


**Date:** December 11, 2024

**To:** Board of Directors

**From:** Sam Desue, Jr. 

**Subject:** **RESOLUTION NO. 24-12-67 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING ACQUISITION BY PURCHASE OR EXERCISE OF THE POWER OF EMINENT DOMAIN CERTAIN REAL PROPERTY NECESSARY FOR THE OPERATION OF THE DIVISION TRANSIT PROJECT**

**1. Purpose of Item**

This Resolution requests the TriMet Board of Directors (Board) to authorize the General Manager or his designee to acquire certain real property and real property interests necessary for the operation of the Division Transit Project (Project) by purchase or by power of eminent domain.

**2. Type of Agenda Item**

- Initial Contract
- Contract Modification
- Other Authorization to Acquire Real Property by Purchase or Eminent Domain

**3. Reason for Board Action**

Chapter 267 of the Oregon Revised Statutes (ORS) authorizes TriMet to acquire property by purchase or eminent domain, and ORS 35.235 requires the Board to declare the necessity and purpose for which it is required.

**4. Type of Action**

- Resolution
- Ordinance 1<sup>st</sup> Reading
- Ordinance 2<sup>nd</sup> Reading
- Other \_\_\_\_\_

**5. Background**

The Division Transit Project provides high-capacity transit service along the 15-mile SE Division corridor between downtown Portland and Gresham, using 60-foot articulated buses. The Project constructed approximately 80 platforms, with upgraded rider amenities that facilitate all-door boarding for faster stops. The articulated buses operating within the Project utilize transit signal priority at signalized intersections to create more reliable and faster service than previously possible on SE Division Street. The Project also includes roadway upgrades, active transportation improvements, and safe connections to transit.

During construction of the Project, TriMet acquired approximately 150 property parcels that were needed to construct and operate the Project, including permanent easements, permanent acquisitions of small strips of property in fee, and temporary construction easements.

This Resolution will allow TriMet to correct a title issue that prevented acquisition of permanent property interests in three parcels located at SE 117<sup>th</sup> and SE Division. Once acquired, these three parcels will be transferred to the City of Portland so that the City can access, for maintenance and repair purposes, a signal pole that was installed as part of the Project, and also acquire ownership of a small section of sidewalk that was constructed at this location.

In order to accomplish this, TriMet must acquire the following property interests, as further described and depicted in Exhibits A, B, and C to this Resolution, from the following property owners, who are identified based on the information reasonably available to TriMet at this time:

1. CSC Stonecreek Realty, LLC, fee acquisition of approximately 25 square feet (Exhibit A).
2. Whistle Stop Properties, LLC, fee acquisition of approximately 270 square feet (Exhibit B).
3. David Kornblum and Melinda W. Kornblum, as Trustees of the Kornblum Family Trust; Charles W. Day, Trustee of the Charles W. Day Trust UDT January 24, 1989; and Gary Miller (and any other unknown owners), fee acquisition of approximately 46 square feet (Exhibit C).

During construction of the Project, TriMet acquired the temporary construction easements that were necessary to install the signal pole and construct the sidewalk. However, as TriMet negotiated with Whistle Stop and the former owner of the CSC Stonecreek property for the permanent rights that were needed, it was discovered that there was an error in legal title to the two properties, which are adjacent to each other. Somehow, over the years, a “gap” in ownership had occurred that created a 13-foot wide strip between the two properties for which ownership was unclear.

Once this issue was discovered, TriMet began working with the title company and outside counsel to understand the title history of the properties, in order to determine who owns each property and what steps would be necessary to acquire it. Based on the information reasonably available to TriMet, it appears that ownership of the “gap” parcel (the property identified as (3) above) is held by several parties, including two trusts and an individual, in fractional shares as a tenancy in common. However, while researching the ownership interests, TriMet also discovered that one or more of the owners appear to be deceased and the status of the trusts is unclear. Therefore, there may be unknown heirs or other persons who have ownership interests in the “gap” parcel.

Given that there probably are several unknown owners of the “gap” parcel, TriMet anticipates that it will need to file a condemnation action to perfect title in that parcel

and ensure that all owners have an opportunity to receive their just compensation. In compliance with ORS Chapter 35, TriMet will send the offer required by ORS 35.346 to the last known addresses of the owners identified above. If TriMet receives no responses or additional contact information for the owners of the “gap” parcel during the statutory 40-day offer period, TriMet will need to file a condemnation action, and give legal notice of the condemnation complaint to all potentially interested parties through publication in a manner approved by the court.

TriMet will likely be required to publish the notice in several different jurisdictions, including all locations where known fractional owners reside. Such publication will demonstrate that TriMet took reasonable steps to locate and notify the owners of the “gap” parcel during the condemnation process, and allow TriMet to secure the necessary ownership interests in the property.

TriMet has contact information for the owners of the properties identified as (1) and (2) above, and will attempt to negotiate a purchase of their property interests with each of them. If a purchase agreement cannot be accomplished following a reasonable period of negotiation, TriMet will proceed with condemnation of those properties.

**6. Financial/Budget Impact**

The acquisition of necessary property is a Project cost, and is included in the FY2025 Project budget.

**7. Impact if Not Approved**

This Resolution is required in order for TriMet to acquire the property necessary to operate the Project. Passage of this Resolution will allow TriMet to make formal written offers to purchase the property based on independent appraisals, attempt to agree with the property owners to acquire the identified properties, and initiate condemnation proceedings if necessary in order to obtain ownership of the identified properties.

**RESOLUTION NO. 24-12-67**

**RESOLUTION NO. 24-12-67 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AUTHORIZING ACQUISITION BY PURCHASE OR EXERCISE OF THE POWER OF EMINENT DOMAIN CERTAIN REAL PROPERTY NECESSARY FOR OPERATION OF THE DIVISION TRANSIT PROJECT**

**WHEREAS**, the Division Transit Project (Project) is a high-capacity transit project between Gresham and Portland designed to accommodate transportation options along the SE Division Street corridor in the Portland metropolitan area; and

**WHEREAS**, Metro began planning for the Project in 2014 by convening a Steering Committee and holding a series of public open houses and meetings, culminating in approval of the Project plan, known as the Locally Preferred Alternative, in November 2016, which was unanimously approved by the cities of Gresham and Portland, the Multnomah County Commission and the TriMet Board of Directors (Board); and

**WHEREAS**, pursuant to ORS 267.200(2) and ORS 267.225(2), TriMet is authorized and empowered to acquire by condemnation, purchase, lease, devise, gift or voluntary grant real and personal property or any interest therein, located within the TriMet District for the purpose of providing or operating a mass transit system and aiding in the objects of the District; and

**WHEREAS**, TriMet has identified certain real property and real property interests as necessary to acquire for the operation of the Project; and

**WHEREAS**, after its Board first declares by Resolution the necessity of the acquisition of real property and the purpose for which it is required, TriMet is required by ORS 35.235 to attempt to agree with the owner of said real property the compensation to be paid therefor, and the damages, if any, for the taking thereof; and

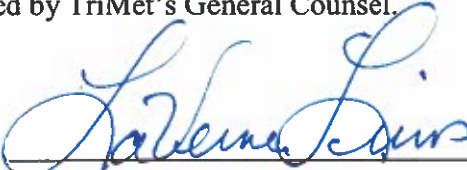
**WHEREAS**, before TriMet exercises the right to purchase, acquire, enter upon or appropriate any land or property for establishing, laying out, widening, enlarging or extending roads, streets or highways, ORS 35.610 requires TriMet to describe the land to be purchased, acquired, entered upon or appropriated, and to further determine that the appropriation of such land is reasonably necessary to protect the full use and enjoyment by the public of the road, street or highway;

**NOW, THEREFORE, BE IT RESOLVED:**

1. That the Board hereby declares that the acquisition of certain real property and real property interests, described generally in Exhibits A, B, and C, attached hereto and made a part hereof as if fully set forth herein, are necessary for the operation of the Project.

2. That the continued operation of the Project is necessary for the public interest and that the Project was planned, designed, located and constructed in a manner that is most compatible with the greatest public good and the least private injury.
3. That the appropriation of the real property is reasonably necessary to protect the full use and enjoyment by the public of the road, street or highway adjoining the property.
4. That the General Manager or his designee is authorized and directed to attempt to make agreements with the owners of the real property and any other persons in interest as to the compensation to be paid for the real property and real property interests identified in the attached Exhibits A, B, and C, and damages, if any, for the acquisition thereof, and is authorized to make binding offers for such compensation.
5. That the Board hereby ratifies any offers to purchase any and all rights, title and interest that have been previously made in connection with the Project.
6. That in the event no satisfactory agreement for TriMet's acquisition of the identified real property and real property interests can be reached, TriMet is authorized to commence and prosecute to final determination such proceedings as may be necessary to acquire the real property and real property interests; and TriMet is further authorized to make such stipulations, agreements, or admissions in the course of such proceedings as may be in TriMet's best interests.
7. That there is hereby authorized the creation of a fund in the amount estimated to be the just compensation for the real property and real property interests identified in Exhibits A, B, and C, which to obtain possession of the property may be deposited with the clerk of the Court in which such legal proceedings are commenced, for the use by the defendants in such proceedings.
8. That the General Manager or his designee is authorized to execute the necessary documents on behalf of the Board in a form approved by TriMet's General Counsel.

Dated: December 11, 2024

  
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Presiding Officer

Attest:

  
\_\_\_\_\_  
Recording Secretary

Approved as to Legal Sufficiency:

  
\_\_\_\_\_  
Legal Department