

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL WORK SESSION MEETING
DATE: February 20, 2007
DAY: Tuesday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

- | | | | |
|----------------|-----------|---|--------|
| 2:00 PM | 1. | DISCUSSION OF AGENDA FOR COUNCIL REGULAR MEETING, FEBRUARY 22, 2007//ADMINISTRATIVE/CHIEF OPERATING OFFICER COMMUNICATIONS | |
| 2:15 PM | 2. | WORK PLAN IMPLEMENTATION | Wilton |
| 2:45 PM | 3. | INTRODUCTION OF AUDIT STAFF AND WORK PLAN | Flynn |
| 3:15 PM | 4. | COUNCIL BRIEFINGS/COMMUNICATION | |

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Agenda Item Number 2.0

WORK PLAN IMPLEMENTATION

Metro Council Work Session
Tuesday, February 20, 2007
Council Chamber

METRO COUNCIL

Work Session Worksheet

Presentation Date: February 22, 2007 Time: 2:15 p.m. Length: 30 minutes

Presentation Title: Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan

Department: Parks and Greenspaces Dept.

Presenters: Jim Desmond

ISSUE & BACKGROUND

Over the course of several work sessions in November and December 2006, staff presented and received Metro Council direction on various components of the 2006 Natural Areas Bond Measure. On January 16, 2007, Metro Council reviewed the proposed public involvement strategy for refinement of the preliminary target areas. Since then, staff has been working on revising and updating the 1995 Open Spaces Parks and Streams Bond Measure Implementation Work Plan to create the 2006 Natural Areas Implementation Work Plan. On February 22, staff will present the revised sections that pertain to Acquisition Parameters and Due Diligence Guidelines. These parameters and guidelines will serve as a pre-approved set of criteria or conditions under which the Chief Operating Officer and his/her designees are authorized to negotiate and complete land acquisition transactions related to the implementation of the 2006 Natural Areas Bond Measure. These parameters and guidelines closely follow the policies adopted by the Metro Council following the passage of the 1995 bond measure, which have guided the program over the past 11 years.

OPTIONS AVAILABLE

1. Delegate authority to the Chief Operating Officer to close transactions meeting the acquisition criteria set forth in the Implementation Work Plan as revised.
2. Authorize the Office of Metro Attorney to oversee the due diligence for acquisitions as set forth in the Implementation Work Plan as revised.

IMPLICATIONS AND SUGGESTIONS

Staff proposes Metro Council adoption of the Acquisition Parameters and Due Diligence Guidelines, part of the Natural Areas Implementation Work Plan and that staff return to Council for adoption of other elements of the work plan as Council's authority is needed.

QUESTION(S) PRESENTED FOR CONSIDERATION

Does Metro Council agree that the proposed Acquisition Parameters and Due Diligence Guidelines should be adopted as part of the 2006 Natural Areas Implementation Work Plan?

LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION Yes No
DRAFT IS ATTACHED Yes No

SCHEDULE FOR WORK SESSION

Department Director/Head Approval _____

Chief Operating Officer Approval _____

NATURAL AREAS
IMPLEMENTATION
WORK PLAN



METRO

**REGIONAL PARKS AND GREENSPACES
DEPARTMENT**

600 NE Grand Ave., Portland, OR 97232-2736 (503) 797-1850

ACQUISITION PARAMETERS

Definition:

"*Acquisition Parameters*" are the Council-approved criteria and conditions under which the Chief Operating Officer and his/her designees are authorized to negotiate and complete land acquisition transactions without further Council review and approval. The Chief Operating Officer and his/her designees may complete a land acquisition transaction that does not meet all of the *acquisition parameters* only with specific Council review and approval.

Rationale:

The creation of pre-approved *acquisition parameters* will permit the agency to deal with willing sellers in a timely and business-like manner and allow the Council to focus on policy level issues.

Intent:

Metro intends to pay no more than fair market value for property, it being acknowledged, however, that the Metro area real estate market is dynamic and the process of identifying fair market value is not exact. Metro's acquisition process should provide as much flexibility as possible to achieve the goals of the Natural Areas Bond Measure and to reflect the actual market conditions affecting the fair market value of properties targeted for natural areas acquisition.

Acquisition Parameters:

The Metro Council authorizes the Chief Operating Officer and his/her designees to negotiate and close real estate transactions related to the 2006 Natural Areas Bond Measure provided all of the following criteria/conditions are met:

- The landowner is a willing seller.
- The property is identified on a Council-adopted target area "confidential refinement map."
- The Real Estate Negotiator and a stabilization team representative have inspected the property, they and the Natural Areas Manager have approved the purchase, and an acknowledgement of such visits and approvals has been completed (Appendix 1).
- If the property is identified as Agricultural Resource Land in the Refinement Plan adopted for the applicable target area, then Metro has complied with the Agricultural Resource Land Guidelines in this Work Plan, as specifically refined by the applicable Refinement Plan for the target area in which the property is located.

- The negotiated purchase price for the property is either:
 1. Equal to or less than the fair market value as established by the appraisal and appraisal review processes described below (note that Metro will actively solicit donations and bargain sales); or
 2. Not more than 10% or \$100,000, whichever is less, above such fair market value and the Chief Operating Officer has authorized acquisition of the property at such price after taking into account the following “public interest” factors:
 - The importance of the site based on the applicable adopted Refinement Plan for that target area;
 - The impact to the overall goals and progress of the program and the applicable Refinement Plan for that target area that will result if the property is not purchased; and
 - Whether any other parties are making financial contributions toward the purchase price.

- **Appraisal**

An independent certified appraiser has completed an appraisal of the property that states a conclusion of the fair market value of the property or, if appropriate, a range of value. The appraisal may be in summary report format. The appraiser shall state in the appraisal any assumptions that he/she relied upon to determine the property’s fair market value; however, the appraisal shall not be based upon any “extraordinary assumptions” made by the appraiser that materially affect the property’s fair market value.

- **Appraisal Review**

A certified appraiser has completed a review of the appraisal if either (1) the property’s purchase price is \$250,000 or more, or (2) the Metro Attorney determines, at his/her sole discretion, that such an appraisal review is appropriate under the circumstances of a particular proposed acquisition. Such appraisal review shall be completed in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”) and general appraisal standards and may include a determination of an acceptable range of value for the property by the review appraiser. If the review appraiser determines that the appraisal does not meet USPAP or other general appraisal standards, the review appraiser, after consultation with and at the direction of the Office of the Metro Attorney, may either (a) work with the appraiser to correct the deficiencies, (b) order a second appraisal to be reviewed in the manner set forth herein, or (c) make a final determination of the range of value for the property.

- *"Due diligence"* has been completed in conformance with the *due diligence* section of this Work Plan and no unusual circumstances have been found to exist.

Notices and Reports to Council Regarding Completed Transactions

The Natural Areas Bond Program Manager or his/her designees shall notify the Council promptly following the closing of any real estate transaction. The Chief Operating Officer or his/her designees shall prepare and present to the Council quarterly updates summarizing acquisition activity distinguished by target area.

DUE DILIGENCE GUIDELINES

Definition:

"*Due diligence*" is the systematic inspection of the legal title and physical condition of real property before that property is purchased to assure protection of public investment in natural area and trail properties. *Due diligence* should be conducted in advance of closing so that resolvable problems can be adequately addressed prior to closing.

Components:

The primary areas of *due diligence* are described below. A more detailed list of items examined may be found in the Appendix under "Due Diligence and Closing Checklist." The Metro Attorney may amend the checklist as determined necessary and appropriate at his/her discretion.

The Due Diligence Team is comprised of the Real Estate Negotiator, Metro Attorney staff, and Stabilization Manager for each property.

- Appraisal: An appraisal of the property must be completed to determine the property's fair market value and provide other useful information about the property. The appraisal shall be in the format described in the previous section regarding *acquisition parameters* and shall be reviewed in the manner set forth therein.
- Examination of Title:
 1. Metro must satisfy itself that the property is the seller's to sell, that Metro understands what rights will be conveyed, that all parties necessary for the conveyance are involved, and that any rights that are not a part of the transaction will not defeat the purpose of the acquisition.
 2. *Due diligence* requires the review and inspection of the title report and related documents, including the deed to the current owner, recorded easements and other encumbrances, water rights, access rights, taxes, liens, etc.
 3. Other documents that need to be inspected include unrecorded leases with existing tenants or farmers, management agreements, records pertaining to personal property included in the sale, surveys, and agreements the seller may have entered into that may not be of record.

- Inspection of the Property:

1. Location of Boundaries. *Due diligence* requires the review of any existing

survey of the property. Absent a recent survey, Metro should identify the known or assumed property boundaries on site. If such boundary identification is not apparent, a new survey will be conducted unless deemed unnecessary or uneconomical by the Due Diligence Team. Additionally, Metro must identify that both legal and physical access to the property exist and are usable. Legal and physical access by the public will be secured unless the nature of the property is such that access restrictions are acceptable for that property.

2. **Physical Inspection.** Metro or its contractors and agents must physically inspect the property for environmental assessment purposes and to identify possible hazards, unrecorded easements and trespassers, and to make a preliminary evaluation of the condition of any structures and improvements (roads, fences, utilities, etc.), which shall be further evaluated during the stabilization period (see section regarding *Stabilization and Land Stewardship, supra*). Any encroachments, potential property boundary disputes, or unrecorded use of the property identified either during property inspection or in title search will be resolved prior to closure unless deemed impractical by the Due Diligence Team and the Natural Areas Manager has authorized closing notwithstanding such circumstances(s).

3. **Environmental Review.** Metro shall contract with an environmental professional to conduct a Phase I Environmental Assessment in accord with the requirements of the federal All Appropriate Inquiries standards set forth in 40 CFR Part 312, ASTM Standard E1527-05, as that standard may revised and updated, and in accord with applicable state of Oregon law and regulation, for the purpose of establishing the Innocent Landowner Defense pursuant to CERCLA section 101(35) and 107(b)(3). If the Phase I Environmental Assessment identifies environmental conditions indicative of releases or threatened releases of hazardous substances, pollutants, contaminants, petroleum and petroleum products and controlled substances, Metro shall contract with an Environmental Professional to conduct a Phase II Environmental Investigation, which may include soil and groundwater sampling and testing, in accord with ASTM Standards. The Chief Operating Officer may authorize the expenditure of Natural Area Program bond funds to remediate environmental contamination identified on a property by a Phase II Environmental Assessment provided that the Chief Operating Officer has concluded that (a) such expenditure is reasonable in relation to the purchase price and appraised value of such property, and (b) such expenditure will result in receipt of a "No Further Action" letter, or a substantial equivalent, from the Oregon Department of Environmental Quality or will substantially eliminate the probability of future environmental liability to Metro, based on information provided in the Phase II Environmental Assessment. If such expenditure successfully remediates an environmental condition identified in a Phase II Environmental Assessment then such condition shall no longer be considered an "unusual circumstance," as described in the following paragraph of this work plan.

- **Unusual Circumstances.** If, in the course of *due diligence*, the Due Diligence Team discovers any unusual deed or title restrictions, encumbrances, or environmental

Exhibit A to Resolution No. 07-3766

conditions that may prohibit or unduly restrict Metro's ability to use the property as a natural area or for a trail or that may create a liability to Metro, such restrictions, encumbrances, or conditions shall be considered "unusual circumstances." As provided in the section of this Work Plan regarding *acquisition parameters*, the Chief Operating Officer and his/her designees may not complete the purchase of a property with such unusual circumstances without obtaining the Metro Council's specific approval prior to such acquisition.

- Document Retention. Documents related to acquisitions shall be retained as determined appropriate by the Metro Attorney.

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DUE DILIGENCE AND CLOSING CHECKLIST

Target Area: File No. _____

Seller:

Seller's Attorney/Representative:

Property address and/or tax lot designation:

County:

Refinement designation:

Real Estate Negotiator:

Acres:

Purchase Price:

Escrow Deposit: \$ _____; Delivered to Escrow Co. on _____

Option or Purchase and Sale Agreement?

Effective Date:

Closing Date:

If Option:

Option Exercise Date:

Option Payment:

Funding Source:

Metro Partner:

Date IGA Executed:

Date City/County Resolution Signed:

Date Metro Resolution Signed:

or Exhibit B Letter sent:

Right of First Refusal Letter

date sent:

recipient:

Title Co./Escrow Holder & Address:

Phone no:
Fax no:
Email address:

Appraiser:

Surveyor:

Environmental Review:
Internal:

District Councilor:

I. DUE DILIGENCE REVIEW AND/ OR PREPARING TO EXERCISE THE OPTION

A. Title Review

Title Company:
Effective date of Preliminary Title Report:
Reviewed:
Notice of objections to Seller (permitted exceptions ltr) due: _____ sent: _____
Title Policy to be subject only to:

B. Appraisal/Appraisal Review

Appraiser:
Effective Date of Appraisal:
Appraisal ordered by:
Reviewed by: _____ Date reviewed:
Value confirmed?
Revision/correction required?
Appraisal approved as revised?

C. Environmental/Hazardous Materials Review

Phase I Environmental inspection by:
Received:
Stabilization Mgr review and signoff:
Underground storage tank?
Additional action/recommendations:

D. Survey Review

1. ALTA Survey
Certified to Metro and title company
Confirm acreage
Any title problems noted?

2. Filed Surveys

- Available?
- Date surveyed:
- Surveyor:
- Date reviewed:
- Confirm acreage:
- Any title problems noted?

3. Site visit boundary review

- Date conducted:
- Conducted by:
- Any boundary, trespass, or other issues noted?

E. **Planning Department/Land Use Actions**

- a. Planning Jurisdiction:
- b. Planning information reviewed by: _____
- c. Zoning Designation:
- d. Does planning file exist on this property? _____ Contents?

F. **Council Action**

- a. Council Target Area Resolution: Res No. _____, adopted: _____
- b. Additional Council Resolution, if any: Res No. _____, adopted: _____

G. **Access, Easements, Permits and Licenses**

- a. Property description:
- b. Access (if on State Highway confirm with ODOT):
Easements and licenses:
Legal confirmed by:
Actual confirmed by:
- c. Mineral rights reserved?
- d. Leases/Permits
Farm lease:
Residential lease:
- g. Reforestation:
- h. Other:

H. **Financial Issues**

- a. Deferred taxes?
- b. Broker?
- c. 1031; bargain sale?
- d. Other:

I. **Additional Agreements/Terms in Option or Purchase and Sale Agreement**

- a. Possession at closing

- b. Subdivision/ Covenants, Conditions & Restrictions (CC&Rs):
- c. Holdback
- d. Leaseback
- e. Easements
- f. Other

J. Buildings and other Improvements

- a. Description:
- b. Other improvements:
- c. Possession at closing:
- d. Specific property, debris, unsightly material to be removed:
- e. If residential:
 - Availability of utilities, water, sewage, etc.:
 - Inspection conducted by:
 - date completed:
 - Additional action/recommendations:

K. Personal Property or Fixtures?

- a. Farm/ ranch equipment, age and condition:
- b. Inventory prepared by:
- c. Review title:
- d. Perform UCC-3 lien search if important personal property:

L. Known off-record Title Problems

- a. Boundary/fences?
- b. Tenants?
- c. Evidence of potential adverse possession / prescriptive easement/trespassers?

M. Water

- a. Water rights:
- b. Review all water certificates, permits, applications:
- c. Confirm title with state water engineer's office/water master:
- d. Confirm irrigation district rights/annual assessment
- e. Confirm not subject to mortgages or other liens:
- f. Confirm eligibility/percentage active rights:
- g. Confirm requirements for transfer or assignment:
- h. Upon closing, file any appropriate documents:
- i. Cost of water use:
- j. Well log(s): copy in file yes ____ not available ____

II. EXERCISING THE OPTION

A. Option Exercise Letter

Date sent to Seller: _____

Closing Date: _____

Subject to conditions?

(Caution: may be deemed a counter offer giving Seller right to terminate)

III. CLOSING

A. Closing documents and other items to be prepared or obtained

- 1. Closing memo to Chief Operating Officer initialed by paralegal, atty and parks
- 2. Deed (statutory warranty deed)
- 3. Escrow Instructions
- 4. Buyer's settlement statement prepared by title company
 - a. real property tax prorations
 - b. closing costs
- 5. FIRPTA Affidavit
- 6. 1031 Assignment document, if applicable
- 7. Water rights assignment, if app.
- 8. Assignment of Leases and right to receive revenue, if app.
- 9. Assignment of intangible property (permits, trade names, etc), if app.
- 10. Bill of sale (if personal property included)
- 11. Other documents:

B. Confirm all closing conditions met

- 1. Review Agreement:
 - a. Any special conditions?

C. Send closing documents to title company

D. Arrange for transfer of funds.

IV. POST-CLOSING MATTERS

A. Obtain any keys to the property (info re utilities to parks property manager).

B. Notify Parks Management of Closing.

C. Notify Property Manager re: Insurance for improvements.

D. Insurance for personal property.

E. Review title policy to make sure it conforms to escrow instructions.

F. Documents: Received: Reviewed:

Closing Statement: _____ _____

Deed: _____ _____

Title policy: _____

G. Send originals of all permanent record documents to Metro Accounting Manager.

Date sent: _____

Agenda Item Number 3.0

PRESENTATION OF AUDIT STAFF AND WORKPLAN

Metro Council Work Session
Tuesday, February 22, 2007
Council Chamber

METRO COUNCIL

Work Session Worksheet

Presentation Date: 2/20/07 Time: 3:20 PM Length: 30 Minutes

Presentation Title: Presentation of Audit Staff and Workplan

Department: Office of the Auditor

Presenters: Suzanne Flynn

ISSUE & BACKGROUND

The Metro Auditor has recently recruited new staff to fill positions in the Office. She will introduce the staff and briefly describe their backgrounds. She will also present a draft audit schedule and request feedback.

OPTIONS AVAILABLE

IMPLICATIONS AND SUGGESTIONS

QUESTION(S) PRESENTED FOR CONSIDERATION

Are there any audits that the Council would prioritize higher than others?

**LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION Yes No
DRAFT IS ATTACHED Yes No**

SCHEDULE FOR WORK SESSION

Department Director/Head Approval

Chief Operating Officer Approval _____

