

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 17-4789  
CHIEF OPERATING OFFICER TO ACCEPT )  
THE DONATION OF PROPERTY IN THE ) Introduced by Chief Operating Officer  
SANDY RIVER GORGE TARGET AREA ) Martha J. Bennett, with the concurrence of  
) Council President Tom Hughes

WHEREAS, at the general election held on November 7, 2006, the voters of the Metro region approved the 2006 Natural Areas Bond Measure, authorizing Metro to sell \$227.4 million in general obligation bonds to fund natural area acquisition and water quality protection; and

WHEREAS, the Sandy River Gorge Target Area was identified in the Bond Measure as one of 27 regional target areas for land acquisition; and

WHEREAS, on September 6, 2007, the Metro Council adopted Resolution No. 07-3842 “Approving the Natural Areas Acquisition Refinement Plan for the Sandy River Gorge Target Area,” which Resolution approved the acquisition of properties within the target area; and

WHEREAS, a primary goal of the Sandy River Gorge refinement plan is to “Protect biological linkages by acquiring essential properties along the Sandy River and its tributaries for the protection of fish and wildlife habitat and water quality benefits;” and

WHEREAS, the Nature Conservancy of Oregon (“TNC”) is a valued partner whose mission is to conserve the lands and waters on which all life depends; and

WHEREAS, approximately 249 acres of real property owned by TNC and a 1.7-acre private parcel (together, the “Property”) that meets Metro’s goals in this area along the Sandy River is available for acquisition through fee title donation; and

WHEREAS, a complete Phase I environmental site assessment of the Property was not conducted, therefore the transaction does not meet all of the Acquisition Parameters and Due Diligence Guidelines in the 2014 Natural Areas Implementation Work Plan; and

WHEREAS, the lack of access from some of the parcels to a public road or right of way and the existence of a possibility of “reverter” in the proposed deed from The Nature Conservancy also constitute factors which are not within the Acquisition Parameters; and

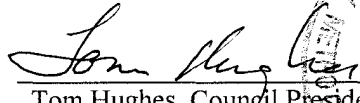
WHEREAS, the 2014 Natural Areas Implementation Work Plan states that the “COO may complete an acquisition transaction that does not meet all of the acquisition parameters only with prior Council review and approval;” and

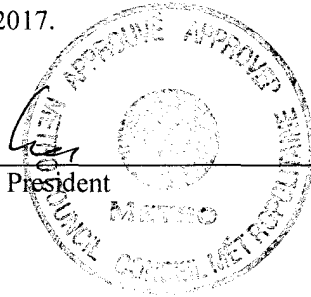
WHEREAS, bringing the Property into the existing 1,153 acre assemblage of properties acquired in the Sandy River target area since the passage of the Open Spaces, Parks and Streams bond measure in 1995 would generate benefits through comprehensive natural area management on a landscape scale and allow better coordination with other public agencies with interests in the area; now therefore

BE IT RESOLVED that the Metro Council finds that it is in the public interest to accept the donation of the Property, and therefore authorizes the Chief Operating Officer to:

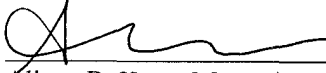
1. Accept the donation of the Property on terms and under conditions acceptable to the Chief Operating Officer and the Office of Metro Attorney; and
2. Execute such ancillary documents as may be required in connection with this acquisition, in the forms approved by the Office of Metro Attorney.

ADOPTED by the Metro Council this 11<sup>th</sup> day of May, 2017.

  
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Tom Hughes, Council President



Approved as to Form:

  
\_\_\_\_\_  
Alison R. Kean, Metro Attorney

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 17-4789, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ACCEPT DONATION OF CERTAIN PROPERTY IN THE SANDY RIVER GORGE TARGET AREA**

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Date: May 11, 2017

Prepared by: Dan Moeller, (503) 797-1819

## **BACKGROUND**

Metro has the opportunity to accept the donation of approximately 251 acres of land contained in 11 tax lots in scattered locations in the Sandy River Gorge target area of Metro's 2006 Natural Areas bond measure. The Nature Conservancy of Oregon ("TNC") has offered to donate 249 acres of the land to add to Metro's 1,153 acres in this area, and an adjacent private owner is also willing to donate a small 1.7 acre parcel. The TNC property and the adjacent property to be potentially donated to Metro are referred to in this Staff Report as the "Property." All acquisitions, including donations, must meet the due diligence standards set forth in the Natural Areas Work Plan (the "Work Plan"), adopted by the Metro Council via Resolution 14-4536 in August 2014, or be submitted to the Metro Council for approval. The potential donation of the Property falls slightly outside the parameters of the Work Plan, requiring authorization for the acquisition.

The Property, depicted on Attachment A to this Staff Report, has general characteristics of mature riparian forests, including Douglas Fir, Western redcedar, Western hemlock, Pacific yew and other species. Remnant old growth trees, springs and seeps are present with a low invasive plant load. This acquisition includes over two miles of Sandy River frontage. It meets the goals of the Refinement Plan for the Sandy River Gorge Target Area, adopted by the Metro Council in September, 2007 via Resolution 07-3842 by acquiring essential properties along the Sandy River and its tributaries for the protection of fish and wildlife habitat and water quality benefits and by working with TNC and the adjacent property owner as partners to achieve objectives and maximize the leveraging of regional bond funds.

The Work Plan states "Metro shall contract with an environmental professional to conduct a Phase 1 Environmental Assessment in accord with the requirement of the federal All Appropriate Inquiries and in accord with applicable state of Oregon law and regulation..." as part of the due diligence carried out by the Office of the Metro Attorney. Metro hired an environmental consultant to perform all the components of a Phase 1 except for an on-the-ground site reconnaissance. This is because the Property is known to have been under the control of the TNC and the adjacent owner for many years, and the locations are remote and not easily accessible. Some of the land, as noted below, lacks legal access entirely. TNC has agreed to indemnify Metro against any liability associated with the environmental condition of the Property donated by TNC. The consultant's scope of Phase I due diligence related to the Property included a review of the historic land use of the site, a search through records for known environmental issues, and a review of published information regarding the geology, hydrology and topographical information of the Property. Site reconnaissance was conducted by Metro science and land management staff, accompanied by TNC land management staff in March and April of 2017.

Two additional elements of the donations warrant mention as they would normally be unacceptable terms to the Natural Areas program. Some of the parcels are landlocked with no legal access to a public street or right of way. However, they are accessible by the river and have historically been accessible by cooperation from the adjoining landowners. In some cases, the adjoining landowner is the US government. The deed that will convey the TNC properties to Metro contains a possibility of "reverter," such that if the property is no longer held in public trust for the protection, enhancement, and restoration of habitat for fish, wildlife, and water quality, TNC has the right to take back the property.

It is the opinion the Office of the Metro Attorney that any risk associated with these circumstances is low and manageable. This acquisition represents an opportunity to connect public lands in multiple locations, facilitating land management and enabling a consistent approach to habitat conservation throughout the Sandy River Gorge.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

None.

### **2. Legal Antecedents**

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisitions and Water Quality Protection,” was adopted on March 9, 2006.

The voters’ approved Metro’s 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3842, “Approving the Natural Areas Acquisition Refinement Plan for the Sandy River Gorge Target Area,” was adopted on September 6, 2007.

Resolution No. 14-4536, “For the Purpose of Amending and Updating the Natural Areas Work Plan,” adopted by the Metro Council on August 14, 2014.

### **3. Anticipated Effects**

Metro will acquire the Property, pursuant to the terms of the donation agreements from The Nature Conservancy of Oregon and a private landowner. The Property will be managed by Metro staff.

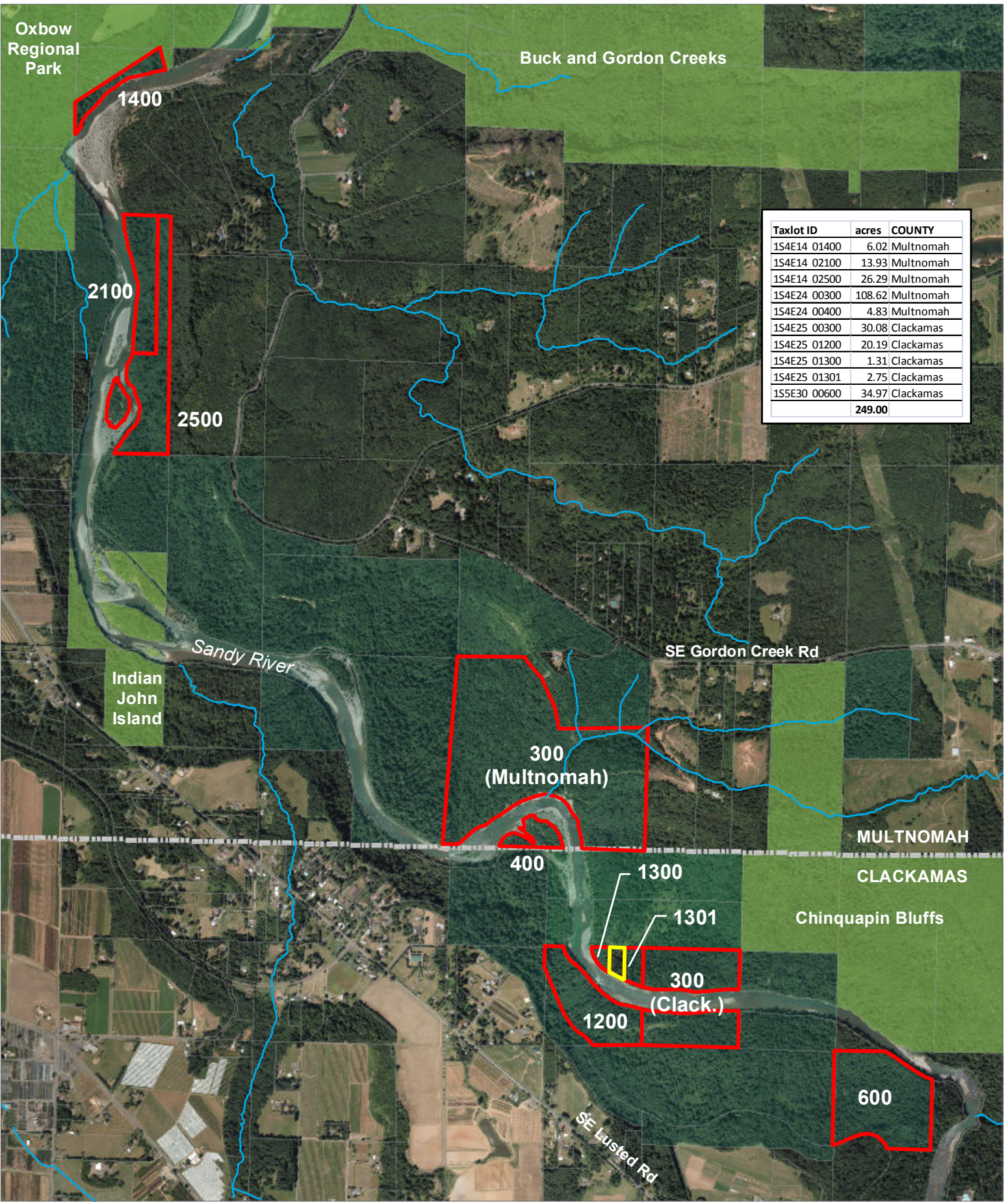
### **4. Budget Impacts**

Funds to conduct due diligence related to this donated Property will come from the 2006 Natural Areas Bond Measure.

## **RECOMMENDED ACTION**

Staff recommends the adoption of Resolution 17-4789.





**SANDY RIVER TARGET AREA**

**TNC Properties - 249 acres**

**Legend**

- TNC property to be conveyed to Metro
- 1.76-acre property to be donated to Metro
- Existing Metro property
- Other public and/or conservation land

