

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 02-3221
THE EXECUTIVE OFFICER TO)
PURCHASE A CONSERVATION) Introduced by Mike Burton,
EASEMENT OVER THE KING PROPERTY) Executive Officer
IN THE GALES CREEK 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 Gales Creek 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 June 24, 1996, the Metro Council adopted Resolution No. 96-2343, a refinement plan for the Gales Creek regional target area, which authorized the purchases of sites in Gales Creek, 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, Algia King Jr. and Richee King own approximately 45 acres in the Gales Creek Target Area and that property is further identified and depicted in Exhibit A (the "King Property"); and

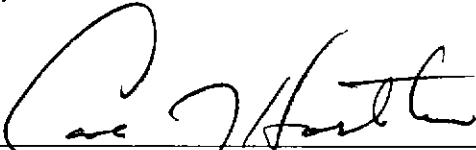
WHEREAS, the Kings propose to sell a conservation easement to Metro that would encumber the King Property and which would restrict land uses over the property such that its natural condition would be permanently protected pursuant to the terms and conditions set forth in Exhibit B and would allow Metro to provide public access to the property; and

WHEREAS, the King Property is included in the Gales Creek regional target area and the acquisition of the conservation easement would serve the Gales Creek target area refinement plan objective of acquiring and protecting the riparian and wooded corridor along the Tualatin to connect Jackson Bottom and Fernhill Wetland; and

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

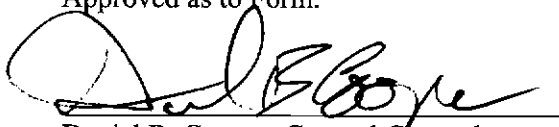
BE IT RESOLVED that the Metro Council authorizes the Executive Officer to purchase the conservation easement over the King Property in the form as attached as Exhibit B; and

ADOPTED by Metro Council this 26th day of
September, 2002.



Carl Hosticka, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

Exhibit A

Resolution 02-3221

W.B. Wells
& Associates, Inc.
Surveyors • Engineers • Planners



Exceptional Service,
Creative Solutions,
Quality Beyond
Your Expectations

**EASEMENT DESCRIPTION
FOR METRO
APPROX. 45.3 ACRES OF A. KING PROPERTY
JOB NO. 02-145
JULY 29, 2002
REV. AUGUST 16, 2002**

That portion of the Solomon Emerick Donation Land Claim No. 46, in Sections 3 and 4, Township 1 South, Range 3 West of the Willamette Meridian, in the County of Washington, State of Oregon, described as follows:

That certain tract of land conveyed to Algia A. King, Jr. by Statutory Bargain and Sale Deed recorded October 27, 1981 as document 81036369 in Washington County Deed Records.

EXCEPTING therefrom that portion lying westerly of a line 12 feet westerly of the bank of the Tualatin River and southerly and westerly of the northerly and easterly line of a 60.00 foot wide known as County Road No. 16.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 12, 1968
DONALD L. MCCONNELL
859

RENEWED THRU: 12/31/02

Exhibit B

Resolution 02-3221

When recorded return to:
Metro Office of General Counsel
600 NE Grand Avenue
Portland, OR 97232

DEED OF CONSERVATION AND PUBLIC ACCESS EASEMENTS

THIS DEED OF CONSERVATION EASEMENT ("Easement") is made this _____ day of _____, 2002, by Algia King, Jr. and Richee E. King ("Grantors"), having an address at 981 Cherry Street, Cornelius, OR 97113, and commonly known as Tax Lot 1100, Section 4D, Township 1 South, 3 West, W.M., in Washington County, Oregon, ("the Property") 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 portion of the Property 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 (the "Protected Property");

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

WHEREAS, the Protected Property contains significant riparian habitat and is adjacent to other property owned by Metro to the northeast and is also adjacent to property owned by the City of Cornelius located to the northeast. 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, which will be 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 six (6) 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;

WHEREAS, Metro agrees, by accepting this Easement, to honor the intentions of Grantors as stated in this Easement and to preserve and protect the Conservation Values of the Protected Property for the benefit of this generation and the generations to come; and

NOW, THEREFORE, in consideration of TWO THOUSAND SEVEN HUNDRED ELEVEN DOLLARS (\$2,711.00) PER ACRE of Protected Property, acreage amount to be finalized prior to Closing based on acreage estimated by the surveyor, plus \$6,600.00 in timber value, 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 and public access easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth ("Easement"). Grantors expressly intend that this perpetual Easement run with the land and that this Easement 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. **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); to provide for public access to the Protected Property consistent with the purpose of this Easement, and the development, at Metro's discretion, of a public access points or trails on and through the Protected Property; and to 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. **Public Access and Public Access Easement.** To accomplish the purposes of the Public Access Easement, the following rights are hereby conveyed to Metro:
 - A. A perpetual public access and trail easement over the Protected Property, (hereinafter "Public Access Easement") appurtenant to Metro Tax Lot 800, Section 4DA, Township 1 South, Range 3 West, Willamette Meridian in the City of Cornelius, Washington County (which Tax Lot 800 is adjacent to and a part of

the City of Cornelius' Steamboat Park), and any other adjoining property hereafter acquired by Metro.

- B. Together with a right of entry to construct, operate and maintain public facilities on, over and under the Protected Property including a trail for public access on and through the Protected Property.
- C. Together with a right of entry over the old County Road #16 (an extension of South Flax Plant Road) and the former Emerick Bridge, adjacent to or located on Grantor's retained property, for construction, inspection and maintenance purposes only, and not public access.

3. **Conservation Easement Rights Conveyed to Metro.** To accomplish the Purposes 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 by mutual agreement the Conservation Values of the Protected Property.
- B. **Access.**
 - i. To enter the Protected Property for the purpose of making a general inspection to assure compliance with this Easement
 - ii. To enter the Protected Property to perform all other functions of this Easement, including restoration and enhancement as set forth below, and for public recreational purposes, including the construction, operation, and/or maintenance of public and trail facilities.
 - iii. 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, or for the purpose of enforcing the provisions of this Easement.
 - iv. Together with the right to enter the Protected Property via the old County Road #16 (an extension of South Flax Plant Road) and the former Emerick Bridge, adjacent to or located on Grantor's retained property, for construction, inspection and maintenance purposes only, and not public access.
- 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 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.

- 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 7 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**. Metro is granted all rights short of fee simple ownership of the Protected Property. 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 on the Protected Property:
- A. **Subdivision**. Grantors are prohibited from the legal or "de facto" subdivision of the Protected Property.
 - B. **Utilities**. Grantors are prohibited from causing 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**. Grantors are prohibited from the placement or construction of any buildings, structures, or other improvements of any kind (including, without limitation, pipelines, wells, septic systems, drainfields, fences, roads, and parking areas), except in accordance with Sections 2 and 3 herein.
 - D. **No Liens**. Grantors are prohibited from placing, allowing, or causing any liens to be placed on or affecting the Protected Property.
 - E. **Alteration of Land**. Grantors are prohibited from altering the surface of the land, including, without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat, or sod.
 - F. **Alteration of Water Courses**. Grantors are prohibited from 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.

- G. **Erosion or Water Pollution.** Grantors are prohibited from 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.
- H. **Agricultural Activities.** Grantors are prohibited from allowing or conducting grazing or agricultural activities of any kind.
- I. **Feedlots.** Grantors are prohibited from allowing or conducting 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.
- J. **Waste Disposal.** Grantors are prohibited from 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.
- K. **Signs.** Grantors are prohibited from the placement of commercial signs, billboards, or other advertising material on the Protected Property.
- L. **Hunting.** Grantors are prohibited from hunting or trapping; except to the extent determined necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
- M. **Fishing.** Grantors shall be allowed to fish on the Protected Property in accordance with all applicable laws, rules and regulations, and so long as such activity does not interfere with the Conservation Values or protection of the Protected Property.
- N. **Mining.** Grantors are prohibited from the exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.
- O. **Wildlife Disruption.** Grantors are prohibited from disrupting wildlife breeding, foraging and nesting activities.
- P. **Domestic Animals.** Grantors are prohibited from using the site to exercise, train or pasture any domestic animal on the Protected Property.
- Q. **Herbicides or Pesticides.** Grantors are prohibited from the use or release of any herbicides or pesticides on or onto the Protected Property.

- R. **Removal of Trees and Other Vegetation.** Grantors are prohibited from pruning, cutting down, or otherwise destroying or removing 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.
 - S. **Introduced Vegetation.** Grantors are prohibited from introducing 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.
 - T. **Harvesting of Native Plants.** Grantors are prohibited from gathering, picking, taking, or harvesting of native plants, or any parts thereof, from the Protected Property.
 - U. **Off-Road Vehicles and Excessive Noise.** Grantors are prohibited from operating motorcycles, snow mobiles, or any other type of off-road motorized vehicles or the operation of other sources of excessive noise pollution.
 - V. **Use of Firearms.** Grantors are prohibited from discharging firearms, bows and arrows, air guns, slingshots, and similar devices.
 - W. **Fires.** Grantors are prohibited from allowing or causing fires of all forms, except those necessary for maintenance and consistent with Conservation Values of the Protected Property.
 - X. **Fireworks.** Grantors are prohibited from using all forms of fireworks.
 - Y. **Motorized Vehicles.** Grantors are prohibited from operating motorized or mechanized vehicles or motorized equipment except when approved by Metro and in association with the maintenance of conservation values.
 - Z. **Amplified Sound.** Grantors are prohibited from using devices that amplify or emit amplified sound.
5. **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, if possible, but in any event no less than 48 hours, 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 working days of receipt of Grantors' written request therefor. Metro's approval may be withheld upon a determination by Metro that, in Metro's discretion, 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: Mr. Algia King, Jr.
 Mrs. Richee K. King
 981 Cherry Street
 Cornelius, OR 97113
 Tel. No. (503) 357-8993

With a copy to:

To Metro: Metro
 Department of Parks and Greenspaces
 Attn: Charles Ciecko
 600 NE Grand Avenue
 Portland, OR 97232
 Tel. No. (503) 797-1843

With a copy to:

Timothy Marble
Marble Law Office PC
1906 Council St.
P.O. Box 278
Forest Grove, OR 97116
Tel. No. (503) 357-8248

Metro
Office of General Counsel
600 NE Grand Avenue

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

6. **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.
7. **Costs, Liabilities and Insurance** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of adequate

comprehensive general liability insurance coverage. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Notwithstanding the above, Metro shall be responsible for the operation, upkeep and maintenance of any trail built by Metro on the Protected Property, and for any other activity performed or responsibility assumed by Metro under Sections 2 and 3 herein.

8. **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.
9. **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 act, omission, condition, or other matter relating to or occurring 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; (3) reserved rights under Section 5 and obligations under Sections 9 and 10. Grantor shall be afforded the full protection from liability to the public provided under Oregon Revised Statute 105.672-696.
10. **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.

11. **Subsequent Transfer and Extinguishment.**

A. **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.

B. **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;
- 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.

12. **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 in writing; 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 Washington County, Oregon, and any other jurisdiction in which such recording is required.

13. **Assignment.** Metro may assign this Easement to any municipal park provider or statutorily authorized holder of a conservation easement without the agreement of Grantors. Any other assignment of this Easement by Metro 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.
14. **Recording.** Metro shall record this instrument in a timely fashion in the official records of Washington County, Oregon, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.
15. **Subordination.** If the Protected Property is subject to the mortgage or deed of trust, Grantor shall ensure that at or prior to Closing, the beneficiary of the mortgage or deed of trust shall agree by separate instrument, to be recorded concurrently with this Easement, to subordinate its rights in the Protected Property to the Easement to the extent necessary to permit Metro to enforce the Purpose of this Easement in perpetuity and to prevent any modification or extinguishment of the Easement by the exercise of any rights of the beneficiary under the mortgage or deed of trust.
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 non-material 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. **"Grantors" - "Metro".** The terms "Grantors" and "Metro," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantors, and their personal representatives, heirs, successors, and assigns, and Metro, its 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 personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property and Grantor's adjacent 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.
- J. **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.

19. **Schedule of Attachments**

- A. Legal Description.
- B. Site Plan.

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

Algia King, Jr.

Richee E. King

State of Oregon)
) ss.
County of _____)

On this _____ day of _____, 2002, before me _____,
the undersigned Notary Public, personally appeared _____
and _____ 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 Grant Deed of Conservation Easement.

METRO, a municipal corporation

By: _____
Mike Burton, 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:

METRO NATURAL RESOURCES COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 02-3221, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE A CONSERVATION EASEMENT OVER THE KING PROPERTY IN THE GALES CREEK TARGET AREA

Date: September, 13, 2002

Presented by: Councilor McLain

Committee Action: At its September 4, 2002 meeting, the Metro Natural Resources Committee voted 3-0 to recommend Council adoption of Resolution 02-3221. Voting in favor: Councilors Atherton, Hosticka, and McLain.

Background: The conservation easement covers most of a nearly 47 acre parcel on the Tualatin River, north of Cornelius. It is in the Gales Creek target area, and meets all Open Spaces Work Plan criteria. The easement covers 45 undeveloped acres of this parcel, leaving 1 ½ acres remaining with a wood shop on industrially zoned land. It meets a tier two criteria of protecting the corridor along the Tualatin between Jackson Bottom and Fernhill Wetlands. The easement will exist in perpetuity and allow for public access and restoration of the property.

- **Existing Law:** Meets requirements of Open Spaces Implementation Work Plan, as modified by resolution 01-3106, providing for additional criteria for acquisition.

Meets state statute and Metro code requirements regarding conservation easements.

- **Budget Impact:** Costs associated with this resolution are budgeted in the Open Spaces Acquisition Fund.

Committee Issues/Discussion: Nancy Chase, Open Spaces Acquisition Division, gave the staff presentation. A public hearing was opened. No testimony was offered, though a letter from Cornelius does support the resolution.

Staff Report

CONSIDERATION OF RESOLUTION NO. 02-3221 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE A CONSERVATION EASEMENT OVER THE KING PROPERTY IN THE GALES CREEK TARGET AREA

Date: August 15, 2002

Presented by: Charles Ciecko
Jim Desmond

BACKGROUND

Resolution No. 02-3221 requests authorization for the Executive Officer to purchase conservation and public access easement over property owned by Algia King Jr. and Richee E. King in the Gales Creek target area.

The Kings own an approximately 47-acre parcel of land located east of South 10th Avenue and along the south boundary of the City of Cornelius. The property straddles the urban growth boundary and is across the Tualatin River from Steamboat Park. Steamboat Park is owned by Metro and the City of Cornelius and is managed by the City. Metro proposes to purchase a perpetual conservation and public access easement over the undeveloped 45-acre portion of the King property which is in unincorporated Washington County and is zoned EFU (Exclusive Farm Use).

The primary purpose of the easement is to allow Metro to restore the property to a natural state and ultimately provide an extension to Steamboat Park. The area to be covered by the easement is entirely in the 100-year floodplain, with some designated federal wetland and over two miles of river frontage. The site is currently being used for grazing. The easement will allow public access and restoration of the site. The specific terms of the easements are attached as Exhibit B to the accompanying resolution.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. 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 96-2343, the Metro Council adopted a refinement plan, which outlined a land protection strategy for the Gales Creek 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 2 priority. The Property is also designated as Tier 2 in the Jackson Bottom/ Dairy McKay target area. The Tier 2 objective for both plans states:

- "Acquire/protect the riparian and wooded corridor along the Tualatin to connect Jackson Bottom to Fernhill wetland."

The King property contains significant river frontage and floodplain habitat and is located between Jackson Bottom and Fernhill Wetland.

B. Resolution 01-3106 Criteria

The acquisition of the easements would also meet one 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":

- "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 606 acres in Gales Creek Target Area out of a goal of 775 acres.

Since Metro has not exceeded the minimum 775-acre goal established for the Gales Creek target area, purchase of the easement does 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, city, or park and recreation district to acquire conservation easements by purchase, agreement, or donation upon a determination that such acquisition will be in the public interest.

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

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

3. Anticipated Effects

Acquisition of this easement provides an opportunity to expand Steamboat Park and protect over two miles of river frontage in the Gales Creek regional target area.

4. 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.

5. Outstanding Questions

None.

FINDINGS

Acquisition of the King easement with the above-stated terms is recommended based upon the following:

- The easements lies in Tier 2 of the Gales Creek target area and fulfills the goals of the target area refinement plan.
- Metro is below its goal of acquiring 775 acres in the Gales Creek 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. 02-3221.