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3
4 BEFORE THE LAND USE BOARD OF APPEALS
5 OF THE STATE OF OREGON
6

7 NORTHWEST TRAIL ALLIANCE,
8 PETITIONERS,
9 v.
10 CITY OF PORTLAND,
11 RESPONDENT.

LUBA No. 2015-015

RESPONDENT CITY OF PORTLAND'S
MOTION TO DISMISS

12 Respondent City of Portland moves the Board for a final opinion and order dismissing
13 this appeal for lack of jurisdiction. The letter petitioner seeks to challenge is a managerial
14 directive concerning the city-owned and managed River View Natural Area (RVNA). It is
15 neither a land use decision nor a final determination of any kind. Whether it is reviewable in any
16 forum is questionable. If it is, that forum is not LUBA and this appeal should be dismissed for
17 the reasons explained below.

18 **BACKGROUND**

19 To provide context for this motion, the City offers a brief description of the RVNA and
20 management responsibilities for it. This summary is supported by the attached Exhibits A–G.
21 The Board may consider extra-record materials in determining its jurisdiction to hear an appeal
22 and the City offers the attached exhibits to assist the Board in making this determination. *Murray*
23 *v. Multnomah County*, 56 Or LUBA 370, 373 (2008).

24 **Description of the RVNA**

25 The RVNA is a 146-acre parcel of forested land located close to the Willamette River in
26 Southwest Portland. (Exhibit A.) The City purchased this natural area in 2011, recognizing its

1 value for “significant water quality, wildlife habitat, and passive recreation benefits.” As
2 described in the council ordinance authorizing the purchase, this natural area makes up half of a
3 300-acre contiguous forest canopy and is part of a wildlife corridor that extends from Forest Park
4 in Northwest Portland to the Tryon Creek State Natural Area in Southwest Portland. It contains
5 seven streams that are tributaries to the Willamette River (Exhibit B).

6 The City purchased the property using City funds and a contribution from the
7 Metropolitan Service District (Metro). In exchange for Metro’s financial contribution, in 2011
8 the City granted Metro a conservation easement over the RVNA to preserve its wildlife habitat,
9 water quality, and passive recreational functions. Among the activities allowed under the
10 conservation easement are “public access for nature based recreation, such as hiking or nature
11 watching, environmental education and research.” Pursuant to Metro’s conservation easement,
12 the City retains the right to regulate use of the property consistent with its intent to operate the
13 RVNA as “an open space, natural area.” (Exhibit C, at 2-3.)

14 RVNA is managed by the City’s Bureau of Parks and Recreation (PPR) in consultation
15 with the City’s Bureau of Environmental Services (BES). (Exhibit F also found at
16 <https://www.portlandoregon.gov/parks/62001>). Other than the site stabilization activities
17 anticipated in the conservation easement (removal of non-native invasive vegetation and
18 replanting degraded areas), the condition of the property remains as it was at the time the City
19 bought it.

20 **RVNA Oversight**

21 Exercising his charter authority, the mayor has assigned responsibility for BES to
22 Commissioner Nick Fish and for PPR to Commissioner Amanda Fritz. (See Charter Sec. 2-302
23 and Mayor’s Executive Order, Exhibits D and E.) As commissioners in charge of these bureaus,
24 they are responsible for supervising and controlling the operations and property of the bureaus
25 they oversee. In particular, the city charter specifically authorizes the city council and the
26 commissioner in charge of PPR, Commissioner Fritz, to “impose restrictions on public use of any

1 parks, recreational areas and facilities as found needed and appropriate.” This includes limiting
2 use of any particular area to a specific class or classes of person and restricting the kinds and
3 times of public use. (See Charter Sec. 12-102, Exhibit D.)

4 Within two years of acquiring the RVNA, PPR began work on a natural area management
5 plan for the site with assistance from BES. This type of plan is a tool PPR uses to manage natural
6 areas throughout the city. The RVNA plan’s purpose is to inventory the property’s ecosystem
7 values, guide future management priorities, establish research and interpretive activities, and
8 design a compatible trail system. Work on the plan continues and is estimated to be completed in
9 September, 2015. (Exhibit F also found at <https://www.portlandoregon.gov/parks/62001>.)

10 PPR and BES became aware that mountain bikers were using the RVNA for off-road
11 mountain biking both before and after the City purchased the property. As is often the case, BES
12 and PPR were faced with several competing priorities: to maintain the RVNA’s water quality
13 and ecological functions, to complete long-term planning for the RVNA, and to address the
14 mountain biking community’s desire for places to engage in nature-based mountain biking. As
15 the commissioners in charge of BES and PPR, Commissioners Fish and Fritz concluded the best
16 way to fairly balance these priorities is to halt mountain biking activity in the RVNA until the
17 natural area management plan is completed and a citywide off-road cycling plan is funded and
18 developed. Exercising their authority as supervisors of the bureaus they manage, the
19 commissioners sent a letter on March 2, 2015 to RVNA stakeholders informing them that
20 mountain biking activity is not allowed in the RVNA as of March 16th pending completion of
21 both plans. It is this letter that petitioners have appealed to LUBA. (Exhibit G.)

22 ARGUMENT

23 The Board must dismiss this appeal because the Board’s authority is restricted to
24 reviewing land use decisions and the March 2nd letter is not a land use decision. (ORS
25 197.825(1).) A “land use decision” is a final local decision that adopts, amends, or applies the
26 statewide planning goals, a comprehensive plan, or a land use regulation. (ORS

1 197.015(10)(a)(A).) A “land use regulation” is a local zoning, land division, or similar general
2 ordinance adopted to implement a comprehensive plan. (ORS 197.015(11).) As this Board has
3 recognized repeatedly, the two key hallmarks of a land use decision are: (1) a local official or
4 decision making body is legally required by law to apply its comprehensive plan or zoning
5 regulations in the decision making process, or (2) the local official or decision maker actually
6 does so. *See Kaye v. Marion County*, 58 Or LUBA 680, 682 (2009). The appealed letter satisfies
7 neither of these hallmarks.¹

8 Neither the City’s comprehensive plan nor the zoning code regulate the subject of the
9 March 2nd letter: who may use city-owned property and for what purpose. As a result, there is no
10 applicable comprehensive plan or zoning code provision Commissioners Fish and Fritz are
11 legally required to apply or failed to apply in deciding whether mountain biking may or may not
12 occur in the RVNA. For that reason their letter does not discuss or apply the statewide planning
13 goals or the City’s zoning code or comprehensive plan and does not approve or deny any past,
14 present, or future development in the RVNA. The letter simply informs stakeholders the
15 commissioners are exercising their managerial discretion to halt one activity - mountain biking -
16 in the RVNA for now. This is the type of supervisory oversight the commissioners are expected
17 to perform. It has nothing to do with development activity in the RVNA and is not regulated by
18 the City’s comprehensive plan or zoning code.

19 Even if the March 2nd letter could be construed as applying the City’s zoning code or
20 comprehensive plan, it lacks one of the statutory prerequisites to be a land use decision: finality.
21 As explained in the letter, halting mountain biking is a step in an ongoing planning process. The
22 natural area management plan, which is not yet completed, will address appropriate recreational
23 activities in the RVNA. The proposed citywide off-road cycling plan will identify in which city
24 parks or natural areas mountain biking is best accommodated. The letter does not foreclose future

25 _____
26 ¹ The letter does not purport to be a land division, site review, or design review determination and
is not a limited land use decision as defined in ORS 197.015(12) for that reason.

1 resumption of mountain biking in the RVNA. It expresses a managerial determination to halt
2 that activity until the necessary natural resource and parks planning is complete. In all other
3 respects, the letter changes nothing about the existing status or development of the RVNA.

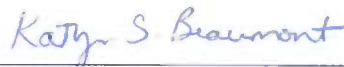
4 Any doubt about this was foreclosed by a recent communication to interested parties by
5 Commissioner Fritz. In response to concerns about the decision, she declared: "We are not saying
6 River View will never be used for mountain biking, rather just not now, before the citywide
7 assessment of appropriate places for cycling is funded and completed." (Exhibit F;
8 <https://www.portlandoregon.gov/parks/62001>.)

9 As a practical matter, the City routinely decides who may use City-owned lands and for
10 what purposes. None of these determinations are land use decisions. For example, the City as a
11 landowner restricts camping, skateboarding, fishing, swimming, and similar activities in parks
12 and other public spaces for the benefit of other users, the physical integrity of the public space,
13 and the public health, safety, and welfare. (See PCC Chapter 20.12 (Prohibited Conduct).) In
14 doing so, the City is not exercising its land use planning responsibilities and its decisions as a
15 land owner are not subject to LUBA review. The March 2nd letter suspending mountain biking
16 activity in the RVNA is no different and is not a land use decision.

17 For the reasons stated above, the City requests the Board to find the appealed letter is not
18 a land use decision and to dismiss the petitioner's appeal.

19 DATED: April 13, 2015.

20 Respectfully submitted,

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23 KATHRYN S. BEAUMONT, OSB #800146
24 Chief Deputy City Attorney
25 LINLY F. REES, OSB #945098
26 Senior Deputy City Attorney
Attorneys for Respondent City of Portland



- Legend**
- River View Natural Area
 - 10-foot Contours
 - Streams - Perennial
 - Streams - Intermittent (in RVNA)
 - Wetlands
 - Culvert
 - Bicycle Network
 - Bus Stops
 - Sidewalk
 - Powers Marine Park



Source: ES&V, Inc. aerial imagery, 2015; ES&V, Inc. topographic data, 2015; ES&V, Inc. wetlands data, 2015; ES&V, Inc. bicycle network data, 2015; ES&V, Inc. bus stop data, 2015; ES&V, Inc. sidewalk data, 2015; ES&V, Inc. culvert data, 2015; ES&V, Inc. stream data, 2015; ES&V, Inc. contour data, 2015; ES&V, Inc. cemetery data, 2015; ES&V, Inc. college data, 2015; ES&V, Inc. park data, 2015; ES&V, Inc. map data, 2015.

Site Base Map

River View Natural Area
Management Plan

LUBA No. 2015-015
Exhibit A

ORDINANCE No. 184564

*Authorize acquisition of 146 acres of land in southwest Portland to preserve as a natural area (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The Trust for Public Land ("TPL") holds an option to purchase 146 acres of land in southwest Portland between SW Macadam Avenue and SW Palatine Hill Road, the undeveloped, forested portion of River View Cemetery.
2. The property is comprised of Tax Lot 1S1E27DA 200; and portions of Tax Lot 1S1E22 200 and Tax Lot 1S1E27 100, depicted in Exhibit A to this Ordinance ("Property"). River View Cemetery Association will complete a lot line adjustment prior to closing, creating a legal lot for transfer.
3. TPL has agreed to exercise its option to purchase the Property and to sell it to the City of Portland ("City") for \$11,250,000 which is \$2,750,000 under the fair market value according to an independent appraisal. The terms of the purchase are stipulated in an April 1, 2011 "Agreement for Sale of Real Property" ("Agreement") between the City and TPL.
4. Portland Parks & Recreation ("Parks") has determined that the Property lies within the Westside Wildlife Corridor, a Parks Local Share target area, meets acquisition criteria of the Natural Area Acquisition Strategy, and as such qualifies for a share of natural area acquisition funds available in the City of Portland Metro Local Share Program.
5. The Bureau of Environmental Services ("BES") has determined that significant water quality, wildlife habitat, and passive recreation benefits will occur as a result of the City's acquisition and management of the properties, and that it meets the guidelines of the Bureau's Grey to Green Initiative.
6. Both bureaus assert that the acquisition addresses the need to protect important terrestrial wildlife connectivity and critical fish habitat in the lower Willamette River. The acquisition area is an undeveloped portion of River View Cemetery, a unique ecological asset to the City that supports an upland wildlife corridor from Forest Park to Tryon Creek State Natural Area. The Property comprises half of a 300-acre contiguous forest canopy. Seven undeveloped streams (totaling 2.2 miles) flow through the Property as direct tributaries to the Willamette River. The tributaries and their forested buffers support critical habitat in the lower Willamette, where there are documented Pacific lamprey, coastal cutthroat trout, steelhead, chum, coho, and chinook.

7. Metro will provide \$2,000,000 of the purchase price to the City in exchange for a conservation easement over the 146 acres pursuant to the terms stipulated in an April 1, 2011 Agreement for Purchase and Sale of a Conservation Easement ("Easement Agreement") between the City and Metro.
8. According to the terms of the Agreement, at closing the City will deposit \$10,500,000 of the \$11,250,000 purchase price into escrow and execute a promissory note for the remaining \$750,000 in favor of TPL. The funding package for the purchase will come from the following sources:
 - 1) \$6,000,000 from BES' Grey to Green Initiative, Sewer System Operating Fund FY 2010-2011 Budget, Bureau of Environmental Services, WBS element E10190.L65;
 - 2) \$2,500,000 from Parks from Portland's Local Share of the 2006 Metro Natural Areas Bond Measure WBS element P00493.CL, and
 - 3) \$2,000,000 from Metro through the purchase of a conservation easement.
9. Funding for payoff of the \$750,000 promissory note is anticipated from proceeds from an Oregon State Parks Grant, submitted in April of 2011.
10. The Director of Parks and BES estimate a one-time site stabilization cost of \$220,000 to prepare the Property for public ownership. The expenses are to be funded from Grey to Green and Local Share acquisition funds. Additional restoration costs over the next four years are estimated at an additional \$325,000, which will be raised from donations and grants.
11. The Director of Parks estimates that the on-going operation and maintenance (O&M) costs will ramp up as restoration is completed over the first five years. The expected O&M requests will be FY 12-13: \$80,000, FY 13-14: \$130,000, FY 14-15: \$180,000, and FY 15-16 and thereafter: \$255,000.
12. Assuming due diligence results are acceptable, Parks and BES recommend acquisition of the Property for use as natural area because it is in the public interest and for the general benefit and use of the people of the City of Portland for watershed health and access to nature.

NOW, THEREFORE, The Council Directs:

- a. The Commissioner of Parks and Director of BES are authorized to execute closing documents and take all other actions necessary to close the transaction in accordance with the Agreement.

- b. The Commissioner of Parks and Director of BES are authorized to execute a promissory note with TPL for the loan of \$750,000, once it has been approved as to form by the City Attorney. The promissory note shall be substantially similar to the "Unsecured Promissory Note" attached as Exhibit B to this ordinance.
- c. The Commissioner of Parks and Director of BES are authorized to grant a conservation easement to Metro over the 146 acre Property that is substantially similar to the "Form of Conservation Easement" attached as Exhibit C to this Ordinance, and approved as to form by the City Attorney.
- d. The Director of Parks is directed to fund \$30,000 from the Parks local share funds as a one time cost to prepare the Property for public ownership, and is directed to add 146 acres of the Property to the City's Natural Area Park inventory;
- e. The Director of BES is directed to fund \$190,000 from Grey to Green Initiative funds as a one time cost to prepare the Property for public ownership.
- f. In accepting responsibility for the Property for park natural area, the Council acknowledges the need to fund the on-going O&M cost estimated to ramp up to \$255,000 per year, and directs the Bureau of Management and Finance to transfer these funds from the General Fund to the Parks and Recreation budget beginning as per the following schedule, to be included in Parks budget requests. FY 11-12: \$8,000, FY 12-13: \$80,000, FY 13-14: \$130,000, FY 14-15: \$180,000, and FY 15-16 and thereafter: \$255,000

Section 2. The Council declares that an emergency exists in order to avoid delay in the completion of this high priority land acquisition; therefore, this Ordinance shall be in force and effect from and after its passage by Council.

Passed by the Council **MAY 04 2011**
Commissioner Fish
Commissioner Dan Saltzman
Prepared by: Deborah Lev

LaVonne Griffin-Valade
Auditor of the City of Portland
By *Emily Matasan*
Deputy

Agenda No.
ORDINANCE NO. 184564
 Title

✓ *Authorize acquisition of 146 acres of land in southwest Portland to preserve as a natural area (Ordinance)

INTRODUCED BY Commissioner/Auditor: Fish, Saltzman	CLERK USE: DATE FILED <u>APR 29 2011</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Adams Position 1/Utilities - Fritz Position 2/Works - Fish <i>Niata</i> Position 3/Affairs - Saltzman <i>Dan Saltzman</i> Position 4/Safety - Leonard	LaVonne Griffin-Valade Auditor of the City of Portland By: <i>[Signature]</i> Deputy
BUREAU APPROVAL Bureau: Parks & Recreation Bureau Head: Zari Santner <i>Zari Santner</i> Prepared by: Deborah Lev: ack Date Prepared: April 15, 2011	ACTION TAKEN:
Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Council Meeting Date May 4, 2011	
✓ City Attorney Approval	

AGENDA
TIME CERTAIN <input checked="" type="checkbox"/> Start time: 10:08 am Total amount of time needed: 20 (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	✓	
2. Fish	✓	
3. Saltzman	✓	
4. Leonard	✓	
Adams	✓	

Multnomah County Official Records
R Weldon, Deputy Clerk

2011-081746



\$101.00

07/22/2011 02:58:42 PM

1R-EASEMT
\$70.00 \$11.00 \$15.00 \$5.00

Cnt=1 Stn=21 ATESB

After recording return to:

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

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this "Easement") is entered into this 22nd day of July, 2011, by and between City of Portland ("Grantor"), by and through its Bureau of Parks and Recreation and by and through its Bureau of Environmental Services and Metro, an Oregon municipal corporation ("Holder").

RECITALS

A. Grantor is the fee simple owner of that certain real property approximately 145.7 acres in size, located in the County of Multnomah, State of Oregon, formerly a portion of River View Cemetery, commonly known as Tax Lot 100 in Section 27 and Tax Lot 200 in Section 27DA, in Township 1 South, Range 1 East of the Willamette Meridian, and more particularly described on the attached Exhibit A (the "Property").

B. On November 7, 2006, the voters approved Ballot Measure 26-80 (the "2006 Natural Areas Bond Measure"), which provided Holder with funds for the acquisition of natural areas from willing sellers. The 2006 Natural Areas Bond Measure was designed to provide Holder with the ability to protect the region's significant natural areas, fish and wildlife habitat, greenways, water quality, and lands near rivers and streams.

C. The Property is located within the Willamette Greenway Target Area, a target area specifically identified in the 2006 Natural Areas Bond Measure, which area is regionally significant because it provides protection for wildlife habitat and water quality, a connected riverfront corridor for wildlife and people, a refuge and rearing habitat for salmonids.

D. Grantor has purchased the Property with funds provided, in part, by Holder. In exchange for receipt of such funds, Grantor has agreed to grant to Holder a conservation easement over a 142.96-acre portion of the Property (the "Easement Area") to preserve the natural features of the Property that provide significant wildlife habitat values and contribute to water quality. The Easement Area is more particularly described on the attached Exhibit B.

For valuable consideration, the receipt of which is hereby acknowledged by Grantor, and the mutual covenants, terms, conditions, and restrictions contained herein, the parties hereby agree as follows:

AGREEMENT

1. **Grant of Conservation Easement.** For and in consideration of the sum of TWO MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$2,250,000) and of the mutual promises, terms, conditions, restrictions and undertakings herein set forth, Grantor hereby voluntarily grants to Holder a perpetual, non-possessory conservation easement, in gross, on, over, under, and across the Easement Area. This Easement is being created and acquired in accordance with ORS 271.715 to 271.795, and the provisions herein shall be construed and applied accordingly.

PAID IN FULL MUD 407704

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2. Purpose.

(a) General Purpose. The general purposes of this Easement are to ensure that the Easement Area will be retained forever predominantly in its natural condition for:

1. "The protection of 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));
2. "The preservation of land areas for outdoor recreation by, or the education of, the general public" (as that phrase is used in 26 U.S.C. §170(h)(4)(A)(i));
3. "The preservation of certain open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public ... and will yield a significant benefit" (as that phrase is used in 26 U.S.C. §170(h)(4)(A)(iii)); and
4. "Protecting natural, scenic, or open space values of real property, ensuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, [and] maintaining or enhancing air or water quality..." (as that phrase is used in ORS 271.715(1)).

(b) Specific Purposes; Conservation Values. The more specific purpose of this Easement is to prevent any use of, or activity on, the Easement Area that will impair or interfere with the Conservation Values, as such term is defined herein. Grantor and Holder have identified that the Easement Area provides protection for important wildlife habitat and water quality, connects riverfront natural areas that function as important corridors for wildlife and people, and is an important refuge and rearing habitat for salmonids along the Willamette River's main stem. These characteristics of the Easement Area (the "Conservation Values") shall be preserved, protected, and enhanced under this Easement. The Conservation Values include:

1. At 145 acres, the Property contains the largest remaining unprotected and undeveloped habitat patch in the West Hills Wildlife Corridor. The large habitat patch size provides critical interior habitat particularly for species that demonstrate patch-size preference. Additionally, native species diversity and wildlife population stability increase with increasing habitat patch size.
2. The Property supports mature Douglas fir and western red cedar forest including large trees, vertical diversity and canopy gaps. The higher level of structural diversity in mature forest structure tends to host more native wildlife.
3. The protection of seven intermittent and perennial streams and the associated riparian forest provides benefits to water quality and wildlife, including stream shade for favorable water temperatures, stream bank protection, runoff filtration, large wood recruitment, wildlife breeding habitat and travel corridors.
4. The Property's location, due north of Tryon Creek State Park, helps to create and maintain a key connection within the West Willamette Wildlife Corridor.
5. Cold water flowing from the perennial streams located on the Property creates much needed temperature refuge for salmonids in the main-stem Willamette River.

3. Prohibited and Permitted Uses.

(a) Prohibited Uses. Subject to encumbrances of record and the terms of the Dunthorpe-Riverdale Service District and City of Portland Sewage Transportation, Treatment, Maintenance and Engineering

Services Agreement adopted pursuant to City Ordinance No. 180597, Grantor shall not engage in any activity on, or use of, the Easement Area that is inconsistent with the terms of this Easement or materially interferes with or impairs the Conservation Values. Without limiting the generality of the forgoing, the activities and uses described on the attached Exhibit C are expressly prohibited.

(b) Permitted Uses. Grantor reserves all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that are not inconsistent with the terms of this Easement or expressly prohibited herein. Grantor intends to operate the Property as an open space, natural area. Grantor's permitted uses shall therefore include public access for nature based recreation, such as hiking and nature watching, environmental education and research. Grantor reserves the right to enter the Easement Area at any time for the purpose of managing, maintaining, and improving the Easement Area in a manner consistent with the intent of this Easement. Permitted maintenance activities include, but are not limited to, vegetation management and riparian channel restoration. Permitted improvement activities include, but are not limited to, pruning, invasive species removal, planting, habitat restoration, stream bank stabilization and/or restoration, and monitoring. Grantor shall provide Holder with not less than thirty (30) days written notice prior to (a) applying for any building, or construction permit, and (b) undertaking any activity that could materially interfere with or impair the Conservation Values.

4. Initial Stabilization Actions. As of the Effective Date of this Easement, Holder and Grantor acknowledge that the Property is heavily impacted by multiple invasive species, degrading overall forest health and threatening the existing canopy. Although Grantor will be adopting detailed Vegetation and Site Stabilization and Management Plans after the Effective Date of this Agreement, to prevent further degradation of the site and to protect the Conservation Values, Grantor has agreed to perform certain stabilization activities during the first three years it owns the Property, which activities are listed on the attached Exhibit D (the "Required Stabilization Activities"). In the event Grantor fails to substantially perform the Required Stabilization Activities within the three-year time period, Holder will have the right, but not the obligation, to perform (or cause to be performed) such activities; provided, however, that Holder shall first give written notice to Grantor of its noncompliance with this Section 4 and provide Grantor with a reasonable period to cure. Grantor shall reimburse Holder for all costs and expenses incurred by Holder associated with such performance. This remedy shall be in addition to any other remedy available to Holder in Section 6 below.

5. Baseline Documentation. The current condition of the Easement Area is documented in an inventory of relevant features of the Easement Area, dated July 14, 2011, on file at the offices of Holder, and signed by Grantor for identification purposes (the "Baseline Documentation"). The parties agree that the Baseline Documentation provides an accurate representation and description of the Easement Area at the time of this grant. The Baseline Documentation is intended to serve as an objective, although not exclusive, information baseline for monitoring compliance with the terms of this Easement. Holder shall have the right to access the Easement Area at any time for the purpose of monitoring compliance with the terms of this Easement.

6. Enforcement and Remedies.

(a) Notice of Violation. Holder shall have the right to prevent any use of, or activity on, the Easement Area that is inconsistent with the purpose and terms of this Easement. If Holder determines that Grantor, or third parties under Grantor's authority or permission, are in violation of the terms of this Easement, Holder shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. In the event that such violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purpose and terms of this Easement, such notice shall demand that Grantor, at Grantor's sole cost and expense, restore the portion of the Easement Area so injured to its prior condition in accordance with a plan approved by Holder.

(b) Failure to Cure. If Grantor fails to cure a violation within 30 days after Grantor's receipt of notice thereof from Holder, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing the violation within the 30-day period, Holder may bring an action at law or in equity to (i) enforce the terms of this Easement, (ii) enjoin the violation by a temporary, preliminary, and/or permanent injunction, (iii) recover any damages to which Holder may be entitled for such violation of the terms of this Easement, and (iv) require the restoration of the Easement Area to the condition and appearance that existed prior to such violation.

(c) Emergency Enforcement. If Holder, in its sole discretion, reasonably determines that the circumstances require immediate action to prevent or mitigate significant damage to the Easement Area, Holder may enter the Easement Area to prevent or mitigate further damage to or alteration of the Easement Area necessary to protect the Conservation Values or otherwise pursue its remedies under this Section 5 without prior notice to Grantor and without waiting for the expiration of the cure period set forth above in subsection 5(b).

(d) Nature of Remedies. Holder shall have available all legal and equitable remedies to enforce Grantor's obligations hereunder. Grantor agrees that Holder's remedies at law for any violation of the terms of this Easement are inadequate, and that Holder shall be entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which Holder may be entitled, including without limitation specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Holder's rights under this Section 5 shall be cumulative, in addition to all remedies now or hereafter existing at law or in equity, and apply equally in the event of either actual or threatened violations of the terms of this Easement.

(e) Costs of Enforcement. Grantor shall reimburse Holder for any reasonable costs or expenses incurred by Holder in enforcing the terms of this Easement necessitated by Grantor's violation of the terms of this Easement including reasonable court costs, not to include attorney's fees, and costs of restoration mitigation.

(f) Holder's Discretion to Enforce. Enforcement of the terms of this Easement is at the discretion of Holder. Any forbearance by Holder to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees, or licensees shall not be deemed or construed to be a waiver by Holder of such term under this Easement. No delay or omission by Holder in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

(g) Waiver of Certain Defenses. Grantor acknowledges that it has carefully reviewed this Easement and has had the opportunity to consult with and been advised by legal counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Holder or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, adverse possession, or prescription.

(h) Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Holder to bring any action against Grantor to abate, correct, or restore any condition on the Easement Area or to recover damages for any injury to, or change in, the Easement Area resulting from (1) causes beyond Grantor's control including, without limitation, natural changes, fire, flood, storm or earth movement, acts of trespassers, or (2) any reasonable and prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes.

7. Liability and Indemnification.

(a) Liability. The parties acknowledge and agree that because Grantor is the fee owner of the Property, except as specifically provided for under subsection (b) below, the general liability for risks, damages, injuries,

claims, or costs arising by virtue of Grantor's ownership and use of the Property shall remain with Grantor as a normal and customary incident of the right of Property ownership. Nothing in this Easement shall be construed as giving rise to any right or ability of Holder to become an "owner" or "operator" of the Easement Area within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or ORS Chapters 465 and 466, as amended.

(b) Indemnification. To the extent permitted by Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300, Grantor shall indemnify, defend, and hold harmless Holder (and Holder's officers, employees and agents) from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Grantor and Grantor's invitees on the Property. To the extent permitted by Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300, Holder shall indemnify, defend, and hold harmless Grantor from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from, arising out of, or relating to the activities of Holder (or Holder's officers, employees and agents) on the Property, except to the extent such damages are due to Grantor's or Grantor's invitees' negligence or willful misconduct, or to any breach of this Easement by Grantor or Grantor's invitees.

8. Covenants Running With the Land. The parties acknowledge and agree that the covenants and agreements set forth in this Easement are intended to bind Grantor, Holder, and their respective successors and assigns. The Easement Area shall be held, conveyed, mortgaged, pledged as security for a debt, leased, used, and occupied subject to the covenants, conditions, restrictions, and other limitations set forth in this Easement (the "Restrictions"). All and each of the Restrictions are imposed as equitable servitudes upon the Easement Area and every part thereof shall run with the land. Furthermore, all and each of the Restrictions shall be binding upon and burden, and shall inure to the benefit of, all persons having or acquiring any right, title, or interest to either the Easement Area or the Property.

9. Amendment. Grantor and Holder may mutually agree in writing to amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Holder under any applicable laws, including 26 U.S.C. § 170(h), as amended (or any successor provision(s) then applicable), and ORS 271.715-795. In no event shall the "economic hardship" of Grantor constitute a changed circumstance that would allow Grantor to unilaterally amend this Easement.

10. Assignment. With the written consent of Grantor, which consent shall not be unreasonably withheld, this Easement is transferable by Holder, but Holder may only assign its rights and obligations hereunder to an organization that is a "qualified organization" at the time of the transfer under 26 U.S.C. § 170(h)(3) (or any successor provision then applicable) and authorized to acquire and hold conservation easements under ORS 271.715 to 271.795 (or any successor provisions then applicable). Holder shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. In the event that an assignee assumes the obligations of Holder hereunder, then Holder shall have no further liability with respect to this Easement.

11. Termination of Easement. This Easement can only be terminated or extinguished (1) by judicial proceedings in a court having jurisdiction and (2) if there is a total loss of all Conservation Values on the Easement Area. Subsequent to such termination or extinguishment, Grantor shall pay Metro a proportionate share of the proceeds from any sale, exchange, or involuntary conversion of the Easement Area after the satisfaction of prior claims. That proportionate share shall be equal to the fair market value of this Easement at the time of termination or extinguishment, as determined by a competent appraiser; provided however, in no event shall the amount Holder is entitled to be less than the consideration for this Easement as stated in Section 1.

12. Condemnation. If all or any part of the Easement Area is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate any portion of this Easement, Grantor and Metro shall act jointly to recover the full value of the

interests in the Easement Area subject to the taking or in-lieu purchase and all direct or incidental damages resulting therefrom. Metro shall be entitled compensation for its loss, which amount shall be equal to then-current fair market value of the portion of the Easement being terminated, as determined by a competent appraiser. All expenses reasonably incurred by Grantor and Metro in connection with the taking shall be paid out of the amount recovered.

13. Recording. Grantor shall immediately record this instrument, and any amendment agreed to pursuant to Section 8, in the official records of the county within which the Property is located, and in any other appropriate jurisdictions, and Holder may re-record it at any time as may be required to preserve Holder's rights in this Easement.

14. Notice and 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 mail, postage prepaid, to the address set forth below. Any party may change the address to which its notices are to be sent by duly giving notice pursuant to this Section.

To Grantor:	Portland Parks & Recreation Property Management 1120 SW 5th, Room 1302 Portland OR 97204
	Bureau of Environmental Services Watershed Services Acquisition Manager 1120 SW 5th, Room 1000 Portland, OR 97204
With a copy to:	Office of the City Attorney 1221 SW 4th Ave. Portland, OR 97204
To Holder:	Metro Natural Areas Program Director 600 NE Grand Avenue Portland, OR 97232
With a copy to:	Office of Metro Attorney 600 NE Grand Avenue Portland, OR 97232

15. General Provisions.

(a) Governing Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon.

(b) Liberal Construction and Conservation Intent. 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. Any ambiguities in this Easement shall be construed in a manner which best effectuates the Conservation Values for the Easement Area.

(c) Changed Circumstances. Grantor and Holder acknowledge that future conditions may change in the areas neighboring the Property, including without limitation, increased development, land use, and zoning changes. Grantor and Holder further acknowledge that such future conditions may result in various hardships to Grantor by virtue of the restrictions contained in this Easement, including without limitation, restrictions on the ability to develop the Property. However, Grantor and Holder expressly intend that this Easement continue in perpetuity regardless of such changes conditions and circumstances and regardless of hardship, whether such hardship is economic or otherwise. In no event shall the hardship of Grantor constitute a changed circumstance that would allow Grantor to unilaterally terminate this Easement.

(d) 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.

(e) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement Area and supersedes all prior discussions, negotiations, understandings, or agreements relating to the 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 8.

(f) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon assignment of that party's interest in the Easement or transfer of the Easement Area, except that liability for acts or omissions occurring prior to transfer shall survive assignment or transfer.

IN WITNESS WHEREOF, the parties have executed this Easement as of the date first set forth above.

GRANTOR:

THE CITY OF PORTLAND, by and through its
Bureau of Parks

By: Nick Fish

Name: Nick Fish

Title: Commissioner

THE CITY OF PORTLAND, by and through its
Bureau of Environmental Services

By: Will Flynn

Name: Dean Marriott

Title: Director of BES

APPROVED AS TO FORM

Paula Nguyen

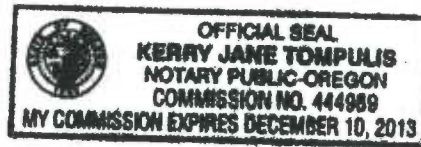
CITY OF PORTLAND
LUBA No. 2015-015

Exhibit C

State of OREGON
County of MULTNOMAH

This instrument was acknowledged before me on July 21, 2011, by
Nick Fish as Commissioner of The City of Portland.

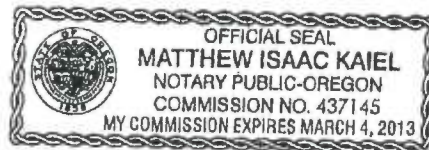
Kerry Jane Tomplis
Notary Public - State of Oregon



State of OREGON
County of Multnomah

This instrument was acknowledged before me on July 21st, 2011, by
William F. Ryan as designee of Dean Marriott of The City of Portland.

[Signature]
Notary Public - State of Oregon



This Conservation Easement is approved as to form and content and accepted by Metro, an Oregon municipal corporation, as of the date set forth above.

HOLDER:

METRO, an Oregon municipal corporation

By: 

Name: Daniel B. Cooper

Title: Acting Chief Operating Officer



State of OREGON

County of MULTNOMAH

This instrument was acknowledged before me on July 21, 2011, by Daniel B. Cooper as Acting Chief Operating Officer of Metro.



Notary Public - State of Oregon

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

The purpose of this legal description is to describe a portion of Tax Lot 100 as shown on Tax Map 1S 1E 27 PORTLAND, Tax Lot 200 as shown on Tax Map 1S 1E 27DA PORTLAND and Tax Lot 200 as shown on Tax Map 1S 1E 22 PORTLAND, lying in the Southeast quarter of Section 22, the Southwest Quarter of Section 26, and in Section 27, Township 1 South, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, State of Oregon, also being a portion of that land described in Deed Book 68, Page 93, recorded June 29, 1883, in Multnomah County, State of Oregon; being more particularly described as follows:

Commencing at a found monument at the Southwest Corner of Section 22, Township 1 South, Range 1 East, Willamette Meridian; thence along the South line of said Section 22, South 88° 28' 53" East 1876.70 feet to the West line of the Hector B. Campbell DLC 44, as described in Deed Book 68, Page 93, recorded June 29, 1883, Multnomah County; thence along said DLC line, South 03° 12' 31" West 1578.53 feet to the North Right-of-Way line of S.W. Palatine Hill Road; thence running on said Right-of-Way line South 86° 47' 29" East 25.00 feet; thence South 03° 12' 31" West 329.06 feet to **THE TRUE POINT OF BEGINNING** of the tract to be described; thence departing said Right-of-way line, South 86° 46' 36" East 285.41 feet to a point; thence North 20° 39' 07" East 301.05 feet to a point; thence North 58° 10' 01" East 399.46 feet to a point; thence North 77° 56' 52" East 332.14 feet to a point; thence North 45° 25' 25" East 197.29 feet to a point; thence North 72° 46' 22" West 90.27 feet to a point; thence South 87° 41' 15" West 142.09 feet to a point; thence South 50° 01' 31" West 173.35 feet to a point; thence North 65° 32' 36" West 66.03 feet to a point; thence North 07° 01' 39" East 45.74 feet to a point; thence North 45° 32' 58" East 395.12 feet to a point; thence North 43° 35' 25" East 436.16 feet to a point; thence North 13° 24' 33" West 159.65 feet to a point; thence North 15° 13' 12" East 197.44 feet to a point; thence North 07° 44' 06" West 461.05 feet to a point; thence North 51° 36' 19" East 329.51 feet to a point on the Westerly Right-of-Way of S.W. Macadam Avenue (Road 680) and to a point of curvature; thence on the arc of a 1473.00 foot radius curve, to the left, through a central angle of 23° 18' 07" (the long chord bears South 19° 44' 06" East 594.94 feet) an arc length of 599.06 feet to a point; thence South 31° 23' 10" East 2899.63 feet to the Northeasterly corner of that tract of land described in Book 2171, Page 114, recorded June 15, 1963, Multnomah County Deed Records; thence departing said Westerly Right-of-Way and running along the Northerly line of said deed, South 58° 31' 32" West 50.00 feet to the Northwest corner of said Deed; thence along the Westerly line of said deed, South 31° 23' 10" East 80.00 feet to the southwesterly corner of said deed; thence North 58° 36' 50" East 50.00 feet to said Westerly Right-of-Way of S.W. Macadam Avenue ; thence along said Westerly Right-of-Way, South 31° 23' 10" East 235.32 feet to a point; thence leaving said Right-of-Way South 50° 16' 46" West, 293.01 feet to an angle point on the North line of the tract recorded in Book 388, Page 413, of the Multnomah County Deed Records; thence continuing along said North line and its Westerly extension also being on the North line of that property conveyed to Lewis and Clark College in Book 691, Page 572 Multnomah County deed records, South 89° 48' 36" West 3263.63 feet to a point on the North Right-of-Way of S.W. Palatine Road; thence along said Northerly Right-of-Way, North 40° 01' 50" West 43.33 feet; thence continuing on said Right-of-Way line, North 03° 12' 31" East 1204.92 feet to **THE TRUE POINT OF BEGINNING**.

Exhibit B

LEGAL DESCRIPTION OF EASEMENT AREA

The purpose of this legal description is to describe a portion of Tax Lot 100 as shown on Tax Map 1S 1E 27 PORTLAND, Tax Lot 200 as shown on Tax Map 1S 1E 27DA PORTLAND and Tax Lot 200 as shown on Tax Map 1S 1E 22 PORTLAND, lying in the Southeast quarter of Section 22, the Southwest Quarter of Section 26, and in Section 27, Township 1 South, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, State of Oregon, also being a portion of that land described in Deed Book 68, Page 93, recorded June 29, 1883, in Multnomah County, State of Oregon; being more particularly described as follows:

Commencing at a found monument at the Southwest Corner of Section 22, Township 1 South, Range 1 East, Willamette Meridian; thence along the South line of said Section 22, South 88° 28' 53" East 1876.70 feet to the West line of the Hector B. Campbell DLC 44, as described in Deed Book 68, Page 93, recorded June 29, 1883, Multnomah County; thence along said DLC line, South 03° 12' 31" West 1578.53 feet to the North Right-of- Way line of S.W. Palatine Hill Road; thence running on said Right-of- Way line South 86° 47' 29" East 25.00 feet; thence South 03° 12' 31" West 329.06 feet to **THE TRUE POINT OF BEGINNING** of the tract to be described; thence departing said Right-of-way line, South 86° 46' 36" East 285.41 feet to a point; thence North 20° 39' 07" East 301.05 feet to a point; thence North 58° 10' 01" East 399.46 feet to a point; thence North 77° 56' 52" East 332.14 feet to a point; thence North 45° 25' 25" East 197.29 feet to a point; thence North 72° 46' 22" West 90.27 feet to a point; thence South 87° 41' 15" West 142.09 feet to a point; thence South 50° 01' 31" West 173.35 feet to a point; thence North 65° 32' 36" West 66.03 feet to a point; thence North 07° 01' 39" East 45.74 feet to a point; thence North 45° 32' 58" East 395.12 feet to a point; thence North 43° 35' 25" East 436.16 feet to a point; thence North 13° 24' 33" West 159.65 feet to a point; thence North 15° 13' 12" East 197.44 feet to a point; thence North 07° 44' 06" West 461.05 feet to a point; thence North 51° 36' 19" East 329.51 feet to a point on the Westerly Right-of-Way of S.W. Macadam Avenue (Road 680) and to a point of curvature; thence on the arc of a 1473.00 foot radius curve; to the left, through a central angle of 23° 18' 07" (the long chord bears South 19° 44' 06" East 594.94 feet) an arc length of 599.06 feet to a point; thence South 31° 23' 10" East 2899.63 feet to the Northeasterly corner of that tract of land described in Book 2171, Page 114, recorded June 15, 1963, Multnomah County Deed Records; thence departing said Westerly Right-of-Way and running along the Northerly line of said deed, South 58° 31' 32" West 50.00 feet to the Northwest corner of said Deed; thence along the Westerly line of said deed, South 31° 23' 10" East 80.00 feet to the southwesterly corner of said deed; thence North 58° 36' 50" East 50.00 feet to said Westerly Right-of-Way of S.W. Macadam Avenue ; thence along said Westerly Right-of-Way, South 31° 23' 10" East 235.32 feet to a point; thence leaving said Right-of-Way South 50° 16' 46" West, 293.01 feet to an angle point on the North line of the tract recorded in Book 388, Page 413, of the Multnomah County Deed Records; thence continuing along said North line and its Westerly extension also being on the North line of that property conveyed to Lewis and Clark College in Book 691, Page 572 Multnomah County deed records,

Exhibit B - Continued

South 89° 48' 36" West 3263.63 feet to a point on the North Right-of-Way of S.W. Palatine Road; thence along said Northerly Right-of-Way, North 40° 01' 50" West 43.33 feet; thence continuing on said Right-of-Way line, North 03° 12' 31" East 1204.92 feet to **THE TRUE POINT OF BEGINNING**.

EXCEPTING THEREFROM: a portion of that land described in Deed Book 68, Page 93, recorded June 29, 1883, in Multnomah County, State of Oregon; being more particularly described as follows:

Commencing at a found monument at the South one-quarter corner of Section 22, Township 1 South, Range 1 East, Willamette Meridian; thence along the South line of said Section 22, South 88° 13' 53" East 499.66 feet to a point on the Southeasterly line of Adjusted Tract 1 of said Survey; thence along said Southeasterly line the following two courses: North 07° 44' 06" West 193.15 feet; thence North 51° 36' 19" East 141.56 feet to a point being 205.00 feet Right, Station 34+89.38 of the Legal Centerline of SW Macadam Avenue (State Highway 43), formerly known as County Road No. 680 and being **THE TRUE POINT OF BEGINNING** of the tract to be described; thence continuing North 51° 36' 19" East, along said Southeasterly line 187.94 feet to the Westerly right-of way line of said SW Macadam Avenue, Station 34+06.35, 40.00 feet right of the Legal Centerline and at a point of curvature; thence along said Westerly Right-of-Way on the arc of a 1473.00 foot radius curve, to the left, through a central angle of 23° 18' 07" (the long chord bears South 19° 44' 06" East 594.94 feet) an arc length of 599.06 feet, Station 39+89.15, 40.00 feet right of Legal Centerline; thence continuing along said Right-of-way line, South 31° 23' 10" East, 137.10 feet to Station 41+26.85, 40.00 feet right of said Centerline; thence leaving said right-of-way line, South 58° 36' 50" West 165.00 feet to Station 41+26.85, 205.00 feet right of said Centerline; thence North 31° 23' 10" West 137.10 feet to Station 39+89.15, 205.00 feet right of said centerline and being a point of curvature; thence on the arc of a 1638.00 foot radius curve, to the right, through a central angle of 19° 58' 56" (the long chord bears North 21° 23' 42" West 568.37 feet) an arc length of 571.26 feet to **THE TRUE POINT OF BEGINNING**.

Exhibit C

Grantor's Prohibited Uses and Activities

1. The partition, division, subdivision, or *de facto* division of the Easement Area.
2. Residential, commercial, or industrial use, activities, improvements, or development of any kind, except in support of permitted uses such as environmental education or nature-based recreation including soft surface trails, viewing platforms, kiosks and signage.
3. The excavating, draining, dredging, mining, drilling, removing or exploring for or extracting of minerals, oil, gas, coal, and other hydrocarbons, soils, sands, gravel, rocks or any other materials on or below the surface of the Easement Area.
4. Unless as part of a restoration activity, the manipulation or alteration, diminution, or drainage of any natural water course, wetland, stream bank, riparian area, shoreline, or body of water on the Easement Area, any activity that causes or is likely to cause significant pollution of any surface of subsurface waters, or any use or activity that causes or is likely to cause significant soil degradation or erosion.
5. Agricultural activities of any kind, including, without limitation, the establishment and maintenance of a livestock corral, personal gardens, row crops, haying, grazing, livestock watering, or other pasture uses.
6. The placing, filling, storing, processing, disposing, dumping, depositing, abandonment, discharging, or release of any gaseous, liquid, solid, or hazardous wastes, substances, materials, trash, or debris of whatever nature on, in, over, or under the ground or into the surface or ground water of the Easement Area.
7. The introduction or planting of any non-native, noxious, or invasive species; provided, however, that non-native, non-noxious, and non-invasive species may be introduced for temporary erosion control.

Exhibit D

Required Vegetation Stabilization Activities:

- 1) Release 80% of native canopy from invasive clematis and ivy to support mature forest structure and maintain cool water in streams.
- 2) Treat 100% of Early Detection and Rapid Response (EDRR) weeds to improve interior forest habitat.
- 3) Decrease groundcover ivy and blackberry to <20% in high priority areas (riparian, wetlands) to promote native species diversity and forest structural diversity.

Required Site Stabilization and Management Activities:

- 1) Mark Property boundaries and install signage to identify the Property as a City-owned natural area
- 2) Install barriers and fencing as needed to control unauthorized vehicular access
- 3) Remove unauthorized improvements and decommission unsustainable trails as necessary to prevent substantial stream and wetland degradation and to reduce the risk of erosion.

Charter of the City of Portland, Oregon

Section 2-302 Assignment and Authority of Commissioners.

At the first regular meeting after the election of any Council member, the Mayor shall designate one member to be Commissioner In Charge of each department, who shall thereafter be designated as Commissioner of such department, which designation may be changed and a transfer of Commissioners from one department to another be made, whenever it appears that the public service will be benefitted thereby. Such assignment shall be made by the Mayor by order which shall be filed and preserved as an ordinance. The Commissioner In Charge of each department shall have the supervision and control of all the affairs and property which belong to that department, subject to the provisions of this Charter and to such regulation as may be prescribed by the Council.

Section 12-102 Regulations and Restrictions.

The Council or the Commissioner to whom authority has been delegated may make regulations and impose restrictions on public use of parks, recreational areas and facilities as found needed and appropriate, may exclude some or all kinds of vehicles from all or particular areas of any park or facilities, may limit to a particular class or classes of persons those permitted to use any particular area or facility if the limitation is not based on race, color, creed or national origin, and may restrict the kinds and times of public use.

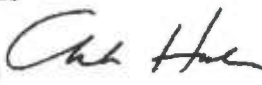


Office of Mayor Charlie Hales
City of Portland

EXECUTIVE ORDER

DATE: June 3, 2013

TO: City Auditor LaVonne Griffin-Valade
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Steve Novick
Commissioner Dan Saltzman
City Bureau Managers

FROM: Mayor Charlie Hales 
Commissioner of Finance and Administration

RE: Assignment of City Departments and Bureaus

Pursuant to Section 2-302 of the Charter of the City of Portland, Oregon, as of 8:00 a.m., June 4, 2013, I am reassigning all City departments and bureaus to commissioners named below. This order will remain in effect until further notice.

MAYOR CHARLIE HALES

- Portland Police Bureau
- Portland Development Commission
- Bureau of Planning and Sustainability
- Fire & Police Disability and Retirement
- Office of Neighborhood Involvement
- Office of Equity and Human Rights
- Office of Management and Finance
- Office of Government Relations
- City Attorney
- City Budget Office
- Oversight of the Willamette River Super Fund clean-up project.

COMMISSIONER NICK FISH

- Bureau of Environmental Services
- Water Bureau
- Regional Arts and Culture Council

Liaison Responsibilities

- Elders in Action
- Portland Utility Review Board
- Venture Portland

COMMISSIONER AMANDA FRITZ

- Bureau of Parks & Recreation
- Bureau of Development Services

Liaison Responsibilities

- Royal Rosarians
- Adjustment Committee
- Building Board of Appeals
- County Animal Control

COMMISSIONER STEVE NOVICK

- Bureau of Transportation
- Bureau of Emergency Management
- Bureau of Emergency Communications

Liaison Responsibilities

- Joint Policy Advisory Committee on Transportation (JPACT)
- Portland Streetcar Inc.
- Regional Emergency Management Group
- BOEC Users Group
- BOEC Finance Committee
- Taxi Cab Board of Review
- Towing Board of Review

COMMISSIONER DAN SALTZMAN

- Bureau of Housing
- Bureau of Fire & Rescue
- Gateway Domestic Violence Center
- Portland Children's Investment Fund (Children's Levy)

Liaison Responsibilities

- Travel Portland
- Visitors Development Fund
- Home Forward
- League of Oregon Cities

Parks & Recreation

Healthy Parks, Healthy Portland

Phone: 503-823-PLAY (7529) Fax: 503-823-6007 1120 SW Fifth Ave., Suite 1302, Portland, OR 97204



River View Natural Area



A message from Commissioner Fritz regarding the recent changes at River View Natural Area:

The decision to prohibit mountain biking for now at River View was made in partnership with Commissioner Fish and the Bureau of Environmental Services, with due consideration of the reason for dedicating ratepayer dollars to purchase the site to protect water quality. We are not saying River View will never be used for mountain biking, rather just not now, before the citywide assessment of appropriate places for cycling is funded and completed. I encourage you to participate in the upcoming City Budget process, to urge funding for the citywide Master Plan for cycling that Portland Parks and Recreation and I have proposed in our requested budget allocations.

-Amanda Fritz, City Commissioner

A letter from Commissioners Fritz and Fish - March 2, 2015 (<http://portlandoregon.gov/parks/article/520979>)

Frequently Asked Questions - River View Natural Area Management Plan (<http://portlandoregon.gov/parks/article/520980>)

PROJECT OVERVIEW

Portland Parks & Recreation (PP&R) is currently managing the River View Natural Area (RVNA) to stabilize the site and control the growth of invasive species. PP&R will work with a consultant team, a technical advisory committee, and a project advisory committee (PAC) to create a Management Plan that will protect and enhance the natural resources of the RVNA by:

- Directing future management priorities with a science-based approach;
- Protecting core natural areas and identifying enhancement projects;
- Designing a trail system that is compatible with protection of the natural resources; and
- Identifying environmental interpretation and research opportunities.

Project Partners

Portland Parks & Recreation, Bureau of Environmental Services, Metro, Trust for Public Lands

Project Advisory Committee

Brian Baumann, Adam Clinton Baylor, Sarah Bice, Corrina Chase, Michel George, Michael Karnosh, Marci Krass, Fran Laird, Steve Manton, Chris Sautter, Jennifer Seamans, Chad Sorber, Charlie Sponsel, Mauricio Villarreal, Jay Withgott

Project Manager

Emily Roth, Natural Resource Planner

Email: Emily.Roth@portlandoregon.gov (<http://portlandoregon.gov/mailto:Emily.roth@portlandoregon.gov>)

LUBA No. 2015-015
Exhibit F

Phone: 503-823-9225

Public Involvement Coordinator

Maija Spencer, Program Specialist

Email: Maija.Spencer@portlandoregon.gov (<http://portlandoregon.govmailto:Maija.Spencer@portlandoregon.gov>)

Phone: 503-823-7720

PROJECT SCHEDULE

August - September 2013 (Relevant Information)

Technical Advisory Committee (TAC) Site Reconnaissance Tour, September 18

Project Advisory Committee (PAC) Site Tour, September 26

Consultant Team prepares Relevant Information / Site Tour Summary Technical Memo

October - December 2013 (Identify Goals, Opportunities & Constraints)

PAC Meeting, October 8

TAC Meeting, October 15

October 2013 - January 2014 (Site Analysis)

Consultant Team prepares Site Analysis and Base Plan

Community Open House, November 12

PAC Meeting, January 22

February - July 2014 (Draft Concept Plan)

Develop design criteria

Prepare Concept Plan with ecological prescriptions, trails, and access overlay

PROJECT UPDATES

March 2015

The planning process is resuming and will be completed by the end of this year. Dates for the next Public Advisory Committee meeting and an Open House will be announced soon. Please check back for updates.

April 2014

The City/Consultant team is continuing to work on the many plan components and needs more time to critically look at habitat protection, trail placement, and access/parking since hearing from the Project Advisory Committee in January and the Collins View Neighborhood Association in February.

The City/Consultant Team will continue to:

Complete the ecological work for protection of core habitat and riparian areas, and ecological prescriptions.

Develop site-specific design criteria for dogs, walking/hiking trails, mountain biking trails, viewing areas, and gathering space. These criteria will be used to evaluate whether dogs on leash will be allowed/not allowed; location of walking/hiking trails and viewing areas; allowance and location of mountain biking trails if appropriate; and educational activities.

Evaluate areas for parking and access, including working with Lewis and Clark College and River View Cemetery.

Develop the draft plan showing core habitat, riparian areas, trails and viewing areas, parking and access, and management recommendations.

Onsite Activity

Restoration work: planted 50,000 trees and shrubs and removal of invasive species.

Continued allowed use for walking/hiking and bicycling on trails open to the public. If the trails are too wet and you can see your tracks, please do not use trails until dry.

Dogs must be on leash at all times.

PROJECT BACKGROUND

The River View Natural Area (RVNA) is a 146-acre forested parcel connecting Forest Park to the north, Tryon State Natural Area to the south, and the Willamette River to the east. It is nestled between SW Macadam Ave and SW Terwilliger Blvd in southwest Portland. The RVNA has significant ecological value; 7 streams, 130 plant species, 31 mammal species, and 74 avian species have been documented at this site. It comprises about half of the forest canopy in the 350-acre River View Subwatershed of the Lower Willamette Watershed.

LUBA No. 2015-015
Exhibit F

Under private ownership until 2011, the RVNA was logged in the 1800s and 1950s and subjected to vegetative neglect over the next 60 years. In July 2011, the City of Portland, in partnership with Metro and Trust for Public Land, acquired the property. It is one of the largest single natural area acquisitions in the City's history.

FAQs - River View Natural Area Management Plan (<http://portlandoregon.gov/article/520980>)

March 2, 2015 Frequently Asked Questions

A letter to River View Stakeholders from Commissioners Amanda Fritz and Nick Fish

(<http://portlandoregon.gov/article/520979>)

March 2, 2015 letter from Commissioners Fritz and Fish

Project Update - April 2014 (<http://portlandoregon.gov/article/486821>)

Project Advisory Committee (PAC) (<http://portlandoregon.gov/63877>)

PAC Meeting Notes 1/22/14 (<http://portlandoregon.gov/article/478080>)

PAC Meeting Notes 10/8/13 (<http://portlandoregon.gov/article/466362>)

Stakeholder Interview Summary 1/16/14 (<http://portlandoregon.gov/article/478082>)

Site Analysis 11/21/13 (<http://portlandoregon.gov/article/469393>)

Comment Summary 11/12/13 (<http://portlandoregon.gov/article/474304>)

Relevant Information Memo 10/25/13 (<http://portlandoregon.gov/article/472333>)

Mailing List Sign-up (<http://portlandoregon.gov/62006>)

Maps (<http://portlandoregon.gov/article/470685>)

Westside Wildlife Corridor (<http://portlandoregon.gov/article/470686>)

Background Information (<http://portlandoregon.gov/63868>)

Aerial View 1960 (<http://portlandoregon.gov/article/466684>)

Tributary Conditions Map 2009 (<http://portlandoregon.gov/article/466687>)

Wildlife Table 2010 (<http://portlandoregon.gov/article/466685>)

Subwatershed Improvement Strategies Report 2010 (<http://portlandoregon.gov/article/466688>)

Signed Conservation Easement 2011 (<http://portlandoregon.gov/article/471540>)

+ View 2 more links (<http://portlandoregon.gov>)



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ENVIRONMENTAL SERVICES
CITY OF PORTLAND

working for clean rivers

March 2, 2015

River View Natural Area (RVNA) Management Plan Frequently Asked Questions

What and where is River View Natural Area (RVNA)?

RVNA is a 146-acre forested parcel in southwest Portland, providing a link connecting Forest Park to the north, Tryon State Natural Area to the south, and the Willamette River to the east. It is located between SW Macadam Avenue and SW Terwilliger Boulevard. RVNA has significant ecological value with seven free-flowing streams, wetlands, and multiple plant communities. 130 plant species, 31 mammal species, and 74 avian species are associated with the natural area's ecosystem. The property comprises about half of the forest canopy in the 350-acre Riverview sub watershed of the Lower Willamette Watershed.

Who owns RVNA?

Portland Parks and Recreation (PP&R) and the Bureau of Environmental Services (BES) jointly own the natural area. Metro holds a conservation easement on the property.

What is the RVNA Management Plan?

The RVNA Management Plan is a planning process and document that will direct future management priorities with a science-based approach, protect core natural areas, locate a trail system compatible with the protection of natural resources, identify enhancement projects, and establish environmental interpretation and research opportunities.

What is the timeline for completion of the RVNA Management Plan?

The planning process began in 2013 with data collection and analysis and the creation of a Technical Advisory Committee (TAC) and Project Advisory Committee (PAC). The planning process will resume this March, with the goal of completing the plan in September of 2015. An Open House for the general public will be held in late spring.

What recreational uses are allowed at RVNA?

Passive recreational uses are allowed including hiking, wildlife viewing, stewardship activities, environmental education, and research.

What uses at RVNA are no longer allowed?

As of March 16th, mountain biking will no longer be an allowed use at RVNA. Trail building, camping, and fires are also prohibited.

Why is mountain biking no longer an allowed use?

In order to protect RVNA's sensitive natural resources, the Commissioners of PP&R and BES have decided to limit uses to passive nature recreation.

What measures will be taken to provide for mountain biking opportunities in the City of Portland?

PP&R will develop a Citywide Off-Road Bicycle Master Plan to identify the most appropriate mountain biking opportunities within the City park system. Funding for this planning process will be included in PP&R's proposed FY 2015-2016 budget.

Where can I find more information about the Management Plan process?

PP&R maintains a website dedicated to RVNA at www.portlandoregon.gov/parks/riverview. You can sign up for email updates about RVNA at the website.



**PORTLAND
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March 2, 2015

Dear River View Natural Area Stakeholder:

We are writing to update you on recreational policy changes at River View Natural Area (RVNA) as well as the accompanying RVNA Management Planning process.

RVNA is a 146-acre natural area in southwest Portland, located between SW Macadam Avenue and SW Terwilliger Boulevard. The River View forest provides a link in the upland wildlife corridor from Forest Park in the north to Tryon Creek State Natural Area in the south. The property contains special status habitats (rare or locally significant), including wetlands, interior forest, and riparian areas.

The City's Natural Resource Inventory designates River View as a high value resource for sensitive and threatened wildlife and habitats. Seven undeveloped streams flow through the property to the Willamette River. These tributaries and their forested buffers support critical habitat for coastal steelhead, coho, and Chinook salmon in the lower Willamette, all designated as threatened under the federal Endangered Species Act (ESA). Acquisition of RVNA in 2011 fulfilled one of the City's highest natural area conservation objectives. The property is also one of the priorities identified through Metro's 2006 Natural Areas bond measure.

In 2013, PP&R began a Natural Area Management Plan process to identify significant ecosystem assets, direct future management priorities, establish research and interpretation activities, and design a trail system compatible with the protection of natural resources. During this time period, many recreational uses occurring on site prior to the City's acquisitions were permissible.

Exercising an abundance of caution and to protect the City's investment in the River View Natural Area, PP&R and BES will be limiting activities at RVNA from now on to passive nature-based recreational uses - hiking, wildlife viewing, stewardship, education, research etc. Planning for these uses will proceed with the goal of completing the Management Plan in the fall of 2015.

Mountain biking will no longer be an allowed use at RVNA as of March 16th, 2015. The two bureaus will continue to work together with the community to develop a plan for RVNA that meets our common goals of protecting water quality

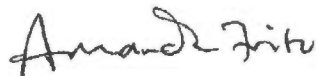
and watershed health, restoring aquatic and terrestrial habitat, and providing recreation access that is compatible with the protection of natural resources.

The City recognizes the existing and growing need for additional nature-based mountain biking experiences within our City park system. While some natural areas may be able to accommodate mountain biking, other factors must also be considered when evaluating this type of nature based recreational use. We, as Commissioners of PP&R and BES, believe completion of a Citywide Off-Road Cycling Plan is the best course of action for meeting this demand. A comprehensive biking plan will identify the most appropriate biking opportunities within our City park system, while protecting the conservation values of our natural areas and the enjoyment and safety of all park users. Towards this end, funding for a Citywide Off-Road Cycling Plan is included in the requested PP&R Fiscal Year 2015-2016 budget. Since the cost is \$350,000, community advocacy will be necessary to encourage the Mayor and Council to fund this request.

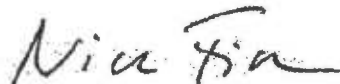
We welcome your continued participation in the Management Plan process. Updates on plan progress can be found on RVNA's website (www.portlandoregon.gov/parks/riverview).

If you have questions about this new policy, please contact Commissioner Fritz at 503-823-3008.

Sincerely,



Amanda Fritz, Commissioner
Portland Parks and Recreation



Nick Fish, Commissioner
Bureau of Environmental Services



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March 2, 2015

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1 **CERTIFICATE OF FILING AND SERVICE**

2
3 I hereby certify that I served the foregoing RESPONDENT CITY OF PORTLAND'S
4 MOTION TO DISMISS on:

5 AARON T. BERNE
6 HARRIS BERNE CHRISTENSEN LLP
7 5000 SW MEADOWS ROAD
8 SUITE 400
9 LAKE OSWEGO, OR 97035
10 *Of Attorney for Petitioner*

11 on April 13, 2015, by mailing to said attorney(s) a correct copy thereof, contained in a seal
12 envelope, with postage prepaid, and deposited in the post office at Portland, Oregon on said day.

13 I further certify that on April 13, 2015, I filed the original and one copy of
14 RESPONDENT CITY OF PORTLAND'S MOTION TO DISMISS with the:

15 LAND USE BOARD OF APPEALS
16 DSL BUILDING
17 775 SUMMER STREET NE
18 SUITE 330
19 SALEM OR 97301-1283

20 by mailing said document, contained in a sealed envelope with First Class postage prepaid, and
21 deposited with the post office at Portland, Oregon on said day.

22 *Kathryn S. Beaumont*

23

KATHRYN S. BEAUMONT, OSB #800146
24 Chief Deputy City Attorney
25 LINLY F. REES, OSB #945098
26 Senior Deputy City Attorney
Attorneys for Respondent City of Portland