

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF) RESOLUTION NO. 01-3134
AUTHORIZING THE EXECUTIVE)
OFFICER TO PURCHASE THE)
UNION PACIFIC RAILROAD) Introduced by Mike Burton,
PROPERTIES IN THE OMSI TO) Executive Officer
SPRINGWATER CORRIDOR TARGET)
AREA)

WHEREAS, in May 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure that authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and certain park-related capital improvements; and

WHEREAS, the amended Open Space Implementation Work Plan adopted in January 1997, provides that the Metro Council approval is required for purchases involving "unusual circumstances;" and

WHEREAS, on July 25, 1996, via Resolution 96-2362, the Metro Council adopted a refinement plan that outlined a land protection strategy for the OMSI to Springwater Corridor Trail target area; and

WHEREAS, the Tier IB objective of the refinement plan calls for the completion of the trail, through the purchase of land and/or easements, between the Sellwood Bridge and current end of the Springwater Corridor Trail at the Union Pacific Railroad (UP) tracks; and

WHEREAS, the Union Pacific properties ("the Properties") have been designated "essential" purchases by the Metro Council in 1999; and

WHEREAS, the city of Portland has indicated an interest to manage the Properties for Metro under the terms of a future intergovernmental agreement (IGA); and

WHEREAS, federal transportation funding has been secured for the design and construction of three trail bridges (over Johnson Creek, SE McLoughlin Blvd. and the Union Pacific Railroad tracks) in this corridor; and

WHEREAS, the land where the bridges will be built is currently owned by Union Pacific and thus must be purchased by Metro before they can be built; and

WHEREAS, the value determined by Metro's appraisal is 21% below the offered purchase price, and the value determined by the appraiser retained by UP is 62% above the offered purchase price; and

WHEREAS, the purchase of the Properties is on an "as-is" basis with no environmental representations or warranties regarding the conditions of the Properties from the seller; and

WHEREAS, the Properties are subject to blanket easements for PGE transmission lines and short line railroad freight operations; and

WHEREAS, pursuant to the Open Spaces Implementation Work Plan, paying above Metro's appraised value, purchasing on an "as-is" basis without environmental representations or warranties, and purchasing subject to blanket railroad and utility easements are "unusual circumstances;" and

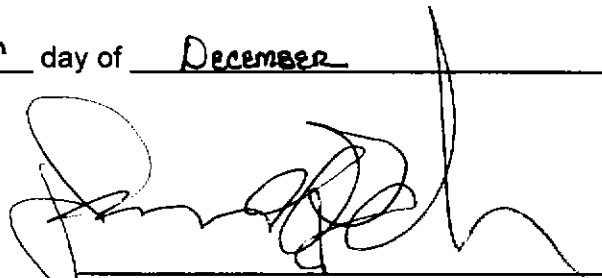
WHEREAS, the Open Spaces Implementation Work Plan requires Metro Council's specific approval for acquisitions that involve an "unusual circumstance;" now therefore

BE IT RESOLVED,


The Metro Council authorizes the Metro Executive Officer to purchase the Union Pacific Properties, as more particularly described in Exhibit A.

ADOPTED by the Metro Council this 6th day of December




David Bragdon, Presiding Officer

Approved as to form:


Dan Cooper, General Counsel

Resolution #01-3134

Exhibit A

Legal description of the Union Pacific Railroad properties to be provided by the Office of General Counsel prior to the Metro Council meeting.

EXHIBIT A
TRACT 1

A portion of Lot 2, Block 23, TOWN OF SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon, lying within the Portland Traction Company right of way, said portion being more particularly described as follows:

Commencing at the Northwest corner of said Lot 2; thence East on the North boundary of said lot, 10 feet to a point which is 50 feet Northerly from, when measured at right angles to, the center line of said railroad right of way; thence Southeasterly on a 3° curve to the left, parallel with and 50 feet from said center line 74 feet, more or less, to the South boundary of said lot; thence West 66 feet to the Southwest corner of said lot; thence North to the place of beginning.

**EXHIBIT A
TRACT 2**

PARCEL 1: Lots 1, 2, 14, 15 and 16, Block "M" TOWN OF SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon.

PARCEL 2: A portion of Lots 3, 4, 5, 12 and 13, Block "N", TOWN OF SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Northeast corner of said Block "N"; being 30 feet South of an iron pipe at the intersection of the West line of SE 11th Avenue and the center line of SE Linn Street; running thence West on the South line of SE Linn Street, 200 feet; thence South on the East line of SE 10th Avenue, 100 feet to the Northwest corner of Lot 3 and the true place of beginning of the tract of land herein to be described; thence South $63^{\circ} 26'$ East 111.80 feet to the Southeast corner of Lot 3, which is also the Northwest corner of Lot 13; thence South $70^{\circ} 42' 40''$ East 105.95 feet to the West line of SE 11th Avenue; thence South on the West line of SE 11th Avenue to the North line of that alley established by Resolution No. 25034; thence West along the North line of said alley to the East line of SE 10th Avenue; thence North along the East line of SE 10th Avenue to the point of beginning.

PARCEL 3: All of Lot 6, a portion of Lots 5, 9 and 10, Block "O", and all of Lots 7 and 8, and a portion of Lots 6 and 9, Block "P", TOWN OF SELLWOOD, TOGETHER WITH a portion of East 12th Street, now vacated, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Northwest corner of said Block "O"; running thence South on the East line of SE 11th Avenue, 200 feet to the Northwest corner of Lot 5; thence South on the same line 9.87 feet to a point being 147.55 feet North of an iron pipe marking the Southwest corner of Block "O", said point also being the true point of beginning of the tract herein to be described; thence Southeasterly across Lots 5, 10 and 9 of Block "O", East 12th Street vacated, and part of Lot 6 of Block "P", on a curve with a radius of 1,879.53 feet, which is approximated by the following chords; South $72^{\circ} 29' 10''$ East 50 feet; South $74^{\circ} 00' 30''$ East 50 feet; South $75^{\circ} 32' 00''$ East 50 feet; South $77^{\circ} 03' 30''$ East 50 feet; South $78^{\circ} 35' 00''$ East 50 feet; South $79^{\circ} 54' 30''$ East 36.95 feet, a distance of 286.95 feet measured on the curve to a point on the Westerly extension of the South wall of the Sellwood Carhouse; thence East on said extension and wall across Lots 6 and 9 of Block "P", 171.73 feet to the West line of SE 13th Avenue; thence South along the West line of SE 13th Avenue to the Southeast corner of Block "P"; thence West along the South lines of Blocks "P" and "O", to a point in the center of vacated East 12th Street; thence North along the center of vacated East 12th Street to the Easterly extension of the North line of Lot 8, Block "O"; thence West along the Easterly extension of the North line of said Lot 8, and along the North line of Lots 8 and 7 of Block "O", to the West line of said Block "O"; thence North along the West line of said Block "O" to the point of beginning.

EXHIBIT A
TRACT 3

Lots 2 through 7, 9 and 16, Block "X", TOWN OF SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon.

A portion of Lot 11, Block "X", TOWN OF SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

BEGINNING at the Northwest corner of said lot; thence South following the West boundary line thereof, 31 feet, more or less, to a point in said West boundary line which is 50 feet from the center line of the main railway track of the Portland Railway Light and Power Company, said point being on a radial line drawn from the center of said track; thence Northeasterly on a curve to the left of 2915 feet radius, parallel with and 50 feet distant from the said center line a distance of 104 feet to the Northeast corner of said Lot 11; thence West, following the North boundary line of said lot, 100 feet to the point of beginning.

Lots 10 and 15, Block "X", TOWN OF SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon; EXCEPTING THEREFROM that portion conveyed to Bob Snair and Don Snair by instrument recorded November 10, 1988 in Book 2154, Page 2369, Multnomah County Deed Records, said portion being more particularly described as follows:

BEGINNING at the Southeast corner of Lot 15, Block "X", TOWN OF SELLWOOD; thence West 111.04 feet along the South line of Lots 15 and 10 to a point on Southerly line of Portland Traction Company's right of way; thence along the arc of a 2914.93 foot radius curve to the left a distance of 117.95 feet (the chord which bears North 70° 17' 35" a distance of 117.95 feet) to a point; thence South 39.77 feet along the East line of Lot 15 to the true point of beginning.

And that portion of Lot 1, Block Y, TOWN OF SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon, located in the railroad right of way.

EXHIBIT A
TRACT 4

PARCEL I:

Lots 5 through 11, inclusive, Block 103, SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM that portion more particularly described as follows:

That portion of Lot 5, Block 103 lying Southeasterly of a line parallel to the originally located center line of the main track of the Portland Traction Company (Springwater Line) and distant 75 feet Southeasterly measured at right angles from the aforesaid.

PARCEL II:

A portion of Lots 15 through 18, Block 103, SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at a point in the East boundary line of said Block 103, a distance of 5 feet South of the Northeast corner thereof; thence Southerly along said East boundary line a distance of 95 feet, more or less, to a line drawn East and West through the center of said block; thence West along said center line a distance of 255 feet; thence on a straight line to the point of beginning.

EXCEPTING THEREFROM that portion dedicated as highway, as described in Document, recorded May 26, 1902 in Book 293, Page 9, Multnomah County Deed of Records.

EXHIBIT A
TRACT 5

A portion of the George Wills Donation Land Claim, in Section 25, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Milwaukie, County of Clackamas and State of Oregon, said portion being particularly described as follows, to-wit:

Commencing at a point 15.25 chains East and 14.43 chains North of the Southwest corner of said George Wills Donation Land Claim; which point is the Northwest corner of the land transferred to grantor herein by L.M. Atchinson by Deed recorded August 30, 1894 in Book "N", Page 559; running thence South along the West boundary of said land transferred by Atchinson 100 feet, to a stake; thence North 69° East parallel with and 75 feet Southerly from the center line of the railroad of The Oregon Water Power and Railway Company, as the same is located and established to the right of way of the Oregon and California Railway Company; thence Northwesterly along said right of way to the North line of said Atchinson Tract; thence West along said North line to place of beginning.

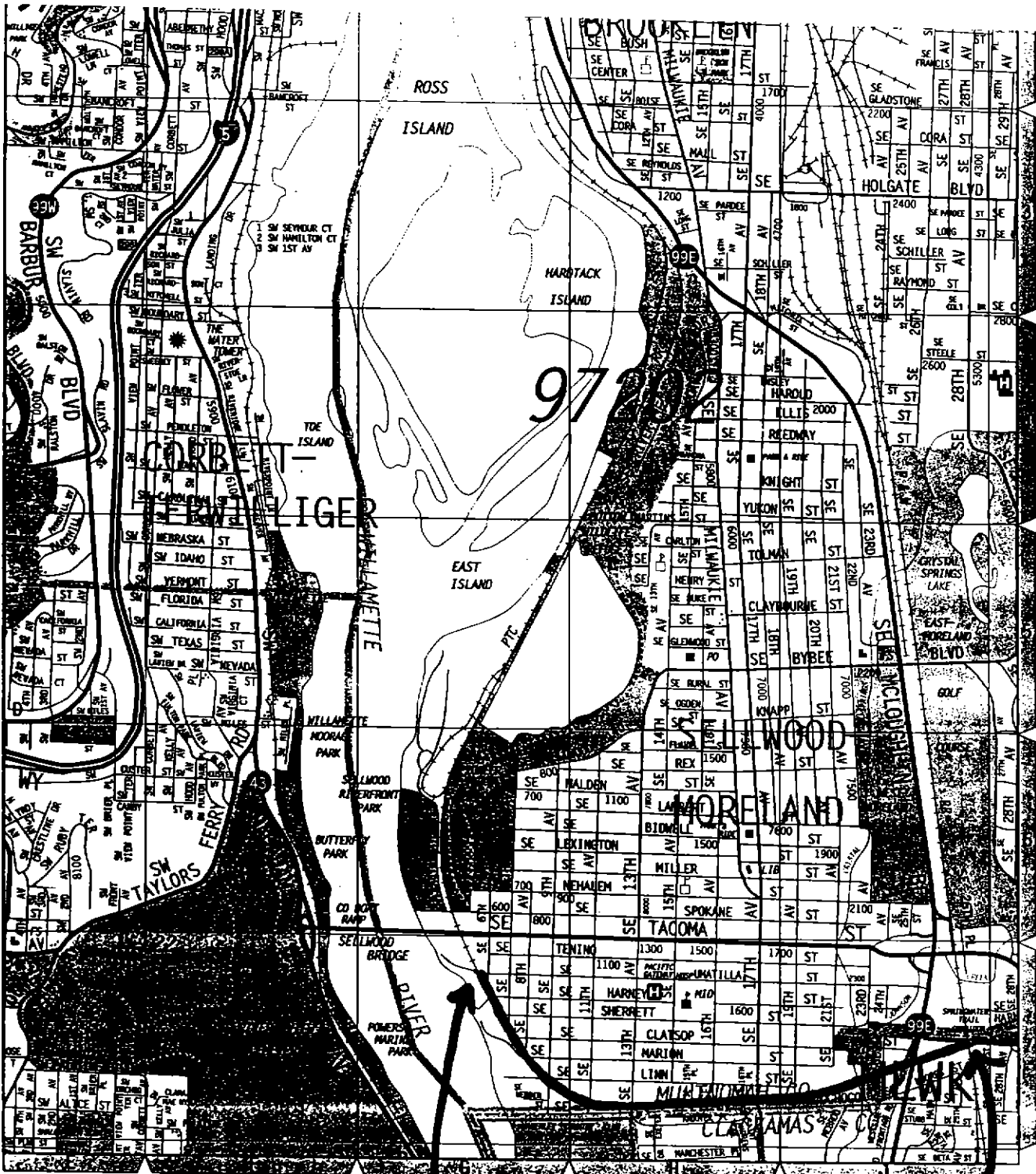
ALSO a portion of the said George Wills Donation Land Claim, described as follows, to-wit:

Commencing at a point in West boundary of said Donation Land Claim, 625.44 feet Northerly from the Southwest corner thereof and which point is 75 feet Northerly from, measured at right angles to, the center line of said O.W.P. & Ry. Co's Railway; thence North 63° 19' East parallel with and 75 feet from said center line, 1398 feet, to and across the right of way of the Oregon & California Ry. and to the West line of the plat of BURLEY; thence South 173.7 feet, more or less, to the North boundary line of said Atchinson Tract; thence West along the North line of said Atchinson Tract 238.92 feet; thence South 34 feet to a point which is 75 feet Southerly from, measured at right angles to, said center line of railroad; thence South 63° 19' West, parallel with and 75 feet from said center line 1127 feet to a point in West boundary of said Donation Land Claim, 156.38 feet South of beginning; thence North to beginning.

EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its Department of transportation, Highway Division, by instrument recorded March 9, 1990 as Recorder's Fee No. 90-10502, Clackamas County Deed Records.

AND FURTHER EXCEPTING THEREFROM that portion lying within the Southern Pacific Railroad right of way.

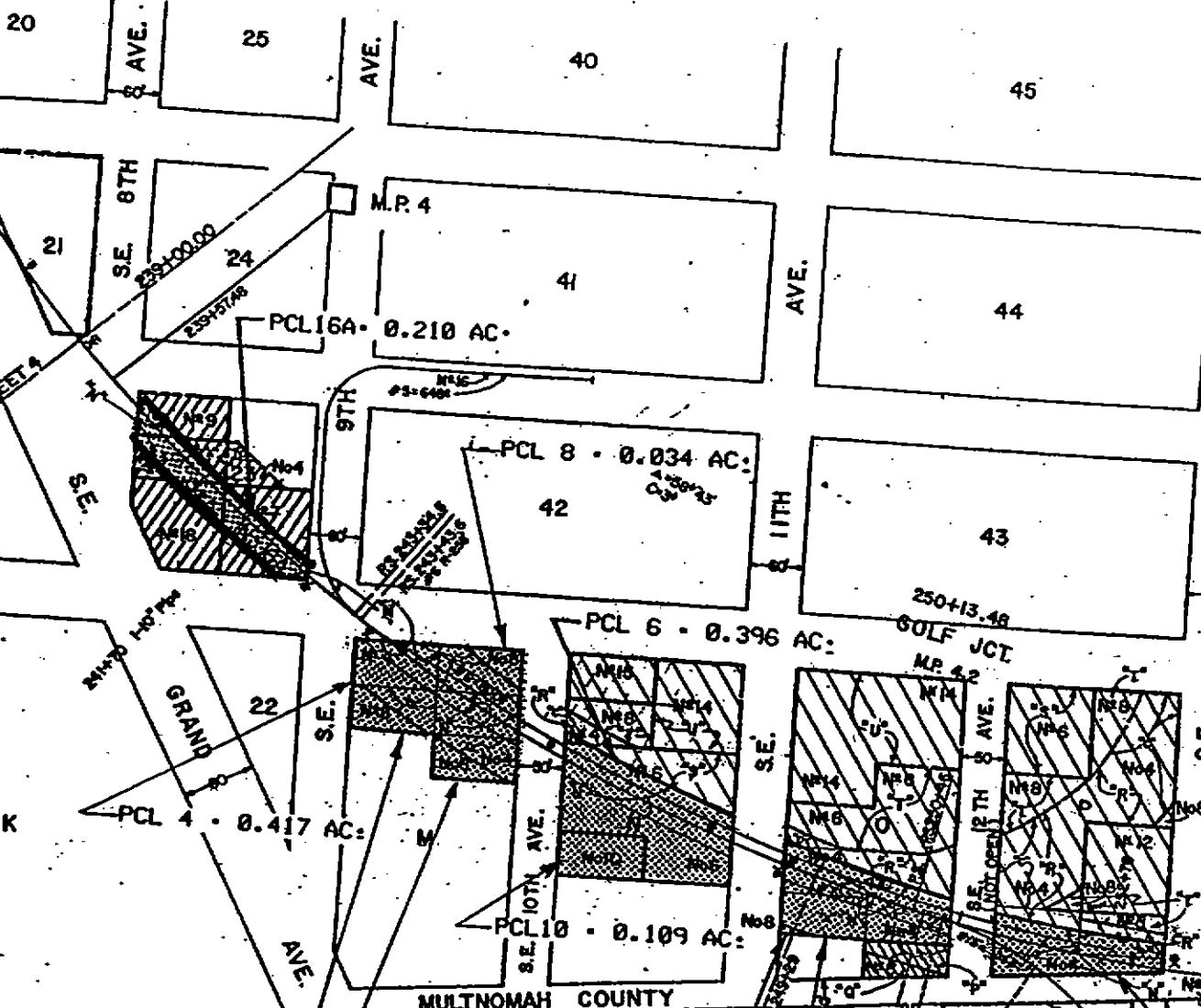
VICINITY MAP



PROJECT AREA

RESOLUTION 01-3134
EXHIBIT A, page 6

TO EAST PORTLAND
MATCH MARK FOR SHEET 4



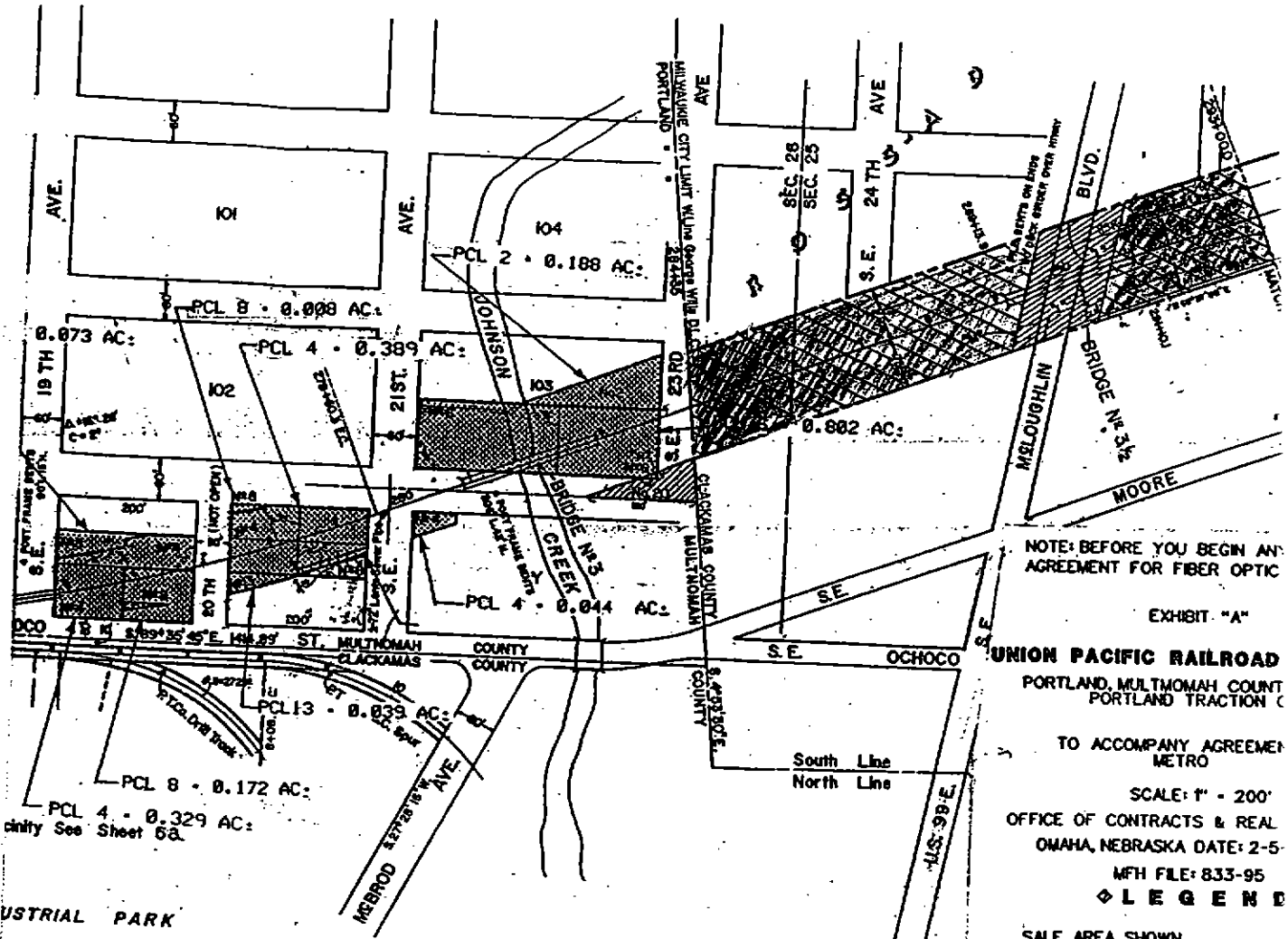
MULTNOMAH COUNTY
CLACKAMAS COUNTY

OREGON CITY LINE
To Clatsop
P.S. 253-128

For Land In This Vicinity
See Valuation Section
P.T. Co. Ora. 2, Sheet 1.

V-1
5

Revised Aug. 1970



NOTE: BEFORE YOU BEGIN AN AGREEMENT FOR FIBER OPTIC

EXHIBIT "A"

UNION PACIFIC RAILROAD
 PORTLAND, MULTNOMAH COUNTY
 PORTLAND TRACTION CO

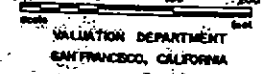
TO ACCOMPANY AGREEMENT
 METRO

SCALE: 1" = 200'
 OFFICE OF CONTRACTS & REAL
 OMAHA, NEBRASKA DATE: 2-5-
 MFH FILE: 833-95
LEGEND

SALE AREA SHOWN
 UPRR CO. R/W OUTLINED

RIGHT OF WAY AND TRACK
 PORTLAND TRACTION CO
 OPERATED BY
 PORTLAND TRACTION CO

EAST PORTLAND TO BORING
 MULTNOMAH & CLACKAMAS COUNTIES, O.
 FROM STATION 239+00.0 TO STATION 293



NOTE: S.P.Co. and U.P.R.R.Co. acquired control of P.T.Co. through ownership of all its Capital Stock, service date Dec. 27, 1961 L.C.C. Finance Docket No. 21564, filed with Doc. P-242.

PCL 4 - 0.329 AC:
 See Sheet 5a.

INDUSTRIAL PARK

RAILROAD COMPANY
 TRANSPORTATION COMPANY
 TRACTION COMPANY

MAP 5

- 0.188 AC:
- 1.736 AC:
- 1.198 AC:
- 0.398 AC:
- 0.210 AC:
- 0.109 AC:

TOTAL AREA - 3.839 AC.

Staff Report

CONSIDERATION OF RESOLUTION NO. 01-3134 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE THE UNION PACIFIC RAILROAD PROPERTIES IN THE OMSI TO SPRINGWATER CORRIDOR TARGET AREA

Date: December 3, 2001

Presented by: Charles Ciecko
Jim Desmond

Description

Resolution No. 01-3134 requests authorization for the Executive Officer to purchase ten parcels (approximately 7.6 acres of land) owned by Union Pacific Railroad (the "Property") in the OMSI to Springwater Corridor Tier IB target area.

Existing Law

In May 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure, which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and certain park-related capital improvements. Metro Code 2.04.026 (a) (3) requires that the Executive Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase of real property.

The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 95-2228A (and amended via Resolution 96-2424), was established to implement the Open Spaces, Parks and Streams bond measure passed by the voters of the region in 1995. The Work Plan established acquisition parameters that authorize the Executive Officer to purchase property, within the Council-approved target area refinement plan maps. Purchases that do not meet these criteria or have "unusual circumstances" (as that term is defined in the Work Plan) require specific Council approval. On July 25, 1996, via Resolution 96-2362, the Metro Council adopted a refinement plan, which outlined a land protection strategy for the OMSI to Springwater Corridor regional target area. This resolution proposes to approve an unusual circumstance purchase and authorize the purchase of the Property subject to the terms of the Purchase and Sale Agreement, executed by Metro and the landowner.

Background

1. The Springwater Corridor Trail (from OMSI to Boring) is in public ownership except for a number of parcels of land and easements which are located between the Sellwood Bridge and where the Springwater Corridor Trail currently ends at the Union Pacific railroad tracks. This final gap is approximately 1.5 miles in length. These parcels are located within the trail corridor designated in the OMSI to Springwater Corridor Target Area Refinement Plan and also have been identified as "essential" acquisitions in presentations made by staff to the Metro Council in December 1999 and September 2001 where the expenditure of remaining bond funds was reviewed in detail.

2. The parcels east of S.E. 17th Ave. need to be acquired to allow Metro to design and construct the three trail bridges (Johnson Creek, McLoughlin Blvd. and Union Pacific Railroad tracks) which will extend the Springwater Corridor Trail west towards OMSI and downtown Portland. Funding for the "Three Bridges" has been secured from the U.S. Department of Transportation through Metro's MTIP process.
3. Metro has entered into an agreement with the current owner, Union Pacific Railroad ("UP"), to purchase ten parcels totaling 7.6 acres located between the Sellwood Bridge and the current end of the Springwater Corridor Trail at the Union Pacific Railroad tracks.
4. The Open Spaces Acquisition Committee met and unanimously recommended that the Property be purchased by Metro on conditions set forth in this staff report and those more specifically stated in the purchase and sale agreement.

Unusual Circumstances

There are three unusual circumstances regarding the transaction for which Council approval is sought:

1. The value of the railroad corridor determined by Metro's appraisal as received is 21% below the purchase price, and the value determined by the appraiser retained by UP is 62% above the purchase price. However, railroad corridors are very difficult to appraise, as the market for them is limited. Union Pacific believes that the negotiated price is below that which it generally receives for similar railroad corridors.
2. The negotiations between Metro and UP on the environmental aspects of the properties have been extensive. UP has insisted that the property sale be on an "as-is" basis with no environmental representations or warranties regarding the conditions of the properties. Metro typically receives these types of representations and warranties from sellers of real property. UP will only sell the properties under this "as-is" clause, which is not unusual for national railroad entities. Metro's standard due diligence and environmental assessment revealed no adverse environmental issues related to the site. However, in an abundance of caution, Metro's consultant has recommended some testing of soil and groundwater be performed relating to adjacent properties. The Council's acceptance of the "as-is" clause would be predicated on Metro receiving a "clean" report.
3. East Portland Traction Company (EPTC) occupies a portion of the Property, west of SE 17th Avenue, and currently provides freight rail service. Metro has yet to discuss a rails-with trails arrangement with EPTC, but has successfully negotiated a similar arrangement in the past and plans to do so in this instance, if necessary. PGE holds a blanket transmission line easement over the Property. PGE has agreed to accommodate the Springwater trail elsewhere in the region, and has expressed a willingness to negotiate such an agreement for this section of the Springwater Trail.

Findings

Acquisition of the property is recommended, based on the following:

- The Properties lie in Tier IB of the Council approved OMSI to Springwater Corridor target area refinement plan.

- The “three bridges” project, funded with federal transportation funds, cannot be completed unless the Properties are under public ownership and available for trail and bridge development.
- The city of Portland strongly supports this acquisition and has indicated a willingness to manage and operate the property under the terms of a future intergovernmental agreement (IGA).

Budget Impact

Open Spaces Bond funds would pay for the acquisition and related due diligence costs. No future costs for operations and maintenance will be incurred by Metro. The city of Portland has stated its willingness to assume long-term management responsibilities for the property as part of an intergovernmental agreement.

Outstanding Questions

Metro has performed a Phase I Environmental Assessment on the Property, which revealed no evidence of a recognized environmental condition related to the Property. However, because of the Property’s history as a rail-freight corridor, and because of the present and post-industrial use of surrounding properties, Metro’s consultant has recommended soil and groundwater testing be performed. Metro will perform the recommended testing, and the Council’s acceptance of the “as-is” clause would be predicated on Metro’s receipt of satisfactorily clean test results.

In accordance with the Open Spaces Implementation Work Plan adopted by Metro Council, the Open Spaces Acquisition Committee met and recommended that the Property be purchased by Metro on these terms and those stated in the Purchase and Sale Agreement.

Executive Officer Recommendation

The Executive Officer recommends passage of Resolution No. 01-3134.