

Floodplain Documents



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TECHNICAL MEMORANDUM

WEST Consultants, Inc.

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Salem, OR 97302-1286
(503) 485-5490
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www.westconsultants.com



EXPIRES: 12/31/2024

To: Kyle Latimer
Date: 4/17/2023
From: Ken Puhn, PE, CFM
Reviewed: Hans Hadley, PE, CFM
Subject: 33027 Oak Road No-rise Hydraulic Analysis

Introduction

A "No-Rise" hydraulic analysis was conducted to evaluate impacts of proposed fill that will be placed on portions of Mr. Latimer's property to elevate it above the FEMA Base Flood Elevation (BFE). The subject property is a 14.2-acre parcel located at 33027 White Oak Road near Corvallis, Oregon (**Figure 1**, all figures referenced in the text are found at the end of this document). The flooding source is an unnamed side channel of the Willamette River located to the south and east side of the subject property, which receives floodwaters from the Willamette River. According to FEMA Flood Insurance Rate Map (FIRM) panel number 41043C0515G, effective on September 29, 2010, much of the subject property is located within a FEMA Zone AE Special Flood Hazard Area (SFHA). Per Linn County Floodplain Ordinance, placement of fill in a FEMA floodplain must cause no rise in the base flood elevations. Accordingly, a hydraulic analysis is required to determine if the proposed activities will cause a rise to the FEMA BFEs.

According to the FIRM, the effective BFEs for the property range from approximately 226.3 ft at the upstream end, to approximately 225.8 ft at the downstream end. All elevations listed in this memorandum are referenced to the North American Vertical Datum of 1988 (NAVD88).

A hydraulic study was completed in accordance with standard engineering practice for a FEMA Engineering No-Rise analysis. It indicates that the proposed fill will not result in an increase in water surface elevations during the base flood. This memorandum summarizes the analysis methodology and results.

Analysis Approach

The subject property is in an area with complex hydrology and hydraulics, where there are interconnected channels from multiple watercourses, including Muddy Creek, Owl Creek, Willamette River, and other sloughs and side channels (**Figure 2**). The southeast corner of the subject property is bounded by an unnamed side channel, which is likely one of the many historic channels of the Willamette River that existed prior to the anthropogenic modifications made to the Willamette River, which transformed the river

from a multi-channel anastomosing river to a predominantly single-thread meandering river (Figure 3). The unnamed side channel connects Muddy Creek to Owl Creek, but also receives floodwater from the Willamette River, which flows to many of the adjacent rivers and side channels during large flood events. According to the effective Flood Insurance Study (FIS) for Linn County (FEMA 2019), Owl Creek was not studied, and Muddy Creek was studied by approximate methods for the reach upstream of the Burlington Northern Railroad crossing near Fayetteville, which is located upstream of the subject property. Accordingly, it is assumed that the SFHA for the subject property (and Muddy Creek and Owl Creek in this area) is based on flooding from the Willamette River. The FIS states the original hydrologic and hydraulic analyses for the Willamette River were performed by the U.S. Army Corps of Engineers (USACE) Portland District for FEMA and completed in July 1983. However, water-surface profiles for the portion of the Willamette River within Linn County, except for the reach at Albany, were determined from hydraulic rating curves and thus, there is no effective hydraulic model. Since no FEMA hydraulic model exists and the hydrology and hydraulics are known to be complex, a two-dimensional (2D) hydraulic model for the Willamette River, developed by WEST for a U.S. Army Corps of Engineers' project, was used for the no-rise analysis. Existing and proposed conditions models were evaluated in the 2D model to compare water surface elevations for the existing topography and proposed filled topography on the subject property.

Hydrology

The hydrology used for this study is based on the FEMA FIS 1% annual-chance flood (100-yr) discharge of 177,000 cfs (reported for the City of Corvallis, OR). The FIS discharges are based on current regulated discharge-frequency relationships developed by the USACE Portland District for the Willamette River basin (USACE, 2014). The 50% annual-chance flood (2-yr) through 0.2% annual-chance flood (500-yr) flows for the Willamette and major tributaries were modeled using a continuous stepped hydrograph. The no-rise condition was evaluated at the time in the model hydrograph corresponding to a flow of 177,000 cfs at the Highway 34 bridge in Corvallis.

Hydraulics

The hydraulic study utilized the U.S. Army Corps of Engineers' (USACE) software HEC-RAS (Hydraulic Engineering Center – River Analysis System) version 6.2 (USACE 2022). The previously developed 2D hydraulic model extends from the Willamette River confluence with the McKenzie River at the upstream boundary to the Willamette Falls at the downstream boundary. The geometry of the hydraulic model is based on bathymetric and overbank data obtained by the U.S. Geologic Survey (USGS, 2021), which is a combination of water penetrating green LiDAR for the Willamette River channel and DOGAMI LiDAR for the overbank regions. A rating curve based on USGS stream gage data was used for the model's downstream boundary.

Manning's n hydraulic roughness coefficients were used to represent 2D hydraulic roughness along the channel and in the overbank areas in the HEC-RAS model. Spatially varied roughness values are based on land cover classifications from the USGS National Land Cover Data set (NLCD 2019). The initial 2D roughness values were adjusted slightly to better match the February 1996 flood using peak discharge and stage data at the Harrisburg USGS streamflow gage.

Existing Conditions Model (ECM)

The existing conditions model (ECM) represents the current physical condition of the channels and floodplain areas, including the subject property. The previously developed model was refined in the region of the property to provide better model resolution. Mesh grid cells were reduced to 50 ft in size and break lines were added to better define linear features such as White Oak Rd located to the west and the unnamed side channel located to the southeast of the property (**Figure 4**). For the unnamed side channel, Manning's n bank and channel roughness values were increased to 0.1 to account for vegetation and sluggish pooled water observed during the site visit. The simulated 100-yr floodplain for the ECM is provided in **Figure 5**. Simulated ECM water surface elevations in the channel adjacent to the property are lower than the FIS BFEs by approximately 1.3 ft. The ECM simulation indicates that flooding on the property is due to backwater that flows north to south and ponds in the north central portion of the property. Water does not overtop the banks from the side channel. Since the ECM model indicated lower BFEs than the FEMA FIS, a second simulation was conducted in which the channel and bank Manning's n values for the side channel in the vicinity of the subject property were increased by 50% to a conservatively high value of 0.15. Under this condition, water still does not overtop the channel banks into the property and flooding is limited to backwater from the north, and flood conditions and elevations on the site remain nearly identical when compared to the base ECM condition using a channel Manning's n value of 0.1.

To ensure flooding from the Willamette River produces the controlling (highest) water surface elevations on the subject property, an additional simulation was conducted by simulating the 100-yr discharges for Owl Creek and Muddy Creek. Since no discharges are reported for either watercourse in the FIS, USGS regional regression equations were used within the online USGS program StreamStats, to develop peak 100-yr flows (USGS 2022). To simulate flooding from the two watercourses, peak flows of 59 cfs and 9,410 cfs for Owl Creek and Muddy Creek, respectively, were simulated using a steady-state 48-hour hydrograph. The Owl Creek and Muddy Creek drainage areas are <1% and 3% of the drainage area of the Willamette River at Corvallis. Accordingly, peak flood discharges on these creeks will occur well before peak flooding on the much larger and regulated Willamette River. Therefore, the simulation for Owl Creek and Muddy Creek was conducted independent (without consideration) of flooding on the Willamette River, per FEMA guidance which requires an assumption of non-coincident flooding for tributaries unless the ratio of drainage areas lies between 0.6 and 1.4 (FEMA 2016). The simulated water surface elevations on the subject property from this simulation were lower than those from the Willamette River flooding; therefore, the Willamette River is assumed to be the controlling flood source for the property and was used for the no-rise analysis.

For comparative purposes, observed inundation GIS layers from the Oregon Statewide Flood Hazards Database (available from DOGAMI) for the historic 1996 and 1964 floods were also reviewed. These layers indicate that flooding did not occur on the subject property for these two historic events (**Figure 6**).

Proposed Conditions Model (PCM)

The ECM was modified to create the PCM by using a levee structure across the northern boundary of the property to prevent backwater from entering the site. This method was used since the exact amount and location of proposed fill is unknown at this time so an elevation of 230 ft was used as a conservative estimate. This method effectively simulates a condition in which the portion of the subject property beyond

the channel banks of the unnamed side channel is filled to elevation 230 ft, which is well above the FIS BFEs. The simulated PCM 100-yr floodplain is shown as **Figure 7**.

Results

Water surface elevations predicted by the ECM and PCM models were compared to determine if the proposed fill will cause a rise in water surface elevations for the base flood. This was accomplished by subtracting the ECM water surface grid from the PCM water surface grid. Any values greater than 0.004 ft would indicate a rise in the base flood elevation, since Linn County considers a water surface elevation no-rise to be to the 0.00 ft level of accuracy per FEMA standards. The GIS based comparison showed that there was no rise in water surface elevations to the 0.00 ft level. Model results indicate that grading and fill activities on the property that occur outside of the floodplain extents shown in Figure 7, will not cause a rise in the BFEs for the Willamette River, Owl Creek, Muddy Creek, or the unnamed side channel adjacent to the subject property. Since the proposed fill is located in a backwater area, the fill will cause no change in flow direction, and the maximum change in average flow velocity is zero (to the 0.00 ft/s level of accuracy). A FEMA No-Rise Certificate is provided in **Figure 8**.

References

- Dewitz, J., 2019, National Land Cover Database (NLCD) 2016 Products: U.S. Geological Survey data release, <https://doi.org/10.5066/P96HHBIE>.
- U.S. Army Corps of Engineers, Hydrologic Engineering Center; HEC-RAS, River Analysis System, Software Version 6.2; March 2022
- U.S. Army Corps of Engineers, Flood Frequency Curves for the Willamette River and its Major Tributaries Upstream of Salem, Oregon. July 2014
- U.S. Department of Homeland Security, Federal Emergency Management Agency; Flood Insurance Study for Linn County, OR and Incorporated Areas, 41043CV001B, Vol. 1 - 3; Effective October 18, 2019
- U.S. Department of Homeland Security, Federal Emergency Management Agency; Flood Insurance Study for Benton County, OR and Incorporated Areas, 41003CV000B; Effective December 8, 2016
- U.S. Department of Homeland Security, Federal Emergency Management Agency; Guidance for Flood Risk Analysis and Mapping, November, 2016
- U.S. Geological Survey, 2019, The StreamStats program, online at <https://streamstats.usgs.gov/ss/>, accessed in November 2022

Appendix A

Figures

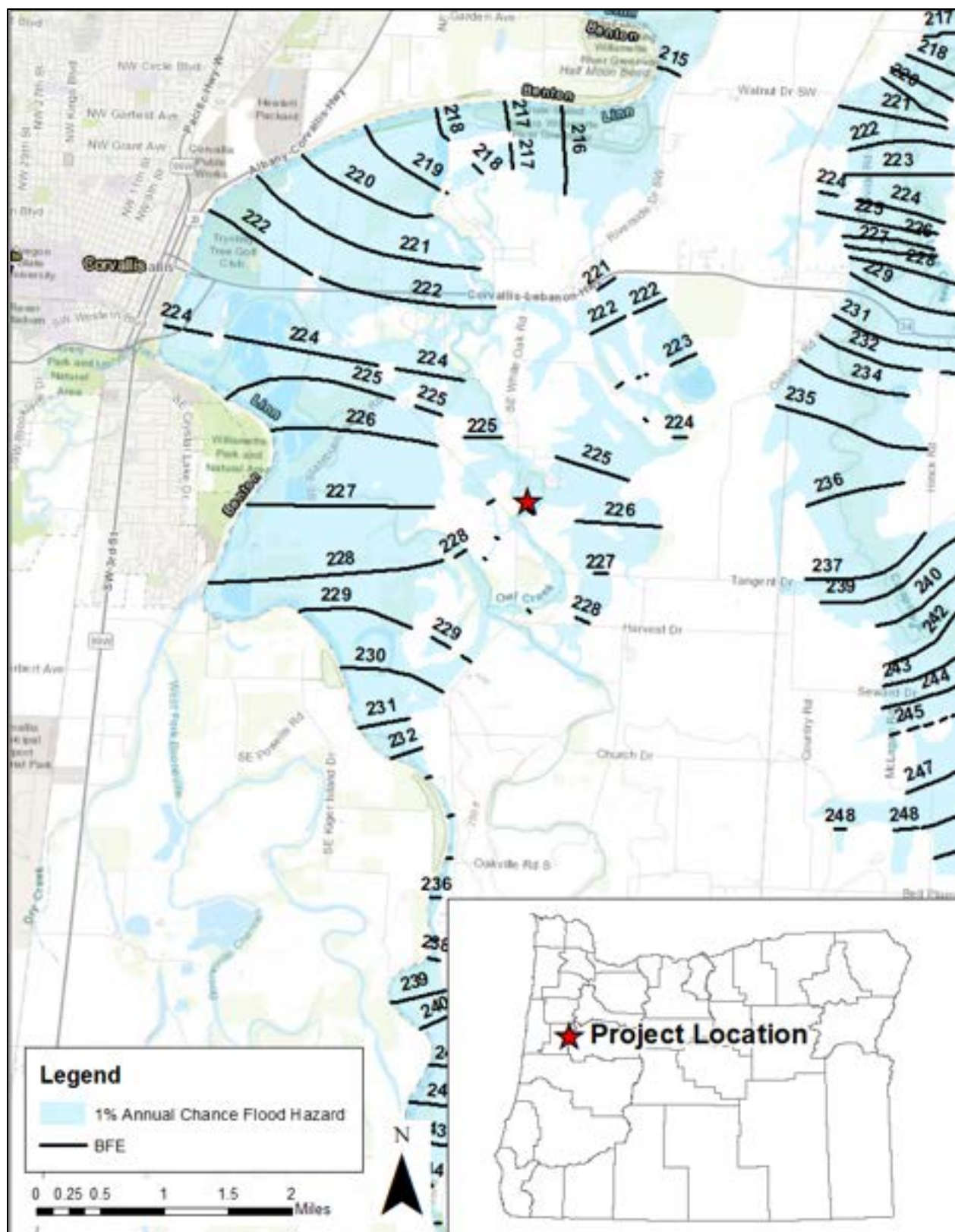


Figure 1. Project location map

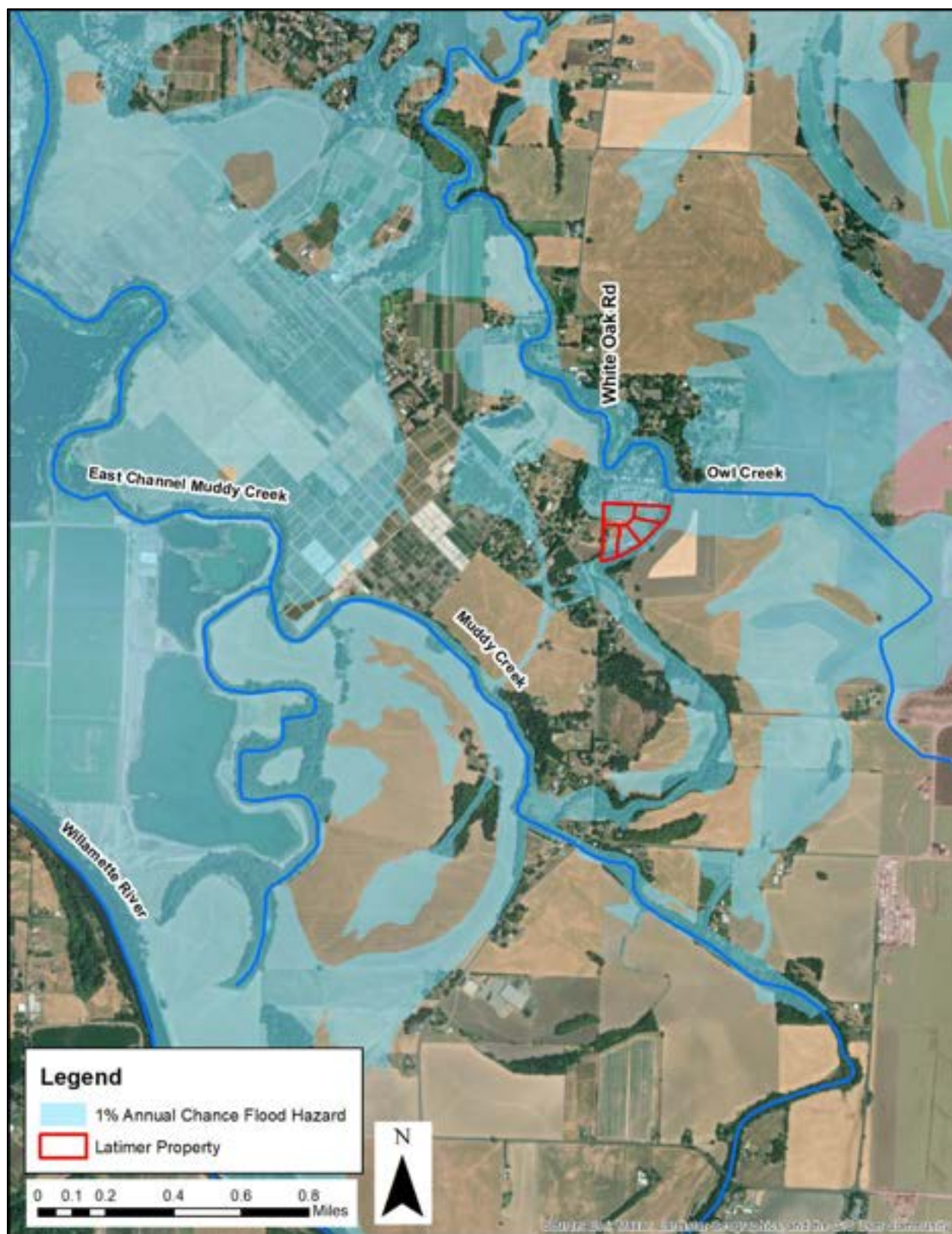


Figure 2. Regional watercourses and FEMA floodplain

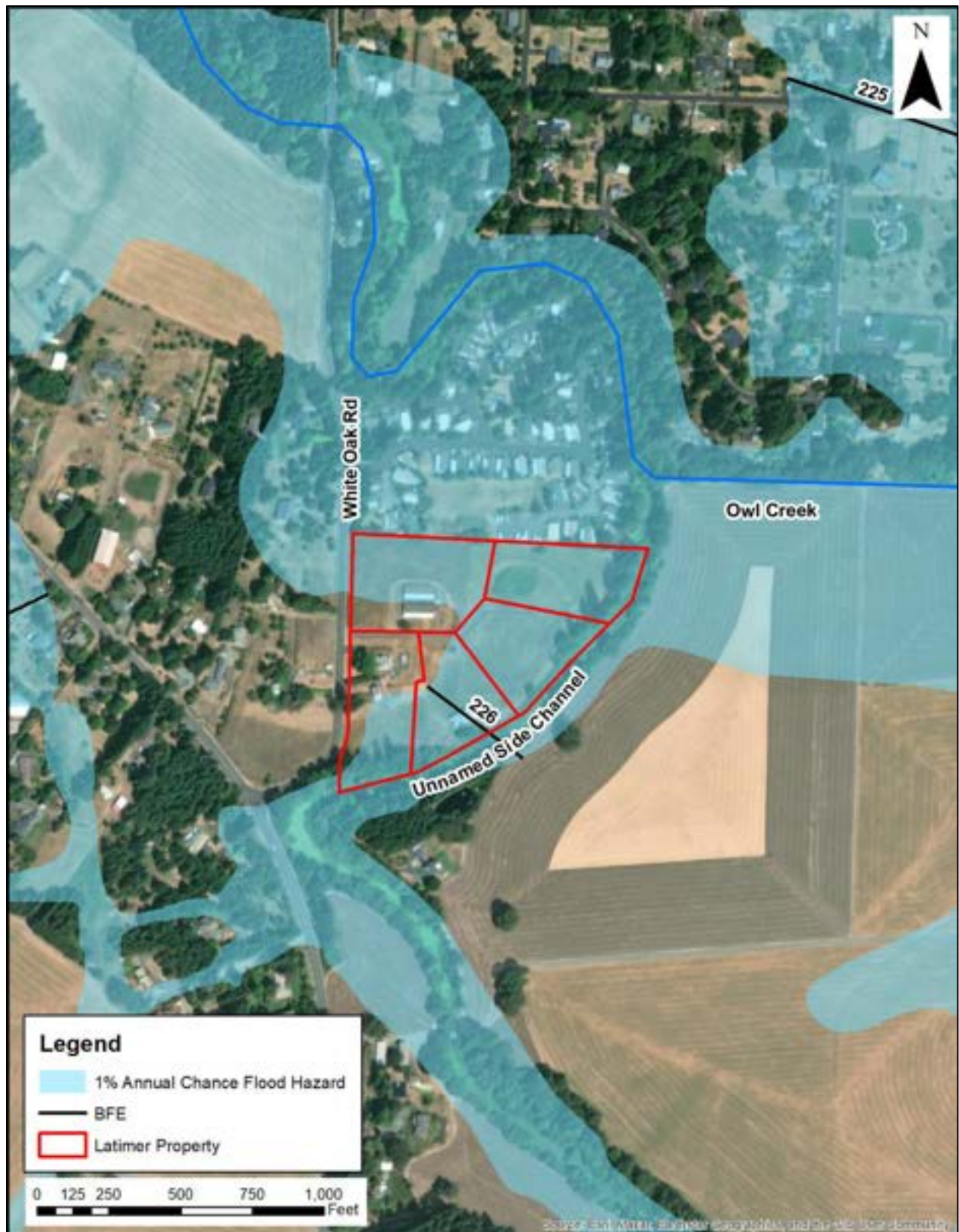


Figure 3. Site map and effective FEMA floodplain

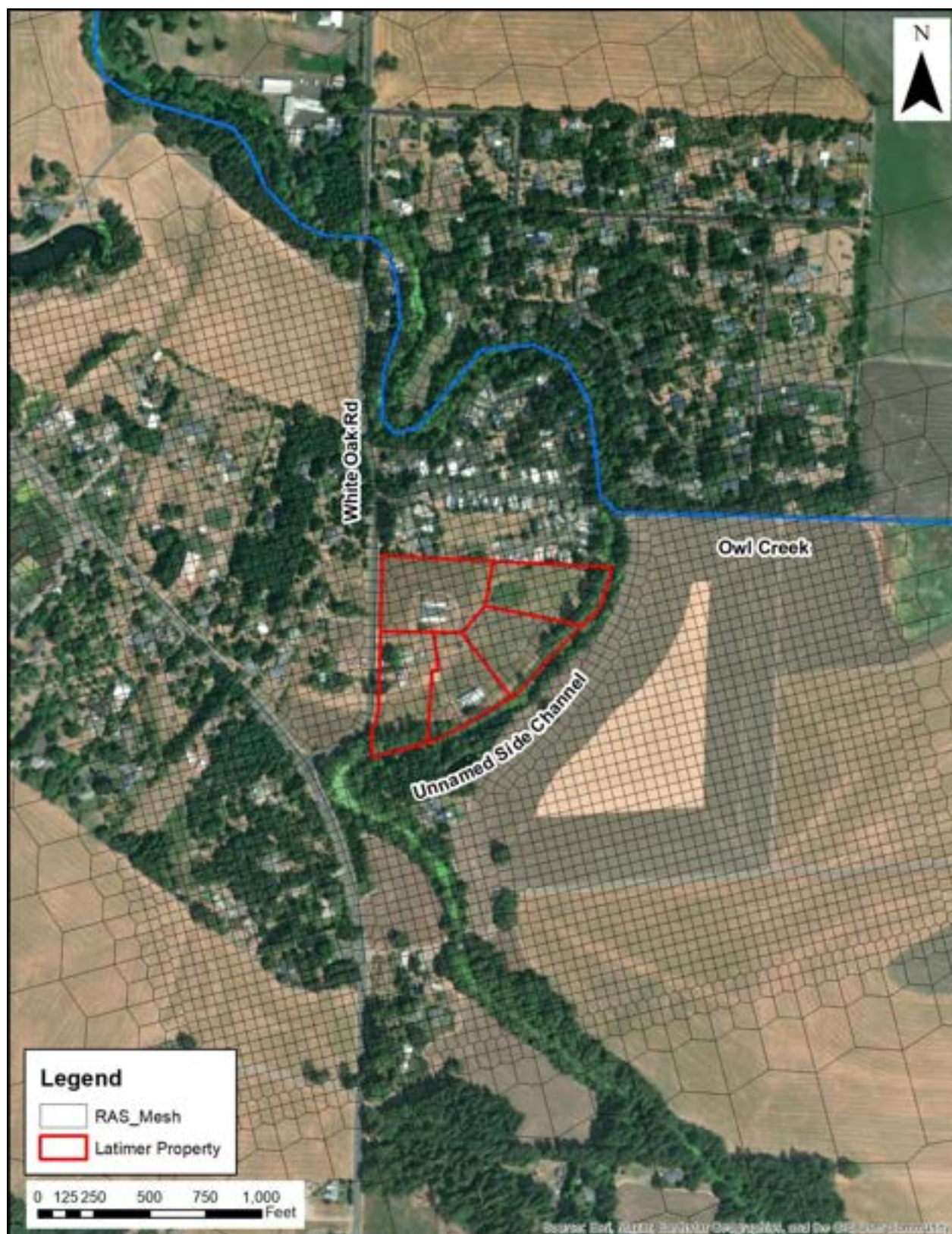


Figure 4. HEC-RAS Model mesh

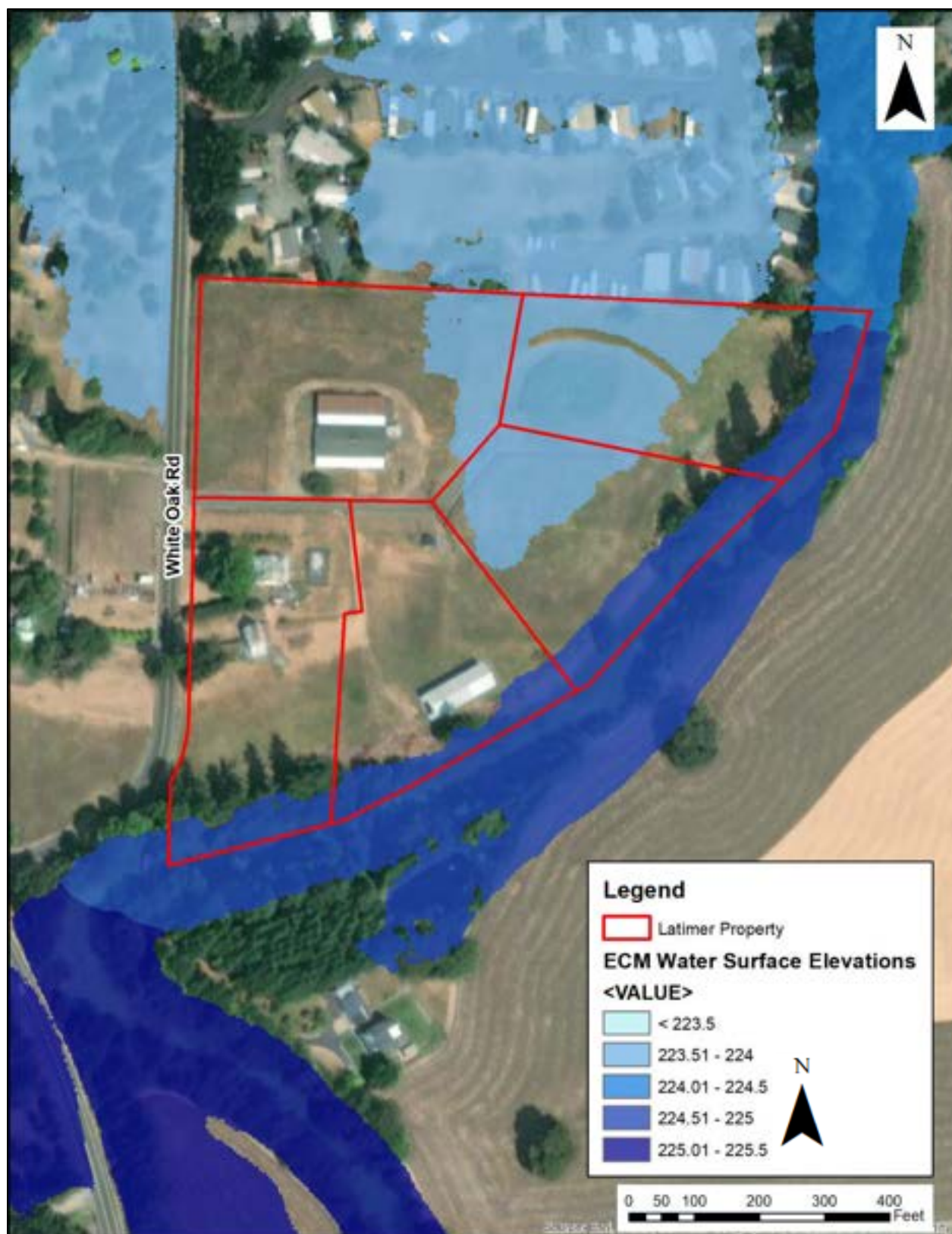


Figure 5. Existing conditions model floodplain

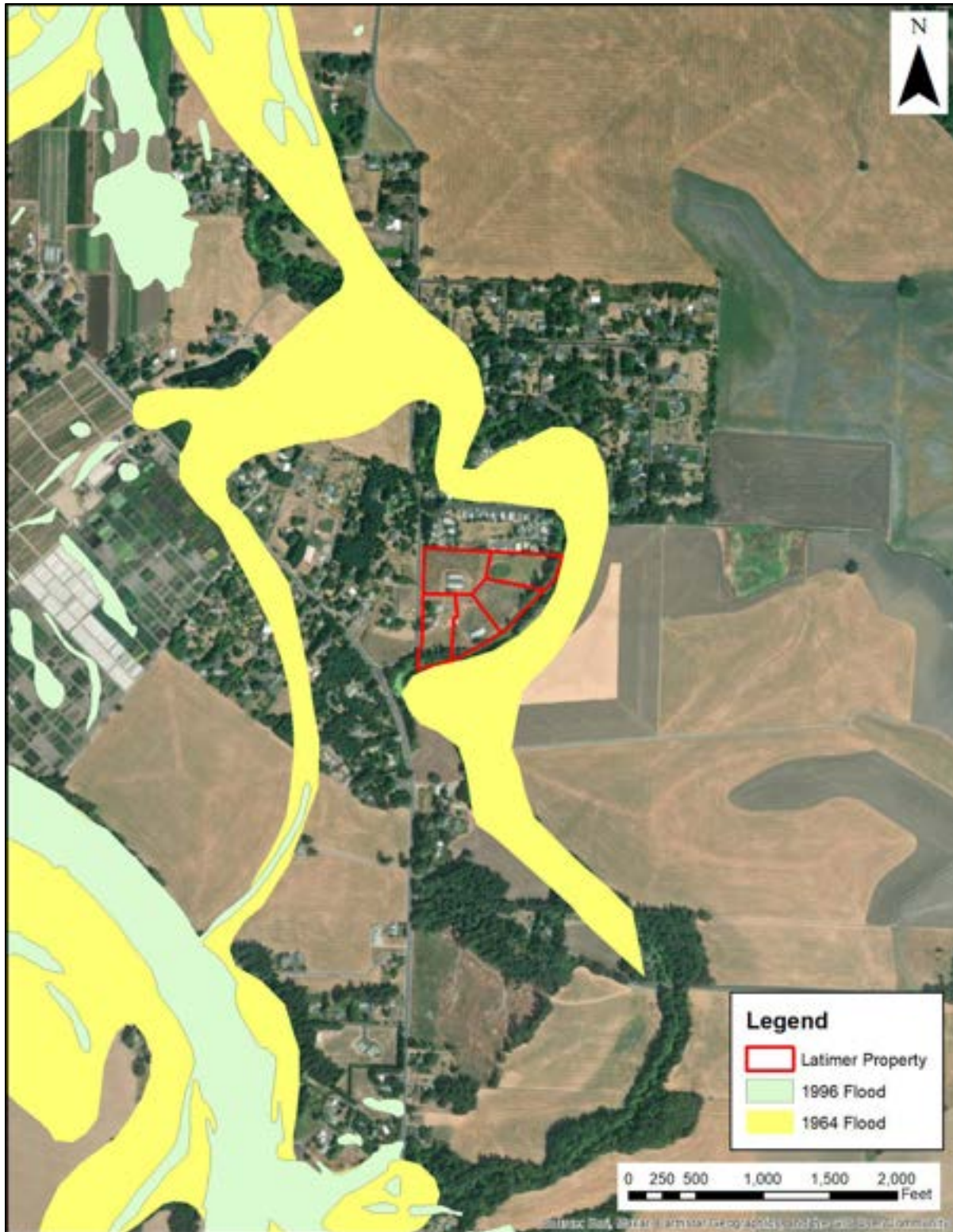


Figure 6. 1964 and 1996 flood delineations from the Oregon Statewide Flood Hazard Database



Figure 7. Proposed conditions floodplain

ENGINEERING "NO-RISE" CERTIFICATION

This is to certify that I am a duly qualified engineer licensed to practice in the State of Oregon.

It is to further certify the fact that proposed fill and grading at 33027 Oak Road in Corvallis, OR, provided it is located outside of the floodplain shown in Figure 7 of the attached Technical Memorandum, will not impact the 100-year flood elevations for the Willamette River, Owl Creek, Muddy Creek, or the unnamed slough adjacent to the subject property.

Attached are the following documents that support my findings:

Technical Memorandum by WEST Consultants, Inc. dated April 11, 2023.



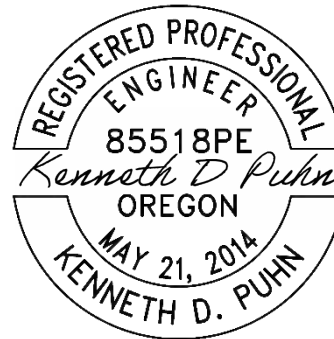
Project Manager

WEST Consultants, Inc.

2601 25th Street

Suite 450

Salem, OR 97302



EXPIRES: 12/31/2024

Figure 8. No-rise certificate

CC&R's



After recording return to:

Kyle Latimer
PO Box 310
Lebanon, OR 97355

Mail tax statements to:

No Change

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth by the undersigned, hereinafter referred to as "Declarant":

WHEREAS, Declarant is the owner of five (5) parcels of real property in the County of Linn, State of Oregon, more particularly described as:

Parcels 1 and 2, PARTITION PLAT NO. 2023-03, as platted and recorded January 17, 2023, Linn County Book of Partition Plats and as instrument no.: 2023-00493, Linn County Records, in Linn County, Oregon;

and

Parcel 1, PARTITION PLAT NO. 2022-96, recorded December 7, 2022 as Document no. 2022-19316, in the County of Linn, State of Oregon;

and

Parcels 2 and 3 PARTITION PLAT NO. 2022-96, as platted and recorded December 7, 2022, Linn County Book of Partition Plats and as instrument no.: 2022-19316, Linn County Records, in Linn County, Oregon

Which are hereafter collectively referred to as the "Property".

WHEREAS Declarant desires to subject the Property to certain protective covenants, conditions, and restrictions, for benefit of the Property, and its present and subsequent owners as hereinafter specified, and will convey the Property subject thereto.

WHEREAS the Property is not a planned community as that term is defined in ORS Chapter 94 (2023) and no property within the Property is held under any common ownership.

NOW, THEREFORE, Declarant hereby declares that all of the properties

described shall be held, sold and conveyed subject to the following covenants, conditions, and restrictions which are for the purpose of protecting the value and desirability of the property which shall run with the land and shall inure to the benefit of each Owner thereof. These covenants, conditions, and restrictions shall run with the land and be binding on all parties having any right, title or interest in the described properties or any parts thereof, their heirs, successors, and assigns.

ARTICLE I **DEFINITIONS**

Whenever used in this Declaration, the following terms shall have the following meanings:

1. **"CC&Rs"** shall mean all of the Covenants, Conditions, and Restrictions set forth in this Declaration of Covenants, Conditions, and Restrictions
2. **"Declarant"** shall mean and refer to Evan Latimer, Kyle Latimer and Ashley Latimer.
3. **"Dwelling Unit"** is any structure intended to be occupied by one family as a dwelling.
4. **"Parcel"** shall mean and refer to any of the five (5) parcels that are part of the Property.
5. **"Owner"** shall mean and refer to the record owner (or if a Parcel is being sold on a land sale contract, then the contract purchaser) whether one or more persons or entities, of all or any part of the Property, excluding those having such interest merely as security for the performance of an obligation, and excluding the general public and a public entity as owners of any streets, tracts, rights- of-ways or easements. Wherever any consent or approval is required by the Owner(s), each Parcel shall have one vote with respect to such consent or approval and the any Parcel owner may provide the consent or approval on behalf of all Parcel Owners.
6. **"Property"** shall mean the five (5) described parcels identified above.

ARTICLE II **SPECIFIC PROPERTY USE RESTRICTIONS**

Section 1. Dwellings, Build Out, and Design.

1.1 The primary Dwelling Unit on any Property shall have no less than 1,600 square feet of living area, exclusive of open porches or patios. Accessory Dwelling Units ("ADUs") or other similar dwellings of smaller size may be placed and maintained on a Property provided that there is already and remains a Dwelling Unit on the property that is not less than 1,600 square feet of living area,

exclusive of open porches or patios.

1.2 The construction of any building on any Parcel, including painting and all exterior finish, shall be substantially completed within 18 months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due or due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the other Owners. The building area shall be kept reasonably clean and in workmanlike order during the construction period.

1.3 No structure of a temporary character, such as a trailer, RV, camper, yurt, tent, or other similar building or structure shall be used at any time on the Parcel as a permanent residence.

1.4 Notwithstanding any provision of this Section 1, a modular home or tiny home may be placed and maintained on any Property as an Accessory Dwelling Unit provided that it is permanently attached to the land and any wheels and other transportation devices or mechanisms are removed.

1.5 Exterior lighting must be screened to prevent glare and annoyance to adjacent Owners.

Section 2. Parking and Garaging.

Parking of vehicles or equipment for commercial purposes which include, but are not limited to, automotive or equipment repair, storage, or sales, shall not be allowed on any part of the Property nor on any street or public or private ways adjacent thereto unless parked within the confines of an enclosed garage on the Parcel.

Section 3. Wells.

No new wells shall be constructed on any Parcel without the written consent of the Owners of the Parcels. However, such consent may only be withheld, where a proposed new well will adversely affect the volume, flow or potability of the existing wells or siting of a septic system within an existing approval area on the Property, in the opinion of a qualified professional or as otherwise limited or prohibited by law.

Section 4. Animals.

No animals or livestock of any kind shall be raised, bred, or kept on any part of the Property for commercial purposes or gain. No kennels, animal boarding or grooming facilities, animal training operations, or animal shelters shall be permitted. A Parcel may not keep roosters, turkeys, or peacocks for any purpose(s). However, domestic pets such as dogs, cats, goats, and chickens (hens) may be kept for personal purposes so long as such domestic animals do not constitute a nuisance to other Owners.

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ARTICLE III

ENFORCEMENT

Section 1. Enforcement.

The Declarant, as specifically reserved for herein, or any Owner, or the owner of any recorded mortgage, or the beneficiary of any deed of trust, on any part of the Property shall have the right to enforce, by any proceeding at law or in equity, these CC&Rs. No party, including any Declarant nor the individual Owners have a legal duty to enforce the CC&Rs. Failure by the Declarant or by any Owner to enforce any CC&Rs in any instance shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Costs and Attorney's Fees.

If suit or action is instituted to declare or enforce these CC&Rs, the prevailing party shall be entitled to recover in addition to costs incurred such sum as the court may adjudge reasonable as attorney fees therein and on any appeal therefrom.

ARTICLE IV

GENERAL PROVISIONS

Section 1. Severability.

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 2. Benefit of Provisions: Waiver.

The provisions contained in this Declaration shall bind and inure to the benefit of the Declarant, the Owner or Owners of any portion of the Property, and their heirs, successors, and assigns, and each of their legal representatives. Any failure by Declarant or by any Owner or their legal representatives, heirs, successors and/or assigns, to enforce any of such conditions, restrictions or charges herein contained shall in no event be deemed a waiver of the right to do so. The covenants, conditions and restrictions herein shall run with the land.

Section 3. Termination and Amendment.

The provisions contained in this Declaration shall expire and this Declaration and the CC&Rs herein shall be rendered null and void on January 1, 2043 unless, all the Owners of the Parcels herein otherwise vote for and record an extension, prior to the January 1, 2043 expiration date of this Declaration. Declarant reserves the right to amend the CCRs herein at any time so long as Declarant remains an Owner of all Parcels within the Property. These CCRs may otherwise be amended or terminated only by unanimous written agreement of the Owners which such agreement shall be recorded as amended CCRs to be

effective. No amendment shall be retroactive in application.

IN WITNESS WHEREOF, we the owners of the Property have executed this Declaration on the 6th day of July, 2023.

DECLARANT

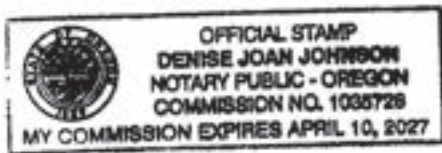
Kyle Latimer
Kyle Latimer

Ashley Latimer
Ashley Latimer

Evan Latimer
Evan Latimer

STATE OF OREGON)
) ss.
County of Benton)

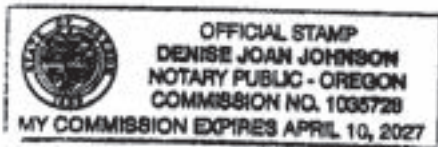
This instrument is signed and acknowledged before me on 7/16, 2023, by Kyle Latimer.



[Signature]
Notary Public for Oregon

STATE OF OREGON)
) ss.
County of Benton)

This instrument is signed and acknowledged before me on 7/16, 2023, by Ashley Latimer.



[Signature]
Notary Public for Oregon

STATE OF OREGON)
) ss.
County of Benton)

This instrument is signed and acknowledged before me on 7/16, 2023, by Evan Latimer.



[Signature]
Notary Public for Oregon

After Recording Return to:
Justin Wirth, Attorney at Law
555 NW 5th Street
Corvallis, OR 97330

Mail Tax Statements to:
No Change

ACCESS AND UTILITY EASEMENT

Recitals

- A. Kyle Latimer, Ashley Latimer, and Evan Latimer are owners of the following parcels of real property, located in Linn County, Oregon:

Parcel 3, PARTITION PLAT NO. 2022-96, as platted and recorded December 7, 2022, Linn County Book of Partition Plats and as instrument no.: 2022-19316, Linn County Records, in Linn County, Oregon.

Parcel 1, PARTITION PLAT NO. 2023-03, as platted and recorded January 17, 2023, Linn County Book of Partition Plats and as instrument no.: 2023-00493, Linn County Records, in Linn County, Oregon.

Parcel 2, PARTITION PLAT NO. 2023-03, as platted and recorded January 17, 2023, Linn County Book of Partition Plats and as instrument no.: 2023-00493, Linn County Records, in Linn County, Oregon.

For convenient reference: Parcel 3, PARTITION PLAT NO. 2022-96, as platted and recorded December 7, 2022, Linn County Book of Partition Plats and as instrument no.: 2022-19316, Linn County Records, in Linn County, Oregon is shown as 'Lot C' on Exhibit "B" hereto; Parcel 1, Partition Plat No. 2023-03, as platted and recorded January 17, 2023, Linn County Book of Partition Plats and as instrument no.: 2023-00493, Linn County Records, in Linn County, Oregon is shown as 'Lot E' on Exhibit "B" hereto; and Parcel 2, Partition Plat No. 2023-03, as platted and recorded January 17, 2023, Linn County Book of Partition Plats and as instrument no.: 2023-00493, Linn County Records, in Linn County, Oregon is shown as 'Lot D' on Exhibit "B" hereto.

- B. Daniel Whalen and Ginger Whalen, as Tenants by the Entirety, are the owners of the following parcel of real property, located in Linn County, Oregon:

Parcel 1, PARTITION PLAT NO. 2022-96, recorded December 7, 2022 as Document no. 2022-19316, in the County of Linn, State of Oregon.

For convenient reference: Parcel 1, PARTITION PLAT NO. 2022-96, recorded December 7, 2022 as Document no. 2022-19316, in the County of Linn, State of Oregon is shown as 'Lot A' on Exhibit "B" hereto

- C. Daniel Whalen is the owner of the following parcel of real property, located in Linn County, Oregon:

Parcel 2, PARTITION PLAT NO. 2022-96, as platted and recorded December 7, 2022, Linn County Book of Partition Plats and as instrument no.: 2022-19316, Linn County Records, in Linn County, Oregon.

For convenient reference: Parcel 2, PARTITION PLAT NO. 2022-96, as platted and recorded December 7, 2022, Linn County Book of Partition Plats and as instrument no.: 2022-19316, Linn County Records, in Linn County, Oregon is shown as 'Lot B' on Exhibit "B" hereto.

- D. The parties above desire to provide for an easement for access and utilities over and with respect to the properties described above as to the area described in Exhibit "A" (the "Easement Area"). The Easement Area (and the above parcels of real property) are depicted in the Maps attached hereto as Exhibit "B".
- E. References in this Access and Utility Easement to Lots A through E are references to the parcels legally described above.
- F. The parties acknowledge that certain public utility easement(s) (as shown on Linn County, Oregon, Partition Plat No. 2023-03) exist or may exist within the Easement Area and agree that nothing in this instrument terminates or diminishes such public utility easement(s). The easement granted by this instrument shall be subject and subordinate to the public utility easement(s) identified Linn County, Oregon, Partition Plat No. 2023-03.

Easement and Maintenance Terms

1. **Recitals.** The Recitals above are material hereto and incorporated into these Terms.

2. **Grant of Easement.**

2.1 Grant by Kyle Latimer, Ashley Latimer, and Evan Latimer, to Dan Whalen and/or Ginger Whalen. Kyle Latimer, Ashley Latimer, and Evan Latimer as owners of the real properties described in Recital A, above grant

and conveys to Daniel Whalen and Ginger Whalen as owners of the real property described in Recital B, above, and to Daniel Whalen as owner of the real property described in Recital C, above a non-exclusive access easement for ingress and egress on and over the Easement Area and an easement for placement of utilities under the Easement Area. For purposes of the easement granted under this Section 2.1 (and throughout the remainder of this document, below), the real property(ies) described in Recital A, above, shall be the "Servient Property(ies)" and the real property(ies) described in Recitals B and C above, shall be the "Dominant Property(ies)".

2.2 Grant by Daniel and Ginger Whalen to Kyle Latimer, Ashley Latimer, and Evan Latimer. Daniel and Ginger Whalen, as owners of the real property described in Recital B, above, grant and convey to Kyle Latimer, Ashley Latimer, and Evan Latimer as owners of the real properties described in Recital A, above, a non-exclusive access easement for ingress and egress on and over that portion of the Easement Area as is located within the boundaries of the real property described in Recital B, above, and an easement for placement of utilities under the Easement Area located within the boundaries of the real property described in Recital B, above. For purposes of the easement granted under this Section 2.2 (and throughout the remainder of this document, below), the real property(ies) described in Recital A, above, shall be the "Dominant Property(ies)" and that portion of the Easement Area as is located within the boundaries of the real property described in Recital B, above, shall be the "Servient Property".

2.3 New or Additional Utilities. All new or additional utilities in the Easement Area shall be placed under the access easement, i.e., no new or additional utilities shall be placed over the Easement Area. However, power poles and overhead lines existing prior to the date of this easement are not affected by this provision, may remain in place, and may be replaced as deemed necessary by the utility provider.

3. Nature of Use. The easements granted herein may be used on a regular, continuous, nonexclusive, non-priority basis (excepting for the public utility easement use described above), benefiting the Dominant Properties and burdening the Servient Properties and the successors, assigns, lessees, mortgagees, invitees, guests, customers, agents and employees of the owners of the Dominant and Servient Properties. This easement further grants the Dominant Property owner(s) the right to perform necessary improvements, maintenance, repairs or replacements, all subject to the provisions of this easement. No permanent structure, gates, speed bumps, fencing, or other improvement shall be constructed within the Easement Area that could restrict or impair the access in any way. The Easement Area may not be used by the owner(s) of either the Dominant Property(ies) or Servient Property(ies) for parking, the storage of personal property, or storage of equipment (except as necessary or convenient to Support and Maintenance or Repair work while it is ongoing). An owner of a parcel subject to

the Easement Area may utilize the Easement Area for landscaping, however, any other owner of a parcel benefited by the easement granted herein may require, at any time, that the parcel owner remove any landscaping that impairs permitted uses of the Easement Area.

4. Improvements, Maintenance and Repair

4.1 Improvement Allocation. When improvements and/or upgrades to improvements, including but not limited to widening, ditching, culverts, or paving, are made to the ingress and egress and/or with respect to utilities, the cost shall be borne entirely by the owner(s) of property(ies) who desire such improvement or by the owner(s) of property(ies) required to make such improvement as a governmental condition to any development or building permit.

4.2 Maintenance and Repair Apportionment.

a. Maintenance and Repair costs for all ingress and egress improvements and for utility improvements, including those improvements previously placed by a lot owner, shall be apportioned by "Segments" of the Easement Area as follows:

b. For the 50' wide Segment of the Easement Area beginning at the public right of way and ending east where "30'00" mark is indicated on Lot C as shown on Exhibit B, the owners of the following Lots shall share in the costs as follows:

Lot A – 25%
Lot B – 25%
Lot C – 25%
Lot D – 25%

c. For the 30' wide Segment of the Easement Area beginning where 30'00" mark is indicated on Lot C as shown on Exhibit B bearing northeast to the southeast corner of Lot A as shown on Exhibit B, the owners of the following Lots shall share in the costs as follows:

Lot A - 20%
Lot B – 40%
Lot C – 40%

d. For the 30' wide Segment of the Easement Area beginning on the southeast corner of Lot A as shown on Exhibit B and bearing east to its terminus, as shown on Exhibit B, the owners of the following Lots shall share in the costs as follows:

Lot B – 50%
Lot C – 50%

- e. Lot E as shown on Exhibit B is intentionally omitted from cost sharing requirements described above; however, Lot E as shown on Exhibit B shall be subject to payment of costs pursuant to Section 6 below.
- f. Repair and maintenance to a utility at the junction point or stub out from the public right of way, if not covered by the utility provider, shall be allocated equally amongst Lots A – D as shown on Exhibit B.

4.3 Maintenance and Repair Definitions. "Maintenance" means the preservation and/or upkeep of then-existing structures on, or features of, real property including, which need to be addressed due to the deleterious effects of time and/or use, and includes, without limitation work to: grade and/or scrape roadway shoulders, replacement of signs, return of storm drainage facilities and ditching to their originally constructed status or specifications, patching, repaving, or spreading of gravel on the roadway surface, and construction or reconstruction of any of the above due to normal wear and tear or obsolescence. "Repair" means work to restore or fix then-existing structures on, or features of, real property, which have become suddenly damaged due to external forces such as, but not limited to misuse of the Easement Area, flooding, water intrusion, and/or Acts of God.

4.4 Determining when Maintenance and Repair Needed. Except for the need for an Emergency Repair as provided below, a decision to conduct maintenance or perform a repair to a Segment shall be made by written vote of 50% or more of the Lot owners benefited by the maintenance and/or repair.

4.5 Payment for Maintenance and Repair. If any Lot owner refuses to pay for their required portion of maintenance or repair, then any other Lot owner may make the payment and file claim against the non-paying Lot owner(s) for the amount paid. All monetary claims under the monetary limit for small claims in Linn County Circuit Court or other small claims court of competent jurisdiction shall be resolved in small claims unless other parties thereto bring a counterclaim exceeding such small claims limitations or non-monetary relief is also sought from the court in which case all claims shall be heard in Circuit Court. The paying Lot owner(s) shall also be entitled to interest on the amount paid on behalf of the non-paying Lot owner(s) at the rate of 12% per annum and shall have all rights to assert any statutory lien rights on the property of the non-paying Lot owner(s) as may be provided by law.

4.6 Administration of Maintenance and Repair Work. The obligation to arrange for, supervise, and perform maintenance and/or repairs, of or to any Segment shall be as agreed between and among the affected Lot owners. In

the absence of such agreement, maintenance and/or repairs shall be conducted, arranged, and/or supervised by the Lot owner(s) initiating or desiring the maintenance and/or repairs.

5. Emergency Repairs. Each parcel owner shall have the right to act to correct an emergency situation to the Easement Area for the sole purpose of attempting to mitigate or alleviate an emergency without the need for consent of other Lot owners. An emergency situation is one in which the Easement Area is completely or substantially impeded such that ingress or egress are not possible, where damage to the Easement Area has severed or substantially impaired the functioning of utility connections, and/or immediate repairs are needed to prevent further substantial risk to life, health, safety, and/or property. Such emergency repair shall be subject to reimbursement consistent with Section 4 above and, where the owner of Lot E (or their guests or invitees) has caused the need for Emergency Repairs, Section 6 shall apply. Snow and ice removal is not an emergency situation unless such snow removal is required for access by emergency vehicles.

6. Damage Caused by Owner. If a Lot owner (or an owner's guests or invitees) for any reason damages any improvements or real property within the Easement Area, or if a Lot owner utilizes heavy machinery, off road vehicles, frequent truck traffic, construction traffic, or other traffic that causes damages to Easement Area beyond normal wear and tear contemplated for residential uses, then that Lot owner shall pay all costs to repair associated with such damage.

7. Dispute Resolution; Attorney Fees. Any Lot owner, or the owner of any recorded mortgage, or the beneficiary of any deed of trust, with respect to any Lot shall have the right to enforce, by any proceeding at law or in equity, all terms imposed by the provisions of this Easement. Such equitable relief may include injunctive relief. Failure by any Lot owner to enforce this instrument shall in no event be deemed a waiver of the right to enforce thereafter. Except for matters required to be resolved in Small Claims Court as described above, in the event of any suit or action to enforce, interpret, or declare the terms of this instrument the prevailing party shall be entitled to recover from the non-prevailing party(ies) the reasonable attorney fees and other costs in the proceedings and on any appeal therefrom as determined by the trial court and on any appeal therefrom.

8. Anti-Merger/Savings Clause. It is the intent of owners of the real property involved that the easement established by this instrument not merge by unity of title. In the event this instrument is determined to be invalid as an easement, then the rights and obligations described in this instrument shall apply to all Lots referenced herein as a binding covenant to the fullest extent possible.

9. Nature of Easement. The easement granted herein will be appurtenant to, and for the benefit of the owner of the Dominant Property(ies). Any conveyance of fee title to the Dominant Property(ies) (or any portion that is a legal lot within the boundaries of a Dominant Property(ies)) will include a conveyance of the Easement

regardless of whether the Easement is specifically identified in the instrument of conveyance. The rights, covenants, and obligations contained in this Easement shall run with the land and bind, burden, and benefit each party's successors and assigns, lessees, mortgagees (or beneficiaries under deed of trust).

Kyle Latimer
Kyle Latimer

Dated: 7-6-23

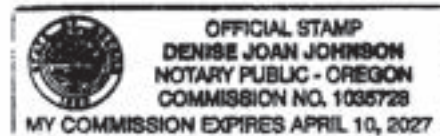
Ashley Latimer
Ashley Latimer

Dated: 7/6/23

Evan Latimer
Evan Latimer

Dated: 7/6/23

State of Oregon)
County of Benton) ss.



Personally appeared before me on this 6 day of July, 2023, the above-named Kyle Latimer, Ashley Latimer, and Evan Latimer, and acknowledged the foregoing instrument to be their voluntary act and deed.

[Signature]
Notary Public for Oregon

Daniel Whalen
Daniel Whalen

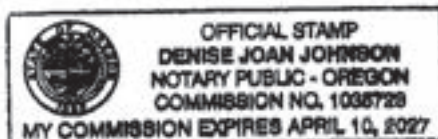
Dated: 5 JUL 23

Ginger Whalen
Ginger Whalen

Dated: 7-5-23

State of OR)
County of Benton) ss.

Personally appeared before me on this 5 day of July, 2023, the above-named Daniel Whalen and Ginger Whalen, and acknowledged the foregoing instrument to be their voluntary act and deed.



[Signature]
Notary Public for Oregon

Exhibit A

Shared access easement description

A variable width strip located in Section 8, Township 12 South, Range 4 West of the Willamette Meridian, in Linn County, Oregon and being more specifically described as follows:

Beginning at a point on the East right-of-way of White Oak Road (County Road no. 118) which bears North $1^{\circ}29'14''$ East 24.00 feet from the Southwest corner of Parcel 1, Partition Plat no. 2022-96, referred to as 'LOT A' on Exhibit B; thence South $88^{\circ}59'15''$ East 384.20 feet to the East line of said Parcel 1; thence North $41^{\circ}19'30''$ East 126.37 feet to the Southwest corner of Parcel 2 of said partition plat; thence South $86^{\circ}11'48''$ East 167.87 feet; thence South $3^{\circ}48'12''$ West 30.00 feet; thence North $86^{\circ}11'48''$ West 153.08 feet; thence South $41^{\circ}19'30''$ West 151.70 feet; thence North $88^{\circ}59'15''$ West 381.54 feet to the East right-of-way of White Oak Road; thence North $1^{\circ}00'45''$ East 50.00 feet to the point of beginning.

Exhibit B

