

W. 10.C.1.

AGENDA COVER MEMO

DATE: March 1, 2005

TO: Lane County Board of Commissioners

DEPT.: Public Works

PRESENTED BY: Frank Simas, Right of Way Manager

AGENDA ITEM TITLE: In The Matter of Authorizing a Grant of Utility Easement to the City of Springfield Over a Portion of County-Owned Road Fund Property Identified as Tax Lot 17-03-25-13-00500

I. MOTION

THAT THE ORDER BE APPROVED AUTHORIZING A GRANT OF A UTILITY EASEMENT TO THE CITY OF SPRINGFIELD OVER A PORTION OF COUNTY-OWNED ROAD FUND PROPERTY IDENTIFIED AS TAX LOT 17-03-25-13-00500.

II. ISSUE OR PROBLEM

The City of Springfield, acting by and through its Springfield Utility Board, requires an overhead utility easement over a portion of County-owned property located on the southeast side of the intersection of North 19th Street and Marcola Road in Springfield.

III. DISCUSSION

A. Background

The Springfield Utility Board is planning an expansion of its overhead communications and electrical transmission and distribution facilities in the area of North 19th Street and Marcola Road in the City of Springfield. The proposed new power poles will be located within the existing rights of way for North 19th Street and Marcola Road, but wires, crossarms and other appurtenances to be placed on the poles will overhang County owned land. Springfield Utility Board therefore requires an easement to allow use of the air space adjacent to the proposed pole line. In addition, an easement perpendicular to North 19th Street is required to allow the guying of a pole near North 19th Street near the southwest corner of the property by means of a guy pole and overhead cable.

The proposed easement is to be 10 feet in width, and in return for the granting of the easement, the Utility Board has agreed to re-arrange some guying facilities running along most of the southeast line of the County property and to reroute an existing lower, overhanging fiber optic line that may be in the way of a proposed driveway onto North 19th Street.

B. Analysis

The existing pole line along the southeast boundary of the County property is currently guyed in a manner that projects into the County land a distance of about 10 feet. Springfield Utility Board has agreed to remove its existing guy assemblies such that the remaining facilities are parallel with the property line. Thus the land along the property line will be usable for a driveway or access when a building is built on the property. Removal of the low-hanging fiber optic line will make available an area along North 19th Street for a future driveway access.

Conveyance of this easement is permitted pursuant to ORS 271.310, and it is reasonably estimated that the enhancement to the property due to the rearrangement of the guy wires and the relocation of the fiber optic line is equal to or greater than the value of the overhead easement to be conveyed, due to the enhanced long-term utility of the property.

By Order 03-12-17-9, the Board approved a Lease and Option Agreement for a one-year term with John and Mary Sooy concerning the subject property. The agreement was renewed for an additional one-year term on December 22, 2004. The Sooy's have not yet exercised the Option to Purchase, but as Optionees, they do have a legal interest in the property and must join in the execution of the easement. They have been involved in discussions with Springfield Utility Board and are in favor of the proposal. The Sooy's have previously signed both the Easement and Agreement, and the Agreement has been signed on behalf of SUB.

C. Alternatives/Options

1. Approve the Grant of Utility Easement and Agreement.
2. Reject the Grant of Easement and Agreement as outlined above.

D. Recommendations

It is recommended that the Board approve this Order, authorize the execution of the attached Easement and authorize the County Administrator to sign the Agreement on behalf of Lane County.

IV. IMPLEMENTATION/FOLLOW-UP

Upon approval, the Agreement will be processed for signature by the County Administrator. Public Works Staff will transmit the signed easement document to the City of Springfield for acceptance and recording.

V. ATTACHMENTS:

Agreement to Convey Easement
Easement
Map

**IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY
STATE OF OREGON**

ORDER NO.

(IN THE MATTER OF AUTHORIZING A GRANT
(OF UTILITY EASEMENT TO THE CITY OF
(SPRINGFIELD OVER A PORTION OF
(COUNTY-OWNED ROAD FUND PROPERTY
(IDENTIFIED AS TAX LOT 17-03-25-13-00500

WHEREAS, by Order 03-12-17-9, Lane County Granted a Lease and Option Agreement to John and Mary Sooy over Tax Lot 17-03-25-13-00500, which is owned by Lane County and is no longer needed for public use; and

WHEREAS, the City of Springfield, acting by and through the Springfield Utility Board, needs an overhead utility easement over a portion of said property in order to expand its overhead transmission and distribution facilities in the area of North 19th Street and Marcola Road in the City of Springfield; and

WHEREAS, ORS 271.310 allows that whenever the public interest may be furthered, real property or interest therein not needed for public use may be sold to a governmental body; and

WHEREAS, in return for the granting of the easement, Springfield Utility Board has agreed to rearrange some existing facilities on the property in order to increase the usability of the affected portions of the property; and

WHEREAS, the Sooy's have not yet exercised their option to purchase the property but possess an interest in the property through their status as optionees; and

WHEREAS, the Sooy's have been involved in discussions concerning the proposed easement and are in favor of the proposal to grant the overhead utility easement; and

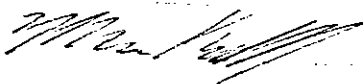
WHEREAS, the Sooy's have previously signed the proposed utility easement, and both the Sooy's and Springfield Utility Board have signed an agreement setting forth the terms of the granting of the easement;

IT IS HEREBY ORDERED that the Board authorize the execution of the Easement and that the County Administrator be authorized to sign the Agreement.

DATED this _____ day of _____, 2005.

Anna Morrison, Chair
Lane County Board of Commissioners

3-7-05



After Recording Return to, and
Send Tax Statements to:
Springfield Utility Board
1001 Main Street
Springfield, OR 97477
Attn. Vu Luu

RECORDING INFORMATION

DO NOT WRITE IN THIS SPACE

PERMANENT EASEMENT

LANE COUNTY, a political subdivision of the State of Oregon and JOHN R. SOOY and MARY P. SOOY, Optionees, hereinafter collectively called GRANTOR, for the true and actual consideration of 0 dollars, grant to CITY OF SPRINGFIELD, a Municipal Corporation, acting by and through its SPRINGFIELD UTILITY BOARD a permanent easement, 10 feet in width, for overhead transmission, distribution and communication lines over the Westerly and Northerly boundaries and the Southwesterly corner of that real property situated in Lane County, State of Oregon, described as follows:

A parcel of land lying in the B.B. Powers Donation Land Claim Number 81 in the Southwest one-quarter of the Northeast one-quarter (SW ¼ NE ¼) of Section 25, Township 17 South, Range 3 West of the Willamette Meridian, Lane County, Oregon, and being a portion of that property described in those certain deeds to LANE COUNTY, a political subdivision of the State of Oregon, recorded June 21, 1946, in Book 323, Pages 601 and 602 and March 18, 1952, in Book 456, Pages 480 and 481, LANE COUNTY OREGON DEED RECORDS, said parcel being all that portion that was vacated by The Board of County Commissioners of Lane County by Order 72-4-19-17 described as follows:

“Beginning at a point on the Easterly right of way line of Mohawk Road portion of the Mohawk Road Interchange (Eugene-Springfield Highway), said point being opposite and 40.0 feet distant Southerly from Engineers’ Centerline Station MK 9+69.76 P.O.C., also said point being 439.23 feet North and 101.85 feet East of the Southeast corner of the William C. Spencer Donation Land Claim No. 50, Township 17 South, Range 3 West, Willamette Meridian; thence North 19° 39’ 04” West, 118.08 feet; thence North 1° 46’ 55” East, 102.70 feet; thence North 49° 15’ 15” East, 51.57 feet to a point opposite and 60.0 feet distant Southerly from Engineers’ Centerline Station L 46+35.00 P.O.T. of Mohawk Road – 19th Street relocation; thence South 88° 06’ 55” East, 145.00 feet; thence North 88° 20’ 28” East, 257.39 feet to a point opposite and 40.0 feet distant Southerly from Engineers’ Centerline Station MK 4+39.63 P.O.C.; thence on a 532.96 foot radius curve left (the long chord of which curve bears South 58° 16’ 44” West, 475.84 feet) a distance of 493.12 feet to the place of beginning.

Containing 0.87 acre, more or less, in Lane County, Oregon.

The bearings used herein are based upon the Oregon Coordinate System, South Zone.”

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING INTEREST TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN O.R.S. 30.930.

IN WITNESS WHEREOF, the undersigned have executed this instrument this _____ day of _____, 20____.

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

STATE OF OREGON)
) ss.
County of Lane)

On _____, 20____, personally appeared _____

who, duly being sworn, did say that they are members of the Board of Commissioners of Lane County, Oregon and that said instrument was signed and sealed in behalf of Lane County by authority of its Board of Commissioners; and they acknowledged said instrument to be its voluntary act and deed. Before me:

Notary Public for Oregon

My Commission Expires: _____

Dated this 9 day of February, 2005.

[Signature]
JOHN R. SOOY, OPTIONEE

[Signature]
MARY P. SOOY, OPTIONEE

STATE OF OREGON)
County of Lane) ss.

On February 9, 2005, personally appeared the above-named John R. Sooy And
Mary P. Sooy

and acknowledged the foregoing instrument to be their voluntary act before me.



[Signature]

Notary Public for Oregon

My Commission Expires: 12/12/06

AGREEMENT TO CONVEY UTILITY EASEMENT

This agreement is entered into this _____ day of _____, 2005, by and between Lane County, a political subdivision of the State of Oregon, and John R. Sooy and Mary P. Sooy, optionees, hereinafter collectively referred to as **OWNERS**, and the City of Springfield a municipal corporation, acting by and through its Springfield Utility Board (SUB), hereinafter referred to as **GRANTEE**.

WITNESSETH:

WHEREAS, OWNERS are in possession of the of property identified by Tax Lot number as shown above; and

WHEREAS, GRANTEE proposes to expand its electrical transmission and distribution and communication facilities adjacent to **OWNER'S** property along North 19th Street and Marcola Road in the city of Springfield and plans to install additional power poles within the right of way for North 19th Street and on additional guy pole within an existing public utility easement along the southeast line of **OWNER'S** property; and

WHEREAS, because wires and other appurtenances attached to said poles will overhang **OWNER'S** property, **GRANTEE** desires to obtain an overhead public utility easement to accommodate said wires and other appurtenances and is willing to modify and rearrange certain of its existing facilities situated on **OWNER'S** land in return for the granting of the public utility easement;

NOW THEREFORE, It is mutually agreed as follows:

1. **OWNERS** agree to convey to **GRANTEE** an overhead public utility easement in the form as shown and described on Exhibit "A" attached hereto.

2. As Consideration for the granting of the public utility easement **Grantee** agrees to rearrange and modify certain of its existing facilities now situated on **OWNER'S** property, more specifically described as follows:

a. **GRANTEE** shall reroute the existing fiber optic line that crosses a portion of **OWNER'S** property between existing SUB poles No. 67052 and 88040.

b. **GRANTEE** shall remove excess SUB facilities and relocate existing SUB guy wires and appurtenances associated with existing SUB poles No. 67052, 72030 and 72031.

c. **GRANTEE** shall locate a new pole in the existing public right of way on the easterly side of an existing driveway onto Marcola Road, in order to allow greater flexibility in future development of **OWNER'S** property.

3. This agreement shall be binding upon the heirs, executors, administrators, successors and assignees of the respective parties.

4. Each of the parties agrees to jointly and severally indemnify and save the other harmless from any claim, liability or damage resulting from any error, omission or act of negligence on the part of the indemnifying party, its officers, agents or employees in the performance of responsibilities under this agreement. The parties' indemnity and hold harmless obligations are subject to the limitations of the Oregon Tort Claims Act and any applicable provisions of the Oregon Constitution.

Executed on the day and year first above written.

GRANTEES

Springfield Utility Board (SUB)

By: _____

Name: _____

Title: _____

OWNERS

Lane County:

By: _____

Name: _____

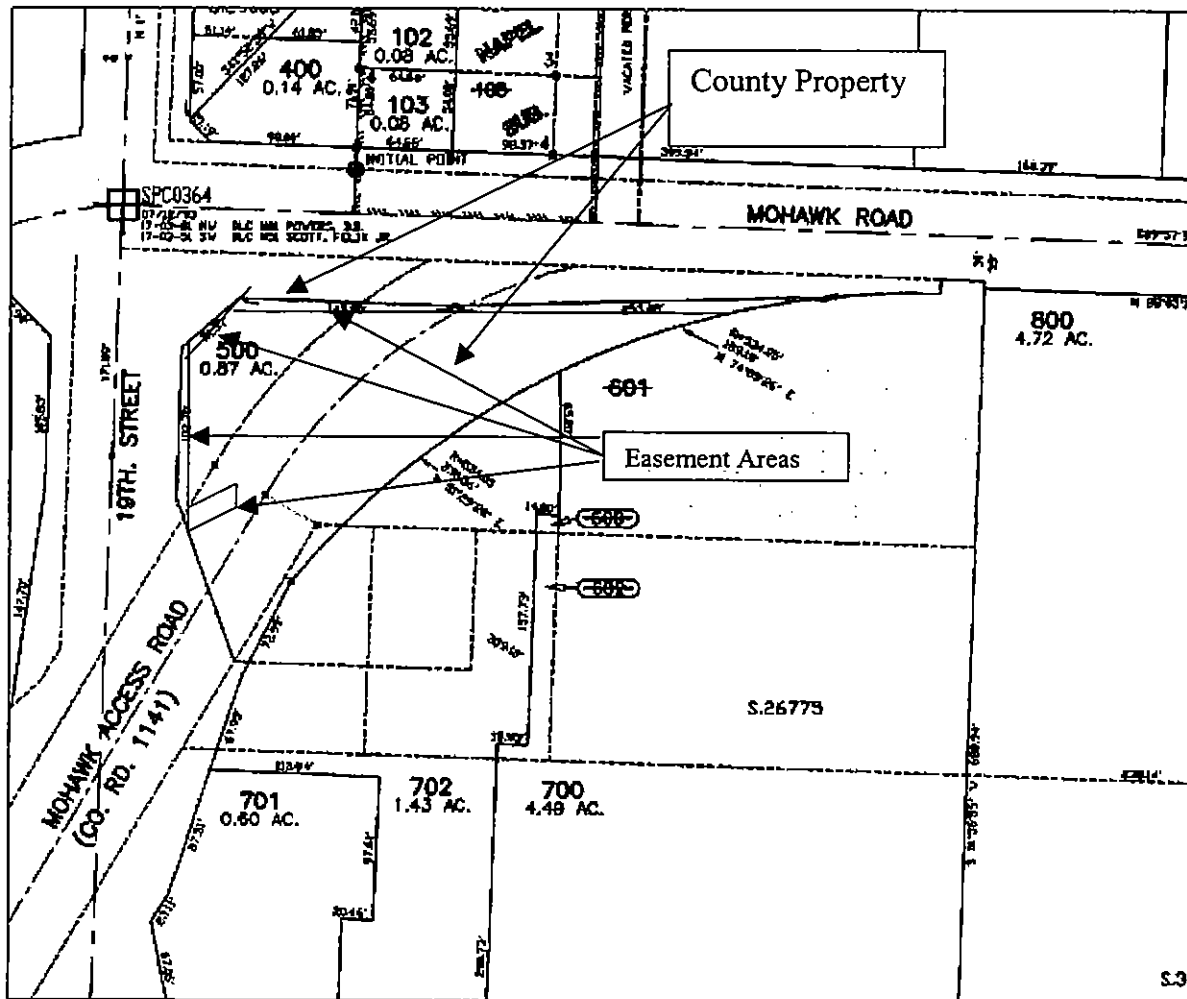
Title: _____

OPTIONEES:

John R. Sooy

Mary P. Sooy

Attachments:
Exhibit A—Form of Public Utility Easement



Map of County Property and Proposed Easement Location