

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE PROPERTY IN THE SANDY RIVER GORGE TARGET AREA ) ) ) ) RESOLUTION NO. 98-2661 Introduced by Mike Burton Executive Officer

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, on July 11, 1996 via resolution 96-2357, the Metro Council adopted a refinement plan for the Sandy River Gorge regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, the Sandy River Gorge target area refinement plan identifies properties in the Gordon Creek watershed as high priority acquisition targets due to the presence of spawning grounds for federally protected salmon species; and

WHEREAS, Longview Fibre Timber Company (Longview) owns approximately 800 acres in the Gordon Creek watershed, and has offered to sell to Metro 240 acres adjacent to 100 acres already in Metro ownership; and

WHEREAS, the acreage which Longview proposes to sell to Metro includes two tax lots created without the approval of the Multnomah County Planning Department; and

WHEREAS, Oregon State Law prohibits an owner of an unapproved tax lot from selling the unapproved tax lot; and

WHEREAS, the Multnomah County Planning Department has outlined a process for obtaining county approval of the illegal tax lots which would take approximately five months, and which would be contingent upon a hearings officer's favorable decision; and

WHEREAS, the length and uncertainty of this process jeopardizes Longview's willingness to sell the Property, and increases the likelihood that Longview will harvest timber on the steep slopes above Gordon Creek, thereby jeopardizing rare and sensitive salmon habitat; and

WHEREAS, the Multnomah County Planning Department has indicated to Metro that it would not oppose Metro's acquisition of the Property from Longview and that it would support Metro's application for County approval of the two tax lots subsequent to the acquisition;

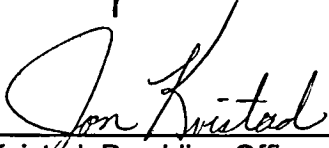
WHEREAS, Longview's sale of the two unapproved tax lots to Metro is contrary to state law, making Metro's acquisition of the Property an unusual circumstance; and

WHEREAS, the Open Spaces Implementation Work Plan requires Metro Council's specific approval for acquisitions which involve an "unusual circumstance;"

BE IT RESOLVED,

That the Metro Council authorizes the Metro Executive Officer to purchase from Longview the Sandy River Gorge Target Area property identified in Exhibit A, including the two unapproved tax lots, and to apply for County approval of the two tax lots subsequent to this acquisition.

ADOPTED by the Metro Council this 2ND day of July, 1998.

  
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Jon Kvistad, Presiding Officer

Approved as to Form:

  
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Daniel B. Cooper, General Counsel

**Exhibit A**  
**Property Description**

**PARCEL I:**

That portion of the South half of the Northwest quarter, the North half of the Southwest quarter and the Northwest quarter of the Southeast quarter lying South of a tract of land conveyed to Raymond Smith, et ux, recorded May 19, 1994 as Recorder's Fee No. 94-079053, in Section 12, Township 1 South, Range 4 East of the Willamette Meridian, in the County of Multnomah and State of Oregon.

**PARCEL II:**

The Southeast quarter of the Southwest quarter and the Southwest quarter of the Southeast quarter of Section 12, Township 1 South, Range 4 East of the Willamette Meridian, in the County of Multnomah and State of Oregon.

**PARCEL III:**

The Northeast quarter of the Northwest quarter and the Northwest quarter of the Northeast quarter of Section 13, Township 1 South, Range 4 East of the Willamette Meridian, in the County of Multnomah and State of Oregon.

**PARCEL IV:**

Easement for access as set forth in instruments recorded March 29, 1974 in Book 978 at Pages 263 and 278, and recorded August 20, 1987 in Book 2035 at Page 524, Multnomah County Records.

## Staff Report

### **CONSIDERATION OF RESOLUTION NO. 98-2661 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE PROPERTY IN THE SANDY RIVER GORGE TARGET AREA**

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**Date: June 17, 1998**

**Presented by:**

**Charles Ciecko  
Jim Desmond**

### PROPOSED ACTION

**Resolution No. 98-2661 requests authorization for the Executive Officer to purchase property in the Sandy River Gorge Target Area.**

### BACKGROUND AND ANALYSIS

In May, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements.

On July 11, 1996, via Resolution 96-2357, the Metro Council adopted a refinement plan which outlined a land protection strategy for the Sandy River Gorge regional target area. Protection of forest land along Buck Creek and Gordon Creek ranks among the high priority objectives for the Sandy River Gorge Target Area. Riparian lands along these streams provide migration corridors for large mammals such as cougar, elk, and black bear. The streams themselves influence water quality in the Sandy River, and provide some of the only viable spawning habitat remaining for federally-listed lower Columbia River steelhead.

Longview Fibre Timber Company (Longview) owns approximately 800 acres within the Buck Creek and Gordon Creek watersheds, and within Tier I of Metro's Sandy River Gorge Target Area. Longview actively manages this acreage for timber production. Among Longview's holdings is a block of land located between 100 acres owned by Metro and 80 acres owned by the State of Oregon Bureau of Land Management. This block of land includes 80-year-old stands of fir trees and a ridge that slopes severely toward Gordon Creek. Timber harvesting within this block could undermine the objectives of the Sandy River Gorge Target Area and compromise threatened steelhead species.

For nearly a year, Metro and Longview have been negotiating the terms of a transaction that would allow Metro to purchase nearly 240 acres within this critical area. With a purchase and sale agreement finally executed, a single unresolved issue prevents the conclusion of the deal. This issue arises from the fact that among the 240 acres that Longview is offering to sell to Metro are two illegally-created tax lots (of the five tax lots subject to this transaction) consisting of approximately eighty acres. Longview created the illegal lots by selling portions of two of its legal lots of record to third parties without legally sub-dividing the lots through the Multnomah County Land Use and Planning Department (Multnomah County). Longview asserts that, at the time the lots were sold, Longview corresponded with the Multnomah County Assessor's office, and believed that this correspondence satisfied County regulations affecting the subdivision.

According to state law (ORS 92.016 and 92.025), Longview may not legally sell the improperly created tax lots to Metro. In fact, according to Multnomah County, unless Longview repurchases those portions of the legal lots of record that it illegally subdivided, or in some other fashion re-aggregates each of the two original lots of record under a single deed, Longview may not legally convey any portion of the original two legal lots of record to any party.

Metro Counsel interprets state law and the Multnomah County Zoning Ordinance differently, and has argued that a sale to Metro of the improperly created tax lots may be accomplished without violating state law, through a lot line adjustment process. Multnomah County has rejected this proposed solution.

According to Multnomah County, they will refuse to issue building permits for any portion of the improperly subdivided real property until the lots are re-aggregated. It is important to note, however, that the Longview's right to log the property at will remains unaffected.

Multnomah County has outlined a method through which Metro could legalize the two improperly created tax lots. Through the Conditional Use Application process, Metro would submit six separate applications to Multnomah County, asking a hearings officer to approve the creation and conveyance of the improperly created tax lots to Metro, on the condition that Metro uses the tax lots for park purposes.

Although this process potentially resolves the Multnomah County land use issue, it jeopardizes the success of this transaction. The conditional use process could extend 150 days and is subject to appeal. Longview's willingness to sell property to Metro may not extend as long. Longview typically does not sell its timber holdings, due to a long-range business plan. Consequently, all of its holdings are considered productive. Longview's timber rotation dictates that the timber on the subject property be cut soon. Timber harvest-timing could also be influenced by Longview's anticipation of additional regulation of logging within watersheds that contain listed steelhead habitat. For these reasons, Longview is unlikely to be willing to hold 240 acres out of production for five months pending an uncertain decision.

Because the timing of the Conditional Use Process could undermine the transaction, Metro has a single option available to secure the protection of the subject property. According to Multnomah County staff, Multnomah County is not opposed to Metro simply acquiring the illegally created tax lots, along with the rest of the subject property. Post-closing, Metro would begin the lengthy process of pursuing a conditional use permit in order to "ratify" the tax lots improperly created by Longview, making them legal lots of record subject to a park conditional use. In the meantime, Multnomah County would not issue a permit to Metro to build any structure on the two illegal tax lots (although the option to build would exist for the remaining 160 acres of the property). Multnomah County confirmed that there is no other consequence to Metro.

In selling the two improperly created tax lots, which comprise 80 of the 240 acres, Longview would be in violation of Oregon state law (ORS 92.016 and 92.025). Consequently, acquisition of the subject property from Longview constitutes an "unusual circumstance," requiring specific approval by the Metro Council according to the Open Spaces Implementation Work Plan.

## **FINDINGS**

Acquisition of this property is recommended based on the following:

- The Sandy River Gorge Target Area Refinement Plan identifies Buck Creek and Gordon Creek as key elements of the Sandy River watershed, providing forested habitat for large mammals, salmon habitat for an endangered species, and water quality protection. The subject property is within both watersheds and demonstrates all of the natural features that the refinement plan intends to protect.
- Metro owns 100 acres adjacent to the subject property. Acquisition of Longview's 240 acres fortifies the habitat protection established by Metro's past purchases.
- Longview Fibre could harvest the subject property, including the steep slopes leading to Gordon Creek, if Metro does not acquire the subject property.
- No timely, viable option exists for the purchase of the subject property, except for Metro to simply acquire it, including the unapproved tax lots, and then to apply to Multnomah County for the ratification of the tax lots through the Conditional Use Permit Process.
- This acquisition on these terms was recommended by the Real Estate Acquisition Committee, which met on May 21, 1998.

## **BUDGET IMPACT**

Bond funds would supply acquisition money. Land banking costs are expected to be minimal, due to the remote nature of the property.

## **EXECUTIVE OFFICER'S RECOMMENDATION**

The Executive Officer recommends passage of Resolution No. 98-2661.