

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)	RESOLUTION NO. 25-5447
CHIEF OPERATING OFFICER TO GRANT A)	
NON-PARK USE EASEMENT TO CLACKAMAS)	Introduced by Chief Operating Officer
COUNTY AT PECAN CREEK NATURAL AREA)	Marissa Madrigal in concurrence with
)	Council President Lynn Peterson

WHEREAS, Metro owns and manages approximately 25 acres of real property in Clackamas County known as Pecan Creek Natural Area (the “Property”), located along Pecan Creek at the intersection of SW Stafford Road and SW Childs Road; and

WHEREAS, Clackamas County is constructing intersection safety and circulation improvements at SW Stafford and SW Childs Roads (the “Project”), including a roundabout, pedestrian sidewalks, bicycle lanes and crosswalks immediately adjacent to the Property; and

WHEREAS, Metro and Clackamas County cooperated in the Project’s design process resulting in intersection improvements that minimized the Project’s impact on the Property and include habitat and water quality benefits through removal of a fish-passage barrier, installation of improved stormwater and conveyance facilities directly adjacent to Pecan Creek, additional protections of natural habitat around Pecan Creek, and native plantings beyond requirements; and

WHEREAS, the Project’s intersection improvement design and location requires a right-of-way dedication and permanent slope easement of approximately 30,270 square feet and a temporary construction easement of approximately 6,705 square feet at the Property; 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 request can be accommodated with minimal impact to natural resources, cultural resources, recreational resources, recreational facilities, recreational opportunities and their operation and management at the Property, mitigation for impacts are appropriate and beneficial, 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, permanent slope easement, and a temporary construction easement to Clackamas County in the locations depicted on Exhibits A and B to this resolution, on terms approved by the Office of Metro Attorney.

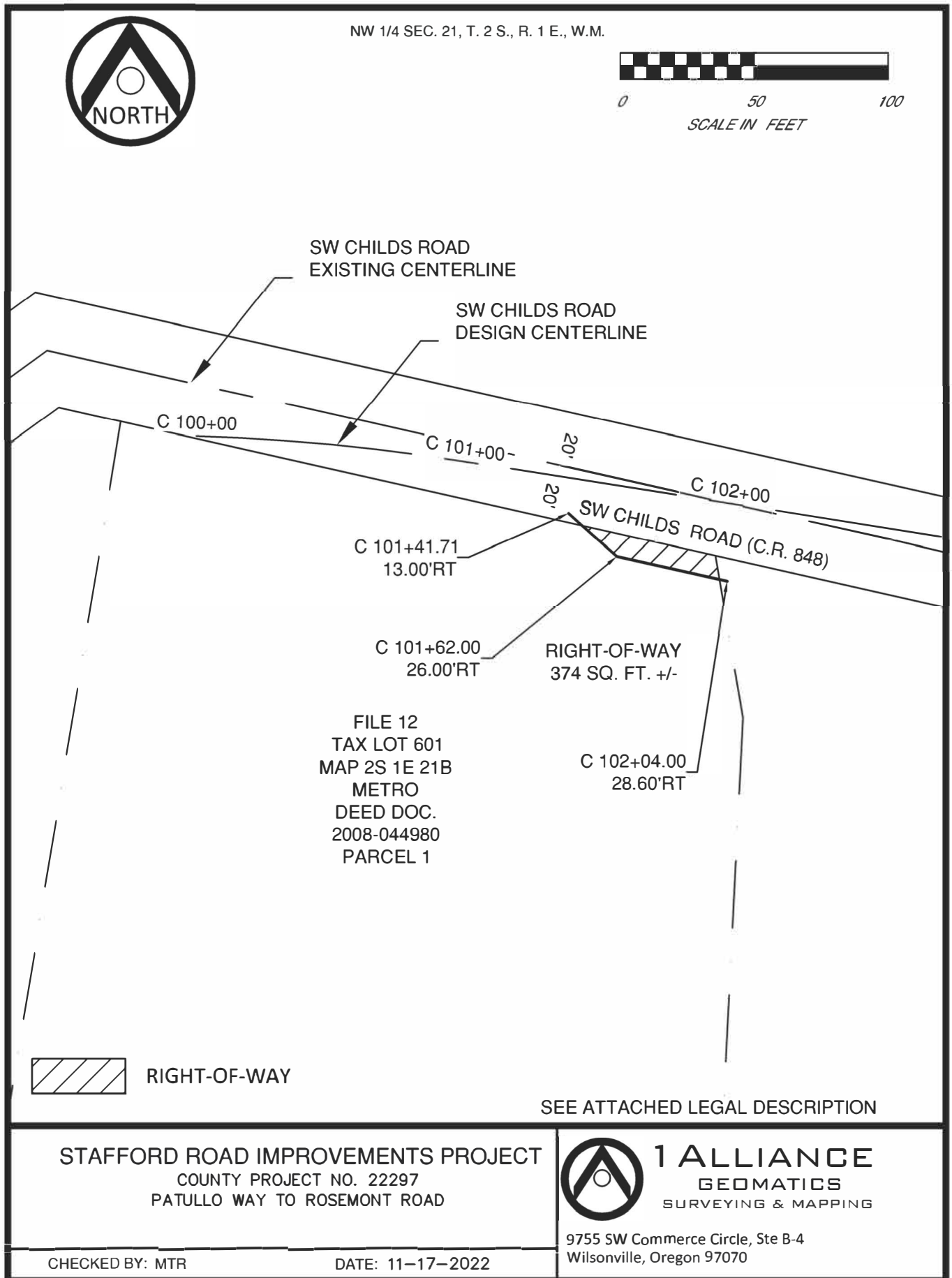
ADOPTED by the Metro Council this 23rd day of January 2025.

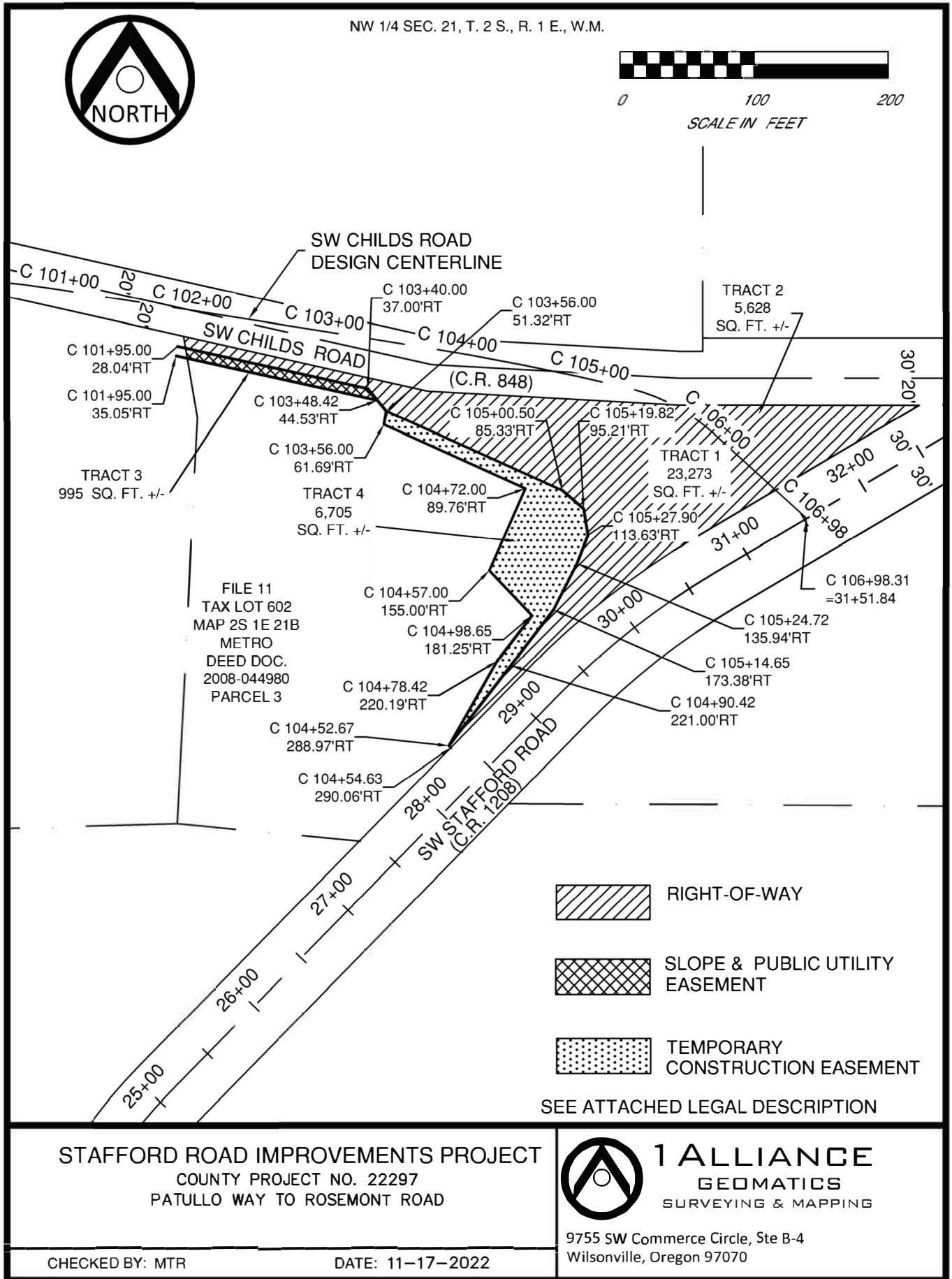


Lynn Peterson, Council President

Approved as to Form:

Carrie MacLaren, Metro Attorney





IN CONSIDERATION OF RESOLUTION NO. 25- 5447, FOR THE PURPOSE OF
AUTHORIZING THE CHIEF OPERATING OFFICER TO GRANT A NON-PARK USE
EASEMENT TO CLACKAMAS COUNTY AT PECAN CREEK NATURAL AREA

Date: January 7, 2025
Department: Parks and Nature
Meeting Date: January 23, 2025

Prepared by: Shannon Leary,
Shannon.leary@oregonmetro.gov
Presenter(s), (if applicable): n/a

ISSUE STATEMENT

Does the Metro Council wish to authorize the Chief Operating Officer to grant Clackamas County a right of way dedication and permanent slope easement of approximately 30,270 square feet, and a temporary construction easement of approximately 6,705 square feet at Pecan Creek Natural Area, subject to terms and conditions as approved by the Office of Metro Attorney?

ACTION REQUESTED

Staff have reviewed the County's request in accordance with the Metro Council approved Reso. 97-2539B (the "Easement Policy") and recommend the Metro Council direct the Chief Operating Officer to grant Clackamas County a right of way dedication, slope easement and temporary construction easement (collectively, the "Easements") as depicted in the Exhibits to this Resolution.

IDENTIFIED POLICY OUTCOMES

Authorizing the Chief Operating Officer to grant the Easements is consistent with Metro Council past policy direction. Staff reviewed and applied Metro Council policy direction in the Easement Policy to this request and have concluded that a recommendation that the Council authorize this request is appropriate.

The County also believes that this project meets Metro's Shared Vision and Goals for Transportation as outlined in the 2018 Regional Transportation Plan. The goals include Vibrant Communities, Shared Prosperity, Transportation Choices, Reliability and Efficiency, Safety and Security, Healthy Environment, Healthy People, Climate Leadership, Equitable Transportation, Fiscal Stewardship, and Transparency and Accountability.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

1. Metro Council authorize the COO to grant the Easements to the County. This would result in the Metro Council continuing to follow its guidance in the Easement Policy, and the County moving forward with the roadway improvement project, which includes wide-ranging benefits such as replacing a fish passage barrier with a

passable culvert, improving stormwater facilities, and accommodating bike lanes and pedestrian facilities on SW Stafford Road and a portion of SW Childs Road.

2. The Metro Council not authorize the COO to grant the easements to the County. This would result in the Metro Council deviating from their guidance in the Easement Policy and the project being put on hold. It is likely that the County would attempt to acquire these easements via eminent domain, the ramifications of which are unknown as this would be precedent setting. It may have political effects.

STAFF RECOMMENDATIONS

Authorizing the Chief Operating Officer to grant the Easements is consistent with Metro Council past policy direction. Staff reviewed and applied Metro Council policy direction in the Easement Policy to this request and have concluded that a recommendation that the Council authorize this request is appropriate.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

Clackamas County aims to improve the safety and capacity at the intersection of Stafford Road with Johnson Road (to the east) and Childs Road (to the west) and to provide a safe route for bikes along Stafford Road. SW Stafford Road is a major arterial with high volumes of vehicle travel (over 10,000 vehicles per day). The section between Pattulo Way and Rosemont Road has a steep grade, narrow travel lanes, lacks bicycle lanes, and has a side-street stop-controlled intersection at SW Childs Road. This intersection experiences significant congestion during peak traffic periods resulting in long traffic queues at Childs Road and numerous accidents at the intersection.

Alternatives were evaluated and a roundabout selected as the safest option. This design has minor impacts to Metro-owned property to the south of Childs Road (Pecan Creek Natural Area) and Lake Oswego-owned property to the north of Childs Road, where Metro holds a conservation easement (Stevens Meadows CE). The overall project will upgrade the existing Pecan Creek culvert under Childs Road, currently a fish-passage barrier, to a larger, fish-passable culvert, plant native plants in a buffer 15,890 square feet beyond requirements, and secure a 36,000 square foot Restricted Development Easement to preserve natural habitat directly adjacent to Pecan Creek. The permanent right of way easement request includes 29,275 sf at Pecan Creek Natural Area. The project also requests a total of 995 sf in permanent slope easement and 6,705 sf in temporary construction easement.

The County considered existing topography and roadway approaches and determined that a roundabout is the safest option to achieve the goals of the project. Three alternatives were analyzed, and the roundabout as designed ranked highest in operations, safety, and environmental and stormwater benefits, while limiting the right-of-way and earthwork required.

The Pecan Creek culvert under Childs Road is currently a fish passage barrier, and the project will reconstruct the culvert to provide passage for fish and amphibian species, enhancing habitat connectivity between Metro and Lake Oswego natural areas. Trees will be removed for construction, but the project has secured a variance from Clackamas County Water and Environmental Services to restore 56,647 sf of new and existing buffer for Pecan Creek, expanding the mitigation area by 15,890 sf beyond its impact. This mitigation area will include applicable native trees, plants and shrubs in an approved planting plan, and the County will monitor and maintain the plantings for three years. While these mitigation efforts are not contained to Pecan Creek Natural Area or Stevens Meadows CE, the overall project provides these enhanced wildlife habitat and connectivity benefits.

While there is no Council action required, it is relevant to note that Metro staff have also reviewed the County's requests for a permanent right of way (4,514 sf) and slope (4,451 sf) easement at the Stevens Meadows property that is held in fee by the City of Lake Oswego and where Metro holds a conservation easement. Metro staff have reviewed the easement requests by the County to determine if the proposed uses are in accordance with the terms of the conservation easement and have found them to be consistent with the conservation easement's Park Development Area permitted uses for park infrastructure. Specifically, the project includes the following park infrastructure: sidewalk and bike lanes that will connect directly to the Stevens Meadows CE property and which will allow for enhanced connectivity for public recreation, the concrete driveway apron that will support the current use of park maintenance vehicle access and could support future park development, and storm water improvements and lighting.

Legal Antecedents

- Metro Council 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 (November 6, 1997)
- Metro Council Resolution No. 06-3672B, For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection (March 9, 2006)
- Metro Council Resolution No. 07-3839, Approving the Natural Areas Acquisition Refinement Plan for the Stafford Basin Target Area (September 27, 2007)
- Metro Code Section 2.04.050 which requires Metro Council authorization for the Chief Operating Officer to transfer interests in real property
- Lake Oswego Measure 3-618: Allows road safety project, driveway realignment on specific park property. Passed by over 80% of voters on November 5, 2024.

Anticipated Effects

The County will move forward with constructing the roadway improvement project, spanning 2025-2026.

Financial Implications (current year and ongoing)

There is no expense to Metro to grant the easements. The County will pay Metro fair market value for the easements and Metro will be reimbursed by the County for the expenses incurred by Metro, consistent with the Easement Policy.

Known Opposition

Stevens Family Farms, LLC (Stevens Farms), the successor in interest to Stevens Family Enterprises, LLC, the entity that conveyed Stevens Meadows to the City of Lake Oswego and the Pecan Creek Natural Area to Metro, has expressed concerns about this project, specifically its impacts to the Stevens Meadows property. Stevens Farms has engaged the Lake Oswego City Council over the past year and recently sent a letter to President Peterson documenting Stevens Farms' concerns. Due to the park development limitations in the Charter of the City of Lake Oswego, the city placed a measure (3-618) on the ballot in November 2024 asking its citizens if they supported the project and the city granting right of way to the county for the project. The measure passed with over 80% support, indicating that the greater Lake Oswego community believes in the benefits of the overall project.

BACKGROUND

The Metro Code requires Metro Council approval of new easements over Metro property. As an owner of approximately 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.

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. Projects designed for the benefit of a Metro park or natural area (a "park use") are recommended for approval. If an easement request is for a non-park use, however, Metro staff must examine it further. Staff must first determine if there is any feasible alternative to the use of Metro's property, without taking into account the cost of any alternative. If a feasible alternative exists, the Easement Policy directs staff to recommend the request be denied. If there is no feasible alternative, then Metro staff analyzes whether any negative impacts from the non-park use on the Metro property can be mitigated. If mitigation is possible, the Easement Policy directs staff to recommend Metro Council approval of the easement.

ATTACHMENTS

Attachment 1: Easement Policy Criteria and Staff Findings

ATTACHMENT 1: EASEMENT POLICY CRITERIA AND STAFF FINDINGS

The Metro Code requires Metro Council approval of new easements over Metro property. As an owner of approximately 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, the "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. This analysis follows the established framework and supports the recommendation found in the staff report.

- 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: Criterion satisfied. The applicant is requesting a right of way dedication of approximately 29,275 square feet and a permanent slope easement of approximately 995 square feet at Pecan Creek Natural Area in order to accommodate a proposed roundabout at the Stafford Rd and Childs Rd intersection. The proposed easement is necessary to significantly improve safety and traffic operations at a high-accident intersection. The proposed improvements are estimated to decrease crashes by 81-88%, and the proposed bicycle lanes will provide connectivity to existing bicycle lanes to the south on SW Stafford Rd, significantly enhancing safety for bicyclists along this stretch. Department staff reviewed this request as provided herein for a non-park use easement and right-of-way dedication 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 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 and right-of-way dedication. There will be minimal impacts to natural resources which will be mitigated by the county, as detailed in Section 5.

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. Department staff determined the proposal can be accommodated without significant impacts to natural resources or the operations and management of Metro property, and the minor impacts to existing natural resources are offset by improvements to the culvert to allow for fish passage, enhanced native plantings, and additional protections for the natural habitat around Pecan Creek.

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 project will replace and upgrade the existing culvert on Pecan Creek, under Childs Road, which will remove a fish passage barrier and allow for fish and amphibians to pass under the roadway. The project will also secure a new 36,000 square foot Restricted Development Easement to preserve natural habitat directly adjacent to Pecan Creek. In addition, stormwater management and conveyance facilities will be improved directly adjacent to Pecan Creek in conformance with federal requirements, resulting in improved water quality. In order to support the larger intersection footprint, additional fill is required. To contain the fill and minimize impacts on the Metro property, a Mechanically Stabilized Earth (MSE) retaining wall is proposed, which results in a significantly less area of Metro property being impacted (vs. an embankment slope method). Metro staff believe that the benefit from the fish passage improvement and significant increase in safety for both vehicles and bicyclists fully mitigate the minimal impacts to the existing natural resources of the site.

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 total permanent easements of approximately 30,270 square feet at Pecan Creek Natural Area, which is limited to the edges of the properties. The applicant has demonstrated that this square footage is necessary to construct and maintain the roundabout improvements.

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 is necessary to ensure the proper upkeep of the roundabout improvements.

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 approve 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 County contracted with an independent appraiser who determined fair market value of the Pecan Creek easements to be \$137,700, which will be paid to Metro by the applicant. Execution of the easement is subject to satisfaction of all expenses, and the applicant is aware and agreeable to this.

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 as deemed necessary by the Office of Metro Attorney.

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. The site does not currently have a Council-adopted Master Plan but impacts are limited to the edges of the property and should not impact any future Master Plan or other use.

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 county considered existing topography and roadway approaches and determined that a roundabout is the safest option to achieve the goals of the project. Three alternatives were analyzed, and the roundabout as designed ranked highest in operations, safety, and environmental and stormwater benefits, while limiting the right-of-way and earthwork required.

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. Minor impacts to natural resources are offset by improvements to the culvert to allow for fish passage, enhanced native plantings, and additional protections for the natural habitat around Pecan Creek. 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.