

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING AN ) RESOLUTION NO. 02-3228  
EASEMENT TO CLACKAMAS COUNTY FOR )  
NON-PARK USE THROUGH METRO ) Introduced by Mike Burton,  
PROPERTY ON BELL ROAD ) Executive Officer

WHEREAS, Metro owns and manages property in Wilsonville near Mill Creek on Bell Road; and

WHEREAS, Clackamas County is requesting a permanent easement to comply with State and Federal laws regarding the Endangered Species Act (ESA) to remove the existing culvert and replace it with a fish-friendly 92-inch by 141-inch aluminized steel pipe arch and for ongoing maintenance of the culvert and surrounding slopes; and

WHEREAS, the proposed drainage and slope easement is 17.5 feet by 50 feet (center-line of Bell Road) for a total of 875 square feet as identified in Exhibit B; and

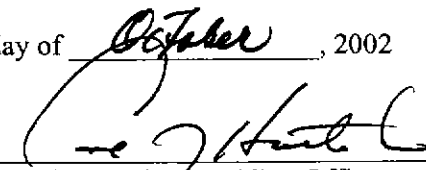
WHEREAS, Clackamas County will pay Metro's cost and expenses to process this right-of-way request and 200 dollars fair market value for the easement area; and

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

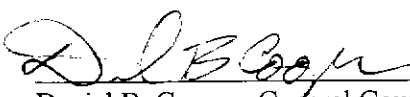
WHEREAS, the Metro Parks Department has determined that this easement request has met the criteria in Resolution 97-2539B, as identified in Exhibit A, and can be accommodated with minimal impact to natural resources, cultural resources, recreational facilities, recreational opportunities, or their operation and management, and the Regional Parks and Greenspaces Advisory Committee has reviewed the proposal and has recommended approval; now therefore,

BE IT RESOLVED that the Metro Council authorizes the Executive Officer to grant a permanent easement to Clackamas County for culvert replacement and ongoing maintenance, as identified in Exhibit B and the attached legal easement document, Exhibit C, on the tract of land owned by Metro on Bell Road in the City of Wilsonville.

ADOPTED by the Metro Council this 10<sup>th</sup> day of October, 2002

  
\_\_\_\_\_  
Carl Hosticka, Presiding Officer

Approved as to Form:

  
\_\_\_\_\_  
Daniel B. Cooper, General Counsel

**EXHIBIT A**  
**Resolution 02-3228**

**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 Resource 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 remove an existing culvert and replace it with a fish passable 92-inch by 141-inch aluminized steel pipe arch. This will be in compliance with the State and Federal laws regarding the Endangered Species Act. The permanent easement will also allow for on-going maintenance of the culvert and surrounding slopes.

- 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 easement will have no significant impact on park or natural resource values while making the culvert passable for fish.

- 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 improvements.

- 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 the installation and maintenance of the culvert, 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 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: Metro will receive the fair market value of 200 dollars for the non-buildable, sloped area.

- 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 for alignment outside the Metro natural 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: 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 B

Resolution 02-3228

MOST EASTERLY  
5/8" IRON ROD  
SET IN PS#9298

SCALE: 1 INCH = 20 FEET

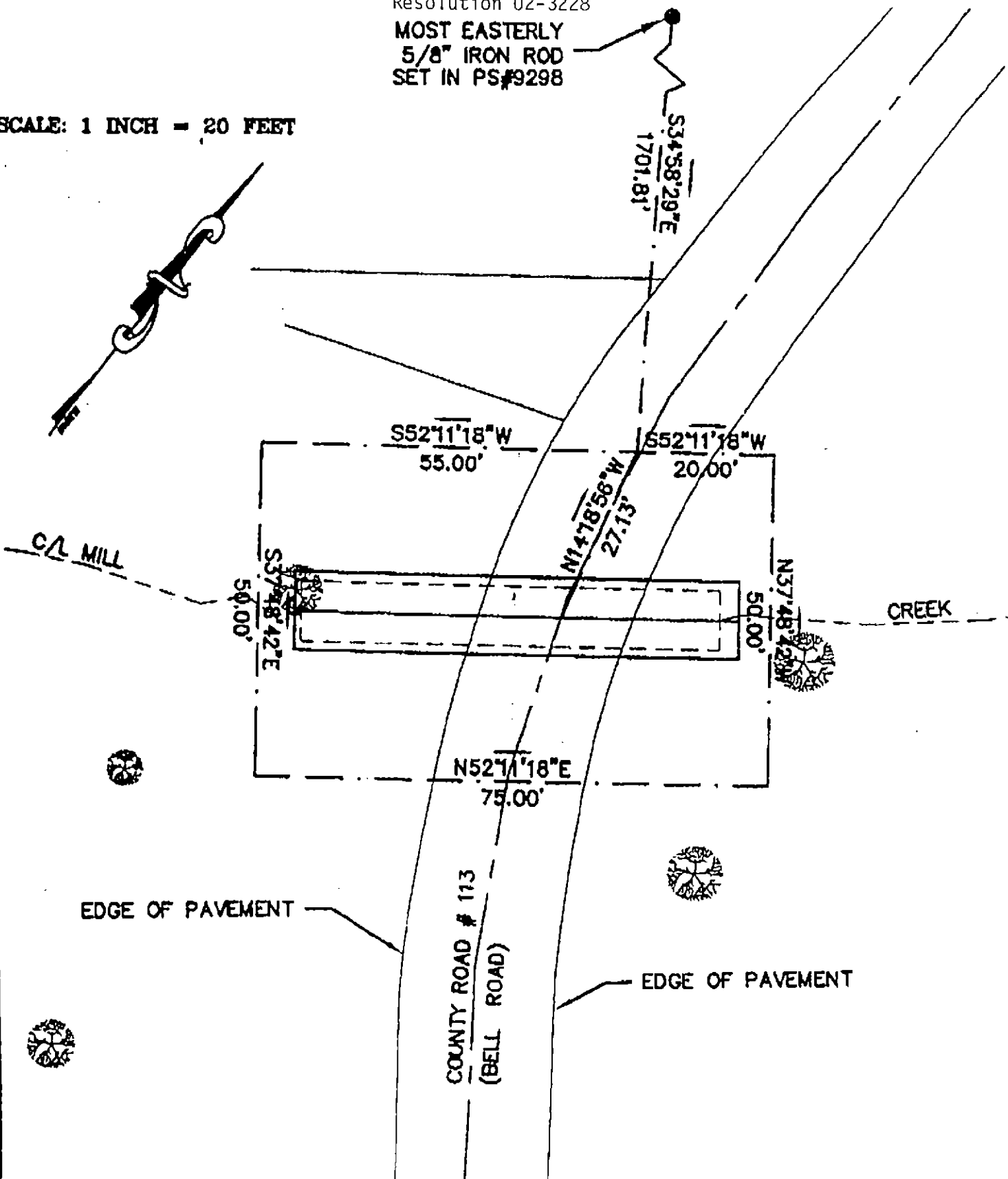


EXHIBIT C  
RESOLUTION 02-3228

After recording return to:  
CLACKAMAS COUNTY, C/O Engineering  
9101 SE Sunnybrook Blvd.  
Clackamas, OR 97015

This document shall have no effect on the  
address to which taxes shall be sent

**DRAINAGE AND SLOPE 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 CLACKAMAS COUNTY, a municipal corporation, its successors and assigns (hereinafter referred to as "Grantee"), a permanent public drainage and slope easement ("Drainage and Slope Easement") over the Premises described as follows, to-wit:

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

The true and actual consideration paid for this transfer, stated in terms of dollars, is TWO HUNDRED DOLLARS (\$200.00).

TO HAVE AND TO HOLD the above described perpetual Drainage and Slope 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 and occupy the Premises in such a manner and at such times from this date as may be reasonably necessary to lay down, construct, reconstruct, replace, upgrade, operate, inspect and perpetually maintain thereon stormwater drainage or surface water pipelines, (the "Storm Drainage Facility") through, under and along the Premises. Grantee agrees to limit its activities on the Premises to those necessary to achieve the above set forth purpose. Said right shall be perpetual for so long as Grantee shall operate or cause to be operated the Storm Drainage Facility for said purposes as herein provided, subject to the terms of Section 6 set forth herein below.
2. Grantee agrees to provide 10 days written notice to Grantors before commencing construction activities on the Premises under this Drainage and Slope Easement.
3. Immediately after any construction, maintenance, repair or replacement of the Storm Drainage Facility, any disturbed ground surface shall be restored and revegetated with native vegetation according to Grantor's specifications.
4. Grantee's use of the Premises shall be non-exclusive, and subject to Grantor's inspection for compliance hereunder, at any time, without notice. However, Grantor agrees to undertake no activity or otherwise harm or impair the Premises to prevent or impede the proper functioning of the Storm Drainage Facility, and agree that no building may be erected upon the Premises without the advance written consent of Grantee.
5. Grantor and its successors and/or assigns are hereby released from responsibility for damage by others to said Storm Drainage Facility.

6. 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 Drainage and Slope Easement set forth herein, whether or not due to the Grantee's own act or omission and whether or not occurring on the Drainage and Slope Easement; and (iii) any breach, violation or failure to perform any of the Grantee's obligations under this Drainage and Slope Easement.

7. This Drainage and Slope Easement is granted on the express condition that the Grantee use the Premises solely for the purposes of installing, constructing and maintaining thereon the Storm Drainage Facility, 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 Drainage and Slope 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.

IN WITNESS WHEREOF, the undersigned Grantor and Grantee have executed this Drainage and Slope Easement, this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

GRANTOR: Metro

\_\_\_\_\_  
Mike Burton  
Executive Officer

GRANTEE: Clackamas County

By: \_\_\_\_\_  
Its: \_\_\_\_\_



State of Oregon )  
  ) *ss.*  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared MIKE BURTON, as Executive Officer of Metro, a municipal corporation, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

State of Oregon )  
  ) *ss.*  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_ as \_\_\_\_\_ of CLACKAMAS COUNTY, a municipal corporation, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this instrument, and acknowledged that he (she or they) executed it.

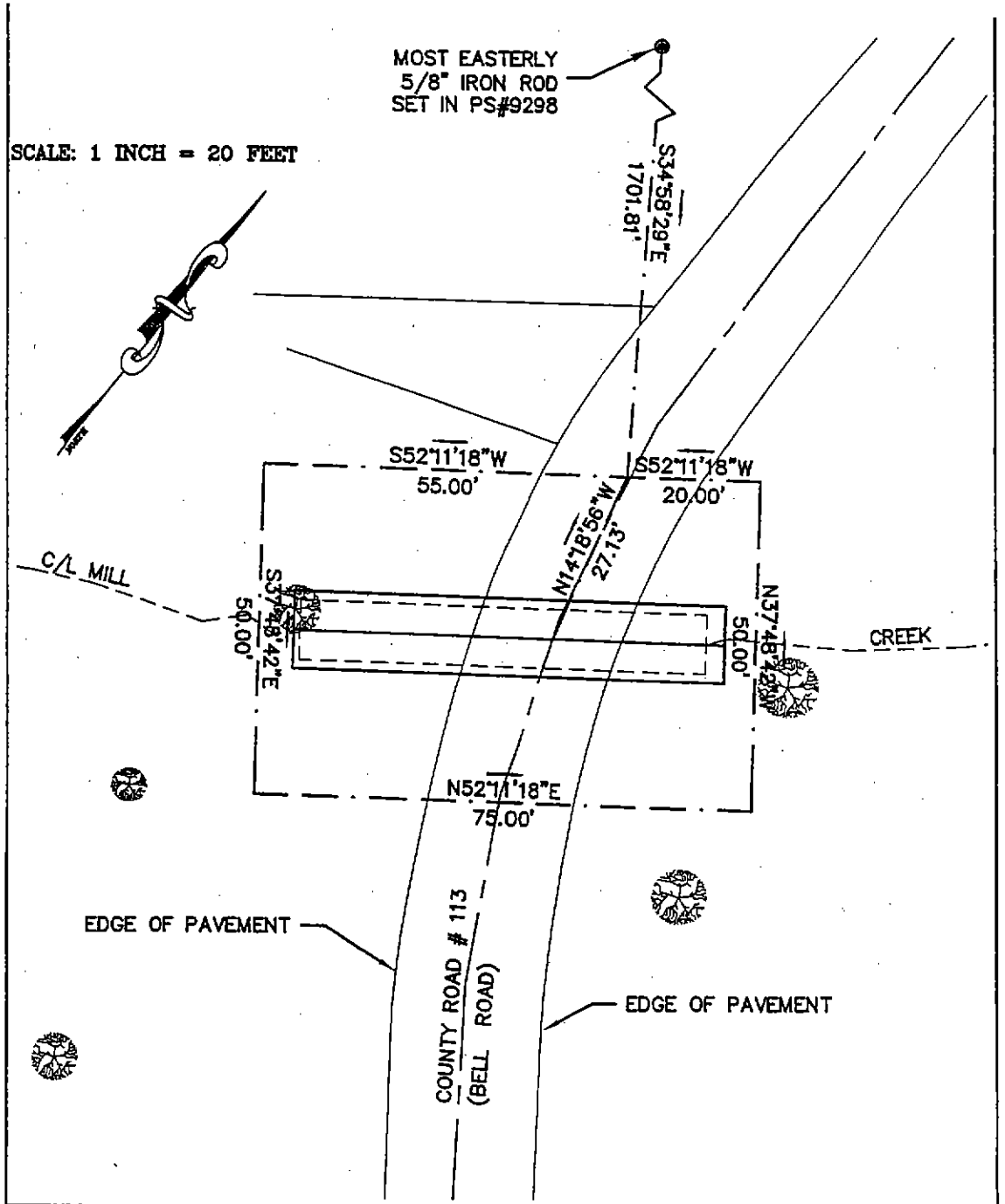
\_\_\_\_\_  
My commission expires: \_\_\_\_\_

Exhibit A

A drainage and slope easement in the southwest  $\frac{1}{4}$  of Section 22, T.3S., R.1W., W.M., being all that portion of land described in the Bargain And Sale Deed to Metropolitan Service district (METRO) recorded under Recorder's Fee No. 2001-033484 that lies within the following described area.

Beginning at a point in the center of County Road Number 113 as traveled, said point being North  $14^{\circ}18'56''$  West a distance of 27.13 feet from the intersection of County Road 113 as traveled and the center of Mill Creek. Said point also being South  $34^{\circ}58'29''$  East a distance of 1701.81 feet from the most Easterly  $\frac{5}{8}''$  iron rod set in Private Survey 9298, Clackamas County Survey Records; thence South  $52^{\circ}11'18''$  West a distance of 55 feet; thence South  $37^{\circ}48'42''$  East a distance of 50 feet; thence North  $52^{\circ}11'18''$  East a distance of 75 feet; thence North  $37^{\circ}48'42''$  West a distance of 50 feet; thence South  $52^{\circ}11'18''$  West a distance of 20 feet to the point of beginning.

Basis of bearing is Private Survey 9298 on file at Clackamas County Surveyor's Office.



**METRO NATURAL RESOURCES COMMITTEE REPORT**

CONSIDERATION OF RESOLUTION NO. 02-3228, FOR THE PURPOSE OF GRANTING AN EASEMENT TO CLACKAMAS COUNTY FOR NON-PARK USE THROUGH METRO PROPERTY ON BELL ROAD

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Date: October 4, 2002

Presented by: Councilor Atherton

**Committee Action:** At its October 2, 2002 meeting, the Metro Natural Resources Committee voted 3-0 to recommend Council adoption of Resolution 02-3228. Voting in favor: Councilors Atherton, Hosticka and McLain.

**Background:** Metro has received and reviewed an easement application from Clackamas County. The County is requesting the easement on Metro property (Wilsonville Tract) on Bell Road, near the Wilsonville Road intersection. The proposed easement, 17.5' x 50', is required for the purpose of replacing an existing culvert with a fish friendly arch. The easement includes ongoing maintenance for the culvert and surrounding slopes. It is judged to have no significant impact on Metro property.

The easement requires Council approval, and is judged to meet all criteria set forth in Metro policy.

- Existing Law: Resolution 97-2539B, establishing criteria and requiring Council approval.
- Budget Impact: County will pay staff costs for processing this request and \$200 fair market value for the easement.

**Committee Issues/Discussion:** Charlie Ciecko, Regional Parks and Open Spaces director made the staff presentation. Councilor McLain asked to review criteria and past practice relative to a local jurisdiction paying fair market value for the easement.

## Staff Report

### IN CONSIDERATION OF RESOLUTION NO. 02-3228, FOR THE PURPOSE OF GRANTING AN EASEMENT TO CLACKAMAS COUNTY FOR NON-PARK USE THROUGH METRO PROPERTY ON BELL ROAD

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Date: September 19, 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. These requests are reviewed and analyzed using policy established within 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.

Metro has received and reviewed an easement application from Clackamas County. The request meets all criteria set forth in the Metro policy regarding easements, right-of-ways and leases for non-park uses. Clackamas County is requesting an easement on Metro owned property on Bell Road, near the Wilsonville road intersection. The proposed easement is 17.5 feet by 50 feet, for the purpose of removing an existing culvert and replacing it with a "fish friendly" 92-inch by 141-inch aluminized steel pipe arch. The permanent easement is also for on-going maintenance of the culvert and the surrounding slopes. The requested easement is found to have no significant impact on Metro-owned property.

#### **ANALYSIS/INFORMATION**

##### **1. Known Opposition**

No known opposition

##### **2. Legal Antecedents**

Endangered Species Act, Section 7

##### **3. Anticipated Effects**

A non-fish passable culvert will be removed and a fish passable culvert will be installed on Mill Creek.

##### **4. Budget Impacts**

Clackamas County will pay staff costs for processing this request and 200 dollars fair market value for the easement.

#### **RECOMMENDED ACTION**

The Executive Director recommends that the Council grant the easement as requested.