

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)
CHIEF OPERATING OFFICER TO GRANT AN)
EASEMENT FOR NON-PARK USE TO THE)
CITY OF TIGARD AT BROWN NATURAL)
AREA)

RESOLUTION NO. 19-5006

Introduced by Acting Chief Operating Officer
Andrew Scott in concurrence with Council
President Lynn Peterson

WHEREAS, with funds provided by the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26, on June 15, 1999, Metro purchased approximately 11.37 acres of real property in the Fanno Creek Greenway Target Area and within the City of Tigard boundaries, now known as the “Brown Natural Area;” and

WHEREAS, pursuant to an Intergovernmental Agreement and its amendments dated September 12, 2000 and March 8, 2013, Metro and the City of Tigard share management of the Brown Natural Area; and

WHEREAS, the City of Tigard requests (a) a permanent easement across the easternmost portion of The Brown Natural Area for the maintenance and repair of an underground water pipeline, which will connect two existing dead-end water lines located to the north and south of the Brown Natural Area, and (b) a temporary construction easement for access to complete installation activities; and

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 can be accommodated with minimal impact to natural resources, cultural resources, recreational resources, recreational facilities, and recreational opportunities, and to their operation and management, at the Brown Natural Area, 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 water line easement and a temporary construction easement to the City of Tigard in the location described on Exhibit A and depicted on Exhibit B to this Resolution, on terms approved by the Office of Metro Attorney.

ADOPTED by the Metro Council this 5th day of December, 2019.



Sam Chase, Deputy Council President

Approved as to Form:



Carrie MacLaren, Metro Attorney

Exhibit A

Waterline Easement Description

A strip of land 15.00 feet in width (offset 7.50 feet on both sides of the following described centerline), located in the Southwest One-Quarter of Section 1 and in the Northwest One-Quarter of Section 12, Township 2 South, Range 1 West, Willamette Meridian, City of Tigard, Washington County, Oregon, and the centerline being more particularly described as follows:

Commencing at the southeasterly corner of Tract A of the plat "Bonita Industrial Park", Washington County Plat Records, also being on the northerly right-of-way line of SW Milton Court (55.00 feet from centerline); thence along said northerly right-of-way line on a curve to the left with a Radius of 55.00 feet, a Delta of 13°42'41", a Length of 13.16 feet, and a Chord of South 64°43'49" West 13.13 feet to the Point of Beginning; thence leaving said northerly right-of-way line, North 23°10'16" West 182.20 feet; thence along a curve to the right with a Radius of 500.00 feet, a Delta of 16°47'24", a Length of 146.52 feet, and a Chord of North 14°46'34" West 146.00 feet; thence North 06°22'52" West 43.73 feet; thence North 49°52'08" East 12.81 feet to the southwesterly right-of-way line of Burlington Northern Railroad (50.00 feet in width) and the Point of Terminus.

The sidelines of the above described strip of land shall be extended and shortened to terminate at said northerly right-of-way line of SW Milton Court and said southwesterly right-of-way line of Burlington Northern Railroad.

The above described tract of land contains 5,781 square feet, more or less.

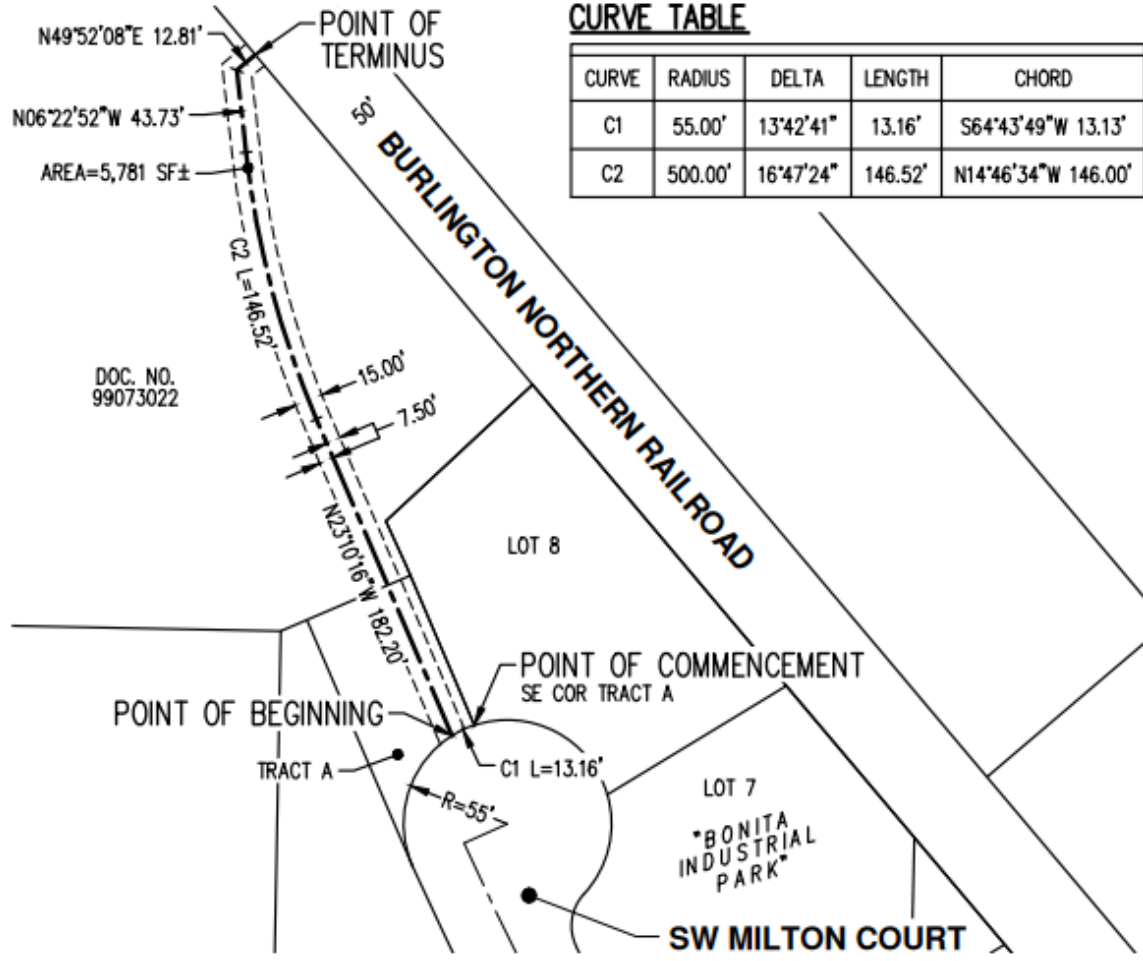
9/23/2019



Exhibit B

EXHIBIT B

A STRIP OF LAND 15.00 FEET IN WIDTH,
 LOCATED IN THE SOUTHWEST 1/4 OF SECTION 1 AND
 IN THE NORTHWEST 1/4 OF SECTION 12,
 TOWNSHIP 2 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,
 CITY OF TIGARD, WASHINGTON COUNTY, OREGON



CURVE TABLE

CURVE	RADIUS	DELTA	LENGTH	CHORD
C1	55.00'	13°42'41"	13.16'	S64°43'49"W 13.13'
C2	500.00'	16°47'24"	146.52'	N14°46'34"W 146.00'

DOC. NO.
99073022

9/23/2019

**REGISTERED
PROFESSIONAL
LAND SURVEYOR**

Nick White

OREGON
JANUARY 9, 2007
NICK WHITE
70652LS
RENEWS: 6/30/20

PREPARED FOR

CITY OF TIGARD
13125 SW HALL BOULEVARD
TIGARD, OR 97223

SCALE: 1" = 80 FEET



WATERLINE EASEMENT MAP		EXHIBIT B
AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 503.563.6151 WWW.AKS-ENG.COM		DRWN: WCB CHKD: NSW AKS JOB: 5703-05

DWG: 5703-05 20190923 EXB | EXB

IN CONSIDERATION OF RESOLUTION NO. 19-5006, FOR THE PURPOSE OF
AUTHORIZING THE CHIEF OPERATING OFFICER TO GRANT AN EASEMENT FOR
NON-PARK USE TO THE CITY OF TIGARD AT BROWN NATURAL AREA

Date: November 19, 2019
Department: Parks and Nature
Meeting Date: December 5, 2019

Prepared by: Shannon Leary, 503-813-
7547; shannon.leary@oregonmetro.gov

ISSUE STATEMENT

The City of Tigard requests the Metro Council authorize the Chief Operating Officer to grant the city a permanent water line easement of approximately 6,000 square feet (approximately 15 feet wide, 400 feet long), and a temporary construction easement for installation activities.

ACTION REQUESTED

Metro Council authorization for the Chief Operating Officer to grant the easement to the City of Tigard.

IDENTIFIED POLICY OUTCOMES

Continued application of the guidance in the Parks and Nature easement policy (Res. 97-2539B) (the "Easement Policy").

POLICY QUESTION(S)

Does the Metro Council wish to permit the City of Tigard to install and maintain a water line connection across a segment of the Metro-owned Brown Natural Area that will connect two dead-end existing water lines? This request has been reviewed by Parks and Nature Department staff using the guidance in the Easement Policy, and the staff findings are documented in Attachment 1 to this Staff Report.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

1. Grant the City of Tigard the easement. This will allow the City to install the water line connection, providing improved water quality and ensuring domestic and critical fire service is maintained for nearby properties. This option is consistent with the recommendation by staff using the guidance in the Easement Policy.
2. Do not grant the City of Tigard the easement. The City would have no other alternative but to continue use of the aging and compromised Red Rock Creek water line. This could cause uncertainty with the City of Tigard.

STAFF RECOMMENDATIONS

Staff reviewed the request using the guidance in the Easement Policy and recommends the Metro Council approve the City of Tigard's request, authorizing the Chief Operating Officer to grant the permanent water line easement and temporary construction easement to the City of Tigard.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

The City of Tigard has requested a 15-foot wide, 400-foot long permanent easement (approximately 6,000 square feet in total) for the maintenance and repair of an underground pipeline which will connect two existing dead-end water lines located to the north and south of the Brown Natural Area. In addition, the City has requested a temporary construction easement to allow access to the northern-most section of the existing water line for installation activities.

The proposed water line connection would allow for improved water quality and would ensure domestic and critical fire service is maintained for nearby properties. A large portion of the proposed water line runs underneath and within the boundaries of the proposed Regional Fanno Creek Trail location on the east side of the Brown Natural Area, in order to mitigate the impact as much as possible. In addition, the City will utilize the horizontal directional drilling (HDD) method of installation for the majority (311 feet) of the water line, which helps minimize surface disruptions. The area will receive restoration enhancement activities, and all other disturbed areas in the temporary easement area will be re-seeded.

The proposed use of the easement area will include maintenance and repair of the underground water line, the right to enter the property at reasonable times, the right to excavate and refill ditches for the location of the water line, and the right to remove obstructions interfering with the location, construction, and maintenance of the water line.

The property is currently encumbered by a sewer line easement to the City of Tigard (Resolution No. 08-3958) near the same location as this proposed water line easement area.

Legal Antecedents

- Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26
- Metro Resolution No. 97-2539B "For the Purpose of Approving General Policies Related to the Review of Easements, Rights of Ways, and Leases for Non-Park Uses Through Properties Managed by the Regional Parks and Greenspaces Department"

Anticipated Effects

- The City of Tigard will construct a water line connection through a corner of Metro-owned property. Nine trees will need to be removed, but those nine trees would otherwise be removed for construction of the proposed Regional Fanno Creek Trail. In addition, approximately 1,868 square feet of vegetated corridor will be impacted

by the temporary construction easement. This area will receive restoration enhancement activities, and all other disturbed areas in the temporary easement area will be re-seeded. The City of Tigard will have ongoing access to exercise valves, maintain equipment, and perform needed repairs.

Financial Implications (current year and ongoing)

- None

BACKGROUND

The Metro Code requires Metro Council approval of new easements over Metro property. As an owner of almost 18,000 acres of land across the greater Portland region, Metro's Parks and Nature Department receives frequent requests for easements over Metro property for both park and non-park uses. In 1997, to ensure that the habitat and natural area purposes for which voters funded Metro's property acquisition are not eroded over time by non-park uses, the Metro Council approved Resolution 97-2539B (Easement Policy). The Easement Policy directs staff to make recommendations to the Metro Council on whether an easement request should be granted, and the policy provides the framework for staff to make its recommendations. Staff has determined that the easement request can be accommodated with minimal impact at the Brown Natural Area, and staff therefore recommends approval of the easement request.

ATTACHMENTS

Attachment 1: Metro easement policy criteria and Staff Findings on City of Tigard's application for a water line easement across the Brown Natural Area.

ATTACHMENT 1 TO STAFF REPORT TO RESOLUTION NO. 19-5006**METRO EASEMENT POLICY CRITERIA AND STAFF FINDINGS ON CITY OF TIGARD'S APPLICATION FOR A WATER LINE EASEMENT ACROSS THE BROWN NATURAL AREA**

- 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 applicant is requesting a 15-foot wide, 400-foot long permanent easement (approximately 6,000 square feet in total) for the maintenance and repair of an underground pipeline which will connect two existing dead-end water lines located to the north and south of the Brown Natural Area. The applicant is also requesting a temporary construction easement to allow construction access to the northern-most section of the existing water line for installation activities. Department staff reviewed this request as provided herein for a non-park use on a natural area site in accordance with this policy.

The proposed water line connection would allow for improved water quality and would ensure domestic and critical fire service is maintained for nearby properties. A portion of the proposed water line runs underneath and within the boundaries of the proposed Regional Fanno Creek Trail location on the east side of the Brown Natural Area, in order to mitigate the impact as much as possible. The proposed use of the easement area will include maintenance and repair of the underground water line, the right to enter the property at reasonable times, the right to excavate and refill ditches for the location of the water line, and the right to remove obstructions interfering with the location, construction, and maintenance of the water line.

- 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 has determined that there will be no significant impacts to cultural resources, recreational facilities, and recreational opportunities or their operation and management to the site by the requested easement. There will be minimal impacts to natural resources which will be mitigated by the city. In addition, approximately 1,868 SF of vegetated corridor that will be impacted by the temporary construction easement will receive restoration enhancement activities, and all other disturbed areas in the temporary easement area will be re-seeded by applicant.

- 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. The site is subject to the Brown Property Natural Resource and Management Plan published in May 2010 which outlines certain conservation, restoration and built improvement goals. The proposed water line lies mostly within the boundaries of the proposed Fanno Creek Regional Trail, and in order to further minimize impacts, the applicant will utilize the horizontal directional drilling (HDD) method of installation for the majority (311 feet) of the water line, which helps minimize surface disruptions. Department staff believe any impacts to the natural area will be minimized and mitigated.

In addition, the applicant (a public partner) holds an existing sewer line easement on the southeast portion of the property.

- 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. All trees that require removal due to water line connection would otherwise be removed for the proposed Fanno Creek Regional trail, and the site disturbance resulting from the temporary construction easement will receive restoration enhancement activities. All other disturbed areas in the temporary easement area will be re-seeded.

- 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 approximately 6,000 square feet. This is a small portion of the greater 38 acre Brown Natural Area site. The applicant has demonstrated that this square footage is necessary to construct and maintain a section of underground water line.

- 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. Access to and maintenance of this area in perpetuity after construction will be necessary to exercise valves and keep all equipment is in good working order.

- 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. The Department believes that the easement is of negligible monetary value, due to the small size, minimal impacts, and existing encumbrances. As such, department further believes that seeking an appraisal for compensation is not a good use of public funds by Metro or the applicant (City of Tigard).

- 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 infeasibility.

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. The site does not currently have a council adopted Master Plan. The easement area is small in relation to the larger site and located mostly within the boundaries of a future trail. It should not impact any future 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: Criterion satisfied. Based on the applicant's analysis, Parks and Nature Department staff determined that no reasonable alternative exists. The applicant performed an extensive analysis to limit the overall project impact to the natural areas and to explore alternative locations for the water line. In lieu of constructing the water line through Metro-owned property, an analysis of three different locations was performed. In each instance, the applicant identified that the options were infeasible due to either rail design specifications, City of Tigard design specifications, or both. The City has reduced the impacts to the Metro-owned properties as much as possible. The requested easement area is the minimum necessary to accommodate the construction and maintenance of the proposed water line on the Brown Natural Area property.

- 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 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.

- 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 been informed of this requirement.