

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING ) RESOLUTION NO. 02-3207  
THE EXECUTIVE OFFICER TO )  
PURCHASE CONSERVATION AND TRAIL ) Introduced by Mike Burton,  
EASEMENTS OVER THE LUCKOW AND ) Executive Officer  
WHITE PROPERTIES IN THE NEWELL )  
CREEK CANYON TARGET AREA )

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 which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; 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, as set forth in a confidential tax-lot-specific map identifying priority properties for acquisition; and

WHEREAS, on November 6, 1997, the Metro Council adopted Ordinance No. 97-714, codified as Metro Code Section 10.03.60, establishing the procedure by which Metro can acquire and hold conservation easements, and requiring public notice and a vote of the Metro Council; and

WHEREAS, Gerald and Dolores Luckow own approximately 1.5 acres along Newell Creek Canyon and that property is further identified and depicted in Exhibit A (the "Luckow Property"); and

WHEREAS, the Luckows propose to sell a conservation and trail easement to Metro that would encumber the Luckow Property and which would restrict land uses over the property such that its natural condition would be permanently protected pursuant to the terms and conditions set forth in Exhibit B and would allow Metro to construct and maintain a public recreation trail on and through the property; and

WHEREAS, Glendon and Helen White own approximately 0.3 acres along Newell Creek Canyon and that property is further identified and depicted in Exhibit C (the "White Property"), and

WHEREAS, the Whites propose to sell a conservation and trail easement to Metro that would encumber the White Property and which would restrict land uses over the property such that its natural condition would be permanently protected pursuant to the terms and conditions set forth in Exhibit D and would allow Metro to construct and maintain a public recreation trail on and through the property; and

WHEREAS, Metro's Regional Trails and Greenways Plan identifies the Oregon City Loop Trail and Beaver Lake Trail as proposed regional trails, and the Luckow and White conservation and trail easements provide links in that conceptual trail alignment; and

WHEREAS, the Luckow and White Properties are included in the Newell Creek Canyon regional target area and the acquisition of the Luckow and White conservation and trail easements would serve the Newell Creek Canyon target area refinement plan objectives of 1) establishing pedestrian and wildlife linkages between the two sides of the canyon split by the Highway 213 bypass and 2) protecting views of the canyon as seen from Highway 213 by acquiring lands adjacent to the road; and

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

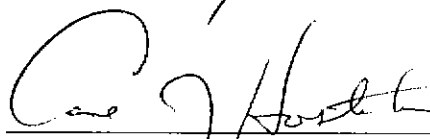
WHEREAS, Metro would assume minimal land management costs by acquiring conservation easements over a portion of the Luckow and White properties; and

WHEREAS, Metro has met public notice requirements for conservation easements as set forth in Metro Code Section 10.03.020; now therefore,

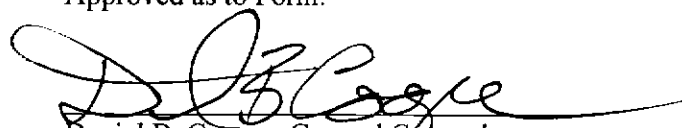
BE IT RESOLVED that the Metro Council authorizes the Executive Officer to purchase the conservation and trail easement over the Luckow Property in the form as attached as Exhibit B; and

BE IT FURTHER RESOLVED that the Metro Council authorizes the Executive Officer to purchase the conservation and trail easement over the White Property in the form as attached as Exhibit D.

ADOPTED by Metro Council this 25<sup>th</sup> day of July, 2002.

  
\_\_\_\_\_  
Carl Hosticka, Presiding Officer

Approved as to Form:

  
Daniel B. Cooper, General Counsel



approx. 1.5 acres

213

Luckow, Gerald D  
32E04B 01802

REGIONAL LAND INFORMATION SYSTEM  
1 inch equals 300 feet



Approx Easement Boundary contour - 10 ft (yellow)

Bond Measure Acquisitions  
Bond Measure Acquisitions as of 05.09.02

EXHIBIT A  
Resolution 02-3207

SOURCE:  
City of Metro  
City of Portland and Benton County, 2001. Contour lines are 10-foot interval and  
20-foot interval contours. Contour interval is 10 feet. Contour lines are  
black, 10-foot interval contours are red, 20-foot interval contours are  
blue.  
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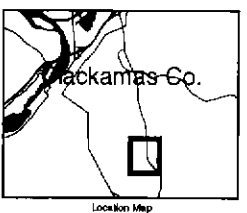


EXHIBIT B  
Resolution No. 02-3207

When recorded return to:

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

**DEED OF CONSERVATION EASEMENT  
AND TRAIL EASEMENT DEDICATION**

THIS DEED OF CONSERVATION EASEMENT AND TRAIL EASEMENT DEDICATION ("Conservation and Trail Easements") (and/or collectively herein as the "Easements") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by Gerald D. Luckow and Dolores O. Luckow, having an address at 18191 South Holly Lane, Oregon City, OR 97045 ("Grantors"), 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 ("Metro").

**RECITALS**

WHEREAS, Grantors are the owner in fee simple of that certain real property (the "Protected Property") located on South Holly Lane in the City of Oregon City, in the County of Clackamas, State of Oregon, more particularly described in Attachment A (legal description) and depicted in Attachment B (site plan), attached hereto and incorporated into this Easement by reference herein;

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

WHEREAS, the Protected Property is of moderate to steep slope, supports a mixed deciduous/conifer forest, and provides a vital link in a wildlife habitat corridor in the Newell Creek watershed. 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 or will be documented in an inventory of relevant features of the Protected Property, dated \_\_\_\_\_, 2002, on file at the offices of Metro and incorporated into this Easement by this reference ("Baseline Documentation"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. Grantors and Metro further agree that within three (3) months of the execution of this Easement, a collection of additional Baseline Documentation may be compiled by Metro, and incorporated into the Easement by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability of this Easement or any of its provisions;

WHEREAS, Grantors, as owners of the Protected Property, have the right to identify, protect, and preserve in perpetuity the Conservation Values of the Protected Property, and desire to transfer such rights to Metro;

WHEREAS, Metro 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 regional and metropolitan concern; and

WHEREAS, Metro agrees, by accepting this Easement, to honor the intentions of Grantors 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 TWENTY THOUSAND DOLLARS (\$20,000.00) PER ACRE multiplied by the amount of acreage (or a pro-rata part of \$20,000 for a part of an acre), as established by survey and the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Oregon, Grantors hereby voluntarily grant and convey to Metro a Conservation Easement in perpetuity on, through and over the Protected Property of the nature and character and to the extent set forth hereinbelow, and dedicate a public recreational Trail Easement of the nature and character set forth hereinbelow. Grantors expressly intend that these perpetual Easements run with the land and that these Easements shall be binding upon Grantors' personal representatives, heirs, successors, and assigns. All references to "Grantors" herein apply equally to Grantors' personal representatives, heirs, successors, and assigns.

1. **Conservation Easement.** The Purpose of this Conservation Easement is to assure that (with the exception of the Trail, as defined below) 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"). Grantors intend that this Easement will confine the use of or activity on the Protected Property to such uses and activities that are consistent with this Purpose.
2. **Trail Easement.**
  - a. **Purpose.** The Purpose of the Trail Easement Dedication is to provide for the development, at Metro's discretion, of a public recreational trail on and through the Protected Property. The Trail Easement Dedication provides Metro with the perpetual right to construct and maintain a trail for public access to, on and through the Protected Property (the "Trail") in a location acceptable to Metro in its sole discretion.
  - b. **Access by Public.** It is the intent of Metro to construct and maintain a Trail that will be open to the public, consistent with the Conservation Values of this Easement. Access by the general public to the Protected Property shall not unreasonably interfere with the Conservation Values of the Protected Property.
3. **Conservation Easement Rights Conveyed to Metro.** To accomplish the Purpose of the Conservation Easement, the following rights are hereby conveyed to Metro:
  - A. **Identification and Protection.** To identify, preserve and protect in perpetuity and to enhance the Conservation Values of the Protected Property.
  - B. **Access.** In addition to the access provided to Metro and the public as set forth herein for the Trail Easement, access over Grantor's Retained Property, legally described as set

forth in Exhibit C attached, to the Protected Property for Metro staff, vehicles and equipment is hereby granted, subject to the limitations below, for the following purposes:

- i. Quarterly general inspections to assure compliance with this Easement;
- ii. Emergency access and entry at other such times as are necessary if there is a reason to believe that a violation of the Easement is occurring or has occurred, for the Purpose of enforcing the provisions of this Easement;
- iii. Restoration and Enhancement of Native Vegetation and Wildlife Habitat Enhancement;
- iv. Access via the 18191 South Holly Lane driveway shall be preceded by 24-hours' notice via telephone or in writing, attached to the front door of the residence located thereon;
- v. No heavy equipment, such as back hoes, dump trucks, or bulldozers shall be driven across the Retained Property to enter the Protected Property, unless expressly agreed to by Grantor;
- vi. Access via any other location, and activities performed by Metro elsewhere on the Protected Property consistent with the terms of this Easement, requires no prior notice.

**C. Restoration of Native Vegetation; Wildlife Habitat Enhancement.** To restore, at Metro's discretion, but not its obligation, native vegetation on the Protected Property, and to enhance wildlife habitat on the Protected Property. Restoration and enhancement may include but is not limited to:

- i. The removal of existing vegetation, including, but not limited to, blackberry, alder, and maple, and the planting of native vegetation, including, but not limited to, fir trees and other conifers, to enhance the Conservation Values of the Protected Property;
- ii. The alteration of the land surface to restore natural systems and enhance the Conservation Values of the Protected Property; and
- iii. The alteration of water courses to restore natural systems and enhance the Conservation Values of the Protected Property.

**D. Injunction.** To enjoin any use of, or activity in, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by neighboring property owners and unauthorized access by members of the public, and at Metro's sole option to undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by uses or activities contrary to the provisions of this Easement, all in accordance with Section 6 of this Easement.

**E. Enforcement.** To enforce the terms of this Easement, consistent with Section 7.

- F. **Assignment.** To assign, convey, or otherwise transfer Metro's interest in the Protected Property in accordance with Section 15.
4. **Prohibited Uses.** Grantors acknowledge and agree that they will not conduct, engage in or permit any activity on or use of the Protected Property inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the Grantors and their agents, heirs and assigns are expressly prohibited from engaging in the following activities and uses
- A. **Subdivision.** The legal or "de facto" subdivision of the Protected Property.
- B. **Utilities.** The above or below 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.
- C. **Construction.** The placement or construction by Grantors of any buildings, structures, or other improvements of any kind (including, without limitation, pipelines, wells, septic systems, drainfields, fences, roads, and parking areas), except for Metro's activities as provided for in Sections 2 and 3 (B & C) herein.
- D. **Alteration of Land.** The alteration of the surface of the land, including, without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat, or sod; except for Metro's activities as provided for in Sections 2 and 3 (B & C) herein.
- E. **Alteration of Water Courses.** The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses; except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
- F. **Erosion or Water Pollution.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.
- G. **Agricultural Activities.** The conducting of grazing or agricultural activities of any kind.
- H. **Feedlots.** The establishment and maintenance of a commercial feedlot. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Protected Property for feeding and fattening for market.
- I. **Waste Disposal.** The disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof or other unsightly, offensive, or hazardous waste or material on the Protected Property.
- J. **Signs.** The placement of commercial signs, billboards, or other advertising material on the Protected Property.
- K. **Hunting.** Hunting or trapping; except to the extent determined necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.

- L. **Mining.** The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.
  - M. **Wildlife Disruption.** The disruption of wildlife breeding, foraging and nesting activities.
  - N. **Domestic Animals.** Use of the site to exercise, train or pasture any domestic animal on the Protected Property.
  - O. **Herbicides or Pesticides.** The use of any herbicides or pesticides; except for Metro's activities pursuant to Section 3 (C) herein and except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
  - P. **Removal of Trees and Other Vegetation.** The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located on the Protected Property; except as deemed necessary by Metro 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.
  - Q. **Introduced Vegetation.** The introduction of non-native wetland plants and non-native invasive species on the Protected Property, or the planting or introduction of any species of vegetation; except as deemed necessary by Metro to enhance the Conservation Values of the Protected Property.
  - R. **Harvesting of Native Plants.** The gathering, picking, taking, or harvesting of native plants, or any parts thereof, from the Protected Property, except when used for habitat enhancement within the Protected Property.
  - S. **Off-Road Vehicles and Excessive Noise.** The operation of motorcycles, snow mobiles, or any other type of off-road motorized vehicles or the operation of other sources of excessive noise pollution.
  - T. **Use of Firearms.** The discharge of firearms, bows and arrows, air guns, slingshots, and similar devices.
  - U. **Fires.** Fires of all forms, except those necessary for maintenance and consistent with Conservation Values of the Protected Property.
  - V. **Fireworks.** Use of all forms of fireworks.
  - W. **Motorized Vehicles.** Operation of motorized or mechanized vehicles or motorized equipment except when approved by Metro and in association with the maintenance of Conservation Values, and except pursuant to the provisions of Sections 2 and 3 herein.
  - X. **Amplified Sound.** Uses of devices which amplify or emit amplified sound.
5. **Reserved Rights.** Grantors specifically reserve for themselves and their personal representatives, heirs, successors and assigns, the following uses of and activities on the Protected Property that are consistent with the Purpose of the Easement and that are not prohibited by this Easement.



- A. **Recreation.** The undertaking of passive recreational activities such as hiking, and bird watching, on the Protected Property, provided that such activities are conducted in a manner and intensity that does not adversely impact the Conservation Values of the Protected Property.
- B. **Protection of Public Health or Safety.** 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 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. Grantors shall provide Metro with notice of their intent to take action under this subsection.

6: **Notice and Approval.**

- A. **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantors to notify Metro prior to undertaking certain permitted activities, as provided in Section 5(B), is to afford Metro 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, Grantors shall notify Metro in writing not less than 7 days prior to the date Grantors intend 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 Metro to make an informed judgment as to its consistency with the Purpose of this Easement. If Grantors 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, Grantors may proceed with such action without Metro's approval only if Grantors notify Metro prior to taking such action and Metro fails to provide its approval, with or without conditions, within such time as is reasonable under the circumstances.
- B. **Metro's Approval.** Where Metro's approval is required, Metro shall grant or withhold its approval in writing within 7 days of receipt of Grantors' written request therefor. Metro's approval may be withheld only upon a reasonable determination by Metro that the action as proposed would be inconsistent with the Purpose of this Easement.
- 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 Grantors:

Gerald D. Luckow and Dolores O. Luckow  
 18191 South Holly Lane  
 Oregon City, Oregon 97045

To Metro:

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.

7. **Metro's Remedies.**

- A. **Notice of Violation.** If Metro determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Metro shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured. Grantors shall thereafter cure the violation or restore any portion of the Protected Property injured by Grantors.
- B. **Grantors' Failure To Respond.** If Grantors fail to cure the violation within 30 days after receipt of notice thereof from Metro, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fail to begin curing such violation within the 30-day period, or fail to continue diligently to cure such violation until finally cured, Metro may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement.
- C. **Metro's Action to Remedy Violation.**
- (1) To enjoin the violation ex parte as necessary, by temporary or permanent injunction;
  - (2) To recover from Grantors or third parties any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, occurring after the date of recording of the Easement, including damages for the loss of scenic, aesthetic, or environmental values; and
  - (3) To require the restoration of the Protected Property to the condition that existed prior to any such injury.

Without limiting Grantors' liability therefor, Metro, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

- D. **Immediate Action Required.** If Metro in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Metro may pursue its remedies under this paragraph without prior notice to Grantors or without waiting for the period provided for cure to expire. Metro's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement and Grantors agree that

Metro's remedies at law for any violation of the terms of this Easement are inadequate and that Metro shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Metro may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Metro's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- E. **Cost of Enforcement.** Any costs incurred by Metro in enforcing the terms of this Easement against Grantors, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation attorneys' fees, shall be borne by Metro.
- F. **Metro's Discretion.** Metro acknowledges its commitment to protect the Purpose of this Easement. Enforcement of the terms of this Easement shall be at the discretion of Metro, and any forbearance by Metro to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantors, their agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Metro of such term of any of grant of rights under this Easement. No delay or omission by Metro in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.
- G. **Waiver of Certain Defenses.** Grantors acknowledge that they have 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, Grantors hereby waive any claim or defense they may have against Metro or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, adverse possession or prescription.
- H. **Acts Beyond Grantors' Control.** Nothing contained in this Easement shall be construed to entitle Metro to bring any action against Grantors 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 Grantors' control including, without limitations natural changes, fire, flood, storm or earth movement, or from acts of trespassers, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.
8. **Costs, Liabilities and Insurance.** Grantors retain all responsibilities and shall bear all costs relating to the ownership of the Protected Property, including the maintenance of adequate comprehensive general liability coverage. Grantors shall keep the Protected Property free of any liens arising out of any work performed for, or materials furnished to Grantors. Metro shall be responsible for the operation, upkeep and maintenance of the Trail, if built by Metro on the Protected Property, and for any other activity performed or responsibility assumed by Metro under Sections 2 and 3 herein. Metro shall bear no responsibility for any other costs or liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property.

9. **Taxes.** Grantors 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 Metro with satisfactory evidence of payment upon request. If Grantors fail to pay any taxes when due, Metro is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantors, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate, and the obligation of Grantors to reimburse Metro created by such payment shall bear interest until paid by Grantors at the maximum rate allowed by law.
10. **Hold Harmless.** Grantors shall hold harmless, indemnify, and defend Metro 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 person, or physical damage to any property, resulting from any occurrence, omission, condition, or other matter relating to or on or about the Protected Property that is due to any act, or failure to act upon legal duty to do so, of Grantors, their successors and assigns and their invitees; (2) violations or alleged violations of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified parties on the Protected Property; and (3) Grantors' reserved rights under Section 5 and obligations under Sections 9 and 10. Grantors shall be afforded the full protection from liability to the public provided under Oregon Revised Statutes 105.672-696 (2001).
11. **Environmental Representations and Warranties.** Grantors represent and warrant that to the best of Grantors' knowledge:
- A. There are no apparent or latent environmental defects in or on the Protected Property;
  - 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 Grantors nor Grantors' 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 Grantors or their predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantors nor their predecessors in interest have received any notices of violation,

penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

**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 Metro shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, in accordance with Section 13(B) of this Easement. Metro 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, Metro shall be entitled to compensation in accordance with applicable law.
- C. Subsequent Transfers.** Grantors agree to:
1. Incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;
  2. Describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property; and
  3. Give written notice to Metro 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 Metro shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantors 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, Grantors and Metro 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 Metro 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.** Metro may assign this Easement to Clackamas County, to the City of Oregon City, or to any qualified holder of a Conservation Easement without the agreement of Grantors. Any other assignment of this Easement by Metro or any subsequent assignment by Clackamas County or the City of Oregon City, must be approved by Grantors, which approval shall not be unreasonably withheld. As a condition of such transfer, Metro shall require that the transferee

exercise its rights under the assignment consistent with the Purpose of this Easement. Metro shall notify Grantors in writing, at Grantors' last known address, in advance of such assignment.

15. **Recording.** Metro 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 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 14.
  - E. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantors' title in any respect.
  - F. **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 personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
  - G. **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.
  - H. **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.
  - I. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original

instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

17. **Portland General Electric Easement.** Grantor and Grantee recognize that the Protected Property is subject to the rights of Portland General Electric (PGE) to use part of the Protected Property for its electrical power transmission lines as provided in the easement recorded on 5/12/1958 Book 540, Page 50 in Clackamas County Oregon. Furthermore, grantor will not be in violation of the terms of this Conservation Easement for the acts of PGE in exercise of PGE's rights under its 1958 easement on the Protected Property.

18. **Schedule of Attachments**

- A. Legal Description of Protected Property.
- B. Site Plan.
- C. Legal Description of Retained Property

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

IN WITNESS WHEREOF, the undersigned Grantors have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Gerald D. Luckow

\_\_\_\_\_  
Dolores O. Luckow

State of Oregon            )  
                                          ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared Gerald D. Luckow and Dolores O. Luckow, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this instrument, and acknowledged that he (she or they) executed it.

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

Metro does hereby accept the above Deed of Conservation Easement and Trail Easement Dedication.

METRO

Dated: \_\_\_\_\_

\_\_\_\_\_  
By:     Mike Burton  
Its:     Executive Officer

State of Oregon            )  
                                          ) ss.  
County of Multnomah )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, \_\_\_\_\_ a Notary Public for Oregon, personally appeared the within named Mike Burton, as Executive Officer for Metro, a municipal corporation, known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

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







REGIONAL LAND INFORMATION SYSTEM

1 inch equals 300 feet

**Metro**  
METRO DATA INFORMATION CENTER  
NORTHWEST CORNER OF CENTRAL EXPRESSWAY & FORTY-FOURTH AVENUE, SUITE 400  
DENVER, COLORADO 80202

**Metro Open Spaces, Parks & Streams Bond Measure:**  
Proposed White Conservation Easement and Trail Easement

-  Approx Easement Boundary contour - 10 ft (yellow)
-  Bond Measure Acquisitions

Bond Measure Acquisitions as of 05.09.02

EXHIBIT C  
Resolution 02-3207

COURTESY  
2004/07  
2005/07  
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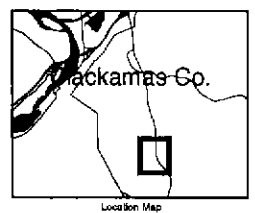


EXHIBIT D  
Resolution 02-3207

When recorded return to:

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

**DEED OF CONSERVATION EASEMENT  
AND TRAIL EASEMENT DEDICATION**

THIS DEED OF CONSERVATION EASEMENT AND TRAIL EASEMENT DEDICATION ("Conservation and Trail Easements") (and/or collectively herein as the "Easements") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by Glendon Dale White and Helen F. White, having an address at 18181 South Holly Lane, Oregon City, OR 97045 ("Grantors"), 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 ("Metro").

**RECITALS**

WHEREAS, Grantors are the owner in fee simple of that certain real property (the "Protected Property") located on South Holly Lane in the City of Oregon City, in the County of Clackamas, State of Oregon, more particularly described in Attachment A (legal description) and depicted in Attachment B (site plan), attached hereto and incorporated into this Easement by reference herein;

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

WHEREAS, the Protected Property is of moderate to steep slope, supports a mixed deciduous/conifer forest, and provides a vital link in a wildlife habitat corridor in the Newell Creek watershed. 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 or will be documented in an inventory of relevant features of the Protected Property, dated \_\_\_\_\_, 2002, on file at the offices of Metro and incorporated into this Easement by this reference ("Baseline Documentation"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. Grantors and Metro further agree that within three (3) months of the execution of this Easement, a collection of additional Baseline Documentation may be compiled by Metro, and incorporated into the Easement by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability of this Easement or any of its provisions;

WHEREAS, Grantors, as owners of the Protected Property, have the right to identify, protect, and preserve in perpetuity the Conservation Values of the Protected Property, and desire to transfer such rights to Metro;

WHEREAS, Metro 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 regional and metropolitan concern; and

WHEREAS, Metro agrees, by accepting this Easement, to honor the intentions of Grantors 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 TWENTY THOUSAND DOLLARS (\$20,000.00) PER ACRE multiplied by the amount of acreage (or a pro-rata part of \$20,000 for a part of an acre), as established by the survey and the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Oregon, Grantors hereby voluntarily grant and convey to Metro a Conservation Easement in perpetuity on, through and over the Protected Property of the nature and character and to the extent set forth hereinbelow, and dedicate a public recreational Trail Easement of the nature and character set forth hereinbelow. Grantors expressly intend that these perpetual Easements run with the land and that these Easements shall be binding upon Grantors' personal representatives, heirs, successors, and assigns. All references to "Grantors" herein apply equally to Grantors' personal representatives, heirs, successors, and assigns.

1. **Conservation Easement.** The Purpose of this Conservation Easement is to assure that (with the exception of the Trail, as defined below) 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"). Grantors intend that this Easement will confine the use of or activity on the Protected Property to such uses and activities that are consistent with this Purpose.
2. **Trail Easement.**
  - a. **Purpose.** The Purpose of the Trail Easement Dedication is to provide for the development, at Metro's discretion, of a public recreational trail on and through the Protected Property. The Trail Easement Dedication provides Metro with the perpetual right to construct and maintain a trail for public access to, on and through the Protected Property (the "Trail") in a location acceptable to Metro in its sole discretion
  - b. **Access by Public.** It is the intent of Metro to construct and maintain a Trail that will be open to the public, consistent with the Conservation Values of this Easement. Access by the general public to the Protected Property shall not unreasonably interfere with the Conservation Values of the Protected Property.
3. **Conservation Easement Rights Conveyed to Metro.** To accomplish the Purpose of the Conservation Easement, the following rights are hereby conveyed to Metro:
  - A. **Identification and Protection.** To identify, preserve and protect in perpetuity and to enhance the Conservation Values of the Protected Property.
  - B. **Access.** In addition to the access provided to Metro and the public as set forth herein for the Trail Easement, access over Grantor's Retained Property, legally described as set

forth in Exhibit C attached, to the Protected Property for Metro staff, vehicles and equipment is hereby granted, subject to the limitations below, for the following purposes:

- i. Quarterly general inspections to assure compliance with this Easement;
- ii. Emergency access and entry at other such times as are necessary if there is a reason to believe that a violation of the Easement is occurring or has occurred, for the Purpose of enforcing the provisions of this Easement;
- iii. Restoration and Enhancement of Native Vegetation and Wildlife Habitat Enhancement;
- iv. Access via the 18181 South Holly Lane driveway shall be preceded by 24-hours' notice via telephone or in writing, attached to the front door of the residence located thereon;
- v. No heavy equipment, such as back hoes, dump trucks, or bulldozers shall be driven across the Retained Property to enter the Protected Property, unless expressly agreed to by Grantor; and
- vi. Access via any other location, and activities performed by Metro elsewhere on the Protected Property consistent with the terms of this Easement, requires no prior notice

**C. Restoration of Native Vegetation; Wildlife Habitat Enhancement.** To restore, at Metro's discretion, but not its obligation, native vegetation on the Protected Property, and to enhance wildlife habitat on the Protected Property. Restoration and enhancement may include but is not limited to:

- i. The removal of existing vegetation, including, but not limited to, blackberry, alder, and maple, and the planting of native vegetation, including, but not limited to, fir trees and other conifers, to enhance the Conservation Values of the Protected Property;
- ii. The alteration of the land surface to restore natural systems and enhance the Conservation Values of the Protected Property; and
- iii. The alteration of water courses to restore natural systems and enhance the Conservation Values of the Protected Property.

**D. Injunction.** To enjoin any use of, or activity in, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by neighboring property owners and unauthorized access by members of the public, and at Metro's sole option to undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by uses or activities contrary to the provisions of this Easement, all in accordance with Section 6 of this Easement.

**E. Enforcement.** To enforce the terms of this Easement, consistent with Section 7.

- F. **Assignment.** To assign, convey, or otherwise transfer Metro's interest in the Protected Property in accordance with Section 15.
4. **Prohibited Uses.** Grantors acknowledge and agree that they will not conduct, engage in or permit any activity on or use of the Protected Property inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the Grantors and their agents, heirs and assigns are expressly prohibited from engaging in the following activities and uses:
- A. **Subdivision.** The legal or "de facto" subdivision of the Protected Property.
- B. **Utilities.** The above or below 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.
- C. **Construction.** The placement or construction by Grantors of any buildings, structures, or other improvements of any kind (including, without limitation, pipelines, wells, septic systems, drainfields, fences, roads, and parking areas), except for Metro's activities as provided for in Sections 2 and 3 (B & C) herein.
- D. **Alteration of Land.** The alteration of the surface of the land, including, without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat, or sod; except for Metro's activities as provided for in Sections 2 and 3 (B & C) herein.
- E. **Alteration of Water Courses.** The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses; except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
- F. **Erosion or Water Pollution.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.
- G. **Agricultural Activities.** The conducting of grazing or agricultural activities of any kind.
- H. **Feedlots.** The establishment and maintenance of a commercial feedlot. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Protected Property for feeding and fattening for market.
- I. **Waste Disposal.** The disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof or other unsightly, offensive, or hazardous waste or material on the Protected Property.
- J. **Signs.** The placement of commercial signs, billboards, or other advertising material on the Protected Property.
- K. **Hunting.** Hunting or trapping; except to the extent determined necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.

- L. **Mining.** The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.
  - M. **Wildlife Disruption.** The disruption of wildlife breeding, foraging and nesting activities.
  - N. **Domestic Animals.** Use of the site to exercise, train or pasture any domestic animal on the Protected Property.
  - O. **Herbicides or Pesticides.** The use of any herbicides or pesticides; except for Metro's activities pursuant to in Section 3 (C) herein and except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
  - P. **Removal of Trees and Other Vegetation.** The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located on the Protected Property; except as deemed necessary by Metro 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.
  - Q. **Introduced Vegetation.** The introduction of non-native wetland plants and non-native invasive species on the Protected Property, or the planting or introduction of any species of vegetation; except as deemed necessary by Metro to enhance the Conservation Values of the Protected Property.
  - R. **Harvesting of Native Plants.** The gathering, picking, taking, or harvesting of native plants, or any parts thereof, from the Protected Property, except when used for habitat enhancement within the Protected Property.
  - S. **Off-Road Vehicles and Excessive Noise.** The operation of motorcycles, snow mobiles, or any other type of off-road motorized vehicles or the operation of other sources of excessive noise pollution.
  - T. **Use of Firearms.** The discharge of firearms, bows and arrows, air guns, slingshots, and similar devices.
  - U. **Fires.** Fires of all forms, except those necessary for maintenance and consistent with Conservation Values of the Protected Property.
  - V. **Fireworks.** Use of all forms of fireworks.
  - W. **Motorized Vehicles.** Operation of motorized or mechanized vehicles or motorized equipment except when approved by Metro and in association with the maintenance of Conservation Values, and except pursuant to the provisions of Sections 2 and 3 herein.
  - X. **Amplified Sound.** Uses of devices which amplify or emit amplified sound.
5. **Reserved Rights.** Grantors specifically reserve for themselves and their personal representatives, heirs, successors and assigns, the following uses of and activities on the Protected Property that are consistent with the Purpose of the Easement and that are not prohibited by this Easement.

- A. **Recreation.** The undertaking of passive recreational activities such as hiking, and bird watching, on the Protected Property, provided that such activities are conducted in a manner and intensity that does not adversely impact the Conservation Values of the Protected Property.
- B. **Protection of Public Health or Safety.** 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 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. Grantors shall provide Metro with notice of their intent to take action under this subsection.

6. **Notice and Approval.**

- A. **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantors to notify Metro prior to undertaking certain permitted activities, as provided in Section 5(B), is to afford Metro 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, Grantors shall notify Metro in writing not less than 7 days prior to the date Grantors intend 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 Metro to make an informed judgment as to its consistency with the Purpose of this Easement. If Grantors 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, Grantors may proceed with such action without Metro's approval only if Grantors notify Metro prior to taking such action and Metro fails to provide its approval, with or without conditions, within such time as is reasonable under the circumstances.
- B. **Metro's Approval.** Where Metro's approval is required, Metro shall grant or withhold its approval in writing within 7 days of receipt of Grantors' written request therefor. Metro's approval may be withheld only upon a reasonable determination by Metro that the action as proposed would be inconsistent with the Purpose of this Easement.
- 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 Grantors:

Glendon Dale White and Helen F. White  
 18181 South Holly Lane  
 Oregon City, Oregon 97045

To Metro:

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.

7. **Metro's Remedies.**

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

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

C. **Metro's Action to Remedy Violation.**

- (1) To enjoin the violation ex parte as necessary, by temporary or permanent injunction;
- (2) To recover from Grantors or third parties any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, occurring after the date of recording of the Easement, including damages for the loss of scenic, aesthetic, or environmental values; and
- (3) To require the restoration of the Protected Property to the condition that existed prior to any such injury.

Without limiting Grantors' liability therefor, Metro, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

D. **Immediate Action Required.** If Metro in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Metro may pursue its remedies under this paragraph without prior notice to Grantors or without waiting for the period provided for cure to expire. Metro's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement and Grantors agree that



Metro's remedies at law for any violation of the terms of this Easement are inadequate and that Metro shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Metro may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Metro's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- E. **Cost of Enforcement.** Any costs incurred by Metro in enforcing the terms of this Easement against Grantors, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation attorneys' fees, shall be borne by Metro.
- F. **Metro's Discretion.** Metro acknowledges its commitment to protect the Purpose of this Easement. Enforcement of the terms of this Easement shall be at the discretion of Metro, and any forbearance by Metro to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantors, their agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Metro of such term of any of grant of rights under this Easement. No delay or omission by Metro in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.
- G. **Waiver of Certain Defenses.** Grantors acknowledge that they have 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, Grantors hereby waive any claim or defense they may have against Metro or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, adverse possession or prescription.
- H. **Acts Beyond Grantors' Control.** Nothing contained in this Easement shall be construed to entitle Metro to bring any action against Grantors 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 Grantors' control including, without limitations natural changes, fire, flood, storm or earth movement, or from acts of trespassers, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.
8. **Costs, Liabilities and Insurance.** Grantors retain all responsibilities and shall bear all costs relating to the ownership of the Protected Property, including the maintenance of adequate comprehensive general liability coverage. Grantors shall keep the Protected Property free of any liens arising out of any work performed for, or materials furnished to Grantors. Metro shall be responsible for the operation, upkeep and maintenance of the Trail, if built by Metro on the Protected Property, and for any other activity performed or responsibility assumed by Metro under Sections 2 and 3 herein. Metro shall bear no responsibility for any other costs or liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property.

9. **Taxes.** Grantors 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 Metro with satisfactory evidence of payment upon request. If Grantors fail to pay any taxes when due, Metro is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantors, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate, and the obligation of Grantors to reimburse Metro created by such payment shall bear interest until paid by Grantors at the maximum rate allowed by law.
10. **Hold Harmless.** Grantors shall hold harmless, indemnify, and defend Metro 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 person, or physical damage to any property, resulting from any occurrence, omission, condition, or other matter relating to or on or about the Protected Property that is due to any act, or failure to act upon legal duty to do so, of Grantors, their successors and assigns and their invitees; (2) violations or alleged violations of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified parties on the Protected Property; and (3) Grantors' reserved rights under Section 5 and obligations under Sections 9 and 10. Grantors shall be afforded the full protection from liability to the public provided under Oregon Revised Statutes 105.672-696 (2001).
11. **Environmental Representations and Warranties.** Grantors represent and warrant that to the best of Grantors' knowledge:
- A. There are no apparent or latent environmental defects in or on the Protected Property;
  - 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 Grantors nor Grantors' 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 Grantors or their predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantors nor their predecessors in interest have received any notices of violation,

penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

**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 Metro shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, in accordance with Section 13(B) of this Easement. Metro 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, Metro shall be entitled to compensation in accordance with applicable law.
- C. Subsequent Transfers.** Grantors agree to:
1. Incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;
  2. Describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property; and
  3. Give written notice to Metro 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 Metro shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantors 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, Grantors and Metro 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 Metro 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.** Metro may assign this Easement to Clackamas County, to the City of Oregon City, or to any qualified holder of a Conservation Easement without the agreement of Grantors. Any other assignment of this Easement by Metro or any subsequent assignment by Clackamas County or the City of Oregon City, must be approved by Grantors, which approval shall not be

unreasonably withheld. As a condition of such transfer, Metro shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Metro shall notify Grantors in writing, at Grantors' last known address, in advance of such assignment.

15. **Recording.** Metro 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 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 14.
  - E. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantors' title in any respect.
  - F. **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 personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
  - G. **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.
  - H. **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.
  - I. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original

instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

17. **Portland General Electric Easement.** Grantor and Grantee recognize that the Protected Property is subject to the rights of Portland General Electric (PGE) to use part of the Protected Property for its electrical power transmission lines as provided in the easement recorded on 4/29/1958 Book 539, Page 352 in Clackamas County Oregon. Furthermore, grantor will not be in violation of the terms of this Conservation Easement for the acts of PGE in exercise of PGE's rights under its 1958 easement on the Protected Property.
  
18. **Schedule of Attachments**
  - A. Legal Description of Property Property.
  - B. Site Plan.
  - C. Legal Description of Retained Property.

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

IN WITNESS WHEREOF, the undersigned Grantors have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Glendon Dale White

\_\_\_\_\_  
Helen F. White

State of Oregon )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared Glendon Dale White and Helen F. White, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this instrument, and acknowledged that he (she or they) executed it.

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

Metro does hereby accept the above Deed of Conservation Easement and Trail Easement Dedication.

METRO

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Mike Burton  
Its: Executive Officer

State of Oregon )  
 )ss.  
County of Multnomah )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, \_\_\_\_\_ a Notary Public for Oregon, personally appeared the within named Mike Burton, as Executive Officer for Metro, a municipal corporation, known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

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

**NATURAL RESOURCES COMMITTEE REPORT**

**CONSIDERATION OF RESOLUTION NO. 02-3207, FOR THE PURPOSE OF  
AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE CONSERVATION  
AND TRAIL EASEMENTS OVER THE LUCKLOW AND WHITE PROPERTIES IN  
THE NEWELL CREEK CANYON TARGET AREAS**

Date: February 22, 2002

Presented by: Councilor McLain

**Committee Action:** At its July 17 meeting, the Natural Resources Committee voted 4-0 to recommend Council adoption of Resolution 02-3207. Voting in favor: Councilors Atherton, Bragdon, Park and McLain.

**Background:** Resolution 02-3207 clears the way for two conservation and trail easements in the Newell Creek Canyon Target area. These easements are on the east side of the Canyon, which is judged to be the best site for a public trail in terms of protecting sensitive habitat. The easements will cover 1.8 undeveloped acres of the two (Luckow and White) properties.

**Committee Issues/Discussion:** Charlie Ciecko and Jim Desmond made the staff presentation. Motion to adopt followed immediately.

- Existing Law: Metro code 10.03 details the procedures for processing conservation easements.
- Budget Impact: Funds necessary for this purchase are contained in the Multnomah County Local Share component of the Open Space, Parks and Streams Bond Measure

## Staff Report

### CONSIDERATION OF RESOLUTION NO. 02-3207 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE CONSERVATION AND TRAIL EASEMENTS OVER THE LUCKOW AND WHITE PROPERTIES IN THE NEWELL CREEK CANYON TARGET AREA

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Date: July 10, 2002

Presented by: Charles Ciecko  
Jim Desmond

## BACKGROUND

Resolution No. 02-3207 requests authorization for the Executive Officer to purchase conservation and trail easements over property owned by Gerald and Dolores Luckow and property owned by Glendon and Helen White in the Newell Creek Canyon target area.

The Luckows own a 4.9-acre parcel of land located east of State Highway 213 and west of South Holly Lane, in unincorporated Clackamas County, near Oregon City. Metro proposes to purchase a perpetual conservation and trail easement over an undeveloped 1.5-acre portion of the Luckow property. The Whites own 2.6 acres of land immediately to the north of the Luckow property. Metro proposes to also purchase a perpetual conservation and trail easement over an undeveloped 0.3-acre portion of the White property.

The White and Luckow Easement areas (collectively, "the Easements") are contiguous and follow the former right of way of the Willamette Valley Southern Railroad, which was abandoned sometime in the middle of the last century. Furthermore, the Luckow property is within a few hundred feet and only one property to the north of a 6-acre Metro open space that is also a former segment of the abandoned railroad line. The Easements also support a mixed deciduous/conifer forest and provide a link in the wildlife habitat corridor in the Newell Creek watershed.

The primary purpose of the Easements is to allow Metro or other entity to construct and maintain a public recreation trail on and through the Luckow and White properties. The former railroad bed that passes through the Easements and nearby Metro property will make an appropriate pathway for the proposed Oregon City Loop and Beaver Lake Trails, as included in the regional trail system. Secondly, the easements would allow Metro to retain the properties forever predominately in their natural condition. The specific terms of the Easements are attached as Exhibits B and D to the accompanying resolution.

## ANALYSIS/INFORMATION

### **1. Known Opposition**

None.

### **1. Legal Antecedents**

#### **A. Refinement Plans**

In May 1995, the Metro area voters approved the Open Spaces, Parks and Streams bond measure that authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and certain park-related capital improvements. Metro Code 2.04.026 (a) (3) requires that the Executive



Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase of real property.

The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 95-2228A (and amended via Resolution 96-2424) established acquisition parameters that authorize the Executive Officer to purchase property, within the Council-approved target area refinement plan maps. Via Resolution 96-2301 (and amended by Resolution 96-2377) the Metro Council adopted a refinement plan, which outlined a land protection strategy for the Newell Creek Canyon target area. Through that resolution, the Metro Council also approved the target area refinement plan tax-lot specific map, which includes the subject properties as a Tier IB priority.

Acquiring the Easements meets two objectives of the Newell Creek Canyon target area refinement plan:

- “Establish pedestrian and wildlife linkages between the two sides of the canyon split by the Highway 213 bypass.” The Easements will provide two necessary links for the proposed Newell Creek alignment of the Oregon City Loop and Beaver Lake Regional Trails.
- “Protect views of the canyon as seen from Highway 213 by acquiring lands adjacent to the road.” Since the Easement areas are adjacent to Highway 213, passing motorists can easily see the land.

#### **B. Resolution 01-3106 Criteria**

The acquisition of the Easements would also meet two of the criteria set forth in Resolution 01-3106 (“For The Purpose of Modifying The Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans To Direct Future Acquisitions Of Properties That Satisfy Specific Identified Criteria”).

- “Complete the acquisition of existing public ownership gaps in trails and greenways identified in the bond measure.” Acquiring the Easements will enhance the Newell Creek greenway and provide two critical links for the proposed Oregon City Loop and Beaver Lake Regional Trails.
- “Achieve, wherever possible, the minimum acreage goals established in the bond measure for each target area, subject to the ‘willing seller’ nature of the program.” Metro has acquired 145 acres in Newell Creek Canyon out of a goal of 370.

Since Metro has not exceeded the minimum 370-acre goal established for the Newell Creek Canyon target area, purchase of the Easements do not require Metro Council authorization pursuant to Resolution 01-3106.

#### **C. Conservation Easements**

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.

#### **4. Anticipated Effects**

Acquisition of this Property is key to assembling a pathway for the proposed Beaver Lake Trail, an integral component of the Newell Creek Canyon regional target area.

#### **5. Budget Impacts**

Bond funds will supply Metro's share of the acquisition money. Costs associated with monitoring and managing the Easements are expected to be minimal.

#### **6. Outstanding Questions**

None.

### **FINDINGS**

Acquisition of the Luckow and White Easements with the above-stated terms is recommended based on the following:

- The Easements lie in Tier IB of the Newell Creek Canyon target area and fulfill the goals of the target area refinement plan.
- The Easements fill a key gap in creating a trail and greenway along Newell Creek in Oregon City.
- Metro is below its goal of acquiring 370 acres in the Newell Creek Canyon target area.
- Metro has met the public notice requirements for acquisition of conservation easements detailed in Metro Ordinance 97-714 ("For the Purpose of Enacting a Policy to Allow Metro to Purchase and Accept Conservation Easements to Promote the Protection of Regionally Significant Natural Resources, Adding the Policy to the Metro Code, and Declaring an Emergency").

### **RECOMMENDED ACTION**

The Executive Officer recommends passage of Resolution No. 02-3207.