

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING AN EASEMENT TO CLACKAMAS COUNTY DEPARTMENT OF TRANSPORTATION FOR NON-PARK USE THROUGH METRO PROPERTY AT MOUNT TALBERT)

RESOLUTION NO. 03-3302

Introduced by Mark B. Williams, interim Chief Operating Officer with the concurrence of the Council President

WHEREAS, Metro and North Clackamas Parks and Recreation District own property in Clackamas County on Mather Road, Mount Talbert area; and

WHEREAS, Clackamas County Department of Transportation is requesting a permanent road and sidewalk easement on a Metro-owned parcel of land to install a continuous sidewalk along Mather Road to provide a safe pedestrian route around Mount Talbert for pedestrians; and

WHEREAS, the proposed size of the easement contains 6,000 square feet in a 10 by 600 foot swath; and

WHEREAS, Clackamas County Department of Transportation has asked that Metro donate this easement, but Metro policy requires the County to pay fair market value (\$3,000) for the area; the County has agreed to pay Metro's cost and expenses to process this permanent easement request; 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 C, and can be accommodated with minimal impact to natural resources, recreational resources, recreational facilities, recreational opportunities or their operation and management, and the Regional Parks 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 Clackamas County Department of Transportation for installing a continuous sidewalk, as depicted in Exhibit A and set forth in the attached legal easement document, Exhibit B, on the tract of land owned by Metro at Mount Talbert on Mather Road in Clackamas County.

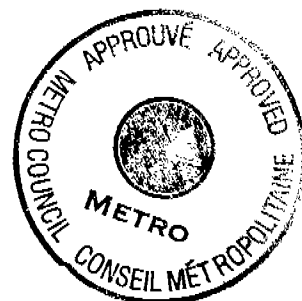
ADOPTED by the Metro Council this 17th day of April, 2003

[Handwritten signature of David Bragdon]

David Bragdon, Council President

APPROVED AS TO FORM:


[Handwritten signature of Daniel B. Cooper] Daniel B. Cooper, Metro Attorney

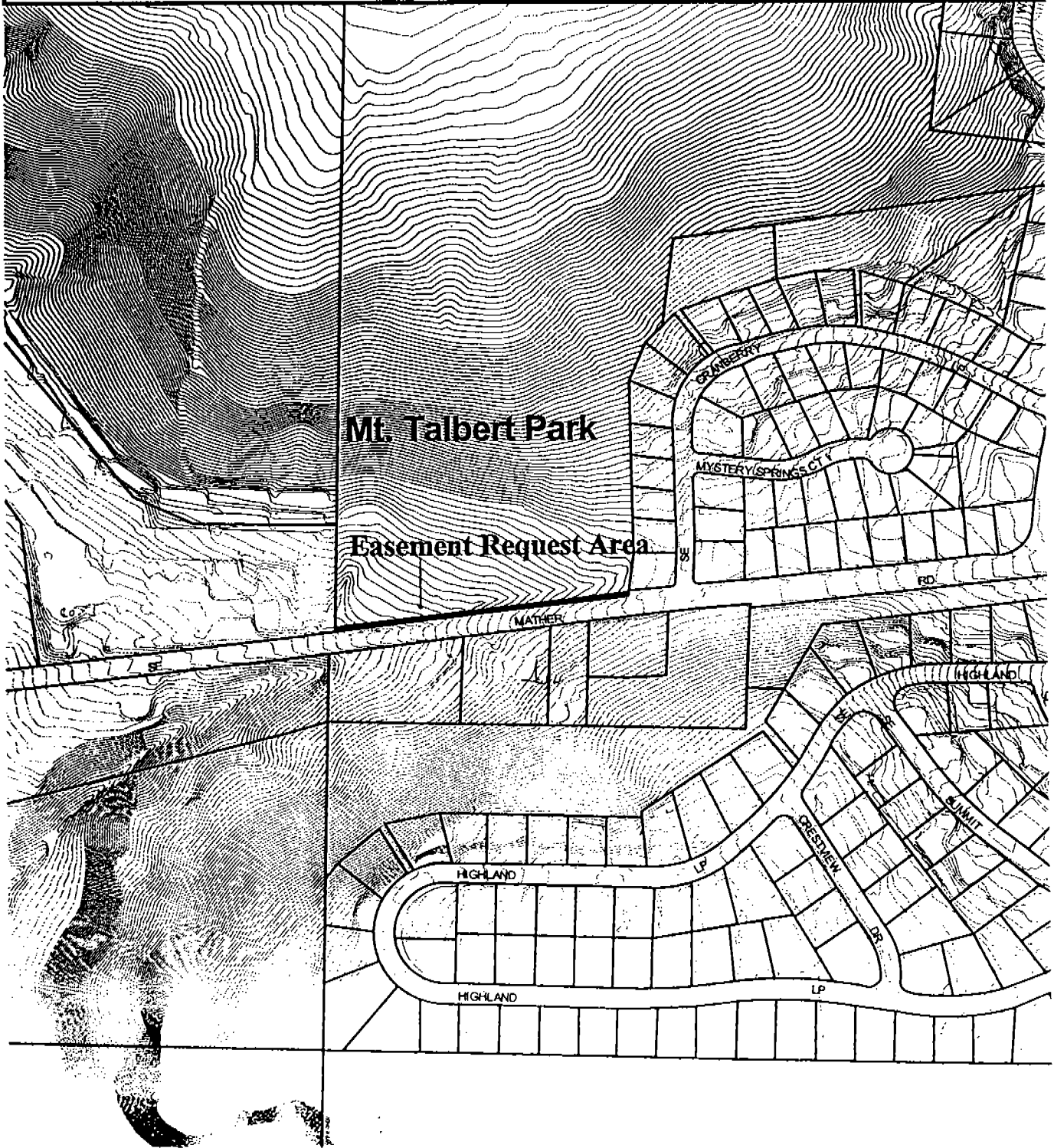


Mather Road - Pedestrian Easement Request
1/15/03



 Two foot contour interval topography
Mt. Talbert Park

100 0 100 200 Feet




**Resolution No. 03-3302
Exhibit B**

After recording return to:
CLACKAMAS COUNTY
DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT
9101 SE Sunnyside Boulevard
Clackamas, Oregon 97015

GRANT OF SIDEWALK, ROAD AND UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that METRO, a municipal corporation and political subdivision of the state of Oregon, as to a $\frac{3}{4}$ interest, and North Clackamas parks and Recreation District, a municipal corporation and political subdivision of the state of Oregon, (NCPRD) as to a $\frac{1}{4}$ interest, hereinafter collectively referred to as "Grantor," for the consideration hereinafter stated, does forever grant unto CLACKAMAS COUNTY, a political subdivision of the state of Oregon, hereinafter referred to as "Grantee," a permanent public road and sidewalk easement over and along the full width and length of 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" and incorporated by reference herein;

and a telephone pedestal easement over and along the full width and length of the premises described as follows, to-wit:

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

Hereafter referred to collectively as the "Easement".

The cash consideration paid for this grant, is \$_____. However, the true and 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 Easement unto Grantee, subject to liens and encumbrances of record as of the date of execution set forth below, in accordance with the following conditions and covenants:

1. **RIGHTS GRANTED.** The Grantee, through its officers, employees and agents, shall have the right to:
 - 1.1 Enter upon those lands described in Exhibit A, in such a manner and at such times from this date as may be reasonably necessary for the purpose of constructing, patrolling, and maintaining thereon a road for the conveyance of vehicles, and a six-foot wide gravel path or paved sidewalk for the conveyance of pedestrians and bicyclists, including storm drainage related thereto and such repairs, replacements and removals of same as may be from time to time required (the "Improvements").
 - 1.2 Enter upon those lands described in Exhibit C in such a manner and at such times from this date as may be reasonably necessary for the purpose of installing, and maintaining thereon a telephone line pedestal (hereafter, the "Utilities"). Said right shall be perpetual for so long as Grantee shall operate or cause to be operated a road or sidewalk for said purposes as herein provided, subject to the terms of Section 6 set forth herein below.

Said right shall be perpetual for so long as Grantee shall maintain and repair the Improvements and operate or cause to be operated the Utilities for the purposes provided herein, subject to the terms of Section 6 set forth herein below.
2. **RELEASE.** Grantor is hereby released from all liability for damages to the Improvements and Utilities by third parties.
3. **SURFACE DAMAGES.** In exercising its rights hereunder, the Grantee shall repair any damage or disturbance to Grantor's property adjacent to the Easement that may be caused by the exercise of the Grantee's rights, and shall restore the surface of Grantor's adjacent property to its condition immediately prior to such damage or disturbance, including restoring or repairing any landscaping or vegetation 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.
4. **COVENANTS.** Grantee covenants and agrees to maintain and repair in perpetuity all improvements constructed within the Easement by Grantee. Grantee covenants and agrees that, when the road is paved, it will construct a six-foot wide gravel path in the location of the future sidewalk, said sidewalk to be constructed when funding becomes available as identified in the Clackamas County 20-year Capital Improvement Project Plan. 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 government bodies having jurisdiction over the

construction activities occurring within the Easement. Grantor covenants and warrants that it is the owner of record of the property described in Exhibit A and that said property is free from all encumbrances except matters of record.

5. INDEMNITY. 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, judgements, 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 Improvements and Utilities 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 Easement.

6. RIGHT OF RE-ENTRY. This Easement is granted on the express condition that the Grantee uses the Easement solely for the purposes of locating and operating a sidewalk, road, and telephone line pedestal in the locations designated herein. If the Easement is ever used for another purpose by the Grantee without the express written permission of Grantor, or if the Easement ever ceases to be used for said purposes, the Grantor may re-enter and terminate the Easement hereby granted.

7. The terms "Grantor" and "Grantee" herein shall include the heirs, successors and assigns of each party. In the event that this Easement or any part thereof, is assigned to a third party, Grantee agrees to guarantee the fulfillment of all obligations hereunder.

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IN WITNESS WHEREOF, the undersigned Grantor has executed this Sidewalk Easement,
this _____ day of _____, 2003.

GRANTOR:

GRANTEE:

METRO, as to a $\frac{3}{4}$ interest

CLACKAMAS COUNTY

Michael Jordan
Chief Operating Officer

By: _____
Name: _____
Its: _____

NORTH CLACKAMAS PARKS
AND RECREATION DISTRICT,
as to a $\frac{1}{4}$ interest

Mike Henley , or designee

EXHIBIT "A"

Project Name: Mather Road

Date: March 25, 2003

Assessors Map and Lot Number: 2-2E-3C, TL 200

Owners and Recorder's Fee No.: Metro, a municipal corporation (3/4 Interest)
North Clackamas Park and Recreation District (1/4 Interest)
Fee #98-113253 and #98-113254

RIGHT-OF-WAY:

A 10.00 foot wide strip of right-of-way, as shown on attached EXHIBIT "B", being a portion of the real property conveyed to Metro, a municipal corporation, by the deed recorded under Fee #98-113253, Deed Records of Clackamas County, Oregon, located in the southwest 1/4 of Section 3, Township 2 South, Range 2 East of the Willamette Meridian, Clackamas County, Oregon, said strip of right-of-way being more particularly described as follows:

All that portion of said real property conveyed to Metro, a municipal corporation, by the deed recorded under Fee #98-113253 that lies southerly of a line that is 30.00 feet (measured perpendicularly) northerly of and parallel to the centerline of Mather Road (County Road No. 1530).

Excepting therefrom any portion within existing county roads.

Containing 5,970 square feet, more or less.

Mather Road - Pedestrian Easement Request
1/15/03



Two foot contour interval topography
Mt. Talbert Park

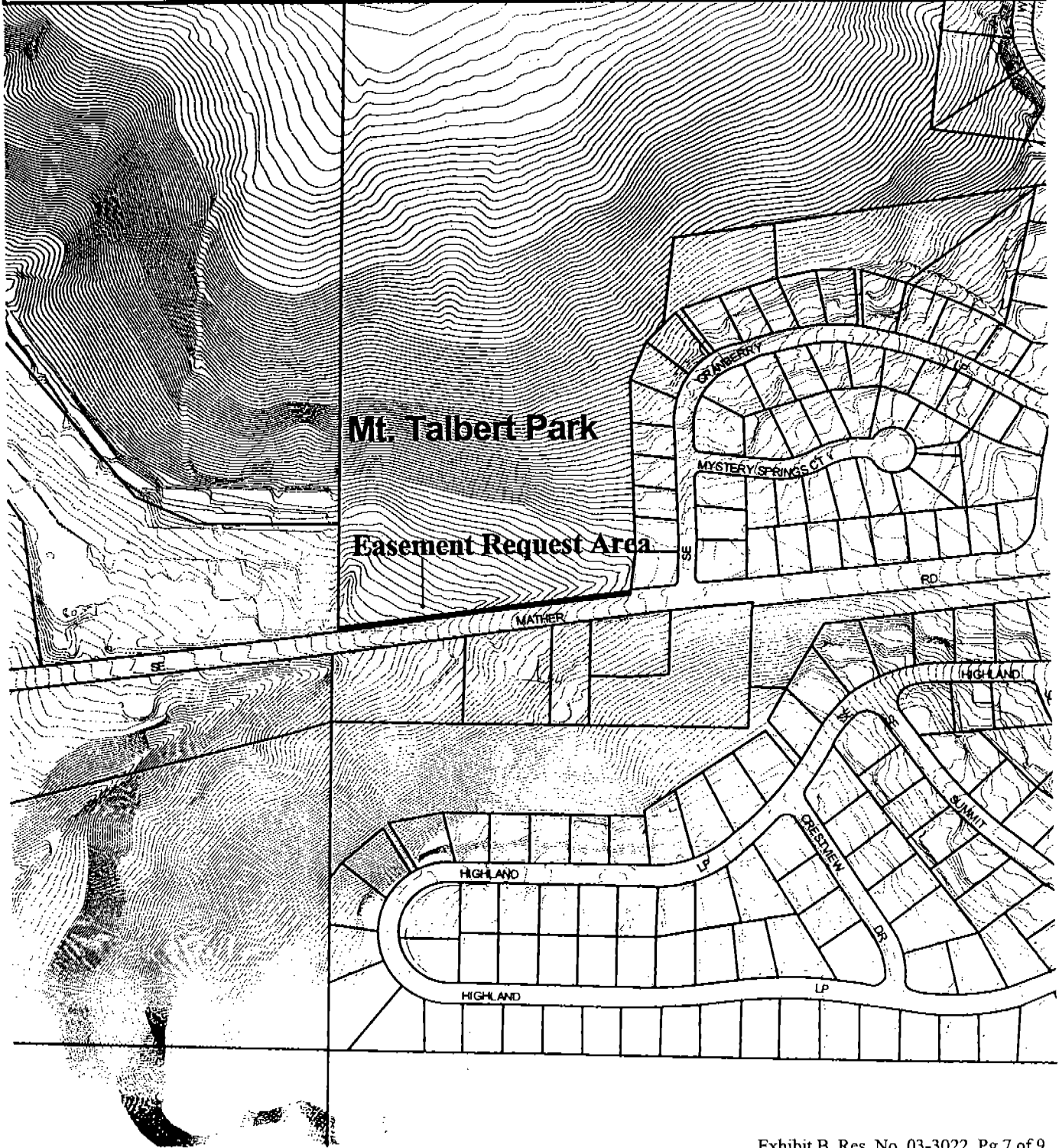
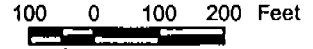


EXHIBIT "C"

MATHER ROAD UTILITY EASEMENT FOR "VERIZON" (Telephone)

A 10 foot wide by 20 foot long "Utility Easement", as shown on attached EXHIBIT "D", being a portion of the real property conveyed to Metro, a municipal corporation, by the deed recorded under Fee #98-113253, Deed Records of Clackamas County, Oregon, located in the southwest ¼ of Section 3, Township 2 South, Range 2 East of the Willamette Meridian, Clackamas County, Oregon, said "utility easement" being more particularly described as follows:

Beginning at the SW corner of the tract of land described in Fee #98-113253, said SW corner also lying on the centerline of Mather Road (County Road No. 1530), thence using a bearing of N82°28'E along the centerline of said Mather Road 282 feet to the true point of beginning; thence N07°32'W perpendicular to said centerline 30 feet; thence N82 28'E parallel to said centerline 20 feet; thence S07°32'E perpendicular to said centerline 30 feet to a point on the centerline of said Mather Road; thence S82°28'W along said centerline 20 feet to the true point of beginning.

Excepting therefrom any portion within existing county roads.

Containing 200 square feet, more or less.

EXHIBIT "D"

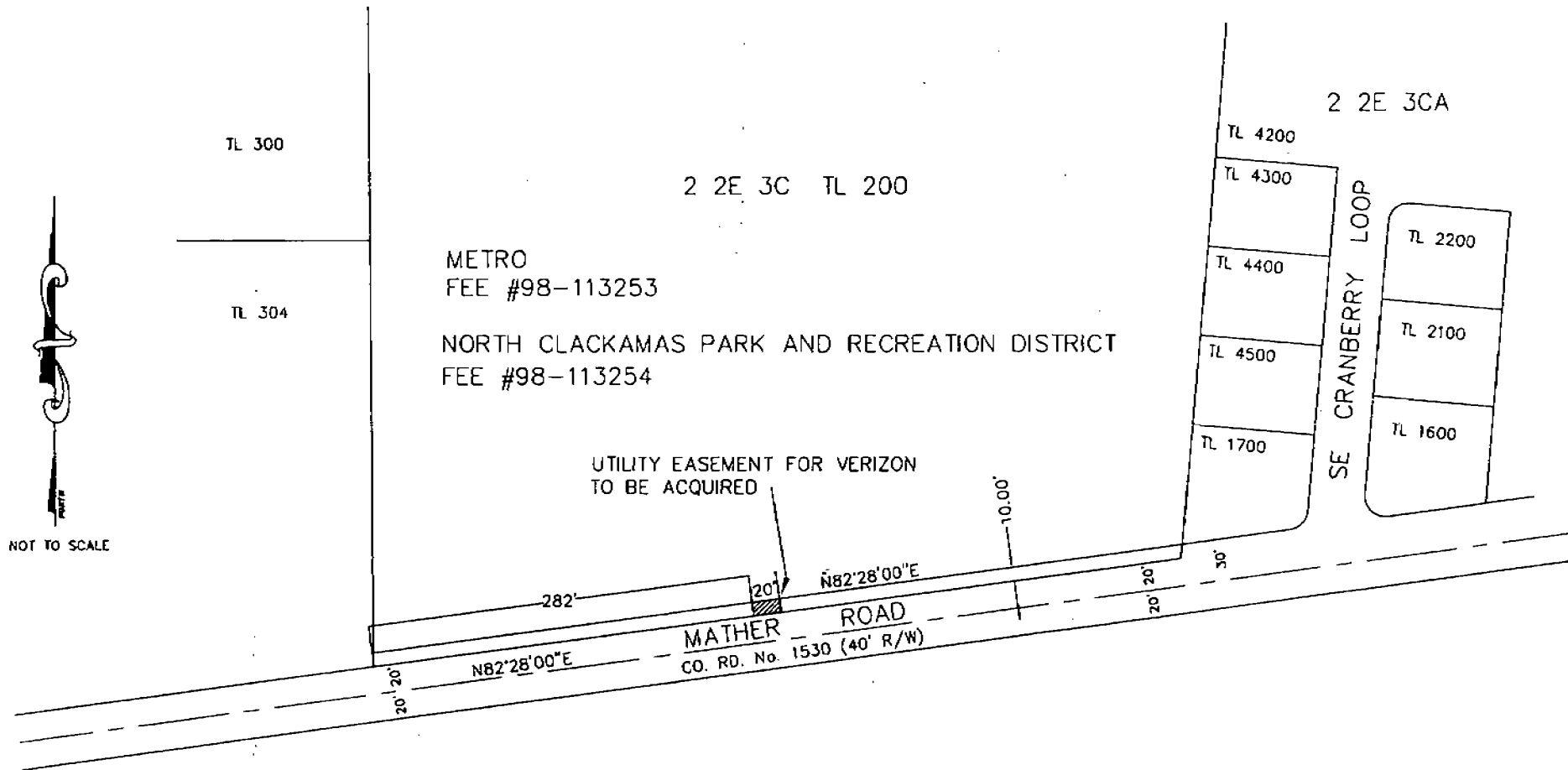


EXHIBIT C
Resolution 03-3302

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 to install a continuous sidewalk along Mather Road to provide safe access to and around Mount Talbert. The project meets the Master Plan for this future Park area.

- 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 Mather Road safer for pedestrians. This easement meets recreational opportunities.

- 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 sidewalk, 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: Clackamas County has asked for this easement to be gifted. Metro has determined the fair market value for this easement to be \$3,000 dollars.

- 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.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 03-3302 FOR THE PURPOSE OF GRANTING AN EASEMENT TO CLACKAMAS COUNTY DEPARTMENT OF TRANSPORTATION FOR NON-PARK USE THROUGH METRO PROPERTY AT MOUNT TALBERT

Date: April 8, 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 Clackamas County 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. Clackamas County is requesting an easement on Metro owned property near Mather Road at Mount Talbert in Clackamas County. The proposed easement is (10 feet by 600 feet) 6,000 square feet for the purpose of installing a continuous sidewalk along Mather Road to provide a safe pedestrian route around Mount Talbert. The North Clackamas Parks and Recreation District "Mt. Talbert Master Plan and Management Recommendations" document identifies that there is a need for roadway improvements, which include safer pedestrian and bicycle access to Mount Talbert. North Clackamas Parks and Recreation District also owns one-quarter (1/4) interest in the property.

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 a safe passage for pedestrians along Mather Road to Mount Talbert and will meet recommendations in the Master Plan for the area.
4. **Budget Impacts** - Clackamas County will pay staff costs for processing this request. Clackamas County has requested that this easement be gifted to them as it meets Mount Talbert Master Plan recommendations for the area and is an improvement. North Clackamas Parks District and Metro staff recommend gifting this easement. Metro Parks appraised the fair market value for this piece at \$3,000. Council has the authority to waive the payment requirement.

RECOMMENDED ACTION

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