

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING AN) RESOLUTION NO. 02- 3194A
EASEMENT TO THE CITY OF OREGON CITY)
FOR NON-PARK USE THROUGH METRO) Introduced by Mike Burton,
PROPERTY ON NEWELL CREST DRIVE) Executive Officer

WHEREAS, Metro owns and manages property in Oregon City near Newell Creek on Newell Crest Drive (the "Newell Crest Property"), and the City of Oregon City ("Oregon City") is requesting a permanent utility easement measuring 20 feet by 30 feet, over a portion of the Newell Crest Property; and

WHEREAS, the proposed permanent utility easement is next to their existing wastewater pump station and easement as set forth in Exhibit A, and would provide for the installation of an auxiliary power generator to supply power to the pump station during power outages, lifting sewage and preventing overflows into Newell Creek Canyon; and

WHEREAS, in accordance with Metro Council 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," the Metro Parks and Greenspaces Department has evaluated this easement request, and has determined that it meets the criteria established by Resolution 97-2539B, and can be accommodated without any impact to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management; and


WHEREAS, Resolution No. 97-2539B requires formal review of all easement requests by the Regional Parks and Greenspaces Advisory Committee, the Metro Natural Resources Committee and the full Metro Council; and

WHEREAS, Oregon City requested that the fair market value consideration for the easement (\$1,951.29) and staff costs associated with processing the easement request be waived by Metro (Exhibit D), and

WHEREAS, the Regional Parks and Greenspaces Advisory Committee has reviewed the proposed easement and recommended approval and also recommended that fair market value consideration for the easement and staff costs associated with processing the easement request be waived; now therefore,

BE IT RESOLVED that the Metro Council authorizes the Executive Officer to grant to the City of Oregon City a permanent utility easement over Metro's Newell Crest Property, for the sum of one dollar (\$1.00) and other valuable consideration as identified in Exhibits A and C attached hereto, upon payment by the City of Oregon City of Metro staff costs associated with processing the easement request.

ADOPTED by the Metro Council this 15th day of June 2002.



Carl Hosticka, Presiding Officer

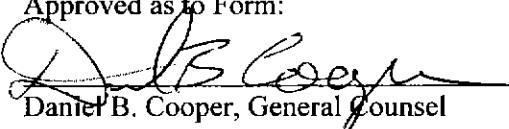
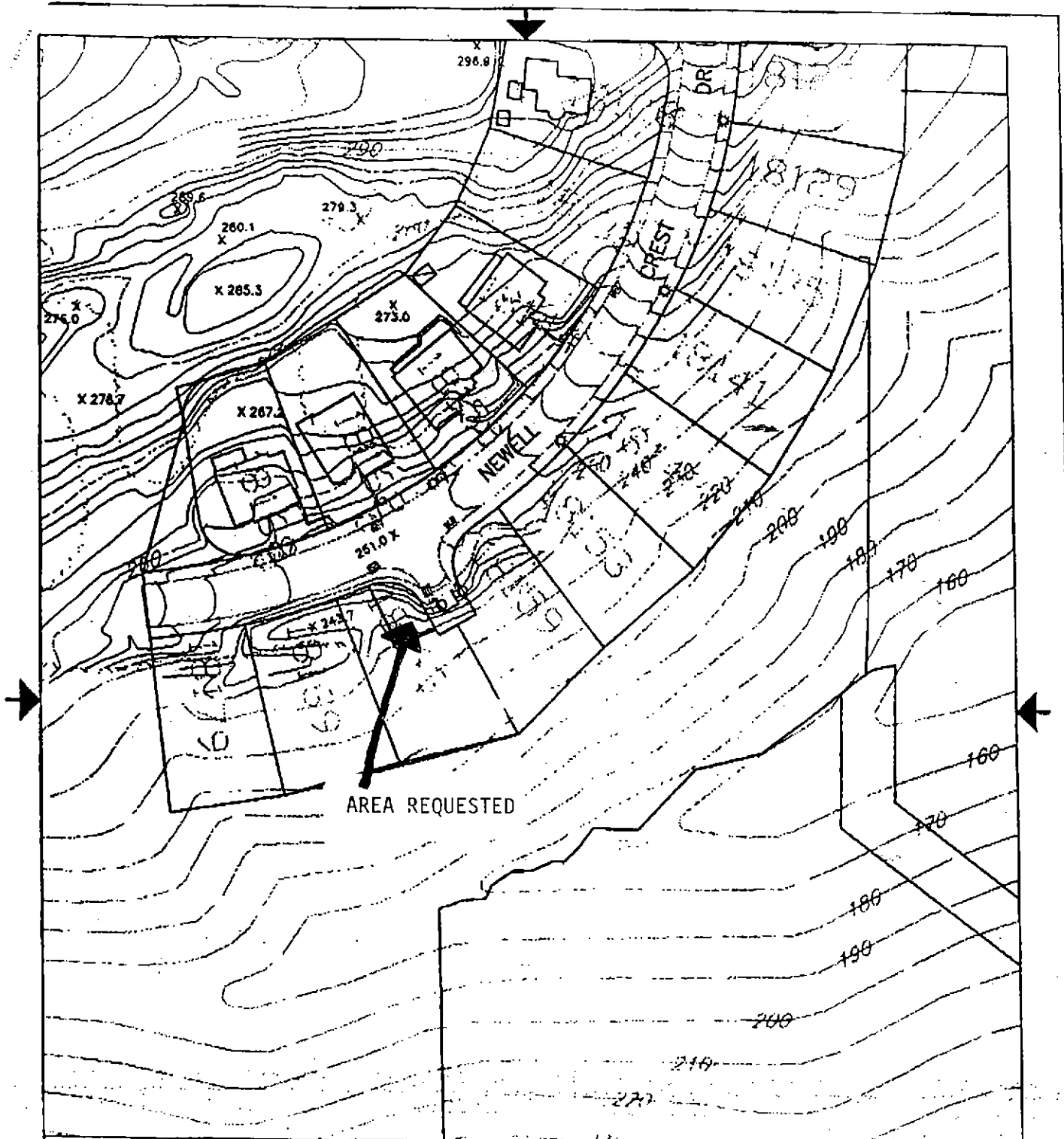
Approved as to Form:

Daniel B. Cooper, General Counsel



EXHIBIT A



AREA REQUESTED



**CITY OF
OREGON CITY**

320 WARNER MILNE ROAD
OREGON CITY, OREGON
97045

NEWELL CREST PUMP STATION

SIZE	PROJECT NO.	DWG NO.	REV
A			

SCALE 1"=50'

SHEET 1 OF 1

Exhibit B
Resolution No. 02-3194A

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 Natural Resources 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 build a generator enclosure for an auxiliary power source adjacent to the current wastewater pumping station to lift sewage during power outages to prevent overflows into Newell Creek Canyon. This will have a positive impact on this area to prevent overflow and does not impact any natural resource or park value.

- 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 to the current easement (600 sq. feet) will have negligible impact on park or natural resource values while preventing overflow into Newell Creek Canyon.

- 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 decreasing the likelihood of a sewage spill into the canyon 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.**

Staff Finding: The dimensions and terms of the easement are limited to accommodate installation of a auxiliary power enclosure, 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 permanent easement space limitations are the minimum needed to accomplish the project while minimizing impact on Metro property.

- 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 has documented time and costs of \$350.50 associated with review of this application and informed the applicant of the policy requiring reimbursement. Execution of the easement is subject to satisfaction of all expenses, unless fee is waived by Council, per request of the applicant.

- 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 \$1,951.29, based on the total purchase price and the square footage requested.

The City Of Oregon City has formally requested that Metro waive all fees due to the gains that Metro will attain through protection from sewage overflows to the canyon area below the pump station during power outages.

- 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 as the pump station already exists at this location.

- 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 No. 02-3194A

After recording return to:
CITY ENGINEER
CITY OF OREGON CITY
P.O. Box 351, Oregon City, Oregon 97045

PUBLIC UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that METRO, a municipal corporation and political subdivision of the state of Oregon (hereinafter referred to as "Grantor"), for the consideration hereinafter stated, does forever grant unto the CITY OF OREGON CITY, a municipal corporation, its successors and assigns (hereinafter referred to as "Grantee"), a permanent public utility easement ("Public Utility Easement") over the Premises described as follows, to-wit:

1. Legal description is set forth in EXHIBIT "C" attached hereto, and incorporated by reference herein.
2. A map of the above legal description is set forth in EXHIBIT "A" and incorporated by reference herein.

The consideration paid for this transfer, stated in terms of dollars, is \$1. However, the actual consideration includes other property or value given or promised which is the whole of the consideration.

TO HAVE AND TO HOLD the above described perpetual public utility easement unto said Grantee, subject to liens and encumbrances of record as of the date of execution set forth below, in accordance with the conditions and covenants as follows:

1. The Grantee, through its officers, employees and agents, shall have the right to enter upon said lands in such a manner and at such times from this date as may be reasonably necessary for the purpose of installing, constructing and maintaining thereon an auxiliary electrical power generator, including such renewals, repairs, replacements and removals thereof as may be from time to time required. Said right shall be perpetual for so long as Grantee shall operate or cause to be operated the auxiliary electrical power generator (hereafter, the "Public Utilities") for said purposes as herein provided, subject to the terms of Section 6 set forth herein below.
2. Immediately after any construction, maintenance, repair or replacement of said Public Utilities, any disturbed ground surface shall be restored and revegetated with native vegetation according to Grantor's specifications.

3. Grantee's use of the Premises shall be exclusive, but subject to Metro's inspection for compliance hereunder, at any time, without notice.

4. Grantor(s) and his/her/their heirs, successors and/or assigns will not be responsible for damage by others to said Public Utilities.

5. To the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, Grantee shall defend, indemnify, and save harmless Grantor, its officers, employees, and agents from and against any and all actual or alleged claims, demands, judgments, 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 Grantor and which, in whole or in part, directly or indirectly, arise from or are in any way connected with: (i) the act, omission or negligence of Grantee, its officers, directors, agents, employees, invitees, contractors or subcontractors; (ii) the construction, maintenance or operation of the easement set forth herein, whether or not due to the Grantee's own act or omission and whether or not occurring on this easement; and (iii) any breach, violation or failure to perform any of the Grantee's obligations under this Public Utility Easement.

6. This Public Utility Easement is granted on the express condition that the Grantee use the Premises solely for the purposes of installing, constructing and maintaining thereon an auxiliary electrical power generator serving a wastewater pump station located on adjacent City of Oregon City property, including such renewals, repairs, replacements and removals thereof as may be from time to time required. If the Premises is ever used for another purpose by the Grantee without the express written permission of Grantor, or if the Premises ever ceases to be used for said purposes, the Grantor may re-enter and terminate the Public Utility Easement hereby granted.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

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IN WITNESS WHEREOF, the undersigned Grantor and Grantee have executed this Public Utility Easement, this _____ day of _____, 2002.

GRANTOR: Metro

Mike Burton
Executive Officer

GRANTEE: City of Oregon City

By: _____
Its: _____

APPROVED AS TO FORM

this _____ day of _____, 2002

Edward J. Sullivan, City Attorney
City of Oregon City, Oregon

APPROVED AS TO LEGAL DESCRIPTION

this _____ day of _____, 2002

_____, P.E., City Engineer
City of Oregon City, Oregon

ACCEPTED on behalf of the City of Oregon City,
OR, this _____ day of _____, 2002.

Laurie Wulf - Newell Crest Drive Property

From: "Chuck Carter" <ccarter@ci.oregon-city.or.us>
To: <Wulf@metro.dst.or.us>
Date: 05/07/2002 2:35 PM
Subject: Newell Crest Drive Property

Laurie,

I am requesting that any fee's regarding the request for easement be waived due to the benefits that will occur to Metro.

Thank you,
Chuck Carter
Operations Supervisor
Storm and Wastewater Division

METRO NATURAL RESOURCES COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 02-3194A, FOR THE PURPOSE OF GRANTING AN EASEMENT TO THE CITY OF OREGON CITY FOR NON PARK USE THROUGH METRO PROPERTY ON NEWELL CREST DRIVE

Date: June 7, 2002

Presented by: Councilor Atherton

Committee Action: At its June 5, 2002 meeting, the Metro Natural Resources Committee voted 4-0 to amend and recommend Council adoption of Resolution 02-3187A. Voting in favor: Councilors Atherton, Hosticka, Park and McLain

Background: Oregon City is requesting expansion of an easement on Metro owned land in the Newell Creek Canyon area. The 20 by 30 foot site will be used to build a generator to pump sewage at an existing wastewater pump station during emergency power outages. Staff determined that the request met Council approved easement and right of way criteria. The city also requested waiver of fees associated with this easement request, which apply to \$350.50 in staff time to process the application, and \$1,951.29, the value of the easement itself.

- Existing Law: Resolution 97-2539B declares Council policy relative to granting easements and rights of way on parks properties.
- Budget Impact: There is no budget impact.

Committee Issues/Discussion: The committee spent some time discussing the fee waiver request. In the end, the committee felt that since the easement was for a non-park purpose, they would not waive the \$350.50 fee for Metro staff time to process the request. The Committee did agree to waive the \$1,951.29 value of the easement, however. This will be reflected in the "resolved" section of the amended resolution. Exhibit C is also amended to reflect that the actual consideration paid for the transfer (easement) is "\$1, and other considerations", not "\$0", as currently written.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3194A, FOR THE PURPOSE OF GRANTING AN EASEMENT TO THE CITY OF OREGON CITY FOR NON-PARK USE THROUGH METRO PROPERTY ON NEWELL CREST DRIVE

Date: June 7, 2002

Prepared by: Laurie Wulf

BACKGROUND

Metro Regional Parks and Greenspaces Department occasionally receives requests for easements, leases and right-of-ways through property that has been acquired through Regional Parks and Greenspaces properties. 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 Regional Parks And Greenspaces Department" adopted by Council on November 6th, 1997.

Metro has received and reviewed an easement application from the City of Oregon City. The request meets all criteria set forth in the Metro Policy regarding easements, right-of-ways and leases for non-park uses. The City of Oregon City is requesting an easement next to their existing easement for the purpose of building a generator enclosure for an auxiliary power source for the wastewater pump station. The easement will be 20 feet by 30 feet and located next to the wastewater pump station. The requested easement is found to have no negative impact on Metro-owned property and will only benefit the property by preventing potential overflows on Metro property. Metro staff costs accrued to date are approximately \$ 350.50 and the value of the easement is \$ 1,951.29. The City Of Oregon City requested waiving of all fees due to the positive impact that this will have for Metro's property

ANALYSIS/INFORMATION

1. **Known Opposition** No known opposition.
2. **Legal Antecedents** None known.
3. **Anticipated Effects** The effect will be an auxiliary power source installed and utilized during power outages, preventing raw wastewater from entering Newell Creek Canyon.
4. **Budget Impacts** The Parks and Greenspaces Advisory Committee recommends waiving all fees to the City of Oregon City for the favorable affect this will have on the Newell Creek Canyon area.

RECOMMENDED ACTION

The Executive Officer recommends that the Council grant the easement as requested and waive all fees on the grounds that the value of service to Metro will exceed potential fees.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING AN) RESOLUTION NO. 02- 3194
EASEMENT TO THE CITY OF OREGON CITY)
FOR NON-PARK USE THROUGH METRO) Introduced by Mike Burton,
PROPERTY ON NEWELL CREST DRIVE) Executive Officer

WHEREAS, Metro owns and manages property in Oregon City near Newell Creek on Newell Crest Drive; and

WHEREAS, the City of Oregon City is requesting a permanent easement, next to their current easement, to build a generator enclosure for an auxiliary power source adjacent to the current wastewater pumping station as seen in Exhibit A; and

WHEREAS, the proposed permanent utility easement is 20 feet by 30 feet for the purpose of supplying power to the pump station to lift the sewage during power outages to prevent overflows into Newell Creek Canyon; 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" requires formal review of all easement requests by the Regional Parks and Greenspaces Advisory Committee, the Metro Natural Resources Committee and the full Metro Council; and

WHEREAS, the Metro Parks and Greenspaces Department has determined that this easement request has met the criteria in Resolution 97-2539B, as identified in Exhibit B, and can be accommodated without any 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 and waiving of all fees for the City Of Oregon City; as requested by the City of Oregon City in Exhibit D; now therefore,

BE IT RESOLVED that the Metro Council authorizes the Executive Officer to grant a permanent easement to the City of Oregon City, as identified in Exhibit A and the attached legal easement document, Exhibit C, on the tract of land owned by Metro on Newell Crest Drive in the City of Oregon City.

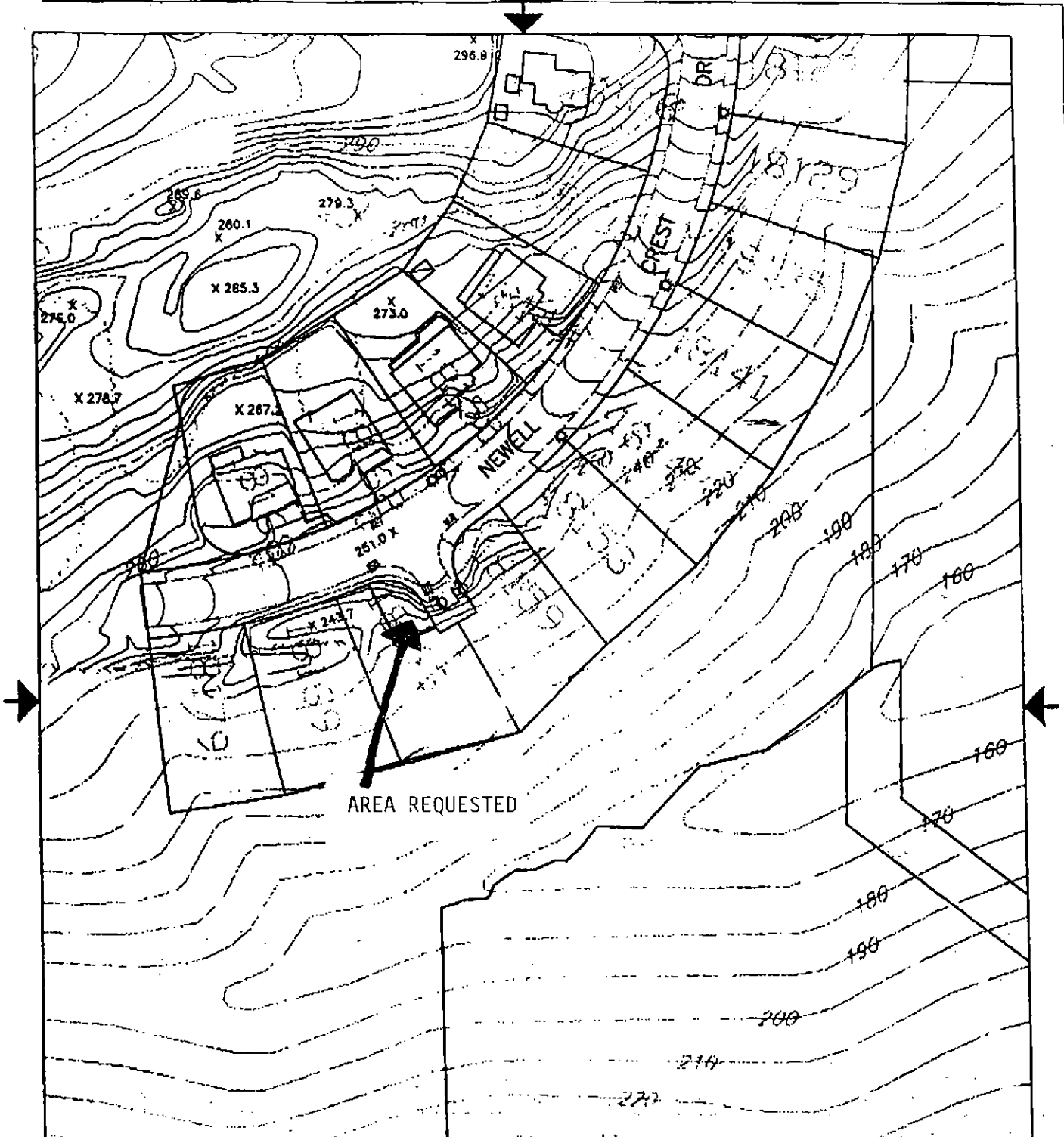
ADOPTED by the Metro Council this _____ day of _____, 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

EXHIBIT A



AREA REQUESTED



CITY OF OREGON CITY
320 WARNER MILNE ROAD
OREGON CITY, OREGON
97045

NEWELL CREST PUMP STATION

SIZE A	PROJECT NO.	DWG NO.	REV
SCALE 1/100	SHEET 1 OF 1		

Exhibit B
Resolution No. 02-3194

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 Natural Resources 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 build a generator enclosure for an auxiliary power source adjacent to the current wastewater pumping station to lift sewage during power outages to prevent overflows into Newell Creek Canyon. This will have a positive impact on this area to prevent overflow and does not impact any natural resource or park value.

- 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 to the current easement (600 sq. feet) will have negligible impact on park or natural resource values while preventing overflow into Newell Creek Canyon.

- 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 decreasing the likelihood of a sewage spill into the canyon 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.**

Staff Finding: The dimensions and terms of the easement are limited to accommodate installation of a auxiliary power enclosure, 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 permanent easement space limitations are the minimum needed to accomplish the project while minimizing impact on Metro property.

- 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 has documented time and costs of \$350.50 associated with review of this application and informed the applicant of the policy requiring reimbursement. Execution of the easement is subject to satisfaction of all expenses, unless fee is waived by Council, per request of the applicant.

- 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 \$1,951.29, based on the total purchase price and the square footage requested.

The City Of Oregon City has formally requested that Metro waive all fees due to the gains that Metro will attain through protection from sewage overflows to the canyon area below the pump station during power outages.

- 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 as the pump station already exists at this location.

- 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 No. 02-3194

After recording return to:
CITY ENGINEER
CITY OF OREGON CITY
P.O. Box 351, Oregon City, Oregon 97045

PUBLIC UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that METRO, a municipal corporation and political subdivision of the state of Oregon (hereinafter referred to as "Grantor"), for the consideration hereinafter stated, does forever grant unto the CITY OF OREGON CITY, a municipal corporation, its successors and assigns (hereinafter referred to as "Grantee"), a permanent public utility easement ("Public Utility Easement") over the Premises described as follows, to-wit:

1. Legal description is set forth in EXHIBIT "C" attached hereto, and incorporated by reference herein.
2. A map of the above legal description is set forth in EXHIBIT "A" and incorporated by reference herein.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$0. However, the actual consideration consists of or includes other property or value given or promised which is the whole of the consideration.

TO HAVE AND TO HOLD the above described perpetual public utility easement unto said Grantee, subject to liens and encumbrances of record as of the date of execution set forth below, in accordance with the conditions and covenants as follows:

1. The Grantee, through its officers, employees and agents, shall have the right to enter upon said lands in such a manner and at such times from this date as may be reasonably necessary for the purpose of installing, constructing and maintaining thereon an auxiliary electrical power generator, including such renewals, repairs, replacements and removals thereof as may be from time to time required. Said right shall be perpetual for so long as Grantee shall operate or cause to be operated the auxiliary electrical power generator (hereafter, the "Public Utilities") for said purposes as herein provided, subject to the terms of Section 6 set forth herein below.

2. Immediately after any construction, maintenance, repair or replacement of said Public Utilities, any disturbed ground surface shall be restored and revegetated with native vegetation according to Grantor's specifications.

3. Grantee's use of the Premises shall be exclusive, but subject to Metro's inspection for compliance hereunder, at any time, without notice.

4. Grantor(s) and his/her/their heirs, successors and/or assigns will not be responsible for damage by others to said Public Utilities.

5. To the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, Grantee shall defend, indemnify, and save harmless Grantor, its officers, employees, and agents from and against any and all actual or alleged claims, demands, judgments, 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 Grantor and which, in whole or in part, directly or indirectly, arise from or are in any way connected with: (i) the act, omission or negligence of Grantee, its officers, directors, agents, employees, invitees, contractors or subcontractors; (ii) the construction, maintenance or operation of the easement set forth herein, whether or not due to the Grantee's own act or omission and whether or not occurring on this easement; and (iii) any breach, violation or failure to perform any of the Grantee's obligations under this Public Utility Easement.

6. This Public Utility Easement is granted on the express condition that the Grantee use the Premises solely for the purposes of installing, constructing and maintaining thereon an auxiliary electrical power generator serving a wastewater pump station located on adjacent City of Oregon City property, including such renewals, repairs, replacements and removals thereof as may be from time to time required. If the Premises is ever used for another purpose by the Grantee without the express written permission of Grantor, or if the Premises ever ceases to be used for said purposes, the Grantor may re-enter and terminate the Public Utility Easement hereby granted.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

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IN WITNESS WHEREOF, the undersigned Grantor and Grantee have executed this Public Utility Easement, this _____ day of _____, 2002.

GRANTOR: Metro

Mike Burton
Executive Officer

GRANTEE: City of Oregon City

By: _____
Its: _____

APPROVED AS TO FORM

this _____ day of _____, 2002

Edward J. Sullivan, City Attorney
City of Oregon City, Oregon

APPROVED AS TO LEGAL DESCRIPTION

this _____ day of _____, 2002

_____, P.E., City Engineer
City of Oregon City, Oregon

ACCEPTED on behalf of the City of Oregon City,
OR, this _____ day of _____, 2002.

Laurie Wulf - Newell Crest Drive Property

From: "Chuck Carter" <ccarter@ci.oregon-city.or.us>
To: <Wulfl@metro.dst.or.us>
Date: 05/07/2002 2:35 PM
Subject: Newell Crest Drive Property

Laurie,

I am requesting that any fee's regarding the request for easement be waived due to the benefits that will occur to Metro.

Thank you,
Chuck Carter
Operations Supervisor
Storm and Wastewater Division

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3194, FOR THE PURPOSE OF GRANTING AN EASEMENT TO THE CITY OF OREGON CITY FOR NON-PARK USE THROUGH METRO PROPERTY ON NEWELL CREST DRIVE

Date: May 13, 2002

Prepared by: Laurie Wulf

BACKGROUND

Metro Regional Parks and Greenspaces Department occasionally receives requests for easements, leases and right-of-ways through property that has been acquired through Regional Parks and Greenspaces properties. 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 Regional Parks And Greenspaces Department" adopted by Council on November 6th, 1997.

Metro has received and reviewed an easement application from the City of Oregon City. The request meets all criteria set forth in the Metro Policy regarding easements, right-of-ways and leases for non-park uses. The City of Oregon City is requesting an easement next to their existing easement for the purpose of building a generator enclosure for an auxiliary power source for the wastewater pump station. The easement will be 20 feet by 30 feet and located next to the wastewater pump station. The requested easement is found to have no negative impact on Metro-owned property and will only benefit the property by preventing potential overflows on Metro property. Metro staff costs accrued to date are approximately \$ 350.50 and the value of the easement is \$ 1,951.29. The City Of Oregon City requested waiving of all fees due to the positive impact that this will have for Metro's property

ANALYSIS/INFORMATION

1. **Known Opposition** No known opposition.
2. **Legal Antecedents** None known.
3. **Anticipated Effects** The effect will be an auxiliary power source installed and utilized during power outages, preventing raw wastewater from entering Newell Creek Canyon.
4. **Budget Impacts** The Parks and Greenspaces Advisory Committee recommends waiving all fees to the City of Oregon City for the favorable affect this will have on the Newell Creek Canyon area.

RECOMMENDED ACTION

The Executive Officer recommends that the Council grant the easement as requested and waive all fees on the grounds that the value of service to Metro will exceed potential fees.