

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 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 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. 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.