

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING ) RESOLUTION NO. 10-4173  
OFFICER TO PURCHASE A QUITCLAIM AND )  
RELEASE OF CERTAIN REAL PROPERTY ) Introduced by Chief Operating Officer  
INTERESTS, PARTLY IN EXCHANGE FOR ) Michael Jordan with the concurrence of  
REAL PROPERTY OWNED BY METRO, IN ) Council President David Bragdon  
THE SPRINGWATER CORRIDOR TARGET )  
AREA )

WHEREAS, in July 1992, via Resolution No. 92-1637 (“For the Purpose of Considering Adoption of the Metropolitan Greenspaces master Plan”), the Metro Council adopted the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, in May 1995 Ballot Measure 26-26 was approved, authorizing Metro to issue \$135.6 million for bonds for Open Spaces, Parks and Streams (the “1995 Open Spaces Bond Measure”); and

WHEREAS, on July 25, 1996, via Resolution 96-2362, the Metro Council adopted a refinement plan for the OMSI to Springwater Corridor target area with objectives to “acquire land and easements to connect the OMSI to the Sellwood Bridge greenway to the existing Springwater Corridor Trail” and “provide the opportunity to develop a mostly off-street trail connection between OMSI and the Springwater Corridor”; and

WHEREAS, on December 19, 2001, Metro acquired five parcels of land for trail purposes located within the trail corridor designated in the OMSI to Springwater Corridor Target Area Refinement Plan (the “Metro Parcels”). Said parcels were also 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. The Metro Parcels are encumbered by a railroad easement held by the Oregon Pacific Railroad Company (the “OPRR”) and the purchase was part of a larger purchase from the Union Pacific Railroad and authorized by Resolution No. 01-3134 “For the Purpose of Authorizing the Executive Officer to Purchase Property in the OMSI to Springwater Corridor Target Area”; and

WHEREAS, on March 9, 2006, the Metro Council adopted Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” recommending submission for voter approval a general obligation bond to preserve and protect natural areas, clean water, and fish and wildlife (the “2006 Natural Areas Bond Measure”); and

WHEREAS, in June 2006, Metro and Alta Planning + Design completed a report with graphics titled the “Springwater Missing Gap” describing the optimal alignment to connect the built trail segments, resulting in a recommendation for a rail-with-trail shared-use path; and

WHEREAS, on March 1, 2007, the Metro Council adopted Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan” which included acquisition parameters for a pre-approved set of criteria under which the Chief Operating Officer and his/her designees are authorized to negotiate and complete land acquisition transactions; and

WHEREAS, on September 6, 2007, the Metro Council adopted Resolution No. 07-3841, “Approving the Natural Areas Acquisition Refinement Plan for the Springwater Corridor Target Area” (the “Refinement Plan”), with a goal to “Complete the 1-mile corridor between the existing Springwater on the Willamette Trail and Three Bridges project at Southeast 19<sup>th</sup> Avenue in Portland east through Milwaukie and Gresham to Boring”; and

WHEREAS, because the trail alignment recommended in the Springwater Missing Gap report and the Refinement Plan is within an operating railroad corridor it is necessary to acquire the rights to build a trail within the corridor from the railroad operator and easement holder, the OPRR; and

WHEREAS, in November 2009, Metro commissioned an appraisal on the portion of the rail corridor running through the Metro Parcels and used the appraisal to estimate value on other sections of the rail corridor for use in negotiating with the OPRR; and

WHEREAS, Metro staff have negotiated agreements with the OPRR (the “Agreements”) wherein Metro will reimburse the OPRR to relinquish its rights through a portion of the trail corridor, which transaction requires Metro Council approval under the Work Plan; and

WHEREAS, the Agreements also contain a commitment by Metro to fund certain railroad street-crossings and track improvements to reduce the likelihood of train derailments, to make the railroad crossings as safe as possible for trail users, and to facilitate future trail construction, which commitment requires Metro Council approval, as it will be partially funded using 2006 Natural Areas Bond Measure funds; and

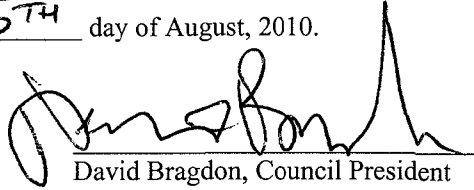
WHEREAS, the Agreements also provide for the sale to the OPRR of an approximately 5,000 square foot portion of one of the Metro Parcels adjacent to the rail line, further described in Exhibit A to this Resolution (the “Linn Street Property”), requiring the Metro Council to declare such property as surplus and authorize its sale; and

WHEREAS, the nature of the compensation and other terms of the Agreements for OPRR to quitclaim its railroad use rights represent unusual circumstances under the 2006 Natural Areas Implementation Work Plan, and therefore require Metro Council approval; and

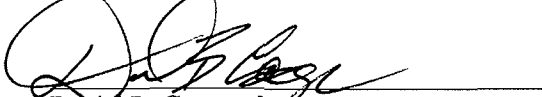
WHEREAS, the successful completion of the Agreements is in the public interest as it facilitates construction of an important segment of the Springwater Corridor Trail, one of the most heavily used bicycle and pedestrian trails in the Metro region; now therefore

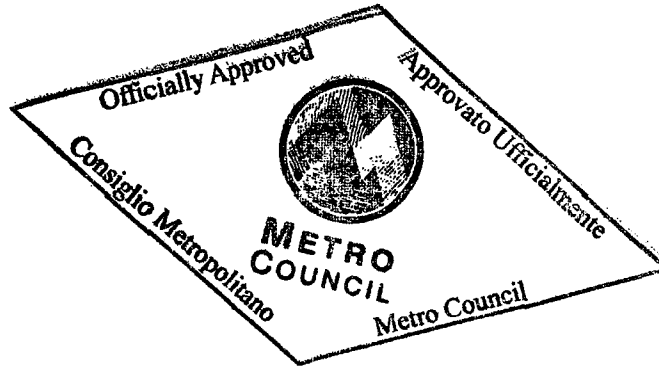
BE IT RESOLVED that the Metro Council (a) concludes that the Linn Street Property, as described in Exhibit A, is not needed for public use and that the public interest will be furthered by its sale and (b) hereby authorizes the Chief Operating Officer to proceed with the property transaction that Metro has executed with OPRR, subject to unusual circumstances, which provides for OPRR to quitclaim and release certain of its railroad use rights to allow for future trail construction between Southeast Umatilla Street and Southeast 13<sup>th</sup> Avenue and to undertake certain street crossing and other railroad improvements, in return for compensation from Metro to include Metro's payment for such railroad improvements and Metro's transfer of the Linn Street Property to OPRR.

ADOPTED by the Metro Council this 5<sup>TH</sup> day of August, 2010.

  
David Bragdon, Council President

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney



**Exhibit A**  
**Linn Street Property Legal Description**

All that portion of Lots 1, 15 and 16, Block "M" TOWN OF SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon, located NE of a line parallel to and fifteen feet distant from the centerline of the Oregon Pacific Railroad Company railroad tracks.

## **STAFF REPORT**

IN CONSIDERATION OF RESOLUTION NO. 10-4173, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO PURCHASE A QUITCLAIM AND RELEASE OF CERTAIN REAL PROPERTY INTERESTS, PARTLY IN EXCHANGE FOR REAL PROPERTY OWNED BY METRO, IN THE SPRINGWATER CORRIDOR TARGET AREA

---

Date: August 5, 2010

Prepared by: Hillary Wilton  
503-797-1845

## **BACKGROUND**

The Springwater Corridor is the southeast segment of the 40-Mile Loop Trail, which was inspired by John Charles Olmsted's 1903 plan for a parkway and boulevard loop connecting park sites in the Portland area. Its proposed route stretches from downtown Portland and continues southeast through the Sellwood neighborhood, through Gresham toward Damascus and Boring. In the past decade, great strides have been made in creating multi-use trail segments in the Springwater Corridor nearer to the Portland downtown core area. The OMSI to Springwater Corridor was a target area in Metro's 1995 Open Spaces, Parks and Streams bond measure and bond funds contributed \$1,360,000 toward trail acquisition. Those funds were leveraged by funds spent by the City of Portland for trail construction. The Springwater Corridor's "Three Bridges" project, funded by federal transportation funds, was completed in Fall 2006 with the construction of bridges over McLoughlin Boulevard, the Southern and Union Pacific railroads and Johnson Creek.

The remaining unbuilt portion of the trail in the Portland core area, known as the Sellwood Gap, extends south from the Sellwood Bridge and Southeast Umatilla Street to Southeast 19<sup>th</sup> Avenue to connect with the Three Bridges portion of the Trail. Trains have been operating along this corridor for at least 100 years and currently the Oregon Pacific Railroad Company (the "OPRR") has rights to operate freight and recreational passenger (SamTrak) trains along the Sellwood Gap. In June 2006, Metro and Alta Planning + Design ("Alta") completed a report about the unbuilt portion of the Springwater Corridor Trail titled, "Springwater Missing Gap - Linking the Springwater on the Willamette to the Springwater Corridor Trail," breaking the Gap into ten sections and detailing placement, construction and issues of constructing the trail and the existing railroad use in the right-of-way down to the level of relocating utility poles and road/train/trail intersection concerns.

The 2006 Natural Areas bond measure includes the Springwater Corridor as a target area and the Refinement Plan goals and objectives focus entirely on acquiring "property necessary to complete the one-mile corridor gap between the existing Springwater on the Willamette trail and the Three Bridges project on Southeast 19<sup>th</sup> Avenue in Portland" (the "Sellwood Gap"). In June 2009, Alta prepared an updated report ("2009 Alta Report") on the Sellwood Gap, in which they interviewed stakeholders such as representatives from the City of Portland's Bureau of Environmental Science, Bureau of Transportation, and Parks and Recreation Department; the Oregon Department of Transportation (ODOT); ODOT Rail; TriMet; the owner of the OPRR; and Metro. This 2009 Alta Report identified current challenges and opportunities, funding sources, safety issues and necessary steps to a finished trail. Collectively, the studies mentioned here have been the guidelines in negotiations between Metro staff and the OPRR.

### **Trail Corridor Description**

There are four distinct sections of the gap area and proposed trail corridor in the Southeast Portland Sellwood neighborhood that, if acquired and built, would close this critical gap to create a continuous corridor of approximately 20 miles of off-street trails for bikes and pedestrians. Two of the four sections

are highlighted in Attachment 1. Section 1 on the attached map is a three block area that starts where the completed Springwater Trail (the “Trail”) terminates south of the Sellwood Bridge, roughly from Southeast Umatilla to Southeast Clatsop Streets. It runs through an unimproved section of the Southeast Grand Avenue street right-of-way parallel to a rail line operated by the OPRR. Section 2 follows the rail route through five residential blocks partially owned by Metro, and across the intervening street right-of-way, from Southeast Clatsop to Southeast 13<sup>th</sup> Avenue at a point known as Golf Junction. The OPRR has an easement across the Metro parcels in this section. Section 3 continues east from Golf Junction following the unimproved Southeast Ochoco Street right-of-way until Southeast 17<sup>th</sup> Avenue. Section 4 follows along Southeast Ochoco Street for one block from Southeast 17<sup>th</sup> Avenue to join the existing trail at Southeast 19<sup>th</sup> Avenue, leading to the Three Bridges portion of the trail.

The right-of-way in Sections 1 through 3 is currently used by the OPRR for rail freight and chartered excursions. In Section 1, the OPRR has a single track rail line and maintains that it has the right to build and operate a parallel second track in the right-of-way. The OPRR’s rights originated with a 1902 railroad franchise. Currently, the exact rights of the OPRR to build and operate a second track in the Section 1 right-of-way are uncertain, although there are other areas in the Sellwood Gap portion of the rail right-of-way that have spur lines where a second track would be placed. Therefore, the matter of constructing a trail in the same right-of-way as a potential second rail line leads to the issue of just compensation to the OPRR for permanently depriving it of the ability to construct and use the second rail line.

### **Agreements between Metro and OPRR**

Metro staff and OPRR have entered into two agreements (the “Agreements”) that will result in a relinquishment by OPRR of its rights to a portion of the Springwater Corridor in Sections 1 and 2, permitting the continuation of the Springwater Trail (the “Trail”) from Southeast Umatilla Street to Southeast 13<sup>th</sup> Avenue. The OPRR has agreed to relinquish its rights to an area defined as everything south and west of a line that is parallel to and nine feet southwest of the centerline of its existing rail road track. Metro attempted to obtain the rights for the continuation of the Trail through Section 3, but the owner of the OPRR was not willing to negotiate for a sale of rights along that segment at this time. Section 4 of the Sellwood Gap is controlled by a different property owner. In addition to monetary compensation for OPRR to relinquish its easement and other rights to expand its railroad operations, the Agreements also provide for Metro (a) to pay OPRR to make certain safety-related improvements to the railroad street crossings within those segments, and (b) to transfer to OPRR an approximately 5,000 square foot portion of the Metro property located at the corner of Southeast Linn Street and Southeast 10<sup>th</sup> Avenue (the “Linn Street Property”).

### **Acquisition of Easement Rights**

For the acquisition of trail segments where it is anticipated that federal funds may be used for trail construction, Metro is following the Federal right-of-way acquisition guidelines. Metro obtained an appraisal on Section 2 that calculated the area (by square feet) of the OPRR easement that OPRR would need to quitclaim in order to allow trail development. The appraiser then valued that area and concluded a value of \$20.93 per square foot of the easement area based on the worth of the adjacent residential land of \$23.25 per square foot (concluding that the value of the easement was 90% of fee value), for a total value of \$269,200 for 12,860 square feet of quitclaimed easement area. Following the federal guidelines for acquisition of trails wherein federal funds may be used, Metro made an offer for the appraisal amount to OPRR to relinquish that portion of its easement through the five residential blocks in the section. In the course of subsequent negotiations, the value per square foot figure was then used to extrapolate the value of OPRR’s rights to operate its railroad within the right-of-way in Section 1, but discounted the value by 25% from fee value to account for the fact that OPRR’s legal rights in Section 1 are somewhat more diluted than its easement rights in Section 2. Metro calculated the equivalent area to be quitclaimed

within Section 1 to be 20,000 square feet, at a negotiated value of \$17.4375 per square foot, for a total of \$348,750. The owner of the OPRR has agreed to this valuation of its rights and has accepted Metro's total offer of \$617,950.

### **Improvements to Street/Railroad Tracks/Future Trail Intersection Areas**

When the trail is expanded between its current terminus and Southeast 13<sup>th</sup> Avenue (at "Golf Junction"), the new trail will increase bicycle traffic across four intersections to access the trail (Southeast Marion Street, Southeast Linn Street, Southeast 11<sup>th</sup> Avenue, and Southeast 13<sup>th</sup> Avenue). In addition, the new trail will need to cross a set of railroad spur tracks at Golf Junction, and several other track changes will be necessary to accommodate the trail, such as moving the locations of some other spur tracks and switches. In order to ensure the greatest degree of safety possible where bicycle traffic will cross the railroad tracks, the Agreement includes a commitment to enter into a separate contract with OPRR to provide \$358,292 for such railroad improvements, in order to prevent possible train derailments and to make the railroad crossings as safe as possible for trail users (the "Public Contract for Railroad Improvements"). These improvements were contemplated in the 2006 and 2009 Alta Reports noted above and Metro staff have identified the availability of \$210,000 from a grant from the Portland Bureau of Environmental Services, resulting in a contribution of \$148,292 from Metro for the construction work.

### **Sale of Metro Property**

The negotiated Agreements between Metro and OPRR include an agreement for Metro to sell the Linn Street Property to OPRR for \$75,000 (to be subtracted from Metro's total compensation described above, such that Metro's total payments to OPRR will be \$691,242 plus the Linn Street Property, including Metro's portion of the payment for the railroad improvements described above). OPRR has told Metro staff that it intends to use the triangular site for the purpose of constructing a railroad office accessory building, though the future use of the site is not a condition of the Agreements between Metro and OPRR.

The Linn Street Property, adjacent to the existing rail line between Southeast Linn Street and Southeast 10<sup>th</sup> Avenue, next to Section 2 on the attached map, is an approximately 5,000 square foot triangular portion of a 25,000 square foot lot (the "Metro Parcel") that Metro acquired from the Union Pacific Railroad Company in 2001 as part of Metro's acquisition of five blocks along the OPRR railroad line. The Metro Parcel is encumbered by the OPRR easement, and OPRR's single set of railroad tracks crosses the property. The Metro Parcel has been managed by the City of Portland under an Intergovernmental Agreement. Because the Metro Parcel is currently a single tax lot, a partition of the property must be approved by the City before it can be sold to OPRR. This part of the transaction, therefore, will not be completed until OPRR's quitclaim of its easement rights has been recorded.

Metro acquired the Metro Parcel in order to facilitate the construction of the Springwater Corridor Trail. As discussed herein and shown on the attached maps, the trail will be located to the west and south of the OPRR railroad tracks. The Linn Street Property is on the northeast side of the railroad tracks. Neither Metro nor the City had developed any particular plans to use or develop that portion of the Metro Parcel. Metro staff believes that the Linn Street Property is not needed for public use and that the public interest will be furthered by its sale as part of this transaction.

The Agreements require the approval of the Metro Council for several reasons. This transaction is not a standard property acquisition, as it involves compensation in return for the quitclaim and release of certain easement and other use rights within both Metro-owned property and public right-of-way. The compensation for such rights includes the appraised value for certain rights, and a negotiated value for other rights, based on that appraisal. The Agreements also include Metro's commitment to fund certain safety-related railroad crossing and track improvements. The nature of the compensation for OPRR to quitclaim its railroad use rights therefore represent unusual circumstances under the 2006 Natural Areas

Implementation Work Plan. In addition, the sale of Metro-owned property also requires Council approval.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

There is no known opposition to this Resolution No. 10-4173.

### **2. Legal Antecedents**

The voters' approved Metro's 2006 Natural Areas Bond Measure at the general election held on November 7, 2006.

Resolution No. 07-3766A, "Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan," was adopted by the Metro Council on March 1, 2007, and established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

Resolution No. 07-3841, "Approving the Natural Areas Acquisition Refinement Plan for the Springwater Corridor Target Area," was adopted by the Metro Council on September 6, 2007.

ORS 271.310(1) authorizes the governing body of any political subdivision within Oregon to sell real property owned by the political subdivision that is "not needed for public use, or whenever the public interest may be furthered."

Metro Code section 2.04.026(a)(2) requires that the Chief Operating Officer obtain the authorization of the Metro Council in order to sell real property owned by Metro.

### **3. Anticipated Effects**

OPRR will quitclaim and release all of its rights to use any portion of the public right-of-way and Metro-owned properties that is more than nine feet from the centerline of its current railroad tracks between Southeast Tacoma Street and Southeast 13<sup>th</sup> Avenue, which will allow for the City of Portland to construct a new portion of the Springwater Corridor Trail between Southeast Umatilla Street and Southeast 13<sup>th</sup> Avenue. OPRR will undertake certain street crossing and other railroad improvements to allow for trail construction and improve the safety of the street crossings for trail users. The Linn Street Property will be declared surplus and not needed for public use, and will be sold to OPRR.

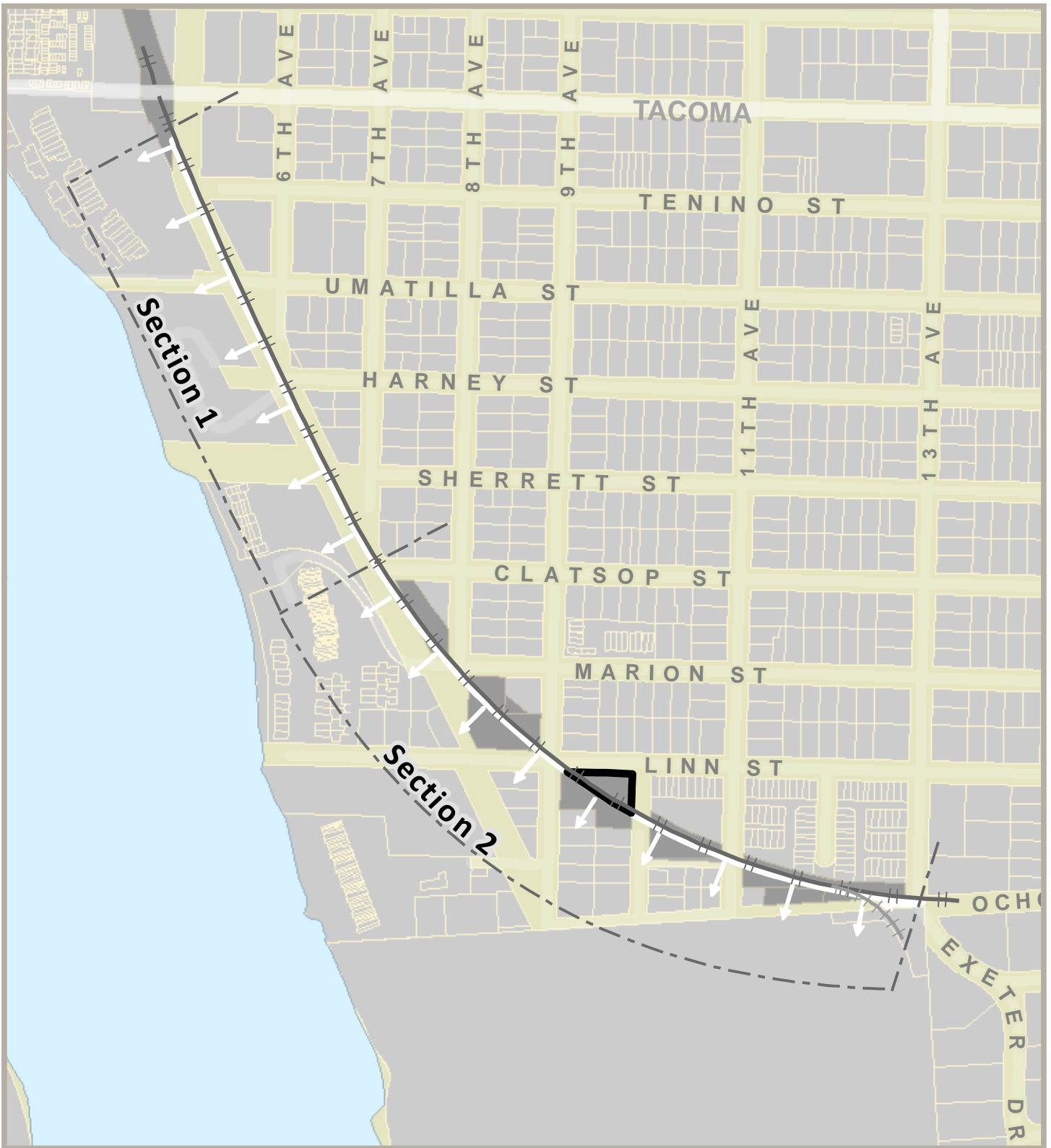
### **4. Budget Impacts**

Metro will fund this transaction, including compensation to OPRR in return for its quitclaim and release of a portion of its railroad use rights and for its construction of safety-related improvements under the terms of the Public Contract for Railroad Improvements, using 2006 Natural Areas Bond Measure regional-share proceeds. The sale of the Linn Street Property will partially offset Metro's compensation to OPRR.

## **RECOMMENDED ACTION**

The Chief Operating Officer recommends passage of Resolution No. 10-4173.





Date of drawing: July, 2010

Metro Property
  Linn Street Property
  Taxlots
  Right of Way

Center of Track (created from 2009 aerial photo)
  Oregon City Spur

"The Property" --Quitclaimed Area  
 (everything SW 9ft from the center of tracks)

