



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of June 1~~7~~, 2015

Please see directions for completing this document on the next page.

DATE: June 8, 2015

FROM: James Lewis Property & Facilities 541-385-1414

TITLE OF AGENDA ITEM:

Consideration of Board signature of Document 2015-339, the grant of an Easement to Bend Park and Recreation District.

PUBLIC HEARING ON THIS DATE? No

BACKGROUND AND POLICY IMPLICATIONS:

In mid- May 2015, Deschutes County received a request from Bend Park and Recreation District. to grant an easement in the northeastern corner of an unaddressed County owned property (Tax Assessor Map/Lot 1811120000300) located along Century Drive, adjacent to Bachelor View Road, in Bend (outlined in red on Exhibit A to this report). The 20-foot wide easement area includes a portion of the existing public trail along Century Drive that crosses the subject property (shown in Green on Exhibit A). The subject property, which was acquired through a land trade for an adjacent parcel with the Bend Park and Recreation District in 2009, is included in Deschutes County Order 2015-020, authorizing the sale of the property in the Deschutes County surplus property auction on June 26, 2015. The easement will allow for continued public access across, and maintenance of, the trail within the easement following sale of the property at the auction.

Pursuant to City of Bend zoning regulations, the trail easement is within the building setback in which no structures/construction is permitted. Also, the affected area lies within another easement for overhead power lines which also prevents development in this area. Thus, the trail easement will further the purpose for which the land trade was approved (to allow public trail construction and access), while not affecting the developability of the parcel or having a derogatory effect on the desirability or value of the property.

FISCAL IMPLICATIONS:

No direct implications. The property on which the easement will be located is proposed for sale in the public auction and has a minimum bid of \$30,000. There has been interest in the property at the minimum bid amount and it is expected to sell at the auction.

RECOMMENDATION & ACTION REQUESTED:

Staff recommends signature of Document 2015-339

ATTENDANCE: James Lewis, Property Manager

DISTRIBUTION OF DOCUMENTS:

Original to James Lewis.

AFTER RECORDING, RETURN
TO:

Bryant, Lovlien & Jarvis, P.C.
591 SW Mill View Way
Bend, OR 97702
Attn: Paul Taylor

PUBLIC TRAIL EASEMENT

This Easement Agreement (“**Agreement**”) is executed this 17th day of June, 2015 by and between DESCHUTES COUNTY, a political subdivision of the State of Oregon (“**Grantor**”), and BEND PARK & RECREATION DISTRICT (“**Grantee**”).

Grantor does hereby grant to Grantee a perpetual non-exclusive easement (“**Easement**”) for the purpose of providing the public with recreational trail access by maintaining an existing public path (“**Path**”) over and across the twenty (20) foot wide strip of real property identified in Deschutes County property records as parcel 18-11-12 0000300 which is owned by Deschutes County and located in Deschutes County, Oregon and more particularly described on the attached Exhibit A and as depicted on Exhibit B (“**Easement Property**”) based on the terms and conditions set forth herein and subject to all prior encumbrances of record.

1. Scope of Public Use. The public shall have the right to use the Easement Property for access to the Path. In no event may the public use the Easement Property for any commercial activities without prior written consent of Grantor. Nothing contained herein shall be deemed to grant any right of access to any area outside of the Easement Property.

2. Security/Safety. Grantee shall provide signage to inform the public as to the restricted nature of the public’s use of the Easement Property as provided in Section 1. Grantee shall maintain security services with respect to the Easement Property consistent with Grantee’s rules and regulations ordinance for Grantee’s properties open to the public for outdoor recreational use. In making use of the Easement Property, Grantee shall exercise reasonable efforts to provide for the safety and convenience of all persons using the Easement Property.

3. Reservation of Rights to Use Easement Property. Grantor retains the right to use the Easement Property for all purposes not specifically granted to Grantee above and to the extent such use is compatible with Grantee’s use. Grantor shall restore any Path improvements that are damaged by the exercise of Grantor’s rights under this Section 3. Grantee shall not damage or cause interference with the operations of any improvements or facilities installed by such other authorized users of the Easement Property.

4. Obligations of Grantee. In making use of the Easement Property, Grantee shall:

(a) Maintain and repair the Easement Property and related landscaping improvements within the Easement Property (i) in accordance with all applicable laws, rules and regulations, and (ii) in good order, condition and repair and continuously safe for public use. In the event of any damage or destruction to the Easement Property, Grantee shall repair it to substantially the same condition as existed immediately prior to such damage or destruction. Grantee’s obligations hereunder include, without limitation, trash removal, restoration of natural areas damaged by vandalism or excessive use, erosion control and sign maintenance.

(b) Periodically inspect, and, at all times, maintain the Easement Property and existing equipment in good order and repair and in proper operating condition.

(c) At their sole discretion, install trail information and way finding signs.

(d) At their sole discretion, have the option of improving the Path surface with a paved hard surface in an effort to make the path ADA-compatible.

5. Liens. Grantee shall not permit any claim, lien or other encumbrance arising from Grantee's use of the Easement Property to accrue against or attach to the Easement Property or the interest of Grantor in adjacent lands.

6. Assignment. The terms and provisions of this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto forever for the uses and purposes above provided; provided that Grantee may not assign or transfer its interest in the Easement Property without Grantor's prior written consent, which consent shall not be unreasonably withheld, so long as such assignment is to a public entity with functions of public service similar to those of Grantee. Notwithstanding the foregoing, if the Grantee anticipates that it will cease to exist, Grantee may assign all of Grantee's rights and obligations under this Agreement to the City of Bend without Grantor's consent.

7. Indemnity. Grantee shall indemnify, defend and hold harmless the Grantor, its heirs and assigns for, from and against any and all claims, liabilities, costs and expenses arising out of: (a) any act or omission of Grantee in connection with the construction, operation, or maintenance of Grantee's improvements, or (b) the failure of Grantee to comply with the terms and provisions of this Agreement. Grantor shall have no liability to Grantee, third parties, or the public arising out of the condition, improvement, maintenance, repair or replacement of the Easement Property or the use thereof.

8. Insurance. Grantee shall keep in force at Grantee's expense, a commercial general liability insurance policy, including coverage for bodily injury and personal property damage (which policy shall likewise include insurance against all assumed or contractual liability of Grantee under this Agreement), insuring against claims for "personal injury" liability, including but not limited to bodily injury, death or property damage with limits of not less than a combined single limit of Two Million and No/100 Dollars (\$2,000,000.00) with standard (ISO) cross liability and a separation of insureds provision.

9. Encumbrances. This easement is granted subject to existing encumbrances of record. Grantee shall be responsible for obtaining any required approvals prior to any change in use of the Easement Property.

10. Time is of the Essence. The time of the performance of all covenants, conditions and agreements of this Agreement is of the essence in this Agreement.

11. Attorneys' Fees. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the US Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

IN WITNESS whereof the Grantee herein has executed this conveyance this _____ day of _____, 2015.

GRANTEE: BEND PARK AND RECREATION DISTRICT

By: _____
Don P. Horton, Executive Director

State of Oregon)
) ss.
County of Deschutes)

This instrument was acknowledged before me on _____, 2015, by Don Horton, as Executive Director for Bend Park and Recreation District.

Notary Public for Oregon
My Commission expires: _____

EXHIBIT A

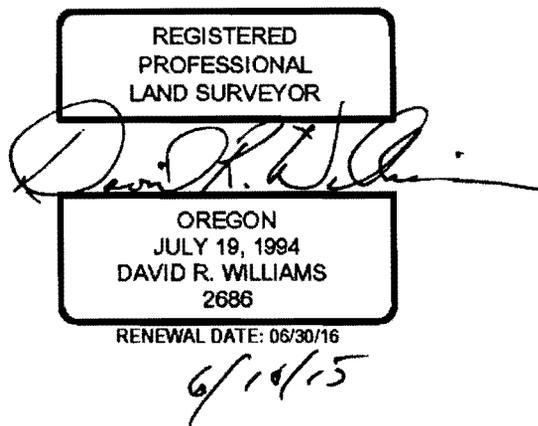
A parcel of land located in the Southwest Quarter (SW1/4) of Section 12, Township 18 South, Range 11 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being more particularly described as follows:

A 20 foot strip of land lying 10 feet each side of the following described centerline:

Commencing at a 5/8" iron rod with yellow plastic cap marked "W&H PACIFIC" which marks the northwest corner of Common Lot 'H' of the plat of Braeburn, Phase III; thence along the easterly boundary of those lands described in Bargain and Sale Deed recorded in Vol. 2009, Pg. 20145, Deschutes County Official Records, North 0°23'24" East a distance of 7.79 feet to the **True Point of Beginning** of this description; thence leaving said easterly boundary, 28.06 feet along the arc of a non-tangent curve to the right with a radius of 55.00 feet, the chord of which bears North 64°06'53" West for a distance of 27.76 feet; thence North 49°29'49" West a distance of 13.44 feet to the northerly boundary of said lands described in Vol. 2009, Pg. 20145, the terminus of this description.

The sidelines of said 20 foot strip of land shall shorten or lengthen to terminate at the boundaries of said lands described in Vol. 2009, Pg. 20145.

Subject to: All easements, restrictions and right-of-ways of record and those common and apparent on the land.

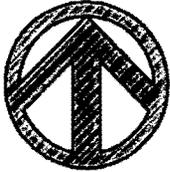


June 9, 2015

S:\Land Projects\150602 - BPRD Haul Road\docs\Legal - Trail Easement.docx

EXHIBIT B
TRAIL EASEMENT

LOCATED IN THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 18 SOUTH, RANGE 11 EAST, W.M.,
CITY OF BEND, DESCHUTES COUNTY, OREGON



NORTH
SCALE: 1"=40'

REGISTERED
PROFESSIONAL
LAND SURVEYOR

David R. Williams

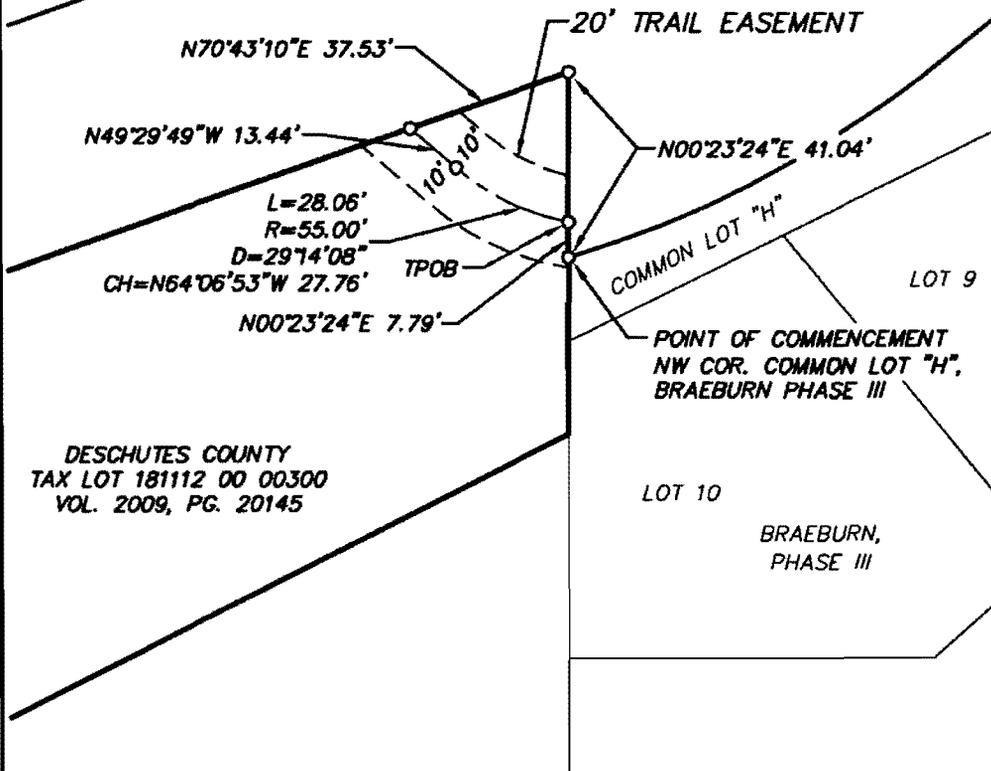
OREGON
JULY 19, 1984
DAVID R. WILLIAMS
2686

RENEWAL DATE: 06/30/16

6/18/15

CENTURY DRIVE MARKET ROAD
(THE CASCADE LAKES HIGHWAY)

BEND METRO PARKS AND REC. DIST.
TAX LOT 181112 00 00501



DESCHUTES COUNTY
TAX LOT 181112 00 00300
VOL. 2009, PG. 20145

LOT 10
BRAEBURN,
PHASE III

HWA SURVEYORS, ENGINEERS
& PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC.
42728 O.A. BENT ROAD, SUITE 100
BEND, OREGON 97701
PHONE: 541.338.1011 FAX: 541.338.6514

TRAIL EASEMENT - BEND PARK AND REC. DIST.

150602-HAUL RD/DWG/150602-ESMT.DWG

SCALE: 1" = 40'

DRAWN BY: PGC

DATE: 6/9/2015

SHEET

1/1

Exhibit A

Haul Road Trail Easement to BPRD

