

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 03-3336  
CHIEF OPERATING OFFICER TO ACCEPT THE )  
DONATION OF A CONSERVATION )  
EASEMENT OVER A PORTION OF THE ) Introduced by Chief Operating Officer  
MORRISS PROPERTY IN THE JACKSON ) Michael Jordan, with the concurrence of  
BOTTOM-DAIRY/MCKAY CREEKS TARGET ) Council President David Bagdon  
AREA )

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

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

WHEREAS, the Jackson Bottom-Dairy/McKay Creeks Regional Target Area was designated as a greenspace of regional significance in the Greenspaces Master Plan and identified as a regional target area in the Open Spaces, Parks and Streams Bond Measure; and

WHEREAS, on June 27, 1996, by Resolution No. 96-2342, For the Purpose of Approving a Refinement Plan for the Jackson Bottom-Dairy/McKay Creeks Target Area as Outlined in the Open Spaces Implementation Work Plan, and on May 17, 2001, by Resolution No. 01-3070A, For the Purpose of Amending the Jackson-Bottom/Dairy/McKay Creeks Target Area to Include Council Creek and Camp Ireland, the Metro Council adopted a refinement plan for the Jackson Bottom-Dairy/McKay Creeks Target Area which authorized the acquisition of sites in Council Creek, a tributary of Dairy Creek, as set forth in a confidential tax-lot-specific map identifying priority properties for acquisition; and

WHEREAS, on November 6, 1997, the Metro Council adopted Ordinance No. 97-714, 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, 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, Jeff C. Morriss and Janina K. Darling (hereafter, "Morriss") wish to donate to Metro \$15,000 cash and a one acre Conservation Easement in the Jackson Bottom-Dairy/McKay Creeks Regional Target Area as identified by metes and bounds legal description (the "Morriss Conservation Easement Area") as an exhibit to the Conservation Easement document attached hereto as Exhibit A; and

WHEREAS, the Morriss Conservation Easement would restrict uses of the Morriss Conservation Easement Area such that its natural condition would be permanently protected pursuant to the terms and conditions set forth in the Conservation Easement document attached hereto as Exhibit A; and

WHEREAS, the Morriss Conservation Easement Area is included in the Jackson Bottom-Dairy/McKay Creeks Regional Target Area and the acceptance of the Conservation Easement would serve the refinement plan objective of acquiring and protecting the riparian corridor along Council Creek; and

WHEREAS, the Morriss cash contribution and Conservation Easement donation is conditioned on Metro acquiring an immediately adjacent parcel of land from Beverly Harris for Parks and Open Spaces purposes (the "Harris Property"); and

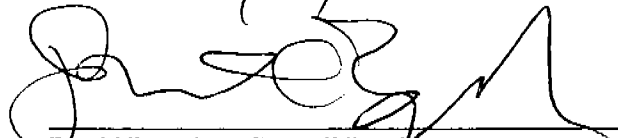
WHEREAS, Metro has entered into an Agreement of Purchase and Sale to acquire the Harris Property; and

WHEREAS, the Morriss donation of the Conservation Easement and a \$15,000 management fund is subject to an Open Spaces Agreement providing for termination of the Conservation Easement and Metro's repayment of the \$15,000 if the Harris Property is ever developed or used for purposes other than Parks and/or Open Space; and


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

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to accept the donation of a Conservation Easement over a portion of the Morriss Property in the Jackson Bottom-Dairy/McKay Creeks Target Area subject to the terms and conditions attached as Exhibit A.

ADOPTED by Metro Council this 29<sup>th</sup> day of May, 2003.

  
\_\_\_\_\_  
David Bragdon, Council President

Approved as to Form:

  
\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

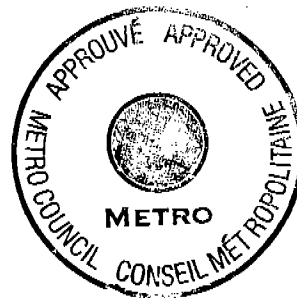


EXHIBIT A  
RESOLUTION NO. 03-3336

When recorded return to:

Office of Metro Attorney  
600 NE Grand Avenue  
Portland, OR 97232-2736

**DEED OF CONSERVATION EASEMENT AND AGREEMENT**

THIS DEED OF CONSERVATION EASEMENT ("Conservation Easement" or "Easement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by Jeff C. Morriss and Janina K. Darling, tenants by the entirety, having an address at 1320 NW Susbauer Road, Cornelius, OR 97113 ("Grantors"), in favor of Metro, a municipal corporation and political subdivision of the State of Oregon, having an address at 600 NE Grand Avenue, Portland, OR ("Metro").

**RECITALS**

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

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

WHEREAS, the Protected Property consists of upland meadow gradually sloping into the forested floodplain of Council Creek, offering a productive riparian zone which transitions into an exemplary emergent wetland;

WHEREAS, the specific Conservation Values of the Protected Property are or will be documented in an inventory of relevant features of the Protected Property. 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 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 upon mutual written agreement of the parties. 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 the Conservation Values of the Protected Property in perpetuity, and desire to transfer such rights to Metro;

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

WHEREAS, to induce Grantors to donate this Easement and cash to form a "Management Fund" as defined below, Metro has agreed to purchase real property adjoining the Protected Property known as the "Harris Property" and legally described in Exhibit C;

WHEREAS, to induce Metro to purchase the Harris Property and to induce Metro to covenant to restrict its use of the Harris Property to parks and open space uses under the terms of the Open Spaces Agreement attached as Exhibit D hereto, Grantors wish to donate this Easement and to establish a Management Fund for management and restoration of the Protected Property and the Harris Property; 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 the mutual agreements set forth in the recitals above, and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Oregon, Grantors hereby voluntarily donate, grant and convey to Metro a Conservation Easement in perpetuity over the Protected Property of the nature and character and to the extent set forth hereinbelow. Grantors expressly intend that this perpetual Easement runs with the land and that this Easement shall be binding upon Grantors' personal representatives, heirs, successors, and assigns. All references to "Grantors" herein apply equally to Grantors' personal representatives, heirs, successors, and assigns.

1. **Conservation Easement.** The Purpose of this Conservation Easement is to assure that the Protected Property will be retained forever predominantly in its natural condition as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem" (as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended and in regulations promulgated under this law), and to prevent any use of or activity on, the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property (the "Purpose"). 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. **Conservation Easement Rights Conveyed to Metro.** To accomplish the Purpose of the Conservation Easement, the following rights are hereby conveyed to Metro:
  - 2.1 **Identification and Protection.** To identify, preserve and protect in perpetuity and to enhance the Conservation Values of the Protected Property.
  - 2.2 **Access.** Access onto the Protected Property via the Harris Property for Metro staff, vehicles and equipment is hereby granted, subject to the limitations below, for the following purposes:
    - 2.2.1 Quarterly general inspections to assure compliance with this Easement;
    - 2.2.2 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; and
    - 2.2.3 Restoration, enhancement, and maintenance of the Protected Property's Conservation Values, including native vegetation and wildlife habitat.

- 2.3 **Restoration and Enhancement of Native Vegetation and Wildlife Habitat.** 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:
- 2.3.1 The removal of existing non-native and competitive vegetation, and the planting and maintenance of native vegetation for the purpose of establishing a native plant community;
  - 2.3.2 The alteration of the land surface to restore natural systems and enhance the Conservation Values of the Protected Property; and
  - 2.3.3 The alteration of water courses to restore natural systems and enhance the Conservation Values of the Protected Property.
- 2.4. **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 5 of this Easement.
- 2.4 **Enforcement.** To enforce the terms of this Easement, consistent with Section 6.
- 2.5 **Assignment.** To assign, convey, or otherwise transfer Metro's interest in the Protected Property in accordance with Section 13.
3. **Prohibited Uses.** Grantors acknowledge and agree that they will not conduct, engage in or permit any third party to engage in 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 expressly agree that the following activities and uses are inconsistent with the Purpose of this Easement:
- 3.1 **Subdivision.** The legal or "de facto" subdivision of the Protected Property.
  - 3.2 **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.
  - 3.3 **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 the installation by Metro of a perimeter fence on the north and east boundaries of the Protected Property and any Metro activities allowed under Section 2.3 above.
  - 3.4 **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 allowed under Section 2.3 above.

- 3.5 **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.
- 3.6 **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.
- 3.7 **Agricultural Activities.** The conducting of agricultural activities of any kind, feedlot, including the establishment and maintenance of a livestock corral, pasture, or For the purposes of this Easement, a feedlot is a confined area or facility which is used to receive livestock that have been raised off the Protected Property for feeding and fattening for market.
- 3.8 **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.
- 3.9 **Signs.** The placement of commercial signs, billboards, or other advertising material on the Protected Property. Grantors may post the Protected Property with “Private Property – No Public Entry” or similar signs.
- 3.10 **Hunting.** Hunting or trapping; except to the extent determined necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
- 3.11 **Mining.** The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.
- 3.12 **Wildlife Disruption.** The disruption of wildlife breeding, foraging and nesting activities.
- 3.13 **Domestic Animals.** Use of the site to exercise or train any domestic animal or livestock on the Protected Property.
- 3.14 **Herbicides or Pesticides.** The use of any herbicides or pesticides; except for Metro’s activities pursuant to Section 2.3 above and except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
- 3.15 **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 for exotic trees and vegetation removed 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.
- 3.16 **Introduced Vegetation.** The introduction of non-native wetland plants and non-native invasive species on the Protected Property. The planting or introduction of any native species of vegetation, except as deemed by Metro to be consistent with

Metro's enhancement and retention of the Conservation Values of the Protected Property.

- 3.17 **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.
  - 3.18 **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.
  - 3.19 **Use of Firearms.** The discharge of firearms, bows and arrows, air guns, slingshots, and similar devices.
  - 3.20 **Fires.** Fires of all forms.
  - 3.21 **Fireworks.** Use of all forms of fireworks.
  - 3.22 **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 Section 2 herein.
  - 3.23 **Amplified Sound.** Uses of devices, which amplify or emit amplified sound.
4. **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:
    - 4.1 **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.
    - 4.2 **Protection of Public Health or Safety.** Any activity necessary to protect public health or safety on the Protected Property that is 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 as set forth below.
5. **Notice.**
    - 5.1 **Notice of Intention to Undertake Actions to Protect Health and Safety.** The purpose of requiring Grantors to notify Metro prior to undertaking the activities allowed under Section 4.2 is to afford Metro an opportunity to provide input to ensure that the activities in question are designed and carried out in a manner consistent with the Purpose of this Easement. 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.

- 5.2 **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 certified mail, return receipt requested, postage prepaid, addressed as follows:

To Grantors:                    Jeff C. Morriss and Janina K. Darling  
   1320 NW Susbauer Road  
   Cornelius, OR 97113

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

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

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

6. **Metro's Remedies.**

- 6.1 **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.

- 6.2 **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.

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

- 6.3.1 To enjoin the violation ex parte as necessary, by temporary or permanent injunction;
- 6.3.2 To require the restoration of the Protected Property to the condition that existed prior to any such injury;



- 6.3.3 If complete restoration is not feasible to recover from Grantors or third parties damages for injury to any of the 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. Damages recovered by Metro shall be used to perform mitigation for said injury within the same watershed.
- 6.4 **Immediate Action Required.** If Metro, in its sole discretion, reasonably 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.
- 6.5 **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.
- 6.6 **No Waiver.** Metro acknowledges its commitment to protect the Purpose of this Easement. 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.
- 6.7 **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 now have against Metro or its successors or assigns under or pertaining to this Easement based upon waiver, laches or estoppel.
- 6.8 **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 reasonable and prudent action

taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

7. **Costs, Liabilities and Insurance.** 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 any activity performed or responsibility assumed by Metro under Section 2 above. 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.
8. **Taxes.** Grantors shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish Metro with satisfactory evidence of payment upon request. If Grantors allow the taxes to go into arrears, Metro is authorized, but in no event obligated, to make or advance such payment of taxes upon ten (10) days prior written notice to Grantors, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate, and the obligation of Grantors to reimburse Metro created by such payment shall bear interest until paid by Grantors at the maximum rate allowed by law.
9. **Hold Harmless.** Grantors shall hold harmless, indemnify, and defend Metro and its elected officials, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any occurrence, omission, condition, or other matter relating to or on or about the Protected Property that is due to any act, or failure to act upon legal duty to do so, of Grantors, their successors and assigns and their invitees; (2) violations or alleged violations of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified parties on the Protected Property; and (3) Grantors' reserved rights under Section 4 and obligations under Sections 7 and 8. Grantors shall be afforded the full protection from liability to the public provided under Oregon Revised Statutes 105.672-696 (2001).
10. **Environmental Representations and Warranties.** Grantors represent and warrant that to the best of Grantors' knowledge:
  - 10.1 There are no apparent or latent environmental defects in or on the Protected Property;
  - 10.2 No Hazardous Materials, as hereafter defined, have been disposed, released, dumped, buried, or abandoned on the Protected Property, nor have any Hazardous Materials migrated from off-site onto the Protected Property. Hazardous Materials shall include the following: those substances listed in ORS 465.200; those substances and defined as Hazardous Substances in CERCLA, 42 USC sec. 9601; those substances defined as pollutants or contaminants in CERCLA 12 USC sec.

9604(a)(2); and those substances defined as hazardous waste in RCRA , 42 USC sec. 6903(5).

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

11. **Subsequent Transfer and Extinguishment.**

11.1 **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 applicable law. Metro shall use all such proceeds to acquire a replacement conservation easement in the same watershed.

11.2 **Subsequent Transfers.** Grantors agree to:

- 11.2.1 Incorporate by reference 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;
- 11.2.2 Describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property; and
- 11.2.3 Give written notice to Metro of the transfer of any interest in all or a portion of the Protected Property no later than thirty (30) days prior to the date of such transfer. Such notice to Metro shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

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

12. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors and Metro may mutually 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),

and ORS 271.715-795. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, and shall be recorded in the official records of Washington County, Oregon, and any other jurisdiction in which such recording is required.

13. **Assignment.** Metro may assign this Conservation Easement to Washington County or to the City of Cornelius without the agreement of Grantors. Any other assignment of this Easement by Metro or any subsequent assignment by Washington County or the City of Cornelius, 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. In the event that an assignee assumes the obligations of Metro hereunder, then Metro shall have no further liability with respect to this Agreement.
14. **Management Fund.** Grantors hereby agree to contribute to a Management Fund, which Metro shall establish for management and restoration of the Protected Property and for the Harris Property. Upon execution of this Easement and the Open Spaces Agreement, Grantors will deliver a check payable to Metro Parks and Greenspaces Department in the amount of Five Thousand Dollars (\$5,000.00). Grantor shall pay an additional \$5,000.00 by check delivered on or about July 1 of each year for two (2) years, through and including July 1, 2004, for a total of \$15,000.00 donated. Should Metro assign its interest in the Conservation Easement pursuant to Section 13 above, Assignee shall collect such payments. However, if Grantor sells the Protected Property, any remaining obligation to fund the Management Fund shall end.
15. **Open Space Covenant.** Metro hereby agrees to operate, manage, and maintain the Harris Property for parks and open spaces uses only, in accordance with the Open Spaces Agreement attached as Exhibit D hereto. The purpose of this Conservation Easement is to further protect the open space values of the Harris Property. If the Harris Property is developed for other use, Grantors may seek extinguishment of this Easement pursuant to Paragraph 11.1 and Metro will not object to such extinguishment.
16. **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.
17. **General Provisions.**
  - 17.1 **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon.
  - 17.2 **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.
  - 17.3 **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.

- 17.4 **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 12.
- 17.5 **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantors' title in any respect.
- 17.6 **Successors and Assigns.** 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.
- 17.7. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon assignment of the party's interest in the Easement or transfer of Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive assignment or transfer.
- 17.8 **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.
- 17.9 **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.

///

///

///

///

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 \_\_\_\_\_, 2003.

\_\_\_\_\_  
Jeff C. Morriss

\_\_\_\_\_  
Janina K. Darling

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_ personally known to me (or proved to be on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this instrument, and acknowledged that he (she or they) executed it.

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

Metro does hereby accept the above Deed of Conservation Easement this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

METRO

\_\_\_\_\_  
Chief Operating Officer

State of Oregon            )  
  ) ss.  
County of Multnomah    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_ as Chief Operating Officer of Metro 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.

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

- Exhibits:  
A Legal Description of Protected Property  
B Site Plan  
C Legal Description of Metro's "Harris Property"  
D Metro Open Spaces Agreement

# Keenon Land Services

Keenon Land Services  
1224 Alder St.  
Vernonia, Oregon  
97064  
Phone (503) 429-6115  
Fax (503) 429-6115



## CONSERVATION EASEMENT

An easement over that tract of land in the North one-half of Section 34, Township 1 North, Range 3 West of the Willamette Meridian, Washington County, Oregon being more particularly described as follows:

Beginning at a 5/8" iron rod at the Northeast corner of that tract of land conveyed to Virgil R. Hockett and Beth E. Zetter in Deed Book 1173, Page 356, Washington County Deed Records, said point being S 60°29'51" E 252.26 feet from the Southwest corner of the J. Porter D.L.C. No. 82; thence S 89°59'28" E 385.37 feet to a 5/8" iron rod with a yellow plastic cap marked "KEENON LAND SERVICES INC."; thence S 00°01'30" E 106.55 feet, passing over a 5/8" iron rod with a yellow plastic cap marked "KEENON LAND SERVICES INC." at 101.55 feet; thence N 89°59'28" W 384.79 feet to a 5/8" iron rod with a yellow plastic cap marked "KEENON LAND SERVICES INC."; thence N 00°20'11" W 106.55 feet to the point of beginning.

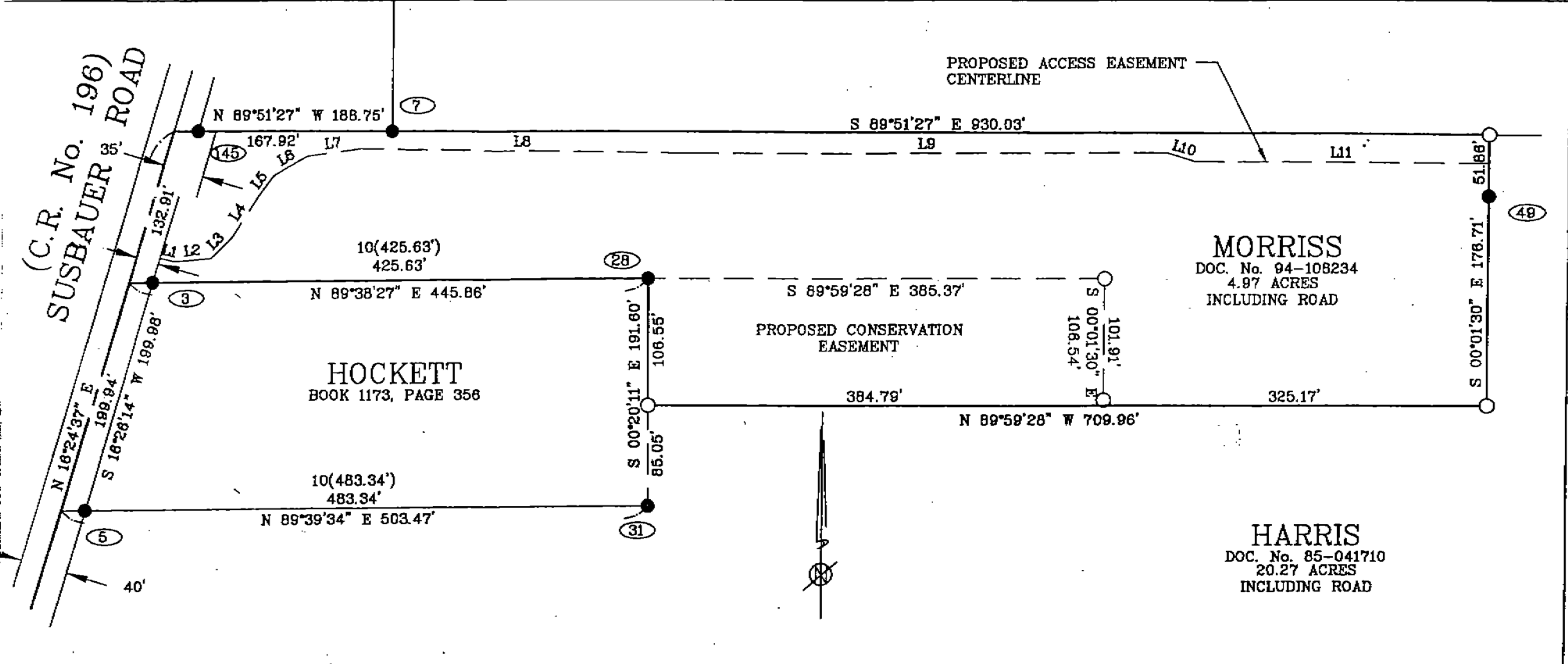


02-044 Conservation easement  
03/05/2003, 11:42:57 AM

EXHIBIT A  
LEGAL DESCRIPTION OF  
PROTECTED PROPERTY



(C.R. No. 196)  
SUSBAUER ROAD



DRAWN BY: DDW

**LAND SERVICES**

KEENON



1224 ALDER ST.  
VERNONIA, OR 97064  
(503) 429-6115

FIELD: MWM/TBM

EASEMENT DIAGRAM FOR

**METRO**

IN THE NE 1/4 & NW 1/4 OF SECTION 34,  
T1N, R3W, W.M.

WASHINGTON COUNTY, OREGON

SCALE 1" = 100'    APRIL 25, 2003

EQUIPMENT: GTS300/TDS46    JOB No. 02-141 EASEMENT PROJECT No. 02-044

EXHIBIT B  
SITE PLAN



## NEW HARRIS DESCRIPTION

A tract of land in the North one-half of Section 34, Township 1 North, Range 3 West of the Willamette Meridian, Washington County, Oregon being more particularly described as follows:

Beginning at a 5/8" iron rod with a yellow plastic cap marked "KEENON LAND SERVICES INC." on the South line of the J. Porter Donation Land Claim No. 82 being S 89°51'27" E 930.03 feet from the Southwest corner thereof; thence S 89°51'27" E along the South line of said Claim 571.30 feet to a point that is N 89°51'27" W 398.01 feet from the Southeast corner thereof, said point being the Northwest corner of that tract of land conveyed to David A. True and Tina M. True in Document No. 86007226, Washington County Deed Records; thence following the West line of said True tract S 00°00'31" W 170.84 feet; thence S 47°19'22" E 671.64 feet to a point on the North line of the William McLinn Donation Land Claim No. 67; thence leaving the West line of said True tract and following the North line of said Claim N 89°08'14" W 2359.27 feet to the Centerline of Susbauer Road (C.R. No. 196); thence following said center line N 16°24'37" E 287.22 feet to the Southwest corner of that tract of land conveyed to Virgil R. Hockett and Beth E. Zetter in Deed Book 1173, Page 356, Washington County Deed Records; thence following the South line thereof N 89°39'34" E 503.47 to an 5/8" iron rod at the Southeast corner of said Hockett tract; thence N 00°20'11" W 85.05 feet to a 5/8" iron rod with a yellow plastic cap marked "KEENON LAND SERVICES INC."; thence S 89°59'28" E 709.96 feet to a 5/8" iron rod with a yellow plastic cap marked "KEENON LAND SERVICES INC."; thence N 00°01'30" W 228.57 feet to the point of beginning.

Containing 20.27 acres more or less.



RENEWAL DATE

02-141 PLA  
03/15/2003, 11:36:05 AM

EXHIBIT C  
LEGAL DESCRIPTION OF  
METRO'S HARRIS PROPERTY

## AGREEMENT FOR PARKS AND OPEN SPACES USE

Metro, a municipal corporation and political subdivision of the State of Oregon, has agreed to purchase and become fee owner of a parcel of real property described by metes and bounds in the attached Exhibit A (the "Metro Property"), and hereby agrees, for the benefit of Jeff C. Morriss and Janina K. Darling, tenants by the entirety (hereafter collectively, "Morriss"), fee owners of that certain parcel of real property described by deed recorded in the Washington County deed records at fee #94108234 (hereafter, the "Morriss Property"), that upon receiving fee title to the Metro Property, Metro will manage and maintain the Metro Property in its natural state, and restrict the use of the Metro Property to parks and open space uses as more particularly set forth below. This Agreement is made in consideration of the donation of a Deed of Conservation Easement for the benefit of Metro over a portion of the Morriss Property and a \$15,000.00 cash donation to Metro to establish a management fund dedicated to restoration and enhancement of the Metro Property and that portion of the Morriss Property subject to the Deed of Conservation Easement.

1. Parks and Open Spaces Uses. Metro covenants and agrees to manage and maintain the Metro Property in its natural state, which includes restoration and enhancement of native vegetation and natural systems, but does not preclude the development of a public trail and trailhead improvements to accommodate natural resource dependant education and recreation. Metro hereby restricts the use of the Metro Property to parks and open spaces uses consisting of preservation, restoration and enhancement of native vegetation, water quality and wildlife habitat, and natural resource dependant education and recreation such as hiking, bird watching and fishing during daylight hours, but not including active organized sports-related recreation.
2. Enforceability. This Agreement shall be enforceable against Metro by Morriss until such time as Morriss no longer owns the fee interest in the Morriss Property. Thereafter, this Agreement shall expire and be of no further force and effect.
3. Violations. If Morriss determines that Metro has breached this Agreement, Morriss shall provide Metro with written notice of this determination addressed to Metro Regional Parks and Greenspaces, 600 NE Grand Ave, Portland OR 97232. Metro shall thereafter have 10 days to cure said breach, or to commence a cure if the violation is of such a nature that it cannot reasonably be cured in 10 days.
4. Liquidated Damages Remedy. If Metro fails to cure or commence a cure as set forth above, Morriss's sole and exclusive remedy (whether at law or in equity) is the return of any funds that have been donated to Metro as set forth above, and extinguishment of the Conservation Easement. This amount and remedy shall be the full, agreed, and liquidated damages for the violation by Metro of this Agreement, all other claims to damage or other remedies being herein expressly waived by Morriss. Upon breach by Metro and failure to cure or commence a cure as set forth above, this

Agreement shall be terminated and neither party shall have any further rights or obligations under this Agreement, except for the right of Morriss to seek extinguishment of the Conservation Easement and to collect such liquidated damages from Metro, and Metro's obligation to pay them.

5. Metro's Assigns. Metro may assign its responsibilities under this Agreement by assigning its interest in the Metro Property and/or the Deed of Conservation Easement to a third party municipality. The terms, conditions and provisions of this Agreement shall extend to and be binding upon the successors and assigns of Metro, and upon assignment, Metro shall thereafter be released from all its responsibilities hereunder. However, before said assignment and release shall be effective, Metro shall present Morriss with a written acknowledgement of the assignment and consent to abide by the Agreement, signed by Assignee.

**IN WITNESS WHEREOF**, Metro, a municipal corporation and political subdivision of the State of Oregon, and Jeff C. Morriss and Janina K. Darling, tenants by the entirety, have executed this Agreement \_\_\_\_\_, 2003.

Declarant METRO,

\_\_\_\_\_  
Michael Jordan  
Chief Operating Officer

\_\_\_\_\_  
Jeff C. Morris, tenant by the entirety

\_\_\_\_\_  
Janina K. Darling, tenant by the entirety

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_ personally known to me (or proved to be on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this instrument, and acknowledged that he (she or they) executed it.

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

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_, in his capacity as Chief Operating Officer of Metro, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this instrument, and acknowledged that he (she or they) executed it.

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

## Staff Report

### CONSIDERATION OF RESOLUTION NO. 03-3336 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ACCEPT THE DONATION OF A CONSERVATION EASEMENT OVER A PORTION OF THE MORRISS PROPERTY IN THE JACKSON BOTTOM-DAIRY/MCKAY CREEKS TARGET AREA

---

Date: May 6, 2003

Presented by: Jim Desmond

## BACKGROUND

Resolution No. 03-3336 requests authorization for the Chief Operating Officer to accept the donation by Jeff C. Morriss and Janina K. Darling (hereafter "Morriss") of a conservation easement over property located in the Council Creek watershed section of Metro's Jackson Bottom-Dairy/McKay Creeks Regional Target Area (the "Morriss Property").

The Morriss Property is located immediately adjacent to a parcel of property owned by Beverly Harris (the "Harris Property"), which Metro has agreed to acquire with funds from the Open Spaces Bond Measure. Morriss' offer to donate a conservation easement over the 1 acre flood plain/riparian portion (the "Conservation Easement Area") of Morriss' 5-acre home site was intended to provide additional support for Metro to purchase the Harris Property, and the Morriss' offer is conditioned on the closing of Metro's acquisition of the Harris Property. The Conservation Easement Area is located near the City limits of the City of Cornelius, but is part of unincorporated Washington County, is zoned EFU (Exclusive Farm Use), and has been used in the past to graze livestock. Currently, the Conservation Easement Area is overgrown with Himalayan Blackberry and other exotic vegetation. Under the Conservation Easement, Metro will be permitted to restore the Conservation Easement Area to its naturally vegetated state, protecting and preserving a wider riparian buffer to Council Creek. The specific terms of the Easement are attached as Exhibit A to the accompanying resolution.

In addition to the Conservation Easement, Morriss has agreed to donate the sum of \$15,000 in three annual installments of \$5,000, to be applied towards Metro's restoration of both the Conservation Easement Area and the Harris Property. Morriss' donation of cash and the Conservation Easement is contingent upon the Harris property continuing in park/open space use. If the Harris Property is developed or otherwise used for other purposes, the conservation easement would be terminated and the \$15,000 donation must be returned to Morriss.

## 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. The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 95-2228A (and amended via Resolution 96-2424) established acquisition

parameters that authorize the Executive Officer to purchase property, within the Council-approved target area refinement plan maps. Via Resolution 96-2342 (and amended via Resolution No. 00-2908 and Resolution No. 01-3070A), the Metro Council adopted Jackson Bottom-Dairy/McKay Creeks Regional Target Area refinement plan, which outlined a land protection strategy for the Jackson Bottom-Dairy/McKay Creeks 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 1 priority.

The Tier 1 objective states:

“protect other significant wetlands associated with Dairy Creek and its tributaries”

The Morriss Conservation Easement Area, when restored, will protect and enhance Council Creek frontage and floodplain habitat. Council Creek is a tributary of Dairy Creek.

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

The acquisition of the Conservation Easement requires Metro Council authorization pursuant to 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”) because Metro has previously exceeded the minimum 335-acre goal established for the target area.

The acceptance 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”).

“Acquire key remaining parcels adjacent to parcels already acquired by Metro...”

“Within existing target area and parcels that meet the objectives otherwise set forth in this resolution, particular emphasis should be given to acquisitions that would either (a) have a significant financial contribution from a local government or outside partner...”

The Conservation Easement is adjacent to property Metro has agreed to purchase, and the donation of both cash and a real estate interest by Morriss constitutes a significant contribution by an outside partner.

### **C. Conservation Easements**

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

Metro Code Chapter 10.03, entitled “Conservation Easements,” authorizes Metro to purchase and accept conservation easements. Metro Code Section 10.03.020 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 . . . by private property owners . . . through sale, donation, or dedication of conservation easements to Metro.”

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

such easement, and upon acceptance Metro may execute all necessary documents to obtain conveyance of the conservation easement.

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

Acceptance of this Conservation Easement and cash donation provides an opportunity to expand and enhance the riparian buffer on Council Creek.

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

Costs associated with monitoring and managing the Easement are expected to be minimal.

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

None.

### **FINDINGS**

Acceptance of the Morriss Conservation Easement under the above set forth terms is recommended based on the following:

- The Conservation Easement lies in Tier 1 of the Jackson Bottom- Dairy/McKay Creeks target area and fulfills the goals of the target area refinement plan.
- Acceptance of the Morriss Conservation Easement would be in the public interest, as it will further the goals of Metro's Jackson Bottom-Dairy/McKay Creeks Regional Target Area by protecting and enhancing Council Creek frontage and floodplain riparian habitat.

### **RECOMMENDED ACTION**

The Chief Operating Officer recommends passage of Resolution No. 03-3336.