



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

February 3, 2022

Board of County Commissioners
Development Agency Board

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 SE Linwood Avenue Improvement 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 \$1,035,000.00 and is included within the \$7,720,000.00 total project budget.
Funding Source	Clackamas County Development Agency
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	10/31/19: BCC approval of a contract for A & E Services with HHPR. 7/29/21: BCC approval of an amendment to the HHPR contract.
Strategic Plan Alignment	How does this item align with the County's Performance Clackamas goals? This item aligns with "Build a Strong Infrastructure" by providing the final connection between the existing Springwater Corridor and the future Monroe Street Greenway, significantly expanding the southeastern Portland Metro Area pedestrian and bicycle network.
Counsel Review	Reviewed and Approved by County Counsel on 1/26/22. NB
Procurement Review	<i>Was the item processed through Procurement?</i> yes <input type="checkbox"/> no <input checked="" type="checkbox"/>
Contact Person	Mendi Houx, DTD Right of Way Agent 2 @ (503) 742-4672

The SE Linwood Avenue Improvement Project (the "Project") is an extension of improvements being completed by the City of Milwaukie on SE Linwood Avenue. The City of Milwaukie's jurisdiction over SE Linwood Avenue extends from SE Harmony Road to SE Monroe Road, north of which the corridor transitions to Clackamas County jurisdiction. The typical sections for the Clackamas County portion and the City of Milwaukie portion were matched in order to provide a seamless and continuous corridor along SE Linwood Avenue that does not distinguish between Clackamas County jurisdiction and City of Milwaukie jurisdiction.

The Project will redesign the SE Linwood Avenue corridor from SE Monroe Road to SE Johnson Creek Boulevard. The corridor currently has many sections that are lacking sidewalks and bike lanes, which creates unsafe conditions for pedestrians, cyclists, and motorists. The Project will complete these missing sidewalk and bike lane connections by installing a multi-use path on either side of the street improving safety and connectivity for pedestrians, cyclists, and motorists. The Project also includes updates to existing stormwater facilities to improve stormwater management.

In order to construct the improvements as designed, additional rights of way and easements will be required. The Project is expected to impact 32 properties abutting the Project alignment. The Board has authority to exercise the power of eminent domain under ORS Chapter 203 and ORS Chapter 35 to acquire the needed rights of way, easements, and fee property by purchase or condemnation proceedings. In accordance with the procedure set forth in ORS Chapter 35, a Resolution of Necessity is required before offers are made for rights of way, easements, and fee property.

The project design team has collected and analyzed data sufficient to choose an alternative and advance the design of the project. The Project has been planned and located in a manner which is most compatible with the greatest public good and which causes the least private injury. The design has progressed through the Development Agency (the "Agency") project development procedures and the final legal descriptions required for acquisition of the needed rights of way and easements from 32 properties affected by the Project are being developed.

The Agency 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 to make appraisals and appraisal reviews.

The resolution directs Agency 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 Manager of the Development Agency 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
Digitally signed by Mendi Houx
Date: 2022.01.24 12:25:39 -08'00'

Mendi Houx
Right of Way Agent 2

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

In the Matter 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 SE Linwood Avenue Improvement Project



Resolution No. _____

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This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on February 3, 2022, and,

It appearing to the Board that the SE Linwood Avenue Improvement Project (the "Project") was included within the Clackamas County Development Agency ("Agency") approved 2021-2022 budget; that the Project will install a multi-use path on either side of the street and update existing stormwater facilities; 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" are a necessary part of the Project; and,

It further appearing to the Board that the acquisition of the necessary rights of way and easements are described as follows: the centerline is described in Exhibit "A"; the width of right-of-way will be in accordance with the Clackamas County Comprehensive Plan and Transportation System Plan; ancillary easements including sign, slope, sidewalk, utility, wetland mitigation, storm water treatment, storm water detention, traffic and safety facility, and temporary construction purposes, together with such incidental additional right-of-way at intersections and due to topography, all as may be reasonably necessary to accommodate Project design; and any uneconomic remnants, as determined by appraisal; all being in the public interest in order to commence and complete the Project in a timely manner; and,

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It further appearing that the Board has authority under ORS Chapter 203 and under 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.

NOW, THEREFORE, IT IS HEREBY RESOLVED that this Board declares it necessary and in the public interest that the Agency, in connection with the Project, begin the acquisition process, in accordance with all applicable laws, rules, and regulations governing such process, for the necessary rights of way, easements, and fee property, either through good faith negotiation, agreement, and purchase, or, if necessary, by commencement of condemnation proceedings.

IT IS FURTHER RESOLVED THAT:

1) The Agency be authorized to, in good faith, attempt to negotiate agreements of just compensation with owners of affected property identified as necessary within the boundaries of Exhibit "A". In so doing, the Agency 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 Manager of the Agency ("Manager") 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 Manager 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 Manager of the Agency shall inform the Board when the Manager 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 February, 2022.

Chair

Recording Secretary

EXHIBIT "A"

LINWOOD AVENUE
MAY 7, 2021

CENTERLINE DESCRIPTION FOR LINWOOD AVENUE

A roadway located in the Northwest One-Quarter and the Southwest One-Quarter of Section 29 and the Northwest One-Quarter of Section 32, Township 1 South, Range 2 East, of the Willamette Meridian in Clackamas County, Oregon, the centerline of which is more particularly described as follows:

Beginning at a 5/8 inch iron rod per SN13929, Clackamas County Survey Records, being the point of curvature of a 1145.92-foot radius curve to the right, having a central angle of 29°44'00", the radius point of which bears S61°49'41"W, being also Station 11+36.86 of the centerline of SE Linwood Avenue (Market Road 37)(County Road 1256);

Thence southeasterly along said centerline of Linwood Avenue (Market Road 37), along said curve to the right (the long chord of which bears S13°18'19"E, 588.02 feet) 594.67 feet to a point of tangency at station 17+31.53 of said centerline;

Thence S01°33'41"W, along said centerline of Linwood Avenue (Market Road 37), 1264.47 feet to Station 29+96.00 of said centerline;

Thence S01°33'41"W, along said centerline of Linwood Avenue (Market Road 37), 663.90 feet to an angle point at Station 36+59.90 of said centerline;

Thence S01°34'28"W, along said centerline of Linwood Avenue (Market Road 37), 1939.05 feet to a 1/2 inch iron rod per said SN13929 at Station 55+98.95 of said centerline;

Thence S01°34'28"W, along said centerline of Linwood Avenue (Market Road 37), 601.69 feet to the terminus of this description at Station 62+00.64 of said centerline, said terminus bears S88°25'32"E, 30.00 feet from a 5/8 inch iron rod on the west right of way line of said Linwood Avenue per said SN13929.

This legal description, along with the Basis of Bearings thereof, is based on the Oregon State Plane Coordinate System – North Zone – Reference Frame: NAD83(2011)(EPOCH 2010.00), The centerline of said Linwood Avenue (M.R. 37)(C.R. 1256) was held to be S01°34'28"W, as measured between Station 55+98.95 and Station 62+00.64.