



DAN JOHNSON
DIRECTOR

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

March 25, 2021

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 Lolo Pass Road Stabilization and Surface Preservation 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 \$15,000 and is included in the \$4,104,731 total project budget.
Funding Source	\$862,809 of County Road Funds and \$3,241,922 from the Federal Lands Access Program 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	06/28/16: BCC Authorization to Apply for Federal Land Access Program Funding. 02/15/18: BCC Authorization of the Federal Lands Access Program Match Agreement. 07/11/19: BCC Authorization of Western Federal Lands Highway Division Memorandum of Agreement. 8/22/19 BCC Approval of a Federal Lands Access Program Project Grant Agreement. 03/16/21: Discussion item at Issues
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? This item supports the DTD Strategic Focus on Safe Roads and Strategic Result of "Travelers on Clackamas County roads will experience safe roads in good condition." 2. How does this item align with the County's Performance Clackamas goals? This item aligns with "Build a Strong Infrastructure" by stabilizing and improving the road to help protect it from damage in the next flood event and to preserve a high quality road surface.
Counsel Review	Date of Counsel review: 3/1/21, NB
Procurement Review	1. Was the item processed through Procurement? 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 LaDuca, DTD Sr. Right of Way Agent @ (503) 679-0619 (c)

The Federal Lands Access Program and County Road Funds will be used to stabilize and improve E Lolo Pass Road by extending a section of existing revetment constructed as a part of the Lolo Pass Road Emergency Repair Project. The revetment construction is intended to reduce the likelihood that the Sandy River will leave its banks during the next flood event at this location. Additionally, Lolo Pass Road will receive a two-inch asphalt overlay along the entire 3.99 miles of road between Highway 26 and the Mount Hood National Forest Boundary to the north.

In order to construct the improvements as designed, additional rights of way and easements will be required. The project is expected to impact one property 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 good faith negotiation, agreement, and 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 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 one property 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 their own expertise and reliable data sources to prepare an Appraisal Waiver Valuation in accordance with applicable law and regulation for acquisitions valued under \$10,000.

The 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. 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 Lolo Pass Road Stabilization and Surface Preservation 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 March 25, 2021 and,

It appearing to the Board that the Lolo Pass Road Stabilization and Surface Preservation Project ("the Project") will stabilize and improve the road by extending a revetment and improving and preserving the road surface with additional pavement; is consistent with the powers and purposes of County government; and is necessary for public use and the continued growth, safety and welfare of the community; 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.

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 Exhibits "A-1" and "B-1" (Exhibits) are a necessary part of the Project; 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

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 the 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 Lolo Pass Road Stabilization and Surface Preservation Project



Resolution No. _____

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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 _____, 2021.

Tootie Smith, Chair

Recording Secretary

Exhibit "A-1"

Page 1 of 2

File No 1

February 23, 2021

PERMANENT RIGHT-OF-WAY EASEMENT FOR ROAD PURPOSES

A tract of land located in the Northwest one quarter (NW 1/4) of Section 26, Township 2 South, Range 7 East, Willamette Meridian, Clackamas County, Oregon and being a portion of land as described in Statutory Warranty Deed, recorded as Document Number 2020-007217, Clackamas County Deed Records, as shown on Exhibit "B" attached hereto and by this reference made a part hereof, more particularly described as follows;

Commencing at the most southern corner of that parcel of land as described in said Document Number 2020-007217, said point being located on the northerly Right-of-Way line of E. Lolo Pass Road, County Road No. 720, said point being marked by a found 5/8" diameter iron rod;

Thence, along the northerly Right-of-Way Line of E. Lolo Pass Road, North 75°47'45" East, a distance of 36.15 feet to a point marked by a 5/8" iron rod, also being the beginning of a non-tangent curve concave northwesterly, said curve has a radius of 600.00 feet, to which a radial line bears North 17°55'18" West and being the **True Point of Beginning**;

Thence leaving said Right-of-Way northeasterly along said curve through a central angle of 32°17'20" an arc distance of 338.13 feet, the long chord being N55°56'02"E – 333.67 feet, to a point of tangency;

Thence North 39°47'22" East, a distance of 71.22 feet to a point on said Right-of-Way;

Thence along said Right-of-Way, South 36°51'05" West a distance of 156.28 feet to the beginning of a curve concave northwesterly, said curve has a radius of 256.48 feet;

Thence continuing along said Right-of-Way, southwesterly along said curve through a central angle of 38°56'40" an arc distance of 174.33 feet, the long chord being N56°19'25"E – 171.00 feet, to a point of tangency;

Thence continuing along said Right-of-Way, South 75°47'45" West, a distance of 88.67 feet to the **True Point of Beginning**;

Exhibit "A-1"

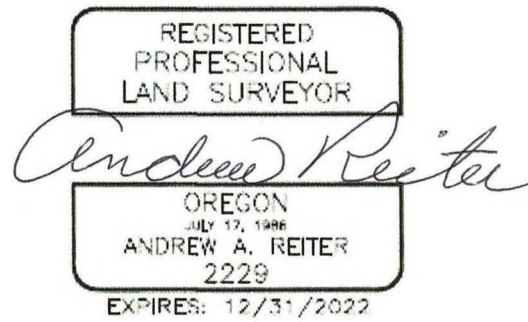
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File No 1

February 23, 2021

The land herein described contains 4,430 square feet, more or less.

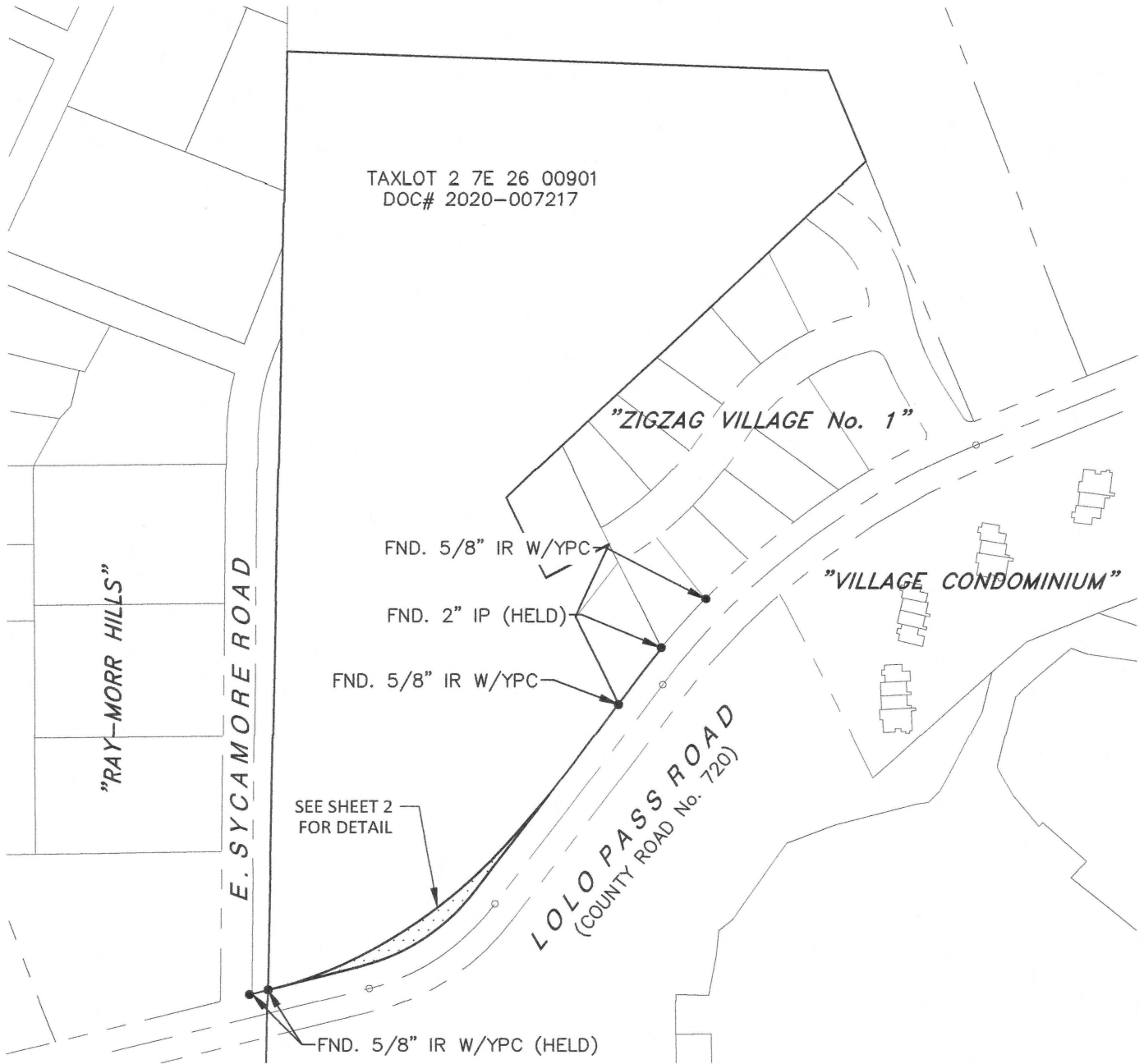
Basis of bearings and boundary determination for this description was held from Survey SN2011-025.



LOCATED IN THE NW 1/4 OF SECTION 26
 T. 2 S., R. 7 E., W.M.,
 CLACKAMAS COUNTY, OREGON

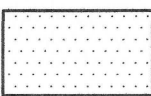


SCALE: 1" = 200'



LEGEND

DOC# DEED DOCUMENT NUMBER
 IR IRON ROD
 IP IRON PIPE
 W/YPC WITH YELLOW PLASTIC CAP

 PERMANENT RIGHT-OF-WAY
 EASEMENT
 AREA = 4,430 Sq.Ft.±



**CLACKAMAS
 COUNTY**
 DEPARTMENT OF
 TRANSPORTATION
 AND
 DEVELOPMENT

EXHIBIT "B-1"
 LOLO PASS ROAD
 STABILIZATION AND
 SURFACE PRESERVATION
 PAGE 1 OF 2

**PERMANENT RIGHT-OF-WAY
 EASEMENT FOR ROAD PURPOSES**

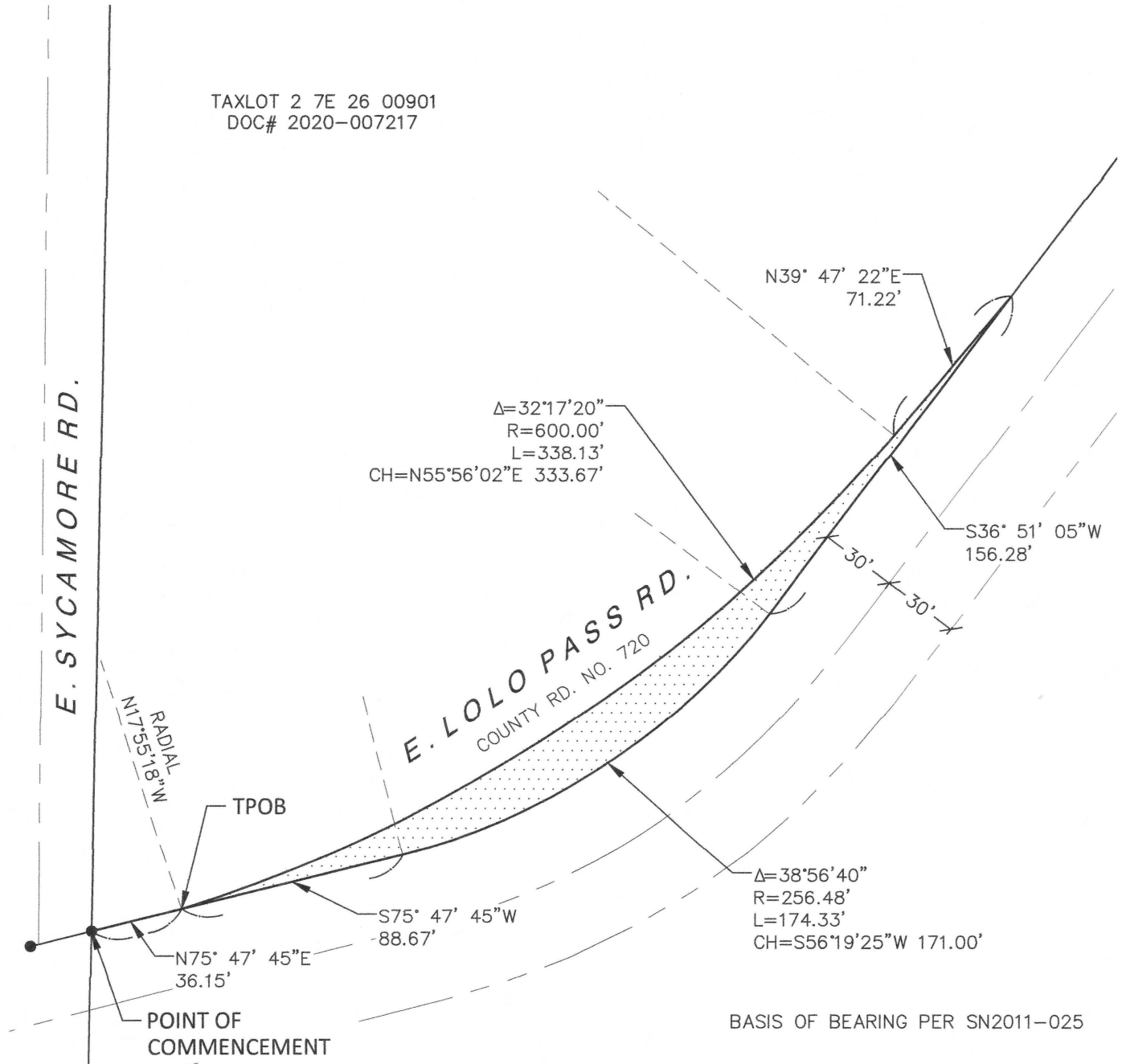
RD. FILE NO.	DRAWN BY	DESIGN BY	DATE:
	AAR	AAR	02/03/21

LOCATED IN THE NW 1/4 OF SECTION 26
 T. 2 S., R. 7 E., W.M.,
 CLACKAMAS COUNTY, OREGON



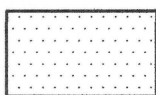
SCALE: 1" = 60'

TAXLOT 2 7E 26 00901
 DOC# 2020-007217



LEGEND

TPOB TRUE POINT OF BEGINNING
 DOC# DEED DOCUMENT NUMBER

 PERMANENT RIGHT-OF-WAY
 EASEMENT
 AREA = 4,430 Sq.Ft.±



DEPARTMENT OF
 TRANSPORTATION
 AND
 DEVELOPMENT

EXHIBIT "B-1"
 LOLO PASS ROAD
 STABILIZATION AND
 SURFACE PRESERVATION
 PAGE 2 OF 2

PERMANENT RIGHT-OF-WAY
 EASEMENT FOR ROAD PURPOSES

RD. FILE NO.	DRAWN BY	DESIGN BY	DATE:
	AAR	AAR	02/03/21