

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 00-3004
EXECUTIVE OFFICER TO EXECUTE A)
NATURAL AREA MANAGEMENT)
AGREEMENT WITH THE JACKSON BOTTOM)
WETLANDS PRESERVE FOR THE)
MANAGEMENT OF PROPERTY IN THE)
JACKSON BOTTOM – DAIRY/McKAY) Introduced by Mike Burton
CREEKS TARGET AREA) Executive Officer

WHEREAS, in July 1992, Metro adopted the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

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

WHEREAS, the Open Spaces Bond Measure provided that lands acquired by Metro with the regional share of the bond funds would be "land banked" with minimal maintenance, and no bond funds can be legally used for any operating expenses on these lands; and

WHEREAS, the Open Spaces Bond Measure stated that Metro Regional Parks and Greenspaces Department may operate and maintain these lands, or other cooperative arrangements may be made consistent with the Greenspaces Master Plan; and

WHEREAS, the Greenspaces Master Plan stated that Metro may choose to enter into contracts with nonprofit conservation organizations to operate and maintain greenspaces and trails; and

WHEREAS, on June 24, 1996, via resolution 96-2342, the Metro Council adopted a refinement plan for the Jackson Bottom – Dairy/McKay Creeks regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition, and which encouraged partnerships involving Metro and local governments; and

WHEREAS, in June, 2000 Metro entered into an Agreement of Purchase and Sale with the Madsen family for a 62-acre parcel of land on the Tualatin River, located within the boundaries of the Jackson Bottom – Dairy/McKay Creeks regional target area and the Jackson Bottom Wetlands Preserve Concept Master Plan area (the "Property"); and

WHEREAS, the Jackson Bottom Wetlands Preserve (the "Preserve"), an Oregon 501 (c) (3) corporation that owns and manages the nearby 650-acre Jackson Bottom Wetlands Preserve for the purpose of water quality enhancement, education programs, and habitat restoration, wishes to manage the property under the terms of the Natural Area Management Agreement attached as Exhibit A; and

WHEREAS, the Preserve and Metro desire that the Preserve should manage, operate, and maintain the Property for the primary purpose of natural area, open space and floodplain, and wildlife habitat; and

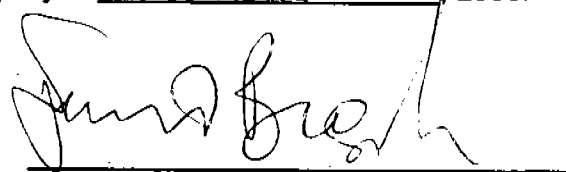
WHEREAS, a Natural Area Management Agreement ("NAMA") involving Metro and the Preserve would benefit the Property, as well as the public in general by ensuring consistent land management in the section of the Tualatin River Basin occupied by the Jackson Bottom Wetlands and the Property; and

WHEREAS, the NAMA attached to this resolution as Exhibit A sets forth the management, maintenance, and operation guidelines for the Preserve, requiring that the Property be managed for protection of the Property's natural resources, enhancement, restoration and protection of wildlife habitat, and public recreation consistent with these goals, with the primary goal being to manage the Property as a component of the Jackson Bottom Wetlands Concept Master Plan area; now therefore

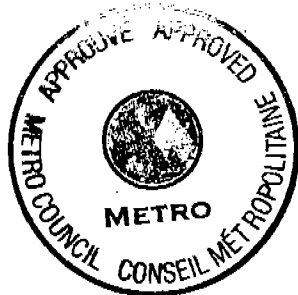
BE IT RESOLVED,

That the Metro Council approves and authorizes the Metro Executive Officer to execute the Natural Area Management Agreement with the Jackson Bottom Wetlands Preserve attached hereto as Exhibit A, whereby the Preserve will manage the Property in the Jackson Bottom – Dairy/McKay Target Area.

ADOPTED by the Metro Council this 16th day of NOVEMBER, 2000.



David Bragdon, Presiding Officer



Approved as to Form:


Daniel B. Cooper, General Counsel

NATURAL AREA MANAGEMENT AGREEMENT

Jackson Bottom Wetland Preserve Madsen Property

This Natural Area Management Agreement ("Agreement") dated this _____ day of _____, 2000, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the Jackson Bottom Wetland Preserve, an Oregon non-profit 501(c) (3) organization, located at 123 W. Main Street, Hillsboro, OR 97123 ("the Preserve").

RECITALS:

WHEREAS, pursuant to the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 ("Metro Open Spaces Bond Measure"), Metro has entered into an Agreement of Purchase and Sale to acquire approximately 62 acres of real property, including approximately 2,500 feet of Tualatin river frontage, a residence, and two (2) outbuildings, known as the Madsen Property ("the Property"), located 4490 SE Minter Bridge Road, Hillsboro, Oregon and more particularly described in Exhibit A attached hereto and incorporated herein;

WHEREAS, the Property is within the Dairy/McKay Creeks Target Area identified pursuant to the Metro Open Spaces Bond Measure, and is also identified as a significant open space and natural area in the Metro Greenspaces Master Plan;

WHEREAS, Metro and the Preserve wish to preserve the Property as open space in accordance with the Metro Open Spaces Bond Measure and the Metro Greenspaces Master Plan;

WHEREAS, on _____, 2000, the Board of Directors of the Preserve were authorized to enter into this Agreement and to manage, operate and maintain the Property in accordance with the terms set forth in this Agreement;

WHEREAS, on _____, 2000, the Metro Council authorized Metro to enter into this Agreement to provide for the transfer of such management responsibility for the Property in accordance with the terms set forth in this Agreement, and

WHEREAS, Metro and the Preserve wish to enter into this Agreement to provide for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, management, maintenance, and operation of the Property;

Now, therefore, the parties agree as follows:

A. Acquisition

1. On June 5, 2000, Metro entered into an Agreement of Purchase and Sale with the owners to acquire the Property. Metro shall be responsible for conducting its normal due diligence investigations pursuant to Metro Open Spaces Bond Measure requirements. If the Preserve requires any due diligence investigations not normally performed by Metro, the Preserve shall be solely responsible for those items. Metro shall also be responsible for drafting and coordinating escrow instructions and closing details, and shall pay the Buyer's closing costs.
2. Metro shall take title to the Property in fee simple at Closing, assuming all conditions precedent to Closing set forth in the Agreement of Purchase and Sale are met.

B. Management, Maintenance, and Operation

1. Responsibility. Subject to the terms and conditions set forth herein, Metro and the Preserve agree that the Preserve shall henceforth be responsible for the ongoing management, maintenance, and operation of the Property. As required by the Metropolitan Greenspaces Master Plan, the Preserve must establish the long-term management guidelines for the Property in a Resource Management Plan ("Management Plan") for the Property, as set forth in Section (D) below. However, this Agreement establishes the Interim Protection Guidelines for the Property, set forth below in Section (C), which shall govern prior to adoption of the Management Plan. The Interim Protection Guidelines also establish the use limitations for the Property, which must be carried forth and reflected in the Management Plan.
2. Residence. The Preserve shall provide a Caretaker to occupy the residence and one-half acre home site (hereafter, the "Residence") at all times. The Caretaker and Preserve shall be responsible for all maintenance and repairs not performed by Metro pursuant to Section B (3) below. If the Preserve fails to provide a Caretaker for the Residence for a period in excess of 60 days, the Preserve shall notify Metro, and Metro shall lease the Residence. Metro retains the right to periodically inspect the Residence for maintenance and repair purposes, upon 5 days actual notice to the Preserve of its intent to do so.
3. Capital Maintenance Reserve. The Preserve shall pay a monthly sum equal to 15% of the Fair Market Rental Rate to Metro to fund long-term capital, maintenance and repair expenditures. The Fair Market Rental Rate shall be determined based on the Residence exclusive of the surrounding property, initially calculated to be \$1,200.00 per month. Every two (2) years, Metro may, at its sole option, annually re-determine the Fair Market Rental Rate, and the Preserve shall then adjust the Capital Maintenance Reserve payment accordingly. If, at any time, the Preserve disagrees with Metro's Fair Market Rental Rate determination, the Preserve and Metro shall engage a mutually agreed upon real estate appraiser to determine the Fair Market Rental Rate. The Preserve and Metro shall pay said appraiser's fee in equal shares. The Capital Maintenance Reserve shall fund Metro's

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repair and replacement of the following: roofing, fire and casualty damage not covered by insurance, structural repair and repair of damage due to insect infestations, exterior paint, siding, HVAC systems, pond irrigation and well pumps, and plumbing and electrical systems . The Preserve shall not be required to pay into the Capital Maintenance Reserve during any period that Metro is leasing the Residence under Section B(2), above.

4. **Insurance.** The Preserve shall insure the residence and outbuildings against property damage by fire and other casualty, in the amount of replacement value. Upon such time as the Preserve's caretaker ceases to occupy the residence, the Preserve may cancel the insurance requirement herein.
5. **Farm Revenues.** If net revenues are generated through agricultural activities occurring on the Property, including the harvest of fir boughs, crops or pasturage, the Preserve shall remit to Metro a 25% share of those net revenues. The term "Net Revenues" means income from agricultural activities, including the growing and harvesting of crops or boughs, and the pasture of livestock, less all expenses associated with said agricultural activities.
6. **Term.** The term of the Preserve's management, maintenance, and operation responsibilities for the Property shall be ten (10) years from the effective date of this Agreement, renewable by mutual written agreement for additional ten (10) year periods.
7. **Right-Of-Occupancy.** Metro grants to the Preserve, its agents and contractors, the right to enter and occupy the Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Property and for the fulfillment of its duties under this Agreement and pursuant to the Management Plan, subject to the terms and conditions set forth herein.

C. Interim Protection Guidelines

1. Prior to the adoption of a Management Plan for the Property, in the interim the Property shall be managed, maintained and operated by the Preserve in accordance and in a manner consistent with this Agreement, the Metro Greenspaces Master Plan, the Jackson Bottom Concept Master Plan, adopted in 1989, and the Jackson Bottom Natural Resources Management Plan, adopted in 1992, (this Agreement and these plans collectively referred to herein as "the Plans"). In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.
2. In the interim period and thereafter, the Property shall be managed, maintained, operated, and protected in accordance with its intended use as a natural area open space, with the primary goals being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and passive public recreation consistent with the foregoing.
3. The irrigation, storage, application, treatment or polishing of treated sewage effluent shall not be permitted on the Property, without prior approval of Metro.

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4. In accordance with the Metro Greenspaces Master Plan, formal public use of the Property and site development on the Property shall not begin until a Management Plan for the Property has been approved by Metro.
5. Prior to the adoption of a Management Plan for the Property, in the interim period the Property may be used informally by the public for passive recreation, habitat enhancement, pedestrian activity, and/or nonmotorized bicycle use, at the Preserve's discretion. All uses of the Property in the interim period shall be consistent with this Agreement and with the Plans, and shall not preclude any uses that could later be allowed in the Management Plan.
6. Prior to the adoption of the Management Plan for the Property, in the interim period the Preserve shall not allow or permit any alteration of any water, timber, mineral, or other resource on the Property, except for the control of exotic or pest plant species or as necessary to prevent Property degradation or for security or public safety concerns. If the Preserve believes that an improvement, trail, or alteration of any water or timber resource on the Property is necessary prior to adoption of a Management Plan for the Property, Metro shall have the right to approve of such action, and the Preserve shall provide Metro 90 days advance written notice of its intent to construct any improvements, trails, or alteration of water or timber resource on the Property. In any event, no improvements or trails shall be constructed on the Property and no alteration of water or timber resource shall occur that are inconsistent with this Agreement and shall not preclude any uses that could later be allowed in the Management Plan. The Preserve may allow continued agricultural use and harvesting of boughs for holiday wreaths by third parties, subject to an agricultural lease or agreement for agricultural use that has been mutually approved by the Preserve and Metro, and the provisions of section B(5) above.
7. In the interim period and thereafter, the Preserve shall maintain, through appropriate use, all ground and surface water rights appurtenant to the Property, including Tualatin Valley Irrigation District allocations. The Preserve shall notify Metro within 90 days after it ceases to make appropriate beneficial use of any water right appurtenant to the Property. Metro may then, at its sole option, transfer the water right to In-Stream Use as provided in ORS 537.348.

D. Resource Management Plan for the Property

1. The Preserve shall develop a Resource Management Plan ("Management Plan") for the Property. The Management Plan shall set forth the acceptable management, operation, maintenance, types and levels of programmed and public use, and trail and improvement standards for the Property. The Preserve shall manage the Property in accordance with the standards and guidelines developed in the Management Plan.
2. The Management Plan shall ensure that the Property is managed, maintained and operated in accordance with the Metro Greenspaces Master Plan and with this Agreement, and that all trails and improvements on the Property comply with the Greenspaces Master Plan and with this Agreement. The Management Plan shall also

ensure that the Property is maintained as a natural area open space, with the primary goals being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing. As part of the process of developing the Management Plan, the Preserve shall take an inventory of the resources on the Property.

3. Metro shall designate at least one staff member to participate in the Management Plan process for the Property. In addition to any other approvals required by the Preserve, the Management Plan shall be subject to approval by the Metro Council prior to its implementation, which approval shall not be unreasonably withheld and shall be based on consistency with this Agreement and with the Greenspaces Master Plan.

E. Permits, Easements, Assessments, Coordination with Other Public Agencies

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Property the Preserve agrees to be responsible for funding the operation and maintenance of the Property with the Preserve's own resources. The Preserve's management responsibility shall include responsibility for all taxes or assessments for the Property.
2. Prior to adoption of the Management Plan and thereafter, the Preserve shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Property.
3. Any permits granted by the Preserve to users of the Property shall comply with the terms and limitations set forth in this Agreement and in the Management Plan for the Property.
4. The Preserve shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Property.
5. All requests for easements, rights of way, and leases on or affecting the Property shall be submitted to Metro in accordance with the Metro Easement Policy, Resolution No. 97-2539B, passed by the Metro Council on November 6, 1997, attached hereto as Exhibit C.

F. General Provisions

1. **Indemnification.** The Preserve, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the management, maintenance or operation of the Property, including but not limited to construction of trails or in relation to any other improvement on the Property.

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2. **Oregon Constitution and Tax Exempt Bond Covenants.** The source of funds for the acquisition of this Property is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The Preserve covenants that it will take no actions not authorized by this Agreement that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event the Preserve breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.
3. **Signage.** The Preserve may provide on-site signage informing the public that the Preserve is managing the site. Metro will provide on-site signage which shall be installed and maintained by the Preserve, stating that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. The Preserve shall also document in any publication, media presentation or other presentations, that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. All signage will be consistent with Metro guidelines for Open Spaces Projects and subject to Metro approval.
4. **Joint Termination for Convenience.** Metro and the Preserve may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon ten (10) days written notice of termination issued by Metro, subject to the mutual written agreement of the parties.
5. **Termination for Cause.** Either party may terminate this Agreement in full, or in part, at any time before the date of completion, whenever that party determines, in its sole discretion, that the party has failed to comply with the conditions of this Agreement and is therefore in default. The terminating party shall promptly notify the other party in writing of that determination and document such default as outlined herein. The other party shall have thirty (30) days to cure the problem. Notwithstanding any termination for cause, both parties shall be entitled to receive payments for any work completed or for which that party is contractually obligated for, which completion or contractual obligation occurred prior to the effective date of the termination, provided that no party shall be obligated to make any payment except for work specifically provided for in this Agreement.
6. **Laws of Oregon.** This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.
7. **Assignment.** The parties may not assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the parties may

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delegate or subcontract for performance of any of its responsibilities under this Agreement.

8. **Notices.** All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro
 Charles Ciecko
 Director, Metro Regional Parks and Greenspaces
 600 N.E. Grand Avenue
 Portland, OR 97232-2736

To Preserve: Jackson Bottom Wetlands Preserve
 Patrick Willis, Manager
 123 W. Main Street
 Hillsboro, OR 97123
 Phone (503) 681-6206
 Fax (503) 681-6277

Copy to: Tim Erwert, Chairman, Board of Directors
 Jackson Bottom Wetlands Preserve
 123 W. Main Street
 Hillsboro, OR 97123
 Phone (503) 681-6206
 Fax (503) 681-6277

9. **Severability.** If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.
10. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to this Property. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

Exhibit A
Resolution No. 00-3004

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth above.

JACKSON BOTTOM WETLAND PRESERVE METRO

By: _____
Title: _____

By: _____
Title: _____

Exhibits:

Exhibit A - Legal Description of Property

Exhibit B - Map

Exhibit C - Metro Easement Policy and Metro Resolution No. 97-2539B

EXHIBIT A
Page 1 of 2
Legal Description of Property

PARCEL 1: A tract of land in Section 18, Township 1 South, Range 2 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

Beginning at the Northwest corner of that tract of land conveyed to Victor and Cora Madsen, husband and wife, in Washington County Deed Records Book 344 page 239; thence South 0° 06' West 740 feet on the West line of said Madsen Tract, to the point of beginning; thence continuing South 0° 06' West on said West line, 250 feet to a point; thence South 89° 54' East, 115 feet to a point; thence parallel to the West line of said Madsen Tract, North 0° 06' East, 250 feet to a point; thence North 89° 54' West, 115 feet to the point of beginning.

PARCEL 2: A tract of land in Section 18, Township 1 South, Range 2 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

Beginning at the Northwest corner of that tract of land conveyed to Roger Madsen, et ux, by deed recorded November 21, 1978 as Recorder's Fee No. 78051115, said beginning point lies in the center of Minter Bridge Road and bears South 65° 12' West 582.8 feet from the Southeast corner of the George Sigler Donation Land Claim No. 42; thence South 0° 06' East 1433.0 feet along the West line of said Madsen tract to the Southwesterly corner thereof; thence South 61° 34' East 583.2 feet along the Southerly line of said Madsen tract to an iron rod; thence South 73° 34' East 246.0 feet along said Southerly line of Madsen tract to a point lying in the center of the Tualatin River, said point also being the Southeast corner of that tract of land conveyed to Anton Nussbaumer, et ux, by Deed recorded in Book 286 page 814; thence following up the center of said Tualatin River with all the meanderings thereof 2500 feet, more or less, to a point in the center of said river and the East line of a tract conveyed to W.G. Hare on March 15, 1939 in Book 179 page 157, Deed Records; thence North 1268.0 feet, more or less, along the Hare East line to a point in the center of the Minter Bridge Road (County Road No. 1174); thence along the center of said Minter Bridge Road North 88° 12' East 197.0 feet to an iron at angle in said road; thence along center of said road North 62° 12' East 400.3 feet, more or less, to the point of beginning.

PARCEL 3: A tract of land in Section 18, Township 1 South, Range 2 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

EXHIBIT A
Page 2 of 2
Legal Description of Property

Beginning at the Southeast corner of the George Sigler Donation Land Claim No. 42, in said Section 18, and running thence South 89° 48' East, 220.5 feet to a steel shaft at the Northeast corner of Tract No. 2 of the lands conveyed to Anton and Bertha Nussbaumer, by Deed recorded on page 814 of Book 286, Washington County, Oregon, Deed Records; thence along the East line of the Nussbaumer Tract, South 0° 06' West, 2024.0 feet to the Southeast corner thereof in the center of the Tualatin River, from which point an iron rod bears North 0° 06' East, 94.7 feet; thence North 73° 34' West 246.0 feet to an iron rod; thence following a line of fence, North 61° 34' West, 583.2 feet to an iron rod; thence North 0° 06' East, 1433.0 feet to a point in the center of the Minter Bridge Road, from which point an iron rod bears South 0° 06' West, 27.6 feet; thence in the center of the Minter Bridge Road, North 65° 12' East 582.8 feet to the place of beginning.

EXCEPTING HOWEVER, that certain property heretofore conveyed to Roger Madsen and Gail Madsen, by deed, recorded in Book 716 page 446, September 23, 1968, described more particularly as follows:

A tract of land in Section 18, Township 1 South, Range 2 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

Beginning at the Northwest corner of that tract of land conveyed to Victor and Cora Madsen, husband and wife, in Washington County Deed Records Book 344 page 239; thence South 0° 06' West 740 feet on the West line of said Madsen Tract, to the point of beginning; thence continuing South 0° 06' West on said West line, 250 feet to a point; thence South 89° 54' East, 115 feet to a point; thence parallel to the West line of said Madsen Tract, North 0° 06' East, 250 feet to a point; thence North 89° 54' West, 115 feet to the point of beginning.

ALSO EXCEPTING the following described tract, to-wit:

A tract of land in Section 18, Township 1 South, Range 2 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

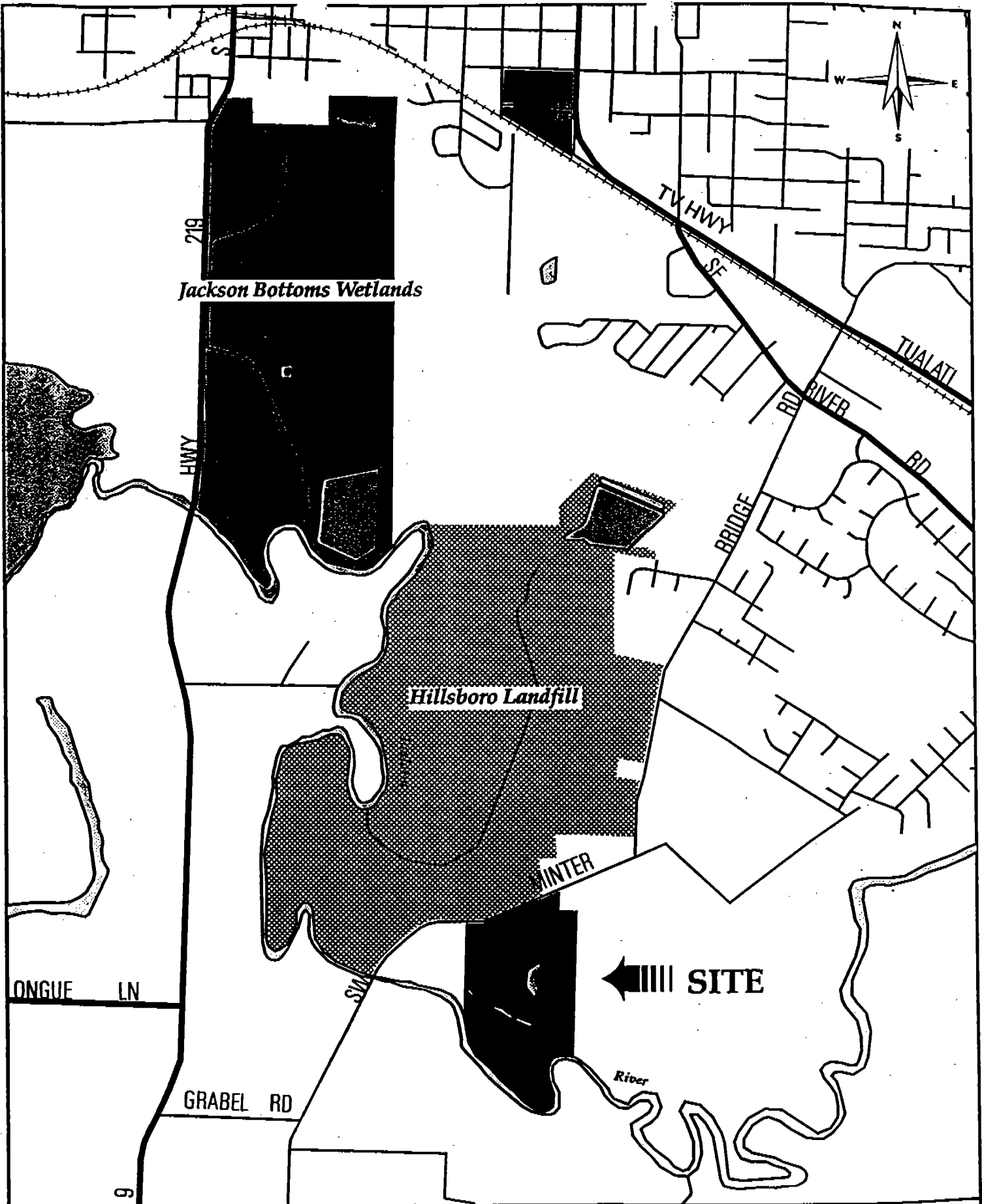
Beginning at the Southeast corner of George Sigler Donation Land Claim No. 42; thence South 89° 48' East, 220.5 feet to a point; thence North 0° 06' East 102.74 feet to the center of Minter Bridge Road; thence South 65° 12' West, along said center line, 243.1 feet to the place of beginning, and the following described tract:

Beginning at the Southeast corner of George Sigler Donation Land Claim No. 42; thence South 89° 48' East, 220.5 feet to a point; thence South 0° 06' West, 250 feet; thence North 89° 58' West, 220.5 feet; thence North 0° 06' East, 250 feet to the point of beginning.

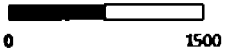
Exhibit A
Resolution No. 00-3004

EXHIBIT B

Map of Property



Scale: 1" = 1500'



Metro Open Spaces, Parks and Streams Bond Measure
 Jackson Bottoms Target Area

Exhibit B



Exhibit A
Resolution No. 00-3004

EXHIBIT C

**Metro Easement Policy and
Metro Resolution No. 97-2539B**

E T ORE THE METRO COUNCIL

HEREBY CERTIFY THAT THE FOREGOING IS A COMPLETE AND EXACT COPY OF THE ORIGINAL THEREOF.

Rebecca V. Shoemaker, Archivist
Clerk of the Metro Council

FOR THE PURPOSE OF APPROVING GENERAL)
POLICIES RELATED TO THE REVIEW OF)
EASEMENTS, RIGHT OF WAYS, AND LEASES)
FOR NON-PARK USES THROUGH PROPERTIES)
MANAGED BY THE REGIONAL PARKS AND)
GREENSPACES DEPARTMENT.)

RESOLUTION NO. 97-2539B

Introduced by
Mike Burton, Executive Officer

WHEREAS, Metro currently owns and manages more than 6,000 acres of regional parks, open spaces, natural areas, and recreational facilities; and

WHEREAS, additional lands are being acquired through the Open Space, Parks, and Streams Bond Measure, approved by voters in May of 1995; and

WHEREAS, the primary management objectives for these properties are to provide opportunities for natural resource dependent recreation, protection of fish, wildlife, and native plant habitat and maintenance and/or enhancement of water quality; and


WHEREAS, Metro will be approached with proposals to utilize regional parks, open spaces, natural areas, and recreational facilities property for utility, transportation, and other non-park purposes; and

WHEREAS, Metro seeks to insure that these uses have no negative impact upon the primary management objectives of Metro Regional Parks and Greenspaces properties; and

WHEREAS, it would be in Metro's best interest to provide for the orderly evaluation and consideration of proposals to utilize portions of Metro Regional Parks and Greenspaces properties for utility, transportation and other non-park uses; NOW THEREFORE,

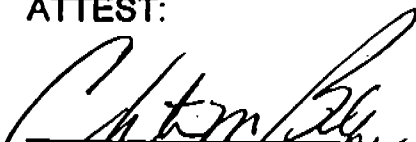
BE IT RESOLVED, that the Metro Council hereby adopts the policy attached as Exhibit "A" for any and all requests related to formal proposals for the use of Metro Regional Parks and Greenspaces properties for the purposes noted therein.

ADOPTED by the Metro Council this 6th day of November, 1997.



Jon Kvistad, Presiding Officer

ATTEST:



Recording Secretary

Approved as to Form:



Daniel B. Cooper, General Counsel

EXHIBIT C - 1 of 4
Metro Easement Policy
Metro Resolution No. 97-2539B

Exhibit "A"

METRO POLICY RELATED TO THE REVIEW OF EASEMENTS, RIGHT OF WAYS, AND LEASES FOR NON-PARK USES

Metro owns and manages , either on its own or in partnership with other government and private entities, several thousand acres of regional parks, open spaces, natural areas and recreational facilities. These facilities are maintained to promote and preserve natural resources and recreational opportunities for the public consistent with the Greenspaces Master Plan adopted by the Metro Council in 1992, the Open Spaces Bond Measure approved by the voters in 1995 and other restrictions limiting the uses of specific properties in existence at the time of its acquisition by the public. Nothing in this policy shall be construed to allow these facilities to be used in any manner which detracts from this primary purpose. This policy is written from the perspective of Metro as the property owner, however, in those cases in which Metro co-owns a property with other entities, all decisions concerning the use of the property in question will be fully coordinated with the other owners. In addition, all new development and all proposed work within Water Quality Resource Areas or other environmentally sensitive work will be conducted in accordance with Metro or local government policies, to include where appropriate, application for permits and completion of environmental reviews. In event that local government policies are less restrictive than the Metro Model ordinances, Metro will apply the more restrictive Metro policies.

Regarding requests for easements, right of ways, and leases for non-park uses in Metro owned or managed regional parks, natural areas or recreational facilities, it is Metro's policy to:

- 1) Provide for formal review of all proposed easements, right of ways, and leases for non-park, uses by the Regional Parks and Greenspaces Advisory Committee, the Regional Facilities Committee and the full Council. Notwithstanding satisfaction of the criteria set forth herein, the final determination of whether to approve a proposed easement, right of way, or lease is still subject to the review and approval by the full Metro Council.
- 2) Prohibit the development of utilities, transportation projects and other non-park uses within corridors or on sites which are located inside of Metro owned or managed regional parks, natural areas, and recreational facilities except as provided herein.
- 3) Reject proposals for utility easements, transportation right of ways and leases for non-park uses which would result in significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.
- 4) Accommodate utility easements, transportation right of ways or other non-park uses when the Regional Parks and Greenspaces Department (the Department) determines that a proposed easement, right of way or non-park use can be accommodated without significant impact to

natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management; and that the impacts can be minimized and mitigated.

5) Require full mitigation and related maintenance, as determined by the Department, of all unavoidable impacts to natural resources, recreational facilities, recreational opportunities or their operation and management associated with the granting of easements, right of ways, or leases to use Metro owned or managed regional parks, natural areas or recreational facilities for non-park uses.

6) Limit rights conveyed by easements, right of ways, and leases for non-park uses to the minimum necessary to reasonably accomplish the purpose of any proposal.

7) Limit the term of easements, right of ways and leases to the minimum necessary to accomplish the objectives of any proposal.

8) Require "reversion", "non-transferable" and "removal and restoration" clauses in all easements, right of ways and leases.

9) Fully recover all direct costs (including staff time) associated with processing, reviewing, analyzing, negotiating, approving, conveying or assuring compliance with the terms of any easement, right of way, or lease for a non-park use.

10) Receive no less than fair market value compensation for all easements, right of ways, or leases for non-park uses. Compensation may include, at the discretion of the Department, periodic fees or considerations other than monetary.

11) Require full indemnification from the easement, right of way or lease holder for all costs, damages, expenses, fines or losses related to the use of the easement, right of way or lease. Metro may also require appropriate insurance coverage and/or environmental assurances if deemed necessary by the Office of General Counsel.

12) Limit the exceptions to this policy to: grave sales, utilities or transportation projects which are included in approved master/management plans for Metro regional parks, natural areas and recreational facilities; projects designed specifically for the benefit of a Metro regional park, natural area, or recreational facility; or interim use leases as noted in the Open Spaces Implementation Work Plan.

13) Provide for the timely review and analysis of proposals for non-park uses by adhering to the following process:

a) The applicant shall submit a detailed proposal to the Department which includes all relevant information including but not limited to: purpose, size, components, location, existing conditions, proposed project schedule and phasing, and an analysis of other alternatives which avoid the Metro owned or managed regional park, natural area or recreational facility which are considered infeasible by the applicant. Cost alone shall not constitute infeasibility.

b) Upon receipt of the detailed proposal, the Department shall determine if additional information or a Master Plan is required prior to further review and analysis of the proposal. For those facilities which have master plans, require that all proposed uses are consistent with the master plan. Where no master plan exists all proposed uses shall be consistent with the Greenspaces Master Plan. Deficiencies shall be conveyed to the applicant for correction.

c) Upon determination that the necessary information is complete, the Department shall review and analyze all available and relevant material and determine if alternative alignments or sites located outside of the Metro owned or managed regional park, natural area, or recreational facility are feasible.

d) If outside alternatives are not feasible, the Department shall determine if the proposal can be accommodated without significant impact to park resources, facilities or their operation and management. Proposals which cannot be accommodated without significant impacts shall be rejected. If the Department determines that a proposal could be accommodated without significant impacts, staff shall initiate negotiations with the applicant to resolve all issues related to exact location, legal requirements, terms of the agreement, mitigation requirements, fair market value, site restoration, cultural resources, and any other issue relevant to a specific proposal or park, natural area or recreational facility. The Department shall endeavor to complete negotiations in a timely and business-like fashion.

e) Upon completion of negotiations, the proposed agreement, in the appropriate format, shall be forwarded for review and approval as noted in item "1" above. In no event shall construction of a project commence prior to formal approval of a proposal.

f) Upon completion of all Metro tasks and responsibilities or at intervals determined by the Department, and regardless of Metro Council action related to a proposed easement, right of way or lease for a non-park use, the applicant shall be invoiced for all expenses or the outstanding balance on expenses incurred by Metro.

g.) Permission from Metro for an easement or right-of-way shall not preclude review under applicable federal, state or local jurisdiction requirements.

REGIONAL PARKS AND GREENSPACES STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 97-2539A FOR THE PURPOSE OF APPROVING GENERAL POLICIES RELATED TO GRANTING OF EASEMENTS, RIGHT OF WAYS, LEASES AND LICENSES FOR NON-PARK USES THROUGH PROPERTIES MANAGED BY THE REGIONAL PARKS AND GREENSPACES DEPARTMENT.

Date: July 29, 1997

Presented by:
Charles Ciecko, Director
Regional Parks and Greenspaces

FACTUAL BACKGROUND AND ANALYSIS:

Metro through its Regional Parks and Greenspaces Department, currently owns and manages over 6,000 acres of regional parks, open spaces, natural areas, and recreational facilities. The primary management objectives for these lands is the provision of natural resource dependent recreation opportunities; protection of fish, wildlife and native plant habitat and the maintenance and/or enhancement of water quality.

From time to time, the Regional Parks and Greenspaces Department is approached with proposals to utilize portions of properties for non-park purposes, such as utilities, transportation components, cell phone towers etc. Currently, there is no policy to guide the review, analysis or authorization of uses which are unrelated to the primary management objectives.

The purpose of the proposed resolution is to create policy which will guide staff in responding to proposals for non-park uses.

Highlights of the proposed policy include:

- Formal review and approval of proposals by the Regional Parks and Greenspaces Advisory Committee, Regional Facilities Committee and full Council.
- Requires development of non-park uses outside of Regional Parks and Greenspace properties whenever feasible except when determined that the proposal use can be accommodated without significant impact.
- Requires full mitigation of all unavoidable impacts.
- Requires reimbursement of all costs associated with review, analyses and authorization for use.
- Requires receipt of not less than fair market value for all non-park uses.
- Requires full indemnification for Metro and insurance, if appropriate.
- Establishes limitations on exceptions.
- Establishes process for timely review, analysis and resolution of all proposals.

The Regional Parks and Greenspaces Advisory Committee considered this issue at their July 1, 1997 meeting and recommends its adoption.

BUDGET IMPACT:

The proposed policy requires receipt of not less than fair market value for non-park uses and reimbursement of all costs incurred by Metro thereby eliminating the potential of subsidizing uses which are inconsistent with the primary management objectives of Regional Parks and Greenspaces properties.

A Regional Parks and Greenspaces staff member will be present to answer any questions by Council regarding this policy.

EXECUTIVE OFFICER'S RECOMMENDATION:

The Executive Officer recommends adoption of Ordinance No. 97-2539A.

OPERATIONS COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 00-3004, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE A NATURAL AREA MANAGEMENT AGREEMENT WITH THE JACKSON BOTTOM WETLANDS PRESERVE FOR THE MANAGEMENT OF PROPERTY IN THE JACKSON BOTTOM-DAIRY/MCKAY CREEKS TARGET AREA

Date: November 8, 2000

Presented by: Councilor Washington

Committee Recommendation: At its November 8, 2000, meeting, the Operations Committee, convening as the Metro Contract Review Board voted 3-0 to recommend Council adoption of Resolution No. 00-2004. Voting in favor: Councilors Atherton, Monroe, Washington. Voting against: none. Absent: none.

Background: Charlie Ciecko, Parks and Greenspaces Director, presented the staff report. He stated that Metro has entered into a purchase/sale agreement for 62 acres adjacent to Jackson Bottom Wetlands Preserve. A condition of the sale approval is to allow the Jackson Bottom Wetlands Preserve to manage the property. Metro often uses local partners to manage properties; however, this will be the first time the partner has been a non-profit organization rather than a public entity.

Jim Desmond, Open Spaces Acquisitions Senior Manager, reported that there no unusual circumstances in this property transaction, and that Executive Officer Mike Burton exercised his right to spend up to \$50,000 over the appraised value to acquire the property. The proposed agreement with Jackson Bottoms Wetlands Preserve (JBWP) to manage the property is for a renewable ten-year term, until a long-term management plan is adopted by Council. The Preserve will manage the entire property, including payment of taxes and insurance, indemnification of Metro with regard to liability, and dividing rental or farm income with Metro. The Preserve caretaker will be allowed to live in the house on the property rent-free, and a capital maintenance reserve account will be established by the Preserve for necessary maintenance during their occupancy. Desmond also pointed out that there is a landfill between the Jackson Bottoms Wetlands Preserve and this site which will be reclaimed and donated to the preserve in the future.

Committee Issues/Discussion: Councilor Atherton questioned whether JBWP could afford to make the required monthly contribution to the capital maintenance reserve account. Desmond replied that they have the capability to charge rents or farm leases on the land, and will be engaging in some income-producing activities allowable by the agreement, so staff does not anticipate any problems in their ability to meet this obligation.

Councilor McLain asked how long the landfill would be open. Staff replied that it is anticipated to close within 20 years. McLain further inquired whether the property fit the criteria assigned to the Tualatin River access area, and expressed her concern that any purchase made by Open Spaces should consistently adhere to criteria. Staff replied that the creeks are part of the Tualatin River access systems, and will not detract from future endeavors in the Dairy/McKay Creeks Target Area.

Councilor Atherton asked why Executive Officer Burton exercised his right to spend \$50,000 more than appraised value on the property and whether this additional expenditure was worth it. Ciecko replied that he did not know the Executive Officer's rationale, but that having the JBWP manage the property will discourage public use before the development of a master plan, which is to Metro's benefit. Desmond added that because Metro's acquisition program is a willing seller program, the Executive Officer frequently exercises his option to expedite a sale.

Staff Report

CONSIDERATION OF RESOLUTION NO. 00-3004 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE A NATURAL AREA MANAGEMENT AGREEMENT WITH THE JACKSON BOTTOM WETLANDS PRESERVE FOR THE MANAGEMENT OF PROPERTY IN THE JACKSON BOTTOM - DAIRY/McKAY CREEKS TARGET AREA

Date: October 24, 2000

Presented By:

**Charles Ciecko
Jim Desmond**

Proposed Action

Resolution No. 00-3004 requests authorization for the Executive Officer to execute a Natural Area Management Agreement ("NAMA") with Jackson Bottom Wetlands Preserve, an Oregon 501 (c) (3) organization (the "Preserve"), for management of Metro property located in the Jackson Bottom – Dairy/McKay Creeks Target Area.

Existing Legislation

Metro Code 2.04.26 (a) (3) requires that the Executive Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase, sale, lease or transfer of real property. Although the NAMA referred to herein is not a transfer of title to the property from Metro to the Preserve, the agreement is a long-term contract transferring occupancy and management rights and responsibilities to a private entity; therefore Metro Contract Review Board approval is sought. The Open Spaces, Parks and Streams bond measure, passed by the voters of the region in 1995, indicates that Metro's Open Space properties may be operated and maintained by cooperative arrangements consistent with the Greenspaces Master Plan. The Open Spaces Implementation Work Plan adopted by the Metro Council via Resolution 96-2424, was established to implement the Open Spaces, Parks and Streams bond measure, and it encourages agreements with other park providers and conservation groups as a strategy to reduce landbanking costs. The subject property is located in the Jackson Bottom – Dairy/McKay Creeks Target Area, adopted by the Metro Council via resolution 96- 2342.

Background and Analysis

Metro has entered into a real estate Purchase and Sale Agreement ("Agreement") with Roger and Gail Madsen to acquire the above-referenced real property. Closing under the Agreement is conditioned upon Metro Council approval of the transfer of management responsibility for the Madsen Property to Jackson Bottom Wetlands Preserve. The Madsen Property is a 62-acre parcel on the Tualatin River, south of Hillsboro and the Jackson Bottom Wetlands Preserve (the "Preserve"). The Madsen Property is partially cultivated with grain crops and provides woodland and floodplain wildlife habitat, and boasts 2,548 feet of river frontage. The Preserve manages the 650-acre Jackson Bottom wetlands located in Hillsboro. An I.R.C. § 501 (c) (3) non-profit, the Preserve is governed by a 12-member board of directors, including representatives of the City of Hillsboro, Unified Sewerage Agency, local agencies, environmental and education organizations, and private citizens. The Madsen Property is within the boundaries of the Jackson Bottom Concept Master Plan, and is therefore an integral component of the wetlands system that the Preserve was established to protect. The Hillsboro landfill lies between Jackson Bottom and the Madsen property, and is scheduled to become part of the Preserve at the end of its utility as a landfill.

Under the NAMA, the Preserve shall be responsible for the ongoing management, maintenance, and operation of the Property for renewable ten-year terms; or until a long-term Resource Management Plan is adopted by Metro and the Preserve. The Preserve may choose to allow the Madsens to continue to live on the property and act as caretakers and farmers of the property.

The NAMA between Metro and the Preserve provides for the following:

1. Guidelines for the Preserve's management, maintenance and operation of the Property as open space;
2. Allocation of any farm income between the Preserve and Metro. If the Property produces farm income, Metro shall receive a 25% share;
3. Occupancy of the Residence on the Property by a Caretaker;
4. Required casualty insurance on the Residence;
5. The creation of a Capital Maintenance Reserve Account during the term of the NAMA, funding future capital maintenance and systems repair for the existing home and outbuildings to be performed by Metro;
6. Provision for the creation and adoption of a long-term resource management plan; and
7. Indemnification of Metro by the Preserve.

Findings

Authorizing the Executive Officer to execute the NAMA with the Preserve is recommended, based on the following:

- Acquisition of the Madsen Property helps to fulfill the following Jackson Bottom – Dairy/McKay Creeks Target Area, "Tier 1 Acquisition Objective": Acquire key parcels near the confluence of the Tualatin River and Dairy Creek, to complete public ownership of the Jackson Bottom Master Plan area for multiple purposes (habitat, water quality, public access, education.)
- The Preserve's ongoing work of restoration projects, water quality research, education programs and programs for the public are very compatible with the goals and mission of Metro's Regional Parks and Greenspaces department and its Open Spaces Division.
- The management of the property by the Preserve will reduce the day-to-day management responsibilities of Metro's landbanking staff, while ensuring that the property's present superior condition is maintained and enhanced.

Budget Impact

The Preserve would become responsible for the management, maintenance and operation of the Property. This would reduce Metro's land-banking costs and future operation and maintenance expenses.

Executive Officer's Recommendation

The Executive Officer recommends approval of Resolution No. 00-3004.