

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO AN AGREEMENT TO PURCHASE PROPERTY IN THE DAIRY / MCKAY CREEKS CONFLUENCE TARGET AREA UNDER THE 2006 NATURAL AREAS BOND MEASURE AND THE NATURAL AREAS IMPLEMENTATION WORK PLAN

RESOLUTION NO. 07-3771

Introduced by Chief Operating Officer Michael J. Jordan, with the concurrence of Council President David Bragdon

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, Resolution No. 06-3672B “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted by the Metro Council on March 9, 2006 (the “2006 Natural Areas Bond Measure”), recommended submission to the voters of a general obligation bond to preserve natural areas and clean water and protect fish and wildlife; and

WHEREAS, Resolution No. 05-3612 “For the Purpose of Stating an Intent to Submit to the Voters the Question of the Establishment of a Funding Measure to Support Natural Area and Water Quality Protection and Establishing a Blue Ribbon Committee; and Setting Forth the Official Intent of the Metro Council to Reimburse Certain Expenditures out of the Proceeds of Obligations to Be Issued in Connection with the Regional Parks and Greenspaces Program,” adopted by the Metro Council on September 29, 2005, directed staff to work on obtaining options to purchase specific properties approved by the Metro Council, as part of the preliminary work associated with the proposed funding measure; and

WHEREAS, in accord with Resolution No. 05-3612, Metro staff has identified an opportunity to purchase specific property in the proposed 2006 Natural Areas Bond Measure Target Areas, which property is identified and further described in Exhibit A; and

WHEREAS, Resolution No. 06-3727 “For the Purpose of Establishing Metro Council Policy Regarding the Acquisition of Rural Agricultural Land Pursuant to the 2006 Natural Areas Acquisition and Water Quality Protection Bond Measure”, adopted by the Metro Council on September 7, 2006, directed that certain policies be included in a work program or refinement plans approved by the Metro Council for implementation of the Bond Measure where the purpose of the acquisition is only to protect water quality or fish and wildlife habitat; and

WHEREAS, the work program and refinement plans are currently in development and will be brought to the Council for review and approval later this year and, in the interim, Metro staff will apply the policies of Resolution No. 06-3727 on a case-by-case basis as applicable, and this may be such a case; and

WHEREAS, Metro offered to purchase a conservation easement from the seller in this instance, but the seller informed Metro that he was only interested in selling a fee simple interest in the property to Metro; and

WHEREAS, if Metro completes its purchase of this property, Metro will comply with the policies established by the Council in Resolution No. 06-3727, which may include offering the

property for resale subject to the following conservation easements: (1) a water quality and habitat conservation easement over the portion of the property essential to protect such qualities, and (2) an agricultural easement over the areas on the property that remain viable for agricultural production without conflicting with protection of water quality and habitat; and

WHEREAS, all terms of the transactions contemplated herein shall comply with the 2006 Natural Areas Acquisition Parameters and Due Diligence Guidelines, set forth in Metro Council Resolution No. 07-3766A "Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan," adopted on March 1, 2007; now therefore


BE IT RESOLVED THAT the Metro Council hereby authorizes the Chief Operating Officer to enter into agreements of purchase and sale and/or agreements and to acquire said property identified in Exhibit A, in accord with the Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan.

ADOPTED by the Metro Council this 30th day of March 2007.



David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney

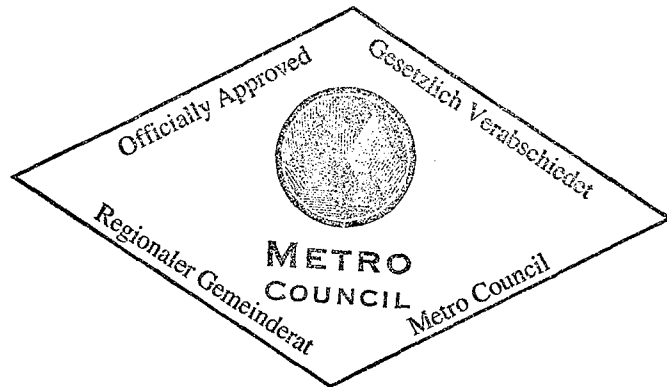


Exhibit "A"
Resolution No. 07-3771

Real property in the County of Washington , State of Oregon, described as follows:

PARCEL I:

LOT 2, BLOCK 2, HILLSBORO GARDEN TRACTS, WASHINGTON COUNTY, OREGON, AND A TRACT OF LAND IN THE EAST HALF OF SECTION 35 AND THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 3 WEST, WILLAMETTE MERIDIAN, WASHINGTON COUNTY, OREGON, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST QUARTER CORNER OF SECTION 35, TOWNSHIP 1 NORTH, RANGE 3 WEST, WILLAMETTE MERIDIAN, WASHINGTON COUNTY, OREGON AND RUNNING THENCE ALONG THE SAID EAST LINE OF SECTION 35 SOUTH 01°32'13" WEST 1720 FEET MORE OR LESS TO THE CENTER OF DAIRY CREEK;
THENCE NORTHWESTERLY ALONG THE CENTER LINE OF DAIRY CREEK AND THE MEANDERS THEREOF TO THE NORTHWEST CORNER OF THAT CERTAIN TRACT OF LAND CONVEYED TO RAYMOND HERTEL, ET UX, AS RECORDED IN BOOK 363, PAGE 599, WASHINGTON COUNTY, OREGON DEED RECORDS; THENCE NORTH 89°49'39" EAST ALONG THE NORTH LINE OF SAID HERTEL TRACT 490 FEET MORE OR LESS TO AN IRON ROD WHICH BEARS 700.00 FEET WESTERLY FROM THE NORTHEAST CORNER OF SAID HERTEL TRACT;
THENCE SOUTH 00°07'00" EAST PARALLEL WITH THE EAST LINE OF SECTION 35, 557.50 FEET TO AN IRON ROD;
THENCE NORTH 89°53'00" EAST 670 FEET TO AN IRON ROD;
THENCE NORTH 00°07'00" WEST 12.83 FEET TO AN IRON ROD;
THENCE NORTH 44°53'00" EAST 42.43 FEET TO AN IRON ROD ON THE SAID EAST LINE OF SECTION 35;
THENCE NORTH 00°07'00" WEST ALONG THE SAID EAST LINE OF SECTION 35, 229.29 FEET TO AN IRON ROD AT THE SOUTHERLY END OF CAVENS LANE (AS ESTABLISHED IN SURVEY NO. 23,010 WASHINGTON COUNTY SURVEY RECORDS);
THENCE NORTH 89°53'00" EAST 20.00 FEET TO AN IRON ROD;
THENCE SOUTH 00°07'00" EAST 259.78 FEET TO A POINT ON THE NORTH LINE OF LOT 4, BLOCK 1, SAID "HILLSBORO GARDEN TRACTS";
THENCE NORTH 88°43'00" WEST ALONG THE SAID NORTH LINE OF LOT 4, BLOCK 1, 20.00 FEET TO THE NORTHWEST CORNER THEREOF;
THENCE SOUTH 00°07'00" EAST ALONG THE WEST LINE OF SAID "HILLSBORO GARDEN TRACTS" ALSO BEING THE SAID EAST LINE OF SECTION 35, 679.70 FEET MORE OR LESS TO THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT FOR ACCESS AND EGRESS AS ESTABLISHED BY DEED RECORDED NOVEMBER 1, 2006 AS FEE NO. 2006-130185 AND FURTHER DISCLOSED BY DEED RECORDED NOVEMBER 1, 2006 AS FEE NO. 2006-130186.

PARCEL II:

LOT 5, BLOCK 1, HILLSBORO GARDEN TRACTS, IN THE COUNTY OF WASHINGTON AND STATE OF OREGON.

PARCEL III:

LOT 1, BLOCK 2 HILLSBORO GARDEN TRACT, IN THE COUNTY OF WASHINGTON AND STATE OF OREGON.

PARCEL IV:

LOT 6, BLOCK 1, HILLSBORO GARDEN TRACT, IN THE COUNTY OF WASHINGTON AND STATE OF OREGON.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3771, AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO AN AGREEMENT TO PURCHASE PROPERTY IN THE DAIRY / MCKAY CREEKS CONFLUENCE TARGET AREA UNDER THE 2006 NATURAL AREAS BOND MEASURE AND THE NATURAL AREAS IMPLEMENTATION WORK PLAN

Date: March 12, 2007

Prepared by: William Eadie

BACKGROUND

Resolution No. 07-3771 requests authorization for Metro to purchase a 93-acre property (“the Property”) in the Dairy / McKay Creeks Confluence Target Area, as described in Exhibit A. This resolution proposes to authorize the purchase of the Property subject to the terms of a Purchase and Sale Agreement executed between Metro and the Seller. Authorization from Council is needed because Metro Council has not yet approved an acquisition refinement plan for the Dairy / McKay Creeks Confluence Target Area under the 2006 Natural Areas Bond Measure.

As stated in the 2006 Natural Areas bond description of the Dairy / McKay Creeks Confluence Target Area, as adopted by Metro Council,

The creeks converge at the interface of farmland and the urban growth boundary, forming broad wetlands accessible to a rapidly urbanizing area. Protecting the riparian areas and associated wetlands in the confluence area will contribute significantly to improved water quality in these major tributaries of the Tualatin River.

The Property is located just north of the Tualatin Valley Highway, between the cities of Hillsboro and Cornelius in unincorporated Washington County. It lies along the east side of Dairy Creek and has almost one mile of frontage along this creek. The confluence of Dairy and McKay Creeks is located within 100 feet of the Property’s southeast corner, and the urban growth boundary is adjacent to the southern boundary of the Property. The 1995 bond measure refinement plan for the Dairy / McKay Creeks target area listed this property as a Tier I priority.

The current zoning designation is AF-20 - Exclusive Farm and Forest. This designation recognizes that some land within this designation may be marginal for agricultural purposes. The entire site is situated within the 100-year flood plain, and it is currently leased on an annual basis to a local farmer who seasonally plants crops on the property. As part of the Purchase and Sale Agreement, Metro would take title to the property subject to the existing agricultural lease.

The Property has a number of natural resource and public access characteristics. The substantial riparian areas along Dairy Creek could be restored to natural vegetation, and the extensive flood plain areas could be used for flood storage. Both of these would contribute to an overall improvement in the water quality in Dairy and McKay Creeks. The Property may also provide future trail connections to the proposed Dairy Creek regional trail, the conceptual alignment of which is located directly across from the Property along the west side of Dairy Creek.

Resolution No. 06-3727, "For the Purpose of Establishing Metro Council Policy Regarding the Acquisition of Rural Agricultural Land Pursuant to the 2006 Natural Areas Acquisition and Water Quality Protection Bond Measure," adopted by the Metro Council on September 7, 2006, directed that certain policies be included in a work program or refinement plans approved by the Metro Council for implementation of the Bond Measure with respect to certain properties in agricultural production where the purpose of the acquisition is only to protect water quality or fish and wildlife habitat. Metro staff is currently working on that work program and refinement plans, which will be brought to Council for approval later this year. In the interim, Metro staff will apply the policies approved by the Council in Resolution No. 06-3727 to agricultural properties as appropriate on a case-by-case basis. The property that is the subject of this resolution may be one of those properties. To the extent that the property is used to provide a trail connection to the Dairy Creek regional trail, then these policies would not apply.

The Council established in Resolution No. 06-3727 that Metro should only purchase certain lands in agricultural production if the owner is not willing to sell Metro a conservation easement and is only willing to sell a fee simple interest. The property owner in this instance approached Metro about acquiring this property. The owner was asked about placing a conservation easement over a portion of the Property, but he declined that inquiry and has requested that Metro acquire fee title to the entire site.

In such cases where Metro acquires fee simple title to such agricultural properties, the Metro Council established in Resolution No. 06-3727 that, subsequent to purchase of the property, Metro was to offer the property for sale subject to the following conservation easements: (1) a water quality and habitat conservation easement over the portion of the property essential to protect such qualities, and (2) an agricultural easement over the areas on the property that remain viable for agricultural production without conflicting with protection of water quality and habitat. If the Council approves this resolution and the purchase of this property is completed, Metro staff will comply with the policies established in Resolution No. 06-3727 with respect to this property.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Resolution No. 05-3612, "For the Purpose of Stating an Intent to Submit to the Voters the Question of the Establishment of a Funding Measure to Support Natural Area and Water Quality Protection and Establishing a Blue Ribbon Committee; and Setting Forth the Official Intent of the Metro Council to Reimburse Certain Expenditures Out of the Proceeds of Obligations to be Issued in Connection with the Regional Parks and Greenspaces Program," adopted on September 29, 2005.

Resolution No. 06-3672B, "For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisitions and Water Quality Protection," adopted on March 9, 2006.

Resolution No. 06-3727 "For the Purpose of Establishing Metro Council Policy Regarding the Acquisition of Rural Agricultural Land Pursuant to the 2006 Natural Areas Acquisition and Water Quality Protection Bond Measure," adopted by the Metro Council on September 7, 2006, directed that certain policies be included in a work program or refinement plans approved by the Metro Council for implementation of the Bond Measure.

Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

This Resolution No. 07-3771 proposes to authorize the purchase of the Property subject to the terms of Purchase and Sale Agreement executed by the Property owner and Metro.

This authorization assumes that the purchase will meet the terms of the Acquisition Parameters and Due Diligence Guidelines of the 2006 Natural Areas Implementation Work Plan on matters such as appraisal review, environmental audit and title matters. This authorization does not cover any such “unusual circumstances” and to the extent any “unusual circumstances” arise during Metro’s due diligence process, further Council review and authorization will be required.

3. Anticipated Effects

Acquisition of the Property will help protect the riparian areas and associated wetlands in the confluence area and will contribute significantly to improved water quality in two major tributaries of the Tualatin River. It may also provide the potential for future public access to these areas via public trails along the riparian areas. If this purchase is completed, Metro will comply with the policy established in Resolution No. 06-3727, which could include offering the property for sale subject to conservation easements for: (1) water quality and habitat conservation over the portion of the property essential to protect such qualities, and (2) agricultural use of the areas on the property that remain viable for agricultural production without conflicting with protection of water quality and habitat.

4. Budget Impacts

The property will close prior to June 30, 2007 and will be purchased from Regional Bond proceeds. Landbanking and future management costs will be borne by Metro.

RECOMMENDED ACTION

Staff recommends passage of Resolution No. 07-3771.