

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING TWO)
SLOPE EASEMENTS AND TWO DRAINAGE)
EASEMENTS TO TRIMET FOR NON-PARK)
USE THROUGH METRO PROPERTY IN)
WILSONVILLE

RESOLUTION NO. 07-3751

Introduced by Chief Operating Officer
Michael J. Jordan with the
concurrence of Council President
David Bragdon

WHEREAS, Metro owns and manages property in Wilsonville along the existing railway right-of-way; and

WHEREAS, TriMet is requesting two permanent slope easements and two permanent drainage easements needed for the construction of the Washington County Commuter Rail on the tract of land owned by Metro as seen in Exhibit A; and

WHEREAS, the permanent drainage and slope easements square footage is 50,114 in total; and

WHEREAS, TriMet will pay Metros costs and expenses to process this easement and install a wildlife passage culvert at the site; and


WHEREAS, the Metro Parks and Greenspaces Department Easement Policy requires formal review of easement requests by the 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 opportunities or their operation and management; now therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to grant two permanent slope and two permanent drainage easements to TriMet. The easement documents shall be drafted by the Metro Attorney, in accord with the Easement Policy, and consistent with the information in Exhibits A, B and the Staff Report.

ADOPTED by the Metro Council this 4th day of January 2007.


David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

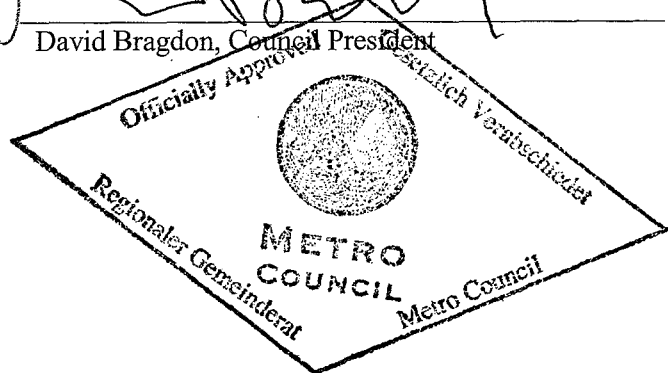


Exhibit "A"

File 1344
Metro

Parcel I
3 1W 10 100
3 1W 11 3000
Parcel II
3 1W 11C 1100, 1200
Parcel III
3 1W 10 100
Parcel IV
3 1W 11C 1100

Commuter Rail Project
Jack Carlson, Otak, Inc., 6/27/2006
Amended: July 6, 2006
August 1, 2006
August 2, 2006
August 23, 2006

Parcel(s): 4

Parcel I-Permanent Easement for Slopes

A parcel of land in the northeast one-quarter of Section 10 and the northwest one-quarter of Section 11, Township 3 South, Range 1 West, W.M., Clackamas County, Oregon, being a portion of that property described in Fee No. 97-033931, recorded May 6, 1997 in the Deed Records of Clackamas County, the said parcel being that portion of said property lying southwesterly of the southwesterly line of the Oregon Electric Railway right of way, and northeasterly of the following described line:

Beginning at a point which bears North, a distance of 64.30 feet, and West, a distance of 1182.73 feet from the northeast corner of said Section 10; thence S.43°23'48"E., a distance of 187.05 feet; thence S.43°54'28"E., a distance of 299.07 feet; thence S.45°19'07"E., a distance of 200.45 feet; thence S.50°28'03"E., a distance of 115.19 feet; thence S.44°47'06"E., a distance of 627.87 feet; thence S.36°16'23"E., a distance of 104.44 feet; thence S.43°47'38"E., a distance of 20.00 feet; thence S.59°16'22"E., a distance of 40.19 feet; thence S.46°13'37"E., a distance of 119.52 feet; thence S.40°27'40"E., a distance of 300.00 feet to the terminus of this line.

The parcel of land to which this description applies contains 25,846 square feet, more or less.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

Parcel II- Permanent Easement for Slopes

A parcel of land in the southwest one-quarter of Section 11, Township 3 South, Range 1 West, W.M., Clackamas County, Oregon, being a portion of that property described in Fee No. 99-094558, recorded September 29, 1999 in the Deed Records of Clackamas County, the said parcel being that portion of said property lying southwesterly of the southwesterly line of the Oregon Electric Railway right of way, and northeasterly of the following described line:

Beginning at a point on the southwesterly line of the Oregon Electric Railway right of way, which point bears North, a distance of 2325.00 feet, and West, a distance of 1321.26 feet, more or less, from the south one-quarter corner of said Section 11; thence S.27°14'39"E., a distance of 166.19 feet; thence S.09°31'11"E., a distance of 115.07 feet; thence S.18°29'14"E., a distance of 33.93 feet; thence S.38°05'27"E., a distance of 101.76 feet; thence S.45°44'37"E., a distance of 105.74 feet to a point on a line which is parallel with and 15.00 feet southwesterly from, when measured at right angles to, the southwesterly line of the Oregon Electric Railway right of way; thence S.30°20'10"E. along said parallel line, a distance of 625 feet to the terminus of this line.

The parcel of land to which this description applies contains 22,703 square feet, more or less.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

Parcel III-Permanent Easement for Storm Drainage

A strip of land, 20.00 feet wide, in the northeast one-quarter of Section 10, Township 3 South, Range 1 West, W.M., Clackamas County, Oregon, being a portion of that property described in Fee No. 97-033931, recorded May 6, 1997 in the Deed Records of Clackamas County, the said strip being that portion of said property lying southwesterly of the southwesterly line of the Oregon Electric Railway right of way and northeasterly of the southwesterly line of the above-described Parcel I, the centerline of said strip being more particularly described as follows:

Beginning at a point which bears South, a distance of 1045.32 feet, and West, a distance of 111.65 feet from the northeast corner of said Section 10; thence N.46°12'22"E., a distance of 45.14 feet to the terminus of this line.

The strip of land to which this description applies contains 504 square feet, more or less.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

Parcel IV-Permanent Easement for Storm Drainage

A strip of land, 20.00 feet wide, in the southwest one-quarter of Section 11, Township 3 South, Range 1 West, W.M., Clackamas County, Oregon, being a portion of that property described in Fee No. 99-094558, recorded September 29, 1999 in the Deed Records of Clackamas County, the said strip being that portion of said property lying southwesterly of the southwesterly line of the Oregon Electric Railway right of way and northeasterly of the southwesterly line of the above-described Parcel II, the centerline of said strip being more particularly described as follows:

Beginning at a point which bears North, a distance of 2052.68 feet, and West, a distance of 1227.72 feet from the south one-quarter corner of said Section 11; thence N.71°30'46"E., a distance of 63.04 feet to the terminus of this line.

The strip of land to which this description applies contains 1,061 square feet, more or less.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

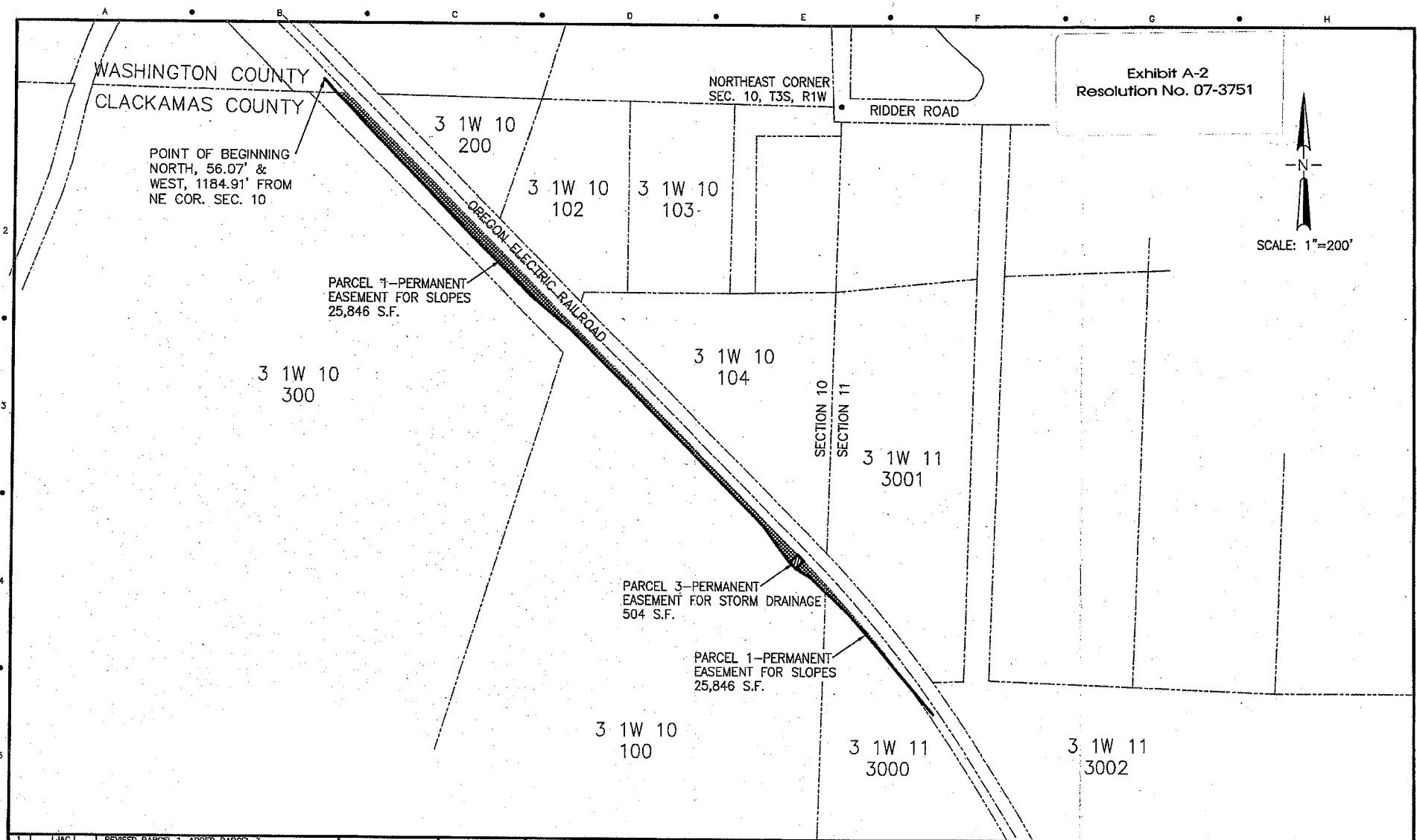
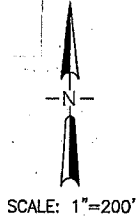


Exhibit A-2
Resolution No. 07-3751



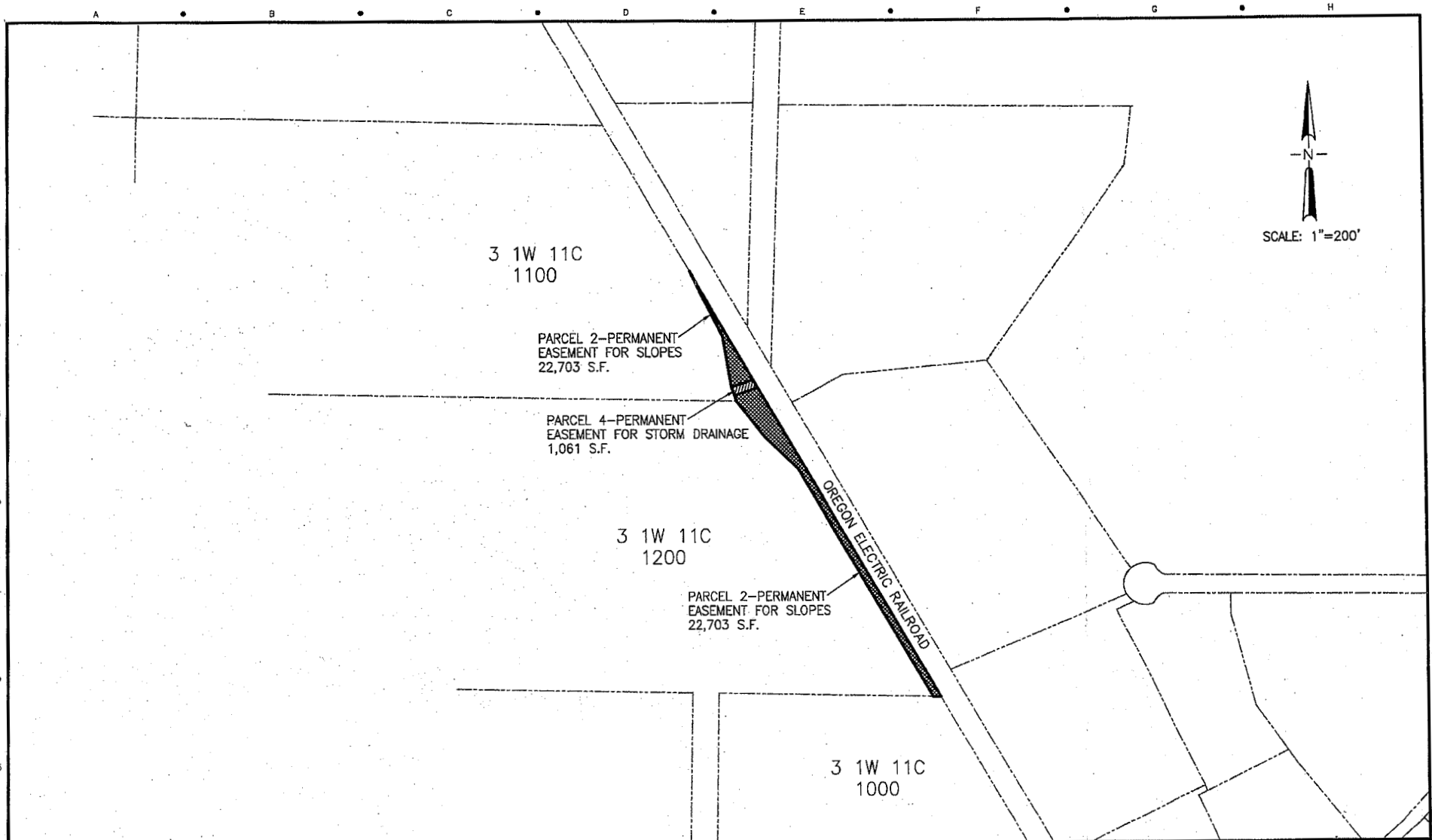
1	JAC	REVISED PARCEL 1, ADDED PARCEL 3
NO.	DATE BY	APPROVED

DESIGNED	DATE
DRAWN	DATE
CHECKED	DATE
APPROVED	DATE

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
TRIOMET CAPITAL PROJECTS AND FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

FILE 1344
METRO
SHEET 1 OF 2

SUBMITTED:	DATE:	APPROVED:	DATE:	SCALE:	DRAWING NO.:	CONTRACT NO.:	SHEET NO.:
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1	JAC	REVISED PARCEL 2, ADDED PARCEL 4	DESIGNED	DATE	<p>TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON</p> <p>CAPITAL PROJECTS AND FACILITIES DIVISION 710 N.E. HOLLADAY STREET PORTLAND, OREGON 97232</p>	FILE 1344 METRO SHEET 2 OF 2				
			DRAWN	DATE		<p>TRIOMET</p>	SCALE:	DRAWING NO.:	CONTRACT NO.:	SHEET NO.:
			CHECKED	DATE			SUBMITTED:	DATE:	APPROVED:	DATE:
			APPROVED	DATE						
NO.	DATE	BY	APPD.	REVISIONS						
		CHK.								

EXHIBIT B
Resolution 07-3751

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: Criterion has been satisfied through a review and approval process that includes a formal easement application; staff and legal review and the 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 acquire 2 permanent easements for slope and 2 permanent easements for storm drainage for the Washington County Commuter line between Beaverton and Wilsonville. The storm drain easements will extend existing drain facilities.

- 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: There will be no significant impact on park or natural resource values. The culvert amendment will allow for wildlife passage, as it is a 10-foot CMP culvert. This is the present slope of the rail line.

- 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: The additional rail line will be built in the existing right-of-way. The easement is for the slope that will be built up with rock to the height of the current rail line. There are no significant impacts on Metro owned land. Metro has negotiated a larger culvert with TriMet to accommodate the passage of wildlife. This 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 due to the culvert change.

- 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 easements are limited to accommodate the slope and drainage necessary. These 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: These are permanent easements that have been determined as the minimum necessary to accomplish the project.

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

Staff Finding: The 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 have 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: The rail project is funded by the Federal Transit Administration. The project is envisioned as being part of the Metropolitan Portland transit system. The public will benefit by having more transit options in the southwest section of the metropolitan area. TriMet has agreed to install a 10-foot CMP culvert for wildlife passage at Basalt Creek and will follow the terms and conditions for constructing this passage that Metro requested. The additional cost of the larger and more effective culvert equals or exceeds the fair market value of the easement area and thus constitutes payment and appropriate consideration under Metro's policy on easement and right-of-way. The terms are included in 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 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 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 realigning the rail line 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.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION 07-3751 FOR THE PURPOSE OF GRANTING TWO SLOPE EASEMENTS AND TWO DRAINAGE EASEMENTS TO TRIMET FOR NON-PARK USE THROUGH METRO PROPERTY IN WILSONVILLE

Date: December 5, 2006

Prepared by: Laurie Wulf

BACKGROUND

Resolution No. 07-3751 would provide Metro Council authorization for the Chief Operating Officer to approve TriMet acquisition of four permanent easements for slope and drainage on a tract of land in Wilsonville that is owned by Metro.

ANALYSIS/INFORMATION

1. **Known Opposition:** There is no known opposition to this proposed legislation. The Washington County Commuter Rail Line has had favorable public response.
2. **Legal Antecedents:** Metro Council 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.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 Metro Council.
3. **Anticipated Effects:** 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 TriMet. The proposal meets all criteria set forth in the Metro Policy regarding easements, right-of-ways, and leases for non-park use. TriMet has requested two slope easements and two drainage easements along an existing ODOT rail line. The storm drainages also extend existing drain facilities. The request will facilitate the construction of the Washington County Commuter Line between Beaverton and Wilsonville. Parcel 1 slope easement is 25,846 square feet, Parcel 2 slope easement is 22,703 square feet, Parcel 3 for storm drainage is 504 square feet and Parcel 4 storm drainage easement is for 1061 square feet. The total square footage is 50,114.

The easement is found to have minimal impacts on Metro-owned property, after Metro staff negotiated a wildlife passage culvert to be installed by TriMet. TriMet also agreed to terms and conditions of construction of the crossing/culvert at Basalt Creek.

4. **Budget Impacts:** Metro will receive monetary compensation and a wildlife passage area to be built by TriMet.

RECOMMENDED ACTION

Staff recommends that the Council adopt this easement request.