



DAN JOHNSON
DIRECTOR

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

August 15, 2024

BCC Agenda Date/ Item: _____

Board of County Commissioners
Clackamas County

Approval of a Resolution Declaring the Public Necessity and purpose for Acquisition of Right of Way, Easements and Fee Property and Authorizing Good Faith Negotiations and Condemnation Actions for the Rugg Road/Badger Creek Culvert and Fish Passage Project. Total project value is \$681,227. Funding is through a National Oceanic and Atmospheric Administration grant and County Road Funds. No County General Funds are involved.

Previous Board Action/Review	08/13/24: Request for Consent		
Performance Clackamas	This project will create a strong infrastructure.		
Counsel Review	Yes-Hong Huynh	Procurement Review	No
Contact Person	Carol Hager	Contact Phone	503-742-4674

EXECUTIVE SUMMARY: Two existing 42-inch diameter culverts under Rugg Road conveying Badger Creek are undersized and in poor condition. The project will replace the two existing culverts with one 10-foot diameter fish-friendly culvert. The Johnson Creek Watershed Action Plan (JCWAP) identifies Badger Creek as an area that provides the highest restoration benefit to affect watershed processes and functions. Given the priority of Badger Creek in the JCWAP the project was awarded NOAA grant funding for construction of the project.

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

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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 (2) properties affected by the Project are being developed.

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

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

RECOMMENDATION: Staff respectfully recommends that the Board of County Commissioners approve the Resolution of Necessity and Purpose for the Badger Creek (Rugg Rd) Culvert Project authorizing the acquisition of necessary easements, by good faith negotiation if possible, or condemnation, if necessary.

Respectfully submitted,

Dan Johnson

Dan Johnson
Director of Transportation & Development

**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 Badger Creek (Rugg Rd) Culvert 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 August 15, 2024 and,

It appearing to the Board that the Badger Creek (Rugg Rd) Culvert Project ("the Project") will replace two existing 42-inch diameter culverts under Rugg Road conveying Badger Creek with one 10' diameter fish-friendly culvert is consistent with the powers and purposes of County government; and is necessary for public use and the continued growth, safety and welfare of the community; and,

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

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

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

It further appearing to the Board that rights of way, and easements within the boundaries described in the attached Exhibit A's, B-1's and B-2's for files 1 and 2 (the "Exhibits") are a necessary part of the Project; and,

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

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

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

In the Matter of Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the Badger Creek (Rugg Rd) Culvert Project 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 _____, 2024.

Tootie Smith, Chair

Recording Secretary

EXHIBIT "A"

Badger Creek at Rugg Road
File 1

March 27, 2024
13E25B01000
Page 1 of 2

TRACT 1

PERMANENT RIGHT OF WAY EASEMENT:

A portion of that property described in Document No. 1990-021136 of the Clackamas County Deed records, located in the SE 1/4 of Section 25, Township 1 South, Range 3 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 the Isaac Brigman's DLC Number 73; thence North 13°54'16" West 120.30 feet to the Point of Beginning, being the most southerly corner of the subject property and westerly right of way line of SE Rugg Road (C.R. No. 497); thence along said right of way line, North 00°32'11" East 14.63 feet; thence leaving said right of way line North 89°57'30" West 12.72 feet, plus or minus, to the line common with that property described in Document No. 1992-09929 of said records; thence along said common line, South 40°41'40" East 19.30 feet to the Point of Beginning,

Containing 93 square feet, more or less.

Basis of Bearing: NAD83(2011) Epoch 2010.00, OCRS Portland Zone per OAR 734

EXHIBIT "A"

Continued

Badger Creek at Rugg Road
File 1

March 27, 2024
13E25B01000
Page 2 of 2

TRACT 2

TEMPORARY CONSTRUCTION EASEMENT:

A portion of that property described in Document No. 1990-021136 of the Clackamas County Deed records, located in the SE 1/4 of Section 25, Township 1 South, Range 3 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 the Isaac Brigman's DLC Number 73; thence North 12°21'02" West 134.51 feet to the westerly right of way line of SE Rugg Road (C.R. No. 497) and Point of Beginning; thence leaving said right of way line North 89°57'30" West 12.72 feet, plus or minus, to the line common with that property described in Document No. 1992-09929 of said records; thence along said common line, North 40°41'40" West 31.23 feet; thence leaving said line North 81°11'41" East 33.75 feet to the westerly right of way line of SE Rugg Road; thence along said right of way line, South 00°32'11" West 28.85 feet to the Point of Beginning,

Containing 631 square feet, more or less.

Basis of Bearing: NAD83(2011) Epoch 2010.00, OCRS Portland Zone per OAR 734

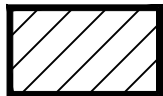
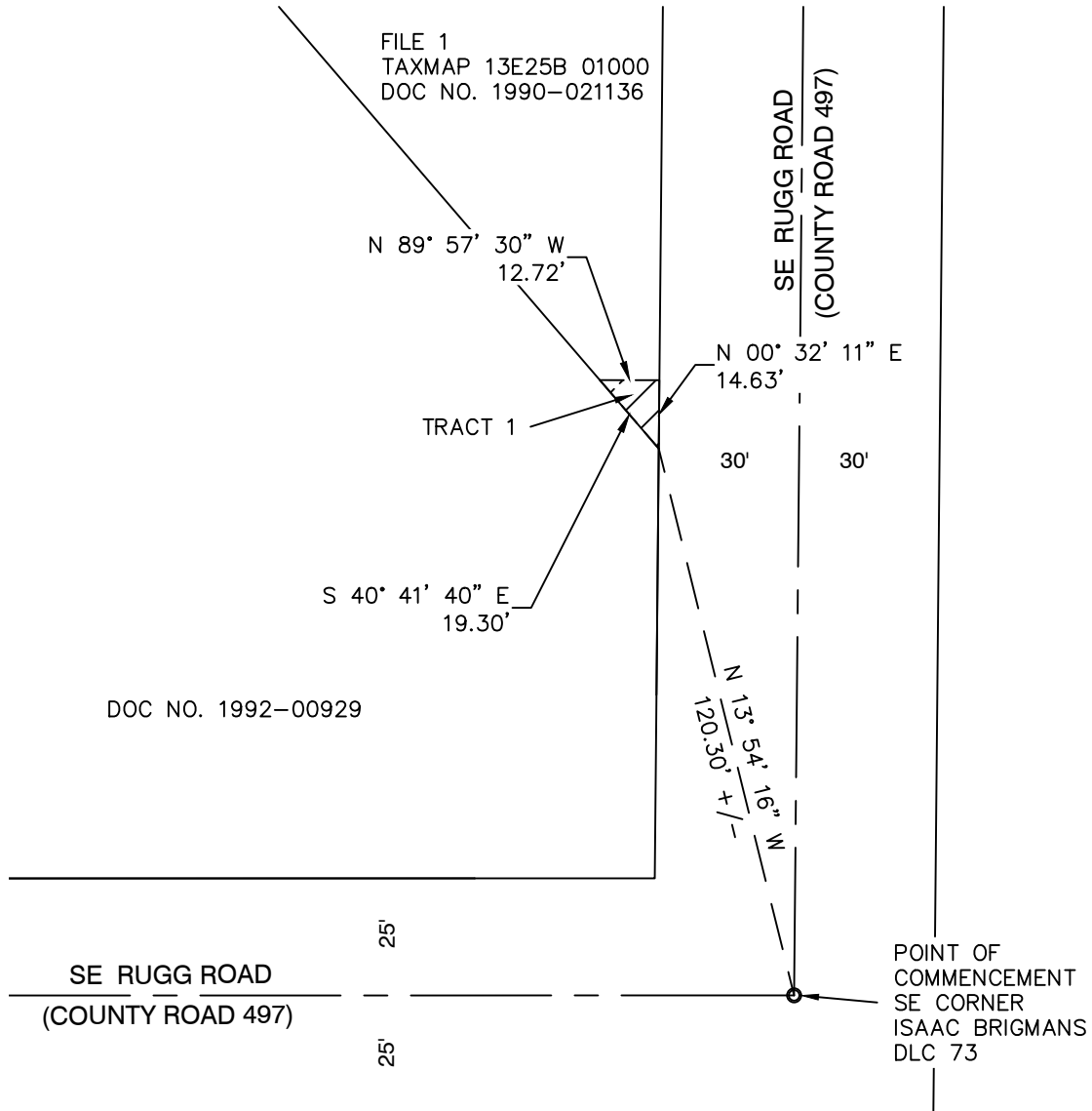
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Brian W. Paull

OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12-31-24

"FILE 1 B-1"
 LOCATED IN THE SE 1/4 OF
 SECTION 25, T.1 S., R.3 E., W.M.
 CLACKAMAS COUNTY, OREGON



PERMANENT RIGHT OF WAY
 EASEMENT
 AREA = 93 SQ. FT. ±



SCALE
 1" = 40'

REGISTERED
 PROFESSIONAL
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DEPARTMENT OF
 TRANSPORTATION
 AND
 DEVELOPMENT

EXHIBIT "B"
 BADGER CREEK AT RUGG
 ROAD

PERMANENT RIGHT OF WAY
 EASEMENT

DRAWN BY BWP

DATE: 03/27/24

"FILE 1 B-2"
 LOCATED IN THE SE 1/4 OF
 SECTION 25, T.1 S., R.3 E., W.M.
 CLACKAMAS COUNTY, OREGON

FILE 1
 TAXMAP 13E25B 01000
 DOC NO. 1990-021136

N 81° 11' 41" E
 33.75'

N 40° 41' 40" W
 31.23'

N 89° 57' 30" W
 12.72' +/-

N 12° 21' 02" W
 134.51'

SE RUGG ROAD
 (COUNTY ROAD 497)

S 00° 32' 11" W
 28.85'

30' 30'

DOC NO. 1992-09929

SE RUGG ROAD
 (COUNTY ROAD 497)

25'

25'

POINT OF
 COMMENCEMENT
 SE CORNER
 ISAAC BRIGMANS
 DLC 73



TEMPORARY CONSTRUCTION
 EASEMENT
 AREA = 631 SQ. FT. ±



SCALE
 1" = 40'

REGISTERED
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Brian W. Paull

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DEPARTMENT OF
 TRANSPORTATION
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EXHIBIT "B"
 BADGER CREEK AT RUGG
 ROAD

TEMPORARY CONSTRUCTION
 EASEMENT

DRAWN BY BWP

DATE: 03/27/24

EXHIBIT "A"

Badger Creek at Rugg Road
File 2

March 27, 2024
13E25B01100
Page 1 of 2

PERMANENT RIGHT OF WAY EASEMENT:

Portions of that property described in Document No. 1992-09929 of the Clackamas County Deed records, located in the SE 1/4 of Section 25, Township 1 South, Range 3 East, Willamette Meridian, as shown on Exhibit 'B' attached hereto and by this reference made a part hereof, more particularly described as follows:

TRACT 1(a)

Commencing from the Southeast corner of the Isaac Brigman's DLC Number 73; thence North 13°54'16" West 120.30 feet, plus or minus, to the most easterly northeast corner of the subject property and westerly right of way line of SE Rugg Road (C.R. No. 497) and the Point of Beginning; thence along that line common to the property described in Document No. 1990-021136 of said records North 40°41'40" West 19.30 feet; thence leaving said common line, North 89°57'30" West 1.75 feet; thence South 00°00'00" East 39.17 feet; thence North 00°00'00" East 14.10 feet to the westerly right of way line of said SE Rugg road and the Point of Beginning,

Containing 467 square feet, more or less.

TRACT 1(b)

Commencing from the Southeast corner of the Isaac Brigman's DLC Number 73; thence North 69°52'37" West 72.65 feet to a point along the Northerly right of way line of SE Rugg Road (C.R. No. 497) and the Point of Beginning; thence leaving said right of way line, North 44°42'31" East 55.18 feet to the westerly right of way line of said SE Rug Road; thence along said right of way line, South 00°32'11" West 39.21 feet to the Point of Beginning,

Containing 754 square feet, more or less.

Total area for Tract 2 (a) and (b) is 1221 square feet, more or less.

Basis of Bearing: NAD83(2011) Epoch 2010.00, OCRS Portland Zone per OAR 734

EXHIBIT "A"

Continued

Badger Creek at Rugg Road
File 2

March 27, 2024
13E25B01100
Page 2 of 2

TRACT 2

TEMPORARY CONSTRUCTION EASEMENT:

A portion of that property described in Document No. 1992-09929 of the Clackamas County Deed records, located in the SE 1/4 of Section 25, Township 1 South, Range 3 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 the Isaac Brigman's DLC Number 73; thence North 24°36'07" West 70.62 feet to the westerly right of way line of SE Rugg Road (C.R. No. 497) and the Point of Beginning; thence leaving said right of way line South 44°42'31" West 14.54 feet; thence North 25°26'15" West 76.75 feet; thence North 85°31'02" West 80.56 feet; thence North 16°56'04" East 12.62 feet; thence North 81°11'41" East 88.42 feet, plus or minus, to the line common with that property described in Document No. 1990-021136 of said records; thence along said common line South 40°41'40" East 31.23 feet; thence leaving said common line South 00°00'00" East 39.17 feet; thence North 90°00'00" East 14.10 feet to the westerly right of way line of said SE Rugg Road; thence along said right of way line South 00°32'11" West 28.03 feet to the Point of Beginning,

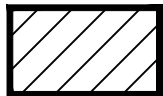
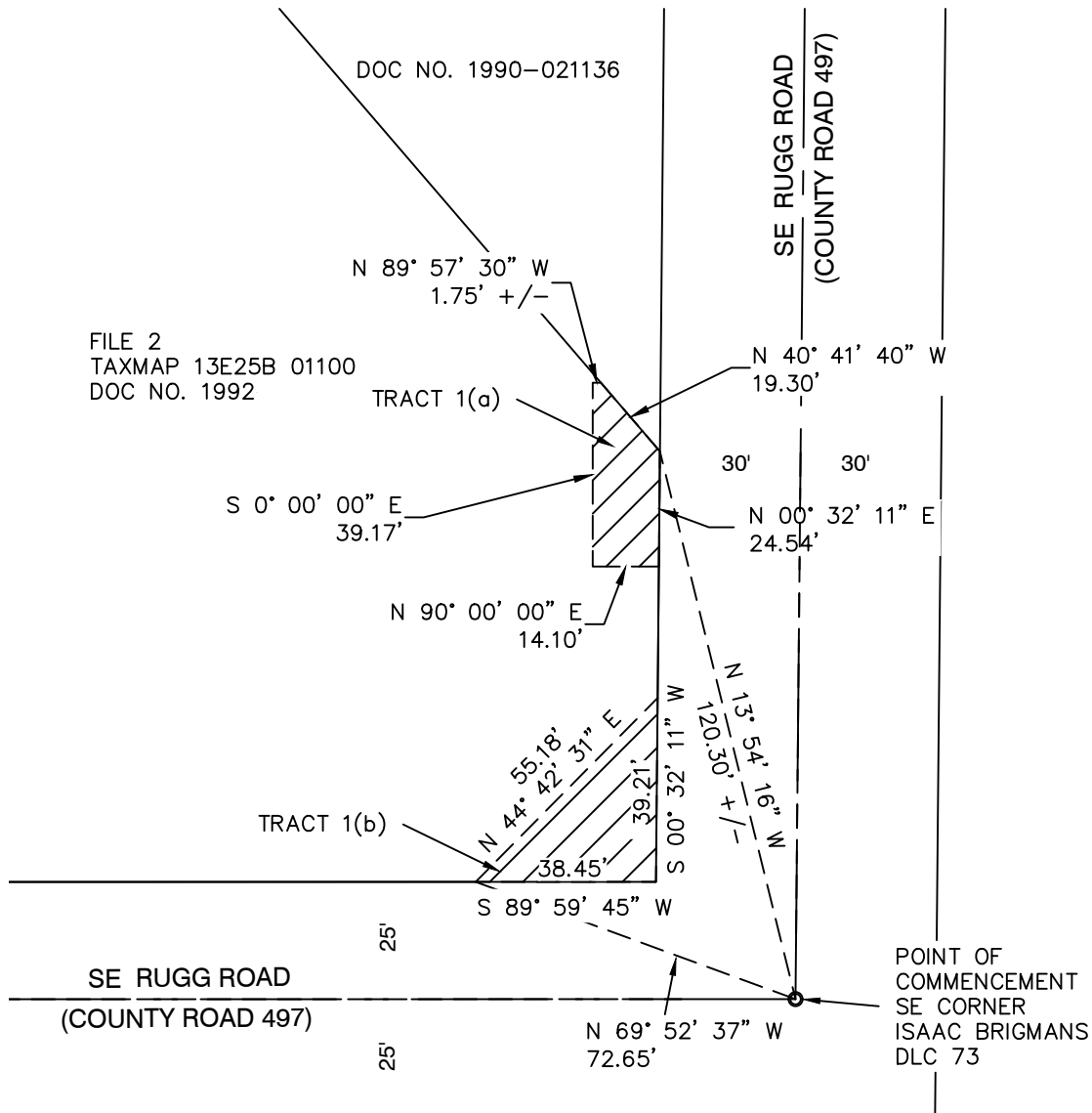
Containing 3756 square feet, more or less.

Basis of Bearing: NAD83(2011) Epoch 2010.00, OCRS Portland Zone per OAR 734



EXPIRATION DATE: 12-31-24

"FILE 2 B-1"
 LOCATED IN THE SE 1/4 OF
 SECTION 25, T.1 S., R.3 E., W.M.
 CLACKAMAS COUNTY, OREGON



PERMANENT RIGHT OF WAY
 EASEMENT
 AREA = 1221 SQ. FT. ±



SCALE
 1" = 40'

REGISTERED
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EXPIRATION DATE: 12/31/2024



DEPARTMENT OF
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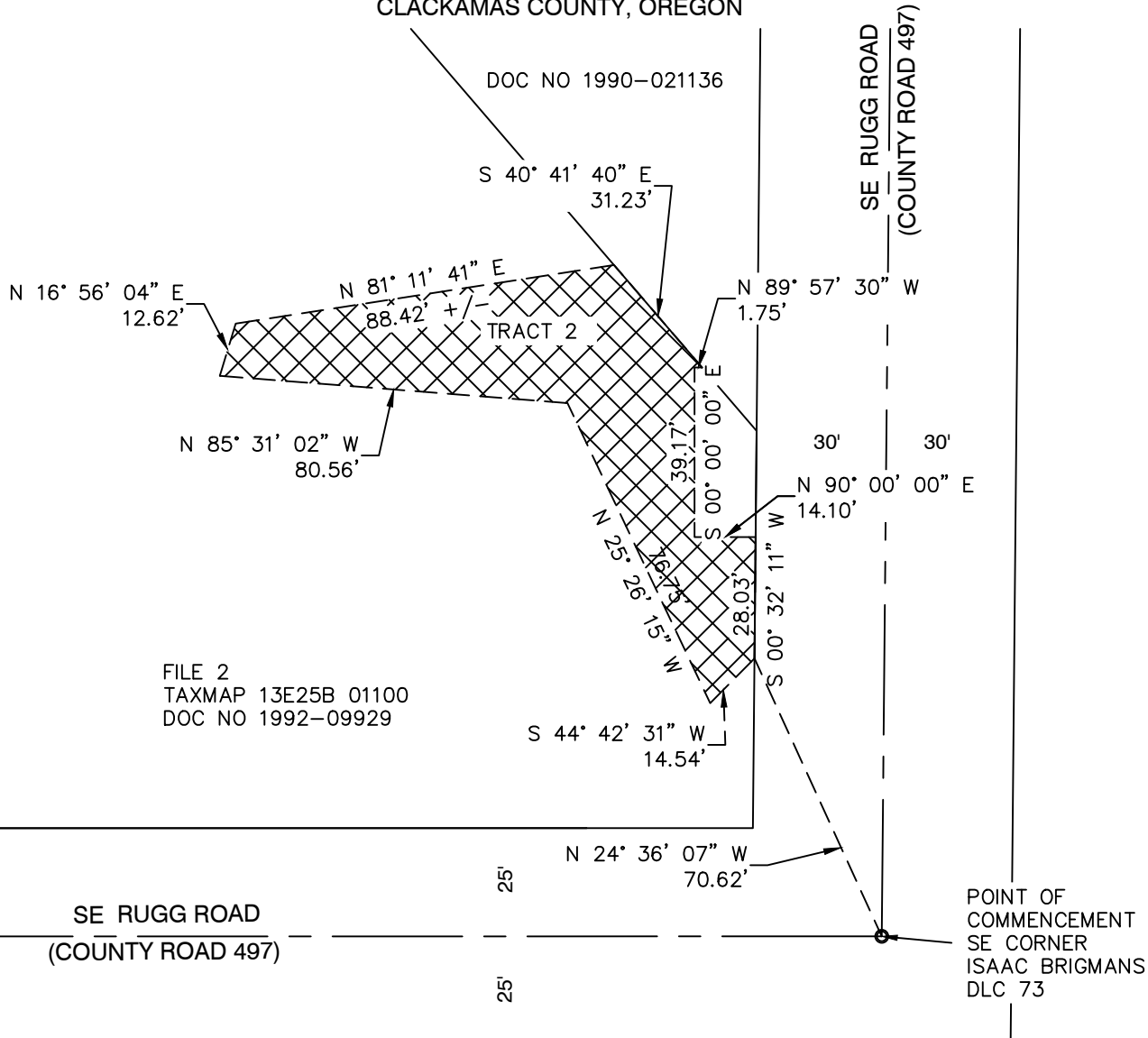
EXHIBIT "B"
 BADGER CREEK AT RUGG
 ROAD

PERMANENT RIGHT OF WAY
 EASEMENT

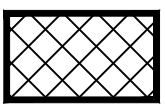
DRAWN BY BWP

DATE: 03/27/24

"FILE 2 B-2"
 LOCATED IN THE SE 1/4 OF
 SECTION 25, T.1 S., R.3 E., W.M.
 CLACKAMAS COUNTY, OREGON



FILE 2
 TAXMAP 13E25B 01100
 DOC NO 1992-09929



TEMPORARY CONSTRUCTION
 EASEMENT
 AREA = 3756 SQ. FT. ±



SCALE
 1" = 40'

REGISTERED
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DEPARTMENT OF
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EXHIBIT "B"
 BADGER CREEK AT RUGG
 ROAD

TEMPORARY CONSTRUCTION
 EASEMENT

DRAWN BY BWP

DATE: 03/27/24