



Supplemental Staff Report

File #:
Version: 1

Date: 12/1/2025
Item #:

TO: Mayor and City Council
THROUGH: Krishna Namburi, City Manager
FROM: Kristin Retherford, Community Planning and Development Director

SUBJECT:

Supplemental staff report in response to comments received concerning Annexation Case No. ANXC-763, the proposed annexation of an approximate 48.02-acre territory, including public street right-of-way, located at 3741 Langley Street SE and the 3700 to 3800 Blocks of Langley Street SE and Timbet Drive SE.

Ward(s): Ward 3
Councilor(s): Matthews
Neighborhood(s): Southeast Mill Creek Association
Result Area(s): Welcoming and Livable Community

SUMMARY:

Annexation of an approximate 48.02-acre territory, including public street right-of-way, located at 3741 Langley Street SE and the 3700 to 3800 Blocks of Langley Street SE and Timbet Drive SE.

ISSUE:

Shall City Council approve the annexation of the territory located at 3741 Langley Street SE and the 3700 to 3800 Blocks of Langley Street SE and Timbet Drive SE, including application of IP (Industrial Park) zoning and withdrawal from the Turner Rural Fire Protection District, and advance to first reading?

RECOMMENDATION:

Approve the annexation of the territory located at 3741 Langley Street SE and the 3700 to 3800 Blocks of Langley Street SE and Timbet Drive SE, including application of IP (Industrial Park) zoning and withdrawal from the Turner Rural Fire Protection District, and advance to first reading.

FACTS AND FINDINGS:

As identified in the December 1, 2025, annexation staff report, the properties included with this annexation request are located within the boundaries of the Santiam Water Control District (SWCD). The SWCD is an Oregon water control district that owns and operates water conveyance facilities providing irrigation and drainage services to members within their district. Because this special district is not one that is subject to withdrawal upon annexation, the territory included with the annexation request will remain within the district following annexation into the City.

Subsequent to completion of the December 1, 2025, staff report, comments were received from the District raising concerns relating to water rights and stormwater management. The comments received from the District are included as **Attachment 1** and specifically pertain to the following issues:

1. Recognition of SWCD easements over property.

The comment received indicates that the properties included in the annexation request are subject to SWCD easements that contain rights-of-way for operation and maintenance of the portion of the Coates Lateral located on the property. It is explained that these easements must be included in any survey made of the property so that the City can responsibly incorporate those facilities in property development plans.

Staff Response: The proposal before the City Council for consideration is whether the approximate 48-acre territory included with this request meets the applicable approval criteria for annexation under SRC 260.010(g)(1). As identified in the supporting exhibits provided with the SWCD's comments, there are existing easements for SWCD facilities on the property; however, identification of existing easements is neither a requirement for submittal of annexation applications under SRC 260.010(f) nor a requirement of the applicable approval criteria. As such, requiring existing easements to be shown on future surveys for the properties is not required in conjunction with the proposed annexation.

In addition, any easements applicable to the properties are already of record and binding on any owner of the property and must be addressed with any future development.

2. Prevention of loss of SWCD water rights.

The comment received indicates that the 48-acre territory is currently irrigated with a SWCD water right and that urbanization of the property will preclude the beneficial use of SWCD water. If the owner fails to use the water right and that water right is not transferred to other SWCD lands through a permanent transfer application with the Oregon Water Resources Department (OWRD), after five years the water right may be subject to forfeiture for non-use and likely unable to be replaced.

The District indicates that approval of a water right transfer application with OWRD requires landowner consent or a deed showing the transfer of the land owner's interest in the water right to the District. The SWCD cannot, however, force a landowner to deed the water right even if the

owner does not intend to use it for beneficial use; and, if the owner ignores a request to consent to transfer, the District must rely on litigation to avoid stranding and subjecting the water right to forfeiture. Because of this, the District requests a landowner deed quitclaiming interest in the water right for the property be required as part of the annexation process.

Staff Response: Because the properties proposed to be annexed are within the Santiam Water Control District, the owner of the property is subject to a water delivery contract with the SWCD and the property is subject to a SWCD water right. Administration of water rights between the District and individual properties is governed by State law and individual contracts between the District and property owners receiving irrigation and other beneficial services from the District. The City, however, is not a party to these agreements and does not have a role in administering requirements of the District as they apply to properties proposed to be annexed. SRC 110.060(a) specifically provides that the City's development code is required to be applied independently of, and without regard to, any private easement, covenant, condition, restriction, or other legally enforceable interest in, or obligation imposed on, the use or development of land. Further, SRC 110.060(b) provides that the City does not enforce any easement, covenant, condition, restriction, or other agreement between private parties, not is the City's development code generally intended to abrogate, annul, or impair such easements, covenants, conditions, restricts, or agreements.

In order for an annexation to be approved, it must be demonstrated that the proposal satisfies the approval criteria included under SRC 260.010(g)(1). As identified in the December 1, 2025, staff report, the proposed annexation satisfies the applicable criteria for approval; and, based on the annexation approval criteria and the requirements of SRC 110.060 establishing the relationship of the City's development code to private regulations and restrictions, the City is not be justified to compel a property owner to transfer their water right to the District when such transfer is governed by private agreements between the District and property owners within the District.

Further, the annexation of the properties into the City does not necessarily mean they will immediately cease to use the established water right. The properties are currently designated Industrial on the Salem Area Comprehensive Plan map and will be assigned corresponding IP (Industrial Park) zoning to implement the Industrial comprehensive plan designation upon annexation pursuant to the requirements of SRC 260.030. While the IP zone is an industrial zone intended to primarily provide for industrial and supporting uses, it does, however, allow Agriculture as a permitted use. As such, there is the potential under the IP zone for the properties to stay in an agriculture use receiving irrigation from the District until such time the property owner is ready to develop them for non-agriculture use.

3. Landowner termination of SWDC water deliver contracts.

The comment received indicates the property owner is currently under contract with the SWCD for the delivery of water. The District requests that the City condition the annexation to require the property owner to sign termination of contract documents provided by the District that will release it from the obligation to deliver water to lands that will no longer be in agriculture

production.

Staff Response: As provided in the response to the request to require the property owner to transfer the water rights of the property to the District, the water delivery contract between the owner and the District is a private agreement between the District and the owner that the City is not a party to and cannot enforce, pursuant to SRC 110.060, nor is required to enforce, based on the approval criteria applicable to the proposed annexation. Termination of the water delivery contract must instead be addressed between the District and the owner pursuant to the terms of the contract.

4. Conformance with Statewide Planning Goal 11.

The comment received indicates that under ORS 197.175, cities exercise their planning and zoning responsibilities in compliance with the Statewide Planning Goals. The District indicates they acknowledge the properties are within the City's UGB and subject to the Salem Area Comprehensive Plan. However, they explain there are significant instances where the proposed annexation does not meet the objectives of the Statewide Planning Goals. The District indicates that under Statewide Planning Goal 11, cities are required to plan and develop a timely, orderly, and efficient arrangement of public facilities and services, including storm sewer systems, to serve as a framework for urban and rural development.

Under the City's development code and ORS, Salem must provide municipal services, including stormwater services, to, or otherwise ensure they are provided to, the property in a time manner. It is explained that the SWCD's Coates Lateral currently provides delivery of water for irrigation as well as stormwater drainage services to the property but because the property is being removed from agriculture production it will no longer be served by the District. Therefore, in order to meet the requirements of the City's development code, Salem must provide alternative stormwater drainage to the property but because the City doesn't have a system in place to provide required stormwater services, approval of the annexation without a plan to provide drainage services fails to meet City development code and Statewide Planning Goal 11 requirements.

Staff Response: Statewide Planning Goal 11 requires cities to plan for and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. Under the goal, a timely, orderly, and efficient arrangement of public facilities and services is a system or plan that coordinates the type, locations, and delivery of public facilities and services in a manner that best supports the existing and proposed land uses.

The City's comprehensive plan, which includes the public facilities plan and the Urban Service Area Map, and the City's development code, including SRC Chapter 200 (Urban Growth Management) and its public facilities chapters, are acknowledged by the State and comply with the Statewide Planning Goals, including Goal 11. The City's public facilities plan includes the Salem Area Wastewater Management Master Plan, the Stormwater Master Plan, and the Water System Master Plan.

When property is annexed into the City it is often located outside the City's Urban Service Area. As provided under SRC 200.005, the Urban Service Area is the territory within the City where all required facilities necessary to serve development are in place or fully committed. Properties located outside the Urban Service Area and within the Urban Growth Boundary are within the Urban Growth Area. In order for properties to be developed within the Urban Growth Area preceding the City's extension of such facilities, an Urban Growth Preliminary Declaration (*pursuant to SRC 200.020, SRC 200.025, & SRC 200.065*) is required which identifies the required master plan and linking public facilities needed to serve the development and the surrounding area.

In the case of the properties included with this annexation request, they will be located outside the Urban Service Area upon annexation and will therefore require an Urban Growth Preliminary Declaration at the time of future development to identify the required public facilities, including stormwater facilities per SRC 200.065, that will be required to be constructed to serve the development and how storm drainage will be provided. The Urban Growth Preliminary Declaration will identify the needed improvements, such as extension of storm drain lines, construction of open channels, and detention facilities to connect drainage facilities; and such infrastructure will be required with the development of the property.

Additionally, SRC 71.075(a) requires that all projects convey storm drainage to an approved point of discharge. At the time of development, an approved point of discharge will be identified and the applicant will be required to construct necessary facilities to convey stormwater to the approved point of discharge. If the approved point of discharge is not Coates Lateral due to its potential private ownership by the District, a different approved point of discharge will be required to be provided at the time of development unless an agreement is entered for use of the Coates Lateral as a discharge point.

Conformance with the Urban Growth Preliminary Declaration requirements of SRC Chapter 200 ensures that properties annexed will be served with public facilities in a manner consistent with Statewide Planning Goal 11.

5. SWCD ownership of Coates Lateral.

The comment received expresses concern that the City misidentifies most of the Coates Lateral as the East Fork of Pringle Creek on maps, in planning documents, and in the 2020 Salem Stormwater Master Plan. The District indicates that under Statewide Planning Goal 2 cities are required to coordinate their plans with affected government agencies, including special districts such as the Santiam Water Control District. The District explains that the City is failing to meet Goal 2 by not acknowledging SWCD ownership of Coates Lateral in a manner that impacts its planning decisions and the City cannot adequately plan for provision of services if it is relying on private facilities unavailable for municipal use.

Staff Response: In the comments provided by the District, they refer to a deed and title report which provide evidence that the Coates Lateral is an artificial private irrigation ditch acquired from the Willamette Valley Water Company in 1960. This information is being reviewed by staff but

notwithstanding whether the Coates Lateral is owned by the SWCD, SRC 71.075(a) requires projects to convey storm drainage to an approved point of discharge. If the Coates Lateral is a private facility owned by the SWCD rather than a waterway, future development of the property will not be able to discharge to it without permission from the owner. In compliance with SRC 71.075(a), an alternative point of discharge will be therefore required to be identified and constructed by the applicant.

Based on the approval criteria applicable to annexations under SRC 260.010(g)(1), the question of how Coates Lateral is described in the City's Stormwater Master Plan is not an issue to be addressed with the annexation but instead rather one that will need to be addressed with the upcoming Stormwater Master Plan update.

6. Flooding concerns and water quality impacts.

The comment received expresses concern that the Pringle Creek Basin, the drainage basin the property is located within, is already at capacity for stormwater and the Salem Stormwater Plan describes historic flooding events in multiple flood prone areas of concern along Coates Lateral. The District indicates Statewide Planning Goal 6 requires cities to ensure that waste and process discharges of future development will comply with applicable state and federal environmental statutes and rules and that discharges from future development will not degrade, overload, or threaten the availability of air, water, or land. It is explained that without additional protections, approval of the annexation will have adverse impacts on water quality and fail to meet Goal 6 due to removal of the properties from irrigated agriculture and instead being developed within the city with increased annual stormwater volume and peak flows; thereby resulting in erosion, canal damage, and flooding that will impact water quality by introducing sediments and other pollutants into Coates Lateral. The SWCD proposes three options to address the identified stormwater drainage issues:

1. Provide new drainage facilities that do not discharge into Coates Lateral;
2. SWCD conveys a portion of Coates Lateral to the City; and
3. SWCD continues to operate Coates Lateral and the City reimburses SWCD for drainage services.

Staff Response: The territory proposed to be annexed is within the City's Urban Growth Boundary and therefore anticipated to eventually be annexed and developed, consistent with the City's comprehensive plan. The approval criteria for annexations under SRC 260.010(g)(1) do not require direct approval of the Statewide Planning Goals to annexations. The standards included in the City's development code that will apply to any future development of the property, however, are acknowledged by the State and therefore ensure future development in a manner in compliance with both the City's Comprehensive Plan and Statewide Planning Goals.

The Public Works Design Standards (PWDS) establish requirements for stormwater management for new development. Projects which exceed 5,000 square feet of new impervious surface require stormwater treatment and detention; thereby managing both the quantity and quality of stormwater discharge from properties. The PWDS also require that stormwater facilities be

designed to match the post-development peak runoff rates to the pre-developed peak runoff rates for the design storm events described in PWDS 4.5(a)(2). Therefore, future development of the annexed territory is not anticipated to negatively impact existing storm drainage conveyance systems. As identified above, the applicant will be required to identify an approved point of discharge for all stormwater runoff from future development on the site (SRC 71.075(a)).

If the Coates Lateral is determined to be a private facility owned by the SWCD rather than a waterway, intergovernmental agreements between the City and the SWCD for use of Coates Lateral within the Urban Growth Boundary should be addressed through the upcoming Stormwater Master Plan update.

BACKGROUND:

Land located within the Urban Growth Boundary (UGB) but outside of the city limits is designated as urbanizable land under Statewide Planning Goal 14. Urbanizable land is land that is determined to be necessary and suitable for future urban areas, that can be served by urban services and facilities, and that is needed for the expansion of an urban area. The city is expected to annex land within the UGB over time to provide for facilities or activities which are related to or supportive of urban development such as residential, commercial, and industrial development as well as such things as sewage treatment facilities, water reservoirs or wells, parks, and recreational facilities.

Bryce Bishop
Planner III

Attachments:

1. Santiam Water Control District Comments

November 18, 2025

Via Email

Bryce Bishop

City of Salem, Planning Division

Bbishop@cityofsalem.net

**RE: Santiam Water Control District Comments to Annexation Case
No. ANXC-763**

Santiam Water Control District (“SWCD”) appreciates the opportunity to provide comments on City of Salem (“Salem”) Annexation Case No. ANXC-763, the proposed annexation of an approximate 48.02-acre territory located at 3741 Langley Street SE and the 3700 to 3800 Blocks of Langley Street SE and Timbet Drive SE (“Property”).

SWCD is primarily concerned with the provision of stormwater drainage services to the Property, the preservation of SWCD water rights and SWCD access rights. SWCD proposes options to address the stormwater drainage issue on the Property and the surrounding area where SWCD and Salem boundaries overlap.

I. Background and SWCD Interest in Annexation of the Property.

SWCD is an Oregon water control district formed under ORS Chapter 553. SWCD owns and operates water conveyance facilities (“SWCD Facilities”). SWCD Facilities provide irrigation and drainage services to its members, including the Property landowner. The Property is burdened by SWCD water delivery contracts. The Property is within SWCD district boundaries and subject to the SWCD Rules and Regulations. SWCD water rights identify the Property as a “place of use.”

The SWCD Facilities include the portion of Coates Lateral located on the Property. SWCD Facilities deliver irrigation water to and provide drainage services from the Property. See Exhibit A – Map of SWCD and Salem Boundary Intersection.

The lands in the vicinity of the Property, where SWCD boundaries overlap with Salem boundaries, are being taken out of agricultural use and converted to industrial and residential uses. This development pattern has increased impervious surfaces and increased municipal stormwater quantity and peak flow rates. Removal of lands that are benefitted by SWCD water rights and services places SWCD water rights in jeopardy and increases the SWCD operations and maintenance burden.

II. SWCD Concerns with Annexation.

A. Recognition of SWCD Easements over Property.

The Property is subject to the SWCD Easements identified by the map attached as Exhibit B – Coates Lateral Easements. The easement documents are attached as Exhibit C – Easement Document. The easements contain rights-of-way for operation and maintenance of the portion of Coates Lateral located on the Property. The easements must be included in any survey made of the Property so that Salem can responsibly incorporate those facilities in Property development plans.

B. Prevention of Loss of SWCD Water Rights.

The 48-acre Property is currently irrigated with a SWCD water right (“SWCD Water”). Urbanization of the Property will preclude the beneficial use of SWCD Water. If the SWCD Water is not removed from the Property and transferred to other SWCD lands through a permanent transfer application with Oregon Water Resources Department (“Transfer Application”), after five years the water right may be subject to forfeiture for non-use. SWCD will likely be unable to replace the forfeited water because OWRD is not issuing new surface water rights from the North Santiam River and because surface water rights in the Willamette Basin are either cost prohibitive or simply unobtainable.

OWRD approval of a Transfer Application requires landowner consent or a deed showing transfer of the appurtenant landowner’s interest in the water right to SWCD. SWCD cannot force a landowner to deed SWCD water use rights even if the landowner does not intend to place the water to beneficial use. If a landowner refuses or ignores a request to consent to transfer, SWCD must rely on costly litigation to avoid stranding and subjecting SWCD water rights to forfeiture. SWCD requests a landowner deed quitclaiming interest in the SWCD Water appurtenant to the Property as part of the annexation process. SWCD will provide the deed template to landowner.

C. Landowner Termination of SWCD Water Delivery Contracts.

A separate SWCD concern is that the Property owner is currently under contract with SWCD for the delivery of water. One of the contracts for the Property is attached as Exhibit D - Contract. SWCD requests that Salem condition annexation on landowner signature of Termination of Contract documents provided by SWCD. This will release SWCD from the obligation to deliver water to lands that will no longer be in agricultural production.

D. Salem Must Provide Drainage Services to the Property.

Salem Municipal Code (“SMC”) requires annexations comply with the following standards:

- (A) The annexation will result in a boundary in which services can be provided in an orderly, efficient, and timely manner;
- (B) The land uses and development densities that will be allowed can be served through the orderly, efficient, and timely extension of key urban facilities and services;
- (C) The withdrawal of the territory from any applicable special districts complies with applicable state statutes governing the withdrawal of the territory from those districts; and
- (D) The public interest is furthered by the annexation of the territory ...¹

ORS 197.175 requires cities exercise their planning and zoning responsibilities in compliance with the Statewide Planning Goals. SWCD acknowledges that the Property is within Salem’s UGB and subject to Salem’s Comprehensive Plan. However, as described below, there are significant instances where this annexation does not meet the objectives of the Statewide Planning Goals. Under the Statewide Planning Goal 11, cities are required to "plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." Public facilities specifically include storm sewer systems. See OAR 660-011-005(7)(c).

Under the SMC and ORS, Salem must provide municipal services including stormwater services to, or otherwise ensure they are provided to, the Property in a timely manner. Currently SWCD’s Coates Lateral provides stormwater drainage services to the Property. Because the Property is being removed from agricultural production, it will no longer be served by SWCD. Therefore, to meet the SMC requirements, Salem must provide alternative stormwater drainage. However, Salem does not have a system in place to perform the stormwater services required by the Property. Approval of the Application without a Salem plan to provide drainage services fails to meet the SMC and Goal 11 requirements.

1. *SWCD Ownership of Coates Lateral.*

Coates Lateral is an artificial irrigation ditch constructed before 1950. In 1960, SWCD purchased assets held by the Willamette Valley Water Company (“Water Company”). Those assets included land, all canals and laterals, water rights, and water delivery contracts. This transfer of ownership is evidenced by the deed from the Water Company to SWCD, dated February 29, 1960, recorded at V531, P414 (“Deed”). The Water Company canals and laterals are specifically described in a title report dated January 4, 1960 (“Title Report”). Coates Lateral (at that time referred to as the “Coates, Zistel, Meier Lateral”) was one of the canals described in the Title Report. As an artificial ditch constructed specifically for irrigation delivery, Coates Lateral is recognized under Oregon law (ORS 540.310 and ORS 540.320) as a man-made conduit capable of ownership.

¹ Salem Municipal Code §260.010(g)(1)

SWCD jurisdiction over Coates Lateral is further supported by formal boundaries encompassing the area approved by Marion County, SWCD water delivery contracts, an ODEQ-approved TMDL plan, and recurring SWCD maintenance activities confirming its authority and commitment to operating and maintaining the constructed facility.

Despite this evidence and SWCD provision of legal arguments and supporting evidence to Salem, Salem misidentifies most of Coates Lateral as the “East Fork of Pringle Creek” in Salem maps, planning documents, and in the 2020 Salem Stormwater Master Plan (“Salem Stormwater Plan”). Under the Statewide Planning Goal 2, cities are required to coordinate their plans with affected government agencies, including special districts such as SWCD. Salem is failing to meet Goal 2 by refusing to acknowledge SWCD ownership of Coates Lateral in a manner that impacts its planning decisions. Salem cannot adequately plan for provision of services if it is relying on private facilities unavailable for municipal use.

2. The Property area is over-capacity for stormwater as described in the Salem Stormwater Plan.

The Salem Stormwater Plan includes Coates Lateral within its Pringle Creek Basin Plan. The Salem Urban Growth Boundary (“UGB”) encompasses approximately 93% of the 13.4 square mile basin. Coates Lateral is in the eastern portion of the Pringle Creek Basin and runs generally southeast to northwest. The Salem Stormwater Plan does not acknowledge SWCD ownership of Coates Lateral but notes that in the southeast portion of the Pringle Creek Basin (south of Kuebler Blvd), the “East Fork Pringle” channels are used as irrigation ditches and are managed by the Santiam Water Control District.²

This Pringle Creek Basin is already at capacity for stormwater and the Salem Stormwater Plan describes historical flooding events in multiple flood prone “Areas of Concern” along Coates Lateral.³ Historical flooding includes the areas upstream of Boone Road, between the city limits and the UGB, where flooding has been observed along roadways, in open spaces, and in some industrial areas during the 2012 and 2015 events.

² *City of Salem Stormwater Management Plan, Draft Pringle Creek Basin Stormwater Plan, September 2019, Page 2.*

³ *Id.* at 4.

Further downstream, the Salem Stormwater Plan notes that Coates Lateral floodwaters often overtop portions of Airway Drive, resulting in road closures. During the 2012 event, high waters from Coates Lateral spilled over a berm dividing the facility from Spinnaker Lake. Despite pumping by the property owner, lake water continued to increase. Water eventually began spilling out of the lake at the boat ramp near the northwest corner and into 22nd Street SE. The overtopping resulted in flooding of properties located south of McGilchrist Street between East Fork Pringle Creek and 22nd Street. During the 1996 storm event, water spilled out of Coates Lateral along the reach located upstream of its confluence with West Fork Pringle Creek. The flooding extended northward into residential and industrial areas located between Mission Street and Oxford Street.

3. *Future development of the Property will add to flooding risk and water quality issues.*

Statewide Planning Goal 6 (OAR 660-15-000)(6) requires cities to insure that "waste and process discharges" of future development will comply with applicable state and federal environmental statutes and rules. Goal 6 requires that the city ensure that waste and process discharges from future development will not degrade, overload, or threaten the availability of air, water, or land. Without additional protections, approval of the annexation will have the adverse impacts on water quality described above and fail to meet Goal 6 requirements.

Specifically, removal of the Property from irrigated agriculture and presumed future development within city boundaries will increase annual storm water volume and peak flows without adequate protections. More specifically, increased impervious surface area will increase the flow and concentration of stormwater discharges in Coates Lateral. Increased stormwater peak flows will exceed the load capacity of Coates Lateral and result in increased erosion. Increased erosion causes turbidity and related water quality issues. Increased peak flows also cause flooding and damage to Coates Lateral and to private property. Erosion, canal damage, and flooding all impact water quality by introducing sediments and other pollutants into Coates Lateral.

4. *Three Options to Address the Stormwater Drainage Issue.*

The Property, as well as surrounding properties annexed into Salem, will continue to require drainage services. This annexation is an opportunity for Salem to address its current and future stormwater needs in the Pringle Creek Basin.

SWCD proposes the following three options:

Option 1. Salem provides stormwater drainage services to the Property through new facilities that do not discharge into Coates Lateral.

Salem does not have a right to use Coates Lateral as a municipal stormwater system for new development. Oregon courts recognize a "water trespass" when a defendant artificially collects surface water or groundwater, diverts it onto a plaintiff's property and the defendant knew or should have known that the water would end up on that property.⁴ Courts have limited a water trespass to the "collection and redirection of water in a way that changed the flow's quantity and location when compared to the natural flow."⁵ A trespass must be intentional, which in this context means that "the acts setting in motion the invasion were done with knowledge that a trespass would result and not that the acts were done for the specific purpose of causing a trespass or injury."⁶ These comments and prior written communications with Salem legal counsel provide Salem with factual notice sufficient to render municipal stormwater discharges from the Property into SWCD Facilities an intentional trespass.

If Property development and the resulting impermeable surfaces, collection structures, and conveyance facilities drain municipal stormwater into SWCD Facilities, these alterations to the natural drainage change the location where the stormwater flow enters Coates Lateral, and they change the rate and flow of storm water discharged into Coates Lateral. Those increased municipal stormwater discharges are not permitted under Oregon law.

Option 2. SWCD conveys Coates Lateral to Salem.

When part of a district is annexed into a city, the city may elect to provide the services previously provided by the district and withdraw the annexed area from the district.⁷ Should Salem elect to withdraw the Property from SWCD, Salem and SWCD would need to determine how to operate the portion of the SWCD within the annexed area. Under ORS 222.540, when a part of a water district is withdrawn, the district turns over the facilities that are not necessary for the remainder of the district system.

SWCD is willing to discuss an agreement with Salem under which SWCD conveys to Salem a portion of Coates Lateral generally identified on Exhibit E – Possible Conveyance of Coates Lateral. SWCD conveyance of Coates Lateral may require reservation of Coates Lateral capacity or another manner in which to convey irrigation water to the remaining SWCD member lands currently served by Coates Lateral.

⁴ *Gibson v. Morris*, [270 Or. App. 608, 613-16](#) (2015).

⁵ *Id.* at 610 n. 1.

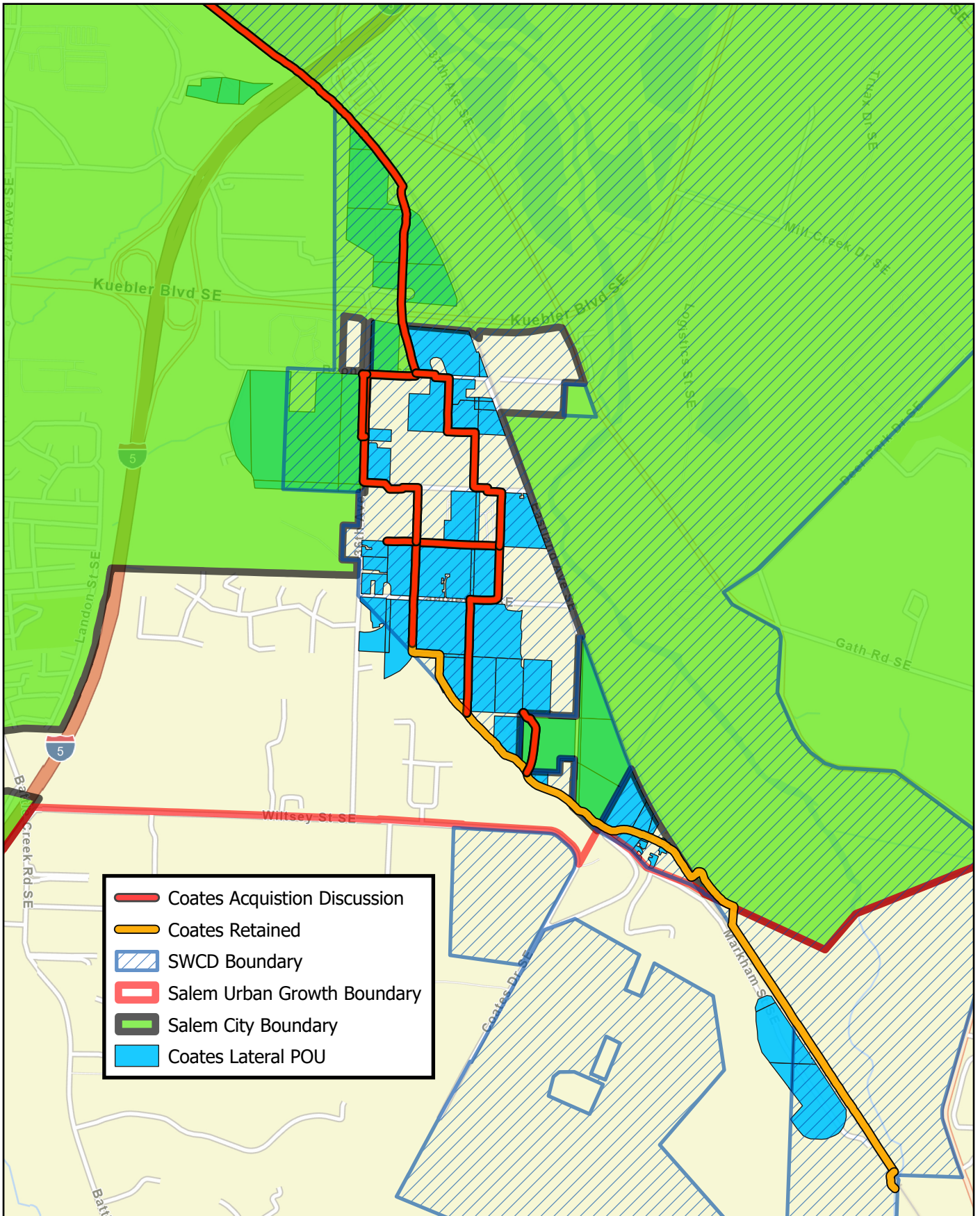
⁶ *Lunda v. Matthews*, 46 Or.App. 701, 705, 613 P.2d 63 (1980)

⁷ ORS 222.520.

Option 3. SWCD continues to operate Coates Lateral and Salem reimburses SWCD for drainage services provided to lands within Salem boundaries.

SWCD is willing to discuss an agreement with Salem under which SWCD continues to operate Coates Lateral for the performance of drainage services in exchange for municipal stormwater liability protections and for cost reimbursements. Cost reimbursements may include facility upgrades necessary to address municipal stormwater the flow demands, and maintenance and operations costs. To protect access for upgrade work and ongoing maintenance operations, an agreement would include development setbacks or payment for piping of Coates Lateral.

Exhibit A
Map of SWCD and Salem Boundary Intersection



- Coates Acquisition Discussion
- Coates Retained
- SWCD Boundary
- Salem Urban Growth Boundary
- Salem City Boundary
- Coates Lateral POU



SWCD and Salem Boundary Intersection

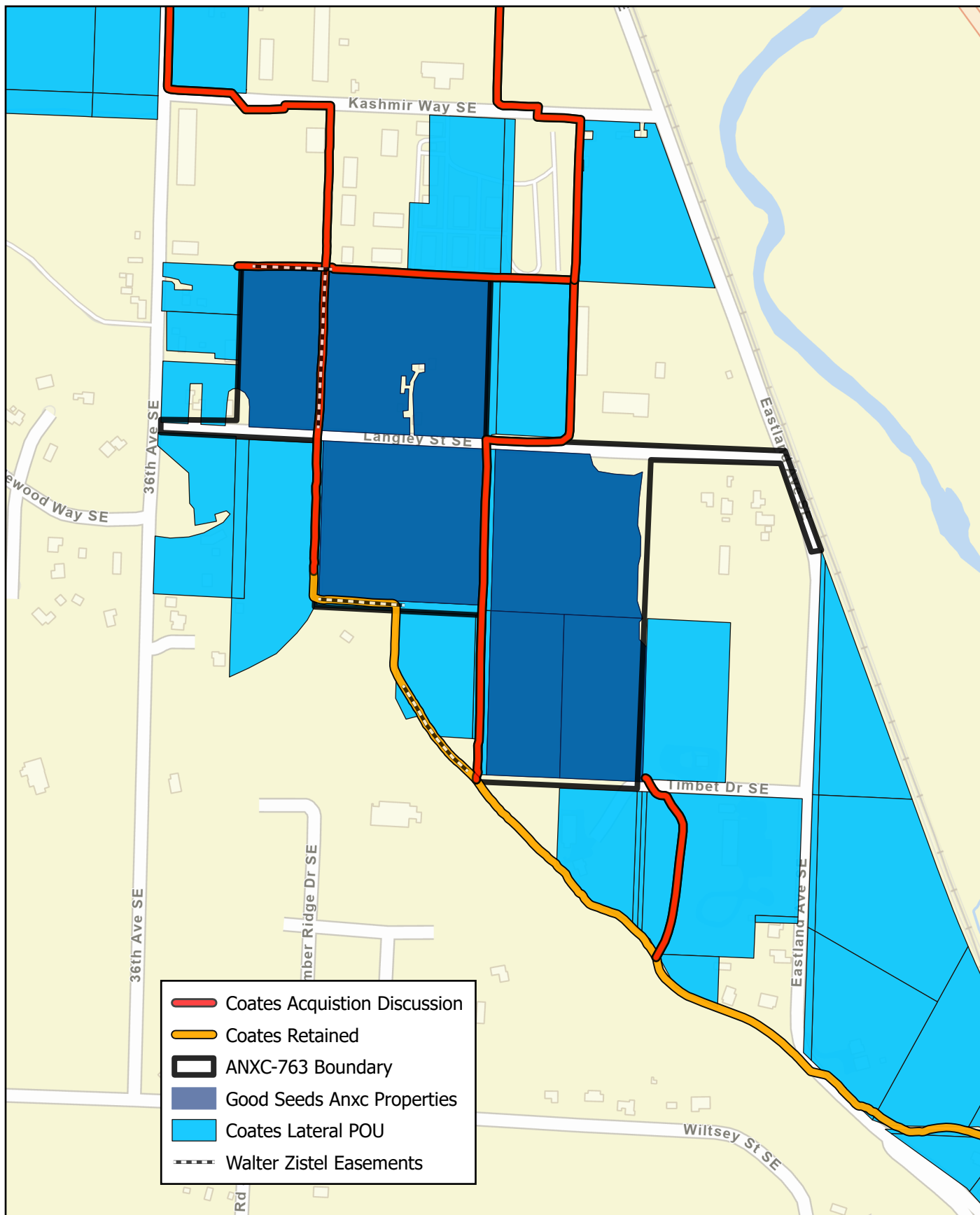
Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User Community, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

2025



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Exhibit B
Coates Lateral Easements



Coates Lateral Easements

Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User Community, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

2025

PCS: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Feet Intl



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Exhibit C
Easement Documents

EASEMENT

THIS INDENTURE WITNESSETH: That WALTER O. ZISTEL, for the consideration of the sum of One and No/100 (\$1.00) Dollars and other good and sufficient consideration to him paid, do hereby give and grant unto the SANTIAM WATER CONTROL DISTRICT, organized under the laws of the State of Oregon, its successors and assigns an easement for a 30 foot width right of way for a canal and rights of ingress and egress for maintenance and operation of same on a line over the following described land, to-wit:

Marion County Assessors Account Number 15996, Lots 19, 20 & 21, Hanshaw Fruit Farms, more particularly described in Vol. 475, Page 679; Marion County Assessors Account Number 16001, Lots 28 & Fr 29, Hanshaw Fruit Farms, more particularly described in Vol. 475, Page 679; and Marion County Assessors Account Number 16004, Lot 35, Hanshaw Fruit Farms, more particularly described in Vol. 416, Page 763.

The location of the above said right of way is more or less described as follows:

Beginning at a point at the Southeast corner of said Lot 35, said point being at the base of the hill, thence Northwesterly along the base of said hill as has been or shall be determined by survey. Said 30 foot width right of way shall be Northeasterly of and adjacent to the above described line.

ALSO: Beginning at a point on the Southeast corner of said Lot 29 thence West along the South line of said Lot 29 to the Southwest corner of said Lot 29. Said 30 foot width right of way is North of and adjacent to the above described line.

ALSO: Beginning at a point on the Southeast corner of Lot 19, thence North along the West line of said Lot 19 to the Northeast corner of said Lot 19. Said 30 foot width right of way shall be West of and adjacent to the above described line.

ALSO: Beginning at a point on the Northeast corner of Lot 19, thence West along the North line of said Lot 19 to the Northwest corner of said Lot 19. Said 30 foot width right of way shall be South of and adjacent to the above described line.

TO HAVE AND TO HOLD the said easement and privilege to the said Santiam Water Control District, organized under the laws of the State of Oregon, its successors and assigns and the said grantors shall have the privilege and right of using the water that may be flowing in said ditch for the domestic use of water for livestock and to farm to the edge of said ditch.

IN WITNESS WHEREOF, We have hereunto set our hand and seal this 19 day of May, 1965.

STATE OF OREGON,)
)ss
County of Marion)

Walter O. Zistel (SEAL)

On this 19 day of May, 1965, before me a Notary Public in and for the said County and State, personally appeared the above named WALTER O. ZISTEL, to me personally known to be the identical person in and who executed the foregoing instrument and acknowledged to me that they executed the same for the uses and purposes above mentioned.

Witness my hand and seal the day and year above mentioned.

Notary Public for Oregon.
My Commission Expires: November 15, 1966.

Exhibit D
Contract

**SANTIAM WATER CONTROL DISTRICT
WATER DELIVERY CONTRACT**

This contract, between the Santiam Water Control District, a municipal corporation formed under ORS Ch. 553, hereinafter referred to as "District", and Walter O. & Elizabeth Zistel, their heirs and assigns, hereinafter referred to as "Owner".

WHEREAS, Owners of land within and adjacent to the District have various water rights in the forms of permits or certificates from the State of Oregon and the District may be the holder of various water rights, and the District owns a water delivery system and is authorized to deliver water for irrigation and other uses, and the Owner owns land within or served by the District with a County Tax Assessor's number and described in the following deed references or legal description:

County Tax Assessor No.	Sec.	Location Township	Range	Deed Reference Reel or Volume & Page
71650-310	18	8S	2W	

AND the Owner has a water right for the irrigation or other beneficial use of water on parcels described as follows:

Permit or Certificate No.	Priority Date	Number of Acres	Attached Map or Exhibit
68665	May 14, 1909	4.8	

and Owner wants to enter into a contract for the delivery of water for the benefit of the land,

NOW, THEREFORE, the District agrees to deliver water to the Owner via the lateral most convenient to the District, to the lands set forth above at a point of delivery described as follows:

Such water shall be used only for the purpose set forth in the Water Right Permit or Certificate mentioned above.

In return, the Owner agrees to pay the District the sum of _____ (\$ _____) as an initial fee or note for this agreement, receipt of which is hereby acknowledged. Owner agrees to pay all charges levied by District for such delivery. It is agreed between the District and Owner that the operation and maintenance charges shall be payable when billed by the District and is not contingent upon Owner using water in any particular given year. It is agreed by the parties that whether Owner utilizes water or abandons their water rights through non-use, the operation and maintenance charges must continue to be paid.

If the Owner is in default for failure to pay any lawful charge or under any of the terms of this or any other agreement entered into with the District, water shall be withheld by the District and not delivered to the lands of Owner as long as such default exists, and the same shall be true even though Owner may be in default with respect to only one year's charge and not in default for other charges for other years or for other parcels of land.

Should Owner either lose their water right or a portion thereof for any reason, this shall not excuse Owner from the continued responsibility for the payment of the charges which will continue to be billed unless and until a new agreement is reached between the parties in accord with District policy.

If any party to this agreement is in default under the terms hereof and this agreement is placed in the hands of an attorney to take any steps or actions with respect to such default, the defaulting party agrees to pay the other parties reasonable attorney's fees and out of pocket expenses even though no court proceeding is filed; however, in the event either of the parties hereto institute a court proceeding to procure any remedy for any breach hereof, the party prevailing shall recover from the other such sums for attorney's fees in such suit or action in an amount the court may adjudge to be reasonable. In addition, such prevailing party shall recover from the other such sums as are incurred as the prevailing party's actual costs and disbursements in such suit or action, including but not limited to the costs of depositions, expert witness fees and other actual out of pocket expenses. Similarly, the prevailing party shall be awarded their costs, disbursements, and reasonable attorney's fees on any appeal.

The District agrees to deliver water within the terms of the water right and state law, subject to the normal losses of the delivery system to the best of the District's ability. The District shall not be responsible for delivery of water outside the water rights of Owner, or for non-delivery in the event of non-availability of water due to any reason beyond the control of the District. The District shall not be held liable for actions or inactions of employees, officers, the Board of Directors, or agents, that do not constitute gross negligence, and then only to the limits established by Oregon law.

Owner hereby grants the District right-of-way easements over and across Owner's land for existing laterals, ditches, and conduits used by the District to carry water to and from the land of Owner and other water users served by the District. Consistent with the intended purpose, the District agrees to install such laterals and conduits in a manner least likely to interfere with Owner's use of their premises and improvements thereon if reasonably possible. If any ditch is relocated for the owner's convenience, the right-of-way easement will also be transferred.

Owner further agrees to comply with the Water Control District Act, as the same may be amended in the future and with any rules, regulations or policy adopted by District and, even though the tract is located outside the District, to pay all charges imposed thereon. If the land involved lies outside the District, any unpaid charges or sums owed to the District shall be a lien on the property in the same manner as described in ORS Chapter 553 for lands within the District, and collection enforcement of the unpaid charges may be taken by the District in the same manner as though the lands were located within the District's boundaries.

The District ditches may incidentally aid in the drainage of some lands but the District shall not be responsible for providing drainage of Owner's land nor is it liable for damages which may result from the failure of any drainage system which utilizes District facilities, or damage that may result from ditch overflow beyond the control of the District.

If this contract is for delivery of water which has not yet been certificated, it is agreed that, if at the time of State Final Proof Survey and certification, the number of certifiable acres differs from that herein contracted for that if the certifiable acres are more than the contracted acres Owner agrees to pay for charges on the additional acres from the certification date onward, and to pay the District a sum representing the initial fee on these additional acres, at the rate then in effect. If the certifiable acres are less than the contracted acres, the District shall not be responsible for the refund of any past fees and charges. Owner continues to be responsible for charges on the contracted acres, unless those contracted acres not certifiable are non-irrigable.

This contract supersedes all agreements heretofore entered into between the parties or their predecessors to the extent that the lands involved and specifically described in such previous agreements coincide with the lands herein involved and described. Such previous agreements shall remain in force on any lands which do not coincide with lands herein described. In signing this contract, both parties certify that they have carefully read this contract and understand it to contain any and all details covering the purchase, sale of irrigation water or the delivery thereof. This contract is terminable only by the mutual agreement of both Owner and District.

In the event the Owner herein shall be in default in any manner whatsoever under the terms of this contract or shall fail to use the water rights mentioned herein for a period of four successive years, then the parties agree that the District may transfer such water rights to other real property or lands, with prior approval of the Board of Directors of the District and approval of Oregon Water Resources Department or upon request of the District to transfer the water rights to the District without consideration.

Dated this 16 day of Aug., 1996.

DISTRICT:

By Raymond Barton
President, Board of Directors

Attest Scott Hendon
Secretary, Board of Directors

STATE OF OREGON)
County of Jefferson) ss.

OWNER(S)

Walter O. Zistel
Elizabeth L. Zistel

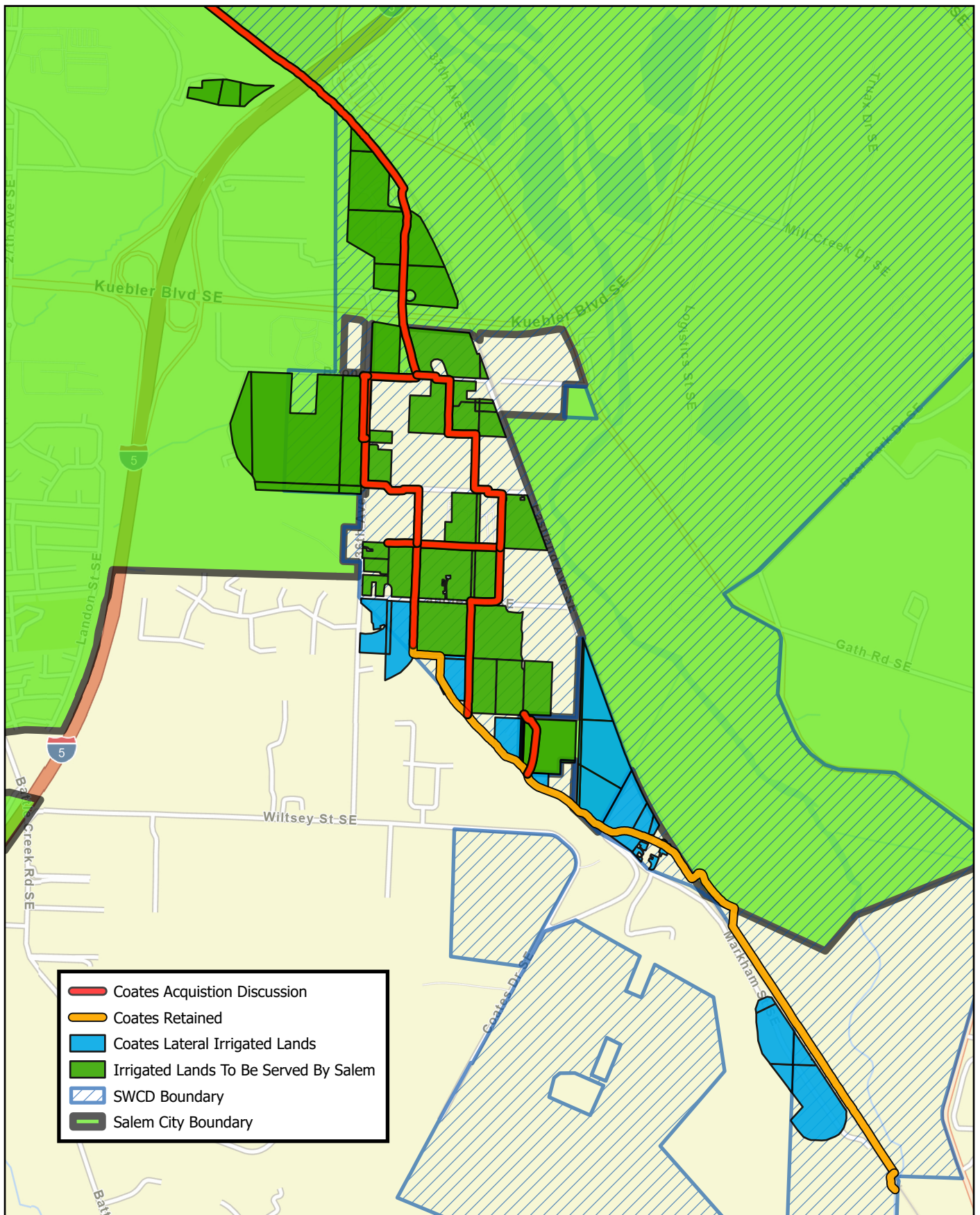


On this 16 day of August, 1996, before me, the undersigned, a notary public in and for said County and State, personally appeared the within named Walter O. & Elizabeth L. Zistel known to me to be the identical individuals described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.

Britt Spaulding
Notary Public for Oregon

Exhibit E
Possible Conveyance of Coates Lateral



- Coates Acquisition Discussion
- Coates Retained
- Coates Lateral Irrigated Lands
- Irrigated Lands To Be Served By Salem
- ▨ SWCD Boundary
- Salem City Boundary



Coates Acquisition Discussion

*** District to retain right to use lateral
for irrigation and drainage**

Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User Community, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

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