

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING AN )  
EASEMENT TO OREGON DEPARTMENT OF )  
TRANSPORTATION FOR NON-PARK USE )  
THROUGH METRO PROPERTY LOCATED IN )  
HILLSBORO AT 4800 SW HILLSBORO )  
HIGHWAY )

RESOLUTION NO. 04-3402

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

WHEREAS, Metro owns property in Washington County on Hillsboro Highway (219); and

WHEREAS, Oregon Department Of Transportation is requesting a permanent easement and a temporary easement on a Metro owned parcel of land to add left and right turn refuge lanes on Hillsboro Highway at Tongue Road; and

WHEREAS, the proposed size of the permanent easement is 2,325 square feet and the temporary easement is 1,485 square feet along Highway 219; and

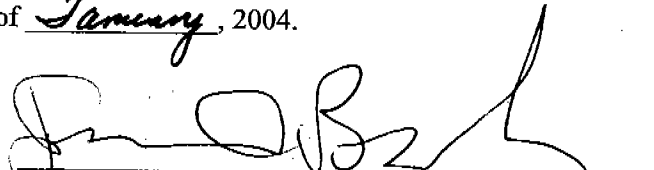
WHEREAS, Oregon Department Of Transportation has agreed to pay Metro \$650 fair market value for the permanent easement and to pay Metro's cost and expenses to process this easement request; and

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 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 minimal impact to natural resources, recreational resources, recreational facilities, recreational opportunities or operation and management; now therefore

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to grant a permanent and temporary easement to Oregon Department of Transportation for installing turn lanes on Highway 219 and Tongue Road as depicted in Exhibit A and set forth in the attached legal document, Exhibit C, on the tract of land owned by Metro, in Washington County at 4800 SW Hillsboro Highway.

ADOPTED by the Metro Council this 24<sup>th</sup> day of January, 2004.

  
David Bragdon, Council President

APPROVED AS TO FORM:

  
Daniel B. Cooper, Metro Attorney



Sec. 18, T. 1 S., R. 2 W., W.M.  
Sec. 13, T. 1 S., R. 3 W., W.M.  
DRG. NO. 10B-17-22  
PROJECT NO. 7043

Michael J. & Debi L. McCallen  
96030820

Rem: 5.670 ha±

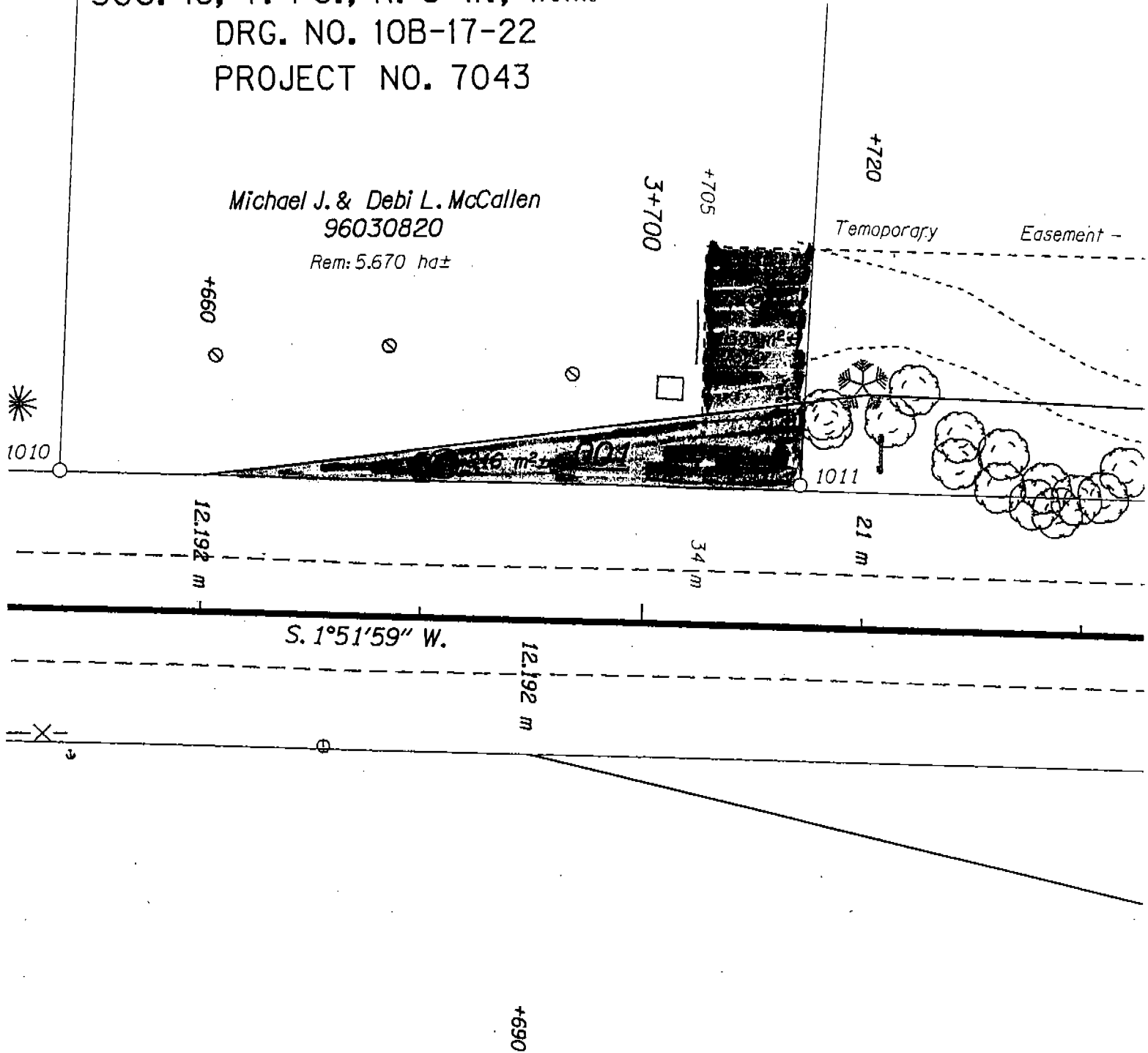


Exhibit B  
RESOLUTION NO. 04-3402

**Resolution No. 04-3402**  
Exhibit B

**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 staff. 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 construct left and right refuge turn lanes on Highway 219 at Tongue Road and re-configure Metro's driveway connecting to Hwy. 219.

- 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. This easement will not have any impacts on natural or cultural resources, recreational facilities or 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. Any disturbance will be re-seeded with native seed.

- 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.**

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Staff Finding: The dimensions and terms of the easement are limited to accommodate the installation of the turn lanes and re-configuration of the driveway.

- 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: Appraised value is determined to be \$650.00.

- 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**

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**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 and is scheduled to start April 1<sup>st</sup>, 2004.

- 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.**

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Staff Finding: Criterion satisfied.

Exhibit C  
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**PERMANENT  
RIGHT-OF-WAY EASEMENT**

**METRO, a municipal corporation and political subdivision of the State of Oregon**, Grantor, for the true and actual consideration of SIX HUNDRED FIFTY DOLLARS (\$650.00) does grant to the **STATE OF OREGON, by and through its DEPARTMENT OF TRANSPORTATION**, Grantee, its successors and assigns, a permanent easement to construct and maintain Oregon State Highway 219 over, across, and upon the surface of the property described as **Parcel 1 on Exhibit "A" dated July 11, 2003** attached hereto and by this reference made a part hereof (the "Permanent Easement"). The parcel of land described as **Parcel 1 on Exhibit "A" dated July 11, 2003** contains 216 square meters, more or less.

Grantor also grants to Grantee, its successors and assigns, a non-exclusive temporary easement for a work area for construction purposes over and across the property described as **Parcel 2 on Exhibit "A" dated July 11, 2003** (the "Temporary Easement"). The parcel of land described as **Parcel 2 on Exhibit "A" dated July 11, 2003** contains 138 square meters, more or less.

IT IS UNDERSTOOD that the Permanent Easement herein granted upon the property described as **Parcel 1 on Exhibit "A" dated July 11, 2003** shall be exclusive.

IT IS ALSO UNDERSTOOD that the Temporary Easement herein granted upon the property described as **Parcel 2 on Exhibit "A" dated July 11, 2003** does not convey any right or interest in the above-described Parcel 2, 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.

THIS EASEMENT SHALL NOT AFFECT THE ADDRESS TO  
WHICH TAX STATEMENTS ARE SENT  
RETURN TO OREGON DEPARTMENT OF  
TRANSPORTATION  
RIGHT OF WAY SECTION  
355 CAPITOL STREET NE, ROOM 420  
SALEM OR 97301-3871

Account No.: 1S21800 01402

Property Address: 4800 SW Hillsboro Highway

Grantee agrees to provide ten (10) days written notice to Grantor before commencing construction activities on the parcels of land described on **Exhibit "A" dated July 11, 2003**.

Grantee agrees to promptly restore and revegetate with native vegetation according to Grantor's specifications any ground surface disturbed by Grantee's construction activities upon the parcel of land described as **Parcel 2 on Exhibit "A" dated July 11, 2003**.

Grantee hereby releases Grantor and its successors and/or assigns, from responsibility for damage by third parties to any improvements made to the property described as **Parcel 1 on Exhibit "A" dated July 11, 2003** attached hereto.

Grantor covenants to and with Grantee, its successors and assigns, that Grantor is the owner of the parcels of land described on **Exhibit "A" dated July 11, 2003** and, with the exception of matters of record, will warrant the easement rights herein granted from all lawful claims whatsoever.

To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, Grantee shall indemnify the Grantor against any liability for damage to life or property arising from Grantee's occupancy or use of said property of Grantor under this agreement, provided however, that Grantee shall not be required to indemnify the Grantor to the extent any such liability arises out of the wrongful act of the employees or agents of the Grantor.

Grantor and Grantee agree that this Permanent Easement is granted on the express condition that the Grantee use the property described as **Parcel 1 on Exhibit "A" dated July 11, 2003** solely for the purposes of installing, constructing and maintaining Oregon State Highway 219 thereon, 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.



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.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS, BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

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 \_\_\_\_\_, 20\_\_\_\_\_.

APPROVED AS TO FORM:

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

By: \_\_\_\_\_  
Senior Assistant Metro Attorney

By: \_\_\_\_\_  
Michael J. Jordan, Chief Operating Officer

State of Oregon                    )  
  ss.  
County of Multnomah            )

Dated \_\_\_\_\_, 20\_\_\_\_\_. Personally appeared \_\_\_\_\_ who, being sworn, stated that he is the 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 \_\_\_\_\_, 20\_\_\_\_\_.

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

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

Accepted on behalf of the Oregon Department of Transportation

\_\_\_\_\_

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3402 FOR THE PURPOSE OF GRANTING AN EASEMENT TO OREGON DEPARTMENT OF TRANSPORTATION FOR NON-PARK USE THROUGH METRO PROPERTY LOCATED IN HILLSBORO AT 4800 SW HILLSBORO HIGHWAY

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Date: November 10, 2003

Prepared by: Laurie Wulf

### BACKGROUND

Metro Regional Parks and Greenspaces 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 guidance and policy established via Resolution 97-2539B, "For the Purpose of Approving General Policies Related to the Review of Easement, 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 a permanent easement of 2,325 square feet along Hillsboro Highway (Highway 219) and a temporary construction easement of 1,485 square feet along the permanent easement. The purpose of the easement is to improve the intersection of Highway 219 and Tongue Road, adding a left and right turn refuge lanes and straightening out the Highway to reduce traffic accidents. The temporary easement is to reconstruct the existing road approach that provides access to Metro property, as well as to the parcel to the south of Metro owned property.

### ANALYSIS/INFORMATION

1. **Known Opposition:** No known opposition. The proposed route included governmental and public input.
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 safer passage and turning from Highway 219 to Tongue Road.
4. **Budget Impacts:** Oregon Department Of Transportation will pay staff costs for processing this request. An appraisal was completed by J. Swan for the permanent easement at a cost of \$650.

### RECOMMENDED ACTION

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