

**Date:** November 13, 2013

**To:** Board of Directors

**From:** Neil McFarlane

**Subject: RESOLUTION 13-11-70 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 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 certain interests in real property located at 13121 SE McLoughlin Boulevard (“Property”) and owned by Milwaukie Lodge Number 2032 Benevolent and Protective Order of Elks of the United States of America (“Elks”).

Earlier this year, TriMet acquired a partial fee and several easements on the Property in order to construct the Park Avenue Park and Ride garage at the southern terminus of the Project. Subsequent to that acquisition, TriMet sought a building permit for the garage from Clackamas County. During the building permit review process, the County determined that the garage would impact the primary fire access to the Property from SE 27<sup>th</sup> Avenue, and conditioned the permit on creation of a new fire access. TriMet developed a new design for fire access in collaboration with the Elks. The new design utilizes an existing driveway and parking area on the Property, but TriMet requires additional temporary construction easements and a temporary access easement in order to construct the fire access.

Because the need for additional construction easements on the Property was only recently identified, it was not included in the Board’s previously adopted Resolutions authorizing the purchase or condemnation of certain parcels necessary for the Project. TriMet’s earlier property acquisition from the Elks was resolved through a friendly negotiation process, and TriMet is hopeful that negotiations

for these temporary easements, which have thus far been cordial, will also be successful. However, possessing the authority to initiate condemnation proceedings for this Property will allow the parties to continue negotiations while ensuring that TriMet will be able to maintain Project schedule.

The Property is used as an Elks Lodge. The legal description and map of the Property is attached to Resolution 13-11-70 as Exhibit A. TriMet received an independent appraisal of the Property and made a formal offer to the property owner on October 15, 2013.

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. Possessing the authority to initiate 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 on the Property in the near future. If the Board does 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 13-11-70**

### **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 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 certain interests in certain real property. The parcels of real property or particular interests therein needed and required for the planned Project are specifically described in the attached 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 parcels 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: November 13, 2013

Attest:

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Presiding Officer

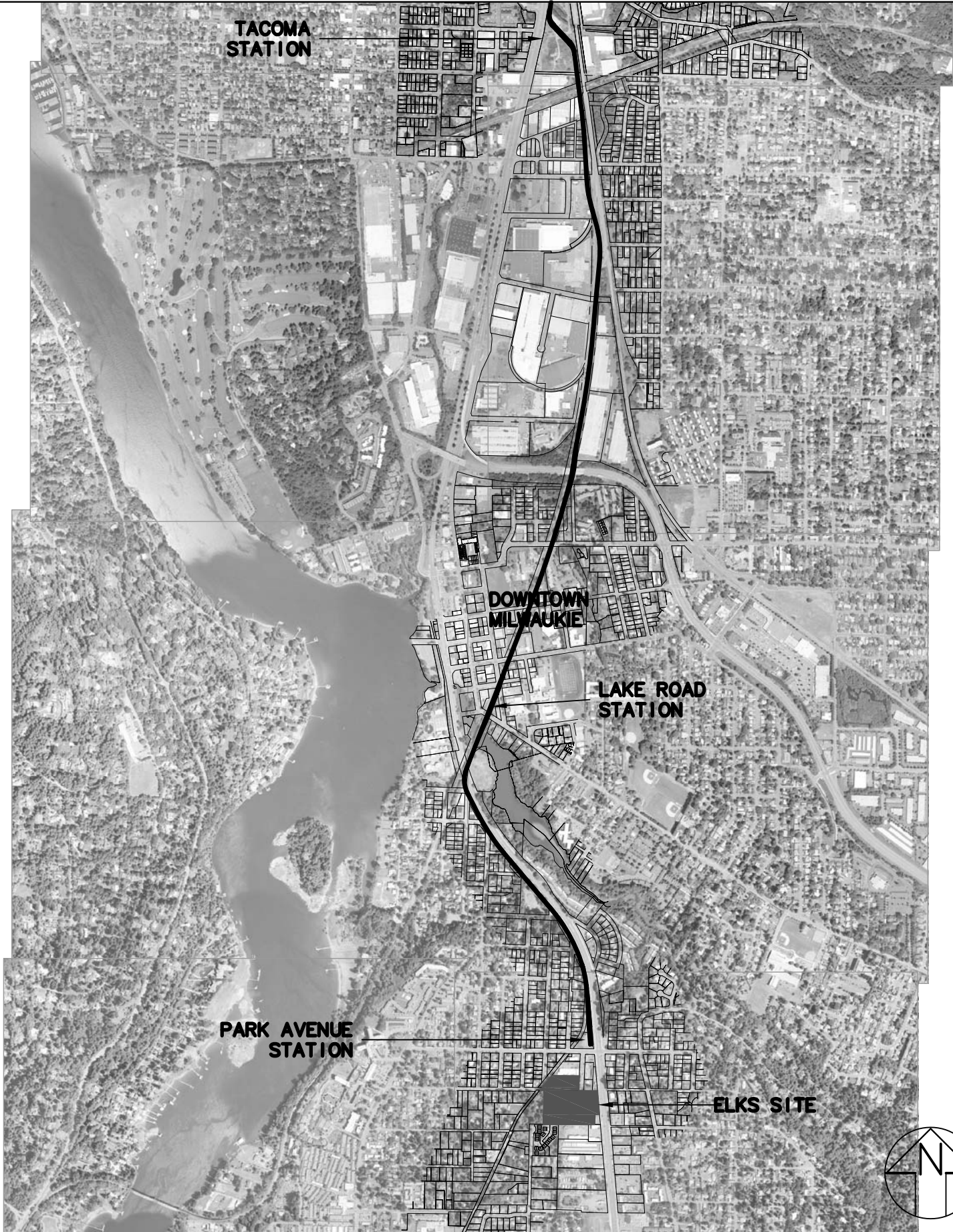
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Recording Secretary

Approved as to Legal Sufficiency:

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Legal Department



**TACOMA  
STATION**

**DOWNTOWN  
MILWAUKIE**

**LAKE ROAD  
STATION**

**PARK AVENUE  
STATION**

**ELKS SITE**



LOCATION MAP



SITE PLAN

**Exhibit "A"**

File 3734  
Milwaukie Elks  
Lodge No. 2032

2 1E 01BC 700  
2 1E 01BD 3800

Portland-Milwaukie LRT Project  
Jack Carlson, Otak, Inc., 9/3/2013  
Amended:

Parcel 1 – Temporary Access Easement (6 Month Duration to Commence Upon Notification to Property Owner)

A tract of land in the northwest one-quarter of Section 1, Township 2 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, being a portion of that property described in that Warranty Deed to Milwaukie Lodge Number 2032 Benevolent And Protective Order of Elks of the United States of America, the said Elks property being described as follows:

Beginning at the intersection of the westerly line of Super Highway No. 99E with the north line of the George Crow and wife D.L.C. No. 49; thence South 89°25' West 482.63 feet; thence South 0°10'30" East 396.06 feet; thence North 89°23'20" East 457.19 feet; thence North 0°12'50" East 117.69 feet; thence North 89°23'20" East 54.75 feet to the said westerly line of said Highway; thence North 6°21'50" West 279.71 feet along said Highway to the place of beginning, as shown by Private Survey No 1152 on file in the office of the County Surveyor of Clackamas County, Oregon.

The said tract being that portion of said Elks property described as follows:

Beginning at a point which bears South, a distance of 1,423.04 feet, and East, a distance of 1,502.26 feet from the northwest corner of said Section 1; thence S.01°39'42"W., a distance of 215.26 feet; thence N.87°52'30"E., a distance of 61.80 feet to the westerly right of way line of S.E. McLoughlin Boulevard; thence N.04°51'29"W. along said westerly right of way line, a distance of 39.99 feet; thence leaving said westerly right of way line, N.46°48'19"W., a distance of 42.91 feet; thence N.01°39'42"E., a distance of 142.80 feet; thence S.87°54'32"E., a distance of 12.56 feet to the westerly right of way line of S.E. McLoughlin Boulevard; thence N.04°51'29"W. along said westerly right of way line, a distance of 52.05 feet to the northeast corner of said Elks property; thence N.89°19'13"W. along the north line of said Elks property, a

distance of 31.65 feet; thence leaving said north line, S.01°39'42"W., a distance of 50.89 feet to the Point of Beginning.

The tract of land to which this description applies contains 9,002 square feet, more or less.

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

Parcel 2 – Temporary Construction Easement (6 Month Duration to Commence Upon Notification to Property Owner)

A tract of land in the northwest one-quarter of Section 1, Township 2 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, being a portion of that property described in that Warranty Deed to Milwaukie Lodge Number 2032 Benevolent And Protective Order of Elks of the United States of America, the said Elks property being described as follows:

Beginning at the intersection of the westerly line of Super Highway No. 99E with the north line of the George Crow and wife D.L.C. No. 49; thence South 89°25' West 482.63 feet; thence South 0°10'30" East 396.06 feet; thence North 89°23'20" East 457.19 feet; thence North 0°12'50" East 117.69 feet; thence North 89°23'20" East 54.75 feet to the said westerly line of said Highway; thence North 6°21'50" West 279.71 feet along said Highway to the place of beginning, as shown by Private Survey No 1152 on file in the office of the County Surveyor of Clackamas County, Oregon.

The said tract being that portion of said Elks property described as follows:

Beginning at a point which bears South, a distance of 1,423.04 feet, and East, a distance of 1,502.26 feet from the northwest corner of said Section 1; thence N.01°39'42"E., a distance of 50.89 feet to the north line of said Elks property; thence N.89°19'13"W. along said north line, a distance of 161.15 feet; thence leaving said north line, S.09°50'48"W., a distance of 72.54 feet; thence S.82°57'28"E., a distance of 55.91 feet; thence N.18°31'22"W., a distance of 11.26 feet; thence N.12°34'25"E., a distance of 11.26 feet; thence N.43°03'19"E., a distance of 10.82 feet; thence S.87°54'32"E., a distance of 110.39 feet to the Point of Beginning.

The tract of land to which this description applies contains 9,481 square feet, more or less.

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



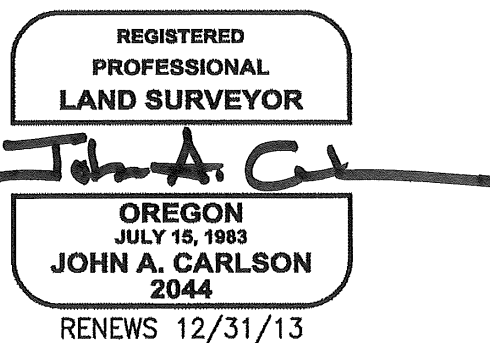
Parcel 3 – Temporary Construction Easement (2 Year Duration to Commence Upon Notification to Property Owner)

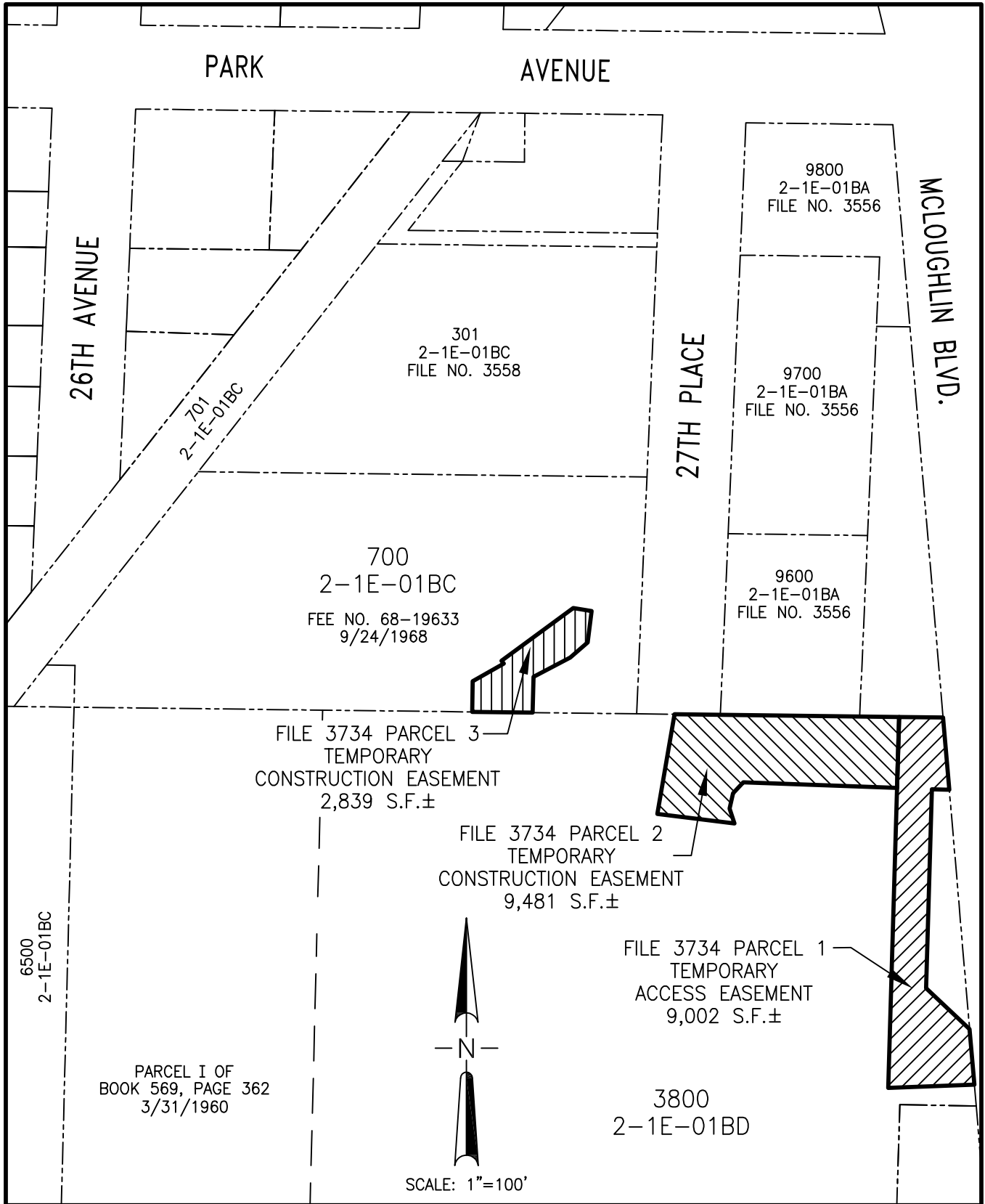
A tract of land in the northwest one-quarter of Section 1, Township 2 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, being a portion of that property described in that Bargain and Sale Deed to Milwaukie Elks Lodge #2032, recorded on September 24, 1968 as Fee No. 68-19633, Clackamas County Deed Records; the said tract being that portion of said property described as follows:

Beginning at a point on the south line of said Fee No. 68-19633 property, which point bears South, a distance of 1,369.05 feet, and East, a distance of 1,240.83 feet from the northwest corner of said Section 1; thence leaving said south line, N.01°11'35"E., a distance of 25.68 feet; thence N.62°15'51"E., a distance of 29.76 feet; thence N.49°11'13"E., a distance of 16.61 feet; thence N.07°07'44"E., a distance of 22.69 feet; thence N.80°40'10"W., a distance of 13.38 feet; thence S.53°40'22"W., a distance of 63.80 feet; thence S.36°19'38"E., a distance of 2.61 feet; thence S.60°34'26"W., a distance of 25.59 feet; thence S.00°40'47"W., a distance of 22.08 feet to the south line of said Fee No. 68-19633 property; thence S.89°19'13"E. along said south line, a distance of 43.35 feet to the Point of Beginning.

The tract of land to which this description applies contains 2,839 square feet, more or less.

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





**TRIMET**  
CAPITAL PROJECTS  
AND  
FACILITIES DIVISION  
1800 SW FIRST AVENUE SUITE 300  
PORTLAND, OREGON 97201

ACQUISITION SKETCH  
PORTLAND TO MILWAUKIE LRT  
FILE NO. 3734

DATE 9/3/2013	REVISION NO. 000	DRAWN BY J. CARLSON	CHECKED BY G. PAUL
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**otak**  
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PORTLAND, OREGON 97204  
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