

ORDER NO. 18 317

ENTERED AUG 28 2018

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 402

In the Matter of

GOVERNMENT CAMP WATER
COMPANY,

Application for Approval of an Affiliated
Interest Contract Application with Lesli Ann
Bekins.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on August 28, 2018, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



A handwritten signature in blue ink, appearing to read "Michael Grant", is written over a horizontal line.

Michael Grant

Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT**

PUBLIC MEETING DATE: August 28, 2018

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A

DATE: August 21, 2018

TO: Public Utility Commission

FROM: Malia Brock MB

THROUGH: Jason Eisdorfer, Bryan Conway, and Bruce Hellebuyck BK

SUBJECT: GOVERNMENT CAMP WATER COMPANY: (Docket No. UI 402)
Requests approval of an Affiliated Interest Agreement with
Lesli Ann Bekins and Waiver of OAR 860-036-2230(2)(e) and
OAR 860-032-2210(2). (Storage)

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve Government Camp Water Company's (Government Camp or Company) affiliated interest agreement (Agreement) with Lesli Ann Bekins for the lease of real property used for indoor and outdoor storage, subject to the following conditions:

1. The Company will provide the Commission access to all books of account as well as all documents, data, and records that pertain to any payments to Ms. Bekins.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of this transaction in any rate proceedings or alternative form of regulation.
3. The Company will notify the Commission in advance of any substantive changes to the Agreement, including any material change in price over the \$12,000 annual contract price approved as the result of adopting Staff's recommendation here. Any such changes shall be submitted in an application for a supplemental order (or other appropriate format) in this docket.
4. If extended beyond its initial term, the Agreement shall not include automatic increases in price for subsequent lease terms without Commission approval.

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DISCUSSION:

Issue

Whether the Commission should approve the affiliated interest contract with Lesli Ann Bekins and waive OAR 860-036-2230(2)(e) and OAR 806-036-2210(2).

Applicable Law

A corporation or person has an "affiliated interest" with a public utility when it owns or holds, directly or indirectly, at least five percent of the voting securities of that public utility, or is an officer or director of such public utility. See ORS 757.015(1), (4). When a public utility enters into a contract with an affiliated interest, it must seek Commission approval of the contract within 90 days of execution of the contract. See ORS 757.495(1), (2); OAR 860-036-2210(2). A contract is deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier. See ORS 757.495.

Under OAR 860-036-2230(2)(e), when services or supplies are sold to a water utility by an affiliate, sales must be recorded in the water utility's accounts at the affiliate's cost or the market rate, whichever is lower. Under that rule, the affiliate's cost must be calculated using the water utility's most recently authorized rate of return.

The Commission reviews affiliated interest agreements and will only approve them if the terms are fair and reasonable and not contrary to the public interest. See ORS 757.495(3). However, the Commission need not determine the reasonableness of all financial aspects of the agreement for ratemaking purposes, and may reserve that issue for subsequent proceedings. See Order No. 11-071 (Docket No. UI 306).

Under OAR 860-036-1000(3), the Commission may waive any of its water division rules upon a written request and good cause shown.

Analysis

Background

This docket concerns an affiliated interest agreement in the form of Government Camp's lease of real property from Ms. Bekins, the Company's Secretary and owner,¹ for use as indoor and outdoor storage.

¹ The transfer of all shares of the Company from Maryanne Hill, its prior owner, to Ms. Bekins, the owner identified in the Company's filing in this docket, is the subject of Docket No. UP 375.

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The Agreement first came to Staff's attention in the Company's rate case that is currently pending in Docket No. UW 174, which was filed on December 29, 2017. After Staff notified the Company that the Agreement would require Commission approval, the Company filed an application for Commission approval of the Agreement in Docket No. UI 399 on March 30, 2018. After Staff notified the Company that its filing did not contain information regarding the affiliate's costs, as required by the application, the Company withdrew that filing. The Company subsequently filed this revised version of the application in Docket No. UI 402 on June 5, 2018.²

The Company is a small family investor owned, rate and service regulated water utility that provides water to an unincorporated area in Government Camp, Oregon. It provides water service to approximately 660 homes and businesses, approximately 190-260 of which are permanent residents. Customers include permanent and part-time residents, multi-family condominium complexes and home owner associations, and snow resorts.

The barn and utility storage lot that is the subject of the Agreement is owned by the Company's Secretary, Ms. Bekins (who is also identified by the Company as its Owner, pending the outcome of Docket No. UP 375). It is used by the Company to store utility material and equipment, including a snow cat, water operational equipment, and tools in Government Camp for use in the daily operations of the water system.

Staff reviewed the Agreement, issued nine information requests, and did a site visit to the real property in the course of investigating the following issues:

1. Terms and Conditions of the Agreement;
2. Waiver of OAR 860-036-2210(2);
3. Transfer Pricing, including Waiver of OAR 860-036-2230(2)(e);
4. Public Interest Compliance; and
5. Records Availability, Audit Provisions, and Reporting Requirements

1. Terms and Conditions of the Agreement

Staff reviewed the Agreement between the Company and Ms. Bekins. While the Agreement appears to be fairly similar to other property rental agreements typically used by water utilities, it includes several terms of concern to Staff.

² At the same time, the Company filed an application for approval of the transfer of all company stock to Ms. Bekins (Docket No. UP 375) and two additional affiliated interest agreements (Docket Nos. UI 403 and UI 404). At the Company's request, the extension period for its currently pending rate case was extended to accommodate these filings. See Order Nos. 18-179 (Docket No. UW 174).

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Rent and Annual Rent Increases. The Agreement states the tenant will pay a monthly rent of \$1,000, or \$12,000 total, for the year of 2018. The initial term of the Agreement is one year, with payment due monthly for each month the Agreement is in effect.³ The Company, as the tenant, has a right of first refusal to extend the Agreement for additional one-year terms, which it may exercise by giving written notice to Ms. Bekins.⁴ During any such subsequent extension of the term of the Agreement, the Agreement states that the monthly rent payments shall be adjusted with a 2 percent increase over and above the previous year's rent, with no cap. Staff's analysis and recommendations regarding the rent and rent increases are discussed below, in connection with pricing.

Property Tax Payments. The Agreement also requires the Company, as tenant, to pay the annual property tax for the leased premises directly to the taxing entity.⁵ This requirement is described as a part of rent. The property taxes paid on the property in 2016 were \$1,200.32.⁶ Staff's analysis and recommendations regarding the property tax provision of the Agreement are discussed below, in connection with pricing.

Utilities. The Agreement also states that while the utilities remain in the name of the landlord, they are considered the responsibility of the tenant and will be forwarded to the tenant for payment.⁷ Staff takes no issue with the provision requiring the Company, as tenant, to pay for utilities used on the property, as the Company appeared on visual inspection to have near-exclusive use of the property.

2. Waiver of OAR 860-036-2210(2)

The Agreement was signed on March 30, 2018, but the effective date stated in the Agreement is January 1, 2018. Because the parties began transacting according to the Agreement as of January 1, 2018, the date of execution of the Agreement for the purposes of ORS 757.495(2) and OAR 860-036-2210(2) is January 1, 2018.

Both the statute and rule require a contract to be filed with the Commission no later than 90 calendar days after its date of execution. The Company initially filed the agreement on March 30, 2018, at the end of the 90-day period. That application was incomplete, due to a lack of cost information, which is necessary information to inform the Commission's full consideration of the Agreement. The subsequent application, filed on June 5, 2018, was filed after the 90-day window had closed.

Staff recommends that the Commission waive OAR 860-036-2210(2) here, as the Company cooperated with Staff in revising its application and coordinating the filing of

³ Agreement Sections 3.1 and 5.1.

⁴ Agreement Section 3.2.

⁵ Agreement Section 3.1.

⁶ Application at 2.

⁷ Agreement Section 5.3.

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multiple simultaneous applications according to ongoing conversations with Staff. For the same reason, Staff does not recommend any action be taken on the basis of the application in this particular docket having been filed after the 90-day statutory window. This should not be interpreted as support for non-compliance with respect to any other agreement, or any future amendment to this agreement.

3. *Transfer Pricing, including Waiver of OAR 860-036-2230(2)(e)*
OAR 860-036-2230(2)(e) requires that affiliated interest transactions be priced and recorded in the utility's accounts at the lower of cost or market rate. The rule states:

When services or supplies are sold to a water utility by an affiliate, sales must be recorded in the water utility's accounts at the affiliate's cost or the market rate, whichever is lower. The affiliate's cost must be calculated using the water utility's most recently authorized rate of return.

The Company requests waiver of this rule, so Staff assessed both figures to determine whether and to what extent a waiver of the rule would be necessary to approve the Agreement.

Affiliate's Cost. The application estimates that the yearly costs to Ms. Bekins of the barn and storage lot are \$1,397 per year, plus an unknown amount for commercial insurance.⁸ This reflects \$1,200 in property taxes plus \$197 in utility bills.⁹ The application additionally characterized the affiliates cost as near zero.

Market Rate: Barn/Shop Storage Area. The Company explained in its application that it performed a market study of rental rates for storage units in Clackamas, Oregon. At the time of the Company's study, the Company reported finding no comparable storage spaces available in Government Camp. The Company estimates that the average cost of storage in Clackamas County is \$1.14 per square foot per month, with rates from a lowest monthly rate of approximately \$ 0.89 up to \$1.30 per square foot.¹⁰

Staff verified the listings provided by the Company to ensure the range of monthly price per square foot provided by the Company represent accurate, reasonable market rates for the Clackamas, Oregon area. Staff also researched monthly storage costs in areas closer to Government Camp, such as in the areas of Sandy and Welches, and identified additional examples of indoor storage at prices of \$1.11 and \$1.36 per square foot.¹¹

⁸ Application at 3.

⁹ Application at 2.

¹⁰ Application at 4.

¹¹ Fort Deposit Self Storage and Business Park in Welches quoted \$1.36 per square foot for a 20' x 20' foot storage unit. Self-Storage in Welches quoted \$1.11 per square foot for a 10' X 30' storage unit.

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Staff assessed the approximate size of the property. The Company's application lists the barn as 1,287 square feet.¹² Staff conducted a site visit at the property on August 6, 2018. Staff's measurements of the barn, which is used as a shop and for storage of equipment and materials, differs slightly from Company estimates. As shown below in Table 1, Staff estimates the barn to be approximately 1,260 square feet, not 1,287.

Staff also assessed how the property is being used. During the site visit, Staff observed that some portions of the barn were being used to store household items and not Company items. Such items included a wooden dining hutch, chairs, and household-related boxes stored along a wall. In line with these observations about the mixed use of the space, Staff recommends reducing the total square feet imputed to the property for the purposes of assessing the market rate and the requested waiver. Staff estimates the Company's current use amounts to 80 to 90 percent of the first floor of the barn. Even if the non-Company items were consolidated, Staff supports estimating that 90 percent of the first-floor space would be used by the Company for storage.

Additionally, Staff observed that the loft area of the barn can be utilized for exit/entry to the barn during deep snow conditions. A ladder connects the lower level of the barn to the loft area, though the ladder is narrow and may be difficult to use for some. In the loft area, Staff observed long lengths of large plastic conduit stored along the loft's 35 foot eave, but confirmed no other Company use of the space. For the purposes of assessing the market rate, Staff's estimate of the loft area used for storage therefore amounts to an area three feet in width along the 35 foot eave for conduit storage and a six by six area for ingress/egress to the loft.

Market Rate: Lot Storage Area. The Company explained that no outside storage lots were available in Government Camp at the time of its market study. The Company identified two land sites for lease in the Clackamas area. Only one, a 27,000 square foot lot in Clackamas, listed a price, which was \$0.19 per square foot per month. The Company supplemented this information by citing a 2013 Commission decision approving an affiliated interest agreement for outside storage near Bend based on analysis of a market rate of \$0.05 per square foot per month.¹³ Staff confirmed that market comparators for outside storage in this area are difficult to find.

The Company's application lists the square footage of the lot space in the Application as 16,704 square feet.¹⁴ This measurement is considerably more than was noted in the Company's prior rate case in Docket No. UW 145. In response to Staff's Information

¹² Application, Page 2.

¹³ See Docket No. UI 326, Order No. 13-066 (Feb. 26, 2013) (using \$0.05 per square foot per month as a market rate for outside storage in the Bend area, based on one comparator).

¹⁴ Application at 2.

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Request 3, the Company's provided the location and measurements of the dimensions of the lots that the Agreement provides for the use and occupancy of in their entirety.¹⁵

During Staff's site visit of the lot on August 6, 2018, Staff assessed how the property is being used. During the review of the lot, Staff observed equipment and materials belonging to or used by the Company in various cleared areas on the site, including pipes, a snow cat, a gravel pile, and other material. Staff estimated that the amount of square footage of the lot used by the Company or already cleared and usable by the Company is approximately 3,436 square feet. The rest of the lot was either uncleared and densely wooded, or appeared to be located in a public right of way.¹⁶

Market Rate: Overall. The Company's market value estimates use the lowest monthly market comparator (\$0.89 per square foot for inside storage and \$0.05 per square foot for outside storage) that the Company found relevant here.¹⁷ The Company's asserts that the market rate is \$23,767, as depicted on the right side of Table 1, below.

To assess the bottom range of the market rate for the storage areas that Staff observed to be used or readily usable by the Company, Staff used the same monthly \$0.05 per square foot rate for outdoor storage that the Company used and used a slightly higher monthly rate of \$1.11 per square foot for inside storage, which is lowest estimate Staff was able to find based on the estimate provided by Self Stor in nearby Welches, Oregon. Staff believes the market rate for these spaces together would be \$14,010, as depicted on the left side of Table 1, below.

The Company's proposed overall price for the initial yearlong term of the Agreement amounts to \$1,100 per month, when including pro-rated estimates for property taxes based on 2016 figures provided in the application, for a total of \$13,200 for the year. Without property taxes, the price is \$1,000 per month, or \$12,000 for the year. These figures are below both Staff and the Company's assessments of the market rate for the property, though only very slightly below Staff's assessment shown in Table 1.

¹⁵ Response to Staff Information Request 3. See Attachment A, Pages 1-3 (plat map of both Lots 14 and 15).

¹⁶ See Attachment B.

¹⁷ Application at 4-5.

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Table 1.

UI 402 Staff Measurements and Computations of Barn/Shop and Lot					
Barn/Shop Area	Measurement	Total Sq. Footages Measured	Percentage or Sq. Footage of Areas Utilized	Staff's Sq. Footage Estimates	Staff Market Cost Comparison in Government Camp/Welches of 1.11 per sq. foot
Barn 1st floor	24 X 35	840	90%	756	
Loft	12 X 35	420	6 X 6 + 3 X 35	141	
Market Rate Monthly Total		1,260		897	\$ 995.67
Market Rate Yearly Total					\$ 11,948.04

Cost of Self Stor unit in Welches/Government Camp of \$1.11 per sq. feet for 10 X 30 storage box

			Market Cost Variable of \$.05 Per Sq. Foot		
Main Lot area w/Snowcat	92 X 35	3,220			
Area Behind Shop	9 X 24	216			
Total Sq. Feet of lot		3,436	\$ 171.80		\$ 2,061.60
Yearly Total of Market Rate for Barn + Lot					\$ 14,009.64

Company provided average of .05 per square foot per a prior 2013 affiliated interest agreement

UI 402 Company's Application	
Square Footages Listed in Company's Application	Lowest Storage Market Cost of \$.89 Per Sq. Foot
850	
438	
1287	
	\$ 13,745.16
Storage Lot Area UW 174/UI 402	
16,704	\$ 10,022.40
	\$ 23,767.56

Waiver of OAR 860-036-2230(2). In this case, the affiliate's cost (\$1,397, per the Company's estimate) is significantly lower than the market rate, no matter how the market rate is measured (from Staff's \$14,010 to the Company's \$23,767). If the Commission were to strictly apply its lower-of-cost-or-market rule as described in OAR 860-036-2230(2)(e), the Company's proposed price exceeds the affiliate's cost.

The Company requests that the Commission waive this rule in this instance. The Company asserts, and Staff agrees, that if the Agreement were approved only at cost, it may provide a disincentive for Ms. Bekins to continue to lease the property to the Company and instead encourage her to rent or sell the property based on its market value. As largely undeveloped real property in a resort area, with a rural barn as the only permanent structure, the property could be put to many other uses that may generate more money than is reflected by the costs incurred to maintain the property.

Staff notes that the barn and lot storage location is very convenient for use by the Company, as it is located directly in Government Camp and therefore provides storage in a geographical area that regularly sees challenging winter travel conditions and that contains relatively limited available similar storage properties. Staff notes that the barn and lot provide the ability to have materials and equipment on hand when needed and save on transportation costs that would be expended if storage was not local.

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For these reasons, Staff supports a limited waiver of the rule contained in OAR 860-036-2230(2)(e). Staff recommends that the Commission approve an annual lease amount for this Agreement of \$12,000 per year. While well above the affiliate's cost, this \$12,000 annual figure is still lower than the approximately \$14,010 market estimate Staff developed based on the use of the property. Approximately 10 percent of the storage space appears to be currently used for personal items, so Staff believes this overall amount is sufficient in this context without the inclusion of an additional amount for the proposed property taxes.

Staff does not recommend allowing the automatic increase of this price by 2 percent in subsequent terms of the Agreement. While Staff is confident that an annual price of \$12,000 is *currently* at or below market, market value fluctuates. Staff has no reason to believe that perpetual increases would result in below-market prices in the future. In a down market, such an automatic escalator may harm ratepayers if it obligates the Company more than it is able to pay. Staff recommends conditions disallowing this increase and requiring the Company to seek Commission approval of material changes.

Staff also does not recommend that the waiver of OAR 860-036-2230(2)(e) include any additional amount for the Company to pay the property taxes over the \$12,000. Staff believes that waiving OAR 860-036-2230(2)(e) to allow for a \$12,000 price is sufficient and any additional amount brings the contract price too close to market for Staff's comfort at this time. While Staff does not understand why it would be desirable to insert a tenant between a property owner and taxing entity, such a relationship is not necessarily contrary to the public interest by itself. Staff therefore does not take a position on how Staff's recommended \$12,000 annual contract price be divided up over the elements of the contract.

Alternatively, if the Commission does not grant the waiver and approve the above amounts, Staff proposes an annual price of \$1,397, the affiliate's costs identified above.

Finally, Staff notes that a \$12,000 annual price for this Agreement reflects a substantial increase in the Company's expenses for the analogous lease over the \$1,000 per year that was included in its last rate case.¹⁸ Approval of Staff's recommendation here does not constitute ratemaking treatment. The Company's costs will be separately considered in the context of establishing overall fair and reasonable rates.

4. Public Interest Compliance

The Commission applies a no-harm standard to its consideration of affiliated interest agreements. Customers could potentially be harmed by not approving this agreement as this could lead the Company to seek other uses for these properties and result in

¹⁸ Docket No. UW 145, Order No. 11-278 (July 29, 2011).

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higher cost alternatives for ratepayers associated with securing alternative company storage space. Additionally, the convenience of having equipment and materials on hand in an area registering multiple feet of snow in the wintertime and with few alternatives to lease is in the public interest. Given that further review will occur before these expenses are allowed into rates, customers will not be harmed by approval of the Agreement and the requested rule waiver.

Staff also assessed whether the termination provisions of the Agreement might cause harm. The Agreement states that it will terminate immediately, with no further action, if Ms. Bekins ceases to have an affiliated interest with the Company.¹⁹ While such a term could in theory subject the Company or its customers to sudden, unpredictable costs of relocation if the condition ever came to pass, Staff notes that whatever her role with the Company, Ms. Bekins will nevertheless be an affiliated interest under ORS 757.015(2), as a "person in any chain of successive ownership" of all shares of the Company. Staff therefore does not object to this term in this particular instance.

5. Records Availability, Audit Provisions, and Reporting Requirements

Proposed conditions numbers 1 through 3 above, together with the Commission's authority over water utilities, afford the Commission the necessary opportunity to examine the Company's records and activity regarding the Agreement.

Conclusion

Based on the review of this application, Staff concludes the following:

1. The application regards an affiliated interest agreement that is fair and reasonable and not contrary to the public interest, with the inclusion of proposed ordering conditions.
2. Good cause exists to waive OAR 860-036-2210(2).
3. Necessary records are available.
4. Good cause exists to waive OAR 860-036-2230(2)(e) and allow an above-cost Agreement price of \$12,000 per year, exclusive of automatic increases or additional amounts, with the inclusion of the proposed ordering conditions.

¹⁹ Agreement Section 3.4.

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PROPOSED COMMISSION MOTION:

Approve Government Camp Water Company's application for an Affiliated Interest Agreement with Lesli Ann Bekins, \$12,000 per year, subject to the four proposed conditions listed above, and waive the cost requirement of OAR 860-036-2230(e) and the 90-day requirement of OAR-036-2210(2) for good cause shown.

UI 402

IR 03

Please provide a map of the storage lot that clearly marks the area the Water Company uses along with measurements of the dimensions of the area actually used by the Company, if available.

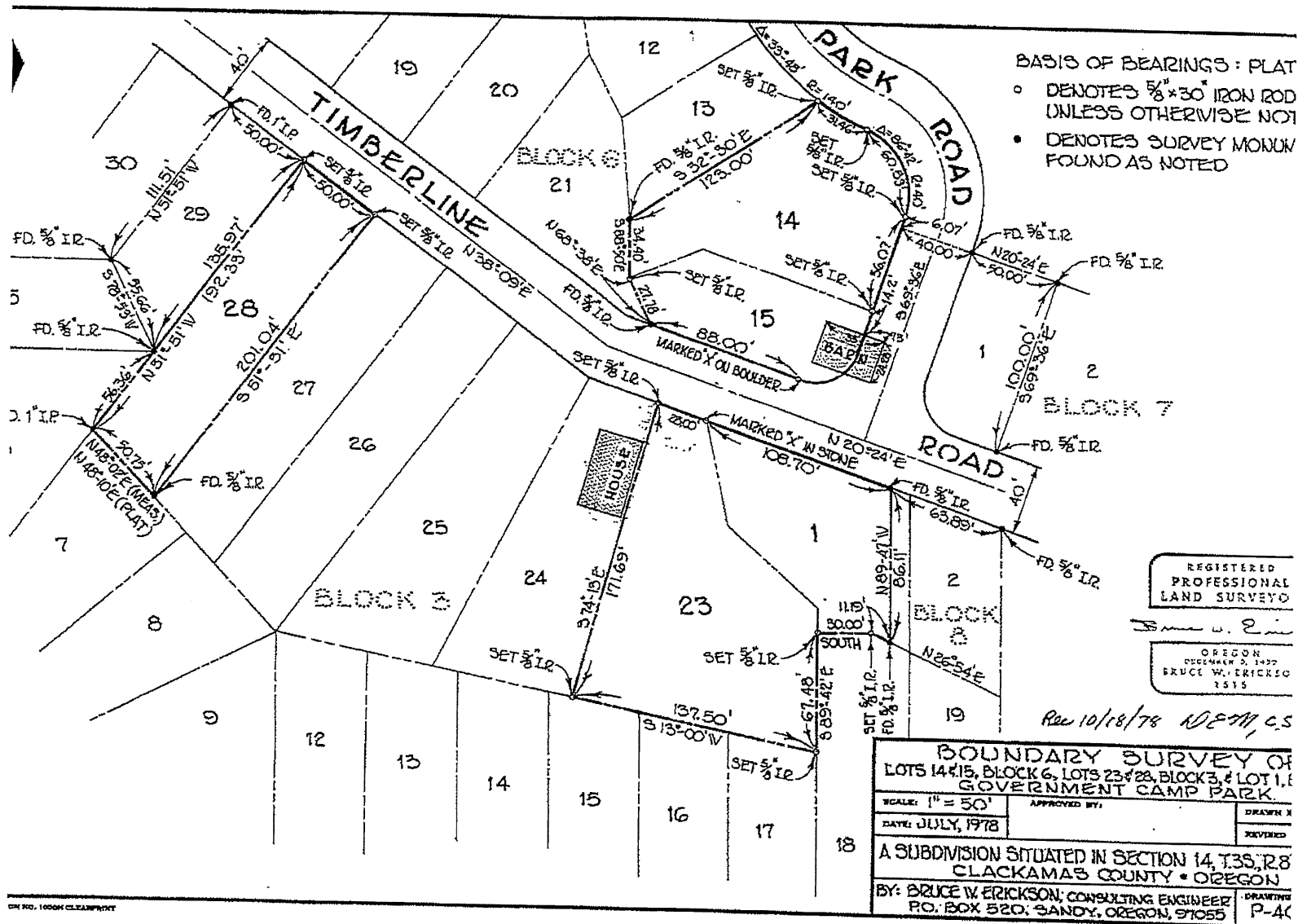
RESPONSE:

Attached, as IR 03 Response Attachment A, is a plat map of both Lots 14 and 15 that denotes the location of the barn and storage lot.² Also attached, as IR 03 Response Attachment B, is a Property Profile Report. These reports show the dimensions and the sq. ft.³ of the lots. The Company's proposed lease provides for use and occupancy of both lots in their entirety.

² Note that Timberline Road is really Blossom Trail and Park Road is really Wy East Trail.

³ Total square footage of both lots is confirmed by the Property Profile Report.

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(B) PS-1612
IR 03 Response Attachment A
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Property Profile Report

30294 E WY EAST TRL GOVERNMENT CAMP, OR 97028

Ownership Information

Owner Name:

BEKINS, LESLI ANN TRUSTEE

Mailing Address:

2220 SE SPARROW ST MILWAUKIE, OR 97222

Property Description

County: Clackamas

Map / Tax Lot: 38Q14DG/04500

Account Num: 00990413

Census:

Property ID: 00990413

Owner Occ:

No

Land Use: 801

Subdivision: GOVERNMENT CAMP PARK

Legal Description:

611 GOVERNMENT CAMP PARK LTS 14 & 15 BLK 6

Property Characteristics

Property Type: RECREATION

Building SF:

Pool:

No

House Style:

Living Area SF:

Deck SF:

Year Built:

Square Feet:

Deck Desc:

Bedrooms:

1st Floor SF:

Patio SF:

Bathrooms:

2nd Floor SF:

Patio Desc:

Heat:

3rd Floor SF:

Foundation:

Cooling:

Attic SF:

Exterior:

Lot Size:

17,640

Bsmnt SF:

Ext. Finish:

Acres:

0.41

Fin Bsmnt SF:

Interior:

Garage Type:

Garage SF:

Roof Style:

Fireplaces:

Bsmnt Type:

Roof Cover:

Assessment Information

Real Market Value: \$ 141,045

Taxes: \$ 1,280.75

Land Value: \$ 131,155

Imp. Value: \$ 9,890

Total Assessed Value: \$ 80,900

Levy Code: 046065

M-S Rate: 15.0124

Tax Year: 17-18

