



City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Meeting Agenda Urban Renewal Commission

Wednesday, December 19, 2018

6:00 PM

Commission Chambers

REVISED

1. **Call to Order and Roll Call**
2. **Citizen Comments**
3. **Adoption of the Agenda**
4. **General Business**
- 4a. [18-603](#) The Cove Disposition and Development Agreement - Approval of the Restoration Easement and Terms of a Restoration Agreement
 - Sponsors:** Economic Development Manager Eric Underwood
 - Attachments:** [Staff Report](#)
[Letter of Interest](#)
[Habitat Restoration Easement](#)
[Exhibit A - Lot 1 Easement Area Map](#)
5. **Future Agenda Items**
6. **City Manager's Report**
7. **Adjournment**

Public Comments: The following guidelines are given for citizens presenting information or raising issues relevant to the City but not listed on the agenda.

- *Complete a Comment Card prior to the meeting and submit it to the staff member.*
- *When the Chair calls your name, proceed to the speaker table and state your name and city of residence into the microphone.*
- *Each speaker is given 3 minutes to speak. To assist in tracking your speaking time, refer to the timer at the dais.*
- *As a general practice, Oregon City Officers do not engage in discussion with those making comments.*

Agenda Posted at City Hall, Pioneer Community Center, Library, and City Web site(oregon-city.legistar.com).

Video Streaming & Broadcasts: The meeting is streamed live on Oregon City's Web site at www.orcity.org

and is available on demand following the meeting.

ADA: City Hall is wheelchair accessible with entry ramps and handicapped parking located on the east side of the building. Hearing devices may be requested from the City staff member prior to the meeting. Disabled individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503-657-0891.



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Staff Report

File Number: 18-603

Agenda Date: 12/19/2018

Status: Agenda Ready

To: Urban Renewal Commission

Agenda #: 4a.

From: Economic Development Manager Eric Underwood

File Type: Report

SUBJECT:

The Cove Disposition and Development Agreement - Approval of the Restoration Easement and Terms of a Restoration Agreement

RECOMMENDED ACTION (Motion):

Staff recommends that the Urban Renewal Commission Approve the Restoration Easement and Terms of a Restoration Agreement Associated with the Cove Disposition and Development Agreement

BACKGROUND:

As per The Cove Disposition and Development Agreement (DDA), the developer has the right to acquire Lot 1 and Tract A as additional property for potential development. Lot 1 is located within the habitat restoration study area of the Cove property; therefore, a portion of the property must be reserved through an easement for habitat restoration. Section 10 of the DDA ensures that an area of Lot 1 will be reserved for habitat restoration by requiring certain preconditions prior to the developer exercising the option to acquire both Lot 1 and Tract A. The preconditions, as stated in the DDA, are as follows:

- (i) Developer and the Commission have agreed upon a restoration consultant pursuant to Section 8.2 - Habitat Restoration & Water Quality (attached);
- (ii) Developer and the Commission have agreed upon the terms of the Restoration Agreement with the selected consultant;
- (iii) Developer and the Commission have agreed upon the terms of an easement covering a strip along the bank of Lot 1 along Clackamette Cove approximately 100 feet upland, which will give the right to do restoration work under the Restoration Agreement and allow access to the Commission before, during, and after the restoration work for such purposes of inspection and passage.

Staff has prepared a map (attached) identifying Lot 1 and the proposed 100' easement, the habitat restoration study area, the sites identified for potential development and the lots marked for eminent development. Easement language has also been prepared for the Commission's consideration (attached). The developer has previously reviewed and is in agreement with the map and easement language as proposed. Approval of these documents by the Commission will satisfy precondition (iii) mentioned above and will allow staff to proceed with recording the easement for habitat restoration purposes.

In addition, a letter of interest (LOI) from the potential restoration consultant, RestorCap, outlines the terms of an agreement to create a Federally approved mitigation bank is also being submitted for the Commission's consideration. The letter addresses the following:

* Mitigation Bank - briefly explains how the mitigation bank can be beneficial to Oregon City and describes the three mitigation markets that are available. These markets are indicated as (1) Wetlands and Waters of the U.S.; (2) Natural Resources and Damages Assessment; and (3) Endangered Species Conservation.

* Price/Appraisal - RestorCap will, at its expense, commission an appraisal of the Property, which will be approved by the City/Urban Renewal Commission prior to commissioning.

* Diligence Contingency - This allows a sufficient time period for RestorCap to conduct due diligence on the property prior to moving forward with the property transaction.

* Non-Binding proposal; Preparation of Transaction Documents - States that the terms mentioned in the LOI are non-binding and that the proposal is contingent upon an opportunity to perform significant diligence of the Property in order to further negotiate and execute an agreement with associated documentation.

* Exclusivity - States that the City will not offer to sell or lease the Property within 12 months following the effective date of the LOI without prior written consent of RestorCap.

* Access - Allows RestorCap and its representatives to conduct due diligence on the property, consider the potential of a mitigation/habitat restoration project on the Property and consider preliminary feasibility with the credit market that might include other agencies including government and industrial.

Approval of the LOI will satisfy preconditions (i) and (ii) mentioned above and will allow the parties to move forward in structuring a final restoration agreement that will include the approved terms.



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BACKGROUND:

As per The Cove Disposition and Development Agreement (DDA), the developer has the right to acquire Lot 1 and Tract A as additional property for potential development. Lot 1 is located within the habitat restoration study area of the Cove property; therefore, a portion of the property must be reserved through an easement for habitat restoration. Section 10 of the DDA ensures that an area of Lot 1 will be reserved for habitat restoration by requiring certain preconditions prior to the developer exercising the option to acquire both Lot 1 and Tract A. The preconditions, as stated in the DDA, are as follows:

- (i) Developer and the Commission have agreed upon a restoration consultant pursuant to Section 8.2 - Habitat Restoration & Water Quality (attached);
- (ii) Developer and the Commission have agreed upon the terms of the Restoration Agreement with the selected consultant;
- (iii) Developer and the Commission have agreed upon the terms of an easement covering a strip along the bank of Lot 1 along Clackamette Cove approximately 100 feet upland, which will give the right to do restoration work under the Restoration Agreement and allow access to the Commission before, during, and after the restoration work for such purposes of inspection and passage.

Staff has prepared a map (attached) identifying Lot 1 and the proposed 100' easement, the habitat restoration study area, the sites identified for potential development and the lots marked for eminent development. Easement language has also been prepared for the Commission's consideration (attached). The developer has previously reviewed and is in agreement with the map and easement language as proposed. Approval of these documents by the Commission will satisfy precondition (iii) mentioned above and will allow staff to proceed with recording the easement for habitat restoration purposes.

In addition, a letter of interest (LOI) from the potential restoration consultant, RestorCap, outlines the terms of an agreement to create a Federally approved mitigation bank is also being submitted for the Commission's consideration. The letter addresses the following:

* Mitigation Bank - briefly explains how the mitigation bank can be beneficial to Oregon City and describes the three mitigation markets that are available. These markets are indicated as (1) Wetlands and Waters of the U.S.; (2) Natural Resources and Damages Assessment; and (3) Endangered Species Conservation.

* Price/Appraisal - RestorCap will, at its expense, commission an appraisal of the Property, which will be approved by the City/Urban Renewal Commission prior to commissioning.

* Diligence Contingency - This allows a sufficient time period for RestorCap to conduct due diligence on the property prior to moving forward with the property transaction.

* Non-Binding proposal; Preparation of Transaction Documents - States that the terms mentioned in the LOI are non-binding and that the proposal is contingent upon an opportunity to perform significant diligence of the Property in order to further negotiate and execute an agreement with associated documentation.

* Exclusivity - States that the City will not offer to sell or lease the Property within 12 months following the effective date of the LOI without prior written consent of RestorCap.

* Access - Allows RestorCap and its representatives to conduct due diligence on the property, consider the potential of a mitigation/habitat restoration project on the Property and consider preliminary feasibility with the credit market that might include other agencies including government and industrial.

Approval of the LOI will satisfy preconditions (i) and (ii) mentioned above and will allow the parties to move forward in structuring a final restoration agreement that will include the approved terms.



LETTER OF INTEREST

April 16, 2018

City of Oregon City
625 Center Street
Oregon City, OR 97045

Attention: Mr. Dan Holladay, Mayor; Tony Konkol, City Manager; J. David Mooney, The Cove LLC

Re: Mitigation Bank, Clackemette Cove

Dear Sirs:

RestorCap, LLC is pleased to present this non-binding Letter of Interest (LOI) to secure through lease or purchase Oregon City (City) owned land adjacent to Clackemette Cove (Cove) for the purposes of creating a federally approved mitigation bank. This LOI for discussion purposes only and does not constitute an agreement or commitment of any person or party to negotiate, enter into or consummate any transaction, including the transaction contemplated hereby. This proposal is only a statement of the current intentions of the parties to the transaction contemplated hereby, and is merely intended to serve as a general outline of the significant terms under which the parties would be willing to consider entering into an agreement after further diligence.

Mitigation Bank

In the lower Willamette there are three primary mitigation markets in place or in development, including: 1) Wetlands and waters of the U.S.; 2) Natural Resources Damages Assessment (NRDA); and 3) endangered species conservation. Each of these markets could be available to a mitigation bank in the Cove because of its location. Developing a mitigation bank in the Cove could provide both restored habitat and revenue over time. Developing a bank in the Cove would entail upfront costs to engage state and federal agencies to design, permit, and construct the bank. The primary agencies that regulate banks are the Oregon Department of State Lands, and the Corps of Engineers (wetland mitigation) and/or NMFS and U.S. Fish and Wildlife (NRDA and conservation banking). The Oregon Department of Fish and Wildlife (ODFW), local tribes, Oregon Department of Environmental Quality, and local governments also serve in an advisory role for mitigation bank development.



Price/Appraisal

RestorCap will, at its expense, commission an appraisal of the Property which will be approved by City prior to such commissioning.

The appraised value may be used as a basis as a lease or purchase price, subject to the approval of both Parties and by the suitability of the property to produce a viable mitigation bank. RestorCap may develop a proposal whereby profit sharing among RestorCap, the City, and The Cove, LLC is possible.

Diligence Contingency

Before moving forward to definitive documentation for the transaction, RestorCap will have a sufficient time period to conduct due diligence on the Property. RestorCap's diligence may include, without limitation, determination of the suitability of the Property for use as a mitigation/habitat restoration site, RestorCap's review and approval of the entitlement, permitting and condition of the Property and of such financial, physical, engineering, environmental, geological and other audits, studies, reports, surveys physical inspections and investigations of the property which RestorCap desires. City will cooperate with RestorCap to provide any necessary information to complete such due diligence.

**Non-Binding Proposal;
Preparation of Transaction
Documents**

This proposal is contingent upon, among other things, an opportunity to perform significant diligence of the Property and the negotiation and execution of satisfactory definitive documentation. Except for the Exclusivity and Access paragraphs below, these terms do not constitute any form of binding contract but rather are solely for the purpose of outlining those terms pursuant to which a definitive agreement may ultimately be entered into. Notwithstanding the foregoing, the parties agree to negotiate the definitive transaction documents in good faith and use their commercially reasonable efforts to enter in to agreements as soon as reasonably possible. The



definitive transaction documents will incorporate all of the terms set forth in this proposal and such additional terms as RestorCap or City may reasonably require.

Exclusivity

From and after acceptance of this letter, and until twelve (12) months following the date of this letter, City will not offer to sell or lease the Property to any other party or accept any offers related to the Property without the prior written consent of RestorCap.

Access

City authorizes RestorCap and its representatives to: (a) enter the Property to conduct due diligence, subject to 24 hour prior notice provided by RestorCap; (b) discuss the potential use of the Property as a mitigation/habitat restoration project with appropriate agencies for permits and approvals including but not limited to the Portland Harbor Trustee Council, the Army Corps of Engineers, Oregon State Department of Natural Resources, (c) discuss preliminary feasibility with the credit market that may include industrial and governmental agencies.

ACKNOWLEDGED AND AGREED:

Dated:

RESTORCAP LLC

By: _____

Name:

Title:

THE COVE LLC

By: _____

Name:

Title:

Oregon City

By: _____

Name:

Title:



**HABITAT RESTORATION
EASEMENT**

Dated: December 19, 2018

From: THE COVE, LLC
an Oregon limited liability company ("Grantor")

In Favor of: URBAN RENEWAL AGENCY for
the City of Oregon City ("Grantee")

WHEREAS, Grantor owns the real property described as Lot 1, CLACKAMETTE COVE per plat recorded December 15, 2009 as Plat No. 4289, Document No. 2009-86084, Official Records of Clackamas County, Oregon ("Lot 1").

WHEREAS, Grantor and Grantee are considering entering into an agreement to restore habitat along the banks of Clackamette Cove, including Lot 1 (the "Restoration Agreement") with a consultant to be jointly selected by Grantor and Grantee (the "Consultant").

NOW, THEREFORE, in consideration of the payment of \$10.00 by Grantee to Grantor, Grantor grants to Grantee a permanent and non-exclusive easement on and over that portion of Lot 1 described on attached **Exhibit A** (the "Easement Area"), on the following terms and conditions.

1. Grantor shall not construct any improvement on the Easement Area, install any utilities within the Easement Area nor conduct any work or activity on the Easement Area that would interfere with the use of the Easement Area by Grantee or Consultant pursuant to this Habitat Restoration Easement and/or the Restoration Agreement, without Grantee's prior consent which may or may not be given by Grantee in its reasonable discretion. Nothing herein shall restrict Grantor's use of Lot 1 outside the Easement Area.

2. Grantee shall use the Easement Area for the following purposes: (a) to allow Consultant to evaluate the Easement Area for habitat restoration and to create a habitat restoration area thereon pursuant to the Restoration Agreement; (b) to maintain the habitat restoration area; and (c) to enter onto and pass across the Easement Area to inspect the habitat restoration area. Without limiting the generality of the above description, Grantee and Consultant and their respective agents and employees may study, remove materials and vegetation, plant new vegetation, conduct earthwork, construct paths and walkways and do all other acts appropriate for the creation and operation of a habitat restoration area on and within the Easement Area, in a manner consistent with the Restoration Agreement.

3. The term of this Habitat Restoration Easement is perpetual.

4. Grantor represents and warrants to Grantee that it holds fee simple title to Lot 1 and the Easement Area, subject to all liens, encumbrances and exceptions of record.

5. Grantee shall defend, indemnify and hold Grantor harmless from and against any claims, losses, liabilities, damages, costs or expenses (including reasonable attorney fees) arising out of or related to entry onto Lot 1 by or on behalf of Grantee pursuant to this instrument.

6. This Habitat Restoration Easement shall run with the land and the rights and obligations hereunder shall inure to the benefit of and be binding upon the personal representatives, successors and assigns of Grantor.

7. This Habitat Restoration Easement may be executed in counterparts.

8. Nothing contained in this instrument shall be deemed a grant, gift or dedication of any portion of Lot 1 to the general public or to grant public access to the Easement Area.

IN WITNESS WHEREOF, the parties have exercised and delivered this Habitat Restoration Easement to be effective on the date first set forth above.

GRANTOR: THE COVE LLC,
an Oregon limited liability company

By: _____
Its: _____

GRANTEE: URBAN RENEWAL AGENCY
FOR THE CITY OF OREGON CITY

By: _____
Its: _____

STATE OF OREGON :
:SS.
COUNTY OF _____ :

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____ of The Cove LLC, an Oregon limited liability company, on behalf of the limited liability company.

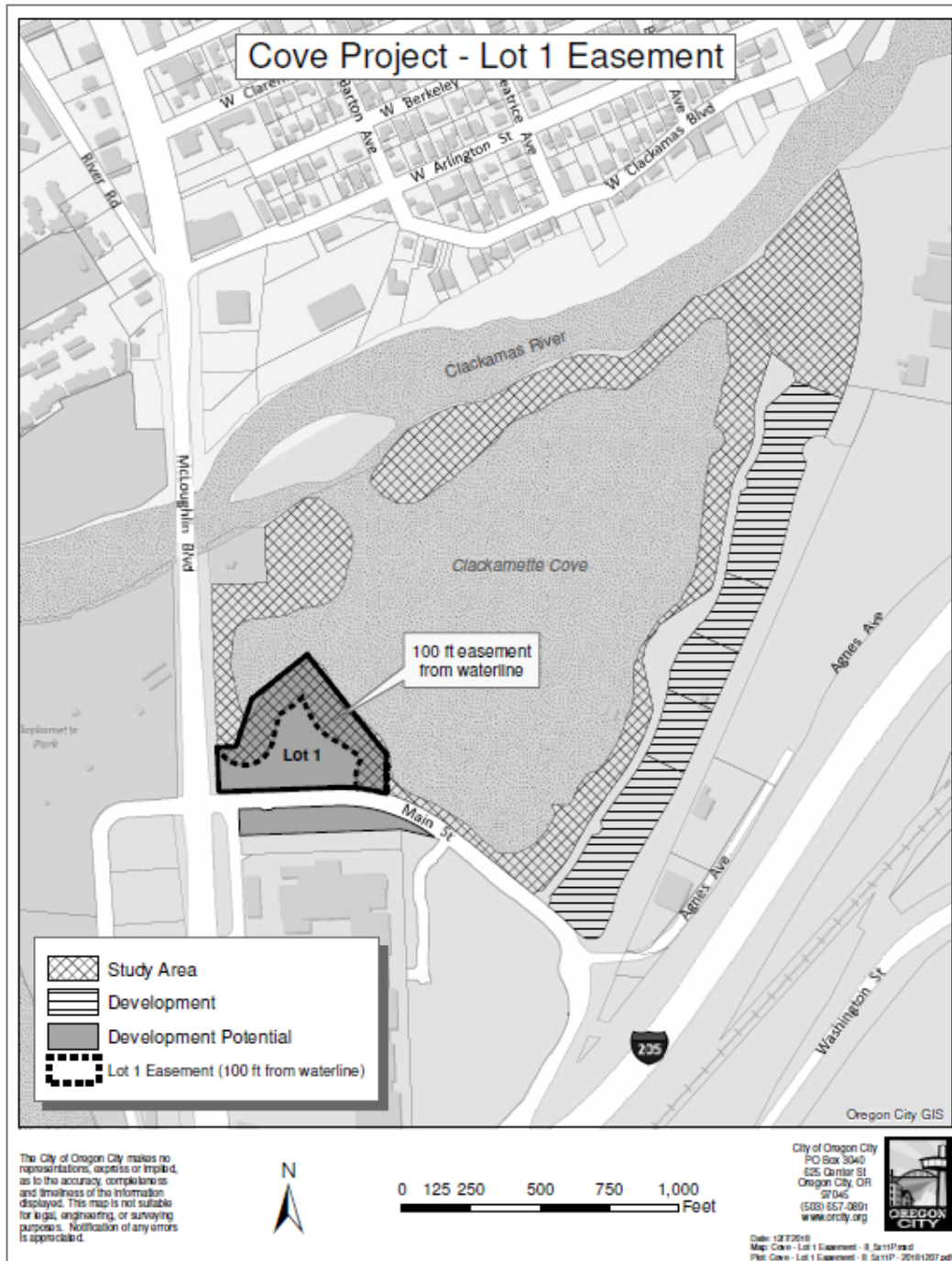
Notary Public for Oregon
Printed Name: _____
My Commission Expires: _____

STATE OF OREGON :
:SS.
COUNTY OF _____ :

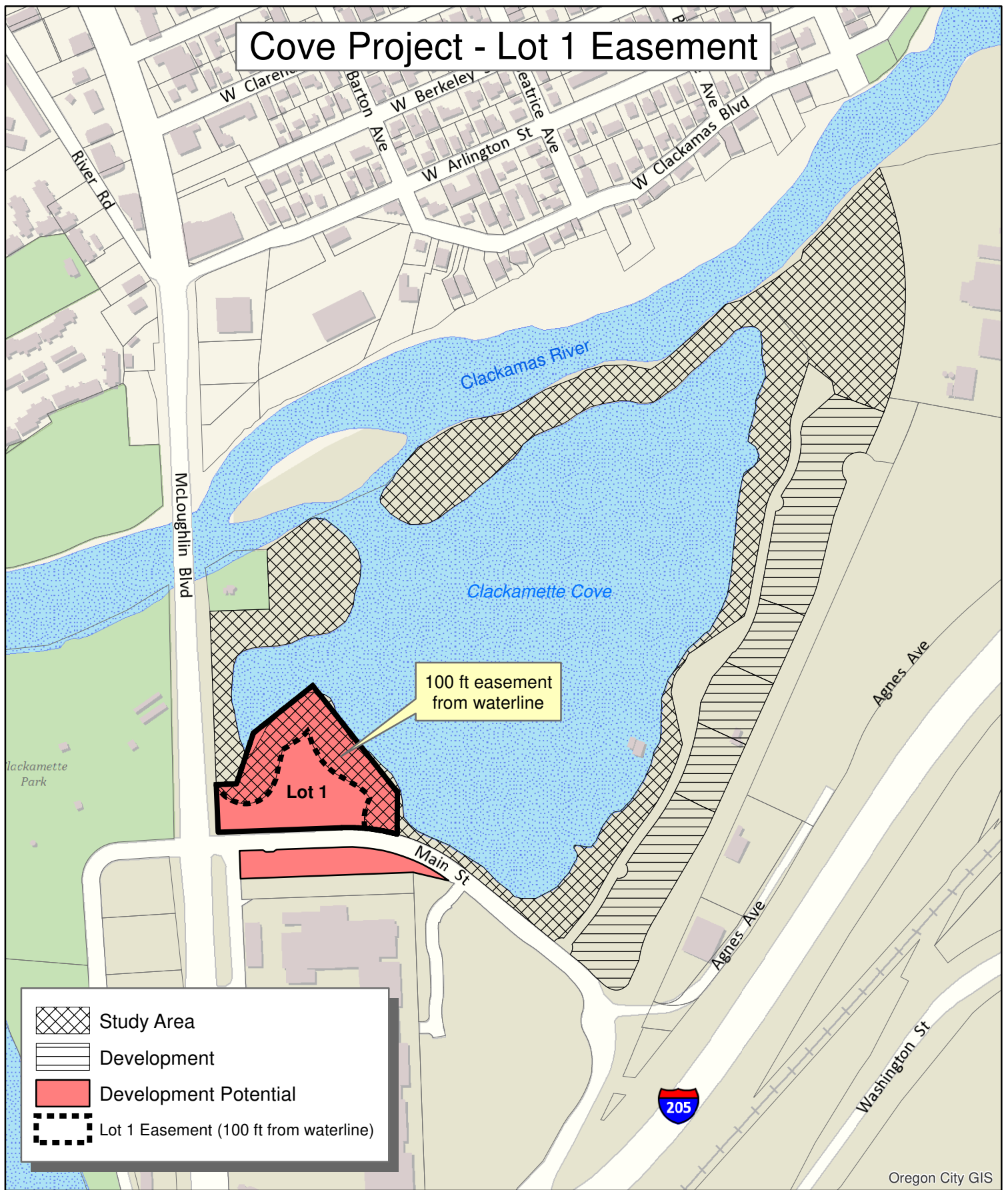
The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, of Urban Renewal Agency for the City of Oregon City, a[n] _____ corporation, on behalf of the corporation.





Notary Public for Oregon
Printed Name: _____
My Commission Expires: _____

Exhibit A Easement Area



Cove Project - Lot 1 Easement



-  Study Area
-  Development
-  Development Potential
-  Lot 1 Easement (100 ft from waterline)

The City of Oregon City makes no representations, express or implied, as to the accuracy, completeness and timeliness of the information displayed. This map is not suitable for legal, engineering, or surveying purposes. Notification of any errors is appreciated.



0 125 250 500 750 1,000 Feet

City of Oregon City
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97045
(503) 657-0891
www.oregocity.org



Date: 12/7/2018
Map: Cove - Lot 1 Easement - 8_5x11P.mxd
Plot: Cove - Lot 1 Easement - 8_5x11P - 20181207.pdf

Oregon City GIS