BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO DISPOSE OF REAL PROPERTY IN THE JOHNSON CREEK TARGET AREA AND PURCHASE REAL PROPERTY IN THE JOHNSON CREEK TARGET AREA	))))))	RESOLUTION NO. 10-4171 Introduced by Chief Operating Officer Michael Jordan with the concurrence of Council President David Bragdon

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 Metro Council on March 9, 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 Johnson Creek Target Area goal of acquiring property within the remaining upland habitat areas adjacent to the main stem, along major tributary creeks, and within the Johnson Creek floodplain to protect water quality and connect existing public holdings; and

WHEREAS, Council approved the Johnson Creek Target Area refinement plan for the 2006 Natural Areas Bond Measure on September 13, 2007 via Resolution No. 07-3851 ("Approving the Natural Areas Acquisition Refinement Plan for the Johnson Creek and Watershed Target Area") which 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 by the Metro Council on March 1, 2007; and

WHEREAS, Metro acquired, with 2006 Natural Areas Bond Measure funds, an approximate 19-acre parcel in the Johnson Creek Target Area located along SE 252nd Avenue, which is specifically identified on the attached Exhibit A (the "Larger Parcel"); and

WHEREAS, the majority of the Larger Parcel contributes to the goals of the Johnson Creek Target Area refinement plan in that it is "within the remaining upland habitat areas adjacent to the main stem of Johnson Creek" and is located "within the Johnson Creek floodplain"; and

WHEREAS, a westerly 0.5-acre portion of the Larger Parcel (the "Metro Property") is located outside of the critical natural resource area and is improved with a single family residence; and

WHEREAS, because the Metro Property is not "within the remaining upland habitat areas adjacent to the main stem of Johnson Creek" nor "within the Johnson Creek floodplain," it therefore does not fulfill the Tier I objective to "protect lands along the mainstream and important tributaries of Johnson Creek"; and

WHEREAS, the disposition of the Metro Property and reinvestment of the proceeds according to the 2006 Natural Areas Bond Measure is considered the best action for future use of the Metro Property; and

WHEREAS, Raymond Marston is the owner of certain real property approximately 2.97 acres in size, located at 7715 SE Telford Road, Gresham, Oregon, 97030 in unincorporated Multnomah County (the "Marston Property"). The Marston Property has been identified as a Tier I acquisition priority in the Johnson Creek Target Area and is more particularly depicted on the attached Exhibit B; and

WHEREAS, Metro desires to acquire the Marston Property in exchange for: (a) the Metro Property plus (b) $98,000 to pay off the existing mortgage against the Marston Property; and

WHEREAS, the $98,000 payment would result in Metro paying $68,000 over the appraised value for the Marston Property, however at the same time will translate into significant savings, avoiding the capital costs of preparing the Metro Property for a market sale and costs of a market sale including commissions; 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 the purchase price for the property must be equal to or less than the fair market value as established by Metro's appraisal and appraisal review processes; and

WHEREAS, because it is in the best interest of the 2006 Natural Areas Bond Measure Program to both: (a) dispose of the Metro Property, and (b) acquire the Marston Property; now therefore

BE IT RESOLVED that the Metro Council concludes that the Metro Property, as depicted on Exhibit A, is not needed for public use and that the public interest will be furthered by the disposition of the Metro Property; and

BE IT FURTHER RESOLVED that the Metro Council concludes 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. Transfer and convey fee title to the Metro Property to Marston in return for Marston transferring and conveying fee title to the Marston Property to Metro, provided that all documents necessary to effect the exchange transaction (including without limitation any required land use applications), are in forms acceptable to the Metro Attorney; and

2. Acquire the Marston Property for $68,000 above its appraised value, provided the acquisition of the Marston Property is otherwise in accord with the Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan; and

BE FURTHER IT RESOLVED that in the event the exchange transaction with Marston does not occur, the Metro Council authorizes the Chief Operating Officer to sell the Metro Property 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 12 day of AUG, 2010.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper

Officially Approved · Approvato Ufficialmente · METRO COUNCIL · Consiglio Metropolitano · Metro Council

EXHIBIT A to Resolution 10-4171

Map of Larger Parcel and Metro Property

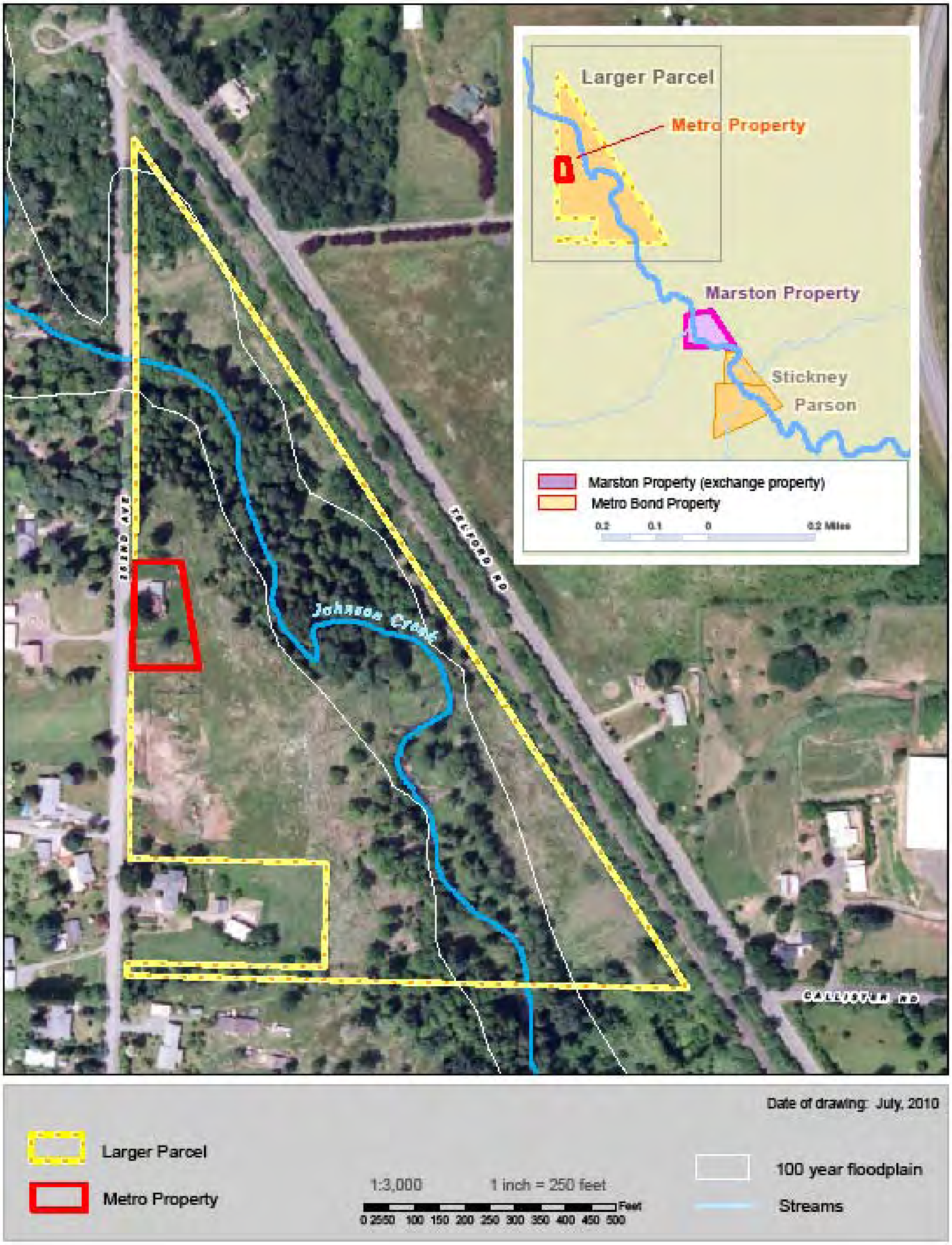
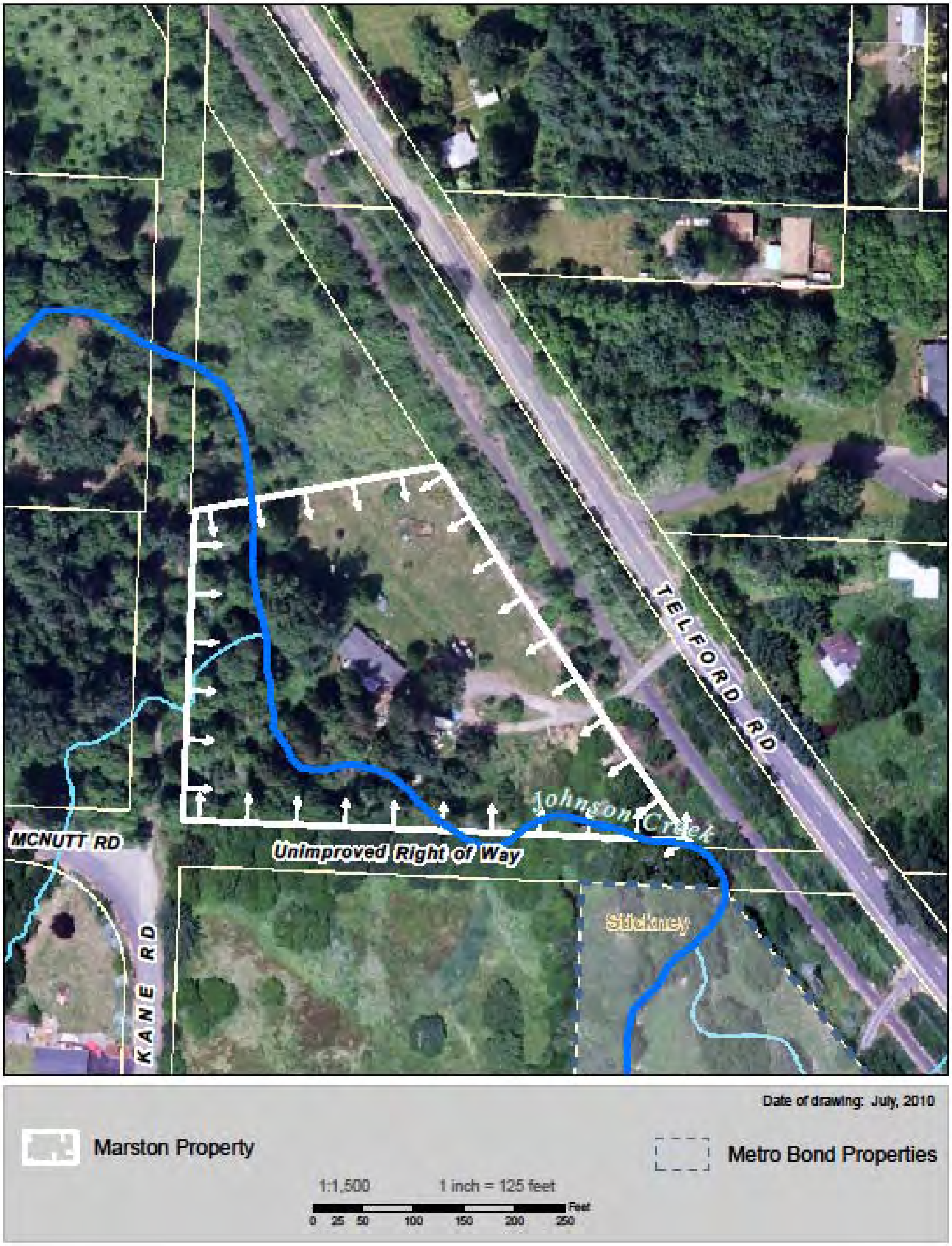


EXHIBIT B to Resolution 10-4171

Depiction of Marston Property



STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 10-4171 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO DISPOSE OF REAL POPERTY IN THE JOHNSON CREEK TARGET AREA AND PURCHASE REAL PROPERTY IN THE JOHNSON CREEK TARGET AREA

Date: August 12, 2010

Prepared by: Hillary Wilton
503-797-1845

BACKGROUND

Resolution No. 10-4171 requests authorization to sell or exchange approximately 0.5 acres of Metro-owned real property (the "Metro Property") for 2.97 acres of real property owned by Raymond Marston (the "Marston Property"). The purpose of this Resolution is to authorize the Chief Operating Officer to: (1) sell the Metro Property, and (2) acquire the Marston Property at a price above the appraised value. These transactions will allow Metro to relinquish a property that does not enhance water quality and wildlife habitat, while creating a unique opportunity to protect a property that does.

The Metro Property is located within the Johnson Creek Target Area and is a 0.5-acre residential portion of a larger 19-acre property (referred to herein as the "Larger Parcel") purchased with funds from the 2006 Natural Areas Bond Measure. A depiction of both the Metro Property and the Larger Parcel is attached to the proposed Resolution as Exhibit A. When Metro purchased the Larger Parcel, the acquisition included a single family residence located on the western side of the property along Southeast 252nd Avenue. The farm house-style residence is approximately 1,700 square feet in size. Because the residence is in fair condition and is located outside of the critical natural resource area, staff believes that the structure is not a good candidate for demolition. Until recently, Metro leased the residence to a residential tenant.

Continued ownership of the Metro Property does not contribute to the goals of the 2006 Natural Areas Bond Measure. The Metro Property is not "within the remaining upland habitat areas adjacent to the main stem of Johnson Creek" nor is it "within the Johnson Creek floodplain." Moreover, if Metro retains the Metro Property, the existing residence will be a management obligation, the expense of which is not outweighed by the future potential rental income. Metro has considered the Metro Property's natural resource and future trail potential and has ultimately concluded that it is best suited as a privately owned, single family residence.

The Marston Property is also located within the Johnson Creek Target Area and is currently improved with a manufactured home. Metro's acquisition of the Marston Property will contribute significantly to Metro's Tier I acquisition goals set forth in the refinement plan, in particular helping to "protect lands along mainstream Johnson Creek Reaches 16 and 17" (see map attached to proposed Resolution as Exhibit B).

The Marston Property borders Johnson Creek and lies immediately north of two other Metro-owned properties, both of which were previous 2006 bond measure acquisitions. Acquisition of the Marston Property creates a contiguous 9-acre management unit along this critical reach of Johnson Creek. Following acquisition of the Marston Property, Metro will remove the existing mobile home structure from the floodplain and the 100-foot critical riparian zone. The undeveloped remaining portion of the Marston Property is a western red cedar-Oregon ash forest with a native understory. Metro's stabilization plan would include re-establishing a wider native riparian forest and shrubby layer on the currently developed portion.

Staff has been working toward acquiring the Marston Property for several years because it is such a high priority acquisition. Although Mr. Marston has been willing to consider selling his property to Metro, finalizing a deal has been challenging due to the following two constraints: (1) Mr. Marston will sell only if he is able to relocate to another nearby property; and (2) Mr. Marston is unable to obtain standard credit terms to obtain conventional financing on a new residence. In order to work around the aforementioned constraints, Staff approached Mr. Marston with the following land exchange proposal: Mr. Marston would convey fee title to the Marston Property to Metro and in exchange Metro would: (a) convey fee title to the Metro Property to Mr. Marston, if Mr. Marston would accept the Metro Property in as-is conditionand (b) pay off Mr. Marston's outstanding mortgage to Chase Bank, in an amount not to exceed $98,000.

Staff believes that the proposed exchange is represents the only opportunity Metro will have in the foreseeable future to acquire the 3-acre Marston Property, a critical link in the Council's acquisition goals in this area. In addition, the proposed exchange will result in additional savings to Metro of the costs and staff time that would otherwise be incurred should Metro pursue a market sale of the Metro Property. The costs would include capital improvements to the property to prepare it for a market sale, including possibly updating the electrical system, recommended by property inspection, as well as a commission on sale of at least 3 percent. Mr. Marston has agreed to take the Metro property in as-is condition. The transfer of the residence would also avoid all future maintenance and upkeep expenses.

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 before selling any property owned by Metro.

Staff hereby requests that the Metro Council declare the Metro Property to be surplus and delegate to the Chief Operating Officer the authority to complete the exchange of the Metro Property for the Marston Property. Should the exchange with Mr. Marston be unsuccessful, Staff requests that the Metro Council authorize Staff to pursue a market sale of the Metro Property in accordance with the "Disposition Guidelines" outlined in Attachment 1. Proceeds from such sale shall be restricted to open space acquisition consistent with the requirements of the 2006 bond measure. The sale approach outlined on Attachment 1 is the same approach used for the sale of the "Lin Property" located in the Cooper Mountain target area as presented to and adopted by the Metro Council on October 22, 2009 under Resolution No. 09-4079, "For the Purpose of Authorizing the Chief Financial Officer to Sell Certain Real Property in the Cooper Mountain Target Area".

As referenced above, as part of the exchange Staff proposes paying off the outstanding balance (not to exceed $98,000) on the existing mortgage encumbering the Marston Property. In November of 2009, Staff obtained independent MAI appraisals of both the Marston Property and the Metro Property. The Marston Property appraised at $255,000 while the Metro Property appraised at $225,000. The payment of approximately $98,000 to Mr. Marston's lender is in essence an agreement to pay $68,000 over the appraised value for the Marston Property. Mr. Marston has agreed to accept the Metro property in as-is condition whilst Metro has made standard requirements for Mr. Marston to prepare his property for sale to Metro. Metro will also realize savings from not needing to market the Metro property. Staff hereby requests that as part of the proposed exchange, the Metro Council authorize such additional payment.

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 before selling any real property owned by Metro.

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 by the Metro Council 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. 06-3720, “For the Purpose of Authorizing the Chief Operating Officer to Enter Into Options to Purchase Properties in the Newell Creek, Lower Tualatin Headwaters, Forest Park and Johnson Creek Target Areas, and Including a Property in the Forest Park Target Area Subject to Unusual Circumstances Under the Proposed 2006 Natural Areas Bond Measure Implementation Work Plan,” adopted by the Metro Council on August 17, 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”, adopted by the Metro Council on September 13, 2007.

The tax-exempt status of the bonds sold to finance the purchase of the Larger Parcel imposes some limitations and requirements on whether and how Metro 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 Metro 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 Property 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 Property 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.

4. **Budget Impacts**

All costs associated with the property line adjustment necessary to result in the Metro Property becoming a legal lot of record will be paid for by Metro. Metro will also pay for ordinary due diligence expenses and closing costs related to the acquisition of the Marston Property, 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. Should the exchange with Mr. Marston be unsuccessful, net revenues from sale of the Metro Property, after payment of any appraisal, brokerage, closing, or other out-of-pocket costs associated with the sale, will be returned to the 2006 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. 10-4171.

ATTACHMENT 1 to Staff Report to Resolution No. 10-4171

DISPOSITION GUIDELINES
The Metro Property in the Johnson Creek 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 Property in order to assure fair and honest dealings with potential purchasers and protection of public investment in this natural area property.

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 the sale of the property would not conflict with the restrictions imposed by the original acquisition funding. The Metro Property acquisition was funded entirely by 2006 Natural Area Bond funds. As noted in the Staff Report for Resolution No. 10-4171, there are several compelling reasons for Metro to remove the Metro Property from its holdings.

- Title Review. Staff will review a current title report to make sure the Metro Property 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 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 City of Gresham, 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 Property 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 Property 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.