

DRAFT

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING AN)
ACCESS EASEMENT OVER PROPERTY)
OWNED BY METRO AND NORTH)
CLACKAMAS PARKS AND RECREATION)
DISTRICT ON MT. TALBERT)

RESOLUTION NO. 00- ~~2593~~ ⁶³2981
Introduced by
Mike Burton, Executive Officer

WHEREAS, on November 6, 1997, Metro Council adopted resolution 97-259~~3~~⁶³ which established a policy to guide Metro's evaluation of requests to encumber properties managed by the Regional Parks and Greenspaces Department with easements that do not serve a park purpose; and

WHEREAS, On January 1, 1998, Metro and North Clackamas Parks and Recreation District (NCPRD), acting pursuant to the East Buttes/Boring Lava Domes Target Area refinement plan objective of protecting the forested slopes of Mt. Talbert, partnered in the acquisition of 67 acres on Mt. Talbert with frontage on Sunnyside Road (the Metro/NCPRD Property); and

WHEREAS, following the Metro/NCPRD purchase of this Mt. Talbert property, the John B. Goodman Ltd. Partnership (Goodman), the owner of the neighboring property to the west, applied to Clackamas County for authorization to construct an assisted care facility on the neighboring property; and

WHEREAS, the Goodman easement application includes a commitment to design and construct a trailhead on the Metro/NCPRD Property and provide a bus turn around easement on the Goodman property; and

WHEREAS, the easement requested by the Goodman ^{is} consistent with the Metro easement policy because it would not have an adverse impact on Metro/NCPRD's primary management objective of protecting the natural character of Mt. Talbert, and serves this management objective by helping to establish appropriate public access to this resource; NOW THEREFORE,

BE IT RESOLVED, that the Metro Council hereby approves the easement according to the terms outlined in the Goodman easement application attached as Exhibit A.

ADOPTED by the Metro Council this _____ day of _____, 2000.

~~WITHDRAWN~~
David Bragdon, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

DRAFT

Staff Report

**CONSIDERATION OF RESOLUTION NO. 00-_____ FOR THE PURPOSE OF APPROVING
AN ACCESS EASEMENT OVER PROPERTY OWNED BY METRO AND NORTH
CLACKAMAS PARKS AND RECREATION DISTRICT ON MT. TALBERT**

**Date: July 24, 2000
Charles Ciecko**

Presented by:

Nancy Chase

PROPOSED ACTION

Resolution No. 00-_____ requests approval of a private access easement which would encumber Metro/NCPRD property on Mt. Talbert.

EXISTING LAW

Metro Council adopted Resolution 97-2593B in order to establish a policy for Metro's consideration of requests to encumber properties managed by Metro Regional Parks and Greenspaces with private easements designed for access, utilities, or other non-park purposes. The policy outlines specific criteria against which Metro staff should consider private easement applications. Metro Regional Parks and Greenspaces staff has concluded that the Mt. Talbert Access Easement application is consistent with these criteria. This resolution requests Metro Council approval of the Mt. Talbert easement application, based on its consistency with Metro easement policy.

BACKGROUND AND ANALYSIS

In May of 1995, voters in the region passed a bond measure enabling Metro to purchase open space properties with \$135.6 million worth of bond funds. The bond measure identified fourteen regional target areas and six regional trails and greenways for property acquisition, including the East Buttes/Boring Lava Domes target area.

One objective for the East Buttes/Boring Lava Domes Target Area refinement plan encourages Metro to partner with other governments and non-profit organizations in the acquisition of open space properties on urban buttes including Mt. Talbert, a forested butte just east of I-205, and south of SE Sunnyside Road. Mt. Talbert was specifically identified for acquisition and protection due to its diversity of wildlife habitats, including older stands of Douglas fir and Western red cedar trees, and its location at the edge of a rapidly urbanizing area. For these reasons, North Clackamas Parks and Recreation District (NCPRD) identified Mt. Talbert as an essential natural area component of its master plan.

In January of 1998, Metro and NCPRD purchased a 67-acre property on Mt. Talbert. The partnership consisted of Metro's contribution of 75% of the purchase price, and NCPRD's commitment to manage the property and to pay the balance of the purchase price. The majority of the 67-acre Metro/NCPRD property consists of the northeast slope of Mt. Talbert, including a

large remnant second growth Douglas fir stand. A smaller, narrow strip of the property extends north from this forested area and connects Mt. Talbert to SE Sunnyside Road. In contrast to the forested slope, this narrow strip is inundated with blackberry and contains little of the natural resource that motivated Metro and NCPRD to invest in this property.

In 1999 and the first quarter of 2000, NCPRD conducted a master planning process to determine the most appropriate way to manage these 67 acres and the rest of the Mt. Talbert Natural Area. The master plan concluded that the narrow strip of land which connects SE Sunnyside Road to Mt. Talbert is the most appropriate public access point and trailhead location for the natural area. The master plan envisions a parking area and trailhead with picnic tables and restroom facilities in this area.

The John B. Goodman Limited Partnership, Inc. (Goodman) owns the property west of and adjacent to the proposed trailhead area. Goodman purchased this property in order to construct and manage an assisted care facility. When Goodman applied to Clackamas County for authorization to build this facility, Clackamas County granted its approval with the condition that access to the facility off of SE Sunnyside Road is provided through the adjacent narrow strip of Metro/NCPRD property. This condition takes effect when the trailhead site is developed. ? Goodman subsequently contacted Metro and NCPRD to secure this access.

Goodman's request for access is complicated by Clackamas County's widening of SE Sunnyside Road and the realignment of SE 117th. These road improvement projects will include the creation of a lighted intersection where SE 117th crosses SE Sunnyside Road. This lighted intersection will be located adjacent to the SE Sunnyside Road frontage of the Metro/NCPRD property (see sketch attached as Exhibit A). Future access to the Metro/NCPRD property off of SE Sunnyside Road will be directly aligned with SE 117th and the new lighted intersection. The conceptual site plan for the trailhead incorporates future street improvements and the approximate location of the new intersection. A temporary access road will be used during site construction. A permanent access road would be constructed when Clackamas County finalized the realignment of SE 117th and the location of the lighted intersection.

Metro's policy for reviewing such requests aims to accommodate easements for non-park related purposes only if the easements would not conflict with the management objectives for the Metro property. In this case, the access easement would allow Goodman to construct and maintain an access road across the narrow strip of Metro/NCPRD property between Mt. Talbert and SE Sunnyside Road. NCPRD's master plan envisions a parking area and trailhead facility for this area. To ensure that the Goodman temporary access road does not conflict with this future use, Metro staff asked Goodman to produce an access road design that includes a layout for a future parking area and trailhead. Goodman produced an access road and trailhead design that is consistent with the Mt. Talbert Master Plan. As compensation for the access easement Metro staff has asked that Goodman construct the Metro/NCPRD trailhead/parking area facility (except the restroom) and provide a bus turn around easement on the Goodman property. Construction will take place at the same time that Goodman constructs the permanent access road. Goodman has also agreed to these items.

On August 1, 2000, the Regional Parks and Greenspaces Advisory Committee advised that

FINDINGS

- The Mt. Talbert easement application is consistent with the easement policy approved by Metro Council as Resolution 97-2539. Exhibit B specifically applies the thirteen policy thirteen criteria to the easement application. ?
- The Mt. Talbert easement applications are consistent with the Mt. Talbert Master Plan, adopted by NCPRD in May, 2000.
- In its August 2000 meeting, The Regional Parks and Greenspaces Advisory Committee recommended that Metro Council should _____ the Mt. Talbert access easement applications.
- The Mt. Talbert easement applications, if approved, will create appropriate public access to the Mt. Talbert natural area by facilitating the design and construction of a trailhead and parking area at little expense to Metro and NCPRD.

BUDGET IMPACT

Metro's costs to administer the access easement application will be reimbursed. The applicant will build the trailhead and maintain the access road and landscaping in conjunction with NCPRD. Minimal or no costs to Metro are expected to arise from this resolution.

OUTSTANDING QUESTIONS

None.

Executive Officer's Recommendation

The Executive Officer recommends passage of Resolution No. 00-_____.

Exhibit A
Sketch of Easement Area

Exhibit B
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 satisfied through a review process that includes formal easement application, review from the Regional Parks and Greenspaces Advisory Committee, Operations Committee, and Metro Council.

- 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.**

Criterion satisfied. The applicant's proposal includes significant park benefits, including a trailhead and parking area design that is consistent with the Mt. Talbert master plan, and a commitment to build the trailhead and parking area. Consequently, the proposed non-park use (the access road) will facilitate and be consistent with future park uses.

- 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.**

Criterion satisfied. The access easement would encumber a portion of the Metro/NCPRD property that is not environmentally sensitive or integral to the natural area values of Mt. Talbert. In addition, because the applicant has committed to designing and constructing the trailhead and parking area facilities that NCPRD has planned for this area, the access easement will not preclude these recreational opportunities.

- 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.**

Criterion satisfied. The access easement would encumber a portion of the Metro/NCPRD property that is not environmentally sensitive or integral to the Mt. Talbert natural area. In addition, because the applicant has committed to designing and constructing the trailhead and parking area facilities that NCPRD has planned for this area, the access easement will not preclude these recreational opportunities.

- 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.

Criterion satisfied. The applicant will mitigate for the potential impacts of road construction by using erosion control measures which Metro and NCPRD would monitor. The applicant will mitigate for any possible impact that the access road will have on recreational opportunities by facilitating design and construction of the trailhead and parking facilities that are planned for the area.

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.

Criterion satisfied. The dimensions and terms of the access easement are limited to accommodate an access road for the future assisted care facility.

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

Criterion satisfied. Since the right requested is an access easement that will serve a future assisted care facility, the easement is restricted to similar traffic generating uses.

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

Criterion satisfied. 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.

Criterion satisfied. 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.

Criterion satisfied. The applicant proposes to provide final design and construction of the trailhead and parking facilities envisioned for the Metro/NCPRD property and grant an easement for bus turnaround on the Goodman property. The value of these donations exceeds the fair market value of the easement requested.

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.

Criterion satisfied. 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.

Criterion satisfied. 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.

Criterion satisfied. 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 exists all proposed uses shall be consistent with the Greenspaces Master Plan. Deficiencies shall be conveyed to the applicant for correction.

Criterion satisfied. NCPRD has concluded that the proposed access easement, as well as the trailhead and parking area design that the applicant has submitted, are consistent with the Mt. Talbert natural area master plan.

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.

Criterion satisfied. Conditions set by Clackamas County require the Goodman property to ultimately use the Trailhead road access at such a time as the trailhead is constructed.

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.

Criterion satisfied. The Department has been negotiating with the applicant since October of 1999. These negotiations have resulted in an easement application that blends the Metro/NCPRD plan to have a parking area and trailhead facility on the subject property with applicant's need to create access to a new assisted care facility.

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.

Criterion satisfied. The Regional Parks and Greenspaces Advisory Committee has reviewed and recommended _____ of this easement application. Operations Committee, and Metro Council review will follow.

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.

Criterion satisfied. 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.

Criterion satisfied.