



DAN JOHNSON
DIRECTOR

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

January 21, 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 Fuller Causey Crosswalk Improvement 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 \$17,500 and is included in the \$185,588 total project budget. |
| Funding Source | \$37,118 of County Road Fund and ODOT State Grants of \$148,470 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 | 10/11/18: BCC authorized DTD to apply for the Safe Routes to School grant. 03/18/19: BCC executed Intergovernmental Agreement (IGA) No. 33116 with Oregon Department of Transportation for the Fuller Causey Crosswalk Improvement Project. |
| 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 "Ensure safe, healthy and secure communities" by adding advance warning signs, rectangular rapid flashing beacons, a center lane pedestrian refuge, and curb ramps thereby ensuring safer pedestrian travel, particularly children, within the community, which will add to the overall secure feeling of the community. |
| Counsel Review | Date of Counsel review: 12/10/20, NB Initials of County Counsel performing review. NB |
| 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 | Mendi Houx, DTD Right of Way Agent 2 @ 971-266-7387 (c) |

The Department of Transportation and Development received a Safe Routes to School grant from the Oregon Department of Transportation to create an enhanced crosswalk to increase visibility and pedestrian safety at the south leg of the intersection of SE Fuller Rd and SE Causey Ave/SE Harmony Dr.

In order to construct the improvements as designed, additional rights of way and easements will be required. The project is expected to impact two 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 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 for the needed rights of way and easements, staff will utilize their own expertise and reliable data sources to prepare Appraisal Waiver Valuations in accordance with applicable law and regulation.

This resolution directs Department staff to proceed with good faith negotiations for the acquisition of the needed property rights. 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 complaints of condemnation with the circuit court of the County and take such other steps as determined 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.

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,

Mendi Houx

Mendi Houx,
Right of Way Agent 2

**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 Fuller Causey Crosswalk Improvement 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 January 21, 2021 and,

It appearing to the Board that the Fuller Causey Crosswalk Improvement Project (the "Project") will create an enhanced crosswalk to increase visibility and pedestrian safety; 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 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" and "A-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

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 Fuller Causey Crosswalk Improvement 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 _____, 2021.

Tootie Smith, Chair

Recording Secretary

EXHIBIT "A-1"
Page 1 of 2
File 1
December 9, 2020

TRACT 1
PERMANENT RIGHT OF WAY EASEMENT:

A portion of that property described in Document No. 1983-21423 of the Clackamas County Deed records, located in the NE 1/4 of Section 32, Township 1 South, Range 2 East, Willamette Meridian, as shown on Exhibit 'B' attached hereto and by this reference made a part hereof, more particularly described as follows:

Commencing from the southwest corner of the above described property, being on the easterly right of way of SE Fuller Rd. (County Road No. 368); thence along said right of way line North $20^{\circ}52'36''$ East 245.26 feet to the Point of Beginning; thence continuing along said right of way line, North $20^{\circ}52'36''$ East 0.79 feet to a point a 24.28 foot radius, non-tangent curve to the right, having an internal angle of $70^{\circ}27'20''$ and a chord bearing of North $58^{\circ}43'22''$ East 33.24 feet; thence along said curve, an arc length of 34.73 feet; thence leaving said right of way South $45^{\circ}43'49''$ West 12.02 feet; thence South $65^{\circ}52'36''$ West 21.70 feet to the Point of Beginning.

Containing 167 square feet, more or less.

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

EXHIBIT "A-1"
Page 2 of 2
File 1
December 9, 2020

TRACT 2
TEMPORARY CONSTRUCTION EASEMENT:

A portion of that property described in Document No. 1983-21423 of the Clackamas County Deed records, located in the NE 1/4 of Section 32, Township 1 South, Range 2 East, Willamette Meridian, as shown on Exhibit 'B' attached hereto and by this reference made a part hereof, more particularly described as follows:

Commencing from the southwest corner of the above described property, being a point on the easterly right of way of SE Fuller Rd. (County Road No. 368); thence along said right of way line North 20°52'36" East 238.19 feet to the Point of Beginning; thence leaving said right of way North 65°52'36" East 58.23 feet to the southerly right of way line of SE Causey Ave.; thence along said right of way North 89°49'46" West 22.21 feet; thence leaving said right of way line South 45°43'49" West 12.02 feet; thence South 65°52'36" West 21.70 feet to the eastly line of said SE Fuller Rd; thence along said easterly right of way line South 20°52'36" West 7.07 feet to the Point of Beginning.

Containing 293 square feet, more or less.

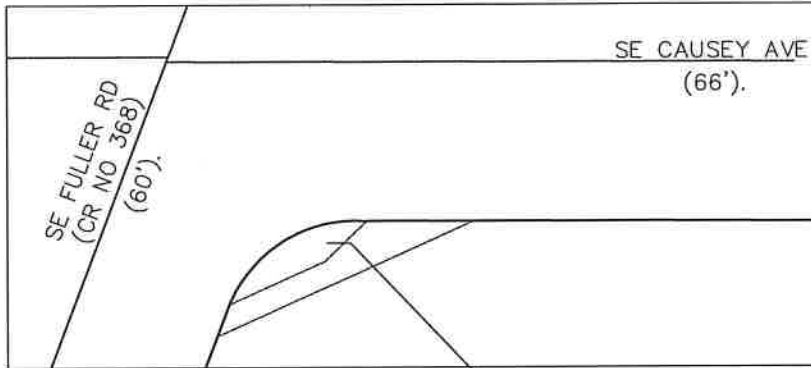
Basis of Bearing: NAD83 2011 (epoch 2010) Oregon Coordinate Reference System, Portland Zone, Per OAR 734.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Brian Paull

OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12-31-20



LOCATED IN THE NORTHEAST 1/4 OF SECTION 32 TOWNSHIP 1 SOUTH, RANGE 2 EAST, W.M. CLACKAMAS COUNTY, OREGON

REGISTERED PROFESSIONAL LAND SURVEYOR

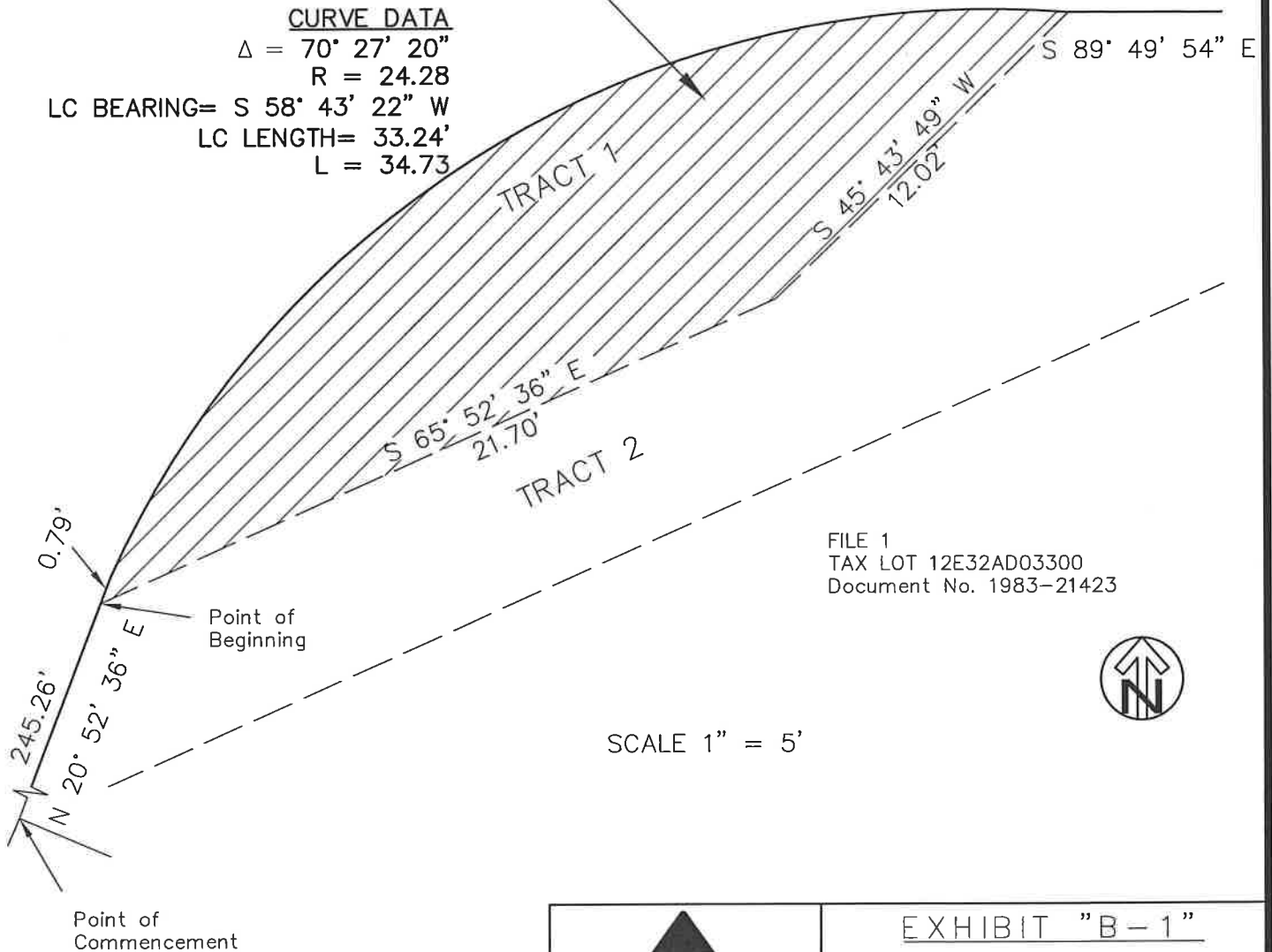
Brian Paull

OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12/31/20

CURVE DATA


$\Delta = 70^{\circ} 27' 20''$
R = 24.28
LC BEARING = S 58° 43' 22" W
LC LENGTH = 33.24'
L = 34.73




FILE 1
TAX LOT 12E32AD03300
Document No. 1983-21423



SCALE 1" = 5'

 TRACT 1
PERMANENT RIGHT OF WAY EASEMENT
AREA = 167 SF



CLACKAMAS COUNTY

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

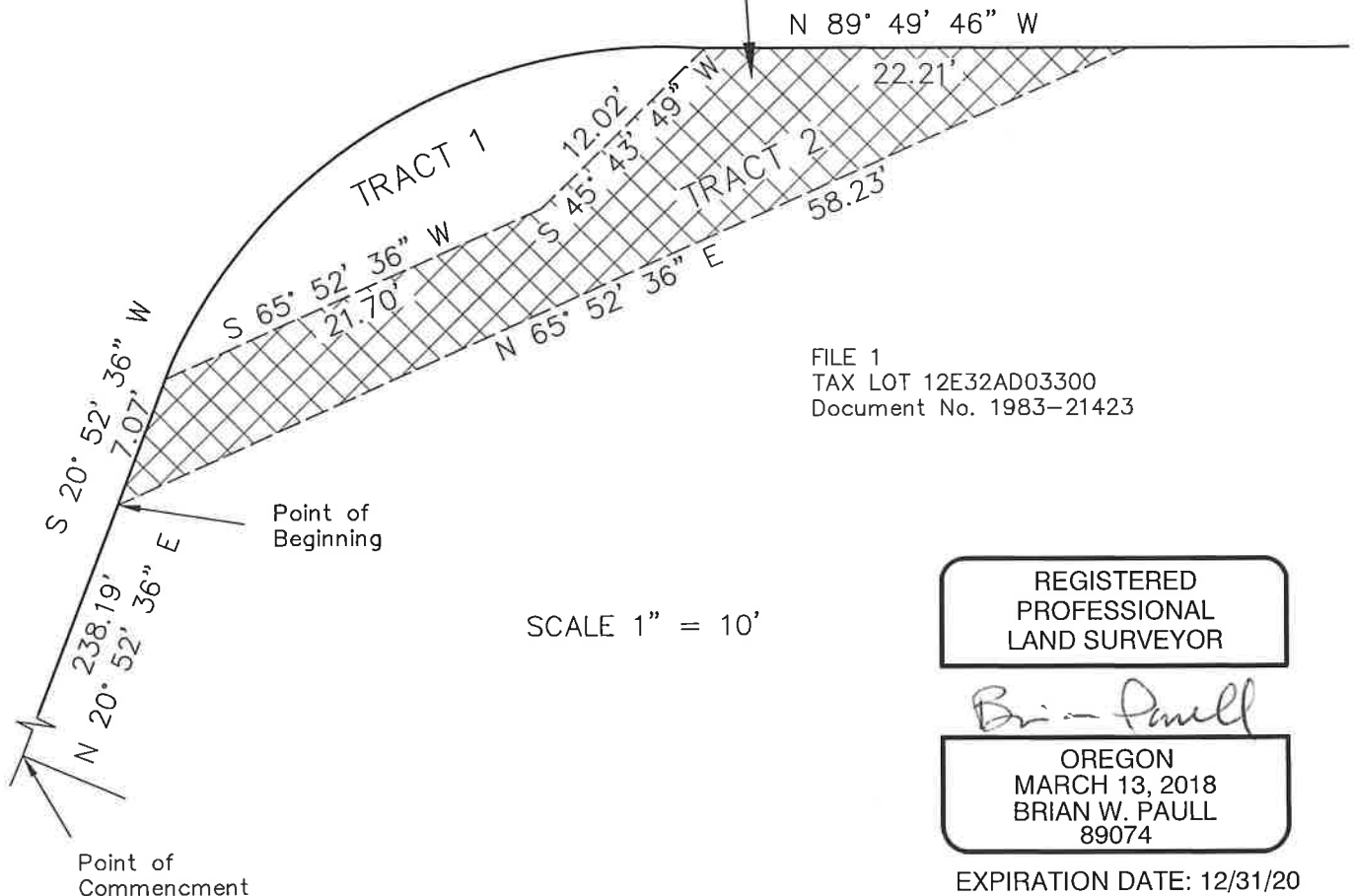
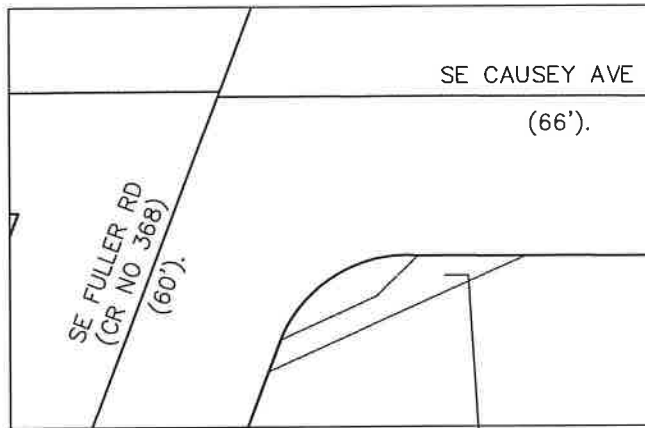
EXHIBIT "B-1"

SE FULLER ROAD AND SE HARMONY DR.

PAGE 1 OF 2

PERMANENT ROW EASEMENT

| | | | |
|-------------------------|-----------------|------------------|-------------------|
| RD. FILE NO. C122289 | DRAWN BY BWP | DESIGN BY BWP | DATE: 10-12-20 |
|-------------------------|-----------------|------------------|-------------------|



FILE 1
 TAX LOT 12E32AD03300
 Document No. 1983-21423

SCALE 1" = 10'

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

Brian Paull

OREGON
 MARCH 13, 2018
 BRIAN W. PAULL
 89074

EXPIRATION DATE: 12/31/20

LOCATED IN THE NORTHEAST 1/4 OF
 SECTION 32 TOWNSHIP 1 SOUTH,
 RANGE 2 EAST, W.M.
 CLACKAMAS COUNTY, OREGON



TRACT 2
 TEMPORARY CONSTRUCTION
 EASEMENT
 AREA = 293 SF



DEPARTMENT OF
 TRANSPORTATION
 AND
 DEVELOPMENT

EXHIBIT "B-1"

SE FULLER ROAD AND SE
 HARMONY DR.

PAGE 2 OF 2

TEMPORARY CONSTRUCTION EASEMENT

| | | | |
|-------------------------|-----------------|------------------|------------------|
| RD. FILE NO. C122289 | DRAWN BY BWP | DESIGN BY BWP | DATE 12-09-20 |
|-------------------------|-----------------|------------------|------------------|

EXHIBIT "A-2"
Page 1 of 2
File 2
December 9, 2020

TRACT 1
PERMANENT RIGHT OF WAY EASEMENT:

A portion of that property described in Document No. 2018-074516 of the Clackamas County Deed records, located in the NE 1/4 of Section 32, Township 1 South, Range 2 East, Willamette Meridian, as shown on Exhibit 'B' attached hereto and by this reference made a part hereof, more particularly described as follows:

Beginning at a point at the intersection of the westerly right of way of SE Fuller Rd. (CR No. 368) and the southerly right of way of SE Harmony Dr; thence along said westerly right of way South 20°52'36" West 18.53 feet; thence leaving said westerly right of way line, North 44°52'04" West 24.41 feet to the southerly right of way line of said SE Harmony Dr; thence along said southerly right of way line North 89°57'55" East 23.83 feet to the Point of Beginning.

Containing 206 square feet, more or less.

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

EXHIBIT "A-2"
Page 2 of 2
File 2
December 9, 2020

**TRACT 2
TEMPORARY CONSTRUCTION EASEMENT:**

A portion of that property described in Document No. 2018-074516 of the Clackamas County Deed records, located in the NE 1/4 of Section 32, Township 1 South, Range 2 East, Willamette Meridian, as shown on Exhibit 'B' attached hereto and by this reference made a part hereof, more particularly described as follows:

Commencing from a point at the intersection of the westerly right of way of SE Fuller Rd. (CR No. 368) and the southerly right of way of SE Harmony Dr; thence along said southerly right of way South 89°57'55" West 23.83 feet to the Point of Beginning; thence leaving said southerly right of way South 44°52'04" East 24.41 feet to the westerly right of way line of said SE Fuller Rd; thence along said westerly right of way line, South 20°52'36" West 5.48 feet; thence leaving said right of way line, North 44°52'04" West 31.64 feet to the southerly right of way line of said SE Harmony Dr; thence along said southerly right of way line, North 89°57'55" East 7.05 feet to the Point of Beginning.

Containing 140 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: 12-31-20

SE HARMONY DR.
(50').

SE CAUSEY AVE
(66').

SE FULLER RD
(CR NO 368)
(60').

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Brian Paull

OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12/31/20

Point of
Beginning

N 89° 57' 55" E

23.83'

TRACT 1

TRACT 2

N 44° 52' 04" W
24.41'

S 20° 52' 36" W
18.53'

FILE 2
TAX LOT 12E32AD02800
DOC. NO. 2018-074516

SCALE 1" = 5'



LOCATED IN THE NORTHEAST 1/4 OF
SECTION 32 TOWNSHIP 1 SOUTH,
RANGE 2 EAST, W.M.
CLACKAMAS COUNTY, OREGON



TRACT 1
PERMANENT RIGHT OF WAY
EASEMENT
AREA = 206 SF



DEPARTMENT OF
TRANSPORTATION
AND
DEVELOPMENT

EXHIBIT "B-2"

SE FULLER ROAD AND SE
HARMONY DR.

PAGE 1 OF 2

PERMANENT ROW EASEMENT

| | | | |
|-------------------------|-----------------|------------------|-------------------|
| RD. FILE NO. C122289 | DRAWN BY BWP | DESIGN BY BWP | DATE: 12-09-20 |
|-------------------------|-----------------|------------------|-------------------|

SE HARMONY DR.
(50').

SE CAUSEY AVE
(66').

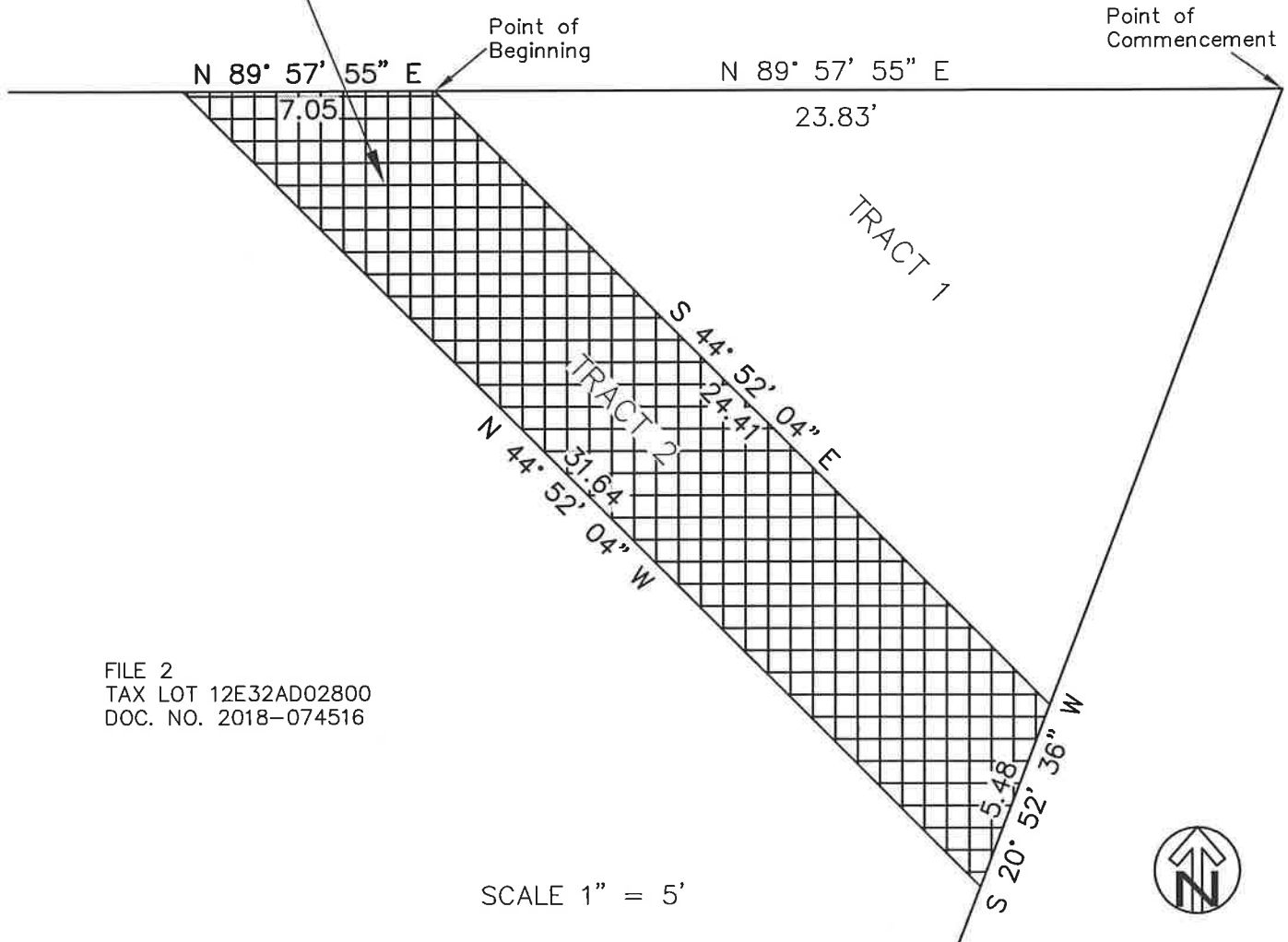
SE FULLER RD
(CR NO 368)
(60').

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Brian Paull

OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12/31/20



FILE 2
TAX LOT 12E32AD02800
DOC. NO. 2018-074516

SCALE 1" = 5'



LOCATED IN THE NORTHEAST 1/4 OF
SECTION 32 TOWNSHIP 1 SOUTH,
RANGE 2 EAST, W.M.
CLACKAMAS COUNTY, OREGON



TRACT 2
TEMPORARY CONSTRUCTION
EASEMENT
AREA = 140 SF



DEPARTMENT OF
TRANSPORTATION
AND
DEVELOPMENT

EXHIBIT "B-2"

SE FULLER ROAD AND SE
HARMONY DR.

PAGE 2 OF 2

TEMPORARY CONSTRUCTION EASEMENT

| | | | |
|-------------------------|-----------------|------------------|-------------------|
| RD. FILE NO. C122289 | DRAWN BY BWP | DESIGN BY BWP | DATE: 12-09-20 |
|-------------------------|-----------------|------------------|-------------------|