

This Instrument Prepared By:

Ray F. Robbins, III, Esq.

The Westervelt Company

Post Office Box 48999


Tuscaloosa, AL 35404

205-562-5431

Source of Title: DB 193 PG 41, DB 193 PG 63, DB 232 PG 627

STATE OF ALABAMA

COUNTY OF SHELBY


20210108000013330 1/10 \$50.00
Shelby Cnty Judge of Probate, AL
01/08/2021 10:20:58 AM FILED/CERT

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the 11th day of December, 2020 (the "Effective Date"), by and between **The Westervelt Company, Inc.**, a Delaware corporation ("Grantor"), and **Freshwater Land Trust** an Alabama nonprofit corporation ("Grantee").

Recitals:

WHEREAS, simultaneously with the execution of this Agreement, Grantee has entered into a conservation easement on three hundred sixty (360) acres, more or less, of land in Shelby County, Alabama, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, to facilitate the establishment by the Grantor of the Coosa River Mitigation Bank (the "Coosa River Mitigation Bank").

WHEREAS, Grantor hereby agrees to grant Grantee a fifteen (15') foot wide permanent non-exclusive access easement over and across certain property owned by the Grantor for ingress, egress and access to and from the Coosa River Mitigation Bank pursuant to the restrictions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00), the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby covenant and agree as follows:

1. **Rule of Construction.** For the purposes of this Agreement, except as otherwise expressly provided herein to the contrary or unless the context otherwise requires:

(i) The terms "include", "including", and similar terms shall be construed as if followed by the phrase "without being limited to";

(ii) The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Paragraph or other subdivision or Exhibit;

(iii) All Recitals set forth in, and all Exhibits to, this Agreement are hereby incorporated in this Agreement by reference; and

(iv) All references in this Agreement to Grantor and Grantee shall specifically include the respective successors and assigns of Grantor and Grantee.

2. Grant of Easement. Subject to the terms and provisions set forth in Paragraph 3 below, Grantor does hereby grant to Grantee, for no additional fee or charge other than that described herein for creating adequate consideration, a fifteen (15) foot wide non-exclusive permanent access easement over and across certain real property owned by the Grantor located in Shelby County, Alabama, which is more particularly described on Exhibit "B" attached hereto and incorporated herein by reference (the "Easement Property") for purposes of providing ingress, egress and access to and from the Coosa River Mitigation Bank. Grantor also reserves the right to replace the easement conveyed herein with another easement at a reasonable location, provided said replacement easement shall be of a similar quality as the one replaced. The route shall not be moved until the alternate route is in substantially the same condition as the original route. Any expense or cost relating to the moving or altering the route shall be paid by the Grantor.

3. Nature of Easements.

(a) The easements granted by Grantor to Grantee pursuant to Paragraph 2 above are granted subject to the terms and provisions of Paragraph 3(b) through (g) below and (i) shall be and are appurtenant to and shall serve and benefit the Grantee Property and any other real property owned by Grantor, (ii) shall be and are covenants running with the land, and (iii) shall be used in common by Grantor and Grantee.

(b) Grantee's right to use the Easement Property shall be only for the purpose of ingress, egress and access to and from the Coosa River Mitigation Bank to perform annual monitoring and inspections.

(c) Notwithstanding anything provided herein to the contrary, Grantee shall not make any modifications to the Easement Property without Grantor's prior written consent. Further, Grantee shall make no alterations to the Easement Property that will result in damage to Grantor's operations, as determined in Grantor's sole and absolute discretion.

(d) Notwithstanding anything provided herein to the contrary, Grantee may improve the condition of the Easement Property, but Grantee agrees that in the event the easement is modified from its current condition, Grantor will not be responsible for any damage or destruction caused by Grantor, its agents, contractors, employees or assigns to any improvements beyond the current condition. Any gates or utilities installed on the Grantor's property by Grantee must be approved by Grantor.

(e) Grantee's shall have the right to enter onto the Easement Property after giving Grantor five (5) days' prior written notice; provided, however, Grantee's entry on the Easement Property shall not, under the circumstances then existing, unreasonably interfere with Grantor's use of the Easement Property, as determined in Grantor's sole and absolute discretion. Grantee shall hold Grantor harmless from and against any loss, liability or damage, including reasonable attorneys' fees and costs, resulting from Grantee's use of the Easement Property and from and against any mechanic's liens or claims of lien resulting therefrom.

(f) Grantor and Grantee agree to reasonably cooperate with each other to ensure the mutual safety of each other and their Related Persons. As used in this Agreement, the term

"Related Person" means any member, partner, principal, officer, director, shareholder, predecessor-in-interest, successor-in-interest, employee, agent, heir, representative, contractor, sublessee, grantee, licensee, invitee or permittee of a specified Party, or any other person or entity that has obtained or hereafter obtains rights or interests from such Party. Without limitation of the foregoing covenant of cooperation, the Parties hereby agree as follows:

- (1) Grantor may continue to hunt or permit hunting on the Easement Property.
- (2) In no event shall Grantee or any Grantee Related Person be permitted to hunt on the Easement Property or to possess firearms on the Easement Property.
- (3) Grantee agrees to restrict its use of the Easement Property as follows: (i) Grantee shall not access the Easement Property on Saturday or Sunday, and (ii) during the months of October through May, Grantee shall not enter on the Easement Property before 9:30 AM nor shall be on the Easement Property after 2:30 PM.

4. Insurance and Indemnity from Grantee. Grantee, its successors and assigns, does hereby indemnify, agree to defend and hold Grantor, its successors and assigns, harmless from and against any and all claims, demands, damages, costs, liabilities and expenses, including reasonable attorneys' fees and expenses, which Grantor or any of its successors and assigns may suffer, pay or incur as a result of any negligent acts or omissions or willful or intentional acts or omissions of Grantee or any of his agents, contractors or invitees. Grantee shall, at its sole expense, maintain a commercial general liability coverage in an amount One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, accident or incident that (when combined with a liability umbrella policy) provides protection against loss or liability to Grantor, Grantee, and third parties caused by Grantee's or its Related Persons' occupation and use of, and activities on the Easement Property. Grantor shall be named as an additional insured and provided a waiver of subrogation in such policy. Grantee shall promptly deliver a certificate of such insurance to Grantor.

5. Non-Waiver. The failure of either party hereto to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

6. Binding Effect. The terms of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns which become owners of the Easement Property, the Coosa River Mitigation Bank or any portion thereof.

7. Captions; Pronouns. The captions in this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement. Whenever the context hereof admits or requires, words in the singular may be regarded as in the plural and vice-versa, and personal pronouns may be read as masculine, feminine and neuter.

8. Severability. Invalidation of any of the provisions contained in this Agreement shall in no way affect any of the other provisions hereof or the application thereof to any other person or entity, and the remainder of this Agreement shall remain in full force and effect.


9. Applicable Law. It is expressly understood and agreed that this Agreement and all questions arising hereunder shall be construed according to the laws of the State of Alabama.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

11. Time is of the Essence. Time is of the essence in the performance by each party hereto of its respective obligations hereunder.

12. Entire Agreement. This Agreement, embodies the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior written or oral agreements or undertakings of the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be executed by and through their respective duly authorized representatives effective as of the day and year first written above.


20210108000013330 4/10 \$50.00
Shelby Cnty Judge of Probate, AL
01/08/2021 10:20:58 AM FILED/CERT

GRANTOR:

THE WESTERVELT COMPANY INC., a
Delaware corporation

By: Robert A. Rimer
Robert A. Rimer
Corporate Land Manager

STATE OF ALABAMA

COUNTY OF TUSCALOOSA

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Robert A. Rimer, whose name as Corporate Land Manager of The Westervelt Company, Inc., a Delaware corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of said corporation.

Given under my hand and official, notarial seal on this the 25th day of November 2020

{SEAL}

Jessie Daylock
Notary Public
My Commission Expires: _____

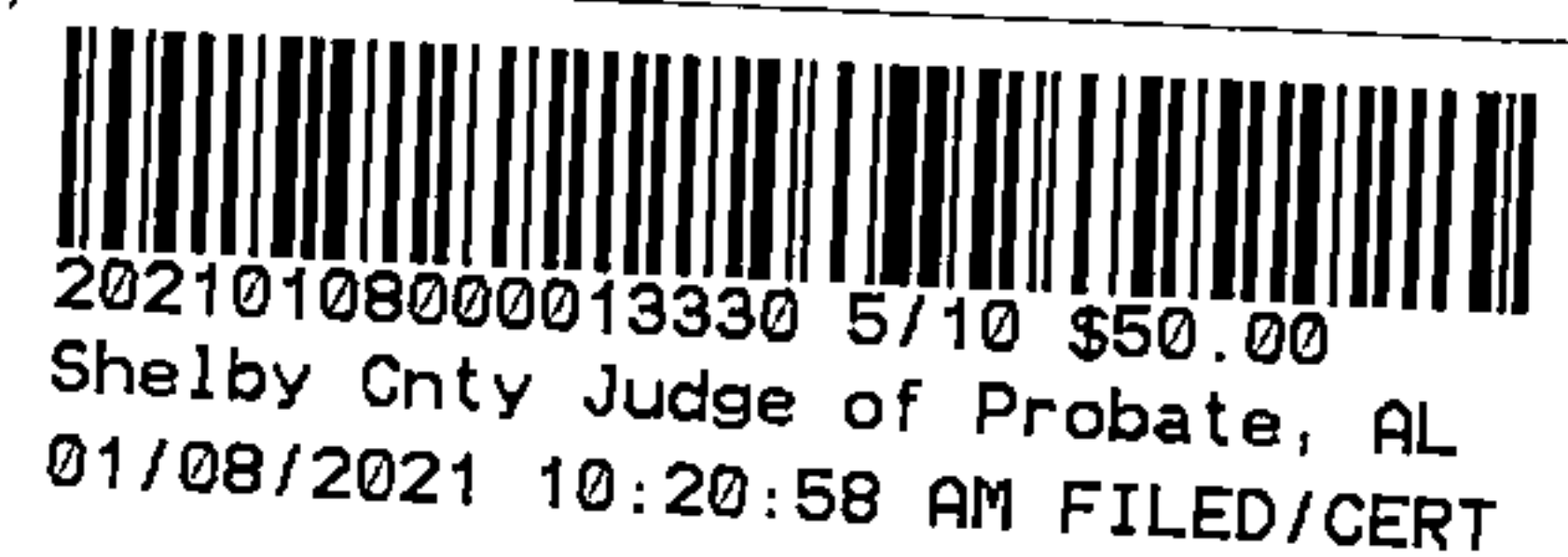
MY COMMISSION EXPIRES DEC. 12, 2021

GRANTEE:

By: _____
Name: _____

STATE OF ALABAMA)

_____ COUNTY)



I, the undersigned authority, a Notary Public in and for said county, in said state, hereby certify that _____ acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and official, notarial seal on this the ____ day of _____, 20____.

{SEAL}

Notary Public
My Commission Expires: _____

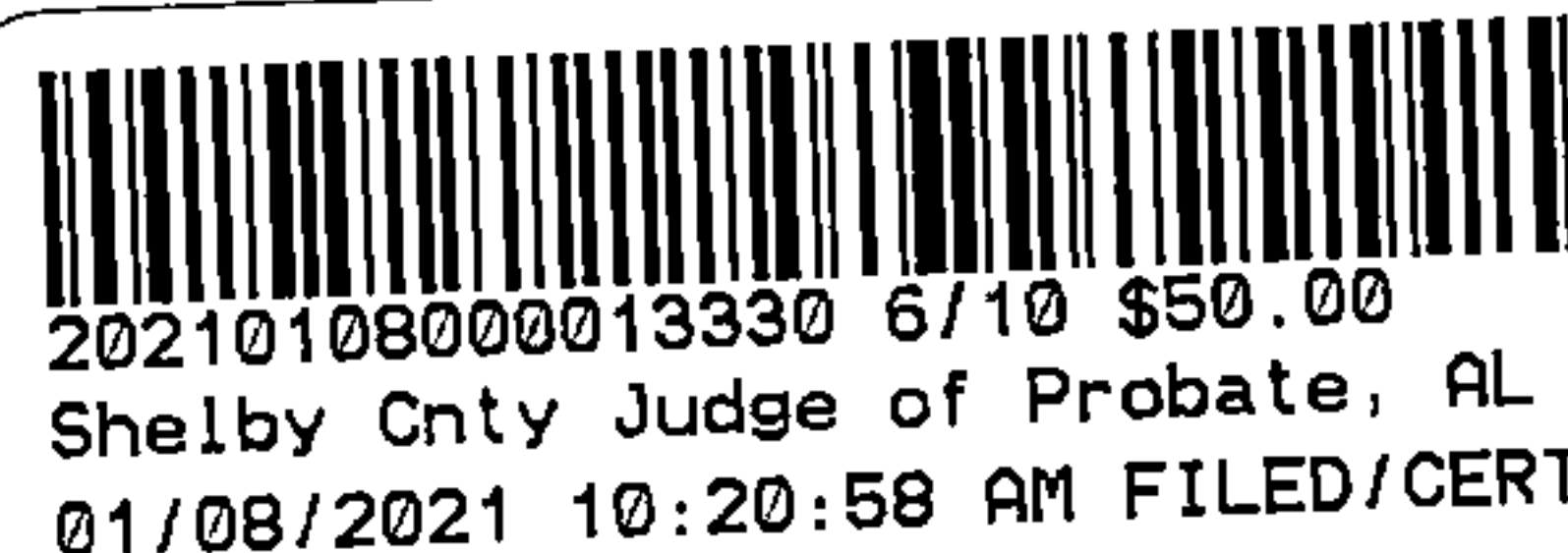
GRANTOR:

THE WESTERVELT COMPANY INC., a
Delaware corporation

By: _____
Robert A. Rimer
Corporate Land Manager

STATE OF ALABAMA

COUNTY OF TUSCALOOSA



I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Robert A. Rimer, whose name as Corporate Land Manger of The Westervelt Company, Inc., a Delaware corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of said corporation.

Given under my hand and official, notarial seal on this the ____ day of _____, 20__.

{SEAL}

Notary Public
My Commission Expires: _____

GRANTEE:

By: Rusha Smith
Name: Rusha Smith
Executive Director

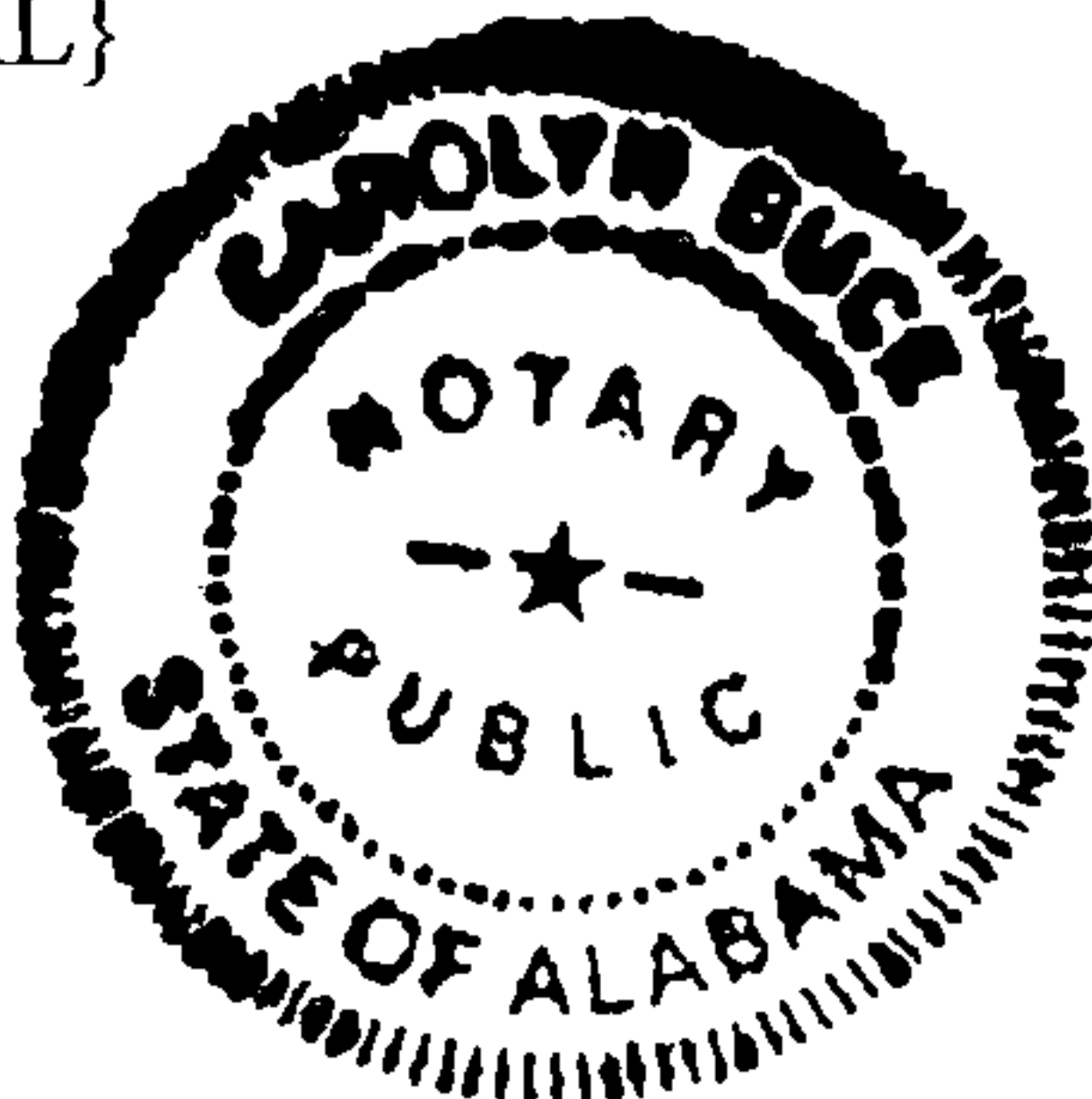
STATE OF ALABAMA)

Jefferson COUNTY)

I, the undersigned authority, a Notary Public in and for said county, in said state, hereby certify that Rusha Smith acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and official, notarial seal on this the 11th day of December 2020

{SEAL}



Carolyn M. Buck
Notary Public
My Commission Expires: 11/03/2023

EXHIBIT "A"
Description of Easement Property

NOTE:

This Parcel shown and described herein may be subject to setbacks, Right-of-Ways, easements, zoning and restrictions that may be found in the Probate Office of said County.



20210108000013330 7/10 \$50.00
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State of Alabama)

Date: 11/17/20

Shelby County)

Coosa River Mitigation Bank Access Easement Description

Access Easement 1

A parcel of land located in Section 1, Township 22 South, Range 1 East Shelby County, Alabama, containing forty four hundredths (0.44) of an acre, more or less; and being more particularly described as follows:

Start at an existing Shelby Iron accepted to mark the northeast corner of Section 10, Township 22 South, Range 1 East Shelby County, Alabama, said Shelby Iron being the POINT OF COMMENCEMENT; thence run N54° 56' 51.59"E for a distance of 7,684.10 feet to an existing set rebar; said rebar being the POINT OF BEGINNING and lying on the easement boundary; Thence travel along the following calls along the easement boundary (points not monumented):

Thence with a bearing of N 87°03'05" E a distance of 926.18 feet to a point; thence with a bearing of N 24°24'24" W a distance of 225.51 feet to a point; thence with a bearing of N 24°24'31" W a distance of 23.11 feet to a point lying on the South R.O.W. of Paradise Point Dr. (60 FT R.O.W.); thence follow along said R.O.W. for a chord bearing of N 68°53'34" E and distance of 15.02 feet to a point lying on said R.O.W.; thence with a bearing of S 24°24'33" E a distance of 269.77 feet to a point; thence with a bearing of S 87°03'05" W a distance of 963.45 feet to a point; thence with a bearing of N 01°58'24" W a distance of 86.94 feet to a point; thence with a bearing of N 56°02'04" E a distance of 17.69 feet to a point; thence with a bearing of S 01°58'26" E a distance of 81.06 feet to the POINT OF BEGINNING. (See drawing Exhibit A dated 11-17-20)

Access Easement 2

A parcel of land located in Sections 15 Township 22 South, Range 1 East Shelby County, Alabama, containing two hundredths (0.02) of an acre, more or less; and being more particularly described as follows:

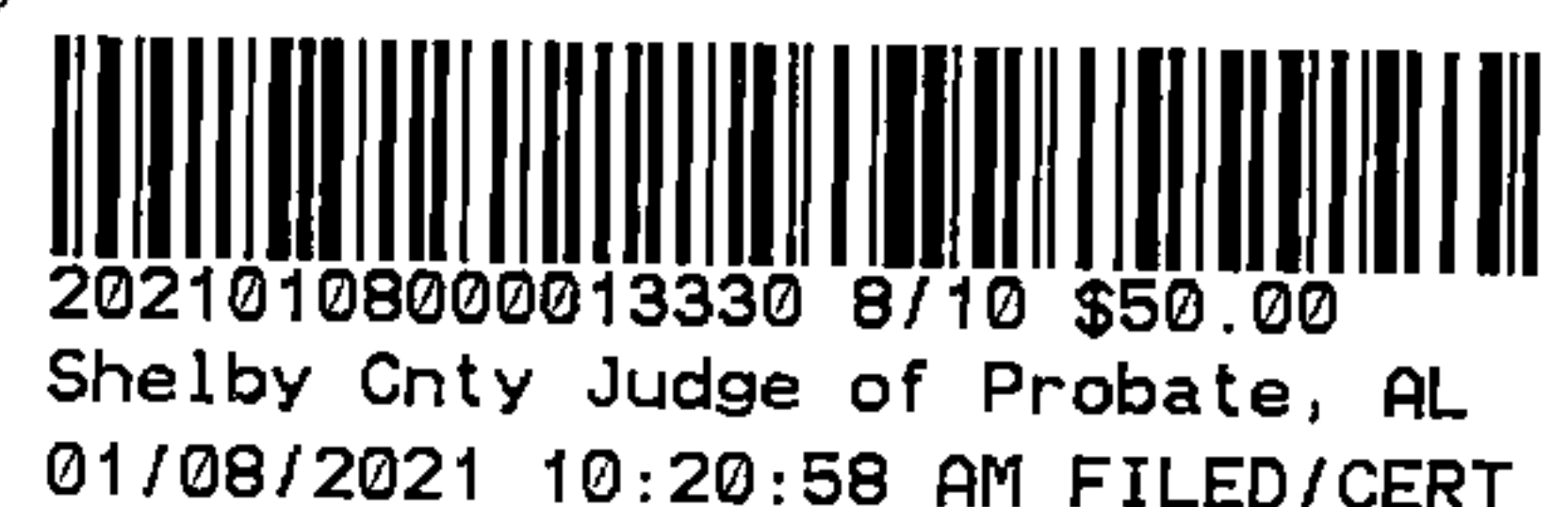
Start at an existing iron accepted to mark the northwest corner of Section 15, said iron being the POINT OF COMMENCEMENT; thence run S0° 29' 28.15"E along the Western boundary of said section for a distance of 1,546.43 feet to a set rebar and cap; said rebar being the POINT OF BEGINNING and lying on the easement boundary; Thence travel along the following calls along the easement boundary (points not monumented):

Thence with a bearing of N 22°29'30" E a distance of 48.78 feet to a point lying on the Southern R.O.W. of Highway 42 (80 FT R.O.W.); thence with a bearing of S 67°36'00" E a distance of 15.00 feet run along said R.O.W. to a point; thence with a bearing of S 22°29'49" W a distance of 48.44 feet to a point; thence with a bearing of N 68°54'12" W a distance of 15.00 feet to POINT OF BEGINNING. (See drawing Exhibit B dated 11-17-20)

Lance A. Stripling

Lance Alan Stripling, PLS

Alabama License No.: 30819



the Westervelt Company
P.O. BOX 48888
TUSCALOOSA AL 35404
(205) 582-5000



1"=100'
GRAPHIC SCALE



EXHIBIT A ACCESS EASEMENT #1

JOHNNY M &
SARA N HOWARD

POINT OF BEGINNING
FOUND REBAR
ACCESS EASEMENT 1

N56° 02' 04"E 17.69
N1° 58' 24"W 86.94
S1° 58' 26"E 81.06
N87° 03' 05"E 926.18
S87° 03' 05"W 963.45
N24° 24' 31"W 23.11
N24° 24' 24"W 225.51
S24° 24' 33"E 269.77
N68° 53' 34"E 15.02

THE WESTERVELT CO.

POINT OF COMMENCEMENT
EXISTING SHELBY IRON ACCEPTED
TO MARK THE NORTHEAST CORNER
OF SECTION 10, TOWNSHIP 22
SOUTH, RANGE 1 EAST SHELBY
COUNTY, ALABAMA

I hereby state that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information, and belief.

Surveyor's Signature: Lance A. Stripling

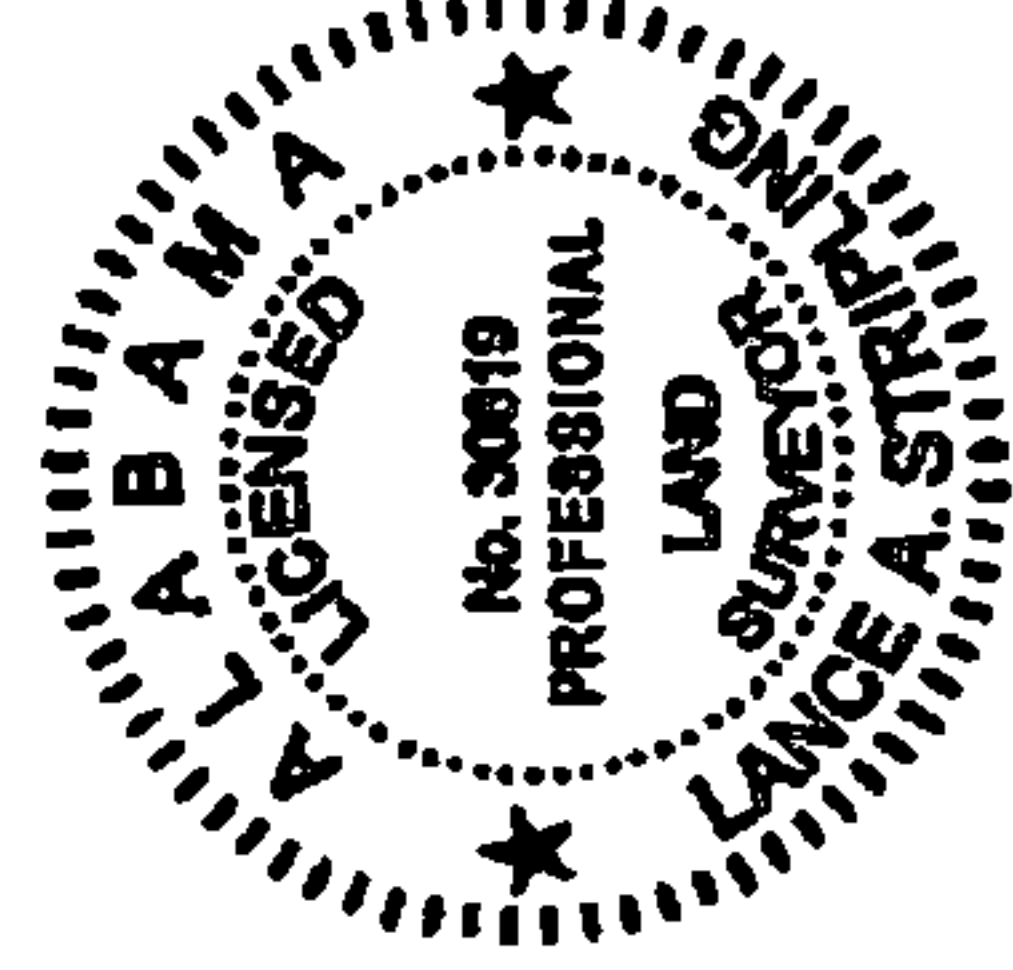
Alabama License Number 30819 Date 11/17/2020

Sources of Title:
(Shelby)
DB 193 PG 41
DB 193 PG 63
DB 232 PG 627

- NOTES:
1. Type of Survey: Easement Survey
 2. Date of Field Survey: March 2020
 3. All bearings shown are based on Alabama West, State Plane Coordinates (NAD 83) and obtained by GPS with OPUS Solution.
 4. Interior fences or structures were not located as part of this survey.

LEGEND

- Concrete Monument Found
- Rebar/Iron Pipe Found
- Point Not Monumented
- Set Rebar and Cap (CA 684)
- Section Line
- Property Line
- Easement Line
- Mitigation Bank Boundary
- Road Centerline
- Road R.O.W. Line
- Mitigation Bank Parcel Hatch
- Property Owner



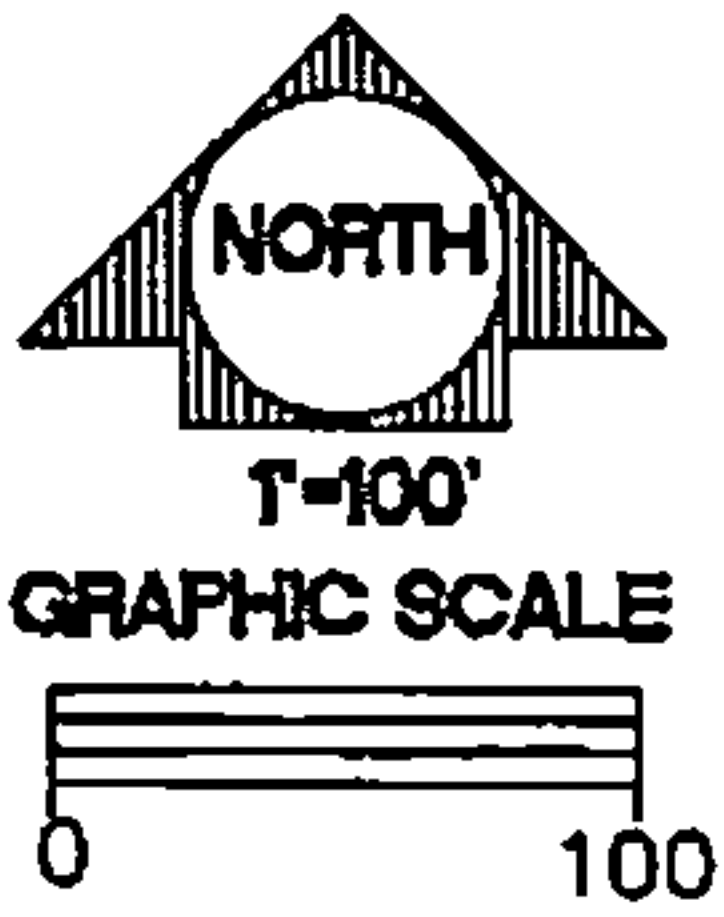
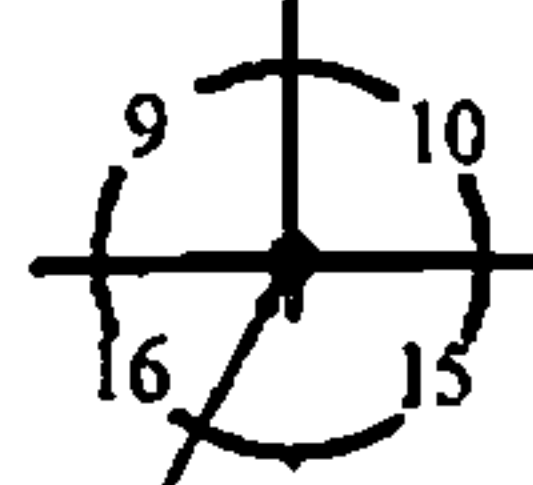


EXHIBIT B

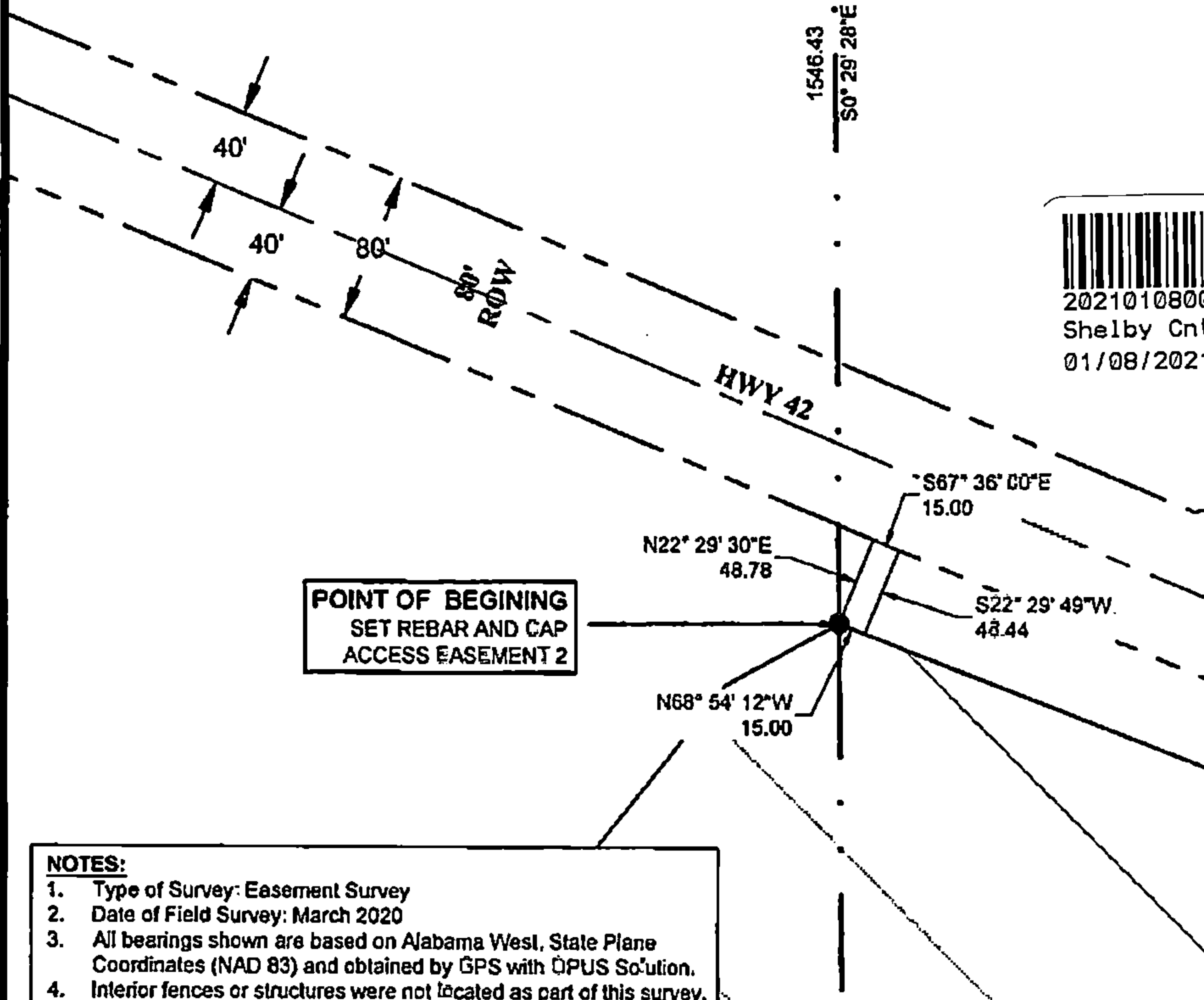
ACCESS EASEMENT #2


the
Westervelt Company
P.O. BOX 48988
TUSCALOOSA AL 35404
(205) 562-5000

POINT OF COMMENCEMENT
EXISTING IRON ACCEPTED TO
MARK THE NORTHWEST CORNER
OF SECTION 15, RANGE 1 EAST,
TOWNSHIP 22 SOUTH SHELBY
COUNTY, ALABAMA



1546.43
S0° 29' 28"E



POINT OF BEGINING
SET REBAR AND CAP
ACCESS EASEMENT 2

NOTES:

1. Type of Survey: Easement Survey
2. Date of Field Survey: March 2020
3. All bearings shown are based on Alabama West, State Plane Coordinates (NAD 83) and obtained by GPS with OPUS Solution.
4. Interior fences or structures were not located as part of this survey.

I hereby state that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information, and belief.

Surveyor's Signature: Lance A. Stripling

Alabama License Number 30819 Date 11/17/2020



Sources of Title:

(Shelby)
DB 193 PG 41
DB 193 PG 63
DB 232 PG 627

LEGEND

- Concrete Monument Found
- Rebar/Iron Pipe Found
- △ Point Not Monumented
- Set Rebar and Cap (CA 684)
- Section Line
- Property Line
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- Mitigation Bank Boundary
- Road Centerline
- Road R.O.W. Line
- ▨ Mitigation Bank Parcel Hatch
- the Westervelt Company Property Owner