

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 16-4718  
CHIEF OPERATING OFFICER TO GRANT AN )  
EASEMENT TO MULTNOMAH COUNTY ) Introduced by Chief Operating Officer Martha  
Bennett in concurrence with Council  
President Tom Hughes

WHEREAS, the Sellwood Bridge was constructed by Multnomah County (the “County”) in 1925 to replace the Spokane Street Ferry, has been managed and maintained by County since, and is a critical east-west Willamette River crossing for circulation of cars, buses, bicycles and pedestrians between southeast Portland, Clackamas County and downtown Portland and the west side of the region; and

WHEREAS, pursuant to the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26, on May 1, 1998, Metro purchased approximately 44 acres of real property in the OMSI to Springwater Corridor Target Area known as the “PGE/Enron Property”, including a portion of land underneath the east approach of the Sellwood Bridge; and

WHEREAS, the County has operated the existing bridge across the PGE/Enron Property under a 1925 Right Of Way easement (the “PGE Easement”) granted to the County by Metro's predecessor-in-interest, PGE (actually granted by PGE's predecessor, the Portland Electric Power Company); and

WHEREAS, the City of Portland, acting through its Bureau of Parks & Recreation (“PP&R”), manages the PGE/Enron Property through an intergovernmental agreement with Metro, and built a 3.1 mile segment of trail on the PGE/Enron Property known as the “Springwater on the Willamette Trail” that opened to the public in 2002, including a segment travelling under the east approach of the Sellwood Bridge (the “Trail Crossing”); and

WHEREAS, in 2004 cracks were discovered in both the east and west Sellwood Bridge approaches, necessitating Multnomah County to explore options for repair or replacement of the bridge; and

WHEREAS, on February 19, 2009, by Resolution 09-022, the Multnomah County Board of Commissioners approved a Locally Preferred Alternative with Conditions for construction of the Sellwood Bridge Replacement Project (the “New Bridge”), following the recommendation of the Sellwood Bridge Project Policy Advisory Group and including new bicycle and pedestrian facilities crossing the Bridge and connecting to the Springwater Corridor Trail; and

WHEREAS, the County has undertaken construction of the New Bridge, including the structure over the Trail Crossing, in accordance with the Permit of Entry for Park Property – Permit #2012-01, issued effective February 1, 2012, by PP&R;

WHEREAS, the New Bridge will be wider and will extend to the south beyond the south boundary of the PGE Easement; and

WHEREAS, the County has requested updated permanent bridge easement rights from Metro, to replace the PGE Easement, for the location where the New Bridge crosses the Springwater on the Willamette Trail, totaling 8,599 square feet, over and across the portion of the Right-of-Way described as Parcel 1 on page 1 and depicted as Parcel 1 - Permanent Easement on page 2 of Exhibit A hereto;


WHEREAS, Metro Parks and Nature Department staff have evaluated this easement request according to the criteria set forth in Metro Council 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 on November 6, 1997 (the "Easement Policy"), as further set forth in Attachment 1 to the Staff Report for this Resolution; and

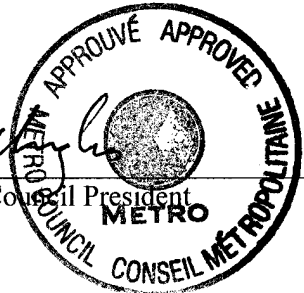
WHEREAS, staff has determined that the easement request can be accommodated without significant impact to natural resources, cultural resources, and recreational facilities or opportunities and that there is no feasible alternative alignment or site for this request, and staff therefore recommends approval of the easement request; and

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

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to grant a permanent right of way easement to Multnomah County in the location described on the attached Exhibit A to this Resolution, on terms satisfying the Easement Policy and approved by the Office of Metro Attorney.

ADOPTED by the Metro Council this 1st day of September, 2016.

  
Tom Hughes, Council President



Approved as to Form:

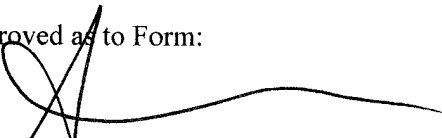
  
Alison R. Kean, Metro Attorney

Exhibit A to Resolution No. 16-4718  
(Permanent Easement Description)

Item No. 2010-45  
DEA File No. T1015D-019  
2/1/2016

SELLWOOD BRIDGE

EXHIBIT 1

PAGE 1 OF 2

**METRO, A MUNICIPAL CORPORATION**

**PARCEL 1**

A portion of that tract of land described as Parcel XIV in Document No. 98073856, Multnomah County Deed Records, located in the Southeast Quarter of Section 22, and the Southwest Quarter of Section 23, Township 1 South, Range 1 East, Willamette Meridian, in the City of Portland, Multnomah County, Oregon, said tract of land being bounded on the North by the following described Line 'A' and being bounded on the South by the following described Line 'B':

Line 'A'

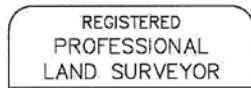
Beginning at a point on the West line of Block 3, Sellwood, Multnomah County Plat Records, being 39.00 feet Northerly of, when measured at right angles to, the centerline of SE Tacoma Street; Thence S88°44'14"W, a distance of 373.56 feet to a point being 20.50 feet Northerly of, when measured at right angles to, the Westerly extension of the centerline of SE Tacoma Street; Thence N88°25'27"W, parallel with said centerline, a distance of 325.87 feet, more or less, to the mean low water line of the Willamette River.

Line 'B'

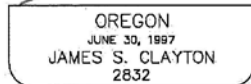
Beginning at a point on the West line of block 4, Sellwood, Multnomah County Plat Records, being 63.50 feet Southerly of, when measured at right angles to, the centerline of SE Tacoma Street; Thence N88°25'27"W parallel with the Westerly extension of said centerline, a distance of 645.35 feet, more or less, to the mean low water line of the Willamette River.

Containing 8,599 square feet, more or less.

As shown on the attached Exhibit 2, in the event of a conflict or discrepancy between the map as shown on Exhibit 2 and the written legal description provided above, the written legal description shall prevail.

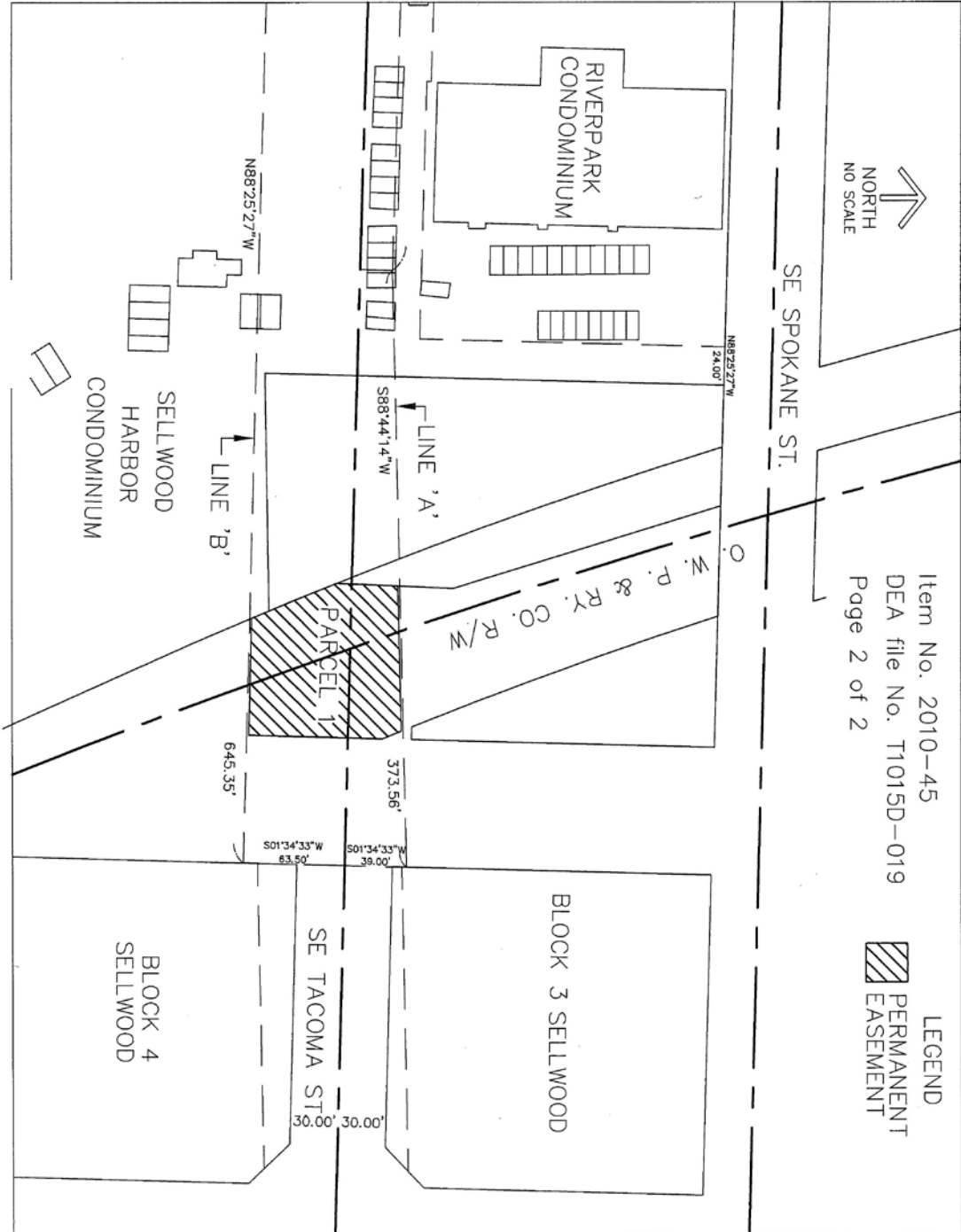


*James S. Clayton* 2-1-16



RENEWAL DATE: 1-1-18

Exhibit A to Resolution No. 16-4718  
 (Permanent Easement Depiction)



## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 16-4718, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO GRANT AN EASEMENT TO MULTNOMAH COUNTY

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Date: September 1, 2016

Prepared by: Dan Moeller  
503-797-1819

#### BACKGROUND

Metro's Parks and Nature Department receives requests for easements, leases and right-of-ways for non-park uses through 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 the Metro Council on November 6, 1997.

Metro received an easement application from Multnomah County, and it has been reviewed by staff in accordance with this policy. As set forth in the findings in Attachment 1 as required by the policy, staff recommends approval of the easement request.

Multnomah County has submitted an application to Metro for an 8,599 square foot permanent easement in southeast Portland, in the location where the County owned and managed Sellwood Bridge perpendicularly crosses the Metro-owned and City of Portland-managed Springwater on the Willamette Trail. The Sellwood Bridge, built by Multnomah County in 1925 to replace the Spokane Street Ferry, is a critical east-west Willamette River crossing link for circulation of cars, buses, bicycles and pedestrians between southeast Portland, Clackamas County and downtown Portland and the west side of the region.

The existing Sellwood Bridge has long been deteriorating culminating in the 2004 discovery of cracks in both the east and west concrete approaches. Work to replace the bridge began in 2006 as a planning effort to develop a community-supported solution to address the long-term transportation deficiencies posed by the deterioration of the bridge. As part of this work, Multnomah County prepared an Environmental Impact Statement (EIS) that summarized major environmental impacts, community concerns and considered alternative solutions. A preferred alternative was selected in 2009, calling for a new bridge to be built on the same alignment (the "New Bridge"). The new bridge would be 64-foot wide at its narrowest point, with two 12-foot travel lanes, two 12-foot shared use sidewalks, and two 6.5-foot bike lanes/emergency shoulders.

The County has operated the existing bridge under a 1925 Right Of Way easement (the "PGE Easement") across the Springwater on the Willamette Trail granted by Metro's predecessor-in-title, PGE (actually granted by PGE's predecessor, the Portland Electric Power Company). The County will replace the existing structure crossing over the Springwater on the Willamette Trail and construct a new bridge approach. The new bridge will be wider and will extend to the south beyond the south boundary of the PGE Easement; therefore, a new easement is required for this new area, the terms of which will be substantially the same (no surface, structural improvements built on the Metro property - purely for the aerial crossing and ground access for facilities maintenance).

The construction work on the New Bridge started in 2012, and the work on the east end taking place within the Springwater on the Willamette Trail to date has been done in accordance with a Non-Park Use Permit (NPUP) issued by the City of Portland, which manages the Springwater Trail for Metro. As the project nears completion, the County desires to replace the temporary rights granted in the NPUP with a

permanent easement from Metro to the County for the portion of the New Bridge that crosses over the Springwater on the Willamette Trail. The County expects to complete this project in late 2016 and requests to secure an easement prior to completion.

Metro Parks and Nature Department staff reviewed this easement request, in accordance with 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.” As set forth in the findings in Attachment 1 as required by the policy, staff have determined that the request can be accommodated without significant impact to natural resources, cultural resources, and recreational facilities or opportunities and that there is no feasible alternative alignment or site for this request. Staff therefore recommends approval of the easement request.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

None

### **2. Legal Antecedents**

1995 Metro Open Spaces Bond Measure approved by voters on May 16, 1995;

2006 Metro Natural Areas Bond Measure approved by voters on November 7, 2006;

Metro Code Section 2.04.026(a)(2), which requires Metro Council authorization for the Chief Operator to transfer interests in real property; and

Metro Council 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**

Adoption of the resolution authorizing granting the easement will allow Multnomah County to construct and maintain the Sellwood Bridge, a critical east-west Willamette River crossing link for circulation of cars, buses, bicycles and pedestrians between southeast Portland, Clackamas County and downtown Portland and the west side of the region.

### **4. Budget Impacts**

The applicant will pay for the value of the easement as well as staff time to process the request, a sum of \$2,567.61.

## **RECOMMENDED ACTION**

The Chief Operating Officer recommends approval of Resolution 16-4718.



## ATTACHMENT 1 TO STAFF REPORT TO RESOLUTION NO. 16-4718

### METRO EASEMENT POLICY CRITERIA AND STAFF FINDINGS ON MULTNOMAH COUNTY'S APPLICATION FOR A PERMANENT EASEMENT ACROSS THE SPRINGWATER ON THE WILLAMETTE TRAIL

- 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 thorough review by Metro Parks and Nature Department staff and the Office of Metro Attorney. Department staff prepared a Resolution, Staff Report and this Staff Findings Report to present to the Metro Council for a final decision.

- 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 easement request is for a transportation project across a Metro owned regional trail. The applicant, Multnomah County, requests a permanent 8,599 square foot easement across the Springwater on the Willamette Trail where the County owned and managed Sellwood Bridge crosses the Trail perpendicularly. Department staff reviewed this request as provided herein for a non-park use on a natural area site in accordance with this policy.

- 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:* Criterion satisfied. Parks and Nature Department staff reviewed this request and determined that there will be no significant impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management to the site by the requested easement. In addition, Council approval of this easement request will provide significant public benefits of improving public safety, connectivity and capacity for multi-modal transportation across the Willamette River.

The County currently has an easement across the Metro property for the existing Sellwood Bridge across the Springwater on the Willamette Trail dating back to the bridge's construction in 1925. However, in the interest of public safety and aiding motor vehicle traffic, Multnomah County is removing and replacing the existing Sellwood Bridge in its

entirety with the “New Bridge”. The New Bridge will follow the same alignment as the old bridge. The County will replace the existing structure crossing over the Springwater on the Willamette Trail and construct a new bridge approach to accommodate the portion of the New Bridge between the east bank of the river and SE 6<sup>th</sup> Avenue. Therefore the easement will be in substantially the same location, but as the New Bridge is wider, the updated easement will be slightly larger and extend further south. As with the previous easement, no surface, structural improvements will be built within the Springwater on the Willamette and trail users will not be impacted.

- 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:* Criterion satisfied. As explained above, Parks and Nature Department staff reviewed this request and determined that there will be no significant impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management to the site by the requested easement. In addition, Council approval of this easement request will provide significant public benefits of improving public safety, connectivity and capacity for multi-modal transportation across the Willamette River.

- 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:* Criterion satisfied. The Metro property, the Springwater on the Willamette Trail, is an existing, paved, multi-use trail. No surface, structural improvements will be built within the Springwater on the Willamette and trail users will not be impacted. No mitigation is required.

- 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:* Criterion satisfied. The applicant requests an easement of 8,599 square feet. The applicant has demonstrated that this square footage is necessary to construct and maintain a section of public roadway.

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

*Staff finding:* Criterion satisfied. The applicant indicates that permanent easement space limitations are the minimum needed to accomplish and maintain the project. Maintenance of this area in perpetuity after the construction will be necessary.

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



**Staff finding:** Criterion satisfied. If the Metro Council approves an easement, the easement will include these terms. The Office of Metro Attorney will draft and review the easement before signature.

- 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:** Criterion satisfied. Metro staff 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 and the applicant is aware and agreeable to this.

- 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:** Criterion satisfied. If the Metro Council elects to approve the easement, the applicant will be required to compensate Metro with the fair market value of the proposed easement area. The proposed easement area is a low value area (open space and encumbered by an existing easement as well as a paved trail) and an appraisal would likely far outweigh the value of the easement. A Metro staff person, an acquisition expert, has valued this easement area at \$1,901.75 and the applicant agrees to compensate Metro accordingly.

- 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:** Criterion satisfied. If the Metro Council elects to approve the easements, the easement document 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:** Criterion satisfied. No exception to the policy was requested and this applicant has satisfied the easement policy.

- 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:** Criterion satisfied. The applicant submitted a detailed application and proposal that included all necessary 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:** Criterion satisfied. The application was thorough and complete, and no additional information is needed. While there is no Master Plan for this property, the site is already built as a trail and this easement request does not prohibit continued trail use. The County's former easement for the old Sellwood Bridge was in place prior to trail construction.

- 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:** Criterion satisfied. Parks and Nature Department staff concur no reasonable alternative exists. Prior to construction, Multnomah County prepared an Environmental Impact Statement that summarized major environmental impacts, community concerns and considered alternative solutions. A preferred alternative was selected by the Multnomah County Commissioners in 2009, calling for a new bridge to be built on the same alignment.

- 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:** Criterion satisfied. Department staff determined the proposal can be accommodated without significant impacts to natural resources or the operations and management of Metro property. Staff does not believe there are any outstanding 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. Should the Metro Council approve the easement request, program staff will work with the Office of Metro Attorney to resolve any and all issues that arise.

- 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:* Criterion satisfied. If the easement is approved by the Metro Council, the Office of Metro attorney will review and approve the easement document.

- 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:* Criterion satisfied. Metro costs have been documented and the 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. The applicant has already received permits from various agencies, including but not limited to, a NPUP (non park use permit) from the City of Portland who manages this trail for Metro, and an Existing Public Road Grade Separation Structure Construction and Maintenance Agreement with Oregon Pacific Railroad Company.