

Contract Review Sheet

PW-5373-23

Real Estate Sale Agreement #: PW-5373-23 Amendment #: _____

Contact: Chalyce MacDonald Department: Public Works Department

Phone #: (503) 566-4139 Date Sent: Tuesday, April 11, 2023

Title: Purchase and Sale Agreement for Caster Property

Contractor's Name: Caster Joint Revocable Living Trust

Term - Date From: Execution Expires: N/A

Original Contract Amount: \$360,000.00 Previous Amendments Amount: \$0.00

Current Amendment: \$0.00 New Contract Total: \$360,000.00 Amd% 0%

Incoming Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 20-0285 Special CMS# _____

Description of Services or Grant Award

Purchase agreement for 6 acres of property adjacent to Scotts Mills County Park, currently owned by the Caster family. This land purchase would replace the recreational sale of Auburn Park to Salem-Keizer School District in 2018.

Desired BOC Session Date: 4/19/2023 BOC Planning Date: 4/6/2023

Files submitted in CMS: 3/29/2023 Printed packet & copies due in Finance: 4/4/2023

BOC Session Presenter(s) Thomas Kissinger

FOR FINANCE USE

Date Finance Received: _____ Date Legal Received: _____

Comments: Y

REQUIRED APPROVALS

Finance - Contracts _____ Date _____ Contract Specialist _____ Date _____

Legal Counsel _____ Date _____ Chief Administrative Officer _____ Date _____



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: Wednesday, April 19, 2023

Department: Public Works Agenda Planning Date: April 13, 2023 Time required: 5 min

Audio/Visual aids

Contact: Thomas Kissinger Phone: 503-930-9083

Department Head Signature: Bria Nibler

TITLE Consider Approval of Purchase and Sale Agreement with Caster Joint Revocable Living Trust and Adoption of a Board Order Authorizing the Public Works Director to Sign Closing Documents.

Issue, Description & Background In 2018, Marion County sold Auburn Park to the Salem-Keizer School District to facilitate the expansion of Auburn Elementary School. The appraised value and sale price of Auburn Park was \$360,000. The purchase and development of Auburn Park utilized federal Land and Water Conservation Fund dollars and the sale of Auburn Park obligates the county to replace the sold park property with new parkland having equal or better appraised and recreational values. The Public Works Department has been working with the Caster family to fulfill these requirements through the acquisition of a 6.03 acre parcel adjacent to Scotts Mills County Park. Staff have negotiated a Purchase and Sale Agreement with the Caster Joint Revocable Living Trust to establish the terms of the proposed property sale to Marion County. The appraised property value and agreed upon purchase price is \$450,000, consisting of a \$360,000 cash payment by the county and a \$90,000 land value donation by the trust. Upon approval of the Purchase and Sale Agreement, staff will begin the closing process.

Financial Impacts: The \$360,000.00 cash payment will come from the Parks Fund (Fund 310). This is a budgeted expense in the current fiscal year.

Impacts to Department & External Agencies Entering into this agreement does not impact any other Marion County departments.

Options for Consideration: 1) Approve the Purchase and Sales Agreement with Caster Joint Revocable Living Trust and execute an order authorize the Marion County Public Works Director to execute closing documents 2) Take no action at this time

Recommendation: Staff recommend approval of the Purchase and Sale Agreement and Board Order.

List of attachments: 1. Purchase and Sales Agreement between Marion County and Caster Joint Revocable Living Trust 2. Board Order

Presenter: Tom Kissinger, Marion County Parks Supervisor

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Copies to:

cmacdonald@co.marion.or.us

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of delegating authority to the)
public works director to execute all documents)
necessary to close the purchase of a tax lot)
in Scotts Mills.)

ORDER No. _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on Wednesday, April 19, 2023.

WHEREAS, the County intends to purchase Tax Lot 061E22A000100 located in Scotts Mills for use by the Marion County parks program; and

WHEREAS, the property purchase is scheduled to close on or before May 12, 2023; and

WHEREAS, in order to facilitate the efficient closing of the purchase, the Board desires to delegate to the Marion County Public Works Director authority to execute all documents necessary to close the County’s purchase of the above listed tax lot; now, therefore,

IT IS HEREBY ORDERED that the Board delegates to the Marion County Public Works Director the authority to execute all documents necessary to close the County’s purchase of the above listed tax lots.

DATED at Salem, Oregon, this 19th day of April, 2023.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT, hereinafter referred to as the "**Agreement**", is made and entered into on _____, 2023 by and between *Terry Ernest Caster & Patricia Doris Caster, Trustees for the Terry Ernest Caster and Patricia Doris Caster Joint Revocable Living Trust Under Agreement Dated 9/30/2013*, hereinafter called "**Seller**," and *Marion County*, a political subdivision of the State of Oregon, hereinafter called "**Purchaser**." Seller and Purchaser may be referred to herein jointly as the "**Parties**" and severally as a "**Party**."

RECITALS:

- A. Seller is the owner of the Property, as defined in Section 1 below, which is adjacent to a parcel of property owned by Purchaser on which it operates a park. The Parties desire to enter into this Agreement to allow for the expansion of said park.
- B. Seller and Purchaser shall cooperate in good faith to finalize the proposed transaction.

AGREEMENT:

In consideration of the mutual promises contained herein, the Seller and Purchaser agree as follows:

1. Description of Property

Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the real property and all improvements thereon, located in the county of Marion County, State of Oregon, which property is commonly known as the property between 721 Crooked Finger Road NE and 897 Crooked Finger Road NE measuring 6.03 acres, more or less, and which has the legal description as set forth in **Exhibit "A"**, which is attached hereto and incorporated by this reference herein (the "**Property**").

2. Purchase Price

The purchase price which Purchaser agrees to pay for the Property is the sum of Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00) (the "**Purchase Price**"), Three Hundred Sixty Thousand and No/100 Dollars (\$360,000) to be paid in cash at Closing. In addition, Seller shall contribute Ninety Thousand and No/100 Dollars (\$90,000) as a donation of land value to Purchaser.

3. Escrow Closing

The Parties shall open an interest-bearing escrow account at AmeriTitle located at 105 N Water Street Suite A, Silverton, Oregon immediately upon signing of this Agreement. Purchaser shall pay all costs associated with the transaction and Seller shall be entitled to any interest accrued under the terms of this Agreement.

Subject to the satisfaction or waiver by Purchaser and Seller of the conditions set forth in this Agreement, the transaction shall close no later than June 30, 2023, or upon satisfaction of Purchaser's

conditions to closing as set forth below (the "**Closing Date**"). For purposes of determining prorations, the Closing Date shall be the date upon which the deed is recorded. Purchaser shall be entitled to possession on the Closing Date.

4. Disbursement and Other Actions by Escrow Holder

At closing, the escrow holder shall do the following:

4.1 Funds

Disburse all funds deposited with the Escrow Holder by the Purchaser in payment of the purchase price as follows:

- 4.1.1 Deduct all items chargeable to the account of the Seller pursuant to this Agreement.
- 4.1.2 Retain the remaining balance of the funds, subject to the Federal Restrictions as set forth in Section 11 below.

4.2 Recording

Cause the deed, and any other documents that the Parties may mutually direct to be recorded in the official records and obtain conformed copies for distribution to the Purchaser and the Seller.

4.3 Title Policy

Issue the title policy to the Purchaser.

4.4 Disbursement of Documents to Purchaser

Disburse to the Purchaser the FIRPTA certificate, and any other documents (or copies thereof) deposited into escrow by the Seller pursuant hereto.

5. Preliminary Title Report

Promptly after the Purchaser and Seller have signed this Agreement, Purchaser has the option to order, at Purchaser's expense, a preliminary title report through AmeriTitle showing the condition of title to the Property.

Purchaser shall have fifteen (15) days after receipt of the preliminary title report within which to notify Seller in writing of Purchaser's disapproval of any exceptions shown in the preliminary title report. If Purchaser disapproves any exceptions or matters, Seller shall have fifteen (15) days within which to agree to remove the exception. Failure to give written notice to such agreement to Purchaser shall be deemed to be refusal, except that Seller shall automatically be deemed to agree to remove monetary liens other than non-delinquent taxes and assessments. If Seller does not agree to remove any other exceptions or matters disapproved by Purchaser, this Agreement shall terminate without further liability to either Party unless Purchaser waives its objection within a second fifteen (15) day period. If Seller shall agree to remove any exception or matter objected to by Purchaser, Seller shall then have thirty (30) days

to remove such exception. Purchaser hereby disapproves of all monetary exceptions and Seller agrees to clear them at or before closing.

6. Title Insurance Policy

In due course after closing, Seller, at Purchaser's expense, shall furnish unto Purchaser a standard coverage ALTA Buyer's policy of title insurance, with such endorsements as Purchaser may require and the cost of which Purchaser shall be solely responsible, for the full value of the Purchase Price, showing a marketable title to said described premises to be vested in Seller, free and clear of all encumbrances. All monetary exceptions are hereby rejected and Seller agrees to clear such exceptions at or before closing. Seller shall sign such documents as are necessary for the title company to issue the above referenced insurance.

7. Prorates

The real property taxes, if any, will be prorated as of closing. Seller shall be responsible for payment of any deferred taxes, penalties, or assessments, if any. Seller shall pay all utilities through the date of closing.

8. Deed

Upon payment in full of the purchase price at closing, Seller shall deliver to Purchaser at closing a Quitclaim Deed conveying the Property to Purchaser free and clear of all encumbrances, except those approved by Purchaser above.

9. Conditions for Benefit of Purchaser

The following shall be conditions precedent to Purchaser's obligation to perform hereunder and they may be waived in whole or in part only by Purchaser. Purchaser's obligation to close this Agreement is expressly conditioned upon the satisfaction, in Purchaser's sole discretion, on written waiver by Purchaser, of all of the following conditions. Except where a different time period is specifically stated, Purchaser shall waive or satisfy all such conditions no later than one hundred twenty (120) days after the execution date, said 120-day period shall be called the "**contingency period.**" Seller acknowledges that the conditions are for the benefit of Purchaser and that it will be left to the discretion of Purchaser to determine whether the conditions have been satisfied or whether Purchaser wishes to waive satisfaction of one or more conditions. The waiver by Purchaser of any condition shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant, or agreement of Seller:

9.1 Purchaser Obtaining Board Approval of the Purchase

This Agreement shall be contingent on Marion County Board of Commissioner approval of the purchase of the Property and the allocation of the Purchase Price for the purchase of the Property.

9.2 Environmental Site Assessment

Within one hundred twenty (120) days after Seller signs this Agreement, a Phase I and Phase II Environmental Site Assessment, and a wetlands evaluation, satisfactory to Purchaser shall be performed, at Purchaser's expense, and reports shall be received by Purchaser. Said reports

shall be prepared after the date of this Agreement or updated to the date of this Agreement from a licensed engineer or environmental consultant selected by Purchaser and reports shall cover the Property. The report must demonstrate, to Purchaser's sole satisfaction, that there are not present on the Property any hazardous substances, wastes, or materials, any pollutants or contaminants, or other similar substances or materials which are included under or regulated by any local, state or federal law, rule, or regulation pertaining to environmental regulation, contamination or clean up, or any PCBs, asbestos, radon or underground storage tanks or wetlands. In the event that the environmental site assessment discloses any environmental condition which is unsatisfactory to Purchaser, Purchaser shall be responsible for providing remedy to any such environmental condition, at Purchaser's expense. If Purchaser elects not to perform such remedial actions, Purchaser shall have ten (10) working days from receipt of the report to notify Seller of Purchaser's election to terminate this Agreement, whereupon the obligations of both Parties hereunder shall be discharged and this Agreement shall terminate.

9.3 Feasibility Studies

Purchaser may conduct a feasibility study to determine if the Property is suited for Purchaser's intended use. If, pursuant to such feasibility study, Purchaser determines that the Property is not suitable for its intended use, Purchaser shall so notify Seller no later than one hundred twenty (120) days after the execution date, whereupon the obligations of both Parties hereunder shall be discharged, and this Agreement shall terminate. If Purchaser does not give Seller notice required herein in the time period allotted therefore, Purchaser shall be deemed to have waived the condition stated herein regarding feasibility. Such feasibility study may include, but not be limited to, the investigation of the zoning, the effect of local land use regulations and municipal ordinances, environmental assessment, engineering, surveys, hydrological, topographical, traffic, soil and water analyses, availability and quality of access, utilities, water and sewage to and from the Property, and obtaining a building permit for construction of contemplated improvements to the Property, the costs of which shall be borne exclusively by the Purchaser.

In order to determine feasibility, Purchaser may go upon the Property, at any reasonable time, for the purpose of making or conducting any inspection, investigation, test or survey reasonably relative to Purchaser's decision to purchase the Property, or to Purchaser's prospective use thereof. This shall include, but not be limited to, any drilling or testing necessary for the completion of all environmental site assessments permitted under the terms of this Agreement. Purchaser hereby agrees to defend, indemnify and to hold Seller harmless from any and all liabilities or obligations incurred as a result of such entrance of Purchaser or its agents on the Property, except that Purchaser shall not be liable to Seller, or have an obligation to indemnify Seller, on account of Purchaser's discovery of any hazardous materials on the Property, or for disclosing the results of any tests, inspections, or surveys performed by Purchaser.

Commencing on the date this Agreement is executed, Purchaser shall have the right, at Purchaser's sole expense, to initiate and pursue to completion proceedings to obtain all government permits and approvals necessary for Purchaser's contemplated development and use of the Property. Seller shall execute such reasonable applications for, and shall otherwise reasonably cooperate with, Purchaser's efforts to obtain such governmental permits or approvals affecting the Property; provided, however, that Purchaser shall fully compensate Seller for any lien, encumbrance, or charge thereon, attributable to Purchaser's activities with respect to this

Section, and shall indemnify, defend and hold Seller harmless therefrom any expenses, claims or liabilities arising out of Purchaser's activities in regard thereto.

10. Satisfaction or Failure of Conditions

If the conditions to Purchaser's obligation to close are satisfied, the Parties shall proceed to close the transaction in accordance with the other terms and conditions of this Agreement. If Purchaser, in its sole discretion, is not satisfied with any condition of the Property as set forth herein, and if Purchaser and Seller have not reached a written agreement in settlement thereof on or before the last day of the contingency period, then Purchaser shall deliver to Seller a termination notice, to be received by Seller on or before the last day of the contingency period, informing Seller of Purchaser's desire to terminate this Agreement. Upon Seller's receipt thereof, neither Party hereto shall have any further rights against or obligations to the other under this Agreement, except as may be otherwise expressly provided herein.

11. Required Statutory Notice

The following is the notice as required by Oregon law: "THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010."

12. Hazardous Waste

Seller represents and warrants, to the best of Seller's knowledge, that the Property has never been used to generate, manufacture, transport, store or dispose of any hazardous substance; that no leak, spill or discharge of a hazardous substance has occurred on, in, or under the Property or the ground waters thereof and that the soil, ground water and soil vapor on, in, or under the Property is free of hazardous substances; that there are no potentially hazardous environmental conditions on the Property; and that the Property has not been identified by any governmental agency as the site upon which, or potentially upon which, hazardous substances may have been located or deposited.

Seller indemnifies and holds Purchaser harmless from any and all claims, penalties, fines, costs or liabilities based on acts of the Seller, including but not limited to, cleanup, remedial action or restoration work, including attorney and expert fees, related in any way to the presence or suspected presence of

hazardous waste in the soil, ground water or soil vapor on, in, or under the Property, except for any hazardous substance generated on the Property after the close of escrow.

These representations and warranties shall survive the closing of this Agreement and the delivery of the deed called for herein.

“Hazardous substance” is used in this Agreement in its broadest sense to include all hazardous, toxic or contaminating substances, including petroleum products, radon, asbestos, or similar materials which are now or in the future may be regulated by any environmental law.

“Environmental law” shall be interpreted broadly to include any present or future local, municipal, state or federal law, order, rule or regulation relating to environmental protection or pollution control.

13. Representations

Seller represents and warrants, to the best of Seller’s knowledge, as follows:

13.1 Pending or Threatened Proceedings

As of the date of closing, there are no pending or threatened litigations, condemnation proceedings or annexation proceedings affecting the Property, and Seller has no knowledge of any litigation that is threatened, against or affecting Seller or the Property in any way; nor does Seller know or have reasonable grounds to know of any basis for the foregoing.

13.2 Notice of Violations

As of the date of closing, Seller has not received notice pertaining to the violation of any law, statute, ordinance, rule, regulation, or deed restriction affecting the Property, and the Seller has no knowledge of any facts which might be a basis for any such notice.

13.3 Pending or Contemplated Assessments or Charges

Seller does not know of any pending or contemplated assessments or similar charges except those of record and shown in the commitment which will affect the Property; and to Seller’s knowledge there is no pending proceeding for any increase of the assessed valuation of any portion of the land or Property except as may be disclosed on such commitment.

13.3.1 All charges, assessments and special taxes to which the Property is presently subject or which Seller has any reason to expect will later be imposed on the Property;

13.3.2 All dues, assessments or charges of any owner’s association or the like for which Purchaser will be responsible or which are or may be assessed against the Property; and

13.3.3 All governmental fees and charges, other than those imposed on a City and/or County wide basis, which Purchaser will be required to pay in connection with its development and/or use of the Property, including the construction of buildings

or other improvements thereon. Specifically excluded from this provision are any potential System Development Charges (SDC's), as these fees are determined during the planning phase of any capital improvement.

13.4 Debt, Creditors or Bankruptcy

There are no unpaid bills or claims in connection with the Property. There are no attachments, executions, or assignments for the benefit of creditors, or voluntary proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or threatened by or against Seller or otherwise affecting the Property.

13.5 Material Fault or Defect

The Property is free from material fault or defect.

13.6 Notices of Unperformed Work

Seller has received no notice from any insurance company or board of fire underwriters recommending or requiring any work to be done on the Property that remains unperformed.

13.7 Condemnation Proceedings

There is no claim, suit, investigation, inquiry, exercise of eminent domain or condemnation proceeding in the nature of declaration or designation of the Property or any part thereof for historic, landmark, archaeological, wilderness, flood plain, wetlands or conservation purposes or for any other restriction on use, development, or alteration.

13.8 Zoning

No action or proceeding has been commenced, is pending or threatened, to change the zoning requirements applicable to the Property to a different or more restrictive use. There are no restrictions on the use of the Property, other than the zoning designation.

13.9 Completion and Accuracy of Records and Documents to Purchaser

All books, records, documents and information to be provided by Seller to Purchaser in connection with this Agreement will be complete, true and accurate at the time they are delivered to the Purchaser and as of the Closing Date.

13.10 Seller's Maintenance of Property

Seller represents that it will maintain the Property in a manner consistent with Seller's past practices until this Agreement is closed or escrow is terminated, whichever occurs earlier. Seller will not enter into any agreement affecting the Property without the Purchaser's prior written consent.

13.11 Purchaser's Possession at Closing

At closing there will be no Parties lawfully in possession of any portion of the Property, nor any Parties with any right to such possession, other than Purchaser. No person, corporation, or other entity other than Purchaser (by reason of this Agreement) has any right or option to acquire the Property or any portion thereof. There are no outstanding service or other contracts affecting the Property.

13.12 Authority of Seller

Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby, and has obtained all necessary consents and approvals of all requisite Parties to execute and perform this Agreement. The individuals executing this Agreement and the instruments referenced herein on behalf of Seller and the partners, officers, or trustees of Seller, if any, have the legal power, right and actual authority to bind Seller to the terms and conditions hereof and thereof.

13.13 Drainage of Water

Property is offered to Purchaser AS IS and, by signing Agreement, Purchaser agrees that any environmental factors affecting the drainage of surface and subsurface waters are acceptable or nonexistent.

13.14 Delivery of Documents by Seller to Purchaser

The Seller has delivered to Purchaser all the documents required to be delivered under this Agreement.

13.15 Wetlands

Seller represents, to the best of their knowledge, no wetlands on the Property have been filled, altered, or drained.

13.16 Material Adverse Changes

There have been no material adverse changes related to or connected with the Property from the date hereof until the Closing Date.

The Seller's representations and warranties contained here are true and accurate, and are not misleading. The Seller's representations and warranties contained here shall be continuing and shall be true and correct as of the Closing Date with the same force and effect as if remade by the Seller in a separate certificate at that time. The Seller's representations and warranties contained in this section shall survive the close of escrow and shall not merge into the deed and the recordation of the deed in the official records.

14. Indemnification by Seller

Seller shall indemnify, defend and hold harmless Purchaser, its successors, heirs, principals, officers, directors, employees, agents and assigns (for purposes of this Section, collectively "**Purchaser**")

from and against any and all liability, loss, claim, damage or expense, including, without limitation, legal, accounting, consulting, engineering, and other expenses, to which Purchaser may become subject insofar as they may arise out of or are based upon:

14.1 Seller's Ownership, Operation and Maintenance of Property

Any act or omission of Seller in its ownership and operation and management of the Property on or prior to the Closing Date; and

14.2 Breach of Representation, Warranty or Failure to Perform Obligations

Seller's breach of any representation and warranty contained in this Agreement or failure to perform any obligation contained in this Agreement to be performed by Seller.

15. Time of Essence

Time is of the essence of the performance of each of the obligations under this Agreement.

16. Remedies

The remedies set forth herein are exclusive. In the event the conditions precedent to Purchaser's obligations have occurred, and Purchaser fails to close the sale through no fault of Seller, then Seller's sole and exclusive remedy shall be Purchaser's payment of any costs incurred by Seller under the terms of this Agreement.

If the transaction fails to close because the conditions precedent to Purchaser's obligations have not occurred, or if Seller's title is not marketable, then this Agreement shall be of no further force or effect, and Seller shall pay for any escrow and title insurance charges.

In the event the conditions precedent to Seller's obligation to perform have occurred, and Seller through, no fault of Purchaser, fails to close this Agreement, then the Seller shall pay any escrow and title insurance charges to the Purchaser. Purchaser may recover such damages as may be allowable in law and at equity; or Purchaser may elect to treat this Agreement as being in full force and effect, and Purchaser shall have the right to an action for specific performance or damages, or both. In addition to any other damages allowable, Purchaser shall be entitled to all of its out-of-pocket expenses incurred in connection with the transaction, including its due diligence costs and other expert expenses.

17. Foreign Investment in Real Property Tax Act

The Foreign Investment in Real Property Tax Act (FIRPTA), IRC §1445, requires every person who purchases U.S. real property from a foreign person to deduct and withhold from the Seller's proceeds, ten percent (10%) of the gross sales price, with certain exceptions. Seller and Purchaser agree to execute and deliver, as appropriate, any instrument, affidavit, or statement, and to perform any acts reasonably necessary to carry out the provisions of FIRPTA.

18. Damage or Destruction; Condemnation

Until closing, the risk of loss shall be retained by Seller. In the event all or any material portion of the Property is damaged, destroyed, condemned, or threatened with condemnation prior to the close of

escrow, Purchaser may terminate this Agreement. In such event, escrow will be terminated, and this Agreement shall have no further force or effect whatsoever. If a nonmaterial portion of the Property is destroyed or condemned, Purchaser may elect to terminate this Agreement or to close this Agreement as provided for herein, including payment to the Seller of the purchase money required. In such event, the Purchaser shall be credited with all insurance proceeds or condemnation proceeds payable to or for the account of Seller.

19. Binding Effect/Assignment

This Agreement is binding upon and shall inure to the benefit of the Parties and their respective heirs, legal representatives and assigns. Purchaser may assign Purchaser’s rights under this Agreement without Seller’s prior written consent.

20. Notices

All notices required or permitted to be given hereunder shall be in writing and shall be personally delivered, or sent by overnight delivery service or by U.S. Certified Mail, Return Receipt Requested, or by facsimile, to the telephone number set forth below, with the original sent by U.S. Mail, addresses as set forth below:

Seller:	Marion County Attn: Jan Fritz 555 Court Street NE #4130 Salem, OR 97301	<i>With a copy to:</i> Marion County Public Works Attn: Thomas Kissinger 5155 Silverton Road NE Salem, OR 97305
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Purchaser:	Terry Caster PO Box 373 Silverton OR 97381	<i>With a copy to:</i> Owen Von Flue, PO Box 800 Silverton, Oregon 97381 vonfluelaw@hotmail.com
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Either Party hereto may, by proper notice to the other, designate such other address for the giving of notice as deemed necessary. All notices shall be deemed given on the business day such notice is personally delivered or sent by facsimile, the business day following dispatch by overnight delivery service, or on the third day following the day such notice is mailed, if mailed in accordance with this Section.

21. Counterparts, Electronic Transmission and Electronic Signatures

This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile, email transmission or other means of electronic transmission of any signed original document, and retransmission shall be the same as delivery of an original. The Parties agree that this transaction may be conducted and closed by electronic means in accordance with the provisions of the Uniform Electronic Transactions Act (“*UETA*”) as codified in ORS Chapter 84. At the request of either Party, the Parties shall

confirm electronically transmitted original signatures or electronic signatures by signing an original document and providing the signed original to the requesting Party.

22. Interpretation

Headings at the beginning of each Section and Subsection are solely for the convenience of the Parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and the masculine shall include the feminine and vice versa.

23. Rule of Construction

Any rule of construction interpreting this instrument against its drafter shall be inapplicable. The recitals set forth above are, by this reference, incorporated into and deemed a part of this Agreement.

24. Reference

Unless otherwise indicated, all references to Sections and Subsections are to this Agreement. In the event the date on which Purchaser or Seller is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day. If one or more of the provisions of this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, then, to the extent consistent with the Parties' intent hereunder, the validity, legality and enforceability of the remaining provisions of any other application thereof shall not be affected or impaired.

25. Governing Law and Venue

The Parties hereby submit to jurisdiction in Marion County, Oregon and agree that any and all disputes arising out of or related to this Agreement shall be litigated exclusively in the Circuit Court for Marion County, Oregon, and in no federal court or court of another county or state. Each Party to this Agreement further agrees that pursuant to such litigation, the Party and the Party's officers, employees, and other agents shall appear, at that Party's expense, for deposition in Marion County, Oregon.

26. Employment of Attorneys

The law firm of Owen Von Flue, Silverton, Oregon, has been employed by Seller to review the documents in conjunction with this transaction, and such attorneys represent only Seller in this matter. Purchaser is represented by Marion County Counsel in this matter.

IN WITNESS WHEREOF the Parties have executed this Agreement.

**PURCHASER:
MARION COUNTY SIGNATURE
BOARD OF COMMISSIONERS:**

Chair Date

Commissioner Date

Commissioner Date

Authorized Signature: _____
Department Director or designee Date

Authorized Signature: _____
Chief Administrative Officer Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

SELLER:
TERRY E CASTER

By: _____ Date: _____
Terry E Caster

Exhibit A
Property Legal Description

PARCEL II:

Beginning at a ½ inch iron pipe marking the intersection of the Easterly right of way line of Market Road No. 76, and the Northerly boundary line of that certain 4 acre tract of land mentioned as the first exception to that parcel of land conveyed to Clifford F. and Mildred R. Imel, by that Land Sale Contract recorded in Reel 120, Page 1650, Marion County Records, said ½ inch iron pipe bears North 75° 00' East 31.69 feet from a ½ inch iron pipe marking the Northwest corner of Lot 86, of FRIENDS OREGON COLONY, as recorded in Volume 3, Page 32, Marion County Book of Town Plats; and running thence along the aforementioned Easterly line as follows: North 20° 41' 18" West 190.68 feet and along the arc of a 1934.86 foot radius curve left, the long chord of which bears North 21 ° 52' 16" West 79.88 feet to a ½ inch iron pipe; thence North 75° 58' 33" East 514 feet more or less, along the Southerly boundary line of that parcel of land conveyed to Marion County by that deed recorded in Volume 548, Page 439, Marion County Record of Deeds, and its Southwesterly extension to the center of Butte Creek; thence Southeasterly along said Creek center line 297 feet, more or less, to said Northerly boundary line of the aforementioned 4 acre tract; thence South 75° 00' West 628 feet, more or less, along said Northerly boundary line to the point of beginning.

PARCEL III

Beginning at a ½ inch iron pipe marking the intersection of the Easterly right of way line of Market Road No. 76, and the Northerly boundary line of that certain 4 acre tract of land mentioned as the first exception to that parcel of land conveyed to Clifford F. and Mildred R. Imel, by that Land Sale Contract, recorded in Reel 120, Page 1650, Marion County Records, said ½ inch iron pipe bears North 75° 00' East 31.69 feet from a ½ inch iron pipe marking the Northwest corner of Lot 86, FRIENDS OREGON COLONY, as recorded in Volume 3, Page 32, Marion County Book of Town Plats; and running thence North 75° 00' East 496.31 feet along the aforementioned Northerly boundary line to a ½ inch iron pipe marking the Northeasterly corner of that parcel of land described in the first paragraph of said Imel Land Sale Contract which was also intended to be conveyed therewith; thence South 51 ° 00' East 247.0 feet along the Easterly boundary line of said parcel of land to a ½ inch iron pipe marking the Southeasterly corner of same; thence South 75° 00' West 630.30 feet along the Southerly boundary line of said parcel of land to a ½ inch iron pipe on the Easterly right of way line of Market Road No. 76; thence Northerly along said Easterly right of way line as follows: along the arc of a 741.20 foot radius curve left, the long chord bears North 16° 18' 15" West 113.32 feet and North 20° 41' 18" West 86.96 feet to the point of beginning.

EXHIBIT 'A'

File No. 566141AM

PARCEL I

Beginning at the Southeasterly corner of Lot 86, FRIENDS OREGON COLONY, as recorded in Volume 3, Page 52, Town Plat of Marion County, Oregon; and running thence South 61° 30' East 873.00 feet along the Northeasterly boundary line of Lot 85 in said recorded Subdivision, said Northeasterly boundary line being also the Northeasterly boundary line of that tract of land conveyed to Lloyd V. and Gloria M. Hoge, by that deed recorded in Volume 744, Page 369, Marion County Record of Deeds, to the Northwesterly corner of Lot 88, in said recorded Subdivision, said Northwesterly corner being also the Northwesterly corner of that tract of land conveyed to Claude L. and Audrey J. Davis, by that deed recorded in Volume 453, Page 580, Marion County Record of Deeds; thence Northerly 190.00 feet, more or less, along the Northerly extension of the Westerly boundary line of said Lot 88, to the center of Butte Creek, said Northerly extension being also the Westerly boundary line of that tract of land conveyed to Victor D. and Norma L. Wolfe, by that deed recorded in Reel 111, Page 1442, Marion County Records; thence Northwesterly down the center of Butte Creek 700.00 feet, more or less, to the Southeasterly boundary line of that 4 acre parcel of land included in that tract of land conveyed to Rachel A. Nordyke, by that deed recorded in Volume 58, Page 253, Marion County Record of Deeds; thence South 42° 45' West 264.00 feet along said Southeasterly boundary line to the point of beginning.

PARCEL II

Beginning at a ½ inch iron pipe marking the intersection of the Easterly right of way line of Market Road No. 76, and the Northerly boundary line of that certain 4 acre tract of land mentioned as the first exception to that parcel of land conveyed to Clifford F. and Mildred R. Imel, by that Land Sale Contract recorded in Reel 120, Page 1650, Marion County Records, said ½ inch iron pipe bears North 75° 00' East 31.69 feet from a ½ inch iron pipe marking the Northwest corner of Lot 86, of FRIENDS OREGON COLONY, as recorded in Volume 3, Page 32, Marion County Book of Town Plats; and running thence along the aforementioned Easterly line as follows: North 20° 41' 18" West 190.68 feet and along the arc of a 1934.86 foot radius curve left, the long chord of which bears North 21° 52' 16" West 79.88 feet to a ½ inch iron pipe; thence North 75° 58' 33" East 514 feet more or less, along the Southerly boundary line of that parcel of land conveyed to Marion County by that deed recorded in Volume 548, Page 439, Marion County Record of Deeds, and its Southwesterly extension to the center of Butte Creek; thence Southeasterly along said Creek center line 297 feet, more or less, to said Northerly boundary line of the aforementioned 4 acre tract; thence South 75° 00' West 628 feet, more or less, along said Northerly boundary line to the point of beginning.

PARCEL III

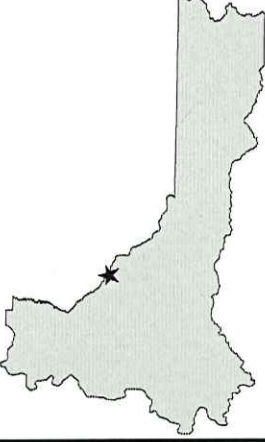
Beginning at a ½ inch iron pipe marking the intersection of the Easterly right of way line of Market Road No. 76, and the Northerly boundary line of that certain 4 acre

tract of land mentioned as the first exception to that parcel of land conveyed to Clifford F. and Mildred R. Imel, by that Land Sale Contract, recorded in Reel 120, Page 1650, Marion County Records, said ½ inch iron pipe bears North 75° 00' East 31.69 feet from a ½ inch iron pipe marking the Northwest corner of Lot 86, FRIENDS OREGON COLONY, as recorded in Volume 3, Page 32, Marion County Book of Town Plats; and running thence North 75° 00' East 496.31 feet along the aforementioned Northerly boundary line to a ½ inch iron pipe marking the Northeasterly corner of that parcel of land described in the first paragraph of said Imel Land Sale Contract which was also intended to be conveyed therewith; thence South 51° 00' East 247.0 feet along the Easterly boundary line of said parcel of land to a ½ inch iron pipe marking the Southeasterly corner of same; thence South 75° 00' West 630.30 feet along the Southerly boundary line of said parcel of land to a ½ inch iron pipe on the Easterly right of way line of Market Road No. 76; thence Northerly along said Easterly right of way line as follows: along the arc of a 741.20 foot radius curve left, the long chord bears North 16° 18' 15" West 113.32 feet and North 20° 41' 18" West 86.96 feet to the point of beginning.

PARCEL IV

A strip of land 20 feet in width the Western boundary of which is a line originating at the most Northerly Northwest corner of Lot 85, FRIENDS OF OREGON COLONY in Township 6 South, Range 1 East of the Willamette Meridian in Marion County, Oregon, and thence running Southerly along the Westerly boundary line of said Lot 85 a distance of 885 feet to the Southwest corner of said Lot 85, at which point said strip of land fronts Market Road No. 76.

06 1E 22A SCOTT'S MILLS



MARION COUNTY, OREGON
NE1/4 SEC22 T6S R1E W.M.
SCALE 1" = 200'

LEGEND

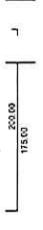
- LINE TYPES**
- Taxlot Boundary
 - Road Right-of-Way
 - Railroad Right-of-Way
 - Private Road ROW
 - Subdivision/Plat Bndry
 - Waterline - Taxlot Bndry
 - Historical Boundary
 - Easement
 - Railroad Centerline
 - Taxcode Line
 - Map Boundary
 - Waterline - Non Bndry

- CORNER TYPES**
- + 1/16TH Section Cor.
 - ⊕ DLC Corner
 - ⊕ 1/4 Section Cor.
 - ⊕ 16, 15 Section Corner
 - ⊕ 21, 22

NUMBERS
Tax Code Number
00 00 0

Acreage All acres listed are Net Acres, excluding any portions of the taxlot within public ROWs
0.28 AC

NOTES
Tick Marks: A tick mark in the road indicates that the labeled dimension extends into the public ROW



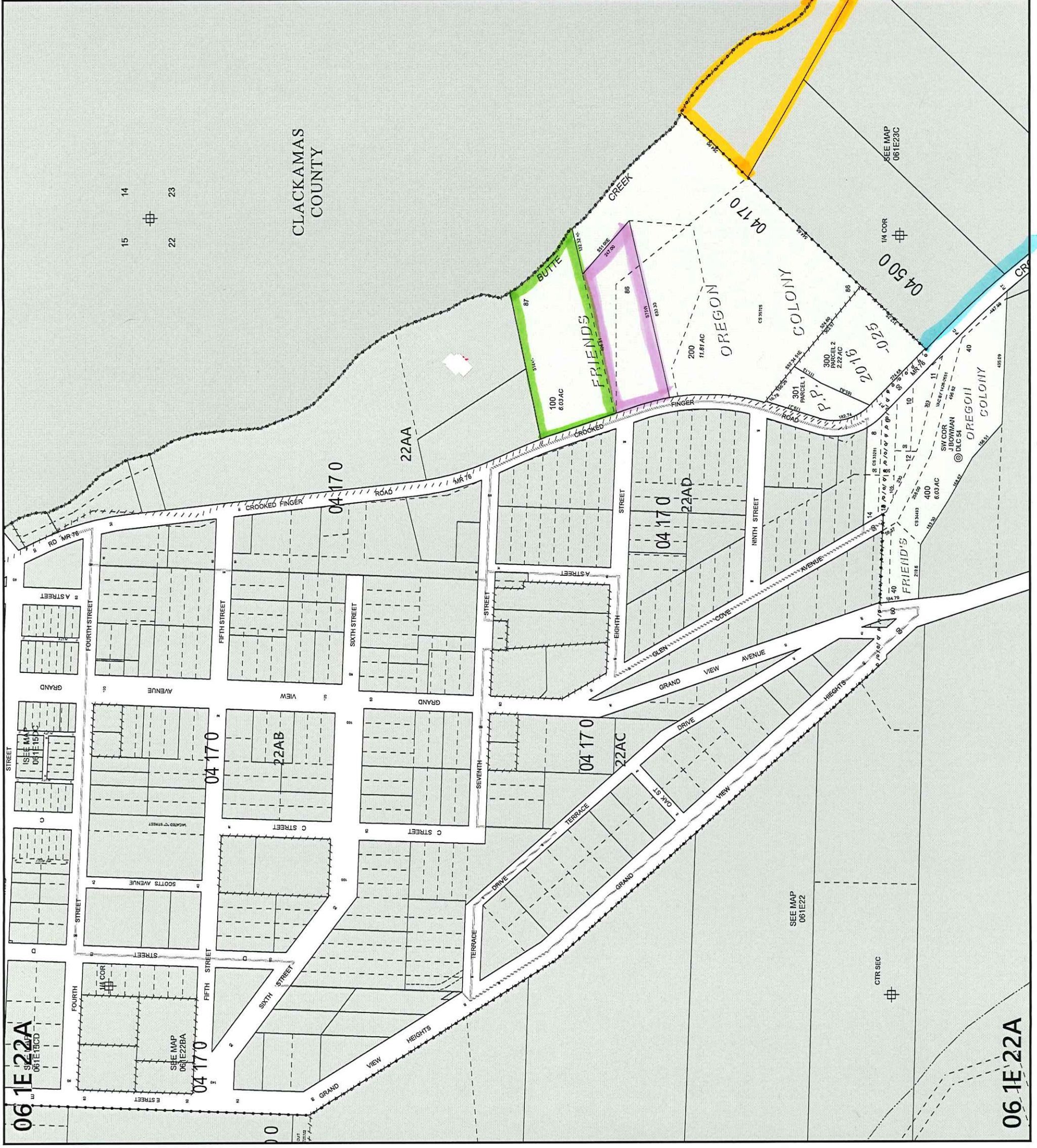
CANCELLED NUMBERS

DISCLAIMER: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY

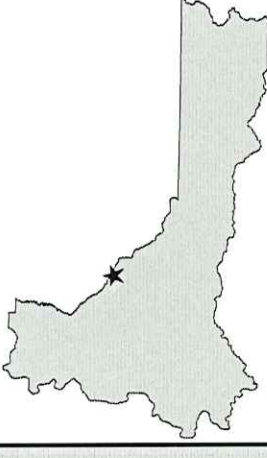


FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT www.co.marion.or.us

PLOT DATE: 6/14/2022
SCOTT'S MILLS
06 1E 22A



06 1E 23C



MARION COUNTY, OREGON
SW 1/4 SEC 23 T6S R1E W.M.
SCALE 1" = 200'

LEGEND

- LINE TYPES**
- Taxlot Boundary
 - Road Right-of-Way
 - Railroad Right-of-Way
 - Private Road ROW
 - Subdivision/Plat Bndry
 - Waterline - Taxlot Bndry
 - Historical Boundary
 - Easement
 - Railroad Centerline
 - Taxcode Line
 - Map Boundary
 - Waterline - Non Bndry

CORNER TYPES

- + 1/16TH Section Cor.
- ⊙ DLC Corner
- ⊕ 1/4 Section Cor.
- ⊕^{16, 15} Section Corner
- ⊕^{21, 22} Section Corner

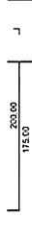
NUMBERS

Tax Code Number
00 00 0

Acresage All acres listed are Net Acres, excluding any portions of the taxlot within public ROWs

NOTES

Tick Marks: A tick mark in the road indicates that the labeled dimension extends into the public ROW



CANCELLED NUMBERS
300

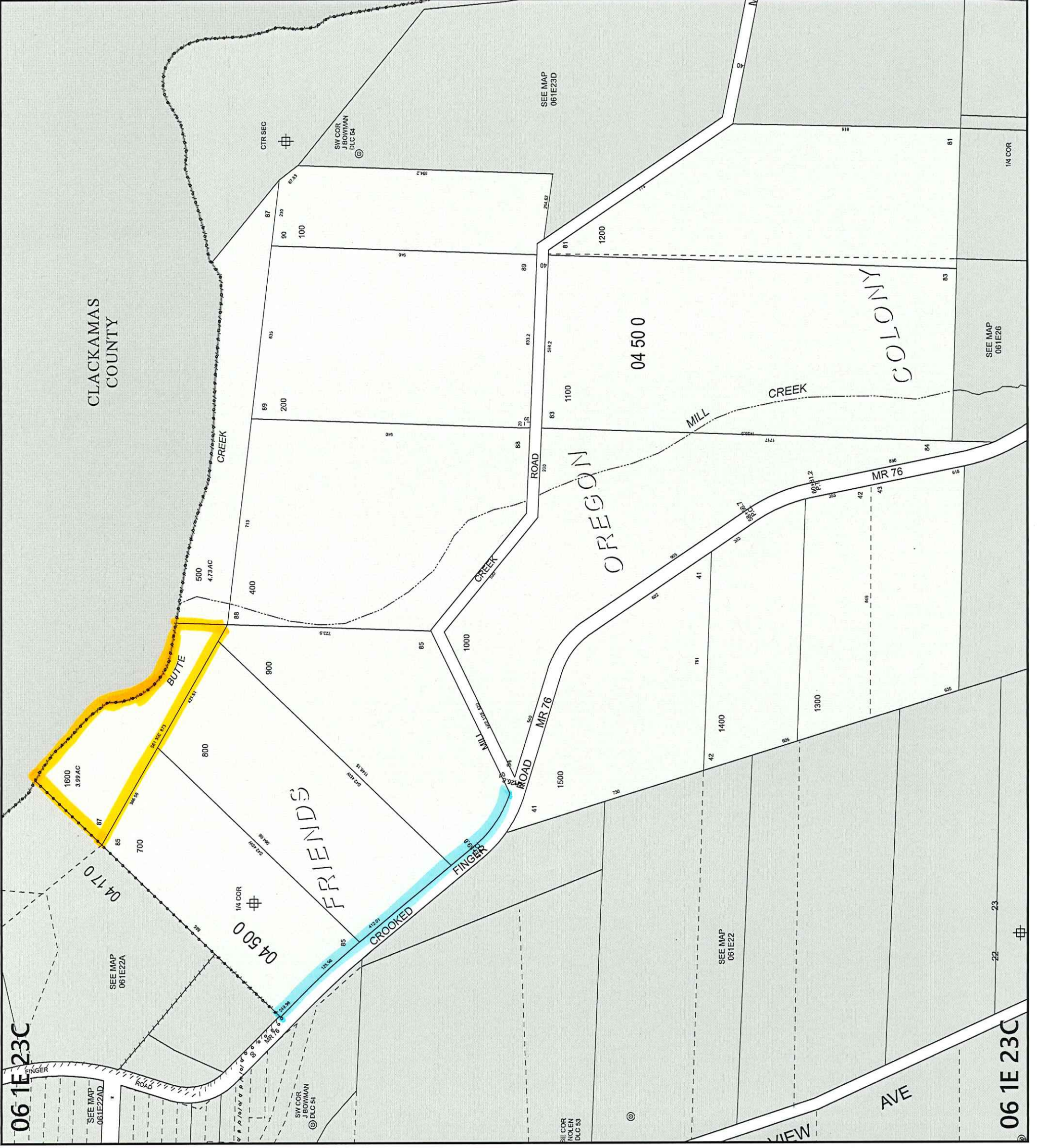
DISCLAIMER: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT www.co.marion.or.us

PLOT DATE: 6/14/2022

06 1E 23C



CLACKAMAS COUNTY

06 1E 23C

06 1E 23C

04 77 0

04 50 0

04 50 0

06 1E 26

SEE MAP 061E22A

SEE MAP 061E22

SEE MAP 061E23D

SW COR J BOYMAN DLC 54

SE COR NOLAN DLC 30

SW COR J BOYMAN DLC 54

CTR SEC

1/4 COR

1/4 COR

1/4 COR

BUTTE

FRIENDS

CROOKED

FINGER

MILL

OREGON

MILL CREEK

COLONY

VIEW AVE

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