

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING AN	)	RESOLUTION NO. 03-3275
EASEMENT TO OREGON DEPARTMENT OF	)	
TRANSPORTATION FOR NON-PARK USE	)	Introduced by Mark B. Williams, interim
THROUGH METRO PROPERTY AT CANEMAH	)	Chief Operating Officer with the concurrence
BLUFF	)	of the Metro President

WHEREAS, Metro owns and manages property in Oregon City, Canemah Bluff area; and

WHEREAS, Oregon Department of Transportation is requesting a permanent easement on a Metro owned parcel of land to place, hang, and maintain mesh screening off the top of the cliff to help prevent rocks from falling onto Highway 99E below; and

WHEREAS, the proposed size of the easement for rockfall screening contains 28,481 square feet, including the rock face wall; and

WHEREAS, Oregon Department of Transportation will pay Metro's cost and expenses to process this permanent easement request and 2,775 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 Advisory 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 accomodated with minimal impact to Natural Resources, cultural resources, recreational 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

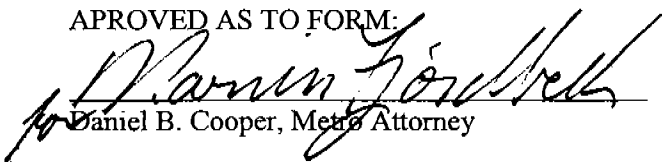
BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to grant a permanent easement to Oregon Department of Transportation for anchoring, hanging and maintaining mesh screening, as depicted in Exhibit B and set forth in the attached legal easement document, Exhibit C, on the tract of land owned by Metro at Canemah Bluff in the city of Oregon City.

ADOPTED by the Metro Council this 20<sup>th</sup> day of February, 2003.

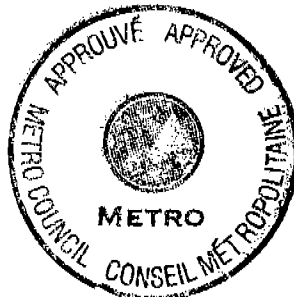


\_\_\_\_\_  
David Bragdon, Council President

APPROVED AS TO FORM:



\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney



**EXHIBIT A**  
**Resolution 03-3275**

**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 full Council will hear the request.

- 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 place and hang mesh screening off the top of the cliff to help prevent rocks from falling on 99E below. The permanent easement will also allow for on-going maintenance of the screening.

- 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 minimal impact on park or natural resource values while making 99E safer for vehicle travel.

- 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 screening, 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 2,775 dollars for the non-buildable 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. All work is being completed from below the site, via hydraulic buckets.

- 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.**

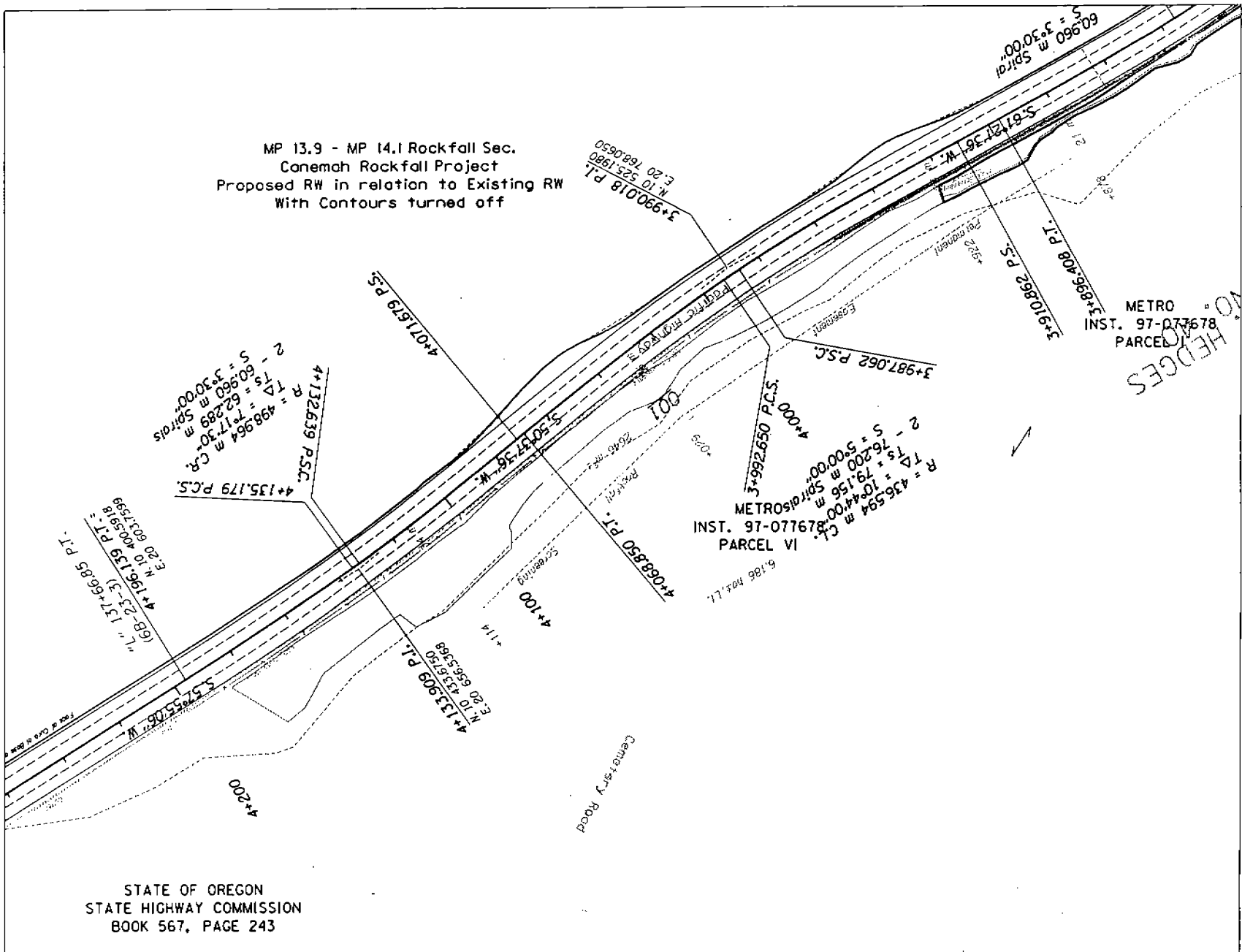
Staff Finding: Metro costs have been documented and applicant will be billed for reimbursement.

- 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 No. 03-3275

MP 13.9 - MP 14.1 Rockfall Sec.  
Canemah Rockfall Project  
Proposed RW in relation to Existing RW  
With Contours turned off



**PERMANENT EASEMENT**

**METRO, a municipal corporation and political subdivision of the State of Oregon, Grantor, for the true and actual consideration of \$2,775 (Two Thousand Seven Hundred Seventy Five and No/100 Dollars) does grant to the STATE OF OREGON, by and through its DEPARTMENT OF TRANSPORTATION, Grantee, its successors and assigns, a permanent easement to install and maintain rock fall screening over, across, and upon the following described property:**

A parcel of land lying in the Absalom F. Hedges D.L.C. No. 40, Township 3 South, Range 1 East, W.M., Clackamas County, Oregon and being a portion of that property designated as Parcels 1 and 6 and described in that deed to Metro, recorded as Recorder's Fee No. 97-077678, Film Records of Clackamas County; the said parcel being that portion of said property included in a strip of land variable in width, lying on the Southeasterly side of the center line of the relocated Pacific Highway East, which center line is described as follows:

Beginning at Engineer's center line Station 3+729.024, said station being 608.824 meters North and 922.845 meters East of a witness corner marking the most Westerly corner of the Absalom F. Hedges D.L.C. No. 40, Township 3 South, Range 1 East, W.M.; said corner being a 102 mm (4") Aluminum Disk, referenced in Bearing Tree Book 12, Pages 85A and 85B, Clackamas County Survey Records; thence South 48° 33' 36" West 4.100 meters; thence on a spiral curve right (the long chord of which bears South 49° 22' 36" West 42.669 meters) 42.672 meters; thence on a 498.954 meter radius curve right (the long chord of which bears South 54° 26' 06" West 59.616 meters) 59.651 meters; thence on a spiral curve right (the long chord of which bears South 60° 11' 36" West 60.950 meters) 60.960 meters; thence South 61° 21' 36" West 14.454 meters; thence on a spiral curve left (the long chord of which bears South 59° 41' 37" West 76.174 meters) 76.200 meters; thence on a 436.594 radius curve left (the long chord of which bears South 55° 59' 36" West 5.588 meters) 5.588 meters; thence on a spiral curve left (the long chord of which bears South 52° 17' 36" West 76.174 meters) 76.200 meters; thence South 50° 37' 36" West 2.829 meters; thence on a spiral curve right (the long chord of which bears South 51° 47' 36" West 60.950 meters) 60.960 meters; thence on a 498.964 radius curve right (the long chord of which bears South 54° 16' 21" West 2.540 meters) 2.540 meters; thence on a spiral curve right (the long chord of which bears South 56° 45' 06" West 60.950 meters) 60.960 meters to Engineer's center line Station 4+196.139.

RETURN TO AND TAX STATEMENT TO  
OREGON DEPARTMENT OF TRANSPORTATION  
RIGHT OF WAY SECTION  
355 CAPITOL STREET NE, ROOM 420  
SALEM OR 97301-3871

Account No.: 31 E 01 01000 and 31 E 01 AB 00401

Property Address:

The widths in meters of the strip of land above referred to are as follows:

Station	to	Station	Width on Southerly Side of Center Line
3+878		3+922	21 in a straight line to 23
3+922		4+029	23 in a straight line to 26
4+029		4+114	26 in a straight line to 34

Bearings based on Oregon Department of Transportation Survey. See Drawing No. 4B-6-3, dated December, 1925.

The parcel of land to which this description applies contains 2646 square meters, more or less.

IT IS UNDERSTOOD that the easement herein granted does not convey any right or interest in the above-described property, except as stated herein, nor prevent Grantor from the use of said property; provided, however, that such use does not interfere with the rights herein granted. Grantee's use of the above described property shall therefore be non-exclusive, and subject to Grantor's inspection for compliance hereunder, at any time, without notice. However, Grantor agrees to undertake no activity that interferes with, harms or otherwise impairs the proper functioning of the rock fall screening, and agrees that no other structures may be erected upon the Permanent Easement without the advance written consent of Grantee.

Grantee agrees to provide 10 days written notice to Grantor before commencing construction activities on the above described property under this Permanent Easement.

Grantee agrees to immediately restore and revegetate with native vegetation according to Grantor's specifications any ground surface disturbed by Grantee's construction, maintenance, repair or replacement of the rock fall screening.

Grantee hereby releases Grantor and its successors and/or assigns from responsibility for damage by third parties to said rock fall screening.

Grantor covenants to and with Grantee, its successors and assigns, that Grantor is the owner of said property, and, with the exception of matters of record, will warrant the easement rights herein granted from all lawful claims whatsoever.

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

It is understood and agreed that this Permanent Easement is granted on the express condition that the Grantee use the above described property solely for the purposes of installing, constructing and maintaining thereon the rock fall screening, including such renewals, repairs, replacements and removals thereof as may be from time to time required. If the above described property is ever used for another purpose by the Grantee without the express written permission of Grantor, or if the above described property ever ceases to be used for said purposes, the Grantor may re-enter and terminate the Permanent Easement hereby granted.

Grantor agrees that the consideration recited herein is just compensation for the property or property rights conveyed, including any and all damages to Grantor's remaining property, if any, which may result from the acquisition or use of said property or property rights. However, the consideration does not include damages resulting from any use or activity by Grantee beyond or outside of those uses expressed herein, if any, or damages arising from any negligence.

In construing this document, where the context so requires, the singular includes the plural and all grammatical changes shall be made so that this document shall apply equally to corporations and to individuals.

It is understood and agreed that the delivery of this document is hereby tendered and that terms and obligations

hereof shall not become binding upon the State of Oregon Department of Transportation, unless and until accepted and approved by the recording of this document.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

APPROVED AS TO FORM:

**METRO, a municipal corporation and political subdivision of the State of Oregon**

By \_\_\_\_\_

By \_\_\_\_\_  
Mark B. Williams  
Interim Chief Operating Officer

State of Oregon        )  
                                  ss.  
County of Multnomah    )

Dated \_\_\_\_\_, 2003. Personally appeared MARK B. WILLIAMS, who, being sworn, stated that he is the Interim Chief Operating Officer of METRO, a municipal corporation and political subdivision of the State of Oregon, and that this instrument was voluntarily signed on behalf of said municipal corporation by authority of its Resolution No. \_\_\_\_\_, passed by its Council, on this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public for Oregon

My Commission expires \_\_\_\_\_

Accepted on behalf of the Oregon Department of Transportation

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## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 03-3275 FOR THE PURPOSE OF GRANTING AN EASEMENT TO OREGON DEPARTMENT OF TRANSPORTATION FOR NON-PARK USE THROUGH METRO PROPERTY AT CANEMAH BLUFF

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Date: February 10, 2003

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, 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 Oregon Department of Transportation. The request meets all criteria set forth in the Metro Policy regarding easements, right-of-ways and leases for non-park uses. Oregon Department of Transportation is requesting an easement on Metro owned property at Canemah Bluff in Oregon City, above Highway 99E. The proposed easement is 28,481 square feet for the purpose of placing, hanging and maintaining mesh screening off the top of the cliff to help prevent rocks from falling onto 99E below. The mesh screening will be hung from anchors that are approximately 5 feet from the slope break to approximately 5 feet above the road surface. Rock bolts will be secured to the face of the cliff to bolt fractured rock together. All work will be completed from 99E, so Oregon Department of Transportation will not need access to the natural area.

#### ANALYSIS/INFORMATION

1. **Known Opposition** No known opposition
2. **Legal Antecedents** Resolution No. 97-2539B "For The Purpose Of Approving General Policies Related To The Review of Easements, Right-Of-Ways, And Leases For Non-Park Uses Through Properties Managed By The Regional Parks And Greenspaces Department".
3. **Anticipated Effects** The easement will allow aid in minimizing a safety problem by securing unstable rock cuts to reduce the incidents of rocks falling into the travel lanes of 99E.
4. **Budget Impacts** Oregon Department of Transportation will pay staff costs for processing this request and 2,775 dollars fair market value for the easement. They will also pay Metro for trees removed for screen placement.

#### RECOMMENDED ACTION

The interim Chief Operating Officer recommends that the Council grant the easement as requested.