CITY OF KEIZER MISSION STATEMENT

KEEP CITY GOVERNMENT COSTS AND SERVICES TO A MINIMUM BY PROVIDING CITY SERVICES TO THE COMMUNITY IN A COORDINATED, EFFICIENT AND LEAST COST FASHION

AGENDA

KEIZER CITY COUNCIL
WORK SESSION
Monday, August 12, 1996
5:30 p.m.
Robert L. Simon Council Chambers
Keizer City Hall, Keizer, Oregon 97303

1. CALL TO ORDER

2. ROLL CALL

3. DISCUSSION

   a. LaBish Ditch Update

      1) History
      2) FEMA Flood Plain Map
      3) Flood Plain Regulations
      4) Ditch Maintenance

4. OTHER BUSINESS

   This time is provided to allow Council members the opportunity to bring matters before the Council which are not on tonight's agenda.

5. WRITTEN COMMUNICATIONS

   To inform the Council of significant written communications and petitions.

6. ADJOURN

Upon request, auxiliary aids and/or special services will be provided to participants with disabilities. To request services, please contact us at 390-3700 at least two working days (48 hours) in advance.

City of Keizer, Oregon

City of Keizer

MEMORANDUM

DATE: August 8, 1996

TO: Mayor Koho and Council Members

FROM: Dotty Tryk, City Manager

SUBJECT: Labish Ditch Workshop

The February flood brought a lot of attention to the Labish Ditch area that it had never had before. The result is that there will be several decisions before you over the next few months dealing with the ditch and surrounding area. The purpose of this workshop is to give you sufficient background to understand the issues and enable you to make what may be very difficult decisions.

I have attached some background information for you to read before the workshop. They are:

A history of Lake Labish

A memo from Ken Sherman Jr. Outlining some of the legal issues surrounding the ditch

Two letters from the President of the West Labish Irrigation District

The engineers' report on the Nolan Property (Hidden Creek) determining the area not to be a wetland

A letter from the Oregon Department of State Lands giving us an opinion on cleaning the ditch

At the meeting we will discuss the flood plain map created by FEMA since the February flood; what flood plain designation means to property owners; and possible mitigation solutions including cleaning the ditch and enlarging the culvert, as well as issues surrounding these actions.

P.O. Box 21000, Keizer, OR 97307-1000 (503) 390-3700 * FAX (503) 393-9437

SHORT HISTORY OF LAKE LABISH

Some 6,800 years ago Mt. Mazama erupted creating Crater Lake. The ash covered all of Oregon east of the Coast Range as well as Washington, Idaho, Montana, and part of British Columbia and Alberta in Canada. The ash can still be found in a layer of about two and a half inches deep at about three feet below the surface of Lake Labish.

Lake Labish was discovered in 1848 by French Canadian fur trappers. The name of Lake Labish came from the French word La Biche meaning female deer or elk, which roamed the area. It was later named Labish. It was federal land at that time. Then it became state property. It was finally sold to adjacent landowners for one dollar an acre.

The Pudding River got its name from two French Canadian fur trappers who shot an elk when they were camped about three miles west of Mt. Angel. Their Indian wives made blood pudding for them, hence the name of Pudding river came about.

Lake Labish drains from a natural divide about three miles from the western end which drains into Clear Lake and Willamette. The eastern end drains into the Little Pudding River. The first attempt to drain the lake came after Marion County gave permission in 1875 to dig a ditch on the western divide from Clear Lake for about two miles. The ditch had little effect due to many springs in and around the Lake Bottom.

There was little or no interest in the Lake Bottom until about 1890 when landowners became interested in the land. The federal government gave the Lake Bottom to Oregon.

In 1891 there was a major flood hit the Salem area. At that time the railroad crossed Lake Labish on a trestle a little north of Chemawa. As the south bound train crossed the trestle it gave way dumping part of the train in the water. The engine could not be salvaged, it kept sinking in the soft ground remaining there to this day. The railroad built a filll across the Lake bottom covering the engine. There were five fatalities in the wreck.

The western end was finally drained about 1911. The middle section ditch was completed in 1915.

In 1913 two millionaires, A. F. Hayes and J. O. Hayes, from California became interested in the northern end of Lake Labish to start the Hayes Labish Farms. The Parkersville Dam was in the way to start draining the Lake. Hayes and other landowners who would benefit from the drainage were assessed a fee for buying out the owners of the dam. They hired a W. P. Lord to handle the legal matters.

After the Parkersville Dam was destroyed Hayes began to dredge the Little Pudding River with a barge mounted steam powered shovel that went on until the first World War when dredging stopped and resumed after the Armistice in 1918.

Hayes had a Holt 75 shipped from Stockton, California to help in clearing the farm. It was unloaded in Salem and driven out to the farm.

The Hayes ranch also built a steam powered sawmill located on a hill south of where the bridge crosses the Lake Bottom and east of the Pudding River. The logs for the mill was rafted during high water by a small tug boat from the north and south near Hazel Green District. All of the onion barns were built with lumber sawed at the mill.

The crops on the Hayes Ranch in the early years were peppermint with the mint still located north of the Kerns ditch.

In the early years of the Ranch some of the land was rented to individuals to grow onion sets and big onions. About 1924 the ranch converted to big onions run by the Hayes ranch, but some acres remained in sets for a few more years.

In early years the land was worked by horses. The Hayes Ranch had a stable of nice draft horses. Later they bought several Model W Cletracks for the hard work but horses were still used for finish work and in harvest.

Other crops grown on the ranch were sweet corn for fresh market, pole beans for cannery, also in later years they raised celery and lettuce. The ranch also had a pig farm in the late 30s and early 40s.

In the early 1930 Hayes formed the Labish Brokerage to ship their products to market. Prior to that there were three shippers out of Portland who shipped onions to market from Brooks by rail cars.

The ranch lost two barns to fire. One was burned when they were drying fertilizer. The other was full of onions and thought to be arson. They were able to salvage a good share of the onions. The Hayes ranch operated until 1945. It was sold and subdivided into ten to twenty acre lots.

After the main body of the lake was drained it had to be cleared of brush which consisted of mostly willows, buck brush with some small Ash and Alder. The next project to do was to dig lateral ditches to drain the fields. This was done by hand shovels and a three sided drain box installed. The drain boxes were built of one by six lumber.

After the western part of the Lake was drained about 1911 there was some peppermint grown and some onions.

The Chemawa Indian School retained sixty or seventy acres of the lake using some of it for teaching students agriculture. Crops grown were onions, pole beans, and sweet corn. Some acres were rented for peppermint.

In 1915 M. L. Jones dug a ditch from the east side of the divide to what was known as the Jones Ditch next to the Hayes Ranch. After that the lake was cleared of brush and lateral ditches were dug to drain the fields. The main crop was onions.

There was a large Japanese community that played a major role in developing and growing onions, celery, lettuce, and other vegetables. They farmed mostly on what was known as the Bush Estate west of the divide and on the M. L. Jones property east of the divide. Every farm had its own greenhouses to start the celery and lettuce plants.

The Japanese had their own church and school to keep their culture alive. They continued to farm on the lake until 1942 when the U.S. Government moved all of them from the West Coast to the interior. The U. S. Government said it was for security purpose during World War Two. After the war was over only a few families returned to the lake to grow onions. The celery crop was no more. The remainder of the Japanese remained in Eastern Oregon, Western Idaho and other places.

The early years of growing onions on the lake was all done by hand labor. The land was prepared with horses who had to wear special shoes clamped to their hooves to keep them from sinking into the ground. The shoes were made out of two twelve's one foot square with notches cut into them to fit the calks on the horses iron shoes.

Commercial fertilizer was spread by hand from the back of the wagon before endgate spreaders became available. The commercial fertilizer was shipped in from Germany and South America arriving in fifty kilogram bags and was usually rock hard. It had to be broken up with a sledge hammer and then mixed with the Phosphate.

Seeding was done with a one row hand pushed seeder. A man had to walk at a good pace to seed two acres a day. Weeding was done on all fours after the weeds in the middle of the rows were cut out with a scuttle hoe pushed by hand.

Onions were pulled by hand crawling on one's knees and put in wind rows of either three or six rows. The onions were picked up by hand or with a fork. In the earlier years they were put in burlap bags on a portable sacker moved by hand down the rows. Later the use of small crates were used. When the small crates were in use, one grower went modern building enough crates for his entire crop.

The onions were hauled to the barn with a team of horses and a wagon. They were dumped in shelves which varied from eighteen to thirty inches in depth. They remained until they were sold.

Before the use of mechanical toppers came in, the onions were topped by hand and bagged in burlap bags. They were then hauled to warehouses in Brooks by horses and wagon. There they were weighed and the growers were paid for the scale weight. After onion toppers and trucks came into being onion were packed and weighed into fifty pound mesh bags and shipped to market in rail cars. They were shipped mainly to the California market, some were exported to foreign markets such as Panama, China, the Philippines and Hawaii.

Growing onions on the lake has always been beset with problems of pests and disease. The first pests in the early years were cut worms and onion maggots. Other problems included smut and mildew. The cut worms were controlled with a mixture of bran, brown sugar, or molasses, a poison called Paris Green and broadcast by hand on the trouble spots.

Onion maggots were controlled with a fly trap developed by two brothers with the help of Oregon Agriculture College at Corvallis. The fly trap was built of window screen in a U shape about ten feet wide with a trap on the inner two. The flies would enter and make their way to the inner trap. This trap was mounted on a pipe frame with a bicycle wheel in front. This was pushed through the fields in early morning before the sun was up.

When smut became a problem, it caused a change in seeding from a one row hand seeder to a Bolens garden tractor. A three row seeder and a tank mounted on it for the use of one and half to two percent solution of formaldehyde and water to control the smut. The Bolens let one man seed six acres a day and cultivate with a three row attachment that was mounted on the Bolens. Later when small tractors were built the seeding went to four, six, and eight rows and cultivators increased by the amount of rows.

In 1936 mildew almost destroyed the crop. There was no control for it until chemicals came into use in the 1950's.

Weed control was a labor intensive chore and still is, although the use of sprays has eased the problem.

Harvesting onions by hand was a slow back breaking chore. The onions were pulled by people walking on their knees and putting them into wind rows. A half an acre was a long hard days work per person. The growers then began to think of easier ways to do the job.

Their first attempt to eliminate the hard work was a blade mounted on the Bolens garden tractor with lifters on the side to part the leaves and bunchers on the back to move the onions into a windrow. One man and the Bolens could pull five to six acres a day.

The next improvement was a growers idea of a conveyor type of a puller, mounted on a small tractor. This is the same machine in use today thus eliminating all of the hard labor of pulling onions by hand.

Picking up onions by hand, hauling them to the barn, and dumping them on shelves was a slow back breaking chore. In the late nineteen twenties there were couple of attempts at mechanical harvesting, neither were successful. One was the use of a potato digger with a sacker built on it. The other was a side conveyor mounted on the side of a truck to fill hand crates.

The next attempt was a self propelled machine to pick up the onions and put them into hand crates. It was fairly successful. Next came a machine with a sacker. These machines eliminated the crews that picked up the onions by hand. There still was a lot of manual labor to hauling them and dumping them on shelves in the barn.

The next step was the addition of a cross conveyor on the pickup machine and dump boxes. The dump boxes were handled in the barn with an electric hoist and a system of I beam rails installed in the barns cutting down on more hand labor.

The growers then converted their barns to bulk storage totes of various sizes handled with forklifts. This system is still in use today.

The latest machines used today have a pre-topper attachment, with the use of bulk bed trucks for filling the tote boxes at the barn thereby using less storage room. Although it is not in general use on the lake bottom, maybe some day that system will be used more and more.

End

MEMORANDUM

TO: Jim Murch
Lee Sjothun

FROM: Ken Sherman, Jr.

DATE: May 27, 1997

SUBJECT: **Responsibility for Maintenance of Drainage Ditch; Expansion of Drainage District**

Introduction

During a hearing before the Keizer City Council on April 1, 1996, I cited ORS 540.420, 540.430 and 540.440 for the proposition that Larry Epping and Hidden Creek Properties LLC, as owners of properties abutting Labish Ditch, have the right to clean and maintain the ditch; and that other abutting owners have a proportionate responsibility to participate in these activities. This memorandum provides additional information on these statutes and the underlying rules of common law regarding drainageways, easements for ditches and responsibilities for maintenance.

As you know, we also represent the West Labish Drainage and Water Control Improvement District, which maintains portions of the Labish Ditch which are upstream from the Epping and Hidden Creek subdivisions. I have suggested that one long-term solution to the problem of keeping open and free-flowing those portions of the ditch which border the Epping and Hidden Creek properties would be for the district to expand its boundaries to include these portions of the ditch. While my research discloses that there are alternatives to the expansion of the district, I still believe that this may be the best long term solution.

Statutory Background

ORS 540.420 provides that:

> "In all cases where ditches are owned by two or more persons and one or more of such persons fails or neglects to do a proportionate share of the work necessary for the proper maintenance and operation of the ditch,... the owner desiring the performance of such work may, after having given 10 days written notice to the other owner who has failed to perform a proportionate share of the work, perform such share, and

recover therefor from the person in default the reasonable expense of the work."

ORS 540.420 applies to the portion of Labish Ditch which is at issue here, because it is owned jointly by Epping and Hidden Creeks on one side, and by a series of single family residential lot owners on the other side, with the parties in each case owning to the center of the ditch. Thus, under this statute, Epping and Hidden Creeks may make demand on the owners on the other side of the ditch to participate in ditch maintenance and cleaning, and if such other owners don't do their proportionate share, Epping and Hidden Creek may recover from the other owners the reasonable expenses of cleaning and maintaining their portions of the ditch.

ORS 540.430 (1) provides that:

> "Upon the failure of any co-owner to pay a proportionate share of the expense, as mentioned in ORS 540.420, within 30 days after receiving a statement of the same as performed by the co-owner, the latter may secure payment of the claim by filing an itemized and sworn statement thereof, setting forth the date of performance and the nature of the labor performed, with the county clerk of the county wherein the ditch is situated. When so filed it shall constitute a valid lien against the interest of the person in default, which lien may be established and enforced in the same manner as provided by law for the enforcement of mechanic's liens."

If Epping and Hidden Creek elect to clean out the ditch, this statute gives them a practical means to secure recovery of the co-owners' shares of the costs, by filing liens against their respective properties.

ORS 540.440 provides that:

> "All persons owning or controlling any water ditches shall keep their right of way along the ditches clean and free from wild oats, mustard, thistles or any weeds or obnoxious grasses whatsoever."

Obviously, the owners on both sides of this portion of the Labish Ditch have failed to meet their responsibilities under this statute. This portion of the ditch is certainly not clean, and it is choked with all sorts of weeds and obnoxious grasses.

ORS 540.990 (1) provides that:

> "Violation of any provision of ORS 540.440 is punishable, upon conviction, by a fine of not less than $25 nor more than $150, together with the costs and disbursements of the action, and in default of the payment of the fine and costs, by confinement in

> the county jail one day for each $2 thereof. Justice courts shall have concurrent jurisdiction with the circuit courts in the trial of all proceedings under this subsection."

Thus, the failure of the owners of this portion of the ditch to keep the same "clean and free from ... weeds and obnoxious grasses" is a crime, punishable by both fine and incarceration in the county jail.

Common Law Background

I have found no Oregon cases construing or applying ORS 540.420 - .440 and .990. There is one very old Oregon case, Carnes v. Dalton, 56 Or 596 (1910) which apparently provides at least the common law basis for the legislature's later enactment of ORS 540.420, et. seq. In Carnes, the court was dealing with an irrigation dam and ditch rather than a drainage ditch. They found that the parties were tenants in common in the ditch,

> "making each responsible in proportion to his interest therein, for the maintenance and repair of the dam and ditch, and in case of default of one or more the other has a right to make such repairs, for which the defaulting party becomes liable for his *pro rata*...".

There is ample authority from other jurisdictions that where an improvement is jointly owned, there will be an equitable lien in favor of a cotenant who has expended money in repairs or improvements of the common property in excess of his share. See Thompson on Real Property, Section 1924.

According to the history of the ditch, prepared by Bill Peterson, the ditch dates back more than 100 years, to 1875. It appears from this history that the west end of the lake was drained first, by a ditch presumably dug by the owners of farms in the area. I have not done any detailed research to discover just who dug that portion of the ditch with which we are concerned, or who then owned the land through which it was dug. I would assume that the farmer(s) who owned what are now the Country Glen and Hidden Creek properties consented to this excavation, and probably contributed to it.

There is no public record of an express easement having been granted across the properties in question for either the construction or the maintenance and repair of this portion of the ditch.

However, the courts have consistently held that easements for drainage ditches may arise by implication or prescription, as well as by express grant. When such a ditch is constructed and maintained on the property of another with the other's knowledge and without his interference, a prescriptive easement for the ditch is acquired. See Thompson on Real Property, Sections 427, 408.

The courts have consistently ruled that the holder of an easement has the right to

maintain the easement "to the extent necessary to permit its use for the purpose of the easement. An easement involves the right to repair it, and this necessarily includes the right to go upon the land of the servient owner for that purpose. .... The grant of an easement to dig a canal includes the right to throw out the soil beyond the limits fixed for the canal. If one has the right-of-way for ditch purposes, he has the incidental right to enter upon the premises for repair and maintenance at the time and places, and to the extent necessary." See Thompson on Real Property, Section 428.

The right of an easement holder to maintain and repair it is not unlimited. In making repairs, the holder "cannot increase the burden or enlarge the character or extent of the use." However, "The right exists in the owner of an easement to remove obstructions whether placed either by the owner of the servient estate or other persons, or whether existing naturally." See Thompson on Real Property, Section 678.

The owner of an easement may have not only a right, but also an obligation, to maintain and repair the easement. "If the character of the easement is such that a failure to keep it in repair will result in injury to the servient estate or to third persons, the owner of the easement will be liable for any injury caused by such failure." Thompson on Real Property, Section 679.

Analysis

Based upon the foregoing principles of common law, it is my opinion that someone probably has an easement for the continuing use of those portions of Labish Ditch which border the Epping and Hidden Creek properties. One of the unanswered questions is: just who has this easement? Since the ditch was created by and for the benefit of the persons who own and farm the western portion of Lake Labish, I would conclude that they have easement rights over the ditch, and as such, have the right to clean and maintain the portions in question. Other abutting property owners, including but not limited to Epping and Hidden Creek, may also have such rights as to down-stream portions of the ditch.

Regulatory Environment

The question has been raised whether there are any administrative or regulatory requirements, limitations or restrictions which would apply to the cleaning and maintenance of these portions of the ditch.

Keizer Ordinance No. 93-251 approved the subdivision of the Hidden Creek property. Condition No. 8, set forth on page 2 of Exhibit E to the ordinance, provides that:

> "In any Conditions, Covenants and Restrictions placed on the property as part of the development, and in any conveyancing document, or any recorded contract to convey any properties located adjacent to the Labish Drainage Ditch, the following restrictions shall be placed:

contract to convey any properties located adjacent to the Labish Drainage Ditch, the following restrictions shall be placed:

"a) Within the easterly 30 feet of the property, no living trees, brush or other vegetation shall be cut or removed except that:

"(1) Any plants or trees which a licensed arborist or landscape architect has certified in writing are diseased or dying may be removed after consulting with a representative from the Oregon Department of Fish and Wildlife;

"(2) Any trees or other plants may be trimmed or pruned to the extent reasonably required for safety reasons;

"(3) Poison oak and poison ivy may be removed and blackberries may be controlled; and

"(4) Other undesirable vegetation as certified in writing by the Oregon Department of Fish and Wildlife, Oregon Department of Soil Conservation or other State of Oregon agency may be removed.

"b) Any trees or plants removed pursuant to subparagraphs a(1) through a(4) above shall be replaced with vegetation appropriate for area wildlife as determined by the Oregon Department of Fish and Wildlife.

"c) Within the 30 foot strip described in a) above, no fences, buildings, structures, paving or other improvements shall be placed or erected, and there shall be no filling or excavation. Provided, however, that developer or developer's successors in interest shall be permitted to install within said 30 foot strip up to four storm sewer drainage lines within easements up to 15 feet in width. Following installation of these lines, developer or developer's successors shall restore the surface to substantially its prior condition and appearance." [Emphasis added]

I have not had an opportunity to review the subdivision approval that Keizer granted to Larry Epping for the Country Glen Subdivision, so I do not know whether it contains similar restrictions.

The Keizer City Council imposed the foregoing conditions on Hidden Creek at the request of neighboring property owners to the east, who wanted the area just west of the ditch to be maintained in as natural a state as possible, to provide a buffer between the subdivisions on either side of the ditch. It is clear from the language of the conditions that the city was focusing on the 30 foot strip adjacent to the ditch, rather than on the ditch itself, but the Hidden Creek half of the ditch is part of the 30 foot strip, so it is effected by these conditions.

Although the conditions make exceptions for the "trimming or pruning of trees and other plants" when "reasonably required for safety reasons", and permit the removal of "undesirable vegetation" which is certified as such by a state agency, the language of Condition 8 is so broad that as a practical matter, it is impossible to obey it and at the same time do what appears to be required by both ORS 540.440 and the laws of nature with respect to the cleaning and maintenance of the ditch. First, at least some of the vegetation in the ditch cannot merely be "trimmed or pruned", it must be removed. Second, even if such vegetation could be removed under a(2) or a(4), it would have to be "replaced with vegetation appropriate for area wildlife" under b. Thirdly, subsection c) prohibits any excavation within the 30 foot strip, which would include the western side of the ditch.

Thus, even though the Keizer city attorney has indicated orally that he believes we can clean and maintain the ditch without violating Condition No. 8, I believe we should ask the city to modify this condition so as to clarify our rights to clean out and maintain the ditch. After we have had a chance to review the approval granted to Larry Epping for Country Glen, we may reach the same conclusion with regard to his approval.

If we obtain a revision of Condition 8 from the city, we should not overlook the necessity of making corresponding revisions to any Covenants, Conditions and Restrictions which have been adopted for the subdivisions.

Regulation by Other Agencies

You have provided me with correspondence obtained by Mark Grenz. I refer specifically to the April 22, 1996 letter from Marge Akers, Natural Resource Coordinator at Division of State Lands, to Jeff Bolton of Multi/Tech Engineering. A copy of this letter is attached. This letter states that a fill/removal permit is not required because "the removal or organic material from the waters of the state is not regulated under the law subject to ORS 196.800 (9)".

While I agree with Ms. Akers' conclusion that no fill/removal permit is required, I am of the opinion that this is the case not because you are only proposing to remove organic material (as opposed to dirt, rock, etc); but because the waters within Labish Ditch does not constitute "waters of this state" as that term is defined in the applicable law. ORS 196.800 (14) provides that:

> "'waters of this state' means natural waterways including all tidal and non-tidal bays, intermittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in this state, navigable and nonnavigable, including that portion of the Pacific Ocean which is in the boundaries of this state." [Emphasis added]

Labish Ditch is not a natural waterway, thus, the fill/removal permit requirements of ORS 196.800 - .905 do not apply regardless of what type of material you may remove from it.

This conclusion is further bolstered by ORS 196.905 (6), which provide as follows:

> "(6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches and tile drain systems, provided that:
>
> (a) The structure was serviceable within the past five years; and
>
> (b) Such maintenance or reconstruction would not significantly adversely affect wetlands that existed at the time that the structure was in good repair other than those wetlands that were significantly adversely affected as a result of the original construction of those structures." [Emphasis added]

During the hearings on the Hidden Creek Subdivision, evidence was presented that there were no jurisdictional wetlands on the subject property, and the city council so found.

Accordingly, I would conclude that, other than the need to modify and clarify the city subdivision approvals and any resulting Covenants, Conditions and Restrictions, there are no regulatory requirements or restrictions which would apply to the cleaning and maintenance of the ditch.

Possibility of Condemnation

There is one other possible approach provided for in the statutes. ORS 772.305 provides that:

> "....any person... shall have the right of way across and upon public, private and corporate lands or other rights of way, for the construction, maintenance, repair and use of all necessary ... ditches... or other means of securing, storing and conveying water for irrigation or for drainage, or any other beneficial purpose, upon payment of just compensation therefor."

In other words, if all else fails -- if it is somehow determined that ORS 540.420 - .440 and .990 do not apply, and that there is no prescriptive or other easement which permits repair and maintenance of the ditch, it should still be possible under this statute to obtain the rights to use and maintain the ditch.

Possible Movement of Ditch

Another possibility which we have briefly discussed is to move the portions of the ditch which are in question here, so that they will be completely on the Epping and Hidden Creek properties. This might be a legal possibility, which could not be objected to by the neighboring property owners, so long as it did not adversely impact their properties.

However, I assume the cost of moving the ditch further to the west would be prohibitive. And of course such action would substantially impact the 30 foot strip protected by the subdivision approval, at least in the Hidden Creek case.

Incorporation of Additional Ditch Property into West Labish District

Dealing with those portions of the ditch which are adjacent to the Epping and Hidden Creek properties is not a one-time problem -- it is something that will require ongoing attention. A mechanism needs to be developed whereby this portion of the ditch will be routinely cleaned and maintained, without controversy or liability.

One way to effect a long-term solution would be to expand the West Labish District to include this portion of the ditch.

The West Labish Drainage and Water Control Improvement District is a corporation organized under ORS 554.005 to 554.340. ORS 554.300 provides that such a corporation may amend its articles of incorporation to include additional lands within the district, subject to the provisions of 554.510 to .590.

ORS 554.510 to .590 set forth the procedures and requirements for expanding a district. The most important statute in this series is 554.520, which makes it clear that the only way additional property can be included is by the owner of the additional property filing an application for inclusion. Thus, as a practical matter, expansion of the district will require the cooperation and participation of each of the property owners on the other side of the ditch.

Conclusion

In summary, I would offer the following observations:

1. ORS 540.420 - .440 and .990 create a clear requirement for owners on both sides of the ditch to clean and maintain it. These statutes also provide a means for enforcing financial responsibility against a non-participating property owner, and create a criminal sanction for violating the duty to keep one's ditch clean.

2. In addition to the rights and obligations conferred by the above statutes, the common law creates a prescriptive easement for the ditch, in favor of at least the upstream farmers, and probably in favor of Epping and Hidden Creek as well.

3. The provisions of Condition No. 8, imposed by the City of Keizer on the Hidden Creek Subdivision (as well any similar conditions which may have been imposed on Country Glen) are broadly enough worded that we should

seek its modification unless the city attorney will render a formal opinion to the effect that we may clean the ditch without violating this condition. We should also modify any corresponding restrictive language in any subdivision covenants, conditions and restrictions which have been recorded.

4. No fill/removal permit is required to clean the ditch, because the waters within it are not "waters of the state", since the ditch is not a natural waterway; and ORS 196.905 (6) permits maintenance and reconstruction of drainage ditches.

5. Moving the ditch so that it does not touch the neighbors' properties might be legally possible but it would probably not be worth the expense, and would still require city council revision of the condition creating the 30 foot buffer strip.

6. The best course of action would be to seek a cooperative solution through a meeting involving Epping, Hidden Creek, and each of the property owners on the other side of the ditch. At this meeting, the practical problems and legal issues concerning the ditch would be discussed, and it would be suggested that the most logical course of action would be to expand the West Labish District to include the down-stream properties. While some property owners may initially reject the idea of any participation or cooperation, they should be made to understand that, one way or another, the ditch will be cleaned and maintained, and by joining in the effort, they will have a much better opportunity to participate in decision making and thus to protect their individual interests.

7. At the hearing on June 3, I believe that we should lay out the foregoing for the city council (perhaps in part by providing them with a copy of this memorandum). We should ask the council to initiate proceedings to modify Condition No. 8 for the Hidden Creek Subdivision and any similar conditions imposed on Country Glen, so as to eliminate any obstacles to the cleaning and maintenance of the ditch. We should advise the council that we propose to hold a "town hall" type meeting with the owners on the other side of the ditch, to enlist their cooperation. And we should tell the council that if we are unsuccessful in obtaining this cooperation and expanding the West Labish District, we will seek condemnation of the ditchway, either as an individual group of private citizens or through the city, as provided for in ORS 772.305.

8. We should immediately share the information in this memorandum with the Keizer city attorney and with the board of directors of the West Labish District.

May 14, 1996

TO: Keizer City Council
Keizer Oregon
SUBJECT: West Labish Ditch

I am Jim Kinkaid, one of the owners of Kinkaid Farm, Inc. We own property within the West Labish Drainage District, One parcel is located at East end of District and another parcel near West end of Drainage District between Burlington Northern Railroad tracks and Radiant Drive. We also rent a small parcel on West side of Burlington Northern Railroad tracks.

At the present time, That portion of Labish Ditch between West end of Labish Drainage District jurisdiction and River Road is very obstructed with debris and sediment thus causing that portion of Labish Ditch upstream to about I-5 to be much higher than it should be. This in turn places the outlets of our field drain tiles under water which in turn backs water up into the tiling system, thus causing our fields not to drain properly.

We have had some problems the past several years with less than adequate field drainage, especially this Winter and Spring with all the rain that has fallen and subsequent flooding in February.

It is very important that the Westerly portion of the Labish Ditch be cleaned out so that fields upstream can drain properly.

I urge your strong consideration of this matter.

Sincerely,

Jim Kinkaid

Jim Kinkaid
Kinkaid Farm, Inc.

May 14, 1996

TO: Keizer City Council
Keizer Oregon

FROM: West Labish Drainage District

The West Labish Drainage District was formed for the purpose of performing periodic maintenance and repair of the West Labish Ditch. The District encompasses about 390 acres owned by approximately 25 landowners who own agricultural real property bordering the West Labish Ditch. The Ditch District begins about 1 1/2 miles East of Portland Rd NE and terminates about 1 mile East of River Rd NE.

The purpose of the Labish Ditch is two fold:

1. Act as a natural drainage stream for much of North Salem.
2. Enhances the drainage of the above mentioned farm land known as Lake Labish.

Also with proper maintenance, the Labish Ditch can act as a run-off stream during times of high water or flooding.

Without timely and proper maintenance of Labish Ditch that farm land within the Labish Ditch District will not drain properly, thus making it very difficult for those landowners to farm their land in a timely and husbandry manner.

A safety factor is also very important at this time to consider. Children like to play along the banks of the Labish Ditch as can be seen by certain evidence. If a small child should fall into that portion within Keizer, it would be very difficult for them to get out on their own because of the debris and obstructions present.

It is very important that **all portions** of the West Labish Ditch be properly maintained:

1. To enhance field drainage within the West Labish Ditch District.
2. Aid in high-water or flooding run-off.
3. Safety factor.

West Labish Drainage District is a separate entity from East Labish Drainage District.

Sincerely,

Jim Kinkaid
President
West Labish Drainage District

Wetland Environment Technologies, Inc.
P.O. Box 632
Corvallis, OR, 97339-0632
(503) 753-8635

24 August 1992

Kenneth F. Bierly, Wetlands Program Manager
Division of State Lands
775 Summer St. NE
Salem, OR, 97310

Dear Ken:

I examined the Nolan Farm, Keizer, OR, T 6S R 3W Sec. 26 SESE, owned by Al and Dorothy Nolan, for the Meadows Group, on August 1992 for Jurisdictional Wetlands. I have concluded that the site, except for Lake Labish Ditch, does not meet the Federal criteria of a Jurisdictional Wetlands.

Information relied on for this determination came from the following sources:

1. Soils mapping by the Soil Conservation Service described in Soil Survey of Marion County, Oregon.
2. Site inspection utilizing routine onsite determination methods as outlined in the Corps of Engineers Wetland Delineation Manual (1987).
3. Site inspection utilizing routine onsite determination methods as outlined in the Federal Manual For Identifying and Delineating Jurisdictional Wetlands (1989).

RESULTS:

Based on my observation, no area meets the criteria of a Jurisdictional Wetlands. Lake Labish Ditch is the eastern border of the site and is not affected by the proposed residential development on the site.

Three transects were placed to assess the site for wetlands (see map). Vegetation, soils, and elevation were recorded along each transect. All transect sections were photographed; selective photos are presented in report.

Soils on the portion of the Nolan Farm examined are mapped as Wapato scl, a hydric soil. It does appear that soils were mapped correctly; however, soils are now in a drained state. I reached this conclusion based on the structure of the soil. Soils are full of pores up to 2cm wide. These pores are formed by soil organisms. Soils are full of worms, insects, and insect casings. The soil has become loose, friable, and very easy to dig.

Vegetation adjacent to the ditch is dominated by woody species. The overstory is dominated by FACW and FAC species of large size, and apparently old age; this includes Salix sp. These species are not regenerating under the overstory. The brush layer is dominated by a mix of FAC and UPL species. The herbaceous layer is dominated by UPL species in most areas; an exception is nettles (Urtica lyalii, FAC). No FACW or OBL species were found at this time of year. The understory is heavily shaded and few species are present. Extreme shade appears to be the reason FAC species are able to grow; further, these species have low percent cover.

Wetlands hydrology was not present on the site at the time of field work. Hydrology has been altered by the construction and channelization of Lake Labish Ditch. The ditch bottom is 8'-9' below its banks. The area examined is 2' to 13' above the bottom of the ditch.

Conclusion: It is my professional opinion that the construction of Lake Labish ditch has effectively drained the soils on this portion of the site. Hydrophytic vegetation that is dominant are old tree species that are relics of when the area was wetland, as the understory is typically dominated by young, upland species. Also, facultative understory species are found in areas with a heavy canopy cover.

There is no difference in the amount of wetlands delineated on this site as defined in the 1987 and 1989 Manuals.

Sincerely,

Scott J. Craig
enclosures

SITE DATA
Wetland Environment Technologies, Inc.
P.O. Box 632
Corvallis, OR, 97339-0632

24 August 1992

Project:	The Nolan Farm
Applicant:	The Meadows Group
	5309 River Road N
	Keizer, OR 97303
Owner:	Al and Dorothy Nolan
County:	Marion
Proposed use:	residential
Zoning/land use:	UT, medium to high density residential
Location:	River Rd. east, T 6S R 3W Sec. 26 SESE
Size:	46 acres
Elevation:	131'+, lowest elevation
Vegetation type:	wooded
Tax lot:	TM 6 3W 26 D TL 3300
Topography:	river terrace
Floodway:	no, floodway at 123'
Present use:	open, and farming, wheat
date use began:	at least 20 yrs.
Past use:	?
date use began:	?
Adjacent areas:	
north:	agriculture
east:	residential
south:	residential
west:	residential

INTERMEDIATE-LEVEL QUADRAT TRANSECT PROCEDURE

Vegetation Data

Field investigator(s): Scott J. Craig

Project/Site: The Nolan Farm Date: 20 August 1992

Applicant/Owner: The Meadows Group State: OR County: Marion

5309 River Road N

Keizer, OR 97303

Do normal environmental conditions exist at the plant community?

Yes X NO ___ (If no, explain)

Has the vegetation, soils, and/or hydrology been significantly disturbed?

Yes ___ NO X (If yes, explain)

Transect# 2

DOMINANT PLANT SPECIES

Plot no. 0

	Species	Percent Cover	Indicator Status
1.	Triticum aestivum	100	UPL

Percent of dominant species that are OBL FACW and/or FAC 0

Plot no. 0-30'

	Species	Percent Cover	Indicator Status
1.	Rubus discolor	80	FACU
2.			
3.			

Percent of dominant species that are OBL FACW and/or FAC 0

Plot no. 30'-110'

	Species	Percent Cover	Indicator Status
1.	Salix scouleriana	70	FAC
2.	Sambucus racemosa	30	FACU
3.	Hedera helix	60	UPL
3.	Polysticum munitum	20	UPL

Percent of dominant species that are OBL FACW and/or FAC 25

INTERMEDIATE-LEVEL QUADRAT TRANSECT PROCEDURE
Vegetation Data

Field investigator(s): Scott J. Craig
Project/Site: The Nolan Farm Date: 20 August 1992
Applicant/Owner: The Meadows Group State: OR County: Marion
5309 River Road N
Keizer, OR 97303

Do normal environmental conditions exist at the plant community?
Yes X NO ___ (If no, explain)
Has the vegetation, soils, and/or hydrology been significantly disturbed?
Yes ___ NO X (If yes, explain)

Transect# 2, cont.

DOMINANT PLANT SPECIES

Plot no. 110'-135'

	Species	Percent Cover	Indicator Status
1.	Fraxinus latifolia	50	FACW
2.	Salix scouleriana	30	FAC
3.	Urtica lyalii	30	FAC
4.	Solanum dulcamara	25	FAC+

Percent of dominant species that are OBL FACW and/or FAC 100

Plot no. 135'-175'

	Species	Percent Cover	Indicator Status
1.	Fraxinus latifolia	45	FACW
2.	Sambucus racemosa	50	FACU
3.	Oemlaria cerasiformis	20	UPL
4.	Symphoricarpos alba	20	FACU
5.	Polysticum munitum	25	UPL

Percent of dominant species that are OBL FACW and/or FAC 20

INTERMEDIATE-LEVEL QUADRAT TRANSECT PROCEDURE
Vegetation Data

Field investigator(s): Scott J. Craig
Project/Site: The Nolan Farm Date: 20 August 1992
Applicant/Owner: The Meadows Group State: OR County: Marion
5309 River Road N
Keizer, OR 97303

Do normal environmental conditions exist at the plant community?
Yes X NO ___ (If no, explain)
Has the vegetation, soils, and/or hydrology been significantly disturbed?
Yes ___ NO X (If yes, explain)

Transect# 3

DOMINANT PLANT SPECIES

Plot no. 0

	Species	Percent Cover	Indicator Status
1.	Triticum aestivum	100	UPL

Percent of dominant species that are OBL FACW and/or FAC 0

Plot no. 0-50'

	Species	Percent Cover	Indicator Status
1.	Crataegus douglasii	60	FAC
2.	Salix scouleriana	30	FAC
3.	Rubus discolor	35	FACU
4.	Polysticum munitum	25	UPL

Percent of dominant species that are OBL FACW and/or FAC 50

Plot no. 50-85'

	Species	Percent Cover	Indicator Status
1.	Crataegus douglasii	60	FAC
2.	Salix scouleriana	30	FAC
3.	Solanum dulcamara	50	FAC
4.	Sambucus racemosa	45	FACU

Percent of dominant species that are OBL FACW and/or FAC 75

Plot no. 85'-100"

	Species	Percent Cover	Indicator Status
1.	Fraxinus latifolia	60	FACW
2.	Sambucus racemosa	45	FACU
3.	Urtica lyalii	20	FAC

Percent of dominant species that are OBL FACW and/or FAC 66

INTERMEDIATE-LEVEL QUADRAT TRANSECT PROCEDURE

Vegetation Data

Field investigator(s): Scott J. Craig

Project/Site: The Nolan Farm Date: 20 August 1992

Applicant/Owner: The Meadows Group State: OR County: Marion

5309 River Road N

Keizer, OR 97303

Do normal environmental conditions exist at the plant community?

Yes X NO ___ (If no, explain)

Has the vegetation, soils, and/or hydrology been significantly disturbed?

Yes ___ NO X (If yes, explain)

Transect# 3, cont.

DOMINANT PLANT SPECIES

Plot no. 100"-130'

	Species	Percent Cover	Indicator Status
1.	Sambucus racemosa	50	FACU
2.	Oemlaria cerasiformis	30	UPL
3.	Solanum dulcamara	40	FAC

Percent of dominant species that are OBL FACW and/or FAC 33

Plot no. 130'-180'

	Species	Percent Cover	Indicator Status
1.	Fraxinus latifolia	30	FACW
2.	Sambucus racemosa	40	FACU
3.	Hedera helix	80	UPL

Percent of dominant species that are OBL FACW and/or FAC 33

INTERMEDIATE-LEVEL QUADRAT TRANSECT PROCEDURE

Vegetation Data

Field investigator(s): Scott J. Craig

Project/Site: The Nolan Farm Date: 20 August 1992

Applicant/Owner: The Meadows Group State: OR County: Marion

5309 River Road N

Keizer, OR 97303

Do normal environmental conditions exist at the plant community?

Yes X NO ___ (If no, explain)

Has the vegetation, soils, and/or hydrology been significantly disturbed?

Yes ___ NO X (If yes, explain)

Transect# 1

DOMINANT PLANT SPECIES

Plot no. 0

	Species	Percent Cover	Indicator Status
1.	Triticum aestivum	100	UPL

Percent of dominant species that are OBL FACW and/or FAC 0

Plot no. 0-35'

	Species	Percent Cover	Indicator Status
1.	Rubus discolor	80	FACU
2.	Dipsacus sylvestris	30	NI
3.			

Percent of dominant species that are OBL FACW and/or FAC 0

Plot no. 35'-45'

	Species	Percent Cover	Indicator Status
1.	Fraxinus latifolia	70	FACW
2.	Rubus discolor	40	FACU
3.	Hedera helix	30	UPL

Percent of dominant species that are OBL FACW and/or FAC 33

INTERMEDIATE-LEVEL QUADRAT TRANSECT PROCEDURE
Vegetation Data

Field investigator(s): Scott J. Craig
Project/Site: The Nolan Farm Date: 20 August 1992
Applicant/Owner: The Meadows Group State: OR County: Marion
5309 River Road N
Keizer, OR 97303

Do normal environmental conditions exist at the plant community?
Yes X NO ___ (If no, explain)
Has the vegetation, soils, and/or hydrology been significantly disturbed?
Yes ___ NO X (If yes, explain)

Transect# 1, cont.

DOMINANT PLANT SPECIES

Plot no. 45'-120'

	Species	Percent Cover	Indicator Status
1.	Fraxinus latifolia	45	FACW
2.	Physocarpus capitata	20	FAC+
3.	Rhamnus purshiana	20	NI
4.	Sambucus racemosa	25	FACU
5.	Hedera helix	65	UPL
6.	Polysticum munitum	20	UPL

Percent of dominant species that are OBL FACW and/or FAC 33

Plot no. 120'-180'

	Species	Percent Cover	Indicator Status
1.	Populus trichocarpa	45	FAC
2.	Fraxinus latifolia	20	FACW
3.	Physocarpus capitata	20	FAC+
4.	Oemlaria cerasiformis	25	UPL
5.	Sambucus racemosa	65	FACU
6.	Rubus discolor	20	FACU
7.	Hedera helix		UPL

Percent of dominant species that are OBL FACW and/or FAC 43

INTERMEDIATE-LEVEL QUADRAT TRANSECT PROCEDURE
Soils Data

Field investigator(s): Scott J. Craig
Project/Site: The Nolan Farm Date: 20 August 1992
Applicant/Owner: The Meadows Group State: OR County: Marion
5309 River Road N
Keizer, OR 97303

Do normal environmental conditions exist at the plant community?
Yes X NO ___ (If no, explain)
Has the vegetation, soils, and/or hydrology been significantly disturbed?
Yes ___ NO X (If yes, explain)

SOILS

Series/phase: Wapato silty clay loam Subgroup: Fluvaquentic Haplaquolls
Is the soil on the hydric soil list? Yes X No ___ Undetermined ___
Soil is a histosol? Yes __ No X Histic epipedon? Yes __ No X Gleyed? Yes __ No X
Soil Pit Characteristics: T1, 35':

Depth	Matrix Color	Mottle Characteristics	Texture, Other Characteristics
0-5"	10 YR 3/2	---	silty clay loam
5-11"	10 YR 4/2	10 YR 3/2 & 4/5, com.	silt loam
11-18"	10 YR 2/2	10 YR 3/5, &10 YR 4/2, com.	clay

Other hydric soil indicators: none
Is the hydric soil criterion met? Yes ___ No X
Rationale: Soil profile is not similar to SCS soil survey profile for the mapped area, a hydric soil. However, soil is disturbed by historic activities and appears to be a drained phase of Wapato as the topography is high, and soil is full of organisms.

Soil Pit Characteristics: T1-85':

Depth	Matrix Color	Mottle Characteristics	Texture, Other Characteristics
0-10"	10 YR 2/2	---	silty clay loam
10"-18"	10 YR 4/2	10 YR 4/5	loam

Other hydric soil indicators: none
Is the hydric soil criterion met? Yes ___ No X
Rationale: Soil profile is not similar to SCS soil survey profile for the mapped area, a hydric soil. However, soil is disturbed by historic activities and appears to be a drained phase of Wapato as soil is full of organisms, there are many large pores, the soil is loose and easily penetrated, and pores in the silt layer are full of soil transported down from above.

INTERMEDIATE-LEVEL QUADRAT TRANSECT PROCEDURE
Soils Data

Field investigator(s): Scott J. Craig
Project/Site: The Nolan Farm Date: 20 August 1992
Applicant/Owner: The Meadows Group State: OR County: Marion
5309 River Road N
Keizer, OR 97303

Soil Pit Characteristics: T2-95':

Depth	Matrix Color	Mottle Characteristics	Texture, Other Characteristics
0-10"	10 YR 2/2	---	silty clay loam
10"-18"	10 YR 2/2	10 YR 3/3, few, small <1mm	silty clay loam

Other hydric soil indicators: none
Is the hydric soil criterion met? Yes ____ No X
Rationale: Soil profile is not similar to SCS soil survey profile for the mapped area, a hydric soil. However, soil appears to be a drained phase of Wapato as soil is full of organisms, there are many large pores, the soil is loose and easily penetrated, and pores in the silt layer are full of soil transported down from above.

Soil Pit Characteristics: T2-120':

Depth	Matrix Color	Mottle Characteristics	Texture, Other Characteristics
0-6"	10 YR 2/2	---	silty clay loam
6"-18"	10 YR 2/2	10 YR 3/3, few, small <1mm	silty clay loam

Other hydric soil indicators: none
Is the hydric soil criterion met? Yes ____ No X
Rationale: Soil profile is not similar to SCS soil survey profile for the mapped area, a hydric soil. However, soil appears to be a drained phase of Wapato as soil is full of organisms, there are many large pores, the soil is loose and easily penetrated, and pores in the silt layer are full of soil transported down from above.

Soil Pit Characteristics: T3-50':

Depth	Matrix Color	Mottle Characteristics	Texture, Other Characteristics
0-12"	10 YR 2/2	---	silty clay loam
12"-18"	10 YR 2/2	10 YR 3/3, few, small <1mm	silty clay loam

Other hydric soil indicators: none
Is the hydric soil criterion met? Yes ____ No X
Rationale: Soil profile is not similar to SCS soil survey profile for the mapped area, a hydric soil. However, soil appears to be a drained phase of Wapato as soil is full of organisms, there are many large pores, the soil is loose and easily penetrated, and pores in the silt layer are full of soil transported down from above.

INTERMEDIATE-LEVEL QUADRAT TRANSECT PROCEDURE
Soils Data

Field investigator(s): Scott J. Craig
Project/Site: The Nolan Farm Date: 20 August 1992
Applicant/Owner: The Meadows Group State: OR County: Marion
5309 River Road N
Keizer, OR 97303

Soil Pit Characteristics: T3-95':

Depth	Matrix Color	Mottle Characteristics	Texture, Other Characteristics
0-8"	10 YR 2/2	10 YR 3/3, few, small <1mm	silty clay loam
8"-18"	10 YR 2/2	10 YR 3/3, few, small <1mm	silty clay loam

Other hydric soil indicators: none
Is the hydric soil criterion met? Yes ____ No X
Rationale: Soil profile is not similar to SCS soil survey profile for the mapped area, a hydric soil. However, soil appears to be a drained phase of Wapato as soil is full of organisms, there are many large pores, the soil is loose and easily penetrated, and pores in the silt layer are full of soil transported down from above.

ROUTINE ONSITE DETERMINATION METHOD
combined form for Nolan Farm Adjacent to Lake Labish Ditch

Field investigator(s): Scott Craig
Project/Site: The Nolan Farm Date: 20 August 1992
Applicant/Owner: The Meadows Group State: OR County: Marion
5309 River Road N
Keizer, OR 97303

Do normal environmental conditions exist at the plant community?
Yes X NO ___ (If no, explain)
Has the vegetation, soils, and/or hydrology been significantly disturbed?
Yes ___ NO X (If yes, explain)

VEGETATION

See Transect forms
Rationale: See rationale at Jurisdictional Determination and Rationale

SOILS

Series/phase: Wapato silty clay loam Subgroup: Fluvaquentic Haplaquolls
Is the soil on the hydric soil list? Yes X No ___ Undetermined ___
Soil is a histosol? Yes ___ No X Histic epipedon? Yes ___ No X Gleyed? Yes ___ No X

Depth	Matrix Color	Mottle Characteristics	Texture, Other Characteristics
0-8"	10 YR 2/2	---	silty clay loam
8"-18"	10 YR 2/2	10 YR 3/3, few, small <1mm	silty clay loam

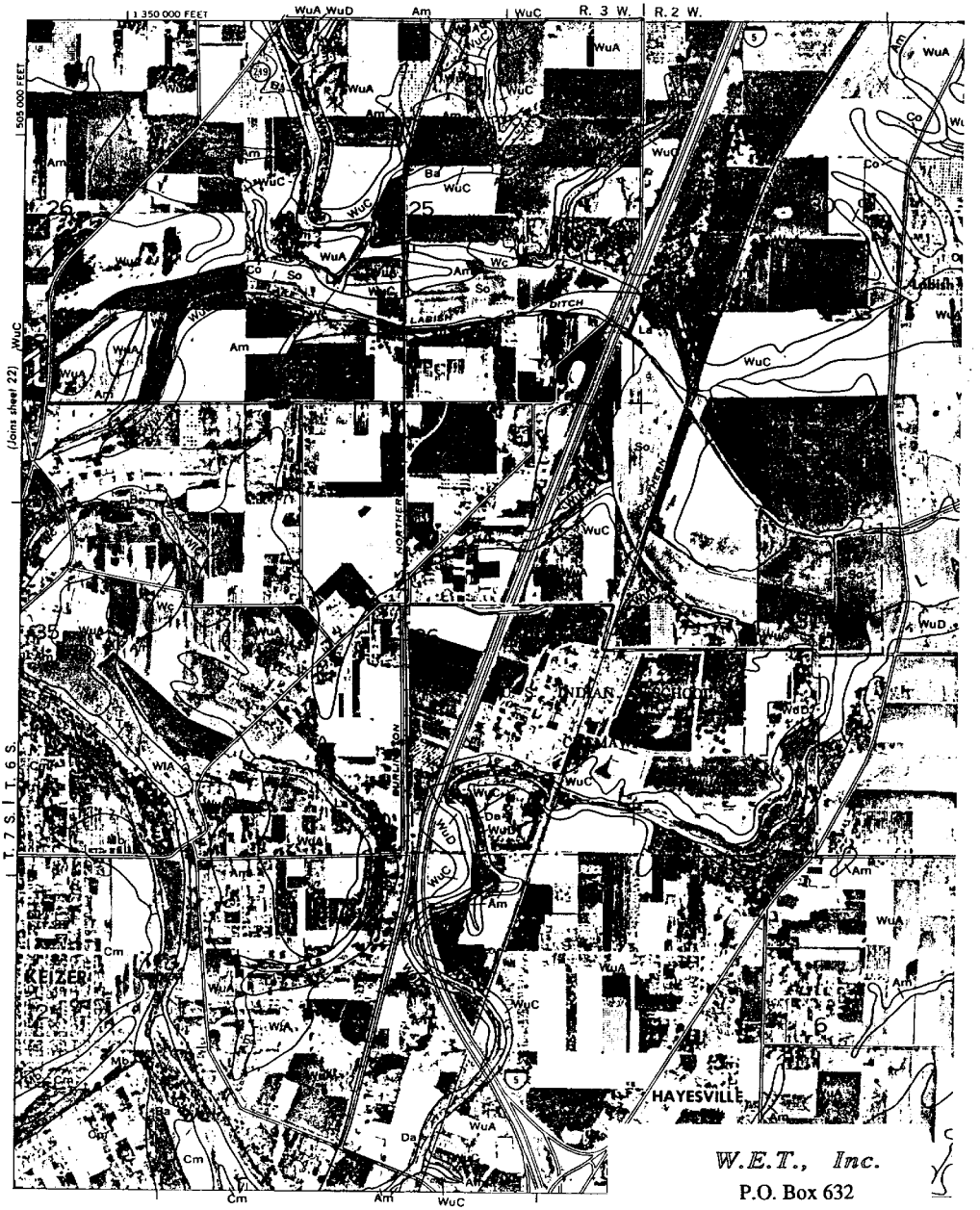
Other hydric soil indicators: none
Is the hydric soil criterion met? Yes ___ No X
Rationale: Soil profile is not similar to SCS soil survey profile for the mapped area, a hydric soil. However, soil appears to be a drained phase of Wapato as soil is full of organisms, there are many large pores, the soil is loose and easily penetrated, and pores in the silt layer are full of soil transported down from above.

HYDROLOGY

Is ground surface inundated? Yes ___ No X Surface water depth: ---
Is the soil saturated? Yes ___ No X
Depth to free standing water in pit/soil probe hole: none encountered to 18"
List other field evidence of surface inundation or soil saturation:
none
Is the wetland hydrology criterion met? Yes ___ No X
Rationale: Soil is not saturated during the growing season. Lowest elevations in area examined on site adjacent to Labish Lake Ditch is 3' higher than creek bottom. Elevations are between 3' to 13' higher than the ditch bottom.

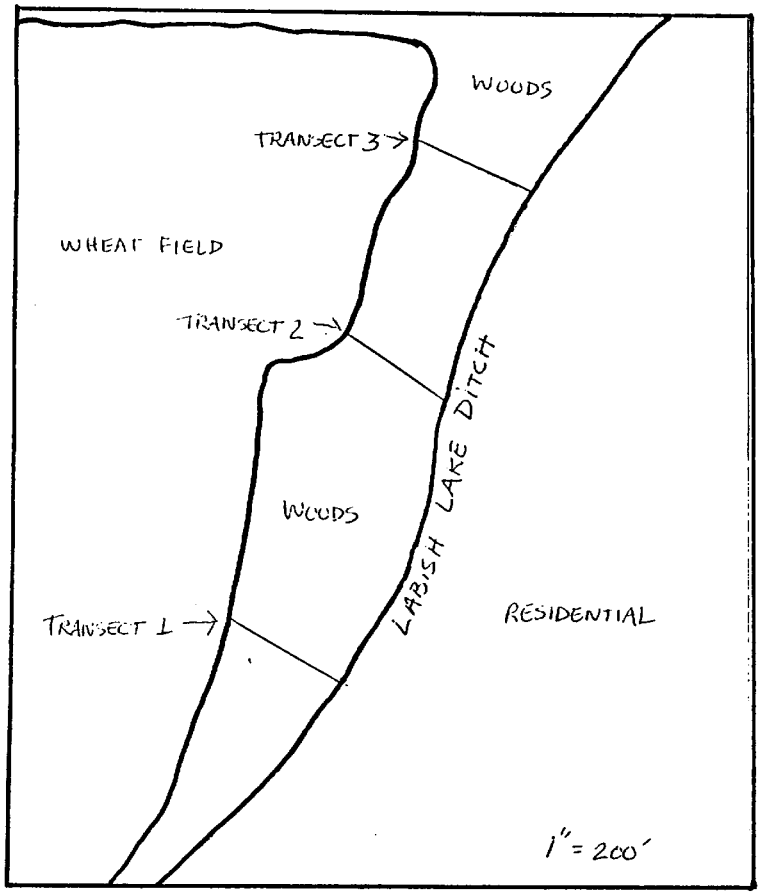
JURISDICTIONAL DETERMINATION AND RATIONALE

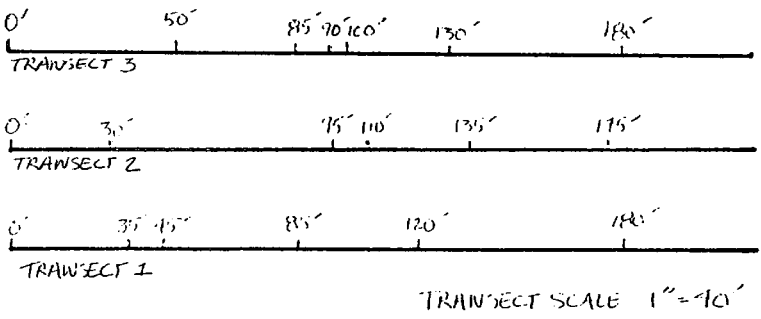
Is the plant community a wetland? Yes ___ No X
Rationale for jurisdictional decision: Two of the three wetlands criteria, soils and hydrology, has not been met. Vegetation is dominated by both upland species and hydrophytic species. The overstory is the only vegetation level which is dominated by FACW species. The herbaceous layer is typically dominated by FACU to UPL species; only a few section are dominated by FAC species. In no case is the herbaceous layer dominated by FACW species.



W.E.T., Inc.
P.O. Box 632
Corvallis OR 97339-0632

W.E.T., Inc.
P.O. Box 632
Corvallis OR 97339-0632





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WETLANDS
Delineation
Keizer, OR
20 Aug 92

Oregon

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STATE LANDS

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FAX (503) 378-4844
TTY (503) 378-4615

April 22, 1996

Jeff Bolton
Multi/Tech Engineering
1155 13th Street SE
Salem, OR 97302

RE: Organic Removal
Labish Ditch

Dear Mr. Bolton:

We have reviewed your proposal for tree and brush removal within Labish Ditch by the City of Keizer.

Under the Removal/Fill Law a State permit is required if you plan to remove, fill or alter 50 cubic yards or more of material within waters of the state. Removal of organic material from waters of the state is not regulated under the law subject to ORS 196.800(9). Based on your proposal, the project will involve removal of organic material and is therefore not subject to a State removal-fill permit.

We suggest you coordinate the removal activity with Oregon Department of Fish and Wildlife (ODFW). The plans indicating the limits of organic cleanup are being forwarded to ODFW with a copy of this letter. Please contact ODFW biologist, Wayne Hunt (phone: 378-6925) at least one week prior to conducting such removal.

Thank you for the opportunity to comment on this proposal. If you have any questions or if we can be of further assistance, please give me a call.

Sincerely,

Marge Akers

Marge Akers
Natural Resource Coordinator

mar:5:p10

cc: Wayne Hunt, ODFW (w/enclosure)