

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING ) RESOLUTION NO. 05-3571  
THE CHIEF OPERATING OFFICER TO )  
CONTRIBUTE TOWARDS THE ) Introduced by Michael J. Jordan, Chief  
PURCHASE OF THE DERNBACH ) Operating Officer with the concurrence of  
PROPERTY ON MT WILLIAMS AND ) David Bragdon, Council President  
ENTER INTO AN  
INTERGOVERNMENTAL AGREEMENT  
AND DECLARING THE SAUVIE ISLAND  
TO BEAVERTON/HILLSBORO TRAIL  
PROJECT INFEASIBLE; AND ADOPTING  
THE BEAVERTON POWERLINE TRAIL  
AS A REPLACEMENT TRAIL PROJECT

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 to preserve open space for parks, trails and wildlife; and

WHEREAS, Resolution 95-2074-A (“For the Purpose of Changing The Date Of The Submission To The Voters Of A General Obligation Bond Indebtedness To Proceed With The Acquisition Of Land For A Regional System Of Greenspaces”) provided that “Other regionally significant open spaces and regional trails identified in the Master Plan may be acquired if target areas become degraded, cost prohibitive or otherwise infeasible as determined by the Metro Council after a public hearing”; and

WHEREAS, the Sauvie Island to Beaverton/Hillsboro Trail Project was established as a trail project under Resolution 95-2074-A and the Metro Council finds that due to the purchase of the Burlington Northern Rail Corridor by a rail operator, and the rail corridor’s continued and future operation as a rail corridor, that the Sauvie Island to Beaverton/Hillsboro Trail Project should be declared infeasible at the current time; and

WHEREAS, the Beaverton Powerline Trail is located in Washington County and is located in the same general portion of the region as the trail it is replacing, and therefore the Beaverton Powerline Trail should be selected as the replacement trail project; and

WHEREAS, Metro’s participation in the acquisition of the Mount Williams (Dernbach) property (“Property”) with funds from the 1995 Open Spaces, Parks and Streams Bond Measure will benefit the Beaverton Powerline Trail and will provide support to other local and private partners; and

WHEREAS, the acquisition of the Property contains certain “unusual circumstances” in that Metro will not be taking title to the Property, and will not be in charge of conducting due diligence on the Property or obtaining a separate appraisal; and “unusual circumstances” require the specific approval by the Metro Council, as set forth in the Open Spaces Implementation Work Plan; and

WHEREAS, Metro and THPRD will enter into an Intergovernmental Agreement regarding THPRD’s acquisition and use of the Property and Metro’s contribution of bond measure funds; now therefore

BE IT RESOLVED that the Metro Council hereby states and authorizes the following:

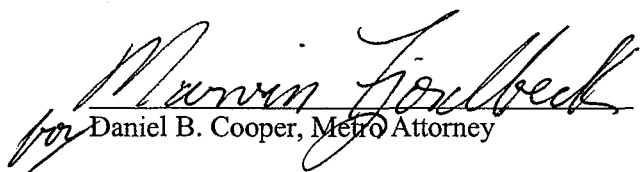
1. That the Sauvie Island to Beaverton/Hillsboro Trail is hereby declared infeasible for the purposes of Right-of-Way acquisition with funds from the 1995 Open Spaces, Parks and Streams Bond Measure;
2. That the Beaverton Powerline Trail is hereby selected as a replacement trail project;
3. That the Metro Chief Operating Officer is hereby authorized to contribute One Hundred Thousand Dollars (\$100,000) towards the acquisition by local governmental agency partners of the Dernbach property located along the Beaverton Powerline Trail on Mt. Williams (hereafter referred to as "the Property") from proceeds from the 1995 Metro Open Spaces Parks and Streams bond measure; and
4. That the Chief Operating Officer is hereby authorized to enter into an Intergovernmental Agreement with THPRD regarding operation, management, and maintenance of the Property, in a form substantially similar to the IGA attached hereto as Exhibit A.

ADOPTED by the Metro Council this 5<sup>th</sup> day of May, 2005.



David Bragdon, Council President

Approved as to Form:

  
for Daniel B. Cooper, Metro Attorney



## **INTERGOVERNMENTAL AGREEMENT and RESTRICTIVE COVENANT**

### **Mt. WILLIAMS**

This Intergovernmental Agreement and Restrictive Covenant is entered into by and between Metro, a metropolitan service district in the State of Oregon (Metro) and the Tualatin Hills Park and Recreation District, an ORS Ch. 266 special district (District).

#### **WHEREAS:**

The parties have determined that their respective constituents will benefit from preservation of a portion of "Mt. Williams" known as the Dernbach Property as a park providing open space, wildlife habitat, public recreation, and pedestrian and bicycle transportation;

The parties desire that District purchase, own, and manage the property ("Property"), the legal description of which is attached hereto as Exhibit A and incorporated herein, in its role as a public park and recreation provider; and

In addition to policy, logistical, and other support, Metro is providing certain funds to District out of the proceeds of the Metro 1995 Open Spaces, Parks and Streams Bond Measure toward the purchase and desires to ensure that Metro be recompensed if the status or use of the property is changed; now, therefore, in consideration of the mutual covenants herein, it is:

#### **AGREED:**

1. In consideration of Metro advancing the sum of One Hundred Thousand Dollars (\$100,000) to District, receipt of which hereby is acknowledged, to acquire in part the purchase of the Property described in Exhibit A hereto, District hereby covenants and agrees that said Property is encumbered with the following restrictions and servitude: to be used exclusively as a public park for open space, trail use, wildlife habitat, and public recreation, including bicycle and pedestrian transportation.
2. This covenant shall RUN WITH THE LAND and shall be binding on District and inure to the benefit of Metro and shall bind the successors and assigns of the parties.
3. District shall have no obligation to repay to Metro any sum, and Metro shall have no recourse against District, so long as the Property in Exhibit A remains in

**Exhibit A to Resolution No. 05-3571**

public ownership as a park and is used solely for the purposes described in Paragraph 1.

4. Nothing herein shall interfere with District's authority to manage the property as a park consistent with its normal and customary practices and policies. District retains the right to decide that it is in the public interest to designate all or any portion of the property as something other than a public park, sell, lease, transfer, or develop some or all of the property for purposes other than those described above, provided that District first:
  - a. issues to Metro 60 days written notice of such decision requesting that Metro release the subject property from the servitude provided for in paragraph 3. Metro shall notify District of its decision to release or not release the Property within 60 days; and
  - b. if the release is granted, makes arrangements reasonably satisfactory to Metro to pay to Metro the following sum:
    - i. \_\_\_ % of the proceeds from such action. Said amount representing an amount equal to the percentage of the District purchase price provided by the Metro to District, or
    - ii. \$\_\_ per square foot times the square footage subject to such District action, said amount representing that portion of the District purchase price per square foot provided by the Metro to District, whichever is greater, or
    - iii. some other compensation as mutually agreed upon by the parties.
5. Upon payment of the amount due, Metro shall execute and record documents necessary to evidence satisfaction of District's obligation to Metro and remove this restrictive covenant and servitude.
6. District and Metro shall cooperate reasonably and in good faith to effectuate the terms of this Agreement, including execution of such further instruments as may reasonably be necessary.
7. This Agreement shall be recorded in the deed records of Washington County and shall constitute an encumbrance (whether a restrictive covenant or equitable servitude) against the Property in favor of Metro until such time as it may be released or declared satisfied by written action of the Metro Council.

**Exhibit A to Resolution No. 05-3571**

8. Failure by District to abide by the terms of this restriction or to pay any portion of the amount due Metro shall be a material breach and default. Metro shall provide District with 30 days written notice and opportunity to cure said breach. Upon failure of District to do so, Metro may pursue any and all remedies available by law, including damages, specific performance, or injunctive relief. In the event that a court determines that this document does not constitute an enforceable covenant or servitude, the terms hereof shall be enforceable in contract. Remedies shall be cumulative and not exclusive. Election to pursue one remedy shall not constitute a waiver of any default, breach, or other right or remedy. No delay in exercising any right or remedy shall restrict, impair, or waive either party's right to enforce the terms of this Agreement.
9. Within the limits of the Oregon Tort Claims Act, District shall hold harmless, indemnify, and defend Metro, its officers, employees, and agents, against any and all claims, demands, actions, and damages relating to or arising from District's ownership, use, or management of the property, including attorney fees and costs.
10. In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorney fees, including on appeal.
11. If any provision of this Agreement is held invalid or unenforceable, such holding shall not affect any other provision and such other provisions shall remain in full force and effect. This Agreement contains the entire agreement of the parties with respect to the Property. No prior statement, agreement, or promise made by any party that is not contained herein shall be binding or valid.
12. This Agreement is enforceable solely by the parties, their successors, and assigns.

**METRO**

**TUALATIN HILLS PARK AND  
RECREATION DISTRICT**

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

\_\_\_\_\_  
*Name*  
*Title*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

**Exhibit A to Resolution No. 05-3571**

STATE OF OREGON            )  
  ) ss.  
Metro of Washington        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2004, by \_\_\_\_\_ for and on behalf of the Tualatin Hills Park and Recreation District.

\_\_\_\_\_  
Notary Public for Oregon

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 05- 3571 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO CONTRIBUTE TOWARDS THE PURCHASE OF THE DERNBACH PROPERTY ON MT WILLIAMS AND ENTER INTO AN INTERGOVERNMENTAL AGREEMENT AND DECLARING THE SAUVIE ISLAND TO BEAVERTON/HILLSBORO TRAIL PROJECT INFEASIBLE; AND ADOPTING THE BEAVERTON POWERLINE TRAIL AS A REPLACEMENT TRAIL PROJECT

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Date: April 21, 2005

Presented by: Jim Desmond

## BACKGROUND

Resolution No. 05-3571 requests Council action on four items:

1. A declaration that the Sauvie Island to Beaverton/Hillsboro Trail as set out in the 1995 Open Space, Park and Streams Bond Measure is infeasible.

The Sauvie Island to Beaverton/Hillsboro Trail project was based on the assumption that the Burlington Northern rail corridor would be declared abandoned by the railroad operator, which would have made possible a purchase of the rail corridor by a government agency such as Metro. However, instead of being declared abandoned, a new rail operator acquired ownership. Since then the rail operator has made a considerable investment in rail infrastructure and the line is actively used. It is unlikely that the rail corridor will be available for trail purposes in the foreseeable future, at least in time for use of 1995 bond funds.

2. Selection of the Beaverton Powerline Trail as a replacement trail project.

Resolution 95-2074A adopting the Open Spaces, Parks and Streams Bond Measure anticipated that some bond projects might prove infeasible, and required that a determination to that effect be made by the Metro Council after a public hearing, and that the replacement project be one that was listed in the Greenspaces Master Plan. The Beaverton Powerline Trail is a regional trail project included in the Greenspaces Master Plan. It is proposed as a replacement trail project because it is located in Washington County and in the same general portion of the region as the trail it is replacing. The section of the Beaverton Powerline Trail, as a replacement trail project, would retain the “regional balance” required under the 1995 bond measure as specifically referenced in the legal antecedents section below.

3. Authorization for the Chief Operating Officer to contribute One Hundred Thousand Dollars (\$100,000) from Open Spaces bond measure funds towards the purchase of the 29.53-acre Dernbach property (hereafter referred to as “the Property”) located along the Beaverton Powerline Trail on Mt. Williams.

The Property is one parcel of a two-parcel property that straddles the Beaverton Powerline Trail just south of its intersection with S. W. Davis Road on Mt. Williams, and represents one of the largest remaining gaps in public ownership along the Trail. It rises above the surrounding landscape to an elevation of approximately 470 feet and is forested with a mixed canopy of deciduous and evergreen trees. With the

exception of the existing single-family residence occupied by the current owner, the Property remains largely undeveloped. Under current zoning, it could be developed with multiple single-family residences.

The selection of the Property was made based on the overwhelming support demonstrated by the public and government agencies, as evidenced by the tremendous contributions towards the acquisition made by all involved. The private donations towards this acquisition were contributed by six corporations, six Beaverton Neighborhood Associations, 86 individuals, and one foundation. The total purchase price of both parcels is approximately Five Million Dollars (\$5,000,000) and is being accomplished in two phases; the first phase, acquisition of the first parcel, has already been completed. Metro is being asked to contribute One Hundred Thousand Dollars (\$100,000) towards the purchase of the second parcel. Other partners in the overall project include Tualatin Hills Park and Recreation District (THPRD), Washington County, State Of Oregon, City of Beaverton and private donations.

Acquisition of the Property requires Metro Council authorization for several reasons:

- Acquisition of the Property involves several “unusual circumstances” as set forth in the Open Spaces Implementation Work Plan.

One “unusual circumstance” is that Metro will not be taking title to the Property. Instead, THPRD will take title to this parcel. Metro and THPRD will enter into an Intergovernmental Agreement which will ensure that a portion of the Property representing Metro’s contribution will be used in accordance with the purposes set forth in the Open Spaces Bond Measure program. Another “unusual circumstance” is that Metro has not obtained its own appraisal of the Property, and will not be in charge of other due diligence functions that Metro normally conducts on properties it acquires with Open Spaces bond measure funds. This is due to Metro’s relatively small proportional contribution to the purchase price of this Property, and because Metro will not take title to the Property, thereby eliminating the risks of ownership that due diligence inspections are designed to avoid. Further, the Trust for Public Land and the THPRD have done due diligence on the site and to spend additional public funds to do so would be duplicative and inefficient.

4. Authority for the Chief Operating Officer to enter into an Intergovernmental Agreement with THPRD regarding operation, management, and maintenance of the Property.

As a condition to Metro’s contribution of the above-described bond measure funds, Metro and THPRD will enter into an Intergovernmental Agreement, in a form substantially similar to the form attached hereto, which will include the conditions necessary to protect the investment of Metro Open Spaces bond dollars in this acquisition.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

None.

### **2. Legal Antecedents**

In May 1995, 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 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”) established acquisition parameters that authorized the Chief Operating Officer to purchase property within the Council-approved target area refinement plan maps.

The Open Spaces Acquisition Bond Measure, adopted by the Metro Council via Resolution 95-2074-A (“For the Purpose of Changing The Date Of The Submission To The Voters Of A General Obligation Bond Indebtedness To Proceed With The Acquisition Of Land For A Regional System Of Greenspaces”) provided that “Other regionally significant open spaces and regional trails identified in the Master Plan may be acquired if target areas become degraded, cost prohibitive or otherwise infeasible as determined by the Metro Council after a public hearing. New target areas shall be selected to retain a regional balance of sites acquired . . . .”

Unusual circumstances as defined in The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 95-2228A, as amended by Resolution 96-2424 require Council approval prior to acquisition.

### **3. Anticipated Effects**

THPRD will take title to the Property and as such will bear any environmental or other risk relating to the Property. The Property will be used for public park, open spaces, trail purposes, wildlife habitat, and public recreation, as will be required by an Intergovernmental Agreement that Metro will enter into as a condition of contributing its funds. Acquisition of the Property will help enhance the natural area and recreation values of the Beaverton Powerline Trail.

### **4. Budget Impacts**

There are sufficient bond funds remaining to allow for this partnership contribution. Landbanking and future management costs will be borne by the THPRD through an Intergovernmental Agreement.

## **RECOMMENDED ACTION**

Chief Operating Officer Michael Jordan recommends passage of Resolution No. 05-3571.