

BEFORE THE METRO COUNCIL

AMENDING THE NATURAL AREAS ACQUISITION)
REFINEMENT PLAN FOR THE FOREST PARK) RESOLUTION NO. 08-3999
CONNECTIONS TARGET AREA AND)
AUTHORIZING THE CHIEF OPERATING OFFICER) Introduced by Chief Operating Officer
TO LEASE PROPERTY TO THE AUDUBON) Michael J. Jordan, with the concurrence of
SOCIETY OF PORTLAND, OREGON) Council President David Bragdon

WHEREAS, in November, 2006, voters in the Metro Area approved a \$227.4 million ballot measure 26-80, the 2006 Natural Areas Bond Measure; and,

WHEREAS, the Forest Park Connections Target Area was identified in the Measure as one of 27 regional target areas for land acquisition, building on the success of land acquisitions in the Forest Park Target Area pursuant to Metro’s 1995 Open Spaces Bond Measure Program; and

WHEREAS, Metro has purchased over 865 acres in the Forest Park Target Area pursuant to the 1995 Open Spaces Bond Measure and the associated implementation work plan; and

WHEREAS, on September 6, 2007, by its approval of Resolution No. 07-3833, the Metro Council adopted a refinement plan for the Forest Park Connections target area which authorized the purchases of sites illustrated in a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, a goal of the Forest Park Connections target area refinement planning focuses on acquiring key properties to connect Forest Park to other public lands; and

WHEREAS, a Tier II objective of the Forest Park Connections target area refinement plan is to acquire important headwater areas within the Balch, Saltzman, Doane and Miller Creek watersheds, on the east side of the ridgeline, primarily using conservation easements; and

WHEREAS, a Partnership Objective of the Forest Park Connections target area refinement plan is to pursue partnership opportunities with local land trusts to leverage regional bond dollars targeted to the Forest Park Connections area; and

WHEREAS, the Oregon Parks Foundation, an Oregon non-profit corporation that holds land for the purpose of preserving natural areas (hereafter the “OPF”), is the owner of an 86.45 acre parcel of land, known as the Collins Sanctuary, that is currently being leased by the Audubon Society and used as a nature preserve open to the public (hereafter the “Property”); and

WHEREAS, the OPF intends to sell its real property assets and dissolve its corporate status within approximately one year; and

WHEREAS, the OPF is willing to sell its property to Metro at a below-market price of \$1,000 per acre; and

WHEREAS, the OPF property meets the above-referenced standard for the Forest Park Connections target area in that it is adjacent to Forest Park and the Audubon Society land which connects to Forest Park and is open to the public; it contains a creek that is a headwater of Balch Creek; and acquisition of the OPF property leads to a mutually beneficial partnership with the Audubon Society; and

WHEREAS, the refinement plan map for Tiers I and II of the Forest Park Connections target area does not currently include the 86 acre Property identified in Exhibit A to this resolution; and

WHEREAS, the Audubon Society is willing to manage and maintain trails on the Property under a lease agreement that will share Property management costs with Metro, pursuant to the lease terms attached as Exhibit B to this resolution; now therefore

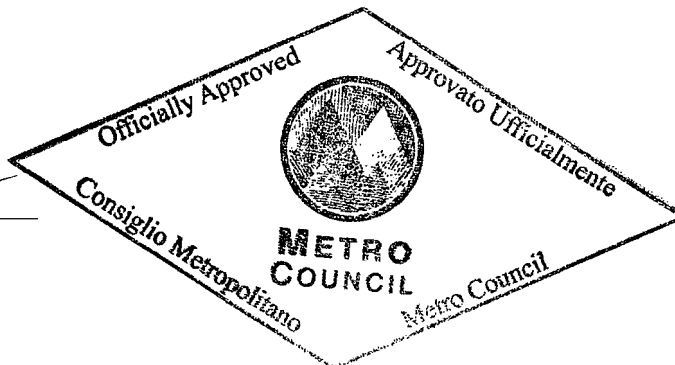
BE IT RESOLVED that the Metro Council amends the Forest Park Connections regional target area refinement plan to include the property identified in Exhibit A to this resolution and authorizes the Chief Operating Officer to enter into an agreement to lease the Property to the Audubon Society substantially in conformance with the lease attached as Exhibit B to this resolution.

ADOPTED by the Metro Council this 6 day of NOVEMBER, 2008.


David Lincoln Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney



Target Area FOREST PARK CONNECTIONS

Description Staff has identified an opportunity to protect 86.45 acres of vacant land with valuable natural resources, close in to the city of Portland. The majority of the Oregon Parks Foundation property, also known as the Collins Sanctuary, is steeply sloped and has significant growth of Maple, Hemlock, Red Cedar, Alder and Douglas Fir trees. It is not currently developable for residential uses. Although it is zoned as Commercial Forest Use, no timber cruise has been done. The property also has Multnomah County zoning overlays to protect wildlife habitat (SEC-h), streams (SEC-s) and steep slopes (Hillside Development Overlay), emphasizing the fragile ecosystem that exists. Some of the larger bird populations on the property include the Chestnut Backed Chickadee, Steller's Jay, Varied Thrush and Mourning Doves.

Primary access to the property is from a trailhead on Cornell Road and there is also street frontage on NW Queens Drive. The property is adjacent to the Portland Urban Growth Boundary and has proximity to Forest Park and Macleay Park. It is currently being used as part of the Audubon Society's headquarters and sanctuaries complex. The Collins Sanctuary is larger than the Founders and Pittocks Sanctuaries and is connected to them through trails. The current trail on the OPF Property was once a wagon road for the homestead that was located there. Balch Creek traverses the property with approximately 5,500 feet of creek frontage and joins with another Balch tributary to go under Cornell Road via culvert, continuing on through the Pittock Sanctuary area of the Audubon Society complex. A population of native cutthroat trout is in the lower creek, isolated by culverts.

The Audubon Society headquarters, nature store and wildlife care center are located on Cornell Road about one-eighth of a mile from the property. Therefore, the Audubon Society is in a good position to monitor the property and effect routine maintenance, repairs and restoration projects on the property. The proposed Lease contains restrictions on the Audubon activities and provides a process for general management responsibility and approval by Metro for special projects or uses for the property

Although the OPF property is not threatened by development at this time, it would be subject to timber harvest if the property was in private hands, and its adjacency to the Portland Urban Growth Boundary suggests that it may be considered for urban development in the future.

- Bond Criteria Addressed**
- Resolution No. 06-3672B, passed by the Metro Council in March, 2006, states that Bond Measure funds will be used “for the purposes of preserving natural areas and stream frontages, maintaining and improving water quality, and protection of fish and wildlife habitat”. The Oregon Parks Foundation Property is unique in that the property currently serves these purposes and provides additional public access and enjoyment benefits through the Audubon Society’s operations. Acquisition of the Property ensures that these values and benefits will continue.
 - The below market purchase price is similar to conservation easement values, identified in the Forest Park Connections Target Area refinement plan as a primary tool to acquire headwater areas within the Balch Creek watershed.
 - Protection of this level of intact canopy on such a large acreage property drainages to the main stem of Balch Creek will keep water temperatures low, a major water quality benefit.
 - The long term lease of the property to the Audubon Society achieves the partnership objective of leveraging regional bond dollars, as the Audubon’s responsibility for managing trails, education programs and public enjoyment of the property reduces Metro’s obligations in those areas.

Property identification Township 1 North, Range 1 East, Section 31BD, Lot 00500
Township 1 North, Range 1 East, Section 31AC, Lot 00400
Township 1 North, Range 1 East, Section 31CB, Lot 00100
Township 1 North, Range 1 East, Section 31CO, Lot 00100

Sellers Oregon Parks Foundation, Inc. an Oregon non-profit corporation

Size 86.45 Acres

Stream Balch Creek

Frontage Approximately 5,500 feet

Conditions Standard due diligence

**DRAFT
LEASE**

LESSOR (“Metro”):

Metro, an Oregon municipal corporation
600 NE Grand Avenue
Portland, Oregon 97232-2736

LESSEE (“Audubon Society”):

Audubon Society of Portland, Oregon, an Oregon non-profit corporation
5151 NW Cornell Road
Portland, Oregon 97210

EFFECTIVE DATE: November _____, 2008

WHEREAS, Metro has entered into a purchase and sale agreement to acquire title to approximately 87 acres of real property, together with all the improvements thereon and all rights appurtenant thereto (including but not limited to access rights, timber rights, water rights, grazing rights, development rights and mineral rights), located at North Cornell Road in the County of Multnomah, State of Oregon, commonly known as Tax Lots 1N1E31AC-00400, 1N1E31BD-00500, 1N1E31C-00100, and 1N1E31CB-00100, Willamette Meridian, and more particularly described on the attached Exhibit A (the “Property”).

WHEREAS, Metro’s purpose in purchasing the Property is to preserve, protect, and enhance the fish and wildlife habitat and water quality benefits provided by the Property;

WHEREAS, the Audubon Society of Portland, an Oregon 501(c)(3) non-profit organization founded in 1902, exists as a vital protector of the Portland metropolitan area’s wildlife and natural resources;

WHEREAS, the Audubon Society utilizes land under its care as sheltered bird and animal habitat and outdoor classrooms, with goals in alignment with Metro’s 2006 Natural Areas Bond Measure;

WHEREAS, the Audubon Society currently leases such Property from its current owner for the purpose of using the Property for public recreation as a wildlife sanctuary and for education and research programs related thereto, and for maintaining the natural condition of the Property;

WHEREAS, Metro and the Audubon Society wish to enter into this Lease, which will be effective upon Metro’s closing on its acquisition of the Property, so that the Audubon Society may continue to lease the Property for the purposes stated herein below;

NOW THEREFORE, Metro and the Audubon Society enter into this Lease as provided in the following terms and conditions:

Section 1. Description of Leased Property. In consideration of the agreements described herein, Metro leases to the Audubon Society the property commonly known as Tax Lots 1N1E31AC-00400, 1N1E31BD-00500, 1N1E31C-00100, and 1N1E31CB-00100, Willamette Meridian, and more particularly described on the attached Exhibit A.

Section 2. Term. This Lease commences on the date that Metro takes title to the Property and terminates on October 31, 2018. Metro and the Audubon Society may, by written agreement signed by both parties, jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective as provided in such termination agreement. The Audubon Society acknowledges, consents to, and agrees that its prior lease of the Property dated February 1, 2005, from its prior owner, the Oregon Parks Foundation, Inc., is hereby terminated, without penalty, as of the Effective Date of this Lease.

Section 3. No Rent. The Audubon Society shall not be obligated to pay any rent to Metro for use of the Property. The consideration for this lease is the mutual agreements of the parties contained herein.

Section 4. Metro's Right of Entry; Property To Be Managed As Natural Area. Notwithstanding this Lease, Metro may go on the Property at any time to undertake any activities as Metro deems appropriate. Metro shall consult with the Audubon Society prior to undertaking any management activities on the Property and shall make its best effort to coordinate with and not to interfere with the Audubon Society's activities on and use of the Property. The Audubon Society acknowledges that Metro intends to manage the property as a natural area and to undertake management activities to improve the natural ecosystem and wildlife habitat on the Property as Metro deems appropriate in Metro's sole discretion. In order for the Property to reach its potential to create a high functioning natural habitat, Metro's management activities may include, without limitation, the removal of invasive plants, the planting of native plants, and the removal of trees, using any method that Metro deems appropriate in its sole discretion, including, without limitation, the possible use of herbicides and pesticides. Metro also may repair, reconstruct, and move the specific locations of trails and trail bridges, at Metro's sole discretion and cost, to mitigate trail impacts on the Property's natural resources, such as erosion and water quality impacts; provided, however, that the basic trail network depicted on the "Sanctuary Nature Trails" map attached hereto as Exhibit B (the trails identified as the Collins, North Collins, and South Collins Trails are on the Property, as is part of the Founders Trail) is maintained and that Metro has consulted with Audubon prior to undertaking such projects."

Section 5. Audubon Society's Authorized Use and Care of Property.

5.1 Trails. The Audubon Society shall operate, manage, maintain, and repair a pedestrian, low-impact, public trail system on the Property. Such trails shall be located in the approximate locations as indicated on Exhibit B. Such trail maintenance and repair

shall include, without limitation, the obligation to maintain and repair all bridges currently in place as of the Effective Date of this Lease. Such trails shall be open for the use of the general public during all daylight hours throughout the year, with no holidays or closure days except as approved in writing by Metro, in its sole discretion. The Audubon Society may close some trails temporarily, without having to obtain Metro's approval, for the purpose of completing trail repair or management projects, provided that other trails on the Property remain open during such activities. The Audubon Society shall never charge any fee for use of the trails on the Property and shall clearly communicate, in signage and in written and oral responses to inquiries, that public use is permitted free of charge. The location of trails shall not be altered or moved from their locations as indicated on Exhibit B, and as they existed as of the Effective Date of this Lease, without consultation with Metro and Metro's written authorization.

5.2 Education and Volunteer Programs and Wildlife Research. The Audubon Society may provide and manage public volunteer and education programs on the Property. The Audubon Society may undertake wildlife research projects on the Property using its employees and volunteers, provided that such volunteers are trained and appropriately supervised by its employees.

5.3 Signage. The Audubon Society may continue to use existing signage on the Property, and may erect new signage at the trailhead parking area to provide the public with information about the trails on the Property, trail use rules, educational information about the ecology, habitat, and natural history of the Property, and that the Audubon Society is managing the Property. Any such new signage erected shall comply with Section 7 of this Lease.

5.4 No Waste. The Audubon Society shall maintain the Property in good condition and shall not commit, permit, or suffer waste to the Property.

5.5 Maintenance of Signs/Facilities. The Audubon Society shall maintain all of the signs, the parking areas, and any other structures used by the Audubon Society on the Property in as good a condition and repair as they were at the commencement of this Lease, reasonable wear and tear excepted, and always subject to the repair covenants of this Lease.

Section 6. Third Party Requests for Use of Property. The Audubon Society may not grant authority for use of the Property by any person or entity except as described in Section 5, above. The Audubon Society shall direct to Metro all requests for easements, rights of way, leases, licenses, and any other uses on or affecting the Property. Metro will respond to such requests as appropriate, and in accordance with the Metro Easement Policy, Resolution No. 97-2539B, passed by the Metro Council on November 6, 1997, attached hereto as Exhibit C. Provided that Metro follows such policy, this Lease does not prohibit or limit Metro's right or authority to grant any such easement, right of way, lease, license or other use on or affecting the Property. Metro will consult with Audubon prior to granting access or permission as referenced above.

Section 7. Acknowledgement. The Audubon Society and Metro shall collaborate to recognize and document in any new on-site signage, written and electronic publications, media presentations, or other public presentations referencing the Property that are produced by or at the direction of the Audubon Society, that Metro is the owner of the Property and that funding for acquisition of the Property came from the 2006 Metro Natural Areas Bond Measure. The Audubon Society shall include such recognition of Metro at the Audubon Society's own cost and expense. At the Audubon Society's request, Metro will provide the Audubon Society with Metro's logo and script graphics, in whatever format Audubon Society requests, for inclusion in any such materials. The Audubon Society shall incorporate Metro's logo and script in a size equal and comparable to the size of the Audubon Society's logo and script in such publication or information. If either party plans and holds any community or media events to publicize the Property, such party agrees to provide the other party with written notice of any such event at least three weeks prior to the scheduled event in order to coordinate with and allow for participation by staff and representatives from the other party and appropriate recognition of the source of funding for acquisition of the Property.

Section 8. Quitting Property at End of Lease; Condition of Property. The Audubon Society shall peaceably surrender, quit, and give up the Property at the termination or earlier expiration of this Lease. At the termination of this Lease, the Property shall be returned to Metro in no worse physical and ecological condition as at the commencement of this Lease, all repairs being completed as required in this Lease, reasonable wear to any fixtures being excepted (except for repair obligations).

Section 9. Compliance with Law and Hazardous Materials.

9.1 The Audubon Society, at its sole expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county, and municipal authorities pertaining to the Audubon Society's use of the Property, and with all recorded covenants, conditions, and restrictions, regardless of when they become effective. These include, without limitation, any required alteration of the Property because of the Audubon Society's specific use, and all applicable federal, state, local laws, regulations, or ordinances pertaining to air and water quality, Hazardous Materials as defined in Section 9.4 below, waste disposal, air emissions and other environmental matters, and all zoning and other land use matters.

9.2 The Audubon Society shall not cause or permit any Hazardous Material to be brought on, kept, or used in or about the Property by the Audubon Society, the Audubon Society's agents, employees, contractors, or invitees without the prior written consent of Metro, which shall not be unreasonably withheld as long as the Audubon Society demonstrates to Metro's reasonable satisfaction that such Hazardous Material is necessary to the Audubon Society's business and will be used, kept, and stored in a manner that complies with all laws regulating any such Hazardous Materials brought upon or used or kept in or about the Property.

9.3 The Audubon Society shall indemnify, defend, and hold Metro harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including without limitation, diminution in value of the Property, damages for the loss or restriction on use or rent of the Property, damages arising from any adverse impact on marketing of the Property, and sums paid in settlement of claims, attorney fees, consultant fees, and expert fees) that arise during or after the lease term due to contamination by Hazardous Materials as a result of the Audubon Society's, or its employees', volunteers', agents', or contractors', use of or activities on the Property. This indemnification of Metro by the Audubon Society includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Materials present in the soil or groundwater or under the Property. Without limiting the foregoing, if the presence of any Hazardous Material on the Property caused or permitted by the Audubon Society or the Audubon Society's employees, volunteers, agents, or contractors results in any contamination of the Property, the Audubon Society shall promptly take all actions at the Audubon Society's sole expense as are necessary to return the Property to the condition existing prior to the release of any such Hazardous Material onto the Property, provided that Metro's approval of such action shall first be obtained, and approval shall not be unreasonably withheld, as long as such actions would not potentially have any material adverse long-term or short-term effect on the Property. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

9.4 As used in this Lease, the term *Hazardous Material* means any hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101), or by the United States Environmental Protection Agency as hazardous substances (40 CFR pt 302) and amendments thereto, petroleum products, or other such substances, materials, and wastes that are or become regulated under any applicable local, state, or federal law

Section 10. Taxes. The Audubon Society shall pay all taxes, if any, on any of the Audubon Society's personal property used on the Property.

Section 11. Liens. The Audubon Society shall pay when due all claims for work done on the Property, and for services rendered or material furnished to the Audubon Society incurred for the Audubon Society's repair responsibilities for the Property and improvements; and the Audubon Society shall keep the Property free of any liens arising out of the failure to pay such claims or arising out of any other activity of the Audubon Society. If the Property or improvements are subjected to any lien because of the activities of the Audubon Society, and a lien is not discharged within 10 days, Metro may discharge the lien, and recover the cost from the Audubon Society on demand, plus interest at the rate of 12% per annum from the date of expenditure. Such action by Metro shall not constitute a waiver of any right or remedy that Metro may have on account of the Audubon Society's default. If the Audubon Society in good faith elects to contest the lien, then the Audubon Society shall, on Metro's written request, deposit with Metro

cash or sufficient corporate surety bond or other security satisfactory to Metro, to discharge the lien plus costs and interest.

Section 12. Indemnification. The Audubon Society shall indemnify and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Lease by the Audubon Society or the Audubon Society's officers, agents, or employees.

Section 13. Insurance. The Audubon Society shall purchase and maintain, at the Audubon Society's expense, the following types of insurance covering the Audubon Society, its employees and agents:

A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. Metro and its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED.

B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. Metro and its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to METRO thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover the Audubon Society's operations under this Contract, whether such operations be by Audubon Society's or by any subcontractor or anyone directly or indirectly employed by either of them. The Audubon Society shall provide Metro with a certificate of insurance complying with this article and naming Metro as an additional insured within fifteen (15) days of execution of this Contract or Metro's closing on its acquisition of the Property, whichever date is earlier.

Section 14. Oregon Constitution and Tax Exempt Bond Covenants. The source of funds for Metro's acquisition of the Property is from the sale of voter-approved general obligation bonds that are to be repaid using ad valorem property taxes exempt from the limitations of Article XI, sections 11, 11b, 11c, 11d and 11e of the Oregon Constitution, and that the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The Audubon Society covenants that it will take no actions that would jeopardize the current status of the real property taxes imposed to repay these bonds as exempt from Oregon's constitutional property tax limitations or the income tax exempt status of the bond interest under IRS rules. In the event the Audubon Society breaches this covenant, the Audubon Society shall undertake whatever actions are necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof. In such an event, Metro shall work cooperatively with the Audubon Society to address such breach.

Section 15. Laws of Oregon; Public Contracts. The laws of the State of Oregon shall govern this License, and the parties agree to submit to the jurisdiction of the courts of the State of Oregon. All applicable provisions of ORS chapters 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated by this reference as if such provisions were a part of this Lease.

Section 16. Assignment. Neither party may assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except that a party may delegate or subcontract for performance of any of its responsibilities under this Agreement. If consent to an assignment is provided, this Lease shall be binding on and inure to the benefit of such approved successors and assigns.

Section 17. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by both (1) electronic mail or fax, and (2) regular mail. Notices shall be deemed delivered on the date personally delivered or the date of such electronic or fax correspondence, unless such delivery is on a weekend day, on a holiday, or after 5:00 p.m. on a Friday, in which case such notice shall be deemed delivered on the next following weekday that is not a holiday.

To Metro: Director, Metro Natural Areas Program
600 N.E. Grand Avenue
Portland, OR 97232-2736
Phone: 503-797-1948
Fax: 503-797-1849
Kathleen.Brennan-Hunter@oregonmetro.gov

Copy to: Office of Metro Attorney
600 N.E. Grand Avenue
Portland, OR 97232-2736
Phone: 503-797-1661
Fax: 503-797-1792
Paul.Garrahan@oregonmetro.gov

To Audubon Society: Executive Director, Audubon Society of Portland, Oregon
1120 SW 5th Avenue, Suite 1302
Portland, OR 97204-1933
Phone: 503-292-6855
Fax: 503-
mredisch@audubonportland.org

Section 18. Severability. If any covenant or provision of this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform to the terms and requirements of applicable law and the intent of this Agreement.

Section 19. Entire Agreement; Modifications. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to the Properties. No waiver, consent, modification, amendment, or other change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

Section 20. Default; Remedies.

20.1 The following shall be events of default:

A. Dissolution, termination of existence, insolvency, business failure, discontinuance as a going business (except for labor disputes), assignment for the benefit of creditors, or commencement of any proceedings under any bankruptcy or insolvency laws by or against the Audubon Society.

B. Failure of the Audubon Society to comply with any other term or condition, or fulfill any other obligation of the lease within 30 days after written notice by Metro specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 10-day period, this provision shall be complied with if the Audubon Society begins correction of the default within the 10-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as possible.

C. Abandonment of the Property by the Audubon Society.

20.2 In the event of default, Metro shall have the right to re-enter, take possession of the Property, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. Such right shall be cumulative and in addition to all other remedies available to Metro under applicable law.

Section 21. Covenants of Title. Metro covenants that Metro will have full right and authority to lease the Property and will protect the Audubon Society from all other claimants except as noted on Metro's deed to the Property.

Section 22. Nonwaiver. Failure by either party at any time to require performance by the other of this Lease shall in no way affect that party's right to enforce any Lease provisions; nor shall any waiver of any breach be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

Section 23. Partial Invalidity. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and other provisions shall remain in full force and effect.

Section 24. Representations and Warranties. The Audubon Society accepts the Property, improvements, and the personal property, if any, included in this Lease in their present condition, AS IS, without any representation or warranties, express or implied, except as otherwise set forth in this Lease. It is understood and agreed that the Audubon Society has inspected the Property and that the Audubon Society has made his or her own determination of the value of the Property.

Section 25. Section Headings. The section headings to the sections of this Lease are not part of the Lease and shall have no effect upon the construction or interpretation of any part of it.

Section 26. Complete Agreement. There are no oral agreements between Metro and the Audubon Society affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, advertising, agreements and understandings, oral or written, if any, between Metro and the Audubon Society or displayed by Metro or its agents to the Audubon Society with respect to the subject matter of this Lease or the Property. There are no representations between Metro and the Audubon Society other than those contained in this Lease and all reliance with respect to any representations is solely upon representations contained in this Lease.

Section 27. Third Parties. Metro and the Audubon Society are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, or indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

METRO,
an Oregon municipal corporation

Audubon Society of Portland, Oregon,
an Oregon non-profit corporation

Michael Jordan
Metro Chief Operating Officer

Meryl Redisch
Executive Director

Date: _____

Date: _____

- Exhibit A - Property Legal Description
- Exhibit B - Audubon's Sanctuary Nature Trails Map
- Exhibit C - Metro Easement Policy

Exhibit A
Property Legal Description

PARCEL I:

A tract of land in Section 31, Township 1 North, Range 1 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

Beginning at a point on the half section line, 24 chains West of the quarter section corner between Sections 31 and 32 in Township 1 North, Range 1 East of the Willamette Meridian; thence running West tracing half section line, 36 chains; thence North 11.11 chains; thence East 36 chains; thence South 11.11 chains to the place of beginning, EXCEPTING 2 acres conveyed to Multnomah County by John Hale and wife on the 20th day of July 1891, as shown by deed bearing date of July 20, 1891, and recorded the same day in Deed Book 158, Page 453, Records of said Multnomah County, and ALSO EXCEPTING THEREFROM 4.123 acres, conveyed by the Scottish American Investment Company to Melchoir Kehrli by deed bearing date of October 18, 1904, and which was recorded October 19, 1904, in Deed Book 328, Page 270, Deed Records of said Multnomah County; ALSO EXCEPTING THEREFROM 8.2 acres conveyed by Percy H. Blyth et ux to N. Q. Tanquary, Trustee by deed recorded October 8, 1909 in Book 472, Page 151, Deed Records.

PARCEL II:

All that part of the following described tract which lies South and West of the Southwesterly boundary line of the N. W. Cornell Road No. 1409:

Beginning at a point in the East and West center line of Section 31, Township 1 North, Range 1 East, Willamette Meridian, in the County of Multnomah and State of Oregon, which is located 2213.40 feet West of the one-quarter corner of the East line of said section; thence West on said center line 305.70 feet; thence North 285.00 feet; thence East parallel to said center line 305.70 feet; thence South 285.00 feet to the place of beginning.

PARCEL III:

A tract of land in Section 31, Township 1 North, Range 1 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

Beginning at the Northwest corner of the William Naylor Donation Land Claim; running thence East along the North line of said claim 20 chains; thence South and at right angles with the North line of said claim 20 chains; thence Westerly and at right angles to last mentioned line 20 chains; to the West line of said claim; thence Northerly along said West line 20 chains to the point of beginning.

PARCEL IV:

All that part of the West half of the Southwest quarter of Section 31, Township 1 North, Range 1 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

Beginning at the Northeast corner of said West half of the Southwest one-quarter of Section 31, Township 1 North, Range 1 East, running thence Westerly 40 rods, tracing the North side line of the aforementioned West half of the Southwest one-quarter of Section 31, Township 1 North, Range 1 East; thence Southerly 80 rods; thence Easterly 40 rods; thence Northerly 80 rods tracing the East side line of said West one-half of Southwest one-quarter of Section 31, Township 1 North, Range 1 East to the place of beginning.

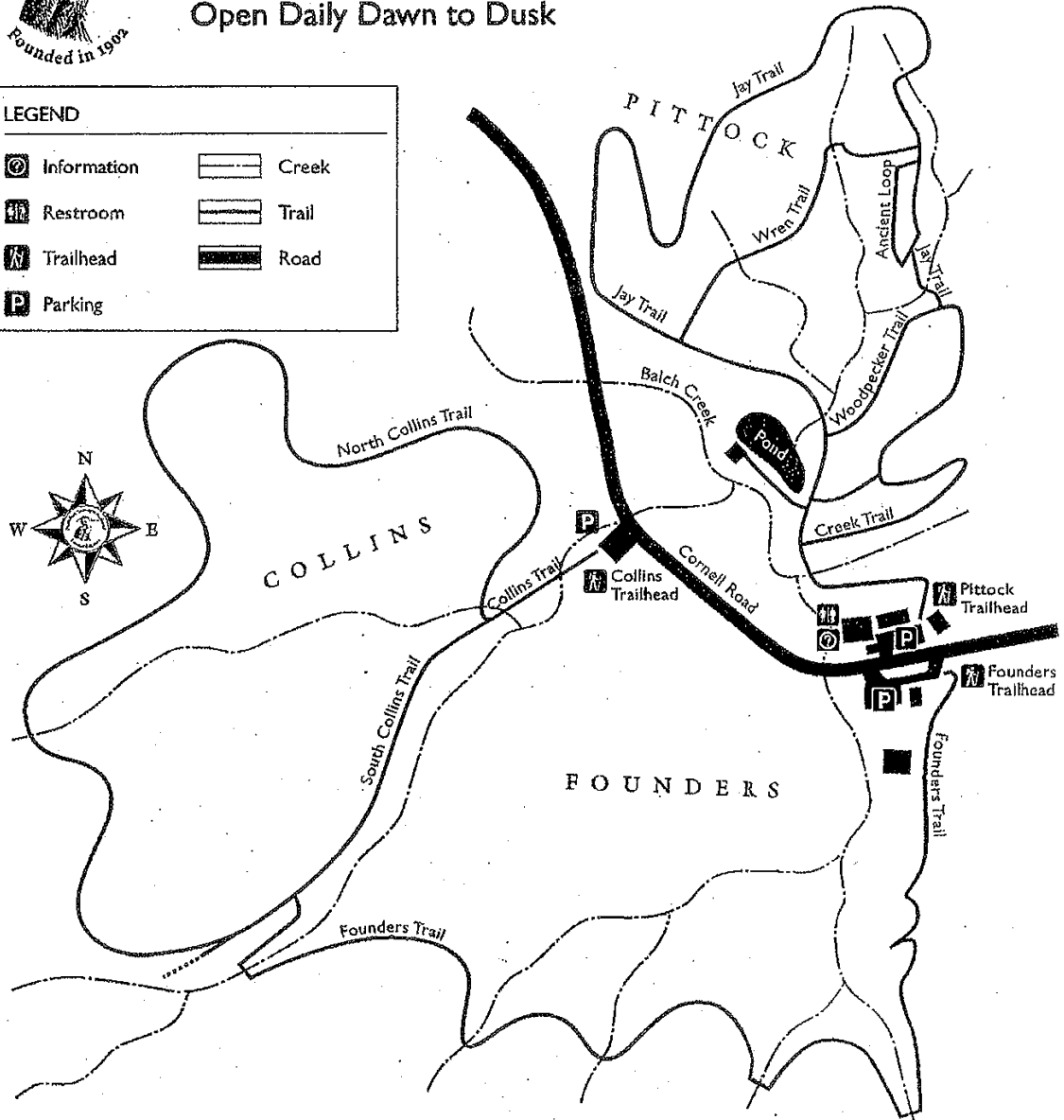
Exhibit B
Audubon's Sanctuary Nature Trails Map



Sanctuary Nature Trails

Open Daily Dawn to Dusk

LEGEND	
Information	Creek
Restroom	Trail
Trailhead	Road
Parking	



**Exhibit C
Metro Easement Policy**

BEFORE THE METRO COUNCIL IS A COMPLETE AND EXACT COPY OF THE ORIGINAL THEREOF.

Rebecca V. Shoemaker, Clerk
Clerk of the Metro Council

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

RESOLUTION NO. 97-2539B

Introduced by
Mike Burton, Executive Officer

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

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

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


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

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

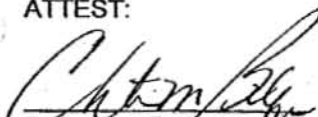
WHEREAS, it would be in Metro's best interest to provide for the orderly evaluation and consideration of proposals to utilize portions of Metro Regional Parks and Greenspaces properties for utility, transportation and other non-park uses; NOW THEREFORE,

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

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


Jon Kvistad, Presiding Officer

ATTEST:


Recording Secretary

Approved as to Form:



Daniel B. Cooper, General Counsel

Exhibit C
Metro Easement Policy

Resolution No. 97-2539B
Exhibit "A"

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

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

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

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

Exhibit C Metro Easement Policy

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

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

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

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

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

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

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

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

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

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

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

Exhibit C
Metro Easement Policy

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

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

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

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

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

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

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3999 AMENDING THE NATURAL AREAS ACQUISITION REFINEMENT PLAN FOR THE FOREST PARK CONNECTIONS TARGET AREA AND AUTHORIZING THE CHIEF OPERATING OFFICER TO LEASE PROPERTY TO THE AUDUBON SOCIETY OF PORTLAND, OREGON

Date: November 6, 2008

Prepared by: Kathleen Brennan-Hunter

BACKGROUND

On September 6, 2007, the Metro Council approved Resolution 07-3833 for the purpose of approving a refinement plan for the Forest Park Connections Target Area, including a confidential, tax-lot specific refinement map (the "Map") outlining areas in which Metro is authorized to purchase properties under the 2006 Natural Areas Bond Measure. The only Tier One objective is to acquire and protect additional lands along the corridor at the north end of the park to line Forest Park with other publicly owned parcels northwest of Newberry Road. In March, 2007, Metro acquired a 57.5 acre property that represented a significant step toward achieving this goal. The property's northern boundary is adjacent to Metro property and a single parcel lies between the southern boundary and Forest Park.

One of the Tier Two objectives of the refinement plan is to acquire important headwater areas within the Balch, Saltzman, Doane, and Miller Creek watersheds, on the east side of the ridgeline, using conservation easements as the primary tool. The Metro Council also adopted Partnership Objectives for the refinement plan, including an objective to "Pursue partnership opportunities with Friends of Forest Park, Trust for Public Land, The Three Rivers Land Conservancy, and other local land trusts to leverage regional bond dollars targeted to the Forest Park Connections area."

Metro staff have entered into an agreement with the Oregon Parks Foundation (the "OPF") to acquire an 86.45 acre property (the "Property"), subject to Metro Council approval. The OPF is a non-profit organization that intends to sell its real property assets and dissolve its corporate status within the next year, therefore putting the Property on the market. The Property is located on Cornell Road, across the road from Forest Park, and adjacent to the Audubon Society headquarters. It was donated to the OPF by the Collins family of Portland, and is currently leased to the Audubon Society. Metro intends to continue leasing the Property to the Audubon Society under substantially the terms and conditions contained in the lease attached as Exhibit B to the resolution.

The Audubon Society has approximately 10,000 members and operates The Audubon Wildlife Care Center, a gift shop, offices and meeting space at its headquarters. The Audubon Society's operations also include a trail system on the Property, also known as the Collins Sanctuary, in its Sanctuary Nature Trails tour, along with the Pittock Bird Sanctuary and the Founders Sanctuary, comprising an educational nature walk visited by more than 55,000 people annually. The Property is traversed by a headwater creek that flows into Balch Creek. The forest includes Douglas fir, Hemlock and Western Red Cedar and is still dominated by an Alder forest. The purchase price of \$86,500, at \$1,000 per acre, is significantly below the market value. A conservation easement is not appropriate in this instance because the OPF does not intend to keep ownership of the Property.

The confidential, tax-lot specific refinement map omitted the Property because it was regarded as already preserved in perpetuity. The change in status of the OPF negates that assumption and as the Property is zoned CFU (Commercial Forest Use) there is a probability that a new owner could change the character

of the property and disallow the use of the property by the Audubon Society and the general public when the current lease expires. This resolution will amend the refinement map to add the Property and authorize Metro's purchase of the Property and its subsequent lease to the Audubon Society, ensuring continued use and enjoyment by the public.

The OPF has entered into a purchase and sale agreement with Metro, subject to the Metro Council's approval of the acquisition. In order to acquire the Property, Metro must amend the Forest Park Connections refinement map.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Resolution No. 06-3672B, "For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisitions and Water Quality Protection," adopted on March 9, 2006.

The voters' approval of Metro's 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A "Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan," adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

Resolution No. 07-3833, "Approving the Natural Areas Acquisition Refinement Plan for the Forest Park Connections Target Area," adopted by the Metro Council on September 6, 2007.

3. Anticipated Effects

Resolution No. 08-3999 would approve an amendment to the Forest Park Connections Target Area confidential refinement map to authorize the acquisition of the property identified in Exhibit A to the resolution. The resolution would also authorize the Chief Operating Officer to enter into a lease of the Property with the Audubon Society.

4. Budget Impacts

Metro's purchase of the Property, and stabilization costs thereafter, shall be funded utilizing 2006 Regional Bond proceeds. Property management costs will be mitigated somewhat due to the lease to the Audubon Society.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No. 08-3999.