

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING AN	)	RESOLUTION NO. 04-3448
EASEMENT TO MIRAMONT POINTE FOR	)	
NON-PARK USE THROUGH PROPERTY	)	
OWNED BY METRO AND THE NORTH	)	Introduced by Chief Operating Officer Michael
CLACKAMAS PARKS AND RECREATION	)	J. Jordan, with the concurrence of Council
DISTRICT ON MT. TALBERT	)	President David Bragdon

WHEREAS, Metro owns a 75% share and North Clackamas Parks and Recreation District own a 25% share in a 67-acre parcel of open space property in Clackamas County on Mt. Talbert, located at 11650 SE Sunnyside Road (the "Mt. Talbert Property"); and

WHEREAS, Miramont Pointe, an assisted living and Alzheimer's care facility, was built on the neighboring property to the west; and

WHEREAS, Miramont Pointe requests that Metro and NCPRD grant an easement over the Mt. Talbert Property, providing for Miramont Pointe's construction and permanent maintenance of an access drive and landscaped entry on the Mt. Talbert Property at the intersection of SE 117<sup>th</sup> Avenue and Sunnyside Road; and

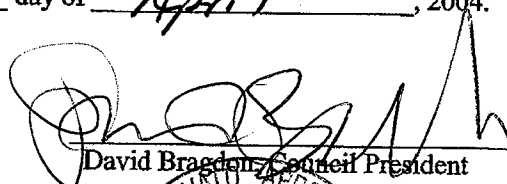
WHEREAS, Resolution No. 97-2539B "For the Purpose of Approving General Policies Related to the Review of Easements, Right-Of-Ways and Leases for Non-Park Uses Through Properties Managed by the Regional Parks and Greenspaces Department," adopted November 6, 1997, requires formal review of all easement requests by the Metro Council; and

WHEREAS, Miramont Pointe has agreed to compensate Metro and NCPRD for the easement requested, in cash and other consideration; and

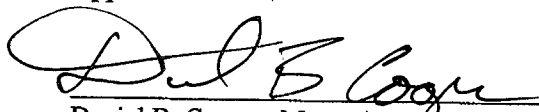
WHEREAS the Metro Regional Parks Department has determined that this easement request has met the criteria in Resolution No. 97-2539B, can be accommodated with minimal impact to natural resources, recreational resources, recreational facilities, recreational opportunities and operation and management of the open spaces, and that it is consistent with the existing Master Plan; now therefore

BE IT RESOLVED, that the Metro Council authorizes the Chief Operating Officer to execute a grant of easement to Miramont Point for a driveway and landscaped entry off SE Sunnyside Road, as depicted in Exhibit A attached hereto, under legal terms and conditions approved by the Metro Attorney.

ADOPTED by the Metro Council this 29<sup>th</sup> day of April, 2004.

  
David Bragdon, Council President

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney

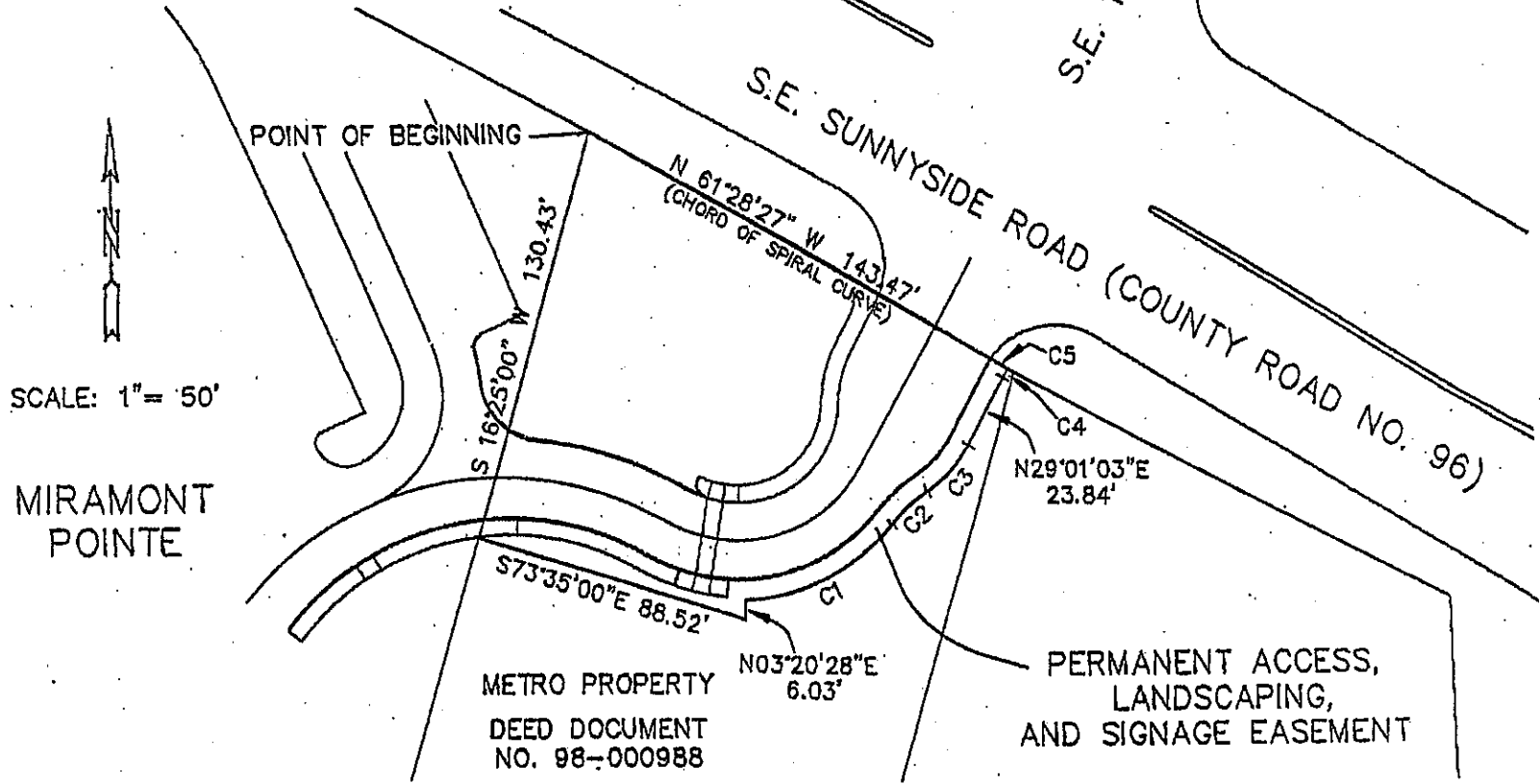


CURVE DATA TABLE					
CURVE	RADIUS	DELTA	LENGTH	BEARING	CHORD
C1	63.50'	48°46'12"	54.05'	N 63°04'51" E	52.43'
C2	50.50'	17°29'58"	15.42'	N 47°26'44" E	15.38'
C3	41.50'	27°10'40"	19.69'	N 42°36'23" E	19.50'
C4	19.75'	8°44'24"	3.01'	N 33°23'15" E	3.01'
C5	3229.05'	00°08'19"	7.80'	N 61°13'18" W	7.80'


# EXHIBIT A-1

S.E. 117TH AVE

S.E. SUNNYSIDE ROAD (COUNTY ROAD NO. 96)



DRAWN BY: CWF DATE: 4-05-04  
 REVIEWED BY: CWF DATE: 1-30-04  
 PROJECT NO.: 499-005  
 SCALE: 1"=50'  
 N:\pro\499-001\dwg\Survey\EXHF1.dwg

  
**ALPHA ENGINEERING INC.**  
 PLANNING • DEVELOPMENT SERVICES • SURVEYING  
 OFFICE 603-452-8003 • FAX 603-452-6043  
 PLAZA WEST • SUITE 230 • 8000 SW OAK • PORTLAND, OH 97223

1/4/21/21 - 1002 50' per 1" 1/4" = 50' SHEET SIZE - DWG FILED IN: 499-005-001-001-001.dwg

EXHIBIT A-2

S.E. SUNNYSIDE ROAD (COUNTY ROAD NO. 96)

S.E. 117TH AVE

S 27°34'49" W 9.00'  
N 62°25'11" W 5.43'

44.19'

5.87'

70.86'

N 16°03'24" E 9.00'

POINT OF BEGINNING

MIRAMONT  
POINTE

S 16°25'00" W 195.78'

N 23°19'47" E 69.20'

N 40°40'54" E 142.61'

SCALE: 1" = 50'

METRO PROPERTY  
DEED DOCUMENT  
NO. 98-000988

METRO  
DRAINAGE  
EASEMENT

DRAWN BY: CWF DATE: 1-30-04  
REVIEWED BY: CWF DATE: 1-30-04  
PROJECT NO.: 499-005  
SCALE: 1"=50'

N:\proj\499-001\dwg\Survey\EXHF3.dwg



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## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3448, FOR THE PURPOSE OF GRANTING AN EASEMENT TO MIRAMONT POINTE FOR NON-PARK USE THROUGH PROPERTY OWNED BY METRO AND THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT ON MT. TALBERT

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**Date: April 19, 2004**

**Presented by: Nancy Chase  
Joel Morton**

### PROPOSED ACTION

**Resolution No. 04- 3448 requests approval for the Chief Operating Officer to execute a grant of permanent easement that would encumber Metro/NCPRD property on Mt. Talbert.**

### BACKGROUND

In May of 1995, voters of the region passed a bond measure enabling Metro to purchase open space properties with \$135.6 million worth of bond funds. The bond measure identified fourteen regional target areas and six regional trails and greenways for property acquisition, including the East Buttes/Boring Lava Domes target area.

One objective of the East Buttes/Boring Lava Domes Target Area refinement plan encourages Metro to partner with other governments and non-profit organizations in the acquisition of open space properties on urban buttes including Mt. Talbert, a forested butte just east of I-205 and south of SE Sunnyside Road. Mt. Talbert was specifically identified for acquisition and protection due to its diversity of wildlife habitats, including older stands of Douglas fir and Western red cedar trees, and its location at the edge of a rapidly urbanizing area. For these reasons, North Clackamas Parks and Recreation District (NCPRD) identified Mt. Talbert as an essential natural area component of its master plan.

In January of 1998, Metro and NCPRD purchased a 67-acre property on Mt. Talbert. The partnership consisted of Metro's contribution of 75% of the purchase price, and NCPRD's commitment to manage the property and to pay the balance of the purchase price. The majority of the 67-acre Metro/NCPRD property consists of the northeast slope of Mt. Talbert, including a large remnant second growth Douglas fir stand. A smaller, narrow strip of the property extends north from this forested area, crosses Mt. Scott Creek, and connects Mt. Talbert to SE Sunnyside Road at the intersection of SE Sunnyside Road and SE 117<sup>th</sup> Avenue. In contrast to the forested slope, the portion of this narrow strip close to SE Sunnyside Road is covered with blackberry and contains few of the natural resources that motivated Metro and NCPRD to invest in this property.

In 1999 and 2000, NCPRD conducted a master planning process to determine the most appropriate way to manage these 67 acres and the rest of the Mt. Talbert Natural Area. The Mt. Talbert Master Plan, approved by Metro Council on July 13, 2000, concluded that the narrow strip of land connecting SE Sunnyside Road to Mt. Talbert is the most appropriate public access point and trailhead location for the natural area. The master plan envisions a parking lot and trailhead with picnic tables and restroom facilities in this area.

The John B. Goodman Limited Partnership, Inc. (Goodman) owns the property west of and adjacent to the proposed trailhead area. Goodman purchased this property in order to construct and operate Miramont Pointe, a 158-unit senior assisted living/Alzheimer's care facility. When Goodman applied to Clackamas County for authorization to build Miramont Pointe, Clackamas County granted its approval subject to the condition that its vehicular access to SE Sunnyside Road would be restricted to a "right in, right out" curb cut off eastbound Sunnyside Road until the Mt. Talbert trailhead is developed. Clackamas County Transportation relocated the SE 117<sup>th</sup> intersection in anticipation that Metro/NCPRD will provide access to the immediately adjoining neighbors to the east and west off the Mt. Talbert property at the time the trailhead is developed. The intersection of SE 117<sup>th</sup> Avenue and SE Sunnyside Road is a four-way stop signalized intersection that allows for right and left hand turns.

Goodman's easement request includes a permanent driveway easement providing for curbs, sidewalks and landscaping, a temporary construction easement, and a drainage easement providing for a stormwater system. They are also requesting a covenant that in the event the property on the east side of the trailhead is granted an easement, Metro would require the owner of the property to the East to enter into an easement agreement committing to share the driveway maintenance costs in perpetuity.

Metro's policy for reviewing such requests aims to accommodate easements for non-park related uses only if the easements would not significantly impact natural resources, cultural resources or recreational opportunities or conflict with the management objectives for the Metro property. In this case, the access easement would allow Goodman to construct and maintain an access road across the narrow strip of Metro/NCPRD property in order to access the assisted living center on the Goodman property. NCPRD's master plan designated this strip of land as a trailhead facility for Mt. Talbert Regional Park. To ensure that the access road does not conflict with this future use, Goodman provided an access road design that includes a fill and grading for a future parking area and trailhead layout consistent with the Mt. Talbert Master Plan. In addition to the access road, Goodman will be installing landscaping along SE Sunnyside Road and along a drainage swale for stormwater disposal. Signage will also be installed with room for Trailhead signage in the future.

## **FINDINGS**

- The Goodman application, easements and construction document satisfy the criteria established by the Easement Policy, Metro Council Resolution 97-2539B. Attachment 1 attached hereto specifically applies the thirteen policy criteria of the Metro Easement Policy to Goodman's easement application.
- The Goodman application and easement are consistent with the Mt. Talbert Master Plan, adopted by NCPRD in May 2000.
- The Mt. Talbert easement applications, if approved, will help create appropriate public access to the Mt. Talbert natural area through construction of the driveway leading to the trailhead site.
- Goodman has agreed to compensate Metro /NCPRD for the easements in cash and other consideration, consisting of a preliminary trailhead design, use of the drive for public access, fill and grading of the trailhead and stormwater detection and treatment capacity sufficient to support trailhead improvements. This compensation satisfies the Easement Policy requirement that Metro receive no less than fair market value for easements for non-park use.
- NCPRD, as co-owner, must also approve the easement documents.

## ANALYSIS/INFORMATION

1. **Known Opposition.** None.

2. **Legal Antecedents.** Metro Council Resolution No. 97-2539B, adopted on November 6, 1997, established a policy for Metro's consideration of requests to encumber properties managed by Metro Regional Parks and Greenspaces with private easements designed for access, utilities, or other non-park uses (the "Easement Policy"). The Easement Policy outlines specific criteria against which private easement applications should be considered. The Mt. Talbert Access Easement application is consistent with these criteria under the terms and conditions of the attached documents. This resolution requests Metro Council approval of the Mt. Talbert easement application and authorization for the Chief Executive Officer to execute a grant of easement based on its consistency with Metro Easement Policy.

3. **Anticipated Effects.** The area proposed to be encumbered by the Easement has little natural resource value. Goodman's contribution to the design of the trailhead and construction of the driveway and stormwater drainage system will significantly reduce the public's expense in implementing the trailhead portion of the Mt. Talbert Master Plan. Further, Metro will have no maintenance obligations for the driveway and stormwater drainage system improvements as long as the Mt. Talbert Property is used for park purposes.

4. **Budget Impacts.** Metro's costs to administer the access easement application will be reimbursed. The applicant will build and maintain the access road, stormwater drainage system, signage and landscaping. Minimal or no costs to Metro are expected to arise from the construction of the access.

## RECOMMENDED ACTION

Michael J. Jordan, Chief Operating Officer, with the concurrence of David Bragdon, Council President, recommends adoption of Resolution No. 04-3448.

**Attachment 1 to Staff Report  
Resolution 04-3448  
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 is satisfied through a review process that includes formal easement application, staff review and approval from Metro Council.

- 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's proposal includes significant park benefits, including a trailhead and parking area design and partial construction that is consistent with the Mt. Talbert Master Plan.

- 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 access easement would encumber a portion of the Metro/NCPRD property that is not environmentally sensitive or integral to the natural area values of Mt. Talbert.

- 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 access easement would encumber a portion of the Metro/NCPRD property that is not environmentally sensitive or integral to the Mt. Talbert natural area and will advance the site's ultimate use as a trailhead.

- 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: The applicant will mitigate for the potential impacts of road construction by: using erosion control measures which Metro and NCPRD will monitor revegetating portions of the Mt. Talbert Property disturbed by construction, and will commit to permanently maintain the easement 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 easements are limited to accommodate an access drive as associated stormwater drainage system benefiting the assisted care facility, and are not transferable or assignable to adjacent properties without Metro's consent.

- 7) **Limit the term of easements, right of ways and leases to the minimum necessary to accomplish the objectives of any proposal.**

Staff Finding: Because of the applicant's extensive investment in easement improvements, the term of the easement will be perpetual.

- 8) **Require reversion, non-transferable, and removal and restoration clauses in all easements, rights of ways, and leases.**

Staff Finding: The access 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 Metro 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: Staff has determined that the cash compensation proposed by Goodman, along with improvements to the Metro property, provides benefit no less than fair market value.

- 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 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. The only alternative access remains the current "right in, right out" access.

- 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: Metro and NCPRD have concluded that the proposed easement, as well as the trailhead and parking area design submitted by applicant, are consistent with the Mt. Talbert Natural Area Master Plan.

- 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: Clackamas County Transportation relocated SE 117<sup>th</sup> Avenue with the understanding that Metro and NCPRD provide access to Miramont Pointe through the Mt. Talbert Property at such a time as the trailhead is constructed .

- 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: The Department has been negotiating with the applicant since October of 1999. These negotiations have resulted in an easement application and legal documents that blends the Metro/NCPRD plan to have a parking area and trailhead facility on the subject property with applicant's need to create access to Miramont Pointe.

- 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: Final documents have been negotiated and revised by the Metro Attorney to conform with Metro requests.

- 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 must reimburse Metro prior to receiving the easement.

- 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.