

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING
AN EASEMENT TO THE CITY OF
PORTLAND'S BUREAU OF
ENVIRONMENTAL SERVICES FOR
THE PLACEMENT OF A 22-FT.
SEWER OUTFALL TUNNEL
THROUGH METRO PROPERTY.

RESOLUTION NO. 09-4093

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

WHEREAS, Metro owns natural area real property along the OMSI to Springwater Trail corridor in the City of Portland, Multnomah County, State of Oregon (herein the "Metro Property"); and

WHEREAS, The City of Portland's Bureau of Environmental Services (BES) is requesting a 52-foot wide and 4,092-foot long (212,784 sq. ft.) permanent easement through Metro Property to construct a 22-foot diameter sewer overflow tunnel approximately 74-99 feet below the existing ground surface as part of its East Side Combined Sewer Overflow Tunnel Project (ESCSO), and has submitted an Application for Permanent Easement for Non-Park Uses for that purpose; and

WHEREAS, The easement will have no surface disturbance nor natural resource impacts on Metro Property as all work will be done underground; and

WHEREAS, The easement will not restrict any current or future above ground / surface uses of Metro Property; and

WHEREAS, Staff has determined no reasonable alternative alignment routes exists outside of Metro Property; and

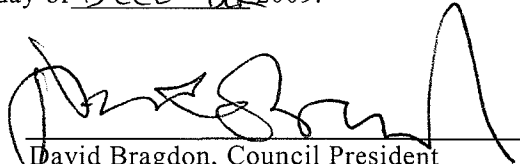
WHEREAS, BES will pay Metro staff costs for processing this request as well as compensating Metro on the fair market value of the easement; and

WHEREAS, Metro Parks and Environmental Services 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

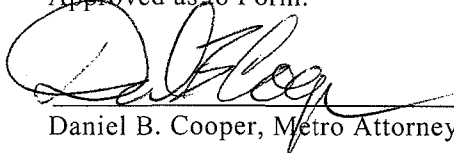
WHEREAS, the Easement Policy requires review of all easement requests by the full Metro Council, now therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to grant a permanent subsurface sewer pipeline easement to the City of Portland's Bureau of Environmental Services 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 3rd day of DECEMBER 2009.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney

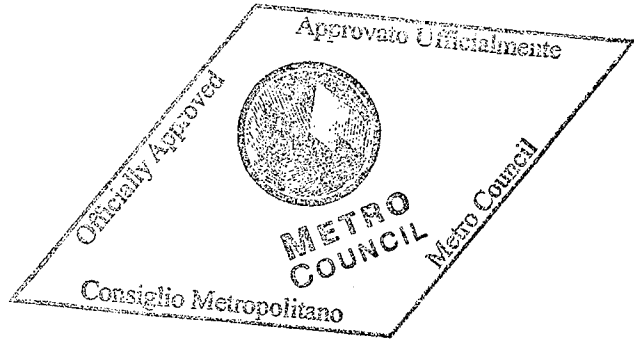
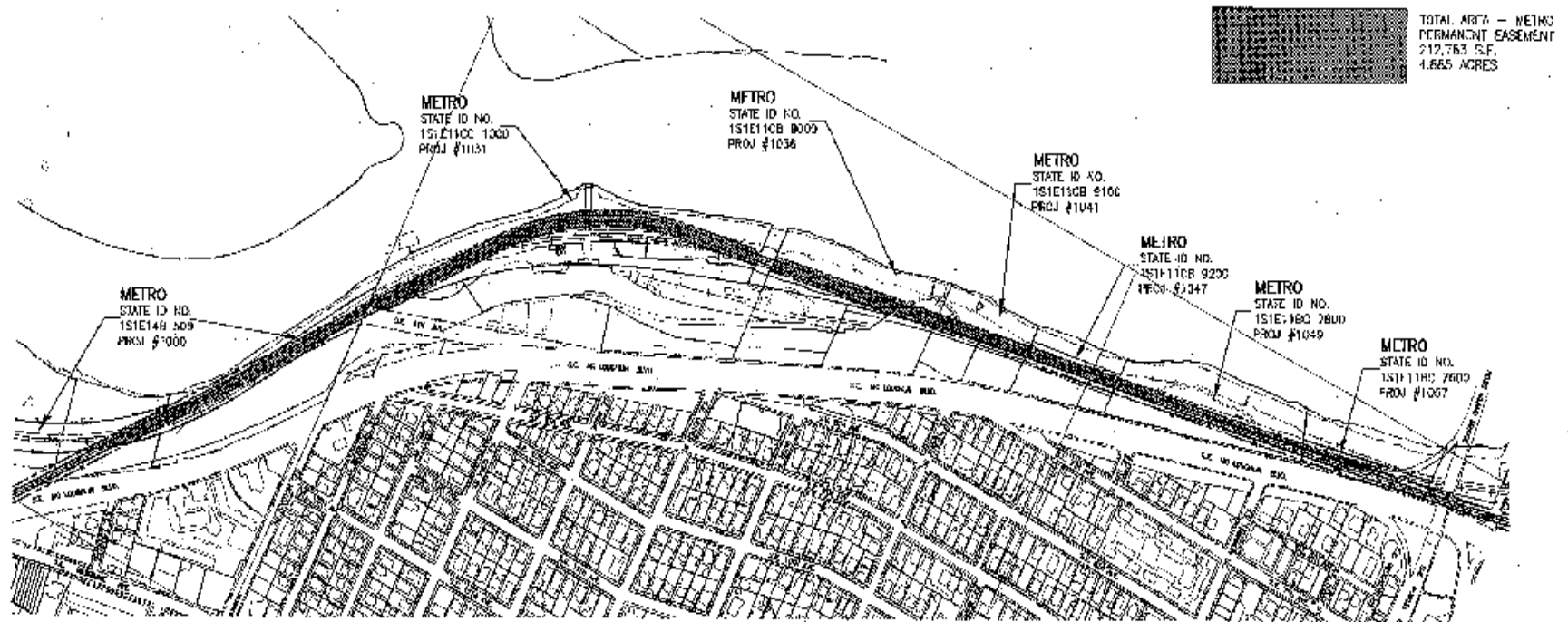


Exhibit A Depiction and Illustration of Proposed Permanent Easement

6928753, 655748, 1227300, 1212374,
R32781, R32750, R39853

STATE ID NOS:
 1S1E10-00200
 1S1E10-01000
 1S1E10B-00100
 1S1E10-03200
 1S1E10C-07800
 1S1E10D-07700
 1S1E10E-07600



	APPROVED BY: _____ SPECIAL AGENT: _____ DATE: _____ PREPARED BY: _____ DATE: _____	DESIGNED BY: _____ DATE: _____ CHECKED BY: _____ DATE: _____	CITY OF PORTLAND ENVIRONMENTAL SERVICES WILLAMETTE RIVER CSO CONTROL PROJECT		PB PORTLAND BUREAU OF PLANNING & DESIGN 1111 N. 2ND AVE., PORTLAND, OR 97232	EAST SIDE CSO PROJECT TUNNEL EASEMENT MAPS PROJECT ID NO. VARIES AS SHOWN STATE ID NO. VARIES AS SHOWN OWNER: METRO	SHEET NO. 3531 OF 3516 1 OF 1
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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4093, FOR THE PURPOSE OF GRANTING AN EASEMENT TO THE CITY OF PORTLAND'S BUREAU OF ENVIRONMENTAL SERVICES FOR THE PLACEMENT OF A 22-FOOT SEWER OUTFALL TUNNEL THROUGH METRO PROPERTY.

Date: November 12, 2009

Prepared by: Dan Kromer

BACKGROUND

Metro Parks and Environmental Services occasionally receive requests for easements, leases and right-of-ways through Metro developed park and natural area 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.

Parks and Environmental Services received an easement application from City of Portland's Bureau of Environmental Services (BES) and it has been reviewed by staff (Attachment 1). BES is requesting a 52-ft. wide and 4,092-ft. long (212,784 sq. ft.) permanent easement through Metro property in the OMSI to Springwater Trail corridor for its East Side Combined Sewer Overflow Tunnel Project (ESCSO). The proposal calls for constructing a large 22-ft. diameter sewer overflow tunnel approximately 74-99 feet below the existing ground surface.

No surface disturbance or natural resource impacts will occur to the site due to the use of underground directional boring for the tunnel, and the easement will not restrict any current or future above ground / surface uses of Metro property.

Staff has determined no reasonable alternative alignment routes exists outside of Metro property and given the minimal site disturbance that will occur, supports the easement request.

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 have no site disturbance as all work will be done approximately 74-99 feet below the existing ground surface.
4. **Budget Impacts:** The City of Portland's Bureau of Environmental Services will pay Metro staff costs for processing this request as well as compensating Metro on the fair market value of the easement.

RECOMMENDED ACTION

Staff recommends that the Council grant the easement as requested.

ATTACHMENT 1
Resolution 09-4093

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: Pursuant to Criteria 13, Metro staff is recommending an easement on Metro property be granted to the City of Portland's Bureau of Environmental Services (BES), so review and approval by the Metro Council is necessary.

- 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: BES is requesting a 52-ft. wide and 4,09-ft. long (212,784 sq. ft.) permanent easement through Metro property in the OMSI to Springwater Trail corridor (see Exhibit A) for its East Side Combined Sewer Overflow Tunnel Project (ESCSO). The proposal calls for using directional boring to construct a large 22-ft. diameter sewer overflow tunnel approximately 74-99 feet below the existing ground surface.

No surface disturbance or natural resource impacts will occur to the site due to the use of underground directional boring for the tunnel and the easement will not restrict any current or future above ground / surface use of Metro property.

No temporary construction easement is being requested due to the use of underground directional boring with shafts to enter the tunnel outside of Metro property.

- 3) Reject proposals for utility easements, transportation right of ways and leases for non-park uses which would result in significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.**

Staff Finding: There will be no significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management to the site by the requested easement due to the use of underground horizontal directional boring.

- 4) Accommodate utility easements, transportation right of ways or other non-park uses when the Regional Parks and Greenspaces Department (the Department) determines that a proposed easement, right of way, or non-park use can be accommodated without significant impact to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management; and that the impacts can be minimized and mitigated.**

Staff Finding: The easement being requested by BES is for a sewer outfall tunnel underneath the OMSI to Springwater Trail corridor. No surface disturbance or natural resource impacts will occur to the site due to the use of underground directional boring for the tunnel and the easement will not restrict any future above ground / surface uses of Metro property.

- 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 necessary due to no above ground site disturbance or natural resource impacts.

- 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 easement request are the minimum needed to allow for construction of the ESCSO tunnel through Metro property.

- 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 by BES is the minimum needed to accomplish the project while minimizing impact on Metro's property. Due to the depth of the tunnel being constructed, the easement will not restrict the current or future above ground / surface uses of Metro 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 fair market value of the easement is \$65,750 based on an appraisal report done by an accredited appraiser and reviewed by Metro. Metro will be compensated this amount by BES.

- 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: Metro property that the easement goes through is part the OMSI to Springwater Trail corridor. The easement will not restrict any current or future above / ground uses of this property.

- 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: BES has submitted a detailed proposal evaluating alternative ESCSO alignment routes that would avoid Metro property. These alternatives were deemed unfeasible due to their public safety and community impacts, which would cause significant risks to established residential neighborhoods and business districts due to potential settlement issues, required ground improvements and shaft construction impacts.

- 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: Staff has determined no reasonable or feasible alternative alignment route exists outside of Metro property given the size and scope of the ESCSO tunnel project, the additional requirements/conflicts of alternative routes and the minimal site disturbance to Metro property that will occur.

- 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: There will be no significant negative impact 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.