

BEFORE THE METRO COUNCIL

**FOR THE PURPOSE OF** ) RESOLUTION NO. 01-3112  
**AUTHORIZING THE EXECUTIVE** )  
**OFFICER TO PURCHASE THE** )  
**TERRY W. EMMERT PROPERTY** ) Introduced by Mike Burton, Executive  
**ON POWELL BUTTE IN THE EAST** ) Officer  
**BUTTES/BORING LAVA DOMES** )  
**TARGET AREA** )

WHEREAS, 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;

WHEREAS, on July 25, 1996, via Resolution 96-2361, the Metro Council adopted a refinement plan that outlined a land protection strategy for the East Buttes/Boring Lava Domes target area;

WHEREAS, the Tier 1B objective of the refinement plan establishes a challenge grant program to acquire strategic properties that enhance and connect existing open space in the Mt. Scott/Clatsop/Powell Buttes, Kelly Butte, Rocky Butte and Mt. Talbert areas;

WHEREAS, Resolution No. 98-2724 amended the East Buttes/Boring Lava Domes target area refinement plan to authorize additional land acquisitions in the East Buttes target area, and increased the allocation of existing bond measure funds to the challenge grant program provided that the local jurisdiction contribute a minimum of 25% of the purchase price for an acquisition;

WHEREAS, City of Portland has indicated an interest in assisting Metro to preserve the approximately 22-acre Terry W. Emmert property located on Powell Butte and is willing to contribute 34.4% of the sale price.

WHEREAS, Metro entered into an Agreement of Purchase and Sale with Terry W. Emmert, with a Closing Date of October 22, 2001, and said acquisition would bring into public ownership the largest one of the few available remaining undeveloped areas on Powell Butte, and provide additional open space adjacent to the Springwater Corridor and the Powell Butte Nature Park;

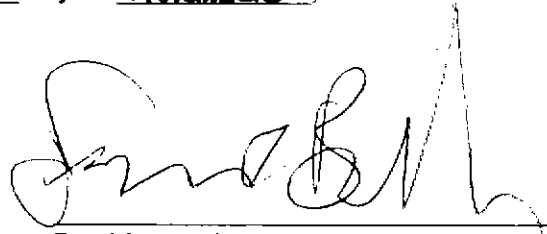
WHEREAS, there is no approved appraisal review confirming the purchase price for this transaction due to the uncertainties caused by the longstanding dispute between the City of Portland and the landowner regarding the legally permitted land use on the subject

property, which constitutes an “unusual circumstance” under existing Metro policy requiring the specific approval of the Metro Council;

BE IT RESOLVED, that the Metro Council authorizes the Metro Executive Officer to purchase the Emmert property, as more particularly described in Exhibit A.

ADOPTED by the Metro Council this 15<sup>th</sup> day of NOVEMBER,



  
\_\_\_\_\_  
David Bragdon, Presiding Officer

Approved as to form:

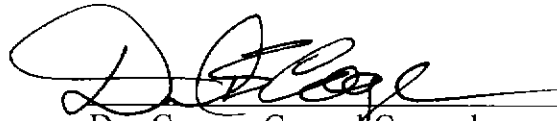
  
\_\_\_\_\_  
Dan Cooper, General Counsel

EXHIBIT A  
PROPERTY DESCRIPTION

PARCEL I:

Lots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19, SYCAMORE ACRES, in the City of Portland, County of Multnomah and State of Oregon.

PARCEL II:

The following described property situated in Section 13, Township 1 South, Range 2 East, of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon:

Beginning at an iron pipe at the Southwest corner of Lot 3, of SYCAMORE ACRES, as shown on the plat of same recorded in Multnomah County, said point being on the Northerly right of way line of the Portland Traction Company (formerly Oregon Water Power & Railway Company); thence North along the West line of said Lot 3, a distance of 317.56 feet, more or less, to an iron pipe at the Northwest corner of said Lot 3, at its intersection with the South line of SE Knight Street; thence South  $83^{\circ} 50'$  West along the South line of said SE Knight Street 923.20 feet, more or less, to an iron pipe in the East line of SE 156th Place; thence South 331.27 feet, more or less, along the East line of SE 156th Place to an iron pipe in the Northerly right of way of the Portland Traction Company (formerly Oregon Water Power & Railway Company); thence Easterly along the said Northerly right of way line of the Portland Traction Company 934.3 feet, more or less, to the place of beginning.

## Staff Report

### **CONSIDERATION OF RESOLUTION NO. 01-3112 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE THE EMMERT PROPERTY ON POWELL BUTTE IN THE EAST BUTTES/BORING LAVA DOMES TARGET AREA**

---

**Date: September 25, 2001**

**Presented by: Charles Ciecko  
Jim Desmond**

#### Description

Resolution No. 01-3112 requests authorization for the Executive Officer to purchase 22 acres of land on Powell Butte in the East Buttes/Boring Lava Dome Target Area.

#### Existing Legislation

In May 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure, which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and certain park-related capital improvements. 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. On July 25, 1996, via Resolution 96-2361, the Metro Council adopted a refinement plan, which outlined a land protection strategy for the East Buttes/Boring Lava Domes regional target area. Through that resolution, the Metro Council also approved the East Buttes/Boring Lava Domes target area refinement plan tax-lot specific map, which includes the subject Powell Butte property ("the Property"). This resolution proposes to approve an unusual circumstance purchase and authorize the purchase of the Property subject to the terms of the Purchase and Sale Agreement, executed by Metro and the landowner.

#### Background and Analysis

Metro has entered into an agreement with the current owner, Terry W. Emmert ("Emmert"), to purchase 22 acres located on the south side of Powell Butte.

Powell Butte was established as one of the "urban buttes" in the approved Tier IB acquisition area for the challenge grant program. Powell Butte is identified as a regionally significant natural area in the Greenspaces Master Plan (July 1992), which describes additions to the area as follows:

Would add to protection of green backdrop for the city. East slopes are highly visible from Gresham. Provides linkage between protected upland habitat on Powell and Jenne Buttes and Johnson Creek, which flows between them, contributing to the biodiversity of both systems.

A majority of Powell Butte is a nature park owned and managed by the City of Portland. However, new developments fill the lower slopes of the butte and the east slopes of the butte have been largely developed since completion of the Greenspaces Master Plan.

The Property also lies directly along the Springwater Corridor Trail, which is a regionally significant land-based trail under the Greenspaces Master Plan. The Springwater Trail is the abandoned Portland Traction Railroad Company right of way purchased by the City of Portland. It provides a major east-west link from the Willamette River to the foothills of the Cascades through some of the Portland metro-area's most densely populated sections. The Greenspaces Master Plan describes the corridor as:

Beginning beneath the Sellwood Bridge and now in the city of Portland ownership, the route to the east generally follows Johnson Creek, passing through Tideman Johnson Park, Beggars Tick Marsh, Leach Botanical Garden, **Powell Butte**, the Gresham Greenways and ultimately to Barton Park. (Emphasis added).

Metro Council authorized the acquisition of the Property as a Tier IB property when it approved the East Buttes/Boring Lava Domes Target Area refinement plan. The Property is the largest in holding on Powell Butte. This 22-acre purchase fulfills the objective in the refinement plan findings, which state that "the best use of regional funds is to make relatively small, strategic purchases that connect Powell Butte to Johnson Creek and the Springwater Corridor to the south." The lower portion of the Property, directly adjacent the Springwater Corridor Trail, is used as a contractor's storage yard; however the majority of the Property, which is upland of the storage yard, is undeveloped forested land. The entire Property is within the Urban Growth Boundary for the Portland metro area. This site is the largest private ownership on Powell Butte.

The Property is directly above and drains to Johnson Creek, which is separated from the Property only by the Springwater Corridor Trail. Any further development of the site could negatively impact the water quality of Johnson Creek.

The Property was identified in 1995 after the passage of the bond measure as one of the very highest priority acquisitions for the City of Portland Parks Bureau in the entire region. Metro began its negotiation to purchase this Property in 1998 after the Trust for Public Land gave up its negotiations and determined there was no "willing selling" here.

The City is assisting in the purchase of the Property by contributing 34% of the contracted sale price. This is significantly above the 25% non-Metro match required pursuant to the East Buttes/Boring Lava Domes Refinement Plan. The City of Portland is committed to managing the property through an existing Intergovernmental Agreement.

### **Unusual Circumstances**

There are two unusual circumstances regarding the transaction for which Council approval is sought:

- The contracted purchase price is not approved by a Metro review appraiser.
- Environmental testing and investigation is being conducted on the Property. The final results of such testing are not known on the date of this report, but will be disclosed to Council in Executive Session on the day this matter is taken up by Council.

## **Findings**

Acquisition of the property is recommended, based on the following:

- The Property lies in Tier IB of the East Buttes/Boring Lava Domes Target Area Refinement Plan.
- The Property meets an objective of the refinement plan in that connects existing open space in the Powell Butte area and that it is a relatively small, strategic purchase that connects Powell Butte to Johnson Creek and the Springwater Corridor to the south.
- The East Buttes/Boring Lava Domes Target Area Refinement Plan identifies Powell Butte as a regional priority for protection through a 25% challenge grant program. The goal of the challenge grant is to promote public partnerships and leverage regional bond funds. The City of Portland has committed to contributing 34% of the purchase price.
- The City of Portland strongly supports this acquisition and it has indicated a willingness to manage and operate this property under the terms of an IGA.
- The encroachment (discussed below under Outstanding Questions) is 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 Open Spaces Acquisition Committee met and unanimously recommended that the Property be purchased by Metro on conditions set forth in this staff report and those more specifically stated in the purchase and sale agreement.
- The Property has been on the "essential" list for acquisition since the first creation of such a list in 1999; furthermore, the Purchase and Sale Agreement to purchase this site was signed prior to the passage of Resolution No. 01-3106 meaning that the particular requirements of that Resolution (including requirements regarding purchases in the East Buttes / Boring Lava Domes target area) are not applicable here.

## **Budget Impact**

Bond funds (with contributions of 34% of the purchase price from the City of Portland) would supply acquisition money. City of Portland has stated its willingness to assume long-term management responsibilities for the property as part of an Intergovernmental Agreement to be entered into after closing.

## **Outstanding Questions**

Metro's property boundary review revealed a possible encroachment by the neighbor to the east. It appears that this person's sheep would in the past trespass over the southeastern portion of the Property, approximately 1/3-acre. The land boundaries have been staked after this discovery and the adjacent landowner has notice of the true property lines. It is unclear whether this encroachment would constitute a prescriptive grazing easement obtained through adverse possession by the neighbor, under ORS Ch.105. Staff will work with the adjacent landowner to make certain that no encroachment occurs in the future. This encroachment is not considered material from any perspective – financial, biological or future access.

In accordance with the Open Spaces Implementation Work Plan adopted by Metro Council, the Open Spaces Acquisition Committee met and recommended that the Property be purchased by Metro on these terms and those stated in the Purchase and Sale Agreement.

**Executive Officer Recommendation**

The Executive Officer recommends passage of Resolution No. 01-3112.