

City of Durham, Oregon

RESOLUTION NO. 691-26

**A RESOLUTION OF THE DURHAM CITY COUNCIL, OREGON, APPROVING THE
ASSINGMENT OF TRAIL EASEMENT OVER TRACT “B” OF DURHAM HEIGHTS FOR
THE PURPOSE OF PUBLIC TRAIL CONNECTIVITY**

WHEREAS, the Durham Heights Homeowners Association (“HOA”) owns Tract “B,” a common area parcel located within the City limits of the City of Durham, and;

WHEREAS, Oregon Metro (“Metro”) has coordinated with the HOA to obtain a Trail Easement (“Easement”) across Tract “B” to support the development of a regional trail connection within Metro’s Regional Trail Network, and;

WHEREAS, Metro has requested that the City of Durham accept the Easement for public trail access purposes, and;

WHEREAS, acceptance of the Easement does not obligate the City of Durham to construct, fund, or maintain a trail or path within Tract “B,” but merely secures a legal right for possible future public trail access should such improvements be pursued, and;

WHEREAS, the proposed Easement is consistent with these Comprehensive Plan goals and policies and supports long-term opportunities to improve public mobility, access, and regional trail integration, and;

WHEREAS, the City Council of the City of Durham desires to accept the Easement to preserve the opportunity for future public trail access consistent with the City’s adopted plans;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DURHAM, OREGON as follows:

Section 1. Authorization.

The City Administrator / Recorder is hereby authorized to accept the Assignment of Trail Easement in attached Exhibit “A,” and to record such documents on behalf of the City of Durham.

Section 2. Effect of Acceptance.

Acceptance of the Assignment of Trail Easement shall not obligate the City to construct, improve, or maintain any trail or facility within Tract “B,” and shall not commit City funds for such purposes unless separately approved by the City Council.

PASSED AND ADOPTED by the City of Durham, Washington County, Oregon this 27th day of January 2026.

CITY OF DURHAM
BY:

Joshua Drake, Mayor

ATTEST:

Jordan Parente, City Administrator / Recorder

EXHIBIT "A"

Washington County, Oregon

2026-002462

D-E

01/16/2026 11:56:31 AM

Stn=8 J CHOATE

\$136.00

\$55.00 \$11.00 \$10.00 \$60.00

\$136.00

I, Joe Nelson, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Joe Nelson, Director of Assessment and Taxation, Ex-Officio County Clerk

After recording return to:

Metro
Office of Metro Attorney
600 NE Grand Avenue
Portland, OR 97232-2736

TRAIL EASEMENT

This Trail Easement (this "Easement") is between Durham Heights Homeowners Association, an Oregon nonprofit corporation ("Grantor"), and Metro, an Oregon municipal government ("Holder") and is entered into the last date signed below (the "Effective Date"). Grantor and Holder may individually be referred to as "party" or collectively referred to as the "parties."

RECITALS

A. Grantor is the fee simple owner of the real property commonly known as Tax Parcel 7700 in Section 13 of Township 2 South, Range 1 West of the Willamette Meridian, in the City of Durham, County of Washington, State of Oregon, and legally described on Exhibit A attached hereto (the "Property").

B. Holder is an Oregon municipal government whose purpose, among other things, is to facilitate the building, operation, and maintenance of recreational trails and pathways for the benefit of the public. Holder desires to partner with the City of Durham to build, operate, and maintain a recreational trail and pathway on the Property along Fanno Creek.

C. Grantor desires to grant to Holder, and Holder desires to accept from Grantor, an easement over the Property for the purpose of allowing Holder to establish and maintain a public trail and pathway in accordance with the terms and conditions set forth below.

In consideration of the recitals and the mutual benefits, covenants, and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby dedicates, grants, covenants, and agrees as follows:

AGREEMENT

1. Grant of Easement. For and in consideration of the sum of NINETEEN THOUSAND EIGHT HUNDRED DOLLARS (\$19,800.00) and of the mutual promises, terms, conditions, restrictions, and undertakings in this Easement, Grantor hereby grants to Holder a nonexclusive, perpetual easement in gross, on, over, and across the Property (referred to as the "Easement Area").

2. Purposes. The purposes of this Easement are to give Holder the right to (a) enter the Easement Area at any time to establish, install, construct, maintain, and repair a trail and pathway, which trail may be up to 20 feet in width (the "Trail"), and (b) permit the public to access and use the Trail established, installed, and constructed by Holder. The Trail that Holder has the right to establish hereunder may be either a low-impact soft surface trail or an all-weather paved trail, or any combination or variant thereof, at Holder's discretion. The approximate location of the Trail within the Easement Area is depicted on Exhibit B attached hereto. At such time after Holder finishes establishing, installing, and constructing the Trail, Grantor and Holder agree to record an amendment to this Easement, which will revise the Easement Area to 20 feet on either side from the centerline of the fully-constructed Trail, resulting in a final 40-foot-wide Easement Area.

3. Construction, Repair, Maintenance.

(a) Holder may take all reasonable actions necessary to establish, construct, maintain, and repair the Trail within the Easement Area, including, but not limited to, installing the following related surface and subsurface utilities and improvements (collectively, the "Trail Facilities"): (i) appropriate trail surfaces, foot bridges and associated trail structures and culverts, (ii) trail markers, signs, lights, and other security enhancements along the Easement Area and at all points of access, (iii) any barriers, fences and gates necessary to prevent motorized vehicular access into the Easement Area, and (iv) benches for the convenience and comfort of the public. The Trail Facilities will be and remain the property of Holder.

(b) Holder is responsible for obtaining all governmental permits for construction of the Trail and Trail Facilities prior to commencing such construction and Grantor will cooperate in good faith with Holder in obtaining any necessary construction and/or development permits. Holder must give Grantor thirty (30) days written notice before commencing construction of the Trail and Trail Facilities.

(c) Holder is solely responsible for all repair and maintenance of the Trail and Trail Facilities; provided, however, that Grantor will reimburse Holder for all sums expended by Holder to repair any damage to the Trail and Trail Facilities due to the negligence or abnormal use by Grantor or Grantor's invitees, guests, or licensees.

4. Permitted Trail Uses. Holder may permit the public to access the Trail for recreational and transportation purposes, including, without limitation, walking, running, cycling, skating, skiing, and horseback riding. Except for motorized wheelchairs (or other mobility devices used by individuals with disabilities) or in the case of an emergency, motorized vehicles will not be permitted on the Trail; provided, however, that Holder may use motorized vehicles and equipment for construction, maintenance, repair, and security purposes related to the Trail and Trail Facilities. Holder has the right, in its sole discretion, to restrict or limit public use of and access to the Trail.

5. Grantor's Use of Easement Area. Grantor retains the right to access, use, and enjoy the Easement Area for its purposes consistent with the rights granted herein. Grantor is prohibited, however, from engaging in any activity on, or use of, the Easement Area that (i) is inconsistent with the terms of this Easement, (ii) materially interferes with or impairs the use of the Trail by Holder or the public, or (iii) hinders or interferes with future Trail construction or repair by Holder. Without limiting the generality of the foregoing, the following activities and uses by Grantor within the Easement Area are expressly prohibited without the express written consent of the Holder:

- (a) Constructing any improvements or structures, parking any vehicles, installing any paving or gravel, or storing any personal property;
- (b) Blocking, obstructing, or interfering with Holder's access through the Easement Area;
- (c) Excluding any persons from using the Trail, provided that such use is in accordance with the terms of this Easement, or taking any other action that unreasonably prevents or interferes with public entry onto the Trail and Trail Facilities, including without limitation imposing a fee or charge of any kind;
- (d) Filling, excavating, digging, dredging, mining, quarrying, removing, or disturbing the topsoil, sand, gravel, rock, minerals, or other materials;
- (e) Damming, dredging, or undertaking any other activities that may be detrimental to water quality; and
- (f) Taking any action that damages fish or wildlife, or their habitats; alters drainage patterns, flood plains, wetlands, or the natural condition of the Easement Area; or results in erosion, siltation, or other forms of pollution.

6. Enforcement. In addition to any other remedies available at law or in equity, Holder may compel Grantor to make the Easement Area available for the purposes set forth above in Section 2 by exercising any one or more of the following remedies:

- (a) Holder may seek injunctive relief to specifically enforce the terms of this Easement, to restrain present or future violations of this Easement, or to compel restoration of the Trail or any Trail Facilities destroyed or altered as a result of Grantor's violation of this Easement; and
- (b) Holder may enter the Property to remove any barrier obstructing Holder's ability to access the Easement Area or the Trail, and may take other self-help measures or actions reasonably necessary to protect and preserve the rights of Holder under this Easement.

7. Hazardous Substances. Grantor represents and warrants to the best of its knowledge that it has disclosed to Holder the results of any and all Phase I Environmental Assessments, Phase II Environmental Investigations, surveys, sampling, and testing regarding

the Property, and any information contained therein. It is understood and agreed that Holder, by accepting this grant of easement, is not accepting any liability for any release of Hazardous Substances, as that term is defined in ORS Chapter 465, on, to, or from the Property, unless resulting directly from an intentional or negligent act of Holder or Holder's employees, agents, or contractors, and that Grantor is not attempting to convey, transfer, or assign any such liability herein.

8. Taxes. Grantor will pay when due all real property taxes, assessments, and other charges against the Property, including the Easement Area. There will be no right to contribution from Holder for such items.

9. Liability and Indemnity. The parties to this Easement acknowledge that, to the extent so provided in ORS 105.672 to ORS 105.696, both Grantor and Holder are immune from liability for injuries incurred on the property by members of the public who access the Easement Area under authority of this Easement. Subject to the limitations and conditions of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Holder will indemnify, defend, and hold harmless Grantor against all losses and litigation expenses resulting from property damage and/or personal injuries that occur or are alleged to occur as a result of Holder's installation or maintenance of the Trail or the Trail Facilities, except to the extent caused by the negligent or wrongful acts or omissions of Grantor. Grantor agrees to indemnify, defend, and hold harmless Holder from any loss or litigation expense arising from, related to, or associated with (a) personal injury or property damage occurring prior to the Effective Date of this Easement, (b) activities or uses engaged in by Grantor, or Grantor's contractors, agents, employees, tenants, guests, invitees, or anyone else entering the Property by, through, or under the express or implied invitation of Grantor, or (c) structures, facilities, or improvements within the Easement Area, other than the Trail Facilities installed by Holder. As used in this Section, the word "losses" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, and penalties or other charge other than a litigation expense. As used in this Section, the term "litigation expenses" means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Agreement including in each case, attorneys' fees, other professionals' fees, and disbursements.

10. Notice and Addresses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt requested, postage prepaid, to the address set forth below. Any party may change the address to which its notices are to be sent by duly giving notice pursuant to this Section.

To Grantor: Durham Heights Homeowners Association
8531 NE Cornell Rd, Suite 700
Hillsboro, OR 97124

To Holder:

Metro
Conservation Program Director
600 NE Grand Avenue
Portland, Oregon 97232-2736

With a copy to:

Metro
Office of Metro Attorney
600 NE Grand Avenue
Portland, Oregon 97232-2736

11. Title Warranty. Grantor represents and warrants that Grantor owns the entire fee simple interest in the Property and has the full power and lawful authority to grant this Easement. Any and all financial liens or financial encumbrances existing as of the date of the execution of this Easement have been subordinated.

12. Entire Agreement. This Easement is the final and complete agreement between the parties concerning the rights granted herein and supersedes all prior understandings with respect to it. This Easement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by all parties to the Easement.

13. Further Cooperation. Each of the parties agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intent purpose of this Easement.

14. Covenants Running With the Land. The parties acknowledge and agree that the grant conferred by this Easement is intended to, and does, constitute an encumbrance that runs with the Property and inures to the benefit of and is binding upon the parties and their respective grantees, heirs, successors, and assigns. Without limiting the foregoing, Grantor acknowledges that Holder's rights under this Easement are assignable and that Grantor hereby consents to Holder's assignment of all of its right, title, and interest and its delegation of all of its obligations created under this Easement. Upon any such assignment, Holder will be forever released and discharged from any and all claims, demands, and damages which Grantor may have, make, or suffer as a result of anything done or occurring after the date of such assignment. Nothing contained in this Section, however, will in any way be construed as releasing Holder's successors and assigns from any obligations to Grantor created by this Easement.

IN WITNESS WHEREOF, the parties have executed this Easement effective as of the last date of signature specified below.

METRO,
an Oregon municipal corporation

By: Marissa Madrigal
Name: Marissa Madrigal
Title: Chief Operating Officer

GRANTOR

Signed in Counterpart

By: _____
Name: _____
Title: _____

Exhibits:

Exhibit A – Property Legal Description

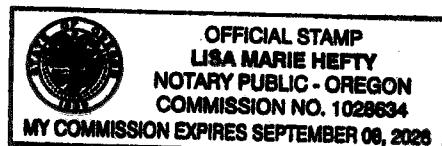
Exhibit B – Depiction of Easement Area and Trail

State of OREGON

County of Multnomah

This instrument was acknowledged before me on January 15, 2026, by Marissa Madrigal as the Chief Operating Officer of Metro, an Oregon municipal corporation.

Lisa M. Hefty
Notary Public - State of Oregon
My Commission Expires: 9/01/2026

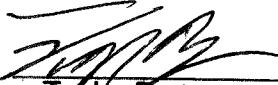


IN WITNESS WHEREOF, the parties have executed this Easement effective as of the last date of signature specified below.

METRO,
an Oregon municipal corporation
Signed in Counterpart

By: _____
Name: _____
Title: _____

GRANTOR

By: 
Name: Taylor Boos
Title: President, of Durham Heights
Homeowners Association, an
Oregon nonprofit corporation

Exhibits:

Exhibit A – Property Legal Description

Exhibit B – Depiction of Easement Area and Trail

State of OREGON

County of Multnomah

This instrument was acknowledged before me on _____, 2025, by
Marissa Madrigal as the Chief Operating Officer of Metro, an Oregon municipal corporation.

Notary Public - State of Oregon
My Commission Expires: _____

State of OREGON

County of Washington

This instrument was acknowledged before me on 1-15-2026, 2026, by
Taylor Boos as the President of Durham Heights **, an Oregon
nonprofit corporation

**Homeowners Association



Notary Public - State of Oregon
My Commission Expires: 8/01/2027

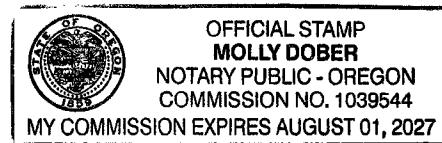


EXHIBIT A

Property Legal Description

Tract B of DURHAM HEIGHTS, a subdivision plat recorded May 14, 2024 as Recording No. 2024-020467, located in the City of Durham, County of Washington, and State of Oregon.

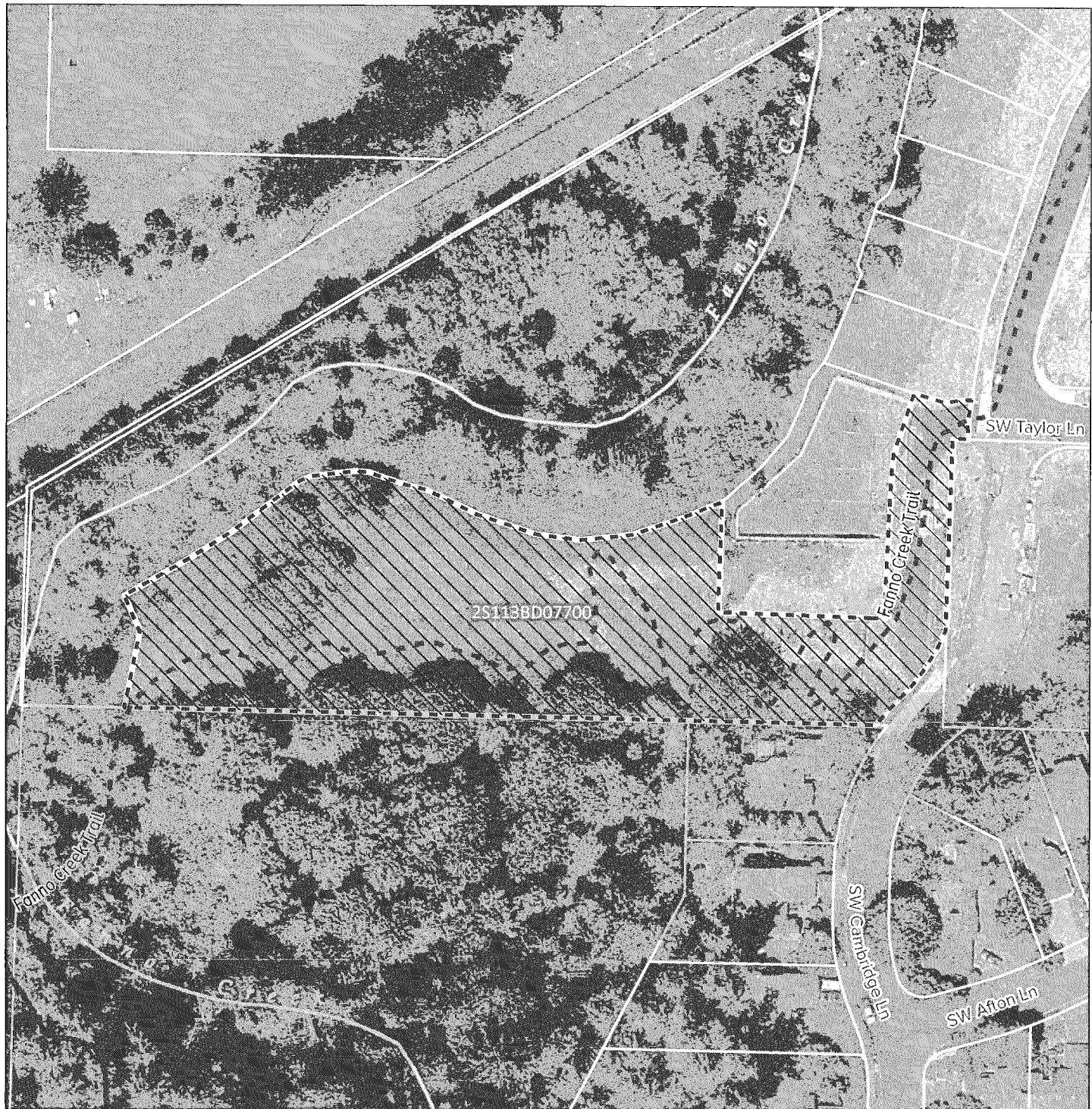
EXHIBIT B

Depiction of Easement Area and Trail

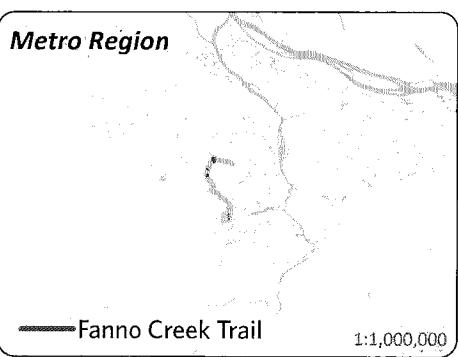
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Trail Easement

DURHAM HEIGHTS HOA



Metro Region



Legend

- Future Trail
- Existing Trail
- Easement Area



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