

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 14-4541
CHIEF OPERATING OFFICER TO SELL) Introduced by Chief Operating Officer
CERTAIN REAL PROPERTY AS PART OF THE) Martha Bennett, in concurrence with
NATURAL AREAS PROGRAM) Council President Tom Hughes

WHEREAS, on July 23, 1992, via Resolution No. 92-1637 (“For the Purpose of Considering Adoption of the Metropolitan Greenspaces Master Plan”), the Metro Council adopted the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails;

WHEREAS, in May 1995, the voters of the Metro region approved ballot measure 26-26, authorizing Metro to issue \$135.6 million for bonds for Open Spaces, Parks and Streams (the “1995 Metro Open Spaces Bond Measure”);

WHEREAS, using funds from the 1995 Open Spaces Bond Measure, Metro acquired over 8,000 acres of property in over 270 transactions;

WHEREAS, in November 2006, the voters of the Metro region approved ballot measure 26-80, authorizing Metro to issue \$227.4 million for bonds for Natural Area Acquisition and Water Quality Protection (the 2006 Metro Natural Areas Bond Measure, and together with the 1995 Open Spaces Bond Measure, the “Bond Measures ”);

WHEREAS, since the passage of the 2006 Metro Natural Areas Bond Measure, Metro has acquired an additional 4,900 acres of property in over 140 transactions;

WHEREAS, as a result of the necessity to acquire entire parcels from willing sellers, Metro now manages and leases a number of rental homes, some of which are not needed to protect the natural resources on the properties and could be divided from the original parcel Metro acquired;

WHEREAS, staff has analyzed the bond acquisition portfolio of properties and identified properties or portions thereof (the “Metro Parcels”), set forth on Exhibit A to this Resolution No. 14-4541, where the goals and objectives of the Bond Measures are not furthered by continued ownership of the Metro Parcels;

WHEREAS, in October 2009, via Resolution No. 09-4079 (“For the Purpose of Authorizing the Chief Operating Officer to Sell Certain Real Property in the Cooper Mountain Target Area”), the Metro Council adopted Disposition Guidelines that applied to a single parcel in that target area;

WHEREAS, the Metro Council finds that the Disposition Guidelines, as revised and attached to this Resolution No. 14-4541 as Exhibit B, establish a fair and open process and procedure that will allow the Natural Areas program to dispose of the Metro Parcels to better achieve the goals and objectives of the Bond Measures;

WHEREAS, sale of the Metro Parcels using the process set forth in the revised Disposition Guidelines, will allow Metro to use the sale proceeds from these surplus properties to acquire additional natural areas properties and interests, and is considered the best resolution for the future of the Metro Parcels and the Natural Areas Program;

WHEREAS, there may be more land included in Exhibit A (whole tax lots to be declared as surplus) than will be actually disposed of after necessary land use processes to separate parts of the parcels for sale; now therefore

BE IT RESOLVED that the Metro Council concludes that the Metro Parcels, as described in Exhibit A, are not needed for public use and that the public interest will be furthered by the sale of the Metro Parcels, and hereby authorizes the Chief Operating Officer to sell the Metro Parcels using an equitable, commercially reasonable, and appropriate process, as determined by the Chief Operating Officer in her sole discretion, in accordance with the Disposition Guidelines set forth in Exhibit B.

Adopted by the Metro Council this ____ day of _____ 2015.

TABLED
Tom Hughes, Council President

Approved as to Form:

Alison R. Kean, Metro Attorney

PROPERTIES TO BE DECLARED SURPLUS

Target Area	Address	Tax Lot ID¹	Comment
Forest Park	Burlington lots- above Rte. 30	Several	Several unbuildable subdivision lots were acquired in a 300 acre acquisition. A land use action is needed to separate them from the larger property.
Dairy and McKay Creeks	3270 NW Susbauer Rd.	1N3 27 01000	Small, isolated property with minimal creek frontage.
Lower Tualatin Headwaters	20050 SW Kruger Rd.	2S236 00700	This parcel is isolated from other holdings. Metro will preserve the natural resource with a 25-acre Conservation Easement.
Willamette Narrows	27850 SW Petes Mountain Rd.	31E10 02004	The house is not needed for resource protection. The strategy is to partition it.
Willamette Narrows	30636 SW Peach Cove Rd.	3S1E 22 00306	The house is not needed for resource protection. The strategy is to divide the lot by a property line adjustment.
East Buttes	25673 SW McNutt Rd.	1S3E23D 02200	The house is not needed for resource protection. The strategy is to divide the lot by a property line adjustment.

¹ The portions of properties identified as surplus in this Exhibit A are subject to minor modification during the land division or property line adjustment process.

METRO SURPLUS PROPERTY DISPOSITION GUIDELINES

The following procedures are the elements of analysis, outreach and sale that will be followed by Metro staff in the disposition of real property owned by Metro that is determined to be surplus (“Surplus Property”). These properties were acquired with funding from either the 1995 Open Spaces Bond Measure or 2006 Natural Areas Bond Measure. These guidelines apply where Metro staff determines that a property (and/or in some cases, residence(s) associated with it) is no longer needed to meet Metro’s natural areas program objectives and there are compelling reasons to dispose of the property. These guidelines assure fair and honest dealings with potential purchasers, as well as the protection of public investment in these natural area properties.

Pursuant to Metro Code 2.04.026(a)(2), staff will not proceed to Outreach and Sale of Surplus Property, as outlined below, until the Metro Council has authorized the disposition. Where Metro Council has determined a property is surplus, it will so declare by resolution and authorize staff to dispose of the property in accordance with these guidelines, or as amended by the Metro Council.

PROCEDURE FOR DISPOSING OF SURPLUS PROPERTY

Analysis

1. Original Acquisition The first step in the disposition process is a thorough review of the original acquisition file and stabilization efforts since Metro’s acquisition of the property. Staff will ensure that sale of the Surplus Property would not conflict with the restrictions imposed by the original acquisition funding (1995 Open Spaces bond funds or 2006 Natural Areas bond funds).
2. Title Review Staff will review a current title report to make sure the Surplus Property is free and clear of liens that could interfere with a transfer of title.
3. Physical Inspection Staff will physically inspect the Surplus Property to identify possible hazards, unrecorded easements or other conditions that could impede the disposition, and will make a preliminary evaluation of the condition of any structures and improvements. Staff will inspect the property boundaries to identify any encroachments and take measures to correct them, if possible.
4. Tenant-Occupied Property If the Surplus Property has a leased residence or agricultural field, staff will review the current lease to ensure compliance with the terms. Surplus Properties will be sold subject to existing leases.
5. Preparation for Disposition The Surplus Property may require a land use action at the county level in order to separate residences or other property to be disposed from the portion of the property that Metro will keep. In these cases, staff will meet with county planners to determine the process that will result in Metro’s ability to transfer the title to the legally created parcels.

Outreach

1. Stakeholder and Public Notice The Natural Areas Public Affairs Specialist will develop recommendations for stakeholder and public notice for the sale of the Surplus Property. The Natural Areas Program Director will review these recommendations. Notice may include, but is not limited to, outreach to adjacent landowners to notify of Metro's intention to dispose of the property. Staff will assess the community impact of disposing of the Surplus Property, if any.

Sale Process

1. Market Value and Negotiated Sale Price The market value of the Surplus Property will be established by an appraisal completed by an independent certified appraiser that states a conclusion of the market value of the property or, if appropriate, a range of value. The appraisal will be completed in accordance with the Uniform Standards of Professional Appraisal Practice and may be a summary format report.
2. Sale Price The negotiated sale price of the Surplus Property, or the total value of money and real property received, shall be: Not greater than that which will ensure that Metro does not violate the terms of its bond covenants, including any applicable bond arbitrage limitations, as determined by the Metro Attorney in consultation with the Metro Chief Financial Officer; and
 - a. Except when limited by the foregoing provision, not less than:
 - i. The market value as established by the appraisal process described below; or
 - ii. 90% of such market value, with the authorization of the Chief Operating Officer upon review of a recommendation from the Natural Areas Program Director finding that:
 1. The property has been on the market for a reasonable exposure period and a disposition transaction has not been completed; and
 2. It is in the public interest to sell the property at the reduced value.
3. Marketing and Sale of Property Metro or its authorized agents will advertise the Surplus Property for sale by commercially reasonable means which may include signage, direct marketing, newspaper advertising, or listing on public real estate listing services. Contracting agents for the sale of the Surplus Property will be at the discretion of the Natural Areas Program Director and in compliance with the Metro Code.

Marketing specifications include, but are not limited to, the following:

- a. The Surplus Property may be offered for sale 'as is' directly by Metro or by a real estate broker.
- b. A detailed information package, including a title report, the form of purchase and sale agreement, and any other information deemed relevant to the transaction will be provided

to interested parties electronically.

- c. If there is more than one offer for a Surplus Property, the winning bid shall be determined by customary real estate practices in Oregon and may include the following factors: the date the bid was received by Metro, offer price, and other terms deemed to be relevant to a successful transaction as determined by the Metro Chief Operating Officer, in her sole discretion.

Exemption to Outreach and Sale Requirements

Surplus Property may be exempted from the Outreach and Sale process set forth in sections 2 and 3 above if sold at fair market value and where the Natural Area Program Director has made a determination that it is in the best interest of Metro and the public interest. Examples where this exemption might apply include:

- Where a tenant(s) currently occupies the Surplus Property, Metro may offer to sell the property directly to the tenant(s), with significant notice and opportunity for the tenant(s) to respond to the offer.
- Metro may offer to sell the property directly to the adjacent landowners, with significant notice and opportunity for the landowners to respond to the offer.
- Metro may offer the Surplus Property to other local government agencies that have jurisdiction or interest in the area, as well as to not-for-profit or other stakeholder groups.

Post-Closing

1. Distribution of Proceeds From Sale The Metro Chief Financial Officer shall determine the distribution of the proceeds from the disposition transaction, in consultation with the Metro Attorney, in order to ensure that such distribution is consistent with bond covenants and the intent of the bond measures approved by the voters.
2. Notice to Metro Council The Natural Areas Bond Program Director or his/her designees shall notify the Council promptly following the closing of any disposition transaction.
3. Document Retention Documents related to disposition transactions shall be retained as determined appropriate by the Metro Attorney, consistent with Metro’s records retention policies.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 14-4541, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO SELL CERTAIN REAL PROPERTY AS PART OF THE NATURAL AREAS PROGRAM

Date: December 29, 2014

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

BACKGROUND

Resolution No. 14-4541 requests authorization for the Chief Operating Officer to declare surplus and sell certain real property, described in Exhibit A to the Resolution (the “Metro Parcels”). These properties were purchased by Metro with 1995 Open Spaces Bond Measure (the “1995 Bond Measure”) or 2006 Natural Areas Bond Measure (the “2006 Bond Measure”) funds (collectively, the “Bond Measures”). Proceeds from such sales shall be restricted to natural area acquisition consistent with the requirements of the Bond Measures.

In 1995 and again in 2006 voters in the Metro Area approved the Bond Measures authorizing Metro to acquire property, including the Metro Parcels, in designated regional target areas. The acquisition areas within the target areas were identified for their natural resources and habitat value. The goals for the target areas vary according to the nature of the intrinsic resources and public feedback received during the refinement planning process. Results of this process are documented in a Refinement Plan for each target area. Acquired properties are stabilized and held until such time as the properties can be part of a site conservation and master planning process, which will set forth a desired future condition for each significant holding.

Metro acquired some residences as part of larger natural resource areas when it was not possible to separate the houses. In some cases, the houses were occupied by tenants at the time of closing, requiring Metro’s continued leasing and providing “eyes and ears” on some more remote properties. Metro’s natural areas property management operations consists of these rented houses and leased agricultural fields, providing better security and additional revenues.

Staff has analyzed Metro’s portfolio of over 400 properties acquired as part of the Bond Measures and identified six candidates for disposition at this time for reasons including, but not limited to, the following:

- The property was acquired to be part of a larger complex that would fulfill one or more of the target area objectives, but subsequent acquisitions did not occur. Development patterns or lack of willing sellers in the immediate area of the acquired properties make it improbable that more progress is feasible. In some cases, a conservation easement may be attached to the resource area, providing continued protection if the entire property is transferred to a purchaser.
- Continued or deferred maintenance or significant repairs are needed to safely maintain the homes, and these do not make sense for Metro from an economic perspective. It would not be in the public interest to expend funds for this purpose if the house is not needed to protect the property.
- Metro staff have determined that the residence can be separated from the habitat/resource portion of a property and sold, thereby freeing up financial and personnel resources for more effective land management.
- In one case, an approximate 2 acre section of a 332 acre acquisition is separated by a rail line from the resource property, adds no resource value, and is very problematic from a management perspective.

The Metro Parcels referenced above and associated residences are no longer viable as part of the Natural Areas Program, and are described further in Exhibit A to Resolution No. 14-4541. In some cases, a portion of the property containing the structures must be split off from a larger Metro property through a land use process before disposition.

State law [ORS 271.310(1)] authorizes the governing body of any political subdivision within Oregon to sell real property owned by the political subdivision that is “not needed for public use, or whenever the public interest may be furthered.” Metro Code section 2.04.026(a)(2) requires that the Chief Operating Office obtain the authorization of the Metro Council prior to executing any contract for the sale of real property owned by Metro. Metro’s procedures for the disposition of surplus property are outlined in the “Metro Surplus Property Disposition Guidelines” included as Exhibit B to the attached resolution, and summarized below:

The Natural Areas Program intends to conduct the disposition process in a fair and transparent manner. A public agency planning to sell real property may sometimes first offer such property to other agencies that have jurisdiction or interest in the area, and some agencies are required to make such an offer (but Metro is not so required). Notwithstanding, notice of the sale of the Metro Parcels will be provided to Metro departments and the relevant counties and park districts before the property is marketed to the general public. Additionally, staff may first offer the properties for sale directly to occupying tenants. Staff may also hire real estate brokers through an RFP process to enhance the marketing effort on some or all of the Metro Parcels.

Staff requests Council authorization to declare the Metro Parcels surplus and authorize staff to dispose of them as outlined in the disposition guidelines.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

ORS 271.310(1) authorizes the governing body of any political subdivision within Oregon to sell real property owned by the political subdivision that is “not needed for public use, or whenever the public interest may be furthered.”

Metro Code section 2.04.026(a)(2) requires that the Chief Operating Office obtain the authorization of the Metro Council prior to executing any contract for the sale of real property owned by Metro.

The tax-exempt status of the bonds sold to finance the purchase of the Metro Parcels imposes some limitations and requirements on whether and how the property may be sold, and on the use of the proceeds of such sale. Staff has consulted with the Office of Metro Attorney, which has consulted with Metro’s bond counsel regarding this issue. The sale of property will be in compliance with the advice of the Metro Attorney and bond counsel to ensure that the tax-exempt status of the bonds is maintained.

Metro Resolution No. 09-4079, “For the Purpose of Authorizing the Chief Operating Officer to Sell Certain Real Property in the Cooper Mountain Target Area.”

3. Anticipated Effects

The Metro Parcels will be declared surplus and not needed for public use, and will be offered for sale. Disposition of the Metro Parcels are consistent with the covenants of the Bond Measure, whose funds were used to acquire and stabilize the property, provided that the anticipated proceeds will be administered within the guidelines of the Bond Measure rules. The sale of property will relieve Metro of maintenance obligations and property taxes for the residences.

4. Budget Impacts

Net revenues from sale of the properties, after payment of any appraisal, brokerage, closing, land use applications for partitioning properties, or other out-of-pocket costs associated with the sale, will be returned to the appropriate 1995 or 2006 Bond Measure account, for use to acquire other real property consistent with the goals and requirements of such measure.

RECOMMENDED ACTION

Staff recommends the adoption of Resolution No. 14-4541.