

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 10-4121
THE CHIEF OPERATING OFFICER TO)
PURCHASE TRAIL AND GREENWAY) Introduced by Chief Operating Officer Michael
EASEMENTS IN THE FANNO CREEK) J. Jordan, with the concurrence of Council
LINKAGES TARGET AREA AND SUBJECT) President David Bragdon
TO UNUSUAL CIRCUMSTANCES)

WHEREAS, on March 9, 2006, the Metro Council adopted 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,” recommending submission for voter approval a general obligation bond to preserve and protect natural areas, clean water, and fish and wildlife (the “2006 Natural Areas Bond Measure”); 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” which included acquisition parameters for a pre-approved set of criteria under which the Chief Operating Officer and his/her designees are authorized to negotiate and complete land acquisition transactions; and

WHEREAS, on September 6, 2007, the Metro Council adopted Resolution No. 07-3837, “Approving the Natural Areas Acquisition Refinement Plan for the Fanno Creek Linkages Target Area,” with a goal to “Complete a continuous greenway trail from the Tualatin River into a highly urbanized “walker-challenged” area of Portland, and further protect water quality along Fanno Creek and its tributaries;” and

WHEREAS, a Partnership Objective of the Natural Areas Acquisition Refinement Plan for the Fanno Creek Linkages Target Area is to pursue partnership opportunities with the City of Tigard and Clean Water Services, among others, to leverage the regional investment in the Fanno Creek Linkages target area with local share funds and for management of purchased properties; and

WHEREAS, Metro and the City of Tigard have identified certain properties that constitute unbuilt “gaps” in the current Fanno Creek Trail Greenway and have prioritized acquisition of these properties as Tier One properties in the Refinement Plan for the Fanno Creek Linkages Target Area; and

WHEREAS, Metro staff have one signed agreement and expect the other agreement signed soon with two adjacent landowners for the purchase of trail easements on “gap” properties, further described in Exhibit A to this Resolution, that would complete a key segment of the Greenway; and

WHEREAS, the purchase price for each of these easement interests is greater than the market value determined by Metro’s appraiser in order to fairly compensate the landowners for fencing allowances and other related transaction costs; and

WHEREAS, paying more than the appraised market value for the easements represents an “unusual circumstance” under the Natural Areas Implementation Work Plan, requiring the Council to approve these acquisitions; and

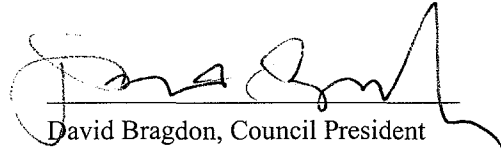
WHEREAS, in addition, the due diligence work contemplated under the proposed agreements does not include a Phase I environmental site assessment ("ESA"), which also constitutes an unusual circumstance under the Work Plan, and the Council therefore must approve acquisition of these easements; and

WHEREAS, it is intended that the City of Tigard will be responsible for the design, construction, management, and maintenance of the future trail and that Tigard will work with Clean Water Services in the design and construction to ensure that environmentally appropriate improvements are carried out; and

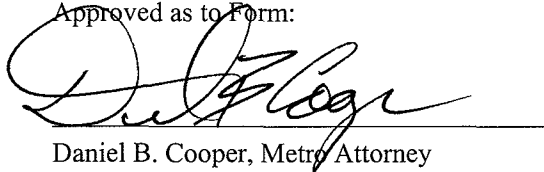
WHEREAS, the acquisition of the Trail Easements is in the public interest as it facilitates construction of an important Fanno Creek Greenway Trail segment, building on several recent trail construction projects in the target area; now therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to acquire trail and greenway easements on the properties identified in Exhibit A located in the Fanno Creek Linkages Target Area at the negotiated purchase prices and without completing Phase I environmental site assessments prior to closing on these easement acquisitions.

ADOPTED by the Metro Council this 4TH day of FEBRUARY 2010.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney

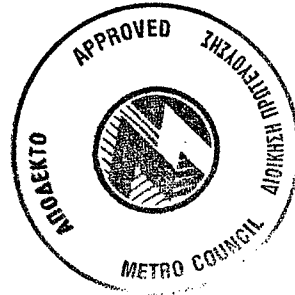


Exhibit A to Resolution No. 10-4121

Target Area: Fanno Creek Linkages
Trail Parcels 1 and 2

Description: Within the city of Tigard, the Fanno Creek Trail alignment runs along Fanno Creek from SW Scholls Ferry Road for 4.25 miles to the southern city limits located near SW Durham Road. Staff has identified an opportunity to acquire two adjacent trail easements in Tigard in the Fanno Creek Linkages Target Area. The easements are located on two separately-owned industrially zoned properties on SW Tigard Street and primarily cover the lowland Fanno Creek floodplain portion of the properties. These parcels represent two of the final three properties needed for acquisition to create a seamless alignment of the Fanno Creek Trail within the city of Tigard. The parcels are located in the heart of the city of Tigard and would create an important community connection to Woodard Park.

The two easements together will create a 3.3 acre corridor through which the Fanno Creek Greenway trail can be built, connecting from the existing trail from Woodard Park to the north, and completing the connection to another completed trail through an adjacent trail easement to the south. The trail segment will be built by the City of Tigard with oversight by Clean Water Services to ensure protection of the creek's riparian habitat. Completion of the trail in this area will reroute the trail users from an on-street temporary route to this off-street natural trail experience.

Bond Criteria Addressed:

- Provides an opportunity to fill a key gap identified in the Fanno Creek Linkages Target Area Refinement Plan, helping to create a continuous greenway from the Tualatin River into a highly urbanized, "walker challenged: area of Portland.
- Protection and possible improvement of water quality in Fanno Creek through the anticipated clean-up and restoration activities mandated by typical trail construction approval processes.
- Fulfills refinement plan partnership objectives of working with the City of Tigard and Clean Water Services as it is contemplated that Tigard will manage the property and build the trail in the future.
- Fulfills the refinement plan partnership objective of working with private landowners to explore opportunities for conservation easements.

Property Identification: A portion of each of Tax Lots 00300, 00302, 00304 and 00501, Map 2S102BA, Willamette Meridian; Clackamas County

Sellers: Private Parties

Size: 2.23 acres and 1.07 acres (easement areas on properties)

Stream Frontage: Fanno Creek, approximately 1,250 ft.

Conditions: Unusual circumstance of purchase price above the appraised values, and the lack of a Phase I environmental site assessment in the due diligence period.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 10-4121, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO PURCHASE TRAIL AND GREENWAY EASEMENTS IN THE FANNO CREEK LINKAGES TARGET AREA AND SUBJECT TO UNUSUAL CIRCUMSTANCES

Date: February 4, 2010

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

BACKGROUND

Resolution No. 10-4121 requests authorization for the Chief Operating Officer to purchase trail and greenway easements using regional funds from the 2006 Natural Areas Bond Measure. The easements on two separate parcels in the Fanno Creek Linkages Target Area are described in Exhibit A to the resolution (the "Trail Parcels").

The Fanno Creek Linkages was identified as a target area of the 2006 Natural Areas Bond Measure. The Fanno Creek Linkages Refinement Plan, approved by the Metro Council in Resolution No. 07-3837 (adopted September 6, 2007), identified a goal to "Complete a continuous greenway trail from the Tualatin River into a highly urbanized 'walker-challenged' area of Portland, and further protect water quality along Fanno Creek and its tributaries." The refinement process included background research from a 2003 "Fanno Creek Greenway Trail Action Plan" (the "Action Plan") prepared for Metro focused on completing the gaps in the trail. The refinement plan identified the Tier One Objective as "Connect publicly owned land along the mainstem of Fanno Creek between Cook Park and Woodard Park to complete the corridor and enhance habitat and water quality protection in this area." There are a total of three (3) parcels needed for the completion of the Fanno Creek Trail within the city of Tigard. These parcels represent two of the final three properties needed for acquisition. Pursuing partnerships with the City of Tigard and Clean Water Services, among others, to leverage the regional investment in the Fanno Creek Linkages target area with local share funds and for management of purchased properties was identified as a Partnership Objective in the Refinement Plan.

The Trail Parcels, located in the Gap #4 area of the Action Plan (see attached map), are owned by two separate entities in the City of Tigard. They are just south of Woodard Park and bisected by Fanno Creek. Adjacent to the Trail Parcels to the north is an existing segment of the trail, and adjacent to the south is an existing trail easement leading to a completed trail segment. The first area, Trail Parcel 1, is a 2.23 acre easement area in a 9.16 acre property. The adjacent Trail Parcel 2 is a 1.07 acre easement Area in a 2.26 acre property. Both are depicted in Attachment 1 to this staff report and both are unimproved portions lying in the floodplain of developed industrial lands.

Metro staff have negotiated with the owners of the Trail Parcels in accordance with the guidelines established to ensure that federal funds may be used for trail construction. The property owners were contacted, Metro obtained permission for an appraisal to be performed on the properties, the appraisals were completed by a qualified appraiser and reviewed by a second qualified appraiser, and the appraisal was included in an Offer-Benefit package given to the landowners. The owners of the Trail Parcels were each offered the appraised value of the easements. The landowners, in both cases, took exception to portions of the appraisal conclusions regarding the need for privacy fencing. They disagreed with the appraiser's comment that the desire for privacy at the commercial setting was not comparable with the desire for privacy in a residential setting. Also, the properties are not currently fenced, thus indicating that security is not an overriding concern at

this location. Both owners felt that security is not presently a concern because the public is not allowed on the proposed easement area, but if a trail were built, the business tenants would have a security concern. The owner of Trail Parcel 2 noted that he would be losing a parking area currently used by his business tenants and would not be compensated for that loss, and both owners declared that they would be incurring legal fees to have their attorneys involved in the proposed transactions.

Metro staff believe that a fencing allowance is justified because, of the six comparable properties used in the appraisal, none were acquired for trail purposes, and only one was on an industrially zoned property. The review appraiser felt that the flood plain sales were somewhat dissimilar from the Tigard properties, because they were not related or connected with industrially-zoned upland, with the exception of one sale. He also noted that sales of this property type are not frequent in the market. In other words, with respect to whether a fencing allowance would be appropriate, the comparables used by the appraiser were not comparable to the subject easement acquisitions.

Metro staff obtained fencing bids to arrive at a reasonable reimbursement for a fence to separate the future trail from the commercial areas of the larger properties, and revised the offers accordingly. Metro staff concluded that fencing allowances of \$19,200 for Trail Parcel 1 and \$7,450 for Trail Parcel 2 are appropriate, which is a cost of \$23.50 per linear foot of fence needed on each property. An amount in addition to the fencing allowance is recommended to be added to Parcel 2 for the intangible value of the easement to the landowners in the form of legal expenses and unknown future effects on the remainder property. Metro staff recommend an additional amount of \$19,200 for Trail Parcel 1 and \$13,100 for Trail Parcel 2, which represents the recommended settlement amounts minus the fencing allowances and additional compensation to the owner of Parcel 2 for expected legal fees. In order to make every effort to ensure that trail acquisitions such as these were consistent with the federal acquisition guidelines, Metro staff consulted generally with right-of-way acquisition staff with the Oregon Department of Transportation and the City of Portland for guidance in arriving at final offers of just compensation to address issues such as these.

Metro staff seeks the Metro Council's approval of these acquisitions for two reasons. First, in order to pay more than the appraised value of these easement property interests as determined by a third party appraiser, and second, to authorize acquisition of these easements even though Metro has not undertaken a Phase I environmental site assessment ("ESA") for these properties. The Council-approved Natural Areas Implementation Workplan states that, "The Chief Operating Officer and his/her designees may complete a land acquisition transaction that does not meet all of the *acquisition parameters* only with specific Council review and approval." The contemplated transactions do not meet the acquisition parameters as the recommended amount to be paid to the landowners exceeds the appraisal value and Metro has not undertaken Phase I environmental site assessments for these properties. In the case of Trail Parcel 1, the recommended settlement amount represents a \$19,200 increase, to a total of \$32,300 for the easement. The Trail Parcel 2 recommended settlement amount represents a \$13,100 increase for a total of \$20,000 for the easement. Metro staff expect to shortly enter into an agreement with the owner of Trail Parcel 1 and have entered into a Purchase and Sale Agreement for Trail Parcel 2 at the revised easement prices of \$32,200 and \$20,000, respectively, subject to the approval of this Resolution 10-4121 by the Metro Council.

Regarding the request to proceed with these easement acquisitions without obtaining a Phase I ESA, the Office of the Metro Attorney ("OMA") has advised and determined that, although the potential liability is not zero, the chances of an easement holder being held liable for

environmental contamination on a property are extremely low, and that indemnifications within the purchase agreement and the recorded easement will provide protection from such liability (unless, of course, the contamination was directly caused by or exacerbated by the actions of the easement holder). The easement language provides the easement holder the right to undertake a Phase I ESA prior to trail construction, in order to ensure that trail construction will not create any such liability. To the extent any Phase 1 ESA reports exist on the subject properties, acquisition staff will make every effort to obtain copies during Metro's due diligence, to help inform the decision of whether to proceed with a trail easement acquisition.

Introduced concurrent with this resolution is a proposed resolution to amend the Natural Areas Implementation Work Plan to provide staff authority to proceed with similar acquisitions in the future.

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 Acquisitions and Water Quality Protection," adopted on March 9, 2006.

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

Resolution No. 07-3837, "Approving the Natural Areas Acquisition Refinement Plan for the Fanno Creek Linkages Target Area," adopted by the Metro Council on September 6, 2007.

3. Anticipated Effects

Metro will enter into a Purchase and Sale Agreement with the owner of Trail Parcel 2 at the above stated Purchase Price and complete due diligence during the contract period; provided, however, that such due diligence will not include obtaining a Phase I environmental site assessment for these acquisitions.

4. Budget Impacts

Metro's purchase of these easements shall be funded utilizing 2006 Regional Bond proceeds. Trail design, permitting and construction will be the responsibility of the City of Tigard.








RECOMMENDED ACTION

Staff recommends the adoption of Resolution No. 10-4121.

ATTACHMENT 1

Trail Easements

Target Area:
Fanno Creek Linkages

-  Easement Areas
-  Parcel Boundaries
-  Public Parks
-  Taxlots
-  Existing Trails
-  Proposed Trails
-  Streams

1 inch = 141.7 feet

