

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF) RESOLUTION NO. 06-3746
OPERATING OFFICER TO ENTER INTO AN)
AGREEMENT TO PURCHASE PROPERTY IN THE) Introduced by Chief Operating Officer
EAST BUTTES TARGET AREA UNDER THE) Michael J. Jordan, with the
1995 OPEN SPACES BOND MEASURE AND) concurrence of Council President
IMPLEMENTATION WORK PLAN SUBJECT TO) David Bragdon
UNUSUAL CIRCUMSTANCES)

WHEREAS, the Metro Council has taken a leadership role in identifying remaining natural areas in the Metro Area and planning for their protection; and

WHEREAS, at the election held on May 16, 1995, the Metro Area voters approved the Open Spaces, Parks and Streams Bond Measure (“Ballot Measure 26-26”), which authorized Metro to issue \$135.6 million in general obligation bonds to fund land acquisition and capital improvements to preserve open space for parks, trails and wildlife (“1995 Open Spaces Bond Measure”); and

WHEREAS, Resolution No. 96-2361 adopted by the Metro Council on July 25, 1996 (“ 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”), identifies the Mt. Talbert area as a Tier 1B objective requiring a 25% participation in the purchase price by North Clackamas Parks & Recreation District (“NCPRD”); and

WHEREAS, Metro staff has identified an opportunity to purchase specific property located in the Mt. Talbert area, identified in the Refinement Plan For the East Buttes and Boring Lava Domes Target Area as a Tier 1B objective, and further described in Exhibit A (“Property”); and

WHEREAS, the Property was the subject of a lawsuit entitled *Sheldon Development Inc. v. Metro, Clackamas County and North Clackamas Parks & Recreation District*, and purchase of the Property will result in a complete settlement of the litigation; and

WHEREAS, the terms of Metro’s acquisition of the Property were determined in non-binding mediation, and the acquisition of the Property contains certain “unusual circumstances” requiring Metro Council approval under the Open Spaces Implementation Work Plan, including that Metro will not receive its standard contractual representations and warranties from the Seller and will not be obtaining an appraisal of current fair market value; and

WHEREAS, NCPRD is unable to contribute 25% to the purchase price for the Property, but has agreed to provide day-to-day management of Mt. Talbert Natural Area in lieu of the required contribution, and said substitution requires Metro Council approval; and

WHEREAS, Metro Council Resolution No. 01-3106 (“(“For the Purpose of Modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to Direct Future Acquisitions of Properties that Satisfy Specific Identified Criteria”), adopted by the

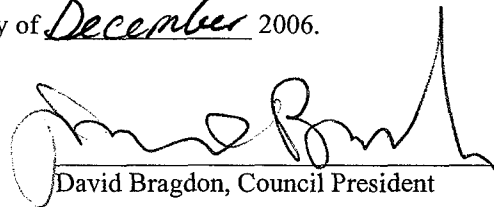
Metro Council on September 27, 2001, requires Metro Council approval of future property acquisitions on Mt. Talbert, because Metro has exceeded its acreage goals for the East Buttes Target Area; and

WHEREAS, all other terms of the transaction contemplated herein shall be governed by the 1995 Open Spaces Implementation Work Plan, set forth in Metro Council Resolution No. 95-2228A ("For the Purpose of Authorizing the Executive Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Open Spaces Implementation Work Plan"), adopted by the Metro Council on November 2, 1995 and amended by Resolution 01-3106 ("For the Purpose of Modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to Direct Future Acquisitions of Properties that Satisfy Specific Identified Criteria"), adopted by the Metro Council on September 27, 2001; and

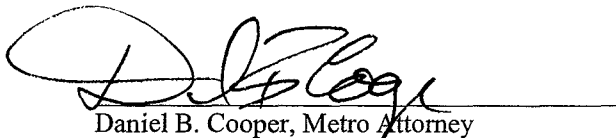
WHEREAS, Ordinance No. 06-1133 ("For the Purpose of Amending the FY 2006-07 Budget and Appropriations Schedule Authorizing New Positions for the Natural Areas Bond Work Program, Providing for Expenditures Related to the Natural Areas Bond, Providing for a Land Purchase in the Open Spaces Fund and Declaring an Emergency"), moves appropriation authority for this expenditure out of Operating Expenditures and into Capital Outlay within the Open Spaces Fund, and authorizes the use of the "Stabilization Reserve" for this property purchase; now therefore

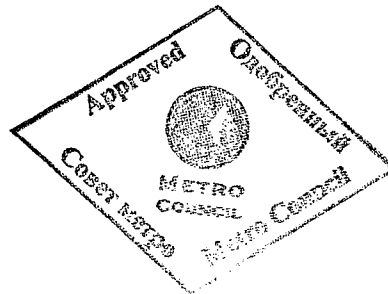
BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to enter into an Agreement of Purchase and Sale and to acquire the Property identified in Exhibit A subject to the unusual circumstances set forth herein.

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. 06-3746**



Target Area: EAST BUTTES

Description: The Property consists of three contiguous tax parcels totaling 10 acres, is contiguous to the established 183-Acre Mt. Talbert natural area and includes significant frontage on Mt. Scott Creek. The property is sloped, includes a remnant filbert orchard and the remainder is forested with red alder, western red cedar and Douglas fir. The Property also significantly contributes to the protection of the north side scenic values of Mt. Talbert.

- Option Criteria Addressed:**
- Water quality protection through Mount Scott Creek, in the Kellogg creek watershed
 - Builds on existing natural area and habitat protection
 - Protects scenic values on the North side of the Butte
 - Builds on this vital and unique natural recreation opportunity in Clackamas County. Mt. Talbert is scheduled to be open to public use, with regional trailhead facilities in 2007

Managers: North Clackamas Parks and Recreation will manage this property as part of Mt. Talbert

Sellers: Private Party

Conditions: Metro Council Approval



STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 06-3746 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO AN AGREEMENT TO PURCHASE PROPERTY IN THE EAST BUTTES TARGET AREA UNDER THE 1995 OPEN SPACE BOND MEASURE AND IMPLEMENTATION WORK PLAN SUBJECT TO UNUSUAL CIRCUMSTANCES

Date: November 30, 2006

Prepared by: Hillary Wilton

BACKGROUND

Metro staff has identified an opportunity to purchase specific property adjacent to the Mt. Talbert Regional Park (the "Property"). The Property is identified in the Open Spaces, Parks and Streams Bond Measure Refinement Plan For the East Buttes and Boring Lava Domes Target Area as a Tier 1B objective, (Resolution No. 96-2361 adopted July 25, 1996, "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"). The Property is also represented in the 2006 Natural Areas Bond Measure Target Area, known as East Buttes.

The Property was subject to litigation filed against Metro, Clackamas County and North Clackamas Parks & Recreation District ("NCPRD") and terms of Metro's acquisition of the Property were determined in non-binding mediation, acquisition of the Property contains certain "unusual circumstances" including that Metro will not receive its standard contractual representations and warranties from the Seller and will not be obtaining an appraisal of current market value; and "unusual circumstances" require the specific approval of the Metro Council, as set forth in the Open Spaces Implementation Work Plan.

Metro's acquisition of the Property with funds from the 1995 Open Spaces Bond Measure will build on the established goals of the Mt. Talbert Regional Park ("Mt. Talbert"), established in partnership with NCPRD.

EAST BUTTES TARGET AREA MT. TALBERT PROPERTY

Mt. Talbert is the largest undeveloped butte in Northern Clackamas County. Mt. Talbert rises as a forested green sentinel overlooking the web of development that surrounds it and the busy I-205 and Sunnyside Road interchange. With funds from the 1995 Open Spaces Bond Measure, 183 acres have been protected on Mt. Talbert, including the butte top and west and north facing slopes, which are visible to tens of thousands of people who travel daily on I-205 or visit Clackamas Town Center.

Metro and NCPRD have worked with neighbors, landscape architects and natural resource experts to develop a master plan for public use of Mt. Talbert. The Mt. Talbert Master Plan including the property visitor facilities planned for construction in 2007 will provide access to existing nature trails, parking, restrooms and a shelter for school field trips. The Property was identified in the Mt. Talbert Master Plan, adopted by the Metro Council on July 13, 2000, 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") as a target for acquisition.

The identified Property consists of three contiguous tax parcels totaling 10 acres. Located on Mt. Talbert's north side, the Property is contiguous to the established 183-acre Mt. Talbert Natural Area. The Property includes significant frontage on Mt. Scott Creek, part of a remnant filbert orchard and is otherwise forested with a mixture of western red cedar, Douglas fir, red alder and sword fern. Acquisition of the Property also significantly contributes to protection of the scenic values on the north side of the butte, which Metro hopes to continue to build upon.

Tier 1B objectives specify a challenge grant requirement and identify Clackamas Park District, now NCPRD, as a necessary partner and probable land manager. NCPRD will not participate in the acquisition of this 10-acre parcel but, through negotiation, has agreed to take over full day-to-day management responsibilities at Mt. Talbert.

Terms of the acquisition of the Property have been negotiated through non-binding mediation; Metro will not be obtaining an appraisal, which is considered an "unusual circumstances" under the terms of the Open Spaces Implementation Work Plan, and requiring Metro Council's specific approval.

While the East Buttes target area has exceeded its acreage goals set in the 1995 Open Spaces Bond Measure (acreage goal: 545, acreage acquired: 855), the Property is within the Tier 1B target area and makes a significant contribution to the established natural area, building on multiple established goals. Any acquisition under the 1995 Open Spaces Bond Measure where target area goals have already been exceeded also requires the specific approval of the Metro Council. Staff recommends the acquisition as a priority.

ANALYSIS/INFORMATION

1. Known Opposition

None known.

2. Legal Antecedents

Resolution No. 95-2228A, adopted November 2, 1995: "For the Purpose of Authorizing the Executive Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Open Spaces Implementation Work Plan."

Resolution No. 96-2361, adopted July 25, 1996: "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. 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."

Resolution No. 01-3106, adopted September 27, 2001: "For the Purpose of Modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to Direct Future Acquisitions of Properties that Satisfy Specific Identified Criteria."

Ordinance No. 06-1133, scheduled for Metro Council consideration on December 14, 2006: "For The Purpose of Amending the FY 2006-07 Budget and Appropriations Schedule Authorizing New Positions for the Natural Areas Bond Work Program, Providing for Expenditures Related to the

Natural Areas Bond, Providing for a Land Purchase in the Open Spaces Fund and Declaring an Emergency.”

3. Anticipated Effects

Metro will enter into a Purchase and Sale Agreement for the Property identified in Exhibit A of the Resolution.

4. Budget Impacts

This acquisition is estimated at \$1,075,000. Ordinance No. 06-1133 establishes expenditure authority for the acquisition of this Property. A “Stabilization Reserve” was created in 2001 (Resolution No. 01-3106), specifically for unforeseen legal liabilities and stabilization activities. A lawsuit filed against Metro and the subsequent mediated settlement agreement to purchase the property conforms to the intent of this reserve, and as such the Stabilization Reserve will be used to pay for this property acquisition.

RECOMMENDED ACTION

Staff recommends the adoption of Resolution No. 06-3746.