



DAN JOHNSON

DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 3, 2022

Board of County Commissioners
Clackamas County

Approval of a Resolution Declaring the Public Necessity and purpose for Acquisition of Right of Way, Easements, and Fee Property and Authorizing Good Faith Negotiations and Condemnation Actions with DTD/Transportation Engineering for the Johnson Creek Tributary (Hideaway Ct) Culvert Replacement Project. Project Total Value: \$911,950.00. Funding is through the Damascus Road fund. County general funds are not included.

Purpose/Outcome	Under ORS Chapter 203, ORS Chapter 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 within the \$911,950 total project budget.
Funding Source	This project is funded through the Damascus Road Fund.
Duration	The Resolution remains active throughout the project's duration of five years and terminates upon completion of the project or when all litigation associated with the project is concluded.
Previous Board Action/Review	-Approval of IGA with ODOT for temporary detour structure. Limits use of bridge components to two years from date of execution of IGA. (1/20/22) -Discussion item at issues 11/1/22
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. 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." by removing scour at bridge abutments and weirs and removal of roadway materials washed downstream. 2. This item aligns with "Ensure safe, healthy and secure communities" by allowing the continued pedestrian, residential and emergency traffic access through permanent repairs and maintaining fish passages.
Counsel Review	Date of Counsel review: 10/24/22; NB



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Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. Item is a resolution
Contact Person	Carol Hager, Senior Right of Way Agent, 503-742-4674

BACKGROUND: The existing culvert failed and washed away after being severely damaged by large trees during the winter of 2020/21 and now needs to be replaced. A temporary bridge was constructed by Transportation Maintenance using bridge components borrowed from ODOT through an IGA. The IGA requires the components to be returned to ODOT in Q1 2024. The culvert needs to be replaced before the bridge components can be returned to ODOT. Funds from the Damascus Road Fund will be used to replace the temporary bridge with a larger sized, fish-friendly three sided culvert.

In order to construct the improvements as designed, temporary easements will be required. The Project is expected to impact 2 properties abutting the Project alignment. The Board has authority to exercise the power of eminent domain under ORS Chapter 203 and ORS Chapter 35 to acquire the needed rights of way, easements, and fee property by purchase or condemnation proceedings. In accordance with the procedure set forth in ORS Chapter 35, a Resolution of Necessity is required before offers are made for rights of way, easements, and fee property.

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 2 properties affected by the Project are being 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.

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 easements, by good faith negotiation if possible, or condemnation, if necessary.

Sincerely,

Carol Hager

Carol Hager
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 Johnson Creek Tributary (Hideaway Ct.) Culvert Replacement 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 November 3, 2022 and,

It appearing to the Board that the Johnson Creek Tributary (Hideaway Ct.) Culvert Replacement Project ("the Project") will replace the damaged culvert with a three sided box culvert; 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 Exhibit A-1, A-2, B-1 and B-2 (the "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 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 Johnson Creek Tributary (Hideaway Ct.) Culvert Replacement 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 _____, 2022.

Tootie Smith, Chair

Recording Secretary

EXHIBIT "A-1"

Page 1 of 1

October 1, 2022

TEMPORARY CONSTRUCTION EASEMENT

A tract of land, located within the real property described in Doc. No. 2013-076726 as Lot 7 Hidden Hollow subdivision, recorded in the Official Records of Clackamas County, Oregon, located in the Northwest 1/4 of section 26 Township 1 South, Range 3 East, of the Willamette Meridian, being more particularly described as follows:

BEGINNING at a point along the westerly right of way of Hideaway Court, being South 18°05'02" West, 257.13 feet from the southwest corner to the Isaac Brigmans DLC No. 73 of said Township and Range; Thence South 89°56'36" West, 20.00 feet to a point of non-tangent curvature; Thence along the arc of a 170.00 foot radius curve to the right, having a central angle of 15°28'52", (chord bears S07°41'02"W, 45.79') a distance of 45.93 feet; Thence South 74°34'32" East, 20.00 feet to the westerly right of way of Hideaway Court and to a point of non-tangent curvature; Thence along the arc of a 190.00 foot radius curve to the left, having a central angle of 15°28'52" (chord bears N07°41'02"E, 51.18') a distance of 51.34 feet to the POINT OF BEGINNING,

Containing 973 square feet, more or less.

Basis of Bearing: NAD83 2011 (Epoch 2010) Oregon Coordinate Reference System, Portland Zone, Per OAR 734.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

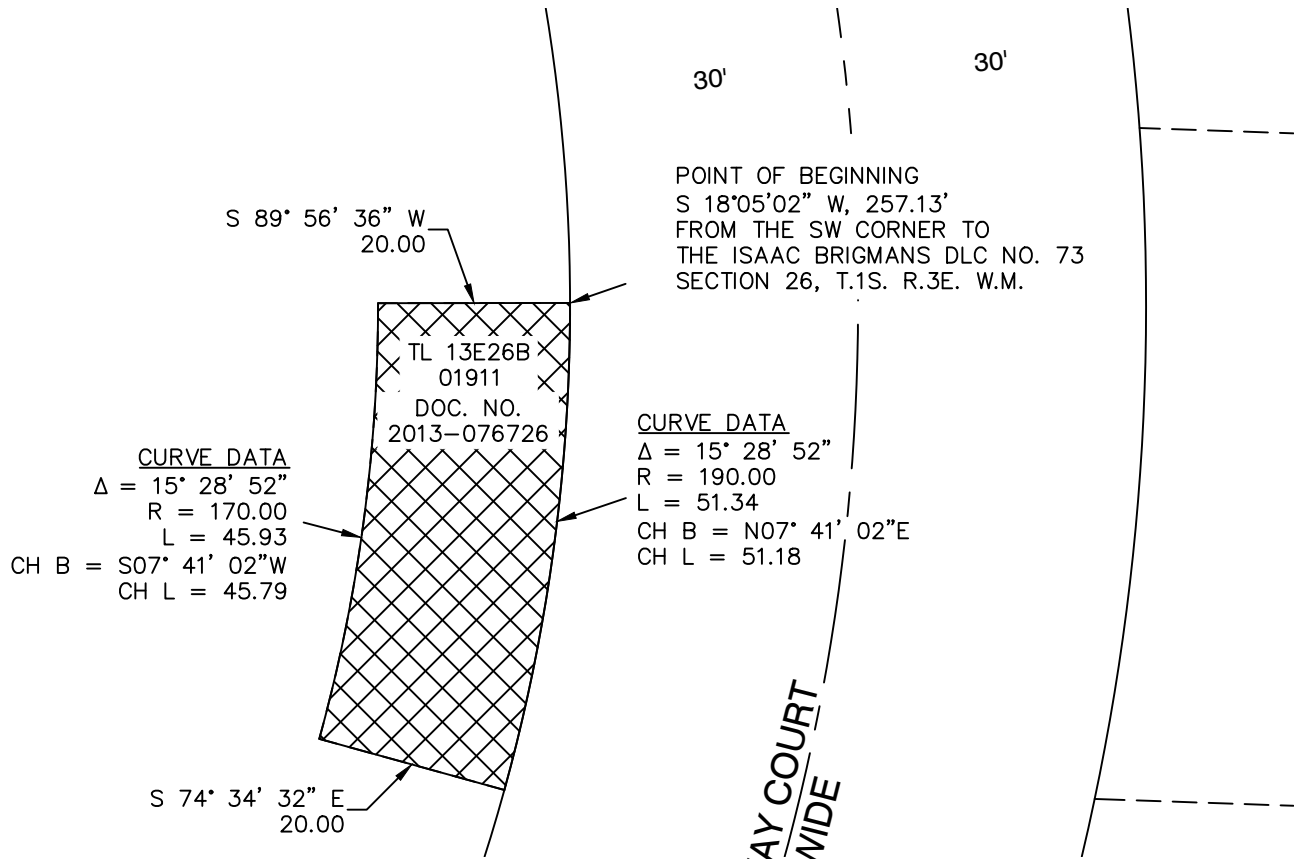
Brian W. Paull

OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12-31-2022

EXHIBIT 'B-1'

LOCATED IN THE NW 1/4 OF SECTION 26 IN T1S R3E W.M.
CLACKAMAS COUNTY, OREGON



TEMPORARY
CONSTRUCTION EASEMENT
TOTAL AREA: 973 SQ.FT.
+/-



SCALE: 1"=20'

BASIS OF BEARINGS: NAD83 2011
(EPOCH 2010) OCRS PER OAR
734-005-0015 PORTLAND ZONE

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Brian Paull

OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12-31-22



DEPARTMENT OF
TRANSPORTATION AND
DEVELOPMENT

EXHIBIT "B-1"
HIDEAWAY COURT
CULVERT

TEMPORARY CONSTRUCTION
EASEMENT

RD. FILE NO.	DRAWN BY BWP	DESIGN BY	DATE: 10-19-22
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EXHIBIT "A-2"

Page 1 of 1

October 19, 2022

TEMPORARY CONSTRUCTION EASEMENT

A tract of land, located within the real property described in Doc. No. 2017-030745 in the Official Records of Clackamas County, Oregon, located in the Northwest 1/4 and Northeast 1/4 of section 26 Township 1 South, Range 3 East, of the Willamette Meridian, being more particularly described as follows:

BEGINNING at a point along the easterly right of way of Hideaway Court, being South $06^{\circ}10'36''$ West, 227.13 feet from the southwest corner to the Isaac Brigmans DLC No. 73 of said Township and Range; Thence South $88^{\circ}01'25''$ East, 58.00 feet; Thence South $35^{\circ}05'14''$ East, 46.66 feet; Thence South $54^{\circ}54'46''$ West, 54.37 feet; Thence North $88^{\circ}01'25''$ West, 45.00 feet to the Easterly right of way of Hideaway Court and a point of non-tangent curvature; Thence along the arc of a 250.00 foot radius curve to the left, having a central angle of $16^{\circ}06'15''$ (chord bears $N03^{\circ}49'42''E$, 70.04') a distance of 70.27 feet to the POINT OF BEGINNING,

Containing 4758 square feet, more or less.

Basis of Bearing: NAD83 2011 (Epoch 2010) Oregon Coordinate Reference System, Portland Zone, Per OAR 734.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

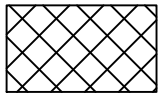
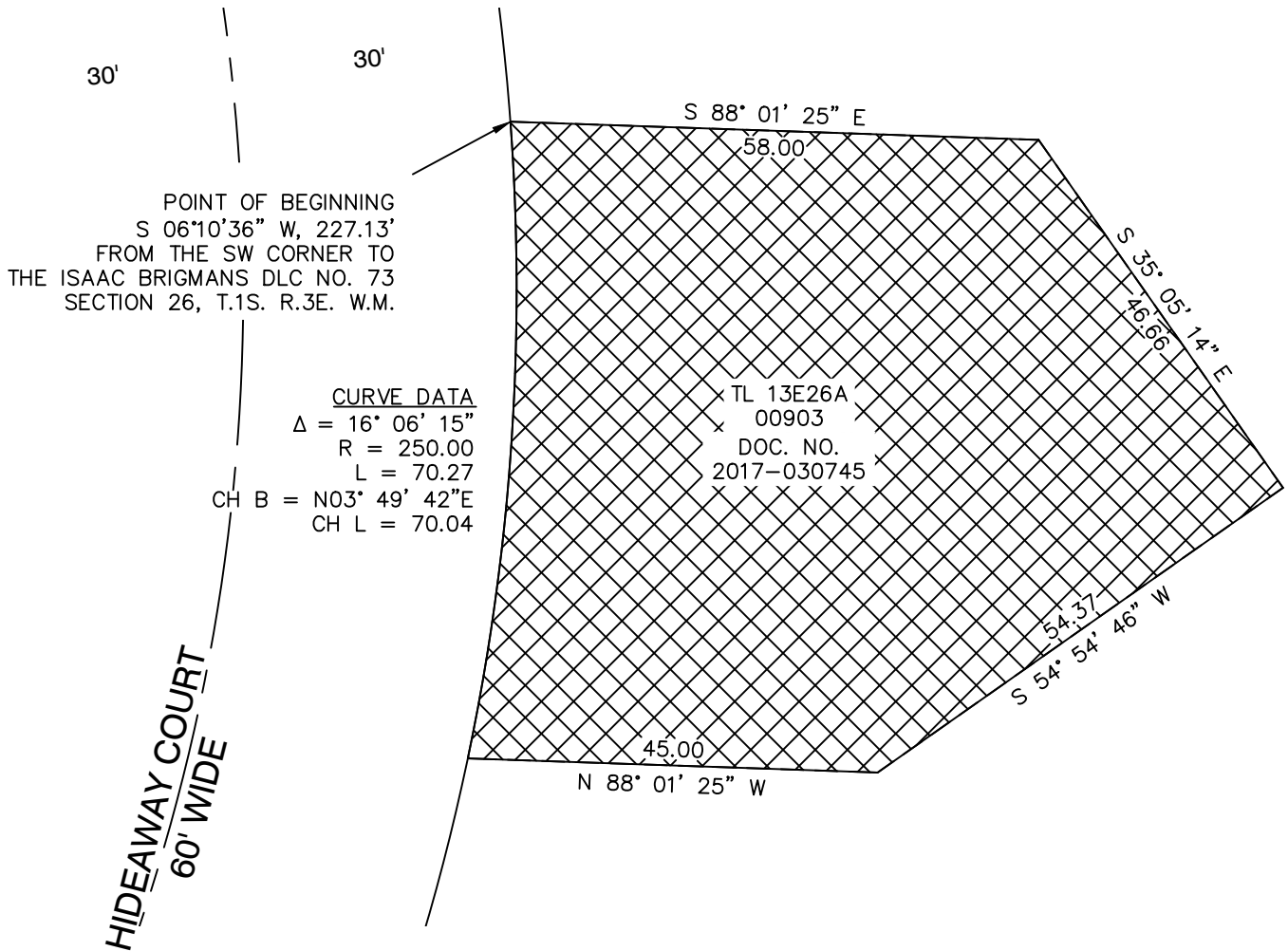
Brian W. Paull

OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12-31-2022

EXHIBIT 'B-2'

LOCATED IN THE NW 1/4 AND NE 1/4 OF SECTION 26 IN T1S R3E W.M.
CLACKAMAS COUNTY, OREGON



TEMPORARY
CONSTRUCTION EASEMENT
TOTAL AREA: 4758
SQ.FT. +/-



SCALE: 1"=20'

BASIS OF BEARINGS: NAD83 2011
(EPOCH 2010) OCRS PER OAR
734-005-0015 PORTLAND ZONE

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Brian Paull

OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12-31-22



DEPARTMENT OF
TRANSPORTATION AND
DEVELOPMENT

EXHIBIT "B-2"
HIDEAWAY COURT
CULVERT

TEMPORARY CONSTRUCTION
EASEMENT

RD. FILE NO.	DRAWN BY BWP	DESIGN BY	DATE: 10-19-22
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COVER SHEET

- New Agreement/Contract
- Amendment/Change/Extension to _____
- Other _____

Originating County Department: _____

Other party to contract/agreement: _____

Description:

After recording please return to: X _____

- County Admin
- Procurement

If applicable, complete the following: _____

Board Agenda Date/Item Number: _____