

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 17-4831
CHIEF OPERATING OFFICER TO GRANT)
AN EASEMENT TO THE SUNRISE) Introduced by Brian Kennedy
WATER AUTHORITY FOR EXISTING)
FACILITIES)

WHEREAS, in 2011, pursuant to Metro's Natural Areas Bond Measure, Metro acquired approximately 100 acres of natural area known as Scouters Mountain Nature Park, an extinct lava dome, which is managed for habitat, water quality, and recreational access; and

WHEREAS, for nearly five decades, the Sunrise Water Authority (“SWA”) has constructed, operated, maintained, and supplied public water from facilities located on and through Scouters Mountain, including two water storage tanks and water transmission lines; and

WHEREAS, SWA’s facilities provide water service to Metro’s property and adjacent residential development; including a 1,970 foot long 10-inch cast iron main connected to an above ground one million gallon concrete reservoir (built in 1971) and a 2,850 foot long 12-inch ductile iron main connected to a buried four million gallon concrete reservoir (built in 2005); and

WHEREAS, SWA’s facilities built in 2005 have formal easements that encumbered Metro’s purchase; however, the older pipeline and reservoir (built in 1971) were not part of a recorded easement; and

WHEREAS, access for installation, maintenance and inspection of the existing 1971 pipelines and reservoir on Metro property is currently done without a formal agreement; and

WHEREAS, SWA’s water lines that were originally installed in 1971 must be replaced to provide safe, potable drinking water, in accord with state rules and regulations; and

WHEREAS, SWA’s water lines are mostly located under the existing road surface; and

WHEREAS, SWA requests a permanent easement for access and to construct, maintain, repair, and inspect their existing water infrastructure; and

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

WHEREAS, staff has determined that the easement request can be accommodated with minimal impact to natural resources, cultural resources, recreational resources, recreational facilities, recreational opportunities and their operation and management, and there is no other practicable or better alignment for this request, and therefore recommends approval; and

WHEREAS, SWA has agreed to pay for Metro's staff time to process the easement request, obtain an appraisal and pay fair market value for the easement, repave half of a street, not cut any trees in association with installing the new water lines, and otherwise return any disturbed land to pre-disturbed condition; and

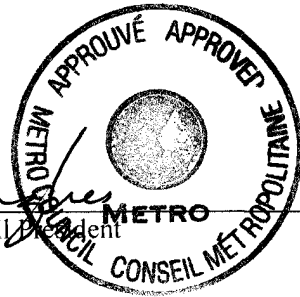
WHEREAS, the Easement Policy requires review of all easement requests by the Metro Council;

NOW THEREFORE,

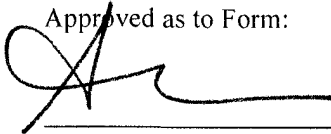
BE IT RESOLVED that the Metro Council authorized the Chief Operating Officer to grant SWA an easement for access, construction, repair, maintenance, and inspection of water transmission facilities and lines in locations depicted on the attached Exhibit A, on terms satisfying the Easement Policy and approved by the Office of Metro Attorney.

ADOPTED by the Metro Council this 28 day of September, 2017.


Tom Hughes, Council President

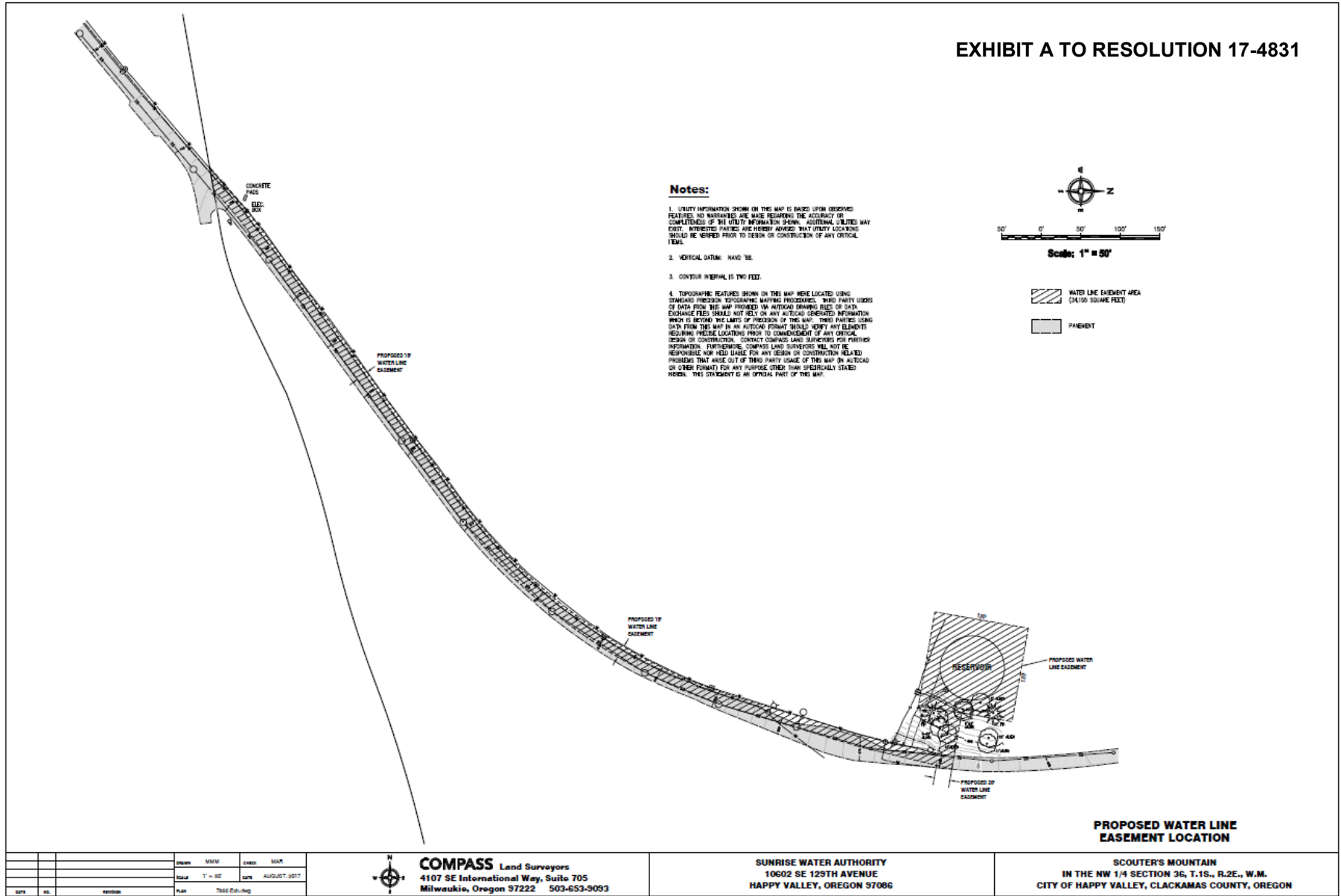


Approved as to Form:



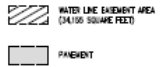
Alison R. Kean, Metro Attorney

EXHIBIT A TO RESOLUTION 17-4831



Notes:

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2. VERTICAL DATUM: NAVD 83.
3. CONTOUR INTERVAL IS TWO FEET.
4. TOPOGRAPHIC FEATURES SHOWN ON THIS MAP WERE LOCATED USING STANDARD PRECISION TOPOGRAPHIC MAPPING PROCEDURES. THIRD PARTY USERS OF DATA FROM THIS MAP PREPARED IN AUTOCAD DRAWING FILES OR DATA EXCHANGE FILES SHOULD NOT RELY ON ANY AUTOCAD GENERATED INFORMATION WHICH IS BEYOND THE LIMITS OF PRECISION OF THIS MAP. THIRD PARTIES USING DATA FROM THIS MAP IN AN AUTOCAD FORMAT SHOULD VERIFY ANY ELEMENTS REQUIRING PRECISE LOCATIONS PRIOR TO COMMENCEMENT OF ANY CRITICAL DESIGN OR CONSTRUCTION. CONTACT COMPASS LAND SURVEYORS FOR FURTHER INFORMATION. FURTHERMORE, COMPASS LAND SURVEYORS WILL NOT BE RESPONSIBLE FOR REEL DAMAGE FOR ANY DESIGN OR CONSTRUCTION RELATED PROBLEMS THAT ARISE OUT OF THIS PARTY USAGE OF THIS MAP IN AUTOCAD OR OTHER FORMATS FOR ANY PURPOSE OTHER THAN SPECIFICALLY STATED HEREIN. THIS STATEMENT IS AN OFFICIAL PART OF THIS MAP.



PROPOSED WATER LINE EASEMENT LOCATION

DATE	BY	REVISION	DESCRIPTION

COMPASS Land Surveyors
 4107 SE International Way, Suite 705
 Milwaukie, Oregon 97222 503-653-9093

SUNRISE WATER AUTHORITY
 10602 SE 129TH AVENUE
 HAPPY VALLEY, OREGON 97086

SCOUTER'S MOUNTAIN
 IN THE NW 1/4 SECTION 36, T.1S., R.2E., W.M.
 CITY OF HAPPY VALLEY, CLACKAMAS COUNTY, OREGON

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 17-4831, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO GRANT AN EASEMENT TO SUNRISE WATER AUTHORITY FOR EXISTING FACILITIES

Date: September 28, 2017

Prepared by: Gary Shepherd

BACKGROUND

Metro's Park and Nature department receives requests for easements for non-park uses through park and natural area properties. 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 Metro Council on November 6, 1997.

Metro received an easement application from the Sunrise Water Authority, which has been reviewed by staff in accordance with the Easement Policy. As set forth in the findings in Attachment 1, as required by the policy, staff recommends approval of the easement request. Staff determined that the request can be accommodated without significant impacts to natural resources, cultural resources, and recreational facility or opportunities, and that there is no feasible or practicable alternative alignment or site for this request. The easement will also act to clarify the rights and responsibilities of Metro and SWA concerning their existing infrastructure on Metro property.

In 2011, Metro purchased property in the City of Happy Valley that was formerly owned by the Boy Scouts of America. The area is now managed and developed as the Scouters Mountain Nature Park.

That property is also home to several key infrastructure elements owned by the Sunrise Water Authority, including a 1,970 foot long 10-inch cast iron main connected to an above ground one million gallon concrete reservoir (built in 1971) and a 2,850 foot long 12-inch ductile iron main connected to a buried four million gallon concrete reservoir (built in 2005). Both sets of facilities are part of critical infrastructure serving water and fire protection to the City of Happy Valley, including water and fire service within the park. *See* Attachment 2.

The facilities built in 2005 have formal easements that encumbered Metro's purchase. However, the older pipeline and reservoir (built in 1971) were not part of a recorded easement. Applicant represented to staff that they had previously obtained the then owners consent to install the subject facilities.

Presently, land use and development plans approved by the City of Happy Valley require the water district to relocate its pump station that serves the older pipeline and reservoir. The "move" has triggered a replacement of the old cast iron main in order to upgrade the pipeline to meet new seismic standards and hardening of key assets as required under the Oregon Resiliency Plan as well as to provide safe and potable drinking water. The older 1971 pipe is for all practical purposes aligned adjacent to the newer pipeline that was installed pursuant to the recorded easement. Both the 1971 line and newer 2005 lines currently reside principally beneath the existing access road serving the park. The project would replace the old pipeline and restore the road and area to its pre-existing condition. In this process, Sunrise is

requesting to record an easement for the new pipeline (a replacement project) along with the existing reservoir (built in 1971).

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 the Sunrise Water Authority to replace an existing water line and access, install, repair, and maintain the water line and existing storage facility under the terms of easement, where none presently exists for the existing facilities. This water system provides water service to Metro’s park and the surrounding community.

4. **Budget Impacts** The applicant will pay for the value of the easement as well as staff time to process the request.

RECOMMENDED ACTION

Approval of Resolution 17-4831

METRO EASEMENT POLICY CRITERIA AND STAFF FINDINGS ON SUNRISE WATER AUTHORITY'S APPLICATION FOR AN EASEMENT IN SCOUTERS MOUNTAIN NATURE PARK

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. Office of Metro Attorney 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: Applicant requests a permanent easement to permit access, construction, repair and maintenance of existing water lines and an existing water storage facility on Scouters Mountain. The utility facility is a non-park use of Metro's natural area and is prohibited, unless an exception is justified and approved. Staff is of the opinion that the exception is justified.

In 2011, Metro purchased property in the City of Happy Valley that was formerly owned by the Boy Scouts of America. The area is now managed and developed as the Scouters Mountain Nature Park.

That property is also home to several key infrastructure elements owned by the Sunrise Water Authority, including a 1,970 foot long 10-inch cast iron main connected to an above ground one million gallon concrete reservoir (built in 1971) and a 2,850 foot long 12-inch ductile iron main connected to a buried four million gallon concrete reservoir (built in 2005). Both sets of facilities are part of critical infrastructure serving water and fire protection to the City of Happy Valley, including water and fire service within the park. *See Attachment 2.*

The facilities built in 2005 have formal easements that encumbered Metro's purchase. However, the older pipeline and reservoir (built in 1971) were not part of a recorded easement.

Presently, land use and development plans approved by the City of Happy Valley require the water district to relocate its pump station that serves the older pipeline and reservoir. The "move" has triggered a replacement of the old cast iron main in order to upgrade the pipeline to meet new seismic standards and hardening of key assets as required under the Oregon Resiliency Plan as well as to provide safe and potable drinking water. The older 1971 pipe is for all practical purposes aligned adjacent to the newer pipeline that was installed pursuant to the recorded easement.

The requested easement would principally align with the existing road and reservoir in the park. Applicant is requesting a 15 foot wide easement centered on the existing waterline (~1150 ft. long), then a 20 foot wide easement centered on the waterline as it transitions across a short vegetated

hillside (~100 ft. long) to connect to the reservoir. The final piece would include a 120 foot by 120 foot easement over the existing water reservoir.

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, and recreational opportunities or their operation and management to the site by the requested easement.

Scouters Mountain is currently developed with water infrastructure and improvements owned and operated by the Sunrise Water District.

Applicant seeks to replace existing but aged water lines and formalize the location, rights, and responsibilities associated with constructing, maintaining, and operating those water lines, a reservoir and related existing water facilities on Metro property. The reservoir currently exists. The existing lines emanating from the reservoir (and which will be replaced) are generally located under the existing access road to the park and thereby confined to an already disturbed area.

The requested easement would principally align with the existing road and reservoir in the park. Applicant is requesting a 15 foot wide easement centered on the waterline (~1150 ft. long), then a 20 foot wide easement centered on the waterline as it transitions across a short vegetated hillside (~100 ft. long) to connect to the reservoir. The final piece would include a 120 foot by 120 foot easement over the existing water reservoir.

The lines will be underground. No trees will be cut. Impacts to the natural area will be minimal. Except during construction and maintenance activities, day-to-day impacts will be no greater than already experienced with the existing facilities.

Access to the park will be maintained and controlled during construction. Applicant will resurface a half street to return the road to its preexisting condition following construction.

The new lines are needed for applicant to provide safe and potable drinking water to its area customers, including Metro. The water service is a significant resource and provides a significant public benefit by serving a public need.

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. Parks and Nature department staff reviewed this request and determined that there will be no significant impacts to natural resources, cultural resources, recreational facilities, and recreational opportunities or their operation and management to the site by the requested easement.

Scouters Mountain is currently developed with water infrastructure and improvements owned and operated by the Sunrise Water Authority.

The requested easement would principally align with the existing road and reservoir in the park. Applicant is requesting a 15 foot wide easement centered on the waterline (~1150 ft. long), then a 20 foot wide easement centered on the waterline as it transitions across a short vegetated hillside (~100 ft. long) to connect to the reservoir. The final piece would include a 120 foot by 120 foot easement over the existing water reservoir.

The request is being made in coordination with the replacement of critical water infrastructure that serves the City of Happy Valley and Metro's park. The replacement will require temporary construction of a new water line and restoration of the disturbed areas to existing conditions. No changes to the grade are proposed. The project will include installation of a new/replacement 12-inch ductile iron main (about three-and-a-half feet below surface), replacement of two fire hydrants, and installation of an 8 foot by 10 foot vault set at grade adjacent to the reservoir (housing seismic control valves). No trees will be cut. Impacts to the natural area will be minimal.

Access to the park will be maintained and controlled during construction. Applicant will resurface a half street to return the road to its preexisting condition following construction.

The new lines are needed for applicant to provide safe and potable drinking water to its area customers, including Metro. The water service is a significant resource and provides a significant public benefit by serving a public need.

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. Where impacted, applicant proposed to resurface the roadway with a half street improvement. Elsewhere, the applicant proposes to mitigate impacts to the site's natural resources by re-grading to existing contours and replanting with native trees, shrubs and groundcover approved by Metro. The terms of the easement will also require mitigation for any future disturbances.

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 a 15 foot wide easement under the existing roadway to replace and thereafter maintain a new water line. The easement widens to 20 feet where the lines approach and connect to the reservoir. The easement will follow the location of existing facilities that have been in place for decades. The easement is the minimum width to allow for access and construction activities. The easement will also act to clarify the rights and responsibilities of Metro and SWA concerning their infrastructure on Metro 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: Criterion satisfied. The easement terms will be for a limited purpose: Permitting applicant to access, construct, maintain, and repair water lines, its reservoir, and related facilities within a defined easement area. Applicant indicates that the easement area is the minimum needed to accomplish and maintain the water infrastructure. Staff agrees.

8) Require reversion, non-transferable, 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. Applicant is aware and agreeable to this requirement.

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 costs and expenses. The applicant is aware and agreeable to this requirement.

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 pay fair market value of the proposed easement and compensate Metro for the grant accordingly. Applicant is aware and agreeable to this requirement.

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. Applicant is aware and agreeable to this requirement.

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 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. 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. Since submission, applicant's legal representative has answered questions and provided information requested by the Office of Metro Attorney. No additional information is needed to analyze the proposal.

The site currently has a master plan: Mt Scott/Scouters Mountain Trail Loop Master Plan (2014). The easement will not impact that master plan, which was developed with knowledge of the existing water lines and infrastructure.

The easement area is relatively small, involves existing water infrastructure and facilities, and does not require a new Master Plan or Master Plan amendment.

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. Based on applicant's and staff's analysis, Parks and Nature Department staff concur no reasonable alternative exists.

In 2011, Metro purchased property in the City of Happy Valley that was formerly owned by the Boy Scouts of America. The area is now managed and developed as the Scouters Mountain Nature Park.

That property is also home to several key infrastructure elements owned by the Sunrise Water Authority, including a 1,970 foot long 10-inch cast iron main connected to an above ground one million gallon concrete reservoir (built in 1971) and a 2,850 foot long 12-inch ductile iron main connected to a buried four million gallon concrete reservoir (built in 2005). Both sets of facilities are part of critical infrastructure serving water and fire protection to the City of Happy Valley, including water and fire service within the park. *See Attachment 2.*

The facilities built in 2005 have formal easements that encumbered Metro's purchase. However, the older pipeline and reservoir (built in 1971) were not part of a recorded 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 businesslike 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.

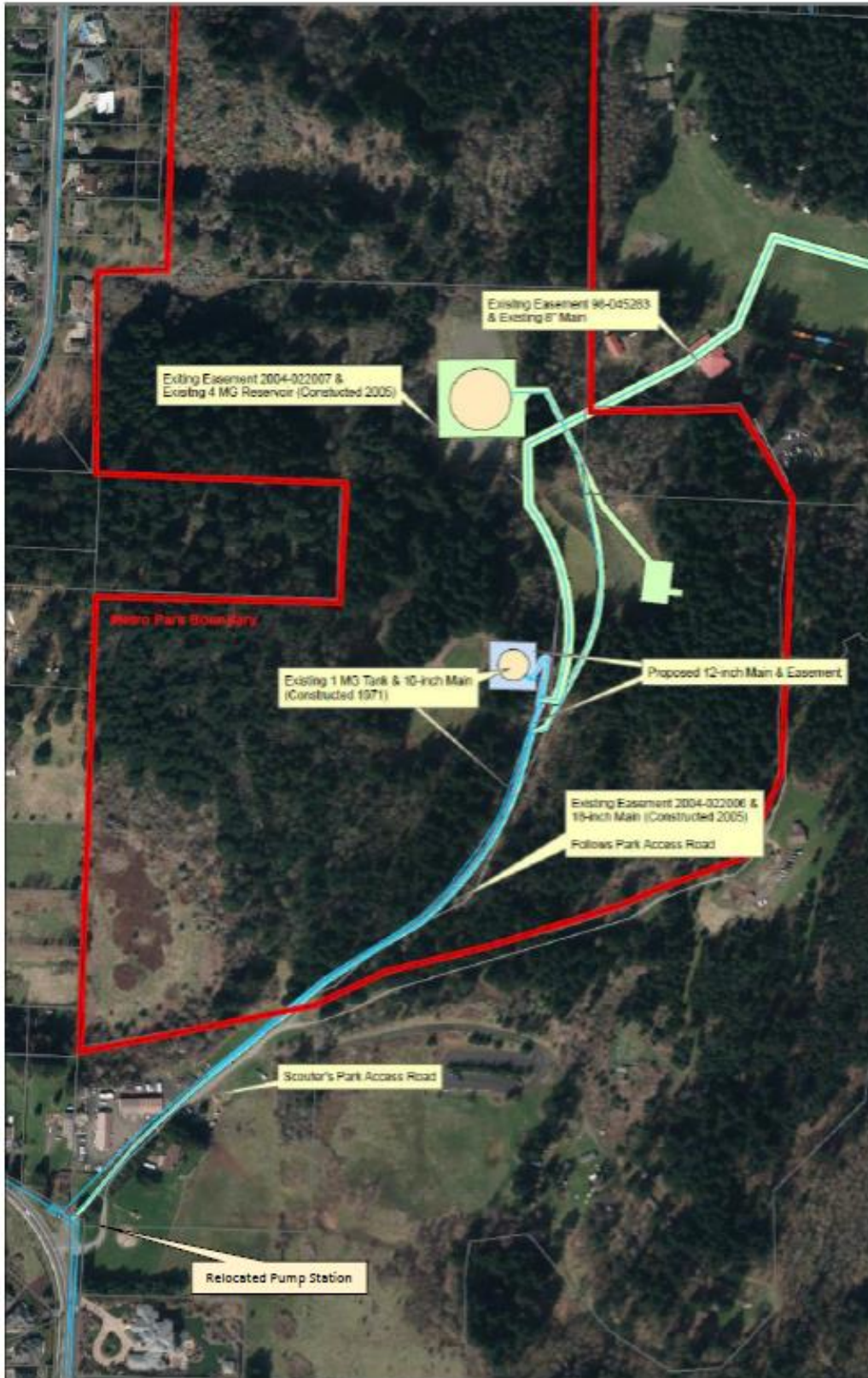
Staff finding: Criterion satisfied. If the easement is approved by the Metro Council, the Office of Metro Attorney will draft and approve the easement document.

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. Applicant understands its obligations.

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.



Site Map: Scouters Mountain Park