

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)	RESOLUTION NO. 11-4260
CHIEF OPERATING OFFICER TO GRANT)	
EASEMENTS TO CLEAN WATER SERVICES)	Introduced by Acting Chief Operating
FOR RIPARIAN AND FLOODPLAIN)	Officer, Daniel B. Cooper, with the
RESTORATION WITHIN THE TUALATIN)	Concurrence of Council President
WATERSHED)	Tom Hughes

WHEREAS, both the 1995 Metro Open Spaces Bond Measure and the 2006 Metro Natural Areas Bond Measure identify the Tualatin River and its tributaries (referred to herein as the "Tualatin Watershed") as a regionally significant natural area;

WHEREAS, Metro has acquired over 600 acres of real property within the Tualatin Watershed for habitat and water quality purposes;

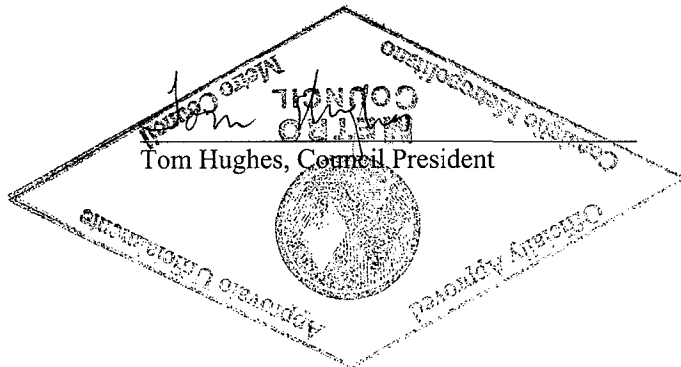
WHEREAS, for the past six years, Clean Water Services ("CWS") has been implementing a Temperature Management Plan program approved by the Oregon Department of Environmental Quality, which program was designed to produce temperature benefits throughout the Tualatin Watershed by increasing shade through riparian and floodplain restoration;

WHEREAS, CWS has contacted Metro and requested permission to conduct riparian and floodplain restoration activities designed to increase shade on Metro-owned properties within the Tualatin Watershed.


WHEREAS, allowing CWS to conduct riparian and floodplain restoration would result in substantial gains in habitat condition and function on such Metro-owned properties; now therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to grant to CWS shade easements over Metro-owned properties within the Tualatin Watershed provided such easements are in the form attached hereto as Exhibit A or otherwise approved by Office the Metro Attorney.

ADOPTED by the Metro Council this 12 day of May, 2011.



Approved as to Form:



 Alison Kean Campbell, Acting Metro Attorney

RETURN TO: Clean Water Services
Mail Stop 10
2550 SW Hillsboro Highway
Hillsboro, OR 97123

Project:
Tax Lot No.:
Square Feet:

Tax Statements: No change requested

**GRANT OF RIGHTS TO CONDUCT ECOLOGICAL ENHANCEMENT
AND
STEWARDSHIP ACTIVITIES**

Name of GRANTOR: METRO
Mailing Address: 600 NE Grand Avenue
Portland, OR 97232-2736

Legal Description of Larger Parcel: See Exhibit A attached herein

GRANTOR, owner of the property described in Exhibit A herein (the “Larger Parcel”), does hereby grant and convey to Clean Water Services, GRANTEE, the right to conduct ecological enhancement and stewardship activities on a portion of the Larger Parcel (the “Property”). The Property is more particularly depicted on Exhibit B attached hereto. GRANTEE’s right to conduct ecological enhancement and stewardship activities is nonexclusive until such time GRANTEE develops an ecological enhancement plan approved by GRANTOR in accordance with Section 2 below.

The consideration for this Grant of Rights is **non-monetary**.

This Grant of Rights shall be effective on the date it is recorded in the deed records of Washington County, Oregon and shall terminate twenty (20) years from that recording date. GRANTEE may renew this Grant of Rights for an additional twenty (20) year period by providing written notice to GRANTOR at least one-year but no more than two-years prior to the scheduled termination date. GRANTEE may also terminate this Grant of Rights prior to the scheduled termination date in the event of a change in GRANTEE’S available funding or business related regulatory constraints. Notice of such termination must be provided in writing at least one (1) year prior to the early termination date.

GRANTEE shall have ownership of ecological credits (e.g. Shade Credits) created on the Property as a result of GRANTEE’s ecological enhancement activities. GRANTEE shall not have ownership of ecological credits which result from activities conducted by GRANTOR unless GRANTEE and GRANTOR separately agree to such ownership.

Additional terms and conditions set forth below are hereby agreed to and binding upon the parties to this Grant of Rights:

1. The purpose of this Grant of Rights shall be to improve ecological conditions by enhancing and maintaining the Property. GRANTEE's enhancement and maintenance activities on the Property may include, but shall not be limited to, the following: 1) using manual, mechanical or chemical means to control invasive species, provided that the chemical means are applied in accordance with GRANTEE's Integrated Pest Management Plan; 2) planting native tree, shrub, forb and grass species; 3) placing large woody debris on the Property or in any stream adjacent to the Property; 4) irrigating planted species; 5) replacing dead tree, shrub, forb and grass species; 6) monitoring site conditions and collecting ecological data; and 7) conducting such other activities as GRANTEE determines are reasonably necessary to protect or improve riparian, fishery, upland and wetland ecological functions in accordance with mutually agreed enhancement plan (s) and applicable regulatory crediting frameworks. GRANTOR reserves the right to use and enjoy the Property except as such use may be inconsistent with or conflict with the activities allowed GRANTEE by this Grant of Rights.
2. Prior to commencing any enhancement activities GRANTEE shall: 1) prepare an ecological enhancement plan (Plan) setting forth GRANTEE's proposed enhancement activities; 2) obtain GRANTOR's approval of the Plan, and 3) obtain all required permits. When GRANTEE's proposed enhancement activities will affect stream flow, the Plan shall include modeling to estimate the hydraulic impact of the enhancement activities. The Plan shall also include a twenty (20) year stewardship plan, and shall include a description of funding sources for the enhancement activities, and any transaction that may result in the transfer of mitigation obligations or ecological credits beyond the regulatory requirements of the GRANTEE. The Plan may be amended from time to time as agreed by both parties.
3. After the Plan has been approved by GRANTOR, GRANTEE shall have the right but not the obligation to conduct any of the enhancement activities described in the Plan. However, if GRANTEE has not implemented the Plan (or substantially commenced implementation of the Plan) within three years from the date the Plan was approved by GRANTOR, then such Plan shall be deemed to have expired and (a) GRANTEE's rights shall no longer be exclusive to GRANTEE and (b) GRANTEE shall be required to submit a new proposed Plan to GRANTOR before commencing any enhancement activities on the Property.
4. When GRANTEE conducts its enhancement activities pursuant to its approved Plan, GRANTEE shall thereafter maintain the resulting enhancements to the Property for the duration of this Grant of Rights. GRANTEE's obligation to maintain such enhancements shall be limited to portions of the Property GRANTEE has enhanced. GRANTEE shall be under no obligation to maintain portions of the Property GRANTEE has not enhanced. GRANTEE'S maintenance obligation shall consist of conducting activities that support the ecological function of the portion of the Property GRANTEE has enhanced. Such maintenance obligations may include, but are not limited to, reducing invasive species and planting additional native species.
5. During the term of this Grant of Rights GRANTOR shall periodically monitor the Property and shall enforce GRANTOR's ownership rights against trespassers in accordance with the policies GRANTOR has adopted for GRANTOR's other similar land. In the event GRANTOR fails to

enforce GRANTOR's rights against trespassers and GRANTEE believes such failure could result in harm to the Property's ecological conditions addressed by GRANTEE's Plan, GRANTEE, in its capacity as the owner of this Grant of Rights, may pursue any and all action against trespassers available under applicable law.

6. GRANTOR and GRANTEE agree that there shall be no damming, dredging or other activities that may be detrimental to enhancement activities conducted on the Property. GRANTOR agrees not to engage in any activities on the Property which are, in the reasonable opinion of GRANTEE, inconsistent with GRANTEE's actions to preserve the natural condition of the Property in accordance with the approved Plan. The parties acknowledge that GRANTOR may lease the Property or portions thereof for farming activities, provided that such activities are consistent with the requirements of this paragraph.
7. GRANTEE and its contractors shall confine enhancement activities and any related construction operations to the Property or obtain the written permission of GRANTOR if additional area or access is required.
8. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, GRANTEE shall defend, indemnify, and hold harmless GRANTOR from and against any and all claims, demands, judgments, losses, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties, which may be imposed upon or claimed against GRANTOR and which, in whole or in part, directly or indirectly, arise from or are in any way connected with (a) the negligent or wrongful act or omission of GRANTEE, its agents, employees or contractors acting within the scope of their employment or duties occurring on the Property and (b) the breach of any provision of this Grant of Rights by GRANTEE. It is understood and agreed that GRANTEE, by accepting this grant of Grant of Rights, is not accepting any liability and shall not be responsible for any environmental contamination on the Property, unless such contamination results from or is caused by an intentional or negligent act of GRANTEE or its agents, employees, and contractors.
9. The rights granted herein shall be covenants running with the land and be binding upon GRANTOR, its successors and assigns for the duration of the Grant of Rights, except as otherwise set forth herein. The parties covenant and agree that all activities and operations conducted on the Property pursuant to this Grant of Rights will be strictly in compliance with all applicable present and future laws, rules, and regulations of Washington County and the State of Oregon, and any other governmental body having jurisdiction over the Property. GRANTOR represents and warrants that it is the owner of the real property described herein, and has the full right and power to grant the rights provided in this Grant of Rights, subject to liens and encumbrances of record as of the date of execution set forth below.

IN WITNESS WHEREOF, the parties have executed this Grant of Rights as of the dates written below.

GRANTEE:
ACCEPTED

Clean Water Services

By: _____
General Manager or Designee

Date: _____

APPROVED AS TO FORM

District Counsel

GRANTOR:

Metro,
an Oregon municipal corporation

By: _____
Name: _____
Title: _____

Date: _____

State of OREGON)
)
County of _____)

This instrument was acknowledged before me on _____, 2011 by
_____, _____ of Clean Water Services, a County Service
District.

Notary Public - State of Oregon

State of OREGON)
)
County of MULTNOMAH)

This instrument was acknowledged before me on _____, 201__ by
_____, _____ of Metro.

Notary Public - State of Oregon

EXHIBIT A
Larger Parcel Legal Description

EXHIBIT B
Property Depiction

STAFF REPORT

FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO GRANT EASEMENTS TO CLEAN WATER SERVICES FOR RIPARIAN AND FLOODPLAIN HABITAT RESTORATION WITHIN THE TUALATIN WATERSHED.

Date: May 12, 2011

Prepared by: Kathleen Brennan-Hunter, 503-797-1948

BACKGROUND

Resolution No. 11-4260 requests authorization for the Chief Operating Officer to grant easements to Clean Water Services (CWS) for the purpose of permitting CWS to conduct riparian and floodplain habitat restoration on Metro properties located within the Tualatin Watershed.

Principle purposes of Metro's 1995 and 2006 Natural Area bond measures include the protection and enhancement of wildlife habitat and water quality. Although bond funds are used to cover property acquisition costs and initial habitat stabilization, long-term habitat and water quality restoration and property management are typically funded through the Metro operating budget and competitive grant opportunities (and occasionally through agreements with local partners). The majority of the natural area properties acquired by Metro require some degree of restoration, and all properties require long-term management to maximize or maintain their habitat quality. Metro now has more than 13,000 acres in active management and faces the challenge of finding the staff time and funding necessary to plan and execute restoration projects.

CWS is a special service district that serves the urban portion of Washington County. CWS has 12 member cities and owns and operates four wastewater treatment plants in the Tualatin River basin at sites in Forest Grove, Hillsboro, and Tigard.

Of principle concern to the resolution under consideration is the Tualatin River's status regarding temperature. Many organisms, including salmon, steelhead and trout require relatively cold water to survive. As a result of its use and subsequent treatment to eliminate toxins, water returned to the Tualatin River from CWS wastewater facilities is too warm to meet the requirements of the federal Clean Water Act. Historically, normal practice for a water provider would be to construct infrastructure to physically cool returning wastewater, thus directly eliminating the harmful impact of the warm water. Although initial construction of such facilities is indeed expensive, the real costs come over time from the electrical power necessary to actually cool large volumes of water. Beyond price considerations, power generation and use contributes to the region's greenhouse gas emissions and air quality challenges.

Instead of spending billions of dollars to construct and operate refrigeration infrastructure, CWS developed an innovative agreement with the Oregon Department of Environmental Quality (DEQ) and the federal Environmental Protection Agency to produce temperature benefits throughout the Tualatin Watershed by increasing shade through riparian and floodplain restoration. In other words, CWS's watershed-based National Pollutant Discharge Elimination System (NPDES) permit allows water quality credit trading for temperature. Such water quality trading for temperature is conducted in accordance with CWS's DEQ-approved Temperature Management Plan (TMP). While the TMP is aimed at reducing temperature, by increasing shade through riparian and floodplain restoration it also results in other beneficial outcomes. Up to 90% of wildlife benefits directly or indirectly from healthy riparian (streamside) forests. By planting trees and shrubs instead of building expensive cooling towers, CWS hope to not only meet or exceed the temperature management requirements of the NPDES, but also improve the overall condition of the Tualatin Watershed.

CWS has been implementing its TMP shade credit program for approximately 6 years. Working with the Natural Resources Conservation Service and other agencies and non-profits as partners, they have aggressively pursued agreements with private landowners (especially the farming community) to conduct restoration on their land, sometimes paying a property owner a per acre fee for the right to plant and maintain riparian forests. While CWS has been successful working with private landowners and will continue to pursue such opportunities, CWS has identified several Metro-owned properties as offering excellent and efficient opportunities to increase shade on the Tualatin River and its tributaries. Those opportunities are particularly important in the more urbanized sections of the watershed, where Metro's holdings represent some of the larger blocks of natural habitat.

Metro owns numerous parcels in the Tualatin Watershed with varying levels of need in regards to riparian and floodplain restoration. While Metro is committed to restoring every acre in its portfolio, staff capacity and available funding limit the pace of implementation. Granting CWS the right to conduct riparian restoration on Metro-owned land would leverage the site-specific knowledge of Metro's staff with CWS's financial and staff resources to speed the restoration of important habitat, leading to substantial gains in habitat condition and function.

CWS has committed to maximizing the amount and quality of habitat restored in each project. CWS will pay all costs for developing and reviewing project plans. CWS is committed to funding all project implementation costs, including 20 years of maintenance to an agreed-upon standard. Last but not least, CWS's TMP shade credit program is a creative solution to an important environmental issue that addresses the region's concerns regarding reducing greenhouse gas emissions and improving water quality and wildlife habitat. Ultimately, CWS's shade credit program is aligned with Metro's core values of innovation, sustainability and public service.

Notwithstanding the forgoing, if for any reason the Natural Area Program staff and the Chief Operating Officer determine that a continued partnership with CWS is no longer in Metro's best interest, Metro is under no obligation to grant CWS additional easements. The intent is to begin by granting CWS only a few easements in order to implement a small number of pilot projects so that Metro may determine whether a partnership model with CWS is sound. Only once such a determination is made will Metro grant CWS additional easements to proceed with additional projects.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

None.

3. Anticipated Effects

Establishing a partnership with CWS will speed the restoration of riparian habitat and water quality on Metro owned property in multiple target areas within the Tualatin Basin.

4. Budget Impacts

None.