

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING AN	)	RESOLUTION NO. 06-3688
EASEMENT TO WASHINGTON COUNTY	)	
DEPARTMENT OF LAND USE AND	)	
TRANSPORTATION FOR NON-PARK USE	)	
THROUGH METRO PROPERTY IN THE	)	Introduced by Chief Operating Officer
JACKSON BOTTOM-DAIRY/MCKAY CREEKS	)	Michael J. Jordan, with the concurrence of
TARGET AREA	)	Council President David Bragdon

WHEREAS, Metro owns open space/natural area property in Washington County on Susbauer Road, in Metro’s Jackson Bottom-Dairy/McKay Creeks (Council Creek) target area; and

WHEREAS, Washington County Department of Land Use and Transportation (hereafter, “Washington County”) is requesting a permanent Drainage, Slope and Public Utilities Easement and a temporary Construction Easement depicted in the attached Exhibit “A” to accommodate construction of a new bridge over Council Creek, known as Susbauer Bridge; and

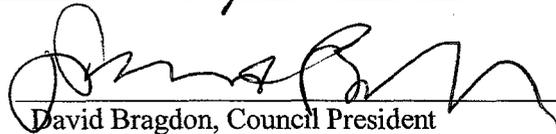
WHEREAS, Washington County will pay the fair market value of the easement area according to an appraisal and has agreed to pay Metro’s costs and expenses to process this permanent easement and temporary construction easement request; and

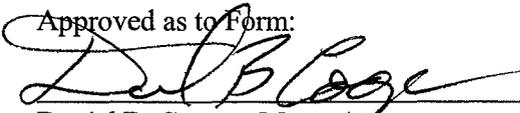
WHEREAS, Resolution No. 97-2539B “For the Purpose of Approving General Policies Related to the Review of Easements, Right-of Ways, and Leases for Non-Park Uses Through Properties Managed by the Regional Parks and Greenspaces Department,” adopted by the Metro Council on November 6, 1997 (the “Easement Policy”), requires formal review of all easement requests by the Metro Council; and

WHEREAS, the Metro Regional Parks and Greenspaces Department has determined that this easement request has met the criteria in Resolution No. 97-2539B, as identified in Exhibit “B” Metro Easement Policy Criteria and Staff Findings, and can be accommodated with minimal impact to natural resources, recreational resources, recreational facilities, recreational opportunities or their operation and management; now therefore

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to grant permanent and temporary easements to Washington County to accommodate replacement of Susbauer Bridge in a form consistent with the Easement Policy and acceptable to the Metro Attorney, encumbering open space/natural area land owned by Metro along Susbauer Road in Washington County.

ADOPTED by the Metro Council this 20<sup>th</sup> day of April, 2006.

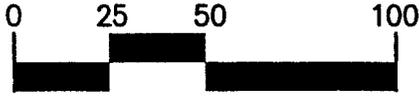
  
David Bragdon, Council President

Approved as to Form:  
  
Daniel B. Cooper, Metro Attorney



**Exhibit A**  
**Depiction of Easement Area Over Metro Property**  
**Susbauer Road**

**[Placeholder]**



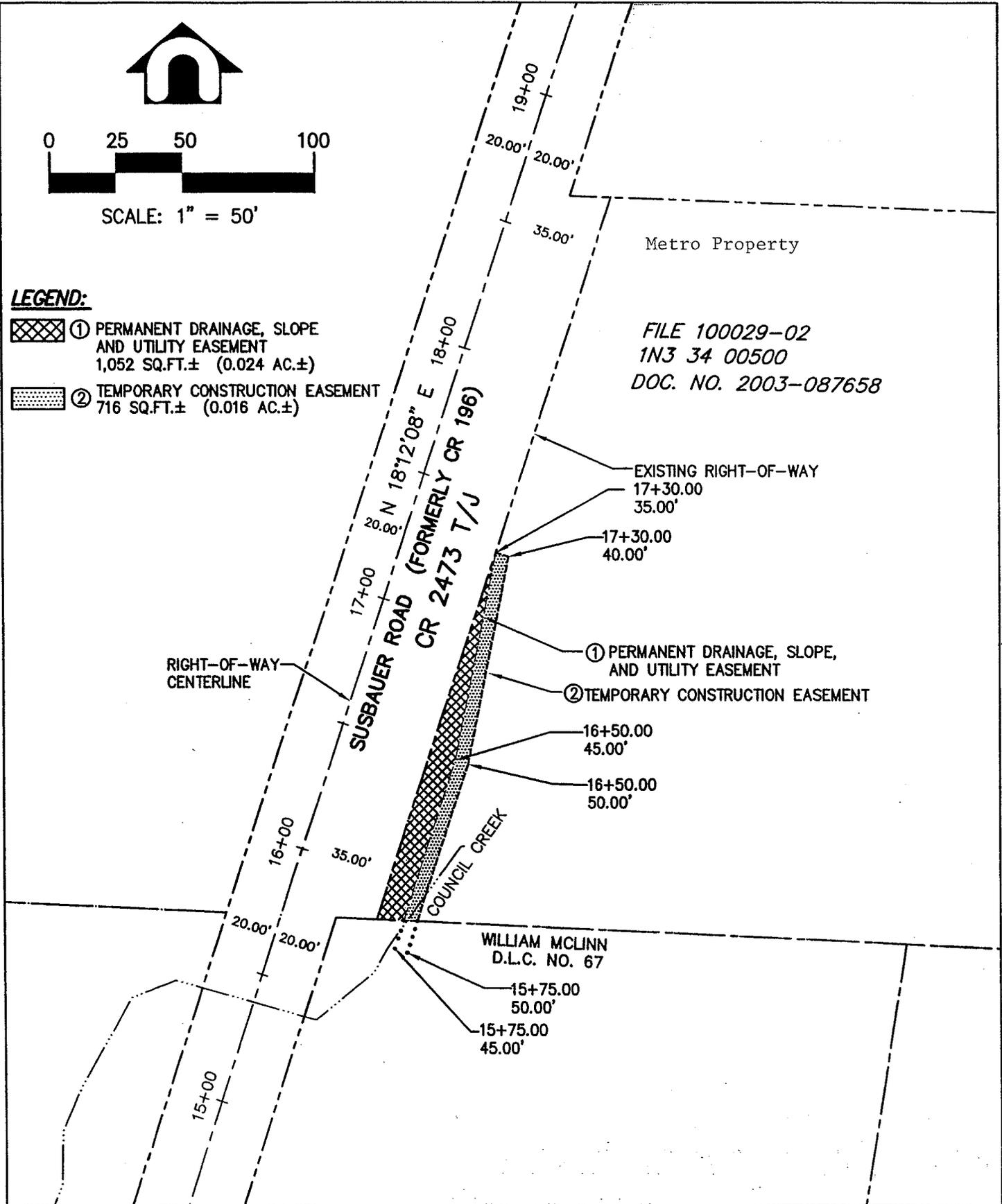
SCALE: 1" = 50'

**LEGEND:**

- ① PERMANENT DRAINAGE, SLOPE AND UTILITY EASEMENT  
1,052 SQ.FT.± (0.024 AC.±)
- ② TEMPORARY CONSTRUCTION EASEMENT  
716 SQ.FT.± (0.016 AC.±)

Metro Property

FILE 100029-02  
1N3 34 00500  
DOC. NO. 2003-087658



**SUSBAUER ROAD**

WASHINGTON COUNTY PROJECT NO.: 100029

FILE NO: 100029-02	SUBMITTAL DATE: 6/22/05	REV'D: 11/15/05
TAX LOT: 00500	ADDRESS: NO SITE ADDRESS	
TAX MAP: 1N334		



**DAVID EVANS AND ASSOCIATES INC.**

2100 Southwest River Parkway  
Portland Oregon 97201  
Phone: 503.223.6663

**EXHIBIT B**  
**Resolution 06-3688**

**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 to Metro 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: Washington County has submitted a formal easement and right-of-way application and request to the Regional Parks and Greenspaces Department. Staff is forwarding Washington County's application with a recommendation of 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 rebuild Susbauer Bridge. The current bridge is in poor condition and requires replacement. The current bridge is at an elevation of 150 feet, which is below the 100-year flood plain and the 25-year water elevation. During large storm events, the roadway is inundated and covered with water. In order to build the new 145-foot long, single span bridge, Washington County is requesting a permanent drainage, slope and utility easement and a temporary construction easement over 1,052 square feet and 716 square feet, respectively, of Metro's natural area property adjacent to Susbauer Road.

- 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: Development proposed within the easement area includes construction of a roadway approach embankment. The area of Metro's property affected by the proposed easement is not considered of high natural resource value, so the proposal will result in no significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.

- 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: No master plan exists for this site. However, the current and anticipated future use of the site is for protection for natural resource/water quality values. The area of Metro's property affected by the proposed easement is not considered of high natural resource value, so the easement will have minimal impact on natural resources and does not limit or eliminate any management activities, and these may be accommodated.

- 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: Mitigation for the Project is being performed down stream off the Metro property. All site disturbance resulting from the use of the temporary construction easement to construct the road improvements will be restored by Washington County upon completion of construction to conditions equal or better prior to construction.

- 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 of the easement request is the minimum needed to allow Washington County to rebuild Susbauer Bridge to provide vehicular and pedestrian passage over Council Creek along Susbauer Road.

- 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 permanent easement has limited negative impact to the natural resources of the property. The long-term impact to Council Creek depends on adequate control and treatment of stormwater generated by the additional road improvements and increased use.

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

Staff Finding: The easement includes 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: Washington County has agreed to cover direct costs.

- 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: Washington County has provided an appraisal by Jay DeVoe, SR/WA, MAI, dated January 20, 2006. The appraisal indicates that the impact to Metro's property is minimal and assigns it a nominal value of \$100. An appraisal review could be obtained, but it would cost a minimum of \$1,000 and would be unlikely to result in a value high enough to recapture the cost of the review. Washington County has agreed to pay Metro the appraisal value for the easement.

- 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 Metro Attorney.**

Staff Finding: The easement would include indemnification provisions. Additional insurance coverage and/or environmental assurances have been deemed unnecessary by the Office of the Metro Attorney.

- 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 is proposed.

- 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 outlined two alternatives which avoided the Metro property, but were infeasible: 1) a 310-foot multi-span bridge spanning the entire floodplain is prohibitively expensive and would require supports to be built in the wetland riparian area; 2) a roadway approach to the bridge structure which would require road fill with embankment slopes or placement of retaining walls to support the roadway fill is infeasible due to unstable surface soils which preclude stable wall construction within the floodplain of Council Creek.

- 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.**

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 alternative for alignment outside this area is feasible.

- 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: The current easement request is acceptable to Metro staff and would increase safety on Susbauer Road and Susbauer Bridge. Washington County plans seeding within the proposed easement areas on the Metro property in order to stabilize the roadway embankment fill and to restore temporary impacts to the property. The project also includes off site construction of a water quality treatment swale, wetland mitigation and installation of upland riparian plantings. The proposal can be accommodated without significant impacts to such resources, facilities, their operation and management.

- 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 expenses have been documented and Washington County shall reimburse Metro for said costs.

- 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.

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 06-3688, FOR THE PURPOSE OF GRANTING AN EASEMENT TO WASHINGTON COUNTY DEPARTMENT OF LAND USE AND TRANSPORTATION FOR NON-PARK USE THROUGH METRO PROPERTY IN THE JACKSON BOTTOM-DAIRY/MCKAY CREEKS TARGET AREA

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Date: April 6, 2006

Prepared by: Laurie Wulf

## BACKGROUND

Metro occasionally receives requests for easements, leases and right-of-ways through property that has been acquired by Metro with funds made available by the 1995 Open Spaces, Parks and Streams Bond Measure. These requests are reviewed and analyzed per the guidance and policy established via Resolution 97-2539B, "For the Purpose of Approving General Policies Related to the Review of Easements, Right-of Ways, and Leases for Non-Park Uses Through Properties Managed by the Regional Parks and Greenspaces Department," adopted by the Metro Council on November 6, 1997.

Metro has received and reviewed an easement application submitted by Washington County Department of Land Use and Transportation. The request meets all criteria set forth in the Metro Policy regarding easements, right-of-ways and leases for non-park uses. Washington County is requesting an easement on Metro-owned property near Susbauer Road in Metro's Jackson Bottom-Dairy/McKay Creeks target area in Washington County near the city of Cornelius city limits. Washington County proposes to acquire a permanent drainage, slope and utility easement of approximately 1,052 square feet, and an adjacent temporary construction easement of approximately 716 square feet. The permanent easement is for the purpose of increasing the right-of-way on Susbauer Road, facilitating rebuilding "Susbauer Bridge" to provide safer passage in this area.

## ANALYSIS/INFORMATION

1. **Known Opposition** No known opposition.
2. **Legal Antecedents** Resolution No. 97-2539B "For The Purpose of Approving General Policies Related to the Review of Easements, Right-of-Ways, and Leases for Non-Park Uses Through Properties Managed by the Regional Parks and Greenspaces Department," adopted November 6, 1997.
3. **Anticipated Effects** The easement will enable Washington County to rebuild Susbauer Bridge and will allow safer passage along Susbauer Road. The bridge project is included in the current Metropolitan Transportation Improvement Program (MTIP) adopted by JPACT and the Metro Council.
4. **Budget Impacts** Washington County will pay appraised value for the easement and will pay staff costs for processing this request.

**RECOMMENDED ACTION**

Staff recommends that Resolution No. 06-3688 be adopted.