

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Nancy Lange	Chair
Dan Lipschultz	Vice Chair
Matt Schuerger	Commissioner
John Tuma	Commissioner
Katie Sieben	Commissioner

In the Matter of the Xcel Energy’s Renewable Development Fund (RDF) Annual report, Tracker Account Tune-up, and Request for 2018 Rider Factor	Docket No. E-002/M-17-712
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**COMMENTS OF FRIENDS OF THE LOCK AND DAM**

Friends of the Lock and Dam (“FL&D”) respectfully submits these comments in response to the notice of the Minnesota Public Utilities Commission (“Commission”) issued October 30, 2017, soliciting comments in the above-referenced matter. In these comments, FL&D will address the following question from the Commission’s notice:

Should the Commission take any action on the Crown Hydro RDF grant contract (AH-01) under Minnesota Laws 2017, Chapter 94, Article 10, Section 29, or other authority?

Crown Hydro was one of the original grantees of funds under the Renewable Development Fund (“RDF”) grant program in 2001. The original grant contract was entered into between Xcel and Crown Hydro more than fifteen years ago, with the expectation that the hydroelectric plant to be constructed with grant funds would be completed by August 31, 2003. Since then, the grant contract has been amended three times and Crown Hydro has yet to acquire the necessary riverfront property adjacent to downtown Minneapolis (“Central Riverfront”). In more than fifteen years, no meaningful progress has been made on construction of the plant. Since there is no reason to believe that Crown Hydro will be able to obtain site control any time in the foreseeable future there is also no reason to believe that construction will begin any time soon.

The delays in completing the Crown Hydro project are inconsistent with the requirements of Minnesota law that are designed to ensure that funds awarded under the RDF program are put to their intended use in a timely manner and not left to languish. Further, Crown Hydro has failed to comply with the schedule provided for under the grant contract. This failure is, under the express contract language, a basis for termination of the contract for cause.

Moreover, continuing with the grant contract will be contrary to the public interest and adopted policy. Since the grant was awarded to Crown Hydro, the downtown Mississippi riverfront has changed substantially, moving away from industrial uses in favor of recreational, historical, and cultural uses. In addition, residential and commercial uses near the river have increased. Clear policy and planning direction has been adopted for the Central Riverfront generally and the Crown Hydro site specifically by the City of Minneapolis, the Minneapolis Park & Recreation Board, the St. Anthony Falls Heritage Board, Meet Minneapolis,<sup>1</sup> and the Minneapolis Downtown Council. All of these plans render the Crown Hydro project incompatible with the community's vision of a revitalized riverfront.

Accordingly, and as discussed in greater detail below, FL&D urges the Commission to exercise its supervisory authority over the RDF program by either directing Xcel Energy to terminate the Crown Hydro grant contract for cause or, in the alternative, declaring that no further payments of grant funds to Crown Hydro will be approved.

## **DISCUSSION**

### **I. Description of Friends of the Lock and Dam and The Falls Project**

FL&D is a non-profit corporation organized under the laws of the state of Minnesota. FL&D operates exclusively for charitable, educational, and scientific purposes under Section

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<sup>1</sup> Meet Minneapolis is a nonprofit organized to promote the City of Minneapolis as a major destination for conventions and visitor travel, and to achieve maximum utilization of the Minneapolis Convention Center. It receives funding from annual contracts with the City and the state of Minnesota.

501(c)(3) of the Internal Revenue Code.<sup>2</sup> FL&D's sole mission is to design and develop a major visitor and interpretive center for the Minneapolis riverfront located at and anchored by the Upper St. Anthony Falls Lock ("Upper Lock"), which is property of the United States that is built and operated by the U. S. Army Corps of Engineers ("Corps"). FL&D has engaged designers, cultural resource consultants, and professional advisors with expertise in developing public-private partnerships to develop a comprehensive proposal with the sole objective of repurposing the Upper Lock and surrounding properties and interests to permit the development of public parks, visitors' accommodations, and educational and aesthetic improvements designed to revitalize the City's Central Riverfront consistent with the Regional Park plan adopted by the Minneapolis Park and Recreation Board ("MPRB" or "Park Board"), the Downtown Public Realm Framework adopted by the City of Minneapolis, and the tourism master plan adopted by Meet Minneapolis.

After many months of work and planning in response to growing community interest in repurposing the Corps' Upper Lock on the Mississippi River, FL&D was formally organized in 2016 to help reestablish the connection between the City and the Mississippi River as part of ongoing riverfront redevelopment planning efforts. It is dedicated to advancing a stand-alone project known as "The Falls," centered on Portland Avenue and the Corps' Upper Lock and the Upper St. Anthony Falls Dam, which is proposed as a key step toward the realization of ongoing redevelopment efforts. Plans for The Falls are described in a presentation titled, "The Falls: St. Anthony Falls Lock and Dam Park and Visitor Center," which is being provided as Appendix A to these comments. The Falls will connect the many parks, trails, and historic sites that contribute to the vitality of the Central Riverfront,<sup>3</sup> including the Water Works park development upriver and the Mill Ruins Park downstream. FL&D's undertaking is supported by civic leaders and

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<sup>2</sup> Internal Revenue Service, Friends of the Lock and Dam – IRS 1023 Application, EIN: 81-1716095 (2016).

<sup>3</sup> See Appendix A, pages 5, 8, and 9, which illustrate the proximate relationship of The Falls, St. Anthony Falls Lock and Dam, the adjacent parks, and the City's "Chain of Parks."

private financial sources and it has already secured a commitment of \$5 million for the planning phase of the project.<sup>4</sup>

More specifically, The Falls consists of the following major components: (i) the St. Anthony Falls Visitor Center, to be operated by the National Park Service and Meet Minneapolis with the City and the Park Board; (ii) new connections to the Stone Arch Bridge and riverfront trail systems that will increase pedestrian access to the riverfront and provide panoramic views of the Upper St. Anthony Falls Lock and Dam, St. Anthony Falls, and the surrounding mill district; (iii) an Interpretive Center that provides educational, cultural, historical, and similar programs and exhibits; (iv) an Event Center, the proceeds from which will support programming and maintenance; (v) a visitors' food venue that would overlook the Mississippi River and enhance the visitors' experience; (vi) a canoe and kayak portage that increases recreational access to the Mississippi River via downtown Minneapolis; (vii) accommodation above and below The Falls for water taxis, tour boats, or other water transportation; and (viii) a one-acre park and community gathering space on the roof of the facility with many programmed civic and performance events.<sup>5</sup>

Plans for The Falls will redevelop a depressed area used for parking near the Corps' facilities at the Upper Lock into a three-level destination for citizens and visitors, tucking major amenities into the site and enabling seamless connectivity from Water Works Park. Visitors would enjoy spectacular 360-degree views of the central riverfront and downtown. They would experience the awesome power of the St. Anthony Falls and the monumental civil engineering

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<sup>4</sup> The preliminary cost estimate for The Falls is \$45 million for the project components noted at Appendix A, page 1. FL&D has already secured an initial \$5 million in private commitments to advance the project, and has received positive responses to its concept plan from the National Park Service, the MPRB, and many City officials and is supported in its efforts by local and regional non-governmental organizations, civic leaders, and a broad base of the Minneapolis community members. Appendix A, at page 1. The success to date of fundraising for similar redevelopment efforts along the Mississippi river gives FL&D confidence in its ability to make a difference in the quality of life for residents and visitors for generations to come. Appendix A, at page 2.

<sup>5</sup> Appendix A, pages 11-13, 19, 24-26.

achievement of the Corps. Such amenities were called for in adopted plans, including the recommendations of the MPRB's Central Mississippi Riverfront Regional Park Master Plan, which lies within the Mississippi National River and Recreation Area, and St. Anthony Falls Heritage Boards' plan and its update: Power of the Falls, and Changing Relationships to the Power of the Falls. The Falls will replace the existing unsightly hardscape in an area of the river originally populated with trees and grass before the Upper Lock was built, while also preserving evidence of the City's commercial-industrial past and the historic character of the Upper Lock. In sum, The Falls will be an important visitor destination in the metropolitan area and a centerpiece of the City's urban recreational environment. It will also be a city, state, regional, and national tourism asset. The Falls at the Port of Minneapolis is sited at the only waterfall on the Mississippi River – one of the great rivers of the world; on an amenitized urban waterfront near museums, culture, and dining; in a National Park; at the heart of a significant historic district; on the Great River Road – a national scenic byway and state tourism priority. The Falls will take full advantage of the Upper Lock and leverage the significant federal investment in this water control facility to effectively reinvent the City's relationship to the Mississippi River and St. Anthony Falls.

## **II. The Commission Has Been Granted Broad Supervisory Authority Over the RDF Program**

The Minnesota legislature created the Renewable Development Fund in 1994 to provide funds for the development of renewable energy sources. See Minnesota Laws 1994, ch. 641, art. 1, sec. 10. The program is funded by Xcel through contributions made in connection with the disposal of radioactive waste produced by the Prairie Island nuclear power plant. In 1999, the legislature amended to the statute that created the fund to specifically provide that expenditures from the fund could only be made upon approval of the Public Utilities Commission. Minnesota

Laws 1999. ch. 200, sec. 1. Since then, the Commission has exercised regulatory oversight over the RDF program, has approved project selections, and has had final authority over expenditures from the fund. See *In the Matter of the Request of Northern States Power Company, d/b/a Xcel Energy for approval of a Renewable Development Oversight Process*, Docket No. E-002/M-00-1583, ORDER REQUIRING RETURN OF FUNDS TO RDF TRACKER ACCOUNT at p. 1 (January 23, 2014). In order to facilitate the Commission’s exercise of its oversight role, Xcel has provided regular reports regarding the status of the RDF program and various projects that have been awarded grants under the program.

The statute was most recently amended in the last legislative session. Under the statute as amended, the Commission makes recommendations to the legislature for funds to be appropriated from the RDF. In connection with making its recommendation, the Commission “may approve proposed expenditures, may disapprove proposed expenditures that it finds not to be in compliance with this subdivision or otherwise not in the public interest, and may, if agreed to by the public utility, modify proposed expenditures.” Minn. Stat. 116C.779, subd. 1(m). In enacting appropriations, the legislature may approve or disapprove, but may not modify, the amount of an appropriation for a project recommended by the Commission and may not appropriate money for a project the Commission has not recommended funding. Minn. Stat. 116C.779, subd. 1(n).

Thus, the statute gives the Commission broad authority to determine that expenditures from the funds should be disallowed where such expenditures are not in the public interest.

### **III. The Grant Contract Should be Terminated Because of Crown Hydro’s Failure to Comply with Requirements of Minnesota Law Regarding the Timely Expenditure of Grant Funds**

In the last legislative session, the Minnesota legislature passed a statute that concerns the timely expenditure of RDF grant funds. See Minnesota Laws 2017, Chapter 94, Article 10, Section 29. The statute provides that a utility subject to Minn. Stat. § 116C.799 -- here, Xcel --

must notify any party who received an RDF grant either: 1) after January 1, 2012; or 2) before January 1, 2012, if the funded project remains incomplete as of the effective date of the statute.

The statute became effective on May 31, 2017, the day following its enactment.

The statute further provides that a grant recipient receiving notice required by the statute must, no later than 30 days after receiving the notice, “transfer any grant funds that remain unexpended as of the effective date of this section to the clean energy advancement fund account if, by the effective date of this section, all of the following conditions are met:

- (1) the grant was awarded more than five years before the effective date of this section;
- (2) the grant recipient has failed to obtain control of the site on which the project is to be constructed;
- (3) the grant recipient has failed to secure all necessary permits or appraisals from any unit of government with respect to the project;
- (4) construction of the project has not begun.”

As part of its regular RDF status report, filed on July 27, 2017, Xcel informed the Commission that it had provided Crown Hydro with the notice required by the statute. Crown Hydro responded to the notice by letter dated August 16, 2017, a copy of which Xcel provided to the Commission on September 13, 2017. In its response, Crown Hydro stated that “funds are not being returned to Renewable Development Fund (RDF) for two reasons.” First, Crown Hydro asserted that “pursuant to Federal Energy Regulatory Commission determination, construction on the project has begun. Second, all funds forwarded to date by the RDF, were pursuant to the contract terms, providing reimbursement for funds previously spent.”

Crown Hydro’s response reflects a misinterpretation of the statute and is contrary to terms of the grant contract. Properly read and applied, the statute requires termination of the grant

contract so that funds allocated to the Crown Hydro project can be made available to other projects that have a reasonable likelihood of success.

Before addressing how Crown Hydro's response falls short, it is important to note what Crown Hydro has not claimed. First, Crown Hydro does not, of course, dispute that its grant was awarded more than five years before the effective date of the statute. Second, Crown Hydro does not dispute that it has failed to obtain control of a site on which the project is to be constructed. Third, Crown Hydro does not dispute that it has not secured all necessary permits or approvals from any unit of government with respect to the project.

Crown Hydro's reliance on FERC's determination regarding the commencement of construction is unavailing. FERC found in 2003 that, pursuant to the Federal Power Act, Crown Hydro had commenced construction by virtue of its purchase of turbines to be used for the project.<sup>6</sup> Since then, however, in correspondence to Crown Hydro regarding Crown Hydro's request for an amendment of its FERC license, FERC has stated, "The license was issued over 14 years ago and project construction has not begun and there's nothing before the Commission to act upon."<sup>7</sup> Thus, Crown Hydro's reliance on the 2003 FERC determination is effectively negated by FERC's subsequent acknowledgement that construction has not begun.

Even more importantly, however, the Minnesota statute governing the expenditure of grant funds does not incorporate FERC's definition of the commencement of construction. The statute concerns the use of state funds for the advancement of the interests of Minnesotans. The use of funds under the RDF, itself a program established by the Minnesota legislature, is a matter falling plainly within the purview of the Commission, by virtue of the authority delegated to it by

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<sup>6</sup> See Appendix B, June 19, 2003, correspondence from the Federal Energy Regulatory Commission to Thomas Griffin, Crown Hydro, Subject: Determination of Start of Construction Based on Manufacturing of Generating Equipment.

<sup>7</sup> See Appendix C, November 4, 2014, correspondence from the Federal Energy Regulatory Commission to Thomas Griffin, Crown Hydro, Subject: Preparation of amendment application.



the legislature. The issue presented to the Commission is not whether the Crown Hydro project should be permitted to continue; rather, the only issue is whether the project represents a prudent use of a scarce state-sponsored resource in a manner that is consistent with the public interest as determined by the Minnesota legislature. FERC has no role to play in how the Commission exercises oversight over the RDF program.

The Grant Contract provides that it is to be interpreted according to Minnesota law. See Grant Contract, Section 17.G. Where the Grant Contract incorporates FERC requirements, it does so specifically. See Second Amendment; Third Amendment (reference to “acquisition of Project property sufficient to comply with Federal Energy Regulatory Commission requirements”). There are a number of definitions of construction provided by Minnesota law that provide this Commission with guidance about how the Grant Contract should be interpreted. Minnesota Statutes chapter 216C, which governs energy planning, defines “construction” to mean “significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies.” Minn. Stat. §216C, subd. 6. Chapter 216E, which concerns electric power facility permits, similarly defines construction in a manner that requires some physical alteration of the site: “‘Construction’ means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.”

The Grant Contract defines what constitutes construction for purposes of the grant in a manner similar to these statutes. The original Grant Contract identified specific milestones and associated deliverables:

	<b>Project Payment Milestone</b>	<b>Deliverable</b>
1.	Engineering, Design & Permitting	Design & Permitting status report and documents expenses
2.	Engineering, Design & Permitting	Design & Permitting status report and documented expenses
3.	Turbine down payment and Engineering Design & Permitting	Documentation of turbine expenses and documented expenses
4.	Turbine manufacturer progress payments and completion of Engineering Design	Documentation of Turbine expenses and documented Engineering expenses and delivery of Contract Documents
5.	Tailrace and tunnel excavation and reconstruction	Documentation of construction costs
6.	Forebay, intake structure and penstock installation	Documentation of construction costs
7.	Powerhouse construction and turbine installation	Documentation of construction costs
8.	Powerhouse construction, electrical instrumentation	Documentation of construction costs
9.	Completion of startup, testing and commissioning	Commissioning report and acceptance documentation

By referring separately to “Turbine expenses” and “construction costs,” the contract distinguishes between those activities which are to be considered “construction” and those which are not. Payments to the turbine manufacturer are not a “construction” cost. The first milestone that requiring documentation of “construction costs” – tailrace excavation and reconstruction – was scheduled to occur after payments for turbine manufacture. Grant Contract, Ex. C.

Although the contract milestones have changed somewhat as the Grant Contract has been amended, Crown Hydro still has not commenced construction for purposes of the Grant Contract. Under the Third Amendment, the first milestone involving construction costs is “powerhouse construction and turbine installation.” Third Amendment, Ex. C. As of the date of the Third Amendment, June 15, 2007, this milestone had not been met. Indeed, site acquisition would need to be completed before powerhouse construction and turbine installation could be commenced.

Nor should Crown Hydro be permitted to avoid the statutory requirements relating to timely completion of grant projects simply because grant funds that have been allocated to Crown Hydro have not yet been paid to Crown Hydro. The statute requires, when the criteria are not met, that the grant recipient must “transfer any grant funds that remain unexpended” to the clean energy advancement fund account. There is no principled reason for distinguishing between unexpended grant funds that are in Crown Hydro’s bank account and unexpended grant funds that have been allocated to Crown Hydro but remain, for the time being, in Xcel’s bank account. Indeed, if Xcel was to, today, pay grant funds to Crown Hydro, the statute would obligate Crown Hydro to pay the money over to the clean energy advancement fund because the statutory criteria have not been met.

The plain purpose of the statute is to ensure that grant funds, which are intended to benefit the public by subsidizing the generation of renewable energy, are put to their intended use in a reasonable amount of time. To allow grant funds to be tied up indefinitely is contrary to the public interest because doing so reduces the funds available for other deserving projects that are able to produce renewable energy in a timely manner. The moribund status of the Crown Hydro project fails to meet both the literal language and the purpose of Chapter 94, Article 10, Section 29.

**IV. The Commission Should Exercise Its Supervisory Authority Over the RDF Program By Directing Xcel to Terminate the Crown Hydro Grant Contract for Failure to Meet the Project Schedule Requirements in the Grant Contract**

Nor does the contract governing Crown Hydro’s use of RDF grant funds give Crown Hydro an indefinite amount of time to complete the project. While the Grant Contract has been repeatedly amended, the most recent amendment – entered into in June of 2007 -- was based on the understanding that Crown Hydro would acquire property for the project no later than October

31, 2007, and that the plant would begin operations no more than 400 days later. However, more than ten years later, Crown Hydro still has not acquired the property necessary to commence construction. Crown Hydro’s failure to comply with the project schedule set out in the Grant Contract stands as an independent legal basis for termination of the contract.

**A. The Initial Grant Contract**

The Initial Grant Contract (“Grant Contract”) was entered into between Xcel and Crown Hydro on January 17, 2002, and was approved by the Commission on May 6, 2002. The Crown Hydro grant was one of the first grants awarded under the RDF program and is also the largest.

Pursuant to the Grant Contract, Crown Hydro was awarded \$5.1 million for the purpose of constructing a 3.2 MW hydroelectric plant on the west bank of St. Anthony Falls in downtown Minneapolis. Pursuant to the Grant Contract, the grant amount is payable in installments upon Crown Hydro’s completion of certain project milestones. The contract term is twenty months, with a specified Contract Start Date of January 1, 2002, and a Contract End Date of August 31, 2003. Grant Contract, Ex. A. The Grant Contract defines the Contract End Date as “the last date reimbursable expenses can be incurred and it is the expiration date of the contract.” Grant Contract, Section 2.A.2.

Project milestones for payment of grant funds include:

	<b>Project Payment Milestone</b>	<b>Deliverable</b>	<b>Due Date</b>	<b>Payment</b>
1.	Engineering, Design & Permitting	Design & Permitting status report and documents expenses	2/15/02	\$250,000
2.	Engineering, Design & Permitting	Design & Permitting status report and documented expenses	3/31/02	\$150,000
3.	Turbine down payment and Engineering Design & Permitting	Documentation of turbine expenses and documented expenses	4/30/02	\$700,000
4.	Turbine manufacturer progress payments and completion of Engineering Design	Documentation of Turbine expenses and documented Engineering expenses and delivery of Contract Documents	6/30/02	\$450,000

5.	Tailrace and tunnel excavation and reconstruction	Documentation of construction costs	9/30/02	\$650,000
6.	Forebay, intake structure and penstock installation	Documentation of construction costs	10/31/02	\$900,000
7.	Powerhouse construction and turbine installation	Documentation of construction costs	11/30/02	\$750,000
8.	Powerhouse construction, electrical instrumentation	Documentation of construction costs	4/31/03	\$750,000
9.	Completion of startup, testing and commissioning	Commissioning report and acceptance documentation	6/30/03	\$500,000

Total Payments \$5,100,000

Grant Contract, Ex. C.

The Grant Contract is terminable for cause, including “Failure to meet project schedule, milestones or deliverables.” Grant Contract, Section 16.B.

**B. The First Amendment to the Grant Contract**

On May 28, 2003, Crown Hydro and Xcel entered into the First Amendment in the Grant Contract (“First Amendment”). Xcel filed the First Amendment with the Commission as part of its 1st Funding Cycle Status and Progress Report.<sup>8</sup>

The First Amendment pushed back all of the deadlines for the project by approximately a year and a half. Thus, under the First Amendment, the first project milestone – Engineering, Design and Permitting – was due to be completed on July 15, 2003, and the project completion date was December 15, 2004.

**C. The Second Amendment to the Grant Contract**

On April 13, 2006, Crown Hydro and Xcel entered into the Second Amendment for the Grant Contract (“Second Amendment”). Xcel’s cover letter that accompanied the filing of the Second Amendment with the Commission stated, “To date, the project has received payments totaling approximately \$1.5 million. The proposed amendment reorders some milestones, extends

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<sup>8</sup> It is unclear whether the Commission ever took any formal action to approve the First Amendment.

the project schedule, provides for additional reporting and requires the project to propose a revised amendment if site control for the project has not been completed by July 31, 2006.” In support of the filing, Xcel stated:

Approval of this grant contract amendment is appropriate because it will allow the project additional time to succeed, and will not subject the rate payers to any additional payments from the fund until the next milestone is reached (note that the RDF rate rider currently in place does not include a projection of payment to Crown this year.) Furthermore, Crown Hydro cannot reach their next milestone until all major contingency issues have been resolved, including securing the site, access for water to the site, updating FERC requirements including environmental assessments, and any permitting needed prior to physical construction.

Xcel requested that the Commission formally approve the Second Amendment. The Commission approved the Second Amendment on June 2, 2005.

Under the Second Amendment, rather than specifying a day-certain due date for each project milestone, the milestone due dates are calculated based on a specific number of days after acquisition of property sufficient to comply with Federal Energy Regulatory Commission requirements. Second Amendment, Exhibit C. The Second Amendment provides that the first construction milestone – “powerhouse construction and turbine installation” – was to be completed within 200 days of property acquisition and that completion of startup, testing, and commissioning was to be due 400 days from property acquisition. The Second Amendment also requires Crown Hydro to provide monthly status reports commencing on February 1, 2006. As already noted, the Second Amendment also requires, in the event property acquisition had not been completed by July 31, 2006, Crown Hydro to present a detailed report regarding the acquisition plan and efforts necessary to achieve acquisition of property and also provide Xcel with a draft contract amendment.

#### **D. The Third Amendment of the Grant Contract**

On June 15, 2007, Crown Hydro and Xcel entered into the Third Amendment to the Grant Contract (“Third Amendment”). In the cover letter submitting the Third Amendment to the Commission, Xcel stated that “The contract amendment falls into the category of a ‘Type 2’ contract in the grant administration process approved by the Minnesota Public Utilities Commission (‘Commission’) and as such, this filing is being made for informational purposes and no Commission action is needed.” In support of this statement, Xcel referenced the Commission’s June 25, 2005, Order in Docket No. E002/M-05-109 (“Order Setting Rider, Approving Contract Amendments and Process for Future Amendments, and Requiring Continued Reporting.”) In that Order, the Commission described “Tier 2 amendments” not requiring Commission’s approval as “involv[ing] minor changes to a contract’s meaning. This might include changing a schedule to accommodate circumstances beyond the parties’ control, the need to re-order or re-ship equipment to correct for contracting errors, delayed routine status reports, or minor changes in the scope of work, for example.” Order at p. 6.

In its cover letter, Xcel also provided the Commission with a summary of the Crown Hydro project’s status:

As reported in previous quarterly RDF status reports, a third amendment was originally proposed to the RDF Advisory Board (“RDF Board”) in August, 2006, however, the RDF Board requested additional information to support Crown’s site acquisition plan, suspending further action on the proposed amendment until further information was received. The RDF Board continued suspension of a 3rd amendment to allow for opportunity to be fully informed by the on-going discussion of the project before the Minneapolis Park and Recreation Board (“MPRB”) in late 2006 through Spring 2007.

A pending feasibility study underway at the direction of the MPRB indicates the MPRB may be expecting to be able to use the results of the study to make a final decision about leasing the site requested by Crown for its project. Study results are anticipated to be complete during the 3rd quarter of 2007. Given the progress made toward a final resolution concerning the site, the RDF Board carefully considered the requested time extension, **believed an appropriate action would**

**be to allow Crown a final opportunity to complete site acquisition** and approved execution of Crown's proposed 3rd Grant Contract Amendment. (Emphasis added.)

The terms of the Third Amendment are very similar to those of the Second Amendment. The milestone descriptions are identical to those contained in the Second Amendment. Like the Second Amendment the due dates for each of the milestones is a specified number of days after property acquisition and the number of days provided as a due date for each milestone is the same as under the Second Amendment. Like the Second Amendment, the Third Amendment requires Crown Hydro to provide monthly reports beginning February 1, 2006. The only material difference between the Third and Second Amendment is that the Third Amendment requires Crown Hydro to provide a detailed property acquisition plan and proposed contract amendment if property is not acquired by October 31, 2007, where the property acquisition due date provided in the Second Amendment is July 31, 2006 – a year and three months earlier.

**E. Crown Hydro's Ongoing Failure to Obtain a Site**

In 2002, when Crown Hydro was first awarded its grant under the RDF program, it was anticipated that the project would be completed by August 31, 2003. Since then, the grant contract has been amended three times and Crown Hydro has yet to show any meaningful progress toward completion. With the most recent amendment, the date for completion was extended to a date to be determined, based on the date when Crown Hydro acquired the property for the project, which was expected to be not later than October 31, 2007. Not only have these delays caused Crown Hydro to fail to meet the schedule provided for under the Grant Contract, as amended, Crown Hydro has also failed to comply with the license that it obtained from the Federal Energy Regulatory Commission ("FERC") in 1999 for a hydro project sited in the basement of the Crown Roller Mill building. Crown's April 4, 2002 application for an amendment to its 1999 license to move the project entirely on MPRB land was dismissed by



FERC on February 2, 2005, because of the protections provided under the Federal Power Act for park land.<sup>9</sup> An order denying a rehearing and request for abeyance was issued on June 1, 2005.<sup>10</sup> A decade later, on April 20, 2015, following FERC’s request to Crown to show cause why the project was not abandoned, Crown filed a second application to amend the 1999 FERC license, which application is still pending.

Now, more than a decade since the Grant Contract was last amended to give Crown Hydro “a final opportunity to complete site acquisition,” Xcel’s filings with the Commission show Crown Hydro’s efforts to acquire property for the project -- the necessary first step toward the commencement of any construction activities – have been a study in futility. The following excerpts from Xcel’s status reports filed with the Commission illustrate the point:<sup>11</sup>

Oct. 12, 2007	“The Minneapolis Park and Recreation Board ("MPRB") has entered into a contract with Emmons & Olivier Resources to evaluate the feasibility of a lease with Crown Hydro on MPRB property. The feasibility study was presented to the MPRB at a study session in August 2007.”
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<sup>9</sup> A copy of the FERC order dismissing Crown Hydro’s application for an amendment of its license is attached as Appendix D.

<sup>10</sup> A copy of the FERC order denying Crown Hydro’s request for hearing and abeyance is attached as Appendix E.

<sup>11</sup> FL&D have propounded a request to Xcel under the Minnesota Data Practices Act to obtain documents relating to the Crown Hydro project. See Appendix F. Xcel provided a partial response to FL&D’s requests on November 21 and FL&D. Based upon an initial review, it does not appear that the documents provided by Xcel include a draft amendment of the Grant Contract or Crown Hydro’s detailed site acquisition plans, as required by both the Second Amendment and the Third Amendment. FL&D has not yet had a sufficient opportunity to complete its review and, based on further review, FL&D may seek to supplement these comments to provide the Commission with information obtained through its Data Practices Act request.

Dec 17, 2007	<p>“On November 7, 2007, the Minneapolis Park Board (“MPRB”) Planning Committee met with respect to the project and unanimously approved a motion directing the MPRB staff to review Crown Hydro’s land lease proposal and then recommend a process for moving forward to make a decision regarding the proposal. Subsequent discussion and action items are scheduled for upcoming MPRB meetings.”</p> <p><u>FL&amp;D Comment:</u> The Report also states that the “Crown Hydro RDF Grant Contract is operating under the Commission- approved 3rd amendment to the contract.” In fact, as discussed above, the Third Amendment was submitted to the Commission for informational purposes only. The Commission was never asked to approve the Third Amendment nor was such approval ever given. This incorrect statement is repeated in subsequent filings by Xcel.</p>
Feb 22, 2008	<p>“On December 19, 2007, the Minneapolis Park Board ("MPRB") Planning Committee voted 5-4 not to start another detailed comprehensive review of the project regarding entering into a lease agreement. The MPRB Board also voted not to rule out future consideration of the project.”</p> <p><u>FL&amp;D Comment:</u> Xcel’s Acquisition Report filed on the same date states that “This project remains in force majeure.” The Crown Hydro grant contract, however, does not contain a force majeure provision.</p>
Nov 3, 2008	<p>“Representatives of Crown Hydro are continuing to address the concerns raised by the Minneapolis Parks and Recreation Board, and limited progress has been reported during the third quarter.”</p>
May 7, 2009	<p>“Crown Hydro representatives continue to explore options for obtaining approval from the Minneapolis Parks and Recreation Board for the site lease required to move forward with this project.”</p>
Nov 16, 2009	<p>“Crown Hydro representatives have been in discussions with senior staff from the Minneapolis Park and Recreation Board (MPRB) regarding the possibility of Park Board ownership or participation in the project.”</p>
Jun 2, 2010	<p>“Crown Hydro dropped the appeal of its case in the federal court system that would give Crown Hydro eminent domain authority to acquire the Minneapolis Park and Recreation Board (MPRB) property necessary for the project. Crown Hydro reported that the appeal possibly interfered with the open dialogue currently taking place that will help in continuing to work on the possibility of a lease or project ownership position by the MPRB.”</p>

Feb 11, 2011	“Crown Hydro continues to engage in discussions with the Minneapolis Park and Recreation Board (“MPRB”) regarding site control for the project. While no agreements have been reached, the parties continue to explore ideas to move the project forward.”
Sep 7, 2011	“The project remains in the development phases as Crown Hydro continues to attempt to obtain necessary permits to move forward. Crown Hydro continues to work on various fronts including possible legislation to proceed with project development.”
Feb 17, 2012	“During the current reporting period, Crown Hydro engineers conducted a feasibility analysis of the development of the Project at a new location within the current project boundaries. Under the revised concept plan, the project will be located on the campus property of the Upper St. Anthony Falls Lock and Dam. Crown Hydro met with the Corps of Engineers (“COE”), St Paul District Office, to discuss Crown Hydro's proposal to locate its hydroelectric Project on COE land.”
Nov 2, 2012	“Since an impasse with the Minneapolis Park Board has prevented the project from moving forward, Crown Hydro is relocating the project to be sited on property owned by the U.S. Army Corps of Engineers (USACE).”
Oct 31, 2013	“The Crown Hydro (Crown) project has been in a period of ‘force majeure’ since October 31, 2007 due to an inability to obtain site control for construction the project. This inability to gain site control has recently led to activities regarding financing and issues with Crown’s Federal Energy Regulatory Commission (FERC) license pertaining to timing and boundaries. Due to Crown’s inability to obtain site control for the facility to be located on Minneapolis Park & Recreation Board property, Crown was unable to complete the project within the FERC license schedule and within the boundaries as approved by FERC on September 17, 2004.”
Jan 27, 2014	“Crown Hydro has been working on an amendment to their Federal Energy Regulatory Commission (FERC) license to move the project boundaries to within property controlled by the United States Army Corps of Engineers (USACE) and to extend the dates in the original license.”

Nov 9, 2016	“Crown Hydro continues to work toward approval of the amendment to its Federal Energy Regulatory Commission (FERC) license to move the project boundaries to within property controlled by the United States Army Corps of Engineers (USACE) and to extend the dates of the license. FERC issued a draft Environmental Assessment (EA) for Crown’s amendment, which is a first step toward issuing an order on the license.”
Oct. 26, 2017	“Crown Hydro continues to work toward approval of the amendment to its Federal Energy Regulatory Commission (FERC) license to move the project boundaries to within property controlled by the United States Army Corps of Engineers (USACE) and to extent the dates of the license. In prior quarters FERC issued a draft Environmental Assessment (EA) for Crown’s amendment, which is a first step toward issuing an order on the license.”

By correspondence filed with FERC on September 7, 2017, the Corps of Engineers advised FERC that it was proceeding with a “disposition study” of the Upper St. Anthony Falls Lock and Dam, the Lower St. Anthony Falls Lock and Dam and Lock and Dam No. 1.<sup>12</sup> The purpose of the study is to investigate the appropriate future disposition of the three locks and dams located in downtown Minneapolis.<sup>13</sup> In its correspondence to FERC, the Corps states that it expects to complete the study process in approximately January 2019. This study will, for course, necessitate further delay in Crown Hydro’s efforts to acquire property from the Corps for construction of the project and makes even more uncertainty whether Crown Hydro will ever be able to acquire the property.

**F. Crown Hydro’s Failure to Meet the Project Schedule Warrants Termination Of the Grant Contract**

The Commission presumably did not intend, when it approved the Grant Contract, that Crown Hydro would have what is, essentially, an unlimited amount of time in which to complete the project. The Grant Contract required that the project be completed by a specific date, August

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<sup>12</sup> See Appendix G.

<sup>13</sup> <http://www.mvp.usace.army.mil/Home/Projects/Article/692881/disposition-study-upper-and-lower-st-anthony-falls-and-lock-and-dam-1/>

31, 2003, referred to as the Contract End Date. The First Amendment, although pushing the date for “completion of startup, testing and commissioning” to December 15, 2004, did not modify the Contract End Date. Nor have subsequent amendments modified the Contract End Date.

Although providing that the due date for completion would be 400 days from the date of property acquisition – a date itself not yet determined – the Second Amendment did not provide for an open-ended commitment. To the contrary, the Second Amendment required that, if Crown Hydro failed to acquire property by July 31, 2006, the contract would be amended.

When that deadline came and went, the Grant Contract was amended a third time. The Third Amendment was never approved by the Commission, based upon the representation that the amendment resulted in only a minor change to the contract. Like the Second Amendment, the Third Amendment required that the contract again be amended if Crown Hydro failed to acquire property by a specific date – October 31, 2007. It is undisputed that Crown Hydro has not acquired property for the project nor has the contract been amended since then. Thus, Crown Hydro is in clear violation of the project schedule and appears to have granted itself an indefinite extension of time to complete the project. Not only has Crown Hydro failed to meet its contractual commitments to complete the project in a timely manner, there is no basis upon which the Commission could determine when, or even if, the project will be completed.

Under the procedures adopted by the Commission, minor changes to a contract, including a change to the schedule, were permitted without Commission approval. However, the Grant Contract is subject to termination for failure to meet the project schedule, milestones or deliverables. The termination provision was not changed by any of the contract amendments. The Commission has never approved a contract amendment that eliminated the October 31, 2007, deadline for acquiring a site for the project, which is the trigger for the deadline for completion of

the project, nor could such an amendment be considered minor. It is plainly contrary to the public interest for RDF grant funds to be tied up indefinitely. It is appropriate that the Commission, in the exercise of its supervisory authority, direct that the Grant Contract, as amended, be terminated for cause effective immediately.

**V. The Crown Hydro Project is Incompatible With the Current Plans for the Central Riverfront**

A map and timeline contrasting the timeline for the Crown Hydro Project with a timeline showing the evolution of public plans for the Central Riverfront is provided as Appendix H. The actions of elected bodies depict the clear and changing intent of the community for this area as contrasted with the attempts over those same years by Crown Hydro to shift their project to a new site after the original concept for the project -- occupying the basement of the Crown Roller Mill failed. Evaluation of the map and timeline makes it clear why the project has met consistent resistance by the community whose plans it would disrupt.

There is no dispute that the Crown Hydro Project conflicts with multiple plans and proposals, some already underway, which utilize the Crown Hydro site for different purposes than generating hydroelectric power. Specifically, the Crown Hydro Project conflicts with the following plans either directly or indirectly:

- Minneapolis Park and Recreation Board, Central Mississippi Riverfront Regional Park Master Plan (2016) available at [https://www.minneapolisparcs.org/asset/d6kv9t/central\\_riverfront\\_masterplan\\_approved.pdf](https://www.minneapolisparcs.org/asset/d6kv9t/central_riverfront_masterplan_approved.pdf)
- Metropolitan Council, Regional Parks Policy Plan 2030 (2016) available at <https://metro council.org/Council-Meetings/Committees/Metropolitan-Parks-and-Open-Space-Commission/2016/October-4,-2016/2016-193.aspx>
- The St. Anthony Falls Heritage Board, Changing Relationships to the Power of the Falls: An Interpretive Vision for the West Bank of St. Anthony Falls (2014) available at [http://www.mnhs.org/places/safhb/pdf/West\\_Bank\\_Vision.pdf](http://www.mnhs.org/places/safhb/pdf/West_Bank_Vision.pdf)

- City of Minneapolis, Downtown: Public Realm Framework Plan (2016) available at <http://www.minneapolismn.gov/www/groups/public/@cped/documents/webcontent/wcmstp-180843.pdf>
- Meet Minneapolis, Destination Transformation 2030 (2016) available at <https://www.minneapolis.org/partners-and-community/meet-minneapolis/destination-transformation-2030/>
- National Parks Conservation Association, Transforming the Lock Ideas Book (2017) available at <https://www.npca.org/resources/3217-transforming-the-lock>

The MPRB’s plan for the Central Mississippi Riverfront, as amended in 2016, specifically calls for a visitor’s center to be created on the St. Anthony Falls lock and dam structure. It states at page 7-16 of the Plan:

Supporting Initiatives (see Figure 33):

A. Collaborate with partner agencies to create a visitor’s center on the lock and dam structure. The building is anticipated to include an orientation center, interpretation, classroom, restrooms, food concession, and indoor/outdoor patio.

Such a use for the lock and dam structure directly conflicts with the Crown Hydro project.

Additionally, but importantly for purposes of these comments, The Falls proposal, which has been successfully launched by the Friends of the Lock and Dam, implements the MPRB’s vision for a visitor’s center on the St. Anthony Falls lock and dam structure. The proposal has broad support throughout the community, including the business community, surrounding neighborhoods and, of course, the MPRB, City of Minneapolis, Metropolitan Council and the St. Anthony Falls Heritage Board. To date, the project has secured over \$5 million for planning and development purposes. A coalition statement supporting the Lock as “the centerpiece of an iconic civic and cultural destinations, reflective of our shared history, for the use and enjoyment of all” was developed at a meeting over the summer of 2017 attended by 20 organizations and 5 government entities. Twelve organizations have gone on to formally endorse that statement

through actions of their board or leadership: Friends of the Lock & Dam, Minneapolis Riverfront Partnership, St. Anthony Falls Heritage Board, National Parks Conservation Association, Minneapolis Downtown Council, East Town Business Partnership, Mississippi Park Connection, River Life (UMN), Friends of the Riverfront, Great River Coalition, St. Anthony Falls Alliance, and NiceRide. A second large coalition meeting was held in the Fall of 2017 and was attended by 21 organizations and 4 government entities. Both the City of Minneapolis and the MPRB passed resolutions of support in 2017 to pursue state bonds for repurposing the Upper St. Anthony Falls Lock in accordance with adopted plans. Notwithstanding this broad public and private support, further development of the Crown Hydro Project would foreclose development of a visitor's center on the lock and dam structure, a central feature of The Falls proposal.

The success of The Falls project speaks loudly to the community's desire to use the St. Anthony Falls Lock and Dam for cultural and recreational purposes. The current hydroelectricity operations of Xcel on the other side of the river are not in question, but enabling expanded generation of hydroelectricity, which would divert more water from The Falls, has long been a concern to those who view The Falls as a cultural and tourism asset. The impact of "drying up" The Falls was raised as a major concern by stakeholders from the beginning of this process, and continues to be one as the Lock and its context – The Falls, Water Works Park, Mill Ruins Park, the Stone Arch Bridge, and the St. Anthony Falls Heritage District – are increasingly recognized for their cultural and touristic value. While expanded hydroelectric use may have been seen by some as desired in 2001, that is no longer the case. Now, the interest and excitement lies in providing more access to the Central Riverfront and enhanced use for educational, recreational and commercial purposes. All of which is reflected in current plans and proposals. In short, the



Crown Hydro project is no longer in the public interest. Accordingly, it should not continue to receive any public funds, even assuming it can find a path out of its current moribund status.

### **CONCLUSION**

In 2001, Crown Hydro was awarded a grant under the RDF program for the purpose of constructing a hydroelectric plant on the Mississippi River in downtown Minneapolis. Under the contract setting forth the terms of the grant award, the plant was to be completed by August 31, 2003. In the intervening fifteen years, Crown Hydro: 1) has failed to secure required permits and governmental approvals; 2) has failed to acquire control of a site for construction of the project; and 3) has failed to commence construction. In June of 2007, Crown Hydro was given “one final opportunity to complete site acquisition” by October 31, 2007. More than a decade has now passed with no progress toward site acquisition, much less completion of the project.

Last session, the Minnesota legislature adopted a statute reflecting clear public policy that RDF grant funds be used in a timely manner to accomplish their intended purpose. Consistent with that public policy, the grant contract contains due dates for Crown Hydro’s performance. Those due dates, however, have been repeatedly extended but not yet met. The Grant Contract makes clear that the failure to meet the project schedule is a basis for termination of the contract for cause.

The public interest is not served by tying up RDF grant funds for an indeterminate period of time. Here, however, the public interest concerns are greatly compounded by the fact that, in the time since the grant was awarded, the plans for the Central Riverfront have changed dramatically. The Crown Hydro project is incompatible with those plans, which have moved away from industrial uses in favor of recreational, historical, and cultural uses of the riverfront in downtown Minneapolis.

The Commission is the agency charged with supervisory responsibility over grant expenditures. It has a legislative mandate to exercise that supervisory responsibility to advance the public interest. For the foregoing reasons, FL&D respectfully urges the Commission to exercise its authority by directing Xcel to terminate the grant contract with Crown Hydro or, in the alternative, declare that no further funds from the grant will be paid to Crown Hydro.

Respectfully submitted,

Dated: November 22, 2017

**GRAY, PLANT, MOOTY, MOOTY  
& BENNETT**

By: /s/ Gregory Merz  
Thomas L. Johnson  
Gregory R. Merz  
500 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402-3796  
(612) 632-3257 (phone)  
(612) 632-4257 (fax)  
gregory.merz@gpmlaw.com

*Attorneys for Friends of the Lock and Dam*

GP:4818-0481-7493 v1

# APPENDIX A

# **The Falls**

St. Anthony Falls Lock and Dam  
Park and Visitor Center

**Friends of the Lock and Dam  
Appendix A (Project 11175-025)  
Filed October 11, 2016**

# THE FALLS

## ST. ANTHONY FALLS LOCK AND DAM PARK AND VISITOR CENTER

September, 2016

*"The Mississippi River is not only the grand natural feature which gives character to your city and constitutes the main spring of its prosperity, but it is the object of vital interest and the center of attraction to intelligent visitors from every quarter of the globe ..... it should be placed in a setting worthy of so priceless a jewel."*

— Horace, W. S. Cleveland, 1883

### THE FALLS PROPOSAL

The concept for re-purposing the Upper St. Anthony Falls Lock sets a bold vision for breathing new life into a riverfront asset that has outlived its original ( navigational ) purpose. This huge 400-foot long concrete structure is positioned in the river such that it understates its bulk, preserves 360-degree views of the central riverfront and downtown, and dramatizes the power of the falls, rendering it an ideal visitor venue. The Falls offers an opportunity to replace the unsightly parking lot hardscape with a 1-acre public park/community gathering space in an area of the river that contained trees and grass in the 1950's before the Upper Lock was built.

The design for The Falls contains the following major components:

- Preservation of the character defining elements of the Upper Lock
- Visitor Center ( operated by the National Park Service in collaboration with the Minneapolis Park and Recreation Board and the City of Minneapolis )
- Interpretive Center
- Redevelopment of the existing parking lot area into a 3-level, below grade structure and a park at grade
  - Lower 2 levels – parking for ~280 cars
  - Upper level – Interpretive Center – 50,000 sq. ft.
- Park – green space and plaza – events, public gatherings & performances
- Food venue and observation decks
- Canoe/kayak portage and bike facilities

It is expected that revenues generated by the food venue, events, parking and other activities would be dedicated to the maintenance and programming of The Falls to ensure its financial sustainability.

Friends of the Lock and Dam ( "FL&D" ), is a new non-profit corporation committed to creating a world-class public recreation, education, and cultural amenity known as "The Falls". We seek to build a public-private coalition to re-purpose the Lock. The design for The Falls is based on the recommendations of the Minneapolis Park and Recreation Board's Central Mississippi Riverfront Regional Park Master Plan, completed in 2015. We have engaged designers, cultural resource

consultants and professional advisors with expertise in developing public-private partnerships to develop a comprehensive proposal for use in gaining input and support from major stakeholders in re-purposing the Lock. In addition to developing this design proposal, we have begun the process of cultivating financial support from the private sector with plans to privately underwrite at least half of the cost to complete the development of The Falls. Our preliminary cost estimate for The Falls is \$45 million for the project components listed above. Final cost could vary as the Schematic Design evolves to Construction Documents. FL&D has already secured an initial \$5 million private commitment to advance the project. The strong momentum of the Water Works/RiverFirst Capital Campaign, coupled with an exciting design for The Falls that leverages and fits seamlessly with Water Works/RiverFirst, gives us confidence in our ability to generate the resources and financial support required to build and sustain a park and visitor center that will serve residents and visitors well for generations to come.

### COMMUNITY ENGAGEMENT BACKGROUND AND PLANNING CONTEXT

The plan to re-purpose the Upper St. Anthony Falls Lock is responsive to a recognition that St. Anthony Falls is the primary character-defining element of the Minneapolis central riverfront. As such, The Falls is the culmination of at least four decades of planning and redevelopment efforts by the City of Minneapolis and Minneapolis Park and Recreation Board to revitalize the central riverfront and give the "Waterfall that Built a City" the prominent place it deserves for visitors and residents. Beginning with the designation of an 800-acre stretch of the Mississippi River as the "St. Anthony Falls Historic District" in 1971, the central riverfront has gradually transformed from a largely abandoned industrial area to a rapidly growing residential and arts community with significant historic, cultural and recreational attractions, and improved river access.

Notable signs of growth and transformation in the central riverfront district during the past twenty years have been the following: over \$2 billion of private/non-profit investment; over 2,000 housing units built or approved for construction; addition of over 1 million square feet of office and commercial space; development or retention of over 2,000 jobs; development or relocation on the riverfront of the following major institutions – Guthrie Theater, Federal Reserve Bank, Mill City Museum, MacPhail Center for Music, McKnight Foundation, American Red Cross regional office, The Nature Conservancy Minnesota, American Academy of Neurology and the Mill City Farmers Market. Including Water Power Park, which is privately owned by Xcel Energy and Water Works Park, which will start construction in 2018, there are now 12 parks on the central riverfront, all of which visually connect to the St. Anthony Falls Lock and Dam. The visitation estimate for the central riverfront was 2 million people in 2013, which was about a 250% increase since 2004. Similar strong visitor growth is anticipated with the completion of Water Works and The Falls, potentially doubling to 4 million people.

Many studies and plans are ongoing or have been conducted in and around the central riverfront. The most recently completed comprehensive study ( April 1, 2015 ) is the "Central Mississippi Riverfront Regional Park ( CMRRP ) Master Plan". This 150-page study was conducted with oversight from a 20-member Community Advisory Committee ( CAC ), input from an 18-member Technical Advisory Committee ( TAC ) and broad community engagement through a series of five 2-day on-site charrette work sessions.

The CMRRP Master Plan ( [www.minneapolisparks.org](http://www.minneapolisparks.org) > Park Care & Improvements > Park Projects > Current Projects > CMRRP > Master Plan ) effort "was completed in collaboration with three specific projects. First, the Minneapolis Parks Foundation's schematic design of the Water Works site" contiguous to the Upper Lock site and West Bank entrance to the Stone Arch Bridge. "Second, the St. Anthony Falls Heritage Board's interpretive plan for the West Bank. And, third, the Heritage Board's interpretive plan for the East Bank. All three projects closely shared CAC and TAC processes and open houses. Because of this collaboration, the four plans fit together seamlessly" ( page 1-3, CMRRP Master Plan )

The Heritage Board's West Bank Interpretive Plan ( July, 2014 ) included the following major recommendations ( page 3 ):

1. Make indigenous cultures more visible
2. Create a more vibrant riverfront through expanded interpretive programming
3. Preserve the area's industrial ruins while providing appropriate accessibility to the public
4. Meet the needs of a growing number of visitors

The CMRRP Master Plan observes that "there is no better location to view the Falls than the Upper St. Anthony Falls Lock" and makes the following development recommendations for the Upper Lock site ( page 7-16 ):

- "Collaborate with partner agencies to create a visitor's center on the lock and dam structure. The building is anticipated to include an orientation center,
- interpretation, classroom, restrooms, food concession, and
- indoor/outdoor patio."

In addition to endorsing the schematic design for the contiguous Water Works Project, the Plan also recommends the creation of a "soft landing for canoes and kayaks".

The plan to develop a world-class park and visitor center – The Falls – is an initiative to respond to and advance the recommendations of two recent major studies sponsored by the Minneapolis Park and Recreation Board and the St. Anthony Falls Heritage Board. These studies, in turn, build upon numerous previous and ongoing planning efforts. The Falls proposal is presented as a major culmination of these efforts, providing the keystone that supports and connects the many parks, trails, and historic sites that contribute to the vitality of the central riverfront. It is also a call to action to ensure that any redevelopment ( including hydropower proposals ) at the Upper St. Anthony Falls Lock site respects its character and history, responds to decades of stakeholder recommendations, and secures the financial and programming resources and support needed to develop and sustain a world-class visitor and interpretive venue.

#### **WATER WORKS PARK — A VITAL LINK TO THE RIVER**

Water Works ( Phases I and II ) is a 4-acre park that anchors a broader effort to reinvigorate green space along the Mississippi central riverfront. Located on the downtown side of St. Anthony Falls and the Stone Arch Bridge, Water Works Park will further transform the riverfront, reveal the Mill District ruins to interpret its history and culture, and better link the Mississippi River with

downtown Minneapolis. The Park Board has adopted the Water Works Concept Design and entered into the RiverFirst Fundraising Agreement with the Minneapolis Parks Foundation calling for \$15 million of the \$31 million project cost to be raised through private philanthropy. As of September, 2016 the Parks Foundation has received commitments for over \$12 million of the \$15 million private goal. Water Works Park and The Falls represent the culmination of 40 years of planning and investment in the central riverfront. The revitalization of this critical area is now endangered by the Crown Hydro project.

Since the Upper Lock was closed to navigation effective June 9, 2015, the area from the Stone Arch Bridge to the Lock was not directly addressed in the Water Works design process, which was initiated well before the closing. The Army Corps of Engineers continues to maintain the Upper Lock for flood control purposes. Since it was completed in 1963, the Lock has been used for flood control 7 times, or on average, once about every 8 years. The Upper Lock is located in the Mississippi National River and Recreation Area ( MNRRA ), a 72-mile, 54,000-acre national park maintained and programmed by the National Park Service ( NPS ). The NPS began conducting tours for visitors at the Upper Lock facilities effective May 28, 2016.

#### **RE-PURPOSING THE UPPER LOCK**

The passage of the Water Resources Reform and Development Act in June, 2014 and the resultant closing to navigation of the Upper St. Anthony Falls Lock a year later brought with it a realization that continues to gain broad acceptance and support – this is a once in a century opportunity to re-purpose this facility. In combination with the adjacent Water Works project, the conversion of the Upper Lock site to a world-class visitor and interpretive center will dramatically increase public access to the Falls and the River, create a more vibrant central riverfront and provide a worthy counterpart to the iconic Stone Arch Bridge. What better place to showcase the history and culture of this region than the USACE's re-purposed lock facility? Moreover, The Falls is located in an urban national park, on the fourth largest watershed in the world, overlooking St. Anthony Falls.

The vision for re-purposing the Upper St. Anthony Falls Lock draws its inspiration from the following community-based initiatives and institutions:

MINNEAPOLIS PARK AND RECREATION BOARD ( MPRB ) – The MPRB has been recognized by the Trust for Public Land the past four years as the #1 Urban Park System in the United States. Its 55-miles Grand Rounds National Scenic Byway connects a diverse system of lakes, parks and trails to the Mississippi River. Numerous MPRB bicycle and pedestrian trails, as well as West River Road and City of Minneapolis bike lanes connect large areas of the city to the west and east banks of the central riverfront. The Central Mississippi Riverfront Regional Park, which lies wholly within the Mississippi National River and Recreation Area, encompasses about 350 acres and contains twelve MPRB park components, including Stone Arch Bridge, Mill Ruins and the soon to be constructed Water Works Park, which are contiguous to the western border of the Upper St. Anthony Falls Lock. The Park Board has also committed to major new parks to the north on both sides of the river, all within easy bicycling or walking distance from The Falls.

WATER WORKS – This transformational gateway park connecting downtown Minneapolis to the Mississippi River and Stone Arch Bridge is the result of over five years of community engagement

and planning led by the Minneapolis Parks Foundation and Minneapolis Park and Recreation Board. The design and programming of the adjacent Upper Lock site should be aligned and complimentary with the design and programming of Water Works to provide a seamless experience for all who visit this iconic public space.

U.S. ARMY CORPS OF ENGINEERS ( USACE ) – The USACE, St. Paul District, has conducted an Initial Appraisal that concludes that, “with the lock at Upper St. Anthony Falls ( USAF ) closed to navigation, the demand for both commercial and recreational lockage at Lower St. Anthony Falls and at Lock and Dam 1 is anticipated to decrease. Therefore, if disposition of USAF is warranted, disposition of all three sites may be warranted.” The USACE, St. Paul District, has recommended that “a section 216 ( disposition ) study be initiated to investigate a range of alternatives to either dispose of the locks and dams ... or to put these sites to additional beneficial uses while under federal ownership.”

MISSISSIPPI NATIONAL RIVER AND RECREATION AREA ( MNRRA ) – MNRRA operates the Mississippi River Visitor Center, located in the lobby of the Science Museum of Minnesota and effective May 28, 2016, with support and participation by the Mississippi Park Connection, opened a second Mississippi River Visitor Center at the Upper St. Anthony Falls Lock and Dam. MNRRA is a “partnership” park in which the NPS owns only 67 acres of the 54,000 acres within its borders. Located in an urban setting, MNRRA offers recreation and education opportunities along the 72-mile long river park and in “numerous centers and museums that highlight the history and science of the Mississippi River.” Supported by McKnight Foundation and Mississippi Park Connection, MNRRA sponsors the Mississippi River Forum, a multidisciplinary group of water resource practitioners and decision-makers.” The Falls would enhance MNRRA’s mission.

MINNESOTA HISTORICAL SOCIETY ( MNHS ) – Established in 1849, MNHS is one of the largest and most prestigious historical societies in the United States, playing a leading role in Minnesota’s historic preservation, education, and tourism. MNHS operates 26 historic sites and museums, including the Mill City Museum located on the Minneapolis central riverfront at the site of what was once the world’s largest flour mill. Mill City Museum’s mission is to “create opportunities to discover the people and industries that built Minneapolis, transformed a region and influenced our world.” In addition to its history programs and exhibits, it conducts tours and field trips and provides one of the region’s most popular event and meeting facilities. MNHS is seen as a key partner in riverfront interpretation at The Falls.

ST. ANTHONY FALLS HERITAGE BOARD ( SAFHB ) – Created by the Minnesota State legislature in 1988, the St. Anthony Falls Heritage Board is a diverse group of public and private officials charged with promoting interpretation and preservation of the historic Minneapolis central riverfront. In July, 2014, the SAFHB adopted an interpretive vision for the West Bank of St. Anthony Falls entitled “Changing Relationships to the Power of the Falls.” One of its major recommendations was “meet the needs of a growing number of visitors ... ( - and repurpose the Upper Lock and Dam as an ideally located venue for visitor amenities - ).”

### **CROWN HYDRO – CONFLICTS WITH THE LARGER PUBLIC PURPOSE**

The Upper St. Anthony Falls Lock and Dam, Mississippi River and their historic setting must be the focus and anchor for ANY development on the central riverfront. Anything that affects or

undermines the future use of these resources for such a public purpose demands the highest level of scrutiny. As a consequence, FL&D and Friends of the Riverfront have engaged counsel to assist in scrutinizing and commenting on FERC’s Draft Environmental Assessment of the Crown Hydro Project and urging a full Environmental Impact Statement ( EIS ) on any such use. The shared vision of The Falls cannot be realized if the current version of the Crown Hydro Project is allowed to proceed.

FL&D has met with many of the key stakeholders involved in re-purposing the Upper St. Anthony Falls Lock, including local, state and federal agencies. Receptiveness of the groups consulted to plans for The Falls project has been very positive. Virtually all groups involved in such efforts believe the Crown Hydro project is not consistent with the extensive planning efforts for the central riverfront and many have raised serious concerns regarding Crown Hydro’s proposed hydropower project.

### **PUBLIC-PRIVATE PARTNERSHIP**

FL&D is committed to a public-private partnership for creation of The Falls. Our goal is nothing short of a world-class visitor and interpretive center that will be the centerpiece for visits to our city for generations. Many stakeholders have expressed support for many of the elements of The Falls plan. We are enthusiastically committed to working with all stakeholders in the central riverfront to develop a world-class public amenity. A partial list of the stakeholders that have been consulted to-date is provided below:

City of Minneapolis  
Friends of the Mississippi River  
Meet Minneapolis Convention and Visitors Association  
Minneapolis Parks and Recreation Board  
Minneapolis Parks Foundation  
Minnesota Historical Society  
Mississippi Park Connection  
National Parks Conservation Association  
National Park Service, Mississippi National River and Recreation Area  
Nice Ride Minnesota  
U S Army Corps of Engineers, St. Paul District  
Wilderness Inquiry

We look forward to bringing this vision to fruition!

Respectfully submitted,

Friends of the Lock and Dam

Friends of the Riverfront

Connecting the Chain of Lakes to the River through the heart of Minneapolis



Google Earth Image

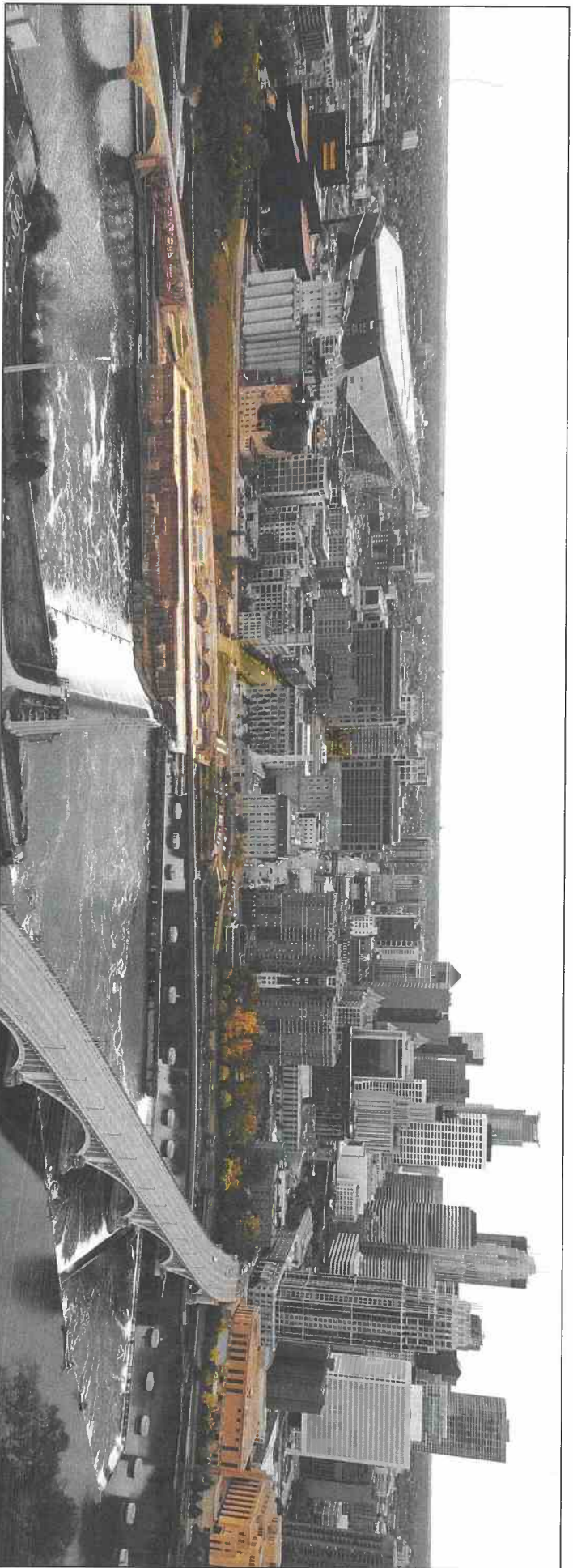
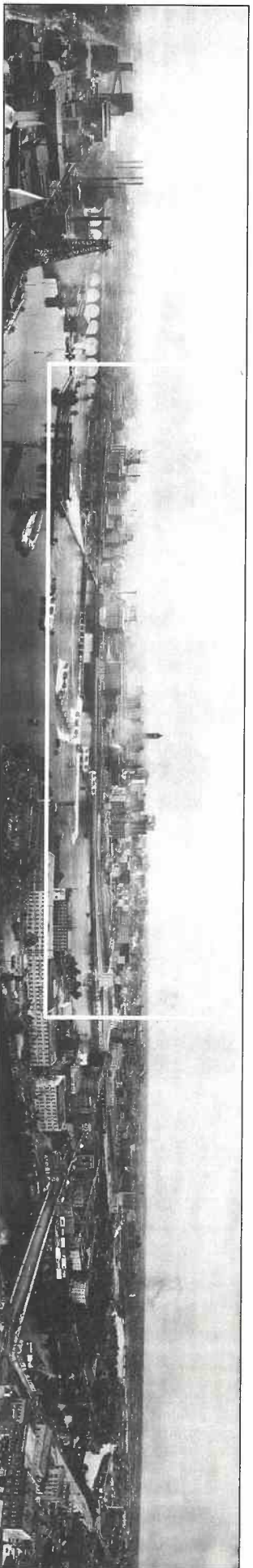


## Minneapolis Riverfront of Parks



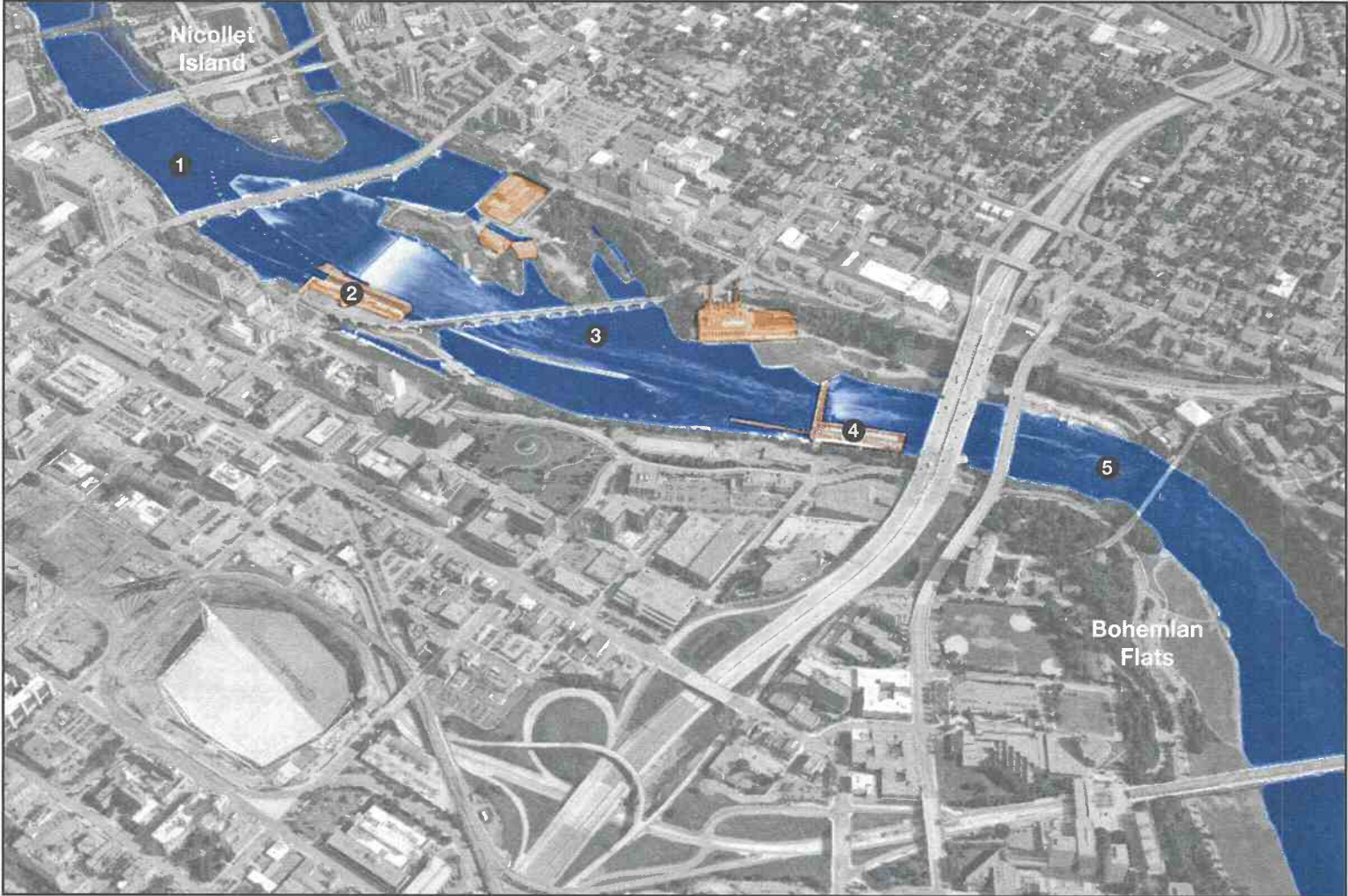
Aerial Image - October 7, 2015

**Minneapolis 1915 - 2015 Industrial Riverfront to Public Asset**



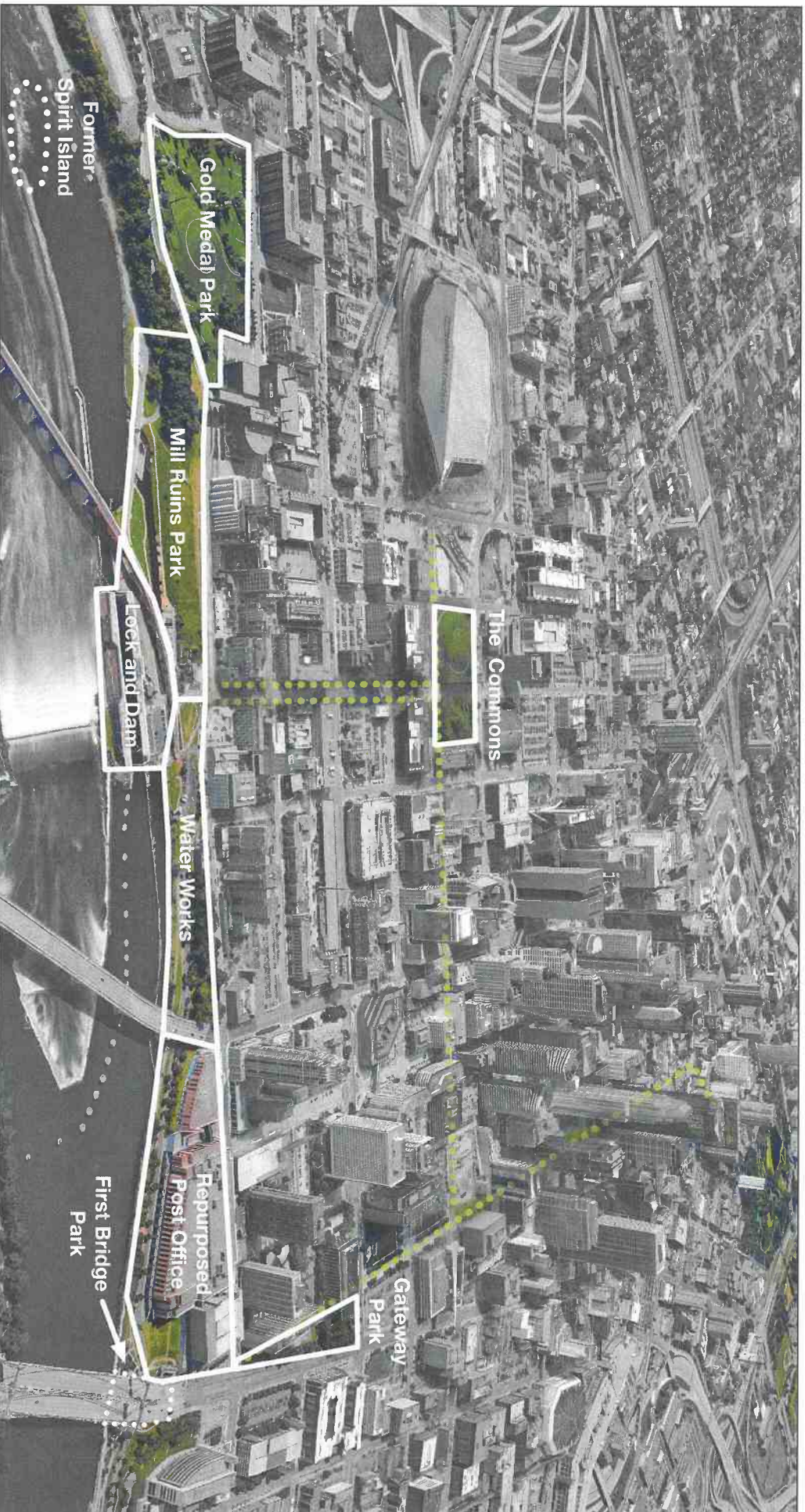
### St. Anthony Falls 3 Pools

- ① Upper Pool  
Normal Elevation 799'  
Range 799-810'
- ② Upper St. Anthony Falls  
Lock & Dam
- ③ Middle Pool  
Maintained at 750' - 752'
- ④ Lower St. Anthony Falls  
Lock & Dam
- ⑤ Lower Pool  
Normal Elevation 725'  
Range 719'-735'



Google Earth Image

# Chain of Parks



## The Falls Final Phase of the Gateway to the River

### 1 Stone Arch Bridge

### 2 Mill Ruins Park

### 3 Water Works — Mezzanine Phase

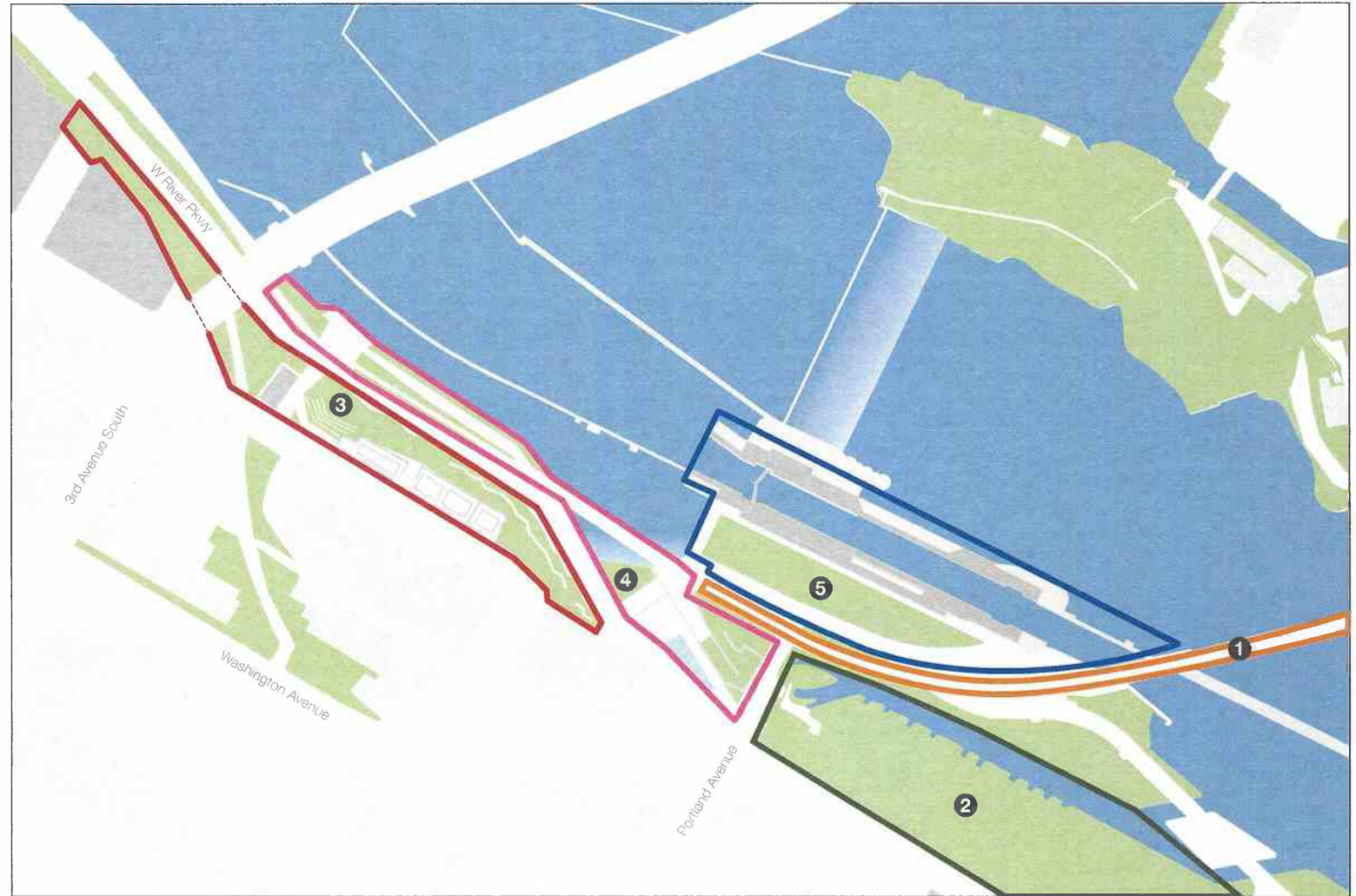
- Parkway Realignment
- Pavilion
- Outdoor Rooms and Amphitheater

### 4 Water Works — Riverside Phase

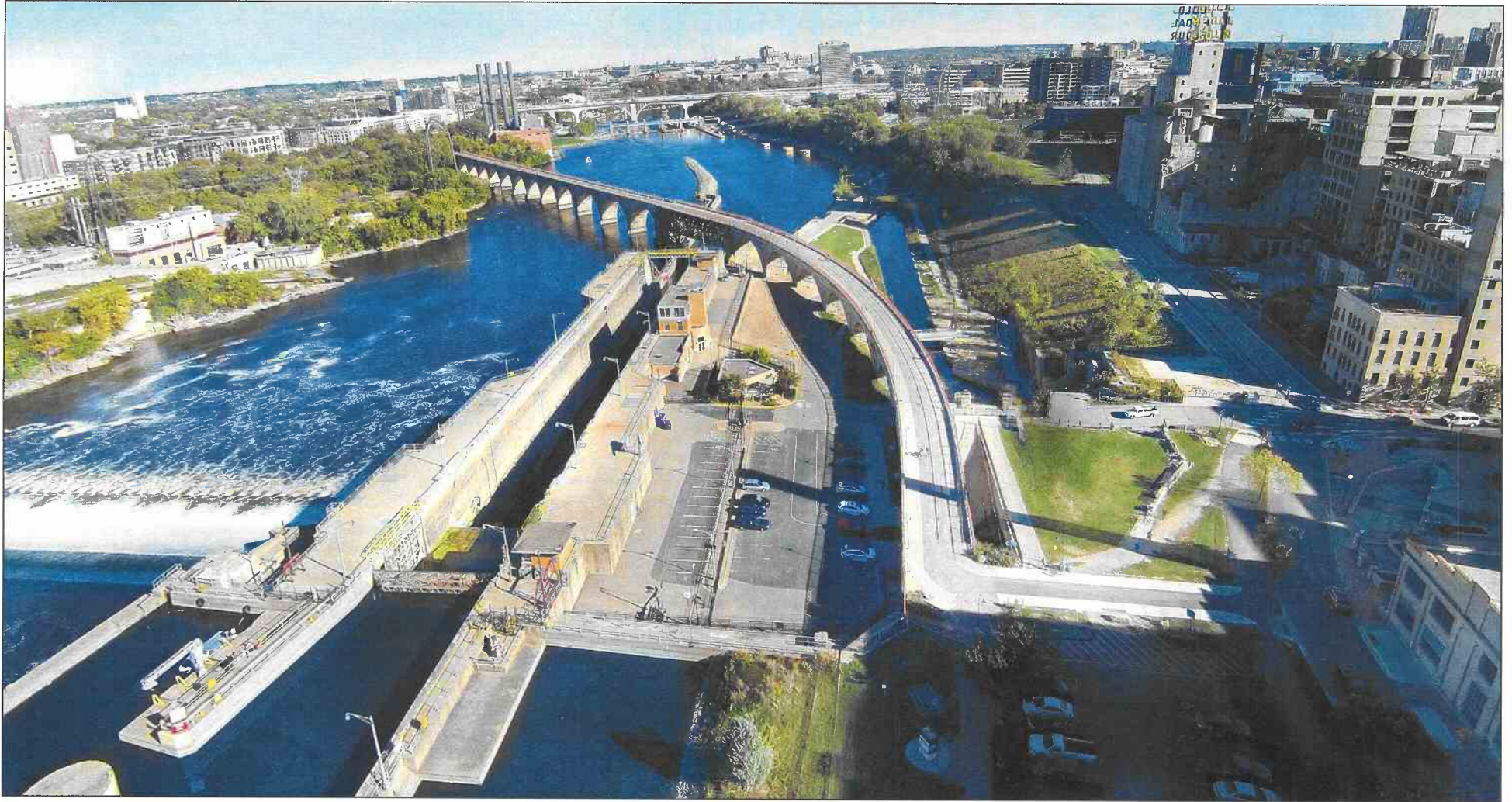
- Excavated Gatehouse Fountain
- New Bridge
- New Ramp Below Stone Arch Bridge
- Kayak Launch
- Water Edge Play Area

### 5 The Falls — Lock & Dam Phase

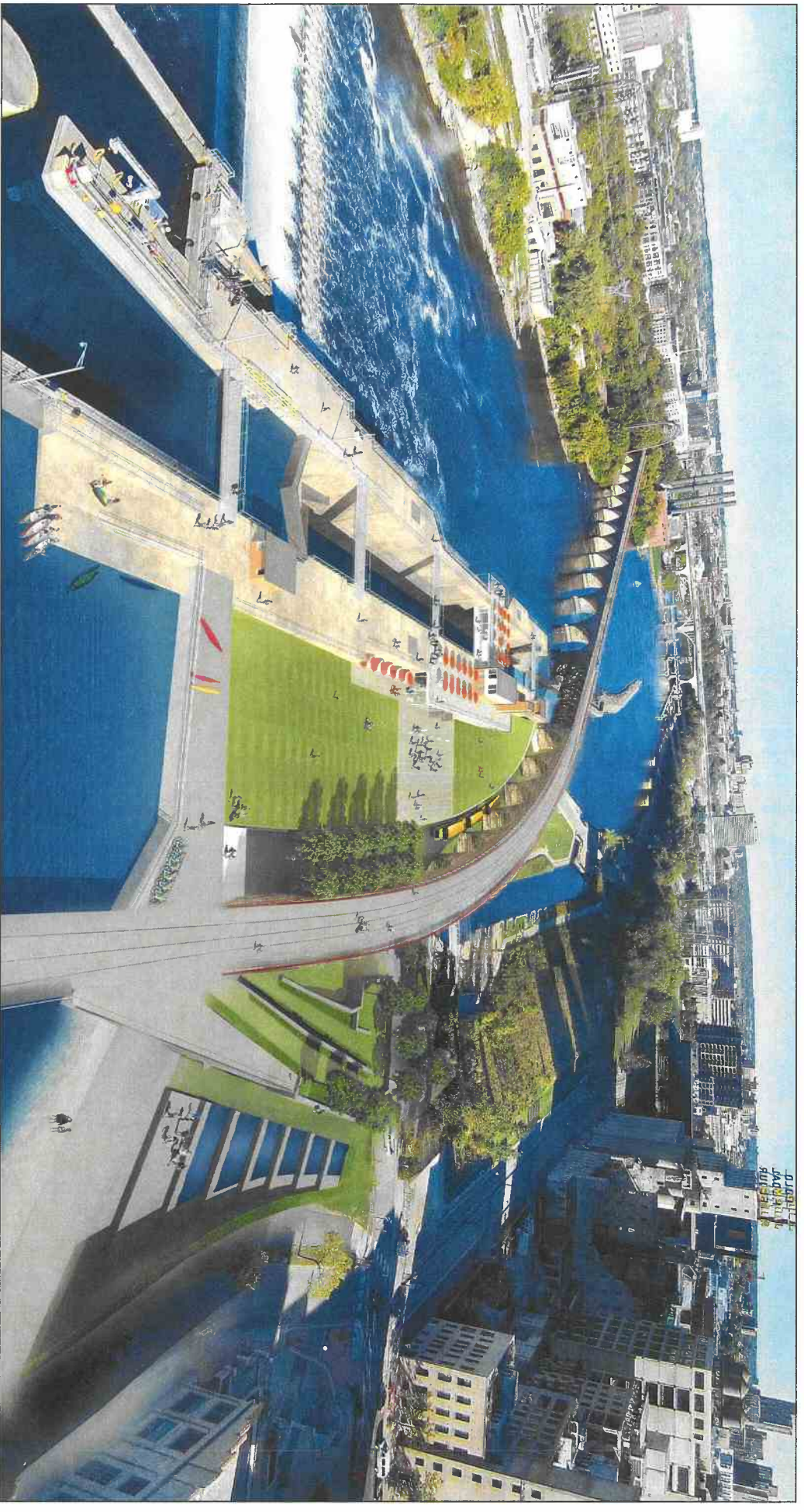
- Park/Public Plaza
- Visitor Center
- Observation Deck
- Canoe Portage
- Food Venue
- Parking



St. Anthony Falls Lock and Dam Existing Condition



**The Falls Park and Visitor Center:**  
A seamless connection to the Stone Arch Bridge and Water Works

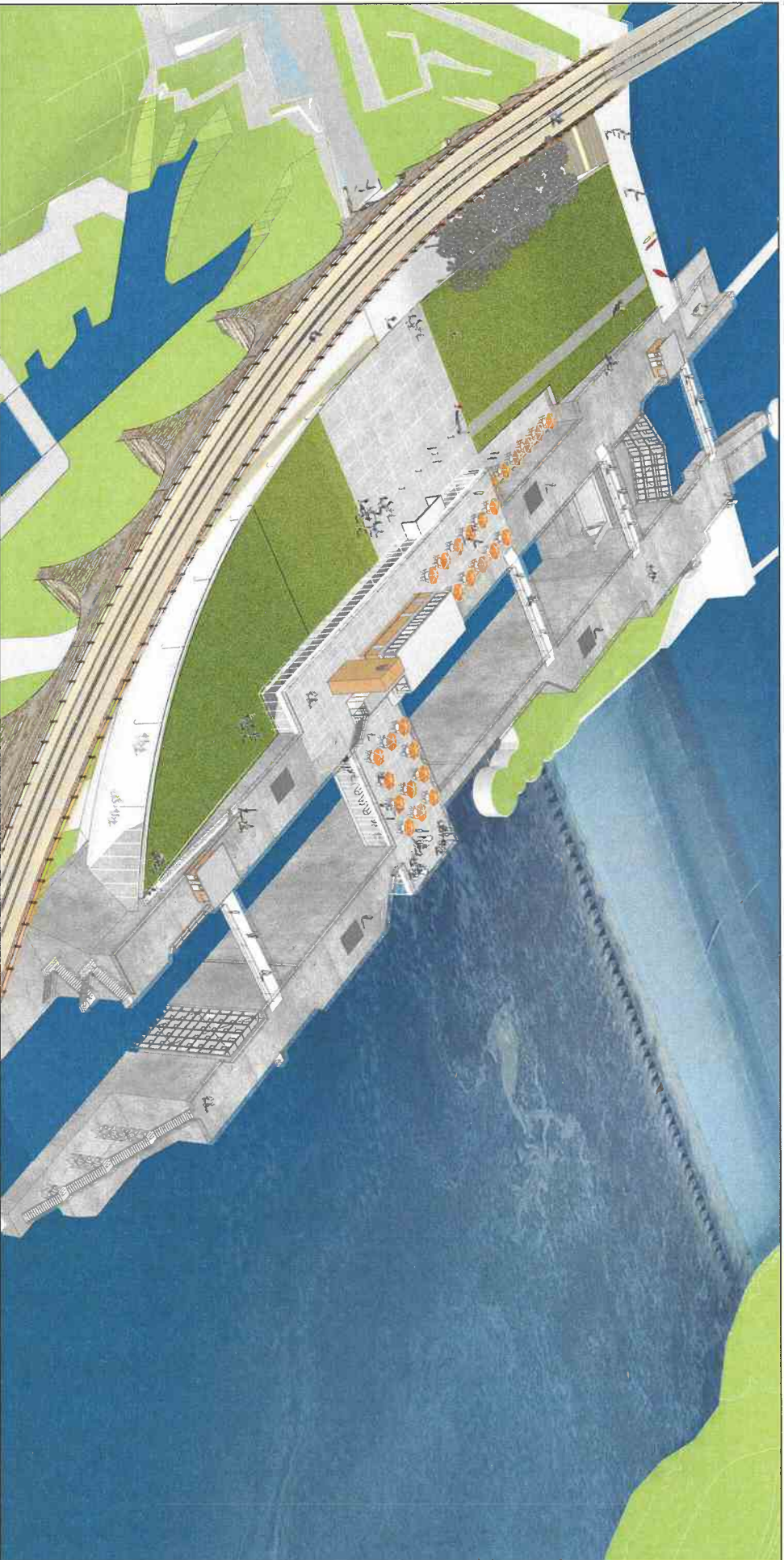


**The Falls** Park and Visitor Center



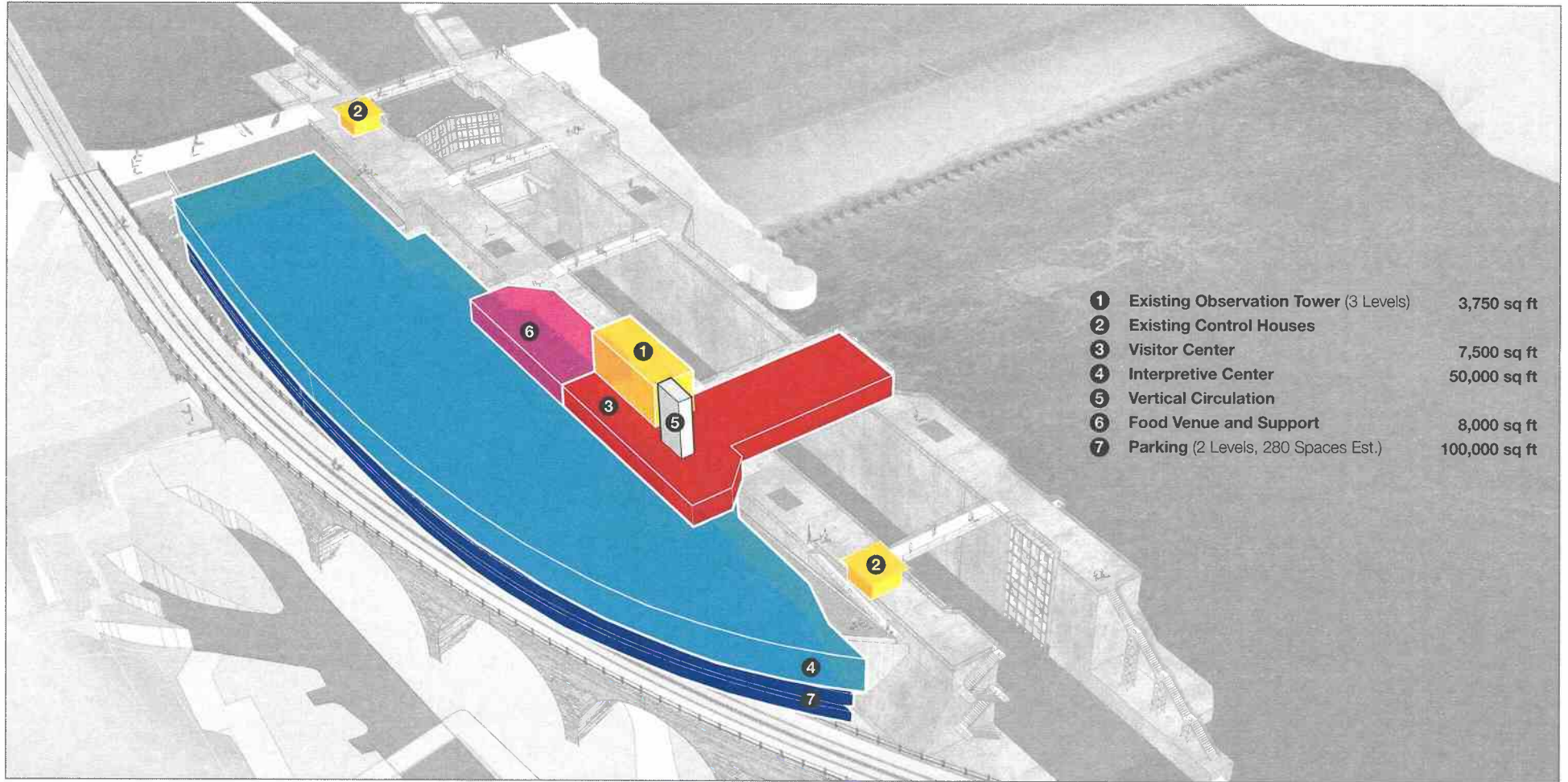


**The Falls Park and Visitor Center**



VJAA

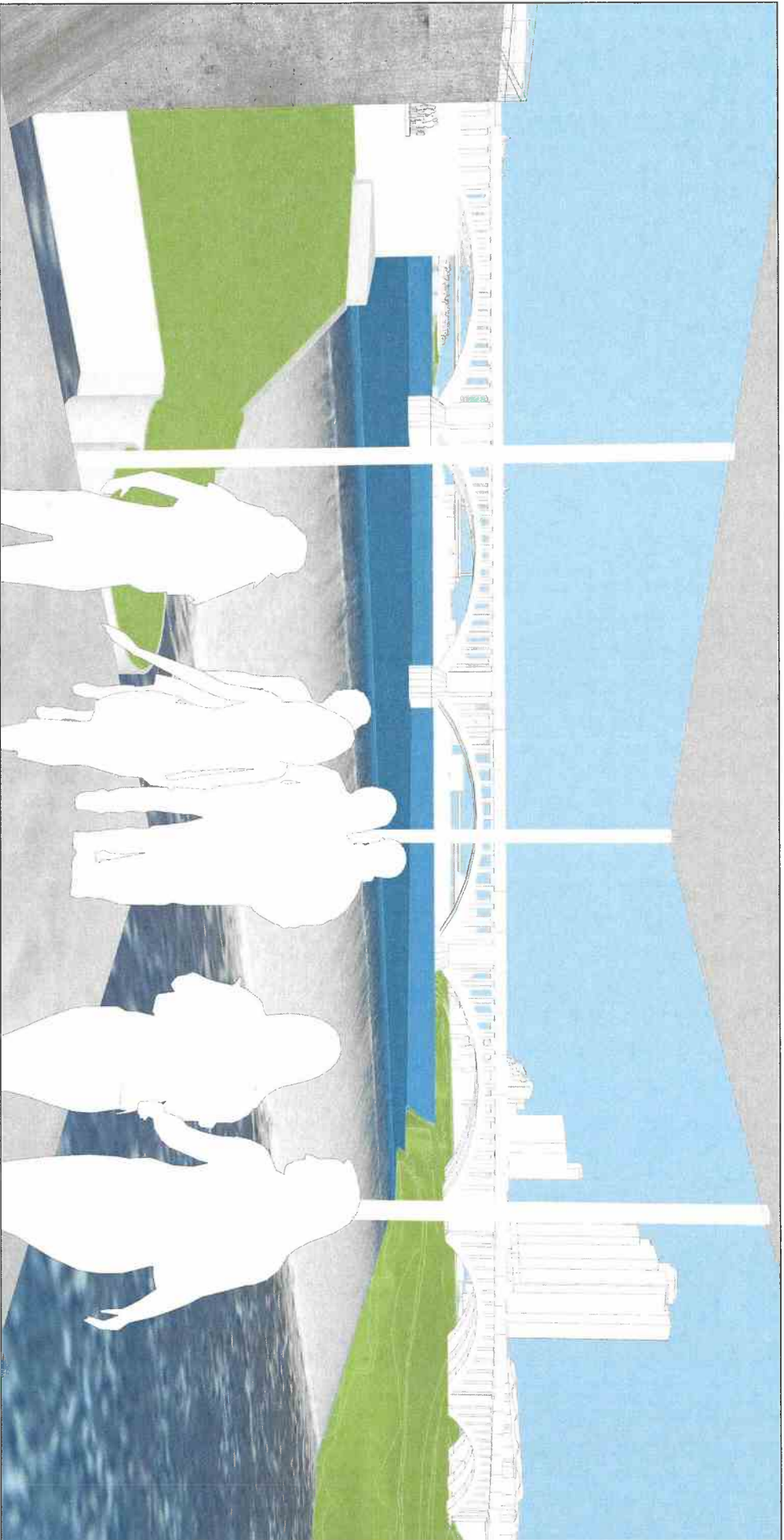
## The Falls Park and Visitor Center



**The Falls** Visitor Center and Observation Deck

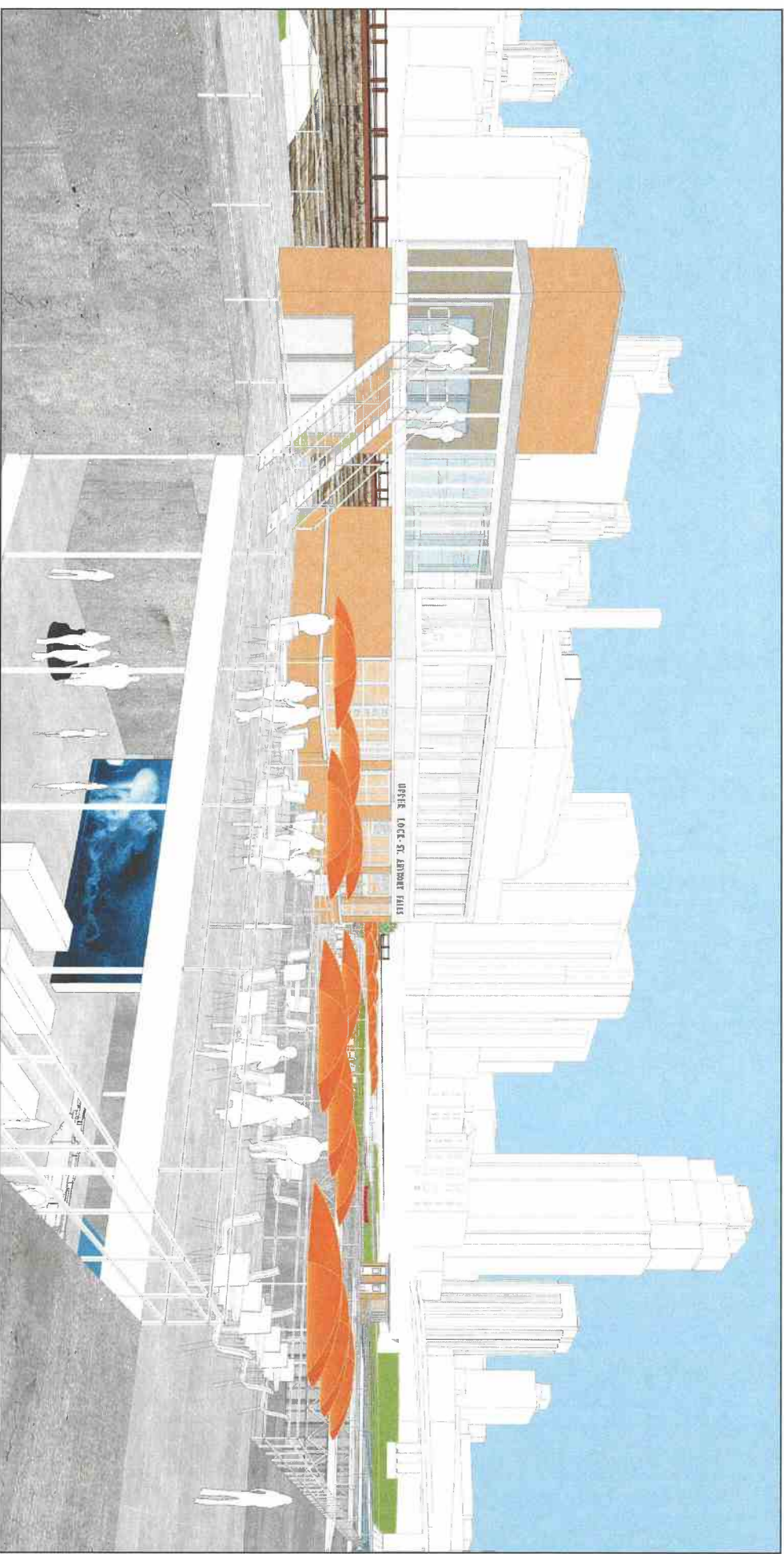


**The Falls** Visitor Center View of the Falls



VJAA

# The Falls Visitor Center and Observation Deck



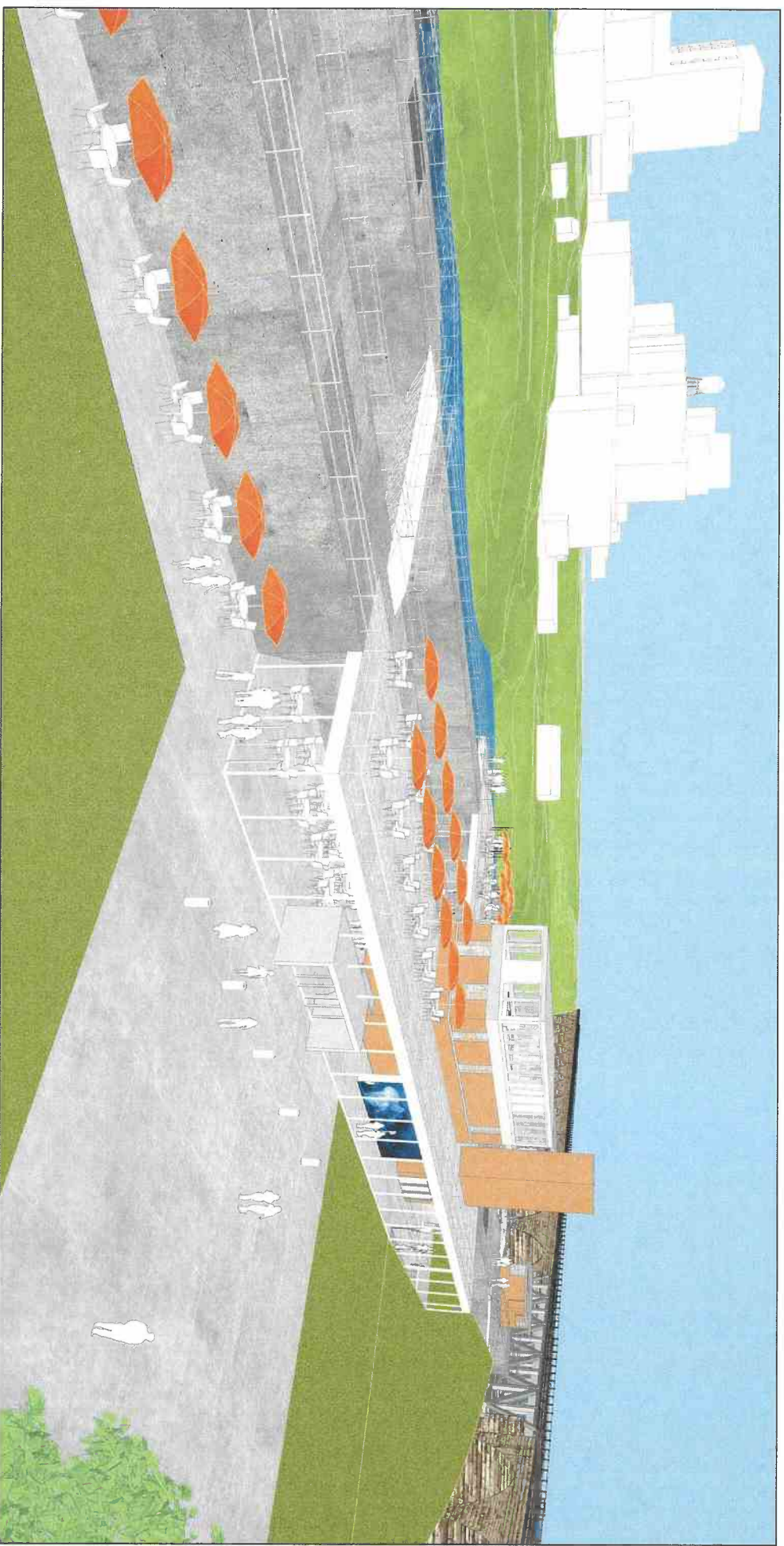
VJAA

**The Falls Plaza Entrance to Visitor Center and Food Venue**



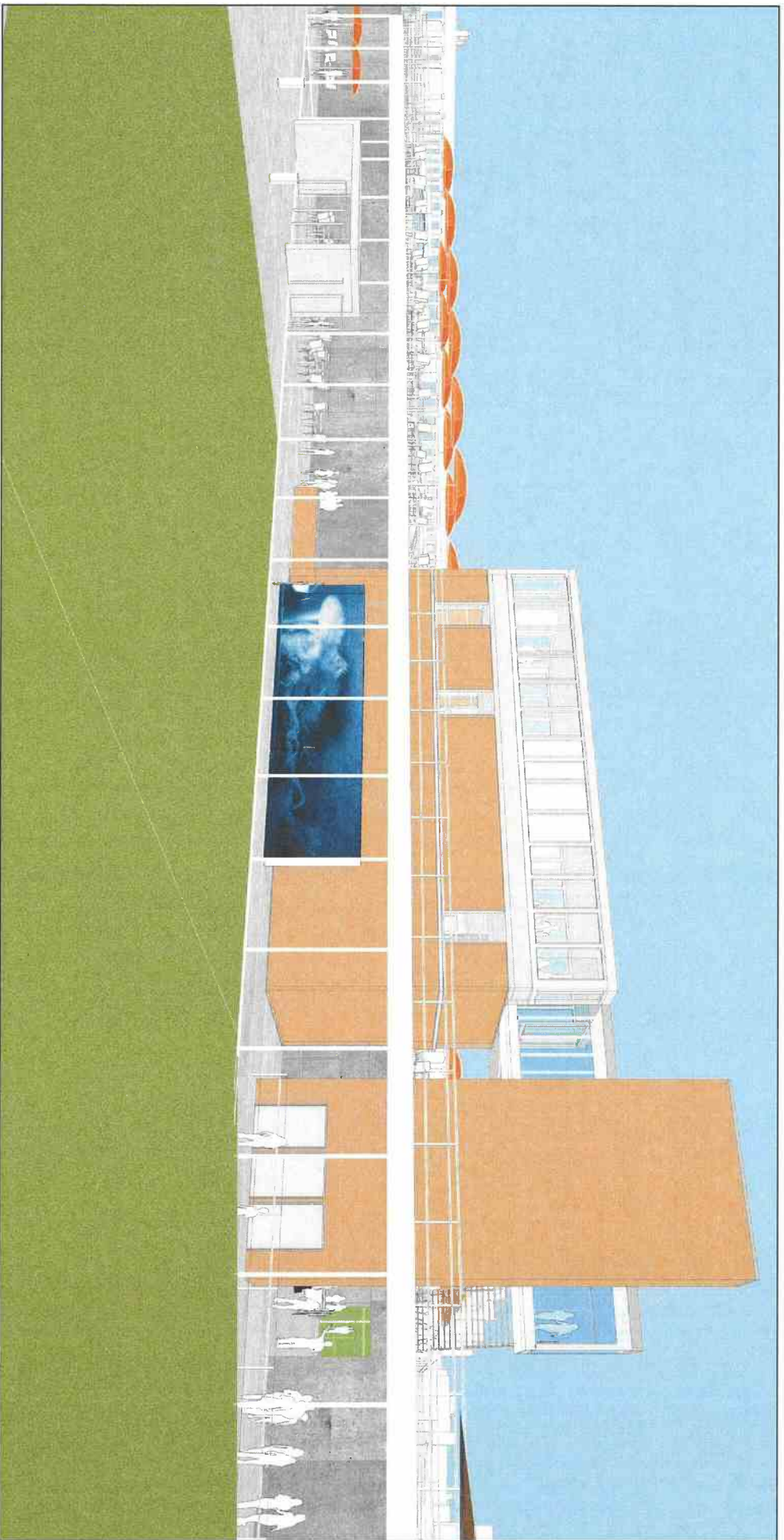
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**The Falls Plaza Entrance to Visitor Center and Food Venue**



VJAA

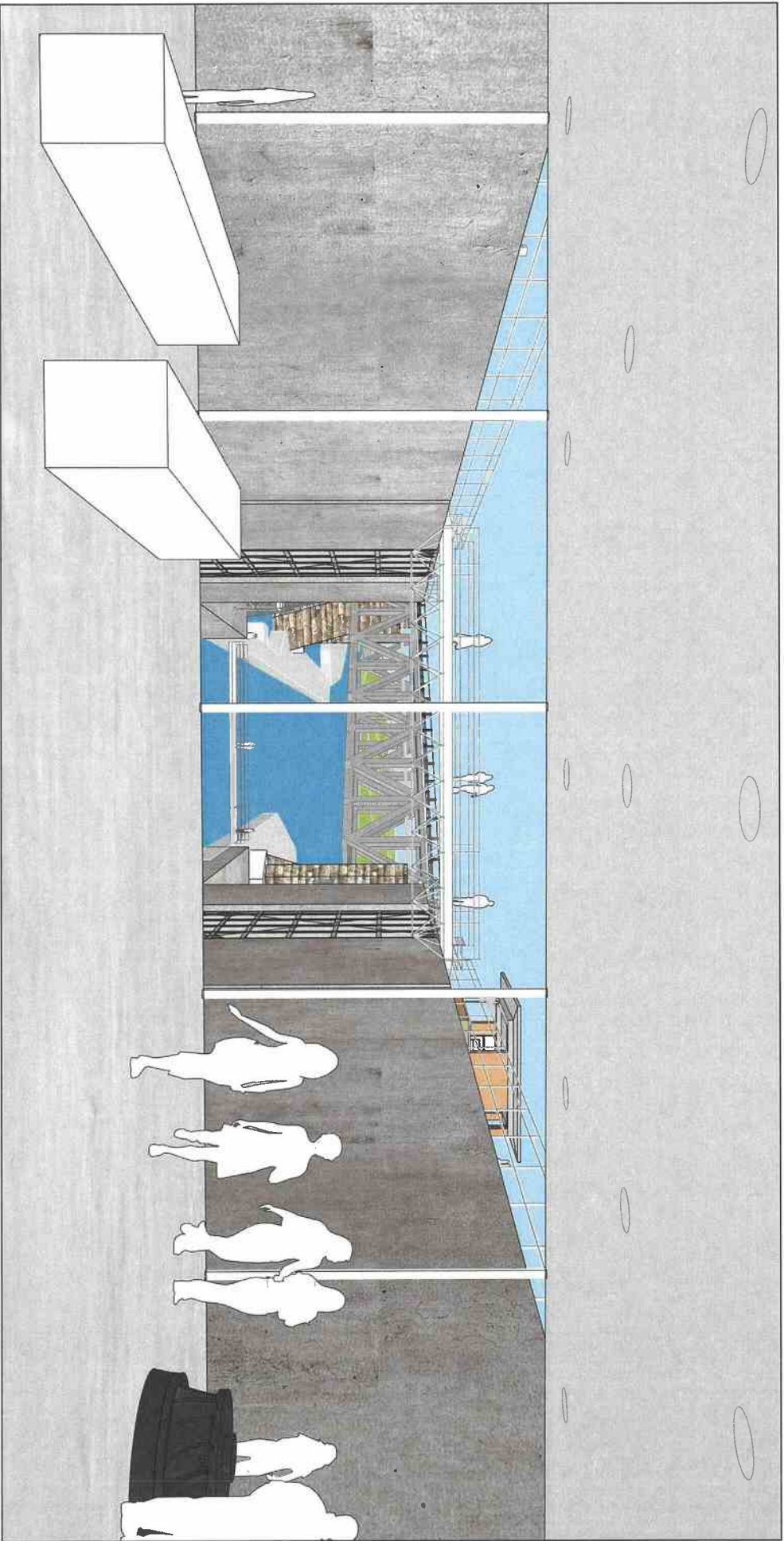
**The Falls Plaza Entrance to Visitor Center**



VJAA



The Falls View Downstream from Visitor Center



VJAA

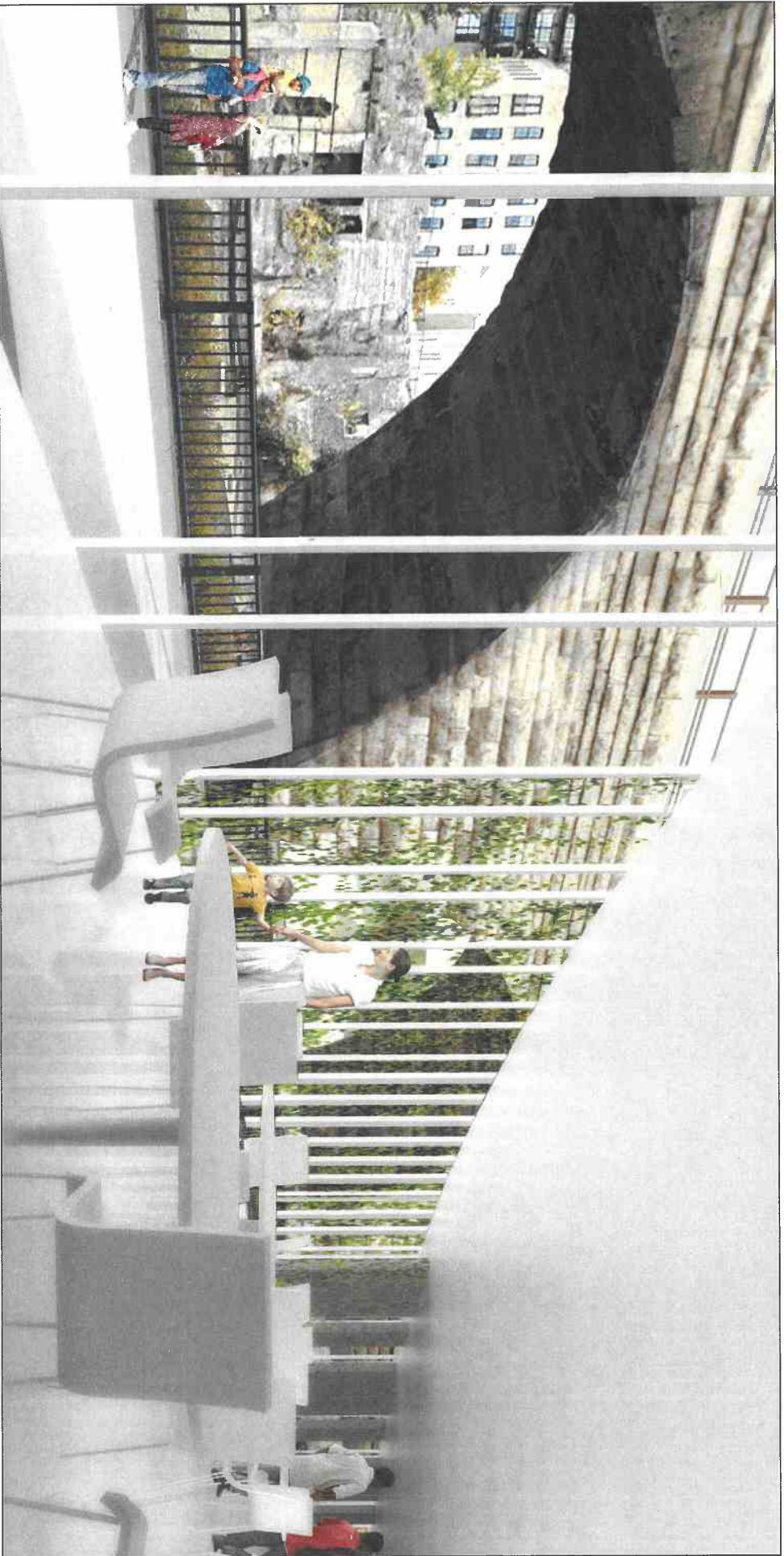
**The Falls** Visitor Center and Interpretive Center Entrance



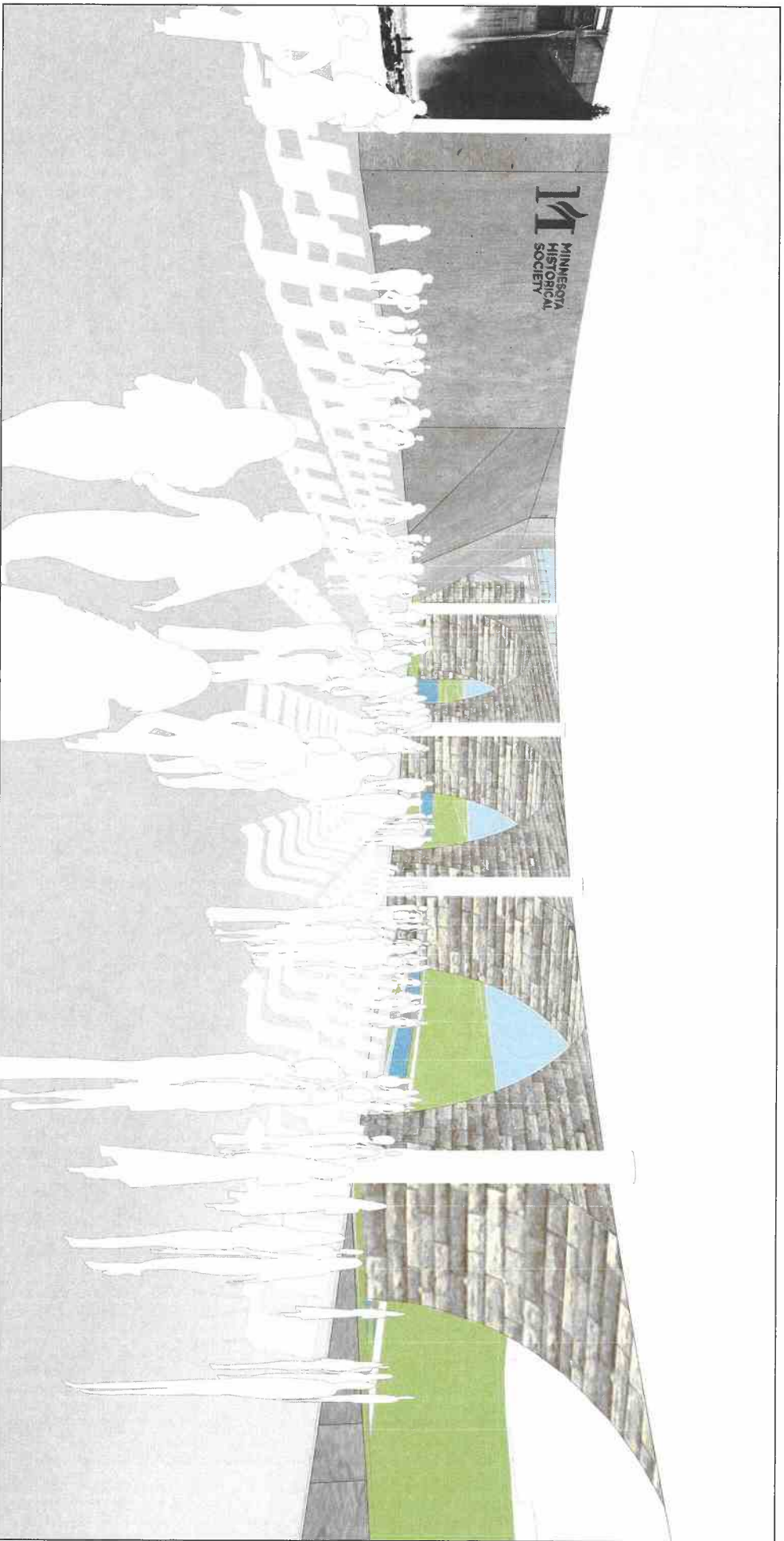
**The Falls** Interpretive Center: Exhibition and Event Space



**The Falls Interpretive Center: Exhibition and Event Space**



The Falls Interpretive Center: Event Space



VJAA

**The Falls** Proposed Boat Landing and Nice Ride Station



**The Falls Crown Hydro Conflict**



VJAA

## Crown Hydro Conflict Canoe Portage

### 1 The Falls Proposed Portage

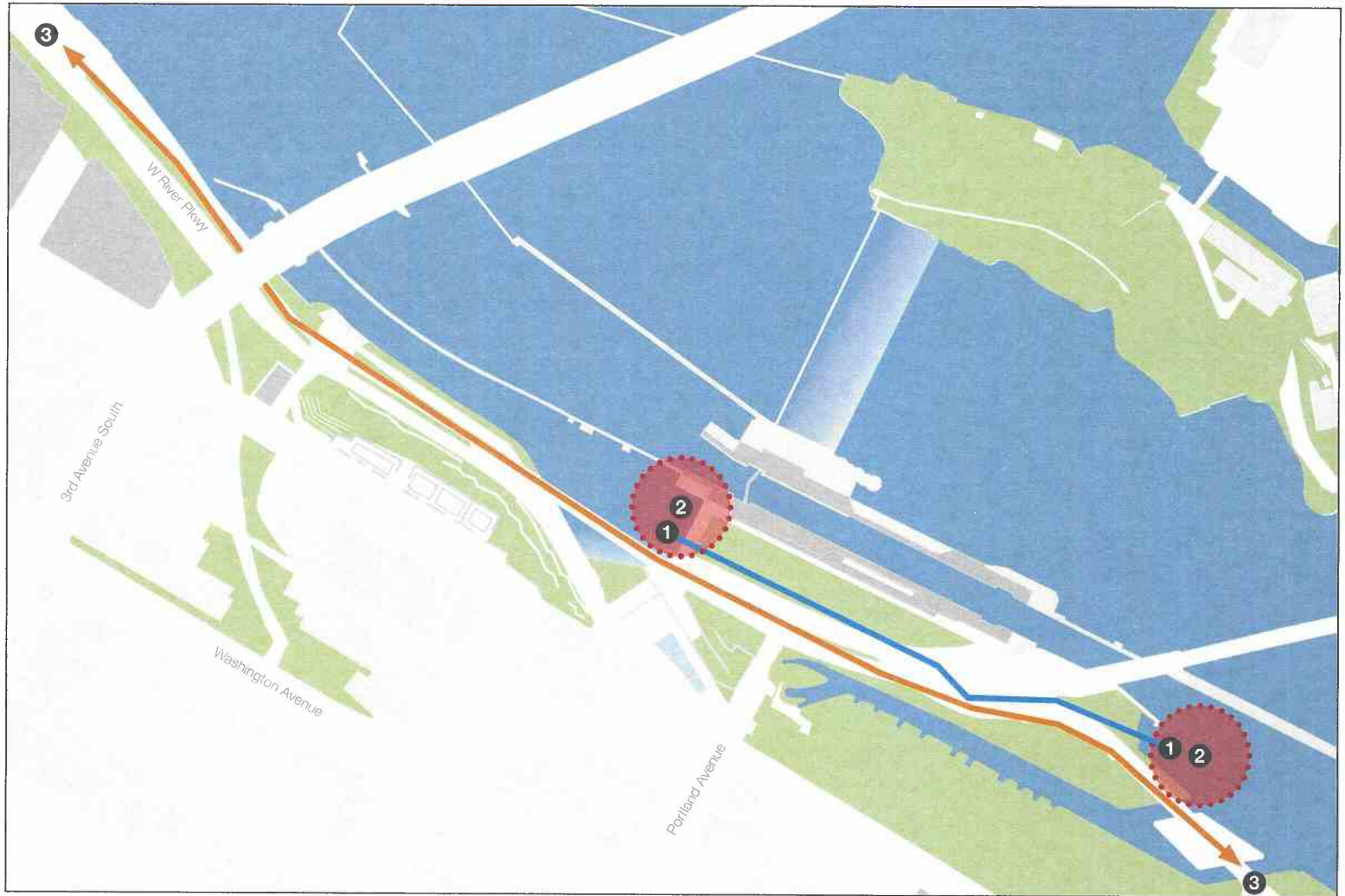
- A beach landing with a short downhill portage to a canoe dock by the Lock tailrace.

### 2 Crown Hydro Conflict

- The Hydropower building blocks the viewshed of the public plaza green space, access to the Lock from Stone Arch Bridge, and future use of parking lot for park and interpretive center.
- Water turbulence at turbine intake and tailrace discharge creates safety issues for canoeists and kayakers.

### 3 Crown Hydro Proposed Portage

- "Potential portage route and carry-in points developed by Crown Hydro" (Page 63 of the FERC Draft Environmental Assessment, Figure 10)
- Crown's proposed portage route is 175 rods, or about 2,900 feet.
- Crown Hydro's proposed portage is over four times longer than The Falls' proposed route.



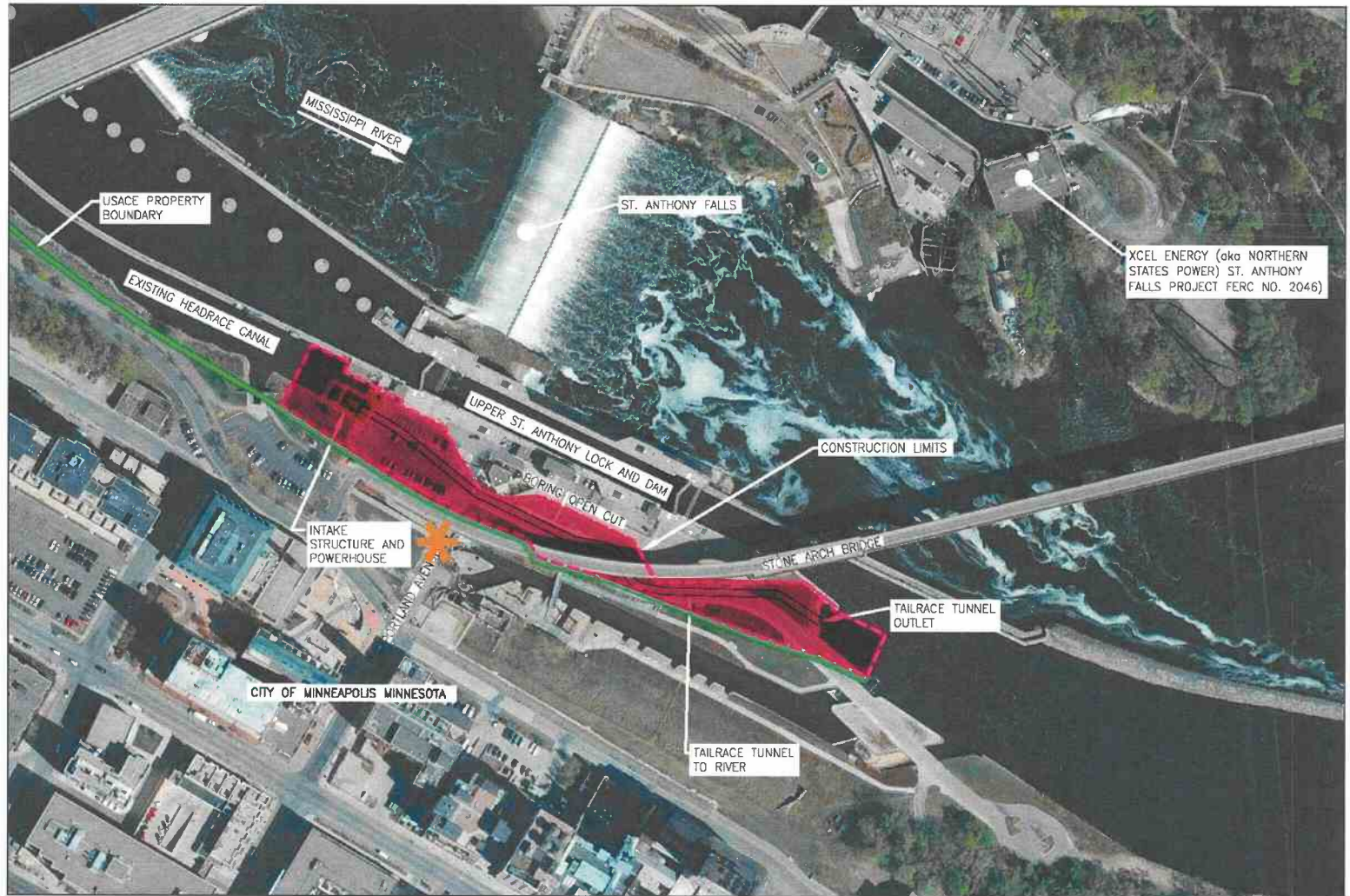


## Crown Hydro Conflict Restricted Access Between River and City

\* “This is the visitor gateway on the west bank where culture, history and recreation meet.”

[ page 7-4, CMPPP Master Plan ]

- Crown Hydro: Restricts access from Downtown, Waterworks and Stone Arch Bridge to Lock and Falls.
- Crown Hydro: Reduces the visual power of the falls, especially during dry periods, by using up to 1,000 cubic feet per second of water.
- Crown Hydro: Limits public use of Lock parking lot (potential 1-acre park and plaza and below grade parking).
- Intake structure, powerhouse, and tailrace tunnel outlet destroy historic fabric of the dam.
- Water turbulence precludes use of existing headrace canal and downstream quiet water for recreation (canoeing, kayaking, etc.).

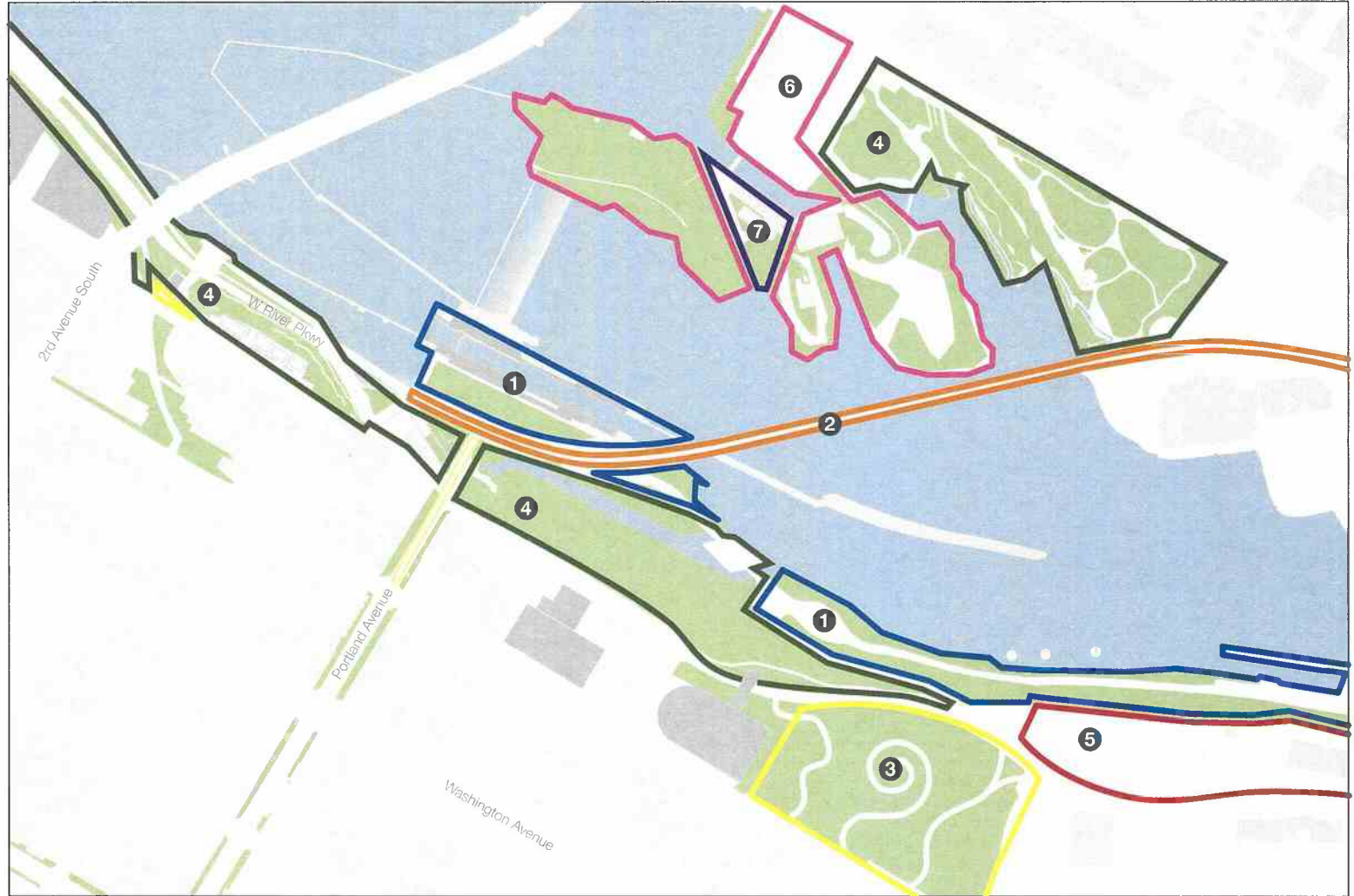


Source: Draft Environmental Assessment, Application For Non-Capacity Amendment of License, Crown Hydro, LLC, FERC Project No. 11175-025, page 12

## Supplementary Material

## The Falls Adjacent Land Ownership

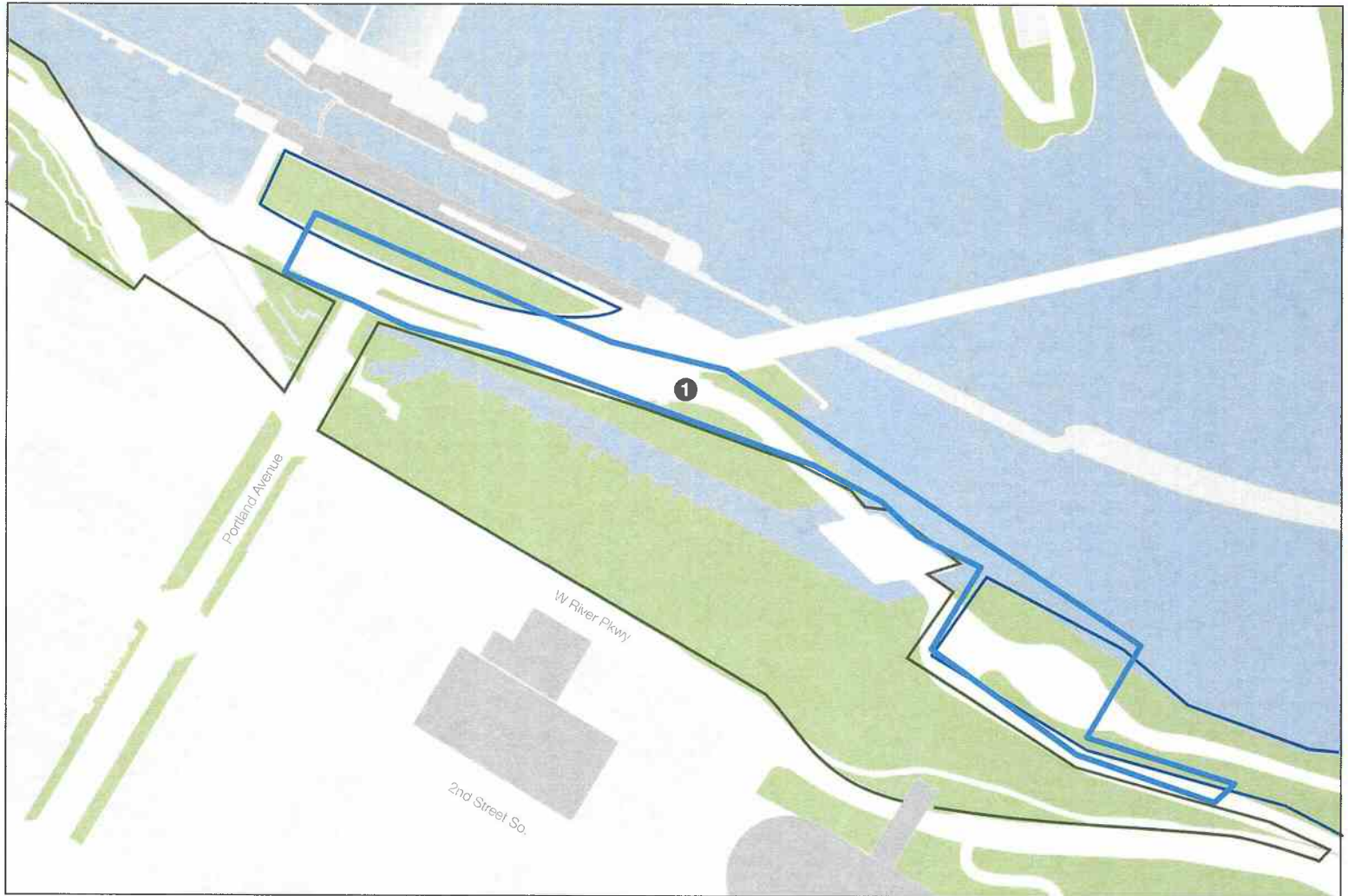
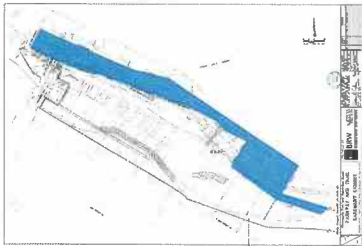
- ① United States Government
- ② Minnesota Department of Transportation (MnDOT)
- ③ City of Minneapolis
- ④ Minneapolis Park and Recreation Board (MPRB)
- ⑤ Minnegasco Inc.
- ⑥ Northern States Power Co. (Xcel Energy)
- ⑦ University of Minnesota



## Easement Exhibit Minneapolis Park and Recreation Board Parkway and Trail Easement

### 1 Minneapolis Park and Recreation Board (MPRB) easement on lands owned by U.S. Army Corps of Engineers

Source: MPRB easement on lands owned by U.S. Army Corps of Engineers, St. Paul District in the vicinity of St. Anthony Falls in Minneapolis, MN under P-11175. . FERC Online eLibrary, USAF Park Easement





# Central Mississippi Riverfront Regional Park Master Plan

April 1, 2015

Minneapolis Park and Recreation Board



Images from CAC Meetings provided by MPRB

## Public Engagement

### Introduction

One of the central tenets of the master planning process for the Central Mississippi Riverfront Regional Park (CMRRP) was the involvement of stakeholders in framing directions. Throughout the process, neighbors, stakeholders, and agencies were provided access to MPRB staff and the consulting team in an effort to guide the master plan in ways that best aligned with the diverse interests and perspectives of the Central Riverfront area.

The engagement process integrated the primary work of master planning the Central Riverfront area and the more design-focused work surrounding the Water Works Project. The results differed due to the specific goals of each effort, but as a master plan, the CMRRP established planning principles that were integrated

with the Water Works design effort. Each focus area of the CMRRP was built on both planning and design directions—recognizing it is the design explorations that compel reactions, but that planning principles are the core of this plan.

### Citizen Advisory Committee

At the outset of the master planning process, the Board of Commissioners appointed a Citizen Advisory Committee (CAC) to provide a direct connection between the planning effort and local interests. The CAC was active in 13 meetings, as well as in charrettes and open houses that occurred throughout the master planning process.

While the perspectives of CAC members varied, there were common interests expressed that became key components of the plan. Foremost among their opinions was the need to recognize Saint Anthony Falls as the primary character-defining element of the Central

Riverfront, a recognition that resulted in the CAC recommending changing the name of the regional park to Saint Anthony Falls Regional Park. The CAC was also keenly interested in preserving and enhancing the natural qualities of the Central Riverfront, making certain that those areas that offered a refuge to people and nature would remain a part of the park with integrity to their character and function.

The CAC offered significant insights into two other areas during the master planning process: maintaining consistency with the history of the riverfront, both in terms of recognizing the places where history is important and how the stories of the riverfront can be portrayed; and ensuring that past planning directions for the Central Riverfront, an area that has been studied intensely for more than 20 years, are maintained so that they make sense in this contemporary master plan. Because the CAC represents neighborhood interests, there were many opportunities for the planning initia-

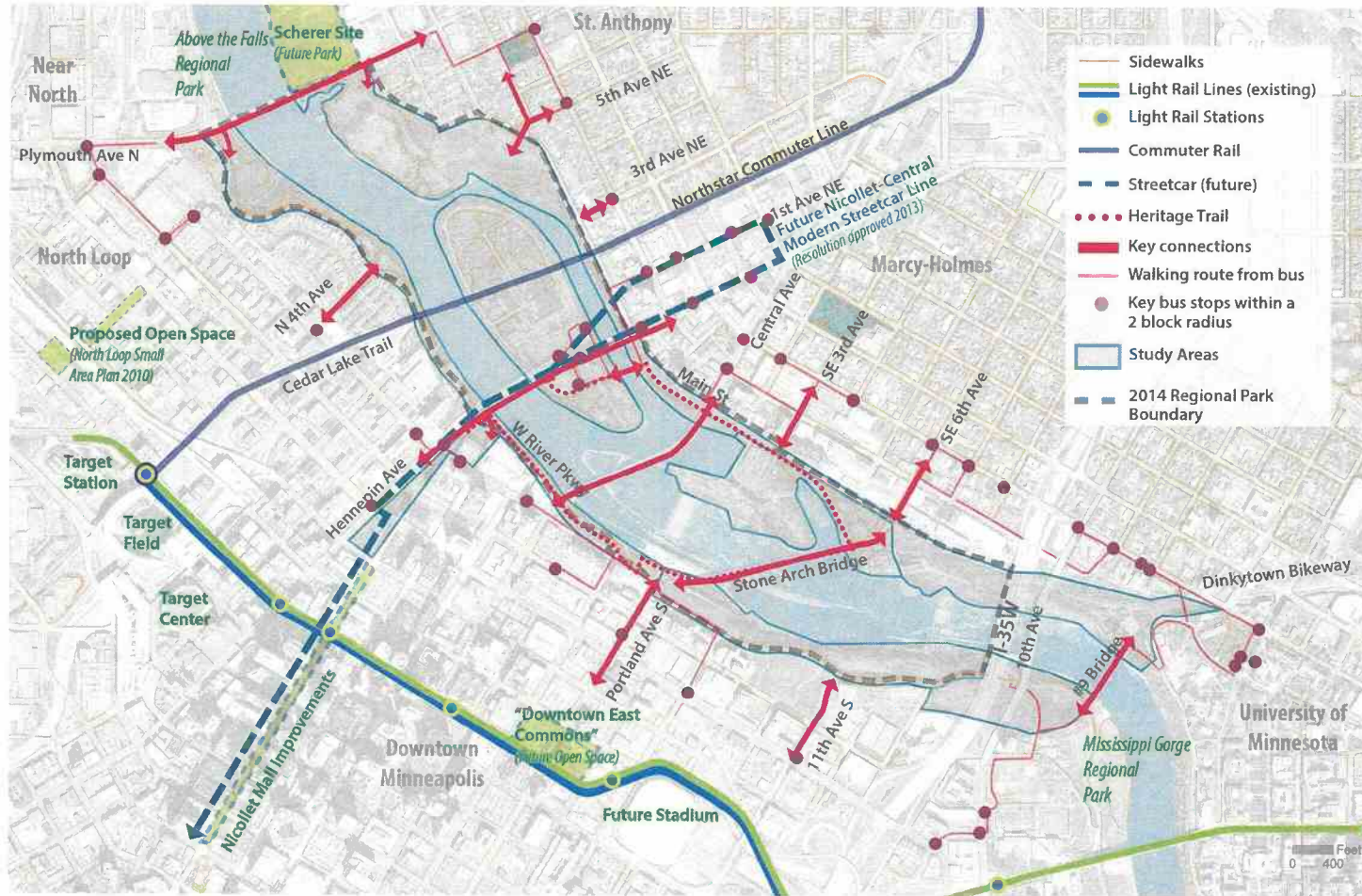


Figure 15: Existing Transit and Pedestrian Connections

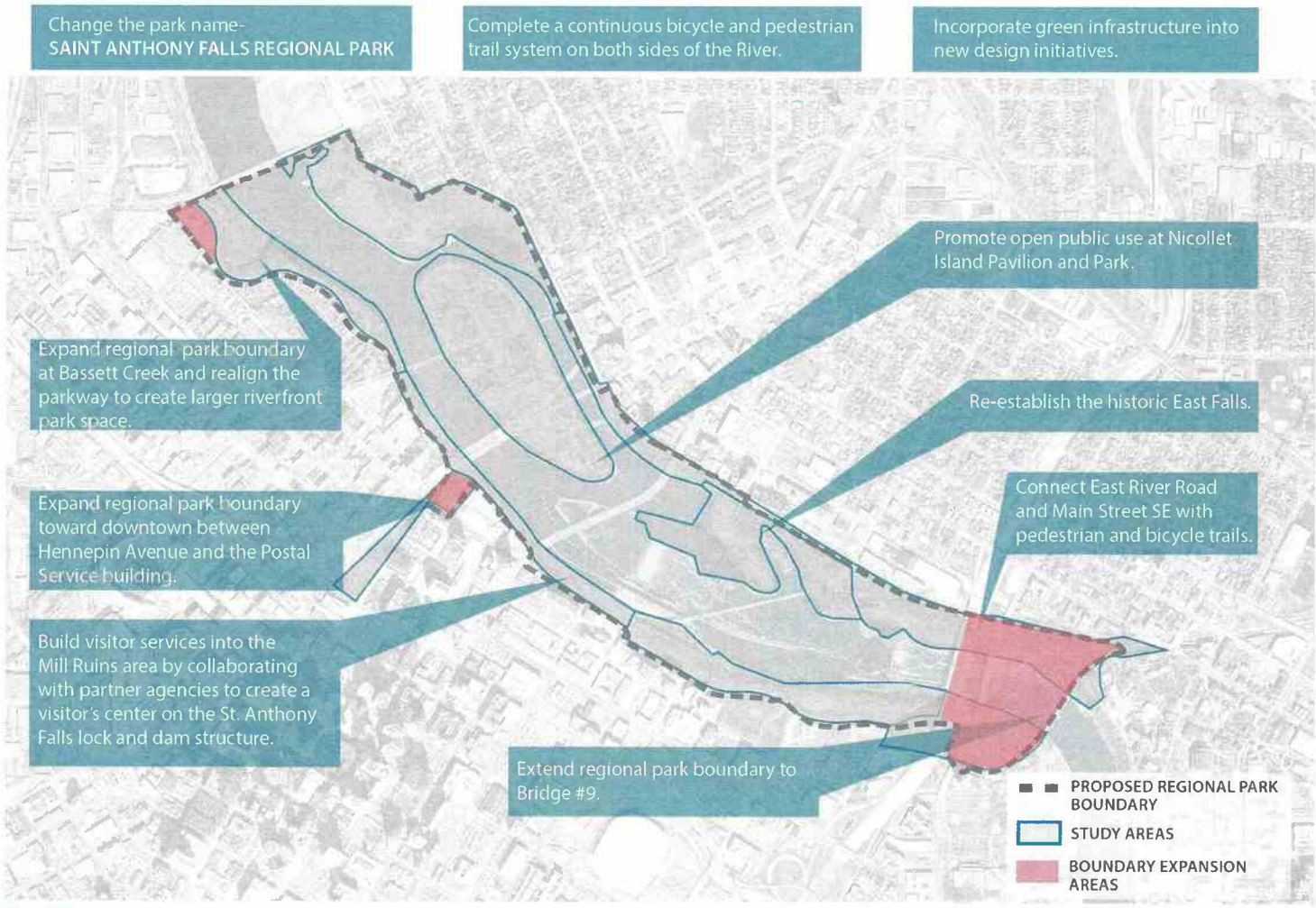


Figure 27: CMRRP Formative Moves



## Interpretation

For direction on interpretation of the area's history, this plan relies on two recent studies commissioned by the Saint Anthony Falls Heritage Board: "Our Changing Relationship to the Power of the Falls: An Interpretive Vision for the East Bank of Saint Anthony Falls" (draft, October 3, 2013), and "Changing Relationships to the Power of the Falls: An Interpretive Vision for the West Bank of Saint Anthony Falls" (draft, July 2014).<sup>1</sup> Both plans aim to provide visitors with experiences that:

- » Provide physical access with trails and structures
- » Connect the people and events through narrative
- » Extend exploration through online resources and location-based media<sup>2</sup>

The plan for the East Bank presents the following major recommendations:

1. Establish a visitor orientation center
2. Build clear and connected trails
3. Integrate interpretive experiences between sites and subjects



1986 Gatehouse excavation, Upper Lock and Dam



4. Develop Main Street as an experience connector
5. Restore and highlight the East Falls
6. Employ a wide array of interpretive modes and tools
7. Get people underground

Specific sites and subjects that should be highlighted are the East Falls, Chalybeate Springs, river ecosystems, hydroelectric sites, the Pillsbury A Mill complex, and tunnels and caves.<sup>3</sup>

On the opposite side of the river, the West Bank plan makes the following major recommendations:

1. Make indigenous cultures more visible
2. Create a more vibrant riverfront through expanded interpretive programming
3. Preserve the area's industrial ruins while providing appropriate accessibility to the public
4. Meet the needs of a growing number of visitors

5. Strengthen the visual and experiential cohesiveness of the area

The interpretive sites and subjects identified for this bank are Saint Anthony Falls and Spirit Island, the canal and gatehouse, railroads and rail corridors, the Upper Lock and Lower Lock and Dam, the mill ruins and tunnels, bridges, standing mills and related structures, and the Gateway District.

The CMRRP plan has directly incorporated these recommendations at a larger scale. (See **Figure 26**). The Interpretive Vision plans for the West Bank and East Bank are included in the appendix.

<sup>1</sup> Both plans were prepared by consultant Circinnulus. They will hereafter be cited as "Interpretive Vision East Bank" and "Interpretive Vision West Bank," respectively.

<sup>2</sup> "Interpretive Vision East Bank," 5, and "Interpretive Vision West Bank," 2.

<sup>3</sup> "Interpretive Vision East Bank," 6.

### 3. Mill Ruins Park

Mills Ruins Park is the premiere visitor's destination on the west bank of the river. With St. Anthony Falls upper lock and dam closing to navigation, the potential to create a visitor's center at this structure will create even more demand. Proposed amenities to accommodate this increased visitor demand must also acknowledge that there are two different visitor markets: the daily riverfront user, who may commute or walk through, and the regional park visitor who may spend an afternoon along the riverfront.

Interpreting the water power story of the St. Anthony Falls and continuing to excavate, conserve, and interpret ruins will be a priority for this park. The interpretive recommendations are consistent with the West Bank Interpretive Plan. The recommendations for Upper Mill Ruins, where the Water Works site lies, are consistent with the on-going design efforts of the MPRB and the Minneapolis Parks Foundation. The recommendations for Lower Mill Ruins are consistent with the 1991 Mill Ruins Park master plan and the West Bank Interpretive Plan.

#### Upper Mill Ruins Park

##### Supporting Initiatives (see Figure 33):

- A. Collaborate with partner agencies to create a visitor's center on the lock and dam structure. The building is anticipated to include an orientation center, interpretation, classroom, restrooms, food concession, and indoor/outdoor patio.
- B. Develop a park building at 1st Street S, near the 3rd Avenue Bridge adjacent to the rail grade that will facilitate vertical circulation. The building program is anticipated to include food concession, restrooms, indoor/outdoor patio, and outfitting shop.

C. Remove and historically record Fuji-ya building to expose historic ruins.

D. Create multi-purpose outdoor "rooms" to interact with the ruins along 1st Street S that are accessible from both sides.

E. Depict historic inlet canal from the riverbank to the gatehouse by exposing existing walls and bridge piers, using native plantings and pavement details to accurately interpret historic landscape patterns, and bridging new trail over the mouth of the inlet pond in the location of the historic rail bridge.

F. Expose elements of the stone seawall upstream from the canal inlet while still improving the ecological function of the shoreline.

G. Enhance pedestrian and bike connection under the Stone Arch Bridge in ways that depict and interpret buried mill ruins.

H. Enhance and simplify bike trail connectivity at the terminus of the Stone Arch Bridge. Utilize proposed woonerf connection to provide better bike connections from downtown to the riverfront.

I. Modify parkway alignment to provide a greater buffer to the 1st Street S/5th Avenue intersection in a manner that also interprets and respects the location of the gatehouse and canal.

J. Provide traffic calming features along West River Parkway that give precedence to the bicycle and pedestrian user.

K. Create a soft landing for canoes and kayaks.



Precedent Image of Allegheny Riverfront Park, Pittsburgh, PA



Precedent Image of Allegheny Riverfront Park, Pittsburgh, PA

# **APPENDIX B**

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project No. 11175-020 MN  
Crown Hydro Project  
Crown Hydro, LLC

Thomas R. Griffin  
Crown Hydro Company  
5436 Columbus Ave. South  
Minneapolis, MN 55417

**JUN 19 2003**

Subject: Determination of Start of Construction Based on Manufacturing of Generating Equipment

Dear Mr. Griffin:

On March 10, and supplemented on March 21, 2003, URS Corporation filed documentation that construction of the Crown Hydroelectric Project, FERC No. 11175, has commenced by the initiation of the manufacturing process for the project generating equipment. URS made the filing on behalf of the Crown Hydro, LLC. When constructed, the project will be located on the Mississippi River, in Hennepin County, Minnesota. The deadline for starting construction under the license was March 19, 2003.<sup>1</sup>

In general, commencement of project construction, under Section 13 of the FPA, is marked by the date of the start of actual work on machinery or facilities considered to be significant, permanent elements of the project.<sup>2</sup> Commencement of construction can start with the manufacturing of turbines or generators for the project, where the actual time for manufacturing of new turbines and generator units is equal to or greater than the period of physical construction at the site.<sup>3</sup>

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<sup>1</sup> See, Order Granting Extension of Time Under Articles 310, 406, and 411, issued June 27, 2001.

<sup>2</sup> See UHA-Braendly Hydro Associates, 46 FERC ¶ 61,178 (1989).

<sup>3</sup> See Daniel J. Horrall, 52 FERC ¶ 61,302 at p. 62,209 (1990). See also Atlantic  
(continued...)

- 2 -

Your filing includes several attachments as documentation that construction has started based on partial fabrication of the draft tubes liners for the project. The following summarizes the information you provided, which is relevant to the determination of start of construction:

1. A proposal from Canadian Hydro Components Ltd ( Canadian Hydro) to Crown Hydro LLC, (Crown Hydro) for the purchase and manufacturing of generating equipment, which includes equipment description, and schedule for payment and delivery of the equipment.
2. A letter dated March 17, 2003, from Canadian Hydro to Crown Hydro documenting the start of fabrication of the turbine components, accompanied by 5 photos. The letter indicates that Canadian Hydro has received a partial payment of \$225,000.00 for the draft tubes. A notarized affidavit from Babette de Sousa, General Manager, Canadian Hydro dated March 18, 2003 attesting the veracity and accuracy of the information on the letter.
3. A purchase order signed on February 25, 2003, by Canadian Hydro and Crown Hydro for a lump sum of \$1,885,000.00. The letter indicates that \$225,000.00 was already paid to Canadian Hydro in the form of \$25,000.00 on November 15, 2001 and \$200,000.00 on January 28, 2003. The letter also includes a copy of a \$200,000.00 check representing the payment.

Based on our review of the material you filed we find that you have started construction of the project before the deadline of March 19, 2003. However, we would like to remind you of the following:

1. Our approval for start of construction, does not apply to any civil site work. The approval only applies to the manufacturing of generating equipment.
2. Our approval does not exempt you from complying with any pre-civil-site-construction or post-construction license articles.

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(...continued)

Power Development Corporation, 40 FERC ¶ 61,253 (1987).

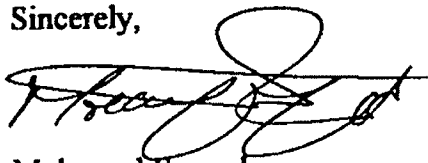
- 3 -

For us to be informed of the progress of your work, please provide our Chicago Regional Office and this office with the following:

A semi-annually progress report on the manufacturing of the equipment, to include photographs showing actual project equipment either completed or in preparation stages, and the status of future payments for the manufacturing of the generating units under the present contract.

If you have any questions, please contact Anumzziatta Purchiaroni at (202) 502-6191, or by e-mail at [anumzziatta.purchiaroni@ferc.gov](mailto:anumzziatta.purchiaroni@ferc.gov).

Sincerely,



Mohamad Fayyad  
Engineering Team Lead  
Engineering and Jurisdiction Branch  
Division of Hydropower Administration  
and Compliance

cc: Jessica Overmohle  
URS Corporation  
Thresher Square  
700 Third Street South  
Minneapolis, MN 55415

# APPENDIX C

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project No. 11175-024 -- Minnesota  
Crown Mill Hydroelectric Project  
Crown Hydro, LLC

November 4, 2014

Mr. Thomas R. Griffin  
President, Crown Hydro, LLC  
2432 East 1st Street  
Duluth, MN 55812

Subject: Preparation of amendment application

We received your September 30, 2014 progress report for developing an amendment application for the unconstructed Crown Mill Project.<sup>1</sup> You filed this report in response to our letter issued April 3, 2014. In your report, you say you intend to complete all needed studies by December 2014, circulate a draft amendment application for stakeholder review by February 2015, and file a final amendment application for Commission approval by April 2015. This schedule delays your final amendment application by about three months compared to the schedule you provided last February.

Despite your proposal to file a final amendment application by April 2015, we are concerned that you are not making adequate progress because much of the information referenced in your September 30, 2014 progress report is preliminary. Your report does not contain or reference any actual study results (except a single mussel survey), it is not clear that you have consulted with all needed agencies, and your proposed plans and specifications for actually modifying and building the project have not yet been developed (or at least plans have not been provided to the Commission). It is unclear how you will have sufficient information or a project design developed in time to meet your most recent April 2015 proposed filing date.

It has now been 18 months since we provided you with instructions for developing an application to amend the license for this project in lieu of a Commission proceeding to terminate the license by implied surrender. The license was issued over 14 years ago and project construction has not begun and there's nothing before the Commission to act

<sup>1</sup> Order Issuing License (Major Project), issued March 19, 1999 (86 FERC ¶ 62,209).



upon. Therefore, please file a complete amendment application for Commission approval with all needed information as described in previous correspondence by April 30, 2015, as proposed in your most recent September 30, 2014 progress report. Otherwise, the Commission may resume a proceeding to terminate the license for this project by implied surrender.<sup>2</sup>

If you have any questions concerning this matter, please contact Mr. B. Peter Yarrington at (202) 502-6129 or [peter.yarrington@ferc.gov](mailto:peter.yarrington@ferc.gov).

Sincerely,



Heather E. Campbell  
Acting Director  
Division of Hydropower Administration  
and Compliance

cc: Mr. Bill Hawks  
4100 Shoreline Drive, Suite 301  
Spring Park, MN 55384

Mr. Donald H. Clarke  
Counsel to Crown Hydro, LLC  
Law Offices of Duncan, Weinberg, Genzer & Pembroke, P.C.  
M Street, NW, Suite 800  
Washington, DC 20036

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<sup>2</sup> See Notice of Termination of License by Implied Surrender dated June 14, 2012.

## **APPENDIX D**

UNITED STATES OF AMERICA 110 FERC ¶62,121  
FEDERAL ENERGY REGULATORY COMMISSION

Crown Hydro LLC

Project No. 11175-016

ORDER DISMISSING AMENDMENT APPLICATION

(Issued February 10, 2005)

On April 4, 2002, and supplemented on July 1, and December 13, 2002, Crown Hydro LLC (Crown), licensee for the 3.4-megawatt Crown Mill Project, FERC No. 11175, filed an application to amend its license. Crown proposed to revise the project design and boundary so as to relocate the proposed powerhouse, and to make additional modifications to the project. When constructed, the project would be located at the Upper St. Anthony Falls Dam on the Mississippi River, (a navigable waterway of the United States),<sup>1</sup> in the City of Minneapolis, Hennepin County, Minnesota. The project would occupy 0.5 acre of United States lands under the jurisdiction of the U.S. Army Corps of Engineers (Corps).

BACKGROUND

The license for the Crown Mill Project was issued March 19, 1999,<sup>2</sup> and authorized the project works consisting of: (a) a 17-foot-deep, 50 to 100-foot-wide, 350-foot-long headrace canal; (b) a gated intake structure with a trash rack; (c) the intake tunnel; (d) the forebay; (e) two steel penstocks leading from the forebay to the turbines; (f) a powerhouse room to be constructed in the basement of the Crown Roller Mill Building containing two vertical Kaplan 1,700-kW generating units and having a hydraulic capacity of 500 cubic feet per second (cfs), for a total installed capacity of 3,400 kW; (g) the 19-foot-high, 15 to 30-foot-wide, 380-foot-long tailrace tunnel; (h) the 20 to 100-foot-wide, 700-foot-long tailrace canal; (i) an underground 13.8-kV transmission line; and (j) appurtenant facilities.

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<sup>1</sup> 9 FPC 1323. (1950)

<sup>2</sup> See, 86 FERC ¶ 62,209, Order Issuing License (Major Project).

Project No. 11175-016

2

The project would use the reservoir and Upper St. Anthony Falls Dam, a horseshoe shaped dam with a concrete spillway about 50 feet high (also known as St. Anthony Falls).

#### PROPOSED AMENDMENT

In the April 4, 2002 filing, Crown explains that because of its inability to reach an acceptable lease agreement with the Crown Roller Mill Building owner, the use of the Crown Building as a powerhouse became impractical. Therefore, Crown requested Commission approval to revise the project design boundary so as to relocate the powerhouse from the west side to the east side of West River Parkway, and to be within the footprint of the remains of the Holly and Cataract Mill Foundation, known as Mill Ruins Park, owned by the City of Minneapolis Park and Recreation Board (Park Board). The entire project would lie within the boundaries of the Mississippi National River and Recreation Area, and within the St. Anthony Falls National Register Historic District.

In the April 4, 2002 filing, Crown indicates that, from the tailrace to the river, the project design would be essentially the same as originally licensed. The project would include an intake structure with a trash rack; two slide gates; forebay; two 8-foot-diameter steel penstocks, leading the flow from the forebay to the turbines; a powerhouse containing two identical generating units, a transmission line; and appurtenant facilities.

The powerhouse would be a one-story above-grade structure constructed on the east side of the West River Parkway, within the footprint of the remains of the Holly and Cataract Mill Foundation. The proposed facility would contain two 1,700-millimeter runner diameter axial flow adjustable blade turbines connected to two vertical synchronous generators each rated 1,750 kVA at 0.9 PF (1,575 kW equivalent), at 42 feet net head. The project would remain as a run-of- river plant with a minimum and maximum discharge at the plant of 250 cfs and 1,000 cfs, respectively. Each turbine would have a rated flow of 500 cfs. Discharge through the units would be controlled by adjustable wicket gates loaded just above the turbine blades. Efficiency would be optimized by adjustable runner blades. Wicket gates would provide the means for starting, adjusting, and stopping flow through the turbines.

The excavation work in the forebay, rehabilitation of the historic gatehouse, and construction of a new intake structure would be essentially the same as described in the license exhibits. Flow from Turbine No. 1 draft tube discharges into the Holly Tunnel, which subsequently flows into the City Tunnel, then into the tailrace. Flow from Turbine No. 2 draft tube discharges into the First Street Tunnel, then into the tailrace.

Project No. 11175-016

3

## CONSULTATION

In the April 4, 2002 filing, Crown included comments from the following agencies: Minnesota Pollution Control Agency (December 27, 2002); U.S. Army Corps of Engineers (January 14, 2003); and the City of Minneapolis (February 21, 2003).

On January 17, 2003, the Commission issued public notice of the proposed amendment application. The notice set February 18, 2003, as the deadline for filing protests and motions to intervene. The notice was re-issued on February 26, 2003, because several state and federal agencies requested additional time to provide comments. The deadline for filing comments/motions to intervene was March 18, 2003. Table 1 provides a listing of the agencies that provided comments and the date comments were filed:

Table 1

<b>Agency/Entity</b>	<b>Comment Filing Date</b>
City of Minneapolis	02/21/03
Standard Mill Limited Partnership	03/17/03
United States Department of the Interior	03/17/03
Minnesota Department of Natural Resources	03/18/03
Minneapolis Park and Recreation Board	03/06/03
Board of Hennepin County Commissioners	04/18/03
Minnesotans for an Energy Efficient Economy	04/21/03

On February 21, 2003, the City of Minneapolis (City) filed a Motion to Intervene, stating that the City does not object to the proposed development of the project as long as it is reasonably feasible and includes adequate environmental mitigation. Crown responded to the City by letter filed on April 23, 2003.

Project No. 11175-016

4

On March 17, 2003, Standard Mill Limited Partnership filed a Motion to Intervene and stated its concern that the proposed location of the project could negatively affect its historic property, which is adjacent to the proposed location. Therefore, it requested that the Commission base its decision on an environmental assessment that reflects the proposed project. Crown responded by a letter filed on April 23, 2003, stating that it was engaged in the consultation process required under section 106 of the National Historic Preservation Act, and would continue to work with the interested parties to mitigate any potential adverse effects resulting from the project.

On March 17 and 18, 2003, respectively, the U.S. Department of the Interior (Interior) and the State of Minnesota Department of Natural Resources (MDNR) filed separate motions to intervene. In comments filed March 19, 2003, Interior described measures that should be taken during and following construction to minimize impacts to vegetation, wildlife, and fish. The measures should include restoring native vegetation in the project area, in addition to controlling erosion and sedimentation. Crown responded to the comments in a letter filed on May 5, 2003. The MDNR stated that hydropower operations should be monitored by the licensee, and data (flow and water levels) must be submitted to the MDNR on a monthly or quarterly basis. Crown responded to MDNR's comments by letter filed on April 18, 2003.

In addition, by letters filed April 18 and 21, 2003, respectively, the Board of Hennepin County Commissioners and the Minnesotans for an Energy-Efficient Economy stated their support for the proposed project.

On March 6, 2003, the Park Board filed a motion to intervene opposing the amendment proposal, and provided the following reasons:

1. The irreparable damage to Park Board's Mill Ruins Park that the relocated powerhouse and water conveyance components of the project could do to the goals of the Park Board and the City of Minneapolis in their ongoing development of recreational facilities and historic preservation activities in the project area;
2. The absence of a lease agreement between Crown and the Park Board for use of their land, despite the Park Board's attempts to initiate negotiations with Crown; and
3. Crown's demonstrated inability to meet license requirements and deadlines.

In a letter filed April 18, 2003, Crown responded to the Park Board's comments by stating that the issues raised by the Park Board can be resolved after a Power Purchase

Project No. 11175-016

5

Agreement (PPA) is finalized. On June 17, 2003, Crown filed with the Commission a letter indicating that the subject PPA was approved on June 5, 2003.

## DISCUSSION

The Energy Policy Act of 1992 amended Federal Power Act (FPA) section 21 to include the following proviso: "That no licensee may use the right of eminent domain under this section to acquire any lands or other property that, prior to [October 24, 1992, the 1992 Policy Act's enactment date], were owned by a State or political subdivision thereof and were part of or included within any public park, recreation area or wildlife refuge established under State or local law."

In a letter issued January 13, 2004, Commission staff informed Crown that further processing of the amendment application awaits the timely resolution of the land rights issue; that the 1992 amendments to section 21 of the FPA bar Crown from using the right of eminent domain authority under that section to obtain rights in the Park Board's land; and that consequently, no purpose is served processing the amendment application, unless the Park Board will agree to a conveyance of rights in its land to the licensee that is acceptable under the requirements described in the letter. In the same letter, staff informed Crown that it will not maintain the amendment application on the Commission's docket unless an acceptable conveyance will be executed within a reasonable time, and that failure to do so will result in the dismissal of the licensee's amendment application.

Staff has granted Crown's requests for several extensions of time to file an acceptable conveyance of Park Board land in letters issued January 13, 2004, May 3, 2004, July 15, 2004, and September 17, 2004. In its September 17, 2004 letter, staff granted Crown a 45-day extension of time, until October 26, 2004 to file an acceptable conveyance of Park Board land. In the letter, staff stated that "any further requests for extension of time must also include documentation of Crown attorney's investigations regarding Crown's right to use eminent domain authority [under FPA section 21], and any concrete evidence (such as exchanges of letters and summaries of meetings) of negotiations with the Park Board."

In an October 26, 2004 letter, Crown requested an additional extension of time. In the letter, p. 1, Crown admits that there are no longer any ongoing lease negotiations between Crown and the Park Board and that therefore Crown has no option but to investigate the use of eminent domain authority under FPA section 21.

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In a November 9, 2004 letter, the Park Board states that eminent domain is not available to Crown and refers to its August 18, 2003 letter, outlining the acquisition and development of the land involved to show that Crown cannot use FPA section 21 eminent domain to acquire the Park Board's land.

Crown argues that, while the Park Board may have acquired the land in question prior to 1992, it did not include it in a public park established under State or local law until Mill Ruins Park was established in the Fall of 2001. It attaches to its October 26 letter various publications from the Park Board's Web site and various Park Board resolutions to support this argument.

However, the record shows that not only did the Park Board own the land in question but also that the land was included within what can only reasonably be described as a "public park" or "recreation area" "established under State or local law" prior to October 24, 1992, as required by the proviso. The record shows that:

1. In 1977 through 1984, the Riverfront Development Coordination Board (a Minneapolis joint-powers agency (no longer in existence)), the Metropolitan Council (the regional planning organization for the seven-county Twin Cities metropolitan area), and the Park Board, pursuant to various development reports and government actions, including the Minneapolis City Council's adoption of a land-use map, designated the land in question as "parkland";
2. In 1986 and 1990, respectively, the Park Board, through court-ordered condemnation, acquired for "park, parkway and roadway purposes" the portions of the land in question known as the Fuji-Ya property (which includes lands where Crown proposes to locate its hydropower generating facility) and the Shiely property (through which Crown proposes to channel tailrace water); and
3. In 1987 and 1990, respectively, the Park Board developed the portion of the land that Crown proposes to use for its generating facilities with "bicycle and pedestrian trails, ornamental lighting, and river-edge railings, site furnishings, landscaping, parking areas, interpretive signage, and other park features," and the Park Board developed the area where Crown intends to channel tailrace water as "passive green space." See the Park Board's August 18, 2003 letter, pp. 2-4, and its November 9, 2004 letter, pp. 2-4.

Consequently, notwithstanding Crown's new evidence indicating that the Park Board may not have established Mill Ruins Park as a state park until after 1992, the pre-1992



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designation, acquisition, and development of the land involved here as “parkland” with various park improvements for use and enjoyment by the public include that land within the phrases “public park” or “recreation area” in the proviso of FPA section 21.

Crown has failed to show that it can obtain the necessary property rights in the Park Board’s land, either by an agreement with the Park Board or by eminent domain authority under FPA section 21. Therefore, for the reasons set forth above, Crown's latest request, filed October 26, for an extension of time to file an acceptable conveyance of the Park Board's land in Minneapolis' Mill Ruins Park needed for Crown's license amendment is denied by this order. In addition, Crown’s application for amendment of license to revise the project design and boundary so as to relocate the powerhouse is dismissed by this order. The dismissal is without prejudice to Crown re-filing the application if it ever obtains the requisite property rights.

The Director orders:

(A) The licensee's amendment application to change project design and to relocate the powerhouse filed on April 4, 2002, and supplemented on July 1 and December 13, 2002, is dismissed.

(B) The licensee’s request for an additional extension of time to file an acceptable conveyance of Park Board land, or evidence regarding the right to use eminent domain authority under FPA Section 21, is denied.

(C) This order constitutes final agency action. Requests for a rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Joseph D. Morgan  
Director  
Division of Hydropower  
Administration and Compliance

Project No. 11175-016

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# **APPENDIX E**

UNITED STATES OF AMERICA 111 FERC ¶61,315  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Crown Hydro LLC

Project No. 11175-023

ORDER DENYING REHEARING AND REQUEST FOR ABEYANCE

(Issued June 1, 2005)

1. On April 4, 2002, as supplemented July 1, and December 13, 2002, Crown Hydro LLC (Crown), licensee for the unconstructed 3.4-megawatt (MW) Crown Mill Project No. 11175, filed an application to amend its license to relocate the project's proposed powerhouse. By order issued February 10, 2005,<sup>1</sup> staff dismissed Crown's amendment application. Crown has filed a timely request for rehearing of staff's order and a request to hold the amendment proceeding in abeyance.

2. As described below, Crown's requests for rehearing and for abeyance are denied. This order is in the public interest because it is consistent with Congress' intent to protect state and local public parks and recreation areas from condemnation by licensees.

**Background**

3. The license for the Crown Mill Project was issued on March 19, 1999.<sup>2</sup> The proposed project would be located at the Upper St. Anthony Falls Dam on the Mississippi River in the City of Minneapolis, Hennepin County, Minnesota. The entire project would lie within the boundaries of the Mississippi National River and Recreation Area, and

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<sup>1</sup> 110 FERC ¶ 62,121 (2005).

<sup>2</sup> 86 FERC ¶ 62,209 (1999). The Commission issued the license to Crown Hydro Company. In 2001, the Commission approved the transfer of the license to Crown Hydro LLC. 95 FERC ¶ 62,254 (2001).

within the St. Anthony Falls National Register Historic District, an area that includes several sites of historic mill properties. The project would occupy 0.5 acre of United States lands under the jurisdiction of the U.S. Army Corps of Engineers (Corps).<sup>3</sup>

4. As licensed, the project's powerhouse was to be located in the basement of the Crown Roller Mill building on the west side of Minneapolis' West River Parkway near the center of the city. The project required reconstructing Crown Roller Mill's hydropower facilities, which had ceased hydropower operations in 1933.<sup>4</sup>

5. However, in its amendment application,<sup>5</sup> Crown explained that, because of its inability to reach an acceptable lease agreement with the owner of the Crown Roller Mill Building, the use of that building as a powerhouse became impractical. Therefore, Crown requested Commission approval to relocate the powerhouse to the east side of West River Parkway in the footprint of the remains of the Holly and Cataract Mill Foundation. The proposed new site lies within Minneapolis' Mill Ruins Park, owned by the City of Minneapolis Park and Recreation Board (Park Board).<sup>6</sup> As amended, the project would include a new, one-story, above-grade powerhouse structure containing two turbine generators.<sup>7</sup>

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<sup>3</sup> The Upper St. Anthony Falls Dam was constructed by the Corps but is now owned and operated by Northern States Power Company.

<sup>4</sup> The project, as licensed, also included a reconstructed upper headrace canal, a gated intake structure with a trashrack, an intake canal, a forebay, two steel penstocks leading from the forebay to the project's turbines, a proposed powerhouse room containing two turbine-generator units with a total capacity of 3.4 MW, an existing tailrace tunnel and reconstructed tailrace canal, and a proposed underground transmission line.

<sup>5</sup> See Crown's April 4, 2002 filing at 1.

<sup>6</sup> The Park Board was created in 1883 by an act of the Minnesota legislature to serve as a semi-autonomous body responsible for maintaining and developing the Minneapolis Park system. See the Park Board's letter, filed August 18, 2003, at 1.

<sup>7</sup> Excavation work in the forebay, rehabilitation of the historic gatehouse, and construction of a new intake structure would be essentially the same as in the licensed project. Flow to the turbines would be provided by two penstocks. The flows from the  
(continued...)

6. The Commission issued public notice of the amendment application. The Park Board intervened in opposition.<sup>8</sup> It argued that the relocated powerhouse and water conveyance components of the project would cause irreparable damage to Mill Ruins Park and to the goals of the Park Board and the City of Minneapolis in their development of recreational facilities and historic preservation activities in the project area, and that Crown had failed to negotiate a lease for use of the Park Board's land, despite the Park Board's attempts to initiate negotiations with Crown. In addition, the Board asserted that Crown had been unable to meet license requirements and deadlines.<sup>9</sup>

7. On August 14, 2003, staff wrote to the Park Board, stating that section 21 of the FPA<sup>10</sup> barred a licensee's use of that section's eminent domain authority to obtain rights in public parks, recreation areas, or wildlife refuges established under state or local law prior to October 24, 1992. To determine whether the bar applied in the current situation,

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two turbines would discharge separately into separate tunnel systems and then join in discharging into the tailrace canal. The project would be essentially the same as licensed from the entrance to the tailrace canal to the river.

<sup>8</sup> In addition to the Park Board, the City of Minneapolis, Standard Mill Limited Partnership, United States Department of the Interior, Minnesota Department of Natural Resources, Board of Hennepin County Commissioners, and Minnesotans for an Energy Efficient Economy filed comments and motions to intervene. All motions to intervene were timely, unopposed, and therefore automatically granted under 18 C.F.R. § 385.214(c)(1) (2004).

<sup>9</sup> The Park Board also stated that Crown had executed an agreement with it in August of 1998 in which Crown agreed to refrain from exercising any power of eminent domain authority to obtain the Park Board's land in exchange for the Park Board's promise to refrain from opposing Crown's original license application. *See* the Park Board's motion to intervene at 10. The Park Board stated that, in light of this agreement, Crown cannot develop the project without arriving at an agreement with the Park Board for use of the Park Board's property. Although this assertion does not affect our decision here, we note that private contractual disputes between licensees and third parties are matters to be decided by the courts. *See, e.g., Halecrest Company et al.*, 60 FERC ¶ 61,121 at p. 61,413 and n. 35 (1992).

<sup>10</sup> 16 U.S.C. § 814. *See* P 19, *infra*.

staff asked for details of the Park Board's acquisition, establishment, and uses of the Mill Ruins Park.

8. On August 18, 2003, the Park Board replied to staff's August 14, 2003 letter with a chronology of the Park Board's acquisition and use of the Mill Ruins Park land. The Park Board stated that construction of the downstream portion of the park had been completed in 2001. It also included details of the Board's pre-1992 condemnation of the so-called Fuji-Ya Restaurant property along the upstream portion of Mill Ruins Park, where Crown proposed to locate its generation facility, and the so-called J.L. Shiely gravel yard property in the downstream portion of Mill Ruins Park, where Crown proposed to channel tailrace water from the project.

9. On October 16, 2003, staff sent a letter to Crown stating that, based on the Park Board's August 18, 2003 letter, FPA section 21 barred Crown's use of that section's eminent domain authority to obtain the Park Board's property for the relocated powerhouse. In consequence, staff required Crown, within 30 days, to file evidence that the Park Board had conveyed the necessary property rights to Crown or to show cause why the Commission should not dismiss Crown's license amendment application.

10. On November 17, 2003, Crown requested that the Commission continue to process its amendment application, in light of Crown's progress in developing the project. It stated that it had secured financing for the project, including a state-awarded \$5.1 million renewable-energy-project grant and state approval of a power purchase agreement with Xcel Energy for the project's output, and that it was pursuing negotiations for a lease with the Park Board and trying to allay the Park Board's concerns about the compatibility of the amended project with the Mill Ruins Park.<sup>11</sup>

11. On January 13, 2004, staff granted Crown a 90-day extension of the conveyance deadline, until April 12, 2004, to file an acceptable lease or other conveyance of the Park Board's land. Staff stated that no purpose would be served processing the amendment application unless the Park Board would agree to such a conveyance of its land and that

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<sup>11</sup> The Park Board filed a letter on November 17, 2003, clarifying some of the statements in Crown's November 17, 2003 letter but not objecting to the statement that Crown was negotiating a lease with the Park Board. Crown filed a letter on December 9, 2003, advising the Commission that the Park Board was convening a meeting of interested parties to discuss unresolved issues regarding the lease negotiations.

staff would not maintain the amendment application on the Commission's docket unless an acceptable conveyance was executed within a reasonable time.

12. On April 15, 2004, Crown filed a second request for an extension of time, for 60 days, noting that it had submitted a draft lease to Park Board staff, who had submitted it to the Board with a recommendation to approve the lease. On May 3, 2004, staff granted the 60-day extension to June 11, 2004.<sup>12</sup>

13. On June 1, 2004, Crown filed a third request to extend the deadline for filing an acceptable conveyance of Park Board land, asking for a 90-day extension. Crown noted that the Park Board had rejected the lease on May 19, 2004, and that Crown was assessing its options for future development of the project, including any right it might have to condemn the property under section 21 of the FPA. In a letter issued July 15, 2004, staff granted the 90-day extension request. Staff advised Crown that the Commission would not continue to delay action on the amendment application without firm evidence supporting such a delay.

14. On September 10, 2004, Crown requested a fourth extension of the conveyance deadline. Crown stated that it still hoped to enter into a lease with the Park Board, but that it was also investigating the accuracy of the Park Board's August 18, 2003 letter with respect to the acquisition and designation of the Fuji-Ya and Shiely parcels as parklands. On September 17, 2004, staff granted a 45-day extension of the deadline, to October 26, 2004.

15. On October 18, 2004, the Park Board filed a letter asserting that Crown could not use eminent domain authority in this case, appending additional documentation about the acquisition of the lands and their designation as part of a public park.

16. On October 26, 2004, Crown filed a request for a fifth extension of the deadline. It stated that lease negotiations with the Park Board had ceased, and argued that the Mill Ruins Park, which included the relevant portions of the Fuji-Ya and Shiely parcels, was not established as a public park prior to 1992, such that use of eminent domain authority was not barred.

17. On November 9, 2004, the Park Board filed a letter opposing Crown's request for a further extension of time. The Board provided additional evidence, including dated

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<sup>12</sup> By letter dated April 27, 2004, and filed May 17, 2004, the Park Board filed a letter supporting Crown's extension request.



slides showing park improvements such as bicycle paths and interpretive signage, to support its contention that the land in question was part of a park prior to 1992.

18. In its February 10, 2005 order, staff dismissed the amendment application, finding that the Park Board owned the land in question, and that it had included the land within a public park or recreation area established under State or local laws prior to 1992, thus barring Crown's use of section 21's eminent domain authority to acquire the land. Staff therefore dismissed the application without prejudice to Crown re-filing it upon obtaining the requisite property rights. Crown's rehearing request followed.

### **Discussion**

#### **A. FPA Section 21 Bars Crown's Use of Eminent Domain Authority**

19. The second proviso of FPA section 21, included in the 1992 Energy Policy Act amendment to section 21, states:

Provided further, That no licensee may use the right of eminent domain under this section to acquire any lands or other property that, prior to the date of enactment of the Energy Policy Act of 1992 [Oct. 24, 1992], were owned by a State or political subdivision thereof and were part of or included within any public park, recreation area or wildlife refuge established under State or local law.

20. In its February 10, 2005 order<sup>13</sup> staff made the following findings supporting its conclusion that the Park Board's property in question comes within the section 21 proviso:

... the record shows that not only did the Park Board own the land in question but also that the land was included within what can only reasonably be described as a "public park" or "recreation area" "established under State or local law" prior to October 24, 1992, as required by the proviso. The record shows that:

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<sup>13</sup>110 FERC ¶ 62,121, *supra*, at p. 64,247.

1. In 1977 through 1984, the Riverfront Development Coordination Board (a Minneapolis joint-powers agency (no longer in existence)), the Metropolitan Council (the regional planning organization for the seven-county Twin Cities metropolitan area), and the Park Board, pursuant to various development reports and government actions, including the Minneapolis City Council's adoption of a land-use map, designated the land in question as "parkland";
2. In 1986 and 1990, respectively, the Park Board, through court-ordered condemnation, acquired for "park, parkway and roadway purposes" the portions of the land in question known as the Fuji-Ya property (which includes lands where Crown proposes to locate its hydropower generating facility) and the Shiely property (through which Crown proposes to channel tailrace water); and
3. In 1987 and 1990, respectively, the Park Board developed the portion of the land that Crown proposes to use for its generating facilities with "bicycle and pedestrian trails, ornamental lighting, and river-edge railings, site furnishings, landscaping, parking areas, interpretive signage, and other park features," and the Park Board developed the area where Crown intends to channel tailrace water as "passive green space." See the Park Board's August 18, 2003 letter, pp. 2-4, and its November 9, 2004 letter, pp. 2-4.

Consequently, notwithstanding Crown's new evidence indicating that the Park Board may not have established Mill Ruins Park as a state park until after 1992, the pre-1992 designation, acquisition, and development of the land involved here as "parkland" with various park improvements for use and enjoyment by the public include that land within the phrases "public park" or "recreation area" in the proviso of FPA Section 21.

21. On rehearing, Crown contends that the February 10, 2005 Order erroneously equated the "designation, acquisition, and development" of the Fuji-Ya and Shiely parcels as parkland with their inclusion in a "public park" "established under State or local law," as section 21 requires. It argues that section 21's bar to a licensee's use of eminent domain authority does not apply to all property acquired for park purposes, but only such property that was actually included in a public park established prior to

October 24, 1992 enactment of the 1992 Energy Policy Act, and that, contrary to the findings in staff's February 10, 2004 Order, the Park Board's evidence fails to show that the Fuji-Ya and Shiely parcels were included in a public park prior to their inclusion in the Mill Ruins Park in 2001.

22. Crown's arguments are unpersuasive. First, Crown does not dispute staff's finding, supported by the record, that the Park Board acquired title to the Fuji-Ya and Shiely parcels by condemnation proceedings in 1986 and 1990, respectively, prior to the enactment of the Energy Policy Act. Thus, the parcels "were owned by a State or political subdivision thereof," prior to the revision of section 21.

23. Moreover, the above-quoted findings in staff's February 10, 2005 order and further evidence in the record show that the parcels involved were included in Minneapolis' Central Riverfront Regional Park and improved with several park and recreation amenities prior to October 24, 1992. The Park Board's letters filed August 18, 2003, and November 9, 2004, show that in 1982, the Park Board prepared a master plan for the Central Riverfront Regional Park and the Metropolitan Council adopted it;<sup>14</sup> that the master plan included descriptions of the development of the Central Riverfront Regional Park in an area that includes the site of today's Mill Ruins Park and the Fuji-Ya and Shiely parcels;<sup>15</sup> that by 1987, construction was completed on the West River Parkway on the former Fuji-Ya property, which included bicycle and pedestrian trails, ornamental lighting and river-edge railings, site furnishings, landscaping, parking areas, and interpretive signage between the parkway and the river adjacent to and within the parcel;<sup>16</sup> and that in 1990, as an interim step until funding for full development of the Shiely tract to become part of the Mill Ruins Park, the gravel operations on that tract were removed and the site was made available to the public as passive green space.<sup>17</sup>

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<sup>14</sup> See the Park Board's November 9, 2004 letter, pp. 2-3 and Exhibit A, in the section entitled "West Bank Milling and Lower Locks."

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 3 and Exhibits C (in particular C-4) and E.

<sup>17</sup> See the Park Board's August 18, 2003 letter, p. 4.

24. By the foregoing local government actions, the Fuji-Ya and Shiely parcels were included in the city's Central Riverfront Regional Park prior to the enactment of the 1992 Energy Policy Act. The fact that further improvements were made in the development of the Central Riverfront Regional Park and that the Fuji-Ya and Shiely parcels were later included in the Mill Ruins Park in 2001 (which itself is now part of the Central Riverfront Regional Park) does not detract from the steps Minneapolis and the Park Board took prior to 1992 that included the parcels involved as part of the Central Riverfront Regional Park and consequently as part of a "public park" or "recreation area" "established under state or local law," within the plain meaning of those phrases as used in section 21.

25. Citing various state court decisions, Crown contends that, under state law, courts will look beyond the "parkland" purpose ascribed to the acquisition of the parcels involved to the actual use made of the parcels. It argues that the mere statements in state and local planning documents referring to the Fuji-Ya and Shiely parcels as parkland and what it asserts to be the meager development of the parcels did not make the parcels part of a public park established under state or local law. Crown argues that, prior to the 1992 enactment of the Energy Policy Act, the only improvements to the Fuji-Ya parcel made were a "roadway and sidewalks/pathways," and the Shiely parcel was merely claimed as "passive open space," making each of those parcels only buffer lands or passive open space between the river and the roadways and pathways and not part of a public park.<sup>18</sup>

26. It is not clear to us that the state court decisions Crown cites are relevant to, much less determinative of, the issues here since none involve an interpretation of section 21 of the FPA.<sup>19</sup> In any event, assuming that the state court decisions apply here, the above-

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<sup>18</sup> See Crown's rehearing request, pp. 4-5.

<sup>19</sup> Crown cites *Mareck v. Hoffman*, 275 Minn. 222; 100 N.W. 2d 758 (1960) (a Village's minimal upkeep and lack of park improvements for a parcel of land failed to support a finding that the Village's title to the land included a public trust for maintaining the land for park purposes); *Pearlman v. Anderson*, 62 Misc. 2d 24, 307 NYS.2D 1014 (S.Ct. 1970) (Village that acquired land for general municipal purposes with moneys from a general fund could not be enjoined to use the land only for park purposes, notwithstanding the fact that the Village cleaned up the property, put in a few shrubs and trees, walkways with four or five benches, and used the land to a small degree as a park); *Independent School District of Virginia v. State of Minnesota*, 124 Minn. 271, 144 N.W. 960 (1914) (upheld a School District's statutory right to condemn property for educational purposes); and *Schneider v. Town of West New York*, 84 N.J.Super.77, 82- (continued...)

described actions of Minneapolis and the Park Board show that the parcels involved were not only acquired and developed and designated for inclusion in a public park but also were actually open to the public and used for park and recreation purposes prior to 1992. Crown's assertions that the Fuji-Ya and Shiely parcels were merely developed as buffer zones or passive green space, and thereby not used as a part of a park, ignore not only the parcels' inclusion in the Central Riverfront Regional Park but also the described improvements to a portion of the Fuji-Ya parcel and the significant refurbishing efforts required to remove the remnants of a sand and gravel operation from the Shiely parcel.

27. Crown contends that, even if we conclude that any improved areas of the Shiely and Fuji-Ya parcels have been included in a public park, it is inappropriate to find that the parcels in their entirety constitute part of an established public park or recreation area. It argues that the mere improvements are insufficient to find an entire parcel to be a "public park" under section 21. To support its argument for excluding portions of the parcels in question, Crown submits November 3 and 17, 2004 Park Board meeting agendas that include entries indicating that the Park Board is contemplating the sale of a portion of the Fuji-Ya site.<sup>20</sup>

28. There is no basis for concluding that the FPA section 21 proviso does not apply to portions of public parks or recreation areas simply because they do not contain specific improvements or because they may be subject to future sale. The legislative history of the proviso shows that Congress revised section 21 to remedy the "unnecessary and unwise intrusion into the sovereignty of the States and their subdivisions" created by developers' acquisition of state or local park lands through the use of section 21 eminent domain authority.<sup>21</sup> Our decision here is consistent with the Congressional intent.

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83, 201 A.2d 63 (1964) (Town not barred from selling land originally purchased for a public park where the town never dedicated the land as a public park).

<sup>20</sup> See Appendices G and H of Crown's rehearing request. We are accepting these newly-proffered Park Board agendas, even though they could have been submitted prior to the staff order, in order to create a full record.

<sup>21</sup> See H.R. Report No. 102-474 (VIII) at 99-100 (1992), reprinted in 1992 U.S.C.C.A.N. at 2317-18.

**B. Maintaining the Amendment Application Would Serve No Purpose**

29. Crown argues that it is inappropriate to dismiss its amendment application, in light of Crown's commitment to the project, public support for the project, the Park Board's actions in allegedly inducing and then opposing the amendment application, and the lack of prejudice to any party by maintaining the application on the Commission's docket. Crown states that it negotiated a lease with the Park Board in good faith (albeit unsuccessfully) and consequently failed to pursue the investigation of its use of eminent domain authority for several months. It states that it intends to conduct further research into this matter, and again requests an extension of time and a deferral of a decision on its amendment application for it to file an acceptable conveyance.

30. As discussed above, we have resolved the section 21 issue, after full consideration of Crown's arguments. Crown's amendment application was pending for nearly three years before staff dismissed it, during which time staff granted Crown four extensions of time, for a total of eleven and one-half months, to submit an acceptable conveyance of Park Board land, all to no avail. Nothing in the record indicates that a grant of additional time will enable Crown to reach agreement with the Park Board. We therefore see no purpose in continuing to retain the amendment application.<sup>22</sup> As staff's order states, Crown may refile the application if it is able to resolve land issues. Crown may also pursue an acceptable conveyance or eminent domain authority to obtain appropriate rights in the original site of the powerhouse to develop its project as licensed.<sup>23</sup>

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<sup>22</sup> Compare *Symbiotics, LLC*, 110 FERC ¶ 61,235 at P 12 and n.10 (2005) (Commission policy against holding hydroelectric applications in abeyance pending the outcome of future determinations).

<sup>23</sup> Standard Article 5 of Crown's license (Form L-6 entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States," 54 FPC 1808 (1975)), incorporated by reference in ordering paragraph D of the license, 86 FERC ¶ 62,209, *supra*, at p. 64,289) requires Crown to obtain appropriate rights to operate and maintain the project as licensed by five years following the issuance of the license, and that deadline has expired. Crown must act diligently to obtain rights to construct, operate, and maintain its licensed project.

Project No. 11175-023

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The Commission orders:

(A) The rehearing request filed by Crown Hydro LLC on March 14, 2005, is denied.

(B) Crown Hydro LLC's request, as described in this order, to hold this proceeding in abeyance is denied.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

# **APPENDIX F**





80 SOUTH EIGHTH STREET  
500 IDS CENTER  
MINNEAPOLIS, MN 55402  
MAIN: 612.632.3000  
FAX: 612.632.4444

GREGORY R. MERZ  
ATTORNEY  
DIRECT DIAL: 612.632.3257  
DIRECT FAX: 612.632.4257  
GREGORY.MERZ@GPMLAW.COM

November 9, 2017

Bria Shea  
Mark Ritter  
Xcel Energy  
414 Nicollet Mall  
Minneapolis, MN 55401

VIA EMAIL  
bria.e.shea@xcelenergy.com  
mark.g.ritter@xcelenergy.com

Re: Renewable Development Fund/Crown Hydro

Dear Ms. Shea and Mr. Ritter:

I am submitting the following request, pursuant to the Minnesota Data Practices Act, Minn. Stat. Ch. 13, to Xcel Energy, acting in its capacity of administrator of the Renewable Development Fund ("RDF"). I request that, within ten days of the date of this request, Xcel Energy produce the following:

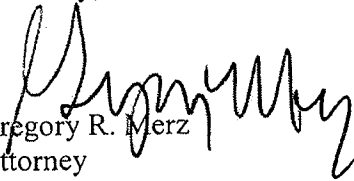
1. The application submitted by Crown Hydro for an RDF grant, together with all supporting documents submitted in support of the application.
2. All documents evidencing, replacing, or relating to approval by the Minnesota Public Utilities Commission of the Third Amendment to the Crown Hydro grant contract.
3. All reports provided by Crown Hydro regarding acquisition plans and efforts necessary to achieve acquisition of property, as required by the Second and Third Amendments to the Crown Hydro grant contract, Second Amended Exhibit C and Third Amended Exhibit C.
4. All monthly status reports provided by Crown Hydro, as required by the Second and Third Amendments of the Crown Hydro grant contract, Second Amended Exhibit C and Third Amended Exhibit C.
5. Any updated draft amendment to the Crown Hydro grant contract provided by Crown Hydro, as required by the Second and Third Amendments of the Crown Hydro grant contract, Second Amended Exhibit C and Third Amended Exhibit C.
6. All documents evidencing, referring or relating to Xcel Energy's review and consideration of Crown Hydro's grant application or any amendment.
7. All correspondence sent to or received from Crown Hydro regarding the Crown Hydro grant contract, including any amendments.

Page 2  
November 9, 2017

8. All documents relating to the performance by Crown Hydro under the Crown Hydro grant contract, including any amendments.

Please contact me when the requested data is available for review.

Sincerely,



Gregory R. Merz  
Attorney

GP:4849-3778-7220 v1

# **APPENDIX G**



**ORIGINAL**

**DEPARTMENT OF THE ARMY**  
ST. PAUL DISTRICT, CORPS OF ENGINEERS  
180 FIFTH STREET EAST, SUITE 700  
ST. PAUL, MN 55101-1678

**FILED**  
**SECRETARY OF THE**  
**COMMISSION**

**SEP 07 2017** **SEP 12 P 3 07**

Program and Project Management Division  
Project Management Branch

**FEDERAL ENERGY**  
**REGULATORY COMMISSION**

Ms. Kimberly Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

RE: FERC License Nos. 362, 2056, 12451, 11175 and Preliminary Permit No. 14627

Dear Ms. Bose:

I am writing this letter as a courtesy to our federal hydropower partners and potential partners.

This is to inform you that the U.S. Army Corps of Engineers, St. Paul District has received approval to proceed with a disposition study of the Upper St. Anthony Falls Lock and Dam, the Lower St. Anthony Falls Lock and Dam and Lock and Dam No. 1 located on the Mississippi River in Minneapolis and St. Paul, Minnesota. Disposition studies are authorized under Section 216 of the Flood Control Act of 1970 when found advisable due to significantly changed physical or economic conditions at a completed project. The closure of Upper St. Anthony Falls lock and dam in June 2015 greatly diminished the navigational use of the two downstream locks, which warrants a study to consider the future of all three sites.

Subject to federal funding, the Corps will complete the disposition study process in approximately January 2019. The disposition study may result in a recommendation that Congress deauthorize one or more of these projects and dispose of associated real property and government-owned improvements. In that event, these properties will be disposed of by the General Services Administration in accordance with priorities set out by federal law.

If you have any questions you may contact me at (651) 290-5426 or via email at [nanette.m.bischoff@usace.army.mil](mailto:nanette.m.bischoff@usace.army.mil).

Sincerely,

A handwritten signature in cursive script that reads "Nanette M. Bischoff".

Nanette M. Bischoff, P.E.  
Project Manager/Hydropower Coordinator

**Robert Olson**  
**Xcel Energy**  
**1414 West Hamilton Avenue**  
**Eau Claire, Wisconsin 54702-0008**

**Matthew Miller**  
**Xcel Energy**  
**1414 West Hamilton Avenue**  
**Eau Claire, Wisconsin 54702-0008**

**Kelly Withers**  
**Brookfield Renewable, Licensing and Compliance – North America,**  
**243 Industrial Park Crescent,**  
**Sault Ste. Marie, Ontario P6B-5P3,**  
**Canada**

**Gary “Bucky” Monson**  
**CFO**  
**Crown Hydro, LLC**  
**13208 Sheffield Curve**  
**Minnetonka, MN 55305**

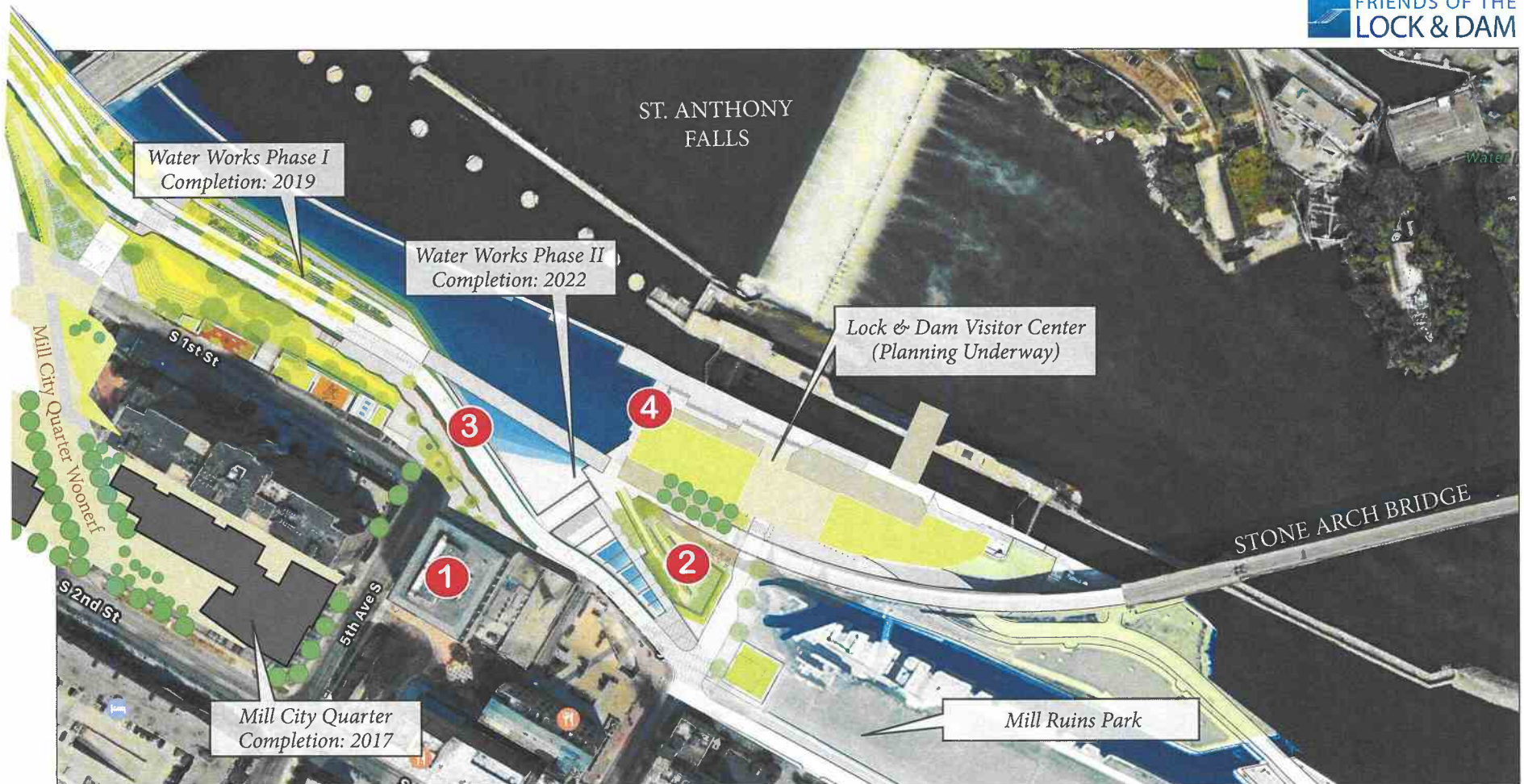
**Donald C. Clarke**  
**Duncan, Weinberg, Genzer and Pembroke, P.C.**  
**Suite 800**  
**1615 M. Street NW**  
**Washington, D. C. 20036**

**Robert H. Schulte**  
**Schulte Associates, LLC**  
**Symphony Hydropower (14671)**  
**2236 Coley Forest Place**  
**Raleigh, NC 27607**

Document Content(s)

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# **APPENDIX H**



CONCEPTUAL REPRESENTATION OF ADOPTED PLANS

## Crown Hydro Project: History and Conflicts with Adopted Plans

- 1 - Crown Roller Mill, 1991 - Preliminary application filed in 1991 and current license granted in 1999 for facility in Crown Roller sub-basement; failed to come to an agreement with the building owners. Meanwhile, the transformative vision for the area already embraced in the 1982 regional open space plan is affirmed in the [Historic Mills District Plan](#) adopted by the City of Minneapolis in 1998 and updated in 2001: a mixed use historic district with riverfront parks.
- 2 - Mill Ruins Park, 2002 - Crown Hydro attempts turbine delivery in 2003 - delivery rejected by the Park Board; failed to come to agreement with the Park Board.
- 3 - Fuji Ya Parcel, 2006 - Crown Hydro seeks to relocate the project to the Fuji Ya Parcel. Park Board says no in 2007.
- 4 - St. Anthony Falls Lock & Dam, 2015 - Crown Hydro seeks to amend the 1999 license for a new proposal on USACE owned land - FERC is currently considering this request.



## CROWN HYDRO TIMELINE

## CITY, PARK BOARD, SAFHB, MDC, MEET MINNEAPOLIS TIMELINE

- 1972 - [Mississippi/Minneapolis Plan](#), the “cornerstone” plan for riverfront revitalization.
- 1977 - [Long Range River Development & Acquisition Report](#); and [Central Riverfront Open Space Master Plan](#) adopted
- 1983 - [Mills District Plan](#) adopted
- 1987 - [Riverfront Recreation, Education & Cultural Plan](#)
- 1988 - [Critical Area Plan](#)
- 1990 - [St. Anthony Falls Heritage Zone Interpretive Plan](#)
- 1991 - [Mill Ruins Park Plan](#) adopted by the Park Board
- 1991: Initial Application by Crown Hydro submitted to FERC.
- 1998 - [Historic Mills District Plan](#), City of Minneapolis plan envisioning the Mills District as an amenitized mixed use neighborhood with riverfront parks
- 1999: FERC license granted for sub-basement of the Crown Roller Mill; agreement with building owner fails.
- 2001 - [Update to the Historic Mills District Plan](#), City of Minneapolis update documenting plans for the future Mill Ruins Park, Mill City Museum, and “the Guthrie Alternative”
- 2002: Mill Ruins site. Crown Hydro seeks license amendment for Mill Ruins site (Map Site #2); attempts delivery of turbines in 2003; delivery rejected by Park Board & turbines stay in Canada. Park Board says no in 2004.
- 2006 - [Critical Area Plan Update](#)
- 2006: Crown Hydro seeks to relocate project to Fuji Ya Parcel. Parcel (Map Site #3). Park Board says no in 2007.
- 2008 - [Minneapolis Plan for Sustainable Growth](#), Open Space & Heritage chapters of the Comprehensive Plan
- 2009 - [Power of the Falls: Renewing the Vision for the St. Anthony Falls Heritage Zone](#), St. Anthony Falls Heritage Board (SAFHB) plan identifying Lock & Dam/Stone Arch Bridge as a key interpretive site.
- 2009 & 2011 Crown Hydro attempts to obtain site control through legislative action; fails to obtain site control of Park Board owned land.
- 2008 - [Intersections: Downtown 2025 Plan](#) is adopted by Minneapolis Downtown Council (MDC) with direction to “enhance and emphasize the Riverfront as a world-class destination.”
- 2012 - [RiverFIRST Plan](#), Park Board Plan for the development of continuous Mississippi Riverfront parkland, adopted; and Water Works Park study completed.
- 2014 - [Changing Relationships to the Power of the Falls](#), St. Anthony Falls Heritage Board is adopted with recommendations for the future of the St. Anthony Falls Heritage Zone.
- 2015 - Park Board adopts the [Central Mississippi Riverfront Master Plan](#), calling for a visitor center on the St. Anthony Falls Lock; also this year, Park Board approves the design of [Water Works Park](#)
- 2016 - City of Minneapolis adopts the [Downtown Public Realm Framework](#), identifying a Central Riverfront Feature District; the Lock is at the convergence of two “River Connection” corridors within the district. Also this year, Friends of the Lock & Dam forms, & leads a coalition of 21 organizations, 12 of which formally endorse a coalition statement supporting the Lock as an iconic cultural destination.
- Starting in 2015: Crown Hydro seeks to relocate project to Upper St. Anthony Falls Lock & Dam (Map Site #4), federally owned and controlled by the U.S. Army Corps of Engineers. FERC currently considering Crown Hydro application to amend 1999 license for this site.
- 2017 - Meet Minneapolis, the tourism association, adopts [Destination Transformation 2030](#), a plan co-chaired by the Mayor and involving 6 thematic advisory committees, identifying the River as our region’s most differentiating asset and calling for an iconic visitor center on the Downtown Central Riverfront; also this year, Park Board begins construction of Water Works Park Phase I.