

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)
EXECUTIVE OFFICER TO ACQUIRE RIGHTS TO)
CONSTRUCT AND MAINTAIN A TRAIL IN THE)
EXISTING RAILROAD CORRIDOR LOCATED IN)
THE OMSI TO SPRINGWATER CORRIDOR)
SECTION OF THE WILLAMETTE RIVER GREEN-)
WAY TARGET AREA)

RESOLUTION NO. 98-2655

Introduced by Mike Burton
Executive Officer

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Measure 26-26) which authorizes Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, the OMSI to Springwater Corridor section of the Willamette River Greenway Target Area was designated as a regional trail and greenway in the Greenspaces Master Plan and identified as a regional target area in the Open Spaces, Parks and Streams Bond Measure; and

WHEREAS, On July 2, 1996, the Metro Council adopted a refinement plan for the OMSI to Springwater Corridor section of the Willamette River Greenway Target Area; and

WHEREAS, Metro desires to acquire real property rights to construct and maintain a trail in an existing railroad right of way; and

WHEREAS, the amended Open Space Implementation Work Plan adopted in January, 1997, provide that Metro Council approval is required for purchases involving "unusual circumstances;" and

WHEREAS, the contemplated acquisition of real property rights in an existing railroad right of way involves "unusual circumstances;" now therefore

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to acquire certain real property rights in an existing railroad right of way pursuant to the terms and conditions set forth in that certain Agreement for the Relinquishment, Release and Conveyance of Easement, Right of Way and Property between Metro and the Railroad Operator dated June 4, 1998, and also hereby authorizes the Executive Officer to execute that certain Consent Agreement with Union Pacific dated as of the effective date.

Adopted by Metro Council this 4th day of JUNE, 1998.



Jon Kvistad, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

Staff Report

CONSIDERATION OF RESOLUTION NO. 98-2655 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ACQUIRE RIGHTS TO CONSTRUCT AND MAINTAIN A TRAIL IN THE EXISTING RAILROAD CORRIDOR LOCATED IN THE OMSI TO SPRINGWATER CORRIDOR SECTION OF THE WILLAMETTE RIVER GREENWAY TARGET AREA

Date: May 21, 1998

Presented by:

**Charles Ciecko
Jim Desmond**

PROPOSED ACTION

Resolution No. 98-2655 requests authorization for the Executive Officer to acquire perpetual real property rights from the existing owner of the railroad right of way and other interested parties necessary to construct and maintain a pedestrian and bicycle trail in the OMSI to Springwater Corridor Target Area.

BACKGROUND AND ANALYSIS

The OMSI to Springwater Corridor section of the Willamette River Greenway target area was identified as a regional target area in the Open Spaces, Parks and Streams Bond Measure. A Tier IA objective of the adopted refinement plan for this target area is to "acquire land and easements along the Willamette River between OMSI and the Sellwood Bridge." Metro is the owner of the fee simple interest underlying the existing railroad right of way. However, design and construction of the trail cannot begin until Metro acquires additional real property rights from the holder of the railroad right of way. The resolution before Council seeks authority to acquire the real property rights necessary to complete the vision of connecting the Springwater Corridor Trail to the inner southeast Portland neighborhoods and downtown Portland.

The amended Open Spaces Implementation Work Plan states that all "unusual circumstances" require specific approval by the Metro Council prior to acquisition. Staff has determined that the contemplated transaction is an "unusual circumstance" because it falls outside of the standard open space land acquisition scenario where Metro purchases fee simple title to properties at or below fair market value as determined by our independent appraisal.

Metro and the owner/operator of the existing railroad right of way ("the Railroad Operator") have negotiated an Agreement for Relinquishment, Release and Conveyance of Easement, Right of Way and Property ("the Agreement") whereby the Railroad Operator has agreed to release to Metro all if its rights in and to a certain portion of the existing right of way so that a trail can be constructed and maintained, while the Railroad Operator will maintain its existing freight and excursion train operations. The Agreement by its terms, including as partial consideration a cash payment to the Railroad Operator, is subject to the Metro Council's approval. Basically, the Railroad Operator will retain 17 feet and relinquish the balance of the right of way to Metro. The right of way varies in width from 35 to 100 feet, but is approximately 60 feet in width through most of the 3.09-mile corridor.

Prior to construction of the trail, the railroad tracks on the right of way must be relocated so the trail does not interfere with the railroad operations. As additional consideration for the Agreement, Metro will pay the Railroad Operator to relocate its existing tracks onto the easternmost portion of the existing berm to accommodate the trail. The Railroad Operator has agreed to relocate the tracks pursuant to a track moving agreement which is a part of the negotiated transaction, provided that Metro pay the cost of relocation. Staff has determined that the fee quoted by the Railroad Operator is at or below what the services of relocating the track would be expected to cost if they had been independently contracted.

One of the acquisition parameters set forth in the amended Open Spaces Implementation Work Plan states "an appraisal shall be prepared by an independent certified appraiser which shall state a conclusion of the fair market value of the property." The value of the rights Metro is acquiring is extremely difficult to appraise. The issues faced by an appraiser include:

- I. This transaction is not simply a real estate deal. The Railroad Operator is relinquishing all of his rights in the right of way, except for the right to run one track. The effect this relinquishment will have on his freight operations is difficult to quantify, but the Railroad Operator is certainly giving up rights and values that go beyond simply real property values.
- II. Standard appraisal practice includes using past sales to which the current transaction can be compared. In this instance, similar transactions do not exist. No other party has negotiated an arms length transaction, whereby a railroad operator is relinquishing all but a 17-foot wide corridor in a railroad easement extending for a 3.09-mile length for the purpose of constructing a trail, and will still be operating freight and excursion lines.

The value of opening up this trail is, likewise, immeasurable. It is estimated that over 600,000 citizens of the region will annually use the trail. The trail will provide an extremely important link in the 40-mile loop and be an important recreational and transportation corridor linking downtown to the inner southeast neighborhoods and the existing 16 miles of improved Springwater Corridor Trail.

Union Pacific ("UP"), parent company to Portland Traction Company, which originally conveyed to the Railroad Operator all of the Railroad Operator's interests in the corridor, retained certain consent rights in the corridor regarding easements and crossings. UP also retained commuter rail rights in the corridor. UP has agreed to grant its consent to the Metro-Railroad Operator transaction, and to the easement and crossing rights associated with the trail, for consideration as set forth in an agreement entitled Consent to Relinquishment, Release, Conveyance of Easement, Right of Way and Property. UP will retain its other rights in the corridor.

The Real Estate Acquisition Committee met on May 21, 1998 and unanimously recommended to the Executive Officer that Metro complete the transaction as outlined above.

FINDINGS

Acquisition of the real property rights from the Railroad Operator is recommended based on the following:

- The target area description in the Bond Measure Fact Sheet is as follows:

“OMSI to Springwater Corridor. Acquire 7-mile trail corridor, trail heads and trail improvements on east bank of Willamette River.”

- A Tier IA objective in the OMSI to Springwater Corridor section of the Willamette River Greenway target area adopted refinement plan is to “acquire land and easements along the Willamette River between OMSI and the Sellwood Bridge.”
- Although Metro owns the fee simple title underlying the railroad right of way, Metro is not able to design and construct the trail unless Metro enters into the Agreement or otherwise obtains the consent of the Railroad Operator to the installation of the trail.
- The Springwater Corridor Trail is a significant transportation and recreation amenity for the region, currently extending from Boring through Gresham to southeast Portland, stopping near McLoughlin Boulevard, and serving 600,000 users per year. Obtaining this easement from the Railroad Operator would allow the extension of the Springwater Corridor Trail to inner southeast Portland neighborhoods and downtown Portland, and provide the citizens access to nature along this segment of the trail at Oaks Bottom Wildlife Refuge and the Willamette River.
- It is not possible to appraise the value of this right of way, since no comparable sales exist for relinquishment of a portion of a railroad corridor for trail construction.

BUDGET IMPACT

Funds to acquire the right of way and move the tracks are available in the fiscal year 1997-98 Open Spaces Acquisition Division budget and can be carried forward to the fiscal year 1998-99 budget as necessary.

Executive Officer's Recommendation

The Executive Officer recommends adoption of Resolution 98-2655.

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Adopted by Metro Council this _____ day of _____, 1998.

Jon Kvistad, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel