

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO 02-3159  
EXECUTIVE OFFICER TO PURCHASE THE TABER )  
PROPERTY AS AN ADDITION TO HOWELL ) Introduced by: Mike Burton  
TERRITORIAL PARK ) 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 designated Howell Territorial Park as an area of regional significance; 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 capital improvements; and

WHEREAS, The Open Space, Parks and Streams bond measure set aside funds for local government projects, and Metro agreed to be responsible for the Multnomah County portion of the local share funds; and

WHEREAS, Metro Resolution No. 96-2349, authorized Metro to enter into a Right of First Refusal and to acquire the Taber Property, if funds became available; and

WHEREAS, Metro Resolution No. 02-3147, established the Taber Property as a Multnomah County local share project; and

WHEREAS, Judith Taber-Bridge ("Seller") will only sell the Taber Property on the condition that Metro accept the Property "AS-IS, WHERE-IS" as to its environmental condition; and

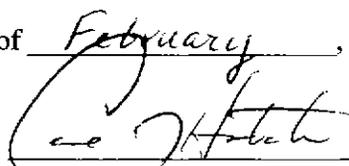
WHEREAS, Metro's Phase I environmental assessment revealed "no evidence of recognized environmental conditions" in connection with the Taber Property; and

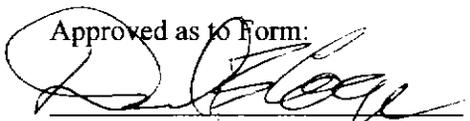
WHEREAS, because the "AS-IS, WHERE-IS" disclaimer demanded by the Seller shifts liability, requiring Metro to assume a larger share of the risk that the Taber Property may suffer from some latent environmental defect, it is necessary that the Metro Council approve Metro's acquisition of the Taber Property subject to such terms; now therefore

BE IT RESOLVED,

That the Metro Council authorizes the Metro Executive Officer to purchase the Taber Property, legally described in Exhibit A attached hereto, as an addition to Howell Territorial Park.

ADOPTED by the Metro Council this 28<sup>th</sup> day of February, 2002.

  
Carl Hostjoka, Presiding Officer

Approved as to Form:  
  
Daniel B. Cooper, General Counsel

**EXHIBIT "A"**  
**Legal Description**

A tract of land being in Section 21, Township 2 North, Range 1 West of the Willamette Meridian, in the County of Multnomah and State of Oregon, more particularly described as follows:

Beginning at a 1 inch iron pipe, said iron pipe being located South 47° 36' 01" East 2106.61 feet from the Northwest corner of the James F. Bybee Donation Land Claim; thence South 17° 21' 00" East 272.31 feet; thence South 72° 39' 00" West 418.97 feet; thence South 45° 43' 00" East 254.00 feet; thence North 72° 39' 00" East 1460.14 feet; thence North 17° 21' 00" West 209.00 feet; thence North 72° 39' 00" East 536.14 feet to the Westerly bank of the Gilbert River; thence along said Westerly river bank Northwesterly 317.50 feet, more or less, to a 5/8 inch iron rod; thence leaving said Westerly river bank South 72° 28' 10" West 1575.76 feet to the point of beginning.

**NATURAL RESOURCES COMMITTEE REPORT**

**CONSIDERATION OF RESOLUTION NO. 02-3159, FOR THE PURPOSE OF  
AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE THE TABER  
PROPERTY AS AN ADDITION TO HOWELL TERRITORIAL PARK**

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Date: February 28, 2002

Presented by: Councilor McLain

**Committee Action:** At its February 20, 2002 meeting, the Natural Resources Committee voted 3-1 to recommend Council adoption of Resolution 02-3159. Voting in favor: Councilors Atherton, Hosticka and McLain. Voting no: Councilor Park.

**Background:** Charlie Ciecko, Regional Parks and Greenspaces department director, made the staff presentation. This resolution authorizes purchase of a 19.5 acre parcel adjacent to Howell Territorial Park, on Sauvie Island. A 20.76 acre parcel was purchased by Metro in 1996 from the same seller, as part of Multnomah County's "local share" program. In 1997, the Howell Territorial Park Master plan, adopted by the Metro Council, identified this parcel as a desirable addition to the park.

**Existing Law:** This purchase is consistent with the Howell Territorial Park masterplan, and with the IGA governing Metro's management of Multnomah local share funds.

**Budget Impact:** There are sufficient funds in the parks department budget to purchase this property. A companion resolution 02-3147, reallocated some Multnomah County local share dollars to assist in the purchase of this property.

**Committee Issues/Discussion:** The committee discussed certain aspects of this resolution in executive session. At issue in public discussion is whether Multnomah County is, or will be, willing to allow further development of the park to move forward. At this time the answer to that issue is not fully resolved. Several committee members support this purchase because it is consistent with the park masterplan, because it is supported by the Regional Parks and Greenspaces Technical Advisory Committee and because they feel that it complements the financial value of parcels already owned by Metro at the park.

## **STAFF REPORT**

IN CONSIDERATION OF RESOLUTION NO. 02-3159 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE THE TABER PROPERTY AS AN ADDITION TO HOWELL TERRITORIAL PARK

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Date: January 25, 2002

Prepared by: Nancy Chase  
Joel Morton

## **BACKGROUND**

This resolution requests that the Metro Council authorize the Executive Officer to purchase property with "AS-IS, WHERE-IS" conditions from Judith Taber-Bridge (the "Taber Property" or "Property").

In 1996, Metro purchased 20.76 acres from Marge Taber, adjacent to Howell Territorial Park on Sauvie Island in unincorporated Multnomah County. The transaction also included a Right of First Refusal for Metro to acquire 19.5 adjacent acres, representing most of Marge Taber's remaining property.

The original Howell family pioneer homestead encompassed the Taber Property as well as what is now Howell Territorial Park. Consequently, the Taber Property has been considered integral to the long-range vision for the Park. The Howell Territorial Park Master Plan, adopted by the Metro Council in April 1997, identified this property as a desirable addition to the park.

Benefits would include:

- Legally buildable lot for future caretaker residence.
- Expands buffer between park facilities and adjacent farm operations.
- Recaptures an additional portion of the historic Bybee Donation Land Claim.
- Provides enhanced opportunity to re-establish savannah Oregon white oak habitat.

Judith Taber-Bridge, Marge Taber's heir, now wishes to sell the Taber Property and recently offered it to Metro as required under the Right of First Refusal. The Executive Officer subsequently entered into an Agreement of Purchase and Sale to acquire the Taber Property at appraised value. The property contains a manufactured home, several outbuildings, and has 319 feet of frontage on the Gilbert River.

A standard Metro contract includes a number of clauses wherein the owner makes representations regarding the condition of the property and warrants their truthfulness. In this case, Judith Taber-Bridge has recently received the Property and is unwilling to make the standard representation that the Property suffers from no environmental defects. Therefore, she has disclaimed all representations and warranties about the environmental condition of the Property, requiring that Metro purchase it "AS-IS, WHERE-IS." Because all of Judith Taber-Bridge's predecessors in interest to the Property are now dead, Metro will have no recourse to either the Seller or a prior owner if a claim arises related to the Taber Property's environmental condition.

Metro has commissioned a Phase I environmental site assessment on the Taber Property. The results of this assessment will be known by the time this resolution reaches Metro Council. However, confidence is high that the Phase I assessment will report that no “recognized environmental conditions” exist, based on the initial assessment of Metro staff and a recent visit to the Property by hazardous waste technicians from Metro’s Central Transfer station, who removed several intact drums of old, unused farm chemicals.

The “AS-IS, WHERE-IS” clause demanded by Judith Taber-Bridge requires Metro to assume a larger share of the risk in the event that the property suffers from some latent environmental defect. It is therefore necessary that the Metro Council approve of Metro’s acquisition of the property under these conditions.

### **ANALYSIS/INFORMATION**

#### **1. Known Opposition**

Not aware of any at this time.

#### **2. Legal Antecedents**

Metro Council Resolution 96-2349 authorized the Executive Officer to enter into both an Agreement of Purchase and Sale for 20 acres subsequently bought by Metro, and a Right of First Refusal to buy another 19.5 acres owned by Marge Taber, Judith Taber-Bridge’s mother. Metro Council Resolution 02-3147, a companion piece of legislation, proposes to reallocate Multnomah County Local Share funds, authorizing the expenditure of Bond Measure 26-26 Multnomah County Local Share funds to acquire the Taber Property.

#### **3. Anticipated Effects**

Refer to Background section.

#### **4. Budget Impacts**

The funds used to pay for the property are from the Multnomah County Local Share component of the Open Space, Parks and Streams bond measure. There are sufficient funds available.

### **RECOMMENDED ACTION**

The Executive Officer recommends passage of Resolution No. 02-3159