



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 5, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Resolution Declaring the Public Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property for the Bear Creek (Canby Marquam Highway) Bridge Project and Authorizing Good Faith Negotiations and Condemnation Actions

Purpose/Outcomes	Under ORS 35 and the federal Uniform Act, a local government agency is authorized to declare by resolution or ordinance the necessity and the purpose for which the project is required by enacting a Resolution of Necessity prior to initiating acquisition of the easements or other property rights needed from abutters to the project.
Dollar Amount and Fiscal Impact	The right of way budget for the project is estimated to be \$50,800 and is included in the \$454,800 2020/21 fiscal year approved budget. The total amount estimated for this project is \$2,313,800.
Funding Source	\$238,940 of County Road Fund and HB 2017 Fund and ODOT State Grants of \$2,074,860 will be utilized for this project.
Duration	The Resolution remains active throughout the project's duration and terminates upon completion of the project or when all litigation associated with the project is concluded.
Previous Board Action/Review	3/21/19: BCC Approval of Local Agency Agreement No. 33216 with Oregon Department of Transportation for the Canby Marquam Hwy: Bear Creek Bridge #06027. 10/17/19: BCC Approval of Personal Services Contract with David Evans and Associates, Inc. to provide Design Services for the Canby Marquam Highway: Bear Creek Bridge.
Strategic Plan Alignment	-This item supports the DTD Strategic Focus on Safe Roads and Strategic Result of "Travelers on Clackamas County roads will experience roads in good condition." -This item aligns with "Build a Strong Infrastructure" by replacing a functionally obsolete and structurally deficient bridge with a wider structurally sufficient facility ensuring safe transport of equipment and products serving agricultural communities.
Counsel Review	Date of Counsel review: October 21, 2020 SM
Procurement Review	1. <i>Was the item processed through Procurement?</i> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> This item is a resolution of necessity, required under ORS 35 as a precursor in support of possible condemnation action.
Contact Persons	Sharan Hams-LaDuca, DTD Sr. Right of Way Agent @ 503-679-0619 (c)

County Road fund, HB 2017 Fund, and an Oregon Department of Transportation grant will be used to replace a functionally obsolete and structurally deficient bridge that carries the Canby Marquam Highway over Bear Creek. The new bridge will be wider than the existing bridge, and meet current design, safety and functional standards.

In order to construct the improvements as designed, additional rights of way and easements will be required. The project is expected to impact two rural residential properties abutting the project alignment. The Board has authority to exercise the power of eminent domain under ORS Chapter 35 to acquire rights of way, easements, and fee property by purchase or condemnation proceedings. In accordance with the procedure set forth in that statute, a Resolution of Necessity is required before offers are made for needed rights of way and easements.

The project design team has collected and analyzed data sufficient to choose an alternative and advance the design of the project. The project has been planned and located in a manner which is most compatible with the greatest public good and which causes the least private injury. The design has progressed through the Department of Transportation and Development (the "Department") project development procedures and the final legal descriptions required for acquisition of the needed rights of way and easements from two properties affected by the Project have been developed.

The Department shall negotiate in good faith and accordance with all applicable laws, rules, and regulations in an attempt to reach agreement as to the amount of Just Compensation owed each affected property owner. To fairly determine the amount of Just Compensation, staff will utilize the expertise of authorized real estate appraisers and other such experts.

This resolution directs Department staff to proceed with good faith negotiations for the acquisition of the needed property rights and to utilize the expertise of authorized real estate appraisers and other such experts to assist in the acquisition process. The resolution further requires the Director of the Department to notify the Board if the exercise of the power of eminent domain becomes necessary in order to acquire the needed property rights. Only after this process is completed does it authorize the Office of County Counsel to file a Condemnation Action.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the Resolution of Necessity and Purpose authorizing the acquisition of necessary rights of way, easements, and fee property by good faith negotiation if possible, or condemnation, if necessary.

Sincerely,

Sharan LaDuca

Sharan LaDuca
Senior Right of Way Agent

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the Bear Creek (Canby Marquam Highway) Bridge Project



Resolution No. _____
Page 1 of 2

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on October 27, 2020 and,

It appearing to the Board that the Bear Creek (Canby Marquam Highway) Bridge Project (the "Project") will replace the existing bridge (#06027) which carries the Canby Marquam Highway over Bear Creek; is consistent with the powers and purposes of County government; and is necessary for the continued growth, safety and welfare of the community; and,

It further appearing to the Board that the Project has been planned in accordance with appropriate standards for the improvement of transportation infrastructure such that property damage is minimized, transportation promoted, and travel safeguarded; and

It further appearing to the Board that the Project has been planned and located in a manner which is most compatible with the greatest public good and causes the least private injury; and,

It further appearing to the Board that rights of way, and easements within the boundaries described in the attached Exhibit "A-1", "B-1", "A-2" and "B-2" (the "Exhibits") are a necessary part of the Project, consistent with the powers and purposes of County government, and necessary for the continued growth, safety and welfare of the community; and,

It further appearing that the Board has authority under ORS Chapter 203 and ORS Chapter 35 to acquire rights of way, easements, and fee property by good faith negotiation, agreement, and purchase or by exercise of the power of eminent domain with condemnation proceedings; and

It further appearing that the Board has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public.

NOW, THEREFORE, IT IS HEREBY RESOLVED that this Board declares it necessary and in the public interest that the County Department of Transportation and Development (the "Department"), in connection with this Project, begin the acquisition process, in accordance with all applicable laws, rules, and regulations governing such process, for the necessary rights of way, easements, and fee property, either through good faith negotiation, agreement, and purchase, or, if necessary, by commencement of condemnation proceedings.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the Bear Creek (Canby Marquam Highway) Bridge Project



Resolution No. _____
Page 2 of 2

IT IS FURTHER RESOLVED THAT:

1) The Department be authorized to, in good faith, attempt to negotiate agreements of just compensation with owners of affected property identified in the Exhibits. In so doing, the Department is authorized to retain real estate appraisers, negotiators, and other such experts deemed necessary to assist staff with the acquisition process; and,

2). If the Director of the Department (the "Director") determines that changes to the design of the Project, unanticipated field conditions, or the need to accommodate uneconomic remnants makes it necessary or desirable to modify the rights of way, easements, and fee property required for the Project, the Director shall promptly bring before the Board, and the Board shall promptly consider a resolution amending the Exhibits; and,

3). It is the intention of the Board that the required rights of way, easements, and fee property be obtained through good faith negotiation. The Board acknowledges that the exercise of the power of eminent domain may be necessary. The Director of the Department shall inform the Board when the Director deems eminent domain necessary. Thereafter, the Office of County Counsel is authorized to file complaints of condemnation with the circuit court of the County and take such other steps as it determines necessary for the immediate possession of required rights of way, easements, and fee property and the successful litigation of the condemnation action, including the retention of real estate appraisers, experts, and other consultants deemed necessary to the successful conclusion of that litigation.

Dated this _____ day of _____, 2020.

Jim Bernard, Chair

Recording Secretary

Parcel 1 – Permanent Right-of-Way Easement for Road Purposes

A parcel of land lying in the SW1/4NW1/4 of Section 3, Township 5 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, and being a portion of that property described in that Quit Claim Deed to Frederick G. Clayton and Joyce A. Clayton, recorded February 1, 1994 as Document Number 94-08949 of Clackamas County Records; said parcel being that portion of said property included in a strip of land variable in width, lying on the Westerly side of the center line of the Canby-Marquam Highway, which center line is described as follows:

Beginning at Engineer’s Center line Station 00+00.00, said station being the Southwest corner of Section 3, Township 5 South, Range 1 East, Willamette Meridian; thence North 00°18’39” West, a distance of 2457.40 feet; thence on a 572.96 foot radius curve right (the long chord of which bears North 17°48’15” East, a distance of 356.29 feet) 362.30 feet; thence North 35°55’09” East 189.40 feet; thence on a 716.20 foot radius curve left (the long chord of which bears North 10°10’16” East, a distance of 622.25 feet) 643.70 feet; thence North 15°34’37” West 663.50 feet; thence on a 286.48 foot radius curve right (the long chord of which bears North 13°40’23” East, a distance of 279.96 feet) 292.50 feet; thence North 42°55’23” East 154.10; thence on a 358.10 foot radius curve left (the long chord of which bears North 21°10’16” East, a distance of 265.42 feet) 271.90 feet; thence North 00°34’51” West 470.11 feet to Engineer’s Center line Station 55+04.91.

The width in feet of said strip of land is as follows:

Station	to	Station	Width on Westerly Side of Center Line
36+11.00		36+71.00	30.00 feet in a straight line to 59.00 feet
36+71.00		37+15.00	66.50 feet in a straight line to 68.00 feet
37+15.00		37+77.50	68.00 feet in a straight line to 61.00 feet
37+77.50		39+47.00	61.00 feet in a straight line to 37.00 feet
39+47.00		41+00.00	37.00 feet

Bearings are based on the Oregon Coordinate Reference System, Portland Zone, NAD 83 (2011) epoch 2010.00.

This parcel of land contains 8,797 square feet, more or less, outside the existing right of way.

Parcel 2 – Temporary Construction Easement

A parcel of land lying in the SW1/4NW1/4 of Section 3, Township 5 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, and being a portion of that property described in that Quit Claim Deed to Frederick G. Clayton and Joyce A. Clayton, recorded February 1, 1994 as Document Number 94-08949 of Clackamas County Records; said parcel being that portion of said property included in a strip of land variable in width, lying on the Westerly side of the center line of the Canby-Marquam Highway, which center line is described in Parcel 1.

The width in feet of said strip of land is as follows:

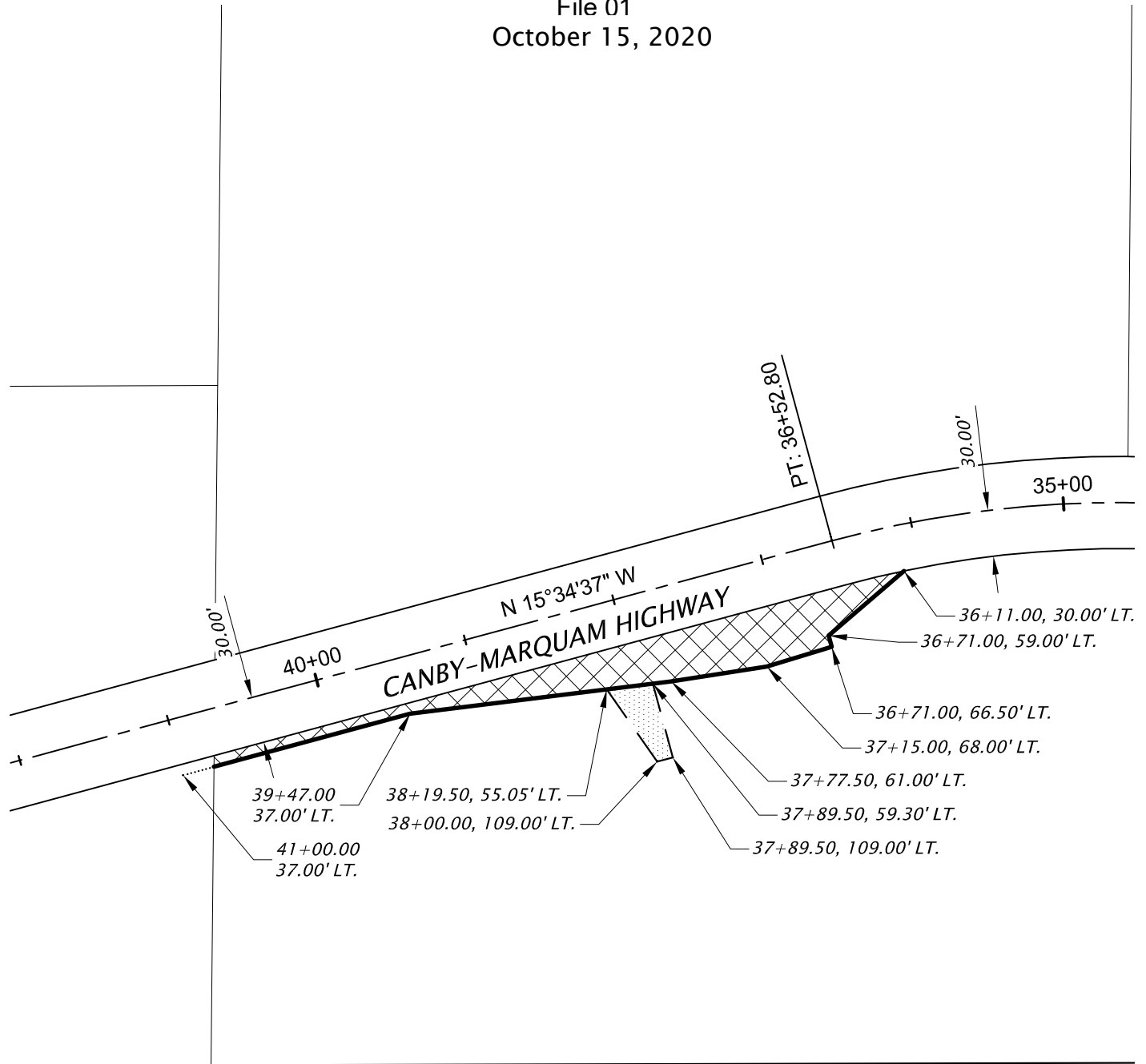
Station	to	Station	Width on Westerly Side of Center Line
37+89.50		38+00.00	109.00 feet
38+00.00		38+19.50	109.00 feet in a straight line to 55.05 feet

EXCEPT therefrom Parcel 1.

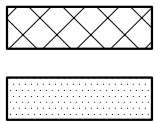
This parcel of land contains 1,029 square feet, more or less, outside the existing right of way.

EXHIBIT "B-1"
 Page 1 of 1
 File 01
 October 15, 2020

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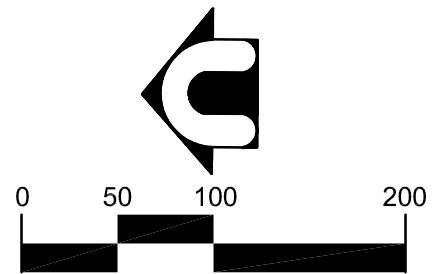


LEGEND :



PARCEL 1, PERMANENT RIGHT-OF-WAY EASEMENT FOR ROAD PURPOSES:
 8,797 SQ. FT. ±, (0.202 AC. ±)

PARCEL 2, TEMPORARY CONSTRUCTION EASEMENT:
 1,029 SQ. FT. ±, (0.024 AC. ±)



CANBY-MARQUAM HIGHWAY



DAVID EVANS
 AND ASSOCIATES INC.
 2100 S River Parkway, Suite 100
 Portland Oregon 97201
 Phone: 503.223.6663

Parcel 1 – Permanent Right-of-Way Easement for Road Purposes

A parcel of land lying in the SW1/4NW1/4 of Section 3, Township 5 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, and being a portion of that property described in that Statutory Warranty Deed, to Mary E. Kerr, an unmarried person, recorded September 28, 1992 as Document Number 92-60812 of Clackamas County Records; said parcel being that portion of said property included in a strip of land variable in width, lying on the Easterly side of the center line of the Canby-Marquam Highway, which center line is described as follows:

Beginning at Engineer’s Center line Station 00+00.00, said station being the Southwest corner of Section 3, Township 5 South, Range 1 East, Willamette Meridian; thence North 00°18’39” West, a distance of 2457.40 feet; thence on a 572.96 foot radius curve right (the long chord of which bears North 17°48’15” East, a distance of 356.29 feet) 362.30 feet; thence North 35°55’09” East 189.40 feet; thence on a 716.20 foot radius curve left (the long chord of which bears North 10°10’16” East, a distance of 622.25 feet) 643.70 feet; thence North 15°34’37” West 663.50 feet; thence on a 286.48 foot radius curve right (the long chord of which bears North 13°40’23” East, a distance of 279.96 feet) 292.50 feet; thence North 42°55’23” East 154.10; thence on a 358.10 foot radius curve left (the long chord of which bears North 21°10’16” East, a distance of 265.42 feet) 271.90 feet; thence North 00°34’51” West 470.11 feet to Engineer’s Center line Station 55+04.91.

The width in feet of said strip of land is as follows:

Station	to	Station	Width on Easterly Side of Center Line
35+99.50		36+24.00	30.00 feet in a straight line to 41.00 feet
36+24.00		36+64.00	41.00 feet in a straight line to 48.00 feet
36+64.00		36+96.00	48.00 feet in a straight line to 47.50 feet
36+96.00		37+17.50	47.50 feet in a straight line to 45.00 feet
37+17.50		37+32.50	45.00 feet in a straight line to 40.00 feet
37+32.50		39+39.00	40.00 feet

Bearings are based on the Oregon Coordinate Reference System, Portland Zone, NAD 83 (2011) epoch 2010.00.

This parcel of land contains 3,903 square feet, more or less, outside the existing right of way.

Parcel 2 – Temporary Construction Easement

A parcel of land lying in the SW1/4NW1/4 of Section 3, Township 5 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, and being a portion of that property described in that Statutory Warranty Deed to Mary E. Kerr, an unmarried person, recorded September 28, 1992 as Document Number 92-60812 of Clackamas County Records; said parcel being that portion of said property included in a strip of land variable in width, lying on the Easterly side of the center line of the Canby-Marquam Highway, which center line is described in Parcel 1.

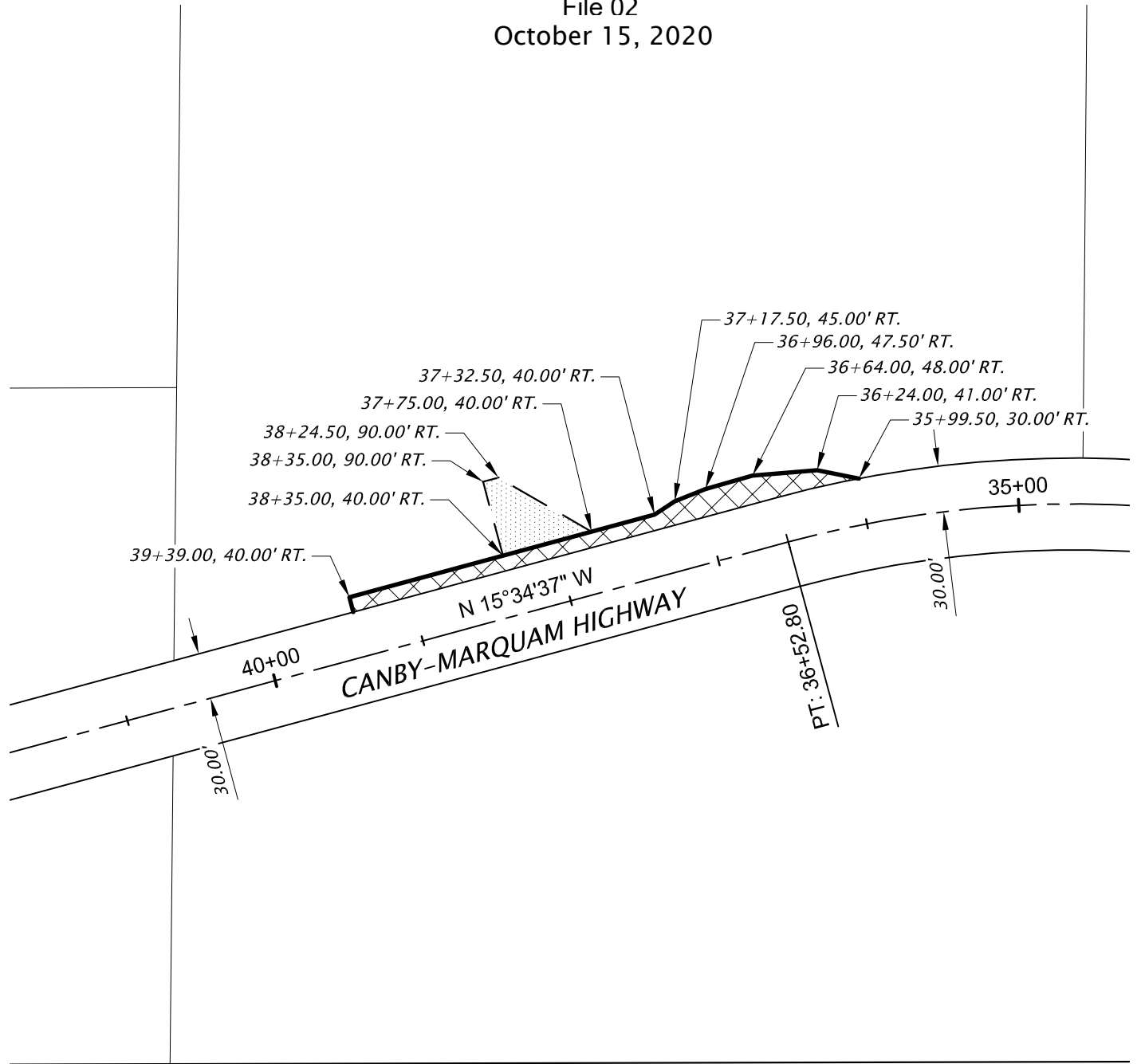
The width in feet of said strip of land is as follows:

Station	to	Station	Width on Easterly Side of Center Line
37+75.00		38+24.50	40.00 feet in a straight line to 90.00 feet
38+24.50		38+35.00	90.00 feet

EXCEPT therefrom Parcel 1.

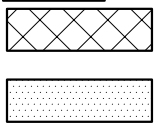
This parcel of land contains 1,762 square feet, more or less, outside the existing right of way.

EXHIBIT "B-2"
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 File 02
 October 15, 2020



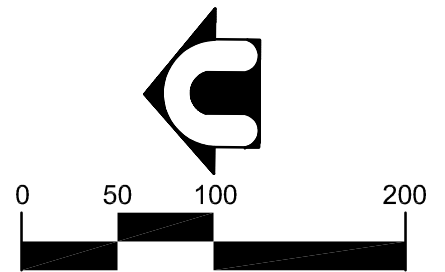
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LEGEND :



PARCEL 1, PERMANENT RIGHT-OF-WAY EASEMENT FOR ROAD PURPOSES:
 3,903 SQ. FT. ±, (0.090 AC. ±)

PARCEL 2, TEMPORARY CONSTRUCTION EASEMENT:
 1,762 SQ. FT. ±, (0.040 AC. ±)



CANBY-MARQUAM HIGHWAY



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