

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING  
AN EASEMENT TO ACCESS TO  
RESIDENTIAL PROPERTY  
ADJACENT TO HOWELL  
TERRITORIAL PARK

RESOLUTION NO. 11-4243

Introduced by Acting Chief Operating Officer  
Daniel B. Cooper, with the concurrence of  
Council President Tom Hughes

WHEREAS, Metro owns and operates Howell Territorial Park, located on Sauvie Island in Multnomah County (herein the "Howell Park"); and

WHEREAS, the applicant, owns a residence adjacent to Howell Park and is requesting a permanent road easement through Howell Park, and has submitted an Application for Permanent Easement for Non-Park Uses for that purpose; and

WHEREAS, the applicant's residence is currently served by a gravel road across Howell Park that is its only ingress and egress, but the gravel road was not constructed upon an easement or dedicated road right-of-way; and

WHEREAS, the applicant has requested an access easement to establish a legal right to use the road for resident access; and

WHEREAS, the easement presents no new surface disturbance nor natural resource impacts on Howell Park; and

WHEREAS, staff has determined that the easement will not restrict any current or future uses of Howell Park nor inhibit operation and management of the site; and

WHEREAS, staff has determined that the road has been in use for nearly 50 years and that no reasonable alternative alignment route exists outside of Howell Park; and

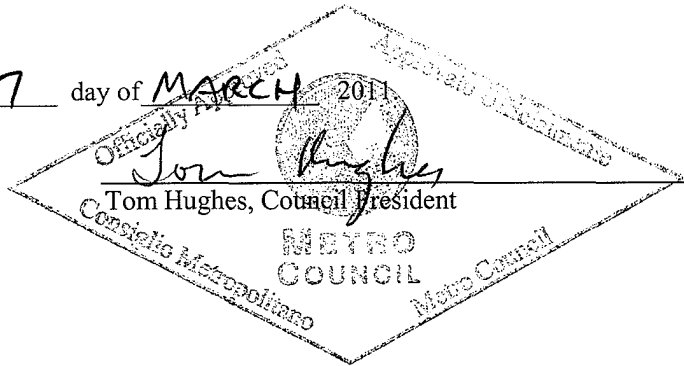
WHEREAS, the applicant will pay Metro's staff costs for processing this request as well as compensate Metro for the appraised fair market value of the easement; and

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 no impact to natural resources, cultural resources, recreational resources, recreational facilities, recreational opportunities or their operation and management, and recommends approval; and

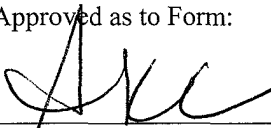
WHEREAS, the Easement Policy requires review of all easement requests by the full Metro Council, now therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Acting Chief Operating Officer to grant a permanent road easement to the applicant, Pauline Dexter, 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 17 day of MARCH 2011



Approved as to Form:

  
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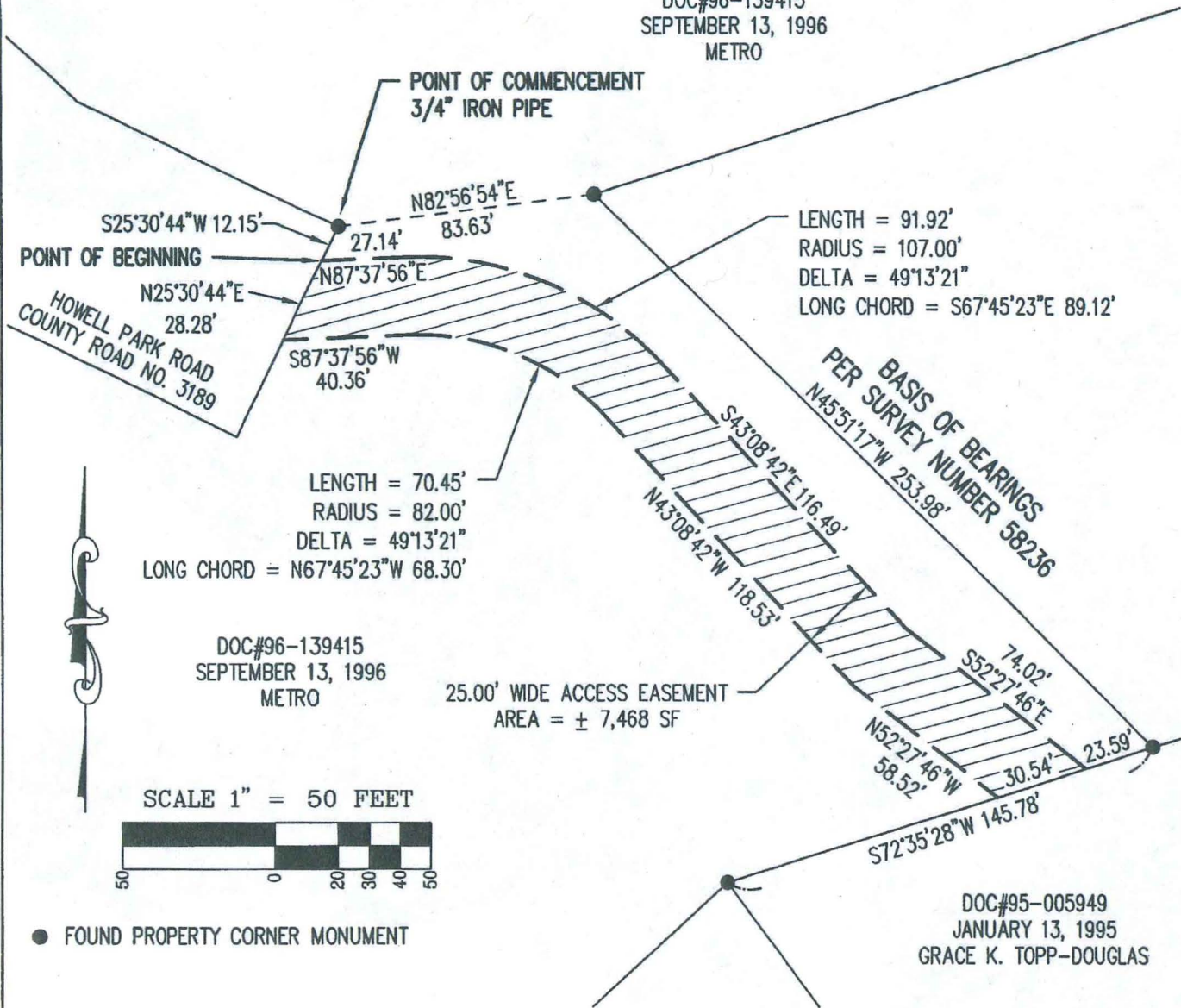
Alison Kean Campbell, Acting Metro Attorney

**Exhibit A**

# ACCESS EASEMENT MAP

LOCATED IN THE SW 1/4 OF SECTION 21,  
TOWNSHIP 2 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,  
MULTNOMAH COUNTY, OREGON  
JULY 21, 2010

DOC#96-139415  
SEPTEMBER 13, 1996  
METRO



**PREPARED FOR:**  
  
PAULY DEXTER AND  
NANCY MENZIA

**JOB NAME:** HOWELL PARK ROAD  
**JOB NUMBER:** 618  
**DRAWING NUMBER:** 618 EASE  
**DRAWN BY:** CHS  
**CHECKED BY:** SFF

**NORTHWEST**  
**SURVEYING, Inc.**

1815 NW 169th PLACE,  
SUITE 2090  
BEAVERTON, OR 97006  
PHONE: 503-848-2127  
FAX: 503-848-2179  
nwsurveying@nwsrvy.com

Exhibit A  
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## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 11-4243, FOR THE PURPOSE OF GRANTING AN EASEMENT TO ACCESS TO RESIDENTIAL PROPERTY ADJACENT TO HOWELL TERRITORIAL PARK

Date: March 17, 2011

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 a property owner, Pauline Dexter, whose property is adjacent Howell Territorial Park. The applicant is requesting a 25' wide and 220' long (7,468 sq. ft.) permanent road easement running east to southwest through Metro property (Howell Territorial Park) on Sauvie Island. The proposed easement area is currently a gravel road that has been used by adjacent property owners as the only ingress and egress to their residential properties for almost 50 years. Said gravel road starts where the paved Howell Park Road, which is a county road, ends.

There will be no significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or Metro's operation and management to the site by the requested easement. This is due to the fact that a gravel road already exists through Metro property and has been used as a main access road to residential properties for almost 50 years. The value of the easement is \$500.00 based on an appraisal report done by an accredited appraiser and reviewed by Metro.

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. The applicant would be responsible for all present and future maintenance costs for the easement area.

Staff has determined no reasonable alternative alignment route exists outside of Metro property and that no site disturbance will occur. Bases on staff review findings, Attachment 1, staff 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 impacts as a gravel road through easement area presently exists.
4. **Budget Impacts:** The applicant 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

### Dexter Easement Application

#### 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 applicant (Pauline Dexter), 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: The applicant is requesting a 25' wide and 220' long (7,468 sq. ft.) permanent road easement running east to southwest through Metro property (Howell Territorial Park) on Sauvie Island. The proposed easement area is currently a gravel road that has been used by adjacent property owners as the only ingress and egress access road to their residential properties for almost 50 years. Said gravel road starts where the paved Howell Park Road, which is a county road, ends.

- 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 fact that a gravel road already exists through Metro property and has been used as a main ingress and egress access road to residential properties for almost 50 years.

- 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: There is a 1997 Master Plan for Howell Territorial Park. The Master Plan shows the gravel road that the applicant is requesting a permanent road easement on and states, "Multnomah County owns and maintains Howell Park Road to the Park's maintenance entry. South of the maintenance entry, Howell Park Road becomes a private drive which is maintained by adjacent property owners. A portion of this private drive is located within the park boundary".

- 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: 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 fact that a gravel road already exists through Metro property where this easement would cover. The applicant would be responsible for all present and future maintenance costs for the easement area.

- 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 permanent road easement request corresponds with the width and length of the current gravel road and are the minimum needed to allow for ingress and egress to the applicant's 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 term of the easement being requested is the minimum needed to accomplish the proposal while minimizing impact on Metro's 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 value of the easement is \$500.00 based on an appraisal report done by an accredited appraiser and reviewed by Metro.

- 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: The 1997 Master Plan for Howell Territorial Park identifies the requested gravel access road easement as a private drive maintained by adjacent property owners, with a portion of the private drive being located on Metro property within the park's boundary. The gravel access road was an allowable use in the Master Plan.

- 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: The applicant has submitted a detailed proposal and stated they contacted all the adjacent property owners about granting the applicant an access easement through their property. However, none of these adjacent property owners are willing to grant applicant an easement. If an easement through Metro property on the existing gravel road is not granted, the applicant's property would be land-locked with no legal access to their house and/or property.

- 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 that the present gravel access road through Metro property has been in place for almost 50 years and the only other alternative routes would have to go through farm land and those property owners are not willing to grant the applicant an easement

- 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: Easement is contingent upon Council 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.