

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENACTING A ) ORDINANCE NO 97-714  
POLICY TO ALLOW METRO TO )  
PURCHASE AND ACCEPT ) Introduced by Mike Burton,  
CONSERVATION EASEMENTS TO ) Executive Officer  
PROMOTE THE PROTECTION OF )  
REGIONALLY SIGNIFICANT NATURAL )  
RESOURCES, ADDING THE POLICY TO )  
THE METRO CODE, AND DECLARING AN )  
EMERGENCY. )

WHEREAS, the voters approved the 1992 Metro Charter which specifically authorizes Metro to acquire, develop, maintain, and operate a regional system of parks, open spaces, and recreational facilities; and

WHEREAS, the Metro Charter also provides Metro with a general grant of powers to carry out its functions with all powers that the laws of the United States and this state now or in the future could allow Metro just as if the charter specifically set out each of those powers, and providing that the specified powers are not exclusive and shall be construed liberally; and

WHEREAS, in July 1992, the Metro Council adopted by Resolution No. 92-1637 the Metropolitan Greenways Master Plan which identified a desired regional system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, the Metro Council adopted by Resolution No. 95-2074A the Open Spaces Parks and Streams Bond Measure which states that "There are various means intended to be used to secure rights to natural resource land" and, in addition to outright purchase of title to the land, "other methods insure preservation of the character of the land as open space and allow its use by the public. ... Easements, rather than full title to the land, can be donated or sold by a landowner."

WHEREAS, the Open Spaces, Parks and Streams Bond Measure anticipated that, as one tool for land protection, Metro would acquire conservation easements from landowners who are not interested in selling a full fee interest in their land to Metro, but who would like to protect their land permanently as open space; and

WHEREAS, the Open Spaces Implementation Work Plan adopted by Resolution No. 95-2228A in November, 1995, and Resolution No. 96-2424 in January, 1995, by the Metro Council states that Open Spaces staff is to "negotiate the purchase of property and easements in specific target areas and trails;" and

WHEREAS, conservation easements are cost-effective open space protection tools that keep land in private ownership while establishing permanent conservation of regionally significant natural areas; and

WHEREAS, the Metro Council would like to provide a process for citizens who would like to donate or sell a conservation easement to Metro; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

## **Section 1**

Title X of the Metro Code shall be amended by adding a new chapter entitled "Conservation Easements" and adding the following new provisions:

### Chapter 10.03 Conservation Easements

#### 10.03.010 Finding

The purchasing and acceptance of conservation easements to promote the protection of regionally significant natural resources is of metropolitan concern, and for that reason and the reasons set forth in this chapter it is appropriate for Metro to undertake these acts.

#### 10.03.020 Purpose

The purpose of this Chapter is to encourage the voluntary retention and protection of the natural, scenic, or open space values of real property, assuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, and preserving the historical, architectural, archeological, or cultural aspects of real property by private property owners through sale, donation, or dedication of conservation easements to Metro.

#### 10.03.030 Applicability

(a) The Chapter applies to any interest created after [effective date of ordinance] which complies with this Chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This chapter applies to any interest created before [effective date of ordinance], if it would have been enforceable had it been created after [effective date of ordinance], unless retroactive application contravenes the Constitution or laws of this state or the United States.

(c) This Chapter does not invalidate any interest, whether designated as a conservation or preservation easement, or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

#### 10.03.040 Definitions

For the purposes of this Chapter unless the context requires otherwise, the following terms shall have the meanings indicated:

(a) "Conservation Easement" means an interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open space values of real property, assuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archeological, or cultural aspects of real property. Although generally a non-possessory interest, a conservation easement can include the right of limited Metro access for surface water repair and maintenance, a public pathway or right of public access at the election of the private landowner.

(b) "Holder" means:

- (1) Metro acting alone or in cooperation with any federal or state agency, public corporation, or political subdivision.
- (2) A charitable corporation, charitable association, charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreation, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archeological, or cultural aspects of real property.

(c) "Third-party Right of Enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association or charitable trust which, although eligible to be a holder, is not a holder.

#### 10.03.050 Acquisition and Creation of Conservation Easement

(a) Metro may acquire by purchase, agreement or donation, but not by exercise of the power of eminent domain, unless specifically authorized by law, conservation easements in any area within or without the Metro region wherever Metro Council determines that the acquisition will be in the public interest.

(b) Except as otherwise provided, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(c) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and recordation of the acceptance.

(d) Except as provided in this Chapter, a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(e) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to or consents to the conservation easement.

#### 10.03.060 Hearing: Notice

(a) Before the acquisition or acceptance of a conservation easement, Metro shall hold one or more public hearings on the proposal and the reasons therefor. All interested

persons, including representatives of other governmental agencies, shall have the right to appear and a reasonable opportunity to be heard.

(b) Notice of the hearing shall be published at least twice, once not less than 12 days and once not less than five days, prior to the hearing in a newspaper of general circulation in the community. The notice may also be published by broadcasting or telecasting generally in the community.

(c) At least 30 days prior to the hearing, Metro shall mail notice of the hearing to the governing body of each county, city, and other governmental agency having jurisdiction in the area of the proposed easements.

(d) At the conclusion of the hearing, Metro Council shall decide whether to accept, reject, or condition such easement, or whether to continue the hearing for further information. If the Metro Council decides to accept such easement, the Executive Officer is empowered thereby to execute all necessary documents to obtain conveyance of the easement pursuant to this Chapter.

#### 10.03.070 Validity of Conservation Easement

(a) A conservation easement is valid even though

- (1) It is not appurtenant to an interest in real property;
- (2) It can be or has been assigned to another holder;
- (3) It is not of a character that has been recognized traditionally at common law;
- (4) It imposes a negative burden;
- (5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (6) The benefit does not touch or concern real property; or
- (7) There is no privity of real estate or contract.

#### 10.03.080 Enforcement

(a) Action affecting conservation easement; Standing to bring action. A conservation easement may be enforced by

- (1) An owner of an interest in real property burdened by the easement;
- (2) A holder of the easement;
- (3) A person having a third-party right of enforcement; or
- (4) A person otherwise authorized by other law to enforce the easement.

(b) This Chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

(c) In addition to any other remedy, the violation of the terms of a conservation easement held by Metro or in which Metro has a third party right of enforcement is a civil

infraction that may be enforced pursuant to the law of the jurisdiction where the encumbered property is located.

**Section 2: Severability**

The provisions of this ordinance are severable. If any portion of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

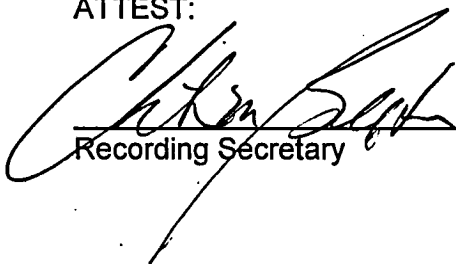
**Section 3: Emergency**

This ordinance is necessary for the health, safety and welfare of the Metro region, because immediate adoption of authority to acquire conservation easements is necessary to ensure Metro's ability to protect sensitive property without incurring unnecessary expense; therefore, an emergency is declared to exist, and this Ordinance shall be effective immediately upon passage.

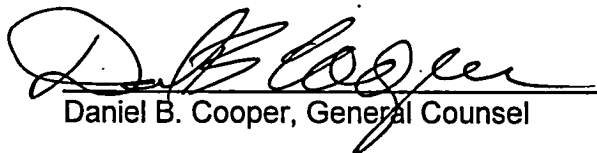
ADOPTED by the Metro Council this 6<sup>th</sup> day of November, 1997.

  
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Jon Kvistad, Presiding Officer

ATTEST:

  
\_\_\_\_\_  
Recording Secretary

Approved as to Form:

  
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Daniel B. Cooper, General Counsel

## Staff Report

### **CONSIDERATION OF 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.**

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Date: September 24, 1997

Presented by: Jim Desmond  
Nancy Chase

## PROPOSED ACTION

Ordinance No. 97-714 requests the adoption of a conservation easement policy and the addition of that policy to the Metro Code.

## BACKGROUND AND ANALYSIS

In May, 1995, voters in the region passed the Open Spaces, Parks, and Streams bond measure enabling Metro to purchase open space properties with \$135.6 million worth of bond funds. The Open Spaces Implementation Work Plan adopted by the Metro Council in November, 1995, and amended in January, 1997, states that Open Spaces staff is to use bond measure funds to "negotiate the purchase of property and *easements* in specific target areas and trails."

The easements contemplated by the Open Spaces Implementation Work Plan include conservation easements. Conservation easements are open space protection tools which leave properties in private ownership while protecting the natural resource. According to Oregon law, a conservation easement is "an interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open space values of real property, . . ." (ORS 271.715). By selling or donating a conservation easement to Metro, a landowner retains fee title to his property, and gives to Metro the right to monitor and enforce land use restrictions enumerated in the conservation easement. These restrictions vary depending upon the landowner and the subject property, but oftentimes they affect timber harvesting and development rights. Conservation easement restrictions are most often permanent, surviving all future sales or ownership transfers which involve the encumbered property.

Landowners may receive cash or tax benefits for the restrictions that they voluntarily place upon their property. The cash value of the conservation easement is generally the difference between the fair market value of the property unencumbered by a conservation easement, and the fair market value of the property encumbered by the conservation easement. This is also usually the value of the deduction which the Internal Revenue Service will recognize, subject to certain restrictions, if a landowner donates a conservation easement. In addition to an income tax benefit, a conservation easement may also create an estate tax benefit. By reducing the value of land with a conservation easement, a landowner may reduce the estate tax which his/her heirs may face.

## FINDINGS

Adoption of a Metro conservation easement policy and the addition of the policy, via ordinance, to the Metro Code is recommended based upon these findings:

- Conservation easement acquisition is a cost-effective way to achieve open space protection in the region. Easement acquisition costs are usually a fraction of the cost of outright property acquisition. In

addition, the cost of monitoring and enforcing a conservation easement is sometimes far less than the cost of owning and managing open space property.

- Conservation easements benefit private landowners. Landowners can receive financial compensation for maintaining existing land uses. Landowners can also generate income and estate tax benefits by donating or selling conservation easements to Metro.
- Conservation easements benefit local governments by keeping private property on local property tax rolls.
- Formalizing Metro's policy regarding conservation easements would assist landowners seeking to participate in Metro's open spaces program without an outright sale of their property.

### **BUDGET IMPACT**

Bond funds would supply acquisition money. Metro may receive some conservation easements through donations. Monitoring costs arising from visits to conservation easement sites are expected to be small.

### **Executive Officer's Recommendation**

The Executive Officer recommends passage of Ordinance No. 97-714.