

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO CONTRIBUTE ONE-THIRD OF THE PURCHASE PRICE TOWARD THE PURCHASE OF PROPERTY IN THE JOHNSON CREEK TARGET AREA UNDER THE 2006 NATURAL AREAS BOND MEASURE AND SUBJECT TO UNUSUAL CIRCUMSTANCES

RESOLUTION NO. 09-4034

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

WHEREAS, at the general election held on November 7, 2006, the voters of the Metro region approved Measure 26-80, the 2006 Natural Areas Bond Measure submitted to the voters to preserve natural areas and clean water and protect fish and wildlife (the “Measure”); and

WHEREAS, the Johnson Creek Target Area was identified in the 2006 Natural Areas Bond Measure as one of 27 regional target areas for land acquisition; and

WHEREAS, Metro staff has identified an opportunity to partner with the North Clackamas Parks and Recreation District (NCPRD) and the City of Portland Bureau of Environmental Services (BES) to jointly contribute towards the purchase of a specific property in the 2006 Natural Areas Bond Measure Johnson Creek Target Area, which property is identified and further described in Exhibit A to this resolution (the “Property”); and

WHEREAS, the ten acre Property includes over 1,600 feet of stream frontage along Johnson Creek and also abuts the Springwater Trail, is currently in an extremely degraded condition, and is in an area of the region considered nature-deficient and in need of additional, accessible parks for nearby residents; and

WHEREAS, BES is contributing one third of the purchase of the Property in return for easements to allow BES to repair and realign a sewer pipe that crosses the Property and to undertake a major channel change, flood prevention, and natural restoration project along the full length of Johnson Creek on the Property, for which BES already has budgeted funds available; and

WHEREAS, NCPRD and Metro are each contributing one third of the purchase price of the Property and NCPRD will take 100% ownership interest in the Property in order to implement and maintain natural areas restoration and to develop a park on the upland portion of the site; and

WHEREAS, Metro is contributing one third of the purchase price of the Property in order to protect fish and wildlife habitat and water quality in the Johnson Creek watershed, but due to potential risks, expenses and liabilities associated with ownership and management of the Property, Metro does not wish to own or manage the Property; and

WHEREAS, acquisition of the Property by NCPRD will further the Johnson Creek Target Area goal of partnering with other governments to acquire key parcels adjacent to existing publicly protected resource areas; and

WHEREAS, on March 1, 2007, the Metro Council adopted 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,” (the “Acquisition Parameters and Due Diligence Guidelines”); and

WHEREAS, the Acquisition Parameters and Due Diligence Guidelines provide that the purchase price for property must be no more than the fair market value of the property as determined by an independent certified appraiser in an appraisal subject to no extraordinary assumptions, and as confirmed by a review appraisal by an independent certified appraiser; and

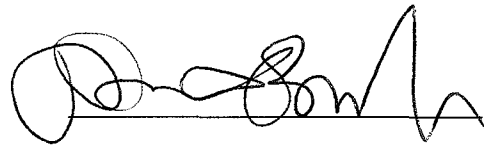
WHEREAS, the appraisal of the Property, which has been confirmed on review, included two extraordinary assumptions, one was the appraiser’s assumption about the exact size of the area of the Property that could be developed as industrial land, consistent with its current zoning (which was not considered extraordinary by the review appraiser), and the other that it would be possible to obtain and construct access to the property sufficient to permit the Property to be developed as industrial land; and

WHEREAS, the inclusion of extraordinary assumptions in the appraisal of the Property is an “unusual circumstance,” under the Acquisition Parameters and Due Diligence Guidelines, and the Council therefore must approve acquisition of the Property at the negotiated purchase price; and

WHEREAS, acquisition of the Property is warranted notwithstanding such unusual circumstance because of the opportunity for Metro to partner with BES and NCPRD to achieve public ownership of the property that will allow restoration of its extensive stream frontage along Johnson Creek and the Springwater Trail; now, therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to contribute one-third of the purchase price toward NCPRD’s acquisition of the property identified in Exhibit A (the “Property”), at the purchase price agreed to by the parties, and to pay certain closing costs and expend due diligence resources towards such acquisition, notwithstanding the unusual circumstance that the appraisal for the Property included two extraordinary assumptions.

ADOPTED by the Metro Council this 2nd day of April 2009.

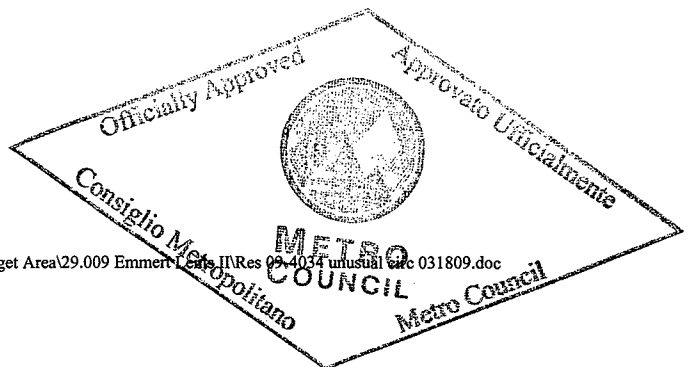


David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney



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Exhibit A to Resolution No. 09-4034

**Target Area: JOHNSON CREEK
Lents II Property**

Description: Staff has identified an opportunity to acquire approximately 10 acres of land in partnership with the City of Portland Bureau of Environmental Services (“BES”) and North Clackamas Parks and Recreation District (“NCPRD”) that will serve several restoration, conservation, and recreation functions in the Johnson Creek Target Area. The property is located between the Springwater Corridor and Johnson Creek at 76th Drive, just south of the Multnomah and Clackamas County border. The property is approximately 6 miles from downtown Portland and west of the 205 Highway, therefore in one of the more heavily traveled segments of the Springwater Corridor trail.

The industrial-zoned property is relatively level and the majority of the site is suitable for intense restoration activity because it does not include high value plant life habitat. It is one of few large vacant parcels left in the area and surrounded by high density industrial, commercial and residential uses. An appraisal completed for Metro indicates that there is a strong demand for small manufacturing and light industrial spaces in this area of the City. Industrial development of the site would most likely wipe out the current opportunity to contribute to the health of Johnson Creek and provide a park area for the neighborhood and Springwater Trail users.

Currently, a sewer line and manhole are exposed at the creek, which has been channelized and eroded, separating the creek from its natural floodplain. BES will invest in a significant capital project which will grade the bed of the creek, bury the pipe, and raise the level of the creek, necessitating a side channel on the property. This will reconnect the floodplain and provide benefits for water quality and for species that depend on aquatic habitat. It will also allow for more water storage during heavy rain events. Approximately 4-5 acres of the property would be used for this purpose and planted in appropriate floodplain vegetation. The balance of the property would be restored and planned as a community park area by NCPRD. The proximity to the Springwater Trail will most likely bring more users than a typical community park.

- Bond Criteria Addressed:**
- Provides an uncommon opportunity to protect associated upland area in a densely developed area along Johnson Creek
 - Improvement of water quality in Johnson Creek by restoring the floodplain function of the creek to its more natural state.
 - Protects the health of the creek by allowing for preventive maintenance of sewer lines using best science currently available.
 - Fulfills refinement plan partnership objectives of working with the City of Portland’s Bureau of Environmental Services and Clackamas County
 - Leverages bond resources by limiting Metro investment to one third of the purchase price.
 - The BES capital project includes intense restoration that will benefit habitat and water quality.

Property

identification: Tax Lots 3609, 3700 and 3800, Map 1S2E 29AB, Willamette Meridian; Clackamas County

Seller: Private Party

Size: 10.07 acres

Stream

Frontage: Johnson Creek, approximately 1,600 feet

Conditions: Standard due diligence; subject to unusual circumstance due to extraordinary assumptions in the appraisal regarding the developable area estimate and access issues; NCPRD to be 100% owner, with BES holding an easement.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4034 AUTHORIZING THE CHIEF OPERATING OFFICER TO CONTRIBUTE ONE-THIRD OF THE PURCHASE PRICE TOWARD THE PURCHASE OF PROPERTY IN THE JOHNSON CREEK TARGET AREA UNDER THE 2006 NATURAL AREAS BOND MEASURE AND SUBJECT TO AN UNUSUAL CIRCUMSTANCE

Date: April 2, 2009

Prepared by: Kathleen Brennan-Hunter

BACKGROUND

Metro has entered into an agreement with a private landowner (“Owner”) to purchase 10 acres of property in the Johnson Creek Target Area, which property is commonly known as “Lents 2” and is more specifically identified on Exhibit A attached to the Resolution (the “Property”). The Property is located along the Springwater Corridor, with approximately 1,600 feet of frontage on Johnson Creek, in unincorporated Clackamas County in the neighborhood of SE 72nd and Johnson Creek Boulevard. The Property acquisition is a collaboration of the City of Portland Bureau of Environmental Services (“BES”), North Clackamas Parks and Recreation District (“NCPRD”) and Metro (collectively “the Parties”). The Property has been identified as a Tier II acquisition priority and partnership objective in the Johnson Creek Target Area.

The purchase of the Property is being jointly funded by the Parties with each party contributing one-third of the purchase price. BES will contribute funds in return for one or more easements across the Property to complete a sewer repair and channel restoration project. This project will include the replanting and natural area restoration of the length of Johnson Creek on the Property, improvement of two significant outfalls, and construction of a side channel to improve floodplain capacity on the Property. NCPRD will contribute funds from its System Development Charges in order to develop a community park on a portion of the Property; and Metro will contribute funds from the Natural Areas Bond Measure to facilitate the acquisition and further Metro’s goals of protecting fish and wildlife habitat and water quality. NCPRD will take 100% ownership interest at closing, and will assume all management responsibility for the Property.

The Property is zoned industrial but has remained undeveloped likely due to access constraints. It is located in unincorporated Clackamas County in an area of mixed-use industrial property and lower cost housing. The current owner has used the property for long-term storage of construction debris and soil. In its current state the property attracts nuisance uses and is a blight along the Springwater Corridor Trail. BES’s commitment to a major restoration project, anticipated for construction in 2010, combined with future active park use by NCPRD will make an enormous impact on the health of Johnson Creek and the entire neighborhood. The City of Portland’s Bureau of Parks and Recreation has agreed to provide a permit of entry to the Parties to facilitate the development and maintenance of the Property, until future acquisitions might provide better access opportunities.

Metro has represented the Parties in negotiations to acquire the Property and will continue to represent the parties in negotiations to acquire two additional complementary properties. NCPRD will be responsible for future management of the Property. The terms of the roles of the parties are described in the Intergovernmental Agreement being presented to council concurrent with this Resolution as Resolution No. 08-3969, “Authorizing The Chief Operating Officer To Execute An Intergovernmental Agreement With The City Of Portland And The North Clackamas Parks And Recreation District Regarding The

Purchase And Management Of Property In The Johnson Creek Target Area Acquired Pursuant To The 2006 Natural Areas Bond Measure.”

The appraisal of the Property, which has been confirmed on review, included two extraordinary assumptions. The first was the appraiser’s assumption about the exact size of the area of the Property that could be developed as industrial land, consistent with its current zoning. The appraiser assumed that a total of six acres of the ten acre site could be developed. The appraiser listed this as an extraordinary assumption because any change in the developable area of the site would have a direct impact on the total valuation. On review, the review appraiser noted that this assumption did not seem all that extraordinary in his experience. The second extraordinary assumption was that it would be possible to obtain and construct access to the property sufficient to permit the Property to be developed as industrial land. As noted above, it is difficult to access the Property because it is located between the Springwater Corridor Trail and Johnson Creek. The area to its north, across the trail, is primarily a residential neighborhood. The area to its south, across Johnson Creek, is developed for light industrial uses. The Property is zoned for industrial use, but it is questionable whether the Property currently has sufficient legal access to permit it to be developed for that use. In addition, a bridge would have to be constructed to allow such use. At Metro’s request, the appraiser calculated the market value of the Property by assuming that access could be provided and by subtracting the value of the additional land that would be required to provide such access and the cost of the bridge that would need to be constructed.

Metro, BES, and NCPRD all acknowledge that such access issues also will affect plans to improve the Property as a park. That is why the partners have agreed, in a separate IGA, to continue to work to acquire additional properties in the area that could provide improved access. In addition, the Parties have obtained an easement across the Springwater Trail from Portland Parks to access the Property for construction and maintenance and the Property will be easily accessible by pedestrians and cyclists using the Springwater Trail.

During the course of Metro’s due diligence investigations regarding the Property, certain hazardous substances were detected at levels below the threshold required for reporting the contamination to the Oregon Department of Environmental Quality. Metro ordinarily would engage in additional investigations to determine the full extent of such contamination prior to taking ownership interest in such a property, but Metro’s partners, NCPRD and BES, are comfortable moving forward with the acquisition and accepting all risk that the Property contains higher levels of hazardous substances than were detected in Metro’s due diligence investigation. Due to such potential risks, expenses, and liabilities associated with ownership and management of the Property, Metro recommends against Metro taking an ownership interest or any management responsibility for the Property.

Metro’s contribution to the purchase price is a critical factor in the property acquisition, without which the opportunity to protect and restore the Property may be lost.

Acquisition of the “Lents 2” Property by NCPRD with a one third contribution of regional bond funds is recommended because it will facilitate immediate restoration and ensure long-term protection of a unique urban 10-acre Johnson Creek and Springwater Corridor frontage property. It will meet the goals and Tier II objectives set forth in the Johnson Creek Target Area Refinement Plan to partner with the City of Portland (and, in this case, NCPRD) to secure key parcels adjacent to existing publicly protected resource areas.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

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," was adopted on March 9, 2006.

The voters' approved Metro's 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

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," was adopted by the Metro Council on March 1, 2007, and established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

Resolution No. 07-3851, "Approving the Natural Areas Acquisition Refinement Plan for the Johnson Creek and Watershed Target Area," was adopted by the Metro Council on September 13, 2007.

Resolution No. 08-3969, "Authorizing The Chief Operating Officer To Execute An Intergovernmental Agreement With The City Of Portland And The North Clackamas Parks And Recreation District Regarding The Purchase And Management Of Property In The Johnson Creek Target Area Acquired Pursuant To The 2006 Natural Areas Bond Measure," being introduced concurrently with this resolution.

3. Anticipated Effects

NCPRD, BES, and Metro shall pay equal thirds of the purchase price to acquire the Property. NCPRD shall hold a 100% interest in the property and BES shall hold an easement for its sewer and Johnson Creek restoration-related improvements. BES shall be responsible for restoration of the property and NCPRD for development of a community park and for long-term maintenance and management of the Property.

4. Budget Impacts

Metro's contribution to the Property shall be funded utilizing 2006 Regional Bond proceeds. Stabilization, restoration, and management costs will be borne exclusively by BES and NCPRD pursuant to the terms of the IGA.

RECOMMENDED ACTION

The Chief Operating Officer recommends passage of Resolution No. 09-4034.