Build a Multi-Purpose Athletic Facility, A Timetable for Consideration;" provided on 8/16/05 by Eric Galatz, attorney for DeLaSalle, not dated.
- c. Email letter from Eric Galatz, dated 8/16/05
- d. "EAW for Proposed Athletic Field at DeLaSalle High School;" Eric Galatz, dated 8/16/05
- e. "Reciprocal Use Agreement between Minneapolis Park and Recreation Board and DeLaSalle High School;" Eric Galatz, Leonard Street and Deinard, dated 8/16/05
- f. Email and letter from Jan Hively, 8/13/05

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ITEM 1: PETITION

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ITEM 2: PROJECT DESCRIPTION

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ITEM 3: PHOTOS

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ITEM 4: SUBMISSIONS AND LETTERS

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