

AGENDA ITEM FOR URWCD BOARD MEETING () Discussion only
(X) Action

FROM (DEPT/ DIVISION): County Counsel

SUBJECT: UmaBirch Restoration Project

<p>Background:</p> <p>In 2022, the District was approached regarding the UmaBirch Restoration project. The project will remove the westerly portion of the levee, located west of the Birch Creek Road. The levee would be relocated parallel to the road, and restore the confluence of the Umatilla River and Birch Creek. At that time, the District gave no objection to the review of the proposed project, but reserved support for the project. The design of the project is nearing completion, and a proposed easement document is before the Board for review. The document would allow the moving of the easement of the levee to the new location. The terms of the easement are similar to the original one. The new easement is contingent on the approval by the Corps of the new section.</p>	<p>Requested Action:</p> <p>Approve easement deed and authorize chair to sign the easement and any other required documents to accomplish the transaction</p>
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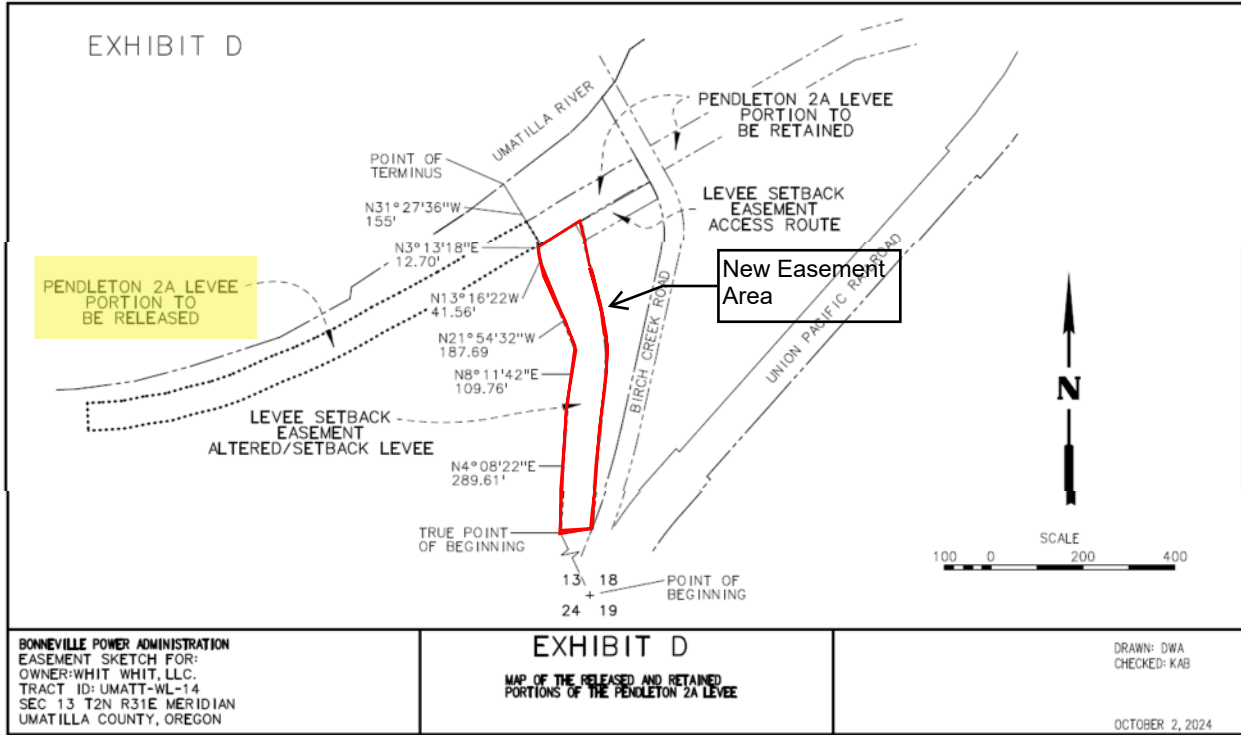
ATTACHMENTS: Map; Proposed Easement Deed

Scheduled for meeting on: November 26, 2024

Action taken:

Follow-up:

EXHIBIT D
 Map – Released Portion of the Pendleton 2a Levee



AFTER RECORDING RETURN TO:

WhitWhit, LLC
101 SE 3rd Street
Pendleton, OR 97801

With a copy to:
Blue Mountain Land Trust
P.O. Box 1473
Walla Walla, WA 99362

PENDLETON 2A LEVEE SETBACK EASEMENT DEED
Partially Releasing and Replacing the 1959 Levee Easement Deed

This **PENDLETON 2A LEVEE SETBACK EASEMENT DEED PARTIALLY RELEASING AND REPLACING THE 1959 LEVEE EASEMENT DEED** (“**Pendleton 2a Levee Setback Easement Deed**”) is made and entered into by and between WhitWhit, LLC, an Oregon Limited Liability Company (“**Grantor**”), and the Umatilla River Water Control District No. 1, a public body corporate and politic of Umatilla County, Oregon (“**Grantee**”). Grantor and Grantee are individually referred to herein as “**Party**” and collectively referred to as “**Parties.**”

RECITALS

- A. Grantor owns certain real property generally located south of the unincorporated town of Rieth and approximately five miles west of Pendleton in Umatilla County, Oregon, on which a portion of the Pendleton 2a Levee is located. The Pendleton 2a Levee, inclusive of artificial berms and embankments, is part of the larger U.S. Army Corps of Engineers (“**USACE**”) Pendleton Zone 2 Flood Damage Reduction Project (“**Pendleton Zone 2 FDR Project**”) federally authorized under Section 204 of the Flood Control Act of 1950 (Public Law 516, 81st Congress, 2nd Session).
- B. Grantee is a public body corporate and politic of Umatilla County, the non-Federal interest holder (local sponsor) of the Pendleton Zone 2 FDR Project as defined by 42 U.S.C. § 1962d-5b(b). Grantee is responsible for operating and maintaining the Pendleton 2a Levee.
- C. In an Easement Deed dated July 9, 1959 and recorded February 16, 1960, Book 257, Page 422 (“**1959 Levee Easement Deed**”) in the records of Umatilla County, Oregon, Grantor’s predecessor in interest, the State of Oregon, acting by and through the Oregon State Board of Control, conveyed to Grantee, its successors and assigns “a perpetual easement and right of way to build, construct, reconstruct, and repair levees, embankments, revetments, canals, and any incidental works appurtenant thereto” upon, over, and across lands on which the Pendleton 2a Levee and additional portions of the Pendleton Zone 2 FDR Project were subsequently constructed in 1961, as legally described in Book 126, Page 324, recorded on June 5, 1925 (property including Pendleton 2a Levee) and Book 124 Page 522, recorded

on December 23, 1924 (property including other portions of the Pendleton Zone 2 FDR Project).

- D. Grantor has entered into a Riparian and Conservation Agreement with the Confederated Tribes of the Umatilla Reservation (“**CTUIR**”) to plan and perform habitat restoration work along the mainstem Umatilla River and Birch Creek (“**Uma-Birch Floodplain Reconnection Project**”), a major component of which involves the alteration and setback of a portion of the Pendleton 2a Levee on Grantor’s property. Grantor has also conveyed or intends to convey a “**Conservation and Restoration Easement**” to the Blue Mountain Land Trust (“**BMLT**,” partner of the CTUIR), with a third-party right of enforcement to the U.S. Department of Energy, Bonneville Power Administration, the federal funding agency.
- E. Parties now intend to record this Pendleton 2a Levee Setback Easement Deed to partially release and replace the 1959 Levee Easement Deed for a portion of the Pendleton 2a Levee on Grantor’s real property that will be altered and setback. The 1959 Levee Easement Deed will remain in place to cover the portion of the Pendleton 2a Levee that is not being altered and setback. The Pendleton 2a Levee Setback Easement Deed will automatically partially release and partially replace the 1959 Levee Easement Deed and vest when USACE conducts its final inspection documenting and approving as-built conditions of the levee alteration and setback.

Now, therefore, the Parties agree as follows:

1. Conveyance and Consideration. Grantor, for and in consideration of Grantee’s agreement to allow for the alteration and setback of a portion of the Pendleton 2a Levee on Grantor’s real property as part of the Uma-Birch Floodplain Reconnection Project, and other good and valuable consideration, hereby grants, bargains, sells, and conveys to Grantee and its successors and assigns this perpetual easement and right of way, legally described in **Exhibit A** (Legal Description – New Setback Portion of the Pendleton 2a Levee) and shown in **Exhibit B** (Map – New Setback Portion of the Pendleton 2a Levee), together with the right of access. Upon the USACE’s final inspection documenting and approving as-built conditions of the alteration and setback of that portion of the Pendleton 2a Levee, this Pendleton 2a Levee Setback Easement Deed automatically vests to partially release and partially replace the 1959 Levee Easement Deed, as legally described in **Exhibit C** (Legal Description – Released Portion of the Pendleton 2a Levee) and shown in **Exhibit D** (Map – Released Portion of the Pendleton 2a Levee).

The 1959 Levee Easement Deed will remain in place to cover that portion of the Pendleton 2a Levee that is not being altered and setback, along with other portions of the Pendleton Zone 2 FDR Project outside of Grantor’s real property.

2. Right to Build, Construct, Reconstruct, and Repair. Grantee has the right in this Pendleton 2a Levee Setback Easement Deed to build, construct, reconstruct, and repair the new setback portion of the Pendleton 2a Levee, as described and shown in Exhibits A and B.

3. Right to Timber, Rock, Earth, and Gravel. Grantee has the right in this Pendleton 2a Levee Setback Easement Deed to take from the area described and shown in Exhibits A and B such timber, rock, earth or gravel as may be necessary to exercise its rights in Section 2 to build, construct, reconstruct, and repair the new setback portion of the Pendleton 2a Levee as described and shown in Exhibits A and B.
4. Right of Access. Grantee has the right at all times to enter the area described and shown in Exhibits A and B with workers, machinery and equipment, to exercise its rights in Section 2 to build, construct, reconstruct, and repair the Pendleton 2a Levee. Such right of entry shall be restricted, where practicable, to the access route legally described in **Exhibit E** (Legal Description – Access Route) and shown in **Exhibit F** (Map – Access Route). Where not practicable to restrict Grantee’s right of entry to such access route, the details related to entry of machinery and equipment upon, under, over and across or outside of the area described and shown in Exhibits A and B will be through a consultation with Grantor,

If, in the future, a gate(s) is installed on the access route, Grantor and Grantee shall ensure that each Party, BMLT, and the CTUIR are provided with keys or number combinations to the gate(s).
5. Hazardous Substances and Petroleum. Grantee shall not store or dispose of hazardous substances (as defined by 42 U.S.C. § 9601) or petroleum, or refuel equipment, on the area described and shown in Exhibits A and B.
6. Effective Date of this Pendleton 2a Setback Levee Easement Deed. As described above in Section 1, this Pendleton 2a Levee Setback Easement Deed automatically vests upon the USACE’s final inspection documenting and approving as-built conditions of the alteration and setback of that portion of the Pendleton 2a Levee described and shown in Exhibits A and B, and upon such vesting, partially releases and partially replaces the 1959 Levee Easement Deed, as described and shown in Exhibits C and D. The 1959 Levee Easement Deed remains in place for that portion of the Pendleton 2a Levee that is not being altered and setback, and for other portions of the Pendleton Zone 2 FDR Project.
7. Severability. If any provisions of this Pendleton 2a Levee Setback Easement Deed is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of the Pendleton 2a Levee Setback Easement Deed, and the application of such provision to the other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
8. Entire Agreement. This Pendleton 2a Levee Setback Easement Deed sets forth the entire and complete agreement between the Parties with respect to the subject matter hereof. Upon the occurrence of the USACE’s authorization and the CTUIR’s performance of the alteration and setback of a portion of the Pendleton 2a Levee as described above in Section 1, any prior agreements, commitments, or representations, express or implied, between the Parties are superseded by this Pendleton 2a Levee Setback Easement Deed, except for the 1959 Levee Easement Deed which shall remain in place for that portion of the Pendleton

2a Levee not being altered and setback. This document may be altered, amended, or repealed only by a written instrument executed by both Parties.

9. Governing Law. This Pendleton 2a Levee Setback Easement Deed shall be governed by and construed in accordance with the laws of the United States and the State of Oregon.
10. Counterparts. This Pendleton 2a Levee Setback Easement Deed may be executed in two or more counterparts and each counterpart shall be deemed to be an original, but all of which together shall constitute one and the same instrument upon delivery of one such counterpart by each party to this Pendleton 2a Levee Setback Easement Deed.
11. Schedule of Exhibits. The following exhibits are incorporated by reference into this Pendleton 2a Levee Setback Easement Deed.

Exhibit A	Legal Description – New Setback Portion of the Pendleton 2a Levee
Exhibit B	Map – New Setback Portion of the Pendleton 2a Levee
Exhibit C	Legal Description – Released Portion of the Pendleton 2a Levee
Exhibit D	Map – Released Portion of the Pendleton 2a Levee
Exhibit E	Legal Description – Access Route
Exhibit F	Map – Access Route

[Signatures and notary acknowledgments appear on the following pages]

IN WITNESS WHEREOF, this Pendleton 2a Levee Setback Easement Deed has been executed.

Grantor:

James L. Whitney
Member, WhitWhit, LLC

Date

Clason Whitney
Member, WhitWhit, LLC

Date

Nicole Whitney Chamberlin
Member, WhitWhit, LLC

Date

Acceptance by Grantee, Umatilla Water Control District No. 1:

John M. Shafer
Chair, Umatilla County Board of Commissioners
Acting District Board

Date

ACKNOWLEDGMENT

STATE OF OREGON)
) ss:
COUNTY OF UMATILLA)

I certify that I know or have satisfactory evidence that **James L. Whitney** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a **Member, WhitWhit, LLC**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public

Print Name _____

My commission expires _____

ACKNOWLEDGMENT

STATE OF OREGON)
) ss:
COUNTY OF UMATILLA)

I certify that I know or have satisfactory evidence that **Clason Whitney** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a **Member, WhitWhit, LLC**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public

Print Name _____

My commission expires _____

ACKNOWLEDGMENT

STATE OF OREGON)
) ss:
COUNTY OF UMATILLA)

I certify that I know or have satisfactory evidence that **Nicole Whitney Chamberlin** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as a **Member, WhitWhit, LLC**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public

Print Name _____

My commission expires _____

ACKNOWLEDGMENT

STATE OF OREGON)
) ss:
COUNTY OF UMATILLA)

I certify that I know or have satisfactory evidence that **John M. Shafer** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **Chair of the Umatilla County Board of Commissioners, Acting District Board, on behalf of Umatilla River Water Control District No. 1**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public

Print Name _____

My commission expires _____

EXHIBIT A
Legal Description – New Setback Portion of the Pendleton 2a Levee

That portion of the Pendleton 2a Levee lying west of Birch Creek Road, located in Section 13, Township 2 North, Range 31 East, Willamette Meridian, Umatilla County, Oregon, more particularly described as follows:

Beginning at the Southeast corner of said Section 13, thence North 25°19'02" West a distance of 3681.21 feet to the TRUE POINT OF BEGINNING; thence North 04°08'22" East a distance of 289.61 feet; thence North 08°11'42" East a distance of 109.76 feet; thence North 21°54'32" West a distance of 187.69 feet; thence North 13°16'22" West a distance of 41.56 feet; thence North 03°13'18" East a distance of 12.70 feet; thence North 58°32'24" East a distance of 98.56 feet; thence South 27°24'35" East a distance of 13.77 feet; thence South 05°33'06" East a distance of 11.28 feet; thence South 15°13'53" East a distance of 163.93 feet; thence South 06°34'07" East a distance of 103.65 feet; thence South 02°01'29" West a distance of 70.77 feet; thence South 06°00'29" West a distance of 314.52 feet; thence South 83°17'06" West a distance of 69.17 feet to the TRUE POINT OF BEGINNING.

EXHIBIT B
Map – New Setback Portion of the Pendleton 2a Levee
 (see also Exhibit D)

*EXHIBIT MAP OF REPLACEMENT LEVEE
 EASEMENT LOCATED IN SECTION 13,
 T.2N., R.31E., W.M., UMATILLA COUNTY,
 OREGON
 W.O. 22-5866*

LINE DATA TABLE		
NO.	LENGTH	BEARING
1	289.61'	N04°08'22"E
2	109.76'	N08°11'42"E
3	187.69'	N21°54'32"W
4	41.56'	N13°16'22"W
5	12.70'	N03°13'18"E
6	98.56'	N58°32'24"E
7	13.77'	S27°24'35"E
8	11.28'	S05°33'06"E
9	163.93'	S15°13'53"E
10	103.65'	S06°34'07"E
11	70.77'	S02°01'29"W
12	314.52'	S06°00'29"W
13	69.17'	S83°17'06"W

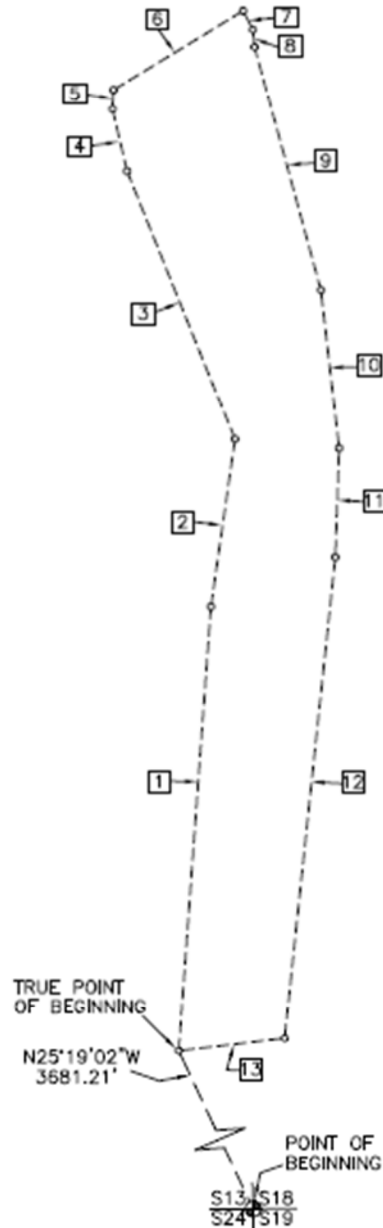
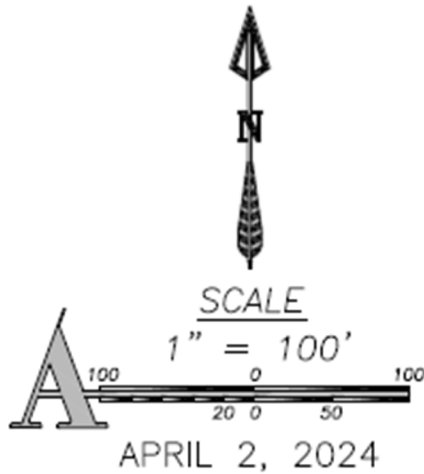


EXHIBIT C

Legal Description – Released Portion of the Pendleton 2a Levee

That portion of the Pendleton 2a Levee described in Easement Deed, recorded February 16, 1960, in Book 257, Page 422, records of Umatilla County, Oregon, lying within Government Lots 1 and 2 of Section 13, and the north part of the Jonas Whitney DLC No. 38, all in Township 2 North, Range 31 East, Willamette Meridian, Umatilla County, Oregon, lying south of the centerline of the channel of the Umatilla River and west of the following described line:

Beginning at the Southeast corner of said Section 13, thence North 25°19'02" West a distance of 3681.21 feet to the TRUE POINT OF BEGINNING; thence North 04°08'22" East a distance of 289.61 feet; thence North 08°11'42" East a distance of 109.76 feet; thence North 21°54'32" West a distance of 187.69 feet; thence North 13°16'22" West a distance of 41.56 feet; thence North 03°13'18" East a distance of 12.70 feet to the southerly right-of-way line of said Pendleton 2A Levee; thence North 31°27'36" West a distance of 155 feet more or less to the centerline of the Umatilla River and the terminus of this line.

The right of way of said Pendleton 2a Levee is shown on that Corps of Engineers, U.S. Army, Office of the District Engineer, Walla Walla, Washington, Umatilla River, Zone 2, Location, Levee and Revetment Construction, Site Map and Plans and Profiles, Real Estate Overlay Dwg. No. WW-RE-214, Sheet 7 of 10, which is attached by reference to that Easement Deed, recorded June 3, 1959, in Book 254, Page 430, records of said county.

EXHIBIT D
 Map – Released Portion of the Pendleton 2a Levee

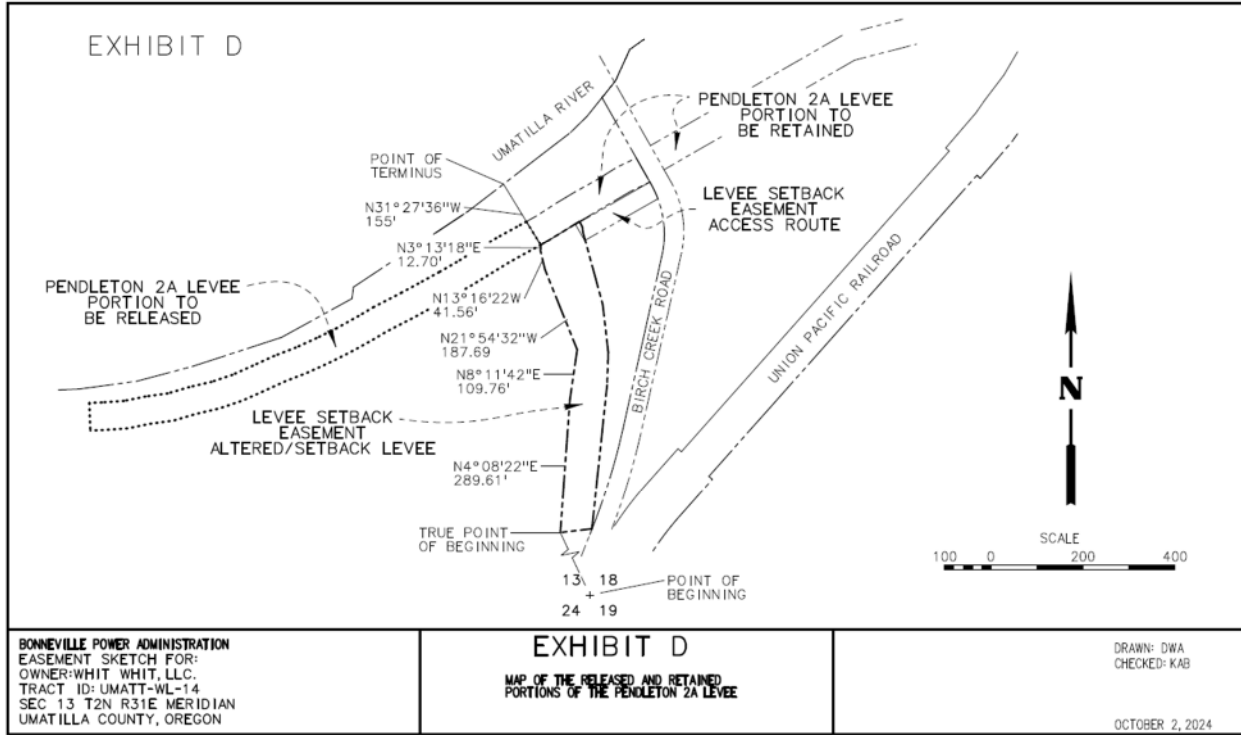


EXHIBIT E
Legal Description – Access Route

A non-exclusive route of access, 40 feet wide, over and across a part of Section 13, Township 2 North, Range 31 East, Willamette Meridian, Umatilla County, Oregon, said route of access being 20 feet on each side of a centerline, more particularly described as follows:

Commencing at the Southeast corner of said Section 13, thence North 18°35'19" West a distance of 4296.20 feet to THE TRUE POINT OF BEGINNING; thence South 60°17'09" West a distance of 186.05 feet to the point of terminus of said centerline. The sidelines of said route of access are to be extended to or shortened to terminate at the Southerly right-of-way line of Birch Creek Road.

EXHIBIT F
Map – Access Route
(see also Exhibit D)

