

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING AN) RESOLUTION NO. 06-3742
AMENDMENT TO THE MT. TALBERT)
MASTER PLAN PURSUANT TO AN EXISTING)
INTERGOVERNMENTAL AGREEMENT) Introduced by Chief Operating Officer
BETWEEN METRO AND NORTH CLACKAMAS) Michael J. Jordan with the concurrence
PARKS AND RECREATION DISTRICT) of Council President David Bragdon

WHEREAS, on July 23, 1992, Metro Council adopted the Metropolitan Greenspaces Master Plan via Resolution No. 92-1637, "For the Purpose of Considering Adoption of the Metropolitan Greenspaces Master Plan," which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, Mt. Talbert was identified as a regionally significant open space by the Metro Greenspaces Master Plan; and

WHEREAS, the Refinement Plan for the East Buttes-Boring Lava Domes Target Area, adopted by the Metro Council on July 25, 1996, Resolution No. 96-2361, "For the Purpose of Approving a Refinement Plan for the East Buttes and Boring Lava Domes Target Area as Outlined in the Open Space Implementation Work Plan," identified certain areas as Tier 1B, requiring a 75%-25% partnership between Metro and local governments for acquisition of identified properties; and also requiring deed restrictions that the properties remain in their natural condition in perpetuity; and

WHEREAS, in November 1997, Metro entered into an Intergovernmental Agreement ("IGA"), Contract No. 920211 with North Clackamas Parks and Recreation District ("NCPRD"), attached hereto as Exhibit A, providing that Metro and NCPRD would jointly purchase Mt. Talbert properties for NCPRD to manage, which IGA requires that any management plan for the Mt. Talbert properties be subject to Metro Council approval; and

WHEREAS, in accord with the East Buttes Refinement Plan, Metro and NCPRD acquired 183 acres on Mt. Talbert, sharing title to the land as tenants in common, in proportion to each party's contribution to the purchase price (Metro-75%; NCPRD 25%); and

WHEREAS, Metro has made subsequent acquisitions on Mt. Talbert and NCPRD currently manages approximately 183 acres of Metro-NCPRD property under the IGA; and

WHEREAS, on July 13, 2000, via Resolution No. 00-2970, "For the Purpose of Council Approval of the Mt. Talbert Master Plan and Management Recommendations, Pursuant to an Existing IGA Between Metro and North Clackamas Parks and Recreation District," Metro Council approved the Mt. Talbert Master Plan, providing for a regional trailhead for Mt. Talbert to be built on Sunnyside Road; and

WHEREAS, the Mt. Talbert Master Plan was also approved by the NCPRD Board and Clackamas County Board of Commissioners; and

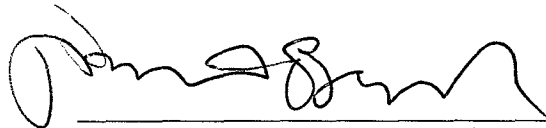
WHEREAS, preliminary design and engineering has revealed serious topographic constraints, access issues and associated design challenges that make development of a regional trailhead on Sunnyside Road very difficult, and limit opportunities to develop meaningful Americans with Disabilities Act ("ADA") access to Mt. Talbert; and

WHEREAS, Metro staff has reviewed and recommends that Metro Council approve the amendment to the Mt. Talbert Master Plan to allow construction of the regional trailhead off of Mather Road and open the park to the citizens of the region; and

WHEREAS, concurrent approval by the NCPRD Board and Clackamas County Board of Commissioners will be pursued; now therefore

BET IT RESOLVED, that the Metro Council hereby authorizes and approves the amendment to the Mt. Talbert Master Plan and appended hereto as Exhibit B.

ADOPTED by the Metro Council this 7th day of December 2006.



David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney

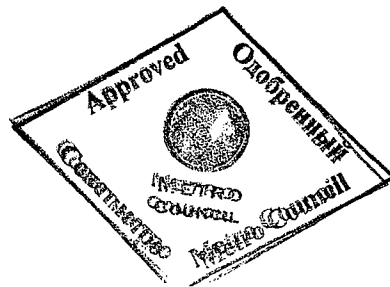


EXHIBIT A
Resolution No. 06-3742

INTERGOVERNMENTAL AGREEMENT

Mount Talbert - Chia Development Corporation Property

This Intergovernmental Agreement ("Agreement") dated this 20th day of November 1997 is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the North Clackamas Parks and Recreation District, located at 11022 SE 37th Avenue, Milwaukie, Oregon 97222 ("NCPRD").

RECITALS:

WHEREAS, approximately 66.77 acres of real property within the Mount Talbert Natural Area in Clackamas County, Oregon, known as the Chia Development Corporation Property; formerly known as Bon Development Corporation, is available for purchase, as more particularly described in Exhibit A attached hereto ("Chia Property" or "Property");

WHEREAS, the East Buttes-Boring Lava Domes was identified as a regionally significant open space by the Metro Greenspaces Master Plan., and by the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 ("Metro Open Spaces Measure");

WHEREAS, the Refinement Plan for the East Buttes-Boring Lava Domes Target Area, adopted by the Metro Council on July 17, 1996, Resolution No. 96-3631, identified certain areas as Tier 1b, requiring a 75%-25% partnership between Metro and local governments for acquisition of identified properties; and also requiring deed restrictions that the properties remain in their natural condition in perpetuity;

WHEREAS, the Chia Property is within the East Buttes-Boring Lava Domes Target Area and is identified as a Tier 1B property in the Refinement Plan;

WHEREAS, Metro and NCPRD wish to purchase the property and to preserve it as open space in accordance with the Metro Open Spaces Measure and with the Metro Greenspaces Master Plan;

WHEREAS, Metro is negotiating an Agreement of Purchase and Sale for the Property (the "Agreement of Purchase and Sale"); and

WHEREAS, Metro and NCPRD wish to enter into this Agreement to authorize the purchase and to provide for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, maintenance and operation of this Chia Development Corporation Property;

Now, therefore, the parties agree as follows:

A. Acquisition

1. Metro and NCPRD are hereby authorized to purchase the Chia Property in accordance with the final Agreement of Purchase and Sale, to be attached hereto as Exhibit C. At closing Metro will contribute 75% of the purchase price and NCPRD will contribute 25% of the purchase price. NCPRD will also accept an assignment of a 25% interest in the Agreement of Purchase and Sale.
2. Metro and NCPRD shall take title to the Property as tenants in common, with Metro having a 3/4 undivided interest and NCPRD having a 1/4 undivided interest and with deed restrictions requiring that the property shall remain in its natural condition in perpetuity..
3. Metro shall be responsible for completing the negotiations for the final Agreement of Purchase and Sale and any other terms of the transaction with the Property owner and for undertaking the normal due diligence investigations conducted by Metro pursuant to the Open Spaces Measure practices. If NCPRD requires any due diligence investigations not required by Metro, NCPRD shall be solely responsible for those items. Metro shall also be responsible for drafting and coordinating escrow instructions and closing details, and shall pay the Buyer's closing costs.

B. Management, Maintenance, and Operation

1. The long-term management guidelines for the Property will be set forth in a Resource Management Plan ("Management Plan") for the Property, as set forth in Section D below. This Agreement shall set forth the interim protection guidelines for the Property prior to adoption of the Management Plan, and shall also set forth the use limitations for the Property which must be carried forth and reflected in the Management Plan.
2. If Metro executes an agreement to purchase Property within Mount Talbert which Metro would like NCPRD to manage under the terms of this Agreement, Metro shall notify NCPRD in writing in the form attached hereto as Exhibit B ("Notice of Acquisition"). NCPRD shall notify Metro if NCPRD does not wish to accept management responsibilities for that property in accordance with this Agreement, using NCPRD's best efforts to make this notification prior to the closing date for the acquisition. If NCPRD has not so notified Metro within thirty (30) days of receiving Metro's Notice of Acquisition, then NCPRD shall be deemed to have accepted the new Property for management, maintenance and operation in accordance with the terms and conditions of this Agreement.
3. Metro and NCPRD agree that NCPRD shall be responsible for the ongoing management, maintenance, and operation of the Property, both during the interim period and after adoption of the Management Plan.

4. The term of NCPRD's management, maintenance, and operation responsibilities for the Property shall be determined by the Management Plan, but in no event shall the term be less than ten (10) years from the effective date of this Agreement, renewable by mutual written agreement for additional ten (10) year periods.
5. Metro grants to NCPRD, its agents and contractors, the right to enter the Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Property and for the fulfillment of their duties under this Agreement and pursuant to the Management Plan.

C. Interim Protection Guidelines

1. Prior to the adoption of a Management Plan for the Property, the Property shall be managed, maintained and operated by NCPRD in accordance and in a manner consistent with this Agreement, the Metro Greenspaces Master Plan, and NCPRD's Comprehensive Master Plan ("the Plans"). In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.
2. The Property shall at all times be managed, maintained, operated, and protected in accordance with its intended use as a natural area open space, with the primary goals being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing.
3. In accordance with the Metro Greenspaces Master Plan, formal public use of the Property and site development on the Property shall not begin until a Management Plan for the Property has been adopted.
4. Prior to the adoption of a Management Plan for the Property, in the interim period, at NCPRD's discretion, the Property may be used informally by the public for passive recreation, habitat enhancement, pedestrian activity, and/or nonmotorized bicycle use. All uses of the Property in the interim period shall be consistent with this Agreement and with the Plans, and shall not preclude any uses that could later be allowed in the Management Plan.
5. Prior to the adoption of the Management Plan for the Property, in the interim period NCPRD shall not allow or permit any alteration of any water, timber, mineral, or other resource on the Property, except for the control of exotic or pest plant species or as necessary to prevent Property degradation or for security or public safety concerns.
6. NCPRD shall maintain security of the Property as NCPRD may deem necessary in its discretion as manager of the Property.

D. Resource Management Plan for the Property

1. NCPRD shall develop a Resource Management Plan ("Management Plan") for the Property. The Management Plan shall set forth the acceptable management, operation, maintenance, types and levels of programmed and public use, and trail and improvement standards for the Property. NCPRD shall manage the Property in accordance with the standards and guidelines developed in the Management Plan.
2. The Management Plan shall ensure that the Property is managed, maintained and operated in accordance with the Metro Greenspaces Master Plan and with this Agreement, and that all trails and improvements on the Property comply with the Greenspaces Master Plan and with this Agreement. The Management Plan shall also ensure that the Property is maintained as a natural area open space, with the primary goals being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing. As part of the process of developing the Management Plan, NCPRD shall take an inventory of the resources on the Property.
3. Metro shall designate at least one staff member to participate in the Management Plan process for the Property. In addition to any other approvals required by NCPRD, the Management Plan shall be subject to approval by the Metro Council prior to its implementation, which approval shall not be unreasonably withheld *and* shall be based on consistency with this Agreement and with the Greenspaces Master Plan.

E. Permits, Assessments, Coordination with Other Public Agencies

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Property NCPRD agrees to be responsible for funding the operation and maintenance of the Property with NCPRD's own resources. NCPRD's management responsibility shall include responsibility for all taxes, liens or assessments for the Property.
2. Prior to adoption of the Management Plan and thereafter, NCPRD shall be responsible for obtaining any p e t s necessary for management, maintenance or operation of the Property.
3. Any permits granted by NCPRD to users of the Property shall comply with the terms and limitations set forth in this Agreement and in the Management Plan for the Property.
4. NCPRD shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Property.

F. General Provisions

1. Indemnification. NCPRD, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from any management, maintenance or operation of the Property, including but not limited to. construction of trails or in relation to any other improvement on the Property, except as caused by Metro's negligence.
2. Oregon Constitution and Tax Exempt Bond Covenants. The source of funds for the acquisition of this Property is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. NCPRD covenants that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event NCPRD breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.
3. Signage. NCPRD shall provide on-site signage informing the public that NCPRD is managing the site. Metro will provide on-site signage stating that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. NCPRD shall also document in any publication, media presentation or other presentations, in which the Property is mentioned, that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. On-site signage that provides recognition of Metro funding- shall be subject to prior review and comment by Metro. All signage will be consistent with Metro guidelines for Open Spaces Projects.
4. Joint Termination for Convenience. Metro and NCPRD may by mutual agreement terminate all or part of this Agreement based upon a determination that such action is in the public interest.
5. Law of Oregon. This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.

6. Assignment. NCPRD may not assign any of its rights or responsibilities under this Agreement without prior written consent from Metro, except NCPRD may delegate or subcontract for performance of any of its responsibilities under this Agreement.
7. Novices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro
Charles Ciecko
Director, Metro Regional Parks and Greenspaces
600 NE Grand Avenue
Portland, OR 97232-2736

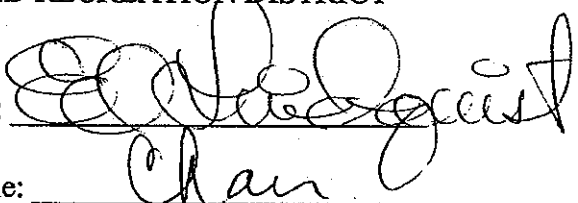
To NCPRD Mike Henley
Director
North Clackamas Parks and Recreation District
11022 SE 37th Avenue
Milwaukee, OR 97222

9. Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.
10. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to this Property. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth above.

NORTH CLACKAMAS PARKS
AND RECREATION DISTRICT

By:


Title: Chan

METRO

By:

Title:

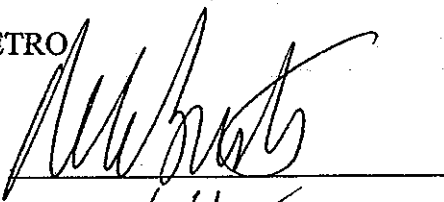

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EXHIBIT B
Resolution No. 06-3742

Amendments to the Master Plan

The Mt. Talbert Master Plan was amended on Dec. 7, 2006 by the Metro Council. The amendment to the plan was completed to facilitate development of the site and to open the park for public use. The amendment was adopted by the North Clackamas Parks District on xxx, 2007 and the Clackamas County Board of Commissioners on xxx, 2007.

The amendment modifies the master plan dated Aug. 1, 2000 to allow development of the main regional trailhead with parking, picnic shelter and restroom facilities off of Mather Road instead of Sunnyside Road. The original Master Plan calls for regional trailhead improvements (restrooms, parking and picnic shelter) to be developed at the Sunnyside Road entrance to the park. Due to topographic and access constraints, the Sunnyside Road entrance to the park will instead be developed to provide pedestrian access, limited parking and a future connection to the Mt. Scott trail. By developing the regional trailhead on Mather Road, an ADA accessible trail will be able to be constructed that provides access to the wet prairie meadow and viewing of the forested habitat and the oak savannah restoration project.



INSERT MAP

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 06-3742 FOR THE PURPOSE OF
APPROVING AN AMENDMENT TO THE MT. TALBERT MASTER PLAN
PURSUANT TO AN EXISTING INTERGOVERNMENTAL AGREEMENT
BETWEEN METRO AND NORTH CLACKAMAS PARKS AND RECREATION
DISTRICT

Date: November 22, 2006

Prepared by: Lydia M. Neill

BACKGROUND

Metro staff is proposing to amend the Mt. Talbert Master Plan, which was required through IGA with North Clackamas Parks and Recreation District (NCPRD) to facilitate development on the site and to open the park for public use. The proposed amendment modifies the master plan to allow development of the regional trailhead with parking, picnic shelter and restroom facilities off of Mather Road instead of Sunnyside Road. Currently the Master Plan calls for regional trailhead improvements (restrooms, parking and picnic shelter) to be developed off of Sunnyside Road. Due to topographic and access constraints, and far higher than anticipated construction costs, the Sunnyside entrance to the park is proposed to be downgraded to provide pedestrian access, limited parking and a future connection to the Mt. Scott trail.

In November 1997 Metro entered into an Intergovernmental Agreement with NCPRD for joint purchase, and NCPRD management, of 183 acres on Mt. Talbert in North Clackamas County. The IGA requires that NCPRD's Management Plan:

- Set forth acceptable standards for trails and other improvements and for overall management, operation, and maintenance of the property
- Identify appropriate types and levels of programmed and public uses
- Ensure that the property is maintained as a natural open space area with the primary goals being:
1) protection of natural resources, 2) enhancement and protection of wildlife habitat and provision of public recreation opportunities consistent with natural resource and habitat protection.

The IGA also requires that the Management Plan "be subject to Metro Council approval, which approval shall not be unreasonably withheld and shall be based on consistency with [the IGA] and the Greenspaces Master Plan."

NCPRD began work on the Mt. Talbert Master Plan and Management Recommendations in August 1999. The Mt. Talbert Master Planning area includes approximately 340 acres, 183 of which are owned jointly by Metro and NCPRD, while the remainder is in private ownership.

A professional planning consultant was retained to draft the master plan. NCPRD and Metro staff were involved in the management planning process to ensure consistency with the IGA. The final draft of the Mt. Talbert Master Plan and Management Recommendations were adopted by the Metro Council on July 13, 2000 and the IGA was adopted on November 18, 1997. The IGA is set to expire on November 18, 2007.

ANALYSIS/INFORMATION

The Mt. Talbert Master Plan and Management Recommendations are intended to guide preservation and enhancement of the natural resources and character of Mt. Talbert and ensure appropriate recreational use of the site. Master Plan highlights include but are not limited to:

- Realignment of the intersection of 117th and Sunnyside Road to create safe vehicular access into the main park entrance.
- ADA accessible parking and trailhead amenities at main entrance including toilets, picnic tables, drinking fountain, entry kiosk, bike rack, signage, footbridge over Mt. Scott Creek.
- Several pedestrian access points into the site.
- Network of existing soft surface hiking trails on Mt. Talbert.
- Educational and interpretive signage.
- Trail, and natural resource management recommendations aimed at enhancing and protecting wildlife habitat on Mt. Talbert.

After adoption of the Master Plan by the Metro Council, Walker Macy, a planning and landscape architecture firm, was hired to complete preliminary design and engineering to open the park to the public. Initially work by the consultant was concentrated on developing the regional trailhead access off of Sunnyside Road. This preliminary work revealed expensive topographic constraints, access issues and design constraints making development of a regional trailhead difficult. Site difficulties limit opportunities to develop meaningful and cost-effective ADA access to the site.

Therefore, staff is suggesting that the location of the regional trailhead be shifted to Mather Road. Secondary non-ADA trail access is still being recommended to be developed at the Sunnyside entrance to the park. The following program elements are proposed to be moved to Mather Road: parking, a picnic shelter and restroom facilities. As a result of moving the regional trailhead to Mather Road, an ADA accessible trail can be developed that gives users access to forested portion of the park, the meadow that contains wetland prairie species, and view of the oak reforestation project. The Mather Road entrance to the park will be located off of a collector street and will allow bus parking for school groups and a looped driveway access. Overall, it is Walker Macy's and staff's opinion that the Mather Road access to the park will provide a better park experience for the public.

Approval of the amendment to the Mt. Talbert Master Plan is recommended based upon these findings:

- The changes to the master plan are consistent with the overall standards set forth in the original plan for trails, park amenities and overall management, operation, and maintenance of the property governed by the IGA.
- This proposed plan provides the safest access for the public and the greatest opportunity for experiencing the natural features of the park.
- This proposed plan change provides a better opportunity for developing meaningful ADA access to the site.
- The Plan's mission statement, goals, program elements and proposed amenities ensure that the natural resources and wildlife habitat of the property subject to the IGA will be enhanced and protected if the plan is fully implemented.
- The Plan complies with policies in the Greenspaces Master Plan and is consistent with the IGA.

Known opposition:

Several property owners near Mather Road have expressed opposition to the proposed changes to the Mt. Talbert Master Plan due to increased traffic to the site and the location of the proposed driveway.

Legal Antecedents:

Metro Code 2.04.026 (a) (2) requires that the Chief Operating Officer obtain the authorization of the Metro Council prior to executing any agreement entered into pursuant to ORS chapter 190 by which Metro acquires or transfers any interest in real property, or transfers any function or duty to another governmental unit. The IGA was adopted by the Metro Council by Resolution No. 97-2563, was established between Metro and the NCPRD regarding joint acquisition and NCPRD management of property in the Mt. Talbert section of the East Buttes and Boring Lava Domes Target Area. The IGA requires that long-term management guidelines for the Property be set forth in a Resource Management Plan. The IGA requires that the Management Plan ensure that the property is managed, maintained and operated in accordance with the Metro Greenspaces Master Plan. Section D of the IGA requires that the Management Plan “be subject to approval by the Metro Council prior to its implementation, which approval shall not be unreasonably withheld and shall be based on consistency with the IGA and the Greenspaces Master Plan”.

Resolution No. 92-137 adopted July 23, 2002: “For the Purpose of Considering Adoption of the Metropolitan Greenspaces Master Plan”

Resolution No. 96-2361 adopted July 25, 2002: “ For the Purpose of Approving a Refinement Plan For the East Buttes and Boring Lava Domes Target Area as Outlined in the Open Space Implementation Work Plan”

Resolution No. 97-2563 adopted November 6, 1997: “For the Purpose of Authorizing the Executive Officer to Execute an Intergovernmental Agreement With North Clackamas Parks and Recreation District to Manage Properties on Mt. Talbert Purchased by Metro”

Resolution No. 00-2970 adopted July 13, 2000: “For the Purpose of Council Approval of the Mt. Talbert Master Plan and Management Recommendations Pursuant to an Existing IGA Between Metro and North Clackamas Parks and Recreation District”

Anticipated Effects:

The changes to the Master Plan will allow construction to proceed on the site to open the park for public use in 2007.

Budget Impacts:

No budget impacts resulting from this decision are anticipated.

RECOMMENDED ACTION

Approval of Resolution No. 06-3742 For the Purpose of Council Amendment to the Mt. Talbert Master Plan Pursuant to the existing IGA Between Metro and the North Clackamas Parks and Recreation District.