



October 24, 2024

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
 Acting as the governing body of Water Environment Services  
 Clackamas County

**Approval of a Resolution of Necessity and Purpose Authorizing the Acquisition of Fee Property by Good Faith Negotiations, if possible, or Condemnation, if necessary, for Upper Kellogg Creek Surface Water Capital Improvement Projects. Funding is through WES Surface Water Construction Fund. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	Presented at Issues – October 22, 2024		
<b>Performance Clackamas</b>	1. This project supports the County’s Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invest in our natural resources. 2. This project supports WES’ Strategic Plan to provide Enterprise Resiliency, infrastructure Strategy and Performance and Operational Optimization.		
<b>Counsel Review</b>	Yes	<b>Procurement Review</b>	Yes
<b>Contact Person</b>	Ron Wierenga	<b>Contact Phone</b>	503-742-4581

**EXECUTIVE SUMMARY:** Clackamas Water Environment Services (WES) has contracted separately, with Board approval, for the design of the Upper Kellogg Creek Surface Water Capital Improvements. WES was allocated \$2.4 million dollars of American Rescue Plan Act (ARPA) funds for the construction of the Upper Kellogg Creek projects, including SE Clackamas Road and Aldercrest Culvert Replacements. Per the ARPA requirements, awarded funds need to be spent by December 31, 2026. In order to construct the necessary improvements as designed, permanent and temporary easements, and fee property acquisitions will be required. The project spans eight private properties. WES has been actively collaborating with four property owners who are committed to the project and have agreed to grant easements to WES. The remaining four parcels where improvements need to be made are vacant undevelopable land, and ownership is not fully clear due to several unrecorded land sale contracts from the 1970s, as noted by the title company.

To ensure timely acquisition in fee of these four vacant parcels and to meet ARPA deadlines, it is essential to approve a Resolution of Necessity (RON) authorizing acquisition of four parcels. Pursuing negotiations without issuing a RON carries the risk of missing critical ARPA milestones. This could potentially

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require restarting negotiations through other means, which would result in construction delays and possible loss of funding for the project.

The WES Board has authority to exercise the power of eminent domain under ORS Chapter 451, ORS Chapter 190, and ORS Chapter 35 to acquire the needed fee property by purchase or condemnation proceedings. In accordance with the procedure set forth in ORS Chapter 35, a RON is required before offers are made.

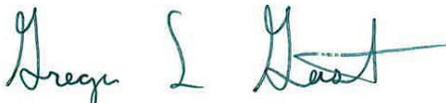
WES will negotiate in good faith and in accordance with all applicable laws, rules, and regulations in an attempt to reach agreement as to the amount of just compensation owed each affected property owner. To fairly determine the amount of just compensation, staff will utilize the expertise of authorized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

The resolution directs WES 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.

In the event that the negotiations are unsuccessful, the resolution further requires the WES Director 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 on behalf of WES.

**RECOMMENDATION:** Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve the Resolution of Necessity and Purpose authorizing the acquisition of fee property by good faith negotiation if possible, or condemnation, if necessary.

Respectfully submitted,



Greg Geist  
Director, WES

Attachment: Resolution of Necessity

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

In the Matter of Declaring the Necessity and Purpose for Acquisition of Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions by Water Environment Services for the Upper Kellogg Creek Capital Improvements Project



Resolution No. \_\_\_\_\_

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This matter comes before the Clackamas County Board of County Commissioners, acting as the governing body of Water Environment Services (the “Board”), at its regularly scheduled meeting on October 24, 2024;

It appearing to the Board that the Upper Kellogg Creek Capital Improvements Project (“the Project”) will improve the piped stormwater system and the drainage capacity of the Upper Kellogg Creek channel to prevent chronic drainage and water quality issues; is consistent with the powers and purposes of Water Environment Services (“District”); and is necessary for public use and the continued growth, safety and welfare of the community;

It further appearing that the Board has the responsibility of providing sufficient wastewater infrastructure for protecting public health, stewardship of healthy watersheds, and water resource recovery;

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

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;

It further appearing to the Board that fee property acquisitions on tax lots 22E08CB00121, 22E08CB00123, 22E08CB00122, and 22E08BC04309, further described in Exhibit A, Exhibit B, Exhibit C, and Exhibit D (the “Exhibits”) attached and incorporated herein, are a necessary part of the Project;

It further appearing that the Board has authority under ORS Chapter 451, ORS Chapter 190, 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 District, in connection with this Project, begin the acquisition process, in accordance with all applicable laws, rules, and regulations governing such process, for the necessary fee property, either through good faith negotiation, agreement, and purchase, or, if necessary, by commencement of condemnation proceedings.

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IT IS FURTHER RESOLVED THAT:

1) The District 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 District 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 District Director (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 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 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 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 Clackamas County and take such other steps as it determines necessary for the immediate possession of required 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

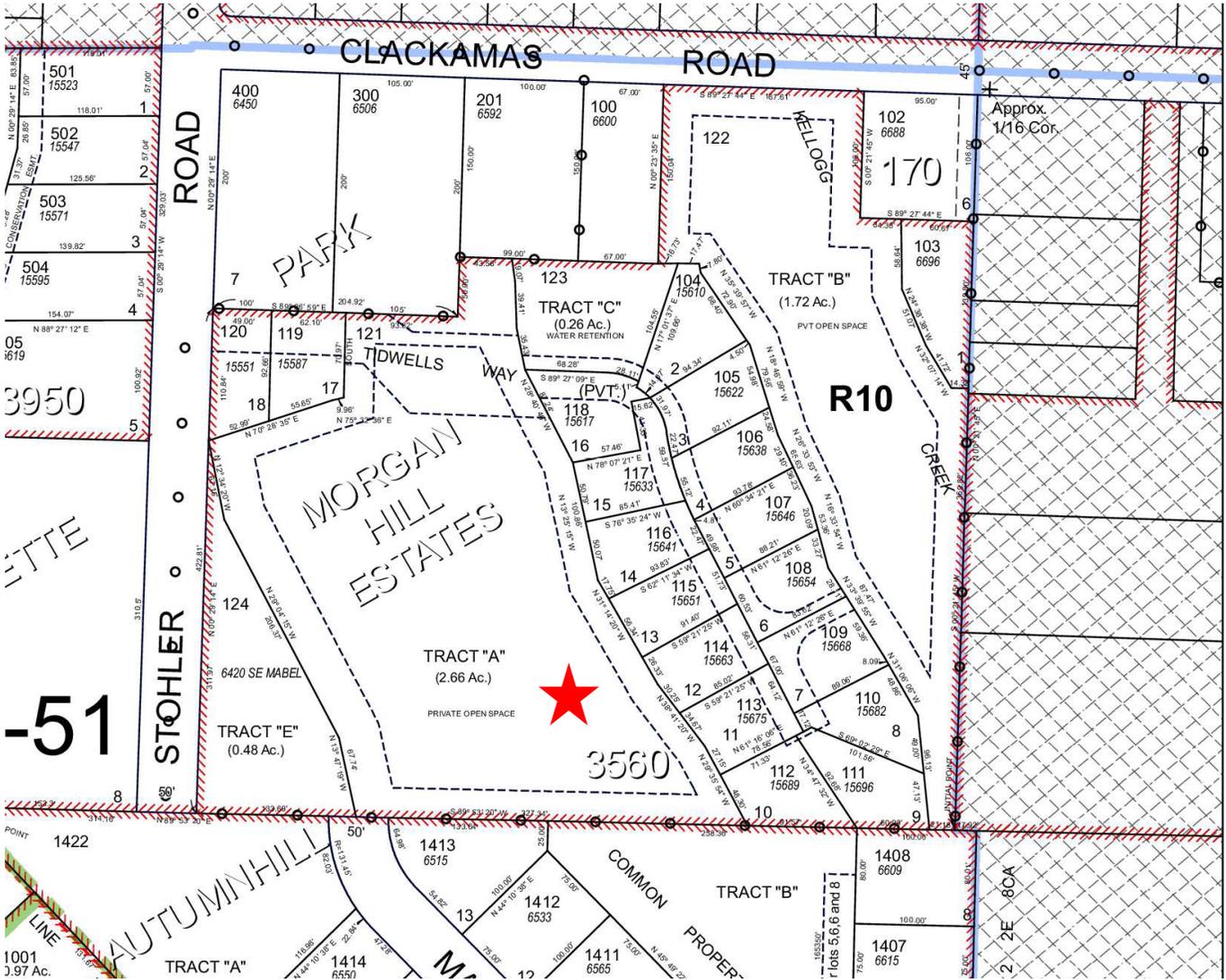
\_\_\_\_\_  
Recording Secretary

# EXHIBIT "A"

Tax Lot 22E08CB00121

Legal Description

Tract "A", MORGAN HILL ESTATES, a subdivision of a portion of Lots 6 & 7, "Willamette Park" in the N.W. ¼, Section 8, T.2S., R.2E., Willamette Meridian, in the County of Clackamas and State of Oregon.



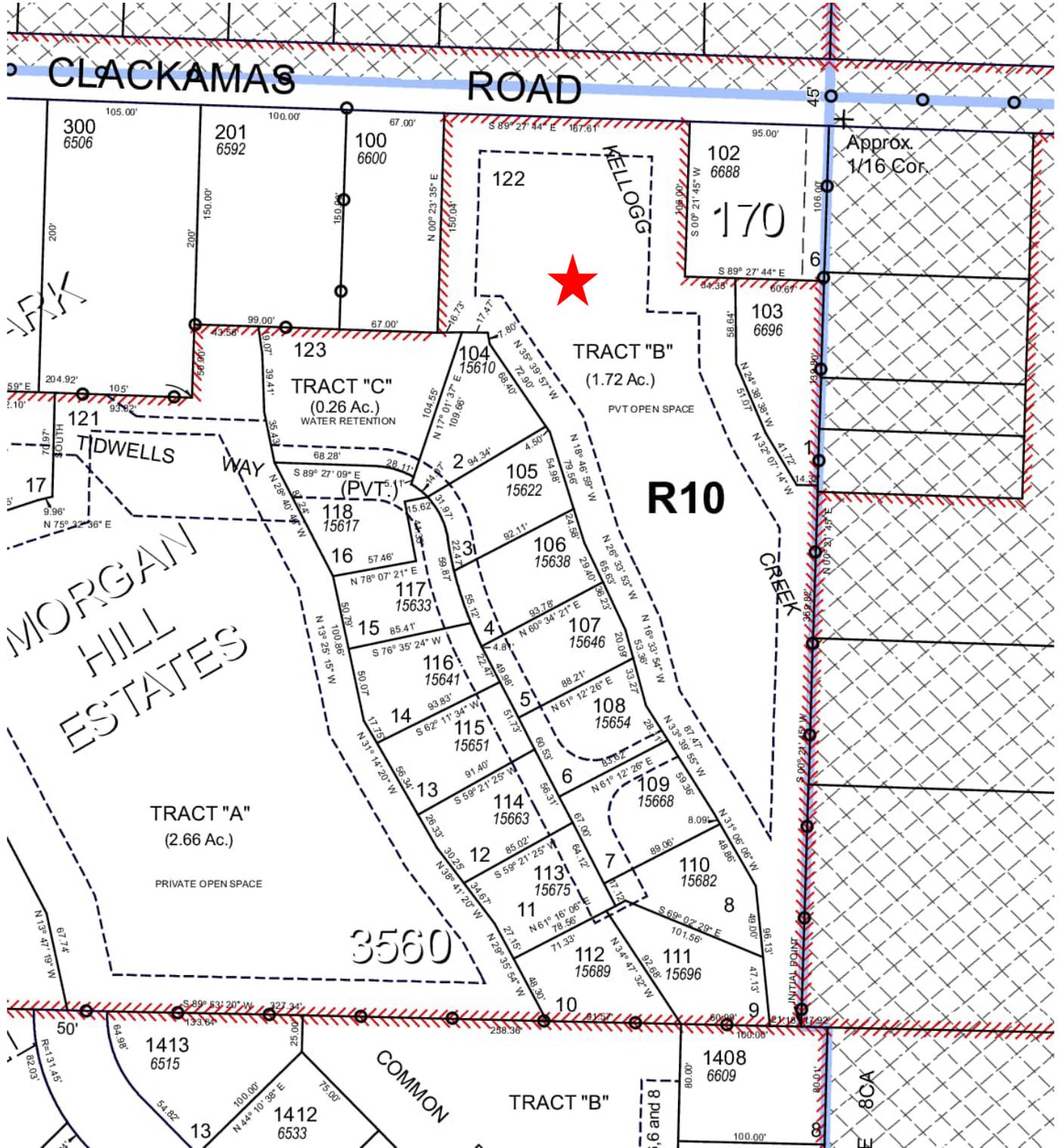


# EXHIBIT "C"

Tax Lot 22E08CB00122

Legal Description

Tract "B", MORGAN HILL ESTATES, a subdivision of a portion of Lots 6 & 7, "Willamette Park" in the N.W. ¼, Section 8, T.2S., R.2E., Willamette Meridian, in the County of Clackamas and State of Oregon.



# EXHIBIT "D"

Tax Lot 22E08BC04309  
Legal Description

Tract A, WILDERNESS ESTATES, in the N.W. ¼, Section 8, T.2S., R.2E., W.M., in the County of Clackamas and State of Oregon.

