

Date: March 28, 2012

To: Board of Directors

From: Neil McFarlane

Subject: **RESOLUTIONS 12-03-27, 12-03-28, AND 12-03-29 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING TRIMET TO ACQUIRE BY PURCHASE OR BY THE EXERCISE OF THE POWER OF EMINENT DOMAIN CERTAIN REAL PROPERTY NECESSARY TO CONSTRUCTION OF THE PORTLAND-MILWAUKIE LIGHT RAIL PROJECT**

1. Issue or Purpose of the Item.

The purpose of this item is to request that the TriMet Board of Directors (“Board”) adopt resolutions authorizing the acquisition by purchase or by the power of eminent domain of certain real property necessary to construction of the Portland-Milwaukie Light Rail Project (“Project”).

2. Reason for Board Action.

ORS Chapter 35 authorizes TriMet to acquire property by eminent domain and ORS 35.235 requires the Board to declare the necessity of real property for the Project.

3. Background.

In order to construct the Project, TriMet will need to acquire interests in the following parcels of real property along the Project alignment:

1. 11301 SE 21st Avenue, Milwaukie (“Horton Property”)
2. 12412 SE 27th Avenue, Milwaukie (“Piltz Property”)
3. 2320 SE Wren Street (“Fischer Property”)

Resolution 12-03-27

Jeffery Horton is the owner of property located at 11301 SE 21st Avenue, Milwaukie. The Horton Property is currently vacant. TriMet requires a fee acquisition of the Horton Property to provide access to the Lake Road MAX station. The property will also be used for construction staging. A portion of the property which will not be needed for access will likely be offered for transit oriented development. The legal description and map of the Horton Property is attached to Resolution 12-03-27 as Exhibit A. The Horton Property was included in the Board’s previously adopted Resolution 10-12-68 authorizing acquisition of certain parcels necessary to the Project. TriMet received an independent appraisal of the Horton Property and made a formal offer to the property owner on March 6, 2012. Authority

for initiation of condemnation proceedings as soon as required for construction needs will allow the parties to continue negotiations while still maintaining project schedule. As a result, and in accordance with Resolution 10-12-68, TriMet is now submitting for Board approval Resolution 12-03-27 authorizing use of the condemnation process for acquisition of the Horton Property.

Resolution 12-03-28

Kenneth Piltz is the owner of property located at 12412 SE 27th. TriMet requires fee acquisition of the Piltz Property for light rail tracks. The legal description and map of the Piltz Property is attached to Resolution 12-03-28 as Exhibit A. The Piltz Property was included in the Board's previously adopted Resolution 10-12-68 authorizing acquisition of certain parcels necessary to the Project. TriMet received an independent appraisal of the Piltz Property and made a formal offer to the property owner on September 30, 2011. Negotiations with the property owner have not, thus far, been successful. Initiation of condemnation proceedings now will allow the parties to continue negotiations while still maintaining Project schedule. As a result, and in accordance with Resolution 10-12-68, TriMet is now submitting for Board approval Resolution 12-03-28 authorizing use of the condemnation process for acquisition of the Piltz Property.

Resolution 12-03-29

Randy L. and Anna M. Fischer are the owners of property located at 2320 SE Wren Street. TriMet requires a fee acquisition of the Fischer Property for light rail tracks. The legal description and map of the Property is attached to Resolution 12-03-29 as Exhibit A. The property was included in the Board's previously adopted Resolution 10-12-68 authorizing acquisition of certain parcels necessary to the Project. TriMet received an independent appraisal of the Property and made a formal offer to the property owner on October 27, 2011. Negotiations with the property owner have not, thus far, been successful. Initiation of condemnation proceedings now will allow the parties to continue negotiations while still maintaining project schedule. As a result, and in accordance with Resolution 10-12-68, TriMet is now submitting for Board approval Resolution 12-03-29 authorizing use of the condemnation process for acquisition of the Fischer Property.

Condemnation is a tool created by statute that protects both the property owner and the public body engaged in the property acquisition process. The property owner may access funds while the ultimate amount of just compensation is being determined, and may receive an award of legal fees in the event the public body's offer is deemed insufficient by the judge or jury. At the same time, the public body is able to obtain possession of the real property, thereby reducing project schedule risk. In addition, both parties benefit by allowing a judge or jury to decide the amount of just compensation when they cannot otherwise agree.

Determining whether and when to begin the condemnation process depends on the facts of each case. Each of the Properties is needed for construction in the near future. Initiating condemnation now will ensure the Properties are available to the Project in a timely manner.

4. Options.

TriMet remains hopeful that each of the Properties can be acquired through negotiations, subsequent to the initiation of condemnation proceedings. However, in order to ensure that they are available when needed for the Project, and to avoid costs that would be associated with a delay of construction, it could be necessary to begin condemnation proceedings on each in the near future. If the Board did not adopt the resolution, the likelihood of Project delay would be increased, as well as TriMet's exposure to costs related to that delay. Condemnation is the only acquisition method by which TriMet can be assured of obtaining these needed Properties.

5. Recommendation.

The General Manager recommends that the Board adopt the Resolutions.

RESOLUTION 12-03-27

RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING TRIMET TO ACQUIRE BY PURCHASE OR BY THE EXERCISE OF THE POWER OF EMINENT DOMAIN CERTAIN REAL PROPERTY NECESSARY TO CONSTRUCTION OF THE PORTLAND-MILWAUKIE LIGHT RAIL PROJECT

WHEREAS, ORS 267.200(2) and ORS 267.225(2) authorize and empower TriMet to acquire by condemnation, purchase, lease, devise, gift or voluntary grant real and personal property or any interest therein located inside the boundaries of TriMet; and

WHEREAS, the Portland-Milwaukie Light Rail Project (“Project”) is a light rail transit project designed to accommodate transportation needs in the Portland metropolitan area; and

WHEREAS, the Metro Council (“Council”) adopted the 2008 South/North Land Use Final Order Amendment Portland-Milwaukie Segment of the South/North Light Rail Corridor Project, on July 24, 2008, approving the Project; and

WHEREAS, ORS 35.235 requires the TriMet Board of Directors (“Board”), after first declaring by resolution the necessity of the acquisition of real property and the purpose for which it is required, to attempt to agree with the owner of said real property with respect to compensation to be paid therefore, and the damages, if any, for the taking thereof; and

WHEREAS, for the accomplishment of the Project, it is necessary that TriMet have the immediate right of possession to certain parcels of real property described in this resolution;

NOW, THEREFORE, BE IT RESOLVED:

1. That for the accomplishment of the planned Project there is needed and required fee simple title to a portion of real property owned by Jeffery Horton. The parcel of real property or particular interests therein needed and required for the planned Project are specifically described in Exhibit A under the TriMet file number, name of the record owner or reputed owner, and legal description, and said Exhibit A is by this reference hereby adopted and made a part hereof as completely and fully as though set forth in full herein.
2. That the Project is necessary for the public interest, and has been planned, designed, located and will be constructed in a manner that will be most compatible with the greatest public good and the least private injury.
3. That the immediate possession of the parcel is necessary.
4. That TriMet staff is authorized and directed to make attempts to agree with the owner of the property and any other persons in interest as to the compensation to be paid for the property and damages, if any, for the taking thereof, and the General Manager or his designee is authorized to make a binding offer for such compensation.

5. That the Board hereby ratifies all offers to purchase all rights, title and interest that have been previously made in connection with the Project.
6. That in the event no satisfactory agreement can be reached, TriMet staff, through its legal counsel, is authorized to commence and prosecute to final determination such proceedings as may be necessary to obtain immediate possession and acquire the property; and TriMet staff, through its legal counsel, is further authorized to make such stipulations, agreements, or admissions in the course of such proceedings as may, in counsel's judgment, be in the best interests of TriMet.
7. That there is hereby authorized the creation of a fund in the amount estimated to be the just compensation for such property which shall, to obtain possession of the property, be deposited with the clerk of the Court in which the action is commenced for the use by the defendants in the actions.
8. That the General Manager or his designee is authorized to execute the necessary documents on behalf of the Board in a form approved by TriMet's General Counsel.

Dated: March 28, 2012

Attest:

Presiding Officer

Recording Secretary

Approved as to Legal Sufficiency:

Legal Department

RESOLUTION 12-03-28

RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING TRIMET TO ACQUIRE BY PURCHASE OR BY THE EXERCISE OF THE POWER OF EMINENT DOMAIN CERTAIN REAL PROPERTY NECESSARY TO CONSTRUCTION OF THE PORTLAND-MILWAUKIE LIGHT RAIL PROJECT

WHEREAS, ORS 267.200(2) and ORS 267.225(2) authorize and empower TriMet to acquire by condemnation, purchase, lease, devise, gift or voluntary grant real and personal property or any interest therein located inside the boundaries of TriMet; and

WHEREAS, the Portland-Milwaukie Light Rail Project (“Project”) is a light rail transit project designed to accommodate transportation needs in the Portland metropolitan area; and

WHEREAS, the Metro Council (“Council”) adopted the 2008 South/North Land Use Final Order Amendment Portland-Milwaukie Segment of the South/North Light Rail Corridor Project, on July 24, 2008, approving the Project; and

WHEREAS, ORS 35.235 requires the TriMet Board of Directors (“Board”), after first declaring by resolution the necessity of the acquisition of real property and the purpose for which it is required, to attempt to agree with the owner of said real property with respect to compensation to be paid therefore, and the damages, if any, for the taking thereof; and

WHEREAS, for the accomplishment of the Project, it is necessary that TriMet have the immediate right of possession to certain parcels of real property described in this resolution;

NOW, THEREFORE, BE IT RESOLVED:

1. That for the accomplishment of the planned Project there is needed and required fee simple title to real property owned by Kenneth Piltz. The parcel of real property or particular interests therein needed and required for the planned Project are specifically described in Exhibit A under the TriMet file number, name of the record owner or reputed owner, and legal description, and said Exhibit A is by this reference hereby adopted and made a part hereof as completely and fully as though set forth in full herein.
2. That the Project is necessary for the public interest, and has been planned, designed, located and will be constructed in a manner that will be most compatible with the greatest public good and the least private injury.
3. That the immediate possession of the parcel is necessary.
4. That TriMet staff is authorized and directed to make attempts to agree with the owner of the property and any other persons in interest as to the compensation to be paid for the property and damages, if any, for the taking thereof, and the General Manager or his designee is authorized to make a binding offer for such compensation.

5. That the Board hereby ratifies all offers to purchase all rights, title and interest that have been previously made in connection with the Project.
6. That in the event no satisfactory agreement can be reached, TriMet staff, through its legal counsel, is authorized to commence and prosecute to final determination such proceedings as may be necessary to obtain immediate possession and acquire the property; and TriMet staff, through its legal counsel, is further authorized to make such stipulations, agreements, or admissions in the course of such proceedings as may, in counsel's judgment, be in the best interests of TriMet.
7. That there is hereby authorized the creation of a fund in the amount estimated to be the just compensation for such property which shall, to obtain possession of the property, be deposited with the clerk of the Court in which the action is commenced for the use by the defendants in the actions.
8. That the General Manager or his designee is authorized to execute the necessary documents on behalf of the Board in a form approved by TriMet's General Counsel.

Dated: March 28, 2012

Attest:

Presiding Officer

Recording Secretary

Approved as to Legal Sufficiency:

Legal Department

RESOLUTION 12-03-29

RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING TRIMET TO ACQUIRE BY PURCHASE OR BY THE EXERCISE OF THE POWER OF EMINENT DOMAIN CERTAIN REAL PROPERTY NECESSARY TO CONSTRUCTION OF THE PORTLAND-MILWAUKIE LIGHT RAIL PROJECT

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WHEREAS, the Metro Council (“Council”) adopted the 2008 South/North Land Use Final Order Amendment Portland-Milwaukie Segment of the South/North Light Rail Corridor Project, on July 24, 2008, approving the Project; and

WHEREAS, ORS 35.235 requires the TriMet Board of Directors (“Board”), after first declaring by resolution the necessity of the acquisition of real property and the purpose for which it is required, to attempt to agree with the owner of said real property with respect to compensation to be paid therefore, and the damages, if any, for the taking thereof; and

WHEREAS, for the accomplishment of the Project, it is necessary that TriMet have the immediate right of possession to certain parcels of real property described in this resolution;

NOW, THEREFORE, BE IT RESOLVED:

1. That for the accomplishment of the planned Project there is needed and required fee simple title to real property owned by Randy L. and Anna M. Fischer. The parcel of real property or particular interests therein needed and required for the planned Project are specifically described in Exhibit A under the TriMet file number, name of the record owner or reputed owner, and legal description, and said Exhibit A is by this reference hereby adopted and made a part hereof as completely and fully as though set forth in full herein.
2. That the Project is necessary for the public interest, and has been planned, designed, located and will be constructed in a manner that will be most compatible with the greatest public good and the least private injury.
3. That the immediate possession of the parcel is necessary.
4. That TriMet staff is authorized and directed to make attempts to agree with the owner of the property and any other persons in interest as to the compensation to be paid for the property and damages, if any, for the taking thereof, and the General Manager or his designee is authorized to make a binding offer for such compensation.

5. That the Board hereby ratifies all offers to purchase all rights, title and interest that have been previously made in connection with the Project.
6. That in the event no satisfactory agreement can be reached, TriMet staff, through its legal counsel, is authorized to commence and prosecute to final determination such proceedings as may be necessary to obtain immediate possession and acquire the property; and TriMet staff, through its legal counsel, is further authorized to make such stipulations, agreements, or admissions in the course of such proceedings as may, in counsel's judgment, be in the best interests of TriMet.
7. That there is hereby authorized the creation of a fund in the amount estimated to be the just compensation for such property which shall, to obtain possession of the property, be deposited with the clerk of the Court in which the action is commenced for the use by the defendants in the actions.
8. That the General Manager or his designee is authorized to execute the necessary documents on behalf of the Board in a form approved by TriMet's General Counsel.

Dated: March 28, 2012

Attest:

Presiding Officer

Recording Secretary

Approved as to Legal Sufficiency:

Legal Department

File 3564
Jeffrey M. Horton

Parcel 1
1 1E 36BC 3300

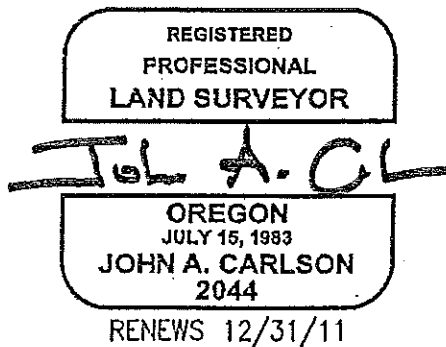
Portland-Milwaukie LRT Project
Jack Carlson, Otak, Inc., 4/29/2011
Amended:

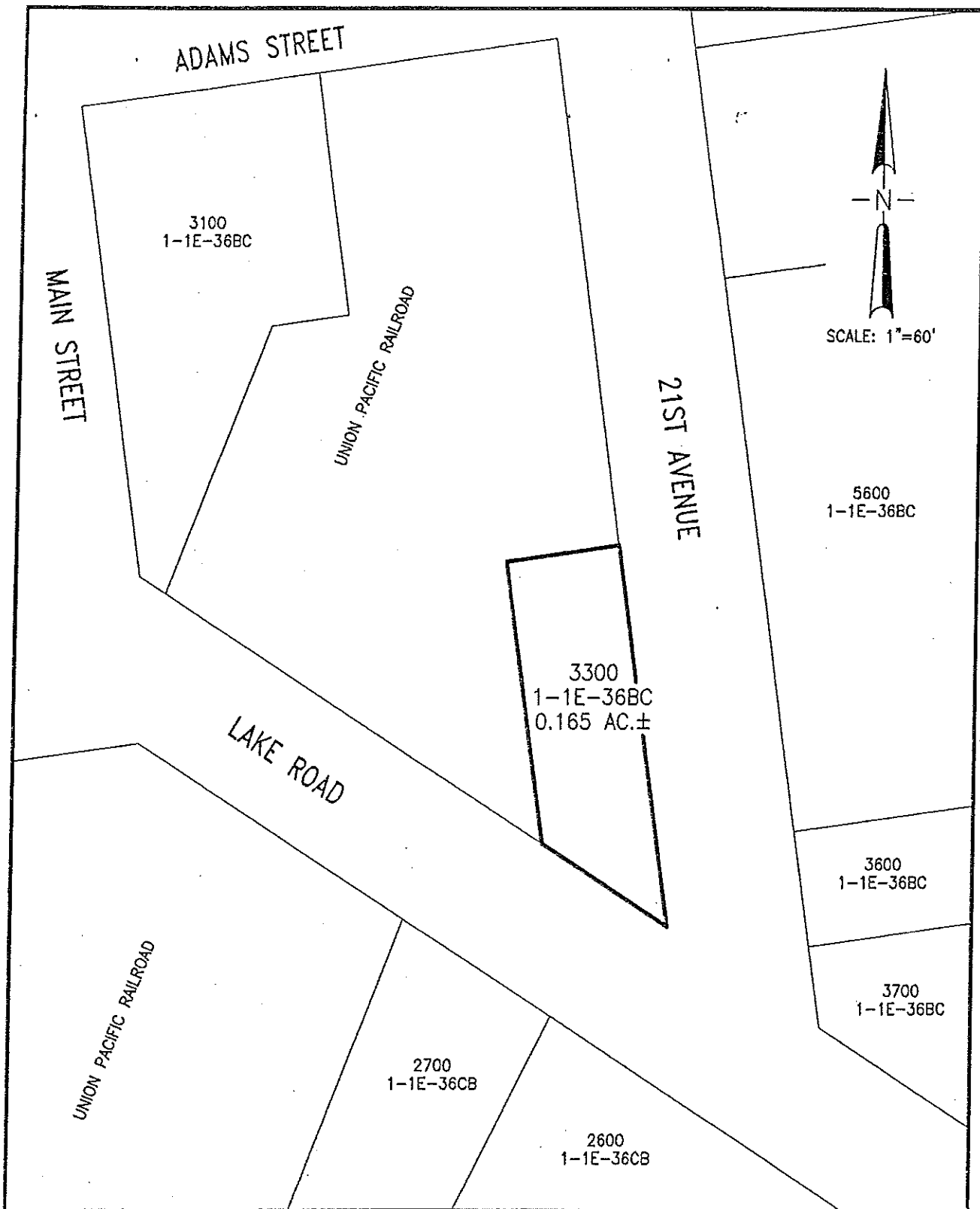
Parcel 1-Fee

A tract of land in the northwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

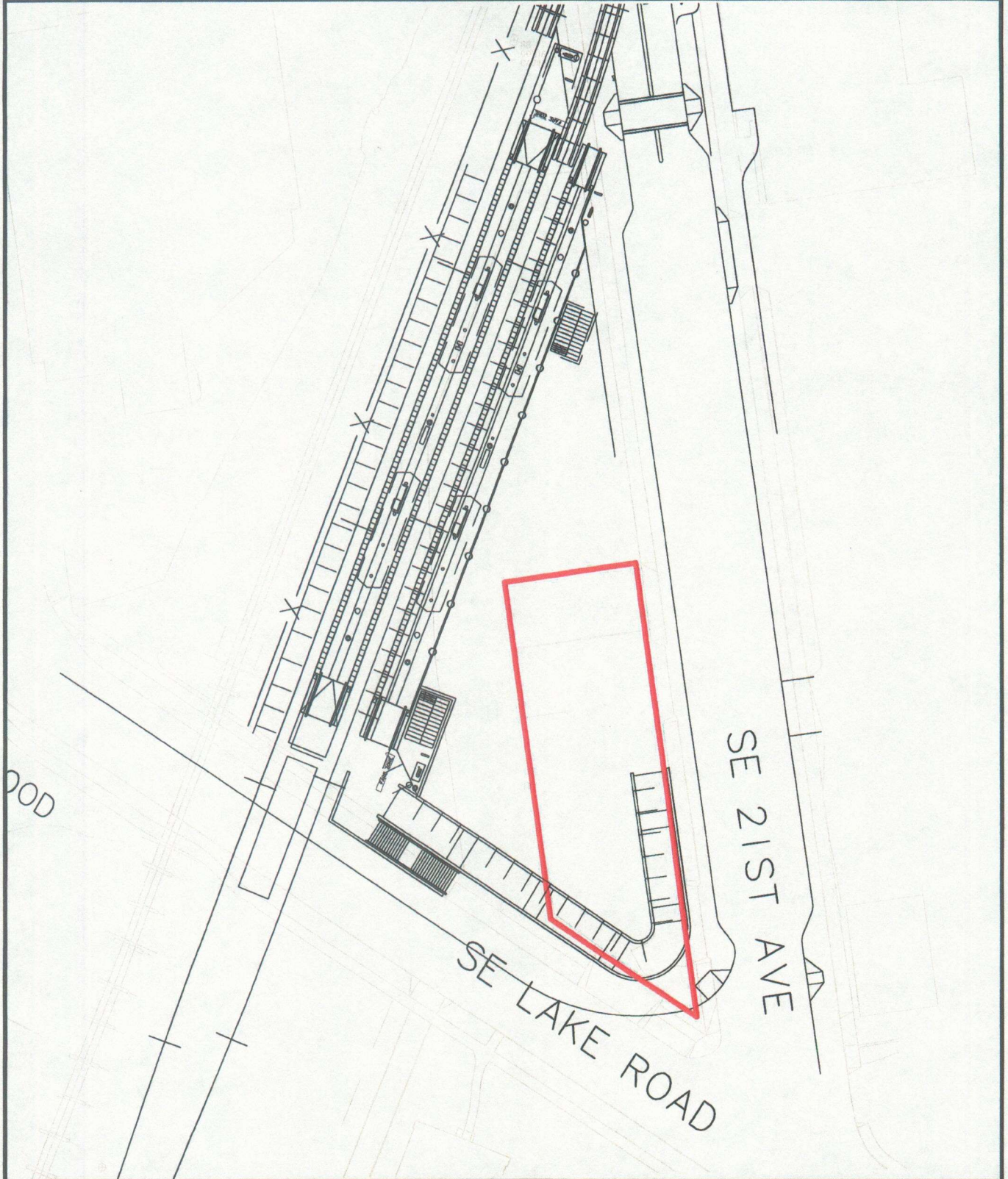
All of that property described in that Statutory Warranty Deed to Jeffrey M. Horton, recorded on December 11, 2001 as Fee No. 2001-104669, Clackamas County Records.

The tract of land to which this description applies contains 0.165 acres, more or less.





TRIOMET CAPITAL PROJECTS AND FACILITIES DIVISION 710 N.E. HOLLADAY STREET PORTLAND, OREGON 97232	ACQUISITION SKETCH PORTLAND TO MILWAUKIE LRT FILE NO. 3564				 17355 S.W. BOONES FERRY ROAD LAKE OSWEGO, OREGON 97035 (503)635-3618 FAX (503)635-5395
	DATE 4/29/2011	REVISION NO. 000	DRAWN BY JAC	CHECKED BY GEP	



TRIMET		CAPITAL PROJECTS AND FACILITIES DIVISION 710 N.E. HOLLADAY STREET PORTLAND, OREGON 97232		FILE 3564 HORTON	
DRAWN JCL	DESIGN XXX	CHECKED XXX	APPROVED: XXX	DATE: 03/28/11	
SCALE: 1"=50'		FILE NAME: 3564		CONTRACT NO: XX-XXXX	SHEET NO: Exhibit A OF 1 Resolution 12-03-27 Page 3 of 3

File 3551

Kenneth M. Piltz, C.P.

Parcel 1

1 1E 36CD 2600

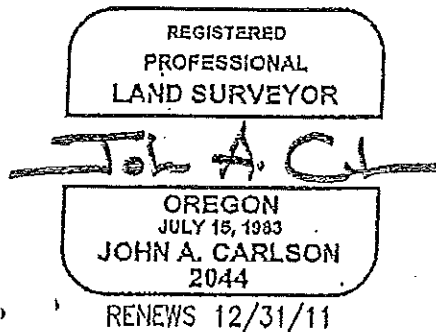
Portland-Milwaukie LRT Project
Jack Carlson, Otak, Inc., 3/15/2011
Amended:

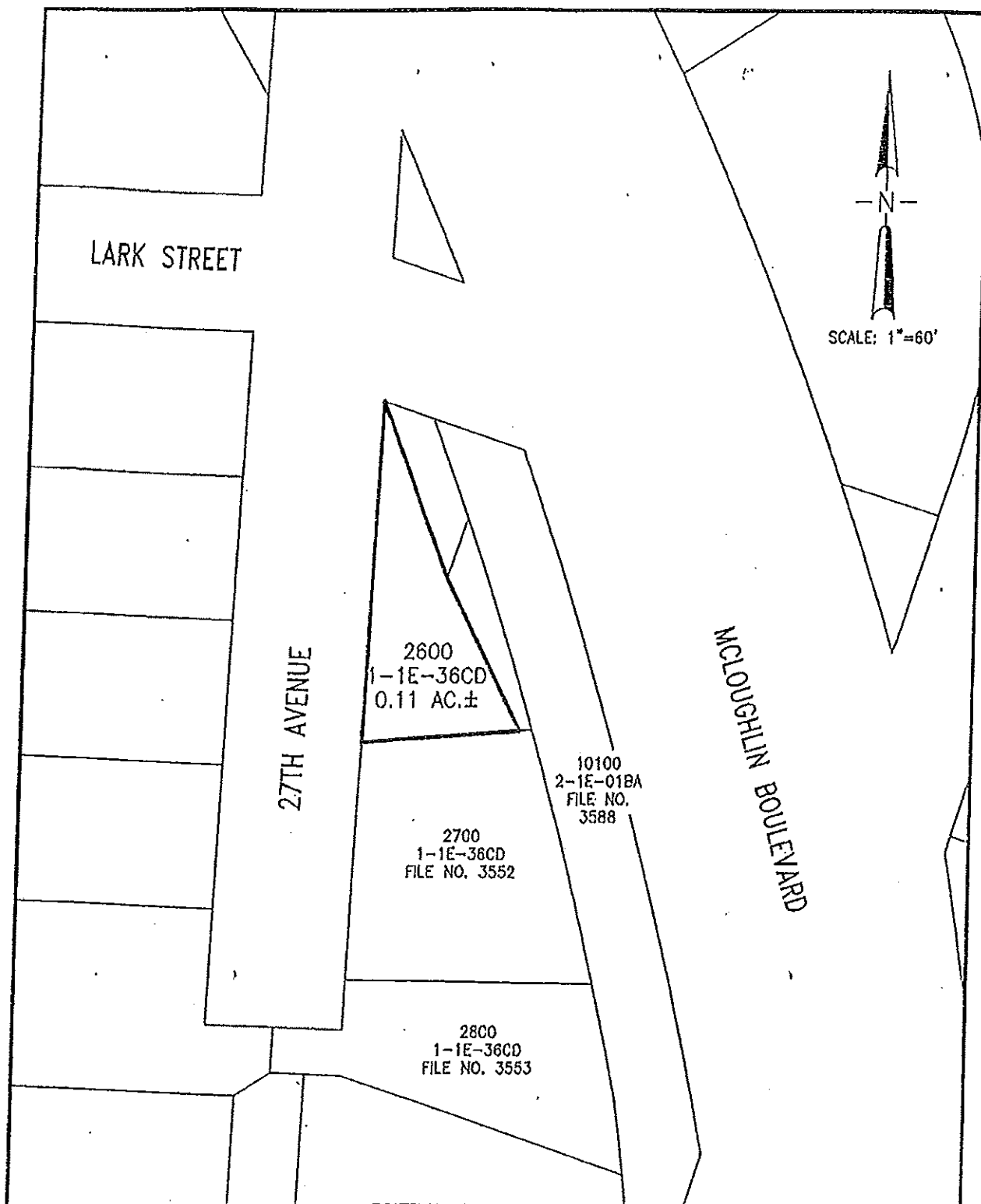
Parcel 1-Fee


A tract of land in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

All of that property described in that Real Estate Contract to Kenneth M. Piltz Buyer, recorded on March 31, 1998 as Fee No. 98-026262, Clackamas County Public Records.

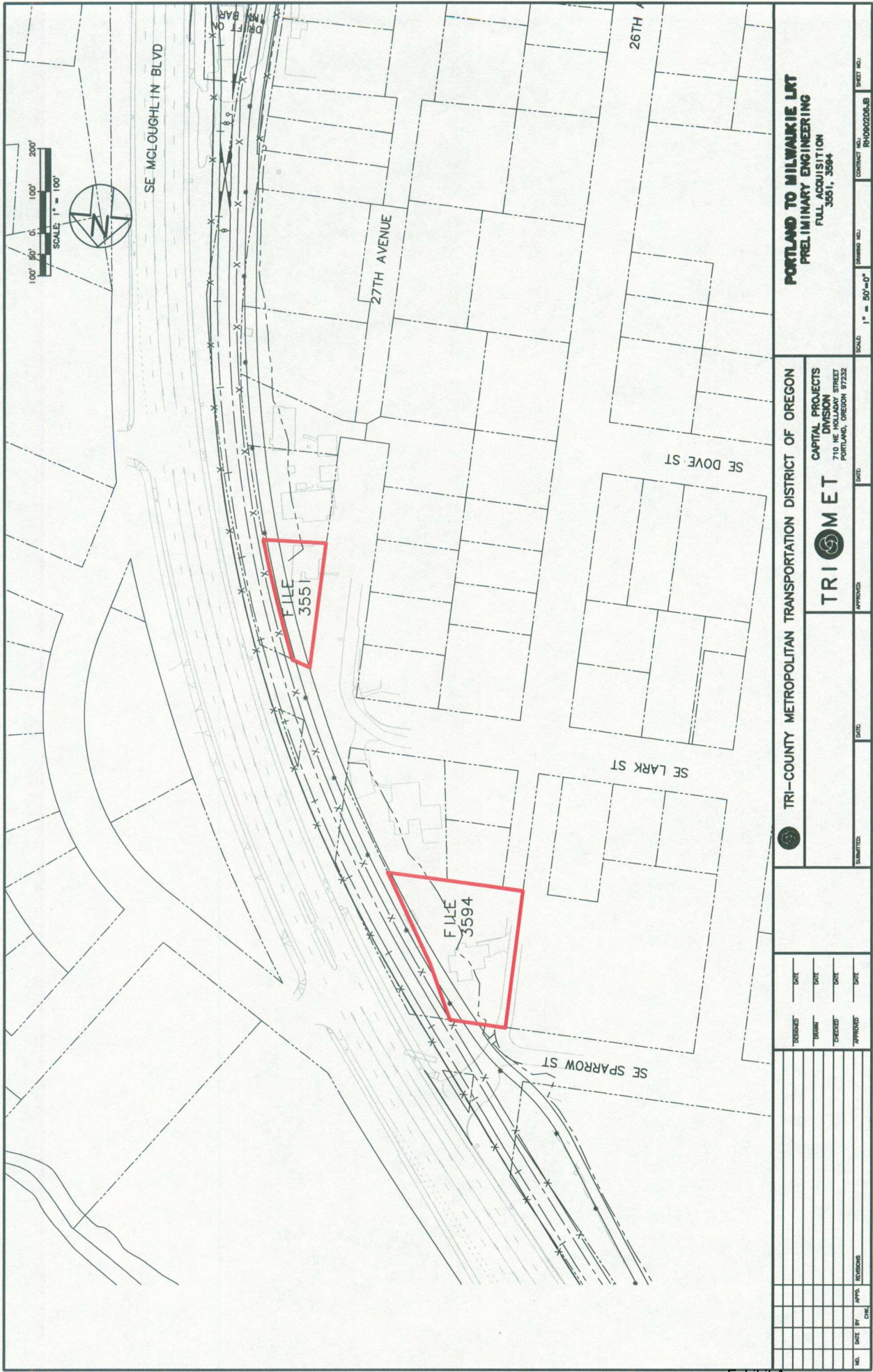
The tract of land to which this description applies contains 0.11 acres, more or less.





TRI MET CAPITAL PROJECTS AND FACILITIES DIVISION 710 N.E. HOLLADAY STREET PORTLAND, OREGON 97232	ACQUISITION SKETCH PORTLAND TO MILWAUKIE LRT FILE NO. 3551				 17355 S.W. BOONES FERRY ROAD LAKE OSWEGO, OREGON 97035 (503) 635-3618 FAX (503) 635-5395
	DATE 3/15/2011	REVISION NO. 000	DRAWN BY JAC	CHECKED BY GEP	

3551 Piltz



TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON

CAPITAL PROJECTS
DIVISION
710 NE HOLLADAY STREET
PORTLAND, OREGON 97232

TRIOMET

PORTLAND TO MILWAUKIE LRT
PRELIMINARY ENGINEERING
FULL ACQUISITION
3551, 3594

SCALE: 1" = 50'-0"

CONTRACT NO. PH000206LB

SHEET NO.

NO.	DATE	BY	APPROVED	REVISIONS

File 3593
Randy L. & Anna M. Fischer

Parcel 1
1 1E 36CC 901

Portland-Milwaukie LRT Project
Jack Carlson, Otak, Inc., 7/6/2011
Amended:

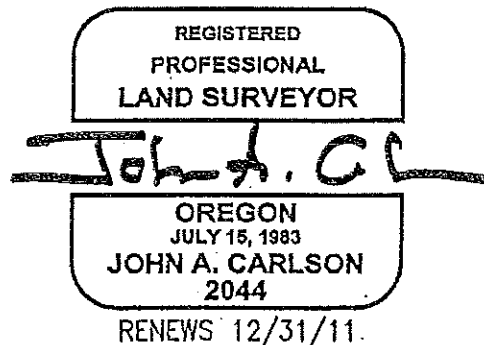
Parcel 1-Fee

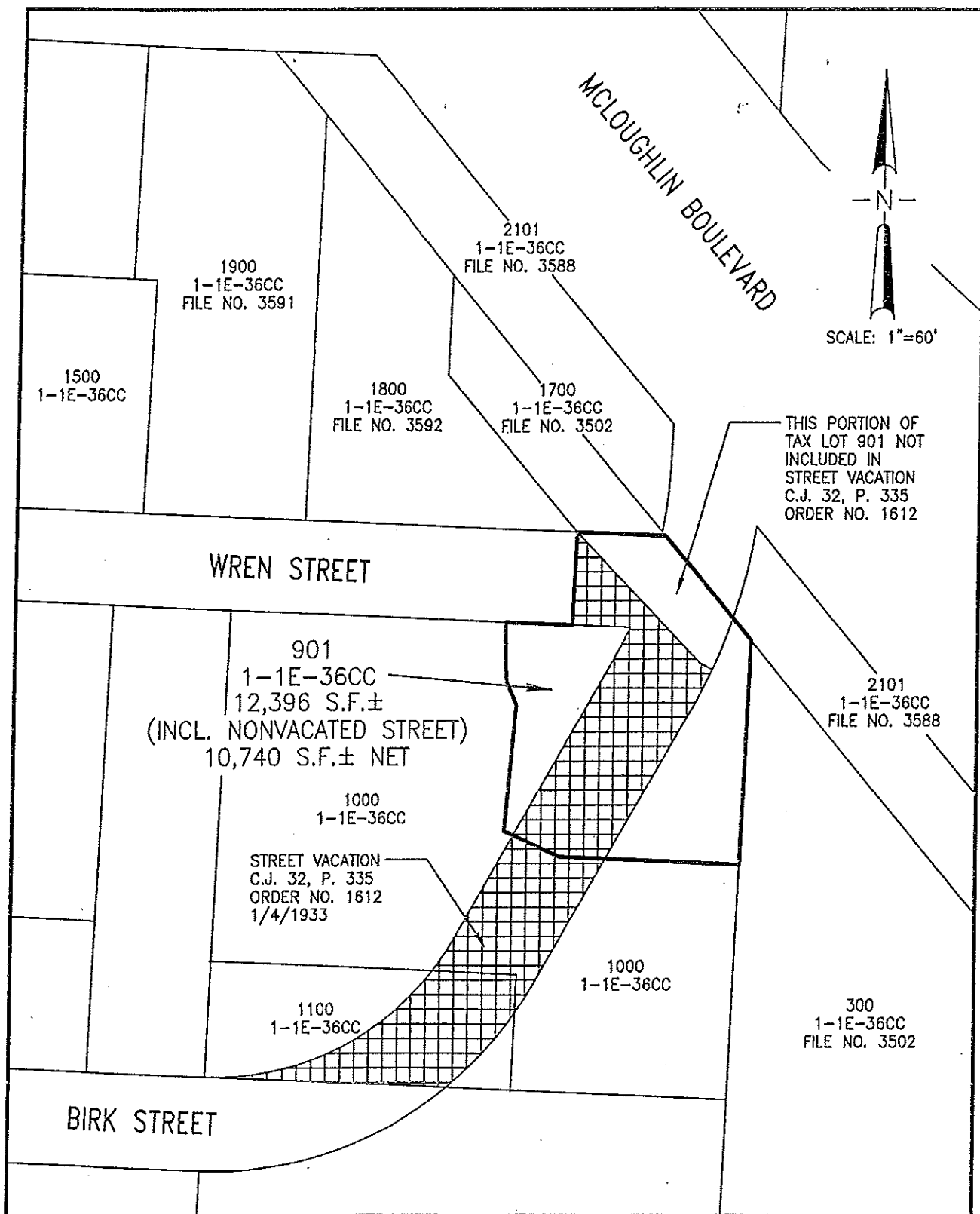
A tract of land in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

All of that property described in that Statutory Bargain and Sale Deed to Randy L. Fischer and Anna M. Fischer, recorded on February 13, 2002 as Document No. 2002-014903, Clackamas County Official Records;

EXCEPT that portion thereof lying within dedicated public streets.

The tract of land to which this description applies contains 10,740 square feet, more or less.





TRI MET CAPITAL PROJECTS AND FACILITIES DIVISION 710 N.E. HOLLADAY STREET PORTLAND, OREGON 97232	ACQUISITION SKETCH PORTLAND TO MILWAUKIE LRT FILE NO. 3593				 17355 S.W. 8CONES FERRY ROAD LAKE OSWEGO, OREGON 97035 (503)635-3618 FAX (503)635-5395
	DATE 7/6/2011	REVISION NO. 000	DRAWN BY JAC	CHECKED BY GEP	

3593 Fischer

