



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

June 3, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between Clackamas County and the City of Oregon City to Transfer Permitting Authority and Maintenance Responsibility for a portion of Maplelane Court and Maplelane Road (County Road #0398, DTD #32104 and DTD #32001, to the City

Purpose/Outcomes	Transfers permitting authority and maintenance responsibility for construction on portions of Maplelane Court to the City of Oregon City and establishing a process and timelines related to a jurisdictional transfer.
Dollar Amount and Fiscal Impact	Cost savings in the form of staff time and materials related to the permitting, maintenance and oversight of this roadway and a onetime payment of \$29,384 which represents the cost of a 2" asphalt overlay over that portion being transferred.
Funding Source	Community Road Fund
Duration	Upon execution; permanent
Previous Board Action	May 18, 2021: Discussion item at issues
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This transfer will directly align with our departments Business Plan goal of completing jurisdictional transfer of roads to cities. 2. Build public trust through good government
Counsel Review	Reviewed and approved: 5/11/21 NB
Procurement Review	Was this item processed through Procurement? No This item is an IGA related to a transfer of Jurisdiction
Contact Person	Michael Bays, Survey Cadd Supervisor; 503-742-46667

Clackamas County currently has jurisdiction, including permitting authority, enforcement of road standards and maintenance responsibility of Maplelane Court and Maplelane Road. This intergovernmental agreement addresses transferring rights and duties as "road authority," including permitting authority, development of road standards, and maintenance responsibility to the City for portions of Maplelane Court and Maplelane Road.

Transferring the rights and duties as road authority for these portions of Maplelane Court and Maplelane Road to the City of Oregon City will eliminate confusion and improve efficiencies of

maintenance and public service. The City will perform all construction and reconstruction; improvement or repair and maintenance; review and issuance of access permits; establishment of roadway standards; acquisition of right of way; storm water and drainage facility repair and maintenance; and review and issuance of street opening permits. The County will retain official jurisdiction of these portions of the roadways until such time as a jurisdictional transfer as outlined in this agreement with the County has been completed.

RECOMMENDATION:

Staff respectfully recommends that the Board approve this Intergovernmental Agreement with the City of Oregon City to transfer rights and duties as road authority for portions of Maplelane Court and Maplelane Road to the City and to establish a process and timelines related to a jurisdictional transfer.

Respectfully submitted,

Michael Bays

Michael Bays, Survey Cadd Supervisor
Attachments: IGA, Exhibits

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF OREGON CITY
AND CLACKAMAS COUNTY RELATED TO THE TRANSFER OF A PORTION OF
MAPLELANE COURT AND MAPLELANE ROAD**

This agreement (the “Agreement”) is made on the date all required signatures have been obtained, between the City of Oregon City (“CITY”), a municipal corporation of the State of Oregon, and Clackamas County (“COUNTY”), a political subdivision of the State of Oregon, pursuant to ORS Chapter 190 (Intergovernmental Cooperation), collectively referred to as the “PARTIES” and each a “PARTY.”

RECITALS

WHEREAS, ORS Chapter 190 authorizes local governments to enter into intergovernmental agreements for the performance of any or all functions and activities that a local government, its officers or agencies, have the authority to perform;

WHEREAS, the portions of Maplelane Court and Maplelane Road subject to this Agreement are located entirely within the boundaries of the City and are County Roads, as defined in ORS 368.001;

WHEREAS, Maplelane Court and Maplelane Road are depicted in Exhibit “B”, and more particularly described in Exhibit “A”, all of which are attached hereto and incorporated herein (collectively “Maplelane Court”);

WHEREAS, the Parties agree that the City is best suited to assume primary responsibility for maintenance and permitting of Maplelane Court;

WHEREAS, ORS 373.270 provides a procedure whereby a county may transfer jurisdiction over any county roads within a city to that city, and the Parties desire to pursue a transfer of jurisdiction of Maplelane Court and a portion of Maplelane Road pursuant to the terms of this Agreement; and

WHEREAS, the Parties agree that Maplelane Court should be improved, or the City should be compensated, consistent with the terms of this Agreement at, or prior to, the completion of the full transfer pursuant to ORS 373.270.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** This Agreement shall be effective upon execution, and shall expire automatically at the time the City assumes jurisdiction of Maplelane Court and a portion of Maplelane Road pursuant to ORS 373.270, and the County has paid the amount of money set forth herein.
2. **Transfer of Authority.**

- A. Responsibility for Road Authority activities (as outlined in Section 3) for Maplelane Court and a portion of Maplelane Road shall be surrendered to the City pursuant to the terms and conditions of this Agreement. The only portion of Maplelane Court subject to this Agreement measures approximately 1,606 feet and 96,367 square feet in area, as more particularly depicted on Exhibit “B”, and more specifically described on Exhibit “A”.
 - B. To facilitate the performance of responsibilities under this Agreement, the City hereby accepts responsibility for Road Authority activities (as outlined in Section 3) for Maplelane Court and a portion of Maplelane Road, as described herein.
 - C. The City shall be solely responsible for all costs associated with the Road Authority activities assumed by the City as set forth in this Agreement.
3. **Road Authority Obligations.** For purposes of this Agreement, the Road Authority activities include those activities the City deems necessary in accordance with City standards, including but not necessarily limited to, the following:
- A. Construction and reconstruction (including capital improvements);
 - B. Improvement or repair, and maintenance;
 - C. Maintenance and repair of related facilities within the roadway, including but not limited to storm water drainage facilities, traffic control devices, street lights and roadside barriers;
 - D. Timely repair or mitigation of known hazards to the road users;
 - E. Issuance of permits for work or the establishment of roadway standards on Maplelane Court; and
 - F. All other responsibilities the County may have under ORS 368 with regards to Maplelane Court and Maplelane Road which may be assumed by the City under state law.
4. **Maintenance Standard.** Any maintenance on Maplelane Court and Maplelane Road required by this Agreement shall be carried out in a manner that is similar to other roads with similar features, function, and characteristics under the City’s jurisdiction.
5. **County Responsibilities.**
- A. The County shall give notice and shall carry out those procedures set forth in ORS 373.270 to determine whether it is necessary, expedient or for the best interests of the County to surrender jurisdiction over Maplelane Court and Maplelane Road.
 - B. The County shall provide to the City the sum of \$29,384 which is equivalent to the cost of the following improvement: a 2-inch asphalt overlay on the portion of Maplelane Court identified in the exhibits attached to this Agreement. The sum of \$29,384 identified in this paragraph shall be payable to the City within 30 days of the date that full and absolute jurisdiction over Maplelane Court and Maplelane Road are surrendered by the County and accepted by the City as described below.

6. City Responsibilities.

- A. After the County has initiated the process to transfer jurisdiction of Maplelane Court and Maplelane Road, the City shall carry out any additional procedures necessary, as set forth in ORS 373.270, for purposes of finalizing the transfer. The City shall not unreasonably delay or withhold its consent to the transfer of Maplelane Court and Maplelane Road, and shall complete the process to finalize the transfer within 90 days from the date that the County concludes its hearing and decision on the matter. This obligation shall terminate in the event the governing body of the County fails to find that it is necessary, expedient or for the best interests of the County to surrender jurisdiction over Maplelane Court
- B. The City agrees to assume full and absolute jurisdiction over the portion of Maplelane Court and Maplelane Road identified in the exhibits attached to this Agreement, if the governing body of the City and the governing body of the County both determine that it is necessary, expedient or for the best interests of their respective jurisdictions to complete the transfer described herein.

7. Termination.

- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. Either the County or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

8. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense

thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

9. General Provisions

- A. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- E. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding

such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.
- K. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- L. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- M. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.

N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

CLACKAMAS COUNTY

Chair

Date

Recording Secretary

CITY OF OREGON CITY

City Manager, Anthony J Konkol, III

Date

Approved as to form:

City Attorney

Exhibit "A"

S. Maplelane Ct. and Maplelane Road Transfer of Jurisdiction

Clackamas County to City of Oregon City

Description

All that portion of S. Maplelane Court and Maplelane Road , both being County Road No. 398, Department of Transportation and Development maintenance No. 32104; Situated in the SW 1/4 of Section 04, T. 3 S., R. 2 E., W.M. as shown in Exhibit "B", attached hereto, lying West of the Westerly boundary line of Tax Lot 32E04C 01900, as described in Document No. 2012-076496, Clackamas County deed records, and lying East of the Easterly Right-of-Way Line of Highway 213 Trails End Highway, being approximately 1,606 feet long.

Contain 96,367 square feet, more or less.



1' = 200'

EXHIBIT "B"

CITY LIMITS

START MILE POINT 0.35

32E04C 01900
DOC. NO. 2012-076496

CLACKAMAS COUNTY

CITY OF OREGON CITY

HWY 213
(TRAILS END HWY)

S MAPLELANE CT.
OR NO. 398

CITY OF OREGON CITY

EASTERLY RIGHT-OF-WAY
OF HIGHWAY 213

BEAVERCREEK RD.

S MAPLELANE RD.



TRANSFERED ROAD

LOCATED IN THE SW 1/4 OF
SECTION 04, T. 3 S., R. 2 E., W.M.
CLACKAMAS COUNTY, OREGON

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



05/03/2021

A. REITER

JURISDICTIONAL TRANSFER
S. MAPLELANE CT.
COUNTY ROAD NO. 398

SHEET

1 OF 1



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

June 3, 2021

Board of Commissioners
Clackamas County
Members of the Board:

A Board Order Vacating a Portion of Victory Road

Purpose/Outcomes	Permanent vacation of a portion of Victory Road right of way.
Dollar Amount and Fiscal Impact	None
Funding Source	N/A
Duration	Upon execution; permanent right of way easement and vacation.
Previous Board Action	N/A
Strategic Plan Alignment	Grow a Vibrant Economy by giving back unused right of way to provide for construction of a new home.
Counsel Review	Reviewed and approved by County Counsel on 05/11/21 NB
Procurement Review	This Item was not processed through Procurement This is a right of way acknowledgement and simultaneous vacation
Contact Person	Doug Cutshall, Engineering Technician 503-742-4669

BACKGROUND:

Victory Road, (County Road No. 2247), located in the NW quarter of Section 23, Township 2 South, Range 2 East, W.M., was dedicated to the public, February 17, 1910, through Outlook, Plat Number 242, Clackamas County Plat Records. A recent partition of property adjoining Victory Road and Forsythe Road created an opportunity for the County to partner with the developer to complete a project on the County's Transportation System Plan. This project relocated the Victory Road right of way to a much safer intersection with Forsythe Road. As a result of the relocation, there is existing right-of-way that is no longer being used by the public and therefore can be vacated.

The portion to be vacated contains approximately 11,276 square feet, being an unused right-of-way that serves no public need and is not a benefit to the traveling public. Vacating this portion of road right of way will not affect area traffic flow or deprive public access to adjoining properties.

The Petition to Vacate under ORS 368.341 has been filed with acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Clackamas County Department of Transportation Maintenance, Engineering, Planning, Traffic Divisions, and all local utility companies, have been contacted and do not have any objections to this vacation, provide that utility rights are reserved.

RECOMMENDATION

Staff respectfully recommends that the Board adopt the attached Board Order approving the vacation of this portion of Victory Road right of way.

Sincerely,

Douglas Cutshall

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

In the Matter of the Vacation
of a Portion of Victory Road,
Co. Rd. No. 2247, DTD No. 22222,
Situated in the NW ¼ of
Section 23, T.2 S., R.2 E., W.M.



Board Order No. _____
Page 1 of 1

This matter coming before the Board of County Commissioners at this time and it appearing to the Board that Stone Creek & Development Inc. has dedicated to the public a Permanent Right of Way Easement for Road Purposes, and;

Whereas the said right of way easement was previously accepted through Partition Plat 2018-055, Clackamas County Plat Records, which said plat relocated a portion of Victory Road to provide a safe intersection with Forsythe Road. This new alignment will allow the unused portion of Victory Road right of way to be vacated. The said vacated portion being described as follows;

All of that portion of Victory Road, County Road Number 2247, situated in the NW1/4 of Section 23, T.2 S., R.2 E., W. M. lying north of and between the northerly right of way of Forsythe Road, County Road Number 408 and, the easterly extension of the arc of a curve labeled C-16, depicted on Page 2 of Partition Plat 2018-055 Clackamas County Plat Records, said arc being the southerly right of way of relocated Victory Road, said vacated portion is shown on attached Exhibit "A" and by this reference made a part of this description.

Whereas the Board having read said petition and report from the County Road Official, have determined the vacation of the above described portion of roadway to be in the public interest; and,

Whereas Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, along with all local utility companies, have been contacted and do not have any objections to this vacation provided that utility rights are reserved; now therefore,

IT IS HEREBY ORDERED, that the Board adopts as its own, the findings and conclusions contained in the written report from the County Road Official dated April 13, 2021; and,

IT IS FURTHER ORDERED that the above described portion of Victory Road and attached Exhibit "A", containing, 11,276 square feet, more or less, be vacated; and,

IT IS FURTHER ORDERED that rights for all existing utilities within the vacated Victory Road right of way, be reserved, Nothing contained herein shall cause or require the removal or abandonment of any storm or sanitary sewer, water main, gas line, conduit of any kind, wires, or poles which are now installed in said right-of-way and used or intended to be used for any public service or utility. In addition, the rights are reserved to access, maintain, repair, construct or reconstruct, install, renew, and enlarge all utilities that are now used for any public service or utility; and,

IT IS FURTHER ORDERED that this Order and supporting documents be recorded free of charge with the Clackamas County Clerk when presented, with copies sent to the County Assessor Office, County Surveyor's Office, and County Finance/Fixed Assets' Offices.

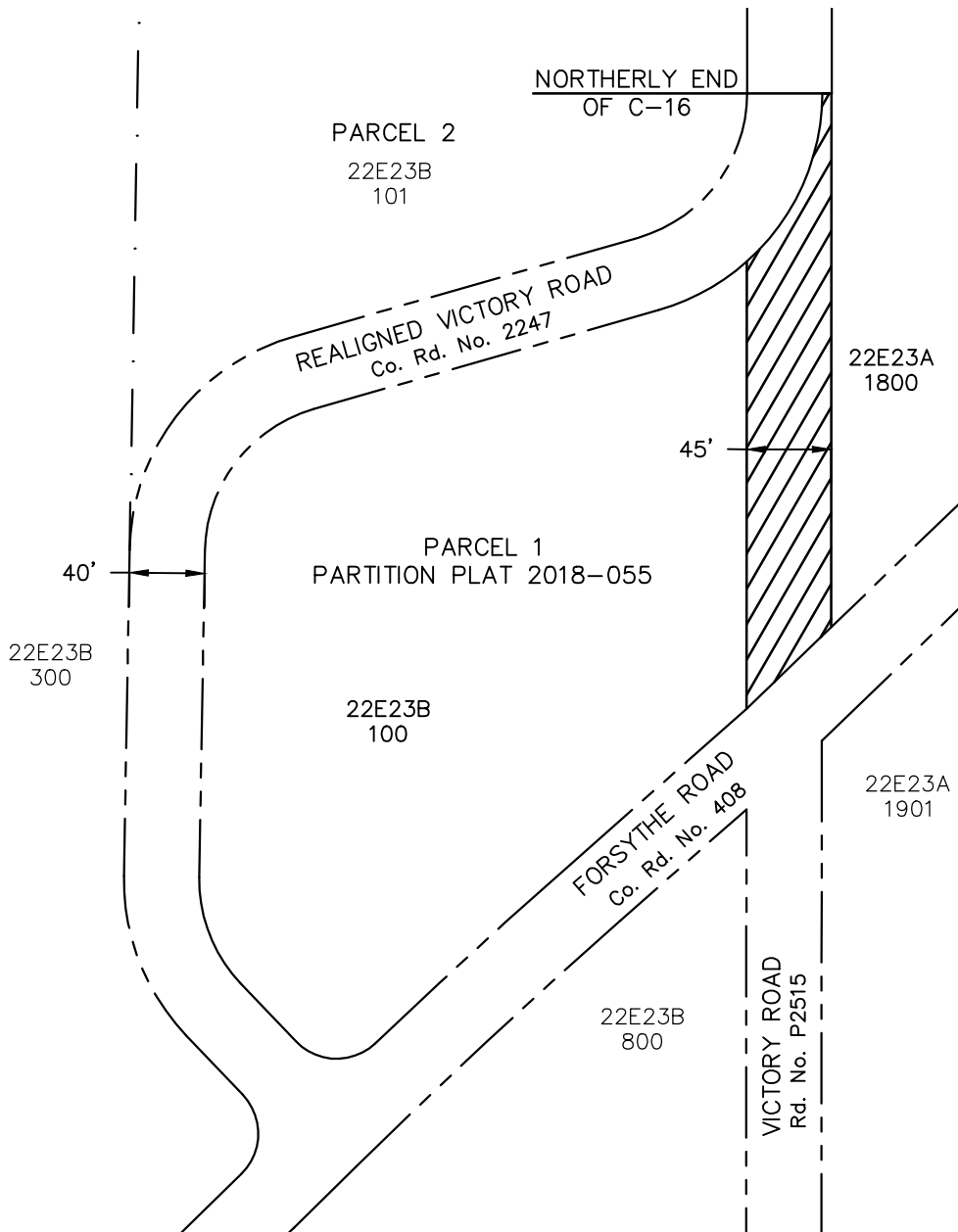
ADOPTED this _____ day of _____, 2021

BOARD OF COUNTY COMMISSIONERS

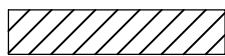
Chair

Recording Secretary

SITUATED IN THE NW 1/4 OF
SECTION 23, T.2 S., R.2 E., W.M.
CLACKAMAS COUNTY, OREGON



LEGEND



VACATED RIGHT OF WAY
45' WIDTH x 251' LENGTH
11,276 Sq. Ft.



SCALE 1" = 100'

MEMORANDUM

TO: Board of Commissioners

FROM: Dan Johnson, Director D.T.D.

DATE: April 13, 2021

SUBJ: **Board Order Vacating a Portion of Victory Road, County Road No. 2247**

LOCATION: Victory Road is situated in the northwest quarter of Section 23, Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon.

FACTS AND FINDINGS: Victory Road was dedicated to the public, February 17, 1910, through Outlook, Plat Number 242, Clackamas County Plat Records. A recent partition of property adjoining Victory Road and Forsythe Road inspired the County to partner with the developer and relocate the Victory Road right of way to a much safer intersection with Forsythe Road. The relocation resulted in an unused portion of the old Victory Road.

The portion to be vacated contains approximately 11,276 square feet, being an unused right-of-way that serves no public need and is not a benefit to the traveling public. Vacating this portion of road right of way will not affect area traffic flow or deprive public access to adjoining properties.

The Petition to Vacate under ORS 368.341 has been filed with acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Clackamas County Department of Transportation Maintenance, Engineering, Planning, Traffic Divisions, and all local utility companies, have been contacted and do not have any objections to this vacation, provide that utility rights are reserved.

It is my assessment to support the subject road vacation.

This road vacation does not violate any portion of Clackamas County Code 7.03.095 (4) (A). Said Code enumerated as follows;

a. Whether the vacation would inhibit or preclude access to an abutting property, and whether an access reservation would be adequate to protect that access;

Finding: Vacating this right of way would not inhibit or preclude access to any abutting property. Access to abutting properties is still available via the new Victory Road.

b. Whether it is physically possible to build a road that meets contemporary standards over the existing terrain or right of way;

Finding: It was physically possible to build a road however that road did not meet contemporary standards

c. Whether it is economically feasible to build a road that meets contemporary standards over the existing terrain or right of way;

Finding: It was economically feasible at the time of the original road construction.

d. Whether there is another nearby road that can effectively provide the same access as the right-of-way to be vacated;

Finding: The newly constructed Victory Road provides access to all of the property the old alignment provided.

e. Whether the right-of-way to be vacated has present or future value in terms of development potential, use in transportation linkages, or use in road replacements;

Finding: The right of way has no present or future value.

f. Whether there are present and future likely benefits of the right-of way to the traveling public;

Finding: There are no present and future likely benefits of the right of way to the traveling public.

g. Whether anticipated growth or changes in use of the surrounding area are likely to impact the future use of the right-of-way proposed to be vacated;

Finding: There are no anticipate impacts to the future use of the right of way proposed to be vacated.

h. Whether the right-of-way proposed to be vacated leads to a creek, river, or other waterway that can be used for public recreation; and

Finding: Not applicable.

i. Whether the right-of-way proposed to be vacated leads to federal, state or local public lands that can be used for public recreation.

Finding: Not applicable.

Dan Johnson, Director D.T.D



DAN JOHNSON
DIRECTOR

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

June 3, 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 Contract Paving: Webster Area Package Project and Authorizing Good Faith Negotiations and Condemnation Actions

Purpose/Outcomes	Under ORS Chapter 203, 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 \$32,209 and is included within the \$1,048,440 total project budget.
Funding Source	\$997,704 of Community Road Fund and \$50,736 of County Road Fund will be used.
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	None
Strategic Plan Alignment	-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." -This item aligns with "Build a Strong Infrastructure" by repaving 1.15 miles of local roads.
Counsel Review	County Counsel reviewed and approved 5/11/21
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
Contact Person	Mendi Houx, Right of Way Agent 2 503-742-4672

Community Road Fund and County Road Funds will be used to complete an urban contract paving package in the Webster Road area (the "Project"). The Project consists of ADA Ramp Improvement upgrades at SE Aldercrest Court and SE Vernelda Street, and SE Webster Road and SE San Marcos Avenue, and paving 1.15 miles of local roads in the following locations:

- SE San Marcos Avenue from SE Delrey Avenue to SE Webster Road.
- SE Antigua Avenue from SE Delrey Avenue to the culdesac.
- SE Cypress Avenue from SE Delrey Avenue to SE Webster Road.
- SE Renada Street from SE Webster Road to SE Del Rey Avenue.
- SE Eldorado Court from Delrey Avenue to the culdesac.
- SE Delrey Avenue from Crypress Avenue to Antigua Avenue.
- SE Delrey Avenue from Cypress Avenue to the dead end.
- SE Aldercrest Court from SE Thiessen Road to SE Kern Court.
- SE Kern Court from SE Aldercrest Court to the culdesac.

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

The 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. 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,

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 Contract Paving: Webster Area Package 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 June 3, 2021 and,

It appearing to the Board that the Contract Paving: Webster Area Package Project ("the Project") will construct ADA Ramp Improvements at SE Aldercrest Court and SE Vernelda Street, and SE Webster Road and SE San Marcos Avenue, and pave 1.15 miles of local roads; 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-2, A-3, A-4, B-2, B-3, and B-4 (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 Contract Paving: Webster Area Package 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-2"

Page 1 of 2

File 2

April 20, 2021

Tract 1:

PERMANENT RIGHT OF WAY EASEMENT:

A portion of that property described in Document No. 2001-014337 of the Clackamas County Deed records, located in the NW 1/4 of Section 8, Township 2 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 most westerly southwest corner of "Tract A" of "Aldercrest Circle", Plat No. 3537 of the Clackamas County Records, being a point on the northeasterly right of way of Aldercrest Court; thence along said northeasterly right of way, N 29°47'53" W 23.50 feet to the Point of Beginning; thence leaving said right of way, N 60°16'44" E 0.77 feet; thence N 19°59'57" W 5.91 feet; thence N60°40'01" E 0.49 feet; thence N 29°19'59" W 4.64 feet; thence N 21°51'58" E 21.18 feet; thence N 69°53'00" E 6.33 feet; thence N 20°07'00" W 2.27 feet to the southeasterly right of way of Vernelda Street; thence along said right of way S 70°24'53" W 0.53 feet to a 21.25 foot radius curve to the left (chord bearing of S20°18'30"W 32.61 feet), thence along said curve, 37.17 feet; thence S 29°47'53" E 3.96 feet to the Point of Beginning,

Containing 104 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

April 20, 2021

Tract 2:

TEMPORARY CONSTRUCTION EASEMENT:

A portion of that property described in Document No. 2001-014337 of the Clackamas County Deed records, located in the NW 1/4 of Section 8, Township 2 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 most westerly southwest corner of "Tract A" of "Aldercrest Circle", Plat No. 3537 of the Clackamas County Records, being a point on the northeasterly right of way of Aldercrest Court; thence along said northeasterly right of way, N 29°47'53" W 23.50 feet; thence leaving said right of way, N 60°16'44" E 0.77 feet to the Point of Beginning; thence N 19°59'57" W 5.91 feet; thence N60°40'01" E 0.49 feet; thence N 29°19'59" W 4.64 feet; thence N 21°51'58" E 21.18 feet; thence N 69°53'00" E 6.33 feet; thence S 20°07'00" E 4.32 feet; thence S 70°16'44" W 0.15 feet to a 16.50 foot radius curve to the left (chord bearing of S 20°16'44" W 25.28 feet); thence along said curve, 28.80 feet; thence S 29°43'16" E 2.09 feet; thence S 60°16'44" E 4.13 feet to the Point of Beginning,

Containing 115 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

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Brian Paull

OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12-31-2022

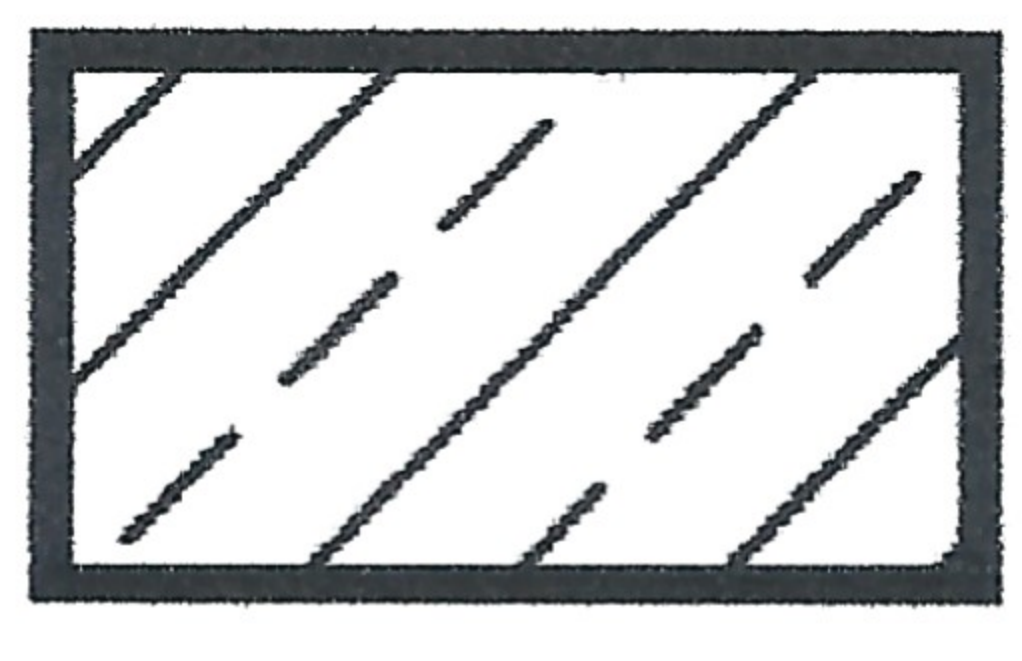
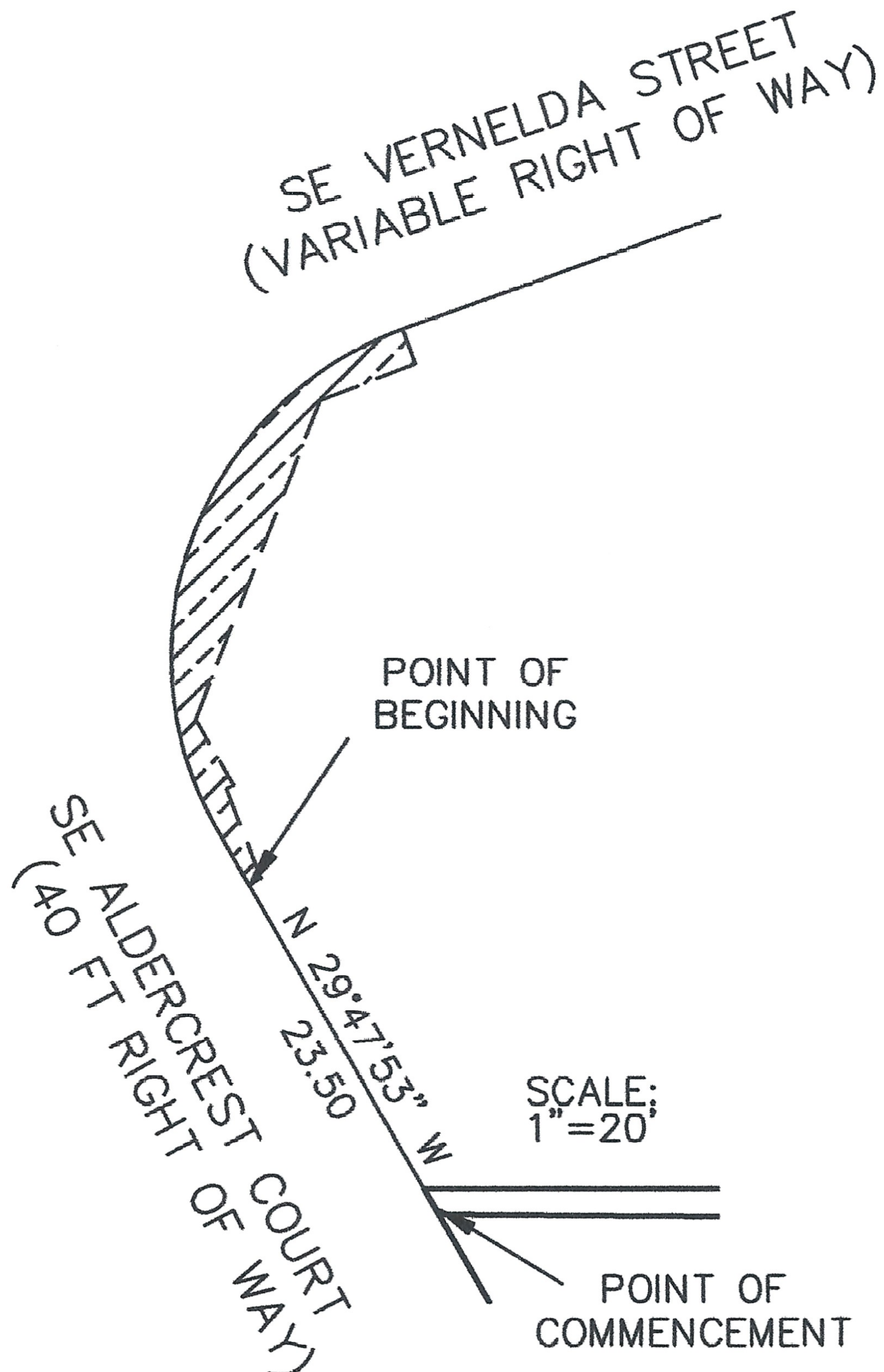
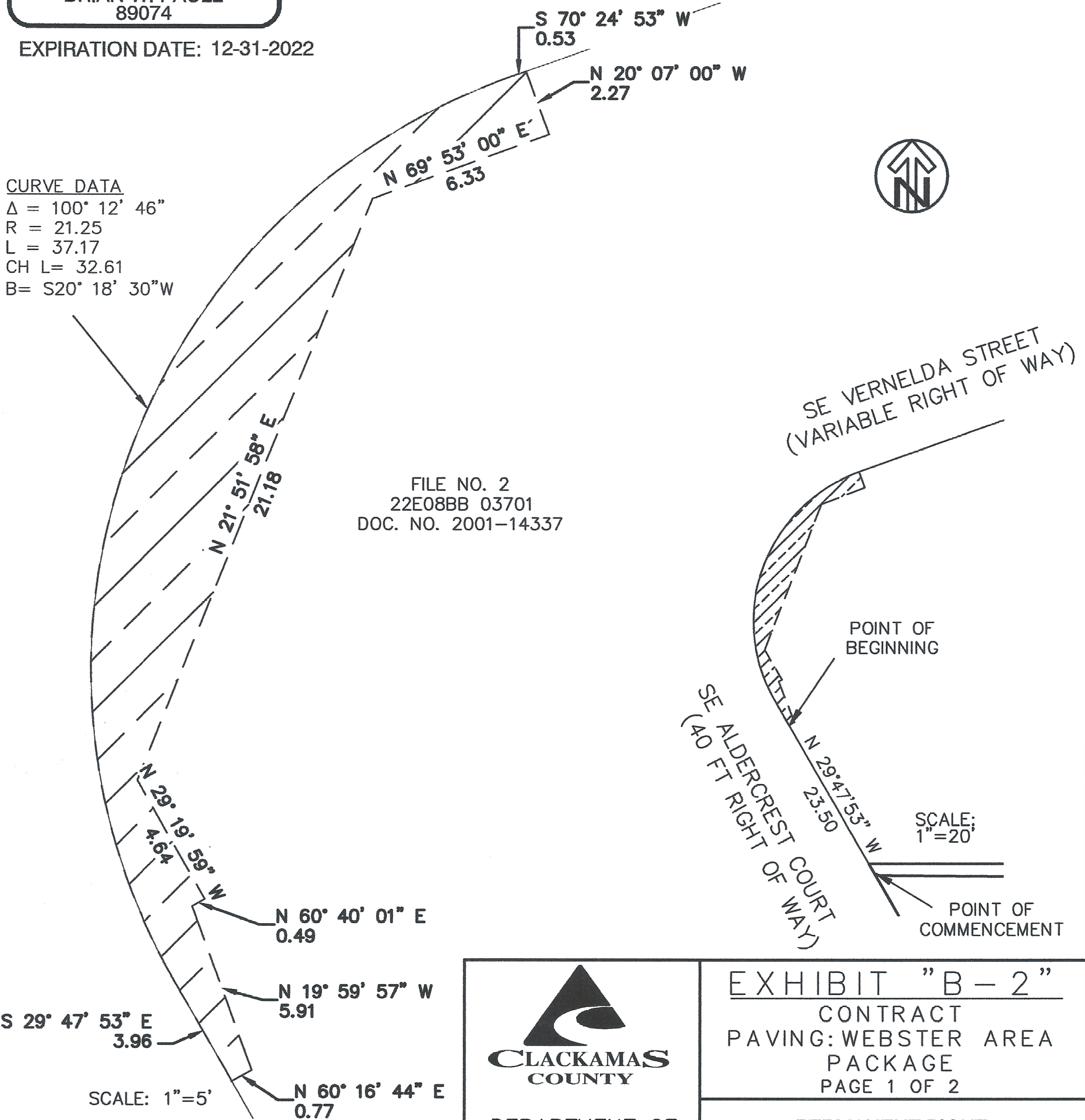
LOCATED IN THE NW 1/4 OF
SECTION 8 T2S., R2E., W.M.
CLACKAMAS COUNTY, OREGON

CURVE DATA

$\Delta = 100^{\circ} 12' 46''$
 $R = 21.25$
 $L = 37.17$
 $CH L = 32.61$
 $B = S20^{\circ} 18' 30'' W$



FILE NO. 2
22E08BB 03701
DOC. NO. 2001-14337



TRACT 1
PERMANENT RIGHT OF WAY
EASEMENT
AREA = 104 Sq.Ft.±



DEPARTMENT OF
TRANSPORTATION
AND
DEVELOPMENT

EXHIBIT "B-2"
CONTRACT
PAVING: WEBSTER AREA
PACKAGE
PAGE 1 OF 2

PERMANENT RIGHT
OF WAY EASEMENT

DRAWN BY BWP	DESIGN BY	DATE: 04-20-21
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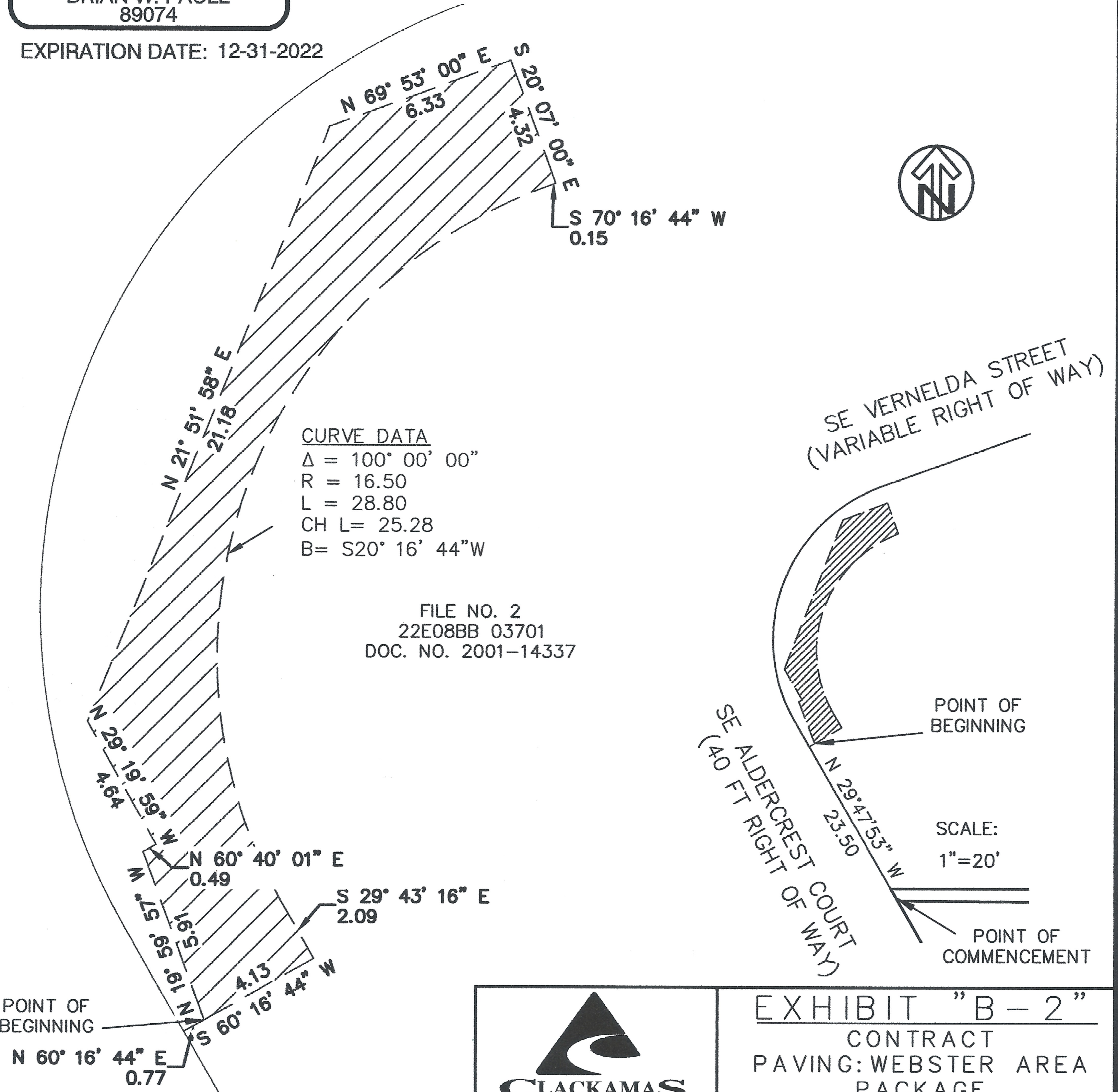
REGISTERED
PROFESSIONAL
LAND SURVEYOR

LOCATED IN THE NW 1/4 OF
SECTION 8 T2S., R2E., W.M.
CLACKAMAS COUNTY, OREGON

Brian Paull

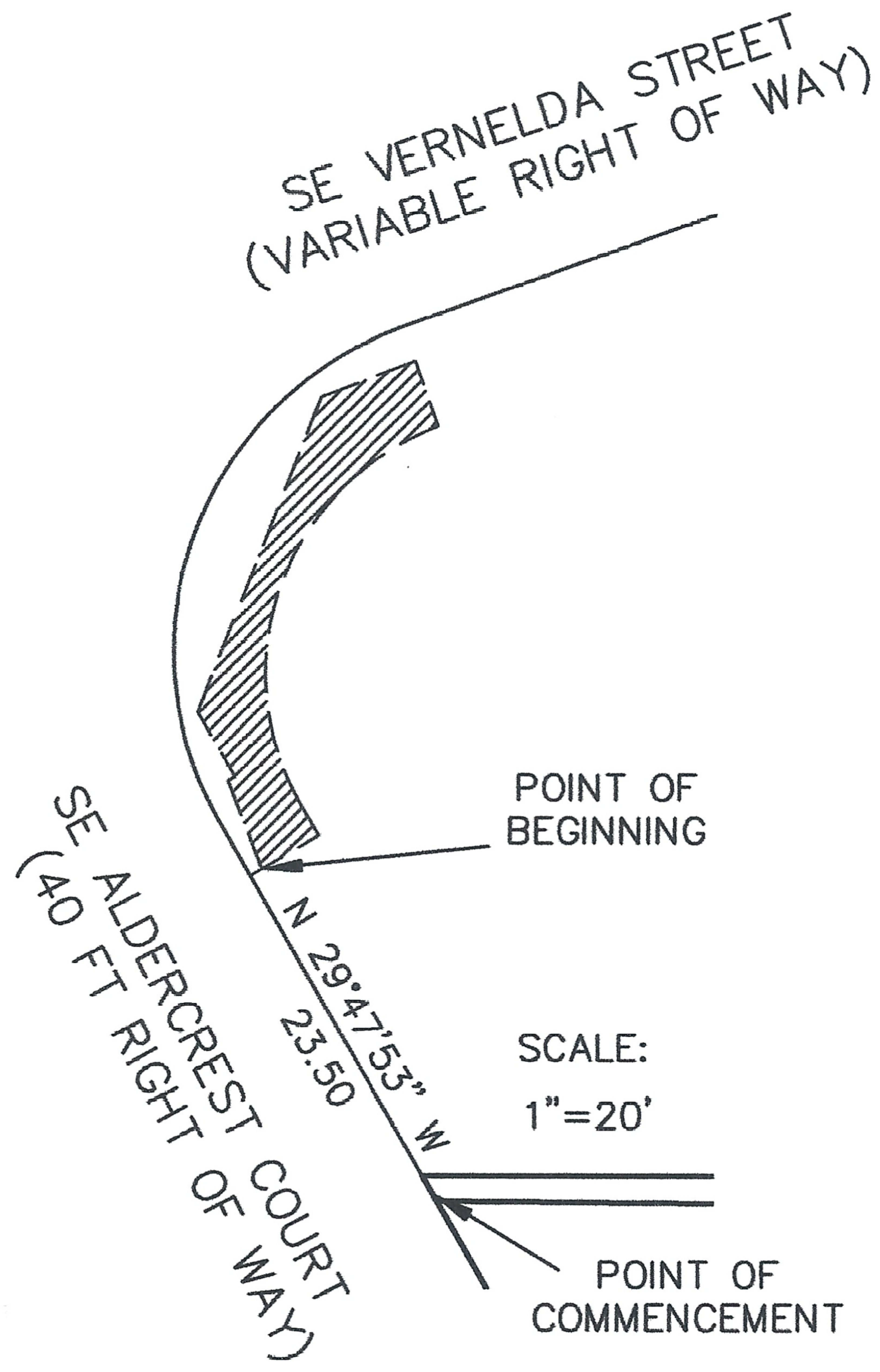
OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12-31-2022



CURVE DATA
 $\Delta = 100^\circ 00' 00''$
 $R = 16.50$
 $L = 28.80$
 $CH L = 25.28$
 $B = S20^\circ 16' 44'' W$

FILE NO. 2
22E08BB 03701
DOC. NO. 2001-14337



SCALE:
1"=20'

SCALE: 1"=5'
**TRACT 2
 TEMPORARY CONSTRUCTION
 EASEMENT**
 AREA = 115 Sq.Ft.±



DEPARTMENT OF
TRANSPORTATION
AND
DEVELOPMENT

EXHIBIT "B-2"
 CONTRACT
 PAVING: WEBSTER AREA
 PACKAGE
 PAGE 2 OF 2

**TEMPORARY
 CONSTRUCTION EASEMENT**

DRAWN BY BWP	DESIGN BY	DATE: 04-20-21
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EXHIBIT "A-3"

Page 1 of 2

File 3

April 20, 2021

Tract 1:

PERMANENT RIGHT OF WAY EASEMENT:

A portion of that property described in Document No. 2007-000184 of the Clackamas County Deed records, located in the NW 1/4 of Section 8, Township 2 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 southeast corner of Lot 10 Block 1 of "The Master Estates" recorded as Plat 2156 in the official Records of Clackamas County, being on the northerly right of way of SE San Marcos Street; thence along said right of way S 77°21'36" W 69.45 feet to a 15 foot radius curve to the right (chord bearing of S85°53'10"E 8.66 feet); thence along said curve 8.79 feet to the Point of Beginning; thence continuing along said curve 14.78 feet (chord bearing of N40°52'15"W 14.19 feet); thence N 12°38'24" W 1.27 feet; thence leaving said right of way N 77°19'31" E 1.45 feet; thence S 12°40'27" E 2.18 feet to a 15.52 foot radius non-tangent curve to the left (chord bearing of S 37°02'21" E 12.74 feet); thence along said curve 13.12 feet to the Point of Beginning,

Containing 14 square feet, more or less.

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

EXHIBIT "A-3"

Page 2 of 2

File 3

April 20, 2021

Tract 2:

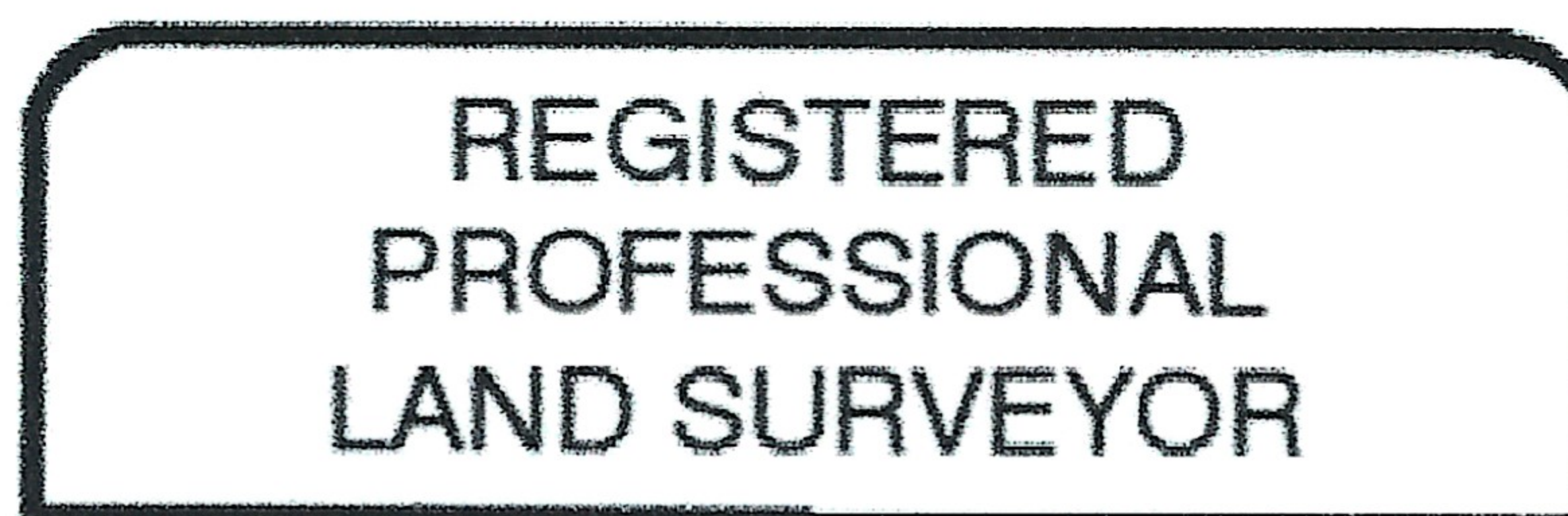
TEMPORARY CONSTRUCTION EASEMENT:

A portion of that property described in Document No. 2007-000184 of the Clackamas County Deed records, located in the NW 1/4 of Section 8, Township 2 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:

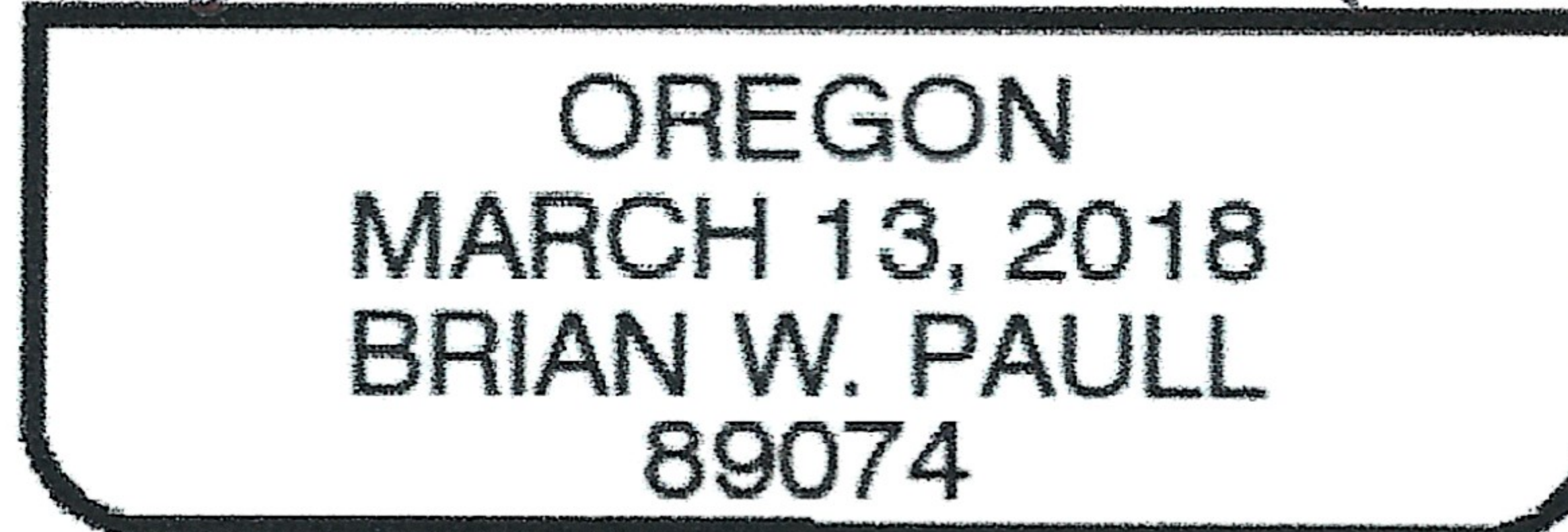
Commencing from the southeast corner of Lot 10 Block 1 of "The Master Estates" recorded as Plat 2156 in the official Records of Clackamas County, being on the northerly right of way of SE San Marcos Ave; thence along said right of way S 77°21'36" W 69.45 feet to a 15 foot radius curve to the right (chord bearing of S81°25'23"E 2.14 feet); thence along said curve 2.14 feet to the Point of Beginning; thence continuing along said curve 6.64 feet (chord bearing of N81°47'33"W 6.59 feet) to a non-tangent 15.52 foot radius curve to the right (chord bearing of N37°02'21"W 12.74 feet); thence leaving said right of way and along said curve 13.12 feet; thence N 12°40'27" W 2.18 feet; thence S 77°19'31" W 1.45 feet to the easterly right of way of SE Webster Road; thence along said right of way N 12°38'24 W 3.99 feet; thence leaving said right of way N 77°16'26" E 5.00 feet; thence S 12°43'33" E 5.28 feet to a 10 foot radius curve to the left (chord bearing of S 53°32'17" E 13.10 feet); thence along said curve 14.28 feet; thence S 04°26'57" E 4.99 feet to the Point of Beginning.

Containing 102 square feet, more or less.

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

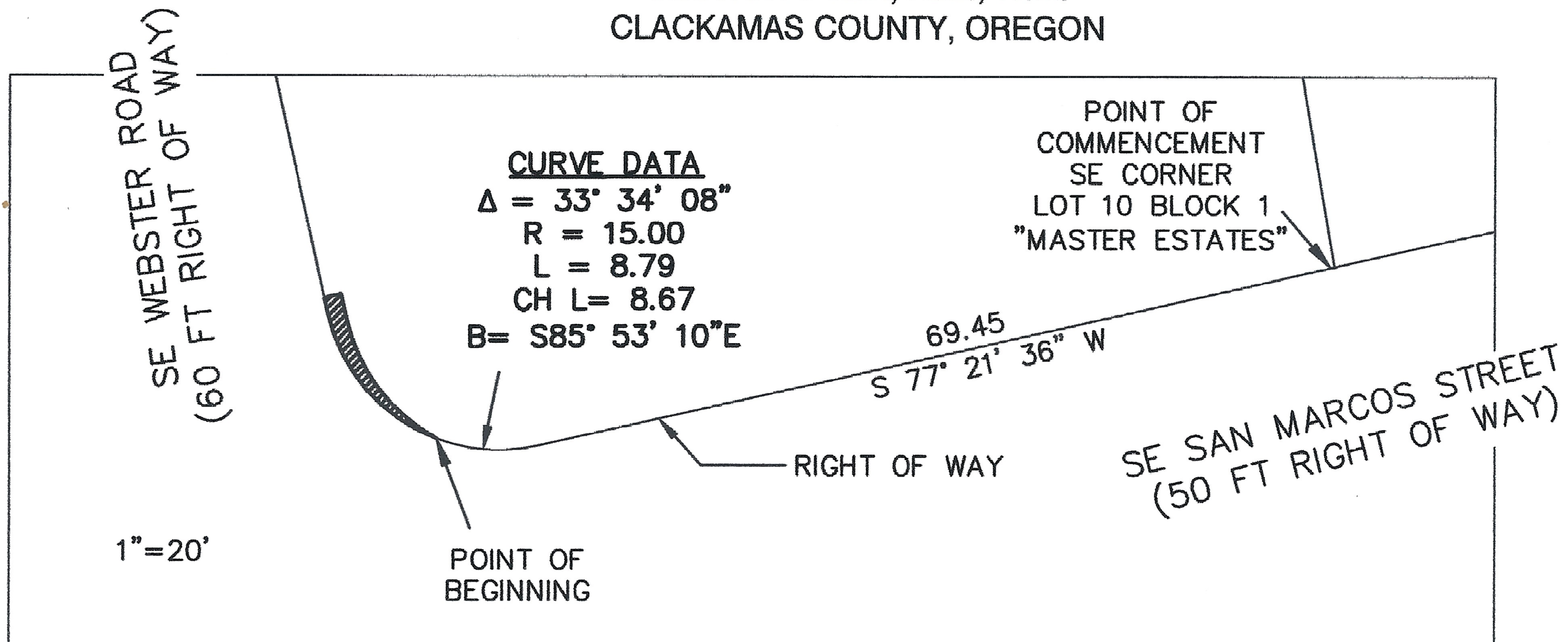


Brian Paull



EXPIRATION DATE: 12-31-2022

LOCATED IN THE NW 1/4 OF
SECTION 8 T2S., R2E., W.M.
CLACKAMAS COUNTY, OREGON



1"=20'

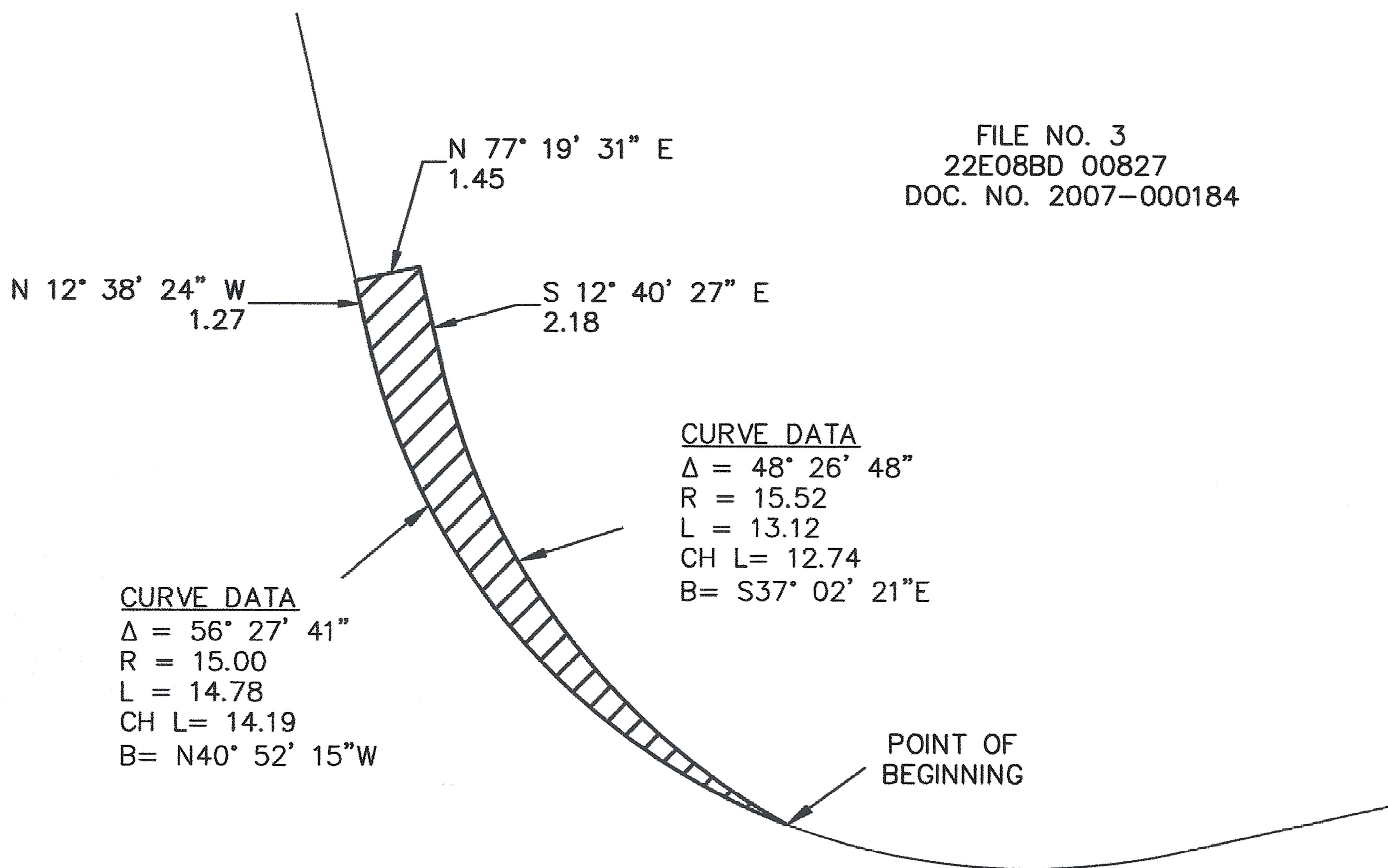
POINT OF BEGINNING

POINT OF COMMENCEMENT
SE CORNER
LOT 10 BLOCK 1
"MASTER ESTATES"

69.45
S 77° 21' 36" W

RIGHT OF WAY

SE SAN MARCOS STREET
(50 FT RIGHT OF WAY)



FILE NO. 3
22E08BD 00827
DOC. NO. 2007-000184

N 77° 19' 31" E
1.45

N 12° 38' 24" W
1.27

S 12° 40' 27" E
2.18

CURVE DATA
Δ = 48° 26' 48"
R = 15.52
L = 13.12
CH L = 12.74
B = S37° 02' 21"E

CURVE DATA
Δ = 56° 27' 41"
R = 15.00
L = 14.78
CH L = 14.19
B = N40° 52' 15"W

POINT OF BEGINNING

REGISTERED
PROFESSIONAL
LAND SURVEYOR

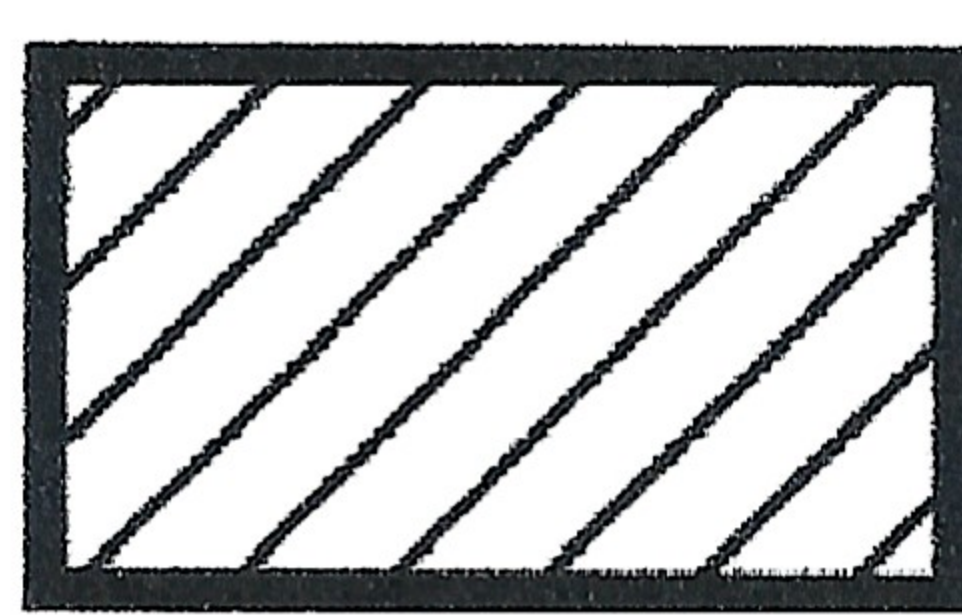
Brian Paull

OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12-31-2022



SCALE: 1"=5'



TRACT 1
PERMANENT RIGHT OF WAY
EASEMENT AREA= 14 SQ. FT +/-



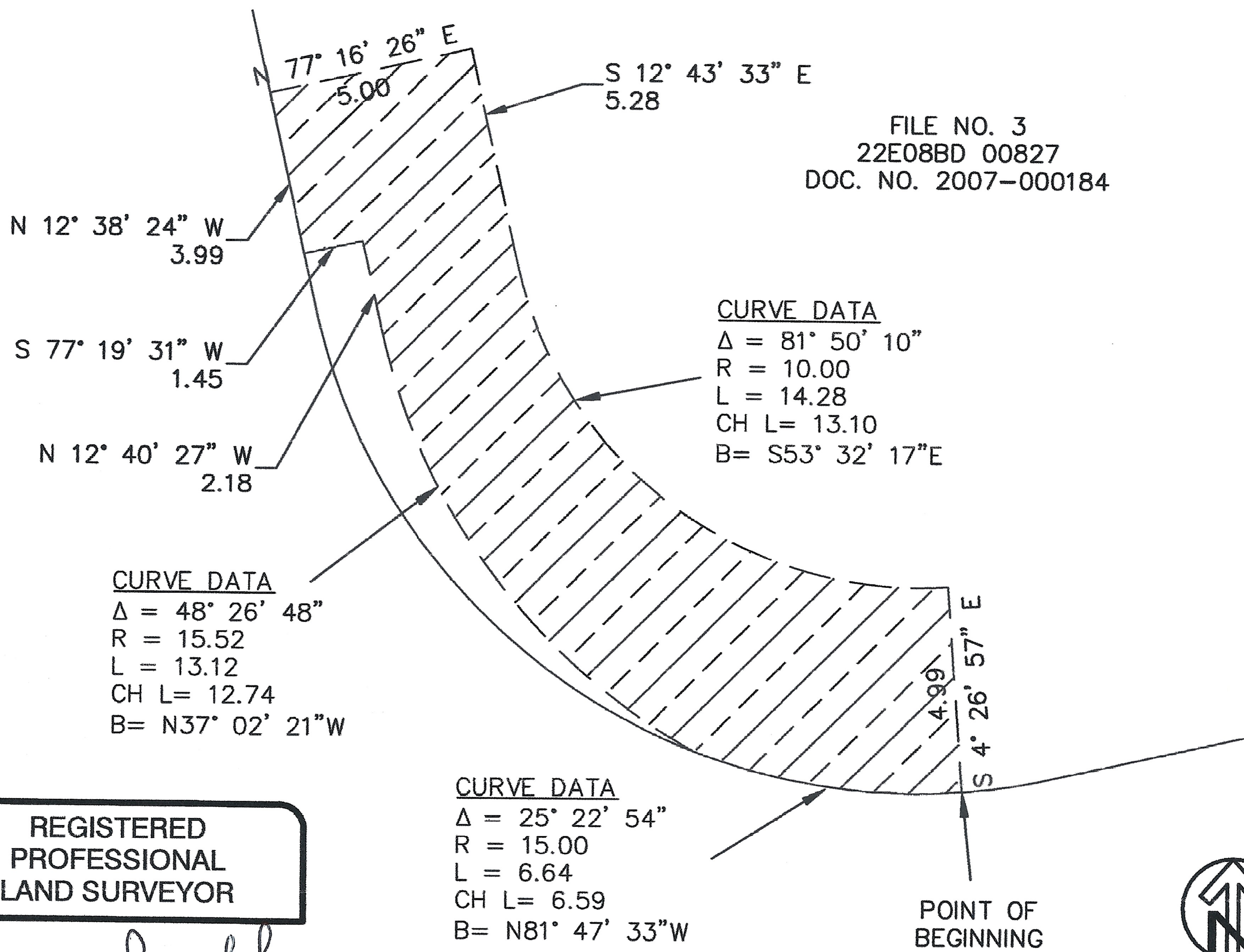
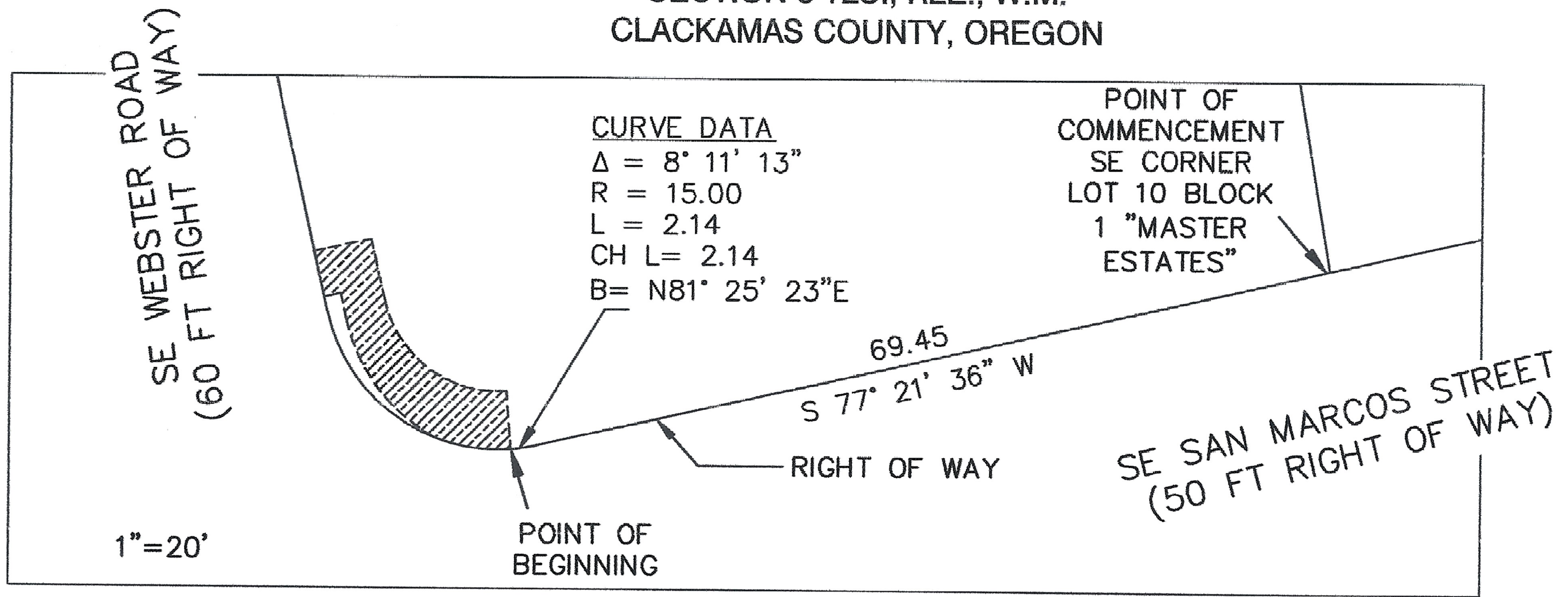
DEPARTMENT OF
TRANSPORTATION
AND
DEVELOPMENT

EXHIBIT "B-3"
CONTRACT PAVING
WEBSTER AREA PACKAGE
PAGE 1 OF 2

PERMANENT RIGHT
OF WAY EASEMENT

DRAWN BY BWP	DESIGN BY	DATE: 04-20-21
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LOCATED IN THE NW 1/4 OF
SECTION 8 T2S., R2E., W.M.
CLACKAMAS COUNTY, OREGON

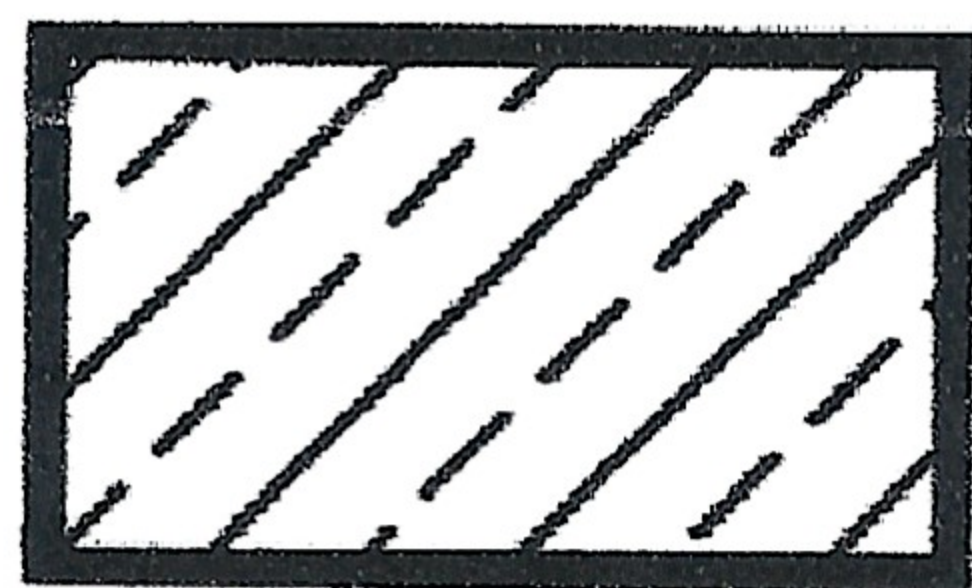


REGISTERED
PROFESSIONAL
LAND SURVEYOR

Brian Paull

OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12-31-2022



TRACT 2
TEMPORARY CONSTRUCTION
EASEMENT AREA= 102 SQ.
FT +/-



DEPARTMENT OF
TRANSPORTATION
AND
DEVELOPMENT



SCALE : 1"=5'

EXHIBIT "B-3"
CONTRACT PAVING:
WEBSTER AREA PACKAGE
PAGE 2 OF 2

TEMPORARY CONSTRUCTION
EASEMENT

DRAWN BY BWP	DESIGN BY	DATE: 04-20-21
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EXHIBIT "A-4"

Page 1 of 2

File 4

April 20, 2021

Tract 1:

PERMANENT RIGHT OF WAY EASEMENT:

A portion of that property described in Document No. 1996-087615 of the Clackamas County Deed records, located in the NW 1/4 of Section 8, Township 2 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 northeast corner of Lot 3 Block 2 of "The Master Estates" recorded as Plat 2156 in the official Records of Clackamas County, being on the southerly right of way of SE San Marcos Ave; thence along said right of way S 77°21'36" W 68.62 feet to a 15 foot radius curve to the left (chord bearing of S64°37'55"W 6.61 feet); thence along said curve, 6.66 feet to the Point of Beginning; thence along said curve and said right of way 16.90 feet (chord bearing of S19°37'55"W 16.02 feet); thence S 12°38'24" E 1.50 feet; thence leaving said right of way N 78°51'33" E 1.63 feet; thence N 11°08'27" W 2.52 feet to a 15.51 foot radius curve to the right (chord bearing of N15°58'32"E 14.31 feet); thence along said curve 14.88 feet to the Point of Beginning.

Containing 19 square feet, more or less.

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

EXHIBIT "A-4"

Page 2 of 2

File 4

April 20, 2021

Tract 2:

TEMPORARY CONSTRUCTION EASEMENT:

A portion of that property described in Document No. 1996-087615 of the Clackamas County Deed records, located in the NW 1/4 of Section 8, Township 2 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 northeast corner of Lot 3 Block 2 of "The Master Estates" recorded as Plat 2156 in the official Records of Clackamas County, being on the southerly right of way of SE San Marcos Ave; thence along said right of way S 77°21'36" W 68.62 feet to a 15 foot radius curve to the left (chord bearing of S74°59'44"W 1.24 feet); thence along said curve, 1.24 feet to the Point of Beginning; thence leaving said right of way S 17°22'51" E 5.00 feet to a non-tangent 10 foot radius curve to the left (chord bearing of S29°59'50"W 13.54 feet); thence along said curve 14.88 feet; thence S 12°37'29" E 6.50 feet; thence S 79°09'27" W 5.00 feet to the easterly right of way of SW Webster Road; thence along said right of way N 12°38'24" W 4.84 feet; thence leaving said right of way N 78°51'33" E 1.63 feet; thence N 11°08'27" W 2.52 feet to a 15.51 foot radius curve to the right (chord bearing of N15°58'32"E 14.31 feet; thence along said curve 14.88 feet to a 15 foot non-tangent curve to the right (chord bearing of N62°16'03"E 5.40 feet) and the southerly right of way of SE San Marcos Street; thence along said curve 5.43 feet to the Point of Beginning.

Containing 106 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

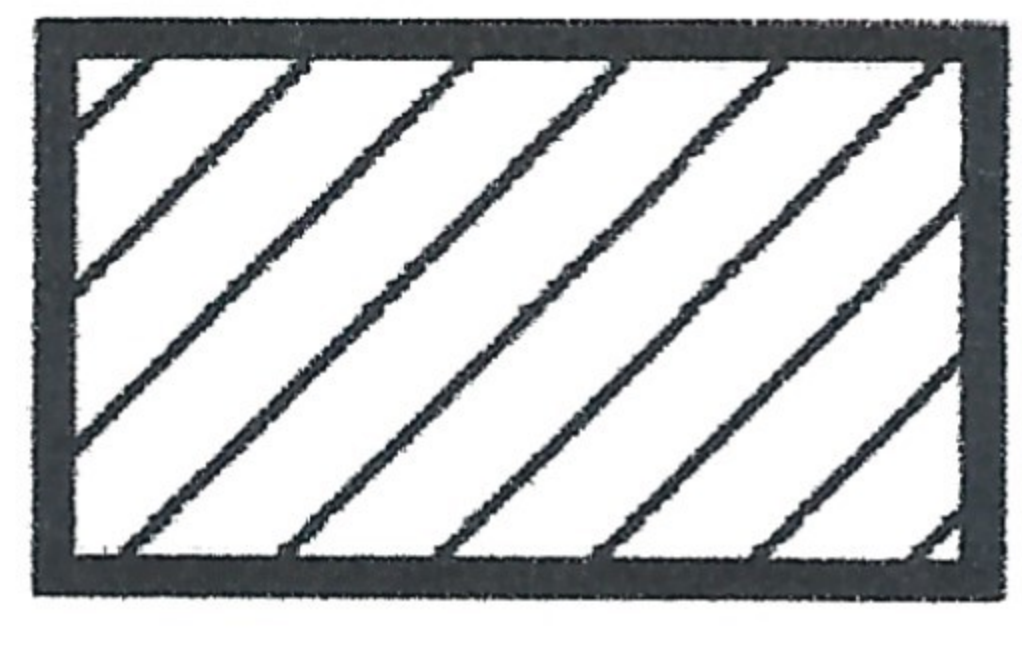
OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12-31-2022

EXHIBIT "B-4"
 CONTRACT PAVING:
 WEBSTER AREA PACKAGE
 PAGE 1 OF 2
 PERMANENT RIGHT
 OF WAY EASEMENT

DEPARTMENT OF
 TRANSPORTATION
 AND
 DEVELOPMENT
 CLACKAMAS
 COUNTY

TRACT 1
 PERMANENT RIGHT OF WAY
 AREA = 19 SQ. FT.
 +/-



EXPIRATION DATE: 12-31-2022

REGISTERED
 LAND SURVEYOR
 OREGON
 MARCH 13, 2018
 BRIAN W. PAULL
 89074

Brian Paull

REGISTERED
 LAND SURVEYOR
 OREGON
 MARCH 13, 2018
 BRIAN W. PAULL
 89074

SCALE: 1"=5'



FILE NO. 4
 22E08BD 00830
 DOC. NO. 1996-087615

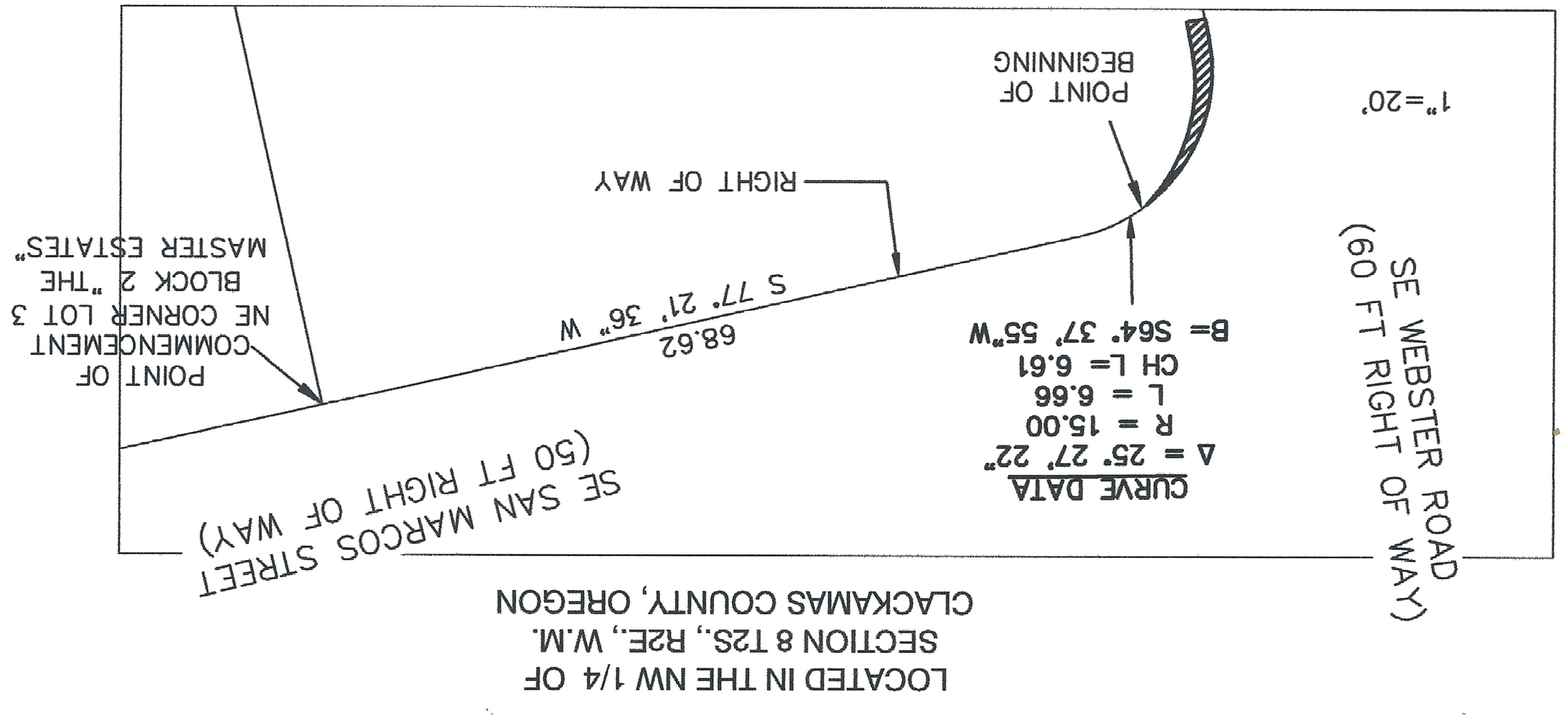
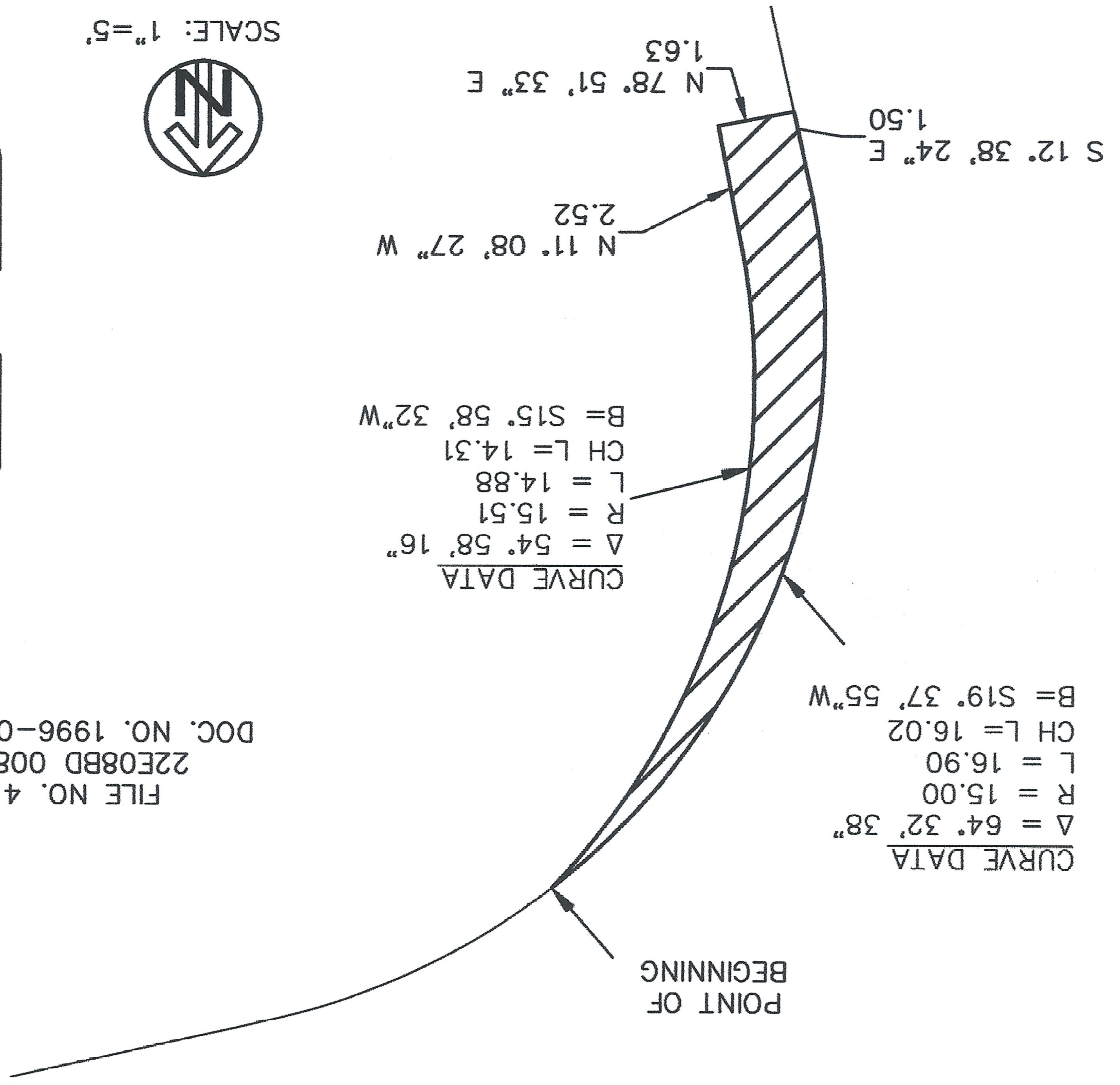


EXHIBIT "B-4"
 CONTRACT PAVING:
 WEBSTER AREA PACKAGE
 PAGE 2 OF 2

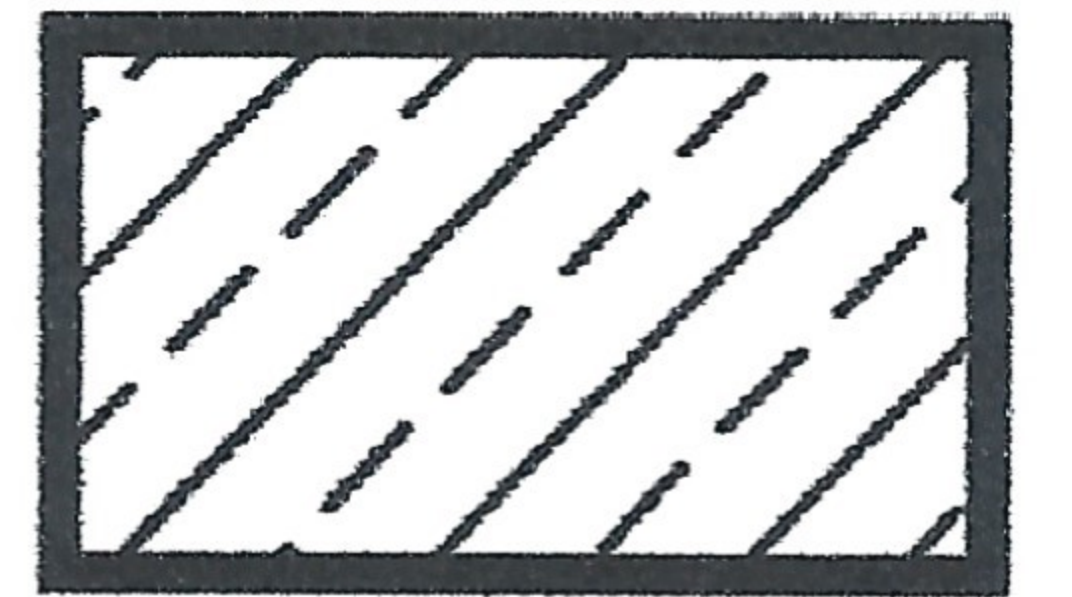
TEMPORARY CONSTRUCTION
 EASEMENT

DESIGN BY
 DRAWN BY
 DATE: 04-20-21

DEPARTMENT OF
 TRANSPORTATION
 AND
 DEVELOPMENT



TRACT 2
 EMPORARY CONSTRUCTION
 EASEMENT AREA = 106 SQ.
 FT +/-



EXPIRATION DATE: 12-31-2022

REGISTERED
 LAND SURVEYOR
 BRIAN W. PAULL
 MARCH 13, 2018
 89074

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

FILE NO. 4
 22E08BD 00830
 DOC. NO. 1996-087615

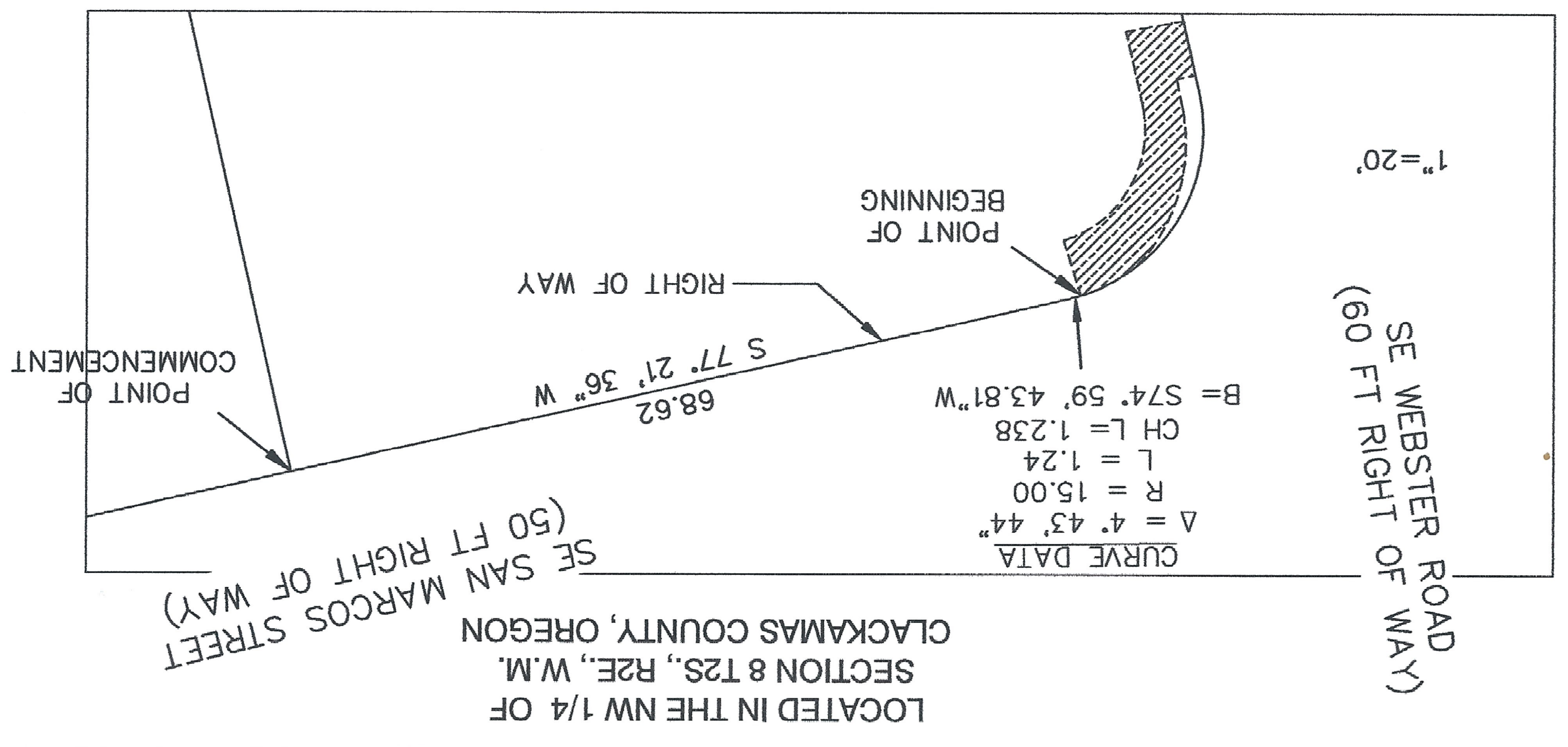
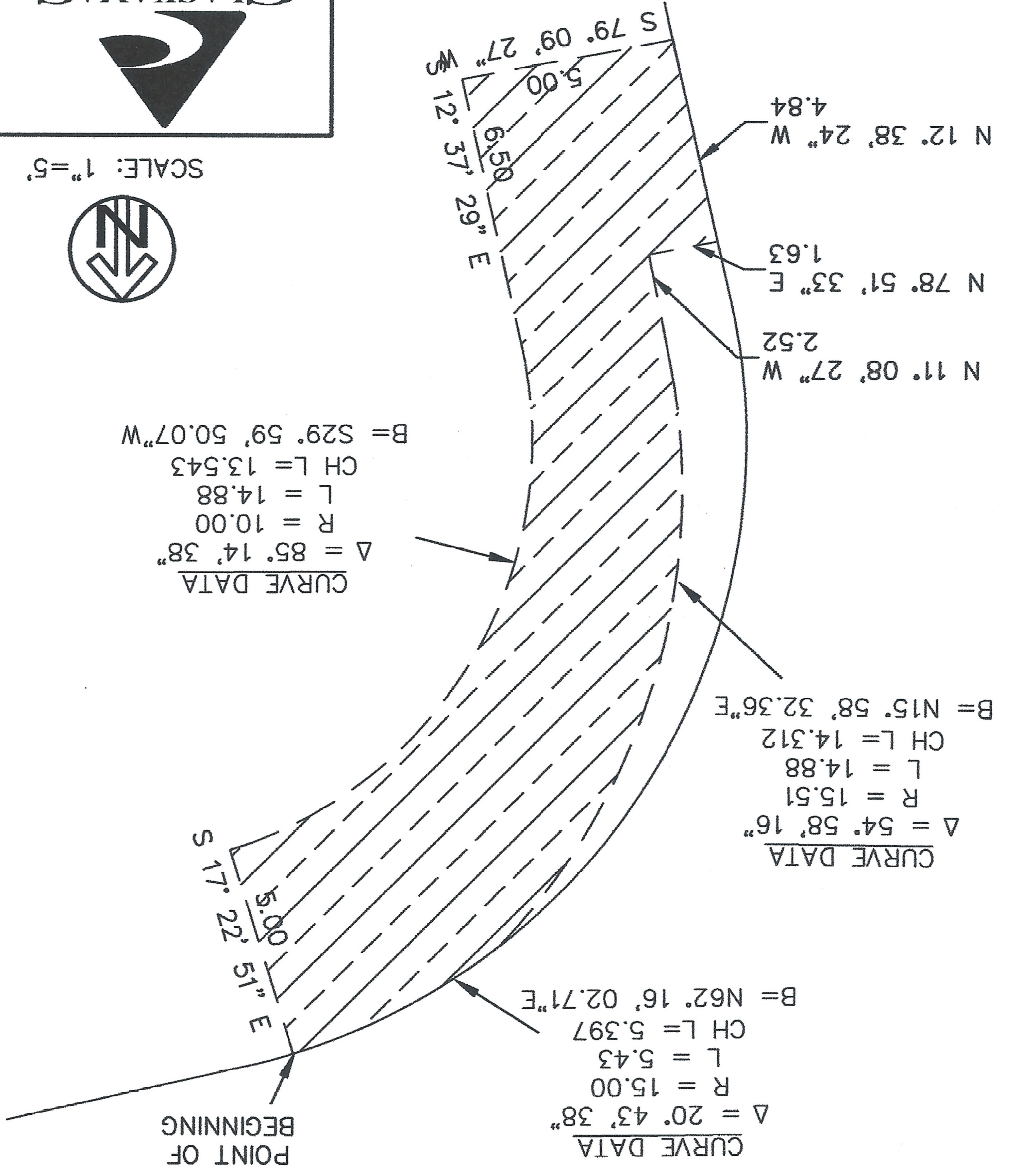
SCALE: 1"=5'



CURVE DATA
 $\Delta = 85^{\circ} 14' 38''$
 $R = 10.00$
 $L = 14.88$
 $CH L = 13.543$
 $B = S29^{\circ} 59' 50.07'' W$

CURVE DATA
 $\Delta = 54^{\circ} 58' 16''$
 $R = 15.51$
 $L = 14.88$
 $CH L = 14.312$
 $B = N15^{\circ} 58' 32.36'' E$

CURVE DATA
 $\Delta = 20^{\circ} 43' 38''$
 $R = 15.00$
 $L = 5.43$
 $CH L = 5.397$
 $B = N62^{\circ} 16' 02.71'' E$



LOCATED IN THE NW 1/4 OF
 SECTION 8 T2S, R2E, W.M.
 CLACKAMAS COUNTY, OREGON



DAN JOHNSON
DIRECTOR

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

June 3, 2021

Board of Commissioners
Clackamas County
Members of the Board:

**Acceptance of an Access Easement and Maintenance Covenant for a
Storm System located at 13601 SE 178th Avenue**

Purpose/Outcomes	Establishment of an access easement and maintenance covenant for a storm system located at 13601 SE 178 th Avenue
Dollar Amount and Fiscal Impact	None
Funding Source	N/A
Duration	Upon execution; access easement and maintenance covenant will be permanent unless agreed to be extinguished by the County
Previous Board Action	5/18/21: Discussion Item at Issues
Strategic Plan Alignment	-Protect existing public rights of way and improve public safety. -Build a vibrant economy
Counsel Review	Reviewed and approved by County Counsel on 05/10/2021
Procurement Review	This Item was not processed through Procurement This is a voluntary easement dedication and maintenance covenant
Contact Person	Rick Nys, Development Engineering Supervisor, 503-742-4702

BACKGROUND:

SE 178th Avenue currently outfalls public stormwater onto private property. As part of a Building Permit issuance in the City of Happy Valley, the property owner at 13601 SE 178th Avenue had to convey the public storm water through the property to an appropriate outfall in order to develop the property and build a home. In order to protect the public outfall of stormwater from 178th Avenue through the private property to the point of outfall, DTD requested and the property owner agreed to grant a public access easement over the storm system conveying public storm water in case of an emergency where the public street is experiencing flooding. Additionally, the owner will take sole responsibility to maintain the private system in order to ensure the public stormwater will be able to reach the outfall without risk of flooding on public or private property.

The easement contains approximately 2,628 square feet, and is contained entirely on the subject property. The easement and maintenance agreement will protect both public right of way and private property from flooding risk and ensure continued conveyance of public stormwater to an appropriate outfall.

The easement dedication and maintenance covenant has been agreed upon and signed by the property owner. The accompanying legal descriptions and exhibits have been reviewed and approved by DTD.

RECOMMENDATION

Staff respectfully recommends that the Board accept the attached Access Easement and Maintenance Covenant for storm system located at 13601 SE 178th Avenue.

Sincerely,

Rick Nys

Rick Nys

Development Engineering Supervisor
Department of Transportation and Development

After recording return to:

ACCESS EASEMENT AND MAINTENANCE COVENANT

THIS ACCESS EASEMENT AND MAINTENANCE COVENANT ("Agreement") is made this 6 day of May, 2021, between Paul Frantchuk ("Owner"), and CLACKAMAS COUNTY, a municipal corporation of the State of Oregon (the "County").

RECITALS

A. Owner owns certain real property located in the City of Happy Valley, Clackamas County, Oregon, legally described on Exhibit A attached hereto and commonly known as 13601 SE 178th Avenue, Damascus, OR 97089, (the "Property").

B. The County has jurisdiction over, and manages, the right of way adjacent to the property, identified as SE 178th Avenue (the "Right of Way").

C. Owner has constructed or will construct a stormwater management facility and/or conveyance system for runoff from the public Right of Way. The stormwater management facility and conveyance system described herein (collectively, the "Stormwater Facilities") are composed of the following:

Type	Quantity	Location
Conveyance Pipe Network	1	*
Dispersion Trench	1	*
Inlet Catch Basin	1	*

*See depiction attached hereto as Exhibit C

D. The Owner and the County desire to create an easement to allow for the conveyance of stormwater from the Right of Way through the Property and to allow for the future maintenance and operation of the Stormwater Facilities described herein. The easement is legally described on Exhibit A and depicted on Exhibit B, both attached hereto.

E. The Stormwater Facilities enable development of the Property while mitigating the impacts of existing runoff to the Property and protecting the public stormwater system associated with the Right of Way.

F. The Stormwater Facilities are designed by a registered Professional Engineer to accommodate the anticipated volume of runoff in accordance with County's stormwater and grading design standards.

G. Failure of the Stormwater Facilities can result in an unacceptable impact to the public stormwater system and the Right of Way.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Owner agree as follows:

1. **Covenant to Maintain.** Owner shall maintain the Stormwater Facilities in good working order, clear of all debris, and in compliance with all applicable state and local rules, regulations, and guidelines (including those adopted from time to time by the County and including the County's *Roadway Standards* and Water Environment Services *Stormwater Standards Clackamas County Service District #1* standards).

2. **Easement.** Owner hereby grants the County, its employees, independent contractors and designees, a nonexclusive easement for ingress and egress over, across and under the Easement area described on Exhibit B and depicted on Exhibit C from time to time at the County's sole discretion to inspect, sample, and monitor components of the Stormwater Facilities and discharges therefrom, as well as allow the County to take the actions described in Sections 4 and 5 of this Agreement. Owner understands and agrees that this easement limits the ability of Owner, its successors and assigns from constructing any permanent buildings, structures, landscaping or other improvements in the Easement that would interfere with the functioning of the Stormwater Facilities or the County's access to perform the inspection and maintenance required under this Agreement. Prior to any entry onto the Easement to inspect, sample or monitor components of the Stormwater Facilities, the County shall give Owner reasonable advance written notice (but in no event less than forty eight (48) hours advance written notice), and a representative of the Owner shall have the right to be present during any such inspection, sampling or monitoring.

3. **Failure to Perform Covenant.** If the County, in its sole but reasonable discretion, determines that Owner is not in compliance with the covenant described in Sections 1 and 2, except in the case of an emergency, the County or its designee shall give the Owner written notice to perform the maintenance and/or repair work specified in the notice. If such work is not performed to the County's reasonable satisfaction within seven (7) days after the date of such notice, or such other time as the County may, in its sole discretion, determine, the County, its employees, independent contractors and designees may exercise their right under the Easement described in Section 4 of this Agreement to enter the Easement to perform any and all work required bringing the Stormwater Facilities into compliance with this Agreement; provided, however, that if such work is not capable of reasonably being performed within such seven (7) day period, the County shall not perform any such work so long as Owner promptly commenced such work within such seven (7) day period following written notice from the County and is using commercially reasonable efforts to diligently prosecute such work to completion.

4. **Emergency.** If the County, in its sole but reasonable discretion, determines that there exists or will likely exist an emergency on or within the Easement with respect to the Stormwater Facilities, the County, its employees, independent contractors and designees may immediately exercise their rights under the Easement described in Section 2 of this Agreement to immediately

enter the Easement to perform any and all work required to bring the Stormwater Facilities into compliance with this Agreement, and in such case the County shall use reasonable efforts to notify the Owner prior to entering the Easement. Notwithstanding the above, the work performed may consist only of avoiding or mitigating the emergency and/or cleaning and repairing the Stormwater Facilities to their original condition and standards.

5. **County Under No Obligation.** Owner, for itself and its successors and assigns, agrees that the County, as well as its departments, elected officials, employees, independent contractors and/or designees shall have no obligation to exercise its rights under this Agreement, including the right under Sections 3 and 4 of this Agreement to perform the work required of the Owner, or to perform any other maintenance or repair of the Stormwater Facilities. Subject to the terms and provisions of Section 8 of this Agreement, Owner also agrees that none of the County, as well as its departments, elected officials, employees, independent contractors and/or designees shall have any liability to Owner or any of Owner's successors or assigns (including owners of lots in the Development) in connection with the exercise or non-exercise of such rights, the maintenance or repair of the Stormwater Facilities, or the failure to perform the same.

6. **Owner Obligations.** In addition to the covenants and easement described above, Owner agrees to the following additional obligations.

(a) Prior to final approval of the Stormwater Facilities, Owner shall record this document in the deed records of Clackamas County and provide a copy of the recorded document to the County.

(b) Owner shall notify the Clackamas County's Transportation Maintenance Division in writing of the person responsible for compliance with Owner's obligations under this covenant ("Owner Designee"), and of any change in the Owner Designee. Owner expressly agrees that the Owner Designee shall have the authority to bind Owner, its successors and assigns with respect to the matters described in this Agreement.

(c) Upon sale or transfer of the Easement, or any portion thereof, the Owner shall inform the purchaser of the obligations required under this Agreement.

7. **Reimbursement.** If Owner fails to perform general maintenance as described in Section 1 above, Owner shall reimburse the County for all of its reasonable and documented out-of-pocket costs and expenses incurred in connection therewith within thirty (30) days after receipt of an invoice. If Owner fails to pay the invoiced amount within such period, such amount shall thereafter accrue interest at the statutory rate. Such amount, together with interest, shall be a lien on the Owner (and each of the lots contained therein) which may be foreclosed in accordance with ORS Chapter 88.

8. **Indemnification.** Subject to Oregon law, Owner agrees to indemnify, defend (with legal counsel reasonably acceptable to the County), and hold harmless the County, its employees, independent contractors and designees harmless for, from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims or suits arising from Owner's failure to perform its obligations under this Agreements or the exercise of the County's rights under this Agreement.

Subject to Oregon law, the County agrees to indemnify, defend (with legal counsel reasonably acceptable to Owner), and hold harmless Owner, its employees, independent contractors, guests, customers, invitees and designees harmless for, from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims or suits arising from the County's negligent maintenance, testing, repair or rebuilding of the Stormwater Facilities.

9. **Run with the Land.** The parties' rights and obligations contained herein shall run with the land and shall be binding upon Owner and its successors and assigns. Those rights and obligations shall inure to the benefit of the County, as well as its successors and assigns.

10. **Attorney Fees.** If legal action is commenced in connection with this Agreement, each party in such action shall be responsible for its own attorney fees and costs incurred in the trial court and in the appeal therefrom. The term "action" shall be deemed to include action commenced in the bankruptcy courts of the United States and any other court of general or limited jurisdiction.

11. **Assignment.** The obligations of Owner (and subsequent owners) under this Agreement may not be assigned except (a) in connection with the sale of the property owned by such person (in which case the transferee will be deemed to assume such obligations).

12. **Authority.** If Owner is an entity, the individual executing this Agreement on behalf of Owner represents and warrants to the County that he or she has the full power and authority to do so and that Owner has full right and authority to enter into this Agreement and perform its obligations under this Agreement.

IN WITNESS WHEREOF, Owner and the County have executed this instrument on the date first written above.

[Signature Page Follows]

OWNER:

CLACKAMAS COUNTY

By: Paul Frantchuk

By: _____

Name: Joe

By: _____

Title: Owner

COUNTY

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, by
_____, as _____ of Clackamas County.

Notary Public for Oregon
My Commission Expires _____

OWNER

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on MAY 9th, 2021, by
Paul FRANTCHUK, as OWNER

[Signature]

Notary Public for Oregon
My Commission Expires 4/08/2024

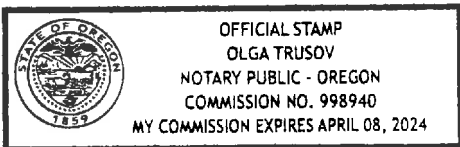


EXHIBIT A

PUBLIC STORM UTILITY EASEMENT

PAUL FRANTCHUK
13601 SE 178TH AVE.
DAMASCUS, OR 97089
MAP: 23E06DA02300

A 15 FOOT PUBLIC STORM UTILITY EASEMENT OVER A PORTION OF LOT 22 "DAMASCUS HEIGHTS – UNRECORDED PLAT", CLACKAMAS COUNTY SURVEY RECORDS, SITUATED IN SOUTHEAST 1/4 SECTION 6, TOWNSHIP 2 SOUTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, AND DESCRIBED IN DEED DOCUMENT 2019-074234, DATED NOVEMBER 21, 2019, CLACKAMAS COUNTY DEED RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

POINT OF BEGINNING BEING THE NORTHEAST CORNER OF LOT 22, "DAMASCUS HEIGHTS – UNRECORDED PLAT" (PS3145-P7), CLACKAMAS COUNTY SURVEY RECORDS;

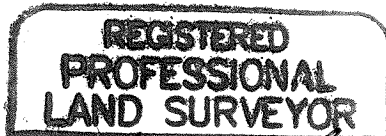
FROM SAID POINT OF BEGINNING, ALONG THE EAST LINE OF SAID LOT 22, S00° 38' 00"E 15.02 FEET;

THENCE LEAVING SAID EAST LINE, S86° 47' 25"W 175.18 FEET TO THE WEST LINE OF LOT 22;

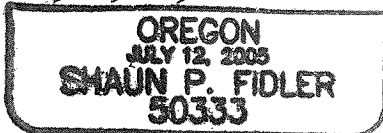
THENCE ALONG SAID WEST LINE N00° 38' 00"W 15.02 FEET;

THENCE LEAVING SAID WEST LINE N86° 47' 25"E 175.18 FEET TO THE POINT OF BEGINNING;

CONTAINING 2628 SQUARE FEET MORE OR LESS
SEE EXHIBIT B FOR EASEMENT LOCATION DRAWING.



A handwritten signature in black ink, appearing to read "Shaun P. Fidler".

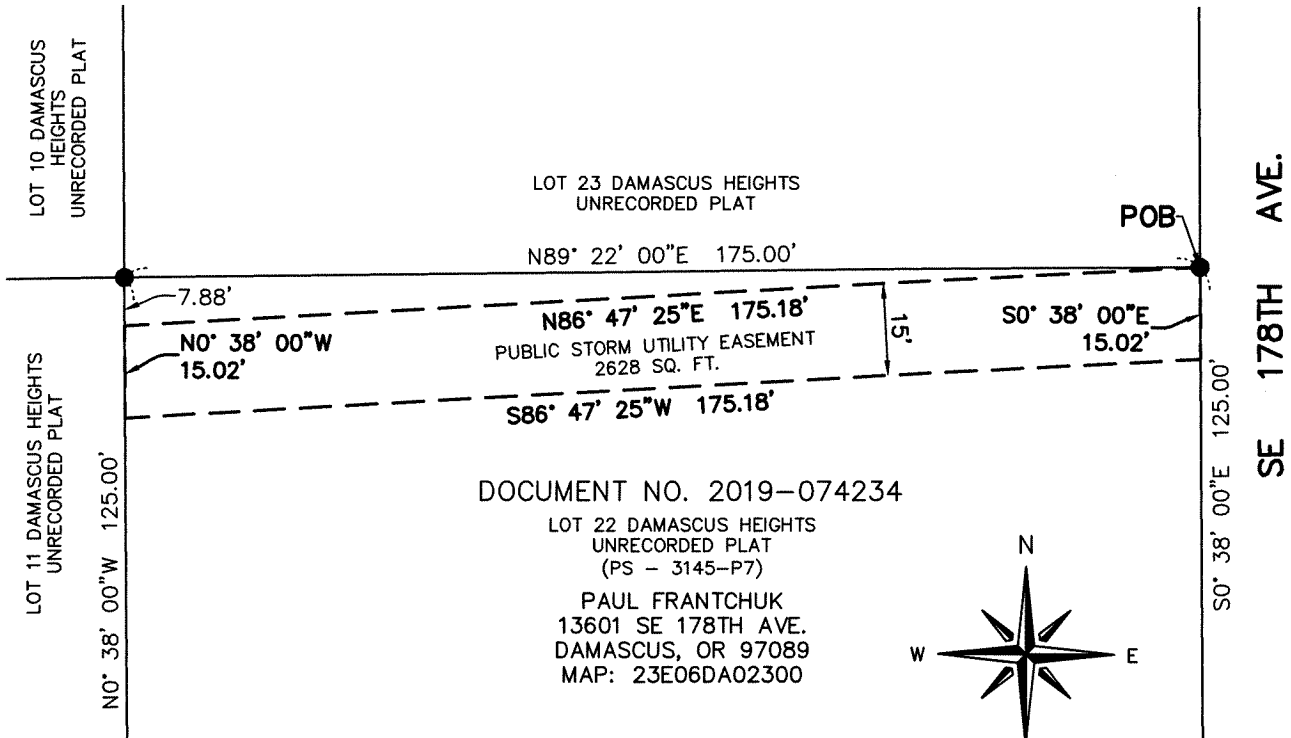


RENEWAL DATE 12-31-21

SHEET 1 OF 2
FILE: E20027_Legal Desc.dwg
PLOT DATE: 03/31/21

EXHIBIT B

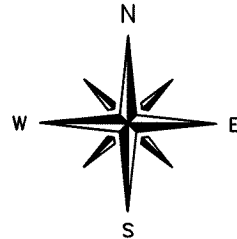
PUBLIC STORM UTILITY EASEMENT



DOCUMENT NO. 2019-074234

LOT 22 DAMASCUS HEIGHTS
UNRECORDED PLAT
(PS - 3145-P7)

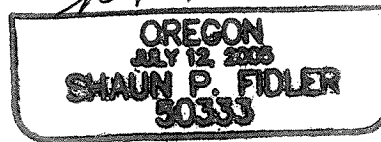
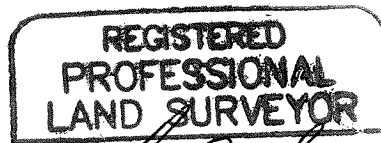
PAUL FRANTCHUK
13601 SE 178TH AVE.
DAMASCUS, OR 97089
MAP: 23E06DA02300



SCALE 1" = 30'

LEGEND

- POB POINT OF BEGINNING
- SQ. FT. SQUARE FEET
- NO. NUMBER



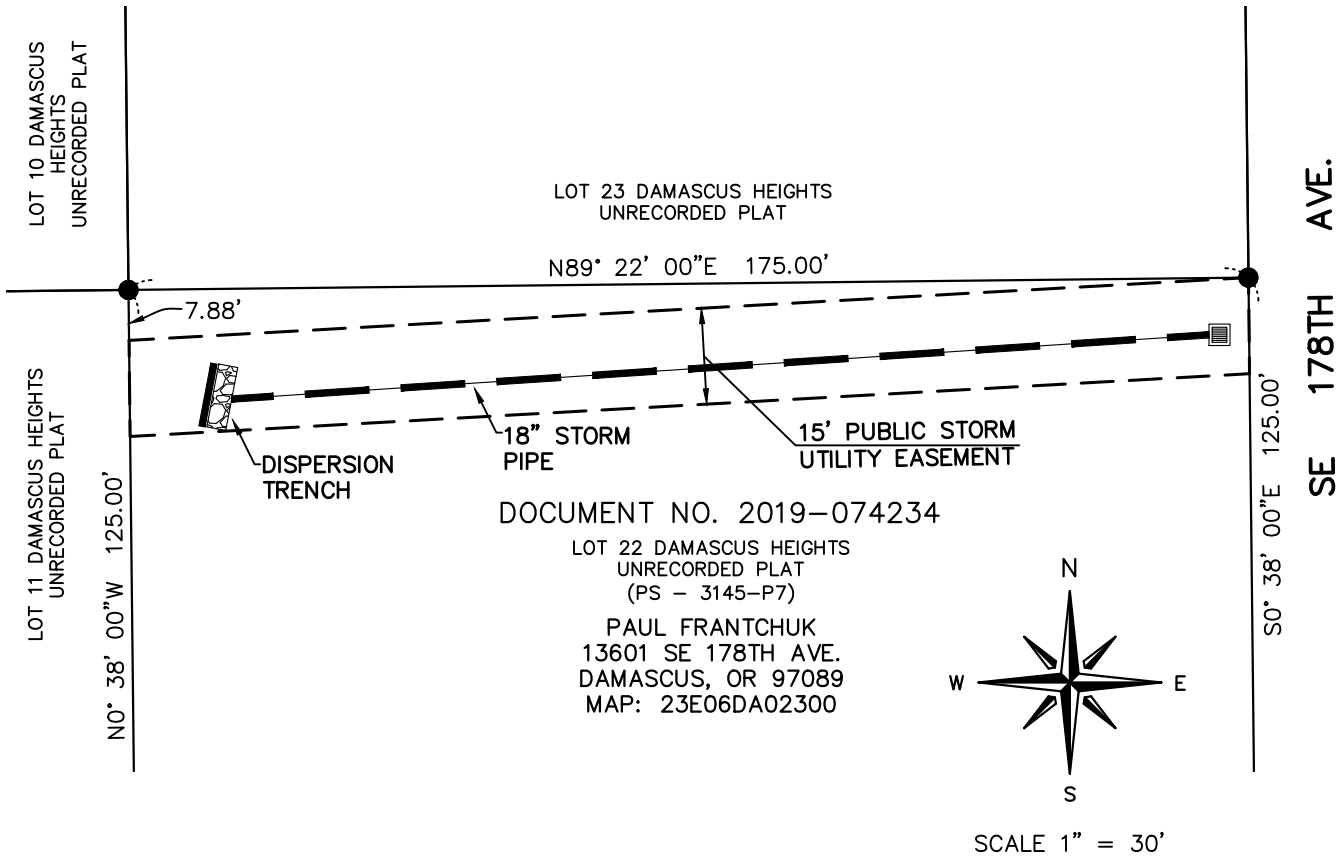
RENEWAL DATE 12-31-21

SHEET 2 OF 2

FILE: E20027_Legal_Desc.dwg
PLOT DATE: 03/31/21

EXHIBIT C

STORMWATER MANAGEMENT FACILITIES



LEGEND

- 1/2" IRON PIPE AS PER RECORD OF SURVEY PS19941, CLACKAMAS COUNTY SURVEY RECORDS
- NEWLY BUILT CATCH BASIN