

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING AN) RESOLUTION NO. 00-2968
EASEMENT TO MULTNOMAH COUNTY FOR)
NON-PARK USE THROUGH METRO PROPERTY) Introduced by Mike Burton,
ON TROUTDALE ROAD AT DOUGLAS CEMETERY) Executive Officer

WHEREAS, Metro owns and manages Douglas Cemetery in Troutdale, with frontage on Troutdale Road; and

WHEREAS, Multnomah County is requesting a temporary construction easement and a permanent easement for road improvements on the tract of land owned by Metro as seen in Exhibit A (the Property); and

WHEREAS, the temporary construction easement is 30 feet by 50 feet and the permanent easement 15 feet by 50 feet at the entrance of Douglas cemetery for road widening purposes as described in the attached easement document; and

WHEREAS, Multnomah County will pay Metros costs and expenses to process this right-of-way request; and

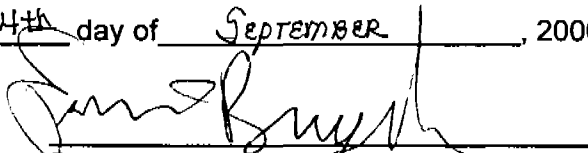
WHEREAS, the Metro Parks and Greenspaces Department Easement Policy requires formal review of all easement requests by the Regional Parks and Greenspaces Advisory Committee, the Metro Operations Committee and the full Metro Council; and

WHEREAS, the Metro Parks and Greenspaces Department has determined that this easement request has met the Metro Easement Policy criteria, as identified in Exhibit B, and can be accommodated without significant impact to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management, and the Regional Parks and Greenspaces Advisory Committee has reviewed the proposal and has recommended approval; now therefore,

BE IT RESOLVED,

That the Metro Council hereby authorizes the Executive Officer to grant a temporary construction easement and a permanent easement to Multnomah County, as identified in Exhibit A and in the attached legal easement document, Exhibit C, on the tract of land owned by Metro on Troutdale Road in the City of Troutdale.

ADOPTED by the Metro Council this 14th day of September, 2000.


David Bragdon, Presiding Officer

Approved as to Form:


Daniel B. Cooper, General Counsel

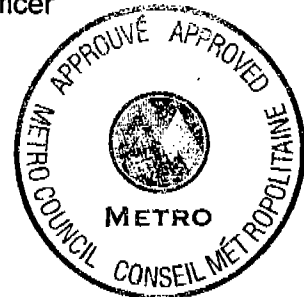
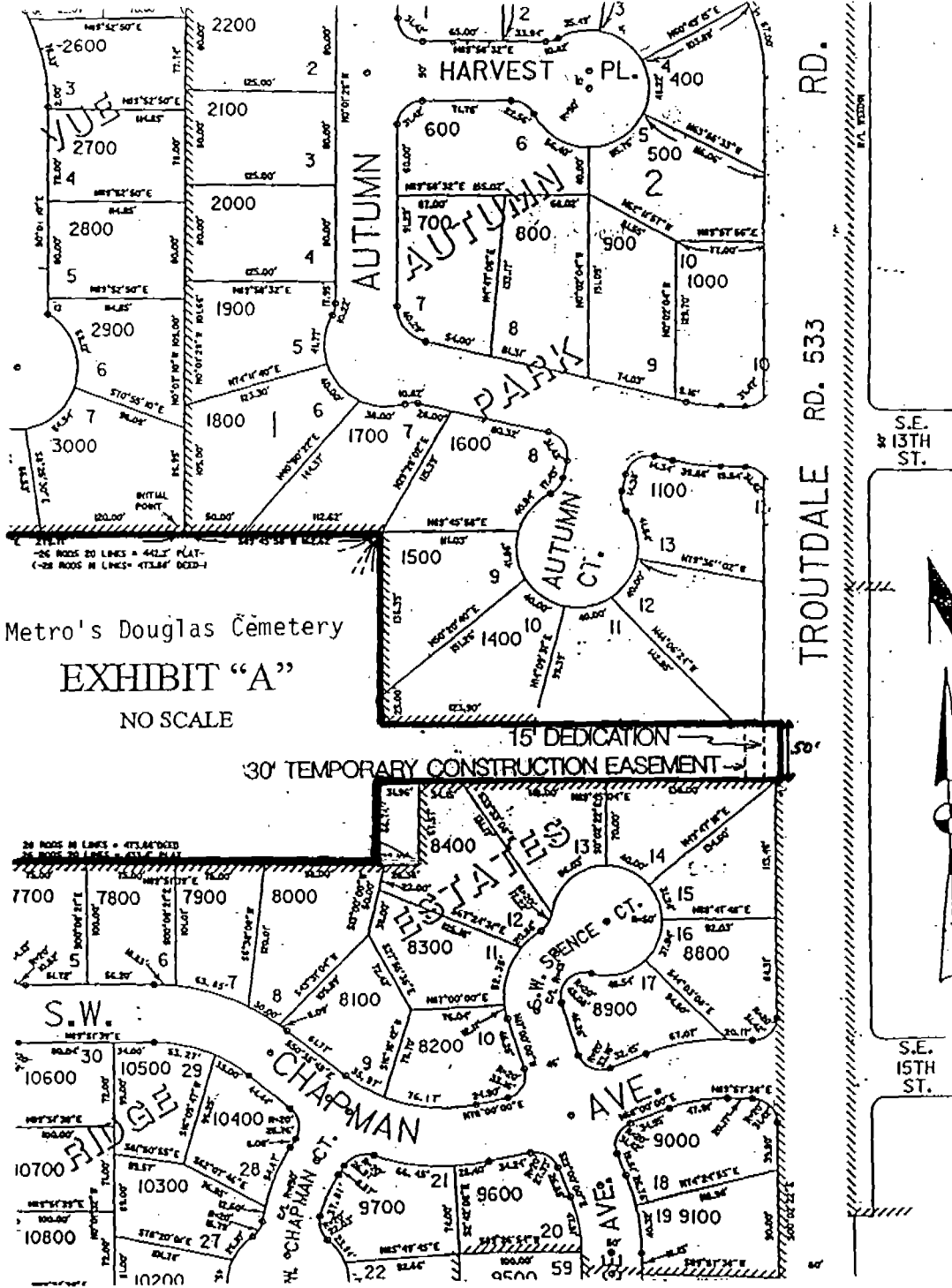


EXHIBIT A

Map



Metro's Douglas Cemetery
EXHIBIT "A"
NO SCALE

Exhibit B
Resolution 00-2968

Metro Easement Policy Criteria and Staff Findings

- 1) **Provide for formal review of all proposed easements, rights of ways, and leases for non-park uses by the Regional Parks and Greenspaces Advisory Committee, the Regional Facilities Committee and the full Council. Notwithstanding satisfaction of the criteria set forth herein, the final determination of whether to approve a proposed easement, right of way, or lease is still subject to the review and approval by the full Metro Council.**

Staff Finding: Criterion has been satisfied through a review and approval process that includes formal easement application and approval from the Regional Parks and Greenspaces Advisory Committee. The Metro Council Operations Committee and full Council body will review the easement prior to approval.

- 2) **Prohibit the development of utilities, transportation projects and other non-park uses within corridors or on sites which are located inside of Metro owned or managed regional parks, natural areas, and recreational facilities except as provided herein.**

Staff Finding: The applicant proposes to expand the entrance to the Douglas cemetery through the adjacent Troutdale Road widening project, which increases the safety of vehicular ingress and egress while not impacting any natural resource or park values.

- 3) **Reject proposals for utility easements, transportation right of ways and leases for non-park uses which would result in significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.**

Staff Finding: The very small increase in asphalt paving (750 square feet) will have negligible impact on park or natural resource values while improving traffic safety.

- 4) **Accommodate utility easements, transportation right of ways or other non-park uses when the Regional Parks and Greenspaces Department (the Department) determines that a proposed easement, right of way, or non-park use can be accommodated without significant impact to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management; and that the impacts can be minimized and mitigated.**

Staff Finding: Meets criteria.

- 5) **Require full mitigation and related maintenance, as determined by the Department, of all unavoidable impacts to natural resources, recreational facilities, recreational opportunities or their operation and management associated with the granting of easements, right of ways, or leases to use Metro owned or managed regional parks, natural areas or recreational facilities for non-park uses.**

Staff Finding: No mitigation is required given the minimal impact and benefit due to improvements in vehicular ingress and egress.

- 6) **Limit rights conveyed by easements, right of ways, and leases for non-park uses to the minimum necessary to accomplish the objectives of any proposal.**

Staff Finding: The dimensions and terms of the access easement are limited to accommodate road widening, and are not transferable or assignable to adjacent properties.

- 7) **Limit the term of easements, right of ways and leases to the minimum necessary to accomplish the objectives of any proposal.**

Staff Finding: The construction easement time and space limitations are the minimum needed to accomplish the project while minimizing impact on Metro property. The long-term easement encompasses the Troutdale Road pavement widening and is consistent with that occurring along the project length.

- 8) **Require reversion, non-transferable, and removal and restoration clauses in all easements, rights of ways, and leases.**

Staff Finding: Access easement will include these terms.

- 9) **Fully recover all direct costs (including staff time) associated with processing, reviewing, analyzing, negotiating, approving, conveying, or assuring compliance with the terms of any easement, right of way, or lease for non-park use.**

Staff Finding: Metro staff assigned to this application has documented time and costs spent on this application and informed the applicant of the policy requiring reimbursement. Execution of the easement is subject to satisfaction of all expenses.

- 10) **Receive no less than fair market value compensation for all easements, right of ways, or leases for non-park uses. Compensation may include, at the discretion of the Department, periodic fees or considerations other than money.**

Staff Finding: Metro will receive desirable road improvement at no cost to Metro.

- 11) **Require full indemnification from the easement, right of way or leaseholder for all costs, damages, expenses, fines, or losses related to the use of the easement, right of way, or lease. Metro may also require insurance coverage and/or environmental assurances if deemed necessary by the Office of General Counsel.**

Staff Finding: The easement will include indemnification and insurance provisions.

- 12) **Limit the exceptions to this policy to: grave sales, utilities or transportation projects which are included in approved master/management plans for Metro regional parks, natural areas and recreational facilities; projects designed specifically for the benefit of a Metro regional park, natural area, or recreational facility; or interim use leases as noted in the Open Spaces Implementation Work Plan.**

Staff Finding: No exception requested.

13) Provide for the timely review and analysis of proposals for non-park uses by adhering to the following process:

- A. The applicant shall submit a detailed proposal to the Department which includes all relevant information including but not limited to: purpose, size, components, location, existing conditions, proposed project schedule and phasing, and an analysis of other alternatives which avoid the Metro owned or managed regional park, natural area or recreational facility which are considered infeasible by the applicant. Cost alone shall not constitute unfeasibility.**

Staff Finding: Applicant has submitted a detailed proposal including all required information.

- B. Upon receipt of the detailed proposal, the Department shall determine if additional information or a Master Plan is required prior to further review and analysis of the proposal. For those facilities, which have master plans, require that all proposed uses are consistent with the master plan. Where no master plan exist all proposed uses shall be consistent with the Greenspaces Master Plan. Deficiencies shall be conveyed to the applicant for correction.**

Staff Finding: No additional information is needed.

- C. Upon determination that the necessary information is complete, the Department shall review and analyze all available and relevant material and determine if alternative alignments or sites located outside of the Metro owned or managed regional park, natural area, or recreational facility are feasible.**

Staff Finding: No reasonable alternative for realigning Troutdale Road exists.

- D. If outside alternatives are not feasible, the Department shall determine if the proposal can be accommodated without significant impact to park resources, facilities or their operation and management. Proposals which cannot be accommodated without significant impacts shall be rejected. If the Department determines that a proposal could be accommodated without significant impacts, staff shall initiate negotiations with the applicant to resolve all issues related to exact location, legal requirements, terms of the agreement, mitigation requirements, fair market value, site restoration, cultural resources, and any other issue relevant to a specific proposal or park, natural area or recreational facility. The Department shall endeavor to complete negotiations in a timely and business-like fashion.**

Staff Finding: No significant negative impact on Metro property will occur.

- E. Upon completion of negotiations, the proposed agreement, in the appropriate format, shall be forwarded for review and approval. In no event shall construction of a project commence prior to formal approval of a proposal.**

Staff Finding: Construction is contingent upon approval.

F. Upon completion of all Metro tasks and responsibilities or at intervals determined by the Department, and regardless of Metro Council action related to a proposed easement, right of way, or lease for a non-park use, the applicant shall be invoiced for all expenses or the outstanding balance on expenses incurred by Metro.

Staff Finding: Metro costs have been documented and applicant will be billed for reimbursement.

G. Permission from Metro for an easement or right-of-way shall not preclude review under applicable federal, state, or local jurisdiction requirements.

Staff Finding: Criterion satisfied.

EXHIBIT C
Resolution 00-2968

AFTER RECORDING, RETURN TO:

Patrick Hinds/Transportation Division, Bldg. #455

FOR TAX STATEMENTS:

Multnomah County
Transportation Division
1600 S.E. 190th Avenue
Portland, Oregon 97233

**RIGHT-OF-WAY FOR ROAD PURPOSES
AND TEMPORARY ROAD CONSTRUCTION EASEMENT**

RIGHT-OF-WAY FOR ROAD PURPOSES

METRO, a municipal corporation and a political subdivision of the State of Oregon, grants to MULTNOMAH COUNTY, a political subdivision of the State of Oregon, for road purposes, a perpetual right-of-way (hereafter, "Right-of-Way") over the following described property:

A tract of land situated in the Northwest One-quarter of Section 36, Township 1 North, Range 3 East, W.M., in the City of Troutdale, Multnomah County, Oregon, being more particularly described as follows:

Beginning at the Southeast corner of Lot 12, Block 1 of AUTUMN PARK, a subdivision recorded on February 5, 1975, in Book 1205, Page 62, Multnomah County Plat Records; thence S89°45'10"W along the South line of said Lot 12, a distance of 5.00 feet to a point being 40.00 feet westerly when measured at right angles to the centerline of N.E. Troutdale Road, County Road No. 533; thence S00°02'00"E parallel to the centerline of said N.E. Troutdale Road, a distance of 50.00 feet to a point on the North line of Lot 14, STUART RIDGE ESTATES, a subdivision recorded on January 28, 1992, in Book 1223, Page 37, Multnomah County Plat Records; thence N89°45'10"E along the North line of said Lot 14 and the easterly extension thereof, a distance of 15.00 feet to a point on the West right-of-way line of N.E. Troutdale Road; thence N00°02'00"W along the West right-of-way line of

N.E. Troutdale Road, a distance of 50.00 feet to the point of intersection of the easterly extension of the South line of Lot 12, Block 1, AUTUMN PARK subdivision; thence S89°45'10"W along the South line and the easterly extension of the South line of said Lot 12, a distance of 15.00 feet to the Point of Beginning.

Containing 750 square feet, more or less.

As shown on the attached Exhibit A, and herein made a part of this document. In the event of a conflict or discrepancy between the map as shown the attached Exhibit A, and the written legal description, the written legal description shall prevail.

Reversion and Restoration. This Right-of-Way is granted for Road Purposes only. If the Easement is ever used for another purpose by MULTNOMAH COUNTY, or if the Easement ever ceases to be used for said purposes, METRO may re-enter and terminate the Right-of-Way hereby granted. If the Right-of-Way ever ceases to be used for road purposes, at METRO's request, MULTNOMAH COUNTY shall remove any installed improvements and restore the Property to its natural state.

Indemnity. MULTNOMAH COUNTY, to the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify, and save harmless METRO, its officers, employees, and agents from and against any and all actual or alleged claims, demands, judgements, losses, damages, expenses, costs, expenses, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties which may be imposed upon or claimed against METRO and which, in whole or in part, directly or indirectly, arise from the intentional or negligent acts or omissions of MULTNOMAH COUNTY, its officers, directors, agents, employees, contractors or subcontractors, in the exercise by MULTNOMAH COUNTY of its rights under this Right-of-Way, including the construction and maintenance of MULTNOMAH COUNTY improvements within the Right-of-Way.

TEMPORARY ROAD CONSTRUCTION EASEMENT

In addition to the above described Right-Of-Way For Road Purposes, METRO, a municipal corporation and a political subdivision of the State of Oregon, grants a one (1) year temporary road construction easement (the, "Easement") through, over, along and within the following described parcel of land:

A tract of land situated in the Northwest One-quarter of Section 36, Township 1 North, Range 3 East, W.M., in the City of Troutdale, Multnomah County, Oregon, being more particularly described as follows:

Commencing at the Southeast corner of Lot 12, Block 1 of AUTUMN PARK, a subdivision recorded on February 5, 1975, in Book 1205, Page 62, Multnomah County Plat Records; thence S89° 45'10"W along the South line of said Lot 12, a distance of 5.00 feet to a point being the Point of Beginning of the tract to be described, said point also being 40.00 feet westerly when measured at right angles to the centerline of N.E. Troutdale Road, County Road No. 533; thence continuing S89°45'10"W along the South line of said Lot 12 and the South line of Lot 11, Block 1, AUTUMN PARK subdivision, a distance of 30.00 feet to a point being 70.00 feet westerly when measured at right angles to the centerline of said N.E. Troutdale Road; thence S00°02'00"E parallel to the centerline of said N.E. Troutdale Road, a distance of 50.00 feet to a point on the North line of Lot 14, STUART RIDGE ESTATES, a subdivision recorded on January 28, 1992, in Book 1223, Page 37, Multnomah County Plat Records; thence N89°45'10"E along the North line of said Lot 14, a distance of 30.00 feet, to a point being 40.00 feet westerly when measured at right angles to the centerline of N.E. Troutdale Road; thence N00°02'00"W parallel to the West right-of-way line of N.E. Troutdale Road, a distance of 50.00 feet to a point on the South line of Lot 12, Block 1, AUTUMN PARK subdivision, being the Point of Beginning.

Containing 1,500 square feet, more or less.

This Temporary Road Construction Easement provides a right-of-way to MULTNOMAH COUNTY, its employees, agents, contractors and subcontractors to go upon the above-described portion of METRO's real property for purposes of constructing improvements with the Right-of-Way set forth above. Under no circumstances shall this Easement permit travel upon or disturbance of any grave. MULTNOMAH COUNTY agrees to restore the Easement area to its original condition at the conclusion of the one (1) year term, which begins as of the date of the last signature affixed hereto.

As shown on the attached Exhibit A, herein made a part of this document. In the event of a conflict or discrepancy between the map as shown on the attached Exhibit A, and the written legal description, the written legal description shall prevail.

Indemnity. MULTNOMAH COUNTY, to the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify, and save harmless METRO, its officers, employees, and agents from and against any and all actual or alleged claims, demands, judgements, losses, damages, expenses, costs, expenses, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties which may be imposed upon or claimed against METRO and which, in whole or in part, directly or indirectly, arise from the intentional or negligent acts or omissions

of MULTNOMAH COUNTY, its officers, directors, agents, employees, contractors or subcontractors, arising in the exercise by MULTNOMAH COUNTY of its rights under this Temporary Road Construction Easement.

The true and actual consideration for this conveyance is \$ _____, representing METRO's costs and expenses to process this Right of-Way request and grant the Right-of-Way.

METRO

By: _____
Mike Burton, Executive Officer

Date: _____

MULTNOMAH COUNTY

By: _____

Title: _____

Date: _____

REVIEWED:

THOMAS SPONSLER
County Counsel
for Multnomah County, Oregon

By: _____
Matthew O. Ryan
Assistant County Counsel

State of Oregon)
)
 ss.
County of _____)

On this _____ day of _____, 2000, before me _____,
the undersigned Notary Public, personally appeared MIKE BURTON, as Executive Director of
METRO, a municipal corporation, personally known to me (or proved to be on the basis of
satisfactory evidence) to be the person whose name is subscribed to this instrument, and
acknowledged that he executed it.

My commission expires: _____

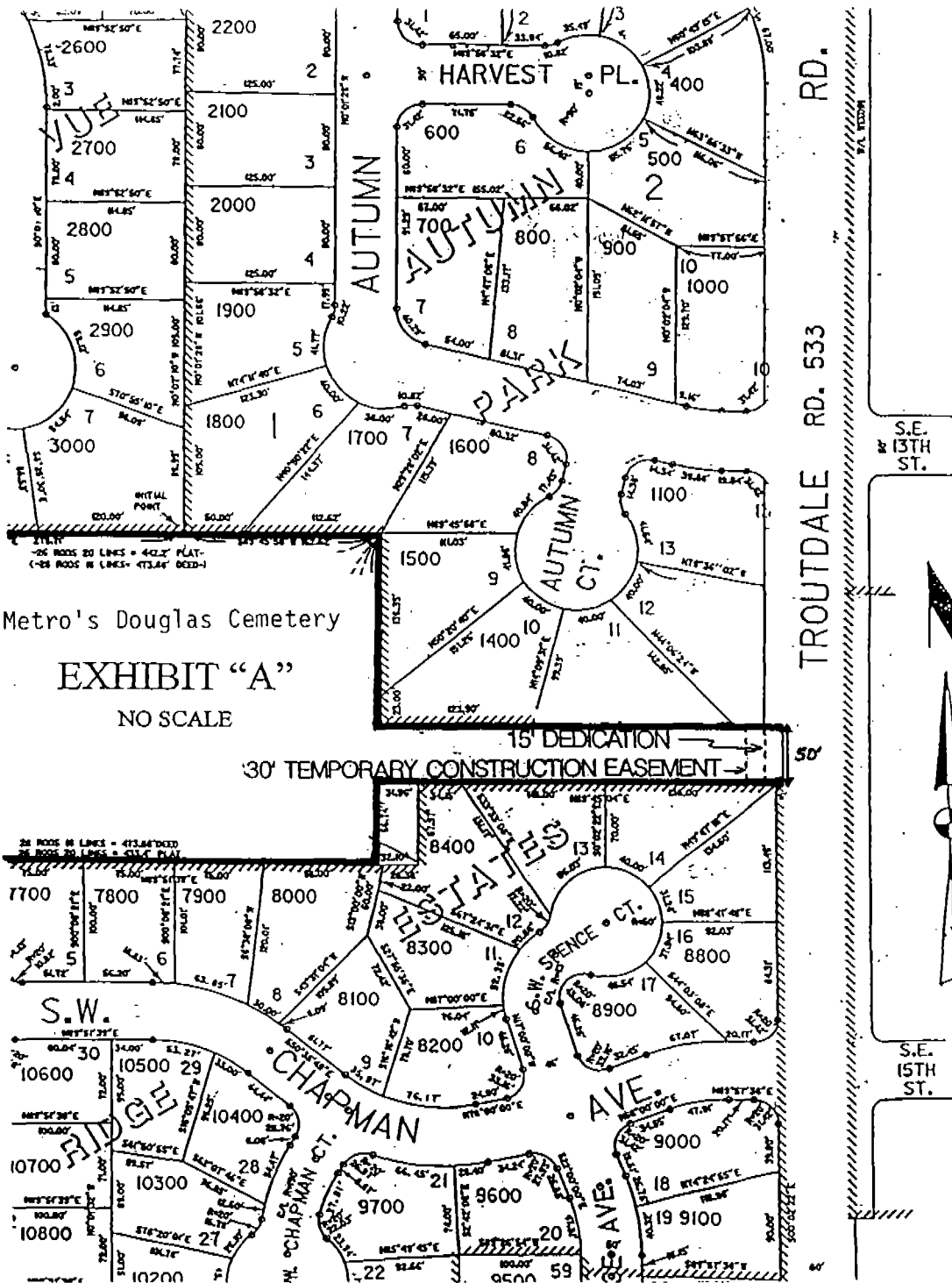
State of Oregon)
)
 ss.
County of _____)

On this _____ day of _____, 2000, before me _____,
the undersigned Notary Public, personally appeared _____, as
_____ of MULTNOMAH COUNTY, a political subdivision of the State
of Oregon, personally known to me (or proved to be on the basis of satisfactory evidence) to be
the person whose name is subscribed to this instrument, and acknowledged that he executed it.

My commission expires: _____

EXHIBIT A

Map



Metro's Douglas Cemetery

EXHIBIT "A"

NO SCALE

15' DEDICATION
30' TEMPORARY CONSTRUCTION EASEMENT

TROUTDALE RD. 533

S.E.
13TH ST.

S.E.
15TH ST.

OPERATIONS COMMITTEE REPORT

CONSIDERATION OF **RESOLUTION NO. 00-2968**, FOR THE PURPOSE OF GRANTING AN EASEMENT TO MULTNOMAH COUNTY FOR NON-PARK USE THROUGH METRO PROPERTY ON TROUTDALE ROAD AT DOUGLAS CEMETERY

Date: 14 September 2000

Presented by: Councilor Atherton

Committee Recommendation: At its September 6, 2000, meeting, the Operations Committee voted 3-0 to recommend Council adoption of Resolution No. 00-2968. Voting in favor: Councilors Atherton, Bragdon, and Monroe. Voting against: None. Absent: Councilor Washington.

Background: Charles Ciecko, Parks and Greenspaces Director, presented the staff report. He stated that, in 1997, Metro adopted a policy for easements, leases, and non-park uses on properties owned and managed by Metro Parks and Greenspaces. The policy provides for a review of any proposed non-park uses, and prohibits development of utility and transportation projects within parks, unless it can be demonstrated that there will be no negative impact as a result of the proposed use or project.

Multnomah County is requesting temporary construction and permanent easements for road-widening purposes at the entrance to Douglas Cemetery, owned and managed by Metro with the City of Troutdale. A review by the Regional Parks and Greenspaces Advisory Committee found that the proposed easement will have no adverse impact on natural resource or recreational values; no loss of, or impact upon, burial space; and no costs to Metro. The Regional Parks and Greenspaces Advisory Committee approved the project at their June meeting.

Committee Issues/Discussion: There was none.

Staff Report

IN CONSIDERATION OF RESOLUTION NO. 00-2968 FOR THE PURPOSE OF GRANTING AN EASEMENT TO MULTNOMAH COUNTY FOR NON-PARK USE THROUGH METRO PROPERTY ON TROUTDALE ROAD AT DOUGLAS CEMETERY

Date: August 25, 2000

Presented by:

Charles Ciecko

Proposed Action

Resolution No. 00-2968 would provide Metro Council authorization for Multnomah County Division of Transportation to acquire a temporary construction easement and a permanent easement for road improvements on a tract of land in the City of Troutdale on property owned by Metro.

Existing Law

Metro Council Resolution 97-2539B approved general policies related to the review of easements, right-of-ways, and non-park uses through properties managed by the Regional Parks and Greenspaces Department. The resolution provides for a formal review of all proposed easements and final review and approval by the full Council.

Factual Background and Analysis

Metro Regional Parks and Greenspaces has and will continue to receive requests for easements, leases and right-of-ways through property that has been acquired through the Open Spaces Acquisition Division. Some of these properties include existing easements or right-of-ways.

Metro has received and reviewed an easement application from Multnomah County. The proposal meets all criteria set forth in the Metro Policy regarding easements, right-of-ways, and leases for non-park uses. Multnomah County is requesting an easement for road widening on Troutdale Road at the entrance of Douglas Cemetery. The approximate width of the temporary construction easement would be 30 feet by 50 feet (1,500 square feet), and the permanent easement would be 15 feet by 50 feet (750 square feet).

The easement is found to have minimal impact on Metro-owned property as it is on the same section of land that is currently asphalted road.

The Regional Parks and Greenspaces Advisory Committee considered this issue at their June 6, 2000 meeting, and recommended its adoption.

Budget Impact

Metro will receive road improvements at no cost.

Map

Attached is a map showing the project/easement boundaries.

Executive Officer's Recommendation

The Executive Officer recommends that the Council adopt Resolution No. 00-2968.