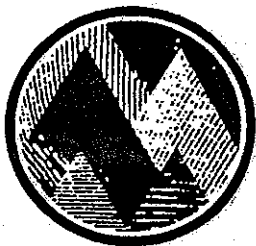


Metro

Metro's Open Spaces Program

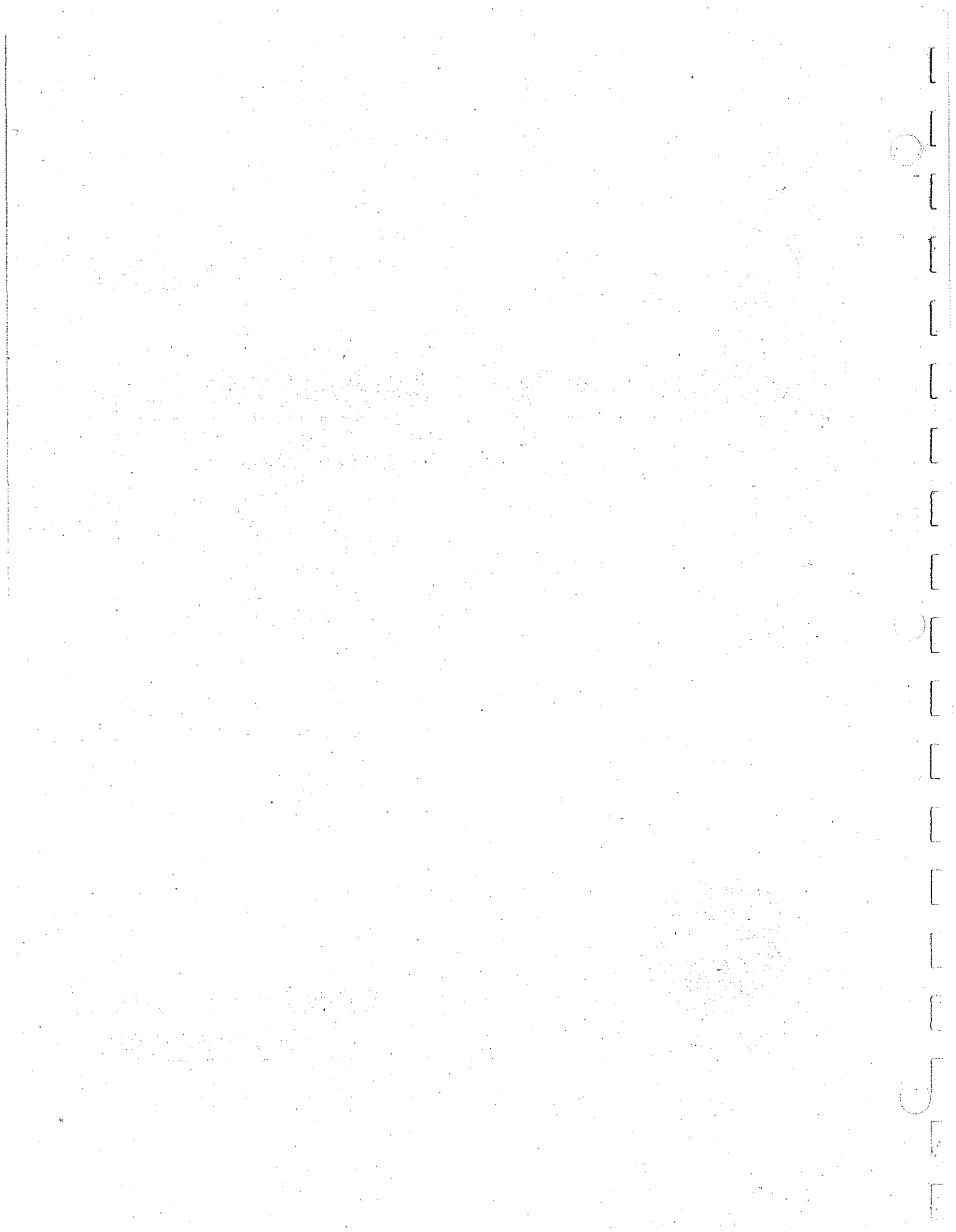
June 1996

A Limited-Scope Review by the Office of the Auditor



METRO

Alexis Dow, CPA
Metro Auditor





METRO
OFFICE OF THE AUDITOR

June 7, 1996

Mike Burton, Executive Officer	Councilor Susan McLain
Councilor Jon Kvistad, Presiding Officer	Councilor Rod Monroe
Councilor Patricia McCaig	Councilor Don Morissette
Councilor Ruth McFarland	Councilor Ed Washington

Re: Metro's Open Spaces Program

Dear Mr. Burton and Councilors:

The accompanying report covers our limited-scope review of Metro's Open Spaces Program. We undertook this study as part of our annual audit plan.

We reviewed a draft report with the Executive Officer, General Counsel, the director of the Regional Parks and Greenspaces Department, and the Open Spaces Program Manager. The last section of this report presents the written response of Executive Officer Burton. An overview of the purpose, methods and results of our work appears in the "Summary" section which introduces our report.

We would appreciate receiving a written status report from the Executive Officer, or a designee, in six months indicating what further progress has been made to address the report's recommendations.

We appreciate the cooperation and assistance provided by staff from the Office of General Counsel and the Regional Parks and Greenspaces Department.

Sincerely,

A handwritten signature in cursive script that reads "Alexis Dow".

Alexis Dow, CPA
Metro Auditor

Auditor: Doug U'Ren

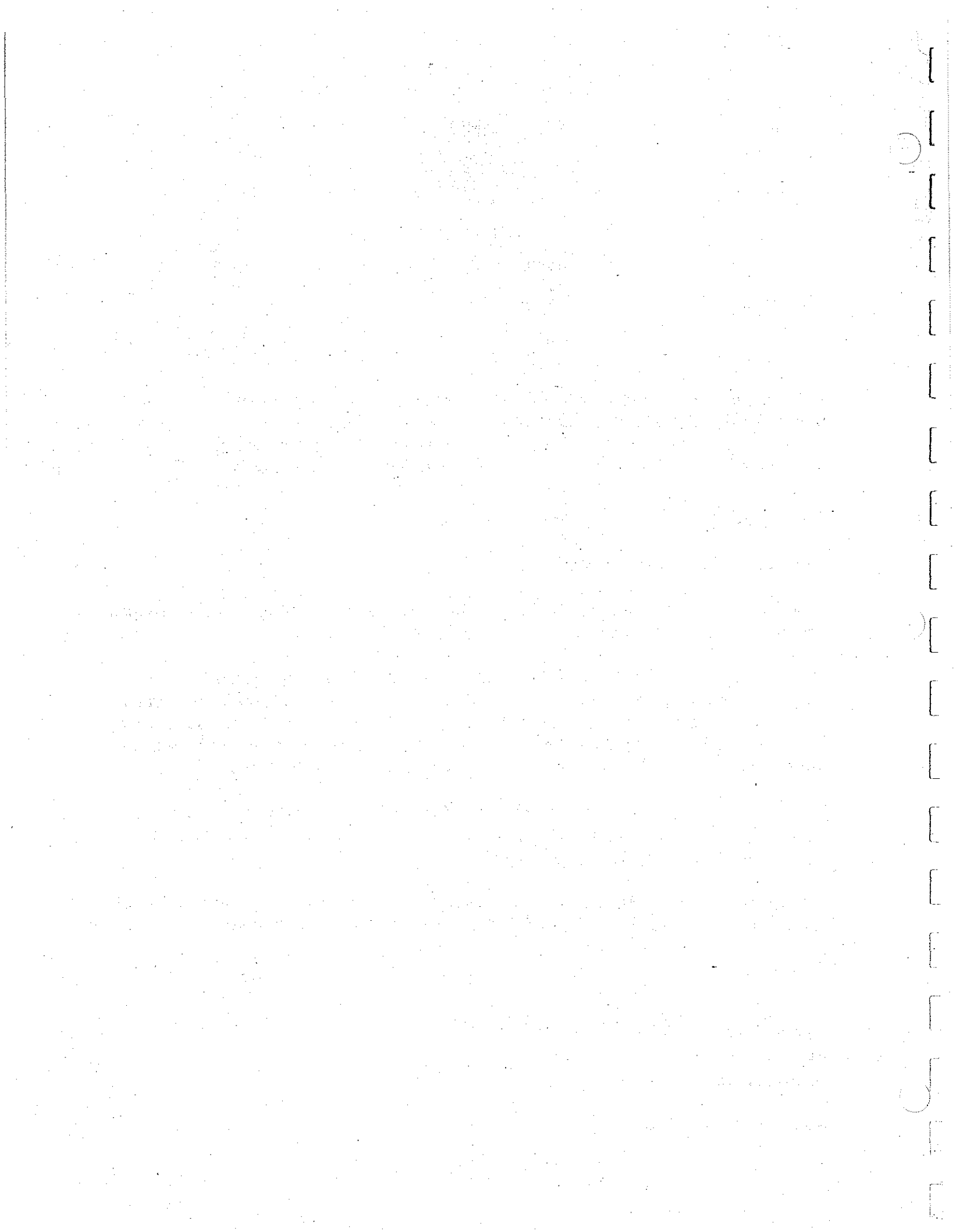
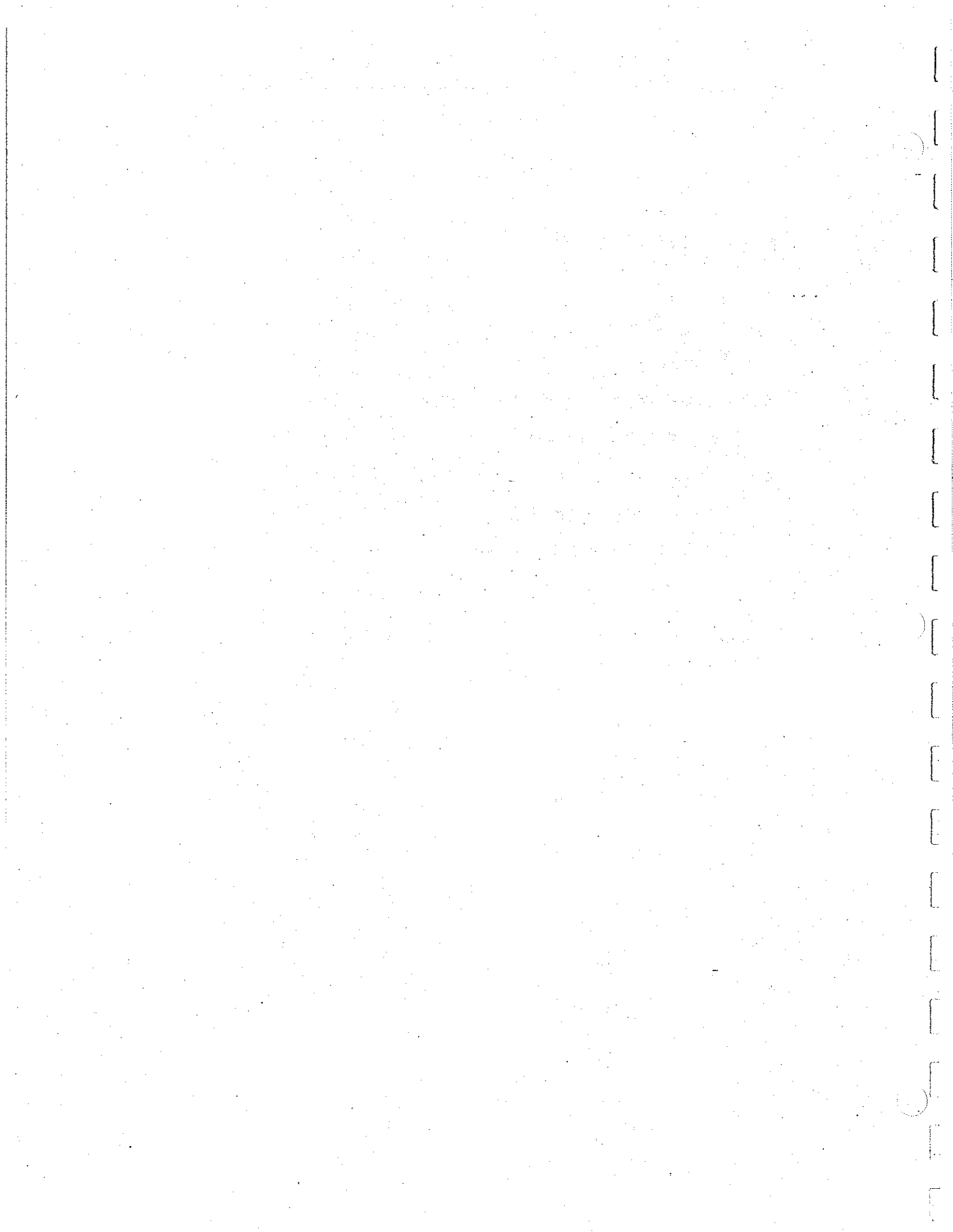


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Executive Officer Mike Burton



Summary

In May 1995 Metro region voters approved Ballot Measure 26-26, which authorized Metro to issue \$135.6 million in general obligation bonds to acquire lands for regional parks, open spaces and trails. Specific goals of the Ballot Measure included (a) purchasing 5,982 acres of land located in 14 regionally significant natural areas, (b) acquiring land to complete five regional trails, and (c) providing \$25 million to finance approximately 90 land acquisition and capital improvement projects sponsored by local governments in Multnomah, Clackamas and Washington counties. The Metropolitan Greenspaces Master Plan, adopted by the Metro Council in 1992, provided the foundation for the Open Spaces ballot measure.

Two Metro departments play major roles in carrying out Open Spaces Program activities: the Regional Parks and Greenspaces Department's Open Spaces Division and the General Counsel's Office. The former identifies the specific properties Metro should try to acquire, negotiates property purchases with landowners, and performs the initial post-acquisition tasks that are necessary to prevent degradation of properties and minimize health and safety risks. The Open Spaces Division is staffed by a program manager, real estate negotiators, planners, a biologist and a management analyst. The General Counsel's Office conducts "due diligence" research, oversees the appraisal process, and provides legal support for the program. The General Counsel's Office hired two paralegals, an assistant counsel and an appraiser for the Open Spaces Program. Some professional services, such as surveys, independent appraisals and environmental assessments, are obtained from private contractors.

Our limited review of the Open Spaces Program focused primarily on whether adequate controls have been established to provide reasonable assurance that Metro will achieve the goals described in Ballot Measure 26-26 and related documents. We also reviewed the adequacy of controls over costs and key documents. We did not

perform tests to determine if controls are actually functioning as intended.

We found that management has established adequate controls to provide reasonable assurance that the Open Spaces Program will accomplish its goals. Controls over costs and key documents, such as property purchase documents and deeds, also appear adequate. The due diligence procedures developed to identify potential boundary, environmental, title and valuation problems that may exist, are comprehensive. The procedures should be sufficient to enable Program staff to uncover and address all significant acquisition issues before purchasing the properties.

Much of the success of the Program hinges on staff's ability to persuade owners of targeted properties to willingly sell their land to Metro for prices that are at or below market value. Another crucial factor is the trend in the region's land values over the next three to five years. If property values remain relatively stable or decline, staff will likely be able to acquire the number of acres of land described in the ballot measure; if property values rise substantially, this goal will be difficult to achieve. Staff has developed reasonable strategies to try to address these challenges.

Although controls are adequate, we have developed nine recommendations for management's consideration. These recommendations are intended to help provide further assurance that Program goals can be met. We have presented them in the "Recommendations" section of this report. We understand management has already begun addressing several of these recommendations.

Objectives, Scope and Methodology

Our primary objective was to evaluate the adequacy of the controls the Parks Department and General Counsel's Office have established to help ensure that the Open Spaces Program will achieve its mission and goals. We also assessed controls the Program has developed to safeguard key documents and records, and ensure that financial and management reports will be accurate and reliable.

To address these objectives, we reviewed the Metropolitan Greenspaces Master Plan, the Open Space Bond Measure and related documents, and the Open Space Implementation Work Plan. We also interviewed personnel in Metro's Parks and Greenspaces Department and General Counsel's Office. Finally, we reviewed Metro ordinances and resolutions applicable to the Open Spaces Program, and the FY 1995-1996 budget for the Program. We performed no test work as this was a limited review.

We conducted our limited-scope review in accordance with generally accepted government auditing standards.

Recommendations

- 1. To enhance the integrity of property valuations performed by Metro-hired independent appraisers, the Metro General Counsel and the Open Spaces Program Manager should establish a policy that directs their staff to avoid disclosing Metro's offer or option prices to the appraisers.**

The Open Space Implementation Work Plan requires that an independent appraisal be performed as part of the property acquisition due diligence process. If staff desires to proceed with a property purchase that will cost 5% or more above the independent appraiser's estimated fair market value, the proposed purchase must be approved by the Metro Council.

Under current practices, Metro staff are allowed to disclose the amount of Metro's property offers to independent appraisers. Furthermore, appraisers licensed in the State of Oregon must conform to professional standards which require them to consider any current options or sale agreements in deriving their opinions of fair market value, if such information is available to them in the normal course of business. Although the appraisal standards appear to provide considerable assurance that independent property appraisals will be reliable, we believe the integrity of the valuations would be enhanced if Metro staff were directed to avoid discussing Metro's offer prices with the appraisers, since this information, if disclosed by Metro staff, could influence the appraisers to seek data that justifies Metro's offer prices.

- 2. Open Spaces Program staff should periodically evaluate whether the goals of the Open Spaces Program can be achieved. Results of their assessments should be communicated to the Executive Officer and Council.**

The "Acquisition Parameters" section of the Implementation Work Plan requires the Executive Officer to provide the Council with quarterly updates summarizing acquisition activity in each target area. The Executive Officer submitted the first report, covering the fourth quarter of 1995, to the Council in January. The report identified property acquisitions by target area, and compared the percentage of targeted acres purchased to date with the percentage of total dollars allocated to the target area that have been spent.

We recommend that the Open Spaces staff enhance these quarterly updates by providing the Council with semiannual reports containing the staff's best estimates of how many acres Metro will acquire in each target area, given prevailing market conditions and available funds. We believe this kind of semiannual reporting would provide the Council with a more complete understanding of the likelihood of the program achieving its goals.

- 3. To avoid the possibility of confusion over the identity of properties the Metro Council has approved for acquisition, the Council Presiding Officer should sign, stamp, or otherwise identify the maps that designate the parcels to be purchased.**

Under current practice, the Metro Council does not sign, stamp or otherwise identify the refinement area maps showing the tax lots it has approved for acquisition. We recommend that this be done to provide positive identification of tax lots approved for purchase and to minimize the risk of acquiring

properties that were targeted on earlier maps but not on the ones approved by the Council.

4. The General Counsel should provide better security for refinement area maps.

The General Counsel and staff appraiser each retain a refinement area map showing tax lots the Council has approved for acquisition. The General Counsel's map is kept in a locked storage room in Metro Regional Center. However, some Metro employees who are neither on the General Counsel's staff nor part of the Open Spaces Program have keys to this room. The other map is stored in an unlocked map drawer. To ensure Metro does not lose both maps, at least one of them should be kept in a lockable cabinet or vault, with access limited to General Counsel and Open Spaces Program employees only.

5. The Executive Officer and Council should consider taking additional measures, such as strengthening the Metro Code of Ethics, to discourage Metro staff from disclosing property appraisal and purchase information to others until Metro has acquired the targeted properties.

The Oregon Ethics Law is contained in chapter 244 of the Oregon Revised Statutes (ORS) and applies to all Metro employees. In addition, section 2.02.240 of the Metro Code, Ethical Requirements for Employees, Officers, Elected and Appointed Officials, establishes a code of ethics for all non-represented Metro personnel.

According to an October 24, 1995, memorandum written by the Metro General Counsel to the Executive Officer and the Metro Council, ORS 244 contains four prohibitions that are particularly applicable to the Open

Spaces Program. "Public official" means all Metro elected officials and Metro employees:

- No public official may use his office to obtain financial gain or avoid financial detriment for the public official, the public's relatives, or any business for which the public official is affiliated;
- Public officials may not solicit or receive gifts in any calendar year with an aggregate value in excess of \$100 from any single source who could reasonably be known to have legislative or administrative interest in the agency in which the official has a position over which they exercise any authority;
- Public officials may not solicit or receive any promise of future employment based on an understanding regarding any vote, official action or judgment that would be influenced thereby; and
- No public official may use confidential information gained while carrying out their official position for their own gain.

Neither ORS 244 nor the Metro Code prohibits a public official from disclosing confidential information to or obtaining financial gain for a nonrelative as long as the public official does not benefit from these actions. Thus, a Metro staff member could provide an acquaintance with a list identifying each of the properties that Metro has decided to buy in a target area. This disclosure would be legal as long as the Metro staff member or his family did not benefit in any way, even if it harmed Metro by increasing the cost of acquiring targeted properties.

We recommend that the Executive Officer address these issues as part of current efforts to clarify and refine the Metro Code of Ethics.

- 6. The Metro General Counsel's Office should develop a process for ensuring that all due diligence procedures contained in the "Option Exercise and Closing Checklist" have been completed.**

Metro staff developed a comprehensive "due diligence" process to ensure that the public's investment in open space will be protected. The due diligence process required by the Open Space Implementation Work Plan includes such activities as obtaining an independent appraisal of the property to help determine its fair market value; examining a title report to ensure the property is the seller's to sell; hiring a surveyor, if necessary, to identify the property's boundaries; and inspecting the property to identify potential environmental problems, uncover unrecorded easements, and evaluate the condition of improvements. Two paralegals and an Assistant General Counsel from the Metro General Counsel's Office coordinate due diligence activities for the Open Spaces Program. Metro staff created a form, known as the "Option Exercise and Closing Checklist," to help ensure that all due diligence steps are performed.

During our review, we examined the contents of one property acquisition file to obtain a better understanding of how Open Spaces Program acquisitions are actually performed and documented. We found that staff used the Option Exercise and Closing Checklist, and it appeared that all due diligence procedures appropriate for the transaction had been carried out. However, some items on the checklist had not been checked off or filled out, which initially created uncertainty as to whether all the relevant due diligence procedures had been performed. We recommend the Metro General Counsel or the Assistant General Counsel review the Option Exercise and Closing Checklist before each property closing to ensure all appropriate due diligence procedures have been adequately carried out. The date and results of this review should be documented.

We also noted during our review of this property acquisition file that staff had not always documented

ATTACHMENT B

OPTION EXERCISE AND CLOSING CHECKLIST

Project:

File No:

Property Address:

Tax Designation:
Acres:

Purchase Price:

Option Exercise Date:
Option Payment:

Option Extension Date:
Option Extension Payment:

Closing Date:

Seller:

Seller's Attorney/Representative:

Funding Source:

Metro Partner:

Title Company/Escrow Holder:

Environmental Assessment:

Appraiser:

Surveyor:

District Councilor:
Park Advisory Committee Rep:

I. PREPARING TO EXERCISE THE OPTION

A. Title Review

Title Report ordered: _____
 Date due: _____
 Received: _____
 Sent to Seller: _____
 Reviewed: _____
 Objections: _____

Notice of Objections Sent to Seller: _____
 Title Policy to be subject only to: _____

B. Appraisal Review

Ordered by: _____
 Date: _____
 Value: _____
 Reviewed by: _____
 Date ordered: _____
 Date Received: _____

Comments: _____

C. Additional Agreements/ Option Terms

- a. Property description _____
- b. Access: _____
 Easements and Licenses _____
 Legal confirmed by _____
 Actual confirmed by _____
- c. Minerals to be conveyed _____
 Minerals to be restricted _____
- d. Leases _____
- e. Grazing Permits _____
- f. Hunting Permits _____
- g. Reforestation _____
- h. Other _____
- i. Mortgages/Deeds of Trust _____
 Terms: _____
 Non-Recourse _____

ATTACHMENT B

- j. Liquidated Damages _____
- k. Deferred taxes _____
- l. Broker _____
- m. Personal Property
Farm Ranch Equipment _____
Residential _____
Other _____
- n. Boundary problems _____
- o. Prescriptive or adverse interests, common law rights _____

- p. Fences _____
- q. Who pays for title, escrow fees, transfer taxes? _____

- r. Possession at Closing _____
- s. Prorations - leases, taxes _____
- t. Subdivision _____
- u. Reps and Warranties _____
- v. Bargain sale _____
- w. Water rights _____
- x. Exchange _____
- y. Other improvements _____
- z. 1031; Other _____

D. Hazardous Materials

Metro inspection by: _____
Date due: _____
Received: _____
Additional Action/Recommendations _____

E. Approval

- 1. Oversight Committee Approval:
On Agenda: _____
Approved: _____
- 2. Park Advisory Committee Approval:
On Agenda: _____
Approved: _____
- 3. Executive Committee Approval:
On Agenda: _____
Approved: _____

4. Council Resolution:
On Agenda: _____
Approved: _____

F. Survey Review

Certified to Buyer and the Title Company.
Confirm acreage.
Any off-record title problems.

G. Off-record Title Problems

Boundary/fence _____
Evidence of potential adverse possession or prescriptive easement _____
Tenants or residential structures _____

H. Water

Water rights _____
Review all water permits, applications and other documents. _____
Confirm title with State Water Engineer's Office. _____
Confirm not subject to mortgages or other liens. _____
Confirm eligibility/percentage active rights. _____
Confirm requirements for transfer or assignment. _____
Upon closing, will need to file appropriate docs _____
Adequate to support desired use _____
Cost of water use. _____

I. Buildings or Other Improvements

Type, size and description. _____
Availability of utilities, water, sewage, etc. _____
Age and condition: structural, mechanical and electrical problems _____

Permit and code compliance. _____

J. Personal Property or Fixtures

Inventory prepared by: _____
Review title. _____
Perform UCC-3 lien search if important personal property. _____
Age and condition _____

K. Liability Review

Potential natural or artificial hazards _____

Cost to repair or remove the hazard _____

L. Review Management Issues

Confirm Preparedness to implement management plan.

M. Right of First Refusal Letter to Local Government.

Date Issued: _____

To: _____

II. EXERCISING THE OPTION

A. Option exercise letter.

Sent to Seller. _____

Subject to conditions _____

(Caution: may result in a counteroffer thereby giving Seller the right to terminate)

III. PREPARING FOR THE CLOSING AFTER EXERCISING THE OPTION

A. Closing documents and other items to be prepared or obtained:

1. Option Agreement
2. Deed (grant or warranty vs. quitclaim)
3. Bill of Sale (if personal property included)
4. Water Rights Assignment, if necessary
5. Assignment of Leases and Right to Receive Revenue, if appropriate
6. Assignment of Intangible Property (such as permits, trade names, and so forth), if appropriate
7. Joint Escrow Instructions
8. Others:

B. Send closing documents to seller and title company for approval.

C. Review and approve closing settlement statement to be prepared by title company.

1. Prorations.
2. Closing Costs.

ATTACHMENT B

- D. Tax documents necessary to close.
W9, Non-Foreign Affidavit, state tax requirements.
- E. Confirm all closing conditions met
 - 1. Review Option Agreement:
 - a. No adverse change in physical condition
 - b. Title
 - c. Truth of Seller's representations and warranties
 - d. Insurance for improvements.
- F. Arrange for transfer of funds
- G. Obtain any keys to the property

IV. POST-CLOSING MATTERS

- A. Review title policy to make sure it conforms to escrow instructions.
- B. Send originals of all documents to _____.
- C. Parks Management notified.
- D. Insurance for Improvements
- E. Insurance for Personal Property.

F. Documents:	Received:	Reviewed:
Deed	_____	_____
Title Policy	_____	_____
Closing Statement	_____	_____



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Metro Auditor Report Evaluation Form

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Help Us Serve Metro Better**

Our mission at the Office of the Metro Auditor is to assist and advise Metro in achieving honest, efficient management and full accountability to the public. We strive to provide Metro with accurate information, unbiased analysis and objective recommendations on how best to use public resources in support of the region's well-being.

Your feedback helps us do a better job. If you would please take a few minutes to fill out the following information for us, it will help us assess and improve our work.



Name of Audit Report: _____

Please rate the following elements of this report by checking the appropriate box.

	Too Little	Just Right	Too Much
Background Information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Details	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Length of Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarity of Writing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential Impact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Suggestions for our report format: _____

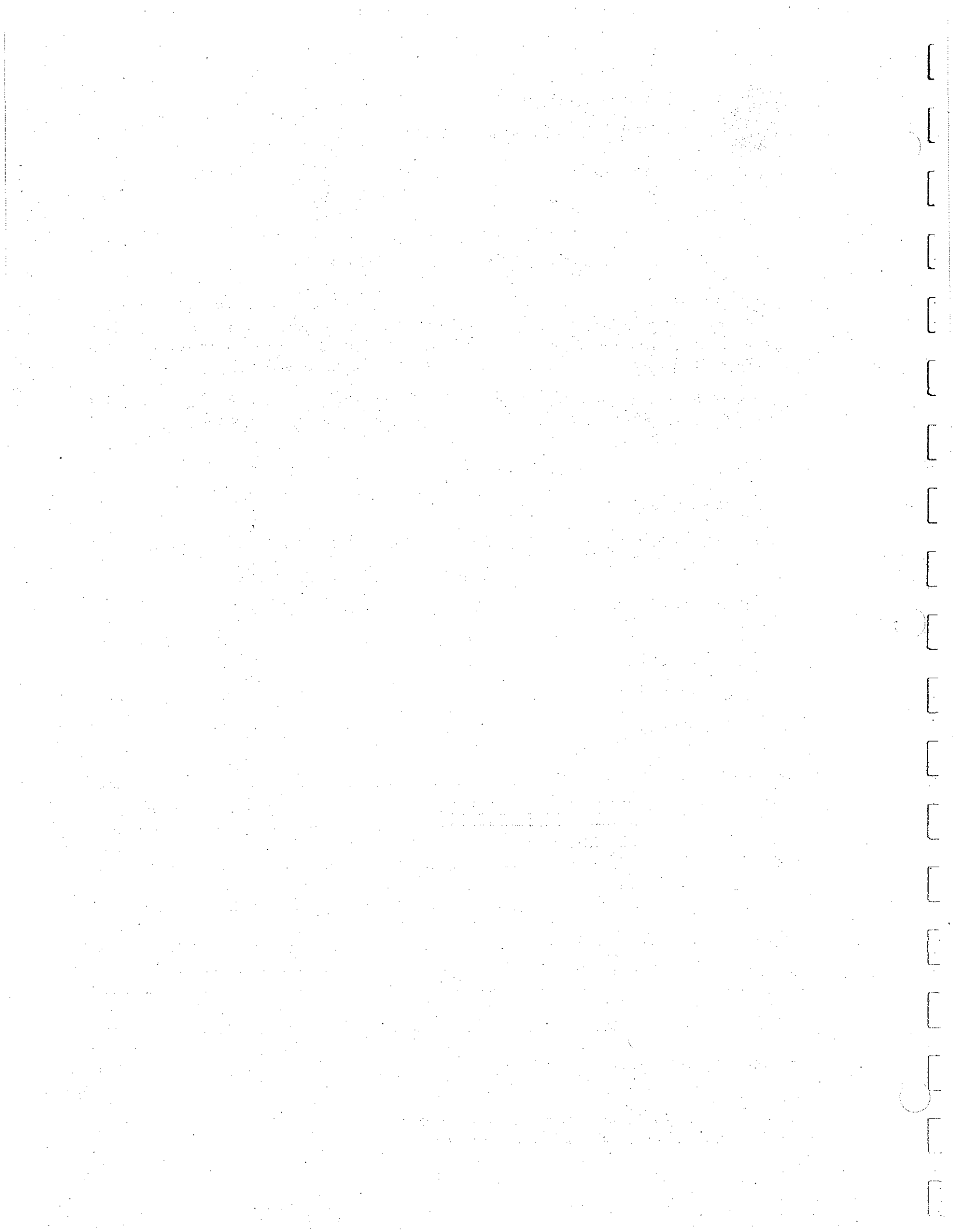
Suggestions for future studies: _____

Other comments, ideas, thoughts: _____

Name (optional): _____

Thanks for taking the time to help us.

Fax: 797-1799
Mail: Metro Auditor, 600 NE Grand Avenue, Portland, OR 97232-2736
Call: Alexis Dow, CPA, Metro Auditor, 797-1891



5. Recommendation: The Executive Officer and Council should consider taking additional measures, such as strengthening the Metro Code of Ethics, to discourage Metro staff from disclosing property appraisal and purchase information to others until Metro has acquired the targeted properties.

Attorneys, paralegals, legal assistants, and the staff appraisers employed with the Office of General Counsel are bound by the confidentiality requirements of the attorney-client privilege. The staff appraiser is also governed by the USPAP ethical provision governing confidentiality, which requires appraisers to keep confidential information regarding properties it is appraising.

Additionally, the Open Spaces Program Manager has discussed with each staff person that it is important to comply with both the letter and spirit of all applicable codes of ethics, and that even the mere appearance of impropriety must be avoided. Each staff member has signed the statement attached as Attachment A hereto.

This recommendation will be incorporated into the final adopted version of any Metro Code of Ethics currently being considered by the Executive Officer.

6. Recommendation: The Metro General Counsel's Office should develop a process for ensuring that all due diligence procedures contained in the "Option Exercise and Closing Checklist" have been completed.

A checklist (the Option Exercise and Closing Checklist) is used in the closing of all real estate transitions. The checklist comprehensively sets forth the items to be verified before closing may occur. A copy is attached (Attachment B).

When an option or purchase and sale agreement is first signed and the file opened, the paralegal assigned to the acquisition begins review of the title exceptions for the property and initiates the environmental review of the property.

When the option exercise date or closing date approaches, the paralegal begins ensuring that all Option Exercise and Closing Checklist items have been accomplished or are in process. Prior to closing and prior to requesting Executive Officer approval for closing documents, the paralegal assigned to the acquisition and the Assistant Counsel for the Open Spaces Program review the checklist and initial the items that have been accomplished, making notations to clarify if necessary any items that are not applicable are noted and initialed. Title exceptions and post-closing matters are also discussed.

If due diligence issues, such as hazardous materials, title exceptions, or other items, have arisen and have been resolved, prior to closing the paralegal with oversight from

the Assistant Counsel will prepare a memorandum documenting the issue and its resolution. Prior to closing, the checklist must be completely signed off and initialed as to all items. The completed checklist then reflects routinely completed items, exceptions and the actions taken and items that are not applicable to the transaction.

7. Recommendation: The Open Spaces Implementation Work Plan specifies that in the event "unusual circumstances" are found to exist during the due diligence process, the proposed property transaction will be reviewed by an acquisition committee and approved by the Council. To avoid misunderstandings, the General Counsel's Office should define "unusual circumstances" that would require Council approval of a property acquisition.

The Office of General Counsel, together with the Open Spaces Program, is developing a list of "unusual circumstances" in response to this recommendation. This list will at least include the following "unusual circumstances" requiring review and approval as called for in the Open Spaces Workplan: hazardous waste concerns on a property; special indemnifications Metro is being asked to provide or believes it should require; material assumptions in an independent appraisal that substantially affect the determination of fair market value; agreements to purchase property as tenants in common, which agreements will require an Intergovernmental Agreement with another governmental entity; and other "unusual circumstances" to be defined as the process progresses.

8. Recommendation: The Open Spaces Program Manager or his designee should develop a procedure which describes the process to be used to establish and communicate the strategy for acquiring properties in each refinement area.

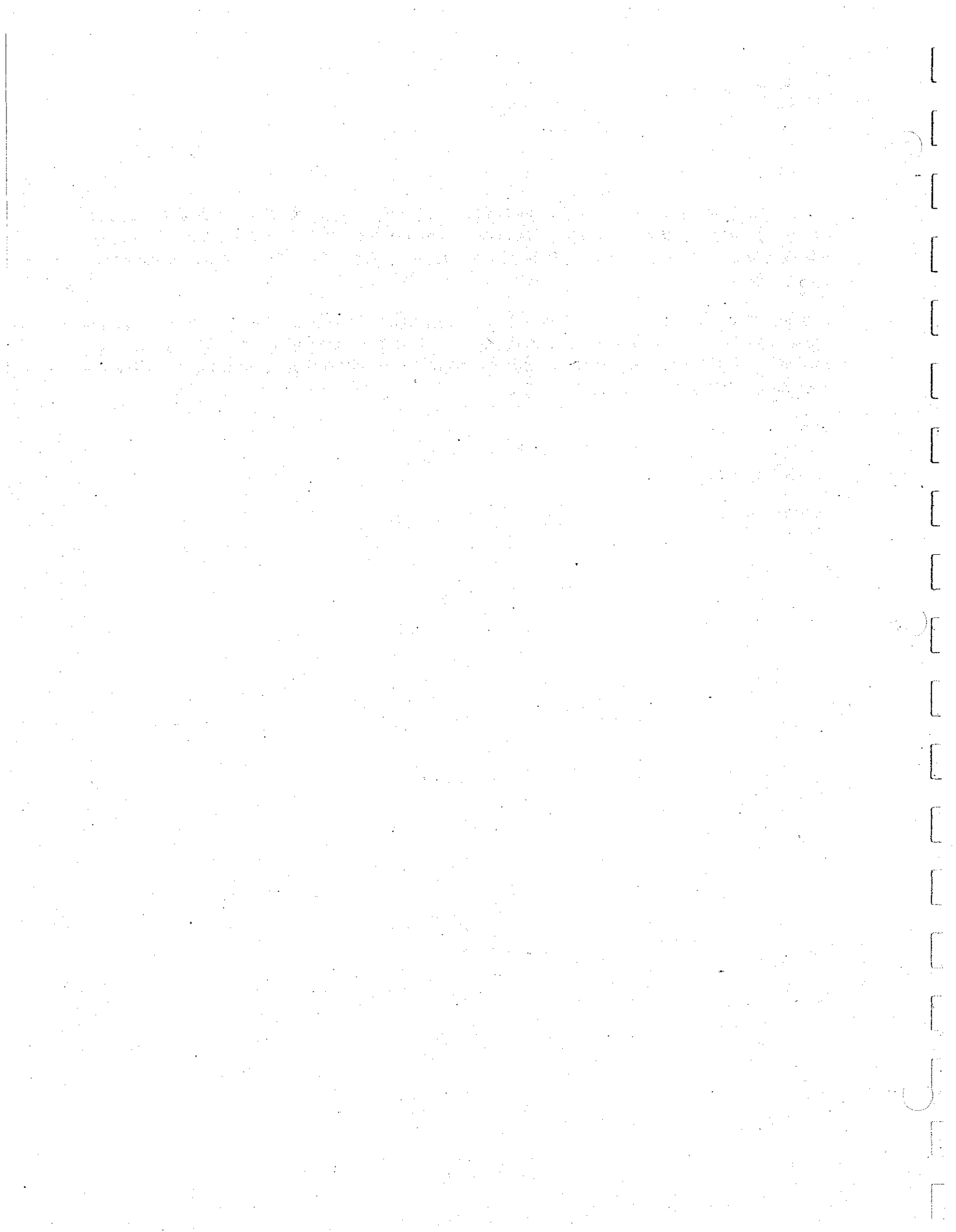
Following the adoption of a refinement plan for each target area, the Real Estate Negotiators, working in conjunction with the staff Review Appraiser, will develop a list of the highest priority Tier One properties and a rough budget of the likely range of market value for these properties. This will provide guidance on whether there are likely to be sufficient funds available to pursue any Tier Two acquisitions. In addition, once this list and rough budget are established, the Real Estate Negotiator will receive guidance from the Senior Real Estate Negotiator and the Program Manager on specific acquisition strategies (i.e., pursue property X first, and then, if successful on X, pursue Y and Z; but if not successful on X, Y and Z become lower priority than W...). Such strategies shall remain confidential and shall be discussed at weekly meetings held each Friday among all the Real Estate Negotiators and their managers (and occasionally the staff attorney).

9. Recommendation: The Open Spaces Program Manager or his designee should develop a procedure for local governments to follow when they change who shall approve the requisition certificates necessary for Metro to process payments.

Open Spaces staff has developed a procedure and form that is required for a local government to change authorized signatories. This new procedure and form will be explained and delivered to all the local governments at a meeting to be held at Metro on June 12, 1996.

2 Attachments

c:\jennifer\audresp.doc



ATTACHMENT A

Date: May 30, 1996
To: All Open Spaces Program employees
From: Alison Kean Campbell, Assistant Counsel
Regarding: Acknowledgment of Ethical Obligations

Please read and sign the attached Acknowledgment of Ethical Obligations, and return to me (via Karen Maxfield). Thanks.

ATTACHMENT A

ACKNOWLEDGMENT OF ETHICAL OBLIGATIONS

I, _____, acknowledge that I received the attached letter explaining the requirements of the Oregon Code of Ethics when I began employment with the Metro Open Spaces Acquisition Program. I fully understand and agree to follow the letter and spirit of these ethics laws.

With respect to the Open Spaces program specifically, I understand that I must not be involved in the Metro side of any real estate transaction in which I or any family member or business have a personal interest; I understand that if I or any family member or business own property located in or near a target area I must notify my supervisor in writing of this potential or actual conflict of interest; I understand that I am prohibited from using confidential information for private gain; and that I may not receive gifts in the amount of over \$100 from those having a potential interest in Open Spaces acquisitions.

Dated: _____

Signature



METRO

OGC # 6.9.C.4

Daniel B. Cooper
Tele: (503) 797-1528
FAX (503) 797-1792

October 24, 1995

The Honorable Mike Burton
Metro Executive Officer
600 N.E. Grand Avenue
Portland, OR 97232

The Honorable Ruth McFarland
Metro Council Presiding Officer
600 N.E. Grand Avenue
Portland, OR 97232

Re: Metro's Open Spaces Acquisition Program/
Requirements of Oregon Ethics Law

Dear Executive Officer Burton and Presiding Officer McFarland:

A draft work plan for the Open Spaces Acquisition Program has been prepared for Council consideration. This Office has received several inquiries regarding the requirements of Oregon law (ORS chapter 244) as applies to private activity by Metro employees and elected officials in relationship to their official roles under the Open Spaces Acquisition Program. This letter summarizes Oregon law creating ethical standards for public officials and addresses several factual circumstances in which ethical considerations are raised. The Metro Code contains provisions similar to Oregon law but is not as comprehensive. For the purpose of this communication I will be addressing the specific requirements of the Oregon statutes. Some but not all of the requirements discussed below also are included in the Metro Code.

This letter contains a general discussion of the applicable law. However, depending on factual circumstances other provisions not discussed may apply. Any Metro official having questions regarding specific fact circumstances should seek further advice.

Oregon Ethics Law in General

1. Who is covered?

Oregon's statutory ethical requirements created in ORS chapter 244 apply to all "public officials." This includes all officers, employees and agents of the state of

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public bodies of the state. Thus, all Metro elected officials and Metro employees are subject to the requirements of the law.

2. What is prohibited?

ORS 244.040 sets forth activities that are prohibited regardless of whether an actual conflict of interest or potential conflict of interest as defined in the statutes are announced or disclosed. The following four prohibitions are particularly applicable in this context.

- a. No public official may use or attempt to use official position or office to obtain financial gain or avoid financial detriment for the public official or for the public official's relative or for any business for which the public official or relative of the public official is associated. ORS 244.040(2) "Relatives" of a public official include the public official's spouse, any children of the public official or of the public official's spouse, and brothers, sisters, or parents of the public official or the public official's spouse. ORS 244.020 Business means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity operated for economic gain except for 501C3 corporations to the extent that the official is associated with such a charitable corporation in a non-paid capacity. ORS 244.020(2) To be associated with a business means that the official or the person's relative is a director, officer, owner, or employee, or agent of the business, or if the business is a corporation if the person or person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year. ORS 244.020(3)
- b. Public officials may not solicit, or receive directly or indirectly in any calendar year gifts with an aggregate value in excess of \$100 from any single source who could reasonably be known to have legislative or administrative interest in the agency in which the official has a position over which they exercise any authority. ORS 244.040(2)
- c. Public officials may not solicit, or receive any pledge or promise of future employment based on an understanding regarding any vote, official action, or judgment that would be influenced thereby. ORS 244.040(3)

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- d. No public official may use confidential information gained in the course or reason of the person's official position for their own personal gain. ORS 244.040(4)

In addition to these absolute prohibitions, ORS 244.120 requires the disclosure of actual or potential conflicts of interest by a public official. Elected public officials, and members of boards or commissions must disclose the conflict of interest, whether actual or potential, at the time that the matter is being considered before any vote. Appointed public officials, such as employees, must disclose the conflict of interest to the person who hired them before taking any action on a matter. Potential conflicts of interest means an action or decision which "could be" to the private benefit or detriment of the person or a person's relative or a business with which any of them are associated. ORS 244.020(7) An actual conflict of interest is a decision or action which "would be" to the private pecuniary benefit or detriment of the person or person's relative or a business with which any of them are associated. ORS 244.020(1) Employees who have a conflict should disclose the conflict directly to their department director as well as to the executive officer in the case of employees in the executive branch, and in the case of council employees the disclosure should be made to the Council presiding officer. For appointed employees, the existence of any conflict of interest, actual or potential, requires that the appointing authority designate an alternate to dispose of the matter or direct the official to dispose of the matter in a manner specified by the appointing authority. This means that the employee who has the conflict of interest should not be the one to make a decision regarding the subject matter. For elected officials, and members of boards and commissions, the potential conflict of interest must be disclosed on the record in which case the official may take action and vote on an issue. If it is an actual conflict of interest the public official must refrain from any discussion or debate on the issue, and not vote on the issue, unless the councilor's vote is necessary to meet a requirement of a minimum number of votes to take the official action.

How Does the Ethics Law Relate to the Open Spaces Acquisition Program

The prohibition against using office for personal gain means that if Metro seeks to buy land that any Metro public official has an interest in, the public official must not in any way be involved in the Metro side of the transaction.

The next area of concern is property transactions by either Metro officials or employees in the areas where Metro is actively involved in making open spaces purchases. The work program calls for Metro to develop a refinement plan for each of the 14 regional acquisition target areas and five trail corridors. The refinement plan process will include the development of a confidential map establishing Metro's priority properties for acquisition.

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Metro's activities in the real estate market in purchasing open space land will have a presumably beneficial impact on nearby properties. In the event a Metro public official owns property located in or near a target area a potential, or actual, conflict of interest could easily arise out of Metro's decision to purchase nearby property. In this circumstance, the public official owning the property must make the proper declaration of the conflict once they are aware of the conflict and fact that they may be asked to take action in this regard. For employees, there is no distinction between potential or actual conflict of interest because in either event the law requires them to declare the conflict and then requires the appointing authority to either name another person to take action or to direct the action of the employee. For councilors, the difference between an actual and potential conflict of interest is significant. In the event of a potential conflict of interest, i.e., the action "could be" to the financial advantage of the councilor, there is only a requirement for a declaration of the potential conflict on the record. If the conflict is an actual conflict of interest in that Metro's action "would be" to the financial benefit of the councilor then the councilor not only must disclose the conflict, but not take part in the decision unless their vote is absolutely necessary to render a decision. In the case of owned property the difference between whether an actual or a potential conflict of interest exists will be a factual question that will be determined by whether the property is close enough to the Metro purchase to be "actually" or "potentially" increased in value.

A third prohibition that is relevant is the prohibition against the use of confidential information for private gain. Councilors and Open Spaces Acquisition Program staff will have access to confidential information regarding Metro's intentions to purchase property. Any subsequent purchase or sale of property in the area near the Metro target area may lead to serious questions being raised regarding the potential use of confidential information for private gain.

One factual issue that needs to be discussed regarding all of the above prohibitions is the question of when does the Metro action actually affect property values of adjacent or nearby property. My views on this matter are that if as a factual matter the property is close enough to the Metro acquisition so that a reasonable person would believe that the property value is actually increased by Metro's activity, then an actual conflict of interest exists. If there is merely a potential that the property could be considered to be increased by Metro's activity, then the conflict is a potential conflict of interest. Unless the property is far enough away so that there is no connection between the Metro action and the value of the property, there is a potential that a conflict of interest could exist. It is true that many factors affect the value of land, and that all individual parcels of land have a unique value based on their own characteristics. Whether any individual parcel's value is increased by the Metro action is a

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question that ultimately can be answered only by an evidentiary hearing. Such a hearing could occur during the enforcement process discussed below.

Another area of concern is the prohibition against the receipt of gifts in the amount of over \$100 from persons who have a potential legislative or administrative interest with Metro. Clearly, potential sellers of land, as well as consultants, appraisers, and others who may be contracting with Metro for carrying out the Open Spaces Acquisition Program, are persons who have such an interest. Metro staff, in particular, as well as Council members and other elected officials should be cautious regarding any "gifts" from such persons. There is a limited exception contained in the statutes which permits public officials to accept paid entertainment where the person involved who pays for the entertainment also attends with the public official, however, the value of such entertainment may not exceed \$100 in any given instance, or \$250 in the aggregate over a year. This would mean that receipt of tickets to shows, sporting events, etc., is permissible as long as the donor also attends and sits with the public official, but is prohibited if the value of the entertainment exceeds \$100. Two tickets to the Trail Blazers and a dinner can easily exceed the \$100 ceiling given current prices.

The above is intended as general guidance for Metro employees and elected officials. The Oregon Ethics Code is enforced by the Oregon Commission on Public Standards. The Commission has the authority to investigate matters and may impose fines for violations as well as requiring the repayment of any financial gain derived by a public official in violation of the statutory provisions. Metro public officials should be aware that this Office cannot act as the attorney for any person charged with such a violation.

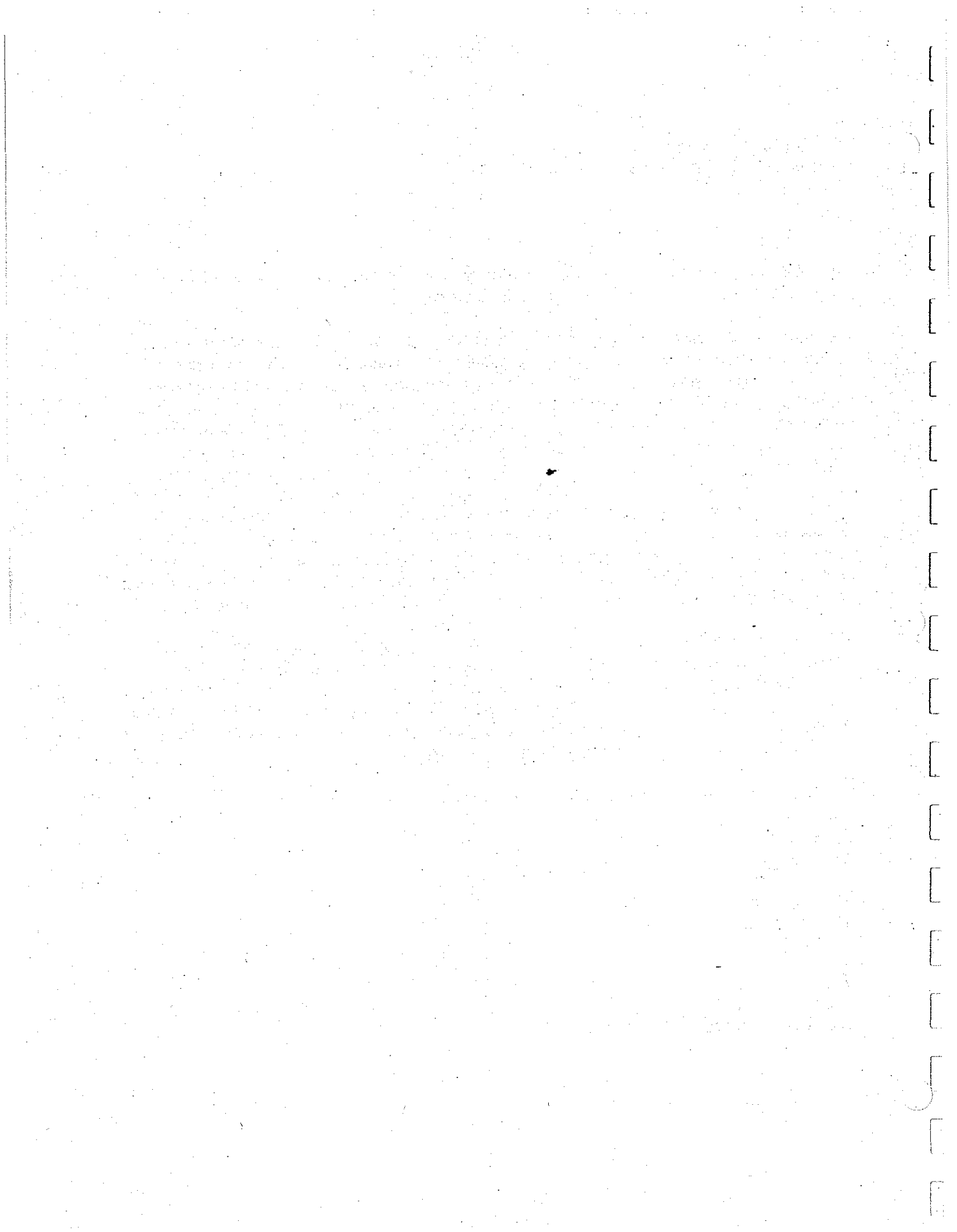
Anyone having any further questions should feel free to contact this Office.

Yours very truly,


Daniel B. Cooper,
General Counsel

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2042/6.89

cc: Metro Council



resolution of due diligence issues. For example, Open Spaces staff discovered during the due diligence process that a neighbor's fence encroached upon the property, creating the possibility that ownership of the portion of the property outside the fence had transferred to the adjacent landowner. We were told this issue had been resolved, but the property file did not contain any records describing how it was resolved. We recommend that the same person who verifies that all due diligence procedures have been carried out also make sure resolution of due diligence problems is appropriately documented in the property acquisition file.

- 7. The Open Spaces Implementation Work Plan specifies that in the event "unusual circumstances" are found to exist during the due diligence process, the proposed property transaction will be reviewed by an acquisition committee and approved by the Council. To avoid misunderstandings, the General Counsel's Office should define "unusual circumstances" that would require Council approval of a property acquisition.**

The "Acquisition Parameters" section of the Open Space Implementation Work Plan states in part:

In the event that unusual circumstances are found to exist during the due diligence process, or if the cost of the property as determined by Metro's staff appraiser, is more than 5% above the fair market value as determined by an independent certified appraiser, the transaction, prior to being presented to the Executive Officer, shall be referred to an "Acquisition Committee" which shall review the transaction and develop a "confidential" recommendation. . . .

The acquisition committee's confidential recommendation shall be forwarded to the Executive Officer. The Executive Officer shall review the recommendation and determine whether he/she

supports or opposes the recommendation. The Executive Officer shall convey this determination to the Council for review in executive session at its next regularly scheduled meeting. The Council will accept or reject the Executive Officer's recommendation. This information shall remain confidential.

The "unusual circumstances" requiring Acquisition Committee review and Council approval of land purchases have not been defined. To help prevent misunderstandings among Parks staff, the Executive Officer and the Council, we recommend that the General Counsel's Office develop a definition of this term and submit it to the Executive Officer and Council for their review and approval.

- 8. The Open Spaces Program Manager or his designee should develop a procedure which describes the process to be used to establish and communicate the strategy for acquiring properties in each refinement area.**

We believe one of the most important steps of the property acquisition process is to develop a strategy for each refinement area that maximizes the probability Metro will acquire targeted properties from willing sellers and achieve refinement plan goals. We were told that the Open Spaces Program Manager and Senior Real Estate Negotiator establish acquisition strategies informally in meetings occurring after the Council has approved each refinement area plan. Although there may be a need to avoid formalizing the strategies to help ensure they remain confidential, we recommend documenting the process to be followed in developing acquisition strategies and communicating it to real estate negotiators. This would help ensure that Metro real estate negotiators contact property owners and make offers in accordance with the approved strategy.

- 9. The Open Spaces Program Manager or his designee should develop a procedure for local governments to follow when they desire to change the persons authorized to request local share payments.**

When a local government signs an intergovernmental agreement with Metro so they can carry out Open Spaces projects and obtain reimbursement for project expenditures, the government designates the persons authorized to sign certificates requesting reimbursement from Metro. Authorization is recorded on a "Designation of Signature Authority" form provided by Metro. Although control over initial delegation of signature authority appears to be adequate, there is no procedure for local governments to follow when they want to change the persons designated to authorize reimbursement requests. We suggest that the Open Spaces staff develop a procedure that establishes and monitors the requirements for changing authorized signers.

Summary of Recommendations

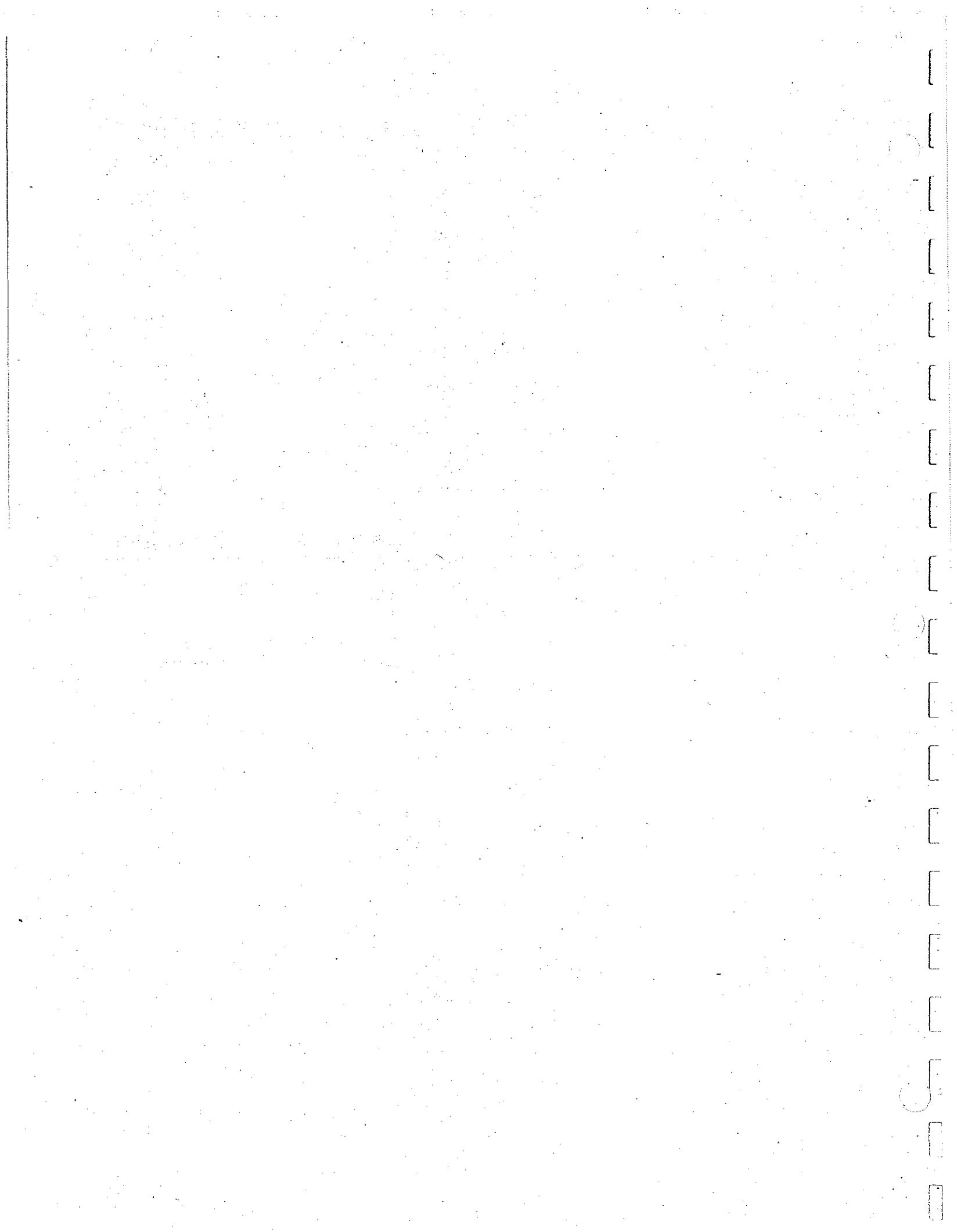
1. To enhance the integrity of property valuations performed by Metro-hired independent appraisers, the Metro General Counsel and the Open Spaces Program Manager should establish a policy that directs their staff to avoid disclosing Metro's offer or option prices to the appraisers.
2. Open Spaces Program staff should periodically evaluate whether the goals of the Open Spaces Program can be achieved. Results of their assessments should be communicated to the Executive Officer and Council.
3. To avoid the possibility of confusion over the identity of properties the Metro Council has approved for acquisition, the Council Presiding Officer should sign, stamp, or otherwise identify the maps that designate the parcels to be purchased.
4. The Metro General Counsel should provide better security for refinement area maps.
5. The Executive Officer and Council should consider taking additional measures, such as strengthening the Metro Code of Ethics, to discourage Metro staff from disclosing property appraisal and purchase information to others until Metro has acquired the targeted properties.
6. The Metro General Counsel's Office should develop a process for ensuring that all due diligence procedures contained in the "Option Exercise and Closing Checklist" have been completed.
7. The Open Spaces Implementation Work Plan specifies that in the event "unusual circumstances" are found to exist during the due diligence process, the proposed property transaction will be reviewed by an acquisition committee and approved by the Council. To avoid misunderstandings, the General Counsel's Office should

define "unusual circumstances" that would require Council approval of a property acquisition.

8. The Open Spaces Program Manager or his designee should develop a procedure which describes the process to be used to establish and communicate the strategy for acquiring properties in each refinement area.
9. The Open Spaces Program Manager or his designee should develop a procedure for local governments to follow when they desire to change the persons authorized to request local share payments.

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Response to the Report





METRO

Date: June 7, 1996
To: Alexis Dow, CPA, Metro Auditor
From: Mike Burton, Executive Officer
Re: Response to Metro Open Spaces Program Review

Thank you for the opportunity to review and formally respond to the above referenced report. Your findings and recommendations are organized in nine categories. My response is similarly organized.

1. Recommendation: To enhance the integrity of property valuations performed by Metro-hired independent appraisers, the Metro General Counsel and the Open Spaces Program Manager should establish a policy that directs their staff to avoid disclosing Metro's offer or option prices to the appraisers.

We understand and share the auditor's concern that specific offer price information not be used by an independent appraiser to "peg" an appraisal at the offer price. Metro's current policy is to avoid any sort of "pegging" and to instead seek an accurate and complete independent appraisal of a potential Open Spaces acquisition at the property's fair market value.

Appraisers are required by the Uniform Standards of Professional Appraisal Practice (USPAP), in Rule 1-5, to consider and analyze any current purchase and sale agreement, option, or listing of the property if the information is available to the appraiser in the normal course of business, as well as information regarding prior sales of the property.

Accordingly, independent appraisers are required to try to ascertain the offer price made on potential Open Spaces acquisitions, and this information will be available to a diligent appraiser in some cases as a matter of public record, and in most cases by the property owners. There may be instances where it is necessary and appropriate for an appraiser to verify with Metro staff terms of a current purchase and sale agreement. We believe that this information, in conjunction with the historical sales data and numerous other pieces of information analyzed by the appraiser, results in the most accurate and complete assessment of fair market value.

However, staff should take every opportunity to avoid even the appearance of influencing the opinion of an appraiser. One way to further this goal is to avoid disclosure of the terms of a current agreement except as sought out by an appraiser acting in the normal course of business in accordance with industry standards.

There is currently no evidence to suggest that any "pegging" of appraisals has occurred in the property acquisitions already completed for the Open Spaces program.

We propose, however, an annual review process whereby a summary of all appraisal documents procured is presented and an analysis is made determining the impact full disclosure of offer price has had on ultimate appraisal conclusions.

2. Recommendation: Open Spaces Program staff should periodically evaluate whether the goals of the Open Spaces Program can be achieved. Results of their assessments should be communicated to the Executive Officer and Council.

The quarterly updates of acquisition activity required under the Acquisition Parameters section of the Open Spaces Implementation Work Plan will be expanded on a semi-annual basis to include a more detailed evaluation of whether targeted acreage goals are likely to be met.

3. Recommendation: To avoid the possibility of confusion over the identity of properties the Metro Council has approved for acquisition, the Council Presiding Officer should sign, stamp, or otherwise identify the maps that designate the parcels to be purchased.

As of May 2, 1996, the Council Presiding Officer signs the original tax-lot specific refinement maps approved by the Metro Council. These maps are secured as discussed in paragraph 4 below.

4. Recommendation: The General Counsel should provide better security for refinement area maps.

Two sets of locking map drawers have been ordered and are due to arrive immediately. The original control set of signed refinement area maps will be kept by the Office of General Counsel, in a locked storage room. Another set of signed refinement area maps will be kept by Metro's review appraiser in a locked map drawer. The key will be kept by the Open Spaces administrative assistant, and the key will be locked nightly. A checkout system will be implemented for the maps, whereby Open Spaces staff may check out a map by signing a card, and returning it by no later than 5:00 p.m. that day.

5. Recommendation: The Executive Officer and Council should consider taking additional measures, such as strengthening the Metro Code of Ethics, to discourage Metro staff from disclosing property appraisal and purchase information to others until Metro has acquired the targeted properties.

Attorneys, paralegals, legal assistants, and the staff appraisers employed with the Office of General Counsel are bound by the confidentiality requirements of the attorney-client privilege. The staff appraiser is also governed by the USPAP ethical provision governing confidentiality, which requires appraisers to keep confidential information regarding properties it is appraising.

Additionally, the Open Spaces Program Manager has discussed with each staff person that it is important to comply with both the letter and spirit of all applicable codes of ethics, and that even the mere appearance of impropriety must be avoided. Each staff member has signed the statement attached as Attachment A hereto.

This recommendation will be incorporated into the final adopted version of any Metro Code of Ethics currently being considered by the Executive Officer.

6. Recommendation: The Metro General Counsel's Office should develop a process for ensuring that all due diligence procedures contained in the "Option Exercise and Closing Checklist" have been completed.

A checklist (the Option Exercise and Closing Checklist) is used in the closing of all real estate transitions. The checklist comprehensively sets forth the items to be verified before closing may occur. A copy is attached (Attachment B).

When an option or purchase and sale agreement is first signed and the file opened, the paralegal assigned to the acquisition begins review of the title exceptions for the property and initiates the environmental review of the property.

When the option exercise date or closing date approaches, the paralegal begins ensuring that all Option Exercise and Closing Checklist items have been accomplished or are in process. Prior to closing and prior to requesting Executive Officer approval for closing documents, the paralegal assigned to the acquisition and the Assistant Counsel for the Open Spaces Program review the checklist and initial the items that have been accomplished, making notations to clarify if necessary any items that are not applicable are noted and initialed. Title exceptions and post-closing matters are also discussed.

If due diligence issues, such as hazardous materials, title exceptions, or other items, have arisen and have been resolved, prior to closing the paralegal with oversight from

the Assistant Counsel will prepare a memorandum documenting the issue and its resolution. Prior to closing, the checklist must be completely signed off and initialed as to all items. The completed checklist then reflects routinely completed items, exceptions and the actions taken and items that are not applicable to the transaction.

7. Recommendation: The Open Spaces Implementation Work Plan specifies that in the event "unusual circumstances" are found to exist during the due diligence process, the proposed property transaction will be reviewed by an acquisition committee and approved by the Council. To avoid misunderstandings, the General Counsel's Office should define "unusual circumstances" that would require Council approval of a property acquisition.

The Office of General Counsel, together with the Open Spaces Program, is developing a list of "unusual circumstances" in response to this recommendation. This list will at least include the following "unusual circumstances" requiring review and approval as called for in the Open Spaces Workplan: hazardous waste concerns on a property; special indemnifications Metro is being asked to provide or believes it should require; material assumptions in an independent appraisal that substantially affect the determination of fair market value; agreements to purchase property as tenants in common, which agreements will require an Intergovernmental Agreement with another governmental entity; and other "unusual circumstances" to be defined as the process progresses.

8. Recommendation: The Open Spaces Program Manager or his designee should develop a procedure which describes the process to be used to establish and communicate the strategy for acquiring properties in each refinement area.

Following the adoption of a refinement plan for each target area, the Real Estate Negotiators, working in conjunction with the staff Review Appraiser, will develop a list of the highest priority Tier One properties and a rough budget of the likely range of market value for these properties. This will provide guidance on whether there are likely to be sufficient funds available to pursue any Tier Two acquisitions. In addition, once this list and rough budget are established, the Real Estate Negotiator will receive guidance from the Senior Real Estate Negotiator and the Program Manager on specific acquisition strategies (i.e., pursue property X first, and then, if successful on X, pursue Y and Z; but if not successful on X, Y and Z become lower priority than W....). Such strategies shall remain confidential and shall be discussed at weekly meetings held each Friday among all the Real Estate Negotiators and their managers (and occasionally the staff attorney).

9. Recommendation: The Open Spaces Program Manager or his designee should develop a procedure for local governments to follow when they change who shall approve the requisition certificates necessary for Metro to process payments.

Open Spaces staff has developed a procedure and form that is required for a local government to change authorized signatories. This new procedure and form will be explained and delivered to all the local governments at a meeting to be held at Metro on June 12, 1996.

2 Attachments

c:\jennifer\audresp.doc



ATTACHMENT A

Date: May 30, 1996
To: All Open Spaces Program employees
From: Alison Kean Campbell, Assistant Counsel
Regarding: Acknowledgment of Ethical Obligations

Please read and sign the attached Acknowledgment of Ethical Obligations, and return to me (via Karen Maxfield). Thanks.

ATTACHMENT A

ACKNOWLEDGMENT OF ETHICAL OBLIGATIONS

I, _____, acknowledge that I received the attached letter explaining the requirements of the Oregon Code of Ethics when I began employment with the Metro Open Spaces Acquisition Program. I fully understand and agree to follow the letter and spirit of these ethics laws.

With respect to the Open Spaces program specifically, I understand that I must not be involved in the Metro side of any real estate transaction in which I or any family member or business have a personal interest; I understand that if I or any family member or business own property located in or near a target area I must notify my supervisor in writing of this potential or actual conflict of interest; I understand that I am prohibited from using confidential information for private gain; and that I may not receive gifts in the amount of over \$100 from those having a potential interest in Open Spaces acquisitions.

Dated: _____

Signature



METRO

OGC # 6.9.C.4

Daniel B. Cooper
Tele: (503) 797-1528
FAX (503) 797-1792

October 24, 1995

The Honorable Mike Burton
Metro Executive Officer
600 N.E. Grand Avenue
Portland, OR 97232

The Honorable Ruth McFarland
Metro Council Presiding Officer
600 N.E. Grand Avenue
Portland, OR 97232

Re: Metro's Open Spaces Acquisition Program/
Requirements of Oregon Ethics Law

Dear Executive Officer Burton and Presiding Officer McFarland:

A draft work plan for the Open Spaces Acquisition Program has been prepared for Council consideration. This Office has received several inquiries regarding the requirements of Oregon law (ORS chapter 244) as applies to private activity by Metro employees and elected officials in relationship to their official roles under the Open Spaces Acquisition Program. This letter summarizes Oregon law creating ethical standards for public officials and addresses several factual circumstances in which ethical considerations are raised. The Metro Code contains provisions similar to Oregon law but is not as comprehensive. For the purpose of this communication I will be addressing the specific requirements of the Oregon statutes. Some but not all of the requirements discussed below also are included in the Metro Code.

This letter contains a general discussion of the applicable law. However, depending on factual circumstances other provisions not discussed may apply. Any Metro official having questions regarding specific fact circumstances should seek further advice.

Oregon Ethics Law in General

1. Who is covered?

Oregon's statutory ethical requirements created in ORS chapter 244 apply to all "public officials." This includes all officers, employees and agents of the state of

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public bodies of the state. Thus, all Metro elected officials and Metro employees are subject to the requirements of the law.

2. What is prohibited?

ORS 244.040 sets forth activities that are prohibited regardless of whether an actual conflict of interest or potential conflict of interest as defined in the statutes are announced or disclosed. The following four prohibitions are particularly applicable in this context.

- a. No public official may use or attempt to use official position or office to obtain financial gain or avoid financial detriment for the public official or for the public official's relative or for any business for which the public official or relative of the public official is associated. ORS 244.040(2) "Relatives" of a public official include the public official's spouse, any children of the public official or of the public official's spouse, and brothers, sisters, or parents of the public official or the public official's spouse. ORS 244.020 Business means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity operated for economic gain except for 501C3 corporations to the extent that the official is associated with such a charitable corporation in a non-paid capacity. ORS 244.020(2) To be associated with a business means that the official or the person's relative is a director, officer, owner, or employee, or agent of the business, or if the business is a corporation if the person or person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year. ORS 244.020(3)
- b. Public officials may not solicit, or receive directly or indirectly in any calendar year gifts with an aggregate value in excess of \$100 from any single source who could reasonably be known to have legislative or administrative interest in the agency in which the official has a position over which they exercise any authority. ORS 244.040(2)
- c. Public officials may not solicit, or receive any pledge or promise of future employment based on an understanding regarding any vote, official action, or judgment that would be influenced thereby. ORS 244.040(3)

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- d. No public official may use confidential information gained in the course or reason of the person's official position for their own personal gain. ORS 244.040(4)

In addition to these absolute prohibitions, ORS 244.120 requires the disclosure of actual or potential conflicts of interest by a public official. Elected public officials, and members of boards or commissions must disclose the conflict of interest, whether actual or potential, at the time that the matter is being considered before any vote. Appointed public officials, such as employees, must disclose the conflict of interest to the person who hired them before taking any action on a matter. Potential conflicts of interest means an action or decision which "could be" to the private benefit or detriment of the person or a person's relative or a business with which any of them are associated. ORS 244.020(7) An actual conflict of interest is a decision or action which "would be" to the private pecuniary benefit or detriment of the person or person's relative or a business with which any of them are associated. ORS 244.020(1) Employees who have a conflict should disclose the conflict directly to their department director as well as to the executive officer in the case of employees in the executive branch, and in the case of council employees the disclosure should be made to the Council presiding officer. For appointed employees, the existence of any conflict of interest, actual or potential, requires that the appointing authority designate an alternate to dispose of the matter or direct the official to dispose of the matter in a manner specified by the appointing authority. This means that the employee who has the conflict of interest should not be the one to make a decision regarding the subject matter. For elected officials, and members of boards and commissions, the potential conflict of interest must be disclosed on the record in which case the official may take action and vote on an issue. If it is an actual conflict of interest the public official must refrain from any discussion or debate on the issue, and not vote on the issue, unless the councilor's vote is necessary to meet a requirement of a minimum number of votes to take the official action.

How Does the Ethics Law Relate to the Open Spaces Acquisition Program

The prohibition against using office for personal gain means that if Metro seeks to buy land that any Metro public official has an interest in, the public official must not in any way be involved in the Metro side of the transaction.

The next area of concern is property transactions by either Metro officials or employees in the areas where Metro is actively involved in making open spaces purchases. The work program calls for Metro to develop a refinement plan for each of the 14 regional acquisition target areas and five trail corridors. The refinement plan process will include the development of a confidential map establishing Metro's priority properties for acquisition.

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Metro's activities in the real estate market in purchasing open space land will have a presumably beneficial impact on nearby properties. In the event a Metro public official owns property located in or near a target area a potential, or actual, conflict of interest could easily arise out of Metro's decision to purchase nearby property. In this circumstance, the public official owning the property must make the proper declaration of the conflict once they are aware of the conflict and fact that they may be asked to take action in this regard. For employees, there is no distinction between potential or actual conflict of interest because in either event the law requires them to declare the conflict and then requires the appointing authority to either name another person to take action or to direct the action of the employee. For councilors, the difference between an actual and potential conflict of interest is significant. In the event of a potential conflict of interest, i.e., the action "could be" to the financial advantage of the councilor, there is only a requirement for a declaration of the potential conflict on the record. If the conflict is an actual conflict of interest in that Metro's action "would be" to the financial benefit of the councilor then the councilor not only must disclose the conflict, but not take part in the decision unless their vote is absolutely necessary to render a decision. In the case of owned property the difference between whether an actual or a potential conflict of interest exists will be a factual question that will be determined by whether the property is close enough to the Metro purchase to be "actually" or "potentially" increased in value.

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One factual issue that needs to be discussed regarding all of the above prohibitions is the question of when does the Metro action actually affect property values of adjacent or nearby property. My views on this matter are that if as a factual matter the property is close enough to the Metro acquisition so that a reasonable person would believe that the property value is actually increased by Metro's activity, then an actual conflict of interest exists. If there is merely a potential that the property could be considered to be increased by Metro's activity, then the conflict is a potential conflict of interest. Unless the property is far enough away so that there is no connection between the Metro action and the value of the property, there is a potential that a conflict of interest could exist. It is true that many factors affect the value of land, and that all individual parcels of land have a unique value based on their own characteristics. Whether any individual parcel's value is increased by the Metro action is a

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The above is intended as general guidance for Metro employees and elected officials. The Oregon Ethics Code is enforced by the Oregon Commission on Public Standards. The Commission has the authority to investigate matters and may impose fines for violations as well as requiring the repayment of any financial gain derived by a public official in violation of the statutory provisions. Metro public officials should be aware that this Office cannot act as the attorney for any person charged with such a violation.

Anyone having any further questions should feel free to contact this Office.

Yours very truly,



Daniel B. Cooper,
General Counsel

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2042/6.89

cc: Metro Council



OPTION EXERCISE AND CLOSING CHECKLIST

Project:

File No:

Property Address:

Tax Designation:

Acres:

Purchase Price:

Option Exercise Date:

Option Payment:

Option Extension Date:

Option Extension Payment:

Closing Date:

Seller:

Seller's Attorney/Representative:

Funding Source:

Metro Partner:

Title Company/Escrow Holder:

Environmental Assessment:

Appraiser:

Surveyor:

District Councilor:

Park Advisory Committee Rep:

I. PREPARING TO EXERCISE THE OPTION

A. Title Review

Title Report ordered: _____
Date due: _____
Received: _____
Sent to Seller: _____
Reviewed: _____
Objections: _____

Notice of Objections Sent to Seller: _____
Title Policy to be subject only to: _____

B. Appraisal Review

Ordered by: _____
Date: _____
Value: _____
Reviewed by: _____
Date ordered: _____
Date Received: _____

Comments: _____

C. Additional Agreements/ Option Terms

- a. Property description _____
- b. Access:
 - Easements and Licenses _____
 - Legal confirmed by _____
 - Actual confirmed by _____
- c. Minerals to be conveyed _____
Minerals to be restricted _____
- d. Leases _____
- e. Grazing Permits _____
- f. Hunting Permits _____
- g. Reforestation _____
- h. Other _____
- i. Mortgages/Deeds of Trust
Terms: _____
Non-Recourse _____

- j. Liquidated Damages _____
- k. Deferred taxes _____
- l. Broker _____
- m. Personal Property _____
 Farm Ranch Equipment _____
 Residential _____
 Other _____
- n. Boundary problems _____
- o. Prescriptive or adverse interests, common law rights _____

- p. Fences _____
- q. Who pays for title, escrow fees, transfer taxes? _____

- r. Possession at Closing _____
- s. Prorations - leases, taxes _____
- t. Subdivision _____
- u. Reps and Warranties _____
- v. Bargain sale _____
- w. Water rights _____
- x. Exchange _____
- y. Other improvements _____
- z. 1031; Other _____

D. Hazardous Materials

Metro inspection by: _____
 Date due: _____
 Received: _____
 Additional Action/Recommendations _____

E. Approval

1. Oversight Committee Approval:
 On Agenda: _____
 Approved: _____
2. Park Advisory Committee Approval:
 On Agenda: _____
 Approved: _____
3. Executive Committee Approval:
 On Agenda: _____
 Approved: _____

4. Council Resolution:
On Agenda: _____
Approved: _____

F. Survey Review

Certified to Buyer and the Title Company.
Confirm acreage.
Any off-record title problems.

G. Off-record Title Problems

Boundary/fence _____
Evidence of potential adverse possession or prescriptive easement _____
Tenants or residential structures _____

H. Water

Water rights _____
Review all water permits, applications and other documents. _____
Confirm title with State Water Engineer's Office. _____
Confirm not subject to mortgages or other liens. _____
Confirm eligibility/percentage active rights. _____
Confirm requirements for transfer or assignment. _____
Upon closing, will need to file appropriate docs _____
Adequate to support desired use _____
Cost of water use. _____

I. Buildings or Other Improvements

Type, size and description. _____
Availability of utilities, water, sewage, etc. _____
Age and condition: structural, mechanical and electrical problems _____

Permit and code compliance. _____

J. Personal Property or Fixtures

Inventory prepared by: _____
Review title. _____
Perform UCC-3 lien search if important personal property. _____
Age and condition _____

K. Liability Review

Potential natural or artificial hazards _____

Cost to repair or remove the hazard _____

L. Review Management Issues

Confirm Preparedness to implement management plan.

M. Right of First Refusal Letter to Local Government.

Date Issued: _____

To: _____

II. EXERCISING THE OPTION

A. Option exercise letter.

Sent to Seller. _____

Subject to conditions _____

(Caution: may result in a counteroffer thereby giving Seller the right to terminate)

III. PREPARING FOR THE CLOSING AFTER EXERCISING THE OPTION

A. Closing documents and other items to be prepared or obtained:

1. Option Agreement
2. Deed (grant or warranty vs. quitclaim)
3. Bill of Sale (if personal property included)
4. Water Rights Assignment, if necessary
5. Assignment of Leases and Right to Receive Revenue, if appropriate
6. Assignment of Intangible Property (such as permits, trade names, and so forth), if appropriate
7. Joint Escrow Instructions
8. Others:

B. Send closing documents to seller and title company for approval.

C. Review and approve closing settlement statement to be prepared by title company.

1. Prorations.
2. Closing Costs.

D. Tax documents necessary to close.
W9, Non-Foreign Affidavit, state tax requirements.

E. Confirm all closing conditions met

1. Review Option Agreement:

- a. No adverse change in physical condition
- b. Title
- c. Truth of Seller's representations and warranties
- d. Insurance for improvements.

F. Arrange for transfer of funds

G. Obtain any keys to the property

IV. POST-CLOSING MATTERS

A. Review title policy to make sure it conforms to escrow instructions.

B. Send originals of all documents to _____.

C. Parks Management notified.

D. Insurance for Improvements

E. Insurance for Personal Property.

F. Documents: Received: Reviewed:

Deed	_____	_____
Title Policy	_____	_____
Closing Statement	_____	_____



Metro Auditor Report Evaluation Form

**Fax... Write... Call...
Help Us Serve Metro Better**

Our mission at the Office of the Metro Auditor is to assist and advise Metro in achieving honest, efficient management and full accountability to the public. We strive to provide Metro with accurate information, unbiased analysis and objective recommendations on how best to use public resources in support of the region's well-being.

Your feedback helps us do a better job. If you would please take a few minutes to fill out the following information for us, it will help us assess and improve our work.



Name of Audit Report: _____

Please rate the following elements of this report by checking the appropriate box.

	Too Little	Just Right	Too Much
Background Information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Details	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Length of Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarity of Writing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential Impact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Suggestions for our report format: _____

Suggestions for future studies: _____

Other comments, ideas, thoughts: _____

Name (optional): _____

Thanks for taking the time to help us.

Fax: 797-1799

Mail: Metro Auditor, 600 NE Grand Avenue, Portland, OR 97232-2736

Call: Alexis Dow, CPA, Metro Auditor, 797-1891

