

After recording return to:  
Bureau of Environmental Services  
Attn: Property Manager  
1120 SW 5<sup>th</sup>, Room 1000  
Portland, OR 97204

Tax Statement shall be sent to:  
No change

### DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (the "**Easement**") is entered into between THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, a mass transportation district whose address is 710 NE Holladay Street Portland, Oregon 97232 ("Grantor") and the City of Portland ("City"), collectively referred to as "the Parties" herein, with an effective date of \_\_\_\_\_, 2013.

### RECITALS

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

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

- a. The Easement Area encompasses Crystal Springs Creek, which is a tributary of lower Johnson Creek in southeast Portland. The creek originates from a spring near Reed College and the Eastmoreland Golf Course, an area that was once primarily marshy wetlands. Before development, the wetlands retained excess water from flood events and provided important rearing and refuge habitat for salmon, steelhead and other native fish, and foraging and nesting sites for beavers, birds, turtles, frogs, and other wildlife.
- b. Crystal Springs is spring fed, which keeps water temperatures cool and stream flow uniform throughout the year. This adds cool water to Johnson Creek in the summer when stream flow can be low and warm. Fish and amphibians thrive in cool water. Crystal Springs is home to coho and Chinook salmon, and steelhead trout. All three species are listed as threatened under the federal Endangered Species Act (ESA), and Crystal Springs is designated as critical habitat.

- c. The Easement Area contains riparian areas, which are the transitional ecosystem between terrestrial and aquatic ecosystems. Within the riparian area are wetlands that provide unique habitats to amphibians, and as rearing, refuge and feeding areas for juvenile salmon. Native vegetation along and within the Easement Area helps to reduce temperatures in the creek, clean and infiltrate rain and stormwater, recharge groundwater and provide habitat for water-dependent species. Riparian habitat also functions as a travel corridor along the watercourse for various wildlife species;
  - d. The Easement Area currently has Environmental Protection (P) zone overlay, according to the City of Portland's Title 33, Planning and Zoning Code, Chapter 33.430, which provides the highest level of protection to the City's most important natural resources and functional values;
  - e. The Easement Area 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 Values of the Easement Area.
- IV. In accepting this Easement, City agrees to honor the intentions of Grantor to preserve and protect the Conservation Values of the Easement Area in perpetuity according to the Easement's terms.

### **CONVEYANCE AND TERMS AND CONDITIONS**

- I. **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.
- II. **Purposes.** The purposes of this Easement are:
- 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.

Grantor intends that this Easement will limit the City's uses of the Easement Area to activities consistent with these purposes and consistent with the City's management of properties it maintains as natural areas.

- III. **Rights and Obligations Conveyed to City.** To accomplish the purposes of this Easement, Grantor conveys to City, and City accepts, the following rights and obligations:
- a) The right, and the obligation, to maintain, preserve and protect 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 existing Rights of Entry with third parties, along the Highway 99 Right of Way, 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 and obligation 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 obligation to keep the Easement Area in a good condition and safe condition, consistent with like properties held by City for natural area purposes;
- e) The right to install planting, signage or other elements to delineate the boundaries of the Easement Area;
- f) The right to assign or transfer City's interest in the Easement in accordance with Section 10.
- g) 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;
- h) 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, in compliance with all applicable federal, state and local rules and regulations;
- i) 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, in compliance with all applicable federal, state and local rules and regulations;

#### IV. 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 daytime uses of the Easement Area that are consistent with this Easement and do not adversely affect the Conservation Values of the Easement Area. Grantor will take all reasonable measures to prevent the public from accessing the Easement Area from the rail corridor;
  - ii. After consultation with City, take reasonable steps in cooperation with public or nonprofit agencies to restore, enhance and protect the Conservation Values of the Easement Area; or
  - iii. To ingress and egress to the Easement Area, and access the east 10 feet of the Easement Area for any purpose within Grantor's reasonable discretion.
- 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. Without notice to the City, use any chemical herbicides, pesticides or fertilizers;
  - ii. Without notice to the City, 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. Without notice to the City, 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, except as to maintain access to the east 10 feet of the Easement Area in Section 4.a.iii above;
  - vii. Divide, subdivide or partition 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. Without notice to the City, operate motorized vehicles, including, but not limited to, construction equipment, logging equipment, motorcycles, all terrain or off road

vehicles, dune buggies, or snow mobiles 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; or

V. **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), Grantor 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; and
  - iii. To recover any damages to which it may be entitled for violation of the terms of this Easement; or
  - 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 is City fails or refuses to carry out its obligations under the Easement.

- VI. **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 not be considered beyond the control of City.

VII. City Covenants and City Remedies.

- a. 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. 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.

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.

**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.**

VIII. 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. To the knowledge of Grantor, 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.

**IX. 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, without limitation, reasonable attorney fees and costs, arising from or in any way connected with City's uses of the Easement Area. 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. Subject to the Oregon Tort Claims Act and the Oregon Constitution, including in both instances future amendments, Grantor agrees to defend, indemnify and hold harmless City, its officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions, and suits (including attorney fees and costs) resulting from 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. This provision does not apply to release of hazardous substances onto or from the Easement Area caused by the officers, agents or employees 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.

- X. **Transfer or Assignment.** City may transfer the Easement to a qualified governmental or nonprofit entity with advance written notice to Grantor, but such transfer will not relieve City its obligations under this Easement. All other transfers or assignments will require the express prior written consent of Grantor.

- XI. **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 the City and Grantor. The Director of the Bureau of Environmental Services is authorized to sign amendments on behalf of the City.
- XII. **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.
- XIII. **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:

TriMet Real Property  
 Harrison Square  
 1800 SW 1st Avenue  
 Suite 300  
 Portland, OR 97201  
 Attn: Director of Real Property

With a copy to:

TriMet Real Property  
 Harrison Square  
 1800 SW 1st Avenue  
 Suite 300  
 Portland, OR 97201  
 Attn: General Counsel

If to City:

Bureau of Environmental Services  
 Attn: Property Manager  
 1120 SW 5<sup>th</sup> Ave., Room 1000  
 Portland, OR 97204

With a copy to:

Office of the City Attorney  
 1221 SW 4<sup>th</sup> Ave.  
 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 exclusive agreement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings or agreements 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.

IN WITNESS WHEREOF, the parties hereto have caused this Easement to be executed this \_\_\_ day of \_\_\_\_\_, 201\_\_.

<p>GRANTOR</p> <p>By: _____</p> <p>Name: Jillian Detweiler</p> <p>Title: Director of Real Estate</p>	<p>CITY OF PORTLAND</p> <p>By: _____</p> <p>Dean Marriott</p> <p>Director</p> <p>Bureau of Environmental Services</p>
--	---

STATE OF OREGON     )  
   ) ss.  
 County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 201\_\_ by

Notary Public for Oregon  
My Commission Expires:

STATE OF OREGON     )  
   ) ss.  
 County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 201\_\_ by \_\_\_\_\_ as Director, Bureau of Environmental Services.

Notary Public for Oregon  
My Commission Expires:

185875

EXHIBIT A

PROPERTY DESCRIPTION

**Property ID: R991131760**

**State ID: 1S1E13 500**

**Legal Description: SECTION 13 1S 1E, TL 500 5.46 ACRES**

EXHIBIT BEASEMENT AREA DESCRIPTION

File 3504  
Union Pacific Railroad

Crystal Springs Creek  
Conservation Area

Portland-Milwaukie LRT Project  
Jack Carlson, Otak, Inc., 6/18/2012  
Amended:

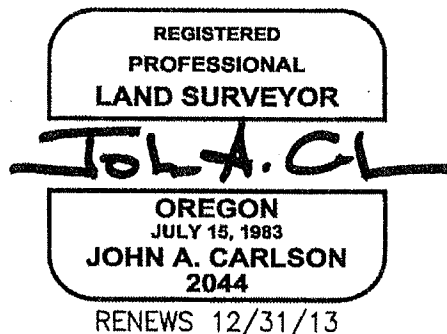
A tract of land in the southwest one-quarter of Section 13, and the southeast one-quarter of Section 14, Township 1 South, Range 1 East, Willamette Meridian, Multnomah County, Oregon, to wit:

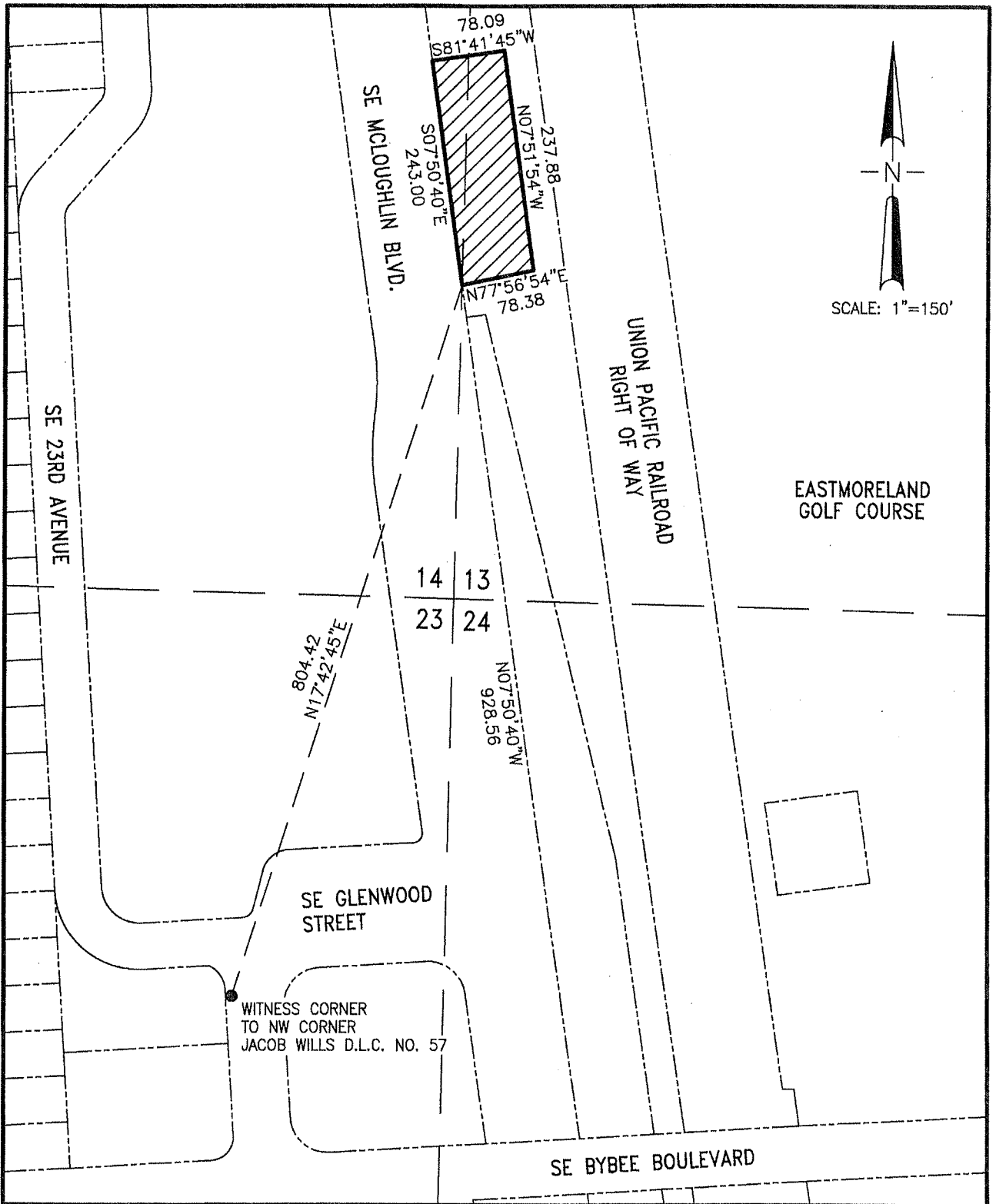
Beginning at a point which bears N.17°42'45"E., a distance of 804.42 feet from the Witness Corner to the northwest corner of the Jacob Wills D.L.C. No. 57; thence N.77°56'54"E., a distance of 78.38 feet; thence N.07°51'54"W., a distance of 237.88 feet; thence S.81°41'45"W., a distance of 78.09 feet; thence S.07°50'40"E., a distance of 243.00 feet to the Point of Beginning.

The northerly and southerly lines of this parcel shall be lengthened or shortened as necessary to meet the northeasterly line of S.E. McLoughlin Boulevard.

The tract of land to which this description applies contains 18,785 square feet, more or less.

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





SCALE: 1"=150'

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

CSC CONSERVATION AREA  
 PORTLAND TO MILWAUKIE LRT  
 FILE NO. 3504

DATE	REVISION NO.	DRAWN BY	CHECKED BY
6/18/2012	000	J. CARLSON	G. PAUL

**otak**

17355 S.W. BOONES FERRY ROAD  
 LAKE OSWEGO, OREGON 97035  
 (503)635-3618 FAX (503)635-5395