

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 02-3241
THE EXECUTIVE OFFICER TO ACQUIRE)
A CONSERVATION EASEMENT AND) Introduced by Mike Burton,
EXECUTE A 25-YEAR LEASE OF OPEN) Executive Officer
SPACE PROPERTY IN THE TUALATIN)
RIVER ACCESS POINTS 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 (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, on March 14, 1996, via Resolution 96-2299 ("For the Purpose of Approving a Refinement Plan For the Tualatin River Greenway and Access Points as Outlined in the Open Space Implementation Work Plan," adopted March 14, 1996), the Metro Council adopted a refinement plan for the Tualatin River Access Points regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, on June 26, 1996, Metro acquired 114 acres from James and Viola Stahlke, for a future public access point on the Tualatin River, which property (the "Metro Property") is depicted on the map attached as Exhibit A hereto; and

WHEREAS, Samuel and Susan Gotter own approximately 6.1-acres of land that lies in Tier I of the Tualatin River Access Points target area, adjacent to the Metro Property, and is further identified in Exhibit B (the "Gotter Property"); and

WHEREAS, the Gotters wish to convey a conservation easement to Metro that would encumber the Gotter Property and which would restrict land uses over the property such that its natural condition would be permanently protected and would allow public access on the property pursuant to the terms and conditions set forth in Exhibit C; and

WHEREAS, in consideration for the conservation easement, the Gotters require that Metro execute a lease to the Gotters for a term of 25 years over an approximate 1.0-acre portion of the Metro Property, that is adjacent to the Gotter Property, pursuant to the terms and conditions as set forth in Exhibit D and as depicted in the map attached as Exhibit A; and

WHEREAS, on November 6, 1997, the Metro Council adopted Ordinance No. 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," adopted November 6, 1997), 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, Metro has exceeded the minimum 266-acre goal established for the Tualatin River Access Points target area, and therefore acquisition of the conservation easement requires Metro Council authorization pursuant to Council 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," adopted September 27, 2001); and

WHEREAS, acquisition of the Gotter conservation easement meets two criteria of Council Resolution 01-3106 in that it will 1) improve public access to the Tualatin River and 2) help accomplish the assemblage of a regional scale natural area consistent with the goals of the refinement plan; and

WHEREAS, the Lease is for non-park purposes and can be accommodated without significant impact to natural resources, recreational facilities, recreational opportunities, or their operational management, per Metro Council Resolution No. 97-2539B ("For the Purpose of Approving General Policies Related to the Review of Easements, Rights of Ways, and Leases for Non-Park Uses Through Properties Managed by The Regional Parks and Greenspaces Department," adopted November 6, 1997); and

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

WHEREAS, the Lease area depicted in Exhibit A is currently surplus, is not needed for public use for the term of the Lease, and the Conservation Easement to be received by Metro in exchange for said Lease is of equal to or superior value for public use; now therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to acquire the conservation easement over the Gotter Property in the form attached as Exhibit C; and

BE IT FURTHER RESOLVED,

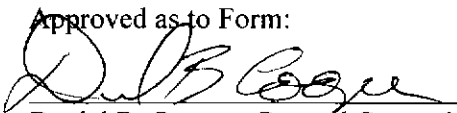
That the Metro Council authorizes the Metro Executive Officer to grant the Gotters a 25-year lease over Metro-owned property in the form attached as Exhibit D.

ADOPTED by the Metro Council this 14th day of November, 2002.

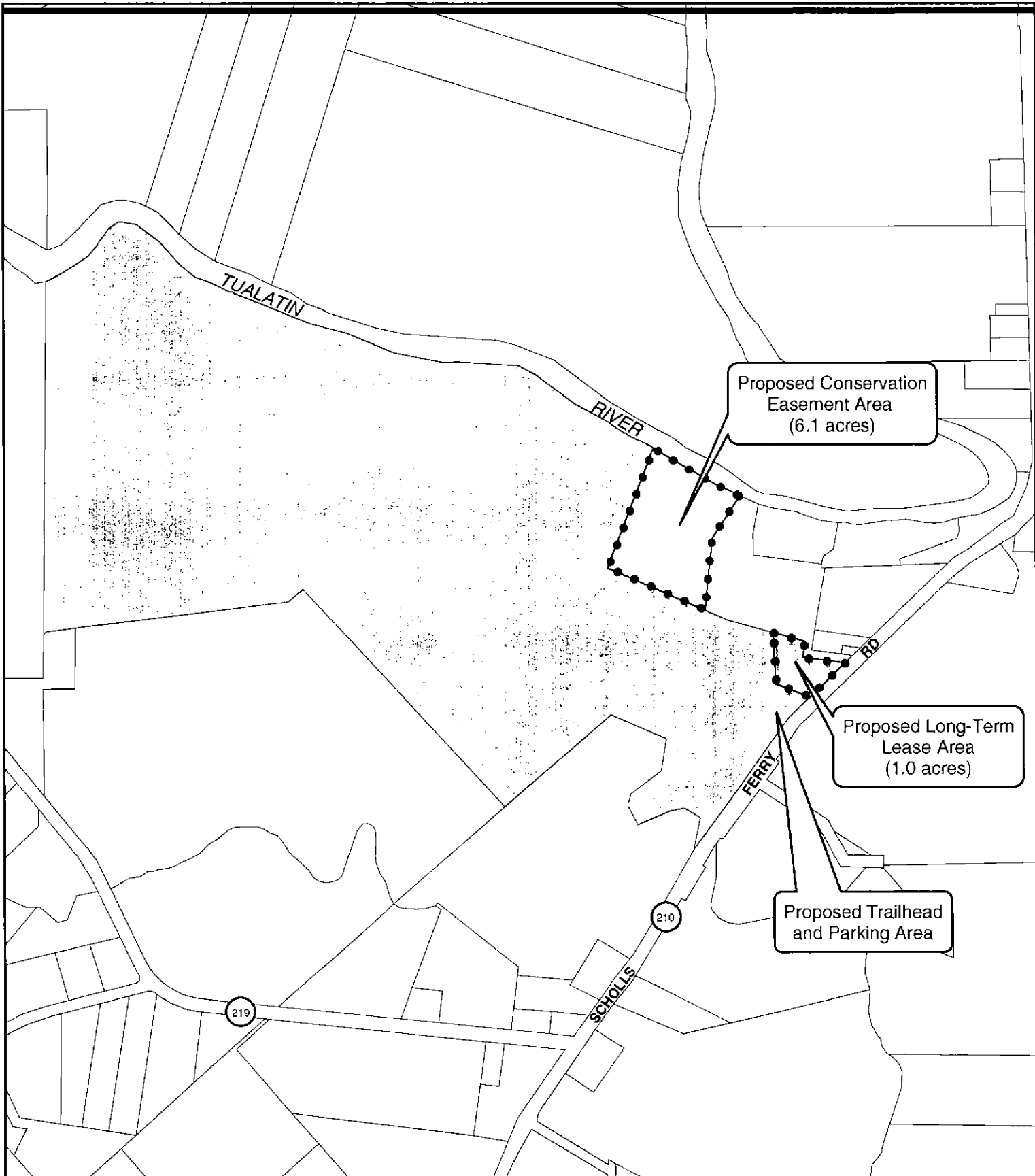


Carl Hosticka, Presiding Officer

Approved as to Form:

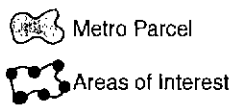


Daniel B. Cooper, General Counsel



REGIONAL LAND INFORMATION SYSTEM

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



Gatter Bottom

Exhibit A

Res. 02-3241

METRO
METRO PLANNING AND POLICY DEPARTMENT
1200 NE 10TH AVENUE, SUITE 1000
PORTLAND, OREGON 97232
503.944.1000
www.metro.gov



600
1 inch equals 600 feet

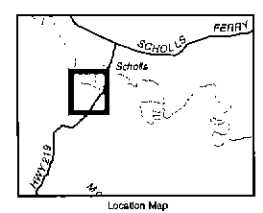


EXHIBIT B

Resolution 02-3241

A tract of land situated in Sections 9 and 10, Township 2 South, Range 2 West of the Willamette Meridian, in the County of Washington and State of Oregon, more particularly described as follows:

Beginning at the Northerly Northeast corner of the tract of land described in Deed to Samuel A. Gotter Jr., et ux recorded in Book 455 page 415, Records of Washington County, being a point in the center of the Tualatin River; thence South $10^{\circ} 28'$ West along the Easterly and Northerly boundary of said Gotter tract, 167.45 feet, South $0^{\circ} 10'$ East 100.12 feet and South $82^{\circ} 19'$ East 317.15 feet; thence South $09^{\circ} 51'$ West 17.20 feet to the Northerly line of that tract of land described in Deed to Land Syndicate Ltd., recorded in Book 375 page 36, Records of Washington County; thence North $88^{\circ} 20'$ East along said Northerly line, 14.30 feet to the Northerly Northeast corner thereof; thence South $09^{\circ} 51'$ West along the Easterly line of a 28.0 foot wide roadway easement as described by instrument recorded in Book 639 page 240, Records of Washington County, 384.30 feet to an angle point; thence South $81^{\circ} 46'$ East along the Northerly line of said easement, 191.80 feet to the Northwesterly line of State Highway 210, (Scholls Ferry Road); thence South $46^{\circ} 00'$ West along the Northwesterly line of said Highway, 35.42 feet to the Southeasterly corner of said easement; thence North $81^{\circ} 46'$ West along the Southerly line thereof, 199.0 feet to an angle point; thence North $09^{\circ} 51'$ East along the West line of said easement 114.0 feet to an iron rod at the Southeast corner of that tract of land described in Deed to Samuel A. Gotter Jr., et ux, recorded in Book 892 page 577, Records of Washington County; thence North $77^{\circ} 05' 55''$ West along the South line of said tract, 246.21 feet to an iron rod; thence leaving said South line, South $85^{\circ} 21' 20''$ West 134.78 feet to an iron rod; thence North $68^{\circ} 25' 35''$ West 590.0 feet; thence North $21^{\circ} 34' 25''$ East 610.0 feet, more or less, to the center of the Tualatin River; thence downstream in the center of said river, 530.0 feet, more or less, to the point of beginning.

EXHIBIT C
Resolution 02-3241

When recorded return to:

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

Mail Tax Statements to:
No Change Requested

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (“the Easement”) is made this _____ day of _____, 2002, by Samuel A. Gotter, Jr. and Susan B. Gotter having an address at 24125 SW Scholls Ferry Road in the County of Washington, State of Oregon (“Grantors”), in favor of Metro, a municipal corporation and political subdivision of the State of Oregon, having an address at 600 NE Grand Avenue, Portland, Oregon (“Metro”).

RECITALS

WHEREAS, Grantors are owners in fee simple of that certain real property (the “Protected Property”) located on Scholls Ferry Road in Hillsboro, in the County of Washington, State of Oregon, which is a portion of that certain real property known as Reference Parcel 2S20900 01801 (the “Larger Property”), more particularly described in Attachment A (legal description). The Protected Property is more particularly described in Attachment B (legal description) and depicted in Attachment C (survey map), attached hereto and incorporated into this Easement by reference herein;

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

WHEREAS, the Protected Property lies near the confluence of McFee Creek and the Tualatin River west of Scholls Ferry Road and north of State Highway 219. All of the Protected Property lies within the Tualatin River floodplain and is next to a 114-acre parcel that Metro purchased in 1996 (“the Metro Property”). The purpose of the Metro Property acquisition was to provide public access to and from the adjacent Tualatin River and to develop suitable natural habitat in the Tualatin River watershed. The northeast section of the Protected Property includes a section of McFee Creek and is near the confluence of the creek and the Tualatin River. This portion of the Protected Property is forested with native riparian vegetation. The remaining portion of the Protected Property has been farmed for many years and is part of the same cultivated area that is on Metro Property. Metro has developed a plan to restore the wetland hydrology and vegetation to the prior-converted agricultural land on its property. Since the Protected Property and the Metro Property both lie in the floodplain and are contiguous, it is advantageous to Metro to also restore and manage the Protected Property. Furthermore, the Protected Property contains an existing farm road that connects with the access road that runs from Scholls Ferry

Road and passes through the Metro Property. Metro intends to use the farm road area of the Protected Property if necessary for potential public pedestrian and vehicular access to and from the Tualatin River;

WHEREAS, the specific Conservation Values of the Protected Property are or will be documented in an inventory of relevant features of the Protected Property, dated _____, 2002, on file at the offices of Metro and incorporated into this Easement by this reference ("Baseline Documentation"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. Grantors and Metro further agree that within three (3) months of the execution of this Easement, a collection of additional Baseline Documentation may be compiled by Metro, and incorporated into the Easement by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability of this Easement or any of its provisions;

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

WHEREAS, Grantors acknowledge that Metro intends to use the Metro Property and the Protected Property as a natural area park and Tualatin River access point that will be open to the public;

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

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

NOW, THEREFORE, in consideration of Metro leasing an approximate 1.0-acre portion of the Metro Property to Grantors for 25 years under the terms and conditions set forth in the Agricultural Lease attached to the Purchase and Sale Agreement creating this Easement and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Oregon, Grantors hereby voluntarily grant and convey to Metro a Conservation Easement in perpetuity on, through and over the Protected Property of the nature and character and to the extent set forth below, and create an Appurtenant Public Pedestrian and Vehicular Access Easement of the nature and character set forth below. Grantors expressly intend that these perpetual Easements run with the land and that these Easements shall be binding upon Grantors' personal representatives, heirs, successors, and assigns. All references to "Grantors" herein apply equally to Grantors' personal representatives, heirs, successors, and assigns.

1. **Conservation Easement.** The Purpose of this Conservation Easement is to assure that (with the exception of the Trail, as defined below) the Protected Property will be retained forever predominantly in its natural condition as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem" (as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended and in regulations promulgated under this law), and to prevent any use of or activity on, the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property (the "Purpose"). Grantors intend that this Easement will confine the use of or activity on the Protected Property to such uses and activities that are consistent with this Purpose.
2. **Appurtenant Pedestrian and Vehicular Access Easement.**

- a. **Purpose.** The Purpose of the Appurtenant Public Pedestrian and Vehicular Access Easement is to provide public access to the Protected Property and for the development, at Metro's discretion, of a public recreational trail and vehicular roadway to provide access to and from the Tualatin River on and through the Protected Property. The Appurtenant Pedestrian and Vehicular Access Easement provides Metro with the perpetual right to construct and maintain a trail and roadway for public access to, on and through the Protected Property in a location acceptable to Metro in its sole discretion.
 - b. **Access by Public.** It is the intent of Metro that all of the Protected Property will be open to the public, consistent with the Conservation Values of this Easement. However, access by the general public to the Protected Property shall not unreasonably interfere with the Conservation Values of the Protected Property.
3. **Conservation Easement Rights Conveyed to Metro.** To accomplish the Purpose of the Conservation Easement, the following rights are hereby conveyed to Metro:
- A. **Identification and Protection.** To identify, preserve and protect in perpetuity and to enhance the Conservation Values of the Protected Property.
 - B. **Access.** In addition to the access provided to Metro and the public as set forth herein for the Appurtenant Pedestrian and Vehicular Easement, access to the Protected Property for Metro staff, vehicles and equipment is hereby granted, subject to the limitations below, for the following purposes:
 - i. Quarterly general inspections to assure compliance with this Easement;
 - ii. Emergency access and entry at other such times as are necessary if there is a reason to believe that a violation of the Easement is occurring or has occurred, for the Purpose of enforcing the provisions of this Easement;
 - iii. Restoration and enhancement of native vegetation and wildlife habitat enhancement;
 - iv. Access to the Protected Property via the Metro Property and activities performed by Metro elsewhere on the Protected Property consistent with the terms of this Easement, require no prior notice.
 - C. **Restoration of Native Vegetation; Wildlife Habitat Enhancement.** To restore, at Metro's discretion, but not its obligation, native vegetation on the Protected Property, and to enhance wildlife habitat on the Protected Property. Restoration and enhancement may include but is not limited to:
 - i. The removal of existing non-native and competitive vegetation, and the planting of native vegetation for the purpose of establishing a native plant community to enhance the Conservation Values of the Protected Property;
 - ii. The alteration of the land surface to restore natural systems and enhance the Conservation Values of the Protected Property; and
 - iii. The alteration of water courses or removal of drainage tile to restore natural systems and enhance the Conservation Values of the Protected Property.

- D. **Injunction.** To enjoin any use of, or activity in, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by neighboring property owners and unauthorized access by members of the public, and at Metro's sole option to undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by uses or activities contrary to the provisions of this Easement, all in accordance with Section 6 of this Easement.
- E. **Enforcement.** To enforce the terms of this Easement, consistent with Section 7.
- F. **Assignment.** To assign, convey, or otherwise transfer Metro's interest in the Protected Property in accordance with Section 14.
4. **Prohibited Uses.** Grantors acknowledge and agree that they will not conduct, engage in or permit any activity on or use of the Protected Property inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the Grantors and their agents, heirs and assigns are expressly prohibited from engaging in the following activities and uses:
- A. **Subdivision.** The legal or "de facto" subdivision of the Protected Property.
- B. **Utilities.** The above or below ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities.
- C. **Construction.** The placement or construction by Grantors of any buildings, structures, or other improvements of any kind (including, without limitation, pipelines, wells, septic systems, drainfields, fences, roads, and parking areas), except for Metro's activities as provided for in Sections 2 and 3 (B & C) herein.
- D. **Alteration of Land.** The alteration of the surface of the land, including, without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat, or sod; except for Metro's activities as provided for in Sections 2 and 3 (B & C) herein.
- E. **Alteration of Water Courses.** The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses; except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
- F. **Erosion or Water Pollution.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.
- G. **Feedlots.** The establishment and maintenance of a commercial feedlot. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Protected Property for feeding and fattening for market.
- H. **Waste Disposal.** The disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof or other unsightly, offensive, or hazardous waste or material on the Protected Property.

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

5. **Reserved Rights.** Grantors specifically reserve for themselves and their personal representatives, heirs, successors and assigns, the following uses of and activities on the Protected Property that are consistent with the Purpose of the Easement and that are not prohibited by this Easement.

- A. **Recreation.** The undertaking of passive recreational activities such as hiking, and bird watching on the Protected Property, provided that such activities are conducted in a manner and intensity that does not adversely impact the Conservation Values of the Protected Property.
- B. **Protection of Public Health or Safety.** The undertaking of other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity, provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided, or, if avoidance is not possible, minimized to the extent possible. Grantors shall provide Metro with notice of their intent to take action under this subsection.

6. **Notice and Approval.**

- A. **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantors to notify Metro prior to undertaking certain permitted activities, as provided in Section 5(B), is to afford Metro an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the Purpose of this Easement. Whenever notice is required, Grantors shall notify Metro in writing not less than 7 days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Metro to make an informed judgment as to its consistency with the Purpose of this Easement. If Grantors must undertake emergency action to protect health or safety on the Protected Property or must act by and subject to compulsion of any governmental agency, Grantors may proceed with such action without Metro's approval only if Grantors notify Metro prior to taking such action and Metro fails to provide its approval, with or without conditions, within such time as is reasonable under the circumstances.
- B. **Metro's Approval.** Where Metro's approval is required, Metro shall grant or withhold its approval in writing within 7 days of receipt of Grantors' written request therefor. Metro's approval may be withheld only upon a reasonable determination by Metro that the action as proposed would be inconsistent with the Purpose of this Easement.
- C. **Addresses.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors: Samuel A. Gotter Jr. and Susan B. Gotter
PO Box 23023
Tigard, Oregon 97123

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

With a copy to: Metro Office of General Counsel
600 NE Grand Avenue
Portland, OR 97232

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

7. **Metro's Remedies.**

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

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

- D. **Immediate Action Required.** If Metro in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Metro may pursue its remedies under this paragraph without prior notice to Grantors or without waiting for the period provided for cure to expire. Metro's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement and Grantors agree that Metro's remedies at law for any violation of the terms of this Easement are inadequate and that Metro shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Metro may be entitled, including specific performance of the terms of this Easement, without the

necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Metro's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- E. **Cost of Enforcement.** Any costs incurred by Metro in enforcing the terms of this Easement against Grantors, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation attorneys' fees, shall be borne by Metro.
 - F. **Metro's Discretion.** Metro acknowledges its commitment to protect the Purpose of this Easement. Enforcement of the terms of this Easement shall be at the discretion of Metro, and any forbearance by Metro to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantors, their agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Metro of such term of any of grant of rights under this Easement. No delay or omission by Metro in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.
 - G. **Waiver of Certain Defenses.** Grantors acknowledge that they have carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantors hereby waive any claim or defense they may have against Metro or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, adverse possession or prescription.
 - H. **Acts Beyond Grantors' Control.** Nothing contained in this Easement shall be construed to entitle Metro to bring any action against Grantors to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantors' control including, without limitations natural changes, fire, flood, storm or earth movement, or from acts of trespassers, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.
8. **Costs, Liabilities and Insurance.** Grantors retain all responsibilities and shall bear all costs relating to the ownership of the Protected Property, including the maintenance of adequate comprehensive general liability coverage. Grantors shall keep the Protected Property free of any liens arising out of any work performed for, or materials furnished to Grantors. Metro shall be responsible for the operation, upkeep and maintenance of the public pedestrian trail and roadway, if built by Metro on the Protected Property, and for any other activity performed or responsibility assumed by Metro under Sections 2 and 3 herein. Metro shall bear no responsibility for any other costs or liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property.
9. **Taxes.** Grantors shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish Metro with satisfactory evidence of payment upon request. If Grantors fail to pay any taxes when due, Metro is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantors, in accordance with any bill, statement, or estimate procured from the appropriate

authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate, and the obligation of Grantors to reimburse Metro created by such payment shall bear interest until paid by Grantors at the maximum rate allowed by law.

10. **Hold Harmless.**

- A. **Grantor.** Grantor 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 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: (i) 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 proximately caused by the presence of Grantor or Grantor's lessees, licensees or invitees presence upon the Protected Property, or (ii) the violation or alleged violation of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, proximately caused by the presence of Grantor or Grantor's lessees, licensees or invitees presence upon the Protected Property.
- B. **Metro.** To the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, Metro shall hold harmless, indemnify, and defend Grantor, its personal representatives, heirs, successors, and assigns 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: (i) 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 proximately caused by the presence of any person upon the Protected Property for the benefit of Metro or with Metro's authorization, or (ii) the violation or alleged violation of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, proximately caused by the presence of any person upon the Protected Property for the benefit of Metro or with Metro's authorization. Grantor shall be afforded the full protection from liability to the public provided under Oregon Revised Statute 105.672-696.

11. **Environmental Representations and Warranties.** Grantors represent and warrant that to the best of Grantors' knowledge:

- A. There are no apparent or latent environmental defects in or on the Protected Property;
- B. There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;
- C. Neither Grantors nor Grantors' predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances on the Protected Property

regulated by State or Federal environmental laws, including but not limited to ORS Chapter 465 and 42 U.S.C. § 9601 et seq; and

- D. There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantors or their predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantors nor their predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

12. **Subsequent Transfer and Extinguishment.**

- A. **Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court having jurisdiction. The amount of the proceeds to which Metro shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, in accordance with Section 13(B) of this Easement. Metro shall use all such proceeds in a manner consistent with the Purpose of this Easement.
- B. **Condemnation.** In the event that the Protected Property is taken, in whole or in part, by the exercise of the power of eminent domain, Metro shall be entitled to compensation in accordance with applicable law.
- C. **Subsequent Transfers.** Grantors agree to:
1. Incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;
 2. Describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property; and
 3. Give written notice to Metro of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Metro shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantors to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

13. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors and Metro are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Metro under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable). Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, and

shall be recorded in the official records of Washington County, Oregon, and any other jurisdiction in which such recording is required.

14. **Assignment.** Metro may assign this Easement to Washington County or to any qualified holder of a Conservation Easement without the agreement of Grantors. Any other assignment of this Easement by Metro or any subsequent holder, must be approved by Grantors, which approval shall not be unreasonably withheld. As a condition of such transfer, Metro shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Metro shall notify Grantors in writing, at Grantors' last known address, in advance of such assignment.
15. **Recording.** Metro shall record this instrument in a timely fashion in the official records of 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.
16. **General Provisions.**
 - A. **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon.
 - B. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of ORS Chapter 271. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
 - C. **Severability.** If any provision of this Easement, or its application to any person, entity, or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.
 - D. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 14.
 - E. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantors' title in any respect.
 - F. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
 - G. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

- H. **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

- I. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

17. **Schedule of Attachments**

- A. Legal Description of Larger Property
- B. Legal Description of Protected Property
- C. Survey Map of Protected Property

///

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

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

Samuel A. Gotter, Jr.

Susan B. Gotter

State of Oregon)
) ss.
County of _____)

On this _____ day of _____, 2002, before me _____, the undersigned Notary Public, personally appeared Samuel A. Gotter, Jr. and Susan B. Gotter, personally known to me (or proved to be on the basis of satisfactory evidence) to be the persons whose names are subscribed to this instrument, and acknowledged that they executed it.

My commission expires: _____

Metro does hereby accept the above Deed of Conservation Easement

METRO

Mike Burton, Executive Officer

Dated: _____

State of Oregon)
) ss.
County of _____)

On this _____ day of _____, 2002, before me _____, the undersigned Notary Public, personally appeared _____, as Executive Officer of Metro, a municipal corporation, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

My commission expires: _____

EXHIBIT D
Resolution 02-3241

AGRICULTURAL LEASE

Date: _____, 2002

Between: Metro
Attn: Charles Ciecko, Director
Regional Parks and Greenspaces
600 NE Grand Avenue
Portland, Oregon 97232
("Landlord")

And: Samuel A. Gotter, Jr. and Susan B. Gotter
24125 SW Scholls Ferry Road
Hillsboro, Oregon 97123
("Tenant")

RECITALS

A. Landlord owns approximately 114 acres of real property located on SW Scholls Ferry Road in the County of Washington, State of Oregon, which is commonly known as Tax Parcel Number 1804 of Section 9, Township 2 South, Range 2 West of the Willamette Meridian (the "Larger Property").

B. Tenant owns approximately 10.65 acres of real property at 24125 SW Scholls Ferry Road in the County of Washington, State of Oregon, which is commonly known as Tax Parcel 1801 of Section 9, Township 2 South, Range 2 West of the Willamette Meridian (the "Tenant Property"). The Tenant Property is adjacent to Landlord's Larger Property.

C. Landlord desires to purchase from Tenant, and the Tenant desires to sell and convey to Landlord, a conservation easement (the "Conservation Easement") over a portion of the Tenant Property, consisting of approximately 6.1 acres of real property (the "Protected Property").

D. In exchange and consideration for the Conservation Easement, Landlord agrees to rent (the "Lease") a 1.0-acre portion of the Larger Property to Tenant (the "Lease Area"). The term of the Lease shall be for 25 years and shall be for agricultural purposes only. A metes and bounds legal description of the Lease Area shall be established by survey prior to Closing, and attached as Exhibit A-1.

E. The Larger Property, Tenant Property, Protected Property and Lease Area are depicted in the map attached as Exhibit B.

F. The specific terms of this Lease are as follows:

Section 1. Description of Lease Area. Landlord agrees to lease a 1.0-acre portion (the "Lease Area") of the Larger Property, together with the improvements, to Tenant, who owns the adjacent Tenant Property. The Lease Area is legally described and further depicted in Exhibit A-1 and A-2 attached hereto.

Section 2. Term of Lease. The term of this Lease shall commence _____, 2002 and terminate _____, 2027.

Section 3. Condition of Property at Termination. Upon the termination of this Lease, the Lease Area shall be returned to Landlord in the same condition as at the commencement of this Lease, all repairs being completed as required in this Lease, reasonable wear and tear to the improvements being excepted (except for repair obligations).

Section 4. Consideration. Consideration for this lease is the perpetual Conservation Easement granted by Tenant to Landlord over a portion of the Tenant Property and recorded as Fee No. _____, Washington County Deed Records. The area protected by the Conservation Easement consists of approximately 6.1 acres of real property.

Section 5. Use of Property By Tenant.

5.1 Tenant shall maintain the Lease Area in good condition and shall not commit, permit, or suffer waste to the Lease Area.

5.2 Tenant shall maintain all of the buildings and fences on the Lease Area in as good a condition and repair as the same were at the commencement of this Lease, reasonable wear and tear excepted, and always subject to the repair covenants of this Lease. Notwithstanding the above, if Tenant keeps livestock on the Lease Area, Tenant shall build and maintain fences adequate to contain all livestock.

5.3 The Property shall be used by Tenant for agricultural purposes only. Tenant may replace the existing pole-barn with a similar-sized pole-barn. Tenant may also erect an additional structure that is either separate or attached to the existing pole barn, provided the new structure is not more than one-half the size of the existing pole barn. Any new structure must be used for agricultural purposes only. At the termination of the lease, any improvements on the Lease Area that were constructed by Tenant will become the property of Landlord. However, prior to the termination of the lease, Tenant may remove, at their own expense, any improvements that they constructed on the Property. No other improvements shall be constructed upon the Lease Area. Tenant may plant and grow crops and trees on the Lease Area and raise poultry and livestock so long as it is not inconsistent with other provisions of this agreement or does not cause damage to the existing mature trees on the Lease Area. Tenant shall suppress the growth of all noxious weeds on the Lease Area, consistent with Section 7, below.

Section 6. Costs of Farming. Tenant shall be responsible for and pay all the costs of materials, labor, equipment, utilities, and other expenses necessary to farm the Lease Area, raise crops and livestock on the Lease Area during the lease term.

Section 7. Manner of Farming and Conservation Laws. Tenant shall farm, cultivate, maintain, and operate the Lease Area consistent with the best agricultural practices employed by the farming industry in the area where the Lease Area is located. Tenant shall refrain from practices that will cause unusual erosion to the Lease Area. Tenant shall maintain the Lease Area in compliance with all federal, state, and other governmental laws, regulations, and directives.

Section 8. Compliance with Law and Hazardous Materials

8.1 Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county, and municipal authorities pertaining to Tenant's use of the Lease Area, and with all recorded covenants, conditions, and restrictions, regardless of when they become effective. These include, without limitation, any required alteration of the Lease Area

because of Tenant'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 8.4 below, waste disposal, air emissions and other environmental matters, and all zoning and other land use matters.

8.2 Tenant shall not cause or permit any Hazardous Material to be brought upon, stored, or used, applied or released in, on, or about the Lease Area by Tenant, Tenant's agents, employees, contractors, or invitees, with the exception of the following:

8.2.1 Gasoline, diesel and other farm fuels, motor oils and other farm lubricants and supplies held within the reservoirs and tanks of agricultural equipment for purposes of their operation; and

8.2.2 Application, in amounts reasonably necessary for customary farm operations of any farm fertilizers, herbicide, fungicide and/or pesticides not classified as "restricted," in accordance with their labeling, and at concentrations, and timing approved by the EPA for farm use of said substances.

8.3 Tenant shall indemnify, defend, and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including without limitation, diminution in value of the Lease Area, damages for the loss or restriction on use or rent of the Lease Area, damages arising from any adverse impact on marketing of the Lease Area, 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 Tenant's use or activities or of Tenant's agents or contractors. This indemnification of Landlord by Tenant 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 Lease Area. Without limiting the foregoing, if the presence of any Hazardous Material on the Lease Area caused or permitted by Tenant or Tenant's agents or contractor results in any contamination of the Lease Area, Tenant shall promptly take all actions at Tenant's sole expense as are necessary to return the Lease Area to the condition existing prior to the release of any such Hazardous Material onto the Lease Area, provided that Landlord'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 Lease Area. The foregoing indemnity shall survive the expiration or earlier termination of this Lease. If Tenant fails to promptly take action as set forth, Landlord may declare a default and terminate this Lease, remediate the contamination or clean up the Lease Area and charge Tenant the costs of doing so.

8.4 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 ORS 465.200; those substances and defined as Hazardous Substances in CERCLA, 42 USC sec. 9601; those substances defined as pollutants or contaminates in CERCLA 12 USC sec. 9604(a)(2); and those substances defined as hazardous waste in RCRA , 42 USC sec. 6903(5), or other such substances, materials, and wastes that are or become regulated under any applicable local, state, or federal law.

Section 9. Chemicals and Fertilizers. No pesticides, herbicides, fungicides, chemicals or fertilizers may be mixed or stored on the Lease Area. Subject to the limitations in Section 7 above, chemicals and fertilizers may be applied to the Lease Area in accordance with their labeling.

Section 10. Irrigation. There are no water rights or other irrigation rights associated with the Lease Area.

Section 11. Taxes.

11.1 Landlord shall pay all the real property taxes levied on the Lease Area.

11.2 Tenant shall pay all taxes on any of Tenant's personal property and equipment used on the Lease Area.

Section 12. Liens. Tenant shall pay when due all claims for work done on the Lease Area, and for services rendered or material furnished to Tenant to grow Tenant's crops on the Lease Area or incurred for Tenant's repair responsibilities for the Lease Area and improvements; and Tenant shall keep the Lease Area and the crops free of any liens arising out of the failure to pay such claims or arising out of any other activity of Tenant. If the Lease Area, improvements, or crops are subjected to any lien because of the activities of Tenant, and a lien is not discharged within 10 days, Landlord may discharge the lien, and recover the cost from Tenant on demand, plus interest at the rate of 18% per annum from the date of expenditure. Such action by Landlord shall not constitute a waiver of any right or remedy that Landlord may have on account of Tenant's default. If the Tenant in good faith elects to contest the lien, then Tenant shall, upon Landlord's written request, deposit with Landlord cash or sufficient corporate surety bond or other security satisfactory to Landlord, to discharge the lien plus costs and interest.

Section 13. Indemnity; Liability Insurance.

13.1 Tenant shall defend, indemnify, and hold harmless Metro and its respective officers, employees, and agents, against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute or common law, including, but not limited to, attorneys' fees and expenses at trial and on appeal, arising out of Tenant's and Tenant's agents, contractors, or invitees' use or occupation of the License Area and activities thereon.

13.2 Before going into possession of the Lease Area, Tenant shall procure, and during the term of this Lease shall continue to carry, public liability and property damage insurance, naming Landlord as an additional insured, with liability limits of not less than \$1,000,000.00 for injury to persons or property in one occurrence. Such insurance should be provided by an insurance carrier reasonably acceptable to Landlord. Tenant shall deliver to Landlord certificates evidencing such insurance with an endorsement requiring 10 days' notice to Landlord prior to the cancellation of such insurance coverage.

Section 14. Default and Termination; Remedies

14.1 The following shall be events of default by the Tenant:

14.1.1 Failure to comply with the terms of the Conservation Easement.

14.1.2 Failure of Tenant to comply with any term or condition, or fulfill any other obligation of the lease within thirty (30) days after written notice by Landlord 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 30-day period, this provision shall be complied with if Tenant begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as possible.

14.1.3 Abandonment by the Tenant of the Lease Area for a period of 90 days.

14.1.4 Notwithstanding the above, no default shall occur where Landlord's basis for a violation is arbitrary and capricious.

14.2 In the event of default, and upon Tenant's failure to cure any of the events of default, as set forth above, Landlord shall have the right to re-enter, take possession of the Lease Area, 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 Landlord under applicable law.

Section 15. Landlord's Right of Entry. Landlord may go on the Lease Area at any time to inspect or show the Lease Area, provided Landlord does so in a reasonable manner that does not harm the growing crops or interfere with the farming activities of Tenant.

Section 16. Covenants of Title. Landlord covenants that Landlord has full right and authority to lease the Lease Area and will protect Tenant from all other claims and claimants, except those listed in the attached Exhibit C.

Section 17. Assignment; No Sublease. Tenant may assign this lease upon Tenant's sale, transfer or devise of the Tenant Property, to the new owner of said tax parcel. No other assignment is permitted hereunder, and this Lease shall terminate automatically upon sale or transfer of the Tenant Property to a new owner without an attendant assignment as set forth above. Landlord shall be notified within 30 days of the sale or lease by Tenant of the Tenant Property and the assignment of this Lease. Tenant shall not sublease all or any part of the Lease Area.

Section 18. Successors-In-Interests. Subject to the limitation on assignment by Tenant, this lease shall be binding upon and inure to the benefit of the parties, their successors, and assigns.

Section 19. Nonwaiver. Failure by either party at any time to require performance by the other of this Lease shall in no way affect such 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 20. Notices. Any notice under this Lease shall be in writing and shall be effective when actually delivered or, if mailed, when deposited as registered or certified mail directed to the addresses below as stated in this Lease or to such other address as either party may specify by notice to the other party. Payments to Landlord shall be made to the same address.

Landlord

Attn: Charles Ciecko, Director
Metro Regional Parks and Greenspaces
600 NE Grand Avenue
Portland, Oregon 97232

and:

Tenant

Samuel A. Gotter, Jr. and Susan B. Gotter
24125 SW Scholls Ferry Road
Hillsboro, Oregon 97123

Section 21. Quitting Lease Area at End of Lease. Tenant shall peaceably surrender, quit, and give up the Lease Area at the termination or earlier expiration of this Lease, in as good condition as it was upon Tenant's receipt of possession of the Lease Area.

Section 22. Representations and Warranties. Tenant accepts the Lease Area, 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 Landlord makes no guarantee or representation as to the production or carrying capacity of the Lease Area, that Tenant has inspected the Lease Area, and that Tenant has made his or her own determination of the value of the Lease Area.

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

LANDLORD:
METRO

TENANT:

By: _____
Charles Ciecko, Director
Regional Parks and Greenspaces

By: _____
Samuel A. Gotter, Jr.

By: _____
Susan B. Gotter

METRO NATURAL RESOURCES COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 02-3241 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ACQUIRE A CONSERVATION EASEMENT AND EXECUTE A 25-YEAR LEASE OF OPEN SPACE PROPERTY IN THE TUALATIN RIVER ACCESS POINTS AREA

Date: November 14, 2002

Presented by: Councilor McLain

Committee Action: At its November 6, 2002 meeting, the Natural Resources Committee voted 3-0 to recommend Council adoption of Resolution 02-3241. Voting in favor: Councilors Hosticka, Park and McLain.

Background: Two pieces of property are involved in this transaction. One is a 114-acre parcel, the Stahlke property, acquired by Metro in 1996 through Open Spaces Bond Measure proceeds. The other is 6.1 acres of a 10.7 acre parcel owned by the Gotters on which Metro is obtaining a permanent easement. The Gotter property includes 433 feet of Tualatin River frontage and 860 feet of McFee Creek frontage, and is otherwise designated as floodplain. In addition to its natural resource values, the Gotter Property also allows better access to the 114 acre Metro owned parcel. In exchange for an easement on the Gotter property, Metro is granting a 25-year lease to approximately 1 acre of the Metro owned property, which Mr. Gotter currently rents on a year-to-year basis. The value of the lease and the easement are judged to be roughly equivalent.

- Existing Law: The Metro council is required by code to approve conservation easements.
- Budget Impact: No monetary consideration is being paid in this agreement. Metro is paying for due diligence costs.
- Known Opposition: None

Committee Issues/Discussion: Jim Desmond, Open Spaces Acquisition manager, made the staff presentation. The committee made favorable comments on the creativity of this arrangement.

Staff Report

CONSIDERATION OF RESOLUTION NO. 02-3241 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ACQUIRE A CONSERVATION EASEMENT AND EXECUTE A 25-YEAR LEASE OF OPEN SPACE PROPERTY IN THE TUALATIN RIVER ACCESS POINTS TARGET AREA

Date: October 23, 2002

**Presented by: Charles Ciecko
Jim Desmond**

BACKGROUND

Resolution No. 02-3241 requests authorization for the Executive Officer to acquire a perpetual conservation easement (the "Easement") over a 6.1-acre portion of property owned by Samuel and Susan Gotter in the Tualatin River Access Points target area. The Resolution also requests authorization for the Executive Officer to grant the Gotters, as consideration to purchase the Easement, a 25-year lease of a 1.0-acre portion of adjacent Metro open space property.

The Gotters own a 10.7-acre parcel of land, which is located at 24125 SW Scholls Ferry Road, near the community of Scholls in Washington County. The Gotter property is adjacent to a 114-acre Metro property, acquired with Open Spaces bond measure funds in June 1996 from the Stahlke family. The purpose of that Metro acquisition was to provide public access to the adjacent Tualatin River and to promote the development of suitable natural habitat in the Tualatin River watershed.

The 6.1-acre portion of the Gotter property (the "Property") that will be encumbered by the Easement is bottomland that is part of the same hydrological and vegetative system as the floodplain on the Metro property. The Property also has 860 feet of frontage along McFee Creek and 433 feet along the Tualatin River. Furthermore, the Property includes the confluence of McFee Creek with the Tualatin River.

Metro's Natural Resources Team plans to restore wetland hydrology and vegetation to approximately 100 acres of the Tualatin River floodplain on the Metro property. According to the restoration plan, this site represents "one of the best opportunities for wetland restoration in the Tualatin River Watershed." Since the Property is bottomland adjacent to Metro property and includes the mouth of McFee Creek, having control and protection over the Property is important for supporting the restoration effort. Another benefit of the Easement is that it improves access to the Tualatin River by providing a shorter, more direct route across a corner of the Gotter Property, without having to traverse around the corner on the Metro property.

In exchange for the Easement, Metro would grant the Gotters a 25-year lease over approximately a 1.0-acre portion of the upland area (the "Lease Area") on the 114-acre Metro property. The Lease area is a small pasture bordered by an access road on the south, by the Gotters property to the north, and Scholls Ferry Road to the east. It also includes a small pole barn that was constructed in 1979. Mr. Gotter already leases from Metro on a yearly basis the upland and pole barn at issue. However, Gotter would like to have a longer-term lease so that he can expand his existing hobby farm. The Lease area, along with the remainder of the Metro and Gotter property, is zoned for EFU and the lease is for agricultural uses only. After the lease expires, Metro will retain full rights to the Lease area.

Lora Price, Metro Regional Parks and Greenspaces Planner, reviewed the Metro site to determine whether the proposed lease would interfere with future park uses of the property. She concluded that the proposed exchange was beneficial to Metro and that the Lease area was not necessary for a future parking lot or trailhead to the Metro property. Instead, she concluded that the 0.7-acre upland area to the south is sufficient for this purpose. Consequently, the upland to be exchanged is not needed for public park use in the foreseeable future or through the term of the lease.

The specific terms of the Easement and Lease are attached respectively as Exhibits B and C to the accompanying resolution. The proposed areas of exchange are outlined on the enclosed map, attached as Exhibit D to the 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 ("For the Purpose of Authorizing the Executive Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Open Space Implementation Work Plan," adopted November 2, 1995) and amended via Resolution 96-2424 ("For the Purpose of Authorizing the Executive Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Amended Open Spaces Implementation Work Plan," adopted January 9, 1997) established acquisition parameters that authorize the Executive Officer to purchase property, within the Council-approved target area refinement plan maps. Via Resolution 96-2299 ("For the Purpose of Approving a Refinement Plan For the Tualatin River Greenway and Access Points as Outlined in the Open Space Implementation Work Plan," adopted March 14, 1996), the Metro Council adopted a refinement plan, which outlined a land protection strategy for the Tualatin River Access Points target area. Through that resolution, the Metro Council also approved the target area refinement plan tax-lot specific map, which includes the subject Property as a Tier I priority.

Acquisition of the Property meets the following Tier I criteria:

- Preservation of floodplain, wetland and riparian habitats along the river, while providing possible access to natural areas in and around the access points, including distinctive habitats such as the interiors of oxbows and the confluences of major creek tributaries. The Property is in the floodplain and contains frontage at and near the confluence of McFee Creek, which is a perennial stream that drains down from

Chehalem Mountain and is identified as an area of interest in Appendix B of the Refinement Plan.

- Safe accessibility from a public roadway that can adequately accommodate additional traffic. The Property provides a more direct route to the river via the upland portion of the Metro property and the terms of the Conservation Easement permit public vehicular and pedestrian traffic across the Property.

B. Resolution 01-3106 Criteria

The acquisition of the Easement would also meet two of the criteria set forth in Resolution 01-3106 (“For The Purpose of Modifying The Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans To Direct Future Acquisitions Of Properties That Satisfy Specific Identified Criteria,” adopted September 27, 2001).

- “Acquire key remaining parcels adjacent to parcels already acquired by Metro or other parks or conservation entities that are necessary to accomplish the assemblage of a regional scale natural area, consistent with the specific goals and objectives set forth in the refinement plan for that target area.” By acquiring the Easements, Metro can manage the Gotter bottomland as one hydrological and vegetative unit.
- “Acquire properties that will provide needed or desirable points of public access to existing public lands held by Metro, other public agencies or conservation organizations.” The acquisition improves vehicular and trail access to the Tualatin River by cutting a corner that exists on the Metro property.

Since Metro has exceeded the minimum 266-acre goal established for the Tualatin River Access Points target area, acquisition of the Easement requires Metro Council authorization pursuant to Resolution 01-3106.

C. Conservation Easements

Oregon Revised Statute (ORS) Section 271.725 authorizes the state, any county, metropolitan service district, or city or park and recreation district to acquire conservation easements by purchase, agreement or donation upon a determination that such acquisition will be in the public interest.

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

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

D. Metro Policy on Leases for Non-Park Uses.

Metro Council Resolution No. 97-2539B (“For the Purpose of Approving General Policies Related to the Review of Easements, Rights of Ways, and Leases for Non-Park Uses Through Properties Managed by The Regional Parks and Greenspaces Department,” adopted November 6, 1997) approved general policies related to the review of easements, right of ways, and leases for non-park uses through properties managed by Metro Regional Parks and Greenspaces Department (the “Easement Policy”). The Easement Policy prohibits the development of utilities, transportation projects and other non-park uses on sites, which are located inside of Metro-owned regional parks, natural areas and recreational facilities except in accordance with the terms of the Easement Policy. A non-park use may be allowed under the Easement Policy, subject to Metro Council approval, if it is determined that the proposed lease use can be accommodated without significant impact to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.

E. Transfer or Lease of Public Lands

A government agency may convey or lease their interest in real property (1) when the property is not needed for public use, or (2) whenever the public interest may be furthered. ORS 271.310(1). The consideration for the transfer or lease may be cash or real property, or both. Any property not immediately needed for public use may be leased if it will not be needed for public use within the period of the lease. ORS 271.310(3). Moreover, property needed for public use may be conveyed or leased so long as it is exchanged for property that is of equal or superior useful value for public use.

4. Anticipated Effects

Acquisition of this Property is important to assembling a publicly-owned natural area along the Tualatin River, totaling approximately 120 acres.

5. Budget Impacts

The proposed exchange requires no monetary consideration to be paid. Metro is paying for the usual due diligence costs, except that the Gotters have agreed to pay a portion of the boundary survey costs.

6. Outstanding Questions

None.

FINDINGS

- The Property has significant natural resource value, including approximately 860 feet of McFee Creek frontage, 433 feet of Tualatin River frontage, and 6.1 acres of Tualatin River floodplain.
- The Easement lies in Tier I of the Tualatin River Access Points target area and fulfills the goals of the target area refinement plan.
- The Easement contributes to the assemblage of a regional scale natural area, consistent with the specific goals and objectives set forth in the refinement plan for that target area.

- The Easement improves the vehicular and trail access to the Tualatin River by cutting a corner that exists on the Metro property.
- The Easement will allow Metro to more effectively restore the wetland hydrology and vegetation on the Metro property, and include the Property as part of that restoration project.

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,” adopted November 6, 1997).

- The Metro Regional Parks and Greenspaces Department Advisory Committee considered this issue at their June 4, 2002 meeting and recommends its adoption.
- The Metro Regional Parks and Greenspaces Department has determined that the Lease proposal meets all of the Easement Policy criteria, as set forth in the Metro Regional Parks and Greenspaces Department Project Report attached hereto. (Attachment 1).
- The Lease Area is not needed for public use in the foreseeable future.
- The value of the Easement is of equal or greater value than the value of the Lease.

RECOMMENDED ACTION

The Executive Officer recommends passage of Resolution No. 02-3241.

ATTACHMENT 1
Resolution 02-3241

Metro Easement Policy Criteria and Staff Findings

- 1) **Provide for formal review of all proposed easements, rights 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.**

Staff Finding: Criterion has been satisfied through a review and approval process that includes review through the Parks Department staff and approval from the Regional Parks and Greenspaces Citizen Advisory Committee. The Metro Natural Resource Committee and full Council body will review the Lease prior to approval.

- 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.**

Staff Finding: The applicant proposes to continue to use the approximate 1.7-acre Lease area for agricultural purposes for a period of twenty-five years and as more specifically set forth in the Lease Agreement which is attached as Exhibit C to the Resolution accompanying this report.

- 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.**

Staff Finding: The Lease will have minimal impact on park or natural resource values. The upland area impacted by the lease is considered to be of much lower habitat value than the 5.3 acre riparian area that will be protected pursuant to a perpetual conservation easement offered in exchange for this Lease.

- 4) **Accommodate utility easements, transportation right of ways or other non-park uses when the Regional Parks and Greenspaces Department (the Department) determines that a proposed easement, right of way, or non-park use can be accommodated without significant impact to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management; and that the impacts can be minimized and mitigated.**

Staff Finding: Meets criteria.

- 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.**

Staff Finding: No mitigation is required given the minimal impact and benefit that applicant will maintain property that is not needed for public use in the foreseeable future.

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

Staff Finding: The rights conveyed under the Lease were limited to use for agricultural purposes only. Applicant must maintain the property in good condition, use “best agricultural practices employed by the farming industry,” and could be in default of the Lease if he fails to comply with the terms of the Conservation Easement.

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

Staff Finding: The twenty-five year lease term was the shortest time period agreeable to the applicant. The 25-year lease is considered by staff an equitable exchange for the perpetual conservation easement over applicant’s superior natural resource property.

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

Staff Finding: Lease is for 25-years and Metro regains all rights to the property at the termination of the Lease. Moreover, applicant will default on Lease if he fails to comply with the Lease terms and with the terms of the Conservation Easement. The Lease is assignable during the 25-year lease term to any party who may purchase the Lessee’s adjacent 10.7-acre property, which the lease is intended to benefit.

- 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 non-park use.**

Staff Finding: Since the Lease is consideration for the acquisition of the Conservation Easement, the transaction is actually part of an Open Spaces Bond Measure purchase. Therefore, staff time has not been billed to the applicant. Applicant has agreed to pay a portion of the survey costs.

- 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 money.**

Staff Finding: Metro will receive a perpetual Conservation Easement over a 5.3-acre portion of applicant’s property in exchange for the Lease. A preliminary analysis indicates that this is an equitable exchange and no other consideration is owed to either party. An appraisal has been ordered to confirm this staff assessment.

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

Staff Finding: The Lease includes indemnification and insurance provisions.

- 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.

Staff Finding: No exception requested.

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 unfeasibility.

Staff Finding: Applicant has submitted a detailed proposal including all required information.

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 exist all proposed uses shall be consistent with the Greenspaces Master Plan. Deficiencies shall be conveyed to the applicant for correction.

Staff Finding: Lora Price, Regional Parks and Greenspaces Planner, was consulted about the proposed exchange. She concluded that proposed Lease would not interfere with foreseeable future park uses and that receiving the Conservation Easement in exchange for the Lease was beneficial to Metro, because it improves access to the Tualatin River and is part of an important natural area the Metro is planning to restore.

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.

Staff Finding: No reasonable alternative is 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.

Staff Finding: No significant negative impact on Metro property will occur.

- E. Upon completion of negotiations, the proposed agreement, in the appropriate format, shall be forwarded for review and approval. In no event shall construction of a project commence prior to formal approval of a proposal.**

Staff Finding: Construction is contingent upon approval.

- 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.**

Staff Finding: Except for applicant's share of the survey costs, Metro will not bill applicant for reimbursements because the Lease is consideration for the acquisition of a 5.3-acre Conservation Easement.

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

Staff Finding: Criterion satisfied.