

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING AN) RESOLUTION NO. 03-3276
EASEMENT TO NORTHWEST NATURAL GAS) Introduced by Mark Williams,
COMPANY FOR NON-PARK USE THROUGH) Chief Operating Officer with the
METRO PROPERTY AT RIVER ROAD AND) concurrence of the Council President
FARMINGTON ROAD)

WHEREAS, Metro owns and manages property in Hillsboro, near the Tualatin River; and

WHEREAS, Northwest Natural Gas Company is requesting a permanent easement on two Metro-owned parcels of land to install and maintain a sub-surface 24-inch diameter steel natural gas transmission line; and

WHEREAS, the proposed size of the easement for the line is 493 feet by 40 feet, at a minimum depth of 40 feet, with 20 feet of temporary workspace on either side; and

WHEREAS, Northwest Natural Gas Company will pay Metro's cost and expenses to process this permanent easement request and \$9,771 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 and the full Metro Council; and

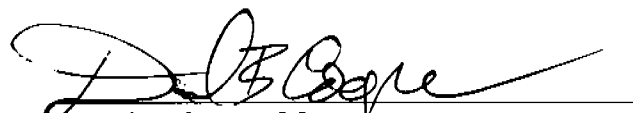
WHEREAS, the Metro Parks Department has determined that this easement request has met the criteria in Resolution 97-2539B, as identified in Exhibit B and can be accommodated with no impact to natural resources, cultural resources, recreational resources, recreational facilities, recreational opportunities 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 Northwest Natural Gas Company for installation and maintenance of a natural gas transmission line, as identified in Exhibits A-1 and A-2 and the attached legal easement document, Exhibit C, on the tract of land owned by Metro at Farmington and River Roads in the City of Hillsboro.

ADOPTED by the Metro Council this 27th day of March, 2003


David Bragdon, Council President

APPROVED AS TO FORM:


Daniel B. Cooper, Metro Attorney

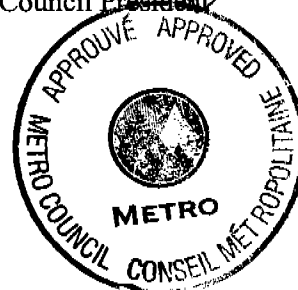


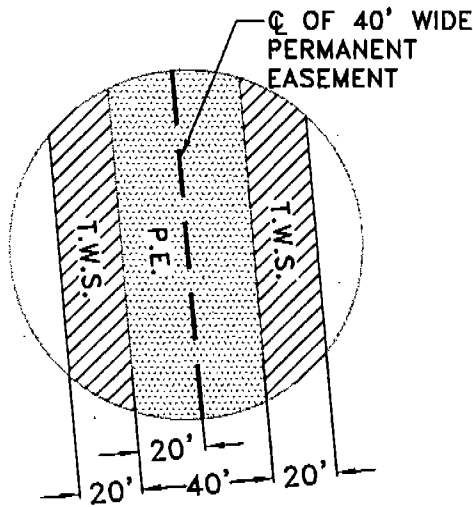
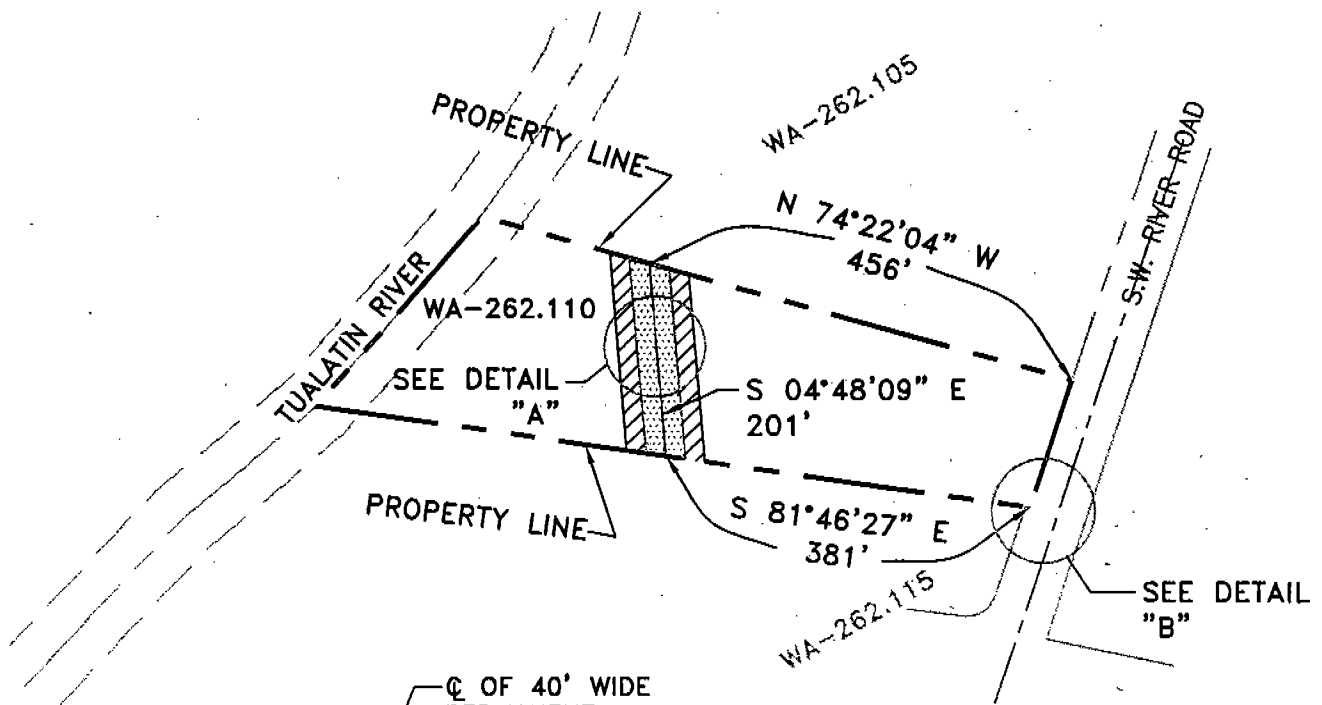
EXHIBIT 'A1'

Resolution No. 03-3276

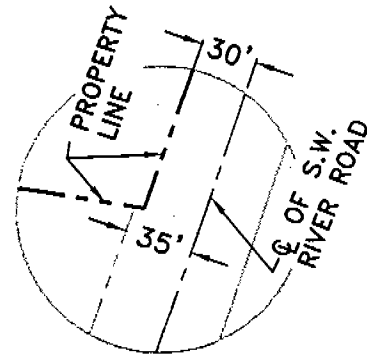
SECTIONS 28 & 29, T1S-R2W

WILLAMETTE MERIDIAN
 TAX LOT 1S228CC-00500
 WASHINGTON COUNTY, OREGON

PROPERTY DEED
 REFERENCE #:
 2000-019065



DETAIL "A"
 NO SCALE



DETAIL "B"
 NO SCALE

LEGEND



PERMANENT EASEMENT (P.E.)



TEMPORARY WORK SPACE (T.W.S.)

"HDD Tract"

PERM. EASEMENT. : 8,054 SQ.FT.
 T.W.S.: 8,054 SQ.FT.

NOTE:
 THIS IS NOT A
 SURVEY DOCUMENT

SCALE: 1"=200'

| | |
|-------------|----------------|
| DRWN: HYC | DATE: 10-10-02 |
| CHK/APP: JH | DATE: 10-11-02 |
| REV "A": JH | DATE: 02-07-03 |

PLAT OF 24"
 SOUTH MIST PIPELINE EXTENSION
 WASHINGTON COUNTY, OREGON

PROPERTY OWNER

METRO,
 A MUNICIPAL CORPORATION
 TRACT NO. SMPWA-262.110

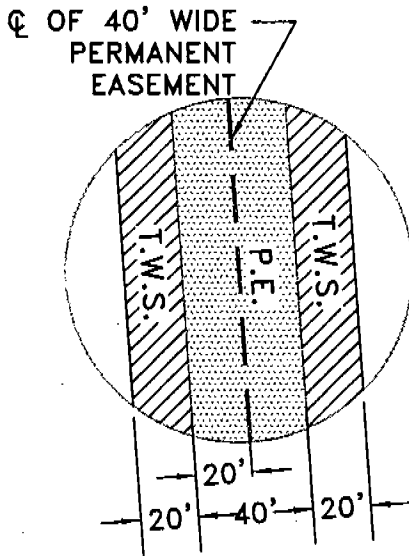
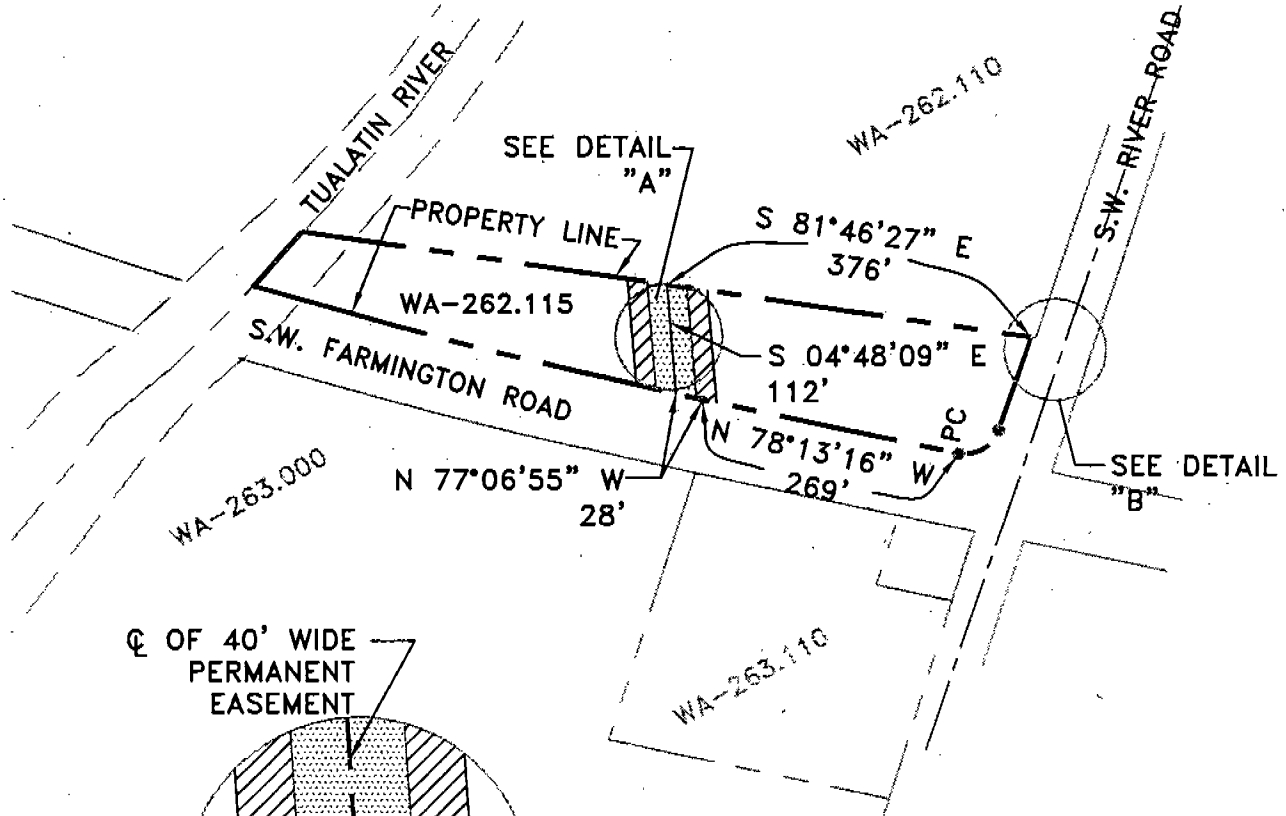
EXHIBIT 'A2'

Resolution No. 03-3276

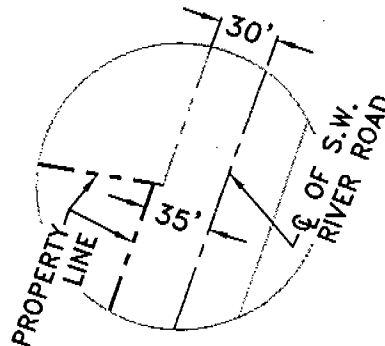
SECTIONS 28 & 29, T1S-R2W

WILLAMETTE MERIDIAN
 TAX LOT 1S228CC-00400
 WASHINGTON COUNTY, OREGON

PROPERTY DEED
 REFERENCE #:
 2000-017992



DETAIL "A"
 NO SCALE



DETAIL "B"
 NO SCALE

LEGEND



PERMANENT EASEMENT (P.E.)



TEMPORARY WORK SPACE (T.W.S.)

"HDD Tract"

PERM. EASEMENT. : 4,466 SQ.FT.
 T.W.S.: 4,466 SQ.FT.

NOTE:
 THIS IS NOT A
 SURVEY DOCUMENT

PROPERTY OWNER

METRO,
 A MUNICIPAL CORPORATION

TRACT NO.
 SMPWA-262.115

SCALE: 1"=200'

DRWN: HYC DATE: 10-02-02

CHK/APP: JH DATE: 10-11-02

REV "A": JH DATE: 02-07-03

PLAT OF 24"
 SOUTH MIST PIPELINE EXTENSION
 WASHINGTON COUNTY, OREGON

Exhibit B
Resolution No. 03-3276

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: Criteria has been satisfied through a review and approval process that includes formal easement application and unanimous approval from the Regional Parks and Greenspaces Advisory Committee at its meeting held on November 5, 2002. The Metro Council 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 install and maintain a sub-surface 24-inch diameter steel natural gas transmission pipeline 60-feet below surface, by using a boring technique which 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: Due to the pipeline installation done from a non-Metro site and the fact that it will be 60 feet below surface there will be no impact on park or natural resource values and it will not prevent Metro from any master plan implementation for this site.

- 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 zero impact of the site.

- 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 and maintenance of the pipeline, 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 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.

- 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 \$9,771 based on an appraisal completed by PGP Valuation, Inc.

- 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 exists 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: All reasonable alternatives have been denied by Oregon Department of Transportation.

- 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 staff costs of \$598.25 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: Criteria satisfied.

After Recording Return To:
Northwest Natural Gas Company
c/o South Mist Pipeline
7175 Evergreen Parkway, Bldg. D, Suite 200
Hillsboro, OR 97214

GAS PIPELINE EASEMENT

THIS PIPELINE EASEMENT (the "Easement") is entered into this _____ day of _____, 2003, between METRO, a municipal corporation and political subdivision of the State of Oregon ("Grantor") and Northwest Natural Gas Company, an Oregon corporation ("Grantee"). All references to "Grantor" and Grantee herein apply equally to Grantor's and Grantee's personal representatives, heirs, successors, and assigns.

- A. Grantor owns property known as Tax Lot 400 and Tax Lot 500 located in Sections 28 and 29, Township 1S, Range 2W, W.M., Washington County, OR. Said Tax Lots are described in deeds recorded as Document No. 2000-19065 and 2000-17992 in the official records of Washington County, and are more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Property").
- B. Grantee wishes to acquire, and Grantor wishes to grant an easement for one or more natural gas pipelines across the Property. Said Easement shall be located as shown within the drawing on Exhibits "A1" and "A2," attached hereto and by this reference made a part hereof.

AGREEMENT

NOW, THEREFORE, for and in consideration of the sum of ten thousand three hundred sixty-nine & 25/100 DOLLARS (\$ 10,369.25) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Grantor, the parties hereby agree as follows:

- 1. GRANT OF PIPELINE EASEMENT. Grantor hereby grants and conveys exclusively to Grantee, its successors and assigns, a perpetual easement forty (40) feet in width (the "Easement") to lay, maintain, operate, change the size of, repair, replace and remove one or more pipelines and pipeline appurtenances, including buried power and communication lines related to the operation of the pipeline (the "Facilities"), in, along, upon and across the Property.
- 2. RELATED RIGHTS. Grantee shall have the following related rights necessary or convenient for Grantee's use of the Easement:
 - a. The right of ingress and egress through the Property to, from, on and along the Easement together with the right to use existing and future roads on the Property for purposes incident to the enjoyment of the Easement.

- b. The right to add to, remove or replace the Facilities in whole or in part, with either like or different size pipelines and pipeline appurtenances.
- c. The right to install and maintain gates in fences upon the Easement, and the right to install and maintain markers indicating the location of the Facilities. Except as otherwise required by applicable codes, such markers shall be placed at fence lines, roadways and other natural barriers.
- d. The right to modify its use of the Easement in any way necessary to comply with applicable local, state and federal regulations applicable to the Facilities. Excepting that modifications required under this section that permanently occupy or use the surface, or restrict Grantor's use of said surface shall be paid for by Grantee based on appraised value.
- e. The right to use all temporary workspaces as shown in Exhibits "A1" and "A2" as required by Grantee during the pipeline construction and final clean up of the Easement. The right to use the temporary workspace areas shall terminate following the final cleanup of the easement resulting from the initial pipeline construction."

3. PIPELINE COVER. Grantee shall bury all pipeline(s) under at least forty (40) feet of cover.

4. SURFACE DAMAGES. In exercising its rights hereunder, the Grantee shall repair any damage or disturbance to the Property and Easement that may be caused by the exercise of the Grantee's rights, and shall restore the surface of the Easement to its condition immediately prior to such damage or disturbance, including restoring or repairing any improvements, paving or landscaping damaged or disturbed by the Grantee's activities on the Easement, to Grantor's reasonable satisfaction. If such restoration is impracticable, the Grantee shall then pay Grantor the fair market value of all damages.

5. GRANTOR'S USE OF THE EASEMENT AREA. Grantor may use those portions of the Property subject to the Easement for any purposes that will not interfere with Grantee's rights under this agreement. In particular, and without limiting the generality of the foregoing:

- a. The following activities are allowed within the Easement area:
 - (1) The planting of native vegetation, lawn, grass, shrubbery, bushes, trees, and any other replaceable landscaping elements and crops placed in such a manner as to allow a walking inspection corridor over the pipeline.
 - (2) Fences crossing the Easement with access gates.

- b. The following activities are not allowed within the Easement area unless plans for such activities have been submitted in advance to Grantee for review and written approval, which Grantee may deny if Grantee believes such usage would interfere with access to or safe operation and maintenance of the pipeline:
- (1) Any type of excavating work or digging including grading, filling, trenching, boring and auguring, below 10 feet.
 - (2) Fences within and paralleling the Easement.
 - (3) The construction or placement of buildings, decks, patios, foundations, septic systems and or any other type of permanent structure or object that could interfere with access to, or jeopardize the safe operation of the Facilities.

6. OWNERSHIP OF PROPERTY. Grantor represents and warrants that it is the owner in fee of the said described land and is entitled to execute this Easement. Grantee shall have the right to discharge or redeem for Grantor, in whole or in part, any mortgage, tax or other lien on said land and thereupon be subrogated to such lien and rights incident thereto.

8. NOTICE OF EASEMENT. Grantor shall give written notice of the existence of the Easement and the Facilities to any tenant, lessee, grantee or assignee of Grantor who acquires any interest in the Property.

9. COVENANTS. Grantee covenants and agrees that, in the conduct of any and all of its activities and operations hereunder, it will comply strictly with all present and future laws, rules and regulations of all federal, state, and local governmental bodies having jurisdiction over the construction, installation, and pipeline operation activities occurring within the Easement.

10. INDEMNIFICATION. 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 the Grantee, their officers, directors, agents, employees, invitees, contractors or subcontractors in locating, constructing, using, inspecting, maintaining, repairing or replacing the Facilities, whether or not occurring on the Easement , except to the extent the claims and actions arise out of the negligence or wrongful act of the Grantor, its successors or assigns; (ii) any breach, violation or nonperformance of any of Grantee's obligations under this Easement.

11. BINDING EFFECT/REVERSIONARY INTEREST. This Pipeline Easement shall bind and inure to the benefit of the Grantee and its successors and assigns forever and shall constitute a covenant running with the Grantor's Property. However, this Easement is granted on the express condition that the Grantee use the Easement for the purposes set forth in Section 1

and 2 above. If the Easement is ever used by the Grantee for purposes other than those set forth in Sections 1 and 2 above without the express written permission of Grantor, the Grantor may re-enter and terminate the Pipeline Easement hereby granted. This Easement and all interest of Grantee hereunder shall terminate at such time that Grantee determines that the easement is no longer necessary and abandons the use thereof. Upon abandonment and within sixty (60) days of request from Grantor, Grantee shall execute a release of this Easement.

12. COMPLETE AGREEMENT. This Pipeline Easement (including attached Exhibits "A," "A1" and "A2," which are incorporated by this reference) is the final and complete agreement between the parties concerning the Pipeline Easement.

IN WITNESS WHEREOF, the parties have executed this Pipeline Easement as of the date set forth above.

Grantee:
METRO

Grantee:
NORTHWEST NATURAL GAS COMPANY

By: _____
Name: _____
Title: Chief Operating Officer

By: _____
Name: _____
Title: _____

EXHIBIT "A"
Legal Description

Tax Lot 500:

A portion of that certain tract of land in the Philip Harris Donation Land Claim No. 53, in Sections 28 and 29, Township 1 South, Range 2 West of the Willamette Meridian, Washington County, Oregon, conveyed to Arthur L. Dickinson et ux, by deed recorded in Book 353, Page 230, Washington County, Oregon Deed Records, said portion being more particularly described as follows:

Beginning at a point on the Westerly line of said Harris Donation Land Claim No. 53, which point bears South 39° 03' 35" West 153.87 feet from the Northwest corner of said Donation Land Claim; and running thence South 76° 27' East 666.70 feet to a point in the center of River Road (County Road No. 404); thence along the center of said road, South 16° 34' West 136.58 feet to a point; thence North 83° 48' West 778.52 feet to a point on the Westerly line of said Harris Donation Land Claim, a point in the Tualatin River; thence along the Westerly line of said Donation Land Claim, North 39° 03' 35" East 261.48 feet to the place of beginning.

Tax Lot 400:

A portion of that certain tract of land in the Phillip Harris Donation Land Claim No. 53, in Sections 28 and 29, Township 1 South, Range 2 West of the Willamette Meridian, Washington County, Oregon, conveyed to Arthur L. Dickinson et ux, by deed recorded in Book 353, Page 230, Washington County, Oregon Deed records, said portion being more particularly described as follows:

Beginning at a point in the center of the Tualatin River which bears South 39° 03' 35" West 415.35 feet from the Northwest corner of said Harris Donation Land Claim No. 53; and running thence South 83° 48' East 778.52 feet to a point in the center of River Road (County Road No. 404); thence along the center of said road, South 16° 34' West 180.00 feet to the intersection of said River Road with the center of Farmington Road (State Secondary Highway No. 208); thence along the center of Farmington Road, North 83° 48' West 619.74 feet and North 70° 25' West 214.50 feet to a point in the center of said Tualatin River; thence in the center of said river, North 39° 03' 35" East 151.68 feet to the place of beginning.

Excepting therefrom any portion lying Southerly of the Northerly right-of-way line of Farmington Road (State Highway 208) as described in Donation Deed recorded March 5, 1992 as Recorder's Fee No. 92013963, Washington County Deed Records.

Also excepting therefrom any portion lying Easterly of the Westerly right-of-way line of River Road (County Road No. 1177) as described in Dedication Deed recorded March 5, 1952 as Recorder's Fee No. 92013964 and re-recorded October 26, 1992 as Recorder's Fee No. 92075407.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 03-3276 FOR THE PURPOSE OF GRANTING AN EASEMENT TO NORTHWEST NATURAL GAS COMPANY FOR NON-PARK USE THROUGH METRO PROPERTY AT RIVER ROAD AND FARMINGTON ROAD

Date: January 31, 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 the 1995 Open Spaces, Parks and Streams Bond Measure. 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.

Metro has received and reviewed an easement application from Northwest Natural Gas Company which meets all criteria set forth in the Metro Policy. Northwest Natural Gas Company is requesting an easement on Metro-owned property near the Tualatin River at River Road and Farmington Road. The proposed easement is 493 feet by 40 feet at a depth of 60 feet below the surface, for the purpose of installing and maintaining a section of sub-surface 24-inch diameter steel natural gas transmission pipeline. The permanent easement is found to have no negative impact on Metro-owned property, as all installation is done from a non-Metro site using a boring technique at 60-feet below surface.

ANALYSIS/INFORMATION

1. **Known Opposition:** No known opposition
2. **Legal Antecedents:** 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."
3. **Anticipated Effects:** Will allow connection of a pipeline to an underground gas storage facility in Mist, Oregon, with the pipeline ending in Molalla.
4. **Budget Impacts:** Northwest Natural Gas Company will pay staff costs for processing this request and \$9,771 dollars fair market value for the easement.

RECOMMENDED ACTION

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