

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING AN  
EASEMENT TO THE CITY OF TIGARD FOR  
THE REPLACEMENT OF A FAILING SEWER  
LINE ALONG FANNO CREEK

RESOLUTION NO. 08-3958

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

WHEREAS, Metro owns natural area real property along Fanno Creek in the City of Tigard, Washington County, State of Oregon (herein the "Metro Property"); and

WHEREAS, the City of Tigard owns, operates and maintains an 8-inch subsurface sewer pipe that crosses the Metro Property near Fanno Creek, and lies within an established sewer pipeline easement; and

WHEREAS, the City of Tigard's sewer pipe has deteriorated and is leaking, and must be replaced; and

WHEREAS, the City of Tigard requests that it be allowed to bypass the leaking portion of the pipe, locating the replacement pipe further from Fanno Creek in a less environmentally sensitive part of the Metro Property, and has submitted an Application for Permanent Easement for Non-Park Uses for that purpose and for temporary construction access; and

WHEREAS, the City of Tigard will release and quitclaim that portion of its existing easement containing the bypassed section of sewer pipe, and restore the easement area to conditions equal to or better than current conditions; and


WHEREAS, the Metro Regional Parks and Greenspaces Department has determined that this easement request has met the criteria in 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"), as identified in Attachment 1 to the Staff Report to this resolution, and can be accommodated with minimal impact to natural resources, cultural resources, recreational resources, recreational facilities, recreational opportunities or their operation and management, and recommends approval; and

WHEREAS, Metro Council wishes to waive the requirement that the City of Tigard pay fair market value for the Easement, because the net increase in permanent easement area requested by the City of Tigard is minimal, at only 916 square feet, and because the grant of easement will have the environmental benefit of stopping the sewer leak and moving the pipe out of wetland habitat area; and

WHEREAS, the Easement Policy requires review of all easement requests by the full Metro Council, now therefore

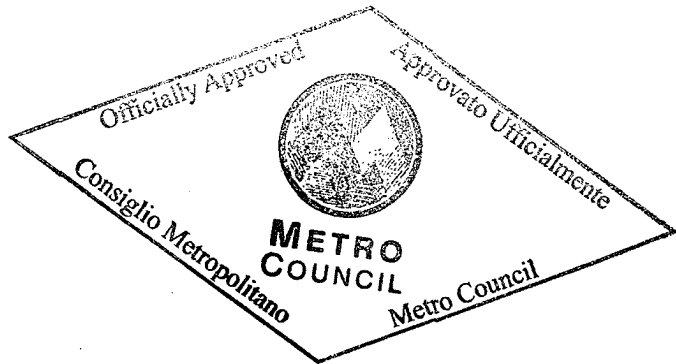
BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to grant a permanent subsurface sewer pipeline easement and associated temporary construction easement to the City of Tigard as depicted in Exhibit A, as shall be further set forth in an instrument approved by the Office of Metro Attorney.

ADOPTED by the Metro Council this 17<sup>th</sup> day of July 2008.

  
David Bragdon, Council President

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney



**Exhibit A**  
**Resolution No, 08-3958**

**Depiction and Illustration of Proposed Permanent Easement**



## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 08-3958, FOR THE PURPOSE OF GRANTING AN EASEMENT TO THE CITY OF TIGARD FOR THE REALIGNMENT OF A FAILING SEWER LINE ALONG FANNO CREEK

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Date: July 17, 2008

Prepared by: Dan Kromer

## BACKGROUND

Metro Regional Parks and Greenspaces Department occasionally receives requests for easements, leases and right-of-ways through Regional Parks and Greenspaces properties. These requests are reviewed and analyzed per 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 Regional Parks And Greenspaces Department" adopted by Council on November 6, 1997.

Regional Parks and Greenspaces has received an easement application from the City of Tigard and it has been reviewed by staff (Attachment 1). The City of Tigard owns, operates and maintains an 8-inch subsurface sewer pipe that crosses a Metro natural area property near Fanno Creek at the end of Milton Court in Tigard. The sewer pipe has deteriorated to the point that it is leaking and needs to be replaced and lies within an established 15' wide and 305' long (4,575 sq. ft.) sewer pipeline easement. The City of Tigard is requesting a 15' x 138' (2,070 sq. ft.) temporary construction access easement, a 2,060 sq. ft. temporary storage easement and a new 15' wide and 187' long (2,822 sq. ft.) permanent easement to relocate the replacement sewer pipeline further from Fanno Creek in a less environmental sensitive part of Metro property. The City of Tigard will release and quitclaim to Metro that portion of their existing easement (1,906 sq. ft.) containing the bypassed, capped off section of sewer pipe. With the release and quitclaim, the actual net increase to the City of Tigard's current easement would be 916 sq. ft. The temporary and permanent easements are found to have no negative impact on Metro-owned property, as The City of Tigard will be required to restore the site to conditions equal or better prior to construction per Metro specifications.

## 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 allow the repair of a failing sewer line through Metro property and move the permanent easement out of a sensitive habitat area.
4. **Budget Impacts:** The City of Tigard will pay staff costs for processing this request.

## RECOMMENDED ACTION

Staff recommends that the Council grant the easement as requested.

**ATTACHMENT 1  
Resolution 08-3958**

**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. Metro Parks and Greenspaces staff reviews the easement application, as does a staff member from the Office of Metro Attorney. The full Metro Council may hear the request if the staff forwards it or if the applicant (City of Tigard) chooses to take it before the Council on their own.

- 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 currently has a 15' wide and 305' long (4,575 sq. ft.) sanitary sewer easement through Metro's property. The present 8" sewer line through this easement area is failing and needs to be replaced. The applicant is proposing to realign the sewer line to a less sensitive habitat area on Metro property and capping off part of the old line where it's failing once the new line is operational. The new easement would encompass an area 15' wide and 187' long (2,822 sq. ft.). The applicant would relinquish their easement rights (1,906 sq. ft.) to Metro on the section of line being capped off so the actual net increase to the applicant's current easement would be 916 sq. ft. The applicant is also requesting a 15' x 138' (2,070 sq. ft.) temporary construction access and a 2,060 sq. ft. temporary construction staging area easement.

- 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 unavoidable impacts to the natural resources on the site to make the necessary repairs to the failing sanitary sewer line. However, impacts will be greatly reduced if the sewer line is relocated to the proposed easement area due to the location where excavation would occur in order to repair the failing section of line and its proximity adjacent an existing storm drain outfall, which leads into Fanno Creek.

- 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: There is no master or management plan for the site and habitat values in and around the proposed easement areas are marginal. Any natural resource impacts to the site would be minimal and temporary and could be mitigated.

- 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: All site disturbance resulting from replacing the sewer line to the new proposed location and the temporary construction access and staging area easements will be restored by the applicant upon completion of construction to conditions equal or better prior to construction per Metro specifications.

- 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 new permanent and temporary easement request are the minimum needed to allow for the new sewer line to be installed.

- 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 being requested is the minimum needed to accomplish the project while minimizing impact on Metro's property.

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

Staff Finding: All easements 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 the easement request has documented time and costs associated with reviewing the application and have informed the applicant of the policy requiring reimbursement. Easement approval 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 value of the easement is \$614 based on the total purchase price and the net permanent easement area increase of 916 sq. ft.

- 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 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: There is no master or management plan for the site.

- 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 and stated there are no alternatives since the failing sewer line section currently passes through Metro property.

- 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 exists as failing sewer line section currently passes through Metro property.

- 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 will occur on Metro property.



- 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.