

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 01-3036
EXECUTIVE OFFICER TO PURCHASE)
THE WILSONVILLE TRACT IN THE) Introduced by Mike Burton
TONQUIN GEOLOGIC TARGET AREA) 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 (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and certain park-related capital improvements; and

WHEREAS, on February 22, 1996, via Resolution 96-2300, the Metro Council adopted a refinement plan for the Tonquin Geologic Target Area which identified acquisition of property owned by the Oregon Division of State Lands ("DSL") as a Tier 1 objective, in order to provide a regional scale natural area/park site; and

WHEREAS, DSL owns approximately 230 acres of farmland, forest, wetlands and Mill Creek, commonly known as the Wilsonville Tract ("the Property"), and has offered the Property for sale to Metro with "unusual circumstances" as defined in the Open Spaces Implementation Work Plan; and

WHEREAS, DSL is not willing to make any representations to Metro regarding the environmental condition of the property; and

WHEREAS, DSL is not willing to make any representations to Metro regarding title matters; such as unrecorded leases, easements or other binding agreements, liens, impending lawsuits or governmental notices; and

WHEREAS, DSL has mandated that the title to the Property be conveyed via a Bargain and Sale Deed, with restrictions that limit the use of the property to public purposes only, and state that the Property cannot be resold to a private purchaser; and

WHEREAS, DSL has required that, through deed restrictions on the Property, Metro make the Property "perpetually accessible, under reasonable conditions, to Oregon kindergarten through grade twelve schoolchildren for environmental education; and

WHEREAS, DSL has reserved the subsurface mineral rights to the Property; and

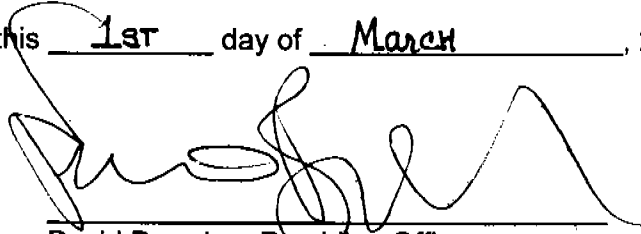
WHEREAS, these circumstances constitute "unusual circumstances" requiring specific Council approval pursuant to the Open Spaces Implementation Work Plan; and

WHEREAS the purchase price for this transaction, due to the unusual deed restrictions, the significant amount of merchantable timber at the Tract, and other unique matters, should not establish a precedent or comparable for other transactions which do not contain similar restrictions and unusual circumstances; now therefore

BE IT RESOLVED,

That the Metro Council authorizes the Metro Executive Officer to purchase the Wilsonville Tract in the Tonquin Geologic target area as identified in Exhibit A, for a price not to exceed \$1,833,300, and accept a deed in substantially the form set forth in Exhibit B or in a form approved by the Metro Office of General Counsel.

ADOPTED by the Metro Council this 1st day of March, 2001.



David Bragdon, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel



Exhibit A

A tract of land in the Southeast one quarter of the Southeast one quarter of Section 16, the Northeast one quarter of Section 21, the North half of Section 22, the Northeast one quarter of the Southeast one quarter of Section 22 and the South half of Section 15, in Township 3 South, Range 1 West of the Willamette Meridian, Clackamas County, Oregon, described as follows:

Beginning at a 5/8 inch iron rod which is North 54°11'40" East 85.02 feet from the section corner common to Sections 15, 16, 21 and 22, Township 3 South, Range 1 West, Willamette Meridian; thence North 66°40'15" West 322.66 feet to a 5/8 inch iron rod; thence North 46°47'23" West 256.51 feet to a 5/8 inch iron rod; thence North 46°47'23" West 21.53 feet to the center line of Grahams Ferry Road; thence following said centerline along the arc of a 1285.88 foot radius curve to the right, the chord of which bears South 46°37'07" West 200.45 feet; thence South 51°05'30" West 435.08 feet; thence along the arc of a 455.80 foot radius curve to the left, the long chord of which bears South 18°18'53" West 493.52 feet; thence South 14°27'45" East 91.47 feet; thence along the arc of a 1227.95 foot radius curve to the right, the long chord of which bears South 08°57'49" East 235.34 feet; thence South 03°27'53" East 173.36 feet; thence along the arc of a 1186.31 foot radius curve to the left, the long chord of which bears South 20°26'03" East 692.48 feet; thence South 21°44'55" East 109.36 feet to the intersection of Graham Ferry Road and Bell Road; thence along the centerline of Bell Road, South 38°48'48" East 173.10 feet; thence South 42°06'56" East 383.23 feet; thence along the arc of a 315.22 foot radius curve to the left, the long chord of which bears South 59°43'00" East 190.64 feet; thence South 77°19'02" East 159.89 feet; thence along the arc of a 114.00 foot radius curve to the right, the long chord of which bears South 42°19'27" East 130.75 feet; thence South 07°19'38" East 130.62 feet; thence along the arc of a 431.32 foot radius curve to the left, the long chord of which bears South 17°13'49" East 148.36 feet; thence South 27°08'02" East 44.21 feet; thence along the arc of a 249.60 foot radius curve to the right, the long chord of which bears South 16°10'55" East 94.84 feet; thence South 05°13'52" East 23.59 feet; thence along the arc of a 448.74 foot radius curve to the left, the long chord of which bears South 11°01'24" East 90.58 feet; thence South 16°48'56" East 28.21 feet; thence along the arc of a 259.95 foot radius curve to the right, the long chord of which bears South 08°37'54" East 74.01 feet; thence South 00°26'54" East 33.37 feet; thence along the arc of a 242.51 foot radius curve to the left, the long chord of which bears South 34°09'25" East 269.17 feet; thence South 67°51'48" East 27.29 feet to the intersection of Bell Road and Wilsonville Road; thence along the centerline of Wilsonville Road, North 13°09'50" East 312.42 feet; thence along the arc of a 295.68 foot radius curve to the right, the long chord of which bears North 51°02'33" East 363.09 feet; thence North 88°55'17" East 73.75 feet; thence along the arc of a 398.28 foot radius curve to the left, the long chord of which bears North 76°14'07" East 174.93 feet; thence North 63°32'59" East 672.88 feet; thence North 64°15'25" East 1539.39 feet; thence along the arc of a 573.00 foot radius curve to the left, the chord of which bears North 63°41'36" East 11.27 feet; thence North 00°04'34" East 3403.82 feet to a point on the South line of the Samuel

B. Franklin Donation Land Claim No. 50; thence South $89^{\circ}40'18''$ West 557.83 feet; thence South $00^{\circ}14'40''$ West 518.01 feet; thence South $89^{\circ}34'40''$ West 1150.00 feet to a 5/8 inch iron rod; thence South $01^{\circ}09'10''$ West 743.76 feet to a 5/8 inch iron rod; thence South $74^{\circ}03'51''$ West 266.67 feet to a 5/8 inch iron rod; thence South $73^{\circ}40'12''$ West 969.32 feet to the point of beginning.

EXCEPTING THERFROM that portion adjacent to Bell Road in the J. R. Shaw Donation Land Claim No. 51 as contained in Deed to Robert W. Harkson, Trustee recorded July 12, 1991, Recorder's Fee No. 91-34172, Clackamas County Records.

ALSO EXCEPTING THEREFROM that portion lying within public roads and highways.

ALSO EXCEPTING THEREFROM that portion lying in the area as follows:

A tract of land located in the Northwest One-Quarter and the Northeast One-Quarter of Section 22, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon, being a portion of that tract of land described in deed to the State of Oregon, recorded July 1, 1993, Recorder's Fee No. 94-29363, Clackamas County deed records, being more particularly described as follows:

Commencing at the Northeast corner of Section 22, T.3S, R.1W., W.M., thence along the North line thereof, S. $89^{\circ}37'45''$ W., 2,319.21 feet to a $\frac{3}{4}$ " iron pipe inside a 2" iron pipe; thence S. $00^{\circ}17'37''$ W., 127.61 feet to the Northwest corner of that tract of land described in Fee No. 79-5357, Clackamas County deed records, and the true point-of-beginning; thence along the East line of that tract of land described in deed to the State of Oregon, recorded July 1, 1993, Recorder's Fee No. 94-29363, Clackamas County deed records, S. $00^{\circ}17'37''$ W., 1,580.05 feet to the North right-of-way line of Wilsonville Road (Market Road No. 6) (30.00 feet from centerline); thence along said right-of-way line the following two (2) courses: thence 22.90 feet along the arc of a 543.00 foot radius curve to the right, through a central angle of $02^{\circ}24'57''$ (the long chord bears S. $63^{\circ}18'58''$ W., 22.89 feet); thence S. $64^{\circ}31'27''$ W., 288.84 feet; thence N. $32^{\circ}52'28''$ W., 1,200.45 feet; thence N. $56^{\circ}36'30''$ E., 569.00 feet; thence N. $74^{\circ}27'30''$ E., 271.50 feet; thence N. $32^{\circ}31'00''$ e., 380.00 feet to the point-of-beginning, containing 871,200 square feet (20.00 acres) more or less.

EXHIBIT "A"
Legal Description

3RD AMENDED LEGAL DESCRIPTION

A tract of land in the Southeast one-quarter of Section 16, the Northeast one-quarter of Section 21, the North one-half of Section 22, the Southeast one-quarter of Section 22, and the South one-half of Section 15, in Township 3 South, Range 1 West, of the Willamette Meridian, in the County of Clackamas and State of Oregon, being more particularly described as follows:

Beginning at the section corner common to Sections 15, 16, 21 and 22, Township 3 South, Range 1 West of the Willamette Meridian; thence North 00° 00' 00" West, 79.48 feet; thence South 66° 40' 15" East, 75.09 feet to a 5/8 inch iron rod; thence North 73° 40' 12" East, 969.32 feet to a 5/8 inch iron rod; thence North 74° 03' 51" East, 266.67 feet to a 5/8 inch iron rod; thence North 01° 09' 10" East, 743.76 feet to a 5/8 inch iron rod; thence North 89° 34' 40" East, 1150.00 feet; thence North 00° 14' 40" East, 511.53 feet; thence North 89° 51' 49" East, 563.14 feet to the Northwest corner of Lot 117, PARK AT MERRYFIELD NO. 4, a recorded plat in Plat Book 99, Page 23, Clackamas County Plat Records; thence along the West line of said plat and its Southerly extension South 00° 14' 48" West, 1789.86 feet to the Northeast corner of that parcel of land conveyed to the West Linn-Wilsonville School District by Deed recorded as Document Number 99-110481; thence along the Northerly line of said school district parcel the following three courses: South 32°28'11" West, 380.12 feet; South 74°24'41" West, 271.45 feet; and South 56°33'47" West, 569.05 feet to the Northwest corner of said school district parcel; thence along the West line of said parcel and its Southerly extension, South 32°55'34" East, 1226.54 feet to the center line of Wilsonville Road; thence along said center line South 64°15'25" West, 1249.08 feet; thence South 63° 32' 59" West, 672.88 feet; thence 176.37 feet along the arc of a 398.28 foot radius curve to the right through a central angle of 25° 22' 19" (the long chord bears South 76° 14' 07" West, 174.93 feet); thence South 88° 55' 17" West, 73.75 feet; thence 390.95 feet along the arc of a 295.68 foot radius curve to the left through a central angle of 75° 45' 26" (the long chord bears South 51° 02' 33" West, 363.09 feet); thence South 13° 09' 50" West, 312.42 feet to the center line intersection of Wilsonville Road and Bell Road; thence along the center line of said Bell Road, North 67° 51' 48" West, 27.29 feet; thence 285.35 feet along the arc of a 242.51 foot radius curve to the right through a central angle of 67° 25' 01" (the long chord bears North 34° 09' 25" West, 269.17 feet); thence North 00° 26' 54" West, 33.37 feet; thence 74.26 feet along the arc of a 259.95 foot radius curve to the left through a central angle of 16° 22' 06" (the long chord bears North 08° 37' 54" West, 74.01 feet); thence North 16° 48' 56" West, 28.21 feet; thence 90.73 feet along the arc of a 448.74 foot radius curve to the right through a central angle of 11° 35' 06" (the long chord bears North 11° 01' 24" West, 90.58 feet); thence North 05° 13' 52" West, 23.59 feet; thence 95.42 feet along the arc of a 249.60 foot radius curve to the left through a central angle of 21° 54' 13" (the long chord bears North 16° 10' 55" West, 94.84 feet); thence North 27° 08' 02" West, 44.21 feet; thence 149.10 feet along the arc of a 431.32 foot radius curve to the right through a central angle of 19° 48' 23" (the long chord bears North 17° 13' 49" West, 148.36 feet); thence North 07° 19' 38" West, 130.62 feet; thence 136.77 feet along the arc of a 114.00 foot radius curve to the left through a central angle of 68° 44' 15" (the long chord bears North 41° 41' 58" West, 128.71 feet);

(Continued)

Exhibit "A"
Legal Description

thence leaving the center line of said Bell Road, North 09° 06' 26" West, 300.95 feet to a 5/8 inch iron rod on the North line of the J.R. Shaw Donation Land Claim No. 51; thence along said North line, North 89° 17' 15" West, 429.74 feet to the center line of said Bell Road; thence along said center line North 42° 06' 56" West, 153.13 feet; thence North 38° 48' 48" West, 173.10 feet to center line intersection of Bell Road and Graham Ferry Road; thence along the center line of Graham Ferry Road, North 21° 44' 55" West, 109.36 feet; thence 647.25 feet along the arc of a nontangent 1186.31 foot radius curve to the right through a central angle of 31° 15' 38" (the long chord bears North 21° 46' 24" West, 639.25 feet); thence North 54° 00' 00" East, 1229.48 feet to the section line common to Sections 21 and 22; thence along said section line, North 00° 00' 00" East, 338.25 feet to the point of beginning.

Draft-Draft-Draft-Draft-Draft-Draft
STATE OF OREGON

BARGAIN AND SALE DEED

GRANTOR:

Oregon State Land Board
by Ann Hanus, Director

Division of State Lands

775 Summer St NE
Salem, OR 97310

GRANTEE:

Metropolitan Service District
(METRO)
600 NE Grand Ave
Portland, OR 97232-2736

**FUTURE TAX STATEMENTS
SHOULD BE MAILED TO:**

Metropolitan Service District (METRO)
600 NE Grand Ave
Portland, OR 97232-2736

AFTER RECORDING RETURN TO:

Metropolitan Service District (METRO)
600 Grand Ave
Portland, OR 97232-2736

NOW, THEREFORE, the STATE OF OREGON acting by and through the Oregon State Land Board, (GRANTOR), does hereby convey unto the Metropolitan Service District (METRO), (GRANTEE), all interest in the said property, except as hereinafter described, with the covenant that said property is: used for public purposes or benefit (e.g. park facility, open space and environmental education); perpetually accessible, under reasonable conditions, to Oregon kindergarten through grade twelve schoolchildren for environmental education; and not for resale to a private purchaser.

DESCRIPTION: A tract of land located in Clackamas County, Oregon encompassing 230 acres as described in Exhibit A.

CONSIDERATION: The true and actual consideration for this conveyance is \$1,833,300

EXCEPTIONS: The State of Oregon shall retain all rights and interests in the subsurface minerals located within the area described in this deed, except the grantee shall control all rights to surface occupancy.

Subject to any and all existing leases, easements, existence of roads, railroads, irrigation ditches and canals, telegraph and power transmission facilities.

Exhibit B
Resolution 01-3036

This instrument will not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses and to determine any limits on lawsuits against farming or forest practices as defined in ORS 30.930.

This instrument will not allow use of the property described in the instrument in violation of applicable federal, state, and local laws preventing discrimination or protecting individuals against discrimination.

WITNESS the seal of the Division of State Lands affixed this _____ day of _____, ____.

STATE OF OREGON, acting by and through its Division of State Lands,

Ann Hanus, Director

Seal

STATE OF OREGON)
) ss
County of Marion)

The foregoing instrument was acknowledged before me this _____ day of _____, ____.

Signature

My commission expires _____, ____.

Exhibit B
Resolution 01-3036

Exhibit A

A tract of land in the Southeast one quarter of the Southeast one quarter of Section 16, the Northeast one quarter of Section 21, the North half of Section 22, the Northeast one quarter of the Southeast one quarter of Section 22 and the South half of Section 15, in Township 3 South, Range 1 West of the Willamette Meridian, Clackamas County, Oregon, described as follows:

Beginning at a 5/8 inch iron rod which is North 54°11'40" East 85.02 feet from the section corner common to Sections 15, 16, 21 and 22, Township 3 South, Range 1 West, Willamette Meridian; thence North 66°40'15" West 322.66 feet to a 5/8 inch iron rod; thence North 46°47'23" West 256.51 feet to a 5/8 inch iron rod; thence North 46°47'23" West 21.53 feet to the center line of Grahams Ferry Road; thence following said centerline along the arc of a 1285.88 foot radius curve to the right, the chord of which bears South 46°37'07" West 200.45 feet; thence South 51°05'30" West 435.08 feet; thence along the arc of a 455.80 foot radius curve to the left, the long chord of which bears South 18°18'53" West 493.52 feet; thence South 14°27'45" East 91.47 feet; thence along the arc of a 1227.95 foot radius curve to the right, the long chord of which bears South 08°57'49" East 235.34 feet; thence South 03°27'53" East 173.36 feet; thence along the arc of a 1186.31 foot radius curve to the left, the long chord of which bears South 20°26'03" East 692.48 feet; thence South 21°44'55" East 109.36 feet to the intersection of Graham Ferry Road and Bell Road; thence along the centerline of Bell Road, South 38°48'48" East 173.10 feet; thence South 42°06'56" East 383.23 feet; thence along the arc of a 315.22 foot radius curve to the left, the long chord of which bears South 59°43'00" East 190.64 feet; thence South 77°19'02" East 159.89 feet; thence along the arc of a 114.00 foot radius curve to the right, the long chord of which bears South 42°19'27" East 130.75 feet; thence South 07°19'38" East 130.62 feet; thence along the arc of 431.32 foot radius curve to the left, the long chord of which bears South 17°13'49" East 148.36 feet; thence South 27°08'02" East 44.21 feet; thence along the arc of a 249.60 foot radius curve to the right, the long chord of which bears South 16°10'55" East 94.84 feet; thence South 05°13'52" East 23.59 feet; thence along the arc of a 448.74 foot radius curve to the left, the long chord of which bears South 11°01'24" East 90.58 feet; thence South 16°48'56" East 28.21 feet; thence along the arc of a 259.95 foot radius curve to the right, the long chord of which bears South 08°37'54" East 74.01 feet; thence South 00°26'54" East 33.37 feet; thence along the arc of a 242.51 foot radius curve to the left, the long chord of which bears South 34°09'25" East 269.17 feet; thence South 67°51'48" East 27.29 feet to the intersection of Bell Road and Wilsonville Road; thence along the centerline of Wilsonville Road, North 13°09'50" East 312.42 feet; thence along the arc of a 295.68 foot radius curve to the right, the long chord of which bears North 51°02'33" East 363.09 feet; thence North 88°55'17" East 73.75 feet; thence along the arc of a 398.28 foot radius curve to the left, the long chord of which bears North 76°14'07" East 174.93 feet; thence North 63°32'59" East 672.88 feet; thence North 64°15'25" East 1539.39 feet; thence along the arc of a 573.00 foot radius curve to the left, the chord of which bears North 63°41'36" East 11.27 feet; thence North 00°04'34" East 3403.82 feet to a point on the South line of the Samuel

Exhibit B
Resolution 01-3036

B. Franklin Donation Land Claim No. 50; thence South 89°40'18" West 557.83 feet; thence South 00°14'40" West 518.01 feet; thence South 89°34'40" West 1150.00 feet to a 5/8 inch iron rod; thence South 01°09'10" West 743.76 feet to a 5/8 inch iron rod; thence South 74°03'51" West 266.67 feet to a 5/8 inch iron rod; thence South 73°40'12" West 969.32 feet to the point of beginning.

EXCEPTING THERFROM that portion adjacent to Bell Road in the J. R. Shaw Donation Land Claim No. 51 as contained in Deed to Robert W. Harkson, Trustee recorded July 12, 1991, Recorder's Fee No. 91-34172, Clackamas County Records.

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Commencing at the Northeast corner of Section 22, T.3S, R.1W., W.M., thence along the North line thereof, S.89°37'45" W., 2,319.21 feet to a 3/4" iron pipe inside a 2" iron pipe; thence S.00°17'37"W., 127.61 feet to the Northwest corner of that tract of land described in Fee No. 79-5357, Clackamas County deed records, and the true point-of-beginning; thence along the East line of that tract of land described in deed to the State of Oregon, recorded July 1, 1993, Recorder's Fee No. 94-29363, Clackamas County deed records, S.00°17'37"W., 1,580.05 feet to the North right-of-way line of Wilsonville Road (Market Road No. 6) (30.00 feet from centerline); thence along said right-of-way line the following two (2) courses: thence 22.90 feet along the arc of a 543.00 foot radius curve to the right, through a central angle of 02°24'57" (the long chord bears S. 63°18'58"W., 22.89 feet); thence S. 64°31'27" W., 288.84 feet; thence N. 32°52'28" W., 1,200.45 feet; thence N. 56°36'30" E., 569.00 feet; thence N. 74°27'30"E., 271.50 feet; thence N. 32°31'00"e., 380.00 feet to the point-of-beginning, containing 871,200 square feet (20.00 acres) more or less.

Staff Report

CONSIDERATION OF RESOLUTION NO. 01-3036 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE THE WILSONVILLE TRACT IN THE TONQUIN GEOLOGIC TARGET AREA

Date: March 1, 2001

Presented by:

**Charles Ciecko
Jim Desmond**

Proposed Action

Resolution No. 01-3036 requests authorization for the Executive Officer to purchase the 230-acre Wilsonville Tract property in the Tonquin Geologic target area in accordance with the deed proposed by the State of Oregon Division of State Lands ("DSL").

Existing Legislation

Metro Code 2.04.026 (a) (3) requires that the Executive Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase of real property. The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 96-2424, was established to implement the Open Spaces, Parks and Streams bond measure passed by the voters of the region in 1995. The Work Plan established acquisition parameters that authorize the Executive Officer to purchase property, within the Council-approved target area refinement plan maps. Purchases that do not meet these criteria or have "unusual circumstances" (as that term is defined in the Work Plan) require specific Council approval. Via Resolution 96-2300, the Metro Council approved the Tonquin Geologic target area refinement plan tax-lot specific map, which includes the subject Wilsonville Tract property. This resolution proposes to approve an unusual circumstance purchase, and authorize the purchase of the Wilsonville Tract property subject to the terms of the deed proposed by DSL.

Background and Analysis

In May 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure that authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and certain park-related capital improvements. On February 22, 1996, via Resolution 96-2300, the Metro Council adopted a refinement plan that outlined a land protection strategy for the Tonquin Geologic regional target area. A Tier 1 objective of the refinement plan identifies "Acquisition of all or part of the Division of State Lands property, Wilsonville, in order to provide a regional-scale natural area/park site" as a priority objective of the plan.

The 230-acre site, situated immediately south of the former Dammasch State Hospital site and commonly known as the Wilsonville Tract ("the Tract" or "the Property"), was declared surplus and offered for possible sale to other governmental agencies by DSL on October 15, 1999. By virtue of the offering document, Metro staff concluded that several of the DSL terms and conditions would constitute "unusual circumstances" requiring Metro Council approval, under the Open Spaces Implementation Work Plan, if the proposed transaction moved further along. Metro submitted a qualified bid for the

property on November 18, 1999 and was the only final bidder. At its December 1999 meeting, the State Land Board authorized the sale of the Tract to Metro and the sale price was set at \$2,329,200 based on an appraisal from the firm of Palmer, Groth and Pietka ("PGP"). After an independent review of the PGP appraisal, questions were raised by Metro about the suitability of the Tract for high-value nursery land, given the Tract's lack of water rights, and other issues raised in that appraisal. Since that time, additional work has been done by a horticultural expert, as well as a new appraisal by Mr. Carl Stillman, taking into account this new information. DSL has lowered the purchase price to \$1,833,300 based on Metro's concerns and based in part on the Stillman appraisal.

Unusual circumstances

The unusual circumstances related to the Wilsonville Tract are:

Environmental / "As Is." The standard procedure for Open Spaces transactions involves the purchaser entering into an Agreement of Purchase and Sale with Metro and then proceeding to closing after all Metro's due diligence is completed. Metro generally requires that the Purchase and Sale agreement include certain standard representations and warranties regarding the environmental condition and condition of title regarding properties purchased in the Open Spaces program. The proposed transaction between Metro and DSL will forego an Agreement and proceed to closing wherein the title will be transferred by a Bargain and Sale Deed. A Phase One Environmental Site Assessment, Third Party Review of 1997 Kleinfelder Reports, and a Phase Two Environmental Site Assessment, were conducted for Metro by the independent environmental firm PBS Environmental, Inc. The Phase Two was conducted to assess potential concerns that were raised when PBS reviewed work previously done by the Oregon Department of Corrections on the adjacent Dammasch Hospital Site. The Phase Two tested soil and groundwater samples adjacent to Dammasch, due to past underground storage tank releases on the Dammasch site. PBS concluded that "no evidence of environmental impacts was discovered on the site with the exception of a trace of phenanthrene in groundwater in the extreme northeast corner of the site." As there is no established state or federal cleanup level for this chemical, and based on the fact that the detection was only at a level slightly above the lab's detection limit, and no other PAH's were present, PBS concluded that "this occurrence is considered to represent a *de minimis* risk." No further investigation was recommended.

Deed Restrictions. The draft Bargain and Sale Deed proposed by DSL states that the property will be granted to Metro "with the covenant that said property is: used for public purposes or benefit (e.g. park facility, open space and environmental education) ... and not for resale to a private purchaser." The deed restriction for "public purposes" precludes Metro's ability to resell the Property to a private entity. Since the appraisals concluded the highest and best use of the property is as a nursery operation or for future development, the prohibition of private nursery or other private beneficial uses of the property may have a negative financial result if, for some reason in the future, Metro would desire to sell the property.

The deed restrictions also require Metro to provide reasonable access to make the property "perpetually accessible, under reasonable conditions, to Oregon kindergarten through grade twelve schoolchildren for environmental education." It is anticipated that schools in the West Linn-Wilsonville School District will want to use the site for environmental education, and there may be other school districts as well. This provision

may increase Metro's operations and management expenses and oversight during the landbanking period.

The draft Bargain and Sale Deed also states that "The State of Oregon shall retain all rights and interests in the subsurface minerals located within the area described in this deed, except the grantee {Metro} shall control all rights to surface occupancy." This is a historic reservation that is apparently part of DSL's policies regarding the sale of property. Metro staff's check of public records did not indicate any presence of subsurface minerals in this area, though Metro's due diligence here was limited in an effort not to expend funds needlessly.

Purchase Price

Although not an unusual circumstance, there are ambiguities in the appraisal prepared by Stillman & Associates regarding the total fair market value for the property. In determining the purchase price, the Land Board has stated that they believe the purchase price represents a 10 percent reduction from the fair market value as determined by Mr. Stillman's appraisal.

There is an ambiguity in the appraisal, however, regarding the total fair market value of the Property when including the timber value. Mr. Stillman's appraisal concluded a market value of \$1,630,000, with a statement that "adding the stipulated value of the merchantable timber (\$407,000) results in a combined total potential transaction value of \$2,037,000. However, in our opinion, this combined value does not necessarily reflect market value as defined in the report." Craig Zell, Metro's review appraiser, confirmed the Stillman appraisal, but added that the stipulated timber value "is not a component of market value and should be considered only a part of the property, but not valued separately or added to market value." Therefore, there is an ambiguity as to the fair market value of the Property including the timber value, ranging from \$1,630,000 to \$2,037,000 based, on the Stillman appraisal. However, Mr. Zell has further stated in a letter dated February 27, 2001 that he and Mr. Stillman have reviewed the negotiated purchase price of \$1,833,300 and they are "in agreement that this price would be a decent representation of market value, and would add that the two sides (Metro and State of Oregon) have imitated the market and negotiated to an approximate mid-point within the value range. As this represents market actions between a knowledgeable buyer and seller it would be my opinion that it is a good representation of market value at this time."

Exemption from Easement Policy

Metro commissioned a survey of the property, which survey disclosed that a few neighboring landowners encroached across lot lines onto the Wilsonville Tract property. These sorts of minor encroachments do not constitute "unusual circumstances," as they are not uncommon for a property of this size, particularly where one side of the property borders a residential neighborhood. The encroachments consist of some landscaping and a fence line continuing from a residence on to the property. Because Metro currently has no contractual interest in the property, the Metro staff may not deal with the encroachment issues before the proposed closing. Therefore, Metro staff is requesting Council approval to resolve these issues post-closing, via quitclaim, easement, license, or otherwise, without requiring that such actions go through the Easement Policy, which generally applies to post-closing requests for easements on Metro park property

In accordance with the Open Spaces Implementation Work Plan adopted by Metro Council, the Open Spaces Acquisition Committee met on February 27, 2001, and recommended that the property be purchased by Metro on these terms.

FINDINGS

Acquisition of this property with the above-stated terms is recommended based on the following:

- One of the “public interest” factors cited in the Work Plan that should be considered is “the importance of the site based on the adopted Refinement Plans.” The Wilsonville Tract site was specifically mentioned as a Tier 1 objective of the plan, and would serve as an anchor in the proposed Tonquin Greenway mentioned as another objective, therefore its acquisition is of paramount importance to the completion of the target area.
- In the introduction to the Open Spaces Implementation Work Plan, a finding states that “Local governments, citizens and other stakeholders should be afforded the opportunity to help determine objectives (and thereby land acquisition priorities) for each target area.” The residents and elected officials of Wilsonville have demonstrated very strong support for Metro’s acquisition of the Tract.
- The Tract has significant natural resource value, including a scenic wooded portion of the Tract with trails, approximately 20 acres of wetlands, approximately 10 acres of filbert orchards, and is traversed by Mill Creek, a year-round, fish-bearing stream.
- The deed restrictions mandated by DSL are not negotiable and are compatible with the intended use of the Property by the City of Wilsonville and Metro, and will not breach the obligations of Metro to the citizens of the region in regard to use of the Tract for purposes consistent with the Open Spaces, Parks and Streams bond measure.
- The mineral reservation is qualified by Metro’s right to control all rights to surface occupancy and is considered unlikely to have an impact on either the current market value of the site or Metro’s intended use of the Tract.
- Metro’s due diligence has not uncovered any evidence of environmental concern warranting additional action, title defects, or other matters that would make the “as-is” terms of the transaction unacceptable.
- The encroachments are not significant and will not affect Metro’s ability to use the property as open space, and should be exempted from the Easement Policy when resolved post-closing.
- The Acquisition Committee met on February 27, 2001 and recommended purchase of the property in accordance with the deed proposed by DSL, subject to review and acceptance of the precise language in the deed to be delivered to Metro.

- The purchase price for this transaction, due to the unusual deed restrictions, the significant amount of merchantable timber at the Tract, and other unique matters, should not establish a precedent or comparable for other transactions that do not contain similar restrictions and unusual circumstances.

BUDGET IMPACT

Bond funds would supply acquisition money. The majority of the property is under an agricultural lease, so maintenance costs will be minimized to a certain extent. Metro staff will pursue assistance in managing the property from the City of Wilsonville. Metro will have to provide access to the site for schoolchildren as outlined above, which may add additional landbanking costs at the site.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends passage of Resolution No. 01-3036.