

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 98-2702
EXECUTIVE OFFICER TO PURCHASE)
PROPERTY IN THE EAST BUTTES/BORING) Introduced by Mike Burton
LAVA DOMES TARGET AREA) 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 certain park-related capital improvements; and

WHEREAS, on July 25, 1996 via resolution 96-2361, the Metro Council adopted a refinement plan for the East Buttes/Boring Lava Domes regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, the East Buttes/Boring Lava Domes target area refinement plan identifies a corridor of undeveloped land extending from City of Gresham-owned open space to the Clackamas River as a viable wildlife habitat corridor upon which Metro should focus its open space acquisition efforts; and

WHEREAS, Metro purchased 60 acres within this corridor in February, 1997, permanently protecting the top and south slope of a forested butte; and

WHEREAS, the north slope of the same butte contains nine properties that include the site of a landfill that operated from the mid-1960s until 1972 ("the Landfill"); and

WHEREAS, the Landfill area has been capped with soil, subdivided, and marketed as single family homesites; and

WHEREAS, home construction is beginning on two of the Landfill lots, and the remainder of the lots are being listed for sale, the development of the area threatens to isolate Metro's property and undermine the target area objective of acquiring an undeveloped and viable habitat corridor; and

WHEREAS, Metro has negotiated contracts to purchase several of the undeveloped Landfill sites, contingent upon the approval of Metro Council, and upon the execution of a Prospective Purchase Agreement with the Oregon Department of Environmental Quality (DEQ) which would release Metro from liability for any cleanup of hazardous waste relating to the Landfill that may otherwise be imposed by DEQ under Oregon's "superfund" hazardous waste cleanup law; and

WHEREAS, Metro's Office of General Counsel has tentatively negotiated the terms of the Proposed Prospective Purchaser Agreement, conditional on Metro Council approval; and

WHEREAS, the Prospective Purchaser Agreement would commit Metro to periodically test surface water and sediment near the landfill area for a period of time not to exceed five years, in exchange for DEQ's commitment not to impose liability for landfill cleanup upon Metro; and


WHEREAS, the purchase of land which is the site of a former landfill area creates an "unusual circumstance" for Metro's proposed acquisition of the site; and

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

BE IT RESOLVED,

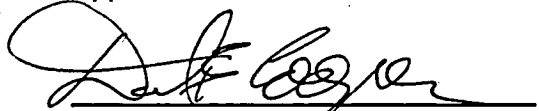
That the Metro Council authorizes the Metro Executive Officer to purchase properties in the East Buttes/Boring Lava Domes target area within the landfill area, as identified in the legal descriptions and tax account numbers attached hereto as Exhibits A and B.

ADOPTED by the Metro Council this 17th day of SEPTEMBER, 1998.



Jon Kvistad, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

EXHIBIT A

BUTUROAGA PROPERTY

A parcel of land in the Northwest quarter of the Northwest quarter of Section 28, Township 1 South, Range 3 East of the Willamette Meridian, in Clackamas County, Oregon, described as follows:

Commencing at the Northwest corner of Section 28 being marked by a Multnomah County brass cap monument and being the Northwest corner of that certain tract of land conveyed to John Ross Battoe and Darlene M. Battoe, husband and wife, recorded on June 28, 1972 as Recorder's Fee No. 72-18604, Clackamas County Recorder's Office; thence South $00^{\circ}20'13''$ East along the West line of said Northwest one-quarter and along the West line of said Battoe tract, a distance of 299.20 feet to the point of beginning of this description; thence continuing South $00^{\circ}20'13''$ East along the West line of said Northwest one-quarter, a distance of 681.80 feet to the Northwest corner of that certain tract of land conveyed to Charles E. Carvell and Marilyn J. Carvell, husband and wife, recorded on January 6, 1977 as Recorder's Fee No. 77-461, Clackamas County Recorder's Office; thence North $89^{\circ}53'00''$ East along the North line of said Carvell tract, a distance of 210.00 feet; thence North $00^{\circ}20'13''$ West parallel to the West line of said one-quarter, a distance of 681.80 feet; thence South $89^{\circ}53'00''$ West, a distance of 210.00 feet to the above-referenced point of beginning of this description.

Together with an easement for access, granted in deed recorded February 23, 1995, as fee no. 95-010385, described as follows:

Commencing at the Northwest corner of Section 28, being marked by a Multnomah County brass cap monument and being the Northwest corner of that certain tract of land conveyed to John Ross Battoe and Darlene M. Battoe, husband and wife, recorded on June 28, 1972 as Recorder's Fee No. 72-18604, Clackamas County Recorder's Office; thence South $00^{\circ}20'13''$ East along the West line of said Northwest one-quarter and along the West line of said Battoe tract, a distance of 189.75 feet to the Southwest corner of the said Battoe tract; thence North $89^{\circ}50'09''$ East along the South line of said Battoe tract, a distance of 411.26 feet to the point of beginning of this description; thence South $71^{\circ}17'01''$ East, a distance of 344.22 feet; thence North $89^{\circ}53'00''$ East, a distance of 125.41 feet; thence North $71^{\circ}17'01''$ East, a distance of 215.16 feet to a point on the Southwesterly right of way line of an existing 60.00 foot wide private access easement; thence Northwesterly 41.36 feet along the arc of a 191.61 foot radius circular curve to the right through a central angle of $12^{\circ}22'05''$ (long chord bears North $04^{\circ}24'21''$ West, a distance of 41.28 feet) to the above referenced point of beginning of this description.

EXHIBIT A

BOROS PROPERTY

A parcel of land in the Southwest one-quarter of the Southwest one-quarter of Section 21, Township 1 South, Range 3 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, and being a portion of that tract of land described in the Deed recorded in Book 832, Page 178 on April 28, 1944, in the Multnomah County Deed Records, and more particularly described as follows:

Beginning at a brass cap survey monument for the Southeast corner of the Southwest one-quarter of the Southwest one-quarter of said Section 21; thence South $89^{\circ} 29' 36''$ West along the South line of said Section 21, a distance of 368.19 feet; thence North $00^{\circ} 41' 20''$ East parallel to the West line of said Section 21, a distance of 656.53 feet; thence North $36^{\circ} 07' 34''$ East, a distance of 66.85 feet to a point in the Southwestern right of way line of Southeast Rodiun Road (Multnomah County Road No. 1089-40); thence along said Southwestern right of way line the following courses and distances: South $53^{\circ} 52' 26''$ East a distance of 154.46 feet; South $60^{\circ} 23' 46''$ East a distance of 216.37 feet; South $34^{\circ} 16' 26''$ East a distance of 17.77 feet to a point in the East line of the Southwest one-quarter of the Southwest one-quarter of said Section 21; thence South $00^{\circ} 14' 05''$ West leaving said Southwestern right of way line and along said East line a distance of 494.59 feet to the above referenced brass cap.

EXHIBIT A

POIRIER PROPERTY

PARCEL I:

The East one-half of the Northwest one-quarter of the Northwest one-quarter of Section 28, Township 1 South, Range 3 East of the Willamette Meridian, in the County of Clackamas and State of Oregon.

PARCEL II:

The North 132 feet of the West one-half of the Northwest one-quarter of the Northwest one-quarter of Section 26, Township 1 South, Range 3 East of the Willamette Meridian in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM any portion lying within the boundaries of a tract of land conveyed to John Ross Battoe, et ux, by deed recorded June 28, 1972 as Recorder's Fee No. 72-18604, Clackamas County Records.

PARCEL III:

A tract of land situated in the Northwest quarter of Section 28, Township 1 South, Range 3 East of the Willamette Meridian in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Northwest corner of said Section 28, Township 1 South, Range 3 East of the Willamette Meridian, from said place of beginning, thence North 89° 55' East along the Northerly line of said Section 28, Township 1 South, Range 3 East, 497.15 feet to a 5/8 inch iron rod at the center line intersection of a 60.00 foot road right of way (Station revised from 501.79); said point being the Northeast corner of that certain tract of land as described in deed to John Ross Battoe, et ux, recorded June 28, 1972 as Recorder's Fee No. 72-18604, Film Records, and the true point of beginning of the tract to be described; thence Southerly along the Easterly line of said Battoe Tract said line being the center line of the aforementioned 60.00 foot right of way, a distance of 197.50 feet to the Southeast corner thereof; thence South 89° 50' 09" West along the South line of said Battoe Tract a distance of 432.04 feet to the Southwest corner of said Battoe Tract, said point being on the West line of said Section 28, thence South 0° 20' 13" East along said West line a distance of 800.25 feet, more or less, to the Northwest corner of that certain tract of land as described in deed to Alfred S. Hayward, recorded January 6, 1977 as Recorder's Fee No. 77-000461, Film Records; thence North 89° 53' East along the North line of said Hayward Tract a distance of 660.00 feet to the Northeast corner thereof; thence South 0° 20' 30" East along the East line of said Hayward Tract a distance of 330.00 feet to the Southeast corner thereof, said point being on the South line

(Continued)

of the Northwest one-quarter of the Northwest one-quarter of said Section 28, thence North 89° 53' East along said South line a distance of 660.00 feet to the Southeast corner of said legal subdivision; thence North along the East line thereof, a distance of 1320.00 feet to the Northeast corner thereof, thence South 89° 55' West along the North line of said legal subdivision a distance of 850.85 feet, more or less, to the true point of beginning.

EXCEPT THEREFROM the East one-half of the Northwest one-quarter of the Northwest one-quarter of Section 28, Township 1 South, Range 3 East of the Willamette Meridian, in the County of Clackamas and State of Oregon.

AND EXCEPT THEREFROM the North 132 feet of the West one-half of the Northwest one-quarter of the Northwest one-quarter of Section 28, Township 1 South, Range 3 East of the Willamette Meridian, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM any portion lying within the boundaries of a tract of land conveyed to John Ross Battoe, et ux, by deed recorded June 28, 1972 as Recorder's Fee No. 72-18604, Clackamas County Records, as disclosed by Warranty Deed from William L. Wiprud, Trustee for the Mark Thomas Profit Sharing True to Roy Martin Rusch recorded September 22, 1988 as Recorder's Fee No. 88-39489.

EXCEPTING THEREFROM any portion lying within that tract of land conveyed by deed recorded February 23, 1995 as Recorder's Fee No. 95-010385, Clackamas County Records.

EXCEPTING THEREFROM any portion lying within that tract of land conveyed by deed recorded June 2, 1994 as Recorder's Fee No. 94-046084, Clackamas County Records.

EXCEPTING THEREFROM any portion lying within that tract of land conveyed by deed recorded March 23, 1992 as Recorder's Fee No. 92-016474, Clackamas County Records.

EXCEPTING THEREFROM any portion lying within those tracts of land conveyed by deeds recorded January 27, 1995 as Recorder's Fee No. 95-04946, Clackamas County Records.

EXCEPTING THEREFROM the southerly 13 acres of tax lot 400, Section 28, T1S, R3E, W.M.

EXHIBIT A

MARINCUS PROPERTY

A parcel of land in the Southwest one-quarter of the Southwest one-quarter of Section 21, Township 1 South, Range 3 East, of the Willamette Meridian, in the County of Multnomah and State of Oregon, and being a portion of that tract of land described in the Deed recorded in Book 832, Page 178 on April 28, 1944 in the Multnomah County Deed Records and more particularly described as follows:

Beginning at a brass cap survey monument for the Southeast corner of the Southwest one-quarter of the Southwest one-quarter of said Section 21; thence South $89^{\circ} 29' 36''$ West along the South line of said Section 21, a distance of 368.19 feet to the true point of beginning of this description; thence continuing South $89^{\circ} 29' 36''$ West along said South line a distance of 291.81 feet to the Southwest corner of said described land; thence North $00^{\circ} 41' 20''$ East along the West line of said described land and parallel to the West line of said Section a distance of 742.50 feet to the Northwest corner of said described land; thence North $89^{\circ} 29' 36''$ East along the North line of said described land parallel to the South line of said section a distance of 291.81 feet to the Southwesterly right of way line of SE Rodium Road (County Road No. 1089-40); thence South $48^{\circ} 12' 26''$ East along said Southwesterly right of way line a distance of 32.35 feet to an angle point therein; thence South $53^{\circ} 52' 26''$ East continuing along said right of way line a distance of 17.65 feet; thence South $36^{\circ} 07' 34''$ West a distance of 66.85 feet; thence South $00^{\circ} 41' 20''$ West a distance of 656.53 feet to the above reference true point of beginning.

EXHIBIT A

NICHOLSON PROPERTY

A tract of land situated in the Northwest one-quarter of Section 28, Township 1 South, Range 3 East of the Willamette Meridian, Clackamas County, Oregon, being more particularly described as follows:

Commencing at the Northwest corner of Section 28, being marked by a Multnomah County brass cap monument, also being the Northwest corner of that certain tract of land conveyed to John Ross Battoe and Darlene M. Battoe, husband and wife, recorded on June 28, 1972 as Recorder's Fee No. 72-18604, Clackamas County Recorder's Office; thence South $00^{\circ}20'13''$ East along the West line of said Northwest one-quarter and along the West line of said Battoe tract, a distance of 189.75 feet to the Southwest corner of said Battoe tract; thence continuing South $00^{\circ}20'13''$ East along the West line of said Northwest one-quarter, a distance of 791.25 feet to the Northwest corner of that certain tract of land conveyed to Charles E. Carvell and Marilyn J. Carvell, husband and wife, recorded January 6, 1977, as Recorder's Fee No. 77-461, Clackamas County Recorder's Office; thence North $89^{\circ}53'00''$ East along the North line of said tract a distance of 210.00 feet to the point of beginning of this description; thence North $00^{\circ}20'13''$ West parallel to the West line of said one-quarter, a distance of 255.80 feet; thence North $89^{\circ}53'00''$ East a distance of 450.00 feet; thence South $00^{\circ}20'13''$ East a distance of 255.80 feet; thence South $89^{\circ}53'00''$ West, a distance of 450.00 feet to the above referenced point of beginning of this description.

Together with a 20.00 foot wide utility access easement being 10.00 feet on both sides of the following described center line:

Commencing at a 5/8 inch diameter iron rod located South $00^{\circ}20'13''$ East 651.00 feet and North $89^{\circ}53'$ East 660.00 feet from the Northwest corner of Section 28, Township 1 South, Range 3 East of the Willamette Meridian; thence South $00^{\circ}20'13''$ West parallel to the West line of the said Section 28, a distance of 235.08 feet to a 5/8 inch diameter iron rod; thence continuing South $00^{\circ}20'13''$ West a distance of 14.82 feet to the true point of beginning of this description; thence South $41^{\circ}47'04''$ East a distance of 10.63 feet to a point of curve; thence 109.62 feet along the arc of a 55.00 foot radius circular curve to the left through a central angle of $114^{\circ}11'33''$ (long chord is 92.35 feet and bears North $80^{\circ}07'09''$ East) to a point of non-tangency; thence North $23^{\circ}38'25''$ East a distance of 13.23 feet to a point on the Westerly right of way line of a 60.00 foot roadway and the terminus point of this description.

Exterior lines of said easement to lengthen and contact to interception with adjoining property and easement lines.

EXHIBIT B

**ADDITIONAL PROPERTIES INCLUDING A PORTION OF
THE FORMER LANDFILL AREA**

1. Waterman property, Parcel Number 1S3E21C 1100
2. Kahler Property, Parcel Number 13E28B 00600
3. Albus Property, Parcel Number 13E28B 00901
4. Duncan Property, Parcel Number 13E28B 00800

Staff Report

CONSIDERATION OF RESOLUTION NO. 98-2702 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE PROPERTY IN THE EAST BUTTES/BORING LAVA DOMES TARGET AREA

Date: September 8, 1998

Presented by:

**Charles Ciecko
Jim Desmond**

Proposed Action

Resolution No. 98-2702 requests authorization for the Executive Officer to purchase property in the East Buttes/Boring Lava Domes Target Area.

Background and Analysis

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

On July 25, 1996, via Resolution 96-2361, the Metro Council adopted a refinement plan which outlined a land protection strategy for the East Buttes/Boring Lava Domes regional target area. One objective of the plan is to protect a corridor of land extending south from open space property owned by the City of Gresham, following along a series of forested buttes. This open space corridor would serve primarily as a viable wildlife migration route, harboring large mammals such as deer and coyote, as well as a variety of migratory and resident bird species.

In February, 1997, Metro took its first step toward creating such a corridor by purchasing 60 acres south of Gresham, including the top and south slope of a butte. In an attempt to link this property to the City of Gresham-owned open space to the north, Metro entered into acquisition negotiations with landowners on the north slope of the butte. In the course of these negotiations, Metro discovered that approximately 12 acres, including nine properties (totaling approximately 50 acres) on the north slope of the butte, was the site of a landfill operation from the mid-1960s to 1972. Since 1972, the site has been capped with soil and subdivided. Subdivisions have sold to several landowners as single family homesites. Today, two homes are under construction, and several other homesites are being marketed for sale.

Because the former landfill is contiguous to Metro-owned property and within the open space corridor anticipated by the target area refinement plan, target area objectives, particularly connectivity, cannot be met if the property in question is not in public ownership. Consequently, Metro pursued negotiations with the owners of six of the nine properties which include portions of the landfill area. Three of these six properties are under contracts pending Metro's resolution of the environmental concerns arising from this area. One of the six was under a contract which expired. This property is currently listed for sale. Negotiations on the remaining properties await Metro's resolution of this issue.

Acquisition of any landfill site creates liability risk. This liability risk is mitigated by the relatively stable condition of the site. Both the U.S. Environmental Protection Agency (EPA) and the Oregon Department of Environmental Quality (DEQ) have studied the site. The landfill was added to DEQ's confirmed release list in 1993, allowing DEQ to require testing, remediation or clean-up. In

1994, DEQ determined that the immediate risk to human health from the landfill was insignificant, and that the landfill was a low priority for further DEQ action. DEQ now represents that it has no further plans to study the site. In 1995, an EPA investigation revealed that the unlined landfill may have received hazardous materials. However, EPA subsequently determined that the site did not currently pose a threat to human health, closed its file, and left site management up to DEQ. During Metro's due diligence, pollutants were detected at concentrations below DEQ cleanup levels within the landfill, and in an unnamed stream draining the landfill area. However, the impact of these pollutants on nearby Kelley Creek has been determined by DEQ to be minimal and a low priority for further action.

Metro has taken steps to further reduce liability risk by applying to enter DEQ's Prospective Purchaser Program, through which DEQ commits not to pursue Metro for funding to clean-up the site, should DEQ decide in the future that site clean-up is warranted. In return, Metro would agree to test sediments, groundwater, and surface water downslope from the landfill area periodically over the next two to five years.

Under the proposed Prospective Purchaser Agreement, Metro's liability risk arising from ownership of this property can be summarized as follows:

1. Liability for clean-up required by DEQ: DEQ may not impose environmental clean-up costs upon Metro unless Metro acts to contribute to or exacerbate the environmental condition of the Property.
2. Liability for clean-up required by EPA: Although the EPA will not formally agree to release Metro from further clean-up liability, the site has been given a low priority by EPA. It is important to note that, according to DEQ, the EPA has never imposed site cleanup costs on a party to a Prospective Purchaser Agreement.
3. Liability to third party private landowners: If affected by the contamination, nearby innocent landowners could seek compensation or contribution to the cost of environmental clean-up from Metro. However, in the opinion of the DEQ's Prospective Purchaser Program Coordinator, due to the size of the landfill area relative to the size of priority cleanup sites monitored by EPA and DEQ in the Pacific Northwest, the stability of the site, and the assessment of the site made by both EPA and DEQ, it is unlikely that either agency would require site clean-up by third party land owners.

In addition to the risk scenario outlined above, Metro would assume the cost of the water quality monitoring regime required by the Prospective Purchaser Agreement. This cost should not exceed \$2,500 in year one. Monitoring costs will most likely decrease in years two through five from \$1,800 per year to lesser amounts, depending on the annual review of test results. These monitoring costs will be paid out of bond funds as an acquisition cost for the first two years, and as a landbanking expense in years three to five, if required by DEQ.

Metro's acquisition of the nine landfill properties constitute an "unusual circumstance," requiring specific approval by the Metro Council, according to the Open Spaces Implementation Work Plan.

Findings

Acquisition of the nine properties containing a portion of a former landfill is recommended, assuming that current owners are willing sellers, based on the following:

- The East Buttes/Boring Lava Domes Target Area Refinement Plan identifies for protection a viable wildlife habitat corridor extending north from the Clackamas River to City of Gresham-owned open space, following along a series of forested buttes. The subject property encompasses a major portion of one of the more prominent of these buttes.
- Metro owns approximately 60 acres adjacent to the subject property. If the subject property is not acquired, the 60 protected acres will remain isolated, and the subject property will be developed. This outcome defeats the Target Area purpose, which is to establish a continuous and viable wildlife habitat corridor.
- Metro's acquisition of the property would prevent the construction of homes atop the landfill material.
- To the extent possible, Metro has minimized the risk inherent in acquiring a former landfill site by negotiating a Prospective Purchaser Agreement with DEQ.
- Metro has considered the risk involved in acquiring properties within the former landfill area and has concluded that the benefits of acquisition, specifically the preservation of a connected wildlife habitat corridor, outweigh this risk.
- This acquisition on these terms was recommended by the Real Estate Acquisition Committee, which met on September 8, 1998.

Budget Impact

Bond funds would supply acquisition money and periodic water quality testing for two years. These monitoring costs are estimated to be \$2,500 in the first year and \$1,800 or less in the second year. Monitoring costs in the third through fifth years, if required by DEQ, will be paid for out of landbanking expenses. Additional landbanking costs are expected to be minimal, due to the desire of both DEQ and Metro to disturb the site as little as possible.

Executive Officer's Recommendation

The Executive Officer recommends passage of Resolution No. 98-2702.