

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ACQUIRING) RESOLUTION NO. 01-3103
A CONSERVATION EASEMENT)
IN THE NEWELL CREEK CANYON) Introduced by Mike Burton
TARGET AREA AND ENTERING INTO) Executive Officer
A BOUNDARY AGREEMENT)

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

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

WHEREAS, the Newell Creek Canyon regional target area was designated as a greenspace of regional significance in the Greenspaces Master Plan and identified as a regional target area in the Open Spaces, Parks and Streams Bond Measure; and

WHEREAS, on April 11, 1996, the Metro Council adopted a refinement plan for the Newell Creek Canyon regional target area which authorized the purchases of sites in Newell Creek Canyon, illustrated in a confidential tax-lot-specific map identifying priority properties for acquisition; and

WHEREAS, Oregon City School District No. 62 owns 14.48 acres along Newell Creek ("The School District Property"), which is undeveloped and densely wooded and identified in Exhibit A; and

WHEREAS, Oregon City School District No. 62 proposes to sell a conservation easement to Metro which would encumber the School District Property and which would restrict land uses of the School District Property so that its natural condition would be permanently protected in a form substantially similar to that set forth in Exhibit B; and

WHEREAS, Metro Council adopted on November 6, 1997, Ordinance No. 97-714 codified as Metro Code Section 10.03.60 which establishes a procedure by which Metro can hold conservation easements; and

WHEREAS, acquisition of a conservation easement over the School District Property would serve the Newell Creek Canyon target area objectives of acquiring large blocks of contiguous forested land along Newell Creek and its tributaries for protection of wildlife habitat and acquisition of the steeply sloped canyon land and upper canyon lands for water quality protection; and

WHEREAS, acquisition of the conservation easement will provide public access to the Newell Creek Canyon and will help protect the natural, scenic, or open space values of real property; and

WHEREAS, lot line discrepancies exist between the boundaries of the conservation easement property and Metro's property immediately south of and adjacent to the conservation easement property, and resolution of these ambiguities will benefit both properties; and

WHEREAS, resolution of these discrepancies requires entry into a Boundary Agreement and/or Quitclaim or Bargain and Sale Deed, in a form substantially similar to the Boundary Agreement attached as Exhibit C or in a form acceptable to the Office of General Counsel; and

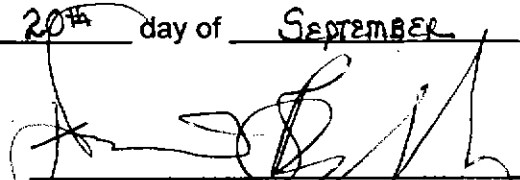
WHEREAS, Metro would assume minimal land management costs by acquiring a conservation easement over a portion of the School District Property; and

WHEREAS, Metro has met public notice requirements for conservation easement as set forth in Metro Code Section 10/03.020; now therefore,

BE IT RESOLVED,

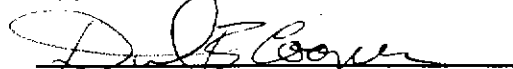
That the Metro Council authorizes the Executive Officer to enter into the conservation easement over the School District Property and that the Metro Council authorizes the Executive Officer to enter into a Boundary Agreement and/or Quitclaim or Bargain and Sale Deed, in forms substantially similar to Exhibits B, and C or in forms acceptable to the Office of General Counsel.

ADOPTED by Metro Council this 20th day of September, 2001.

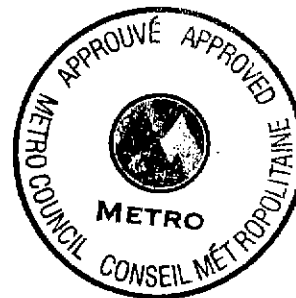


David Bragdon, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel



LEGAL DESCRIPTION
CONSERVATION EASEMENT
OGDEN MIDDLE SCHOOL

EXHIBIT "A"

A TRACT OF LAND, SITUATED IN THE NORTHEAST ONE-QUARTER OF SECTION 32 AND THE NORTHWEST ONE-QUARTER OF SECTION 33, TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON, BEING A PORTION OF THAT TRACT OF LAND DESCRIBED IN DEED TO THE OREGON CITY SCHOOL DISTRICT (SCHOOL DISTRICT NO. 62) IN DEED BOOK 582 PAGE 461, CLACKAMAS COUNTY DEED RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "LOVE PLS 747" AT THE NORTHWEST CORNER OF THAT TRACT OF LAND DESCRIBED IN DEED TO MARVIN A. MCINTOSH AND SHIRLEY M. MCINTOSH, RECORDED APRIL 22, 1985, CLACKAMAS COUNTY RECORDER'S FEE NO. 85-13452; THENCE ALONG THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID MCINTOSH TRACT, N.87°20'39"W., 27.09 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING" AT THE POINT-OF-BEGINNING; THENCE CONTINUING N.87°20'39"W., 397.08 FEET TO THE CENTERLINE OF NEWELL CREEK; THENCE DOWNSTREAM ALONG THE CENTERLINE OF NEWELL CREEK THE FOLLOWING TWENTY FIVE (25) COURSES: THENCE N.44°43'42"E., 112.53 FEET; THENCE N.55°47'40"W., 158.86 FEET; THENCE N.26°07'22"W., 102.81 FEET; THENCE N.15°36'58"E., 44.15 FEET; THENCE N.60°29'56"E., 36.04 FEET; THENCE N.13°18'26"E., 106.61 FEET; THENCE N.39°10'47"W., 66.39 FEET; THENCE N.10°24'54"W., 46.44 FEET; THENCE N.11°12'49"E., 57.49 FEET; THENCE N.50°34'57"W., 32.26 FEET; THENCE N.07°07'47"E., 48.07 FEET; THENCE N.16°31'58"W., 53.33 FEET; THENCE N.46°40'00"E., 73.57 FEET; THENCE N.23°21'25"W., 90.76 FEET; THENCE N.28°20'57"E., 44.07 FEET; THENCE N.51°33'47"E., 102.66 FEET; THENCE N.26°56'11"E., 57.53 FEET; THENCE N.08°18'50"W., 36.40 FEET; THENCE N.20°19'45"E., 70.42 FEET; THENCE N.19°13'11"W., 54.07 FEET; THENCE N.50°28'09"E., 28.73 FEET; THENCE S.77°49'02"E., 51.78 FEET; THENCE N.29°10'48"E., 38.38 FEET; THENCE N.55°15'43"W., 75.67 FEET; THENCE N.19°45'06"E., 28.41 FEET; THENCE LEAVING SAID CENTERLINE S.84°30'42"E., 294.13 FEET TO A 1-INCH IRON PIPE; THENCE CONTINUING S.84°30'42"E., 368.60 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE S.26°24'36"W., 385.86 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE S.22°50'08"W., 185.29 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE S.02°48'24"W., 197.52 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE N.82°06'11"W., 147.08 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE S.32°35'37"W., 175.73 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE S.22° 07'17"E., 112.89 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE S.60°52'05"E., 145.10 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE

S.06°22'25"W., 189.43 FEET TO THE POINT-OF-BEGINNING, CONTAINING 630652 SQUARE FEET (14.48 ACRES), MORE OR LESS.

TOGETHER WITH A PERMANENT EASEMENT FOR INGRESS AND EGRESS, DESCRIBED AS FOLLOWS:

COMMENCING AT 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "LOVE P.L.S. 747" AT THE NORTHWEST CORNER OF THAT TRACT OF LAND DESCRIBED IN DEED TO MARVIN A. MCINTOSH AND SHIRLEY M. MCINTOSH, RECORDED APRIL 22, 1985, CLACKAMAS COUNTY RECORDER'S FEE NO. 85-13452; THENCE ALONG THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID MCINTOSH TRACT, N.87°20'39"W., 27.09 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING" AT THE POINT-OF-BEGINNING; THENCE N.06°22'25E., 30.06 FEET; THENCE S.87°20'39"E., 271.34 FEET; THENCE N.61°44'25"E., 70.57 FEET TO A 1/2" IRON PIPE ON THE WEST RIGHT-OF-WAY LINE OF DONOVAN ROAD (COUNTY ROAD NO. 1785) (50.00 FEET WIDE); THENCE ALONG SAID RIGHT-OF-WAY LINE, AND IT'S SOUTHERLY EXTENSION, S.04°33'22"W., 66.29 FEET TO THE NORTH LINE OF AFOREMENTIONED MCINTOSH TRACT; THENCE ALONG SAID NORTH LINE N.87°20'39"W., 331.64 FEET TO THE POINT-OF-BEGINNING.

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When recorded return to:

Metro Regional Parks and Greenspaces
600 NE Grand Avenue
Portland, OR 97232

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is made this ____ day of _____, 2001, by Oregon City School District No. 62, having a business address is P.O. Box 2110, Oregon City, OR 97045, and owning property located at 14133 S. Donovan Road, Oregon City, OR 97045 ("Grantor"), in favor of Metro, a municipal corporation and political subdivision of the State of Oregon, having an address at 600 NE Grand Avenue, Portland, OR 97231 ("Grantee").

RECITALS

WHEREAS, Grantor is the owner in fee simple of that certain real property (the "Protected Property") in Clackamas County, Oregon, more particularly described in Exhibit A (legal description) and shown on Exhibit B (site plan), which are attached and incorporated into this Easement by this reference.

WHEREAS, Grantee is the owner in fee simple of other real property located east of, and adjacent to the Protected Property, and this Deed of Conservation Easement touches and concerns the other real property owned by Grantee.

WHEREAS, the Protected Property possesses scenic, open space, educational and recreational values of great importance to Grantor, the people of the City of Oregon City, the people of Clackamas County and the people of the State of Oregon (collectively, "Conservation Values").

WHEREAS, the Protected Property consists of riparian habitat along Newell Creek. The waters and channel of Newell Creek provide the natural area connection between properties that Metro owns to the north and south of the Protected Property. The protected property of this conservation easement contains riparian habitat, which serves as a nutrient filter, while providing shade, structure and food sources to the creek. Healthy riparian zones can create diverse aquatic habitats, reduce light levels, modulate temperatures, serve as barriers to erosion into the stream, and provide travel corridors for wildlife species. The extent and continuity of the riparian vegetation are critical to both aquatic and terrestrial communities. The scenic setting, as well as wildlife viewing, education and interpretation opportunities are also unique.

WHEREAS, the specific Conservation Values of the Protected Property are documented in an inventory of relevant features of the Protected Property, dated _____, 2001, on file

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 Grantee further agree that within three (3) months of the execution of this Easement, a collection of additional Baseline Documentation may be compiled by Grantee, and incorporated into the Easement by this reference, if the Grantor gives written approval to such additional Baseline Documentation. 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, has the right to identify, protect, and preserve in perpetuity the Conservation Values of the Protected Property, and desires to transfer such rights to Grantee, except to the extent educational and recreational values are retained herein by Grantor.

WHEREAS, Grantee is a political subdivision of the State of Oregon, whose purpose includes the protection, management and restoration of urban natural areas and areas in proximity to the urban area deemed to be of metropolitan concern.

WHEREAS, Grantee agrees, 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 \$ and the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Oregon, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth ("Easement"). Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's successors, and assigns. All references to "Grantor" herein apply equally to Grantor's successors, and assigns.

1. **Purpose.** The purpose of this 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. Use of the Protected Property for nature trails for educational and recreational purposes is consistent with the Purpose. Use by Grantor of its adjoining property for school or similar purposes is consistent with the Purpose although it may have some impact on the Protected Property.

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2. **Rights Conveyed to Grantee.** To accomplish the Purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

- a) To identify, preserve and protect in perpetuity and to enhance by mutual agreement the Conservation Values of the Protected Property.
- b) To enter the Protected Property for the purpose of making a general inspection to assure compliance with this Easement.
- c) To enter the Protected Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of enforcing the provisions of this Easement.
- d) To construct and maintain trails for public use and public access.
- e) To enforce the terms of this Easement, consistent with Section 6.
- f) To assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with Section 14.

3. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited except for the exercise of Reserved Rights as described in Section 4 herein, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- a) The legal or "de facto" subdivision of the Protected Property.
- b) The harvesting, pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located on the Protected Property; except as deemed necessary by Grantee 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, and except as in accordance with Section 4(C) herein.
- c) The above ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities.
- d) The placement or construction by Grantor of any permanent or temporary buildings, structures, or other improvements of any kind (including, without limitation, pipelines, wells, septic systems, drainfields, fences, roads, and parking areas).

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- e) 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 in accordance with Section 4(C) herein.
- f) 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, including 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; except as deemed necessary by Grantee to preserve, protect or enhance the Conservation Values of the Protected Property.
- g) Road Construction.
- h) The conducting of grazing or agricultural activities of any kind.
- i) 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.
- j) The placement of commercial signs, billboards, or other advertising material on the Protected Property.
- k) Hunting and trapping in all forms.
- l) The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.
- m) The disruption of wildlife breeding, foraging and nesting activities, and the harrassment of wildlife, including pursuing and scaring of wildlife.
- n) Use of the site to exercise, train or pasture any domestic animal on the Protected Property.
- o) Application of any herbicides or pesticides or fungicides; except as deemed necessary by Grantee to preserve, protect or enhance the Conservation Values of the Protected Property.
- p) The introduction of nonnative wetland plants and nonnative invasive species on the Protected Property, or the planting or introduction of any species of vegetation; except as deemed necessary by Grantee to enhance the Conservation Values of the Protected Property.

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- q) Discharge of any solid or liquid waste or hazardous material onto soils or into waters of the site.
- r) 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.
- s) 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.
- t) The discharge of firearms, bows and arrows, air guns, slingshots, and similar devices.
- u) Fires of all forms, except those necessary for maintenance and consistent with Conservation Values of the Protected Property.
- v) Use of all forms of fireworks.
- w) Operation of motorized vehicles except when approved by the grantee and in association with the maintenance of conservation values, and except in accordance with Section 4 herein.
- x) Uses of devices which amplify or emit amplified sound.

4. **Reserved Rights.** Grantor reserves for itself and its successors and assigns, any use of, or activity on, the Protected Property that is not inconsistent with the Purpose of the Easement and that is not prohibited by this Easement. In addition to the foregoing reserved rights, Grantor specifically reserves for itself and its successors, and assigns, the following uses and activities:

- a) Use and maintenance of existing trail system consistent with the conservation values of this Easement, provided that such activity is conducted so that interference with the Conservation Values of the Protected Property is avoided to the extent reasonable.
- b) Use and maintenance of existing storm water drainage system, both on the Protected Property and on Grantor's land adjoining the Protected Property. Grantor shall also have the right to in case of additional construction or modification of its adjacent property to cause and allow stormwater drainage to go on the Protected Property. The existing stormwater drainage is only for natural stormwater runoff and not used for dumping or disposal of any other materials. Grantor shall use reasonable efforts to reduce adverse effects upon the Protected Property. Prior to such construction, Grantor shall provide notice to Grantee as set forth in Section 5 below.
- c) The undertaking of other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any

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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 notice to Grantee as set forth in Section 5 below prior to undertaking any such activities.

- d) Grantor may allow students in its schools to walk the existing trails on the Protected Property for educational and recreational purposes. Grantor and Grantee understand that normal children engage in noisy behavior and sometimes in such activities as chasing squirrels and Grantor cannot guarantee that will not happen.
- e) Grantor may construct trails for educational and recreational uses separately or in cooperation with Grantee. Such trails shall be built in such a manner as to preserve Conservation Values, and in accordance with all existing laws. No such trails shall be built prior to Grantor providing notice to Grantee as set forth in Section 5 below, and Grantee consenting to such trails as set forth in Section 5(b) below.

5. Notice and Approval.

- a) Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in Section 3 or 4, is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required Grantor shall notify Grantee in writing not less than 30 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 Grantee to make an informed judgment as to its consistency with the purpose of this Easement. If Grantor must undertake emergency action to protect health or safety on the Protected Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without Grantee's approval only if Grantor notifies Grantee prior to taking such action and Grantee cannot provide its approval, with or without conditions, within such time as is reasonable under the circumstances.
- b) Grantee's Approval. Where Grantee's approval is required, as set forth in Section 3 or 4, Grantee shall grant or withhold its approval in writing within 30 days of receipt of Grantor's written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

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- c) 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 first class mail, postage prepaid, addressed as follows:

To Grantor: Oregon City School District No. 62
c/o Ken Rezac
P.O. 2110
Oregon City, Oregon 97045

To Grantee: Metro
Department of Parks and Greenspaces
Attn: Charles Ciecko
600 NE Grand Avenue
Portland, OR 97232

With a copy to:

Metro
Office of General Counsel
600 NE Grand Avenue
Portland, OR 97232

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

6. Grantee's Remedies.

- a) Notice of Failure. If either party determines that the other party is in violation of any of the terms of this Easement or threatens violation, the aggrieved party shall give written notice to the other party demanding corrective action to cure the violation. If the party receiving the notice fails or refuses to correct the violation or disputes the violation within 30 days after receipt of notice, the party giving notice may demand mediation. If such dispute or violation cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to this easement, or breach thereof, shall be settled by arbitration and judgment upon the Award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. A party may request arbitration by giving notice to that effect to the other party, specifying in the notice the nature of the dispute. The dispute shall be determined by a single arbitrator for matters up to \$200,000, and by three arbitrators for any dispute in excess of that amount. All arbitrators shall be licensed attorneys having at least 10 years experience with commercial real estate transactions. On the application of either party, the award in the arbitration may be enforced by the order of judgment of a court of competent

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jurisdiction. Mediation and arbitration shall be administered by either the Institute for Conflict Management, Inc. or Arbitration Service of Portland. The choice shall be with the party first demanding mediation.

- b) **Cost of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of alternative dispute resolution and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs, including, without limitation attorneys' fees shall be borne by Grantee.
- c) **Grantee's Discretion.** Grantee acknowledges its commitment to protect the Purpose of this Easement. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term of any of Grants rights under this Easement. No delay or omission by Grantee 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.
- d) **Waiver of Certain Defenses.** Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, adverse possession or prescription.
- e) **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee 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 prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.
- f) **Estoppel Certificates.** Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, that certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement.

7. **Access by Public.** The Grantee may construct and maintain a trail which will be open to the public, consistent with the conservation values of this Easement. Grantee shall also have the

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right to determine and allow public use and access to the Protected Property, consistent with the conservation values of this Easement.

8. **Costs, Liabilities and Insurance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage naming Grantee as additional insured when the use of the property is related to school activities. Grantee shall be responsible for the operation, upkeep and maintenance of any trail built by Grantee on the Protected Property, and for any other activity performed by Grantee under Section 2 herein. Grantor shall be responsible for the operation, upkeep and maintenance of the existing trails, if any, of any trails built by Grantor, and the existing stormwater drainage system on the Protected Property. Grantor shall keep the property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

9. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish Grantee with satisfactory evidence of payment upon request.

10. **Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantee and its 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 Grantor's invitees, unless caused by Grantee's negligence; (2) injury to or the death of any person, or physical damage to any property, resulting from Grantor's acts, omissions, or school-related activities; (3) 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; (4) the obligations specified in Sections 4, 8 and 9.

11. **Representations and Warranties.** In connection with the following representations and warranties, Grantor has made no investigation as to their accuracy. Grantor shall provide the Grantee an opportunity to review all existing files relating to the Property in Grantor's possession or control prior to the execution of this Conservation Easement. Also, the word "knowledge" means actual knowledge of Grantor's present and future Superintendent, Assistant Superintendent, Principal of any school on Grantor's adjoining property, Business Manager and all full-time maintenance personnel on Grantor's adjoining property. Knowledge of other employees of Grantor shall not be imputed to Grantor. Grantor represents and warrants that to the best of Grantor's knowledge:

- a) There are no apparent or latent defects in or on the Protected Property;

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- b) There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;
 - c) Neither Grantor nor Grantor's predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances on the Protected Property regulated by State or Federal environmental laws, including but not limited to ORS Chapter 465 and 42 U.S.C. § 9601 et seq; and
 - d) There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected 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.
 - e) There are no mortgages or deeds of trust encumbering the Property, and Grantor shall not permit any such instruments to encumber the Property, except if such mortgage or deed of trust beneficiary agrees by recorded instrument to subordinate its rights to the Protected Property to the Easement to the extent necessary to permit Grantee to enforce the Easement.

12. **Subsequent Transfer and Extinguishment.**

- a) **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 Grantee 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, unless otherwise provided by Oregon law at the time, in accordance with Section 12B of this Easement. Grantee shall use all such proceeds in a manner consistent with the Purpose of this Easement.

b) **Condemnation.** In the event that the Protected Property is taken, in whole or in part, by the exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

c) **Subsequent Transfers.** Grantor agrees to:

- I. 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;
- II. Describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property;
- III. Give written notice to Grantee 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 Grantee 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.

13. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable). 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 Clackamas County, Oregon, and any other jurisdiction in which such recording is required.

14. **Assignment.** This Easement is transferable as provided for and allowed by law. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. If this Easement is assigned to a person or entity other than a governmental entity, the Grantor's approval is required. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment.

15. **Recordation.** Grantee shall record this instrument in a timely fashion in the official records of Clackamas 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.

16. **General Provisions.**

a) **Controlling Law.** The interpretation and performance of this Easement shall be

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governed by the laws of the State of Oregon.

- b) 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.
- c) 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.
- d) 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 13.
- e) No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.
- f) "Grantor" - "Grantee". The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and its successors, and assigns, and the above-named Grantees, their successors and assigns.
- g) Successors. 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 successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
- h) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- i) 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.

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Metro does hereby accept the above Grant Deed of Conservation Easement.

Dated: _____

Metro

By: Mike Burton

Its: Executive Officer

STATE OF: _____)

) ss

COUNTY OF: _____)

I certify that I know or have satisfactory evidence that _____ signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public

Print Name: _____

My appointment expires: _____

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AFTER RECORDING, RETURN TO:

Karen M. Starin
Metro Office of General Counsel
600 NE Grand Ave
Portland OR 97232-2736

BOUNDARY AGREEMENT

This Agreement is made this _____ day of _____, 2001, by and between Metro, a municipal corporation established pursuant to Oregon law and the Metro Charter ("Metro") and the Oregon City School District No. 62 ("School District").

RECITALS

- A. Metro is the owner in fee of the real property described by deed recorded as Fee No. 97-025067, Clackamas County Deed Records, as described in Exhibit A attached hereto (the "Metro Property").
- B. The School District is the owner in fee of the real property that adjoins the Metro Property to the north, described by deed recorded in Deed Book 582, page 461, Clackamas County Deed Records as described in Exhibit B attached hereto (the "School District Property").
- C. The School District will grant a Conservation Easement and access easement ("Conservation Easement") to Metro over a portion of the School District Property as more specifically set forth in the Conservation Easement.
- D. There is doubt and uncertainty about the location of the boundary line between the Metro Property and the School District Property resulting from possible conflicting or overlapping descriptions in various conveyances and surveys, and the parties wish to resolve this ambiguity by agreeing on a boundary line.

NOW, THEREFORE, the parties agree as follows:

1. Confirmation of True Boundary Line. The parties hereto acknowledge, confirm and agree that a common boundary line separating the Metro Property and the School District Property shall hereafter be established, located and determined as set forth

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on Exhibit C, attached hereto.

2. This Agreement is in full settlement of all disputes concerning the location of the common boundary line separating the Metro Property and the School District Property.
3. This Agreement, establishing the common boundary line separating the Metro Property and the School District Property, shall be a covenant running with the land as to each of the adjoining tracts described, and shall be binding on the parties, their heirs, executors, administrators and assigns.

4. Reciprocal Quitclaim Deeds.

4.1 Metro hereby quitclaims, conveys and releases to the School District all of its right, title and interest in and to the School District Property described by deed recorded in Deed Book 582, Page 461, Clackamas County Deed Records, north of that line described on Exhibit C.

4.2 The School District hereby quitclaims, conveys and releases to Metro all of its right, title and interest in and to the Metro Property described by deed recorded as Fee No. 97-025067, Clackamas County Deed Records, south of that line described on Exhibit C.

5. Interpretation. In the event either party hereto fails to perform its obligations under this Agreement, the other party shall be entitled to require such performance by suit for specific performance, or if appropriate, through injunctive relief. Such remedies shall be in addition to any other remedies afforded under Oregon Law. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives and successors of the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the parties. The headings used in this Agreement are for convenience of reference only and shall not be used in interpreting this document.

6. Statutory Disclaimer. THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING

Oregon City Boundary
Agreement - Exhibit A
Metro Property Description

That portion of the following described property lying Easterly of the Easterly line of State Highway 213 (Cascade Highway South) as described in Deed to State of Oregon, by and through its Department of Transportation, Highway Division, recorded January 22, 1982 as Fee No. 82 2080:

A part of the Ezra Fisher and wife Donation Land Claim No. 44 in Sections 32 and 33, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as:

Beginning at a point on the Westerly line of said Fisher Donation Land Claim North 1°00' East 13.25 chains distant from the Southwest corner thereof; thence South 87°55' East 1000 feet to a point, the Northwest corner of land conveyed to Lavina Thome in Book 178, of Deed at Page 99; thence continue along said Thome North line South 87°55' East 1640 feet, more or less, to the Southwest corner of land conveyed to Samuel Smith in Book 126, of Deeds at page 451; thence North 437.9 feet to the Southwest corner of land conveyed by Samuel Smith to E.W. Randolph by Deed recorded in Book 140, at page 474; thence East 60 feet to the Southeast corner thereof; thence North 100 feet to the Northeast corner thereof; thence West 60 feet to the Northwest corner thereof; thence North 87°15' West along 1822 feet following the North line of land of E.W. Randolph as described in Book 94, of Deeds at page 427, to the Northeast corner of land conveyed to Myrtle Davenport, in Book 147 of Deeds at page 43; thence South 345 feet; thence West 34 feet; thence South 294 feet to a point which is 16½ feet North of the South line of said tract in Book 94 of Deeds at page 427; thence North 87°55' West 735 feet to the West line of said Fisher Claims; thence South 16½ feet to the place of beginning.

PARCEL I:

A part of the Ezra Fisher Donation Land Claim No. 44 in Section 33, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows::

Beginning at a stone in the West boundary line of the said Ezra Fisher Donation Land Claim 23.15 chains North from the Southwest corner thereof; thence South 87°15' East 51.25 chains to the division line between the husband and wife's halves of said claim; thence North along said division line 8.75 chains; thence North 85°51' West 51.25 chains to the West line of the said Fisher Donation Land Claim 30 chains South 0°38' West from the Northwest corner thereof; thence South along said West boundary line of the said Fisher Claim 10 chains to the place of beginning.

EXCEPT that portion thereof conveyed to Clackamas County by Deed recorded May 7, 1937 in Book 237, page 286, Deed Records, in the County of Clackamas and State of Oregon.

EXCEPTING that portion conveyed to State of Oregon, by and through its Department of Transportation, Highway Division as described as follows:

A parcel of land lying in the Ezra Fisher Donation Land Claim No. 44, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon and being a portion of that property designated as Parcel A and described in that Deed to School District No. 62, recorded in Book 582, page 461 of Clackamas County Record of Deeds; the said parcel being that portion of said property lying Westerly of Newell Creek.

PARCEL II:

A part of the Ezra Fisher Donation Land Claim No. 44 in Section 33, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows::

Beginning at the Northeast corner of a tract of land sold by N.W. Randall to John Naught and recorded on page 397 of Volume X, Records of Deeds in Clackamas County; thence North 84°25' West along the North line of said tract 6.09 chains to land sold to Louisa Means; thence South 5°35' West along said Means East line 4.65 chains to said Means Southeast corner; thence North 84°25' West 10.16 chains to the East bank of Newell Creek, and along said Means South line; thence South 15° West 4.75 chains to the South line of said tract of land sold by N.W. Randall to John Naught; thence South 85°57' East along the South line 18.60 chains to the Southeast corner of said tract; thence North 0°30' East along the East line 8.76 chains to the place of beginning.

PARCEL III:

A part of the Ezra Fisher Donation Land Claim No. 44 in Section 33, Township 2 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows::

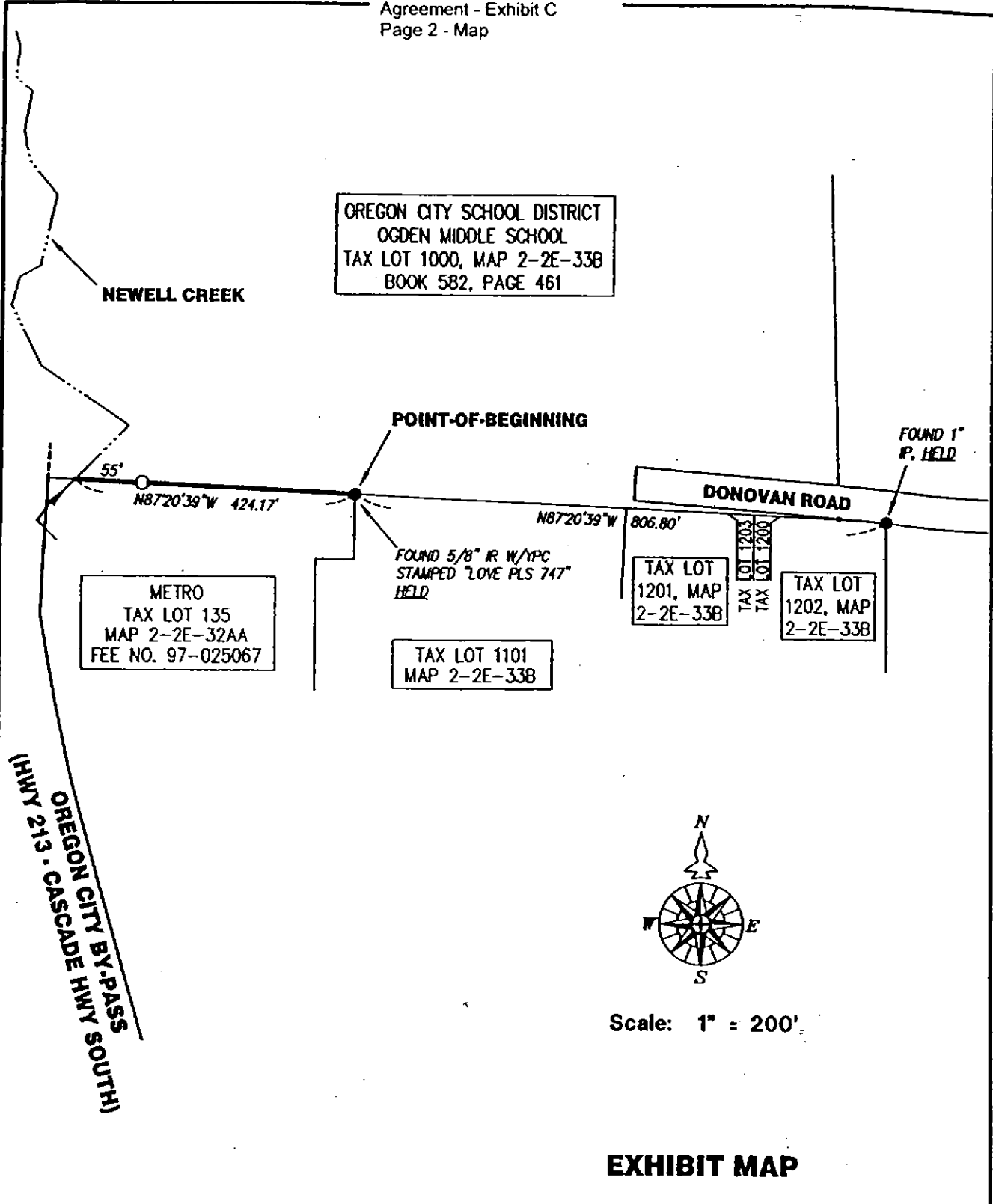
Commencing at a point on the right bank of Newell Creek 16.25 chains North 84½° West from the Northeast corner of a tract of land sold by N.W. Randall and wife to John Naught and recorded on page 397 in Book "X" of Records; running thence South 15° West up said Newell Creek 4.65 chains; thence South 84° East 10.15 chains; thence North 5¼° East 4.54 chains to the North line of said tract; thence North 84½° West 9.85 chains to the place of beginning.

Oregon City Boundary
Agreement - Exhibit C
Boundary Line Description

Boundary Line Description

A boundary agreement line, located in the Northeast One-Quarter of Section 32 and the Northwest One-Quarter of Section 33, Township 2 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, being more particularly described as follows:

Beginning at a 5/8-inch iron rod with a yellow plastic cap stamped "Love P.L.S. 747" at the Northwest corner of that tract of land described in deed to Marvin A. McIntosh and Shirley M. McIntosh, recorded April 22, 1985, Clackamas County Recorder's Fee No. 85-13452; thence North $87^{\circ} 20' 39''$ West, 369.17 feet to a 5/8-inch iron rod with a yellow plastic cap stamped "Compass Engineering"; thence continuing North $87^{\circ} 20' 39''$ West, 55.00 feet to the centerline of Newell Creek, and the terminus of said line.



COMPASS ENGINEERING

ENGINEERING SURVEYING PLANNING

6564 S.E. LAKE ROAD (503) 653-9093 PHONE
MILWAUKIE, OREGON 97222 (503) 653-9095 FAX

TAX LOTS 135 AND 1000
NW 1/4 SECTION 33 & NE 1/4 SECTION 32
T2S, R2E, WM, CLACKAMAS COUNTY, OREGON

4473DR1.DWG

NATURAL RESOURCES COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 01-3103, FOR THE PURPOSE OF ACQUIRING A CONSERVATION EASEMENT IN THE NEWELL CREEK CANYON TARGET AREA AND ENTERING INTO A BOUNDARY AGREEMENT

Date: September 20, 2001

Presented by: Councilor Atherton

Committee Action: At its September 19, 2001 meeting, the Natural Resources Committee voted 3-0 to recommend Council adoption of Resolution 01-3103. Voting in favor: Councilors Atherton, McLain and Hosticka.

Background

Resolution 01-3103 authorizes the purchase of a conservation easement from the Oregon City School District involving 14.48 acres in the Newell Creek Canyon target area, including 1,617 feet of creek frontage.

The easement attaches to an essential properties site that links two other Open Space bond measure purchase sites on the east side of highway #213. It abuts Ogden middle school, which is to the east of the site.

- **Existing Law:** The site is in an approved Open Spaces Bond measure target area. Oregon statute and Metro code guide the acquisition of conservation easements and require a public hearing prior to Council adoption.
- **Budget Impact:** The cost of the easement is \$159,000, paid for with Open Spaces bond proceeds. Costs associated with monitoring and managing the easement are expected to be minimal.

Committee Issues/Discussion: The boundary adjustment was clarified in committee discussion. This issue should be non-contentious given that Metro owns the other piece of property involved in the adjustment. The staff report describes this aspect as a “clean up” issue.

Councilor Atherton asked if the price for the easement was not a bit high. Staff responded that it was backed up by several appraisals and that the easement granted nearly full use of the property.

Staff Report

CONSIDERATION OF RESOLUTION NO. 01-3103 FOR THE PURPOSE OF ACQUIRING A CONSERVATION EASEMENT IN THE NEWELL CREEK CANYON TARGET AREA

Date: August 24, 2001

Presented by: Charlie Ciecko
Jim Desmond

DESCRIPTION

Resolution No. 01-3103, requests approval to purchase a conservation easement in the Newell Creek Canyon target area.

EXISTING LAW

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. The property covered by this Conservation Easement is within the Newell Creek Canyon Target Area Refinement Plan, adopted by the Metro Council as Resolution No. 96-2309. Metro Code Section 2.04.02 (a) (3) requires that the Council must authorize contracts for the purchase, sale, lease or transfer of real property owned by Metro.

BACKGROUND

In May of 1995, voters in the region passed a bond measure enabling Metro to purchase open space properties with \$135.6 million worth of bond funds. The bond measure identified fourteen regional target areas and six regional trails and greenways for property acquisition, including the Newell Creek Canyon.

On April 11, 1996, the Metro Council adopted via Resolution No. 96-2309 the Newell Creek Canyon Target Area Refinement Plan. Tier 1 Objectives in this refinement plan called for the acquisition of large blocks of contiguous forested land along Newell Creek and its tributaries for protection of wildlife habitat and acquisition of steeply sloped canyon land and upper canyon lands for water quality protection.

Oregon City School District No. 62 owns approximately 14.48 acres of land in Newell Creek Canyon, including approximately 1,617 feet of frontage along Newell Creek. This property is listed on Metro's Open Spaces "Essential Properties" list. The School District property contains the forested wildlife habitat and steeply sloped canyon and upper canyon lands described in refinement plan objectives. The School District has agreed to grant a conservation easement to Metro that would encumber their property. Along with other terms and conditions, the conservation easement would place a permanent restriction against the following land uses:

- 1) timber harvesting
- 2) construction of any buildings or improvements

- 3) road building
- 4) grazing

The School District has offered to sell the conservation easement to Metro, including the right for Metro to periodically monitor and enforce easement restrictions, and to construct and maintain trails for public use and public access at appraised value. Acquisition of the conservation easement is in the public interest and will help protect the natural, scenic, and open space values of the property (Exhibit A).

Metro Code Section 10.03.020 establishes a procedure by which Metro could purchase the conservation easement. After providing proper notice to the public and to the local jurisdiction where the property is located, Ordinance 97-714 allows Metro to purchase the easement.

In addition to obtaining a conservation easement over this natural area, a "clean-up" issue can be resolved as part of this transaction. Metro currently owns property south of and adjacent to the conservation easement property. As part of the survey of the conservation easement, the surveyor discovered discrepancies between existing surveys and deeds in and around the subject property. Due to Metro's ownership of this adjacent lot, the discrepancies at the southern border of the conservation easement can be resolved. The County surveyors' office requires a boundary agreement and quitclaim or bargain and sale deed between the School District and Metro as to their common boundary line, in order to record the survey of the conservation easement.

Recording the survey and resolution of the boundary discrepancies will benefit the management of the conservation easement, as well as management of Metro's existing property to the south. Execution of a Boundary Resolution Agreement and/or Quitclaim or Bargain and Sale Deeds, in a form legally acceptable to both parties, to effectuate this resolution is the method to resolve this ambiguity and record the survey. The proposed agreed-upon line is essentially the current "lived-to" boundary and is also an extension of a monumented line east of the Properties, south of Donovan Road.

FINDINGS

Acquisition of the conservation easement and entry into a Boundary Agreement and/or Quitclaim or Bargain and Sale Deeds from Oregon City School District No. 62 is recommended based upon these findings:

- The conservation easement will add approximately 14.48 acres to the Newell Creek Canyon target area, will permanently protect a significant stretch of intact forest habitat and riparian area, and will provide public access to the Newell Creek Canyon.
- Metro has met the public notice requirements for acquisition of conservation easement detailed in Ordinance 97-714.
- Resolution of the boundary discrepancies will benefit both Metro's existing property to the south as well as the new conservation easement property, and will allow for better management of both properties.
- The property is listed on Metro's Open Spaces "Essential Properties" list.

BUDGET IMPACT

Bond funds will supply acquisition money. Costs associated with monitoring and managing the easement are expected to be minimal.

OUTSTANDING QUESTIONS

None.

Executive Officer's Recommendation

The Executive Officer recommends passage of Resolution No. 01-3103.

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When recorded return to:

Metro Regional Parks and Greenspaces
600 NE Grand Avenue
Portland, OR 97232

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is made this ____ day of _____, 2001, by Oregon City School District No. 62, having a business address is P.O. Box 2110, Oregon City, OR 97045, and owning property located at 14133 S. Donovan Road, Oregon City, OR 97045 ("Grantor"), in favor of Metro, a municipal corporation and political subdivision of the State of Oregon, having an address at 600 NE Grand Avenue, Portland, OR 97231 ("Grantee").

RECITALS

WHEREAS, Grantor is the owner in fee simple of that certain real property (the "Protected Property") in Clackamas County, Oregon, more particularly described in Exhibit A (legal description) and shown on Exhibit B (site plan), which are attached and incorporated into this Easement by this reference.

WHEREAS, Grantee is the owner in fee simple of other real property located east of, and adjacent to the Protected Property, and this Deed of Conservation Easement touches and concerns the other real property owned by Grantee.

WHEREAS, the Protected Property possesses scenic, open space, educational and recreational values of great importance to Grantor, the people of the City of Oregon City, the people of Clackamas County and the people of the State of Oregon (collectively, "Conservation Values").

WHEREAS, the Protected Property consists of riparian habitat along Newell Creek. The waters and channel of Newell Creek provide the natural area connection between properties that Metro owns to the north and south of the Protected Property. The protected property of this conservation easement contains riparian habitat, which serves as a nutrient filter, while providing shade, structure and food sources to the creek. Healthy riparian zones can create diverse aquatic habitats, reduce light levels, modulate temperatures, serve as barriers to erosion into the stream, and provide travel corridors for wildlife species. The extent and continuity of the riparian vegetation are critical to both aquatic and terrestrial communities. The scenic setting, as well as wildlife viewing, education and interpretation opportunities are also unique.

WHEREAS, the specific Conservation Values of the Protected Property are documented in an inventory of relevant features of the Protected Property, dated _____, 2001, on file

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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 Grantee further agree that within three (3) months of the execution of this Easement, a collection of additional Baseline Documentation may be compiled by Grantee, and incorporated into the Easement by this reference, if the Grantor gives written approval to such additional Baseline Documentation. 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, has the right to identify, protect, and preserve in perpetuity the Conservation Values of the Protected Property, and desires to transfer such rights to Grantee, except to the extent educational and recreational values are retained herein by Grantor.

WHEREAS, Grantee is a political subdivision of the State of Oregon, whose purpose includes the protection, management and restoration of urban natural areas and areas in proximity to the urban area deemed to be of metropolitan concern.

WHEREAS, Grantee agrees, 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 \$ and the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Oregon, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth ("Easement"). Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's successors, and assigns. All references to "Grantor" herein apply equally to Grantor's successors, and assigns.

1. **Purpose.** The purpose of this 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. Use of the Protected Property for nature trails for educational and recreational purposes is consistent with the Purpose. Use by Grantor of its adjoining property for school or similar purposes is consistent with the Purpose although it may have some impact on the Protected Property.

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2. **Rights Conveyed to Grantee.** To accomplish the Purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

- a) To identify, preserve and protect in perpetuity and to enhance by mutual agreement the Conservation Values of the Protected Property.
- b) To enter the Protected Property for the purpose of making a general inspection to assure compliance with this Easement.
- c) To enter the Protected Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of enforcing the provisions of this Easement.
- d) To construct and maintain trails for public use and public access.
- e) To enforce the terms of this Easement, consistent with Section 6.
- f) To assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with Section 14.

3. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited except for the exercise of Reserved Rights as described in Section 4 herein, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- a) The legal or "de facto" subdivision of the Protected Property.
- b) The harvesting, pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located on the Protected Property; except as deemed necessary by Grantee 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, and except as in accordance with Section 4(C) herein.
- c) The above ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities.
- d) The placement or construction by Grantor of any permanent or temporary buildings, structures, or other improvements of any kind (including, without limitation, pipelines, wells, septic systems, drainfields, fences, roads, and parking areas).

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- e) 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 in accordance with Section 4(C) herein.
- f) 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, including 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; except as deemed necessary by Grantee to preserve, protect or enhance the Conservation Values of the Protected Property.
- g) Road Construction.
- h) The conducting of grazing or agricultural activities of any kind.
- i) 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.
- j) The placement of commercial signs, billboards, or other advertising material on the Protected Property.
- k) Hunting and trapping in all forms.
- l) The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.
- m) The disruption of wildlife breeding, foraging and nesting activities, and the harrassment of wildlife, including pursuing and scaring of wildlife.
- n) Use of the site to exercise, train or pasture any domestic animal on the Protected Property.
- o) Application of any herbicides or pesticides or fungicides; except as deemed necessary by Grantee to preserve, protect or enhance the Conservation Values of the Protected Property.
- p) The introduction of nonnative wetland plants and nonnative invasive species on the Protected Property, or the planting or introduction of any species of vegetation; except as deemed necessary by Grantee to enhance the Conservation Values of the Protected Property.

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- q) Discharge of any solid or liquid waste or hazardous material onto soils or into waters of the site.
- r) 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.
- s) 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.
- t) The discharge of firearms, bows and arrows, air guns, slingshots, and similar devices.
- u) Fires of all forms, except those necessary for maintenance and consistent with Conservation Values of the Protected Property.
- v) Use of all forms of fireworks.
- w) Operation of motorized vehicles except when approved by the grantee and in association with the maintenance of conservation values, and except in accordance with Section 4 herein.
- x) Uses of devices which amplify or emit amplified sound.

4. **Reserved Rights.** Grantor reserves for itself and its successors and assigns, any use of, or activity on, the Protected Property that is not inconsistent with the Purpose of the Easement and that is not prohibited by this Easement. In addition to the foregoing reserved rights, Grantor specifically reserves for itself and its successors, and assigns, the following uses and activities:

- a) Use and maintenance of existing trail system consistent with the conservation values of this Easement, provided that such activity is conducted so that interference with the Conservation Values of the Protected Property is avoided to the extent reasonable.
- b) Use and maintenance of existing storm water drainage system, both on the Protected Property and on Grantor's land adjoining the Protected Property. Grantor shall also have the right to in case of additional construction or modification of its adjacent property to cause and allow stormwater drainage to go on the Protected Property. The existing stormwater drainage is only for natural stormwater runoff and not used for dumping or disposal of any other materials. Grantor shall use reasonable efforts to reduce adverse effects upon the Protected Property. Prior to such construction, Grantor shall provide notice to Grantee as set forth in Section 5 below.
- c) The undertaking of other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any

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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 notice to Grantee as set forth in Section 5 below prior to undertaking any such activities.

- d) Grantor may allow students in its schools to walk the existing trails on the Protected Property for educational and recreational purposes. Grantor and Grantee understand that normal children engage in noisy behavior and sometimes in such activities as chasing squirrels and Grantor cannot guarantee that will not happen.
- e) Grantor may construct trails for educational and recreational uses separately or in cooperation with Grantee. Such trails shall be built in such a manner as to preserve Conservation Values, and in accordance with all existing laws. No such trails shall be built prior to Grantor providing notice to Grantee as set forth in Section 5 below, and Grantee consenting to such trails as set forth in Section 5(b) below.

5. Notice and Approval.

- a) Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in Section 3 or 4, is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required Grantor shall notify Grantee in writing not less than 30 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 Grantee to make an informed judgment as to its consistency with the purpose of this Easement. If Grantor must undertake emergency action to protect health or safety on the Protected Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without Grantee's approval only if Grantor notifies Grantee prior to taking such action and Grantee cannot provide its approval, with or without conditions, within such time as is reasonable under the circumstances.
- b) Grantee's Approval. Where Grantee's approval is required, as set forth in Section 3 or 4, Grantee shall grant or withhold its approval in writing within 30 days of receipt of Grantor's written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

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c) 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 first class mail, postage prepaid, addressed as follows:

To Grantor: Oregon City School District No. 62
c/o Ken Rezac
P.O. 2110
Oregon City, Oregon 97045

To Grantee: Metro
Department of Parks and Greenspaces
Attn: Charles Ciecko
600 NE Grand Avenue
Portland, OR 97232

With a copy to:

Metro
Office of General Counsel
600 NE Grand Avenue
Portland, OR 97232

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

6. Grantee's Remedies.

a) Notice of Failure. If either party determines that the other party is in violation of any of the terms of this Easement or threatens violation, the aggrieved party shall give written notice to the other party demanding corrective action to cure the violation. If the party receiving the notice fails or refuses to correct the violation or disputes the violation within 30 days after receipt of notice, the party giving notice may demand mediation. If such dispute or violation cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to this easement, or breach thereof, shall be settled by arbitration and judgment upon the Award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. A party may request arbitration by giving notice to that effect to the other party, specifying in the notice the nature of the dispute. The dispute shall be determined by a single arbitrator for matters up to \$200,000, and by three arbitrators for any dispute in excess of that amount. All arbitrators shall be licensed attorneys having at least 10 years experience with commercial real estate transactions. On the application of either party, the award in the arbitration may be enforced by the order of judgment of a court of competent

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jurisdiction. Mediation and arbitration shall be administered by either the Institute for Conflict Management, Inc. or Arbitration Service of Portland. The choice shall be with the party first demanding mediation.

- b) Cost of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of alternative dispute resolution and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs, including, without limitation attorneys' fees shall be borne by Grantee.
- c) Grantee's Discretion. Grantee acknowledges its commitment to protect the Purpose of this Easement. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term of any of Grants rights under this Easement. No delay or omission by Grantee 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.
- d) Waiver of Certain Defenses. Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, adverse possession or prescription.
- e) Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee 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 prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.
- f) Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, that certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement.

7. Access by Public. The Grantee may construct and maintain a trail which will be open to the public, consistent with the conservation values of this Easement. Grantee shall also have the

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right to determine and allow public use and access to the Protected Property, consistent with the conservation values of this Easement.

8. **Costs, Liabilities and Insurance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage naming Grantee as additional insured when the use of the property is related to school activities. Grantee shall be responsible for the operation, upkeep and maintenance of any trail built by Grantee on the Protected Property, and for any other activity performed by Grantee under Section 2 herein. Grantor shall be responsible for the operation, upkeep and maintenance of the existing trails, if any, of any trails built by Grantor, and the existing stormwater drainage system on the Protected Property. Grantor shall keep the property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

9. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish Grantee with satisfactory evidence of payment upon request.

10. **Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantee and its 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 Grantor's invitees, unless caused by Grantee's negligence; (2) injury to or the death of any person, or physical damage to any property, resulting from Grantor's acts, omissions, or school-related activities; (3) 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; (4) the obligations specified in Sections 4, 8 and 9.

11. **Representations and Warranties.** In connection with the following representations and warranties, Grantor has made no investigation as to their accuracy. Grantor shall provide the Grantee an opportunity to review all existing files relating to the Property in Grantor's possession or control prior to the execution of this Conservation Easement. Also, the word "knowledge" means actual knowledge of Grantor's present and future Superintendent, Assistant Superintendent, Principal of any school on Grantor's adjoining property, Business Manager and all full-time maintenance personnel on Grantor's adjoining property. Knowledge of other employees of Grantor shall not be imputed to Grantor. Grantor represents and warrants that to the best of Grantor's knowledge:

- a) There are no apparent or latent defects in or on the Protected Property;

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- b) There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;
 - c) Neither Grantor nor Grantor's predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances on the Protected Property regulated by State or Federal environmental laws, including but not limited to ORS Chapter 465 and 42 U.S.C. § 9601 et seq; and
 - d) There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected 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.
 - e) There are no mortgages or deeds of trust encumbering the Property, and Grantor shall not permit any such instruments to encumber the Property, except if such mortgage or deed of trust beneficiary agrees by recorded instrument to subordinate its rights to the Protected Property to the Easement to the extent necessary to permit Grantee to enforce the Easement.

12. **Subsequent Transfer and Extinguishment.**

- a) **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 Grantee 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, unless otherwise provided by Oregon law at the time, in accordance with Section 12B of this Easement. Grantee shall use all such proceeds in a manner consistent with the Purpose of this Easement.

b) **Condemnation.** In the event that the Protected Property is taken, in whole or in part, by the exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

c) **Subsequent Transfers.** Grantor agrees to:

- I. 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;
- II. Describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property;
- III. Give written notice to Grantee 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 Grantee 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.

13. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable). 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 Clackamas County, Oregon, and any other jurisdiction in which such recording is required.

14. **Assignment.** This Easement is transferable as provided for and allowed by law. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. If this Easement is assigned to a person or entity other than a governmental entity, the Grantor's approval is required. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment.

15. **Recordation.** Grantee shall record this instrument in a timely fashion in the official records of Clackamas 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.

16. **General Provisions.**

a) **Controlling Law.** The interpretation and performance of this Easement shall be

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governed by the laws of the State of Oregon.

- b) **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.
- c) **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.
- d) **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 13.
- e) **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.
- f) **"Grantor" - "Grantee".** The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and its successors, and assigns, and the above-named Grantees, their successors and assigns.
- g) **Successors.** 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 successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
- h) **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- i) **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.

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Metro does hereby accept the above Grant Deed of Conservation Easement.

Dated: _____
Metro

By: Mike Burton

Its: Executive Officer

STATE OF: _____)

) ss

COUNTY OF: _____)

I certify that I know or have satisfactory evidence that _____ signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public
Print Name: _____
My appointment expires: _____

LEGAL DESCRIPTION
CONSERVATION EASEMENT
OGDEN MIDDLE SCHOOL

EXHIBIT "A"

A TRACT OF LAND, SITUATED IN THE NORTHEAST ONE-QUARTER OF SECTION 32 AND THE NORTHWEST ONE-QUARTER OF SECTION 33, TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON, BEING A PORTION OF THAT TRACT OF LAND DESCRIBED IN DEED TO THE OREGON CITY SCHOOL DISTRICT (SCHOOL DISTRICT NO. 62) IN DEED BOOK 582 PAGE 461, CLACKAMAS COUNTY DEED RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "LOVE PLS 747" AT THE NORTHWEST CORNER OF THAT TRACT OF LAND DESCRIBED IN DEED TO MARVIN A. MCINTOSH AND SHIRLEY M. MCINTOSH, RECORDED APRIL 22, 1985, CLACKAMAS COUNTY RECORDER'S FEE NO. 85-13452; THENCE ALONG THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID MCINTOSH TRACT, N.87°20'39"W., 27.09 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING" AT THE POINT-OF-BEGINNING; THENCE CONTINUING N.87°20'39"W., 397.08 FEET TO THE CENTERLINE OF NEWELL CREEK; THENCE DOWNSTREAM ALONG THE CENTERLINE OF NEWELL CREEK THE FOLLOWING TWENTY FIVE (25) COURSES: THENCE N.44°43'42"E., 112.53 FEET; THENCE N.55°47'40"W., 158.86 FEET; THENCE N.26°07'22"W., 102.81 FEET; THENCE N.15°36'58"E., 44.15 FEET; THENCE N.60°29'56"E., 36.04 FEET; THENCE N.13°18'26"E., 106.61 FEET; THENCE N.39°10'47"W., 66.39 FEET; THENCE N.10°24'54"W., 46.44 FEET; THENCE N.11°12'49"E., 57.49 FEET; THENCE N.50°34'57"W., 32.26 FEET; THENCE N.07°07'47"E., 48.07 FEET; THENCE N.16°31'58"W., 53.33 FEET; THENCE N.46°40'00"E., 73.57 FEET; THENCE N.23°21'25"W., 90.76 FEET; THENCE N.28°20'57"E., 44.07 FEET; THENCE N.51°33'47"E., 102.66 FEET; THENCE N.26°56'11"E., 57.53 FEET; THENCE N.08°18'50"W., 36.40 FEET; THENCE N.20°19'45"E., 70.42 FEET; THENCE N.19°13'11"W., 54.07 FEET; THENCE N.50°28'09"E., 28.73 FEET; THENCE S.77°49'02"E., 51.78 FEET; THENCE N.29°10'48"E., 38.38 FEET; THENCE N.55°15'43"W., 75.67 FEET; THENCE N.19°45'06"E., 28.41 FEET; THENCE LEAVING SAID CENTERLINE S.84°30'42"E., 294.13 FEET TO A 1-INCH IRON PIPE; THENCE CONTINUING S.84°30'42"E., 368.60 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE S.26°24'36"W., 385.86 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE S.22°50'08"W., 185.29 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE S.02°48'24"W., 197.52 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE N.82°06'11"W., 147.08 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE S.32°35'37"W., 175.73 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE S.22° 07'17"E., 112.89 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE S.60°52'05"E., 145.10 FEET TO A 5/8-INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING"; THENCE

S.06°22'25"W., 189.43 FEET TO THE POINT-OF-BEGINNING, CONTAINING 630652 SQUARE FEET (14.48 ACRES), MORE OR LESS.

TOGETHER WITH A PERMANENT EASEMENT FOR INGRESS AND EGRESS, DESCRIBED AS FOLLOWS:

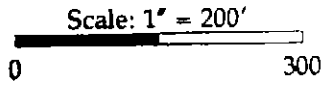
COMMENCING AT 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "LOVE P.L.S. 747" AT THE NORTHWEST CORNER OF THAT TRACT OF LAND DESCRIBED IN DEED TO MARVIN A. MCINTOSH AND SHIRLEY M. MCINTOSH, RECORDED APRIL 22, 1985, CLACKAMAS COUNTY RECORDER'S FEE NO. 85-13452; THENCE ALONG THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID MCINTOSH TRACT, N.87°20'39"W., 27.09 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "COMPASS ENGINEERING" AT THE POINT-OF-BEGINNING; THENCE N.06°22'25E., 30.06 FEET; THENCE S.87°20'39"E., 271.34 FEET; THENCE N.61°44'25"E., 70.57 FEET TO A 1/2" IRON PIPE ON THE WEST RIGHT-OF-WAY LINE OF DONOVAN ROAD (COUNTY ROAD NO. 1785) (50.00 FEET WIDE); THENCE ALONG SAID RIGHT-OF-WAY LINE, AND ITS SOUTHERLY EXTENSION, S.04°33'22"W., 66.29 FEET TO THE NORTH LINE OF AFOREMENTIONED MCINTOSH TRACT; THENCE ALONG SAID NORTH LINE N.87°20'39"W., 331.64 FEET TO THE POINT-OF-BEGINNING.



Open Spaces, Parks & Streams

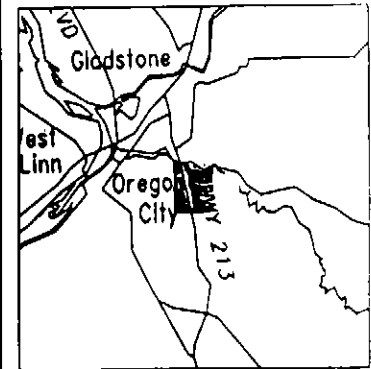
Newell Creek Canyon
Acquisitions in magenta
Subject property in orange

SOURCES:
TAX LOT MAP
County Assessment and Taxation office, 2001. Data collection scale is 1" = 100' in urban areas and 1" = 200' or 1" = 400' in rural areas. Horizontal accuracy is plus or minus five feet or better in Beaverton, Milwaukie, Oregon City, Tigard and urban Multnomah County. Other areas are plus or minus ten feet.
AERIAL PHOTOGRAPHY
Aerial photography by Spencer S. Gross, Inc. Portland, Oregon - July, 2003



METRO

800 NE Grand Ave.
Portland, OR 97232-2736
Voice 503 797-1742
FAX 503 797-1909
Email dro@metro.net.or.us



Location map