

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 96-2424
EXECUTIVE OFFICER TO PURCHASE PROPERTY) Introduced by Mike Burton
WITH ACCEPTED ACQUISITION GUIDELINES) Executive Officer
AS OUTLINED IN THE AMENDED OPEN SPACES)
IMPLEMENTATION WORK PLAN.)

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, acquisition of natural areas from willing sellers is a primary strategy for preservation of natural areas; and

WHEREAS, areas to be acquired by these procedures are designated as Greenspaces of regional significance in the Open Space, Parks and Streams Bond Measure; and

WHEREAS, at the election held on May 16, 1995, the electors of Metro approved Ballot Measure 26-26 which authorizes Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements pursuant to Metro's Open Spaces Program; and

WHEREAS, a pre-approved set of criteria or conditions are necessary and under which the Executive Officer and his/her designees are authorized to negotiate and complete land acquisition transactions related to the implementation of Measure 26-26; and

WHEREAS, on November 2, 1995, the Metro Council adopted the *Acquisition Parameters* and *Due Diligence* guidelines of the Open Space Implementation Work Plan; and

WHEREAS, January through July 1996, Metro Council adopted refinement plans and tax-lot specific maps for 21 regional target areas; and

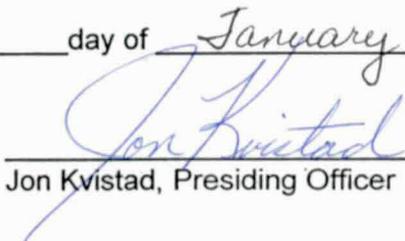
WHEREAS, after implementing the adopted *Acquisition Parameters* and *Due Diligence* guidelines for one year, the Metro Council and Executive Officer have identified ways to improve those guidelines, now therefore

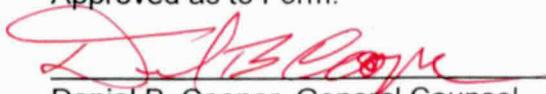
BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to acquire real property and property interests subject to the requirements of the *Acquisition Parameters* and *Due Diligence* guidelines of the amended Open Spaces Implementation Work Plan, identified in Exhibit A and hereby incorporated by reference.

ADOPTED by Metro Council this 9th day of January, 19 97.

Approved as to Form:


Jon Kvistad, Presiding Officer


Daniel B. Cooper, General Counsel

Staff Report

CONSIDERATION OF RESOLUTION NO. 96-2424 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE PROPERTY WITH ACCEPTED ACQUISITION GUIDELINES AS OUTLINED IN THE AMENDED OPEN SPACES IMPLEMENTATION WORK PLAN.

Date: November 22, 1996

Presented by:

**Charles Ciecko
Jim Desmond**

PROPOSED ACTION

Resolution No. 96-2424 requests that the Metro Council approve the Acquisition Parameters and Due Diligence sections of the revised Open Spaces Implementation Work Plan.

BACKGROUND AND ANALYSIS

The Metropolitan Greenspaces Master Plan identified a desired system of natural areas interconnected with greenways and trails. As part of implementing that plan, on May 16, 1995, the electors of Metro approved Ballot Measure 26-26 which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements pursuant to Metro's Open Spaces Program. Developed in November of 1995, the Open Space Implementation Work Plan ("Work Plan") outlined how the program was to operate and acquire land. On November 2, 1995, the Metro Council adopted the *Acquisition Parameters* and *Due Diligence* sections of that plan. The six-month Refinement process in 1996 resulted in Metro Council adopting 21 refinement plans and tax-lot specific maps for acquisition of land in the regional target areas identified in the bond measure.

Over the last year, the Open Spaces Program staff have worked to acquire lands in accordance with the Work Plan. In the course of acquiring over 1000 acres, the Council and the Executive Officer identified ways in which the Work Plan could be improved to facilitate more timely, competitive, and cost-effective acquisitions. These changes are reflected in the *Acquisition Parameters* and *Due Diligence* sections (Attachment A, red-lined version) of the amended Open Spaces Implementation Work Plan. Experience of the program to date indicates that adoption of the amended Work Plan will better enable the Open Spaces Program to meet its acquisition goals in a competitive real estate market.

Executive Officer's Recommendation

The Executive Officer recommends passage of Resolution No. 96-2424.

Exhibit A
Open Spaces Implementation Work Plan

ACQUISITION PARAMETERS

Definition:

“Acquisition Parameters” are a pre-approved set of criteria or conditions under which the Executive Officer and his/her designees are authorized to negotiate and complete land acquisition transactions related to the implementation of Measure 26-26.

Rationale:

The creation of pre-approved *acquisition parameters* will permit the agency to deal with willing sellers in a timely and business-like manner and allow the Council to focus on policy level issues.

Acquisition Parameters:

The Metro Council authorizes the Executive Officer and his/her designees to negotiate and close real estate transactions related to Measure 26-26 provided the following criteria/conditions are met:

- The landowner is a “willing seller.”
- The property has been identified on the target area “confidential refinement map” as adopted by the council.
- It is the intent of Metro to pay no more than fair market value for property, it being acknowledged, however, that the Metro area real estate market is dynamic and the process of identifying fair market value is not exact. It is Metro’s intent that the acquisition process provide as much flexibility as possible to achieve the goals of the Open Spaces Bond Measure and to reflect the actual market conditions affecting properties targeted for open spaces acquisition.
- The property owner has agreed to sell at a price which is within the approved standards set forth herein. Note: Metro will actively solicit donations and bargain sales.
- An appraisal shall be prepared prepared by an independent certified appraiser which shall state a conclusion of the fair market value of the property or, if appropriate, a range of value. The appraiser may consider the investment value, use value, total gross retail value, or other method of valuation for the property, where appropriate, based on the specifics of the particular property. The independent appraiser may be instructed to make any assumptions or valuations that best reflect the specific market conditions affecting the property and the value of the property to Metro in particular (e.g., assemblage value).

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- Except as set forth below, the independent appraisal shall be a “complete valuation” appraisal. Complete valuation independent appraisals shall be reviewed by the Metro staff appraiser for compliance with USPAP and general appraisal standards. Such review may include a determination of an acceptable range of value for the property, if the Open Spaces Division Manager believes that such determination is appropriate and if the review appraiser has sufficient data to form this conclusion from the evidence available. If the staff appraiser determines that the appraisal does not meet USPAP or other general appraisal standards, at the Open Spaces Division Manager’s discretion, taking into account the property’s value and the complexity of the issues, the Open Spaces Division Manager may direct the staff appraiser to (a) work with the appraiser to correct the deficiencies, or (b) order a second appraisal to be reviewed in the manner set forth herein, or (c) make the final determination of the range of value for the property.
- The format of the appraisals shall be determined by the Open Spaces Division Manager based on the complexity and type of appraisal required, and may be either summary or fully self-contained, and either narrative or non-narrative, with an emphasis on summary appraisals.
- Complete valuation appraisals shall not be necessary if either:
 - a) the agreed purchase price or the current assessed value by the appropriate taxing jurisdiction is \$100,000 or less; or
 - b) the property is substantially similar to nearby properties in the same target area which have been appraised for Metro within the immediately preceding twelve month period; or
 - c) valuation of the property is deemed to be “non-complex” by Metro’s review appraiser; or
 - d) the property is determined by the Refinement Plan and by the Open Spaces Division Manager as being a top priority acquisition where time is of the essence to acquire the property; or
 - e) Metro is acquiring the property with a local government partner, and the local government provides the appraisal for the property.

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In any of these cases, the property's value shall be established through one of the following methods, at the discretion of the Open Spaces Division Manager:

- a) an independent appraiser's written opinion of value; or
- b) restricted or residential-type appraisal (this method shall be used only for properties falling under paragraph a) above).

The review of such appraisals shall be an administrative review or a desk review only, confirming that the methodology used in the independent appraisal is appropriate.

If:

- a) the agreed purchase price or the current assessed value by the appropriate taxing jurisdiction is \$100,000 or less; or
- b) the property is substantially similar to nearby properties in the same target area which have been appraised for Metro within the immediately preceding twelve month period; or
- c) Metro is acquiring the property with a local government partner, and the local government provides the appraisal for the property;

then the property's value may be established by a summary report completed by the staff appraiser with an opinion of current value.

- The purchase price is within the established budget for the specific target area.
- "Due Diligence" efforts have been completed and no unusual circumstances have been found to exist. (See following section on *Due Diligence*.)
- The Open Spaces Division Manager or his/her designees shall notify the Council promptly following the closing of any real estate transaction.
- The Executive Officer or his/her designees shall prepare and present to the Council quarterly updates summarizing acquisition activity in each of the target areas.

Exceptions:

- If the lowest purchase price that can be negotiated for a property is no greater than 10% above the value or \$50,000, whichever is less, as established during the appraisal process outlined above, then the Executive Officer may authorize acquisition of the property, taking into account the following "public interest" factors:
 - the importance of the site based on the adopted Refinement Plans;

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- the impact to the overall goals and progress of the Refinement Plan that will result if the property is not purchased
 - the purchase price and impact on the budget for that target area, taking into consideration the potential for outside financial partners
 - the likelihood that the market value of the property will rise quickly within the subsequent 12 - 24 month period, rendering the purchase price a reasonable one within a relatively short time frame
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- If the lowest purchase price that can be negotiated for a property is greater than 10% above the value as established during the appraisal process outlined above, or in the event that unusual circumstances are found to exist during the *due diligence* process, the transaction shall not be authorized without the specific approval of the Metro Council. Prior to presenting the transaction to the Executive Officer, the Open Spaces Division Manager shall refer the transaction to the Open Spaces Acquisition Committee, consisting of the following members: Open Spaces Division Manager, Regional Parks and Greenspaces Director, Open Spaces Senior Real Estate Negotiator, legal counsel, a member of the Executive Officer's staff, and, if available, a citizen member of the Regional Parks and Greenspaces Department Advisory Committee. A quorum shall consist of one member of the Open Spaces staff, one member of legal counsel staff, and one member of the Executive Office staff. The Open Spaces Acquisition Committee shall fully review and consider the "public interest" factors set forth above in determining whether to recommend purchase of the property.

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 his/her recommendation via resolution 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 via resolution.

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DUE DILIGENCE

Definition:

“*Due diligence*” is the systematic inspection of the legal title and physical condition of real property before that property is purchased. *Due diligence* should be conducted far enough in advance of closing that resolvable problems can be adequately addressed and that any deal-breaking issues are discovered before too much effort is wasted on a futile transaction.

Rationale:

Due diligence assures protection of public investment in open space.

Components:

The primary areas of *due diligence* are described below. A more detailed list of items examined may be found in the Appendix under “Option Exercise and Closing Checklist.”

- **Appraisal:** An appraisal of the property must be completed to determine the property’s value and provide other useful information about the property, such as allowable uses, existing structures, and potential management issues. The appraisal shall be in the format described in the previous section regarding *Acquisition Parameters* and shall be reviewed in the manner set forth therein.

- **Examination of Title:**
 1. Metro must satisfy itself that the property is the seller’s to sell, that it understands what rights will be conveyed, that all parties necessary for the conveyance are involved, and that any rights that are not a part of the transaction will not defeat the purpose of the acquisition.

 2. *Due diligence* requires the review and inspection of the title report and related documents, including the deed to the current owner, recorded easements and other encumbrances, severed interests, water rights, access, taxes, liens, etc.

 3. Other documents which need to be inspected include unrecorded leases with existing tenants or farmers, management agreements, records pertaining to personal property, surveys, and agreements the seller may have entered into that may not be of record.

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- Inspection of the Property:

1. Location of Boundaries - *Due diligence* requires the review of any existing survey of the property. Absent a survey, Metro should identify the known or assumed property boundaries, unless such boundary identification would require a new survey and a survey is deemed unnecessary or uneconomical by the Open Spaces Division Manager. Additionally Metro must identify that both legal and physical access by the public to the property exist and are usable, unless the Open Spaces Division Manager determines that access restrictions are acceptable for that property.

2: Physical Inspection - Metro or its contractors and agents must physically inspect the property for environmental assessment purposes and to identify possible hazards, unrecorded easements and trespassers, and to make a preliminary evaluation of the condition of any structures and improvements (roads, fences, utilities), which shall be further evaluated during the stabilization period [see section regarding *Stabilization, supra*]. Environmental assessment procedures to be followed are included in the Appendix, entitled "Greenspaces Site Assessment Procedures."

- Unusual Circumstances: The following issues, when discovered during the due diligence period, shall be considered "unusual circumstances" requiring specific approval by the Metro Council prior to acquisition, as set forth in the section regarding *Acquisition Parameters*:
 - (a) hazardous waste concerns;
 - (b) special indemnifications Metro is being asked to provide or believes it should require;
 - (c) unusual deed or title restrictions or encumbrances which may affect Metro's ability to use the property as open space;
 - (d) the time frame imposed by a Seller is too short to accomplish all due diligence requirements;
 - (e) any other unusual circumstances which may arise not covered by the workplan which materially affect the decision whether or not to purchase a property identified on the target area confidential refinement map as determined by legal counsel and the Department Director.

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Greenspace Site Assessment Procedures

An environmental assessment of each potential acquisition site will be performed. The level of environmental assessment appropriate for each property will be determined on a case by case basis, using the guidelines set forth below.

For each property, an initial environmental assessment (“Initial Assessment”) will be performed by Metro REM personnel. If the work load exceeds personnel availability, Initial Assessments may be conducted by qualified contractors. The purpose of the Initial Assessment will be to assess the property’s potential environmental risk and determine whether a further level of environmental inquiry is necessary. The Initial Assessment shall include a site visit, an interview with the property owner, review of the title report, review of the Environmental Records Review Report for the target area in which the property is located, and observation of adjacent land uses.

If it is determined in the Initial Assessment that further environmental inquiry is not appropriate for the property, the Metro personnel performing the Initial Assessment shall write an environmental assessment report for the property, discussing his/her investigation and conclusions. If the Initial Assessment concludes that a full ASTM Phase I Environmental Assessment (“Phase I”) or higher level assessment is appropriate for the property, such assessment will be conducted by qualified independent contractors.

Except as set forth below, a full ASTM Phase I Environmental Assessment will generally be the standard level of environmental assessment required for property acquisitions where the property has been commercially developed or used commercially in the past. A Phase I shall be conducted by a licensed and insured consulting engineer, certified to be consistent with ASTM standards.

The following categories of properties may not require a Phase I, if confirmed by the Metro REM staff conducting the Initial Assessment:

- a) Single family residential or “ranchette” type parcels. These parcels are lands solely used for residential and related pastoral activities. Residences showing evidence of any commercial activity, such as an industrial type home based business, or farms where hazardous chemicals or materials have been used, or where surrounding properties increase the level of concern, would not qualify.
- b) Undeveloped lands. These parcels are lands that have no history of beneficial or economic use, such as wetlands or grasslands.
- c) Undeveloped forest land. These parcels are lands that have been used solely for timber production, without a forest related dwelling.