

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 06-3652A  
CHIEF OPERATING OFFICER TO )  
CONTRIBUTE TOWARDS THE PURCHASE )  
OF A CONSERVATION EASEMENT OVER A )  
PORTION OF THE TRY/ON LIFE )  
COMMUNITY FARM PROPERTY IN THE ) Introduced by Metro Councilors Brian  
TRYON CREEK LINKAGES TARGET AREA ) Newman, Carl Hosticka and Robert Liberty

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 capital improvements; and

WHEREAS, on May 16, 1996, via Resolution 96-2330 ("For the Purpose of Approving a Refinement Plan For Tryon Creek Linkages Target Area as Outlined in the Open Space Implementation Work Plan"), the Metro Council adopted a refinement plan for the Tryon Creek Linkages Target Area, which included a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, on September 27, 2001, the Metro Council approved Resolution No. 01-3106 ("For the Purpose of Modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to Direct Future Acquisitions of Properties That Satisfy Specific Identified Criteria"), modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to require Metro Council approval of all acquisitions in target areas, such as the Tryon Creek Linkages Target Area, where minimum acreage goals have been met; and

WHEREAS, Metro is currently negotiating the terms of a Purchase and Sale Agreement with the Oregon Sustainable Agriculture Land Trust ("OSALT") for the acquisition of a 1.5 acre conservation easement over the Try/on Life Community Farm Property ("Conservation Easement"), comprising approximately 6.9 acres surrounded on three sides by Tryon Creek State Park, identified as a Tier Two acquisition priority on the confidential tax-lot specific map for the Tryon Creek Linkages Target Area and described in the attached Exhibit A; and

WHEREAS, Metro has exceeded the minimum 20-acre goal established for the Tryon Creek Linkages Target Area, and therefore contributing toward the purchase of the Conservation Easement over the Farm Property requires formal Metro Council authorization pursuant to Council Resolution 01-3106; and

WHEREAS, Metro's participation in acquisition of the Conservation Easement meets the required criteria set forth in Council Resolution No. 01-3106 as follows: 1) the Farm Property is a key remaining parcel surrounded on three sides by Tryon Creek State Park, and its acquisition satisfies a specific Tier II objective in the refinement plan for the Tryon Creek Linkages Target Area; 2) the acquisition of the Conservation Easement benefits from a significant financial contribution from a local government, and state government partners, and leverages the protection of the larger 6.9 acre Farm Property; and

WHEREAS, Metro has determined that a home heating oil storage tank is located on the Try/on Life Community Farm Property, approximately 200 feet from the proposed Conservation Easement. Due

to the imminent expiration of the option to purchase the Try/on Life Community Farm Property, it is unlikely that it will be possible to determine whether or not and to what extent the oil tank has leaked prior to closing. Due to this hazardous substance concern, it is therefore necessary that the acquisition of the Conservation Easement be considered subject to "Unusual Circumstances," as set forth in the Open Spaces Bond Measure 26-26 Workplan; and

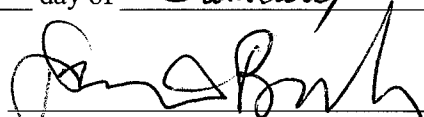
WHEREAS, the Agreement of Purchase and Sale will provide for the acquisition of the Conservation Easement subject to the following conditions: 1) entry by the City of Portland Bureau of Environmental Services (the "City") and Oregon State Parks Department into the Intergovernmental Agreement with Metro set forth below; 2) that Metro, the City and State Parks receive a recorded right of first refusal to purchase the Try/on Life Community Farm Property; and 3) that OSALT use best efforts to obtain for Metro the right to cure any default of the terms and conditions of any secured financing arrangement encumbering the Try/on Life Community Farm Property; and 4) that Metro receive an environmental indemnity from OSALT in the amount of \$400,000, protecting Metro against environmental investigation and cleanup costs relating to the underground home heating oil tank; and

WHEREAS, this resolution proposes that Metro enter into an intergovernmental agreement with the City and State Parks, providing that: 1) Metro, and the City each contribute to the purchase price of the Conservation Easement; 2) that Metro receive a fractional share of ownership in the Conservation Easement as a tenant in common, proportionate to Metro's contribution to the appraised value of the Conservation Easement; 2) that State Parks take on all management responsibility for the Conservation Easement, now therefore:

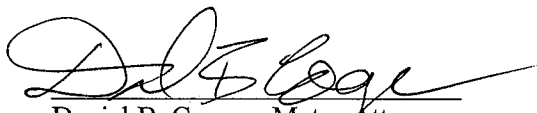
BE IT RESOLVED that the Metro Council authorizes the Metro Chief Operating Officer to contribute \$100,000 towards the purchase of the Conservation Easement over the Try/on Life Community Farm Property described in Exhibit A, subject to "Unusual Circumstances" and subject to the following terms and conditions:

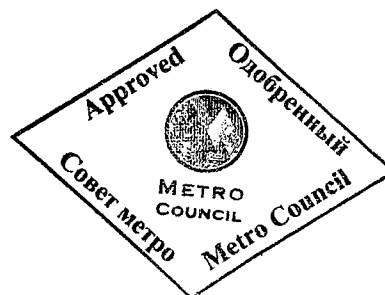
- 1) Metro must receive a pro-rata share of title to the Conservation Easement proportionate to its contribution as measured by the appraised value of the Conservation Easement;
- 2) Metro, the City and State Parks must receive a recorded right of first refusal to purchase the Try/on Life Community Farm Property;
- 3) Metro, the City and State Parks must have entered into an intergovernmental agreement providing for the acquisition of the Conservation Easement under the conditions set forth above herein and providing that State Parks shall manage the Conservation Easement;
- 4) Metro must receive an environmental indemnity from OSALT in the amount of \$400,000, protecting Metro against environmental investigation and cleanup costs relating to the underground home heating oil tank located on the Try/on Life Community Farm Property.

ADOPTED by the Metro Council this 5<sup>th</sup> day of January, 2006.

  
David Bragdon, Council President

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney





**Exhibit A**

**Legal Description**

When recorded return to:

Office of Metro Attorney  
600 NE Grand Avenue  
Portland, OR 97232-2736

## DEED OF CONSERVATION EASEMENT AND AGREEMENT

THIS DEED OF CONSERVATION EASEMENT AND AGREEMENT ("Conservation Easement" or "Easement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the Oregon Sustainable Land Trust ("OSALT"), ("Grantor"), in favor of Metro, a municipal corporation and political subdivision of the State of Oregon; the City of Portland, a municipal corporation, through its Bureau of Environmental Services; and Oregon State Parks, a political subdivision of the State of Oregon, through its Oregon Parks and Recreation Department; in equal shares, as tenants-in-common ("Grantees").

### RECITALS

WHEREAS, Grantor is the owner in fee simple of that certain real property (the "Farm Property") located at 11640 SW Boones Ferry Road, City of Portland, County of Multnomah, State of Oregon, legally described in the attached Exhibit A and incorporated into this Easement by this reference;

WHEREAS, Grantor wishes to permanently protect a portion of the Farm Property from development and preserve it in its natural state (the "Protected Property") legally described in the attached Exhibit B;

WHEREAS, the Protected Property possesses scenic, open space, educational and recreational values of great importance to Grantees, Grantor, and the people of the City of Portland, Multnomah County, the Portland Metropolitan Region, and the State of Oregon (collectively, "Conservation Values");

WHEREAS, the Protected Property consists of forested riparian zone and upland meadow gradually sloping into a tributary of Tryon Creek and Council Creek;

WHEREAS, the specific Conservation Values of the Protected Property will be documented in an inventory of relevant features of the Protected Property, on file at the offices of Grantees and incorporated into this Easement by this reference ("Baseline Documentation"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. Grantor and Grantees further agree that within three (3) months of the execution of this Easement, a collection of additional Baseline Documentation may be compiled by Grantees, and incorporated into the Easement by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability of this Easement or any of its provisions;

WHEREAS, Grantor, as owner of the Protected Property, have the right to identify, protect, and preserve the Conservation Values of the Protected Property in perpetuity, and desire to transfer such rights to Grantees;

WHEREAS, Grantees are political subdivisions of the State of Oregon and a state agency, whose purpose includes the protection, management and restoration of urban natural areas and areas in proximity to the urban area deemed to be of local, regional and statewide concern; and

WHEREAS, Grantees agree, by accepting this Easement, to honor the intentions of Grantor as stated in this Easement and to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation and the generations to come;

**NOW, THEREFORE**, in consideration of THREE HUNDRED THOUSAND DOLLARS (\$300,000), the mutual agreements set forth in the recitals above, the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Oregon, Grantor hereby grants to Grantees a perpetual Conservation Easement over the Protected Property of the nature and character and to the extent set forth hereinbelow. Grantor expressly intends that this Easement run with the land and be binding upon Grantor's personal representatives, heirs, successors, lessees, licensees and assigns in perpetuity. All references to "Grantor" herein apply equally to Grantor's personal representatives, heirs, successors, lessees, licensees and assigns.

1. **Conservation Easement.** The purpose of this Conservation Easement is to assure that the Protected Property will be retained forever predominantly in its natural condition as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem" (as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended and in regulations promulgated under this law), and to prevent any use of or activity on, the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property (the "Purpose"). Grantor intends that this Easement will confine the use of or activity on the Protected Property to such uses and activities that are consistent with this Purpose.
2. **Conservation Easement Rights Conveyed to Grantees.** To accomplish the Purpose of the Conservation Easement, the following rights are hereby conveyed to Grantees:
  - 2.1 **Identification and Protection.** To identify, preserve and protect in perpetuity and to enhance the Conservation Values of the Protected Property.
  - 2.2 **Access.** Access onto the Protected Property via the Farm Property for Grantees' staff, vehicles and equipment is hereby granted, subject to the limitations below, for the following purposes:
    - 2.2.1 Quarterly general inspections to assure compliance with this Easement;
    - 2.2.2 Emergency access and entry at other such times as are necessary if there is a reason to believe that a violation of the Easement is occurring or has occurred, for the Purpose of enforcing the provisions of this Easement; and
    - 2.2.3 Restoration, enhancement, and maintenance of the Protected Property's Conservation Values, including native vegetation and wildlife habitat.
  - 2.3 **Restoration and Enhancement of Native Vegetation and Wildlife Habitat.** To restore, at Grantees' discretion, but not obligation, native vegetation on the Protected Property, and to enhance wildlife habitat on the Protected Property. Restoration and enhancement may include but is not limited to:

- 2.3.1 The removal of existing non-native and competitive vegetation, and the planting and maintenance of native vegetation for the purpose of establishing a native plant community;
- 2.3.2 The alteration of the land surface to restore natural systems and enhance the Conservation Values of the Protected Property; and
- 2.3.3 The alteration of water courses to restore natural systems and enhance the Conservation Values of the Protected Property.
- 2.4. **Injunction.** To enjoin any use of, or activity in, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by neighboring property owners and unauthorized access by members of the public, and to require the restoration of such areas or features of the Protected Property as may be damaged by uses or activities contrary to the provisions of this Easement, all in accordance with Section 6 of this Easement.
- 2.5 **Enforcement.** To enforce the terms of this Easement, consistent with Section 6.
- 2.6 **Assignment.** To assign, convey, or otherwise transfer Grantees' interest in the Protected Property in accordance with Section 13.

3. **Prohibited Uses.** Grantor acknowledges and agrees that they will not conduct, engage in or permit any third party to engage in activity on or use of the Protected Property inconsistent with the Purpose of this Easement. Without limiting the generality of the foregoing, Grantor and its agents expressly agree that the following activities and uses are inconsistent with the Purpose of this Easement:

- 3.1 **Subdivision.** The legal or "de facto" subdivision of the Protected Property.
- 3.2 **Utilities.** The above or below ground installation of new utility systems or extensions of existing utility systems, including, without limitation, wells, water, sewer, septic systems and septic drain fields, power, fuel, and communication lines and related facilities. Notwithstanding the above, new utility systems may be installed upon portions of the Protected Property to support sustainable agricultural practices on the Farm Property with the express written permission of Grantees. Such permission may be granted or withheld at Grantees' sole discretion.
- 3.3 **Construction.** The placement or construction by Grantor of any buildings, structures, or other improvements of any kind including, without limitation, fences, roads, and parking areas.
- 3.4 **Alteration of Land.** The alteration of the surface of the land, including, without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat, or sod; except for Grantees' activities allowed under Section 2.3 above.
- 3.5 **Alteration of Water Courses.** The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses; except as deemed necessary by

Grantees to preserve, protect or enhance the Conservation Values of the Protected Property.

- 3.6 **Erosion or Water Pollution.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.
- 3.7 **Agricultural Activities.** The conducting of agricultural activities of any kind, including the establishment and maintenance of a livestock corral or pasture. Notwithstanding the above, crops may be farmed upon portions of the Protected Property using sustainable agricultural practices with the express written permission of Grantees. Such permission may be granted or withheld at Grantees' sole discretion.
- 3.8 **Waste Disposal.** The disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof or other unsightly, offensive, or hazardous waste or material on the Protected Property.
- 3.9 **Signs.** The placement of commercial signs, billboards, or other advertising material on the Protected Property.
- 3.10 **Hunting.** Hunting or trapping; except to the extent determined necessary by Grantees to preserve, protect or enhance the Conservation Values of the Protected Property.
- 3.11 **Mining.** The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.
- 3.12 **Wildlife Disruption.** The disruption of wildlife breeding, foraging and nesting activities.
- 3.13 **Domestic Animals.** Use of the site to exercise or train any domestic animal or livestock on the Protected Property.
- 3.14 **Herbicides or Pesticides.** The use of any herbicides or pesticides; except for Grantees' activities pursuant to Section 2.3 above and except as deemed necessary by Grantees to preserve, protect or enhance the Conservation Values of the Protected Property.
- 3.15 **Removal of Trees and Other Vegetation.** The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located on the Protected Property; except for exotic trees and vegetation removed as deemed necessary by Grantees to preserve, protect or enhance the Conservation Values of the Protected Property or to conduct educational or research activities consistent with the Purpose of this Easement.
- 3.16 **Introduced Vegetation.** The introduction of non-native wetland plants and non-native invasive species on the Protected Property. The planting or introduction of any native species of vegetation, except as deemed by Grantees to be consistent with Grantees' enhancement and retention of the Conservation Values of the Protected Property.

- 3.17 **Harvesting of Native Plants.** The gathering, picking, taking, or harvesting of native plants, or any parts thereof, from the Protected Property, except when used for habitat enhancement within the Protected Property.
- 3.18 **Off-Road Vehicles and Excessive Noise.** The operation of motorcycles, snow mobiles, or any other type of off-road motorized vehicles or the operation of other sources of excessive noise pollution.
- 3.19 **Use of Firearms.** The discharge of firearms, bows and arrows, air guns, slingshots, and similar devices.
- 3.20 **Fires.** Fires of all forms.
- 3.21 **Fireworks.** Use of all forms of fireworks.
- 3.22 **Motorized Vehicles.** Operation of motorized or mechanized vehicles or motorized equipment except when approved by Grantees and in association with the maintenance of Conservation Values, and except pursuant to the provisions of Section 2 herein.
- 3.23 **Amplified Sound.** Uses of devices which amplify or emit amplified sound.

4. **Reserved Rights.** Grantor specifically reserves for themselves and its personal representatives, heirs, successors and assigns, the following uses of and activities on the Protected Property that are consistent with the Purpose of the Easement and that are not prohibited by this Easement:

- 4.1 **Recreation.** The undertaking of passive recreational activities such as hiking and bird watching on the Protected Property, provided that such activities are conducted in a manner and intensity that does not adversely impact the Conservation Values of the Protected Property.
- 4.2 **Protection of Public Health or Safety.** Any activity necessary to protect public health or safety on the Protected Property that is required by and subject to compulsion of any governmental agency with authority to require such activity, provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided, or, if avoidance is not possible, minimized to the extent possible. Grantor shall provide Grantees with notice of their intent to take action under this subsection as set forth below.

5. **Notice.**

- 5.1 **Notice of Intention to Undertake Actions to Protect Health and Safety.** The purpose of requiring Grantor to notify Grantees prior to undertaking the activities allowed under Section 4.2 is to afford Grantees an opportunity to provide input to ensure that the activities in question are designed and carried out in a manner consistent with the Purpose of this Easement. Grantor shall notify Grantees in writing not less than 7 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantees to make an informed judgment as to its consistency with the Purpose of this Easement.

- 5.2 **Addresses.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt requested, postage prepaid, addressed as follows:

To Grantor: Oregon Sustainable Land Trust  
Attn: Will Newman

\_\_\_\_\_  
\_\_\_\_\_  
(503) 263-8392

To Grantees:

Metro  
Department of Parks & Greenspaces  
Attn: Jim Desmond  
600 NE Grand Avenue  
Portland, OR 97232

With a copy to:

Office of Metro Attorney  
Attn: Joel Morton  
600 NE Grand Avenue  
Portland, OR 97232

City of Portland  
Bureau of Environmental Service  
Attn:  
1900 SW 4<sup>th</sup> Avenue  
Portland, OR 97201

Oregon Parks and Recreation Department  
State Parks  
Attn: Dave Wright  
725 Summer Street, NE, Suite C  
Salem, OR 97301

or to such other address as either party designates by written notice to the other.

6. **Grantees' Remedies.**

- 6.1 **Notice of Violation.** If Grantees determine that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured. Grantor shall thereafter cure the violation or restore any portion of the Protected Property injured by Grantor.

- 6.2 **Grantor's Failure To Respond.** If Grantor fails to cure the violation within 30 days after receipt of notice thereof from Grantees, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fail to begin curing such violation within the 30-day period, or fail to continue diligently to cure such violation until finally cured, Grantees may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement.



6.3 **Grantees' Action to Remedy Violation.**

- 6.3.1 To enjoin the violation ex parte as necessary, by temporary or permanent injunction;
- 6.3.2 To require the restoration of the Protected Property to the condition that existed prior to any such injury; and
- 6.3.3 If complete restoration is not feasible, to recover from Grantor or third parties damages for injury to any of the Conservation Values protected by this Easement, occurring after the date of recording of the Easement, including damages for the loss of scenic, aesthetic, or environmental values. Damages recovered by Grantees shall be used to perform mitigation for said injury within the same watershed.

6.4 **Immediate Action Required.** If Grantees, in their sole discretion, reasonably determine that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantees may pursue their remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantees' rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement and Grantor agrees that Grantees' remedies at law for any violation of the terms of this Easement are inadequate and that Grantees shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantees may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantees' remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.5 **Cost of Enforcement.** Any costs incurred by Grantees in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor.

6.6 **No Waiver.** Grantees acknowledge its commitment to protect the Purpose of this Easement. Any forbearance by Grantees to exercise their rights under this Easement in the event of any breach of any terms of this Easement by Grantor, their agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantees of such term of any of grant of rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

6.7 **Waiver of Certain Defenses.** Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by legal counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense they may have against Grantees or their successors or assigns under or pertaining to this Easement based upon waiver, laches or estoppel.

- 6.8 **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantees to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control including, without limitations natural changes, fire, flood, storm or earth movement, or from acts of trespassers, or from any reasonable and prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.
7. **Costs, Liabilities and Insurance.** Grantor retains all responsibilities and shall bear all costs relating to the ownership of the Protected Property, including the maintenance of adequate comprehensive general liability coverage. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, or materials furnished to Grantor. Grantees shall be responsible for any activity performed or responsibility assumed by Grantees under Section 2 above. Grantees shall bear no responsibility for any other costs or liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property.
8. **Taxes.** Grantor shall pay or obtain payment before delinquency of all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish Grantees with satisfactory evidence of payment upon request. If Grantor allows the taxes to go into arrears, Grantees are authorized, but in no event obligated, to make or advance such payment of taxes upon ten (10) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate, and the obligation of Grantor to reimburse Grantees created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.
9. **Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantees and their elected officials, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any occurrence, omission, condition, or other matter relating to or on or about the Protected Property that is due to any act, or failure to act upon legal duty to do so, of Grantor, their successors and assigns and their invitees; (2) violations or alleged violations of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified parties on the Protected Property; and (3) Grantor's reserved rights under Section 4 and obligations under Sections 7 and 8. Grantor shall be afforded the full protection from liability to the public provided under Oregon Revised Statutes 105.672-696 (2001).
10. **Environmental Representations and Warranties.** Grantor represents and warrants that to the best of Grantor's knowledge:
- 10.1 There are no apparent or latent environmental defects in or on the Farm Property;
- 10.2 No Hazardous Materials, as hereafter defined, have been disposed, released, dumped, buried, or abandoned on the Farm Property, nor have any Hazardous Materials migrated

from off-site onto the Farm Property. Hazardous Materials shall include the following: those substances listed in ORS 465.200; those substances and defined as Hazardous Substances in CERCLA, 42 USC sec. 9601; those substances defined as pollutants or contaminants in CERCLA 12 USC sec. 9604(a)(2); and those substances defined as hazardous waste in RCRA, 42 USC sec. 6903(5).

- 10.3 Neither Grantor nor Grantor's predecessors in interest have taken Hazardous Materials from the Farm Property and disposed of said Hazardous Materials off the Farm Property.
- 10.4 There is no pending or threatened litigation affecting the Farm Property or any portion of the Farm Property that will materially impair the Conservation Values of any portion of the Farm Property. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

11. **Subsequent Transfer and Extinguishment.**

- 11.1 **Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court having jurisdiction. The amount of the proceeds to which Grantees shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined in accordance with applicable law. Grantees shall use all such proceeds to acquire a replacement conservation easement in the same watershed.

11.2 **Subsequent Transfers.** Grantor agrees to:

- 11.2.1 Incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;
- 11.2.2 Describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property; and
- 11.2.3 Give written notice to Grantees of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Grantees shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

12. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantees may mutually amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement

or the status of Grantees under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable), and ORS 271.715-795. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, and shall be recorded in the official records of Multnomah County, Oregon, and any other jurisdiction in which such recording is required.

13. **Assignment.** Grantees may assign this Conservation Easement to a qualified government or non-profit entity without the agreement of Grantor. Any other assignment of this Easement by Grantees or any subsequent assignment, must be approved by Grantor, which approval shall not be unreasonably withheld. As a condition of such transfer, Grantees shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantees shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. In the event that an assignee assumes the obligations of Grantees hereunder, then Grantees shall have no further liability with respect to this Agreement.

14. **Recording.** Grantees shall record this instrument in a timely fashion in the official records of Multnomah County, Oregon, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

15. **General Provisions.**

- 15.1 **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon.

- 15.2 **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of ORS Chapter 271. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

- 15.3 **Severability.** If any provision of this Easement, or its application to any person, entity, or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

- 15.4 **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 12.

- 15.5 **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.

- 15.6 **Successors and Assigns.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

- 15.7. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon assignment of the party's interest in the Easement or transfer of Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive assignment or transfer.
- 15.8 **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- 15.9 **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantees, its successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

GRANTOR:  
Oregon Sustainable Land Trust

By: \_\_\_\_\_  
Will Newman

Its: \_\_\_\_\_

**Exhibits:**

- A Legal Description of Protected Property
- B Legal Description of Grantees' "Farm Property"

**EXHIBIT A**  
**Legal Description of Protected Property**

**EXHIBIT B**  
**Site Plan**



**EXHIBIT C**  
**Legal Description of Grantees' "Farm Property"**

**EXHIBIT D**

**Grantees' State of Oregon**

)

) ss.

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared WILL NEWMAN of OREGON SUSTAINABLE LAND TRUST, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

My commission expires: \_\_\_\_\_

[SEE GRANTEES' ACKNOWLEDGMENTS ON NEXT THREE PAGES]

GRANTEES METRO, CITY OF PORTLAND and OREGON STATE PARKS do hereby accept the above  
Deed of Conservation Easement and Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

GRANTEE:  
METRO

By: \_\_\_\_\_  
Chief Operating Officer

State of Oregon            )  
                                      ) ss.  
County of Multnomah    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me \_\_\_\_\_, the  
undersigned Notary Public, personally appeared \_\_\_\_\_ as Chief  
Operating Officer of METRO, personally known to me (or proved to be on the basis of satisfactory  
evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he  
executed it.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

GRANTEE:  
CITY OF PORTLAND  
Bureau of Environmental Services

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of Oregon        )  
                              ) ss.  
County of Multnomah    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_ as \_\_\_\_\_ of CITY OF PORTLAND, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

GRANTEE:  
OREGON STATE PARKS  
Parks and Recreation Department

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of Oregon        )  
                              ) ss.  
County of Multnomah    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_ as \_\_\_\_\_ of OREGON STATE PARKS, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 06-3652 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO CONTRIBUTE TOWARDS THE PURCHASE OF A CONSERVATION EASEMENT OVER A PORTION OF THE TRY/ON LIFE COMMUNITY FARM PROPERTY IN THE TRYON CREEK LINKAGES TARGET AREA**

---

Date: January 5, 2006

Presented by: Jim Desmond

## **BACKGROUND**

Resolution No. 06-3652 requests authorization for the Chief Operating Officer to contribute \$100,000 towards the purchase of a Conservation Easement over an approximate 1.5-acre portion of the 6.9-acre Try/on Life Community Farm property (hereafter referred to as the "Farm Property") in the Tryon Creek Linkages Target Area, contiguous to Tryon Creek State Park.

This resolution proposes to authorize Metro to enter into an Agreement to contribute \$100,000 toward the purchase of a fractional interest in a Conservation Easement over a portion of the Farm Property, taking a pro-rata share of title as a tenant-in-common with the City of Portland through its Bureau of Environmental Services ("BES"), and the Oregon State Parks ("State Parks"). The anticipated location of the Conservation Easement on the larger Farm Property is depicted in attached Attachment 1.

BES has confirmed that they will contribute \$100,000 toward the purchase of the Conservation Easement, and State Parks is also considering A contribution of \$100,000. The Conservation Easement would permanently protect a portion (hereafter referred to as the "Property") of the Farm Property from development and preserve it in its natural state. The Conservation Easement would be subject to the terms and conditions of an Intergovernmental Agreement to be executed between Metro, BES, and State Parks, which would include a covenant to maintain the Property in compliance with the uses and restrictions described in the Metro Open Spaces Bond Measure and the assumption by Oregon State Parks or the City of Portland of all management responsibility for the Property. The purchase of the Conservation Easement requires Metro Council authorization pursuant to Resolution 01-3106 ("For the Purpose of Modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to Direct Future Acquisitions of Properties That Satisfy Specific Identified Criteria") because Metro has previously exceeded the minimum 20-acre goal established for the target area.

The Property is a portion of the larger 6.9-acre Farm Property, which consists of a rolling wooded meadow site surrounded on three sides by the 670-acre Tryon Creek State Park. Two houses and a barn are also situated on the western portion of the Farm Property. There is a small tributary of Tryon Creek that bisects the site and flows into Tryon Creek to the east of the Farm Property. If developed, the entire Farm Property – including the Property - would likely be improved with multiple single-family homes.

A 501(c)(3) non-profit organization known as the Try/on Life Community Farm currently holds an option to purchase the Farm Property for \$1,425,000. Metro's contribution of \$100,000 along with similar contributions from BES and Oregon Parks will assist the Try/on Life Community Farm in raising sufficient lending capital to close on their purchase option. Without the contributions from Metro, BES, and State Parks, it is questionable whether the Try/on Life Community Farm will be able to raise enough capital to exercise their option. In that event, it is probable that the Farm Property will be placed back on

the open market for sale to a potential developer.

Metro is currently negotiating the terms of an Agreement of Purchase and Sale for the Conservation Easement with the Oregon Sustainable Land Trust (“OSALT”) (once Try/on Life Community Farm has exercised their purchase option, they have agreed to assign title to the Farm Property to OSALT). OSALT is a not-for-profit corporation organized exclusively for charitable purposes, including holding and protecting rural and urban lands for agricultural use, and conducting research and education in the areas of sustainable production and distribution of food, fiber and building materials, for scientific, charitable and educational purposes. OSALT intends to lease the entire site – excepting the Conservation Easement area – to the Try/on Life Community Farm on a long-term ground lease in order to further OSALT’s stated aims of utilizing the site for charitable purposes of research, education, and demonstration regarding sustainable production and distribution of agricultural products. Under the terms of the ground lease the agricultural practices employed are to be “sustainable,” “organic,” or “biodynamic.” All other uses are prohibited without the prior written permission of the lessor.

Acquisition of the Conservation Easement over the Property is recommended because:

(a) The acquisition of the Property would meet two of the criteria set forth in Resolution 01-3106:

- “Acquire key remaining parcels adjacent to parcels already acquired by Metro or other parks or conservation entities ... consistent with the specific goals and objectives set forth in the refinement plan for that target area.” The Property and the larger 6.9-acre Farm Property of which it is a part was identified as a Tier II acquisition objective in the refinement plan for the Tryon Creek Linkages Target Area, which outlined the land protection strategy for the target area, all pursuant to Resolution 96-2330 (“For the Purpose of Approving a Refinement Plan for the Tryon Creek Linkages Target Area, as Outlined in the Open Space Implementation Work Plan”). Acquiring the Conservation Easement over the Farm Property meets the target area goal to “Protect and enhance the ecological integrity and recreation value of Tryon Creek.” The site is bordered on three sides by parkland and is highly desirable from a regional perspective due to its natural area features, including frontage along a tributary of Tryon Creek, which is regionally significant.
- “Within existing target areas and parcels that meet the objectives otherwise set forth in this resolution, particular emphasis should be given to acquisitions that would either (a) have a significant financial contribution from a local government or other outside partner ...” The public/private acquisition partnership between Metro, State Parks, the City of Portland Bureau of Environmental Services, OSALT, the Try/on Life Community Farm, the Friends of Tryon Creek, as well as other private donors represents a significant achievement. Metro’s contribution of \$100,000 represents only seven (7) percent of the overall Farm Property option price of \$1,425,000.

(b) Metro will own a proportional interest in the title to the Conservation Easement as a tenant in common with BES and State Parks, but stabilization, landbanking and restoration costs will not be borne by Metro, as State Parks will manage the Farm Property.

(c) A clear public benefit will result from Metro’s financial contribution toward the Conservation Easement. The contribution by Metro, BES, and State Parks will be utilized by OSALT / Try/on Life Community Farm to close on their purchase option and to obtain long-term financing for the larger 6.9-acre Farm Property. By providing its \$100,000 contribution, Metro is in effect helping to leverage protection of the entire 6.9-acre Farm Property from potential development. As the



titleholder to the Farm Property, OSALT will protect the Farm Property from any future residential development. Under the terms of OSALT's ground lease, the Try/on Life Community Farm will manage the Farm Property according to OSALT's stated aims of utilizing the site for charitable purposes of research, education, and demonstration regarding sustainable production and distribution of agricultural products.

- (d) As part of the structure of this acquisition, in addition to Metro's pro-rata share of the Conservation Easement, Metro will also receive a Right of First Refusal from OSALT over the entire Farm Property. In the unlikely event that OSALT should ever be forced to sell the Farm Property, Metro will have the right to match any bonafide offer to purchase the Farm Property outright. The underlying long-term lender has also agreed to include Metro in its contractual notification schedule, insuring that Metro would have the "right to cure" any future default before the larger Farm Property went into foreclosure.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

None.

### **2. Legal Antecedents**

In May 1995, Metro area voters approved the Open Spaces, Parks and Streams Bond Measure that authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and certain park-related capital improvements. Metro Code 2.04.026 (a) (3) requires that the Chief Operating Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase of real property. The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 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") established acquisition parameters that authorized the Chief Operating Officer to purchase property within the Council-approved target area refinement plan maps. Via Resolution 96-2330 ("For the Purpose of Approving a Refinement Plan for the Tryon Creek Linkages Target Area, as Outlined in the Open Space Implementation Work Plan"), the Metro Council adopted a refinement plan, which outlined a land protection strategy for the Tryon Creek Linkages. Through that resolution, the Metro Council also approved the target area refinement plan tax-lot specific map, which includes the subject Marlantes Property as a Tier II priority.

On September 27, 2001, the Metro Council adopted Resolution 01-3106 ("For the Purpose of Modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to Direct Future Acquisitions of Properties That Satisfy Specific Identified Criteria"), which modifies the Open Spaces Implementation Work Plan. Section B of Resolution 01-3106 requires Metro Council approval of new acquisitions in target areas where minimum acreage goals have been met.

This resolution proposes to authorize Metro to enter into an Agreement to contribute \$100,000 toward the purchase of a fractional interest in a Conservation Easement over a portion of the Farm Property, taking a pro-rata share of title as a tenant-in-common with the City of Portland through Its Bureau of Environmental Services ("BES"), and the Oregon State Parks ("State Parks"). The Conservation Easement would be subject to the terms and conditions of an Intergovernmental Agreement to be executed between Metro, BES, and State Parks, which would include a covenant to maintain the Property in compliance with the uses and restrictions described in the Metro Open Spaces Bond Measure and the

assumption by Oregon State Parks or the City of Portland of all management responsibility for the property. The proposed acquisition satisfies more than one of the listed criteria set forth in Section A of Resolution 01-3106 (“For the Purpose of Modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to Direct Future Acquisitions of Properties That Satisfy Specific Identified Criteria”), but because Metro has exceeded the minimum 20-acre goal established for the target area, Resolution No. 01-3106 requires that the purchase of the Conservation Easement be authorized by the Metro Council prior to acquisition.

Oregon Revised Statute Section 271.725 authorizes the state, any county, metropolitan service district, or city or park and recreation district to acquire conservation easements by purchase, agreement or donation upon a determination that such acquisition will be in the public interest.

Metro Code Chapter 10.03, entitled “Conservation Easements,” authorizes Metro to purchase and accept conservation easements. The Metro Code explicitly states the purpose of this chapter as “encourag[ing] the voluntary retention and protection of the natural, scenic, or open space values of real property . . . through sale, donation, or dedication of conservation easements to Metro.” Code Section 10.03.020.

Metro Code Section 10.03.060 provides that prior to the acquisition or acceptance of a conservation easement, Metro shall hold one or more public hearings on the proposal, with notice as stated therein, and at the conclusion of the hearing, the Metro council shall decide whether to accept, reject, or condition such easement, and upon acceptance Metro may execute all necessary documents to obtain conveyance of the conservation easement.

### **3. Anticipated Effects**

Acquisition of the Conservation Easement will help preserve the natural area and recreation values of Tryon Creek State Park.

### **4. Budget Impacts**

There are sufficient bond funds remaining to allow for this partnership contribution. Landbanking and future management costs will be borne by State Parks.

## **RECOMMENDED ACTION**

Chief Operating Officer Michael Jordan recommends passage of Resolution No. 06-3652.

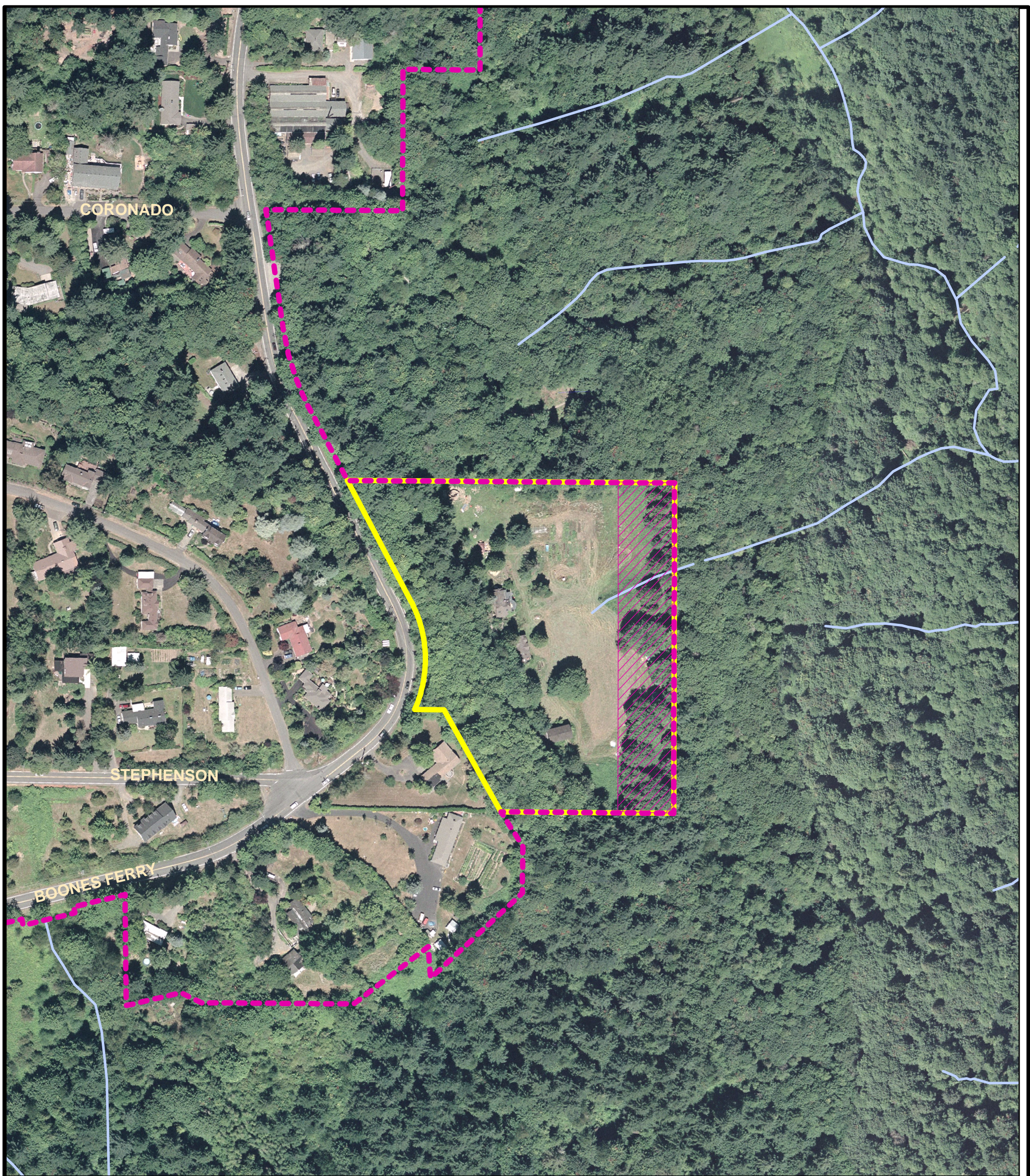
**Attachment 1**  
**Resolution No. 06-3652**

**Conservation Easement Map**

(Placeholder)






# Attachment 1



R L I S  
REGIONAL LAND INFORMATION SYSTEM

## Tryon Creek State Natural Area Marlanes Property

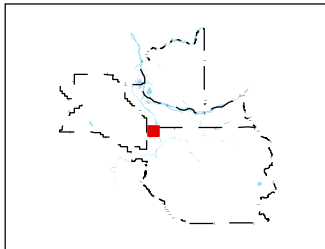
-  Marlanes Property - 6.8 ac.
-  Tryon Creek State Park
-  Conservation easement area - 1.5 ac.

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



METRO DATA RESOURCE CENTER  
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1 inch equals 179 feet  
0 80 160 320 Feet





BEFORE THE METRO COUNCIL

|                                    |   |   |
|------------------------------------|---|---|
| FOR THE PURPOSE OF AUTHORIZING THE | ) | RESOLUTION NO. 06-3652                    |
| CHIEF OPERATING OFFICER TO         | ) |   |
| CONTRIBUTE TOWARDS THE PURCHASE    | ) | Introduced by Michael J. Jordan, Chief    |
| OF A CONSERVATION EASEMENT OVER A  | ) | Operating Officer with the Concurrence of |
| PORTION OF THE TRY/ON LIFE         | ) | David Bragdon, Council President          |
| COMMUNITY FARM PROPERTY IN THE     | ) |   |
| TRYON CREEK LINKAGES TARGET AREA   | ) |   |

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 capital improvements; and

WHEREAS, on May 16, 1996, via Resolution 96-2330 ("For the Purpose of Approving a Refinement Plan For Tryon Creek Linkages Target Area, as Outlined in the Open Space Implementation Work Plan"), the Metro Council adopted a refinement plan for the Tryon Creek Linkages Target Area, which included a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, on September 27, 2001, the Metro Council approved Resolution No. 01-3106 ("For the Purpose of Modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to Direct Future Acquisitions of Properties That Satisfy Specific Identified Criteria"), modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to require Metro Council approval of all acquisitions in target areas where minimum acreage goals have been met; and

WHEREAS, Metro is currently negotiating the terms of a Purchase and Sale Agreement with the Oregon Sustainable Agriculture Land Trust for the acquisition of an approximate 1.5- acre conservation easement over the Try/on Life Community Farm Property ("Conservation Easement"), comprising approximately 6.9 acres surrounded on three sides by Tryon Creek State Park (hereinafter referred to as the "Farm Property"), such that its natural condition would be permanently protected pursuant to the terms and conditions set forth in the Conservation Easement document attached hereto as to form as Exhibit A; and

WHEREAS, the Agreement of Purchase and Sale will provide for the acquisition of the Conservation Easement subject to the following conditions: 1) cross-contingent financial contribution and participation in the acquisition and ownership of the Conservation Easement by Metro, Oregon State Parks ("State Parks") and the City of Portland Bureau of Environmental Services ("the City"); 2) that Metro, the City and State Parks receive a recorded right of first refusal to purchase the Farm Property; and 3) that Metro, the City and State Parks receive notice and a right to cure any default of the terms and conditions of any secured financing arrangement that now or hereafter encumbers the Farm Property; and

WHEREAS, this resolution proposes that Metro enter into an intergovernmental agreement with the City and State Parks, providing that: 1) Metro, the City and State Parks each contribute \$100,000.00, comprising one-third of the MAI appraised value purchase price for the Conservation Easement, in return for equal shares in the Conservation Easement as tenants-in-common; and 2) that State Parks take on all management responsibility for the Conservation Easement; and

WHEREAS, Metro has exceeded the minimum 20-acre goal established for the Tryon Creek Linkages Target Area, and therefore contributing towards the purchase of the Conservation Easement over the Farm Property requires formal Metro Council authorization pursuant to Council Resolution 01-3106; and

WHEREAS, Metro's participation in the acquisition of the Conservation Easement meets the required criteria set forth in Council Resolution No. 01-3106 as follows: 1) the Farm Property is a key remaining parcel surrounded on three sides by Tryon Creek State Park, and its acquisition satisfies a specific Tier II objective in the refinement plan for the Tryon Creek Linkages Target Area; and 2) the acquisition of the Conservation Easement benefits from a significant financial contribution from a local government, and state government partners, and leverages the protection of the larger 6.9 acre Farm Property; now therefore

BE IT RESOLVED that the Metro Council authorizes the Metro Chief Operating Officer to contribute towards the purchase of the Conservation Easement over the Farm Property described in the Conservation Easement in Exhibit A, subject to the following terms and conditions:

- 1) Metro, the City and State Parks shall each contribute \$100,000, and in return each shall receive a one-third interest in the Conservation Easement as a tenants-in-common;
- 2) Metro, the City and State Parks must have received a recorded right of first refusal to purchase the Farm Property;
- 3) Metro, the City and State Parks must have received from any creditor(s) secured by the Farm Property a contractual right of notice and opportunity to cure any default of the terms and conditions of any secured financing arrangement that now or hereafter encumbers the Farm Property;
- 4) Metro, the City and State Parks must have entered into an intergovernmental agreement providing for the acquisition of the Conservation Easement under the conditions set forth above herein and providing that State Parks shall manage the Conservation Easement;
- 5) Due diligence and closing shall be performed in accord with the Metro Open Spaces Implementation Work Plan standard procedures.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
David Bragdon, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

**Exhibit A**  
**Resolution No. 06-3652**

**Conservation Easement**

(Placeholder)



## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 06-3652 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO CONTRIBUTE TOWARDS THE PURCHASE OF A CONSERVATION EASEMENT OVER A PORTION OF THE TRY/ON LIFE COMMUNITY FARM PROPERTY IN THE TRYON CREEK LINKAGES TARGET AREA

---

Date: January 5, 2006

Presented by: Jim Desmond

## BACKGROUND

Resolution No. 06-3652 requests authorization for the Chief Operating Officer to contribute \$100,000 towards the purchase of a Conservation Easement over an approximate 1.5-acre portion of the 6.9-acre Try/on Life Community Farm property (hereafter referred to as the "Farm Property") in the Tryon Creek Linkages Target Area, contiguous to Tryon Creek State Park.

This resolution proposes to authorize Metro to enter into an Agreement to contribute \$100,000 toward the purchase of a fractional interest in a Conservation Easement over a portion of the Farm Property, taking a pro-rata share of title as a tenant-in-common with the City of Portland through its Bureau of Environmental Services ("BES"), and the Oregon State Parks ("State Parks"). The anticipated location of the Conservation Easement on the larger Farm Property is depicted in attached Attachment 1.

BES has confirmed that they will contribute \$100,000 toward the purchase of the Conservation Easement, and State Parks is also considering A contribution of \$100,000. The Conservation Easement would permanently protect a portion (hereafter referred to as the "Property") of the Farm Property from development and preserve it in its natural state. The Conservation Easement would be subject to the terms and conditions of an Intergovernmental Agreement to be executed between Metro, BES, and State Parks, which would include a covenant to maintain the Property in compliance with the uses and restrictions described in the Metro Open Spaces Bond Measure and the assumption by Oregon State Parks or the City of Portland of all management responsibility for the Property. The purchase of the Conservation Easement requires Metro Council authorization pursuant to Resolution 01-3106 ("For the Purpose of Modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to Direct Future Acquisitions of Properties That Satisfy Specific Identified Criteria") because Metro has previously exceeded the minimum 20-acre goal established for the target area.

The Property is a portion of the larger 6.9-acre Farm Property, which consists of a rolling wooded meadow site surrounded on three sides by the 670-acre Tryon Creek State Park. Two houses and a barn are also situated on the western portion of the Farm Property. There is a small tributary of Tryon Creek that bisects the site and flows into Tryon Creek to the east of the Farm Property. If developed, the entire Farm Property – including the Property - would likely be improved with multiple single-family homes.

A 501(c)(3) non-profit organization known as the Try/on Life Community Farm currently holds an option to purchase the Farm Property for \$1,425,000. Metro's contribution of \$100,000 along with similar contributions from BES and Oregon Parks will assist the Try/on Life Community Farm in raising sufficient lending capital to close on their purchase option. Without the contributions from Metro, BES, and State Parks, it is questionable whether the Try/on Life Community Farm will be able to raise enough capital to exercise their option. In that event, it is probable that the Farm Property will be placed back on

the open market for sale to a potential developer.

Metro is currently negotiating the terms of an Agreement of Purchase and Sale for the Conservation Easement with the Oregon Sustainable Land Trust (“OSALT”) (once Try/on Life Community Farm has exercised their purchase option, they have agreed to assign title to the Farm Property to OSALT). OSALT is a not-for-profit corporation organized exclusively for charitable purposes, including holding and protecting rural and urban lands for agricultural use, and conducting research and education in the areas of sustainable production and distribution of food, fiber and building materials, for scientific, charitable and educational purposes. OSALT intends to lease the entire site – excepting the Conservation Easement area – to the Try/on Life Community Farm on a long-term ground lease in order to further OSALT’s stated aims of utilizing the site for charitable purposes of research, education, and demonstration regarding sustainable production and distribution of agricultural products. Under the terms of the ground lease the agricultural practices employed are to be “sustainable,” “organic,” or “biodynamic.” All other uses are prohibited without the prior written permission of the lessor.

Acquisition of the Conservation Easement over the Property is recommended because:

(a) The acquisition of the Property would meet two of the criteria set forth in Resolution 01-3106:

- “Acquire key remaining parcels adjacent to parcels already acquired by Metro or other parks or conservation entities ... consistent with the specific goals and objectives set forth in the refinement plan for that target area.” The Property and the larger 6.9-acre Farm Property of which it is a part was identified as a Tier II acquisition objective in the refinement plan for the Tryon Creek Linkages Target Area, which outlined the land protection strategy for the target area, all pursuant to Resolution 96-2330 (“For the Purpose of Approving a Refinement Plan for the Tryon Creek Linkages Target Area, as Outlined in the Open Space Implementation Work Plan”). Acquiring the Conservation Easement over the Farm Property meets the target area goal to “Protect and enhance the ecological integrity and recreation value of Tryon Creek.” The site is bordered on three sides by parkland and is highly desirable from a regional perspective due to its natural area features, including frontage along a tributary of Tryon Creek, which is regionally significant.
- “Within existing target areas and parcels that meet the objectives otherwise set forth in this resolution, particular emphasis should be given to acquisitions that would either (a) have a significant financial contribution from a local government or other outside partner ...” The public/private acquisition partnership between Metro, State Parks, the City of Portland Bureau of Environmental Services, OSALT, the Try/on Life Community Farm, the Friends of Tryon Creek, as well as other private donors represents a significant achievement. Metro’s contribution of \$100,000 represents only seven (7) percent of the overall Farm Property option price of \$1,425,000.

(b) Metro will own a proportional interest in the title to the Conservation Easement as a tenant in common with BES and State Parks, but stabilization, landbanking and restoration costs will not be borne by Metro, as State Parks will manage the Farm Property.

(c) A clear public benefit will result from Metro’s financial contribution toward the Conservation Easement. The contribution by Metro, BES, and State Parks will be utilized by OSALT / Try/on Life Community Farm to close on their purchase option and to obtain long-term financing for the larger 6.9-acre Farm Property. By providing its \$100,000 contribution, Metro is in effect helping to leverage protection of the entire 6.9-acre Farm Property from potential development. As the

titleholder to the Farm Property, OSALT will protect the Farm Property from any future residential development. Under the terms of OSALT's ground lease, the Try/on Life Community Farm will manage the Farm Property according to OSALT's stated aims of utilizing the site for charitable purposes of research, education, and demonstration regarding sustainable production and distribution of agricultural products.

- (d) As part of the structure of this acquisition, in addition to Metro's pro-rata share of the Conservation Easement, Metro will also receive a Right of First Refusal from OSALT over the entire Farm Property. In the unlikely event that OSALT should ever be forced to sell the Farm Property, Metro will have the right to match any bonafide offer to purchase the Farm Property outright. The underlying long-term lender has also agreed to include Metro in its contractual notification schedule, insuring that Metro would have the "right to cure" any future default before the larger Farm Property went into foreclosure.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

None.

### **2. Legal Antecedents**

In May 1995, Metro area voters approved the Open Spaces, Parks and Streams Bond Measure that authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and certain park-related capital improvements. Metro Code 2.04.026 (a) (3) requires that the Chief Operating Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase of real property. The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 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") established acquisition parameters that authorized the Chief Operating Officer to purchase property within the Council-approved target area refinement plan maps. Via Resolution 96-2330 ("For the Purpose of Approving a Refinement Plan for the Tryon Creek Linkages Target Area, as Outlined in the Open Space Implementation Work Plan"), the Metro Council adopted a refinement plan, which outlined a land protection strategy for the Tryon Creek Linkages. Through that resolution, the Metro Council also approved the target area refinement plan tax-lot specific map, which includes the subject Marlantes Property as a Tier II priority.

On September 27, 2001, the Metro Council adopted Resolution 01-3106 ("For the Purpose of Modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to Direct Future Acquisitions of Properties That Satisfy Specific Identified Criteria"), which modifies the Open Spaces Implementation Work Plan. Section B of Resolution 01-3106 requires Metro Council approval of new acquisitions in target areas where minimum acreage goals have been met.

This resolution proposes to authorize Metro to enter into an Agreement to contribute \$100,000 toward the purchase of a fractional interest in a Conservation Easement over a portion of the Farm Property, taking a pro-rata share of title as a tenant-in-common with the City of Portland through Its Bureau of Environmental Services ("BES"), and the Oregon State Parks ("State Parks"). The Conservation Easement would be subject to the terms and conditions of an Intergovernmental Agreement to be executed between Metro, BES, and State Parks, which would include a covenant to maintain the Property in compliance with the uses and restrictions described in the Metro Open Spaces Bond Measure and the

assumption by Oregon State Parks or the City of Portland of all management responsibility for the property. The proposed acquisition satisfies more than one of the listed criteria set forth in Section A of Resolution 01-3106 (“For the Purpose of Modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to Direct Future Acquisitions of Properties That Satisfy Specific Identified Criteria”), but because Metro has exceeded the minimum 20-acre goal established for the target area, Resolution No. 01-3106 requires that the purchase of the Conservation Easement be authorized by the Metro Council prior to acquisition.

Oregon Revised Statute Section 271.725 authorizes the state, any county, metropolitan service district, or city or park and recreation district to acquire conservation easements by purchase, agreement or donation upon a determination that such acquisition will be in the public interest.

Metro Code Chapter 10.03, entitled “Conservation Easements,” authorizes Metro to purchase and accept conservation easements. The Metro Code explicitly states the purpose of this chapter as “encourag[ing] the voluntary retention and protection of the natural, scenic, or open space values of real property . . . through sale, donation, or dedication of conservation easements to Metro.” Code Section 10.03.020.

Metro Code Section 10.03.060 provides that prior to the acquisition or acceptance of a conservation easement, Metro shall hold one or more public hearings on the proposal, with notice as stated therein, and at the conclusion of the hearing, the Metro council shall decide whether to accept, reject, or condition such easement, and upon acceptance Metro may execute all necessary documents to obtain conveyance of the conservation easement.

### **3. Anticipated Effects**

Acquisition of the Conservation Easement will help preserve the natural area and recreation values of Tryon Creek State Park.

### **4. Budget Impacts**

There are sufficient bond funds remaining to allow for this partnership contribution. Landbanking and future management costs will be borne by State Parks.

## **RECOMMENDED ACTION**

Chief Operating Officer Michael Jordan recommends passage of Resolution No. 06-3652.

**Attachment 1**  
**Resolution No. 06-3652**

**Conservation Easement Map**

(Placeholder)