

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING)
THE CHIEF OPERATING OFFICER TO)
SELL CERTAIN REAL PROPERTY IN)
THE COOPER MOUNTAIN TARGET)
AREA)

RESOLUTION NO. 09-4079

Introduced by Michael Jordan,
Chief Operating Officer, with the
Concurrence of David Bragdon,
Metro Council President

WHEREAS, on July 23, 1992, via Resolution No. 92-1637, (“For the Purpose of Considering Adoption of the Metropolitan Greenspaces Master Plan”), Metro Council adopted the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, the Cooper Mountain Area was identified as a regionally significant natural area by the Metro Greenspaces Master Plan; and

WHEREAS, in May 1995 the Metro electors approved ballot measure 26-26, authorizing Metro to issue \$135.6 million for bonds for Open Spaces, Parks and Streams (“ the 1995 Metro Open Spaces Bond Measure”), and

WHEREAS, in February of 1996, via Resolution No. 96-2275A, (“ For the Purpose of Approving a Refinement Plan for the Cooper Mountain Target Area as Outlined in the Open Space Implementation Work Plan”), Metro Council adopted a refinement plan which identified acquisition of over 400 acres to protect and enhance Cooper Mountain’s unique biological diversity; and

WHEREAS, between February 1997 and December 1999, Metro Parks and Greenspaces acquired ten parcels on Cooper Mountain Plan including a 15.95 acre parcel located on Scholls Ferry Rd. (the “Metro Parcel”) purchased in September of 1999 and attached hereto as Exhibit A; and

WHEREAS, at the time of purchase it was hoped the Metro Parcel would ultimately be connected to the other Metro-owned parcels; and

WHEREAS, in January 2004 Metro Parks planning team initiated a 20-month public master planning process for the Cooper Mountain Natural Area, working closely with Tualatin Hills Park and Recreation District, the City of Beaverton (both financial partners on the Master Plan), Washington County Planning Department, a 16 member Project Advisory Committee, adjacent landowners and interested citizens (resulting in the Cooper Mountain Master Plan and Management Recommendations); and

WHEREAS, in October of 2005 Metro staff presented a summary of the Cooper Mountain Master Plan and Management Recommendations to Metro Council and Washington County Board of Commissioners; and provided a four week period for public review for which there was no known opposition to the plan; and

WHEREAS, Council approved the Cooper Mountain Master Plan and Management Recommendations (the “Master Plan”) in December, 2005 via Resolution 05-3643; and

WHEREAS, the Master Plan noted that Metro was unsuccessful in purchasing the additional properties needed to create a contiguous, publicly owned connection between the main parcels and Scholls Ferry Rd. and recommended that “ if properties between Scholls Ferry and the currently southern

boundary of the natural area ultimately become developed, Metro should consider the Scholls Ferry property as surplus and sell it in order to redirect public funds.”, and

WHEREAS, 207 acres of the approximately 227 acres between the Cooper Mountain Nature Park southern boundary and the Metro Parcel are the subject of Measure 49 claims for increased development density, indicating the likelihood these parcels will remain in private ownership and be subject to future development; 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 Council in March of 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, at the general election held on November 7, 2006 the voters approved the 2006 Natural Areas Bond Measure which identified the Cooper Mountain Target Area goal of acquiring remaining oak communities and streamside forests to build on the investment already made; and

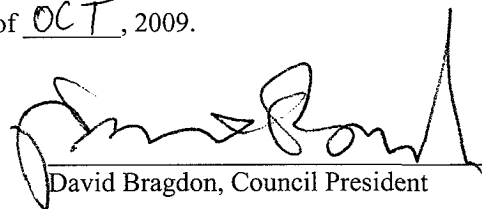
WHEREAS, Council approved the Cooper Mountain Target Area refinement plan for the 2006 Natural Areas Bond Measure in September of 2007 via Resolution No. 07-3836 (“Approving the Natural Areas Acquisition Refinement Plan for the Cooper Mountain Target Area”) with a Tier One objective to “Acquire lands adjacent to the Cooper Mountain Nature Park...” and a Tier Two objective to “Secure a corridor between the planned Cooper Mountain Nature Park and other regional and local trails (including the Westside Trail) and natural areas; and

WHEREAS, the Metro Parcel is not included in the Cooper Mountain Nature Park Master Plan, and is not adjacent to the Cooper Mountain Nature Park and is not part of a regional trail alignment, it therefore does not fulfill the objectives outlined in the 2006 Bond Measure Refinement Plan; and

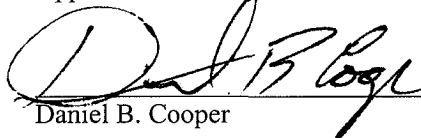
WHEREAS, disposition of the Metro Parcel and reinvestment of the proceeds according to the 1995 Metro Openspaces Bond Measure is considered the best resolution for future use of the Metro Parcel allowing these funds to be reinvested in the same program for the same purpose as intended; now therefore

BE IT RESOLVED that the Metro Council concludes that the Metro Parcel, as described in Exhibit A, is not needed for public use and that the public interest will be furthered by the sale of the Metro Parcel and hereby authorizes the Chief Operating Officer to sell the Metro Parcel using an equitable, commercially reasonable, and appropriate process, as determined by the Chief Operating Officer in his sole discretion.

ADOPTED by the Metro Council this 22 day of OCT, 2009.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper

Resolution No. 09-4079

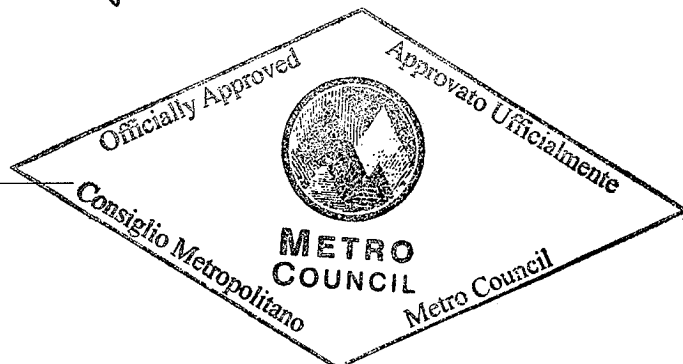


Exhibit A
Metro Lin Property
Legal Description

PARCEL 1: Commencing at a point on the section line South 0° 13' East and a distance of 2679.5 feet from the stone at the Northwest corner of Section 6, Township 2 South, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon; thence North 88° 53' East a distance of 30.0 feet to an iron pipe found to be 30 feet North of the center line of Scholls Ferry Road; thence continuing North 88° 53' East a distance of 600 feet to an iron pipe; and the place of beginning of the tract herein described; thence North 0° 13' West 871.2 feet to an iron pipe; thence North 45° 16' East 420.7 feet to an iron pipe; thence South 0° 13' East a distance of 1161.6 feet to an iron pipe 30 feet North of the center line of Scholls Ferry Road; thence South 88° 53' West 300.0 feet to the point of beginning of the above described tract, situated in the County of Washington and State of Oregon, and:

PARCEL 2: Tract in the Northwest one-quarter of Section 6, Township 2 South, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon, as follows:

Beginning at an iron pipe on the Easterly line of a 30.0 foot private roadway which iron pipe is reached from the stone at the corner of Sections 36, 31, 1 and 6, by going North 89° 36' East 240.76 feet to an iron pipe on the North line of Section 6, and on the Easterly line of a 30.0 foot private roadway; thence along said roadway line South 20° 04' East 869.6 feet to an iron pipe and angle point; thence South 17° 02' West, 284.08 feet to an iron pipe; thence continuing along said roadway line South 24° 21' West 126.9 feet to the true point of beginning; thence North 89° 36' East 371.2 feet to an iron pipe; thence South 28° 34' East 339.3 feet to an iron pipe at the Northeasterly corner of a 7 acre tract; thence South 45° 16' West along the Northerly line of said 7 acre tract 420.7 feet to an iron pipe at the Northwesterly corner of same, and at the Northeasterly corner of a 12.0 acre tract; thence along the Northerly line of said 12.0 acre tract South 88° 53' West 600.0 feet to an iron pipe on the Easterly line of the 30.0 foot private roadway; thence following the Easterly private roadway line North 0° 13' West 274.2 feet to an iron pipe; thence North 55° 57' East 380.8 feet to an iron pipe; thence North 24° 21' East 127.0 feet to the true point of beginning, situated in Washington County, Oregon.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4079 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO SELL CERTAIN REAL PROPERTY IN THE COOPER MOUNTAIN TARGET AREA

Date: October 22, 2009

Prepared by: Kathleen Brennan-Hunter
(503) 797-1948

BACKGROUND

Resolution No. 09-4079 requests authorization for the Chief Operating Officer to sell certain real property, described in Exhibit A to the resolution (the "Metro Parcel"), purchased by Metro with 1995 Open Spaces Bond Measure (the "1995 Bond Measure") proceeds. Proceeds from such sale shall be restricted to open space acquisition consistent with the requirements of the 1995 Bond Measure.

State law 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." ORS 271.310(1). 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.

In 1995 voters in the Metro Area approved the Bond Measure authorizing Metro to acquire property in 14 regional natural areas and six regional trails and greenways. The goals for the 14 areas varied according to the nature of the intrinsic resources. Each property that was acquired was stabilized and "landbanked" until such time as the property and perhaps other properties in the immediate area could be master planned for its ultimate purpose, taking into consideration all the necessary public safety and amenity issues involved.

Cooper Mountain was identified as a target area and the Cooper Mountain Refinement Plan set forth acquisition guidelines developed to acquire enough land to create a new regional nature park. 255 acres were purchased as a result of 10 separate transactions. Of the 255 acres, 231 acres are contiguous and comprise the Cooper Mountain Nature Park, opened to the public in June of this year. A non-contiguous 9 acre parcel on the northeast slope of Cooper Mountain is being managed by Tualatin Hills Park and Recreation District. The Metro Parcel, a second non-contiguous 15.95 acre parcel located on SW Scholls Ferry Road, southwest of the Nature Park and isolated from it, was acquired on September 24, 1999.

The Metro Parcel was intended to provide an important potential access point to Metro's Cooper Mountain land holdings. The property is zoned AF-20, and bounded to the north, east and west by agricultural lands. AF-20 (Agricultural and Forest Use) restricts the property to these uses. The property's neighborhood is characterized by agricultural and forest uses with increasing rural residential developments.

The majority of the site is a former tree farm, and a portion of the property is wooded with a seasonal creek. A mobile home was on the property and was recently removed. Metro staff believes that a purchaser could construct one residence on the site, within certain time limits set by Washington County. The property was appraised in 1999 with highest and best use identified in the appraisal report as a rural residential home site. There are no other partnerships on this site

and Metro has not made any investments in habitat restoration on the property. The site is subject to vandalism in the form of camping and off-road driving from time to time.

In December of 2005, the Metro Council approved Resolution No. 05-3643, “For the Purpose of Approving the Cooper Mountain Master Plan and Management Recommendations” (the “Master Plan”), representing a vision for an important regional natural area that provides for habitat enhancement and compatible public use within a neighborhood context. Washington County has also adopted the Master Plan. In a section referring to the Metro Parcel titled “Potential Surplus Property”, the Master Plan states:

In the acquisition of open space properties in the Cooper Mountain Target Area, Metro purchased a parcel along Scholls Ferry Road in 1999. The acquisition also represented potentially important access to Cooper Mountain provided other parcels could also be purchased. Metro was unsuccessful in purchasing the additional properties needed to create a contiguous, publicly owned connection down to Scholls Ferry Road. If properties between Scholls Ferry and the currently southern boundary of the natural area ultimately become developed, Metro should consider the Scholls Ferry property as surplus and sell it in order to redirect public funds.

The situation today has not changed since the Master Plan analysis, in that other desirable contiguous natural area properties have not been acquired by Metro. In addition, road improvements to 175th Ave. north of Scholls Ferry Road have enhanced the entry at the northern end of the Cooper Mountain Nature Park,. When funds are available, a second entry at Grabhorn Road is included in the approved Master Plan.

Notwithstanding the above, Metro will continue to pursue opportunities in the Cooper Mountain Target Area, which has been identified as a Target Area in the 2006 Natural Areas Bond Measure, building on the investment it has made in protecting Oregon white oak and rare prairie habitat at Cooper Mountain and protecting wildlife habitat acquired and restored to date. The Tier 1 objective is to acquire lands adjacent to the Cooper Mountain Nature Park. The Tier 2 objective is to secure a corridor between the Nature Park and other regional and local trails and natural areas. The Metro Parcel meets neither of these objectives.

The combination of factors referenced above lead to the conclusion that the Metro Parcel is not only extraneous to the Cooper Mountain Nature Park design and the 2006 Natural Areas Bond Measure objectives, therefore not needed for public use, but continued ownership of the property is not beneficial and a drain on Metro’s resources. Metro has considered natural resource protection, future trail potential and optimizing value in this analysis. There are no natural resources on the property that warrant protection beyond those already in place by virtue of jurisdictional authority. The property has no water rights for agricultural purposes. The property is best suited for one single family residence development.

A public agency planning to sell real property may sometimes first offer such property to other agencies that have jurisdiction or interest in the area, and some agencies are required to make such an offer (but Metro is not so required). Per the mandate of the 1995 Open Spaces acquisition Program, Metro provided Washington County the opportunity to take assignment of the purchase and sale agreement for the property shortly before the property was acquired in 1999. The County exhibited no interest in the property. The highest and best use of the property as a single-family residential development does not lend itself to use by other Metro departments or public agencies. Notwithstanding, notice shall be provided to Metro departments, Washington

County and relevant park districts before the property is marketed to the general public. Due to the contemplated sale of the property “as is,” staff will provide personal notification to directly adjacent property owners and property owners who share easement responsibilities on Strobel Road. Staff also will provide a general notification to “Friends of Cooper Mountain” in respect of their vested interest in the process to provide access to Cooper Mountain open spaces, for which this property was once intended. This general notification will be provided as part of Metro’s regular notification to such persons regarding Cooper Mountain park development. Metro Staff will follow the framework outlined in Attachment 1 to this staff report, “Disposition Guidelines” to successfully dispose of the Metro Parcel.

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.

Metro Resolution No. 05-3643, “For the Purpose of Approving the Cooper Mountain Master Plan and Management Recommendations,” which resolution concluded that the Metro Parcel is not needed in conjunction with the creation and management of the Cooper Mountain Nature Park.

The tax-exempt status of the bonds sold to finance the purchase of the Metro Parcel imposes some limitations and requirements on whether and how the property may be sold, and on the use of the proceeds of such sale. Staff has consulted with the Office of Metro Attorney, which has consulted with Metro’s bond counsel regarding this issue. The sale of the property will be in compliance with the advice of the Metro Attorney and bond counsel to ensure that the tax-exempt status of the bonds is maintained.

3. Anticipated Effects

The Metro Parcel will be declared surplus and not needed for public use, and will be offered for sale at a price sufficient to protect Metro’s financial investment in the property. Disposition of the Metro Parcel is consistent with the covenants of the Bond Measure, whose funds were used to acquire and stabilize the property, provided that the anticipated proceeds will be administered within the guidelines of the Bond Measure rules. The sale of the property will relieve Metro of maintenance obligations and property taxes for the residence. After sale, a home will likely be developed on the property. Such development would be generally consistent with surrounding rural residential development.

4. Budget Impacts

Net revenues from sale of the property, after payment of any appraisal, brokerage, closing, or other out-of-pocket costs associated with the sale, will be returned to the 1995 Bond Measure account for use to acquire other real property consistent with the goals and requirements of such measure.

RECOMMENDED ACTION

Staff recommends the adoption of Resolution No. 09-4079.

ATTACHMENT 1
TO STAFF REPORT TO RESOLUTION NO. 09-4079

DISPOSITION GUIDELINES
The Metro Parcel in the Cooper Mountain Target Area

The following disposition transaction procedures are the elements of analysis, outreach and sale that have and will be followed by Metro staff in the disposition of the Metro Parcel, to assure fair and honest dealings with potential purchasers and protection of public investment in this natural area property. Staff shall not proceed to Outreach and Sale of the Metro Parcel described in Resolution No. 09-4079, as outlined below until Metro Council has authorized the disposition.

Procedures:

1. Analysis

- Original Acquisition. Review of the original acquisition file and stabilization efforts since Metro's acquisition of the property is the first step in the disposition process. Staff has conducted research to ensure that sale of the property would not conflict with the restrictions imposed by the original acquisition funding. The Metro Parcel acquisition (purchased from the Lin family) was funded entirely by 1995 Open Spaces, Parks and Streams bond funds. As noted in the Staff Report for Resolution No. 09-4079 there are several compelling reasons for Metro to remove the Metro Parcel from its holdings.
- Title Review. Staff will review a current title report to make sure the Metro Parcel is free and clear of liens that could interfere with a transfer of title to the prospective purchaser.
- Physical Inspection. Metro staff has physically inspected the property to identify possible hazards, unrecorded easements etc. and made a preliminary evaluation of the condition of any structures and improvements. Staff will inspect the property to identify any encroachments and take measures to correct them, if possible.

2. Outreach

- Assessment of community impact: An assessment of community impact has been made and the sale of the property is not known or anticipated to have a negative effect on relationships with partners and community.
- Recommendation for stakeholder and public notice: A specific recommendation for stakeholder notice and public notice for the sale shall be developed by the Natural Areas Public Affairs Specialist and reviewed by the Program Director. This recommendation will likely include targeted stakeholder contact to parties including the Cooper Mountain area neighborhood association, and Washington County, as well as a written notice to a small radius of neighbors.

3. Sale Process

- Market Value and Negotiated Sale Price. Market value for the property shall be established by an appraisal completed by an independent certified appraiser that states a conclusion of the market value of the property or, if appropriate, a range of value. The appraisal shall be completed

in accordance with the Uniform Standards of Professional Appraisal Practice and may be a summary format report.

The negotiated sale price, or the total value of money and real property received, for the property shall be:

- Not greater than that which will ensure that Metro does not violate any of its bond covenants, including any applicable bond arbitrage limitations, as determined by the Metro Attorney in consultation with the Metro Chief Financial Officer; and
- Except when limited by the foregoing provision, not less than:
 - a) the market value as established by the appraisal process described below; or
 - b) 90% of such market value, with the authorization of the Chief Operating Officer upon review of a recommendation from the Natural Areas Program Director finding that:
 - i) The property has been on the market for a reasonable exposure period and a disposition transaction has not been completed; and
 - ii) It is in the public interest to sell the property at the reduced value.
- Marketing and Sale of Property. Metro or its authorized agents shall advertise the Metro Parcel for sale by commercially reasonable means which may include signage, direct marketing, newspaper advertising, or listing on public real estate listing services. Contracting agents for the sale of the property shall be at the discretion of the Natural Areas Program Director and shall be established in accordance with Metro Code.
 - The Metro Parcel will be offered for sale ‘as is’ directly by Metro. The property will be signed and advertised for Sale By Owner. A one page flier will be available at the property and on request. A detailed information package, including a title report, a copy of the relevant zoning code, the form of purchase and sale agreement and any other information deemed relevant to the transaction will be provided to interested parties at a cost according to the standard public information request rates. (\$30 for a CD, or \$30 plus \$0.05 black and white or \$0.15 per color paper copies). Staff will hold not less than 2 open houses at the property for interested parties. Offers will be accepted by sealed bid process not less than 60 days after the property is listed. There will be a reserve price of not less than 10% less than the appraised value. The winning bid shall be determined by the following factors: date the bid was received by Metro, offer price, and other terms deemed to be relevant to a successful transaction as determined by the Metro Chief Operating Officer, in his sole discretion.
 - Should Natural Areas staff be unsuccessful selling the property by the above means, or the property circumstances warrant, a third party auction house may be hired to manage a similar sealed bid process.
- Distribution of proceeds from sale. The Metro Chief Financial Officer shall determine the distribution of the proceeds from the disposition transaction, in consultation with the Metro Attorney, in order to ensure that such distribution is consistent with bond covenants and the intent of the bond measures approved by the voters.

- Notice to Metro Council. The Natural Areas Bond Program Director or his/her designees shall notify the Council promptly following the closing of any disposition transaction.
- Document Retention. Documents related to disposition transactions shall be retained as determined appropriate by the Metro Attorney, consistent with Metro's records retention policies.