

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF)	RESOLUTION NO. 13-4417
OPERATING OFFICER TO PURCHASE PROPERTY)	
IN THE TUALATIN RIVER GREENWAY TARGET)	Introduced by Chief Operating Officer
AREA WITH 2006 NATURAL AREAS BOND)	Martha J. Bennett with the concurrence of
MEASURE PROCEEDS SUBJECT TO UNUSUAL)	Council President Tom Hughes
CIRCUMSTANCES)	

WHEREAS, at the general election held on November 7, 2006, the voters of the Metro region approved Ballot Measure 26-80, authorizing Metro to issue \$227.4 million of general obligation bonds to fund natural area acquisitions and water quality protection (the “Natural Areas Program”); and

WHEREAS, on March 1, 2007, the Metro Council approved 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 “Work Plan”), authorizing the Metro Chief Operating Officer to acquire properties identified on a Council-approved target area confidential refinement map so long as the properties meet the “Acquisition Parameters” and “Due Diligence Guidelines” set forth in the Work Plan; and

WHEREAS, on September 13, 2007, the Council adopted Resolution No. 07-3849, “Approving the Natural Areas Acquisition Refinement Plan for the Tualatin River Greenway Target Area” establishing the goal for the target area of providing “additional or enhanced access that will allow people to enjoy the river”; and

WHEREAS, Metro staff has identified an opportunity to purchase 1.6 acres of property located along the Tualatin River and identified as a Refinement Plan Tier I objective in the Tualatin River Greenway Target Area, which property is more specifically identified as “River Road” on the attached Exhibit A (the “Property”); and

WHEREAS, the Property meets the Refinement Plan Tier I objective of “enhancing the water trail by providing access point sites along the Tualatin River Greenway” and is adjacent to two existing Metro holdings currently being planned and designed as a future non-motorized public launch site to be known as the Farmington Natural Area (the “FNA”); and

WHEREAS, Metro entered into a purchase and sale agreement with the current owner of the Property and in accordance with the Work Plan Acquisition Parameters obtained an MAI appraisal (the “Appraisal”) of the Property, which Appraisal valued the Property below the negotiated purchase price of \$195,000; and

WHEREAS, Phase I and Phase II Environmental Site Assessments of the Property were conducted in accordance with the Due Diligence Guidelines of the Work Plan and several recognized environmental conditions were identified, requiring various levels of corrective action and remediation; and

WHEREAS, the cost of the corrective remedial actions to bring the Property to an acceptable environmental condition is estimated to be up to \$188,430, and possibly more; and the Property owners are unable to contribute to the cost of the cleanup; and

WHEREAS, the Work Plan allows for the Chief Operating Officer to authorize the expenditure of Natural Area Program bond funds to remediate environmental contamination identified on a property, following certain guidelines; and

WHEREAS, the appraisal and environmental issues described above are "unusual circumstances" under the Acquisition Parameters and Due Diligence Guidelines of the Work Plan, requiring Metro Council approval to acquire the Property; and

WHEREAS, acquisition of the Property is necessary to achieve the goals and Tier I objectives of the Tualatin River Greenway Target Area, as it will allow Metro to maximize the recreational opportunities and reduce the resource impacts of the public launch site; and

WHEREAS, Metro staff is taking action to potentially mitigate the financial and environmental impacts to Metro by 1) applying for a Prospective Purchaser Agreement ("PPA") from the Oregon Department of Environmental Quality ("DEQ") which will be a condition to closing on the Property; 2) applying for a grant from Business Oregon in an amount up to \$150,000 or more if possible, to partially cover the costs of the environmental cleanup; 3) applying for a grant from Oregon Parks Department for up to 50% of the cost of building the proposed FNA, which construction may overlap with some of the environmental cleanup actions, and 4) securing pledges of contributions and volunteer services from Tualatin Riverkeepers and Clean Water Services; and

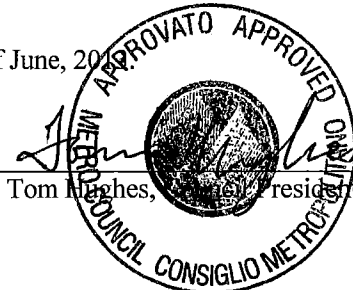
WHEREAS, acquisition of the Property at a purchase price above the appraised value and prior to the remediation of the identified environmental contamination is warranted in light of the benefits that the Property will provide the citizens of the region; now therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to:

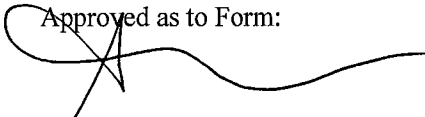
1. Acquire the Property, as identified in Exhibit A, at a price no greater than \$195,000, notwithstanding the unusual circumstances related to the appraisal of the Property and the environmental condition of the Property; provided that (a) the acquisition is otherwise in accord with the Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan, and (b) Metro obtains a PPA or other liability release from DEQ substantially eliminating the probability of future environmental liability to Metro, in a form acceptable to the Office of Metro Attorney.

2. Use Natural Areas Program funds to remediate the environmental condition of the Property, in accordance with a cleanup plan approved by DEQ in connection with PPA or other liability release obtained, and to use any grant funds awarded by Business Oregon to reimburse the Natural Areas Program for the cost of the cleanup.

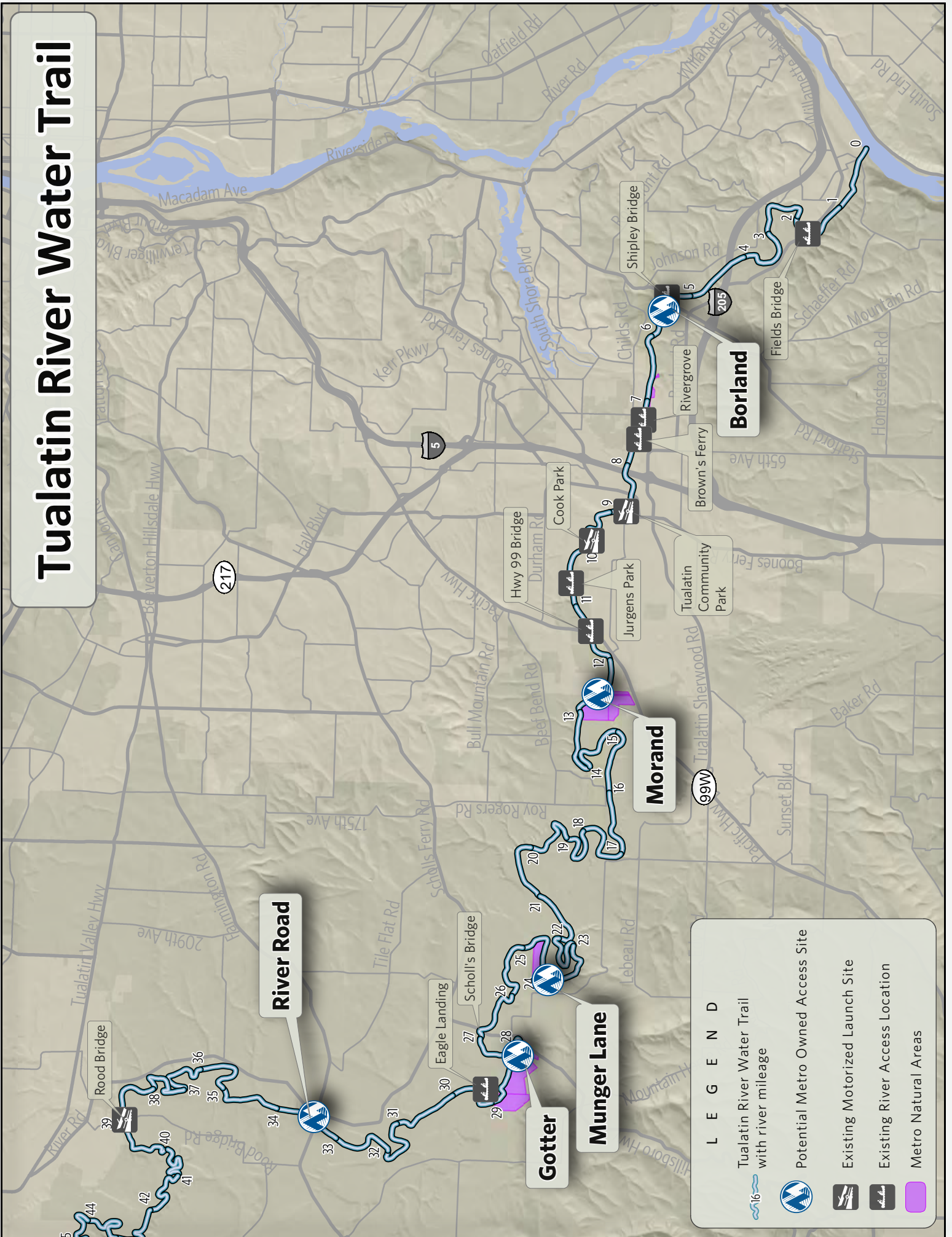
ADOPTED by the Metro Council this 6 day of June, 20



Approved as to Form:


Alison Kean Campbell, Metro Attorney

Tualatin River Water Trail



L E G E N D

- Tualatin River Water Trail with river mileage
- Potential Metro Owned Access Site
- Existing Motorized Launch Site
- Existing River Access Location
- Metro Natural Areas

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 13-4417 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO PURCHASE PROPERTY IN THE TUALATIN RIVER GREENWAY TARGET AREA WITH 2006 NATURAL AREAS BOND MEASURE PROCEEDS SUBJECT TO UNUSUAL CIRCUMSTANCES

Date: June 6, 2013

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

BACKGROUND

Metro has an opportunity to acquire a 1.6-acre parcel of land in the Tualatin River Greenway Target Area (the "Property"). The Property is adjacent to two parcels currently owned by Metro that were acquired in March of 2000 (the "Existing River Road Holdings"). Acquisition of the Property will serve to support the target area goal of providing "additional or enhanced access that will allow people to enjoy the river." Metro has entered into a Purchase and Sale Agreement with the owners of the Property. The purpose of this report is to outline the importance of acquiring the Property despite the fact that the current terms for the acquisition fall outside the parameters of the Natural Areas Implementation Work Plan (the "Work Plan"), adopted by the Metro Council via Resolution 07-3766A.

Goals and Objectives of the Tualatin River Greenway Target Area

The area where the Property is located has long been a focus of a larger strategy to provide public access to the Tualatin River. The Property's location was identified as a Tier I objective in both the 1995 Open Spaces, Parks and Streams Bond Measure (the "1995 Bond Measure") and the 2006 Natural Areas Bond Measure (the "2006 Bond Measure"), mainly due to its inclusion in the 1992 Greenspaces Master Plan.

In the Greenspaces Master Plan, the Tualatin River Greenway Target Area was described as follows:

"The Tualatin River is typical of the slow flowing, meandering small rivers and streams that flow through the Willamette Valley floor. The relatively low slope makes it ideal for canoeing and for amateur boaters. There are few access points on the Tualatin along its course, which makes land acquisition for recreation uses more important."

A Tier I objective of the 1995 Bond Measure Access Points Refinement Plan, adopted by the Metro Council in 1996, was to "acquire a minimum of 266 acres to establish four regional access point sites along the Tualatin River Greenway that meet the following objectives:

- Locations along the river at intervals of 5 to 10 river miles, allowing for day trips and shorter trips than is now practicable.
- Safe accessibility from a public roadway that can adequately accommodate additional traffic.
- Developable for boat ramps and/or docks by reason of existing shallow slopes and banks.
- Associated with sufficient uplands for such features as parking, restrooms, picnic areas, and buffering from the River and adjacent uses."

The Tier I objectives of the 2006 Bond Measure's Tualatin River Greenway Target Area Refinement Plan are to:

- Protect natural areas adjacent to existing public lands to provide public access and improve wildlife habitat protection.
- Continue the work that began in 1995 to enhance the water trail by providing access point sites along the Tualatin River Greenway that meet the following criteria:

- (Here the 2006 objectives repeat the location objectives of the 1995 Bond Measure and add the following): Associated with key locations where there is particular interest in additional boat access/pull-outs including: south of Farmington Road, north side of the river in the vicinity of Rainbow Lane, and in the vicinity of Elsner Road.

Launch Site Identification Process

Acquiring and developing additional non-motorized launch sites along the Tualatin River is a longstanding goal of Metro and its partners. The stretch of the Tualatin River that was targeted for site acquisition is between Hillsboro's Rood Bridge Park (River Mile 39) and the confluence with the Willamette River (River Mile 0). Exhibit A to the Resolution shows the locations of the Metro-owned area properties and current existing launch sites.

In 2011, Metro began the effort to identify the most appropriate Metro owned sites for public river access as part of a budget amendment that provided funding to begin the first phase of an effort to plan and design the Tualatin River Water Trail. The Metro Council was updated on its progress when it passed Ordinance 12-1291, "For the Purpose of Amending the FY 2012-2013 Budget and Appropriations Schedule to Provide Funding for Land Use Application Planning and Design Steps Needed for a Publicly Accessible Tualatin River Canoe Launch at the River Road Natural Area Location." As part of the ordinance package, Metro staff described how it had (a) analyzed the feasibility of five potential public access sites, (b) convened an advisory team, (c) conducted public outreach, (d) selected the River Road Natural Area site, (e) and completed engineering, topographic, wetlands, and other analyses needed to pursue Washington County approval for a land use application. These efforts resulted in the selection of a site at the intersection of SW Farmington and SW River Roads, comprised of Metro's Existing River Road Holdings, as the best choice for a future public access site. The intersection has a bridge over the river, making it accessible from several directions and enhancing the public benefit. The site has high visibility and is located along two significant arterials. Metro started the planning and design of the River Road site, named the project the Farmington Natural Area ("FNA") and concluded that Property is necessary for the optimal access site design. The ordinance specifically mentioned that Metro was proceeding with attempts to acquire the Property, noting that such acquisition would improve the recreational opportunities and reduce the natural resource impacts of the boat launch site. On April 4, 2013, the Metro Council also adopted Resolution 13-4416, "For the Purpose of Authorizing Metro to Apply for Two Local Government Grants from the Oregon State Parks and Recreation Department and Delegating Authority to the Sustainability Center Director to Sign the Applications." If grant funding is awarded, it would be used to pay for launch site improvements at the Farmington Natural Area.

The Property

On August 23, 2012, a Purchase and Sale Agreement (the "Agreement") was executed between Metro and the landowner of the Property. The site includes a 1,760 sq. ft. residence, an approximate 3,000 sq. ft. shop area or barn, and a metal storage structure. The Property also contains concrete fill salvaged from a road project. Following the customary procedures required by the Natural Areas Work Plan, an independent MAI appraisal was ordered which ultimately concluded a value of \$130,000, significantly below the final negotiated purchase price of \$195,000. Also in accordance with the Work Plan, staff obtained a Phase I and Phase II environmental assessment of the Property, which describe the recognized environmental conditions present on the Property and identified contaminated materials present on the site, including: lead and other metal concentrations possibly as a result of pesticide application, heating oil, heavy oil petroleum hydrocarbons possibly as a result of asphalt shingle waste outside and miscellaneous spills inside the barn on the Property. Staff obtained a cleanup cost estimate of \$188,430.

UNUSUAL CIRCUMSTANCES

Metro Council approval is required under the Work Plan when the Chief Operating Officer encounters unusual circumstances in the course of a transaction. In this transaction, there are two unusual circumstances.

Unusual Circumstance No. 1. An independent MAI appraisal of the Property concluded a value \$65,000 below the negotiated purchase price.

Discussion. Metro staff and the landowners disagreed with certain elements of the appraisal. Most significantly, the appraiser attributed no value to the existing improvements, despite the fact that the residence is currently occupied and the the landowner recently put on a new roof at a cost of \$30,000. Much of the site is in the 100 year floodplain, which is the case for the majority of similar homesites on the Tualatin River, but the appraiser gave no value to land inside the floodplain line nor did the appraiser believe that the river frontage or the ability to put a dock on the river contributed any significant value. The landowner is not willing to sell the Property to Metro at its appraised value. Metro staff propose to acquire the Property at a purchase price of \$195,000, which is \$65,000 above the appraised value, for the reasons outlined in this discussion.

First, the purchase price is consistent with Metro's other acquisitions in this area, as verified by separate appraisals. Attachment 1 to this Staff Report outlines other Tualatin River related waterfront homesite properties under 7 acres acquired by Metro with Bond Measure funds. It is included to show the range of values for similar types of property as the subject Property on SW River Road. The average Metro purchase price of similar homesites was \$275,290. The least expensive vacant land homesite was purchased by Metro for \$225,000.

Secondly, the failure to acquire the Property will compromise Metro's ability to achieve the goals described in the Refinement Plan for the Tualatin River Greenway Target Area because the current Metro River Road access site, at approximately 4.5 acres, is not large enough to gain approval for a public access site by Washington County. The Property would help fulfill the Tier I objectives of the Tualatin River Greenway Target Area Refinement Plan by allowing the plan for the FNA to go forward.

Finally, the purchase of this Property will not compromise Metro's ability to achieve the goals described in the Refinement Plan for the Tualatin River Greenway target area. On the contrary, if the Property is not acquired, the success of reaching the target area river access goal is jeopardized. Because the target area is a water trail, there is no acreage goal but almost 70 acres have been acquired in the target area and enough land has been acquired for additional Metro properties to be developed into access points when funding is available. A significant amount of Metro funds have already been spent on the planning and design effort for the FNA, as mentioned in the recent Ordinance 12-1291.

Unusual Circumstance No. 2. The second unusual circumstance of this acquisition is the environmental condition of the Property. As part of Metro's due diligence, a Phase 1 Environmental Site Assessment (ESA) was completed. Several areas of concern including concrete fill of unknown origin, potential soil contamination and the prior use of the property for custom leather and saddle production led to a Phase 2 ESA. The Phase 2 ESA work included collecting more soil and groundwater samples and digging test pits to determine the extent of the problem. A recommendation was made for certain corrective remedial actions to be taken on the Property: removal of topsoil to address elevated lead and zinc levels, removal of heating oil and heavy oil contaminated soil, and removal of rubble/fill/debris.

A cleanup plan and estimate was generated by Metro's environmental consultant and the cost is estimated to be up to \$188,430. If additional contingency problems were encountered, the cost may go up to \$214,430, described in the estimate as "a worst case scenario." It may also be possible to reduce the

cleanup costs by completing them in conjunction with Metro's typical stabilization procedures on a property of this type (such as removing the structures), and with the initial phase of construction on the FNA.

Discussion. The current owners of the Property are unable to remediate the environmental issues present on the site mainly due to financial hardship. Additionally, it is unclear whether any regulatory entity would affirmatively require such cleanup should the owners retain the Property and continue its residential use. Metro's acquisition of the Property would change the use from residential to recreational, and the planned development of the Property as an active public river access site will trigger the need for Metro to assess whether the site conditions present a risk to human and ecological health.

Metro is working with the Oregon Department of Environmental Quality (DEQ) to obtain a Prospective Purchaser Agreement (PPA), which would limit Metro's liability for the environmental condition of the property. In return for this liability release, the PPA must provide the state with a substantial public benefit, which staff expects to be satisfied by the public access and development of the FNA. Metro will not close on the Property without first obtaining the PPA from DEQ, or another similar form of liability release. Staff is in the process of applying to Business Oregon for grant funds to help pay for the cost of the cleanup and are requesting up to \$150,000, and possibly more. These grant funds are not available to private parties, like the current owners. The remainder of the cleanup cost will be from Metro's 2006 bond measure funds.

If the Council approves this Resolution, it will authorize the Chief Operating Officer to:

(1) Acquire the Property at a price no greater than \$195,000, notwithstanding the unusual circumstances related to the appraisal of the Property and the environmental condition of the Property; provided that (a) the acquisition is otherwise in accord with the Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan, and (b) Metro obtains a PPA or other liability release from DEQ substantially eliminating the probability of future environmental liability to Metro, in a form acceptable to the Office of Metro Attorney.

(2) Use Natural Areas Program funds to remediate the environmental condition of the Property, in accordance with a cleanup plan approved by DEQ in connection with PPA or other liability release obtained. If Metro is successful and receives grant funds from the Business Oregon, these funds will reimburse the Natural Areas Program for the cost of the cleanup.

ANALYSIS/INFORMATION

1. Known opposition

None known

2. Legal Antecedents:

The region's voters approved Metro's 2006 Natural Areas Bond Measure at the general election held on November 7, 2006.

Resolution No. 07-3766A "Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan," was adopted by the Metro Council on March 1, 2007, and established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

Resolution No. 07-3849, “Approving the Natural Areas Acquisition Refinement Plan for the Tualatin River Greenway Target Area,” was adopted by the Metro Council on September 13, 2007.

3. Anticipated Effects

Acquisition of the Property would allow the optimal site design and land use application process for the proposed Farmington Natural Area to Washington County to proceed. Acquisition of the Property would also allow Metro to achieve its Tier I objectives of enhancing the water trail by providing access points along the Tualatin River Greenway.

4. Budget Impacts

Metro will close on the Property for a purchase price of no greater than \$195,000 with funds supplied from the 2006 Natural Areas bond measure proceeds. The Chief Operating Officer will direct funds from the 2006 Natural Areas bond measure proceeds to bring the Property to an acceptable environmental condition for the purpose of a future public Tualatin River access site. Staff will make every effort to secure grant funds to supplement the Metro bond measure funds for this project.

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of Resolution No. 13-4417.

Metro Acquisitions on the Tualatin River

Property Name	Target Area	Purchase Price	Year Aquired	Acres	Waterfront	Improvements	Location
Tolbert	Tualatin River Access Points	\$ 225,000	1996	6.19	Tualatin River	Vacant Land	Clackamas County
White, L. & T.	Tualatin River Access Points	\$ 355,130	1997	6.25	Tualatin River	Manufactured home	Clackamas County
Hollabaugh	Tualatin River Access Points	\$ 382,690	1998	5.85	Tualatin River	Vacant	Clackamas County
Schmidt	Tualatin River Access Points	\$ 150,000	2000	1.9	Tualatin River	Low Value Home	Hillsboro
Bogden	Tualatin River Access Points	\$ 189,500	2000	2.92	Tualatin River	Manufactured Home	Hillsboro
Kapaun	Tualatin River Greenway	\$ 275,000	2007	0.41	Tualatin River	Low Value Home	Tualatin
Cole	Lower Tualatin River Headwaters	\$ 325,000	2009	5	Baker Creek	Vacant Land	Washington County
Icon	Tualatin River Greenway	\$ 300,000	2008	1.5	Tualatin River	Low Value Home	Tualatin

Average Purchase Price for Tualatin River homesites \$ 275,290