

RESOLUTION NO. 1506

A RESOLUTION ACCEPTING A 15-FOOT WIDE PUBLIC ACCESS EASEMENT TO BEAVER CREEK THROUGH TRACT A OF THE PLAT OF BELLINGHAM PARK, FOR PUBLIC TRAIL PURPOSES.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Donald W. Oakley, President of Cascade Communities, Inc., was the applicant for the plat of Bellingham Park, which was approved by the Troutdale Planning Commission on December 18, 1996 (Case File No. 96-087). A condition of approval required the construction of a six-foot wide trail within a 15-foot easement to connect to the City's Beaver Creek trail system which is identified on the City of Troutdale Parks, Recreation and Greenways Plan, July 11, 1995. Tract A of the plat of Bellingham Park, is now owned by Cascade Ecological Foundation. Mr. Oakley is the president of Cascade Ecological Foundation, and he signed a public access easement on June 7, 2000, granting a 15-foot public access easement to the City in Tract A.
2. Tract A of the plat of Bellingham Park is specifically identified as Tax Lot 1222 on Multnomah County Tax Assessor's Map 1N3E36CC. Trail improvements have been made within a 15-foot easement on this tax lot and approved by the City of Troutdale Parks Division. This trail completes the public access linkage to the City's trail system along Beaver Creek from SW Corbeth Lane by connecting to an easement in Lot 21 of the plat of Bellingham Park.
3. The acceptance of this easement is in the public interest as it fulfills conditions of approval for the plat of Bellingham Park, and the public will have access to the City's trail system along Beaver Creek.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

The City of Troutdale does hereby accept the 15-foot wide public access easement from Cascade Ecological Foundation in Tract A of the plat of Bellingham Park (Attachment C). The City Recorder is directed to record the easement with Multnomah County Deed Records Office.

YEAS: 7
NAYS: 0
ABSTAINED: 0


Paul Thalhöfer, Mayor

Dated: 7-26-00


Debbie Stickney, City Recorder

Adopted: 7-25-00

C

After Recording Mail To:

City Recorder _____
City of Troutdale _____
104 SE Kibling Avenue _____
Troutdale, Oregon 97060 _____

Recorded in the County of Multnomah, Oregon

Total : C. Swick, Deputy Clerk 44.00

2000-107978 08/07/2000 12:23:03pm ATLJH

A49 6 REC SUR DOR OLIS
30.00 3.00 10.00 1.00

JSE

PUBLIC ACCESS EASEMENT

This Public Access Easement Agreement ("AGREEMENT") is entered into by CASCADE ECOLOGICAL FOUNDATION., an Oregon non-profit corporation authorized to do business in Oregon ("GRANTOR"), and the CITY OF TROUTDALE, an Oregon municipal corporation ("GRANTEE"), as of the date the GRANTOR signs the Certificate of Grantor.

RECITALS

A. GRANTOR owns real property located in the City of Troutdale, more particularly described as Tract A of the plat of Bellingham Park, identified as Tax Lot 1222 on Multnomah County Tax Assessor's Map 1N3E36CC, County of Multnomah and State of Oregon.

B. GRANTEE is a municipal corporation in the State of Oregon which has been previously granted a public access easement from SW Corbeth Lane, a public right-of-way, across a portion of Lot 21 of the plat of Bellingham Park, identified as Tax Lot 1221 on Multnomah County Tax Assessor's Map 1N3E36CC, to the Point of Beginning of a Public Access Easement Area within Tract A of Bellingham Park (Tax Lot 1222 on Multnomah County Tax Assessor's Map 1N3E36CC), as shown on Exhibit "A" and specifically described in Exhibit "B" to this AGREEMENT.

C. With permission of GRANTOR, GRANTEE has constructed a six foot wide soft surfaced trail for use as a public trail within a portion of said Tract A in alignment lying within the Easement Area shown on Exhibit "A" and described in Exhibit "B" to this AGREEMENT.

D. The purpose of this AGREEMENT is to grant a public access easement across said Tract A of Bellingham Park for use as a pedestrian / bicycle connection from a public right-of-way to City park and open space areas.

EASEMENT GRANTED

1. **Grant.** For valuable consideration that is acknowledged and received, GRANTOR hereby grants to GRANTEE, and GRANTEE hereby accepts from GRANTOR, a perpetual exclusive public access easement for the Easement Area for purposes of giving pedestrian connection across Tract A of Bellingham Park in an alignment conforming to the constructed trail and as shown on Exhibit "A" and described in Exhibit "B" to this AGREEMENT.

2. **Limitations.** The Easement Area shall remain open and unobstructed. The GRANTOR is responsible for all costs to construct and maintain the easement and improvements therein.

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3. **Use and Access.** GRANTOR shall allow the public and GRANTEE unrestricted access to the Easement Area at all times.

4. **Binding Effect, Run with the Land.** This AGREEMENT shall run with the land as to all real property burdened and benefitted, and shall inure to the benefit of GRANTOR, GRANTEE and their respective successors and assigns.

5. **Attorney Fees.** In the event legal action is commenced in connection with this AGREEMENT, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and any appeal therefrom. The term "action" shall be deemed to include action commenced in the Bankruptcy Court of the United States and any other court of general or limited jurisdiction. The reference to "costs" includes, but is not limited to, deposition costs (discovery and otherwise), witness fees (expert and otherwise), out-of-pocket costs, title search and report expenses, survey costs, surety bonds and any other reasonable expenses.

6. **Severability.** If any portion of this AGREEMENT shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

7. **Integration.** This AGREEMENT constitutes the entire, final and complete agreement of the parties pertaining to this public access easement, and supersedes and replaces all other written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the Easement Area is concerned. Neither party shall be bound by any promises, representations or agreements except as are expressly set forth herein.

8. **Governing Law.** This AGREEMENT shall be construed in accordance with and governed by the laws of the State of Oregon. The parties agree to venue in Multnomah County, State of Oregon.

9. **Nonwaiver.** Failure by either party at any time to require performance by the other party of any of the provisions in this AGREEMENT shall in no way affect the party's rights under the AGREEMENT to enforce the provisions in this AGREEMENT, nor shall any waiver by a party of the breach of the provisions in this AGREEMENT be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

10. **Easement Area.** The Easement area on the GRANTOR's property, specifically identified as Tract A of Bellingham Park, identified as Tax Lot 1222 on Multnomah County Tax Assessor's Map 1N3E36CC, shall consist of a 15-foot wide public access easement as depicted on Exhibit A and described in Exhibit B.

CERTIFICATE OF GRANTOR

I, Donald W. Oakley, as President of Cascade Ecological Foundation, owner of the property described above, hereby certifies that the foregoing easement is granted to the City of Troutdale.

Dated this 7th day of June, 2000.

Donald W. Oakley
Grantor's Signature

Donald W. Oakley, President
Cascade Ecological Foundation
13535 SE 145th Avenue
Clackamas, OR 97015

T: (503) 658-6344

STATE OF OREGON)
)ss.
COUNTY OF MULTNOMAH)

Personally appeared the above named Donald Oakley and
acknowledged the foregoing instrument to be his volu ct and deed.

BEFORE ME: Rita J. Correy
Notary Public for Oregon

My Commission Expires: 9/12/03



CERTIFICATE OF GRANTEE

I, Debbie Stickney, Recorder of the City of Troutdale, hereby certify that the foregoing easement was accepted by the City council of the City of Troutdale on the 25 day of July, 2000, by Resolution No. 1506.

Dated this 26 day of July, 2000.

Debbie Stickney

City Recorder



STATE OF OREGON)
)ss.
COUNTY OF MULTNOMAH)

Personally appeared the above named Debbie Stickney and acknowledged the foregoing instrument to be his/her/their voluntary act and deed.

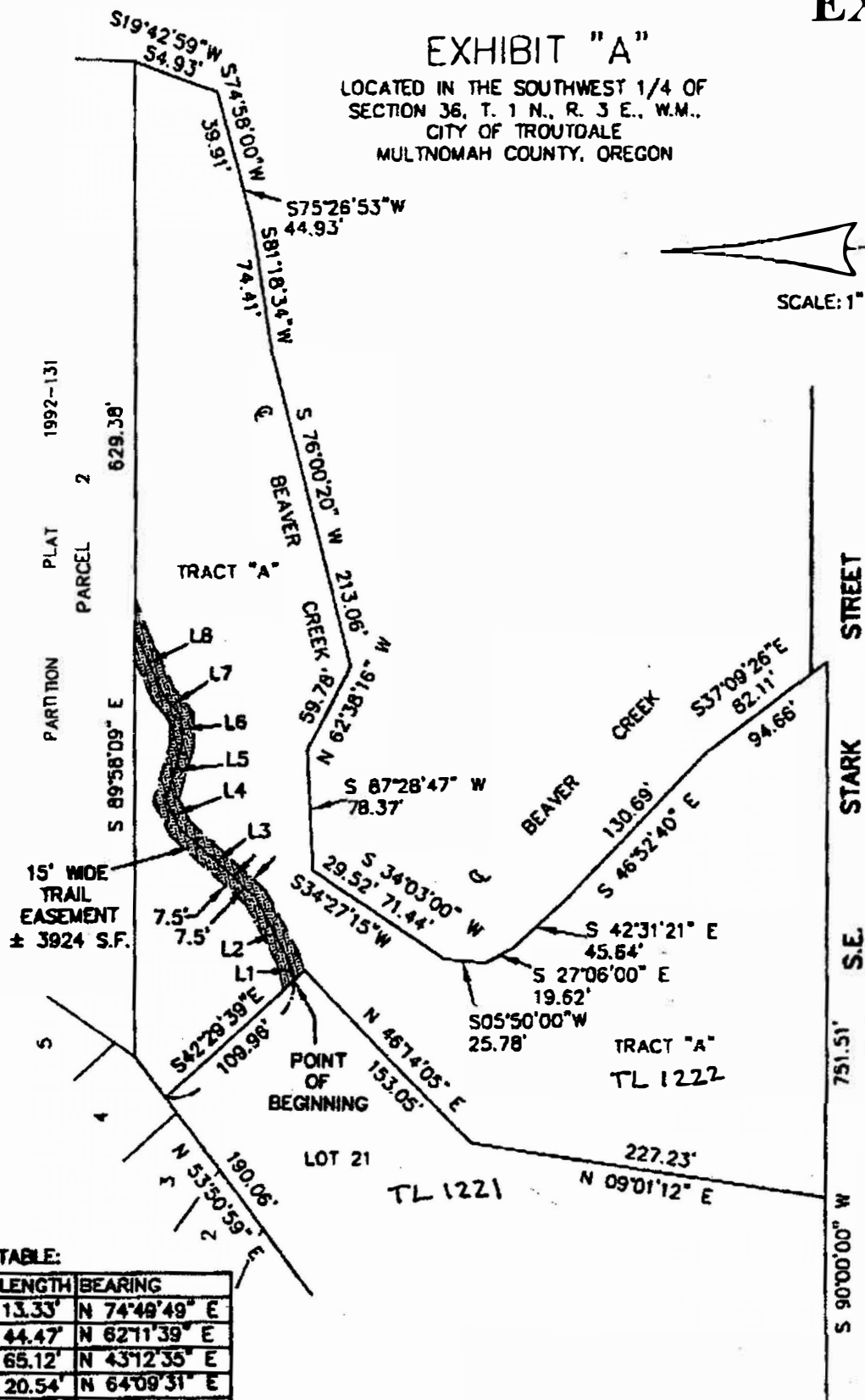
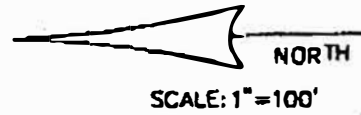
BEFORE ME: Teresa Ann Hall
Notary Public for Oregon

My Commission Expires: Sept 12, 2003

EXHIBIT A

EXHIBIT "A"

LOCATED IN THE SOUTHWEST 1/4 OF
SECTION 36, T. 1 N., R. 3 E., W.M..
CITY OF TROUTDALE
MULTNOMAH COUNTY, OREGON



LINE TABLE:

LINE	LENGTH	BEARING
L1	13.33'	N 74°48'49" E
L2	44.47'	N 62°11'39" E
L3	65.12'	N 43°12'35" E
L4	20.54'	N 64°09'31" E
L5	37.54'	S 74°14'02" E
L6	18.05'	N 88°26'40" E
L7	18.74'	N 51°18'28" E
L8	43.84'	N 68°09'39" E

EXHIBIT PREPARED BY:
C & L LAND SURVEYING, INC.
8116 S.W. NIMBUS AVENUE
BEAVERTON, OREGON 97008
(503) 641-0308
JOB NO. 1651 PWP

EXHIBIT B

EXHIBIT "B" Legal Description 15.00' Trail Easement

A tract of land 15.00 feet wide in Tract "A" of the plat of "Bellingham Park", Multnomah County Plat Records, located in the Southwest One-quarter of Section 36, Township 1 North, Range 3 East of the Willamette Meridian, City of Troutdale, Multnomah County, Oregon, said strip lying 7.50 feet on each side of the following described centerline:

Beginning at a point lying South 42°29'39" West, 109.96 feet from the most northerly corner of Lot 21 of the plat of "Bellingham Park"; thence North 74°49'49" East, 13.33 feet; thence North 62°11'39" East, 44.47 feet; thence North 43°12'35" East, 65.12 feet; thence North 64°09'31" East, 20.54 feet; thence South 74°14'02" East, 37.54 feet; thence North 88°26'40" East, 18.05 feet; thence North 51°18'28" East, 18.74 feet; thence North 66°09'39" East, 43.84 feet to a point in the north line of said Tract "A", and the Point of Terminus.

Contains 3924 square feet, more or less.

The sidelines of said strip are to be prolonged and/or shortened so as to terminate in the lot lines of said Tract "A" of the plat of "Bellingham Park".

This legal description, along with the basis of bearings thereof, is established from the plat of "Bellingham Park", Multnomah County Plat Records.