

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 09-4054  
CHIEF OPERATING OFFICER TO ENTER INTO )  
A PROPERTY EXCHANGE AGREEMENT IN ) Introduced by Chief Operating Officer  
THE DAIRY AND MCKAY CREEKS ) Michael J. Jordan, with the concurrence of  
CONFLUENCE TARGET AREA ) Council President David Bragdon

WHEREAS, at the general election held on November 7, 2006, the voters of the Metro region approved the 2006 Natural Areas Bond Measure, authorizing Metro to sell \$227.4 million in general obligation bonds to fund natural area acquisition and water quality protection; and

WHEREAS, the Dairy and McKay Creeks Confluence Target Area was identified in the Bond Measure as one of 27 regional target areas for land acquisition; and

WHEREAS, on September 20, 2007, the Metro Council adopted Resolution No. 07-3855 "Approving the Natural Areas Acquisition Refinement Plan for the Dairy and McKay Creeks Confluence Target Area" which resolution approved the acquisition of the properties within the target area, subject to all terms of the transaction complying 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," (the "Acquisition Parameters and Due Diligence Guidelines") adopted on March 1, 2007; and

WHEREAS, the goal of the Dairy and McKay Creeks Confluence Target Area refinement plan is to "[p]rotect the riparian areas and associated wetlands in the Dairy and McKay Creeks confluence area to contribute significantly to improved water quality..."; and

WHEREAS, Metro currently owns certain real property within the Dairy and McKay Creeks Confluence Target Area, which property is approximately 93 acres in size (the "Metro Larger Parcel"); and

WHEREAS, McKay Creek Properties ("MCP") is the owner of certain real property approximately 63 acres in size, located directly adjacent to the Metro Larger Parcel (the "MCP Larger Parcel"). The MCP Larger Parcel currently operates as a golf course and has been identified as a Tier 1 acquisition priority in the Dairy and McKay Creeks Confluence Target Area; and

WHEREAS, Metro desires to acquire an approximate 6.4 acre portion of the MCP Larger Parcel (the "MCP Exchange Property") which has significant wetland restoration potential, in exchange for an approximate 4.9 acre portion of the Metro Larger Parcel (the "Metro Exchange Property") that does not have significant wetland restoration potential. Both the MCP Exchange Property and the Metro Exchange Property are depicted on the attached Exhibit A; and

WHEREAS, in order to facilitate the transaction and resolve a current property line encroachment and boundary issue, MCP has requested an easement over an approximate 0.3 acre portion of the Metro Larger Parcel (the "Easement Area") to document MCP's right to continue to use the Easement Area as part of MCP's golf course operations. The Easement Area is depicted on the attached Exhibit A; and

WHEREAS, because such easement is necessary to facilitate the larger exchange transaction designed specifically to benefit a Metro natural area (i.e. the Metro Larger Parcel), the easement is not subject to the easement review criteria set forth in Metro Resolution No. 97-2539B "For The Purpose Of Approving General Policies Related To The Review of Easements, Right-Of-Ways, And Leases For Non-Park Uses Through Properties Managed By The Regional Parks And Greenspaces Department," adopted November 6, 1997; and

WHEREAS, the Acquisition Parameters and Due Diligence Guidelines require, among other things, that prior to closing a real estate transaction related to the 2006 Natural Areas Bond Measure (1) an initial appraisal and a review appraisal of the property be obtained and (2) the purchase price for the property be equal to or less than the fair market value as established by such appraisal and appraisal review processes; and

WHEREAS, because the MCP Exchange Property and the Metro Exchange Property are both located in the floodplain, are adjacent to one another, and are of similar size, it is in the best interest of the 2006 Natural Areas Bond Measure program to acquire the MCP Exchange Property without having to incur the cost associated with obtaining appraisals and appraisal reviews; now therefore,

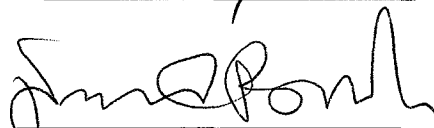
BE IT RESOLVED that the Metro Council finds that, for the reasons stated and as provided herein, it is in the public interest to complete the above described real property exchange transaction, and therefore authorizes the Chief Operating Officer to:

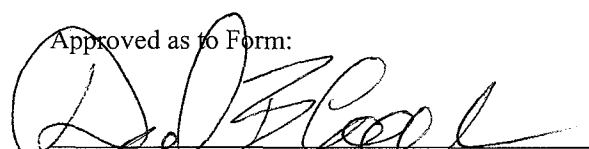
1. Enter into an agreement with MCP whereunder (a) Metro transfers and conveys fee title to the Metro Exchange Property to MCP in return for (b) MCP transferring and conveying fee title to the MCP Exchange Property to Metro, provided that such agreement, and any other documents necessary to effect the exchange transaction (including without limitation any required land use applications), are in forms acceptable to the Metro Attorney;

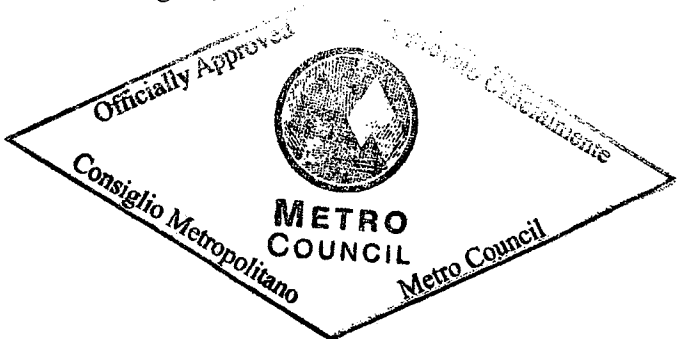
2. Acquire the MCP Exchange Property without first obtaining an appraisal and an appraisal review, provided the acquisition of the MCP Exchange Property is otherwise in accord with the Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan; and

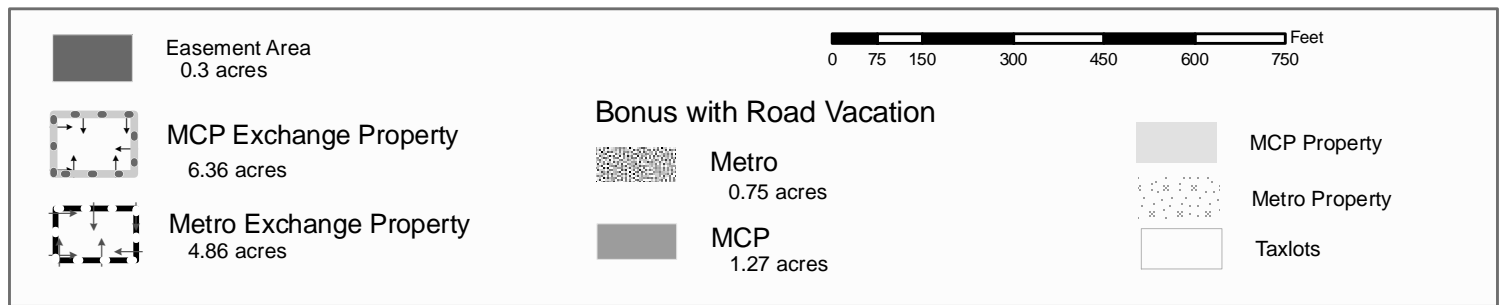
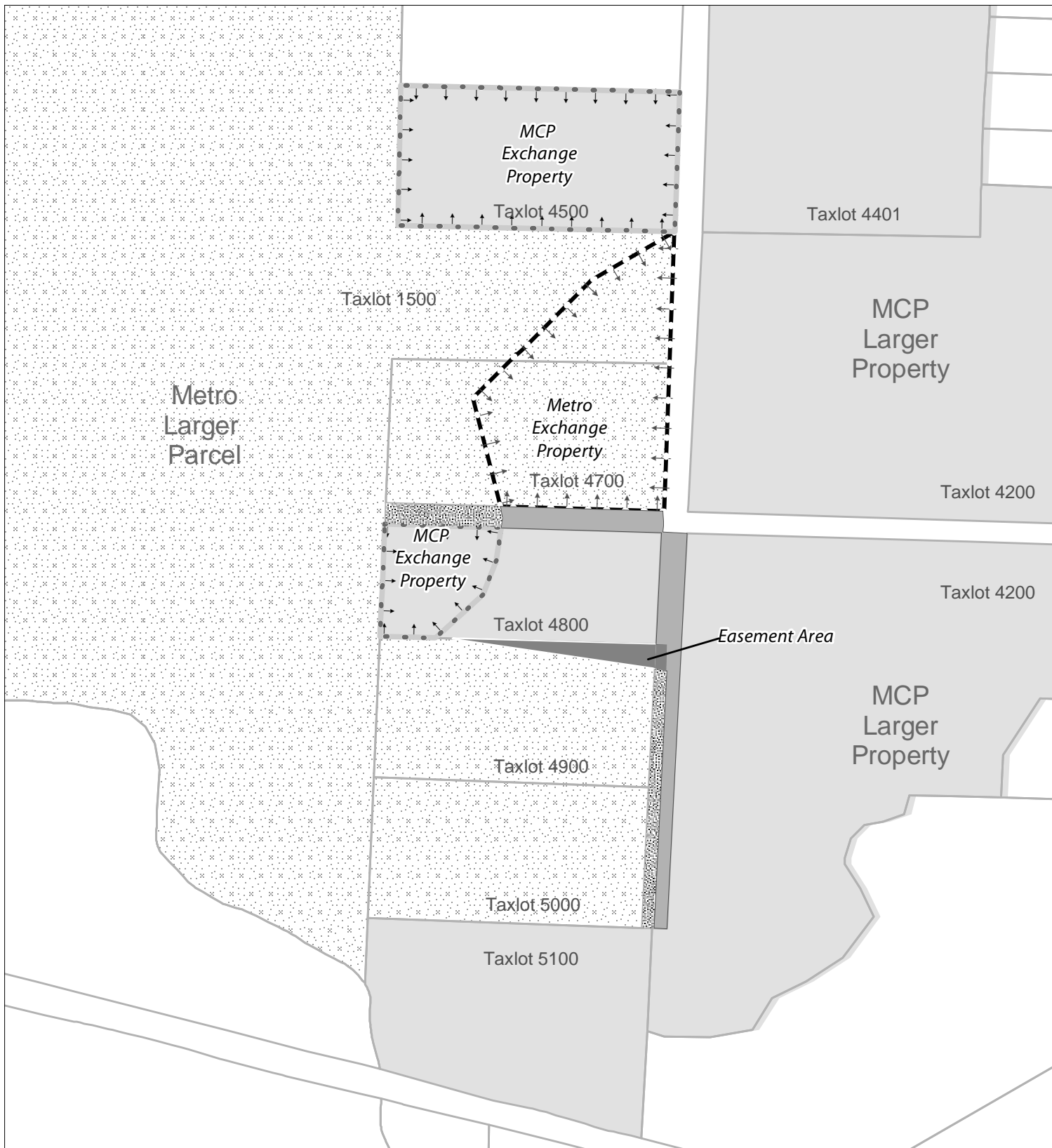
3. Grant to MCP an easement over an approximately 0.3 acre portion of the Metro Larger Parcel, as part of and in order to complete the property exchange transaction described in this Resolution, provided that such easement (a) terminates in the event that the easement area is ever used for a purpose other than golf course or open space purposes and (b) is in a form acceptable to the Metro Attorney.

ADOPTED by the Metro Council this 30 day of July, 2009.

  
David Bragdon, Council President

Approved as to Form:  
  
Daniel B. Cooper, Metro Attorney





## **STAFF REPORT**

IN CONSIDERATION OF RESOLUTION NO. 09-4054 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO CONVEY CERTAIN REAL PROPERTY IN EXCHANGE FOR OTHER REAL PROPERTY IN THE DAIRY AND MCKAY CREEKS CONFLUENCE TARGET AREA

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Date: July 30, 2009

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(503) 797-1948

### **BACKGROUND**

Resolution No. 09-4054 requests authorization to exchange approximately 4.9 acres of Metro owned real property (the "Metro Exchange Property") for an adjacent 6.4 acres of real property owned by McKay Creek Properties (the "MCP Exchange Property"). The purpose of this Resolution is to authorize the Chief Operating Officer to (1) convey the Metro Exchange Property to McKay Creek Properties and (2) acquire the MCP Exchange Property without obtaining an appraisal and an appraisal review as required under the 2006 Bond Measure Natural Areas Implementation Work Plan.

The Metro Exchange Property and the MCP Exchange Property are located within the Dairy and McKay Creeks Confluence target area, immediately north of the confluence of those streams. The Metro Exchange Property is a portion of a larger 93-acre property (referred to herein as the "Larger Metro Parcel") purchased in April 2007 with funds from the 2006 Natural Areas Bond Measure. The MCP Exchange Property consists of the entire approximately 5-acre tax lot 4500 and a 1.4-acre portion of tax lot 4800. The MCP Exchange Property is a portion of a larger 63-acre property that contains the nine-hole McKay Creek Golf Course. A depiction of the parcels is attached to the proposed Resolution as Exhibit A.

Dairy and McKay creeks are located west of Hillsboro and east of Cornelius and drain a largely agricultural watershed within Washington County. McKay Creek forms the western boundary of the City of Hillsboro and flows into Dairy Creek north of Tualatin Valley Highway. The combined creeks flow south converging with the Tualatin River at Jackson Bottom. Broad wetlands at the confluence of Dairy and McKay creeks and upstream riparian areas provide excellent opportunities for restoration of riparian and wetland habitats, as well as flood storage and water quality protection. The overarching goal of the Dairy and McKay Creeks Confluence target area for the 2006 Natural Areas Bond Measure is to "protect the riparian areas and associated wetlands in the Dairy and McKay Creeks confluence area to contribute significantly to improved water quality in these major tributaries of the Tualatin River." The Tier I acquisition objective in the target area is to "protect important riparian lowland areas around the confluence of ... Dairy and McKay Creeks..."

In the proposed land exchange, McKay Creek Properties would convey fee title to the MCP Exchange Property to Metro. The MCP Exchange Property is similar in elevation to lower portions of the Metro Larger Parcel and therefore has significant wetland restoration potential. In exchange for the MCP Exchange Property, Metro would convey fee title to the Metro Exchange Property to McKay Creek Properties. The Metro Exchange Property, while still located within the Federal Emergency Management Agency (FEMA) floodplain, is upland forest and pasture that is not as regularly inundated with water as the Metro Larger Parcel and thus does not have comparable wetland restoration potential to that of the MCP Exchange Property.

In addition to the fee conveyance, Metro would also grant to McKay Creek Properties an easement across approximately 0.3 acres of the Metro Larger Parcel. The purpose of the easement is to address a current, existing encroachment by McKay Creek Golf Course. The easement would be perpetual but would terminate in the event that the area is no longer used for open space or golf course purposes. Because the proposed easement is part of the larger exchange transaction designed specifically to benefit a Metro natural area, the proposed easement is not subject to the easement review criteria set forth in Resolution No. 97-2539B, "For the Purpose of Approving General Policies Related to the Review of Easements, Right of Ways, and Leases For Non-Park Uses Through Properties Managed by the Regional Parks and Greenspaces Department."

Portions of the Metro Exchange Property and the MCP Exchange Property are not legal lots of record, so a property line adjustment will be necessary to complete the land exchange. In order to achieve the property line adjustment, some or all of NW Jackson Street and NW 322<sup>nd</sup> Avenue may need to be vacated. The street vacation would potentially result in an additional 0.8 acres to Metro and an additional 1.3 acres to McKay Creek Properties. McKay Creek Properties will be responsible for paying all surveying costs and any other expenses associated with obtaining a property line adjustment from Washington County. The parties would split all ordinary closing costs. In accordance with the 2006 Bond Measure Natural Areas Implementation Work Plan, Metro would conduct, and pay for, a Phase I Environmental Site Assessment of the MCP Exchange Property.

Because both the Metro Exchange Property and the MCP Exchange Property are entirely within and surrounded by the FEMA designated floodplain, neither parcel has any current development potential. Because the MCP Exchange Property and the Metro Exchange Property are of roughly equal value, Metro will not obtain an appraisal or an appraisal review of the MCP Exchange Property. Council approval is necessary to authorize the Chief Operating Officer to acquire the MCP Exchange Property without first obtaining an appraisal and appraisal review of the property.

Acquiring the MCP Exchange Property, supports the Tier I acquisition objective in the Dairy and McKay Creeks Confluence target area. However, McKay Creek Properties is only willing to convey the MCP Exchange Property to Metro in exchange for the Metro Exchange Property and the easement described above. Pursuant to the Refinement Plan for the Dairy and McKay Creeks Confluence Target Area, Council has given the Chief Operating Officer authority to acquire the MCP Exchange Property. Both the conveyance of Metro Exchange Property and the granting of the 0.3 acre easement require Council approval.

The proposed land exchange furthers the public interest because the exchange produces a net positive benefit in fulfilling wildlife habitat and water quality protection goals of the target area refinement plan. As confirmed in the biological assessment prepared by Pacific Habitat Services, Inc. for the target area refinement plan, the Metro Larger Parcel has great potential to be restored to high value wetland habitat with improved floodplain function. However, in order to effectively restore such wetland habitat, Metro needs to acquire more land in the surrounding floodplain. The floodplain elevations on the Metro Larger Parcel extend into a few surrounding parcels of land, in particular the MCP Exchange Property. By acquiring the MCP Exchange Property, Metro will gain control of more floodplain and will be able to consider restoration methods such as increased depth and duration of flooding to improve wetland function and support native plant communities and associated wildlife.

Although the upland area on the Metro Exchange Property does have habitat values, such values are only of average quality. Because the MCP Exchange Property contains wetland habitat, Metro staff believes the value of owning such property significantly outweighs the value of owning the upland habitat on the Metro Exchange Property. Furthermore, owning the MCP Exchange Property will help realize the full

restoration potential of the Metro Larger Parcel. Following the exchange, it is likely that some upland forest on the Metro Exchange Property would be cut as McKay Creek Properties intends to remove some of the existing trees to accommodate the design of its golf course. However, McKay Creek Properties has indicated that trees along the property boundary will likely remain to frame the hole and create buffer between the golf course and the neighboring property owned by Metro. Metro will maintain a relationship with McKay Creek Properties to encourage the maximum retention of trees and vegetation in the buffer area between the golf course and the Metro Larger Parcel.

Both the Metro Larger Parcel and the MCP Exchange Property are currently leased for agricultural use and, at present, the site has little existing native habitat. Following the proposed land exchange, Metro would continue the farm lease on the Metro Larger Parcel and the MCP Exchange Property until funds are available to restore the wetlands on those properties.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

None.

### **2. Legal Antecedents**

ORS 271.310(1) authorizes the governing body of any political subdivision within Oregon to sell real property owned by the political subdivision that is “not needed for public use, or whenever the public interest may be furthered.”

Metro Code Section 2.04.026(a)(2) requires that the Chief Operating Office obtain the authorization of the Metro Council prior to executing any contract for the sale of real property owned by Metro.

Resolution No. 97-2539B "For The Purpose Of Approving General Policies Related To The Review of Easements, Right-Of-Ways, And Leases For Non-Park Uses Through Properties Managed By The Regional Parks And Greenspaces Department" was adopted November 6, 1997.

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” was adopted on March 9, 2006.

The voters approved Metro’s 2006 Natural Areas Bond Measure at the general election held on November 7, 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. 07-3848 “Approving The Natural Areas Acquisition Refinement Plan For The Dairy and McKay Creeks Confluence Target Area” was adopted by the Metro Council on September 20, 2007, and established the Acquisition priorities for Dairy and McKay Creek Confluence Target Area.

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” was adopted on September 7, 2006.

### **3. Anticipated Effects**

McKay Creek Properties will convey to Metro approximately 6.4 acres of real property and in exchange Metro will transfer to McKay Creek Properties (1) fee title to approximately 4.9 acres of real property and (2) an easement approximately 0.3 acres in size. In order to complete the transaction, the parties will need to obtain a property line adjustment from Washington County. Including the road vacation acreage, ultimately, the transaction will result in Metro receiving a net gain of approximately 2 acres of property in a Tier I acquisition area. In addition, the land exchange will result in Metro having more control of the wetland portions of the properties for future habitat restoration.

### **4. Budget Impacts**

The conveyance by Metro of the Metro Exchange Property to MCP, and the conveyance by MCP of the MCP Exchange Property to Metro, shall be an even, non-cash exchange. All costs associated with the property line adjustment will be paid for by McKay Creek Properties. Metro will, however, pay for ordinary due diligence expenses and closing costs, including the costs incurred to obtain a Phase I Environmental Assessment, a title policy, and one-half of the escrow fees. Such costs will be paid for with 2006 Natural Area Bond proceeds. Stabilization costs will also be paid with 2006 Natural Area Bond funds.

### **RECOMMENDED ACTION**

Staff recommends the adoption of Resolution No. 09-4054.