IMPACT STATEMENT

Legislation title: Vacate a portion of NE 112th Ave south of NE Deering Dr subject to certain conditions and reservations (Hearing; Ordinance; VAC-10114)

Contact name: Karl Arruda, PBOT Right-of-Way Acquisition
Contact phone: 503-823-7067
Presenter name: Karl Arruda

Purpose of proposed legislation and background information:

On February 12, 2016, the Bureau of Transportation ("PBOT" or "Petitioner") initiated a request to vacate portions of NE Marx Street, NE 111th Avenue, NE 112th Avenue, and NE Deering Drive (the "Street Area"). On July 26, 2016, City staff held an Early Assistance meeting for the proposed vacation (EA 16-192639).

The purpose of the vacation is to 1) consolidate unused and unneeded right-of-way to the abutting tax lots along NE Marx Street; and 2) consolidate property to allow for increased and improved management by adjacent property owners along NE 112th Avenue and NE Deering Drive. The vacation request is in connection with the NE 112th Avenue & Marx Street Local Improvement District (the "LID").

This street vacation ordinance (this "Ordinance") is one of three ordinances to vacate the right-of-way. This Ordinance is specifically for the vacation of a portion of NE 112th Avenue south of NE Deering Drive (112th Street Area"). Sidewalk and street improvements have been constructed along NE 112th Avenue as part of the LID. No development is currently planned, however, vacating the 112th Street Area would provide the abutting owners more flexibility to develop in the future.

The vacation is in conformance with the City of Portland's Comprehensive Plan and is consistent with recommendations made by the Director of PBOT and Planning and Sustainability Commission, as provided in the Bureau Director's Report, dated November 2, 2017 and on file with the Office of the City Auditor (the "Auditor") and PBOT.

In accordance with ORS 271.100, the Council fixed a time and place for public hearing before the Council; the Auditor published notice thereof, and posted notice in the areas proposed for vacation, and provided notice to property owners in the affected area as required by ORS 271.110 and 130.

In accordance with ORS 271.190, since the 112th Street Area lies within 5,000 feet of the harbor line, approval in writing of the proposed vacation has been secured from the Port of Portland.

Other procedural requirements of ORS 271 and City Code 17.84 have been complied with, and the Council having held a public hearing, finds no objections were made or filed hereto, and it is in the public interest to vacate the 112th Street Area.

Financial and budgetary impacts:
The process for vacating streets is a cost recovery program, typically paid for by the Petitioner, and does not have a net impact on PBOT's budget. Expenses for processing a street vacation request typically range between $8,000 and $20,000+, depending on the complexity. This street vacation project as a whole falls in the upper part of the range and is estimated (with moderate confidence) to be approximately $25,000.

Revenue paid by the Petitioner for this street vacation will cover the actual expenditures incurred by City staff for the processing of this request. The SAP Cost Object is T00347.L46. The revenue and expenses are occurring in FY 16-17 and FY 17-18.

This legislation does not affect staffing levels nor result in a new or modified financial obligation or benefit now or in the future.

If City Council does not approve the ordinance, the 112th Street Area will remain as right-of-way; PBOT will remain responsible for the 112th Street Area; the abutting property owners will not be able to use the land for future developments; and the completion of the LID may be negatively affected.

Community impacts and community involvement:

Pursuant to ORS 271.110, the Auditor published notice of the public hearing in the Daily Journal of Commerce and has posted the notice near the 112th Street Area. The Auditor also sent notices to the surrounding property owners in the 'affected area' as defined in said statute. The possibility of a street vacation was also discussed with property owners as part of the outreach for the LID project.

Comments were also solicited from City Bureaus, government agencies, public utilities and affected neighborhood and business associations in the area. No objections were received. PBOT, the Portland Water Bureau, the Bureau of Environmental Services, the Multnomah County Drainage District, NW Natural, and PGE established certain conditions.

The PSC advertised and then held a public hearing on June 27, 2017. Several people from the public came forward to testify in support or opposition of the larger street vacation project. The PSC ultimately recommended approval of the vacation request.

There do not appear to be any other impacts to the community from vacating this right-of-way. No opposition to this street vacation request is expected. There is no future public involvement anticipated since the ordinance will conclude the street vacation process.

Information regarding the advertising details can be provided by Toni Anderson, City Auditor's Office, 503-823-4022, or toni.anderson@portlandoregon.gov.

Budgetary Impact Worksheet

Does this action change appropriations?

☐ **YES**: Please complete the information below.
☒ **NO**: Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

ADDITIONAL DOCUMENT: BACKGROUND INFORMATION ONLY

PBOT

PORTLAND BUREAU OF TRANSPORTATION

1120 SW Fifth Avenue, Suite 800 Portland, OR 97204 503.823.5185
Fax 503.823.7576 TTY 503.823.6868 www.portlandoregon.gov/transportation

Dan Saltzman Commissioner **Leah Treat** Director

November 2, 2017

FINDINGS & RECOMENDATIONS REPORT FROM THE BUREAU DIRECTOR TO CITY COUNCIL ON THE PROPOSED VACATION OF NE Deering Drive, NE 111th Avenue, NE 112th Avenue, NE Marx Street (R/W #8073)

Background

1. **Proposed Street Vacation Area**. Portions of NE Deering Drive, NE 111th Avenue, NE 112th Avenue, and NE Marx Street:
   a. NE Deering Drive area is approximately 1980 feet long by 30 feet wide.
   b. NE 111th Avenue area is approximately 100 feet long by 60 feet wide.
   c. NE 112th Avenue area is approximately 69.34 feet long on the western end and 44.58 feet long on the eastern end, and 60 feet wide.
   d. NE Marx Street areas consist of multiple segments and are spread out over an area 1860 feet long. The segments are each approximately 6.70 feet wide.

   All together containing approximately 75,928 square feet, as depicted on **Exhibits 2A through 2M.** The areas are currently unimproved (the "Vacation Area").

2. **Petition**. Vacation proceedings have been initiated by the Portland Bureau of Transportation ("PBOT") without a petition or consent of property owners in accordance with ORS 271.130 (Vacation on council's own motion) and notice shall be given as provided by ORS 271.110 (Notice of hearing). Andrew Aebi is the Representative for PBOT.

3. **Affected Property Owners**. The owners of the property abutting the Vacation Area are as follows:
   a. Walsh Holdings, LLC and William E Walsh, Jr. and Margaret Walsh, Trustees
   b. Wolf Family, LLC
   c. SAKS Unlimited, LLC (Tenant: River City Environmental)
   d. Cotton Creek, LLC (Tenant: Payne Construction)
   e. Rick McCutcheon & Kristin McCutcheon
   f. David C. Bakke & Cindy Conley-Bakke
   g. Babubhai N. and Savitaben B. Patel
   h. Edmund Elliott, LLC

The Portland Bureau of Transportation fully complies with Title VI of the Civil Rights Act of 1964, the ADA Title II, and related statutes and regulations in all programs and activities. For accommodations, complaints and information, call (503) 823-5185, City TTY (503) 823-6868, or use Oregon Relay Service: 711.

4. **Purpose**. The street vacation is proposed for the following purposes:
    a. **NE Deering Drive and NE 111th Avenue**: To consolidate unused right-of-way within a "P" Zone, which generally precludes development, per Columbia South Shore Regulations in Title 33.
    b. **NE 112th Avenue:** To consolidate property to allow for increased and improved management by the adjacent property owners;
    c. **NE Marx Street:** To consolidate excess right-of-way.

5. **Other Required Approval.** In accordance with ORS 271.190, since the Vacation Area lies within 5,000 feet of the harbor line, approval in writing of the proposed vacation has been secured from the Port of Portland.

6. **Due Diligence Review**. Comments were solicited from City Bureaus, government agencies, public utilities and affected neighborhood and business associations. A summary of this due diligence effort is attached as **Exhibit 3** and incorporated by reference. Of particular significance were comments by the Bureau of Development Services ("BDS") which requested that certain conditions be satisfied prior to NE 112th Avenue being vacated. Additionally, PBOT, the Bureau of Environmental Services ("BES"), Portland Water Bureau ("PWB"), and the Multnomah County Drainage District ("MCDD") have requested that the street vacation ordinance (the "Ordinance") reserve easements for their existing facilities. BES has also requested easements for trail and conservation purposes.

7. **Planning and Sustainability Commission Review**. The Planning and Sustainability Commission ("PSC") reviewed and approved the proposed street vacation on June 27, 2017 with its Report and Recommendation attached as **Exhibit 4** and incorporated by reference.

8. **Costs.** PBOT's Representative has provided an Internal Order No. to bill the bureau directly to reimburse the department for staff costs incurred for processing the street vacation request.

Bureau of Transportation Recommendation

The Bureau of Transportation hereby finds the proposed street vacation application to be acceptable, and in the event that no substantive objections are made known to City Council at the upcoming public hearing, recommends approval of the street vacation, subject to the conditions and reservations specified below. The Vacation Area is more specifically described as follows:

As described on **Exhibits 1A through 1M** and depicted on **Exhibits 2A through 2M** attached and incorporated by reference.

Containing 75,928 square feet, more or less.

1. Conditions, Easements, Reservations and Releases. The following conditions must be satisfied by the Petitioner prior to the Ordinance being recorded by the City and thereby considered effective:

A. Bureau of Transportation, Street Lighting. PBOT Street Lighting requires an easement for access and maintenance for its street light on a Pacific Power ("PPL") pole in NE Deering Street, just north of NE 112th Avenue, in substantially the same form as shown on **Exhibit 5**.

B. Bureau of Development Services. Because the property at 5445 NE 112th Avenue is losing legal frontage, BDS requires that it be consolidated with 5439 NE 112th Avenue prior to recording of the Ordinance.

C. Bureau of Environmental Services. BES owns and maintains certain improvements within the Vacation Area (NE Deering Drive). As a condition of street vacation approval, BES requires the following easements (to be recorded concurrently with the ordinance):

i. A 15' wide public sewer easement over an existing facility which crosses NE Deering Drive at the intersection of NE 109th Avenue, in substantially the same form as shown on **Exhibit 6**.

ii. An easement for access and maintenance from the end of NE 112th Avenue north to the Columbia Slough, in substantially the same form as shown on **Exhibit 7**.

iii. A recreational trail easement to maintain public access from the end of NE 112th Avenue north to the Columbia Slough, in substantially the same form as shown on **Exhibit 8**.

iv. A conservation easement for the portion of NE Deering Drive which will revert to the adjacent property owners on the south side of Deering, in substantially the same form as shown on **Exhibit 9**.

D. Water Bureau. The Water Bureau ("PWB") owns and maintains certain improvements within the Vacation Area (NE Deering Drive and NE 112th Avenue). As a condition of street vacation approval, the Representative will satisfy the following conditions:

i. Any meters, hydrants, or other water facilities in the Vacation Area must be relocated to the remaining right-of-way at the applicant's expense.

ii. Survey location work should be completed for water service at 10930 and 10944 NE Marx Street. If the meters for those properties are in the Vacation Area, they will need to be relocated to the remaining right-of-way at the applicant's expense.

PWB will complete any necessary work within a reasonable period of time after receiving payment. The pertinent property owners and the owners' successors and assigns, will agree to accept ownership of any abandoned facilities in the Vacation Area and will waive any claims of any nature that may arise in connection with the existence of such facilities or the City's prior use of those facilities.

iii. PWB requires an easement for an existing water line, from the end of NE 112th Avenue north to the Slough, for the full width of NE 112th Avenue, in substantially the same form as **Exhibit 10**.

The easement will be granted to provide for the maintenance, operation, inspection, repair, reconstruction, replacement and enlargement of the existing public water facility and necessary appurtenances. The Water Easement will be recorded concurrently with the Ordinance.

E. Multnomah County Drainage District requires an easement for access and maintenance from the end of NE 112th Avenue north to the Columbia Slough, in substantially the same form as **Exhibit 11**.

F. Planning & Sustainability Commission. PSC required that a Maintenance Agreement for the trail easement, as required in C.iii, shall be included in documentation submitted to City Council.

G. Utilities. In accordance with ORS 271.120 and City of Portland policy, the Ordinance shall not cause or require the removal or abandonment of any sewer, water or gas main, conduit of any kind, wire, pole or thing used, or intended to be used, for any public service, including, but not limited to those identified by **NW Natural** and **Pacific**

Power. The Ordinance will reserve an easement for the owner of any such utility or thing to maintain, continue, repair, reconstruct, renew, replace, rebuild, and/or enlarge any and all such thing; that no building or structure of any kind shall be built or erected within a distance of ten (10) feet from the centerline of any such utility, except with the prior written consent of the City Engineer and the owner of the utility and that any and all contemplated building plans in the Vacation Area shall be submitted for approval to the City Engineer and to the Director of the Bureau of Development Services, to the end that such construction may be so adjusted with reference to all public utilities in said areas as to cause a minimum of danger or inconvenience to the public and to the owner of such utility and to protect and preserve the same as presently constructed or hereinafter reconstructed, renewed, replaced and/or enlarged. Removal or relocation of existing utilities and release of easements in the Vacation Area will require the necessary conveyance documents and possible written agreements between the Representative and owner(s) of the utilities.

H. City Release. Notwithstanding G. and except for A., C. and D., the Ordinance will serve as a full release of City interests in the Vacation Area and will provide City Bureaus with the authority necessary to take all other legal actions as may be reasonably necessary (including the issuance of quitclaim deeds acknowledging the release of any interests) to achieve this intent.

I. Costs. In the event that additional processing requirements exceed current projections, PBOT's Representative is aware of possible additional processing costs to the City prior to the Ordinance being recorded.

2. Repeal. In the event PBOT's Representative fails to fully comply with the above conditions within one year of Council adopting the Ordinance, City Council may repeal the Ordinance at its sole discretion.

3. Effective Date. The street vacation will not be effective until a certified copy of the Ordinance has been recorded by the City in Multnomah County Deed Records. Prerequisites to recording the Ordinance are that 30 days have passed after final Council passage of the Ordinance, that all conditions of the vacating Ordinance have been met, and that all vacation costs have been paid.

11/14/17

Bureau Director or designee

TO THE COUNCIL:
The Commissioner-in-Charge concurs with the recommendation of the Bureau Director and the Planning and Sustainability Commission and;

RECOMMENDS:
That the City Council accepts the Bureau Director and Planning and Sustainability Commission Reports, which recommend that the proposed street area be vacated subject to conditions and reservations provided herein.

Respectfully submitted,

Commissioner Dan Saltzman

Attachments:
Exhibit 1, Proposed Descriptions
Exhibit 2, Proposed Maps
Exhibit 3, Summary of Comments
Exhibit 4, Planning & Sustainability Commission Recommendation
Exhibit 5, PBOT Easement
Exhibit 6, BES Sewer Easement
Exhibit 7, BES Access Easement
Exhibit 8, BES Trail Easement
Exhibit 9, BES Conservation Easement
Exhibit 10, Water Bureau Easement
Exhibit 11, MCDD Easement

R/W # 8073-1
N.E. MARX STREET
1N2E22BA 2200
STREET VACATION

EXHIBIT 1A

A Tract of Land being a portion of N.E. Marx Street, 80.00 feet in width, that portion adjacent to Block 100 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the Northwest One-Quarter of Section 22, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Southwest corner of Lot 5 of said Block 100, also being the Southwest corner of that tract of land conveyed by Deed to Walsh Holdings, LLC, Recorded in Document No. 99-122502, Multnomah County Deed Records;

Thence, along The North Right-of-Way line of N.E. Marx Street, South 74°34'22" East, a distance of 80.69 feet, to the Southeast corner of said Walsh Holdings tract;

Thence, leaving said Right-of-Way line, South 01°31'37" West, a distance of 6.70 feet, to a point that is 6.50 feet, when measured at right angles from said Right-of-Way line;

Thence, parallel with said Right-of-Way line, North 74°34'22" West, a distance of 56.67 feet;

Thence, North 68°10'22" West, a distance of 20.92 feet;

Thence, North 33°51'55" West, a distance of 6.39 feet to the POINT OF BEGINNING.

Containing 484 square feet.

Project 40347
August 23, 2016

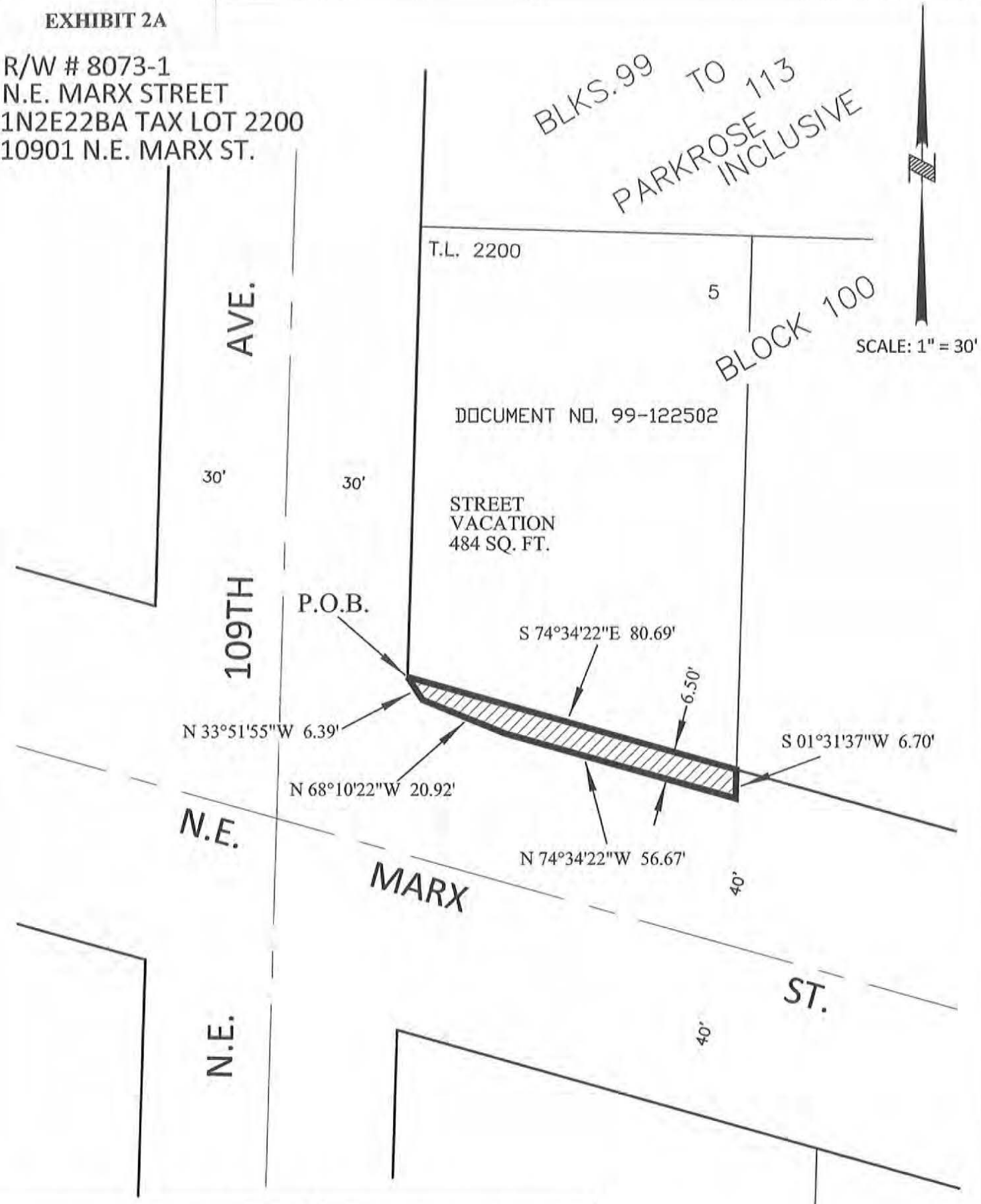
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Thomas P. Beinhauer

OREGON
JULY 17, 1994
THOMAS P. BEINHAUER
2654
EXPIRES 12-31-2017

EXHIBIT 2A

R/W # 8073-1
N.E. MARX STREET
1N2E22BA TAX LOT 2200
10901 N.E. MARX ST.



PBOT
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,
1120 SW 5TH AVE., SUITE 800
PORTLAND, OREGON 97204
PHONE 503-823-7150

JOB #40347
AUGUST 23, 2016

R/W # 8073-2
N.E. MARX STREET
1N2E22BA 1500
STREET VACATION

EXHIBIT 1B

A Tract of Land being a portion of N.E. Marx Street, 80.00 feet in width, that portion adjacent to Block 100 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the Northwest One-Quarter of Section 22, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Southwest corner of Parcel 6 of that tract of land conveyed by Deed to Walsh Holding, LLC, Recorded in Document No. 2011-143488, Multnomah County Deed Records;

Thence, along The North Right-of-Way line of N.E. Marx Street, South 74°34'22" East, a distance of 182.34 feet, to the Southeast corner of Parcel 5 of said Walsh Holdings tract;

Thence, leaving said Right-of-Way line, South 01°31'37" West, a distance of 6.70 feet, to a point that is 6.50 feet, when measured at right angles from said Right-of-Way line;

Thence, parallel with said Right-of-Way line, North 74°34'22" West, a distance of 182.34 feet;

Thence, North 01°31'37" East, a distance of 6.70 feet to the POINT OF BEGINNING.

Containing 1,185 square feet.

Project 40347
August 23, 2016

REGISTERED
PROFESSIONAL
LAND SURVEYOR

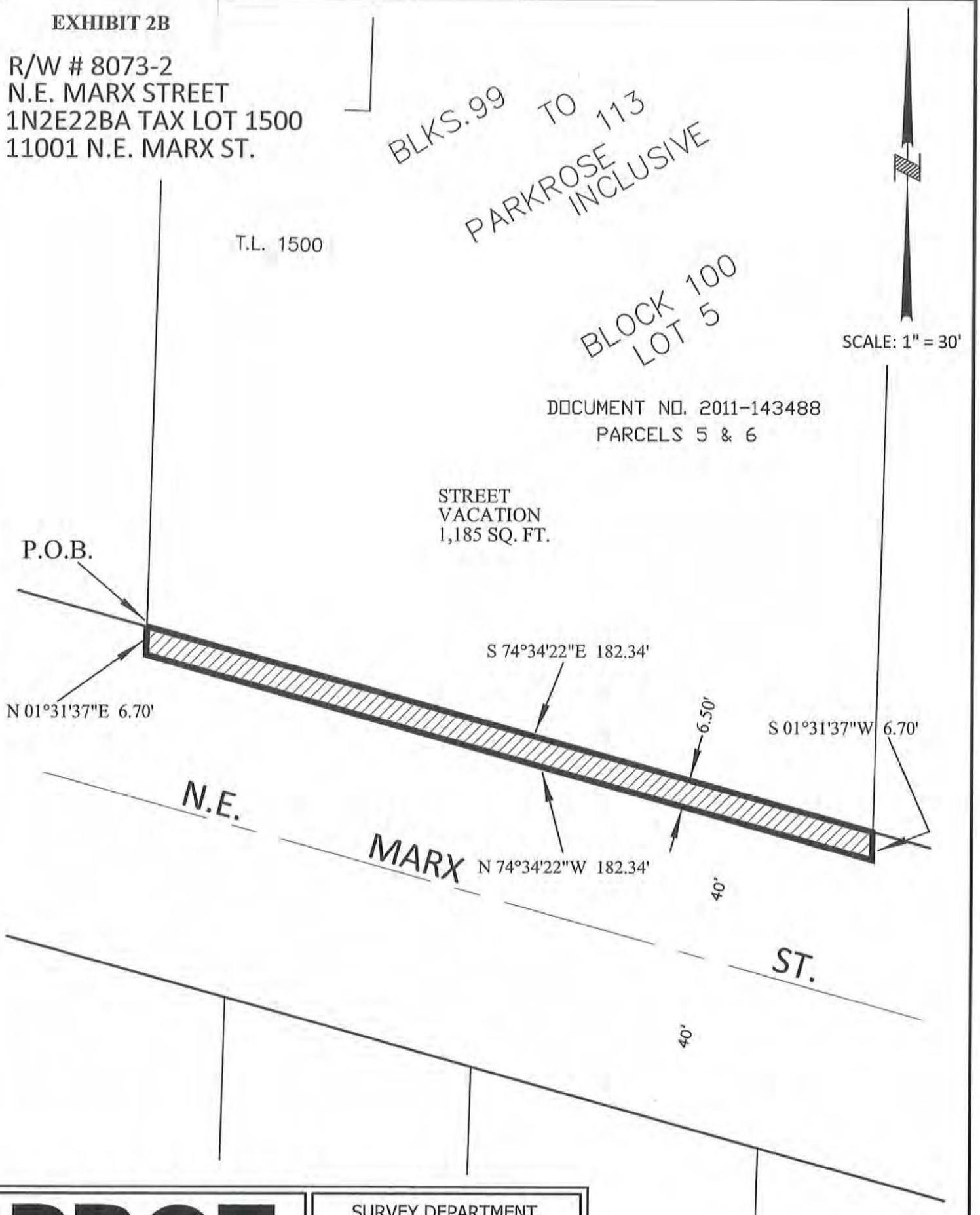
Thomas P. Beinhauer

OREGON
JULY 17, 1994
THOMAS P. BEINHAUER
2654

EXPIRES 12-31-2017

EXHIBIT 2B

R/W # 8073-2
N.E. MARX STREET
1N2E22BA TAX LOT 1500
11001 N.E. MARX ST.



PBOT
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,
1120 SW 5TH AVE., SUITE 800
PORTLAND, OREGON 97204
PHONE 503-823-7150

JOB #40347
AUGUST 23, 2016

R/W # 8073-3
N.E. MARX STREET
1N2E22BA 1400
STREET VACATION

EXHIBIT 1C

A Tract of Land being a portion of N.E. Marx Street, 80.00 feet in width, that portion adjacent to Block 100 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the Northwest One-Quarter of Section 22, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Southwest corner of Lot 4 of said Block 100, also being the Southwest corner of Parcel I of that tract of land conveyed by Deed to Walsh Holding, LLC, Recorded in Document No. 98-237735, Multnomah County Deed Records;

Thence, along The North Right-of-Way line of N.E. Marx Street, South 74°34'22" East, a distance of 132.15 feet, to the Southeast corner of said Walsh Holdings tract;

Thence, leaving said Right-of-Way line, South 01°31'37" West, a distance of 6.70 feet, to a point that is 6.50 feet, when measured at right angles from said Right-of-Way line;

Thence, parallel with said Right-of-Way line, North 74°34'22" West, a distance of 132.15 feet;

Thence, North 01°31'37" East, a distance of 6.70 feet to the POINT OF BEGINNING.

Containing 859 square feet.

Project 40347
August 23, 2016

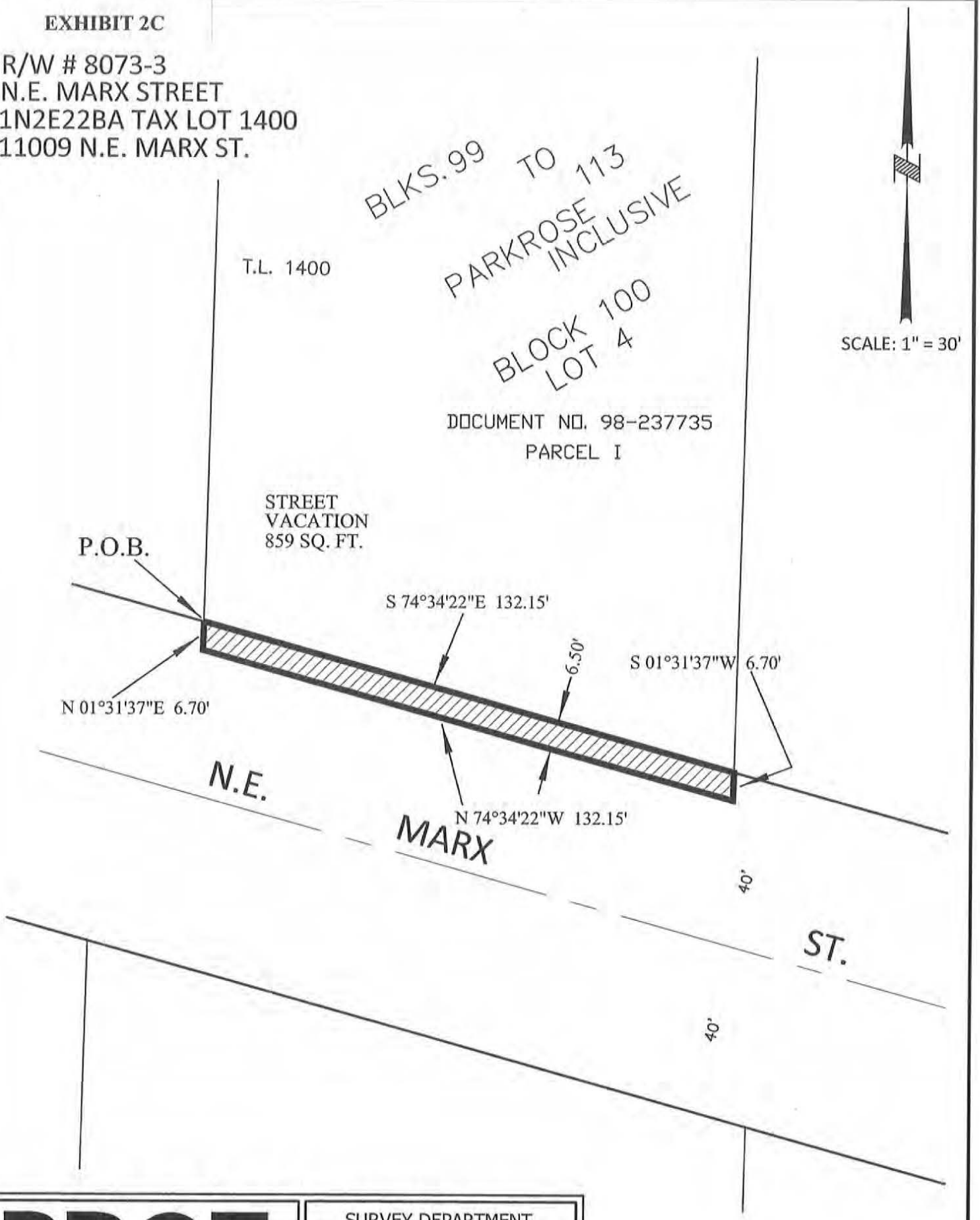
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Thomas P. Beinhauer

OREGON
JULY 17, 1994
THOMAS P. BEINHAUER
2654
EXPIRES 12-31-2017

EXHIBIT 2C

R/W # 8073-3
N.E. MARX STREET
1N2E22BA TAX LOT 1400
11009 N.E. MARX ST.



PBOT
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,
1120 SW 5TH AVE., SUITE 800
PORTLAND, OREGON 97204
PHONE 503-823-7150

JOB #40347
AUGUST 23, 2016

R/W # 8073-4
N.E. MARX STREET
1N2E22BA 1300
STREET VACATION

EXHIBIT 1D

A Tract of Land being a portion of N.E. Marx Street, 80.00 feet in width, that portion adjacent to Block 100 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the Northwest One-Quarter of Section 22, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Southwest corner of Parcel II of that tract of land conveyed by Deed to Walsh Holding, LLC, Recorded in Document No. 98-237735, Multnomah County Deed Records;

Thence, along The North Right-of-Way line of N.E. Marx Street, South 74°34'22" East, a distance of 130.79 feet, to the Southeast corner of said Walsh Holdings tract;

Thence, leaving said Right-of-Way line, South 01°31'37" West, a distance of 6.70 feet, to a point that is 6.50 feet, when measured at right angles from said Right-of-Way line;

Thence, parallel with said Right-of-Way line, North 74°34'22" West, a distance of 130.79 feet;

Thence, North 01°31'37" East, a distance of 6.70 feet to the POINT OF BEGINNING.

Containing 850 square feet.

Project 40347
August 23, 2016

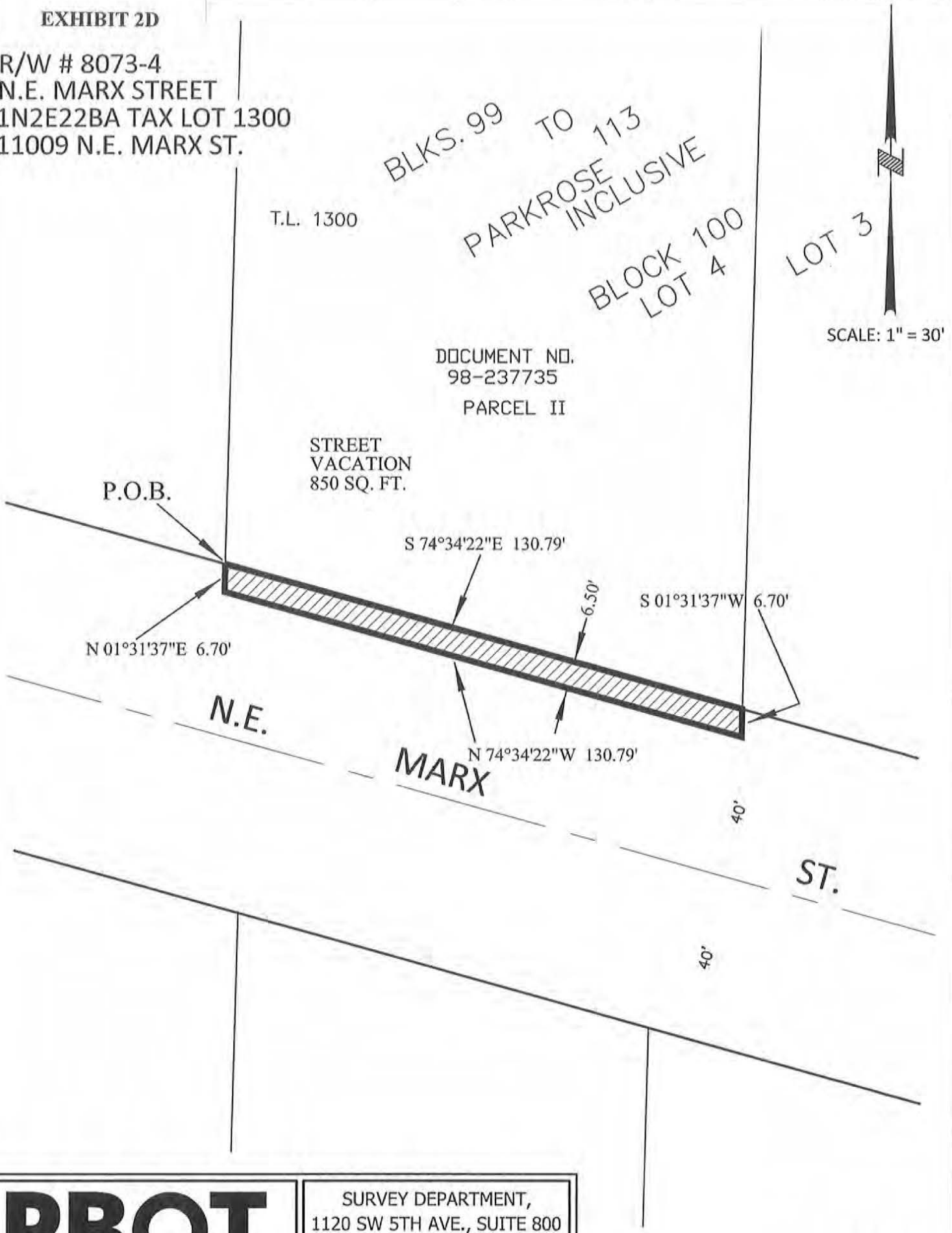
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Thomas P. Beinhauer

OREGON
JULY 17, 1994
THOMAS P. BEINHAUER
2654
EXPIRES 12-31-2017

EXHIBIT 2D

R/W # 8073-4
N.E. MARX STREET
1N2E22BA TAX LOT 1300
11009 N.E. MARX ST.



PBOT
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,
1120 SW 5TH AVE., SUITE 800
PORTLAND, OREGON 97204
PHONE 503-823-7150

JOB #40347
AUGUST 23, 2016

R/W # 8073-5
N.E. MARX STREET
1N2E22BA 1200
STREET VACATION

EXHIBIT 1E

A Tract of Land being a portion of N.E. Marx Street, 80.00 feet in width, that portion adjacent to Block 100 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the Northwest One-Quarter of Section 22, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Southwest corner Parcel II of that tract of land conveyed by Deed to Walsh Holding, LLC, Recorded in Document No. 2004-084201, Multnomah County Deed Records;

Thence, along The North Right-of-Way line of N.E. Marx Street, South 74°34'22" East, a distance of 133.98 feet, to the Southeast corner of said Parcel II of said Walsh Holdings tract;

Thence, leaving said Right-of-Way line, South 01°31'37" West, a distance of 6.70 feet, to a point that is 6.50 feet, when measured at right angles from said Right-of-Way line;

Thence, parallel with said Right-of-Way line, North 74°34'22" West, a distance of 133.98 feet;

Thence, North 01°31'37" East, a distance of 6.70 feet to the POINT OF BEGINNING.

Containing 871 square feet.

Project 40347
August 23, 2016

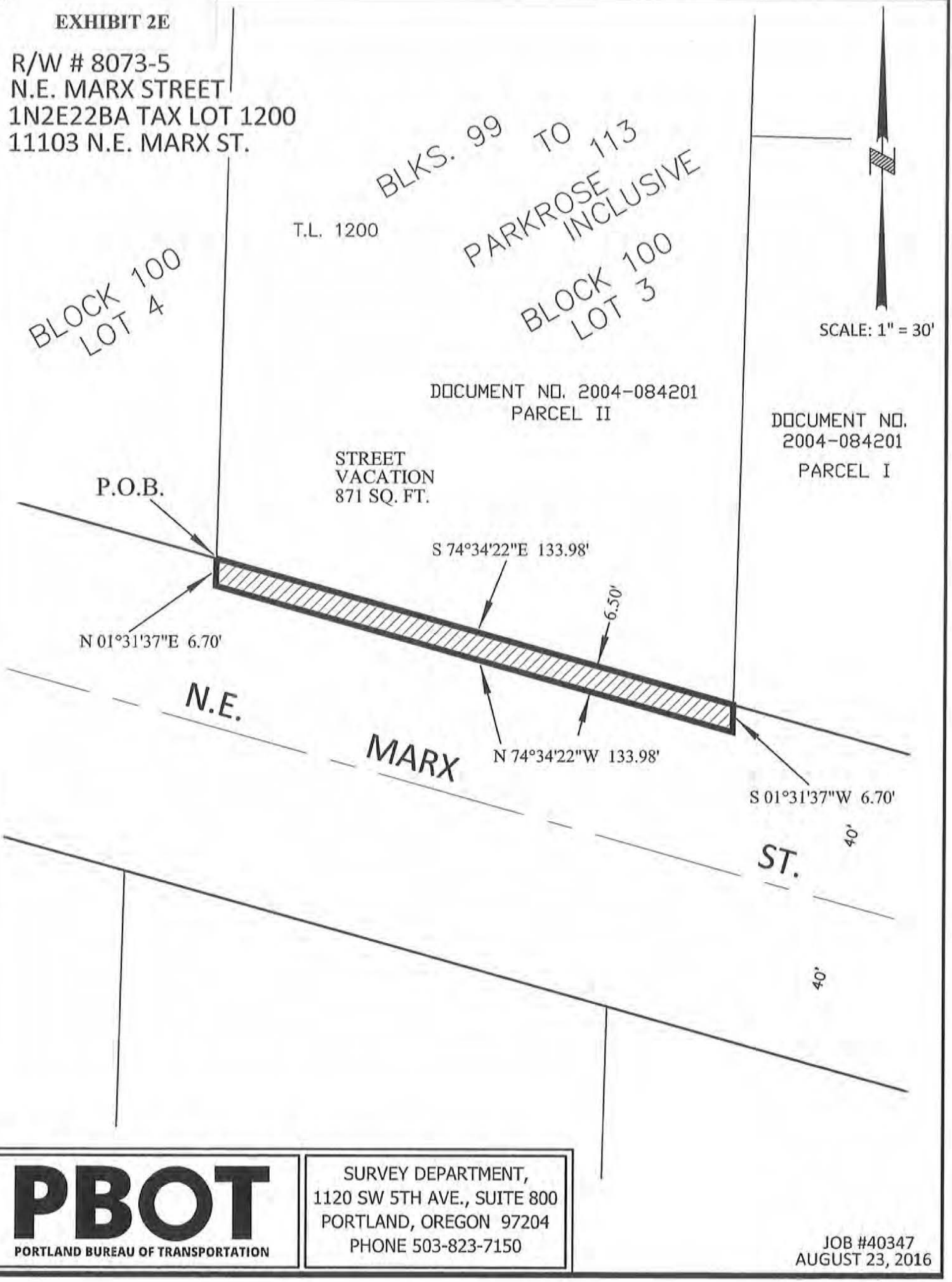
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Thomas P. Beinhauer

OREGON
JULY 17, 1994
THOMAS P. BEINHAUER
2654
EXPIRES 12-31-2017

EXHIBIT 2E

R/W # 8073-5
N.E. MARX STREET
1N2E22BA TAX LOT 1200
11103 N.E. MARX ST.



PBOT
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,
1120 SW 5TH AVE., SUITE 800
PORTLAND, OREGON 97204
PHONE 503-823-7150

JOB #40347
AUGUST 23, 2016

R/W # 8073-6
N.E. MARX STREET
1N2E22BA 1100
STREET VACATION

EXHIBIT 1F

A Tract of Land being a portion of N.E. Marx Street, 80.00 feet in width, that portion adjacent to Block 100 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the Northwest One-Quarter of Section 22, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Southwest corner Parcel I of that tract of land conveyed by Deed to Walsh Holding, LLC, Recorded in Document No. 2004-084201, Multnomah County Deed Records;

Thence, along The North Right-of-Way line of N.E. Marx Street, South 74°34'22" East, a distance of 68.00 feet, to the Southeast corner of said Parcel I of said Walsh Holdings tract;

Thence, leaving said Right-of-Way line, South 01°31'37" West, a distance of 6.70 feet, to a point that is 6.50 feet, when measured at right angles from said Right-of-Way line;

Thence, parallel with said Right-of-Way line, North 74°34'22" West, a distance of 68.00 feet;

Thence, North 01°31'37" East, a distance of 6.70 feet to the POINT OF BEGINNING.

Containing 442 square feet.

Project 40347
August 23, 2016

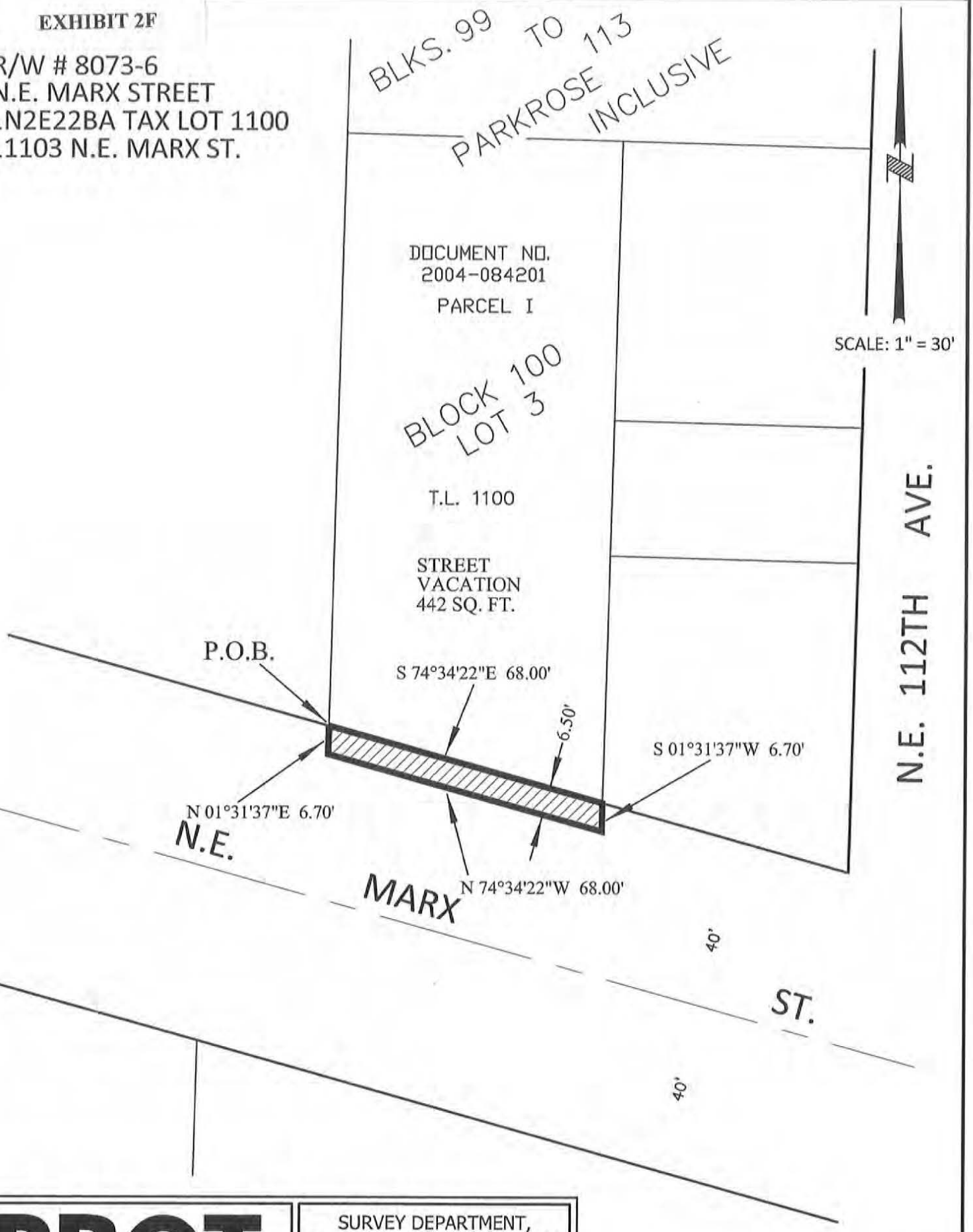
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Thomas P. Beinhauer

OREGON
JULY 17, 1994
THOMAS P. BEINHAUER
2654
EXPIRES 12-31-2017

EXHIBIT 2F

R/W # 8073-6
N.E. MARX STREET
1N2E22BA TAX LOT 1100
11103 N.E. MARX ST.



PBOT
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,
1120 SW 5TH AVE., SUITE 800
PORTLAND, OREGON 97204
PHONE 503-823-7150

JOB #40347
AUGUST 23, 2016

R/W # 8073-7
N.E. MARX STREET
1N2E22BA 1000
STREET VACATION

EXHIBIT 1G

A Tract of Land being a portion of N.E. Marx Street, 80.00 feet in width, that portion adjacent to Block 100 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the Northwest One-Quarter of Section 22, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Southwest corner of that tract of land conveyed by Deed to Babubhai N. Patel and Savitaben B. Patel, Recorded in Document No. 2002-019078, Multnomah County Deed Records;

Thence, along The North Right-of-Way line of N.E. Marx Street, South 74°34'22" East, a distance of 61.12 feet, to the Southeast corner of said Patel Tract, also being the Southeast corner of Said Block 100;

Thence, leaving said Right-of-Way line, South 77°52'54" West, a distance of 14.06 feet, to a point that is 6.50 feet, when measured at right angles from said Right-of-Way line;

Thence, parallel with said Right-of-Way line, North 74°34'22" West, a distance of 47.05 feet;

Thence, North 01°31'37" East, a distance of 6.70 feet to the POINT OF BEGINNING.

Containing 352 square feet.

Project 40347
August 23, 2016

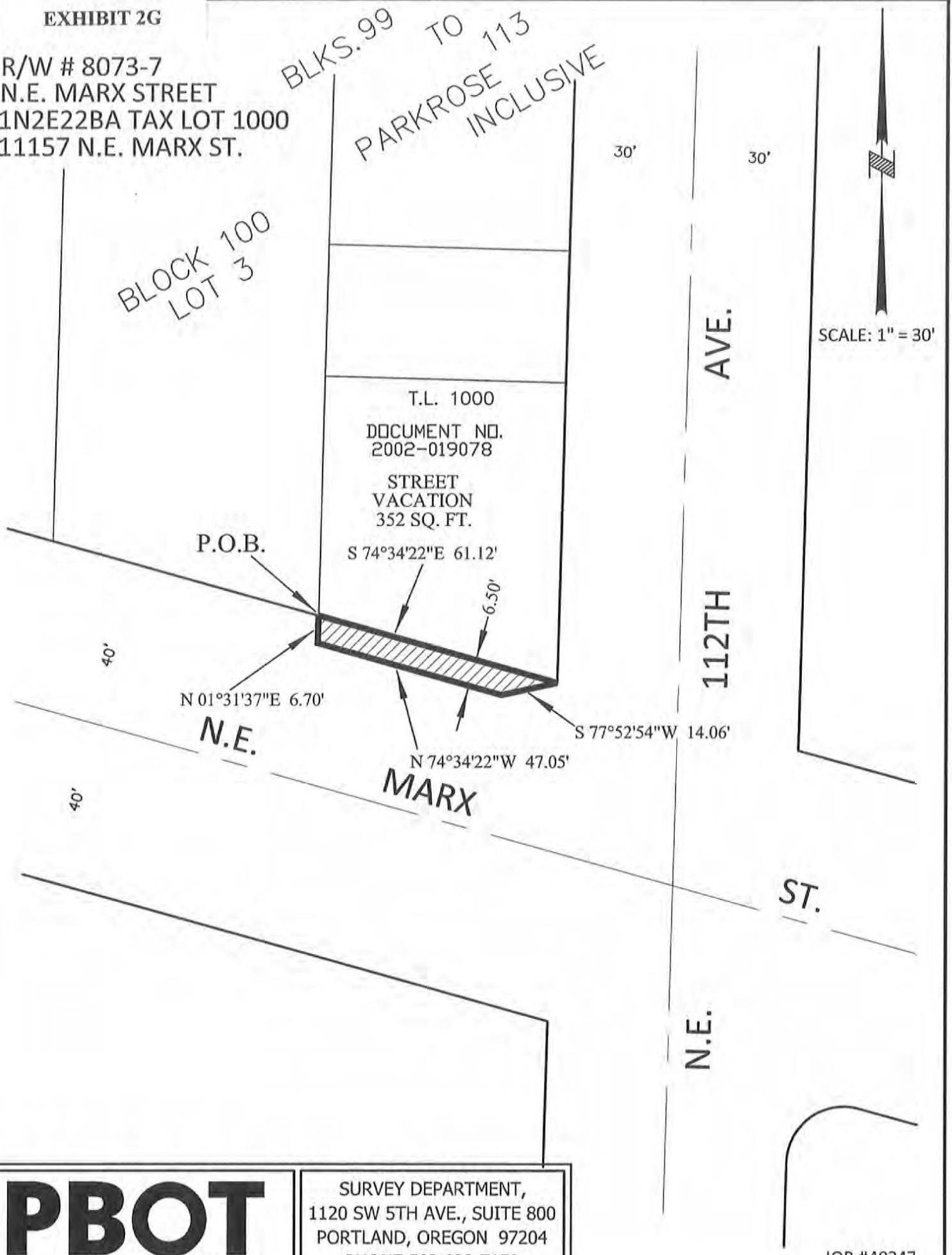
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Thomas P. Beinhauer

OREGON
JULY 17, 1994
THOMAS P. BEINHAUER
2654
EXPIRES 12-31-2017

EXHIBIT 2G

R/W # 8073-7
N.E. MARX STREET
1N2E22BA TAX LOT 1000
11157 N.E. MARX ST.



PBOT
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,
1120 SW 5TH AVE., SUITE 800
PORTLAND, OREGON 97204
PHONE 503-823-7150

JOB #40347
AUGUST 23, 2016

R/W # 8073-8
N.E. MARX STREET
1N2E22BA 4300
STREET VACATION

EXHIBIT 1H

A Tract of Land being a portion of N.E. Marx Street, 80.00 feet in width, that portion adjacent to Block 96 of the duly recorded Map of Parkrose, Blocks 88 to 98, Inclusive, Multnomah County Plat Records, situated in the Northwest One-Quarter of Section 22, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Northeast corner of said Block 96, also being the Northeast corner of Parcel III of that tract of land conveyed by Deed to Brandon E. Anderson, Recorded in Document No. 2016-061520, Multnomah County Deed Records;

Thence, along the South Right-of-Way line of N.E. Marx Street, North 74°34'22"West, a distance of 133.93 feet, to the Northwest corner of Parcel II of said Anderson Tract, also being the Northwest corner of Lot "A" of Said Block 96;

Thence, leaving said Right-of-Way line, North 01°32'06" East, a distance of 6.70 feet, to a point that is 6.50 feet, when measured at right angles from said Right-of-Way line;

Thence, parallel with said Right-of-Way line, South 74°34'22" East, a distance of 133.93 feet;

Thence, South 01°32'06" West, a distance of 6.70 feet to the POINT OF BEGINNING.

Containing 871 square feet.

Project 40347
August 23, 2016

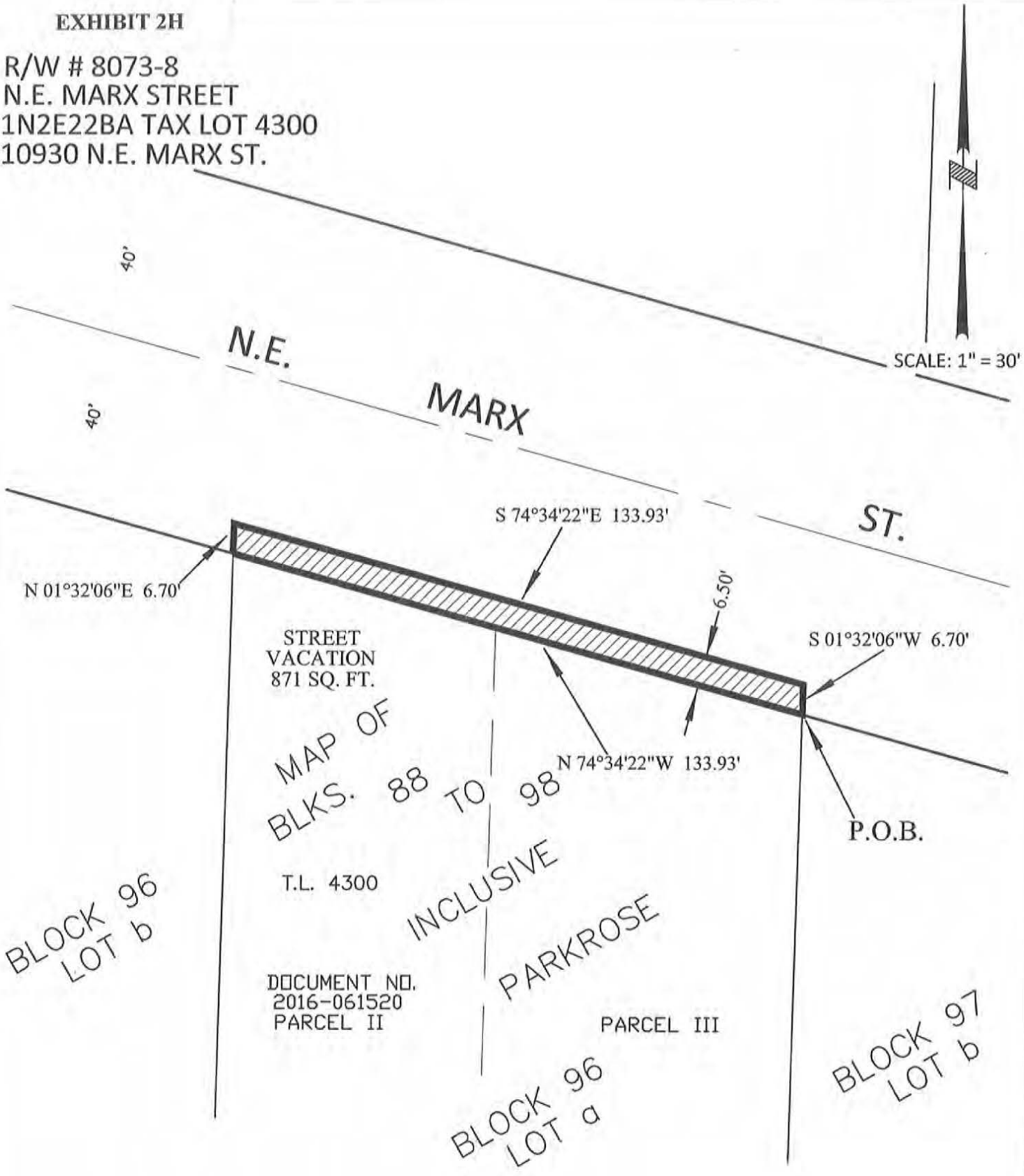
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Thomas P. Beinhauer

OREGON
JULY 17, 1994
THOMAS P. BEINHAUER
2654
EXPIRES 12-31-2017

EXHIBIT 2H

R/W # 8073-8
N.E. MARX STREET
1N2E22BA TAX LOT 4300
10930 N.E. MARX ST.



PBOT
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,
1120 SW 5TH AVE., SUITE 800
PORTLAND, OREGON 97204
PHONE 503-823-7150

JOB #40347
AUGUST 23, 2016

R/W # 8073-9
N.E. MARX STREET
1N2E22BA 4700
STREET VACATION

EXHIBIT 11

A Tract of Land being a portion of N.E. Marx Street, 80.00 feet in width, that portion adjacent to Block 97 of the duly recorded Map of Parkrose, Blocks 88 to 98, Inclusive, Multnomah County Plat Records, situated in the Northwest One-Quarter of Section 22, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Northeast corner of said Block 97, also being the Northeast corner that tract of land conveyed by Deed to David C. Bakke and Cindy Conley-Bakke, Recorded in Document No. 99-017128, Multnomah County Deed Records;

Thence, along The South Right-of-Way line of N.E. Marx Street, North 74°34'22"West, a distance of 103.91 feet;

Thence, leaving said Right-of-Way line, North 01°32'06" East, a distance of 6.70 feet, to a point that is 6.50 feet, when measured at right angles from said Right-of-Way line;

Thence, parallel with said Right-of-Way line, South 74°34'22" East, a distance of 103.91 feet;

Thence, South 01°32'06" West, a distance of 6.70 feet to the POINT OF BEGINNING.

Containing 676 square feet.

Project 40347
August 23, 2016

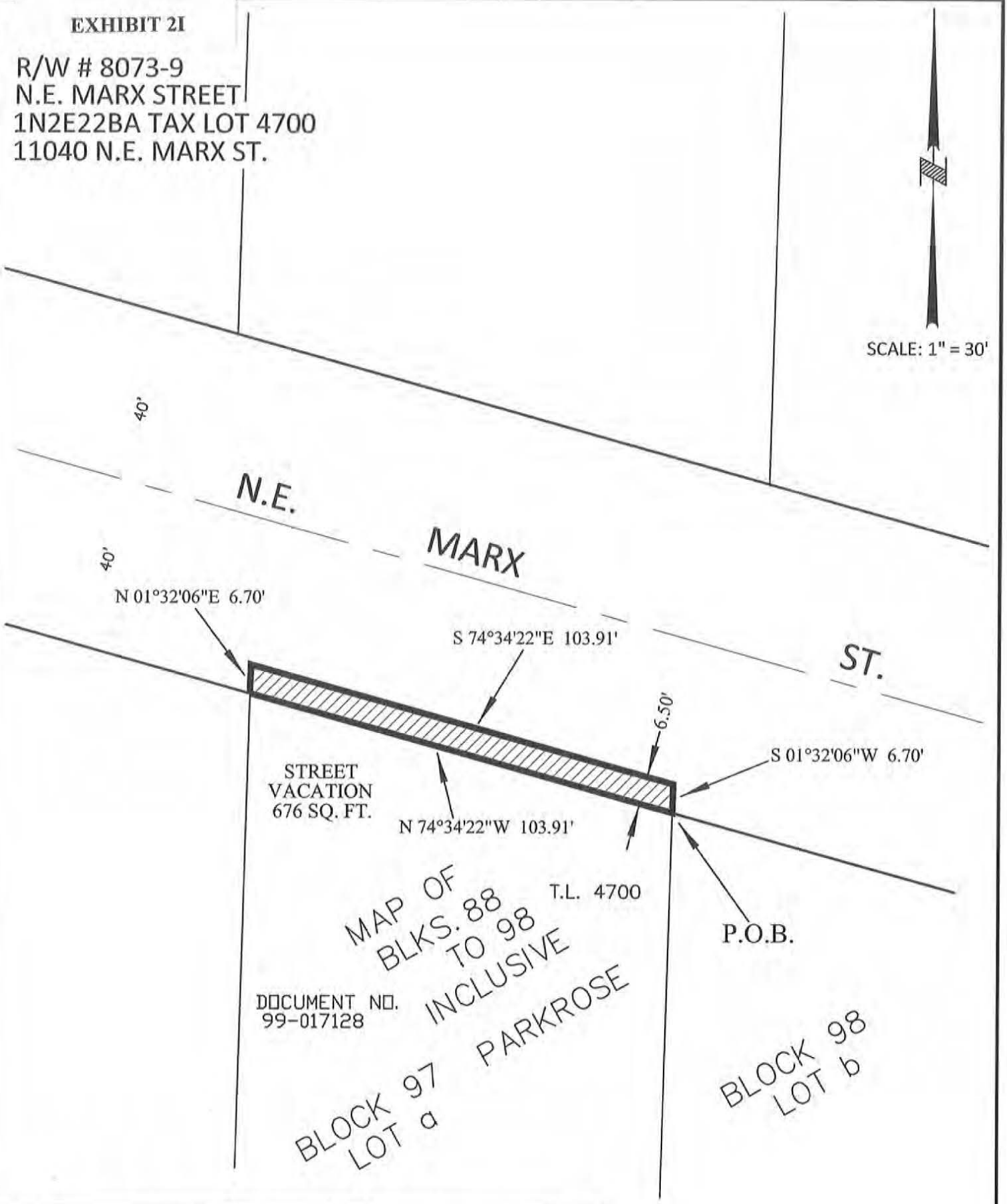
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Thomas P. Beinhauer

OREGON
JULY 17, 1994
THOMAS P. BEINHAUER
2654
EXPIRES 12-31-2017

EXHIBIT 2I

R/W # 8073-9
N.E. MARX STREET
1N2E22BA TAX LOT 4700
11040 N.E. MARX ST.



PBOT
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,
1120 SW 5TH AVE., SUITE 800
PORTLAND, OREGON 97204
PHONE 503-823-7150

JOB #40347
AUGUST 23, 2016

R/W # 8073-10
N.E. MARX STREET
1N2E22BA 4800
STREET VACATION

EXHIBIT 1J

A Tract of Land being a portion of N.E. Marx Street, 80.00 feet in width, that portion adjacent to Block 98 of the duly recorded Map of Parkrose, Blocks 88 to 98, Inclusive, Multnomah County Plat Records, situated in the Northwest One-Quarter of Section 22, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Northeast corner that tract of land conveyed by Deed to Rick McCutcheon and Kristin McCutcheon, Recorded in Document No. 2010-135778, Multnomah County Deed Records;

Thence, along The South Right-of-Way line of N.E. Marx Street, North 74°34'22"West, a distance of 125.00 feet;

Thence, leaving said Right-of-Way line, North 01°32'06" East, a distance of 6.70 feet, to a point that is 6.50 feet, when measured at right angles from said Right-of-Way line;

Thence, parallel with said Right-of-Way line, South 74°34'22" East, a distance of 125.00 feet;

Thence, South 01°32'06" West, a distance of 6.70 feet to the POINT OF BEGINNING.

Containing 814 square feet.

Project 40347
August 23, 2016

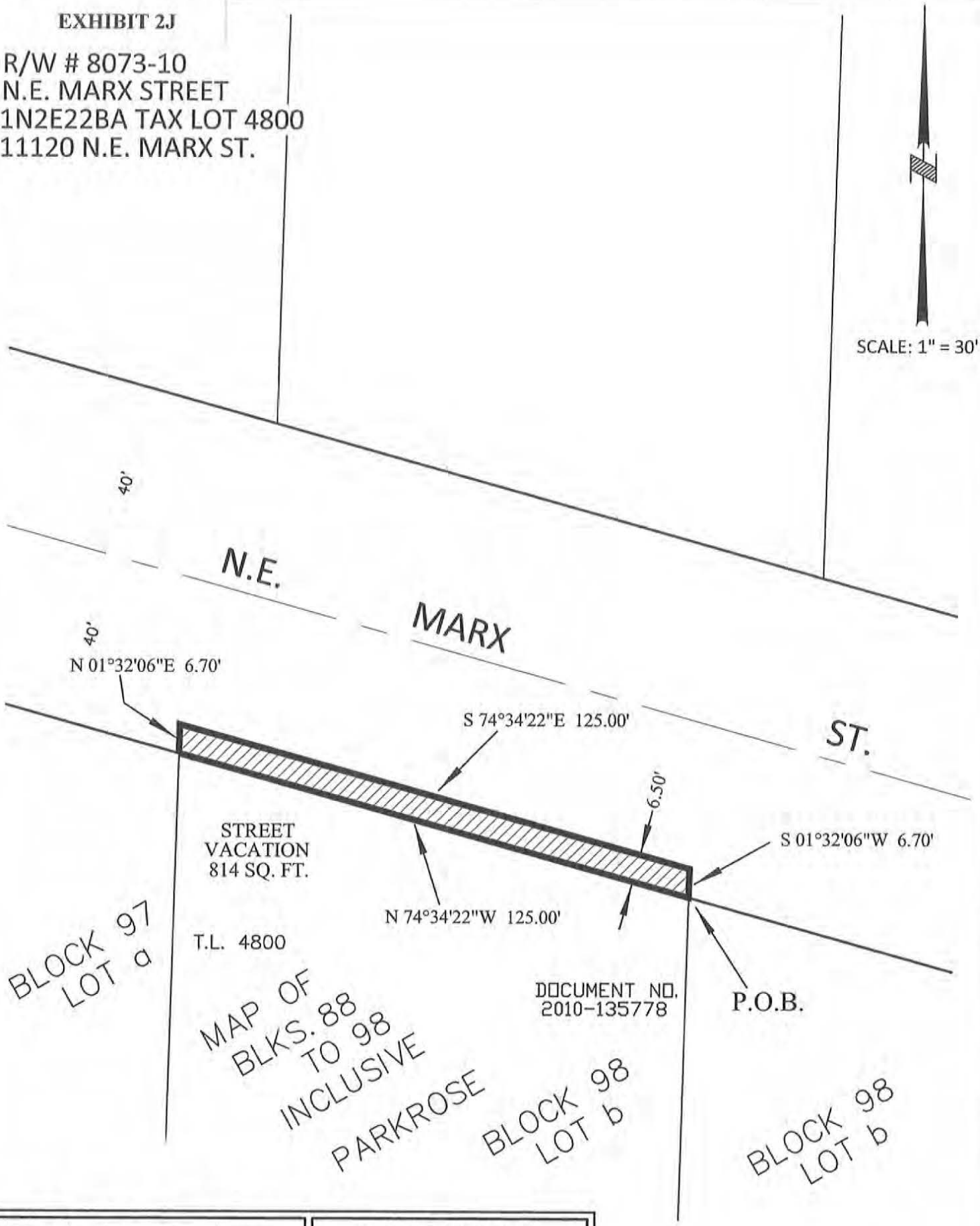
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Thomas P. Beinhauer

OREGON
JULY 17, 1994
THOMAS P. BEINHAUER
2654
EXPIRES 12-31-2017

EXHIBIT 2J

R/W # 8073-10
N.E. MARX STREET
1N2E22BA TAX LOT 4800
11120 N.E. MARX ST.



PBOT
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,
1120 SW 5TH AVE., SUITE 800
PORTLAND, OREGON 97204
PHONE 503-823-7150

JOB #40347
AUGUST 23, 2016

R/W # 8073-11
N.E. MARX STREET
1N2E15CD 3000
STREET VACATION

EXHIBIT 1K

A Tract of Land being a portion of N.E. 112TH Avenue, 60.00 feet in width, that portion adjacent to Block 100 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the Southwest One-Quarter of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Northeast corner Parcel II of that tract of land conveyed by Deed to SAKS Unlimited, LLC, recorded in Document No. 2013-074372, Multnomah County Deed Records, also being the Northeast corner of Lot 1 of said Block 100;

Thence, South 56°58'59" East, a distance of 35.19 feet, to the centerline of said N.E. 112th Avenue;

Thence, along said centerline, South 01°30'09" West, a distance of 56.96 feet;

Thence, North 77°09'51" West, a distance of 30.60 feet, to the West Right of Way line of said N.E. 112th Avenue, also being the East line of said Block 100;

Thence, along said East line, North 01°30'09" East, a distance of 69.34 feet to the POINT OF BEGINNING.

Containing 1,895 square feet.

Project 40347
September 14, 2016

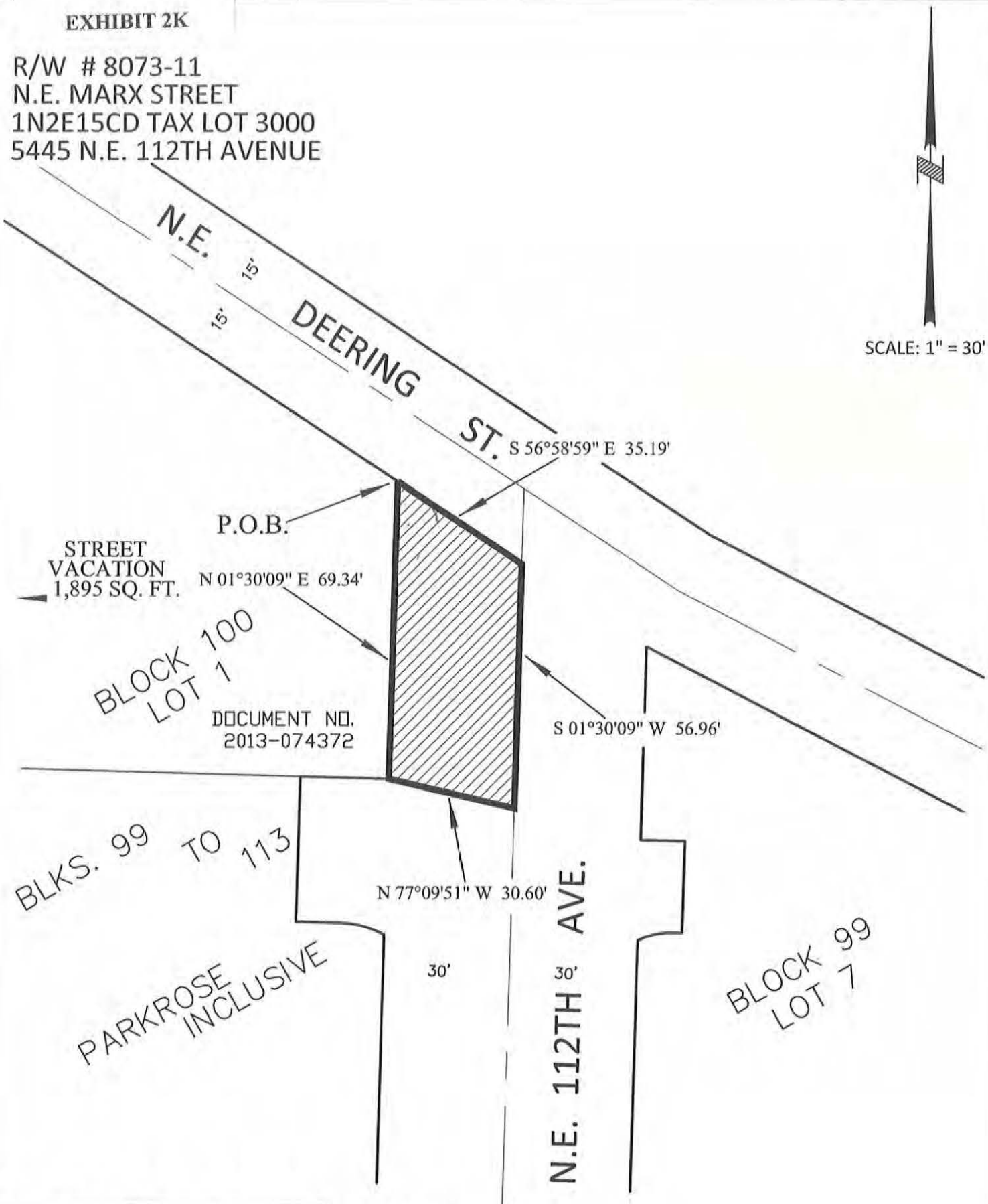
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Thomas P. Beinhauer

OREGON
JULY 17, 1994
THOMAS P. BEINHAUER
2654
EXPIRES 12-31-2017

EXHIBIT 2K

R/W # 8073-11
N.E. MARX STREET
1N2E15CD TAX LOT 3000
5445 N.E. 112TH AVENUE



PBOT
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,
1120 SW 5TH AVE., SUITE 800
PORTLAND, OREGON 97204
PHONE 503-823-7150

JOB #40347
SEPTEMBER 14, 2016

R/W # 8073-12
N.E. MARX STREET
1N2E22AB 1100
STREET VACATION

EXHIBIT 1L

A Tract of Land being a portion of N.E. 112TH Avenue, 60.00 feet in width, that portion adjacent to Block 99 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the South One-Half of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Northwest corner of that tract of land conveyed by Deed to Cotton Creek, LLC, recorded in Document No. 2006-234372, Multnomah County Deed Records, also being the Northwest corner of Lot 7 of said Block 99;

Thence, along the East Right of Way line of said N.E. 112th Avenue, also being the West line of said Block 99, South 01°30'09" West, a distance of 44.58 feet;

Thence, North 77°09'51" West, a distance of 30.60 feet, to the centerline of said N.E. 112th Avenue;

Thence, along said centerline, North 01°30'09" East, a distance of 56.96 feet;

Thence, South 56°58'59" East, a distance of 35.19 feet to the POINT OF BEGINNING.

Containing 1,523 square feet.

Project 40347
September 14, 2016

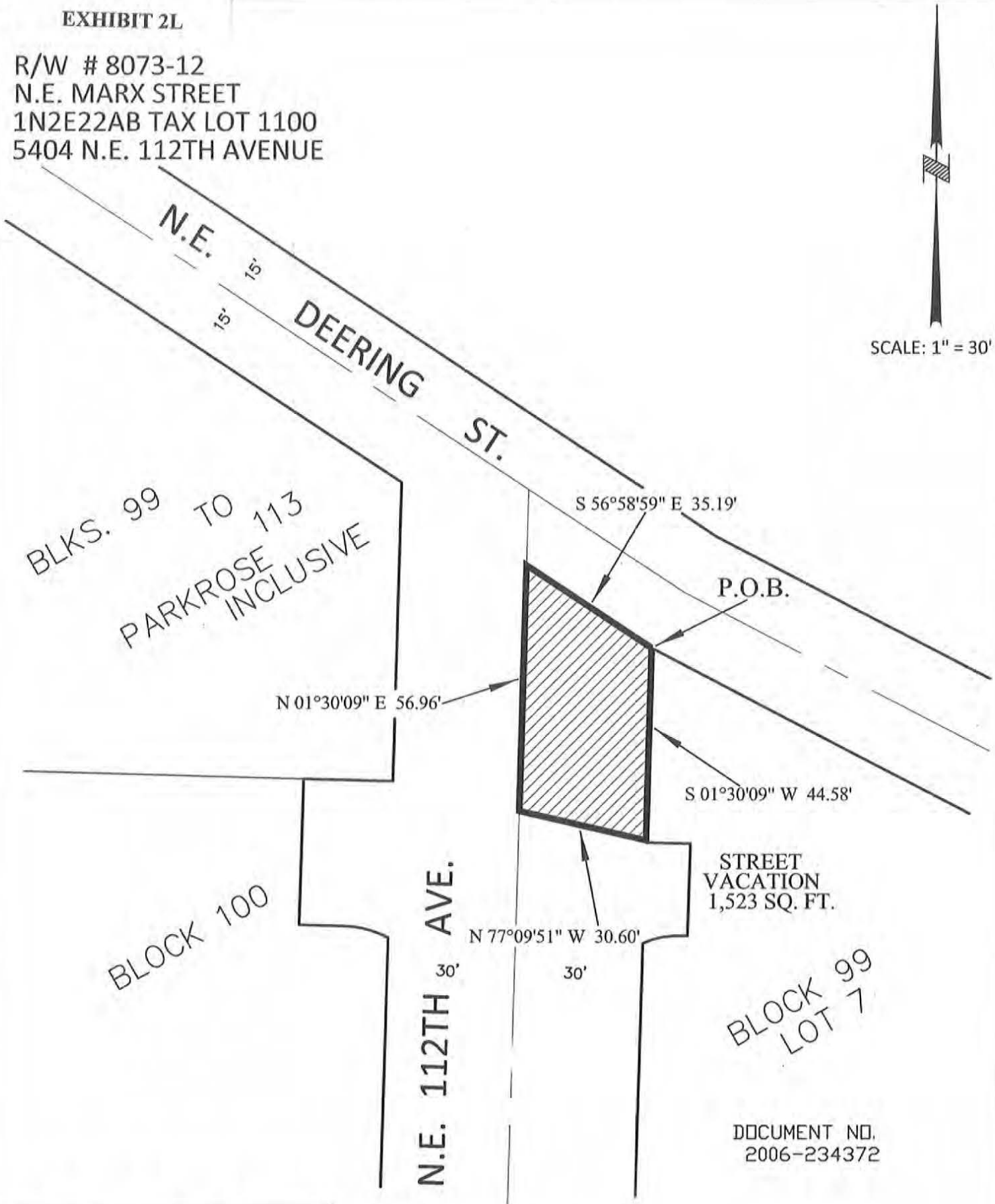
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Thomas P. Beinhauer

OREGON
JULY 17, 1994
THOMAS P. BEINHAUER
2654
EXPIRES 12-31-2017

EXHIBIT 2L

R/W # 8073-12
N.E. MARX STREET
1N2E22AB TAX LOT 1100
5404 N.E. 112TH AVENUE



PBOT
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,
1120 SW 5TH AVE., SUITE 800
PORTLAND, OREGON 97204
PHONE 503-823-7150

JOB #40347
SEPTEMBER 14, 2016

RW 8073
Street Vacation

EXHIBIT 1M

NE Deering Drive:

A parcel of land in the Plat of Parkrose (Blocks 99 to 113, Inclusive), City of Portland, Multnomah County, Oregon, consisting of all of Northeast Deering Drive (being 30 feet wide) lying east of a line 3.0 feet east of and parallel with the east line of Northeast 105th Avenue, except for the portions previously vacated by Ordinance 4669 on September 11, 1980.

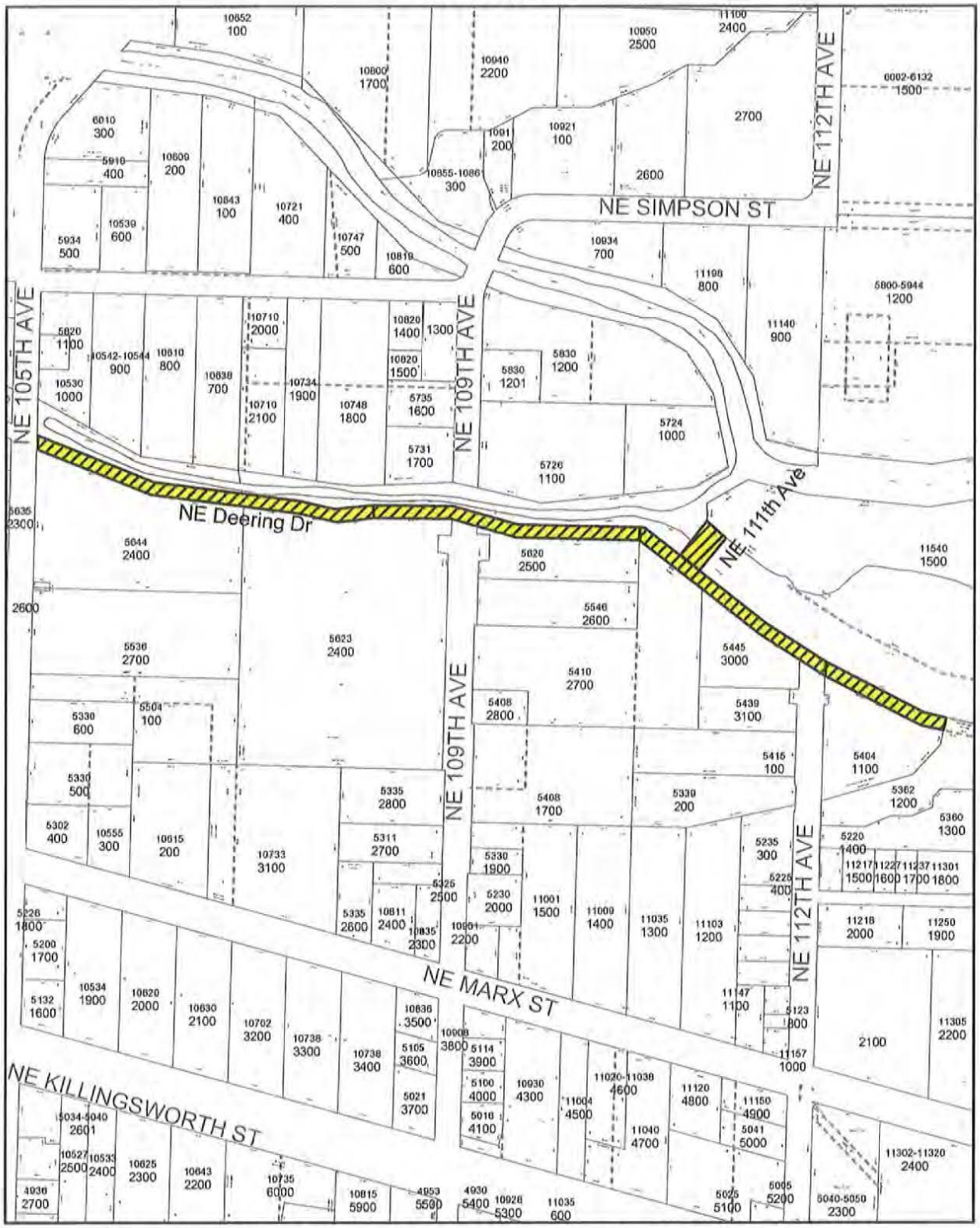
Containing 59,106 square feet, more or less.

Road adjacent to NE Deering Drive (NE 111th Avenue):

A parcel of land in the Plat of Parkrose (Blocks 99 to 113, Inclusive), City of Portland, Multnomah County, Oregon, consisting of that portion of NE 111th Avenue (labeled as "Road" on the Plat) being 100 feet long and 60 feet wide, crossing the Drainage Canal between NE 109th Ave (Slauson Road) and NE 112th Avenue (Clarnie Road) on the Plat.

Containing 6,000 square feet, more or less.

Exhibit 2M



NE Deering Dr east of NE 105th Ave, NE 111th Ave north of NE Deering Dr.

Petitioner: City of Portland

Area proposed for vacation

Sections: 1N2E15CC, 1N2E15CD, 1N2E22AB 1/4 Sections: 2542, 2441

1 inch = 350 feet

EXHIBIT 3

Comments Summary

R/W # 8073 NE Deering Dr, NE 111th Ave, NE 112th, NE Marx	**RWA Project Manager: Karl Arruda**	**Petitioner/Applicant:**
SAP Cost Object No. T00347.D46		
VAC-10114		
IQ #16-237649		
Commenting Party	**Response Date**	**Comments / Conditions**
City Bureaus / Depts. Notified:		
City Auditor Toni Anderson	N/A	City-initiated.
PBOT Development Review Bob Haley/ Kurt Krueger 503-823-5171	9/28/2016	No objection.
Transportation Planning Courtney Duke 503-823-7265	2/28/2017	**No objection. Comment only**: Easements required by other service bureaus should be retained as outlined in bureau responses.
PBOT Permit Engineering Chon Wong 503-823-7050	9/26/2016	No objection.
PBOT Trans Systems Mgmt Carl Snyder	9/26/2016	No objection.
PBOT Street Lighting Dan Spoelstra 503-823-4111	9/14/2016 & 5/5/2017	**No objection subject to the following condition**: Existing street lights should remain in City right-of-way, except light at end of NE 112th Ave. can remain in STV area and be covered by easement.
PBOT Bridges and Structures Cameron Glasgow	10/19/2016	No objection.
Development Services Brandon Rogers 503-823-7597	9/16/2016	**No objection subject to the following conditions**: 5445 NE 112th Ave. is losing legal frontage and must be consolidated with 5439 NE 112th Ave.
Development Services Lisa Baumgartner	11/1/2016	No objection.

Comments Summary

Commenting Party	Response Date	Comments / Conditions
Environmental Services Bret Winkler 503-823-6170	11/30/2016	**No objection subject to the following conditions**: 1) BES has a storm sewer/outfall within NE 109th Ave and which crosses NE Deering Dr. BES will require a minimum 15 by 15 foot (centered on the pipe) public sewer easement through the vacation area for access for maintenance to the storm outfall that discharges into the slough. 2) Directly north of NE 112th Ave., BES requires an easement for access for maintenance to the Slough.
Nancy Hendrickson 503-823-6001	6/2/2017	3) To maintain public access on the Slough, BES also to obtain Recreational Trail Easement from NE 112th to Slough. Existing pedestrian gate to remain open unless BES or Police need to close it for maintenance or safety. 4) BES requires a conservation easement for NE Deering Dr., from adjacent owners on south side of Deering.

Comments Summary

Commenting Party	Response Date	Comments / Conditions
Water Bureau Ben Gossett 503-823-7518 / Terry Wenz 503-823-7171	11/1/2016	**No objection subject to the following conditions:** 1) Any meters, hydrants, or water facilities impacted by the vacation would need to be relocated into the remaining ROW at the applicant's expense if they are not there already, and may require associated backflow assemblies as required by current code and standards. **2) For NE Marx St.:** Applicant will need to provide a survey to locate the Water service for 10930 and 10944 NE Marx St to confirm they are outside of the proposed vacation area, and if they are not, will have to pay to have these services relocated in the R/W outside of the proposed vacation area and backsides reconnected.
		3) For NE Deering Dr and associated stubs: The existing 6" main in NE 112 Ave cannot be abandoned, and PWB must retain 24 hour unimpeaded access for maintenance and meter reading. The Water Bureau would need an easement the width of the existing R/W that provides the above-mentioned items plus the ability to permit future construction and additions as seem fit.

Comments Summary

Commenting Party	Response Date	Comments / Conditions
Fire Bureau Kari Schimel	9/14/2016	No objection.
Park Bureau Zalane Nunn	11/21/2016	No objection.
Urban Forestry Division Rich Faber	10/12/2016	No objection.
BTS Corporate GIS Paul Cone	9/14/2016	No objection.
Parking Control Kelly Sills	11/1/2016	No objection.
Planning & Sustainability Commission		Pending PSC Meeting.
Neigh Assoc Notified:		
Parkrose N.A. Anne Stanhope, Chair	10/18/2016	Public access to Columbia Slough at NE 112th Ave. should be preserved.
North Portland Neighborhood Services Tom Griffin-Valade, Exec. Director		No response.
Columbia Slough Watershed Council Corrina Chase, Executive Director	10/12/2016	Public access to Columbia Slough at NE 112th Ave. should be preserved.
Local Agencies Notified:		
ODOT Region 1 Jon Makler	9/30/2016	No objection.
Port of Portland Phil Healy		No response.
TriMet Nick Stewart	9/14/2016	No objection.

Comments Summary

Commenting Party	Response Date	Comments / Conditions
Mult County Drainage District Bill Owen 503-281-0392	3/23/2017	**No objection subject to the following conditions**: MCDD to obtain Maintenance and Access Easement from NE 112th Ave. to Slough for maintenance work. MCDD to have vehicle and pedestrian access to fenced area.
Public Utilities Notified:		
PGE Tina Tippin		No objection.
Pacific Power Scott Mease 503.813.7115	9/16/2016	Have facilities in STV area on NE Marx and NE Deering at 112th; reserve easement.
CenturyLink Alan Meins		No response.
Northwest Natural Richard H. Hawkes, GIS Tech	9/22/2016	Have facilties in NE Deering; reserve easement.
Comcast Cable Walter Banks		No response.

Comments Summary

Commenting Party	Response Date	Comments / Conditions

EXHIBIT 4

PBOT
PORTLAND BUREAU OF TRANSPORTATION
1120 SW Fifth Avenue, Suite 800 Portland, OR 97204 503.823.5185
Fax 503.823.7576 TTY 503.823.6868 www.portlandoregon.gov/transportation
Dan Saltzman Commissioner **Leah Treat** Director

PLANNING AND SUSTAINABILITY COMMISSION REPORT AND RECOMMENDATION TO CITY COUNCIL

PSC HEARING WAS HELD JUNE 27, 2017 @ 5:30 CH2M BUILDING, LINCOLN ROOM, 1ST FLOOR

FILE NUMBER: R/W #8073

I. GENERAL INFORMATION

Street Vacation Request: R/W #8073, NE Deering Drive, NE 111th Ave, NE 112th, NE Marx

Petitioner: Street vacation initiated by
The City of Portland/Bureau of Transportation
Representative is
Andrew Aebi
PBOT
1120 SW 5th Ave, room 800
Portland OR 97219
503/823-5648

Purpose: The purpose of the proposed vacation is to consolidate unused right of way within a 'P' Zone which generally precludes building in the area per Columbia South Shore Regulations in Title 33

Neighborhood: Parkrose Neighborhood
North Portland Neighborhood Services
Columbia Slough Watershed Council

The Portland Bureau of Transportation fully complies with Title VI of the Civil Rights Act of 1964, the ADA Title II, and related statutes and regulations in all programs and activities. For accommodations, complaints and information, call (503) 823-5185, City TTY (503) 823-6868, or use Oregon Relay Service: 711.

Designation/Zone: IG2, General Industrial 2
Portions 'P' – Environmental Protection

II. FACTS

A. History and Background

The proposed street vacation was initiated by the City of Portland Bureau of Transportation Local Improvement (LID) program. The street vacation will allow for the consolidation of unused and unclassified right of way within a 'P' Zone which generally precludes building in the area per Columbia South Shore Regulations in Title 33. Vacation of unneeded ROW along NE Marx provides additional property for development to meet Comprehensive Plan map designations.

B. Concurrent Land Use Actions

There are no concurrent land use actions at this time. The Bureau of Development services indicated that a lot consolidation will be required for 5445 NE 112th and 5439 NE 112th.

C. The Transportation Element

NE Marx is classified as a Neighborhood Collector for Traffic. The portions of NE Marx ROW that will be vacated are behind the sidewalk (along the property line) and will not impact the street or traffic. All other ROWs and streets proposed for vacation are Local Service Streets for all modes or is an area of ROW that is not classified.

D. Neighborhood Plan

There are no adopted neighborhood plans in this area.

III. FINDINGS

A. Comprehensive Plan Goals and Policies Consideration

The relevant policies of the Comprehensive Plan are:

Policy 6.20 Connectivity states:

Support development of an interconnected, multimodal transportation system to serve mixed-use areas, residential neighborhoods, and other activity centers.

Comment: The proposal will vacate portions of rights-of-way that were never used or no longer used for motor vehicle transportation functions.

Policy 6.21 Right-of-Way Opportunities states:

Preserve existing rights-of-way unless there is no existing or future need for them, established street patterns will not be significantly interrupted, and the functional purposes of nearby streets will be maintained.

Comment: The remnants of rights-of-way were never used or no longer used for motor vehicle transportation functions. The proposed vacation will have no impact on the transportation function of any nearby street.

Policy 8.14 Natural Resources, Objective I. States:
Consideration of Scenic Resources in Street Vacations. Require the preservation and maintenance of existing and potential view corridors and view points when approving street vacations. Require view easements within or near street vacations where access to viewpoints or view corridors is desired.

Comment: No existing or potential view corridors have been identified in the review of the street vacation request.

Policy 11.11 Street Plans, Objectives D, E and N state:
D. Provide full street connections with spacing of no more than 530 feet between connections, except where prevented by barriers such as topography, railroads, freeways, or environmental constraints.

E. Provide bike and pedestrian connections at approximately 330-foot intervals on public easements or rights-of-way when full street connections are not possible, except where prevented by barriers such as topography, railroads, freeways, or environmental constraints.

N. Preserve street connectivity in areas of the City that meet the standards of this policy and its objective as shown on Maps 11.11.9 through 11.11.16.

Comment: The remnants of rights-of-way were never used or are no longer used for any transportation functions. The proposed vacation will have no impact on the transportation function of any nearby streets or ROWs.

Policy 12.4 Provide for Pedestrians, Objective G. states:
Retain rights for pedestrian access and circulation when considering requests for street vacations. Preserve existing pedestrian routes and protect routes needed by pedestrians in the future. Ensure that street vacations do not reduce access to light and air or the intimate scale that is so much a part of Portland's character.

Comment: The remnants of rights-of-way were never used or are no longer used for any transportation functions. The proposed vacation will have no impact on the transportation function of any nearby streets or ROWs.

B. Neighborhood Plan Considerations

Comment: There are no adopted neighborhood plans in this area.

C. Other Relevant Comprehensive Plan Policies (and/or Plans)

Comment: There are no other Comprehensive Plan considerations.

D. Zoning Code Considerations
Other zoning code designations that could apply and that should be considered during review of a street vacation request include environmental zoning or designation as a recreational greenway trail.

Comment: The area along NE Deering is zoned 'P" for Environmental Protection, which precludes development and is regulated by Columbia South Shore regulations. 5445 NE 112th Ave is losing legal frontage and must be consolidated with 54369 NE 112th Ave prior to recording of the street vacation.

E. Subdivision Code Considerations

Comment: There are no subdivision code issues.

F. Improvement and Utility Considerations

The street vacation request was reviewed by **City Bureaus, affected neighborhood associations, government agencies and public utilities.**

Reponses are below and attached.

Bureau of Development Services indicated **no objection** to the street vacation with the following condition:

- 5445 NE 112th Ave is losing legal frontage and must be consolidated with 54369 NE 112th Ave prior to recording of the street vacation.

Bureau of Environmental Services requires:

- A 15' x 15' public sewer easement over an existing facility which crosses NE Deering Street just north of NE 109th Ave, shown on Exhibit 1B.
- An easement for access and maintenance from the end of NE 112th Ave north to the Columbia Slough.
- A recreational trail easement to maintain public access from the end of NE 112th Ave north to the Columbia Slough.
- A conservation easement for the portion of NE Deering Drive which will revert to the adjacent property owners on the south side of Deering.

The Water Bureau requires:

- An easement for an existing water line, from the end of NE 112th Ave north to the Slough, for the full width of NE 112th Ave., as shown on Exhibit 1B.
- Any meters, hydrants, or other water facilities in the vacation area be relocated to the remaining right-of-way at the applicant's expense.
- Additional survey location for the water service at 10930and 10944 NE Marx

PBOT Street Lighting requires:

- An easement for access and maintenance for its street light on a PPL pole in NE Deering St., just north of NE 112th Ave.

Multnomah County Drainage District requires:

- An easement for access and maintenance from the end of NE 112th Ave north to the Columbia Slough, as shown on Exhibit 1B.

Pacific Power requires:
- An easement to be reserved for its three (3) utility poles at the intersection of NE 112th and NE Deering Drive.

Northwest Natural requires:
- An easement in NE Deering

****

Urban Forestry responded with no objection.

Fire Bureau responded with no objection.

Portland Parks and Recreation responded with no objection.

The Bureau of Technology Services responded with no objection.

ODOT and the Port of Portland responded with no objection.

TriMet was notified but did not respond.

Century Link responded that they have no facilities in the area.

G. Neighborhood Issues
Notice of this street vacation request was provided to the Parkrose Neighborhood, North Portland Neighborhood Services and Columbia Slough Watershed Council.

The Parkrose Neighborhood Association responded with the request to continue to provide public access to the Columbia Slough at NE 12th Ave.

The Columbia Slough Watershed Council also responded with the request to continue to provide public access to the Columbia Slough at NE 12th Ave.

North Portland Neighborhood Services did not respond.

IV. CONCLUSIONS

Based on the above analysis and the Public Hearing, the Planning and Sustainability Commission, states that the right-of-way is not needed to provide future facilities. Additionally, approval of the street vacation will not affect the functional performance of the street system in the area.

V. Planning and Sustainability Commission RECOMMENDATION

The PSC recommendation is **approval** of the vacation of the area as shown on Exhibit 1 ***with conditions***:

1. Prior to recording the street vacation ordinance, the Petitioner shall comply with all conditions set forth in Section III.F above; and
2. The Maintenance Agreement for the trail easement shall be included in documentation submitted to City Council.

VI. EXHIBITS

1. Areas proposed for vacation
    a. NE Marx ROW areas between NE 109tha and NE 112th
    b. NE Deering Dr East of 105th, NE 11th north of NE Deering and NE 112th south of NE Deering
2. Comments Summary

Bureau of Transportation Staff Planner
Courtney Duke, Senior Transportation Planner
503/823-7265
courtney.duke@portlandoregon.gov

cc:
Karl Arruda, Right-of-Way Case Manager
Case File

Exhibit 1A

NE Marx St between NE 109th Ave and NE 112th Ave

Petitioner: City of Portland

Area proposed for vacation

State ID: 1N2E22BA 1/4 Section: 2541

1 inch = 150 feet

Exhibit 1B

NE Deering Dr east of NE 105th Ave, NE 111th Ave north of NE Deering Dr, & NE 112th Ave south of NE Deering Dr

Petitioner: City of Portland

Area proposed for vacation

Sections: 1N2E15CC, 1N2E15CD, 1N2E22AB 1/4 Sections: 2542, 2441

1 inch = 350 feet

EXHIBIT 5

Grantor's Name and Address:

STREET LIGHT
UTILITY EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that _____**, LLC,** an Oregon limited liability company, ("Grantors"), for good and valuable non-monetary consideration, the receipt whereof is hereby acknowledged, does hereby grant unto the **City of Portland**, a municipal corporation of the State of Oregon, ("Grantee"), an easement for access, construction, maintenance, and perpetual use by the public utilities ("Easement") over, under and across real property in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows ("Easement Area"):

As described on Exhibit A and depicted on Exhibit B attached hereto and by this reference made a part hereof.

Contains ____ square feet, more or less.

A. Grantor represents and warrants that it has the authority to grant the Easement and that the Easement Area is free from all liens and encumbrances that would materially affect the Easement grant, except as set forth herein, and that it will defend the Grantee against the lawful claims and demands of all persons whomsoever with respect to any liens or encumbrances that would materially affect the Easement grant, except as set forth herein.

B. The Grantor, its successors and assigns, agree to defend, indemnify and hold harmless the Grantee, its officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions, and suits (including attorney fees and

---

R/W # 8073

1N2E22AB TL 1100

1N2E15CD TL 3000

After Recording Return to:

Karl N. Arruda, City of Portland

1120 SW 5th Avenue, 8th Floor

Tax Statement shall be sent to: No Change

costs) resulting from the presence or release of hazardous substances onto or from the subject property. This provision shall not apply to a release of hazardous substances onto or from the subject property caused by the officers, agents or employees of the Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.

C. The use of the Easement is limited to access, installation, maintenance and replacement of electrical conduit and junction boxes for one City-owned street light.

D. The Easement herein granted does not convey any right or interest to title in the property, except as stated herein.

E. The Easement herein granted is not a dedication of public right-of-way and it is understood and agreed that the Grantee, by accepting this easement, is not accepting any liability for taxes, assessments, or other governmental charges relating to the property.

F. Easement Area is limited to a depth of _____ feet below the surface and the Grantor reserves the use and control of the property located below that depth.

G. This Easement represents the entire agreement between Grantor and Grantee(s) relating to Grantee's use of the Easement Area. It is understood and agreed by Grantee(s) that neither Grantor nor Grantor's officers, agents or employees have made any representations or promises with respect to this Easement or the making of or entry into this Easement Area, except as expressly set forth in this Easement. No claim for liability shall be asserted based on any claimed breach of any representations or promises not expressly set forth in this Easement. All oral agreements, if any, are void and expressly waived by Grantee(s). This Easement has been thoroughly negotiated between the parties; therefore, in the event of ambiguity, there shall be no presumption that such ambiguity should be construed against the drafter.

H. This Easement shall be governed, construed and enforced in accordance with the laws of the State of Oregon. Jurisdiction shall be with Multnomah County Courts or the Federal Court located in Portland, Oregon.

I. This Easement may not be modified or amended except by a written instrument duly executed by the authorized signatories for the parties hereto.

J. All notices required under this Easement shall be deemed to be properly served if sent by certified mail, return receipt requested, or delivered by hand to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent as follows:

To Grantor at:	To Grantee at:
CITY OF PORTLAND	Grantee Name
Attn: Right-of-Way Acquisition Supervisor	Attn: *
1120 SW 5th Avenue, Ste 800	Street Address
Portland, Oregon 97204	City/State/Zip

The date of service of such notice by mail is agreed to be three (3) calendar days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail or, if delivered by hand, then the actual date of hand delivery.

TO HAVE AND TO HOLD, the above described and granted premises unto said Grantee for the uses and purposes aforesaid forever.

THIS SECTION IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, _____, LLC, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its Member, this ____ day of _____, 20___.

_____, LLC,
An Oregon limited liability company

By: _____
Title:

STATE OF _____

County of _____

This instrument was acknowledged before me on _____, 20___, by ___ _____ as a Member of _____, LLC, an Oregon limited liability company.

_____
Notary Public for (state)_____
My Commission expires ____

APPROVED AS TO FORM:

_____
City Attorney

APPROVED AND ACCEPTED:

_____
Bureau Director or designee

EXHIBIT A

RW 8073

Streetlight Utility Easement

A Portion of vacated NE Deering Drive and NE 112th Ave., in the Plat of Parkrose (Blocks 99 to 113, Inclusive), City of Portland, Multnomah County, State of Oregon,

Being that portion of vacated NE Deering Drive and vacated NE 112th Ave. inuring to Grantor's property pursuant to Ordinance _____, passed by City Council on _____, lying between the following two lines:

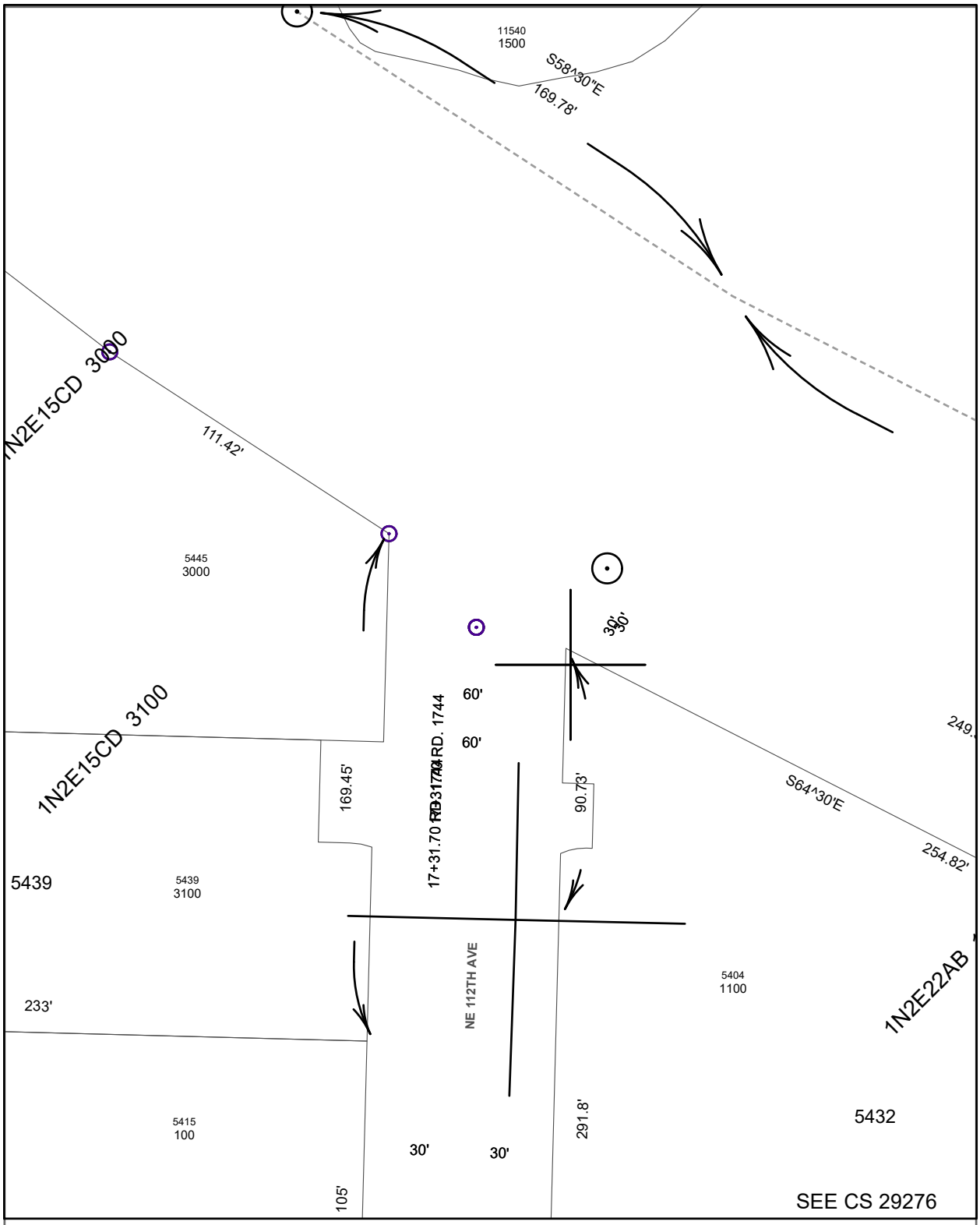
The east right-of-way line of 112th ROW extended north across NE Deering Drive,

and

A line parallel with and 20 feet east of the west right-of-way line of 112th ROW, extended north across NE Deering Drive.

Containing _____ square feet, more or less.

Exhibit B



NE Deering Drive and NE 112th Ave.

Legal: A Portion of NE Deering Drive and NE 112th Ave., Plat of Parkrose

Grantor:

Easement Area

R/W: 8073 1/4 Section:2542 Section: **1N2E22AB**

1 inch = 50 feet

Street Dedication

EXHIBIT 6

Grantor's Name & Address:
William E. Walsh, Jr., Trustee
Margaret M. Walsh, Trustee
8705 SE Porter Circle
Vancouver, WA 98664-2867

SEWER EASEMENT

William E. Walsh, Jr., Trustee and Margaret M. Walsh, Trustee, of the William E. and Margaret M. Walsh Trust (collectively, "Grantor"), for good and valuable non-monetary consideration, the receipt whereof is hereby acknowledged, hereby grants unto the City of Portland, a municipal corporation of the State of Oregon ("Grantee"), a perpetual easement ("this Easement") for the purpose of laying down, constructing, reconstructing, operating, inspecting, monitoring and maintaining a sewer or sewers, outfalls, and appurtenances, through, under, over and along the following described parcel ("the Easement Area"):

As described on Exhibit A and depicted on Exhibit B attached hereto and by this reference made a part hereof.

Contains 464 square feet, more or less.

IT IS UNDERSTOOD and agreed that:

A. No other utilities, buildings, facilities, easements, material storage, grade changes or tree planting will be allowed within the Easement Area without the prior written consent of the Director of the Bureau of Environmental Services. Landscaping which by its nature is shallow-rooted and may be easily removed to permit access to the sewer lines and facilities authorized by this Easement shall not require consent.

B. This Easement includes a right of access for Grantee and its contractors and agents for construction, inspection, maintenance, and other sewerage system activities.

C. Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect the rights herein granted.

R/W #8073

1N2E15CD TL 2500

After Recording Return to:
Karl Arruda, City of Portland
1120 SW 5th Avenue, Suite 800
Portland, OR 97204

Tax Statement shall be sent to: No Change

D. This Easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors in title of Grantee.

E. Grantor represents and warrants that it has the authority to grant this Easement, that the Easement Area is free from all liens and encumbrances that would materially affect the easement grant, and that it will defend the same to Grantee against the lawful claims and demands of all persons whomsoever.

F. Grantor represents that to the best of its knowledge, after appropriate inquiry under the circumstances, the Easement Area is in compliance with all local, State and Federal environmental laws and regulations.

G. Grantor represents that it has disclosed all knowledge of any release of hazardous substances onto or from the Easement Area and disclosed any known report, investigation, survey or environmental assessment that may provide information relevant to the Easement Area. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.

H. Grantor warrants that there are no underground storage tanks, as defined under Oregon law, presently on or under the Easement Area.

I. Grantee, by accepting this Easement, is not accepting liability for any preexisting release of hazardous substances onto or from the Easement Area, and Grantor is not attempting to convey any such liability.

THIS SECTION IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the Owners above named, have hereunto set their hands this _____ day of _____, 20___.

By: _____
William E. Walsh, Jr., Trustee
of the William E. and Margaret M. Walsh Trust

By: _____
Margaret M. Walsh, Trustee
of the William E. and Margaret M. Walsh Trust

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on _____, 20___, by William E. Walsh, Jr., and Margaret M. Walsh, as Trustees of the William E. and Margaret M. Walsh Trust.

_____
Notary Public for Oregon
My Commission expires _____

APPROVED AS TO FORM:

_____
City Attorney

APPROVED:

_____
Bureau of Environmental Services Director
or designee

R/W # 8073
N.E. 109TH AVENUE AND N.E. 112TH AVENUE
N.E. DEERING STREET – STREET VACATION
1N2E15CD
SEWER EASEMENT

EXHIBIT A

A Sewer Easement, being 15.00 feet in width, being a portion of that tract of land lying within N.E. Deering Street, 30.00 feet in width, as platted in the duly recorded subdivision plat of Parkrose, Blocks 99 to 113 – Inclusive, Multnomah County Plat Records, situated in the Southwest One-Quarter Of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Commencing at the Northwest corner of Lot 8 of Block 100 of said subdivision, said point being on the South Right-of-Way line of N.E. Deering Street, 30.00 feet in width;

Thence, North 74°28’23” West, a distance of 4.06 feet, to the POINT OF BEGINNING;

Thence, North 74°28’23” West, a distance of 15.46 feet;

Thence, North 1°31’37” East, a distance of 30.92 feet, to the North right-of-Way line of N.E. Deering Street;

Thence, along said Right-of-Way line, South 74°28’23” East, a distance of 15.46 feet;

Thence, South 1°31’37” W, a distance of 30.29 feet, to the POINT OF BEGINNING.

Containing 464 square feet.

Project 40347
September 15, 2017

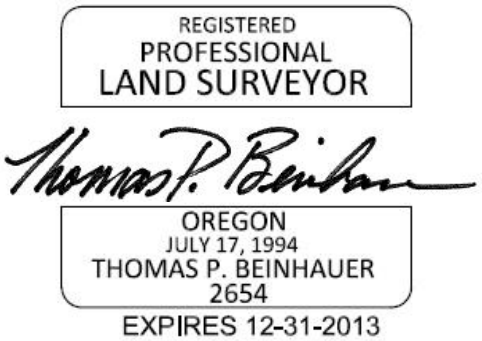
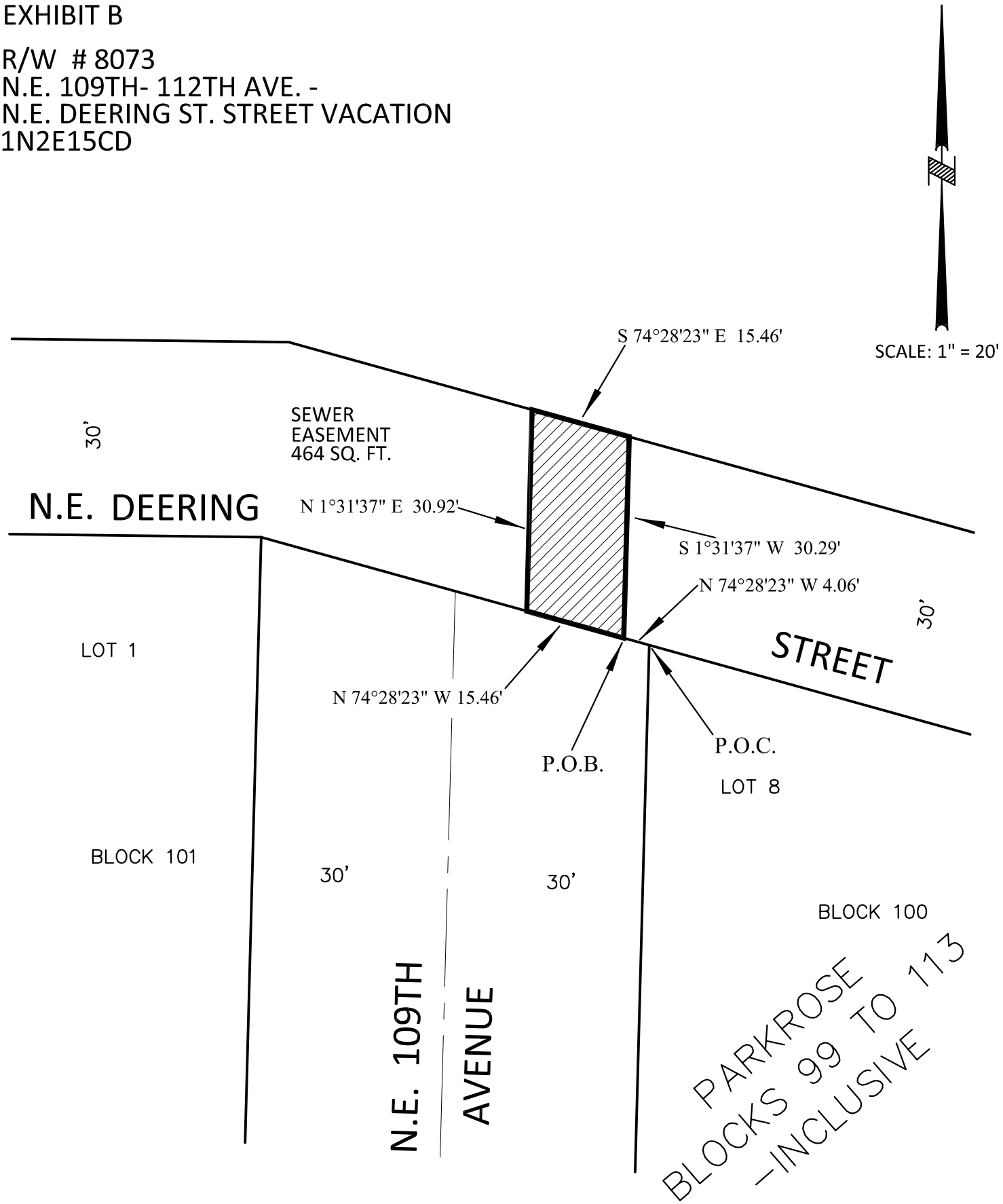


EXHIBIT B

R/W # 8073
N.E. 109TH- 112TH AVE. -
N.E. DEERING ST. STREET VACATION
1N2E15CD



PBOT
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,
1120 SW 5TH AVE., SUITE 800
PORTLAND, OREGON 97204
PHONE 503-823-7150

JOB # 40347
SEPTEMBER 15, 2017

EXHIBIT 7

Grantor's address:

ACCESS EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that _____, LLC, an Oregon limited liability company**,** (Grantor), for good and valuable non-monetary consideration, the receipt whereof is hereby acknowledged, does hereby grant unto the City of Portland, a municipal corporation of the State of Oregon (Grantee), a perpetual, non-exclusive easement for the purpose of ingress and egress through, over and across the following described parcel:

> As described on Exhibit A and depicted on Exhibit B attached and incorporated by reference.
>
> Contains ____ square feet, more or less.

IT IS UNDERSTOOD:

A. Grantor shall keep the traveled portions of the easement free of obstructions. No structures shall be erected within the easement area without the prior written consent of the Director of the Bureau of Environmental Services, City of Portland.

B. In the event that Grantor's property is redeveloped and an alternative easement location is desired, Grantor may request relocation of the easement area. Grantor shall pay all costs associated with the relocation of the easement area, and relocation shall be subject to the written approval of and acceptance by Grantee.

C. Grantor represents and warrants that it has the authority to grant the easement and that the easement area is free from all liens and encumbrances that would materially affect the easement grant, except as set forth herein, and that it will defend Grantee against the lawful claims and demands of all persons whomsoever with respect to any liens or encumbrances that would materially affect the easement grant, except as set forth herein.

R/W #8073

1N2E22AB TL 1100

1N2E15CD TL 3000

After Recording Return to:

Karl Arruda, City of Portland

1120 SW 5th Avenue, Suite 800

Portland, OR 97204

Tax Statement shall be sent to: No Change

IN WITNESS WHEREOF, _____, LLC, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its Member, this _____ day of _____ _____, 20___.

_____, LLC,
AN OREGON LIMITED LIABILITY COMPANY

By: _____
Member

STATE OF _____

County of _____

This instrument was acknowledged before me on _____, 20___, by ___ _____ as a Member of _____, LLC, an Oregon limited liability company.

_____
Notary Public for (state)_____
My Commission expires _____

APPROVED AS TO FORM:

_____
City Attorney

APPROVED:

_____
Bureau of Environmental Services Director
or designee

EXHIBIT A

RW 8073

BES Access & Maintenance Easement

A Portion of vacated NE 112th Avenue and vacated NE Deering Drive, in the Plat of Parkrose (Blocks 99 to 113, Inclusive), City of Portland, Multnomah County, State of Oregon,

Being that portion of vacated NE Deering Drive and vacated NE 112th Ave. inuring to Grantor's property pursuant to Ordinance _____, passed by City Council on _____, lying between the following two lines:

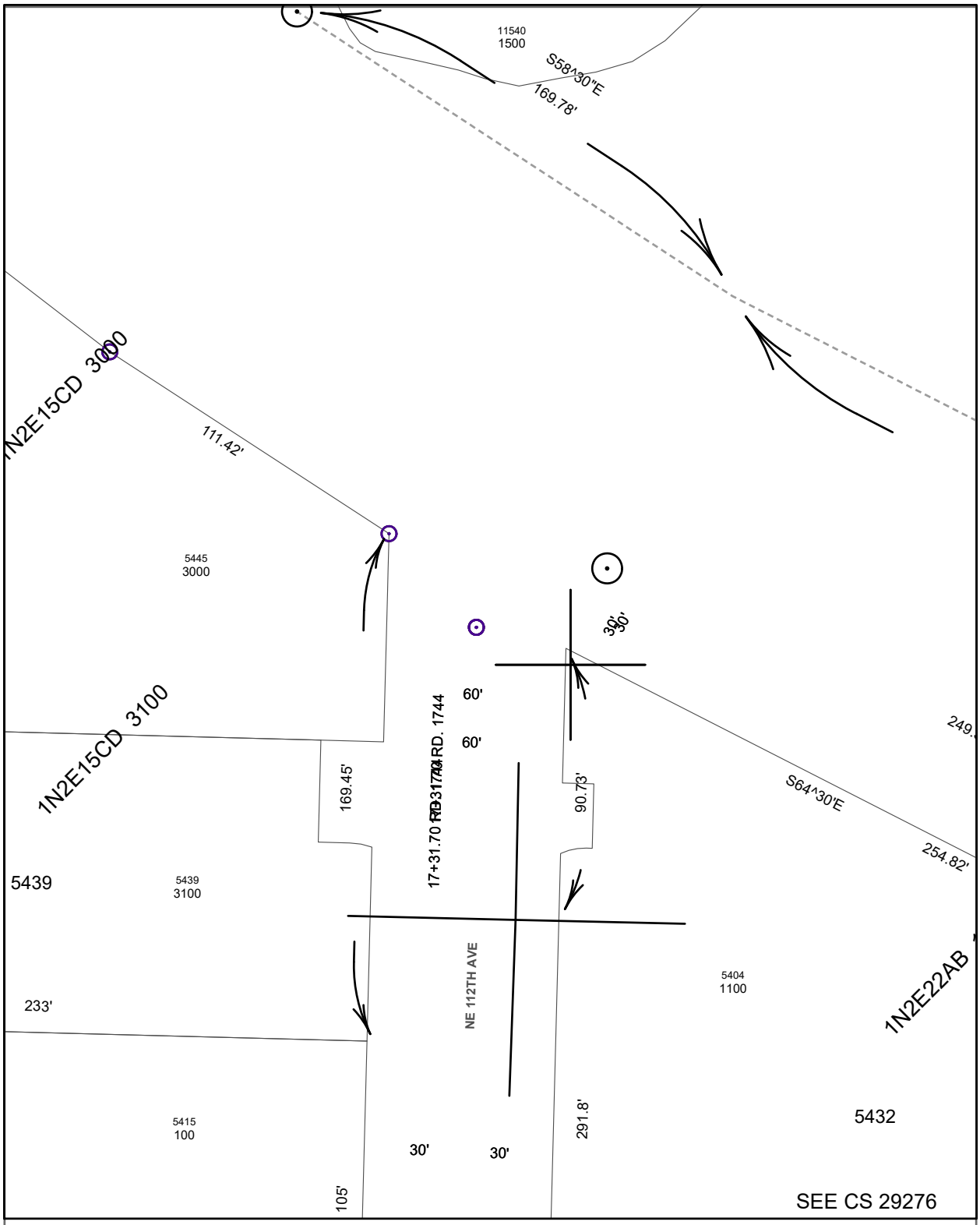
A line parallel with and 15 feet west of the east right-of-way line of NE 112th Ave. extended north across NE Deering Drive,

and

A line across NE Deering Drive that is parallel with and 30 feet west of the west right-of-way line of NE 112th Ave.

Contains ____ square feet, more or less.

Exhibit B



NE Deering Drive and NE 112th Ave.

Legal: A Portion of NE Deering Drive and NE 112th Ave., Plat of Parkrose

Grantor:

Easement Area

R/W: 8073 1/4 Section:2542 Section: **1N2E22AB**

1 inch = 50 feet

Street Dedication

EXHIBIT 8

After recording return to:
Bureau of Environmental Services
1120 SW 5th Ave., 10th floor
Portland, OR 972

TRAIL EASEMENT

This Trail Easement (this "Easement") is made and entered into between the **_____, LLC**, an Oregon limited liability company ("Grantor") and the City of Portland, an Oregon municipal corporation, by and through its Bureau of Environmental Services ("City").

RECITALS

A. Grantor is the owner of the real property known as [for Cotton Creek, LLC: Lot 7, Block 99, Plat of Parkrose, Northeast Quarter of Section 22], [for SAKS Unlimited, LLC: a portion of Lot 1, Block 100, Plat of Parkrose, Southwest Quarter of Section 15], Township 1 North, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah, State of Oregon (the "Property").

B. The Property includes a portion of NE 112th Avenue and NE Deering Drive as a result of street vacation Ordinance No. _____ approved by City Council on _____. Grantor's Property, including the vacated street area, is described on Exhibit A.

C. The Property is adjacent to the Columbia Slough, and is a key point of public access to the Slough.

D. City is responsible for sewer and storm water services in the city of Portland. City desires to preserve access to the Columbia Slough to the public at this location for recreational and educational purposes. In the future, the City may build, operate and maintain a recreational trail and pathway on the Property.

E. The parties now wish to enter into this Easement, giving City the right to construct and maintain a public trail, in accordance with the terms and conditions set forth below.

F. It is the goal of City that the trail built will provide connections from the northern terminus of NE 112th Avenue across Property to the Columbia Slough.

In consideration of the recitals and the mutual benefits, covenants, and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and City hereby dedicate, grant, covenant, and agree as follows:

AGREEMENT

1. Grant of Easement. Grantor hereby grants to City a nonexclusive, perpetual easement in gross, on, over, across, and along a portion of the Property, as described on Exhibit B and depicted in Exhibit C attached hereto (the "Easement Area"). The Easement Area is 45 feet wide at the southern end, 75 feet wide at the northern end, 130 long on the eastern end and 160 feet long at the western end.

2. Purposes. The purposes of this Easement are to give City, its agents or its contractors, the right to (a) enter the Easement Area at any time to establish, install, construct, maintain, and repair a trail and pathway, which trail will be up to sixteen feet in width (the "Trail"), and (b) permit the public to access and use the Trail established, installed, and constructed by City. The Trail that City has the right to establish hereunder may be either a low-impact soft surface trail or an all-weather paved trail, or any combination or variant thereof, at City's discretion.

3. Construction, Repair, Maintenance.

(a) City may take all reasonable actions necessary to establish, construct, maintain, and repair the Trail within the Easement Area, including, but not limited to, installing, maintaining and repairing or replacing the following related surface and subsurface utilities and improvements: (i) appropriate trail surfaces and associated trail structures, (ii) trail markers, signs, lights, and other security enhancements along the Easement Area and at all points of access, (iii) any barriers, fences and gates necessary to prevent motorized vehicular access into the Easement Area, and (iv) benches for the convenience and comfort of the public (collectively, the "Trail Facilities"). It is acknowledged that the Trail and Trail Facilities may be built in several phases. The Trail Facilities will be and remain the property of City.

(b) City will work with Grantor to design the Trail and Trail Facilities in such a manner that they will not adversely impact the integrity any drainage-related or flood-related improvements currently existing or hereafter added, or unreasonably interfere with Grantor's ability to access Grantor's facilities on the Property. City will be responsible for obtaining all governmental permits for construction of the Trail and the Trail Facilities, including, if necessary, a permit or approval from the United States Army Corps of Engineers ("USACE"), at City's sole cost and expense prior to commencing such construction. Grantor will cooperate in good faith with City in obtaining any necessary construction and/or development permits or approvals.

(c) City will give Grantor thirty (30) days' written notice before commencing construction of the Trail and any Trail Facilities.

(d) Subject to City Code Title 33, Chapter 272, City will be solely responsible for all repair and maintenance of the Trail and Trail Facilities that it constructs or installs; provided, however, that Grantor will reimburse City for all sums expended by City to repair any damage to the Trail and Trail Facilities due to, in the determination of City, negligence or abnormal use by Grantor or Grantor's invitees, guests, or licensees.

(e) Except for Trail and Trail Facilities built or installed by City under section 3(a) or otherwise, Grantor will be responsible for general repair and maintenance of the Easement Area and current existing fence or gate separating the Easement Area from the rest of Grantor's Property and NE 112th Avenue.

4. Permitted Trail Uses. Subject to City Code Title 33, Chapter 272 and Title 20, Chapter 12, City may permit the public to access the Trail for recreational and transportation purposes, including, without limitation, walking, running, cycling, skating, skiing, and horseback riding. Except for motorized wheelchairs (or other mobility devices used by individuals with disabilities) or in the case of an emergency, motorized vehicles will not be permitted on the Trail; provided, however, that City may use motorized vehicles and equipment for construction, maintenance, repair, and security purposes related to the Trail and Trail Facilities. City will have the right, in its sole discretion, to restrict or limit public use of and access to the Trail.

5. Grantor's Use of Easement Area. Grantor will retain the right to access, use, and enjoy the Easement Area for its purposes consistent with the rights granted herein. Grantor is prohibited, however, from engaging in any activity on, or use of, the Easement Area that (i) is inconsistent with the terms of this Easement, (ii) materially interferes with or impairs the use of the Trail by City or the public, or (iii) hinders or interferes with future Trail construction or repair by City.

6. Concurrent Easements. City, the Multnomah County Drainage District, Northwest Natural and Pacific Power ("PPL") will have concurrent or adjacent easements for access and maintenance for their respective staff and contractors to access and maintain facilities and the Slough. To the extent these easements overlap each other, they are intended to run concurrently and be non-exclusive.

7. Hazardous Substances. Grantor represents and warrants that it has disclosed to City the results of all Phase I Environmental Assessments, Phase II Environmental Investigations, surveys, sampling, and testing regarding the Property, and any information contained therein. It is understood and agreed that City, by accepting this Easement, is not accepting any liability for any release of Hazardous Substances, as that term is defined in ORS Chapter 465, on, to, or from the Property, unless resulting directly from an intentional or negligent act of City or City's employees, agents, or contractors, and that Grantor is not attempting to convey, transfer, or assign any such liability herein.

8. Taxes. Grantor will pay when due all real property taxes, assessments, and other charges against the Property, including the Easement Area. There will be no right to contribution from City for such items.

9. Liability and Indemnity. Under ORS 105.668 through ORS 105.696, the parties may be immune from liability for injuries incurred on the Property by members of the public who access the Easement Area. To the extent a court of competent jurisdiction determines that such immunity does not apply to a particular claim against the City, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30, and the Oregon Constitution, City will indemnify, defend, and hold Grantor harmless against all losses resulting from property damage and personal injuries that occur as a result of City's negligence in the installation or maintenance of the Trail or the Trail Facilities, except to the extent caused by the negligent or wrongful acts or omissions of Grantor.

Grantor agrees to indemnify, defend, and hold City harmless from any loss or litigation expenses resulting from Grantor's acts or omissions that are incongruent with this Easement, except to the extent caused by the negligent or wrongful acts of City. As used in this Section, the word "losses" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, and penalties or other charge other than a litigation expense. As used in this Section, the term "litigation expenses" means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Agreement including in each case, attorneys' fees, other professionals' fees, and disbursements.

10. Notice and Addresses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other will be in writing and either served personally or sent by certified mail, return receipt requested, postage prepaid, to the address set forth below. Any party may change the address to which its notices are to be sent by duly giving notice pursuant to this Section.

To Grantor: _____

_____

Portland, OR

To City:

Portland, OR 97211-1810

11. Title Warranty. Grantor represents and warrants that Grantor owns the entire fee simple interest in the Property, and has the full power and lawful authority to grant this Easement. Grantor further represents and warrants that the Property is not subject to any other liens or encumbrances, except for the concurrent easements referenced above in Section 6.

12. Entire Agreement. This Easement is the final and complete agreement between the parties concerning the rights granted herein, and supersedes all prior understandings with respect to it. This Easement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by all parties to the Easement.

13. Further Cooperation. Each of the parties agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intended purpose of this Easement.

14. Covenants Running With the Land. The parties acknowledge and agree that the grant conferred by this Easement is intended to, and does, constitute an encumbrance that runs with the Property and inures to the benefit of and is binding upon the parties and their respective grantees, heirs, successors, and assigns. Without limiting the forgoing, Grantor acknowledges that City's rights under this Easement are assignable and that Grantor hereby consents to City's assignment of all of its right, title, and interest and its delegation of all of its obligations created under this Easement. Upon any such assignment, City will be forever released and discharged from all claims, demands, and damages which Grantor may have, make, or suffer as a result of anything done or occurring after the date of such assignment. Nothing contained in this Section, however, will in any way be construed as releasing City's successors and assigns from any obligations to Grantor created by this Easement.

THIS SECTION IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties have executed this Easement as of the date first set forth above.

GRANTOR:

By: _____

State of Oregon
County of _____
This instrument was acknowledged before me on _____, 2017, by _____ as the _____ of _____, an Oregon _____

_____
Notary Public - State of OREGON

CITY:

City OF PORTLAND, GRANTEE

By: _____
Bureau of Environmental Services Director
or Designee

State of OREGON

County of MULTNOMAH

On this _____ day of _____, 20___, personally appeared _____, who being duly sworn, did say that he is the Director, Bureau of Environmental Services, or his designee, of the City of Portland, a municipal corporation, and that said instrument was signed in behalf of said corporation by authority of its City Council and acknowledged said instrument to be its voluntary act and deed.

_____
Notary Public for Oregon
My Commission expires _____

EXHIBIT A

PROPERTY DESCRIPTION

SAKS Unlimited, LLC:

The east 233 feet of Lot 1, Block 100, excepting therefrom the south 100 feet, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive) situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

Cotton Creek, LLC:

That portion of Lot 7, Block 99, in the Plat of Parkrose (Blocks 99 to 113, Inclusive) situated in the northeast one-quarter of Section 22, T1N, R2E, W.M., in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Northwest corner of Block 99; thence South 64°30' East along the Northerly boundary of said Block 99, 254.82 feet; thence South 79°20' East, 54.33 feet; thence South 10° 20' West, 35.48 feet; thence South 42° West 95 feet; thence South 72°41' West, 223.55 feet, more or less, to a point in the Westerly boundary of said Block 99; thence North, 291.8 feet to the point of beginning.

EXHIBIT B

RW 8073

Trail Easement

A Portion of vacated NE 112th Avenue and vacated NE Deering Drive, in the Plat of Parkrose (Blocks 99 to 113, Inclusive), City of Portland, Multnomah County, State of Oregon,

Being that portion of vacated NE Deering Drive and vacated NE 112th Ave. inuring to Grantor's property, as described on Exhibit A, pursuant to Ordinance _____, passed by City Council on _____, lying between the following two lines:

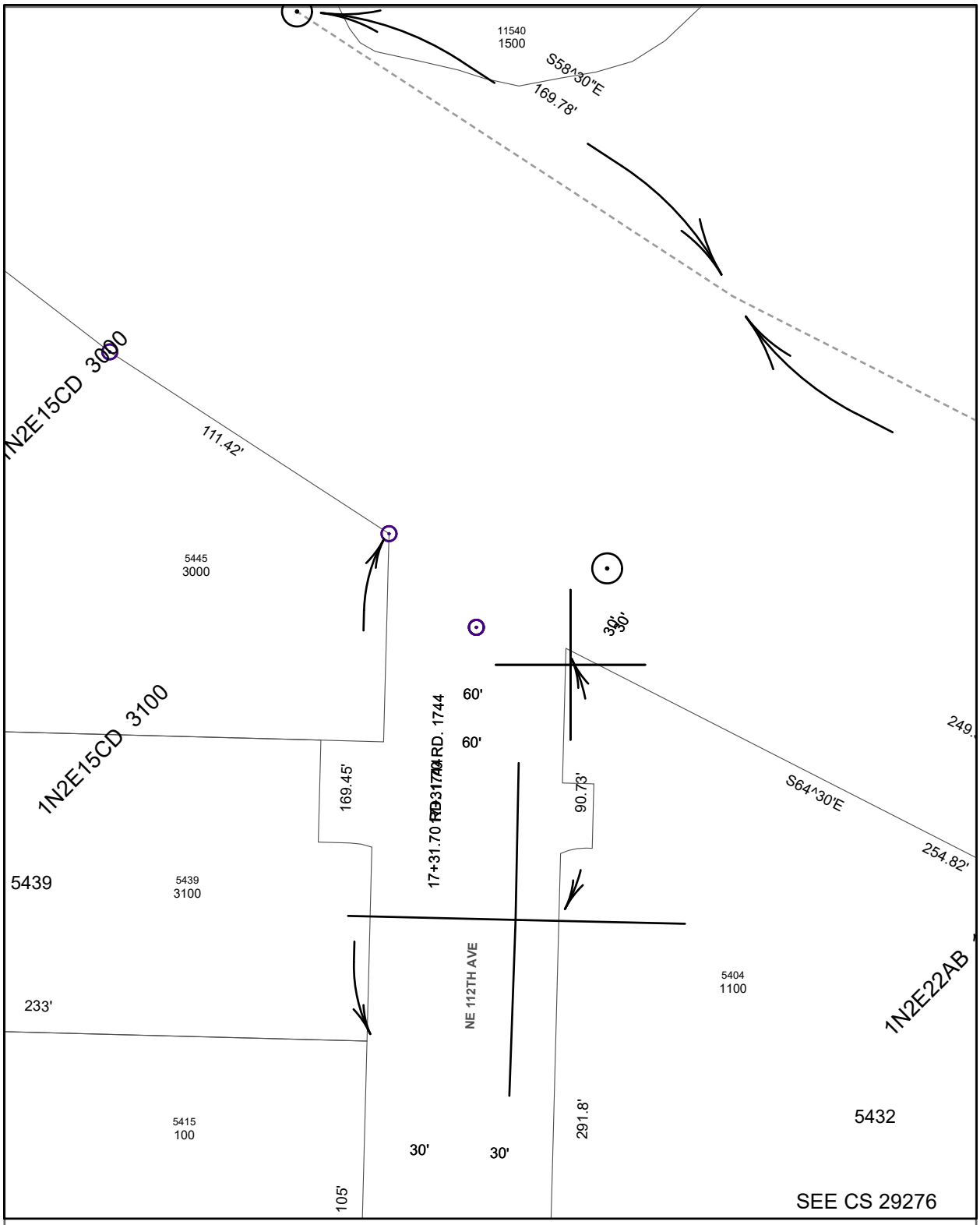
A line parallel with and 15 feet west of the east right-of-way line of NE 112th Ave. extended north across NE Deering Drive,

and

A line across NE Deering Drive that is parallel with and 30 feet west of the west right-of-way line of NE 112th Ave.

Contains ____ square feet, more or less.

Exhibit C



NE Deering Drive and NE 112th Ave.

Legal: A Portion of NE Deering Drive and NE 112th Ave., Plat of Parkrose

Grantor:

Easement Area

R/W: 8073 1/4 Section:2542 Section: **1N2E22AB**

N

1 inch = 50 feet

Street Dedication

Grantor's address:

After recording return to:
City of Portland
Bureau of Environmental Services
106/800/Karl Arruda

Tax Statement shall be sent to:
No change

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (the **"Easement"**) is entered into between _____ (**"**Grantor**"**) and the City of Portland, an Oregon municipal corporation, by and through its Bureau of Environmental Services, ("City"), collectively referred to as "the Parties" herein, with an effective date of _____

RECITALS

I. Grantor is the owner of certain real property in Multnomah County as described in Exhibit A (the **"**Property**"**) and wishes to grant a conservation easement over a portion of the Property, with the easement area more particularly described as follows (the "**Easement Area**").

All of vacated NE Deering Drive (30 feet wide) in the Plat of Parkrose (Blocks 99 to 113, Inclusive), City of Portland, Multnomah County, State of Oregon, vacated pursuant to Ordinance _____, passed by City Council on _____; being that portion of NE Deering Drive between the following two lines:
A line 3.0 feet east of and parallel with the east line of Northeast 105th Avenue, and
The westerly line of vacated Deering Drive, vacated by County Ordinance 4669, September 11, 1980, recorded in Book 1471, Page 1222.

Containing 59,106 square feet, more or less.

II. The Easement Area possesses resource values of importance to the City. Specifically, the Property contains or offers the following conservation, ecosystem and resource values (collectively the "Conservation Values"):

a) The Easement Area contains riparian areas, which are the transitional ecosystem between terrestrial and aquatic ecosystems. They provide important habitat for water-dependent species and function as travel corridors along the watercourse for various wildlife species. Trees in riparian areas provide shade to protect water temperatures.

b) The Easement Area currently has Environmental Protection AND/OR Environmental Conservation zone overlay, according to the City of Portland's Title 33, Planning and

Zoning Code, Chapter 33.430, which provides the highest AND/OR second highest level of protection to the City's most important natural resources and functional values.

c) The Easement Area also contains scenic, open space, and aesthetic values.

III. Grantor, as owner of the Easement Area, has the right and the desire to identify, protect, and preserve in perpetuity the Conservation, Ecosystem and Resource Values of the Easement Area.

IV. In accepting this Easement, the City agrees to honor the intentions of Grantor to preserve and protect the Conservation, Ecosystem and Resource Values of the Easement Area in perpetuity according to the Easement's terms.

CONVEYANCE AND TERMS AND CONDITIONS

1) **Grant**. In consideration of the foregoing and the mutual terms, conditions, and restrictions contained in this Easement, Grantor conveys to City, and City accepts, a perpetual conservation easement on, over and across the Easement Area of the nature, to the extent, and on the terms set forth in this Easement.

2) **Purposes**. Grantor intends that this Easement will limit the City's uses of the Easement Area to activities consistent with the purposes of this Easement, as identified below:

   a) To protect and preserve the Conservation Values of the Easement Area;

   b) To ensure the Easement Area will be retained in its natural state, and to preserve the open space character of the Easement Area, and, except as provided in this Easement, to prevent uses of the Easement Area that will materially impair the Conservation Values of the Easement Area.

3) **Rights Conveyed to City**. To accomplish the purposes of this Easement, Grantor conveys to City, and City accepts, the following rights:

   a) The right to maintain, preserve, protect and enhance the Conservation Values of the Easement Area pursuant to the terms and conditions of this Easement;

   b) The right to enter the Easement Area at any time via NE 105th Ave., NE 109th Ave., NE 112th Ave. (or other appropriate and agreed upon location) for the purpose of improvement to and management of the Easement Area in a manner consistent with the intent of this Easement. The City's rights with regard to improving the Easement Area include, but are not limited to, pruning, invasive species removal, planting, habitat restoration, stream bank stabilization and/or restoration, and monitoring;

   c) The right to prevent, through appropriate enforcement actions, including injunction, any

activity on or use of the Easement Area that is inconsistent with the purpose of this Easement, and require, pursuant to Section 7 below, the restoration of such features of the Easement Area as may be damaged by any inconsistent activity or use;

d) The right to assign or transfer City's interest in the Easement in accordance with Section 10;

e) The right to install planting, signage or other elements to delineate the boundaries of the Easement Area;

f) The right to manage non-native vegetation with manual, mechanical and chemical means. Spray will be applied in accordance with the City's adopted Intergrated Pest Management and Salmon Safe guidelines;

g) The right to place fill or otherwise alter the topography of the Easement Area, including the excavation or removal of sand, gravel or rock from the Easement Area only for the purposes of waterway, riparian and habitat improvement;

h) The right to drain, fill, dredge, ditch or dike any portion of the Easement Area or alter any watercourses, water impoundments or wetlands within the Easement Area for the purposes of conservation values enhancement;

4) **Rights Reserved to Grantor.**

a) Grantor reserves for itself, and for its successors and assigns, any and all rights accruing from its interest in the Easement Area, including the right to engage in, or permit or invite others to engage in, all permitted uses that are consistent with the purpose and terms of this Easement and are not expressly prohibited herein. Without limiting the generality of the foregoing, Grantor expressly reserves the right, for itself and for its successors and assigns, to conduct the following activities and engage in the following uses of the Easement Area:

i) To engage in, and permit others to engage in, passive, non-consumptive recreational uses of the Easement Area that are consistent with this Easement and do not adversely affect the Conservation Values of the Easement Area;

ii) Take reasonable steps in cooperation with public or nonprofit agencies to restore, enhance and protect the Conservation Values of the Easement Area.

b) Nothing contained herein imposes any requirement on Grantor or its successors or assigns to engage in any of the activities or uses described in this Section 4.

c) Notwithstanding anything to the contrary in this Section 4, Grantor may not in the Easement Area:

i) Use any chemical herbicides, pesticides or fertilizers;

ii) Remove or disturb any vegetation, including the harvesting of any trees or other forest resources;

iii) Place debris or fill or otherwise alter the topography of the Easement Area, including the excavation or removal of sand, gravel or rock from the Easement Area;

iv) Undertake or authorize any subsurface or surface construction or place or install structures of any kind within the Easement Area;

v) Engage in any activity that will or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters;

vi) Install roads or overpasses through or over Easement Area without express written permission from City;

vii) Divide, subdivide or partition land within the boundaries of the Easement Area;

viii) Drain, fill, dredge, ditch or dike any portion of the Easement Area or alter any watercourses, water impoundments or wetlands within the Easement Area;

ix) Operate motorized vehicles, including, but not limited to, construction equipment, logging equipment, motorcycles, all terrain or off-road vehicles, dune buggies, or snowmobiles within the Easement Area;

x) Introduce nonnative plant or animal species to the Easement Area;

xi) Discharge firearms or engage in hunting or trapping within the Easement Area.

5) **Grantor's Covenants and Remedies.**

a) Grantor's Covenants. Grantor shall comply with the terms of this Easement. Grantor shall pay before delinquency all taxes, assessments and fees of whatever description levied on or assessed against the Property. Grantor and its successors and assigns have the right to enforce the terms of this Easement against City.

b) Grantor's Remedies. If Grantor determines a violation of the terms of this Easement has occurred or is threatened, Grantor must give written notice to City of such violation and demand corrective action sufficient to cure the violation and, if necessary, restore the Easement Area to its intended condition. If City fails to cause the violation to be cured and, if necessary, restore the Easement Area to its intended condition within 30 days after

receipt of notice thereof from Grantor (or, where the violation cannot reasonably be cured within a 30-day period, City fails to begin curing the violation within such period or fails to continue diligently curing such violation until cured), will have the following rights and remedies, in addition to all other rights under this Easement and at law or in equity:

i) To bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement;

ii) To enjoin the violation by temporary or permanent injunction;

iii) To recover any damages to which it may be entitled for violation of the terms of this Easement;

iv) If the violation results in injury to the Easement Area, to require the restoration of the Easement Area to the condition that existed prior to any such injury;

v) To revoke this Easement if City fails or refuses to carry out its obligations under the Easement.

6) **Acts Beyond Parties' Control**. Nothing contained in this Easement may be construed to entitle either Party to bring any action against the other Party for any injury to or change in the Easement Area resulting from causes beyond that Party's control; including, without limitation, fire, flood, storm, and earth movement, or from any reasonable action taken by a Party under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes. Acts of the public will be considered beyond the control of City.

7) **City Covenants and City Remedies**

a) City's Covenants. City shall comply with the terms of this Easement. City has the right to enforce the terms of this Easement against Grantor, its successors and assigns.

b) City's Remedies. If City determines a violation of the terms of this Easement has occurred or is threatened, City must give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. If Grantor fails to cause the violation to be cured within 30 days after receipt of notice thereof (or, where the violation cannot reasonably be cured within a 30-day period, Grantor fails to begin curing the violation within such period or fails to continue diligently curing such violation until cured), City will have the following rights and remedies, in addition to all other rights under this Easement:

i) To bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement;

ii) To enjoin the violation by temporary or permanent injunction;

iii) To recover any damages to which it may be entitled for violation of the terms of this Easement; and

iv) If the violation results in injury to the Easement Area, to require the restoration of the Easement Area to the condition that existed prior to any such injury.

c) If City reasonably determines that, due to a violation of the terms and conditions of this Easement by Grantor, immediate action is required to prevent or mitigate significant damage to the Conservation Values, City may, at Grantor's cost, take immediate action to prevent, mitigate, or repair damage without prior written notice to Grantor or without waiting for the period provided for cure to expire. City must make reasonable efforts to contact Grantor prior to exercising this right.

d) Nothing in this Easement shall prevent City from exercising any of its regulatory authority as provided under applicable law, including the denial of or conditioning any permits applied for by Grantor or Grantor's successor and assigns.

8) **Representations and Warranties.**

a) Grantor's Representations and Warranties

i) To the knowledge of Grantor, the Easement Area is in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Easement Area and its use and Grantor will continue to comply with all state and federal environmental laws and regulations relating to pollutants or hazardous, toxic or dangerous substances; and

ii) There is no pending or threatened litigation affecting, involving, or relating to the Easement Area.

b) City's Representations and Warranties.

i) City is a qualified organization within the meaning of Internal Revenue Code section 170(h) and the applicable regulations promulgated thereunder and is authorized to acquire and hold conservation easements under ORS 271.715 et seq.; and

ii) City has all requisite corporate authorization and authority necessary to enter into this Easement and to carry out City's obligations hereunder.

9) **Indemnification.**

a) Subject to the Oregon Tort Claims Act and the Oregon Constitution, including in both instances future amendments, City hereby agrees to defend, indemnify, and hold harmless Grantor and its affiliates and subsidiaries, members, directors, officers, employees, agents, and contractors, and, the successors, and assigns of each of them, (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, actions, causes of action, suits, claims, demands, orders, judgments, or administrative actions (collectively a "Claim"), including but not limited to reasonable attorney fees and costs, to the extent they are caused by the wrongful acts or omissions of the City, or of its officers, employees, agents or authorized volunteers acting in the performance of their duties and eligible for defense and indemnification under the Oregon Tort Claims Act. However, no indemnification or defense will be provided by City for the acts or omissions of Grantor or its officers, employees or agents in exercising rights reserved to Grantor under Section 4 of this Easement or from Grantor's intentional, willful or negligent conduct if such conduct is the cause of the Claim.

b) Grantor agrees to defend, indemnify and hold harmless City, its officers, employees, agents or authorized volunteers, and against all liabilities, damages, losses, claims, demands, actions, and suits (including attorney fees and costs) resulting from: (a) a release or threat of release of hazardous substances, as defined in ORS 465.200 (9), into the soil, or groundwater, on the Easement Area; or (b) the wrongful acts or omissions of Grantor or its affiliates, subsidiaries, members, directors, officers, employees, agents, contractors, successors, or assigns. This provision does not apply to release of hazardous substances onto or from the Easement Area caused by the officers, employees, agents or authorized volunteers of City. City, by accepting this Easement, is not accepting any liability for any earlier release of hazardous substances onto or from the Easement Area, and Grantor is not attempting to convey any such liability.

10) **Transfer or Assignment**. City may transfer the Easement to a qualified governmental or nonprofit entity with advance written notice to Grantor. All other transfers or assignments will require the express prior written consent of Grantor.

11) **Amendment**. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, City and Grantor may jointly amend this Easement. Any such amendment must be consistent with the purpose of this Easement and no such amendment will be effective unless signed by City and Grantor.

12) **Subsequent Transfers**. Any future conveyance of any interest in the Easement Area, including without limitation, a leasehold interest, will be subject to the terms of this Easement.

13) **Miscellaneous**.

a) **Controlling Law and Forum**. This Easement will be governed by and construed in accordance with the laws of the State of Oregon. Any litigation arising under this Easement will occur in the court sitting in Multnomah County having proper jurisdiction.

b) **Notices**. Any notice, demand, request, consent, approval, or other communication required or permitted hereunder must be in writing and either served personally, by overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Grantor:

If to City: City of Portland
Columbia Slough Watershed Easement Manager
1120 SW Fifth Avenue, Room 1000
Portland, OR 97204

The address to which notices or other communications must be mailed may be changed from time to time by giving written notice to the other party as provided in this Section.

c) **Recording**. City must record this instrument in the official real estate records of Multnomah County, Oregon and may re-record it as required to preserve its rights under this Easement.

d) **Severability**. If any provision of this Easement is found to be invalid, the remaining portion thereof and all other provisions of this Easement will, nevertheless, remain in full force and effect.

e) **Entire Easement**. This Easement is the final and entire Easement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings or Easements between the parties.

f) **Successors**. The covenants, terms, conditions, and restrictions of this Easement are binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, and permitted assigns. Both the benefits and burdens of this Easement will run with the Easement Area in perpetuity.

g) **Counterparts**. The parties may execute this instrument in two or more counterparts, and when taken together will constitute one and the same instrument.

h) **No Third Party Beneficiaries Created**. This Easement is intended solely for the benefit of Grantor and City and there are no third party beneficiaries hereto, intended or otherwise. This Easement may be enforced only by Grantor and City, their successors

and permitted assigns. As used in this Easement, the term "third party" means individuals or entities other than Grantor and City.

i) **Exhibits and Recitals**. The exhibits and recitals are incorporated herein by this reference.

THIS SECTION LEFT INTENTIONALLY BLANK.

IN WITNESS WHEREOF, the parties hereto have caused this Easement to be executed this _____ day of _____, 20___.

GRANTOR:

_____

CITY OF PORTLAND

_____
Bureau of Environmental Services
Director or designee

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on _____, 2010, by _____.

_____
Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on _____, 20___, by _____ as Director, or designee, Bureau of Environmental Services of the City of Portland.

_____
Notary Public for Oregon
My Commission Expires: _____

APPROVED AS TO FORM

_____
City Attorney

EXHIBIT A

PROPERTY DESCRIPTION

Wolf Family, LLC:

Lot 9, Block 101, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive), excepting therefrom the south 14 feet of the west 40 feet, situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

Walsh Holdings, LLC:

Lot 1, Block 101, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive), situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

William E. Walsh, Jr., Trustee and Margaret M. Walsh, Trustee, of the William E. and Margaret M. Walsh Trust:

Lot 8, Block 100, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive), excepting therefrom the south 109 feet and the part in NE 109th Avenue, situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

SAKS Unlimited, LLC:

The west 150 feet of Lot 1, Block 100, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive) situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

SAKS Unlimited, LLC:

The east 233 feet of Lot 1, Block 100, excepting therefrom the south 100 feet, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive) situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

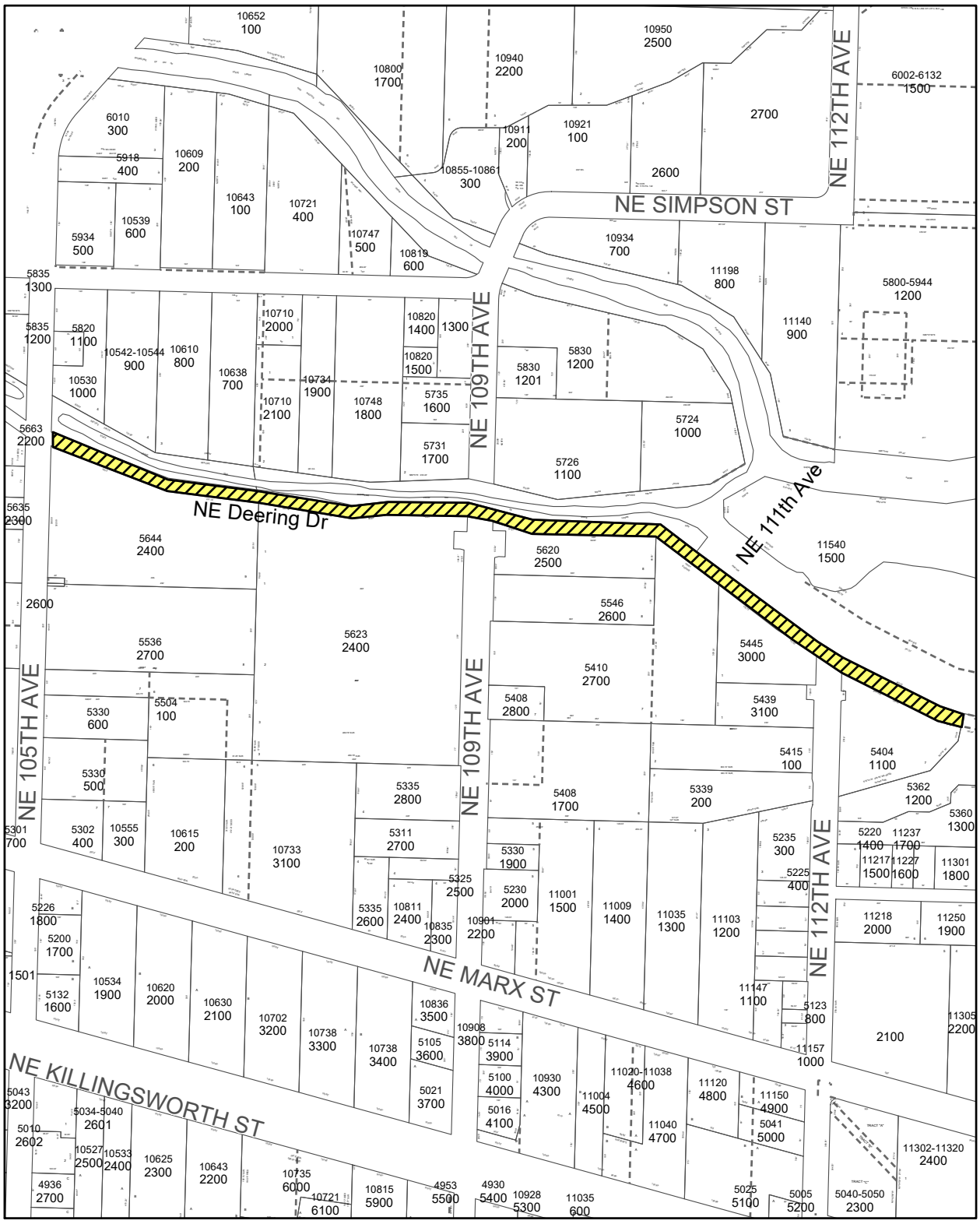
Cotton Creek, LLC:

That portion of Lot 7, Block 99, in the Plat of Parkrose (Blocks 99 to 113, Inclusive) situated in the northeast one-quarter of Section 22, T1N, R2E, W.M., in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Northwest corner of Block 99; thence South 64°30' East along the Northerly boundary of said Block 99, 254.82 feet; thence South 79°20' East, 54.33 feet; thence South 10° 20' West, 35.48 feet; thence South 42° West 95 feet; thence South 72°41' West, 223.55 feet,

more or less, to a point in the Westerly boundary of said Block 99; thence North, 291.8 feet to the point of beginning.

Exhibit B



NE Deering Dr. east of NE 105th Ave.

Grantee: City of Portland

Conservation Easement

Sections: 1N2E15CC, 1N2E15CD, 1N2E22AB 1/4 Sections: 2542, 2441

1 inch = 350 feet

EXHIBIT 10

Grantor's Name and Address:

Grantee's Name and Address:
Portland Water Bureau
1120 SW 5th Avenue #600
Attention: ROW and Survey Section
Portland Oregon 97204

After Recording Return To:
Portland Bureau of Transportation
Karl Arruda/106/800
1120 SW 5th Ave., 8th floor
Portland, Or 97204

Tax Statements
No Change Requested

WATER FACILITY EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that _____, LLC, an Oregon limited liability company, Grantor, in consideration of the provision of water service to Grantor's property, and other good and valuable consideration, does hereby grant unto City of Portland, Grantee, a municipal corporation of the State of Oregon, the right to lay down, construct, reconstruct, inspect, operate and perpetually maintain water system facilities and necessary appurtenances through, under, and along the following described parcel:

> As described on Exhibit A and depicted on Exhibit B attached and incorporated by reference.
>
> Contains _____ square feet, more or less.

THE TERMS OF THIS EASEMENT are as follows:

1. Grantee, Grantee's agents, or employees (hereafter collectively, "Grantee") may construct such surface or underground structures within this easement as necessary or convenient for Grantee's water system and water facilities including, but not limited to, vaults, meters, water lines, drains, and related appurtenances of any kind (hereafter "Grantee Facilities").

2. Grantee may use this easement to construct, access, operate, inspect, maintain, upsize, or replace Grantee Facilities. Within a reasonable time after completion of

any earth disturbing work undertaken by Grantee within this easement, Grantee will return the easement surface to a grade and condition consistent to that which existed prior to Grantee's work, or as close thereto as is reasonably practical.

3. Grantor will neither cause nor allow any permanent or temporary surface or underground structure or facility, including public or private utility line(s) or other improvements, to be constructed or located within the easement without the prior written consent of the Chief Engineer of the Grantee. All construction activities and structures permitted within this easement by Grantee must comply with applicable federal, state, and local laws and regulations.

4. Grantor shall keep this easement open, accessible, and passable at all times. Grantor will erect no fence or other impediment to Grantee's access except as permitted in writing by the Chief Engineer of Grantee.

5. Grantor will neither cause nor allow any change of grade in excess of one (1) foot of elevation within this easement without the prior written consent of the Chief Engineer of the Grantee.

6. Grantor will neither cause nor allow trees to be planted within the easement without the prior written consent of the Chief Engineer of the Grantee.

7. Grantor will neither cause nor allow materials to be stored, used, manufactured or disposed of within this easement except in compliance with all federal, state, and local law, provided that in no case may there be stored, used, manufactured, or disposed of within the easement, any hazardous substances, or any substances or materials which constitute a public health hazard, as defined by rules of the Oregon State Health Division. Grantor will neither cause nor allow any condition to exist within the easement that constitutes a health hazard, as defined by rules of the Health Division. As used in this easement, "Hazardous Substance" means: (i) any hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time; or (ii) any hazardous waste defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time; or (iii) any hazardous substances as defined by Oregon Revised Statute 465.200 and/or implementing regulations of the Oregon Department of Environmental Quality; or (iv) any and all material or substance defined as hazardous pursuant to any federal, state or local laws or regulations or order; or (v) any and all material or substance which is or becomes regulated by any federal, state or local governmental authority; or (vi) any and all material or substance which contains oil, gasoline, diesel fuel or other petroleum hydrocarbons and their by-products.

8. Grantor holds Grantee, its officers, employees, and agents, harmless from any expense, loss, or liability, including legal fees, arising from claims for property damage or personal injury or death not caused by the Grantee's Facilities or Grantee's activities in constructing, reconstructing, maintaining, or repairing its

facilities, including from any liability imposed by law for the clean-up or damages caused by the release or disposal of hazardous substances within the easement, except for release or disposal of hazardous substances caused by Grantee, its officers, employees or agents.

9. In the event Grantor should sell or lease the property upon which the easement is located, the sale or lease will be subject to the restrictions and conditions described herein which will be binding upon the Grantor's heirs, successors, and assigns forever.

10. Grantor and Grantee each agree to notify the other no less than three (3) business days prior to the commencement of any earth disturbing work within the easement approved pursuant to provisions of this agreement, provided however that in the event of emergencies no such notice shall be required.

IN WITNESS WHEREOF, _____, LLC, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its Member, this _____ day of _____ _____, 20___.

_____, LLC,
AN OREGON LIMITED LIABILITY COMPANY

By: _____
Member

STATE OF _____

County of _____

This instrument was acknowledged before me on _____, 20 _____, by _____ as a Member of _____, LLC, an Oregon limited liability company.

_____
Notary Public for (state)_____

My Commission expires _____

Approved as to form:

_____

City Attorney

Approved:

_____

Chief Engineer, Portland Water Bureau

RW 8073
Water Facility Easement

EXHIBIT A

A Portion of vacated NE Deering Drive and NE 112th Ave., in the Plat of Parkrose (Blocks 99 to 113, Inclusive), City of Portland, Multnomah County, State of Oregon,

Being that portion of vacated NE Deering Drive and vacated NE 112th Ave. inuring to Grantor's property pursuant to Ordinance _____, passed by City Council on _____, lying between the following two lines:

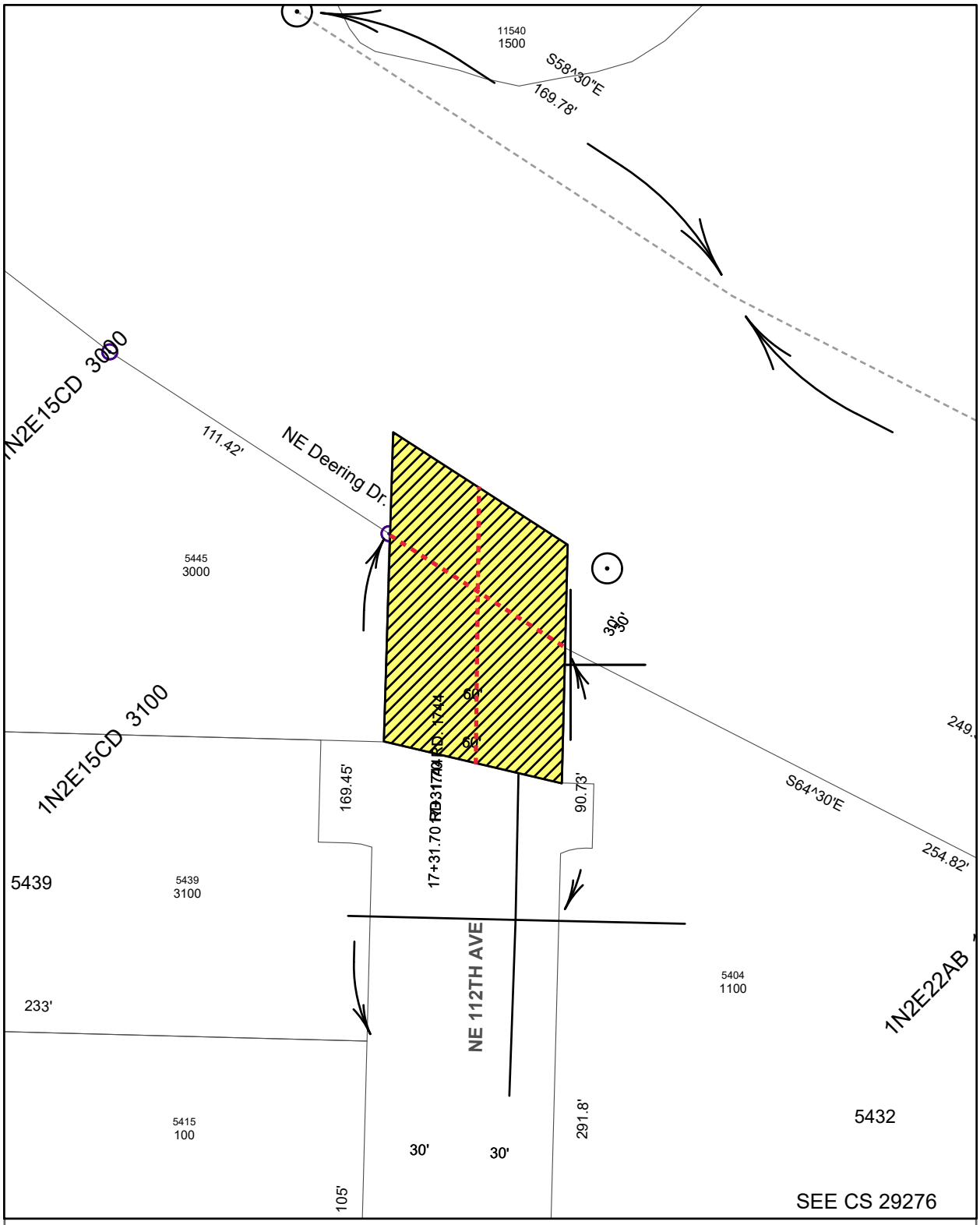
The west right-of-way line of vacated NE 112th Ave., extended north across NE Deering Drive,

And

The east right-of-way line of vacated NE 112th Ave., extended north across NE Deering Drive,

Containing 5,529 square feet, more or less.

Exhibit B



NE Deering Drive and NE 112th Ave.

Legal: A Portion of NE Deering Drive and NE 112th Ave., Plat of Parkrose

Grantor:

Easement Area

R/W: 8073 1/4 Section:2542 Section: **1N2E22AB**

N

1 inch = 50 feet

After recording return to:

Multnomah County Drainage District
1880 N.E. Elrod Drive
Portland, Oregon 97211
Attention: Easement Recordings

EXHIBIT 11

FLOOD CONTROL RIGHT OF WAY AND ACCESS EASEMENT

THIS FLOOD CONTROL RIGHT OF WAY AND ACCESS EASEMENT (this "Easement"), is made as of _____, 201__, by and between _____ ("Grantor") and Multnomah County Drainage District, an Oregon special purpose local government agency organized under Oregon Revised Statutes Chapter 547 ("Grantee").

RECITALS

A. Grantor is the owner of the real property located in Multnomah County, Oregon, and described on the attached Exhibit A (the "Property").

B. Grantee manages and maintains drainage and flood control facilities along the Columbia River pursuant to authorities that include the state enabling statutes and the federal Flood Control Act, and in connection with Grantee's operations, desires to obtain an access easement over and across the portion of the Property described in the attached Exhibit B and depicted on the attached Exhibit C (the "Access Easement Area").

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **Flood Control Facililties.** The term "Flood Control Facilities" means all drainage-related and flood-control related improvements, facilities, and equipment, including, but not limited to drains, levees, dikes, ditches, flood walls, embankments, revetments, canals, piping, and any incidental works, equipment, or improvements appurtenant thereto, or any other works, equipment, or improvements owned or maintained by Grantee or its affiliates.

2. **Grant of Access Easement.** Grantor hereby grants, bargains, assigns, conveys, and transfers to Grantee, a nonexclusive, perpetual access easement in, on, under, over, and across the Access Easement Area for the purpose of ingress and egress to and from the Flood Control Right of Way, including, without limitation, the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions. Collectively, the Flood Control Right of Way and the Access Easement Area are referred to as the "Easement Area." Grantee shall have the right at all times to enter upon the Easement Area with people, vehicles, machinery, and equipment, for the purposes described in this Easement.

3. **Benefited Parties.** The easement rights granted herein are for the benefit of Grantee and its officers, directors, beneficiaries, members, partners, managers, supervisors, employees, agents, contractors, affiliates, invitees, and representatives of local, federal, or state governmental entities or agencies (the "Benefited Parties").

4. **Restoration.** In the event the surface of the Easement Area is disturbed by Grantee's exercise of any of its easement rights under this Easement, upon completion of Grantee's work in such area, Grantee shall restore the area to an orderly condition. Grantee shall promptly repair, at Grantee's sole cost and expense, any damage caused by Grantee to landscaping, paving, or other improvements in the Access Easement Area, and following such damage, to the extent reasonable, restore the Access Easement Area to a condition existing immediately prior to such damage.

5. **Grantor's Restrictions and Obligations.**

5.1 Grantor shall not and shall not allow its officers, directors, members, managers, partners, employees, agents, contractors, affiliates, or invitees (collectively, the "Grantor Parties") to enter onto or use the Easement Area for any purpose, or construct any building or other improvement, store any property, or take any other action in, on, under, over, or across the Easement Area, including without limitation, installing cabling, pipes, or utilities, excavating material, placing piling or fencing, grazing cattle, or adding or removing landscaping, unless Grantor has obtained Grantee's prior written consent, which consent may be conditioned, withheld, or delayed in Grantee's sole discretion, and will be subject to the terms of this Section 5.

5.2 Any construction, excavation, or other use by Grantor or any of the Grantor Parties of any portion of the Easement Area, must not adversely impact (a) Grantee's use of and operations in, on, under, over, or across the Easement Area, (b) any drainage-related or flood-related improvements (currently existing or hereafter added) located in, on, under, over, and across the Easement Area, (c) the Flood Control Facilities maintained by Grantee or any of Grantee's affiliates (wherever located), or (d) any improvements (currently existing or hereafter constructed) owned or maintained by Grantee and located in, on, under, over, and across the Easement Area. It is the parties' intent that Grantor's use of the Easement Area not be inconsistent with or contrary to the laws, rules, regulations, ordinances, or standards applicable, from time to time, to Grantee, Flood Control Facilities, or flood control or drainage activities, measures, or practices, and that Grantor's use of the Easement Area not interfere with or be inconsistent with standards or recommendations Grantee reasonably believes are applicable to use, maintenance, or operation of the Easement Area, Flood Control Facilities or flood control or drainage activities, measures, or practices.

5.3 Grantor shall not and shall not allow any of the Grantor Parties to (a) interfere with or block, restrict, or obstruct access or use by Grantee or any of the Benefited Parties of the Access Easement Area, or (b) create any condition that is a safety hazard, including with respect

to any Flood Control Facilities now or hereafter located in, on, under, over, across, or about the Easement Area.

5.4 Grantor shall promptly repair, at Grantor's sole cost and expense (or at Grantee's option, Grantee may complete the repairs) any damage, including damage to landscaping, paving, or other improvements, caused to the Easement Area or any improvements to the Easement Area, by Grantor or any of the Grantor Parties. If Grantee elects to complete any repairs itself, Grantor shall reimburse Grantee on demand for the costs of those repairs, including the payment of a reasonable fee for time spent by salaried or hourly staff of Grantee to assess, monitor, supervise, and complete such repairs.

5.5 Grantee may charge Grantor a reasonable fee related to Grantee's review of Grantor's request or application for use of the Easement Area. If Grantee authorizes Grantor or any of the Grantor Parties to use any portion of the Easement Area for any purpose, any such authorization shall be conditioned upon and subject to Grantor having obtained approval from agencies or other regulatory bodies with jurisdiction or authority over Grantee, Flood Control Facilities, or flood control or drainage activities, measures, or practices, including without limitation, approval of the U.S. Army Corps of Engineers or the Department of State Lands, and, if Grantee deems it to be necessary, the Federal Emergency Management Agency, for such use of the Easement Area by Grantor. At its option, Grantee may agree to use reasonable efforts to assist and facilitate Grantor in procuring such third-party approvals, at Grantor's sole expense.

5.6 If (a) any agency or other regulatory body with jurisdiction or authority over Grantee, Flood Control Facilities, or flood control or drainage activities, measures, or practices, modifies or in any other way changes the laws, rules, regulations, ordinances, or standards applicable to Grantee, any Flood Control Facilities, or flood control or drainage activities, measures, or practices, (b) Grantee reasonably believes that some or all of the uses Grantor is making of the Easement Area (whether such uses were previously authorized by Grantee or not) violate the best practices standards for Flood Control Facilities or flood control or drainage activities, measures, or practices, or (c) Grantee reasonably believes that Grantor's use of the Easement Area is not compliant with applicable standards or recommendations for Flood Control Facilities or flood control or drainage practices, then Grantee may revoke some or all of Grantor's rights under any authorization or consent given by Grantee to Grantor with respect to any use of the Easement Area by Grantor or any Grantor Parties, upon at least 90 days' advance written notice to Grantor of such revocation.

6. **Grantee's Additional Rights.** In the event that Grantee reasonably determines that all or a portion of Grantor's or any of Grantor Parties' activities in, on, or about the Easement Area or Grantor's or any of the Grantor Parties' use, maintenance, or improvement of the Easement Area is inconsistent with Grantee's use of the Easement Area or the rights granted to Grantee under this Easement, Grantee shall have the right to require Grantor and the Grantor Parties to cease such activities and Grantee may, at its option, remove (or compel Grantor to remove) any improvements located in, on, under, over, and across the Easement Area installed by Grantor or any of the Grantor Parties, and charge Grantor for the cost of such removal.

7. **Maintenance.** Grantor shall, at its sole cost and expense, maintain the Access Easement Area in good condition and repair, including, but not limited to, all of the roadways, sidewalks,

and landscaping. However, Grantor shall have no responsibility for or be obligated in any way to repair any damage to the Access Easement Area arising from any negligent use by Grantee or any of the Benefited Parties, and such repairs shall be the sole responsibility of Grantee and shall be repaired at Grantee's sole expense.

8. **Improvements**. Either party may, at such party's sole cost and expense, improve, replacement, or reconstruct the improvements in the Access Easement Area or add improvements to the Access Easement Area.

9. **Performance for Grantor.** In the event Grantor fails to perform any of its obligations under this Easement, Grantee shall have the right, upon giving Grantor seven days' written notice, to perform such obligations and Grantor shall reimburse Grantee on demand for the resulting cost. Grantee may not commence performance on behalf of Grantor if within the seven-day notice period, Grantor begins and thereafter diligently pursues to completion the performance of the obligations set forth in Grantee's notice. In the event Grantee determines that an emergency exists and Grantor is unavailable, unwilling or unable to take immediate and appropriate action, Grantee may take whatever immediate action it deems necessary and Grantor shall reimburse Grantee on demand the resulting costs. Any costs payable by Grantor under this Section 9 may, at Grantee's option, include a reasonable fee for time spent by salaried or hourly staff of Grantee to assess, monitor, supervise, and complete such performance.

10. **Interest.** Any amounts owed by Grantor to Grantee under this Easement shall accrue interest from the date of expenditure by Grantee until paid in full, at a rate equal to the lesser of 12 percent per annum or the maximum amount allowed by law.

11. **No Representation or Warranty.** Grantor acknowledges and agrees that Grantee has not made any warranty, guarantee, or averment, express or implied, of any nature whatsoever concerning the current or future physical condition of the Flood Control Facilities or Grantee's current or future flood control or drainage activities, measures, or practices, or the current or future suitability of the Flood Control Facilities or Grantee's current or future flood control or drainage activities, measures, or practices for the purpose for which they were intended. Grantor acknowledges that there is an inherent risk in owning property or operating in, on, or about property located in a flood plain.

12. **Limitation**. In no event shall an alleged breach by Grantee of its obligations under this Easement deprive Grantee of its use or enjoyment of the Easement Area unless and until a court of competent jurisdiction enters a decree limiting, temporarily restraining or permanently restraining or otherwise depriving Grantee of its rights under this Easement or use and enjoyment of the Easement Area.

13. **Grantor Warranty of Title.** Grantor represents and warrants to Grantee that it has marketable fee title to the Property, subject to no encumbrances that will unreasonably interfere with use of the Easement Area by the Grantee or the Benefited Parties.

14. **Modification and Amendment**. No amendment, modification, or termination of this Easement shall be effective until the written instrument setting forth its terms has been executed

and acknowledged by Grantee (or its successor or assignee) and the owner of the Property at the time this Easement is amended, modified, or terminated.

15. **Effect of Easement**. The rights and restrictions granted and reserved in this Easement shall be appurtenant to the Property and shall be perpetual. The easements, benefits, burdens, obligations, and restrictions created in this Easement shall create covenants, benefits, and servitudes upon the Property as set forth herein, and shall run with the land, and shall bind and inure to the benefit of Grantee and Grantor as well as each of their successors and assigns. There are no third-party beneficiaries to this Easement and only Grantee and Grantor, and each of their successors and assigns, may enforce the terms of this Easement.

16. **Attorneys' Fees**. If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Easement, including any bankruptcy proceeding, to rescind this Easement, or otherwise with respect to the subject matter of this Easement, the party prevailing shall be entitled to recover, in addition to costs, reasonable attorneys' fees incurred in preparation or in prosecution or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

17. **Partial Invalidity**. If any provision of this Easement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Easement shall not be in any way impaired.

18. **Governing Law.** This Easement shall be governed by and construed in accordance with the laws of the state of Oregon.

19. **Entire Agreement**. This Easement contains the entire agreement and understanding of the parties with respect to the subject matter of this Easement Area.

{*Signature and Notary Pages Follow*}

IN WITNESS WHEREOF, the undersigned has executed this Easement as of _____, 20_____.

GRANTOR:

_____

By: _____
Name: _____
Its: _____

GRANTEE:

_____

By: _____
Name: _____
Its: _____

State of OREGON

County of _____

This instrument was acknowledged before me on _____, 20__, by _____, as _____ of _____.

_____
Notary Public for the State of Oregon
My Commission Expires: _____

State of OREGON

County of _____

This instrument was acknowledged before me on _____, 20__, by _____, as _____ of _____.

_____
Notary Public for the State of Oregon
My Commission Expires: _____

EXHIBIT A

PROPERTY DESCRIPTION

SAKS Unlimited, LLC:

The east 233 feet of Lot 1, Block 100, excepting therefrom the south 100 feet, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive) situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

Cotton Creek, LLC:

That portion of Lot 7, Block 99, in the Plat of Parkrose (Blocks 99 to 113, Inclusive) situated in the northeast one-quarter of Section 22, T1N, R2E, W.M., in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Northwest corner of Block 99; thence South 64°30' East along the Northerly boundary of said Block 99, 254.82 feet; thence South 79°20' East, 54.33 feet; thence South 10° 20' West, 35.48 feet; thence South 42° West 95 feet; thence South 72°41' West, 223.55 feet, more or less, to a point in the Westerly boundary of said Block 99; thence North, 291.8 feet to the point of beginning.

EXHIBIT B

Access Easement

A Portion of vacated NE 112th Avenue and vacated NE Deering Drive, in the Plat of Parkrose (Blocks 99 to 113, Inclusive), City of Portland, Multnomah County, State of Oregon,

Being that portion of vacated NE Deering Drive and vacated NE 112th Ave. inuring to Grantor's property pursuant to Ordinance _____, passed by City Council on _____, lying between the following two lines:

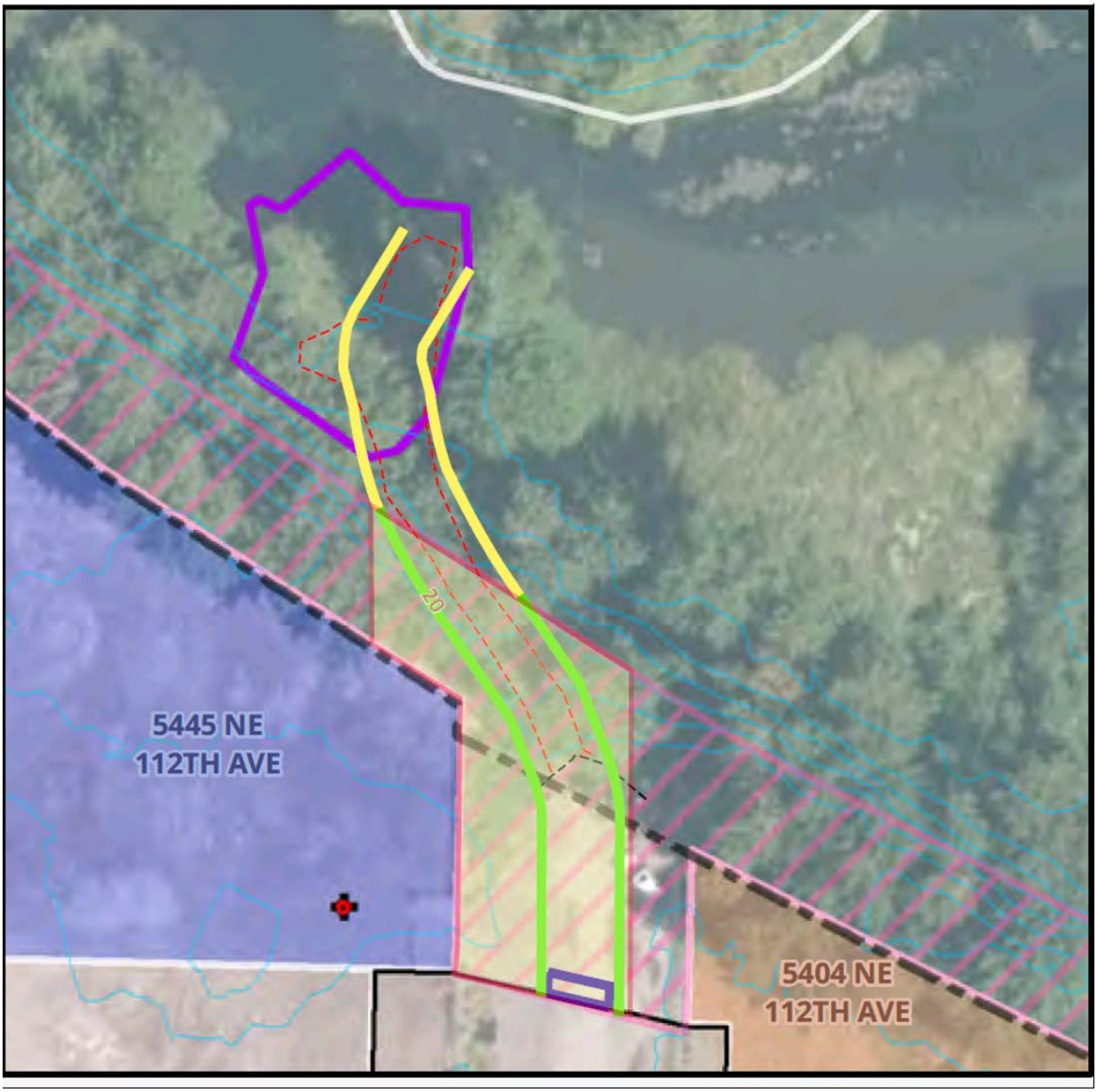
A line parallel with and 15 feet west of the east right-of-way line of NE 112th Ave. extended north across NE Deering Drive,

and

A line across vacated NE Deering Drive that is parallel with and 30 feet west of the west right-of-way line of NE 112th Ave.

Contains ____ square feet, more or less.

Exhibit C



NE Deering Drive and NE 112th Ave.

Legal: A Portion of NE Deering Drive and NE 112th Ave., Plat of Parkrose

Easement Area

RW: 8073 ¼ Section: 2542 Section: 1N2E22AB 1 inch = 32 feet