

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING)	RESOLUTION NO. 18-4935
METRO TO PARTICIPATE IN THE NORTH)	Introduced by Chief Operating Officer
AMERICAN WETLAND CONSERVATION ACT)	Martha Bennett in concurrence with
GRANT PROGRAM)	Council President Tom Hughes

WHEREAS, at the general election held on November 7, 2006, the voters of the Metro region approved Measure 26-80, the 2006 Natural Areas Bond Measure, in order to preserve natural areas and clean water and to protect fish and wildlife (the “Natural Areas Bond Measure”);

WHEREAS, the North American Wetlands Conservation Act, enacted December 13, 1989 (“NAWCA” or the “Act”), provides federal grant funding for wetlands conservation projects, in order to protect birds, including water fowl;

WHEREAS, Metro has, over the past 19 years, participated in numerous successful, multi-party NAWCA grants, pledging its non-federal, regional Natural Areas Bond Measure-funded acquisitions as match, resulting in approximately \$8.5 million dollars of federal investment for wetland conservation projects by Metro and its non-profit partners in the greater Portland region;

WHEREAS, pledging Metro property as non-federal match requires recording a federal Notice of Grant Requirements on the title to the pledged property, and according to recent interpretations of its regulations by the U.S. Fish and Wildlife service, such notice evidences Metro’s obligation to keep the property in conservation use or otherwise repay its “attributable share” of grant funds received (as this term is defined in the NAWCA Grant Standards);

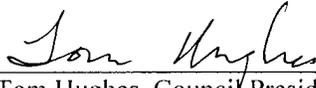
WHEREAS, the obligation to pay the “attributable share” recorded against Metro property, as this term is interpreted by the U.S. Fish and Wildlife Service, could be considered the transfer of a real property interest, for which Metro Council approval is required under Section 2.04.050 of the Metro Code;

WHEREAS, in a letter dated August 24, 2018, the U.S. Fish and Wildlife Service stated that if Metro were to sell or otherwise dispose of property encumbered with a Notice of Grant Requirements, Metro may, with approval from the U.S. Fish and Wildlife Service, substitute property of equal or superior resource value, rather than repay its attributable share; and

WHEREAS, in order to help ensure continued investment in wetland conservation in the greater Portland region, Metro would like to continue to apply for and receive NAWCA grant funds, which in turn will require Metro to pledge additional Metro properties as non-federal match; now therefore,

BE IT RESOLVED that the Metro Council hereby authorizes Metro's prior and on-going participation the NAWCA grant program, and authorizes the Chief Operating Officer to execute and record Notices of Grant Requirements on the title to pledged Metro property, in the form approved by the Office of Metro Attorney.

ADOPTED by the Metro Council this 6th day of December, 2018.



Tom Hughes, Council President

Approved as to Form:



Nathan A. S. Sykes, Acting Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 18-4935 AUTHORIZING METRO TO PARTICIPATE IN THE NORTH AMERICAN WETLAND CONSERVATION ACT GRANT PROGRAM

Date: December 6, 2018

Prepared by: Shannon Leary (503) 813-7547

BACKGROUND

Resolution 18-4935 requests authorization for the Metro to participate in the North American Wetland Conservation Act (“NAWCA”) grant program, a federally authorized grant program administered by the United States Fish and Wildlife Service (FWS) to implement the North American Waterfowl Management Plan and the Tripartite Agreement on wetlands between Canada, U.S. and Mexico. Federal grant funds are disbursed to federal, state, local agencies and non-governmental partners through a bi-annual competitive grant application process.

The program (herein after referred to as “NAWCA”) attracts applications from across the United States, including Hawaii and Alaska, and is extremely competitive. The overall program goal is to achieve wetland habitat conservation objectives for birds, generally, and waterfowl and water birds, specifically. The most successful applications are able to demonstrate ecological benefits across a wide range of wildlife species and their associated habitat types. The maximum grant award from NAWCA is \$1,000,000, and grant funds must be used to acquire, enhance and restore wetlands and associated upland habitat. Applicants must provide a minimum of \$1 in non-federal matching funds, real property assets, donations or other in-kind contributions (“match”) for each federal dollar requested from NAWCA. Given the competitive environment in which NAWCA grants have been submitted and selected in recent years, the ratio of non-federal dollars pledged toward the federal grant component has been in excess of \$2 for each federal dollar requested among successful applicants. Therefore, recent grant awards from NAWCA reflect considerable preference given to those applications that bring the highest level of local, non-federal investment relative to the federal funds requested, thus leveraging federal funds to the maximum extent.

In 2018, NAWCA awarded 24 grants totaling \$23.8 million. Across the 24 awards, partner non-federal match exceeded \$60 million. This round of awards included a \$1,000,000 grant to Columbia Land Trust and eight other regional partners, including Metro. The match pledged to this successful award was \$2,875,379 or 285 percent of the required match amount. Nationwide, the average match percentage provided by the 24 successful applicants was 254 percent or \$2.54: \$1.00.

Non-federal match is challenging for NAWCA grant applicants to aggregate at the levels required to remain competitive at the national level. Sources of state funding are very limited and competitive, and are subject to fluctuation with every state budget cycle. Local funds from county and municipal programs are even more limited, and foundation grants are typically small in size and infrequently made. Private donations and in-kind contributions from sellers willing to accept bargain sales in real property transactions are also typically quite modest.

Since 1999, Metro has been the single largest contributor of non-federal match for NAWCA grants for the Portland region, which, for programmatic and project planning purposes, has included the entire Willamette Valley, Sauvie Island, and the Columbia River floodplain immediately upstream and downstream of the Willamette River's confluence with the Columbia River. Over that time, Metro has provided \$13,208,138 of non-federal match to nine successful NAWCA grant applications. As a recipient of NAWCA grant funds across those nine grants, Metro will have received a total of \$2,267,083 in NAWCA funding for property acquisition, restoration and enhancement activity.

Constituting over 50 percent of the non-federal match provided to these nine NAWCA grants, match provided by Metro originates from properties acquired with 1995 and 2006 natural areas general obligation bond funding. Metro match has been pledged and committed in the form of real property acquired with bond funding (98 percent) and funding spent on restoration and enhancement of Metro properties (2 percent). In pledging real property assets as match, Metro designates certain acreage as being part of the NAWCA grant project, and a Notice of Grant Requirements (the "Notice") is recorded on the deed of most of those properties. The Notice specifies that the property is subject to the requirements of the NAWCA grant, and that the property will be managed in perpetuity for its wildlife habitat values, though there are also allowances for public use and the development of modest infrastructure that does not compromise the property's conservation values. In all cases, the terms of the Notice are consistent with Metro's intended purposes for the property that is subject to the Notice.

According to NAWCA grant rules, any sale of a property subject to the Notice must be approved by FWS prior to sale. According to recent interpretations of these grant rules by FWS, FWS may require repayment of any grant or match funds according to "attributable share" formula, in which the percentage of federal participation in the overall project of which the property in question was funded or pledged (or both) must be repaid to the FWS in the wake of a sale. This could apply even in cases where there was no financial contribution to the original acquisition, but where the property was pledged as match. The result of this approach would be that the FWS could receive sale proceeds from a property for which no federal funding was provided, and as such, the Notice could be considered to be a transfer an interest in the match properties, for which Metro Council approval is required under the Metro Code.

Alternatively, FWS has indicated in a letter dated August 24, 2018, that in lieu of the attributable share reimbursement approach to obtaining FWS approval for the sale of a Notice-encumbered property, Metro will be able to seek approval from FWS to replace Notice-encumbered acreage with acreage of equal or greater wetland value.

NAWCA grants containing non-federal match provided by Metro have resulted in NAWCA grant funding being distributed among dozens of conservation partners throughout the region. NAWCA-funded investments made by regional conservation partners have benefited numerous wetland-dependent species (including many species listed under the Endangered Species Act) as well as rare and imperiled habitat types. In short, the geographic reach, ecological impact and resource leverage provided by non-federal match provided by Metro natural area bond funding has been significant.

Since its inception, NAWCA grants have led to the acquisition, restoration and enhancement of thousands of acres in the greater Portland region. Among the available federal programs aimed at furthering wetland conservation goals, NAWCA has had the most significant financial impact in the region. The public benefit of Metro's continued participation in the NAWCA program is notable. Metro funding provides the majority of non-federal match throughout the region and natural areas bond funding has resulted in Metro's receipt of approximately \$2.3 million dollars of federal funding. The geographic reach and leverage provided by Metro funding has achieved habitat conservation outcomes that are focused in the Portland area but extend to the much larger region.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

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

Metro Code Section 2.04.050 requiring Metro Council approval prior to transfer of Metro property.

3. Anticipated Effects

Resolution 18-4935 will authorize Metro's prior and on-going participation in the North American Wetlands Conservation Act grant program, authorizing the recording of a Notice of Grant Requirements against Metro's real property, bolstering habitat conservation efforts in the greater Portland region and beyond.

4. Budget Impacts

Metro's continued participation in the North American Wetlands Conservation Act grant program will have no measurable effect on the Parks and Nature budget specifically or Metro's budget generally. Funds that are already being spent in pursuit of the Parks and Nature mission will provide additional leverage for additional funding to come to Metro and the region's conservation partners.

RECOMMENDED ACTION

The Chief Operating Officer recommends passage of Resolution No. 18-4935.