

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)	RESOLUTION NO. 98-2694
EXECUTIVE OFFICER TO ACQUIRE TWO)	
PARCELS (BROUGHTON BEACH AND)	
PORTAGE MARINE) FROM THE PORT OF)	Introduced by Mike Burton
PORTLAND WHICH ARE LOCATED IN THE)	Executive Officer
COLUMBIA SHORELINE TARGET AREA)	

WHEREAS, In July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified regionally significant natural area including the Columbia Shoreline; and

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

WHEREAS, in June 1996, the Metro Council adopted a refinement plan for the Columbia Shoreline and Islands Target Area; and

WHEREAS, Metro desires to acquire two parcels which are located along the Columbia River and identified as Tier I properties in the refinement plan; and

WHEREAS, the amended Open Space Implementation Work Plan adopted in January 1997, provides that the Metro Council approval is required for purchases involving "unusual circumstances", and

WHEREAS, the proposed real estate transaction, as set forth in the Sale Agreement and Receipt for Earnest Money and related documents between the Port of Portland and Metro, regarding the Broughton Beach and Portage Marine parcels as set forth in Exhibit A, involves "unusual circumstances," now therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to acquire those certain parcels pursuant to the terms and conditions set forth in the Sale Agreement and Receipt for Earnest Money and related documents between the Port of Portland and Metro, regarding the Broughton Beach and Portage Marine parcels as set forth in Exhibit A.

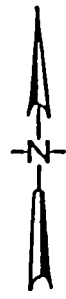
Adopted by Metro Council this _____ day of _____, 1998.

NOT ADOPTED

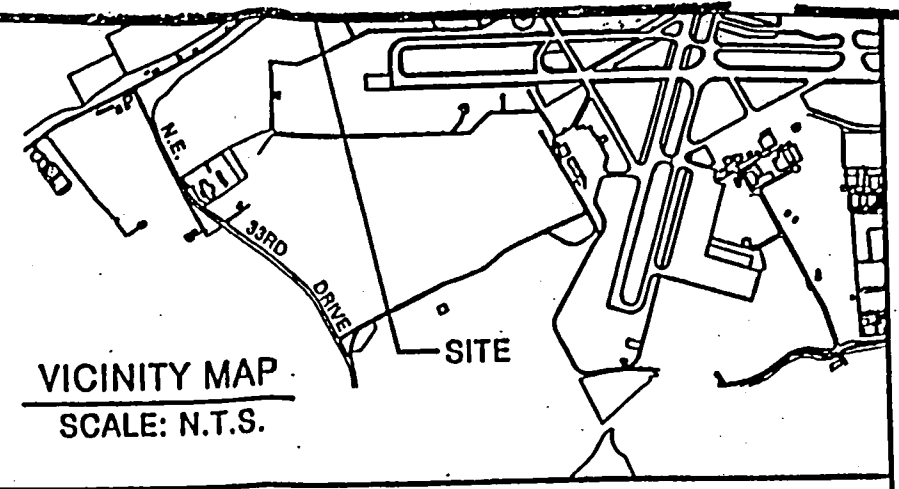
Jon Kvistad, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

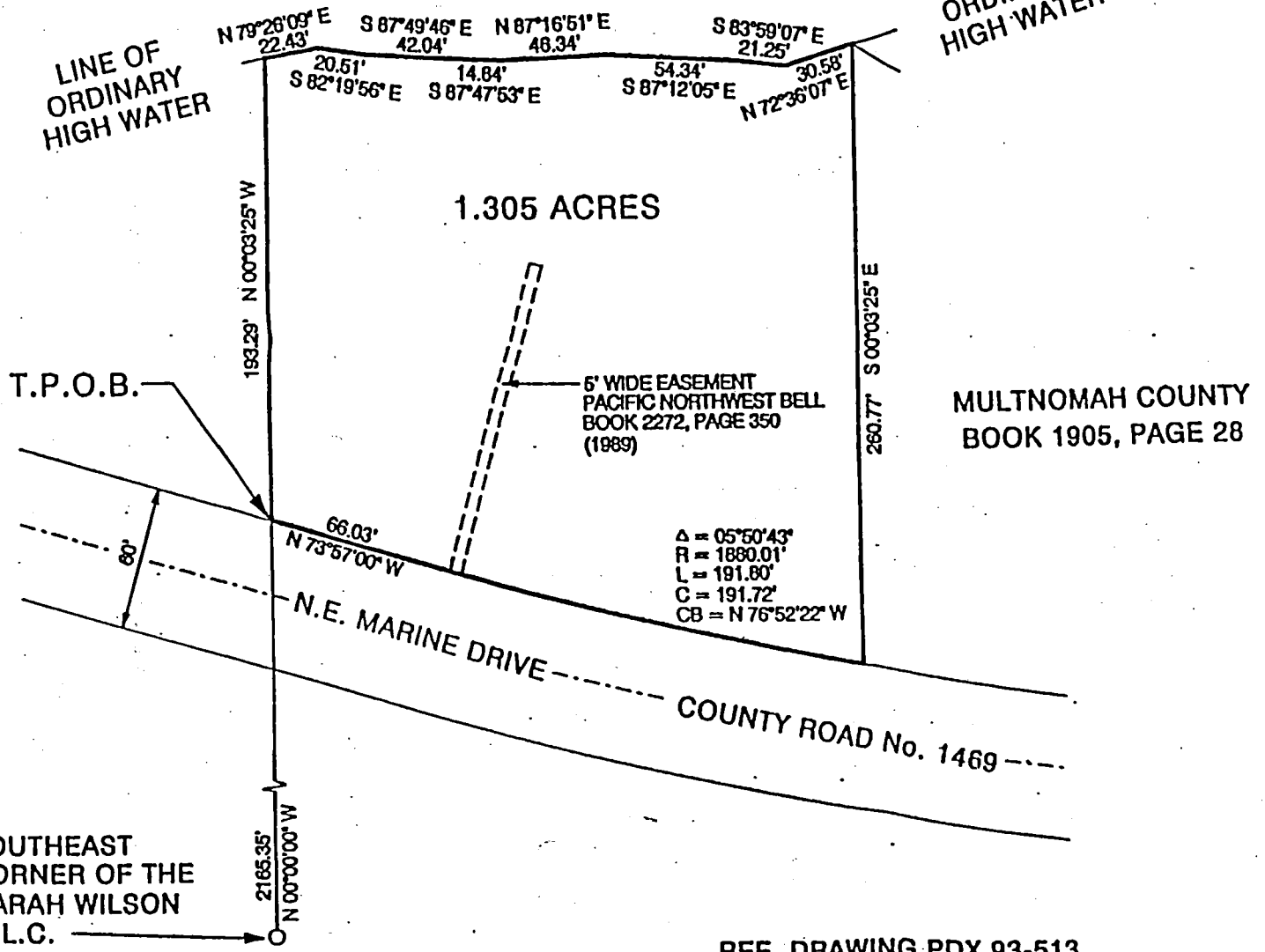


← COLUMBIA RIVER →



LINE OF ORDINARY HIGH WATER

LINE OF ORDINARY HIGH WATER



LEGAL DESCRIPTION

A tract of land in the Northeast quarter of section 1, Township 1 North, Range 1 East, Willamette, Meridian, Multnomah County, Oregon, described as follows:

Beginning at the intersection of the East line of the Sarah Wilson D.L.C. with the North line of N.E. Marine Drive, County Road No. 1469, formerly known as Bridgeton Extension No. 1167, and recorded in field book 523 of the Multnomah County Road Department, and the TRUE POINT OF BEGINNING; thence North 00°03'25\" West along the East line of the Sarah Wilson D.L.C. 193.29 feet to the line of ordinary high water on the South bank of the Columbia River; thence, leaving the East line of the Sarah Wilson D.L.C., following the line of ordinary high water upstream the following courses: North 79°26'09\" East 22.43 feet; thence South 82°19'56\" East 20.51 feet; thence South 87°49'46\" East 42.04 feet; thence South 87°47'53\" East 14.84 feet; thence North 87°16'51\" East 46.34 feet; thence South 87°12'05\" East 54.34 feet; thence South 83°59'07\" East 21.25 feet; thence North 72°36'07\" East 30.58 feet to the northwest corner of that tract conveyed to Multnomah County by deed recorded July 2, 1958 in book 1905, page 28, records of Multnomah County Auditor; thence leaving the line of ordinary high water South 00°03'25\" East along the West line of said Multnomah County tract 260.77 feet to a point on the North right-of-way line of N.E. Marine Drive; thence, leaving the West line of said Multnomah County tract, along the North right-of-way line of N.E. Marine Drive along the arc of a 1880.01 foot radius curve to the right through a central angle of 05°50'43\" a distance of 191.80 feet to a point which bears North 76°52'22\" West 191.72 feet from the last described point; thence North 73°57'00\" West 66.03 feet to the TRUE POINT OF BEGINNING; containing 1.305 acres.

Subject to a 5 foot wide easement granted to Pacific Northwest Bell recorded in Book 2272, Page 350, 1989; and Multnomah County Drainage District easements recorded in Book 649, Page 253 and Book 651, Page 403.

Exhibit A-1

4-OCT-1995 13:15
PLACING
ALONG LONG LONG LONG LONG LONG LONG LONG LONG LONG

REF. DRAWING PDX 93-513

NO.	DATE	BY	REVISIONS	CK'D	APP'VD



PORT OF PORTLAND
PORTLAND, OREGON

AVIATION PROPERTIES

51899 - 205
PROJECT NUMBER

REGISTERED PROFESSIONAL LAND SURVEYOR

Oct. 3, 1995

Charles L. Wiley

OREGON

CHARLES L. WILEY
2474

EXP: 06/30/96

DESIGNED BY C. WILEY

DRAWN BY P. REYNOLDS

CHECKED BY C. WILEY

DATE OCTOBER 1995

SCALE 1" = 50'

PORTLAND INTERNATIONAL AIRPORT

EXHIBIT PLAT

PORT OF PORTLAND / METRO

4141 N.E. MARINE DRIVE

SUBMITTED BY *W. L. Simpson*

DRAWING NO. PDX 95-44 1/1 (EP)

MANAGER, ENGINEERING DESIGN

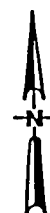
LEGAL DESCRIPTION

A TRACT OF LAND SITUATED IN SECTION 6, TOWNSHIP 1 NORTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH, AND THE STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF THE SARAH WILSON DONATION LAND CLAIM AT A 4 1/4" BRASS CAP IN CONCRETE FOR WITNESS CORNER AT THE INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF N. E. MARINE DRIVE (COUNTY ROAD NO. 1167), A DISTANCE OF 2,165.32 FEET NORTH OF THE SOUTHEAST CORNER OF SAID CLAIM; THENCE SOUTH 00°01'33" EAST A DISTANCE OF 31.20 FEET TO A POINT ON THE CENTERLINE OF SAID RIGHT-OF-WAY; THENCE ALONG SAID CENTERLINE THE FOLLOWING COURSES: SOUTH 73°55'08" EAST A DISTANCE OF 67.32 FEET; THENCE ALONG THE ARC OF A 1,910.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 10°22'59" A DISTANCE OF 348.12 FEET, TO A POINT THAT BEARS SOUTH 79°07'12" EAST A DISTANCE OF 345.65 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 84°18'24" EAST A DISTANCE OF 273.87 FEET; THENCE ALONG THE ARC OF A 3,820.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 5°51'58" A DISTANCE OF 391.11 FEET, TO A POINT THAT BEARS SOUTH 87°12'59" EAST A DISTANCE OF 390.84 FEET FROM THE LAST DESCRIBED POINT; THENCE NORTH 89°51'02" EAST A DISTANCE OF 49.12 FEET; THENCE LEAVING SAID CENTERLINE NORTH 00°01'33" WEST A DISTANCE OF 30.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF SAID COUNTY ROAD NO. 1167, SAID POINT BEING THE TRUE POINT OF BEGINNING, SAID POINT IS ALSO THE SOUTHEAST CORNER OF THAT PARCEL OF LAND DEEDED TO MULTNOMAH COUNTY AND DATED JUNE 12, 1958 IN BOOK 1905, PAGE 28, MULTNOMAH COUNTY DEED RECORDS; THENCE NORTH 89°51'02" EAST ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID ROAD NO. 1167, A DISTANCE OF 308.24 FEET; THENCE ALONG THE ARC OF A 1,940.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 3°42'59" A DISTANCE OF 125.84 FEET TO A POINT THAT BEARS SOUTH 88°17'29" EAST A DISTANCE OF 125.81 FEET FROM THE LAST DESCRIBED POINT; THENCE SOUTH 86°25'59" EAST A DISTANCE OF 150.16 FEET; THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE OF COUNTY ROAD 1167, SOUTH 00°01'59" EAST A DISTANCE OF 90.36 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF COUNTY ROAD 1469; THENCE, ALONG SAID NORTH RIGHT-OF-WAY LINE OF COUNTY ROAD 1469, SOUTH 82°57'00" EAST A DISTANCE OF 165.89 FEET; THENCE ALONG THE ARC OF A 2,835.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 1°24'50" A DISTANCE OF 69.98 FEET TO A POINT WHICH BEARS SOUTH 83°39'25" EAST A DISTANCE OF 69.98 FEET FROM THE LAST DESCRIBED POINT; THENCE, LEAVING THE NORTH RIGHT-OF-WAY LINE OF SAID COUNTY ROAD NO. 1469, NORTH 80°49'41" EAST A DISTANCE OF 606.78 FEET TO A POINT ON THE SOUTHERLY EXTENSION OF A PILE DIKE; THENCE NORTH 3°56'09" EAST ALONG THE AFORESAID SOUTHERLY EXTENSION A DISTANCE OF 163.75 FEET TO A POINT ON THE ORDINARY HIGH WATER LINE OF THE COLUMBIA RIVER; THENCE DOWN RIVER ALONG THE ORDINARY HIGH WATER LINE THE FOLLOWING COURSES TO ITS INTERSECTION WITH THE EASTERLY LINE OF SAID MULTNOMAH COUNTY PARCEL: NORTH 83°40'39" WEST A DISTANCE OF 138.48 FEET; THENCE NORTH 77°58'02" WEST A DISTANCE OF 299.00 FEET; THENCE NORTH 81°45'12" WEST A DISTANCE OF 480.61 FEET; THENCE NORTH 87°18'37" WEST A DISTANCE OF 460.35 FEET; THENCE NORTH 76°47'19" WEST A DISTANCE OF 62.60 FEET TO A POINT ON THE EAST LINE OF SAID BOOK 1905, PAGE 28, MULTNOMAH COUNTY DEED RECORDS; THENCE SOUTH 00°01'33" EAST ALONG SAID EAST LINE A DISTANCE OF 312.04 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 9.48 ACRES MORE OR LESS.

SUBJECT TO THE RIGHTS OF THE PUBLIC TO AND ACROSS ANY PORTIONS LYING IN PUBLIC ROADS. ALSO SUBJECT TO THE EASEMENTS AS GRANTED TO THE U.S. ARMY ENGINEERS AND MULTNOMAH COUNTY DRAINAGE DISTRICT NO. 1 FOR CONSTRUCTION AND MAINTENANCE OF LEVEES LYING WITHIN THE BOUNDS OF THE ABOVE DESCRIBED PARCEL. ALSO SUBJECT TO A BICYCLE AND PEDESTRIAN PATH EASEMENT DATED AUGUST 13, 1987 AND RECORDED SEPTEMBER 4, 1987 IN BOOK 2039, PAGE 2340, MULTNOMAH COUNTY DEED RECORDS.

19-NOV-1998 10:40
CHECK PRINT



WITNESS CORNER
EAST LINE
SARAH WILSON D.L.C.

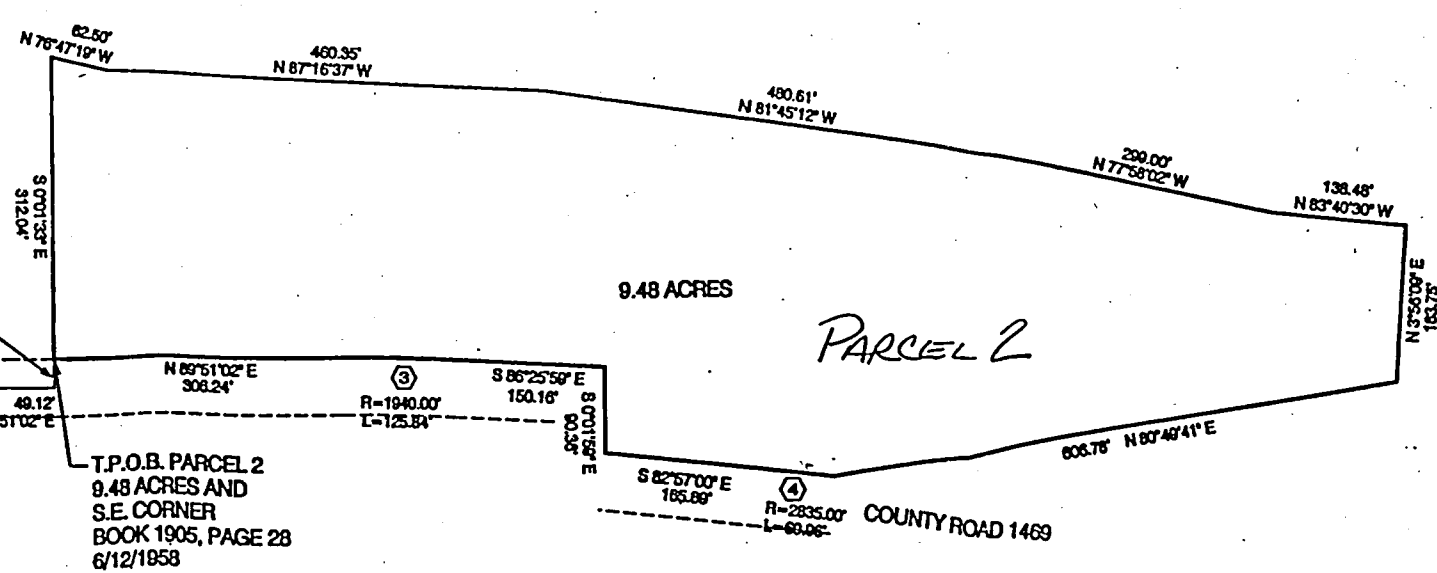
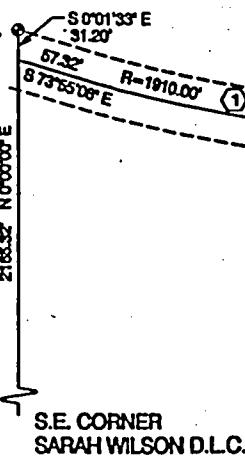


Exhibit A-2

NO.	DATE	BY	REVISIONS	NO.	DATE	BY	REVISIONS



PORT OF PORTLAND
PORTLAND, OREGON

DESIGNED BY: D. FOSTER
DRAWN BY: P. REYNOLDS
CHECKED BY: D. FOSTER
DATE: NOV 1998
SCALE: 1" = 100'

PORTLAND INTERNATIONAL AIRPORT
BROUGHTON BEACH PARCEL 2
EXHIBIT PLAT

PROJECT NUMBER: _____
DRAWING NO.: PDX 1998-34 1/1 (EP)

Staff Report

CONSIDERATION OF RESOLUTION NO. 98-2694 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ACQUIRE TWO PARCELS (BROUGHTON BEACH AND PORTAGE MARINE) FROM THE PORT OF PORTLAND WHICH ARE LOCATED IN THE COLUMBIA SHORELINE TARGET AREA

Date: 10/29/98

Presented by: Berit Stevenson
Charles Ciecko

PROPOSED ACTION

Resolution No. 98-2694 requests authorization for the Executive Officer to acquire from the Port of Portland two parcels known as Broughton Beach and Portage Marine which are located on either side on the M. James Gleason Boat Ramp in the Columbia Shoreline Target Area.

BACKGROUND AND ANALYSIS

Metro acquired the M. James Gleason Boat Ramp from Multnomah County in 1996 as part of the transfer of Multnomah County Parks to Metro. In March 1998, Metro, in partnership with the Port of Portland (Port), The Oregon State Marine Board (OSMB) and Multnomah County, completed a Master Plan for the area known as the Columbia River Management Unit which encompasses the Boat Ramp and the two adjacent parcels - Broughton Beach and Portage Marine. Approximately 61,000 visitors per year are expected to use these properties in FY 2000 and 2001. The Metro Council approved the Master Plan in March 1998.

Prior to and during this time, Metro and the Port have been involved in lengthy negotiations related to transferring ownership of the Broughton Beach and Portage Marine parcels from the Port to Metro (both parcels referred to as "the Property") attached hereto as Exhibit A. These negotiations have resulted in a Sale Agreement and Receipt for Earnest Money ("the Agreement") and related documents which embody the proposed real estate transaction. The acquisition would be funded using funds from the Open Spaces, Parks and Streams Bond Measure 26-26.

The transaction involves the Portage Marine parcel (1.3 acres) which is located just west of the boat ramp and a portion of Broughton Beach (9.5 acres) which is located just east of the boat ramp.¹ The remainder of Broughton Beach would continue to be owned by

¹ The Port will apply for a partition or lot line adjustment to permit the Port to sell the 9.5 acre portion of the beach property. Metro and Port staff are still in negotiations regarding the language and conditions of such land use action.

the Port. A purchase price of \$300,000 has been established for both parcels and is supported by an appraisal of the property. Also included in the transaction is the payment by the Port of \$20,000 per year for a five year period to assist with maintenance costs of the beach area. Metro currently manages an approximate 8 acre portion of Broughton Beach pursuant to a Lease Agreement entered into between the Port and Multnomah County, which has been in effect since 1977, without compensation.

These parcels are within the Columbia Shoreline target area which was identified in the Measure 26-26 Open Spaces, Parks and Streams Bond Measure as a regionally significant natural area. In June 1996, the Metro Council approved a Refinement Plan for the Columbia River Shoreline and Islands target area. The Refinement Plan identifies the subject parcels as Tier I properties and includes the following goal and objective related to these parcels:

Goal - Improve opportunities for public access to the Columbia River

Tier I Objective - Acquire lands along the shoreline suitable for future public access, including boater access.

The Master Plan also supports the acquisition of the two parcels and includes similar goals and recommendations related to improving access to the Columbia River and nearby islands. Specifically, the parcels are necessary to accommodate a much more efficient layout of the parking and boat launch area. These modifications will improve public safety dramatically, and will provide parking and other day use facilities for non-boater use of Broughton Beach. It is anticipated in the Sales Agreement that after Closing Metro would apply to the Oregon Division of State Lands (DSL) for a riparian lease for the property lying below the mean high water line, which is owned by DSL.

Metro and Port staff have been negotiating this transaction for over three years. Due to the Port's status as an international airport provider, the Property's proximity to the Portland International Airport, and internal Port policies, the proposed transaction is structured with a number of provisions and requirements not usually present in other Open Spaces transactions. Some of these provisions, as set forth below, constitute "unusual circumstances" requiring Metro Council approval pursuant to the Open Spaces Implementation Workplan.

A. No Environmental Representations or Warranties / Burden of Proof On Metro Re Environmental Condition of Property.

All properties purchased thus far with Open Spaces Bond Measure funds have been acquired using a purchase and sale agreement containing substantial representations and warranties by the seller regarding the environmental condition of the property. Appraisals determining the property's fair market value generally contain a standard appraisal assumption that no environmental conditions exist on the property which would affect the property's value. Some form of environmental representations and warranties are standard provisions in commercial acquisitions where fair market value is being paid for the property.

The Sales Agreement with the Port does not provide any form of representation or warranty regarding the environmental condition of the Property. Instead, the Port has required that the agreement contain an "As Is" clause, which specifically disclaims any representation or warranty by the Port about the condition of the Property, and specifically provides that Metro has not relied upon any implied or express warranties of the Port in connection with the Property.

Metro engaged the services of a private environmental consultant to perform a Phase I Environmental Site Assessment for both the Broughton Beach and the Portage Marine sites. The Sales Agreement contains a provision that the environmental assessments shall serve as the "baseline" for determination of future environmental liability. A Phase II Environmental Site Assessment for the Portage Marine sites was recommended by the consultant to investigate potential discharging of petroleum and/or solvent-contaminated wastewater to an on-site drywell and septic system. Soil samples were taken, which did not disclose adverse environmental conditions. An underground storage tank was previously decommissioned at the Portage Marine site, and due to the low levels of contaminants the Port received a "No Further Action" letter from the Oregon Department of Environmental Quality regarding the removal of the tank. No further environmental investigations were recommended by the environmental consultant.

The Phase I assessments were updated in October 1998. No new issues of environmental concern were identified for the Properties, other than scattered debris deposited from the river.

In addition to the "As Is" clause and lack of environmental representations and warranties, the Port has also required a provision in the Sales Agreement which shifts the burden of proof to Metro regarding potential future environmental liability

The Sales Agreement provides that the Port shall be responsible for the cleanup of a Hazardous Substance release discovered in the future, if Metro can "prove" that the release occurred within Port ownership and control or was caused by the Port. This is a different burden of proof than that which would otherwise be applicable under state and federal environmental statutes.

The Agreement does, however, specifically provide that the Port is not protected from liability for hazardous substances which the Port caused to be located or to migrate onto the Property after the Property is owned by Metro.

Based on the findings of the independent environmental consultant that no further environmental investigations or actions are recommended for the Property, and based on the provisions in the Sales Agreement providing for the Port's responsibility for any potential contamination caused by the Port, the environmental risk of acquiring the Property is low.

B. Use Restrictions/Repurchase Right.

Due to the Port's unique status as an international airport provider governed by Federal Aviation guidelines, as well as internal Port policies, the Port has required use and resale deed restrictions for the Property, as well as a "repurchase" provision for violating such restrictions.

The use restrictions imposed on the Property limit Metro's use of the Property only to those public recreation and auxiliary public recreation uses as identified in the recently-adopted Columbia River Gleason Boat Ramp/Broughton Beach Master Plan. The proposed deed provides that any changes or modifications in use pursuant to the Master Plan must be approved in writing by the Port. Moreover, the deed also restricts Metro from using the property for residential, church, hospital, school, or other purposes which are incompatible with airport noise, or which are competitive with airport services or facilities.

If Metro violates any of these use restrictions, or attempts to sell the Property, the Port has the right to repurchase the Property. The purchase price that the Port would have to pay Metro to repurchase the Property would be the price Metro paid the Port, increased by the percentage change in the CPI since the sale.

C. Noise and Avigation Easement and Release

The Port also requires, due to its status as an international airport provider and internal Port policies, that Metro grant the Port a "noise and avigation" easement over the Property, and that Metro provide the Port an "acknowledgment and release" regarding all lawful airport operations. The Port has informed Metro that these provisions are required by the Port in all land sales in the vicinity of the airport.

The "noise and avigation" easement and acknowledgment/release grants an easement and releases the Port, and its agents and contractors, including airlines, from "any and all noise, vibration, air currents, natural or artificial illumination, and such matter, debris, emissions, fumes, activities, and other interference, discomfort, or inconvenience" related to any lawful airport operations and activities, including aircraft take-offs and landings, aircraft maintenance, manufacture, and repair activities, including engine run-ups; operations of airport tenants or users, and ground and aviation activities. The proposed release from Metro releases the Port and other easement holders from all damages on the Property arising out of any lawful noise, vibration, air currents, natural or artificial illumination, matter, debris, emissions, fumes, activities, and other discomfort, interference or inconvenience that is cause by lawful airport operations.

Metro would not be prevented from seeking recovery against an airline or aircraft operator or owner for unlawful or negligent acts. Metro would also not be waiving or releasing the Port's liability for negligent acts of Port employees or agents who enter Metro property and cause contamination of, damage to, or destruction of Metro's property. Nor would the Port or other entity be protected from liability for Hazardous Substances the Port or other entity causes to be located or to migrate onto Metro's Property.

D. Dredge Sleeve Easement

The Port has also required that Metro grant the Port an assignable easement over a portion of the Broughton Beach parcel, for the Port or its assigns to access, use, and maintain an existing 36-inch dredge pipe sleeve for the Port's fill operations at the airport. During the dredging operations, the Port shall be permitted to place dredge pipe on the Broughton Beach property, extending from the dredge pipe sleeve near the top of the levee, to the Columbia River. The Port can only use the easement during the months of November through March. The dredging activity usually occurs only when there is a major construction project at the airport which requires substantial fill material, such as runway work. The Port must repair any damage done to Metro's planned parking lot or other improvements on the Property. The easement provides that the Port agrees to fully indemnify, defend, and hold harmless Metro from all claims, actions, and expenses related to the Port's use of the easement.

E. Management Commitment

Metro has been managing approximately 8 acres of Broughton Beach pursuant to a Lease Agreement entered into between the Port and Multnomah County in 1977. The existing Lease Agreement imposes no specific requirements on either Metro nor the Port, nor does it provide for the Port to compensate Metro for managing the property. The Sales Agreement, however, provides that the Port will pay Metro a maintenance fee for five years in the amount of Twenty Thousand Dollars (\$20,000) per year, which shall be used to manage the Broughton Beach area, extending down the Port-owned beach to the Sea Scouts property, for five years. Pursuant to the agreement Metro will post rules and regulations for use of the beachfront area; perform regular litter patrol and garbage removal, crowd control, and parking control; and provide portable toilets and trash receptacles. After the five year period ends, Metro will be responsible for managing the 9.5 acre portion of Broughton Beach which Metro will own, using its own management funds.

F. Use of property by State Parks

The transaction also includes a commitment by Metro to provide an area for use by Oregon Department of State Parks related to State Parks' management of near-by Government Island. State Parks' needs include minor office space and storage requirements, which will be accommodated within the Multnomah County sheriff's patrol facilities. All costs will be born by either State Parks or Multnomah County.

FINDINGS

Acquisition of the parcels from the Port is recommended based on the following:

- The acquisition accomplishes a specific project listing in the Bond Measure Fact Sheet: "M. James Gleason Boat Ramp - Improvements to launch facility on Columbia River in Northeast Portland."

- The acquisition accomplishes a Tier 1 objective in the Columbia Shoreline and Islands Target Area refinement plan to “ Acquire lands along the shoreline suitable for future public access, including boater access.”
- The Property is necessary to improve the site in accordance with the Master Plan. Specifically the parcels will improve overall facility efficiency and public safety significantly.
- The environmental risk on the Property is low, and the Port is not released from liability for contamination it causes on the Property.
- This acquisition on these terms was recommended by the Real Estate Acquisition Committee, which met on October 13, 1998.
- The receipt of \$20,000 per year for five years from the Port will cover the management expense of Broughton Beach for that five year period. This area has been historically managed by Multnomah County and Metro without any compensation from the Port.

BUDGET IMPACT

Funds to acquire the parcels are available in fiscal year 1998-99 Open Spaces Acquisition Division budget.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution 98-2694.