



DAN JOHNSON
DIRECTOR

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

July 15, 2021

Board of Commissioners
Clackamas County

Members of the Board:

A Board Order Adopting the Vacation of a Portion of Johnson Road, Co. Rd. No. 1374

Purpose/Outcomes	Vacates apportion of Johnson Road right of way
Dollar Amount and Fiscal Impact	Application and processing fee received.
Funding Source	N/A
Duration	Upon execution; permanent vacation.
Previous Board Action	7/06/21: Discussion item at issues
Counsel Review	Reviewed and approved by County Counsel on 06/24/21
Procurement Review	This item was not processed through Procurement. This is a Petition for a Road Vacation.
Strategic Plan Alignment	Grow a Vibrant Economy Allowing architects, contractors, and general construction personnel to practice their trade.
Contact Person	Doug Cutshall, Engineering Technician 503-742-4669

BACKGROUND

The portion of Johnson Road, the petitioner wishes to vacate was dedicated to the public through the Plat of Tualatin Dam Park, August 30, 1930, said right of way was never opened or used for road purposes. This portion of unused right of way lies adjacent to but not a part of, (Thomas) Johnson Road, County Road No. 1374, established October 4, 1928. The petitioner plans to utilize the vacated property to build a garage. This portion of right of way has been vacant and unused for 90 years.

The portion to be vacated contains approximately 7,706 square feet, being an unconstructed 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 the determined fee and 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, provided that utility rights are reserved.

RECOMMENDATION

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

Sincerely,

Douglas Cutshall

Douglas Cutshall

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

In the matter of the Vacation of
A portion of Johnson Road,
Co. Rd. No. 1374, situated in Sections
28, 33 & 34, T.2 S., R.1 E., W.M.
Clackamas County, Oregon



Board Order No. _____

Page 1 of 1

This matter coming before the Board of County Commissioners at this time and appearing to the Board that in accordance with ORS 368.341 and pursuant to ORS 368.346, a petition has been filed with the determined fee, and a written report finding this vacation to be in the public interest from the County Road Official, Dan Johnson, Director, have been submitted in the matter of the vacation of an unnamed right of way, described as follows:

All of that portion of Johnson Road, Co. Rd. No. 1374, in the Plat of Tualatin Dam Park, Plat No. 593, Clackamas County Plat Records, situated in the SE $\frac{1}{4}$ of Section 28, the NE $\frac{1}{4}$ of Section 33 and, the NW $\frac{1}{4}$ of Section 34, T.2 S., R.1 E., W.M., Clackamas County, Oregon, lying southwesterly of the arc of a curve that is 30 feet southwesterly of the centerline of County Road Number 1374, as shown on SN1928-027, Clackamas County Survey Records, said arcs lying between Centerline Station PC 21+96.57 and PT 24+94.34, also depicted on attached Exhibit "A", and by this reference being a part of this description. Containing 7,706 square feet more or less.

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 the Board adopts as its own, the findings and conclusions contained in the written report from the County Road Official dated February 19, 2021; 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 above described portion of Johnson Road as depicted on attached Exhibit "A", containing, 7,706 square feet, more or less, be vacated; and,

IT IS FURTHER ORDERED that rights for all existing utilities within the vacated Johnson 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,

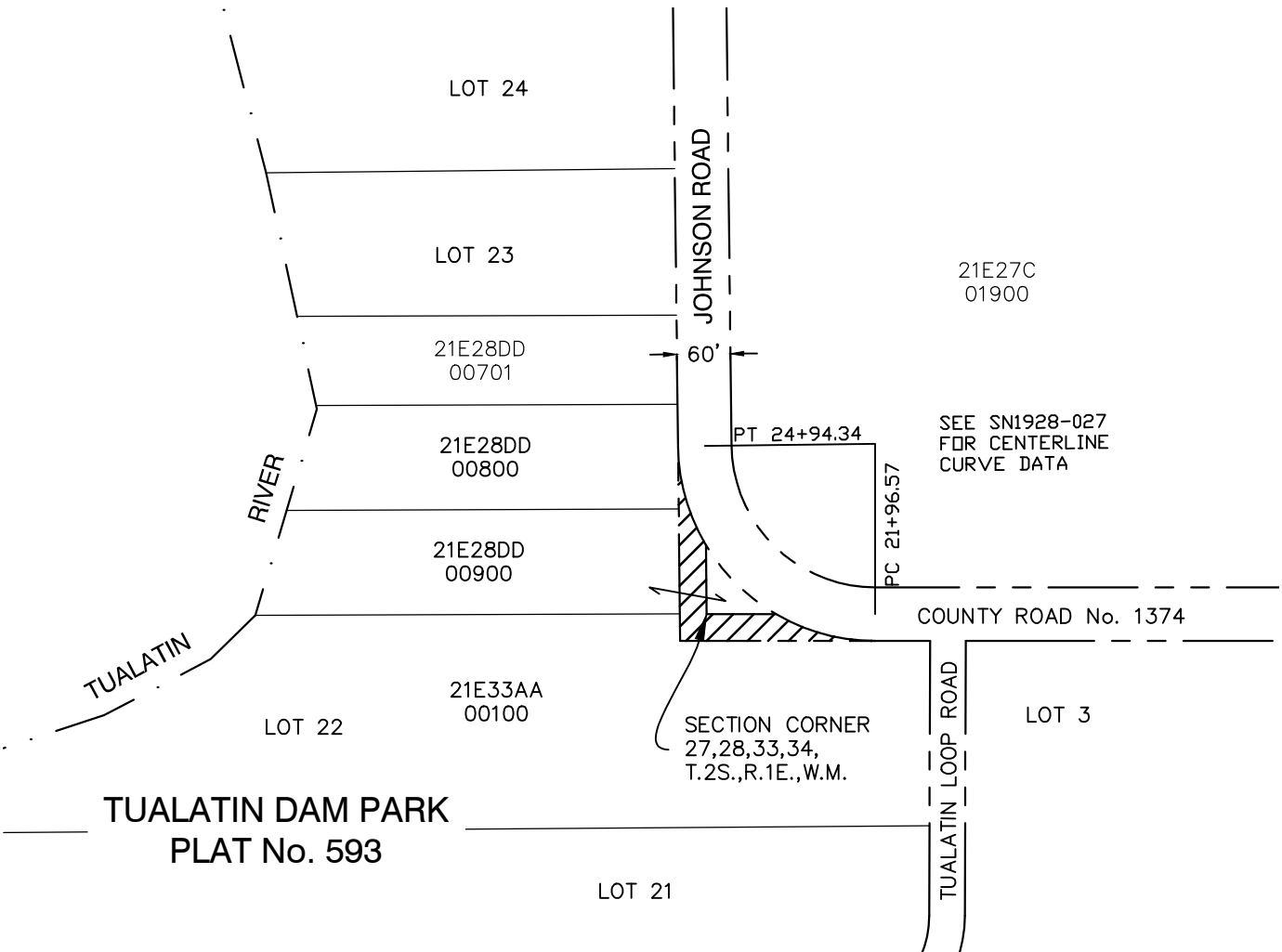
IT IS FURTHER ORDERED, that this Order and attached exhibits be recorded in the Deed Records for Clackamas County and that a copy be filed with the County Surveyor, County Assessor, and Finance Office/Fixed Assets.

ADOPTED this _____ day of _____, 2021
BOARD OF COUNTY COMMISSIONERS

Chair

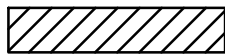
Recording Secretary

SITUATED IN THE SE $\frac{1}{4}$ OF SECTION 28, NE $\frac{1}{4}$ OF SECTION
 33 AND, NW $\frac{1}{4}$ OF SECTION 34, T.2 S., R.1 E., W.M.
 CLACKAMAS COUNTY, OREGON



TUALATIN DAM PARK
PLAT No. 593

LEGEND



VACATED AREA
 7,706 Sq. Ft.



SCALE 1" = 200'

MEMORANDUM

TO: Board of Commissioners

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

DATE: February 19, 2021

SUBJ: **ROAD OFFICIAL'S REPORT FOR THE VACATION OF A PORTION OF JOHNSON ROAD, COUNTY ROAD No. 1374**

LOCATION: The portion of Johnson Road, Co. Rd. No. 1374, is situated in the following Sections, the SE ¼ of 28, the NE ¼ of 33 and, the NW ¼ of 34, T.2 S., R.1 E., W.M.

FACTS AND FINDINGS: The portion of Johnson Road right of way to be vacated, was dedicated to the public through the Plat of Tualatin Dam Park, Plat No. 593, August 30, 1930, however, it was not used by the traveling public. The (Thomas) Johnson Road, County Road No. 1374, established and ordered opened, October 4, 1928 was not shown on the said later (1930) plat. The to be vacated portion of right of way remains almost as it was when dedicated 90 years ago. The petitioner will utilize the vacated right of way to build a garage that otherwise would not be allowed because of required building setbacks from the un-used right of way.

The portion of Johnson Road right of way to be vacated contains approximately 7,706 square feet, being an unconstructed 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 the determined fee and, acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting the 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 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.

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 existing driveways adjoining Johnson 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 may be physically possible to build a road that meets contemporary standards however Johnson Road adequately conveys current traffic flows.

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

Finding: It may be economically feasible to build a road in a portion of this right of way however there is no public need to improve this right of way.

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

Finding: Johnson Road effectively provides the same access.

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 anticipated 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.

It is my assessment that the proposed vacation is in the public interest.



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

July 15, 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 Canby Ferry ITS Project and Authorizing Good Faith Negotiations and Condemnation Actions

Purpose/Outcomes	Under ORS Chapter 203, ORS Chapter 35 and the federal Uniform Act, a local government agency is authorized to declare by resolution or ordinance the necessity and the purpose for which the project is required by enacting a Resolution of Necessity prior to initiating acquisition of the easements or other property rights needed from abutters to the project
Dollar Amount and Fiscal Impact	The right of way budget for the project is estimated to be \$63,000.00 of which \$50,400.00 paid from Federal Ferry Boat Discretionary Funds and \$12,600.00 in County Road Funds. The total amount estimated for this project is \$889,024.00.
Funding Source	Federal Ferry Boat Discretionary Funds and Clackamas County Road Funds.
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	11/9/16 – BCC Approval of a Supplemental Project Agreement No. 31087 with Oregon Department of Transportation for the Canby (M.J. Lee) Ferry Bank Stabilization and Intelligent Transportation System (ITS) Project. 09/06/18 – BCC Approval of Amendment No. 1 with Oregon Department of Transportation for the Canby (M.J. Lee) Ferry Bank Stabilization and Intelligent Transportation System (ITS) Project to add funding for construction. 10/04/18 – BCC Approval of an Intergovernmental Agreement for Right of Way Services with Oregon Department of Transportation for the Canby (M.J. Lee) Ferry Bank Stabilization and Intelligent Transportation System (ITS) Project. 12/02/20 – BCC Approval of a Contract with Harper Houf Peterson Righellis, Inc. for the Canby Ferry ITS Project 07/06/21- Discussion item at issues
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? This item supports the DTD Strategic Focus on Safe Roads and Strategic Result of "Travelers on Clackamas County roads will experience safe roads in good condition." 2. How does this item align with the County's Performance Clackamas goals? This item aligns with "Build a Strong Infrastructure" by constructing an Advanced Traffic Management System.

Counsel Review	Reviewed Date: 6/24/21 NB.
Procurement Review:	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
Contact Person	Sharan LaDuca, Sr. Right of Way Agent 503-742-4675

Background:

Clackamas County received Federal Ferry Boat Discretionary Funds to construct an Advanced Traffic Management System (ATMS) to remotely monitor and control Canby Ferry boat ramps traffic signals and existing advanced electronic roadway signs approaching the ferry ramps. The proposed ATMS will allow County staff and boat operators to remotely control, view, and monitor existing traffic signals at the two boat ramps and electronic signs approaching the ferry area using fiber optic network communication and closed circuit television surveillance cameras. This project will be financed mostly with Ferry Boat Discretionary Program funds with a County Road Fund match.

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 203 and 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 ORS Chapter 35, a Resolution of Necessity is required before offers are made for needed rights of way, easements, and fee property.

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

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

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

Recommendation:

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

Sincerely,

Sharan LaDuca

Sharan LaDuca,
Senior Right of Way Agent

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

In the Matter of Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the Canby Ferry ITS 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 July 15, 2021 and,

It appearing to the Board that the Canby Ferry ITS Project (the "Project") will construct an Advanced Traffic Management System (ATMS) to remotely monitor and control Canby Ferry boat ramps traffic signals and existing advanced electronic roadway signs approaching the ferry ramps; is consistent with the powers and purposes of County government; and is necessary for public use and the continued growth, safety and welfare of the community; and,

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

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

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

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

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

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 Canby
Ferry ITS 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"

Clackamas County
Canby Ferry ITS Project
June 14, 2021
OWNER: Barry Karimi & Greta Karimi

County Project No. 22235
Map & Tax Lot No. 31E09 01100
File 1
Page 1 of 1

Permanent Easement

A 5.00 foot wide strip, as shown on attached Exhibit "B", lying in the Southwest One-Quarter of Section 9, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, being a portion of that property as described in a Statutory Warranty Deed to Barry Karimi & Greta Karimi, recorded as Document No. 2018-030675, Clackamas County Deed Records, said easement being further described as follows:

Commencing at South One-Quarter Corner of Section 9, Township 3 South, Range 1 East, Willamette Meridian per U.S.B.T. 2008-072, being also the intersection of SW Advance Rd (County Road 635) and SW Mountain Rd (County Road 55); thence along the centerline of said SW Advance Rd and the south line of the Southwest One-Quarter of said Section 9, N89°36'41"W 70.50 feet; thence leaving said centerline and said south line of the Southwest One-Quarter of Section 9, N00°23'19"E 20.00 feet to a point on the north line of said SW Advance Rd and the **Point of Beginning**; thence along said north line of SW Advance Rd N89°36'41"W 175.00 feet; thence leaving said north line of SW Advance Rd, N00°23'19"E 5.00 feet to a point 5.00 feet from, when measured at right angles to, said north line of SW Advance Rd; thence parallel to said north line of SW Advance Rd, S89°36'41"E 175.00 feet; thence S00°23'19"W 5.00 feet to the **Point of Beginning**

Containing 875 square feet, more or less.

The Basis of Bearings of this legal description is based on OCRS (Portland Zone), NAD 83(2011)(EPOCH:2010.00) per network GNSS Observation, and held at the south line of the Southwest One-Quarter of Section 9, T3S, R1E, W.M., being held at N89°36'41"W, as measured between the South One-Quarter Corner of said Section 9, per U.S.B.T. 2008-072, being a 3-1/4" bronze disk in monument box, and the Southwest Corner of said Section 9, per U.S.B.T. 2008-063, being a 3-1/4" bronze disk.

EXHIBIT "A"

Clackamas County
Canby Ferry ITS Project
June 15, 2021
OWNER: Richard J Richardson & Marion
Lynn Richardson (Co-Trustees) Richardson
Family Living Living Trust

County Project No. 22235
Map & Tax Lot No. 31E16 01801
File 2
Page 1 of 2

Permanent Easement

A 35.00 foot wide strip, as shown on attached Exhibit "B", lying in the Northeast One-Quarter of Section 21, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, being of Government Lot 3 of said Section 21; being also a portion of that property as described in a Statutory Warranty Deed to Richard J. Richardson and Marion Lynn Richardson, Co-Trustees of the Richardson Family Living Living Trust, recorded as Document No. 2018-076674, Clackamas County Deed Records, said easement being further described as follows:

Beginning at a point on the west line of said property per Document No. 2018-076674, being also the west line of Government Lot 3 of said Section 21 at its intersection with a southerly right of way line of SW Mountain Road (County Road 55) as described in a deed to Clackamas County, recorded June 24, 1957 as Book 527, Page 122, Clackamas County Deed Records, being also S00°08'07"E 446.02 feet, along said west line of Government Lot 3, from the North One-Quarter Corner of Section 21, Township 3 South, Range 1 East, Willamette Meridian per U.S.B.T. 2009-007; thence, along said southerly right of way line of SW Mountain Rd, S79°25'24"E 35.62 feet to a point 35.00 feet from, when measured at right angles to, said west line of Government Lot 3; thence, parallel to said west line of Government Lot 3, S00°08'07"E 225.00 feet, more or less, to the Willamette River; thence, along the Willamette River, S89°51'53"W 35.00 feet to said west line of Government Lot 3 and the west line of said property per Document No. 2018-076674; thence, along said west line of Government Lot 3 and the west line of said property per Document No. 2018-076674, N00°08'07"W 231.62 feet, more or less, to the **Point of Beginning**

Excepting therefrom, any portion of the above described premises lying within the existing right of way of SW Mountain Road (County Road 55).

Also, Excepting therefrom, any portion of the above described premises lying within the Willamette River.

Containing 6,241 square feet, more or less.

The Basis of Bearings of this legal description is
Based on OCRS (Portland Zone), NAD 83(2011)(EPOCH:2010.00)
per network GNSS Observation, and held at
S00°01'13"E, as measured between
the North One-Quarter Corner of said Section 16,
T3S, R1E, W.M, per U.S.B.T. 2008-072,
being a 3-1/4" bronze disk in monument box, and the
North One-Quarter Corner of Section 21,
T3S, R1E, W.M , per U.S.B.T. 2009-007,
being a 3-1/4" bronze disk in monument box.

RECORDING REQUEST AGREEMENTS/CONTRACTS

New Agreement/Contract :
Amendment/Change Order Original Number:

ORIGINATING COUNTY
DEPARTMENT:

DTD – Capital Projects Engineering
Attn: Sharan LaDuca

OTHER PARTY TO
CONTRACT/AGREEMENT:

BOARD AGENDA ITEM

NUMBER: _____

DATE: July 15, 2021

PURPOSE OF
CONTRACT/AGREEMENT:

Approval of a Resolution Declaring the Public Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property for the **Canby Ferry ITS** Project and Authorizing Good Faith Negotiations and Condemnation Actions

SPECIAL INSTRUCTIONS:

Please record only the Board Resolution with attached Exhibits (do not record the Staff Report) in the property records index.

Return original signed and recorded Board Resolution with attached Exhibits to:

DTD, Capital Projects Engineering, Attention Sharan LaDuca.