

Date: July 25, 2012

To: Board of Directors

From: Neil McFarlane

Subject: RESOLUTION 12-07-71 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 a resolution 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 Transit 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 an interest in the parcel of real property along the Project alignment owned by Watumull Properties, Incorporated, and located at 2502 SE 8th Avenue, Portland (“Property”).

The Property is a multi-tenant commercial/industrial site. The Project will eliminate through traffic on SE Division Place. The Property is needed to realign SE Division Place and connect to SE 9th Avenue. This connection provides access for three bus lines to the new transit bridge. TriMet requires a partial fee acquisition of the Property and a 1,460 square foot temporary (2-year) construction easement for construction of the new street. The partial fee acquisition will sever a portion of the building on the Property, so the Project also requires a 16,830 square foot temporary (6 month) construction easement to sever the building. There are two commercial tenants impacted by the acquisition. The tenants are eligible for relocation benefits and will be relocated according to state and federal law. The legal description and map of the Property is attached to Resolution 12-07-71 as Exhibit A. The Property was included in the Board’s previously adopted Resolution 10-12-68 authorizing acquisition of certain parcels necessary for the Project.

TriMet received an independent appraisal of the Property and made a formal offer to the Property owner on May 5, 2012. Initiation of condemnation proceedings now will allow the parties to continue negotiations while still maintaining the Project schedule. Although the Board recently adopted Resolution 12-06-47 authorizing condemnation authority for 114 properties needed by the Project, the Property was not included because the appraised value exceeds the \$500,000 threshold established by that Resolution. As a result, and in accordance with Resolution 10-12-68, TriMet is now submitting for Board approval Resolution 12-07-71 authorizing use of the condemnation process for acquisition of the 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. The Property is needed for construction in the near future. Initiating condemnation now will ensure the Property is available to the Project in a timely manner.

4. Options.

TriMet remains hopeful that the Property can be acquired through negotiations, subsequent to the initiation of condemnation proceedings. However, in order to ensure that it is 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 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 this needed Property.

5. Recommendation.

The General Manager recommends that the Board adopt the Resolution.

RESOLUTION 12-07-71

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 a certain interest(s) in or fee simple title to certain real property. The parcel(s) of real property or particular interest(s) 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(s) 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: July 25, 2012

Attest:

Presiding Officer

Recording Secretary

Approved as to Legal Sufficiency:

Legal Department

Exhibit "A"

File 3572
Watumull Properties Corp.

Parcels 1, 2, 3
1S 1E 11BB 100

Portland-Milwaukie LRT Project
Jack Carlson, Otak, Inc., 9/8/2011
Amended:

Parcel 1-Fee

A parcel of land in the northwest one-quarter of Section 11, Township 1 South, Range 1 East, Willamette Meridian, Multnomah County, Oregon, to wit:

That portion of that property described in that Statutory Warranty Deed to Watumull Properties Corporation, recorded on June 30, 1993 in Deed Book 2716, Page 2018, Multnomah County Deed Records, lying on the northeasterly (right) side of the following described line:

Beginning at a point which point bears N.67°29'05"W., a distance of 855.19 feet from a brass bead set in concrete in a monument box at the centerline intersection of S.E. Clinton Street with S.E. 12th Avenue; thence N.88°12'34"W., a distance of 11.00 feet to a point of nontangent curvature; thence northwesterly along the arc of a 159.00 foot radius curve to the left (the radius point of which bears N.88°12'34"W.) through a central angle of 78°34'25", a distance of 218.05 feet (chord bears N.37°29'46"W., a distance of 201.36 feet) to the point of curve left of a 237.00 foot radius curve; thence along the arc of said curve to the left through a central angle of 11°22'54", a distance of 47.08 feet (chord bears N.82°28'26"W., a distance of 47.00 feet); thence N.88°09'53"W., a distance of 34.64 feet to the terminus of this line.

The tract of land to which this description applies contains 6,012 square feet, more or less.

Bearings are based on the Oregon Coordinate System of 1983, north zone.

Parcel 2-Temporary Construction Easement (2 Year Duration)

A tract of land in the northwest one-quarter of Section 11, Township 1 South, Range 1 East, Willamette Meridian, Multnomah County, Oregon, to wit:

That portion of that property described in that Statutory Warranty Deed to Watumull Properties Corporation, recorded on June 30, 1993 in Deed Book 2716, Page 2018, Multnomah County Deed Records, lying on the northeasterly (right) side of the following described line:

Beginning at a point which point bears N.67°47'56"W., a distance of 853.44 feet from a brass bead set in concrete in a monument box at the centerline intersection of S.E. Clinton Street with S.E. 12th Avenue; thence N.88°12'34"W., a distance of 16.00 feet; thence N.01°47'26"E., a distance of 5.00 feet to the point of curve left of a 154.00 foot radius curve; thence along the arc of said curve to the left through a central angle of 78°34'25", a distance of 211.19 feet (chord bears N.37°29'46"W., a distance of 195.03 feet) to the point of curve left of a 232.00 foot radius curve; thence along the arc of said curve to the left through a central angle of 11°22'54", a distance of 46.09 feet (chord bears N.82°28'26"W., a distance of 46.01 feet); thence N.88°09'53"W., a distance of 34.64 feet to the terminus of this line;

EXCEPT Parcel 1 as described above.

The tract of land to which this description applies contains 1,460 square feet, more or less.

Bearings are based on the Oregon Coordinate System of 1983, north zone.

Parcel 3-Temporary Construction Easement (6 Month Duration)

A tract of land in the northwest one-quarter of Section 11, Township 1 South, Range 1 East, Willamette Meridian, Multnomah County, Oregon, to wit:

That portion of that property described in that Statutory Warranty Deed to Watumull Properties Corporation, recorded on June 30, 1993 in Deed Book 2716, Page 2018, Multnomah County Deed Records, lying on the northeasterly (right) side of the following described line:

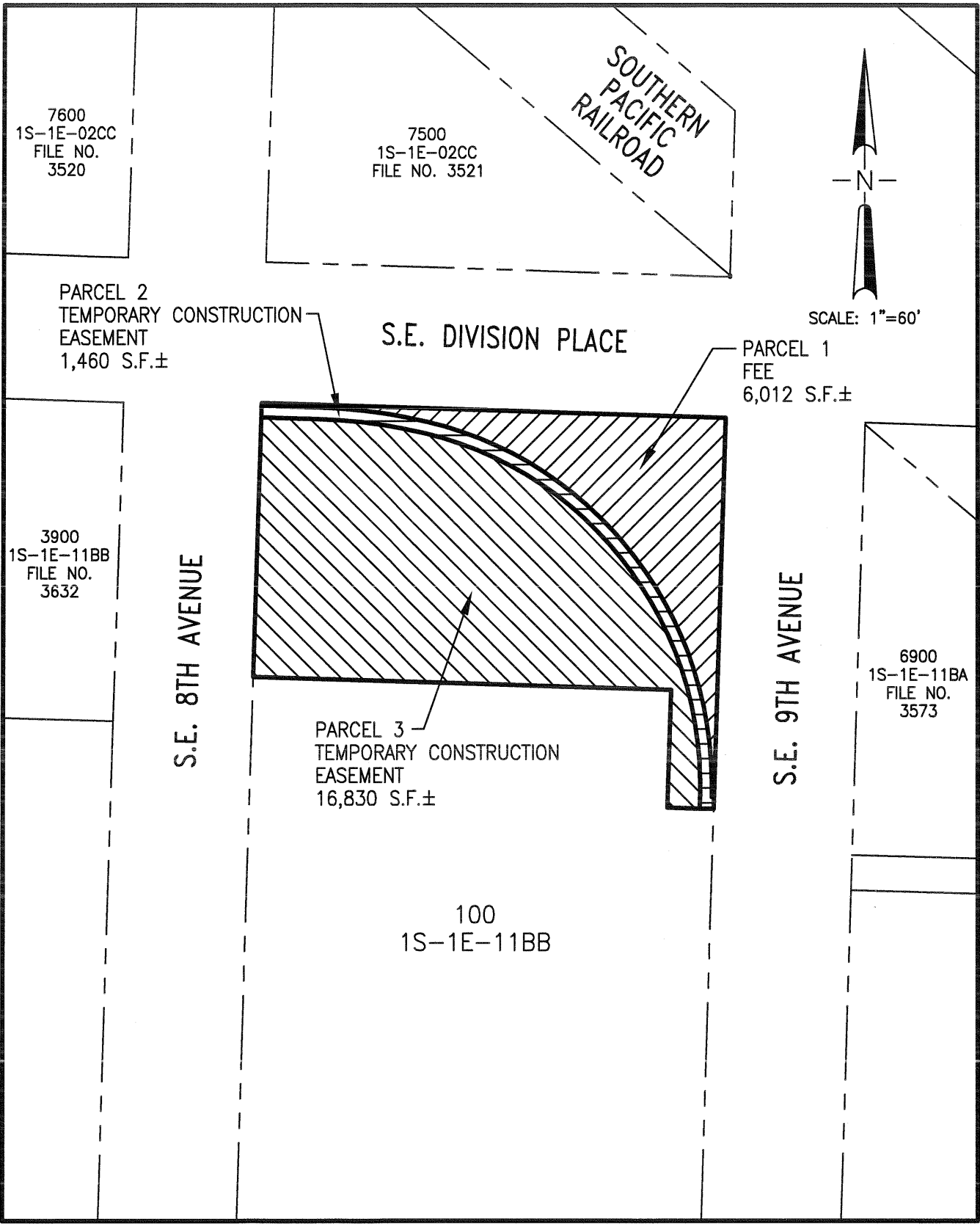
Beginning at a point which point bears N.67°47'56"W., a distance of 853.44 feet from a brass bead set in concrete in a monument box at the centerline intersection of S.E. Clinton Street with S.E. 12th Avenue; thence N.88°12'34"W., a distance of 29.93 feet; thence N.01°46'32"E., a distance of 49.90 feet; thence N.88°12'02"W., a distance of 189.99 feet to the terminus of this line;

EXCEPT Parcels 1 and 2 as described above.

The tract of land to which this description applies contains 16,830 square feet, more or less.

Bearings are based on the Oregon Coordinate System of 1983, north zone.



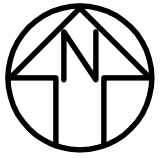


TRIMET
CAPITAL PROJECTS
AND
FACILITIES DIVISION
710 N.E. HOLLADAY STREET
PORTLAND, OREGON 97232

ACQUISITION SKETCH
PORTLAND TO MILWAUKIE LRT
FILE NO. 3572

DATE 9/8/2011	REVISION NO. 000	DRAWN BY JAC	CHECKED BY GEP
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otak
17355 S.W. BOONES FERRY ROAD
LAKE OSWEGO, OREGON 97035
(503)635-3618 FAX (503)635-5395



WATUMULL SITE

OMSI STATION



CLINTON STATION

SOUTH WATERFRONT STATION

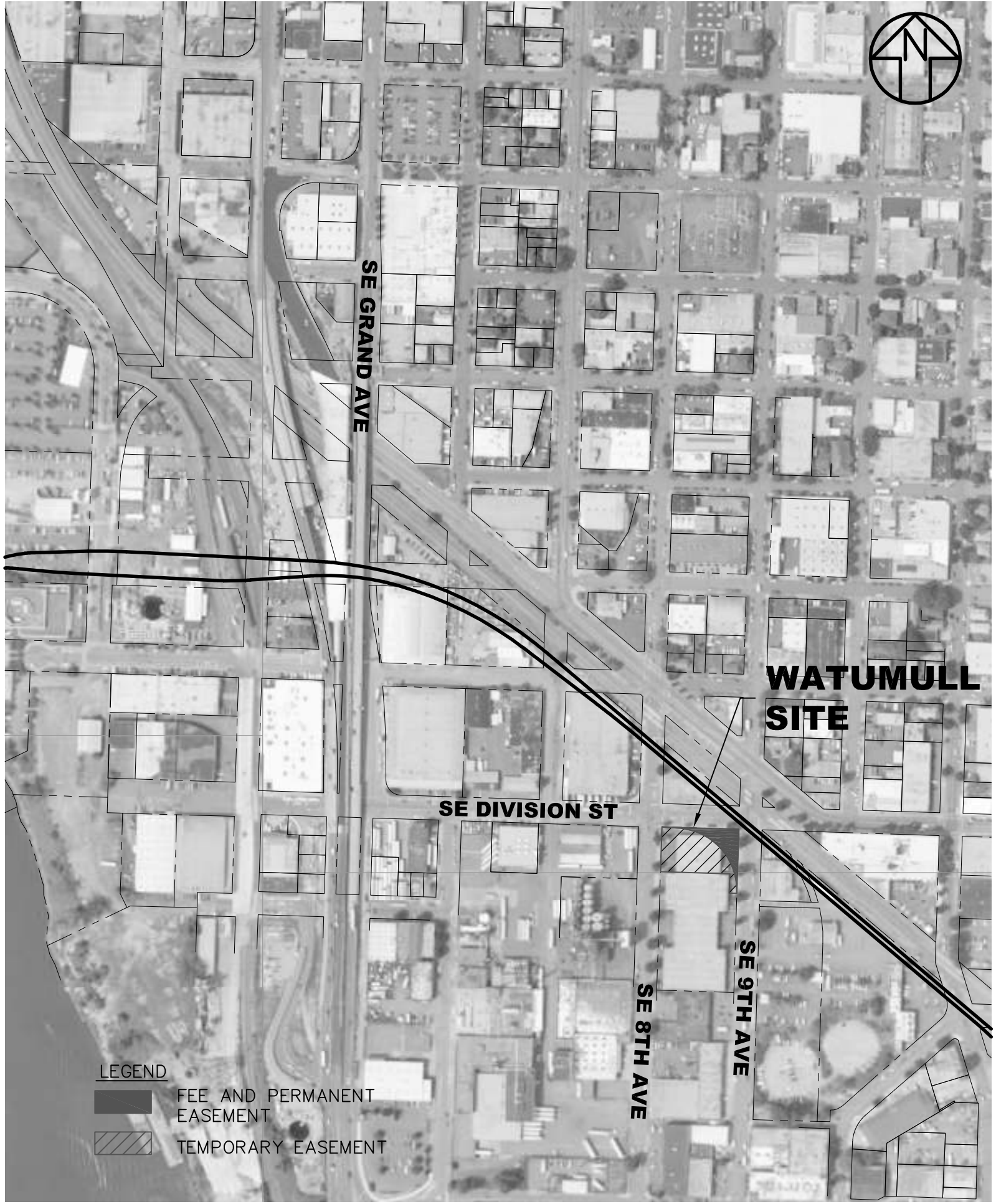
RHINE STATION

HOLGATE STATION

LEGEND

-  FEE AND PERMANENT EASEMENT
-  TEMPORARY EASEMENT

LOCATION MAP



LEGEND

-  FEE AND PERMANENT EASEMENT
-  TEMPORARY EASEMENT

SITE PLAN