

Multnomah County Official Records
E Murray, Deputy Clerk

2021-141250

09/17/2021 01:59:43 PM

COVE-COVE Pgs=13 Stn=25 ATRA
\$65.00 \$10.00 \$11.00 \$10.00 \$60.00

\$156.00

After recording, return to:

Eugene A. Frassetto

STOEL RIVES LLP

760 SW Ninth Avenue, Suite 3000

Portland, OR 97205

**DECLARATION OF COVENANTS AND RESTRICTIONS and
ACCESS EASEMENT**

FOR THE

LINNTON MILL RESTORATION SITE MITIGATION BANK

{Corps permit #NWP-2014-477, DSL permit #58909-RF; 59636-MB}

THIS DECLARATION is made by LINNTON WATER CREDITS, LLC,
("Declarant").

RECITALS

1. Declarant is the owner of the real property described in Exhibit "A" of the attached hereto and by this reference incorporated herein (the "Property"), and has designated the Property as a compensatory mitigation site in accordance with Removal-Fill Permit # 58909-RF; 59636-MBI approved by the Oregon Department of State Lands ("Department"), and the Department of the Army permit #NWP-2014-477 approved by the US Army Corps of Engineers ("Corps").

2. Declarant desires and intends to provide for the perpetual protection and conservation of the wetland and waterway functions and values of the Property and for the management of the Property and improvements thereon, and to this end desires to subject the Property to the covenants, restrictions, easements and other encumbrances hereinafter set forth, each and all of which is and are for the benefit of the Property;

After recording, return to:
Eugene A. Frassetto
STOEL RIVES LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205

**DECLARATION OF COVENANTS AND RESTRICTIONS and
ACCESS EASEMENT
FOR THE
LINNTON MILL RESTORATION SITE MITIGATION BANK
*{Corps permit #NWP-2014-477, DSL permit #58909-RF; 59636-MB}***

THIS DECLARATION is made by LINNTON WATER CREDITS, LLC,
("Declarant").

RECITALS

1. Declarant is the owner of the real property described in Exhibit "A" of the attached hereto and by this reference incorporated herein (the "Property"), and has designated the Property as a compensatory mitigation site in accordance with Removal-Fill Permit # 58909-RF; 59636-MBI approved by the Oregon Department of State Lands ("Department"), and the Department of the Army permit #NWP-2014-477 approved by the US Army Corps of Engineers ("Corps").
2. Declarant desires and intends to provide for the perpetual protection and conservation of the wetland and waterway functions and values of the Property and for the management of the Property and improvements thereon, and to this end desires to subject the Property to the covenants, restrictions, easements and other encumbrances hereinafter set forth, each and all of which is and are for the benefit of the Property;

3. The Department has accepted the mitigation plan for the Property under ORS 196.800 et seq, and the Corps has likewise accepted the mitigation plan under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act.

ARTICLE 1

DEFINITIONS

1.1 “Declaration” shall mean the covenants, restrictions, easement, and all other provisions set forth in the Declaration of Covenants and Restrictions.

1.2 “Declarant” shall mean and refer to LINNTON WATER CREDITS, LLC, the owner of the Property, and the owner’s heirs, successors, and assigns.

1.3 “DSL permit” shall mean the final document approved by the Department that includes the mitigation plan and which formally establishes the mitigation site and stipulates the terms and conditions of its construction, operation and long-term management. A copy of the DSL permit may be obtained at the Department of State Lands, 775 Summer St. NE, Salem, OR 97301; phone 503-986-5200.

1.4 “Corps permit” shall mean the final document approved and issued by the Corps which stipulates the terms and conditions of its construction resulting in the discharge of dredged or fill material into waters of the U.S. A copy of the Corps permit associated with this Declaration may be obtained at the office of the US Army Corps of Engineers, Regulatory Branch, 333 SW First Ave., Portland, OR 97208; Phone 503-808-4373.

1.5 ”MBI” shall mean the final Mitigation Bank Instrument, approved by the Corps and Department, which includes the mitigation plan describing where and how the compensatory mitigation will be completed, monitored, managed, and maintained.

1.5 “Property” shall mean and refer to all real property subject to this Declaration, as more particularly set forth in Exhibit A.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

The Property described in Exhibit A is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration.

ARTICLE 3

DECLARANT REPRESENTATIONS

Declarant represents and warrants that after reasonable investigation, and to the best of its knowledge, that no hazardous materials or contaminants are present that conflict with the conservation purposes intended; that the Property is in compliance with all federal state, and local laws, regulations, and permits; that there is no pending litigation affecting, involving, or relating to the Property that would conflict with the intended conservation use; and that the Property is free and clear of any and all liens, claims, restrictions, easements and encumbrances that would interfere with the ability to protect and conserve the Property.

ARTICLE 4

GENERAL DECLARATION

Declarant, in order to discharge in part its obligations under the DSL permit and the Corps permit, and the mitigation banking instrument (MBI), declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements and other encumbrances in this Declaration, in order that it shall remain substantially in its restored, enhanced, preserved, open and natural condition, in perpetuity. The terms and conditions of this Declaration shall be both implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the Property. No modification or release of this Declaration will be effective unless authorized in writing by the Department and by the Corps. Any amendments must be signed by the Department and must be recorded in the official records of the county in which the Property is located.

ARTICLE 5
USE RESTRICTIONS, MANAGEMENT RESPONSIBILITIES,
AND RESERVED RIGHTS

Declarant is subject to any and all easements, covenants and restrictions of record affecting the Property.

A. USE RESTRICTIONS. Except as necessary to conduct, remediate or maintain the mitigation purposes of the Property consistent with the DSL permit, the Corps permit, and the MBI, the actions prohibited by this covenant include:

1. There shall be no removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of any native vegetation in the Property, nor any disturbance or change in the natural habitat of the Property unless it promotes the mitigation goals and objectives established for the Property by the MBI. Hazard trees that pose a specific threat to existing structures including fences or pedestrian trails may be felled and left on site.
2. There shall be no agricultural, commercial, or industrial activity undertaken or allowed in the Property; nor shall any right of passage across or upon the Property be allowed or granted if that right of passage is used in conjunction with agricultural, commercial, or industrial activity.
3. No domestic animals shall be allowed to graze or dwell on the Property.
4. There shall be no filling, excavating, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock minerals or other materials, nor any storage nor dumping of ashes, trash, garbage, or of any other material, and no changing of the topography of the land of the Property in any manner once the wetlands are constructed unless approved in writing by the Department and by the Corps.
5. There shall be no construction or placing of buildings, mobile homes, advertising signs, billboards or other advertising material, vehicles, or other structures on the Property.
6. There shall be no legal or de facto division, subdivision, or partitioning of the Property.

7. Use of motorized off-road vehicles is prohibited except on existing roadways, and for monitoring, maintenance, and oversight purposes by the owner or his designee.
8. There shall be no hunting or trapping of native species.

B. MANAGEMENT RESPONSIBILITIES. Declarant shall take all reasonable action to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the mitigation purposes of the Property or that are otherwise inconsistent with this Declaration.

C. RESERVED RIGHTS. Declarant reserves all other rights accruing from Declarant's ownership of the Property including but not limited to the exclusive possession of the Property, the right to transfer or assign Declarant's interest in the same; the right to take action necessary to prevent erosion on the Property, to protect the Property from losing its wetland or waterway functions and values, or to protect public health or safety; and the right to use the Property in any manner not prohibited by this Declaration and which would not defeat or diminish the conservation purpose of this Declaration.

The Declarant specifically reserves the right to use the Property for the purposes of, which reserved rights are deemed to be consistent with the purposes enumerated in the permit and MBI.

1. Any activities related to the initial or corrective measures or for long-term maintenance of the wetlands relating to construction, wildlife enhancement, planting, replanting, maintenance, trash removal, invasive weed, or dominant species control may be conducted to insure compliance with the DSL permit, Corps permit, and MBI.
2. Emergency crossing of the Property by farm equipment or other large equipment is allowed. Restoration of the site will be conducted for any damages that are incurred to the Property.
3. The right to prevent trespass and control access by the general public.

4. Any activity for which entry is authorized pursuant to the Access Easement "Right of Entry" Article 6, below.

ARTICLE 6
ACCESS EASEMENT (RIGHT OF ENTRY)

Declarant hereby grants to the Department an easement and right of entry and grants to the Corps a right of entry on the Property for the purpose of physically accessing the Property at all reasonable times to inspect the Property in order to monitor and to ascertain whether there has been compliance with this Declaration and the DSL permit, Corps permit, and MBI. In the event that the Property lacks access via a public road or other common area, Declarant grants to the Department an easement over and across any other property of Declarant, the use of which is necessary to access the Property. If either the Department or the Corps finds it necessary to claim financial assurances to implement the MBI or remediate performance failures, the Declarant hereby grants access and permission to the agencies and/or their agents to conduct such work.

ARTICLE 7
GENERAL PROVISIONS

A. NOTICE. The Department and the Corps shall be provided with a 60-day advance written notice of any legal action concerning this Declaration, or of any action to extinguish, void or modify this Declaration, in whole or in part. This Declaration, and the covenants, restrictions, easements, and other encumbrances contained herein, are intended to survive foreclosure, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation and similar doctrines or judgments affecting the Property. A copy of this recorded Declaration shall accompany said notice.

B. VALIDITY. If any provision of this Declaration, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this

Declaration, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

IN WITNESS WHEREOF, the undersigned being Declarant herein, has executed this instrument this 29th day of AUGUST, 2021.

LINNTON WATER CREDITS, LLC
Multnomah County, Oregon

By: [Signature]
Title: Andrew Gregg, Authorized Signatory

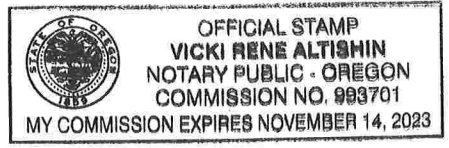
STATE OF OREGON

County of Multnomah

ss: Multnomah

This instrument was acknowledged before me on Aug. 24 2021 (date) by Andrew Gregg (name of person) as Authorized Signatory of Linnton Water Credits, LLC, on behalf of the company. (title) of Applicant firm's name of Multnomah County, Oregon.

[Signature]
Signature of Notarial Officer
My Commission Expires: Nov. 14 2023



GRANTEE: The State of Oregon, Department of State Lands, approves Declarant's conveyance of an easement in favor of the Department.

By: [Signature]
Title: Planning and Policy Manager
Date: Sep. 7, 2021

Attachment:
Exhibit A, legal description and labeled map of the Property

Exhibit A: Legal Description



AKS ENGINEERING & FORESTRY, LLC
12965 SW Herman Road, Suite 100, Tualatin, OR 97062
P: (503) 563-6151 F: (503) 563-6152

AKS Job No. 2713

OFFICES IN: TUALATIN, OR - VANCOUVER, WA - SALEM, OR

EXHIBIT A

A portion of the Solomon Richards DLC No. 47, located in the Southwest 1/4 and the Northwest 1/4 of Section 2, Township 1 North, Range 1 West, Willamette Meridian, City of Portland, Multnomah County, Oregon, being more particularly described as follows:

Commencing at a 4-1/4 inch aluminum disc at the Witness Corner 801.70 feet westerly of the Southeast Corner of the Solomon Richards D.L.C.; thence North 62°10'31" East 78.13 feet; thence South 26°38'14" East 395.96 feet; thence North 62°10'31" East 308.86 feet to the most southerly corner of the tract per Book 828 Page 214 (Recorded December 7, 1971) and the Point of Beginning; thence continuing along the southeast line of said tract North 62°10'31" East 558.01 feet to the Line of Ordinary Low Water of the Willamette River; thence along said Line of Ordinary Low Water North 35°51'32" West 57.90 feet; thence continuing along said line North 37°08'09" West 108.70 feet; thence continuing along said line North 33°48'34" West 63.12 feet; thence continuing along said line North 33°27'02" West 50.40 feet; thence continuing along said line North 18°40'18" West 93.36 feet; thence continuing along said line North 06°08'59" West 120.23 feet; thence continuing along said line North 62°53'37" West 126.83 feet; thence continuing along said line North 39°56'48" West 121.78 feet; thence continuing along said line North 19°24'56" West 65.97 feet; thence continuing along said line North 35°03'34" West 66.15 feet; thence continuing along said line South 85°47'44" West 9.27 feet; thence continuing along said line North 38°42'11" West 72.40 feet; thence continuing along said line North 70°15'33" West 29.28 feet; thence continuing along said line North 13°40'32" West 39.67 feet; thence continuing along said line North 05°17'02" East 157.78 feet; thence continuing along said line North 03°43'28" West 156.71 feet; thence continuing along said line North 26°09'09" West 275.82 feet; thence continuing along said line North 34°05'17" West 282.63 feet to the most northerly corner of the tract per Book 1029 Page 1716 (Recorded March 3, 1975); thence along the northwest line of said tract South 63°20'20" West 377.82 feet to the northeast right-of-way line of NW Front Street (30.00 feet wide); thence along said northeast right-of-way line South 26°37'00" East 100.00 feet to a 5/8 inch iron rod on the southeast right-of-way line of NW 107th Avenue (30 feet wide); thence along said southeast right-of-way line South 63°20'20" West 179.56 feet to the northeast line of the Portland and Western Railroad (50.00 feet from centerline); thence along said northeast line South 26°08'00" East 1112.50 feet to a point of curvature; thence continuing along said northeast line along a curve to the left with a Radius of 5679.65 feet, a Delta of 06°04'12", a Length of 601.70 feet, and a Chord of South 29°10'06" East 601.42 feet to the Point of Beginning.

The above described tract contains 22.26 acres, more or less.

04/27/17



Survey Figure



AKS SURVEYING & FORESTRY
OFFICE LOCATED IN:
SHERWOOD, OREGON
RENO, CALIFORNIA
WWW.AKS-SURVEYING.COM

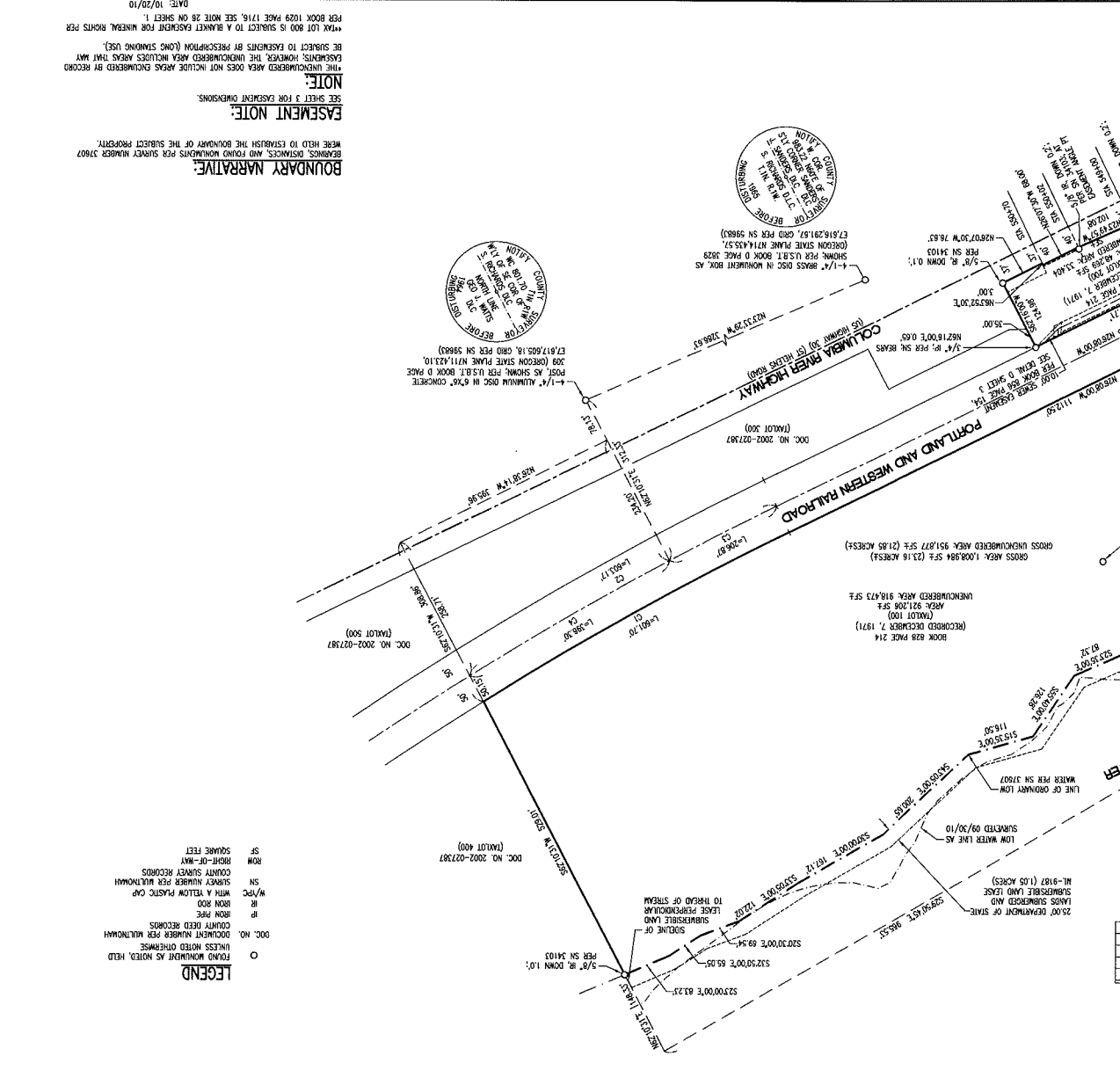
PREPARED FOR:
NAME: NSW
OWNER: JOHN
SCALE: AS NOTED
DRAWING NO.: 2713001
DATE: 10/20/10

WILLIAMS INC.
JESS AMERSON ROAD
SHERWOOD, OREGON
PHONE: (916) 455-3555

LINNTON PLYWOOD MILL

REGISTERED PROFESSIONAL LAND SURVEYOR
MONTGOMERY & HUBBARD
DATE: 10/20/10

JOB NUMBER: 2713
SHEET: 2 OF 7



BOUNDARY NARRATIVE:
BEARINGS, DISTANCES, AND FOUND MONUMENTS PER SURVEY NUMBER 37607 WERE HELD TO ESTABLISH THE BOUNDARY OF THE SUBJECT PROPERTY.

EASEMENT NOTE:
SEE SHEET 3 FOR EASEMENT DIMENSIONS.

NOTE:
THE UNENCUMBERED AREA DOES NOT INCLUDE AREAS ENCUMBERED BY RECORD EASEMENTS, HOWEVER, THE UNENCUMBERED AREA INCLUDES AREAS THAT MAY BE SUBJECT TO EASEMENTS BY PRESCRIPTION (LONG STANDING USE).
*MAX LOT 800 IS SUBJECT TO A BLANKET EASEMENT FOR MINERAL RIGHTS PER PER BOOK 1029 PAGE 1716. SEE NOTE 28 ON SHEET 1.

LEGEND

- FOUND MONUMENT AS NOTED, HELD UNLESS NOTED OTHERWISE
- DOC. NO. DOCUMENT NUMBER PER MULTNOMAH COUNTY DEED RECORDS
- IP IRON PIPE
- IR IRON ROD
- W/PC WITH A YELLOW PLASTIC CAP
- SN SURVEY NUMBER PER MULTNOMAH COUNTY SURVEY RECORDS
- RIGHT-OF-WAY
- SF SQUARE FEET

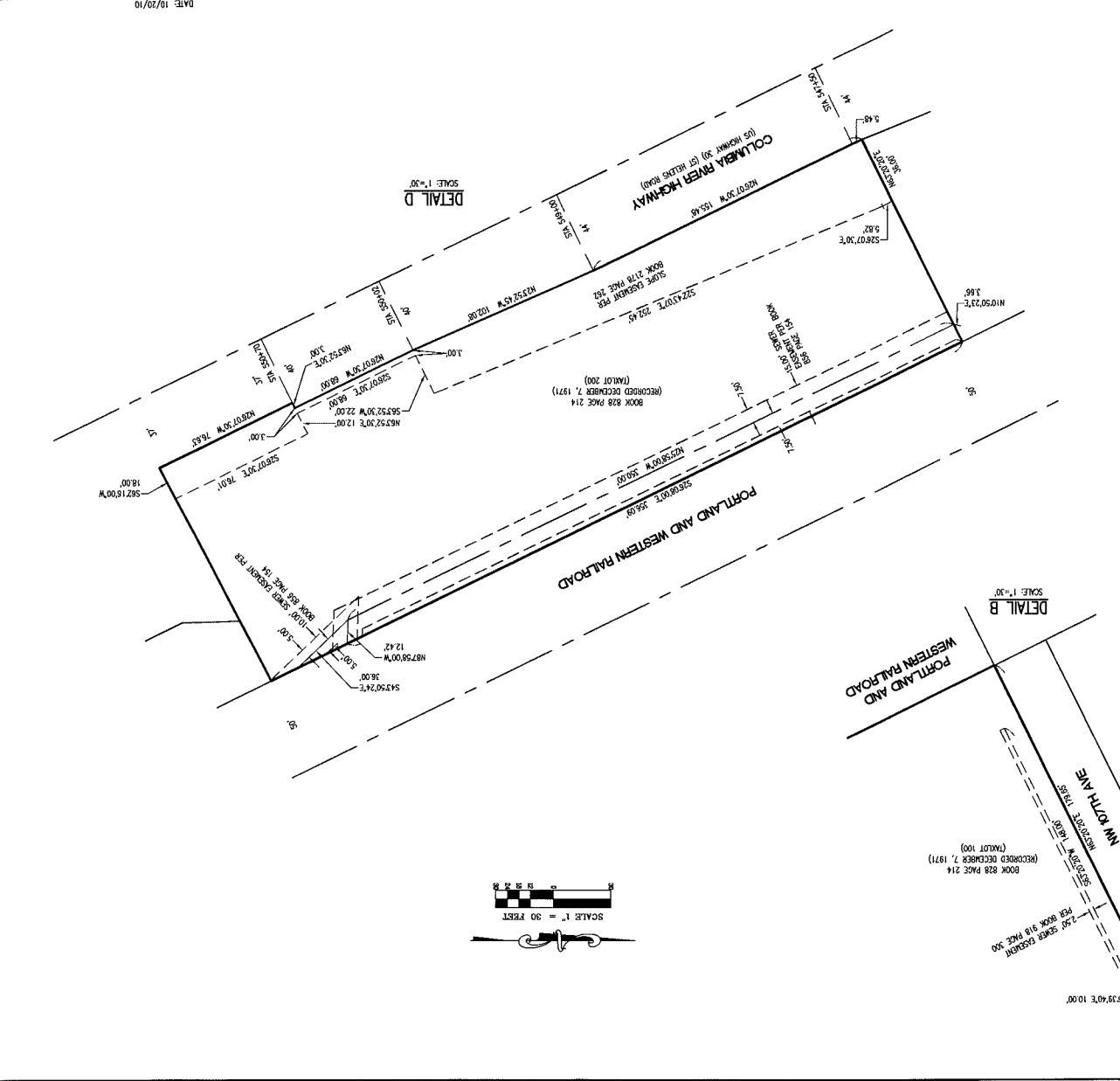


AKS
ENGINEERING & SURVEY
1000 N. 10TH AVE., SUITE 100
SHERWOOD, OREGON 97130
VANOCHE, WASHINGTON

PREPARED FOR:
WILLIAMS INC.
3855 ALBERTSON ROAD
MADRAS, OR 97555
PHONE: (503) 453-3555

LINNTON
TAX LOTS 100, 200 AND 300
MULTNOMAH COUNTY TAX MAPS IN M 28 AND 2C

REGISTERED
PROFESSIONAL
LAND SURVEYOR
MONTGOMERY B. HUBLEY
NO. 12, 2008
EXPIRES: 2/28/11



DATE: 10/20/10
JOB NUMBER: 2713
SHEET: 3 OF 7