NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
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CITY OF Salem AT YOUR SERVICE

Si necesita ayuda para comprender esta información, por favor llame 503-588-6173

DECISION OF THE PLANNING ADMINISTRATOR

AIRPORT OVERLAY ZONE HEIGHT VARIANCE: AVAR23-01

APPLICATION NO.: 23-109134-PLN

NOTICE OF DECISION DATE: May 9, 2023

SUMMARY: An airport overlay zone height variance associated with a new multi-family housing development at Battle Creek and Kuebler.

APPLICANT: Multi-Tech Engineering

LOCATION: 4700 Battle Creek Road SE

CRITERIA: Salem Revised Code (SRC) Chapter 602.025.

FINDINGS: The findings are in the attached Decision dated May 9, 2023.

DECISION: The **Planning Administrator APPROVED** AVAR23-01 based on the application materials and the findings presented in this report.

Case Manager: Lydia Keller, Planner I, Lkeller@cityofsalem.net, 503-540-2326

Salem Revised Code does not provide an expiration period for approval of an Airport Overlay Zone Height Variance. However, the FAA Hazard Determination Letter does provide an expiration date. This Decision is based on the validity of the FAA Hazard Determination Letter. Therefore, if the FAA determination expires, this Decision is no longer valid. Per the FAA letter, the permit will expire on September 30, 2024.

This Decision is final; there is no local appeal process. Any person with standing may appeal this Decision by filing a "Notice of Intent to Appeal" with the Land Use Board of Appeals, 775 Summer St NE, Suite 330, Salem OR 97301-1283, not later than 21 days after the decision date. Anyone with questions regarding filing an appeal with the Oregon Land Use Board of Appeals should contact an attorney.

The following items are submitted to the record: 1) All materials and evidence submitted by the applicant, including any applicable professional studies; and 2) All materials, evidence, and comments from City Departments and public agencies. The application materials are available on the City's online Permit Application Center at https://permits.cityofsalem.net. To view the materials without registering, you may use the search function without registering and enter the permit number listed here: 23 109134.

http://www.cityofsalem.net/planning

BEFORE THE PLANNING ADMINISTRATOR OF THE CITY OF SALEM

DECISION

IN THE MATTER OF APPROVAL OF AIRPORT OVERLAY ZONE HEIGHT VARIANCE CASE NO. AVAR23-01 4700 BATTLE CREEK ROAD SE) **FINDINGS & ORDER**))) **MAY 9, 2023**

In the matter of the application for an Airport Overlay Zone Height Variance, the Planning Administrator, having received and reviewed the evidence and the application materials, makes the following findings, and adopts the following order as set forth herein.

REQUEST

An Airport Overlay Zone Height Variance to allow 19 Multiple Family buildings at Battle Creek Road to be constructed to a maximum of 430 feet above mean sea level, exceeding the building height limit in the horizontal surface area of the Airport Overlay Zone by approximately 51 feet and the conical surface area of the Airport Overlay Zone by 150 feet. The subject properties are approximately 12.87 acres in size, zoned RM2 (Multiple Family Residential), and located at 4700 Battle creek Road SE (Marion County Assessors Map and Tax Lot numbers: 083W11D / 601) (**Attachment A**).

PROCEDURAL FINDINGS

1. On April 28, 2023, an Airport Overlay Zone Height Variance application was submitted for a property located at 4700 Battle creek Road SE.

SUBSTANTIVE FINDINGS

1. Proposal

The applicant is requesting to construct 19 Multiple Family Residential buildings, the proposed height of which will be within the horizontal surface area of the Airport Overlay Zone by approximate 67 feet, for property located at 4700 Battle creek Road SE – 97306.

2. City Department Comments

Public Works Department – Reviewed the proposal and indicated no concerns.

3. Applicability

SRC 602.025 Airport Overlay Zone Height Variance. No building, structure, or object shall be erected or increased in height, and no vegetation shall be allowed to grow to a height more than the height limitations set forth in this chapter unless a variance has been granted pursuant to this section.

DECISION CRITERIA FINDINGS

4. Analysis of Airport Overlay Zone Height Variance Approval Criteria

SRC 602.025(d) *Criteria*. An Airport Overlay Zone height variance shall be granted if the FAA has issued a determination that the proposed variance will not create a hazard to air navigation.

Finding: The FAA has conducted an aeronautical study of the proposed building at 4700 Battle creek Road SE. Findings from the FAA are included in **Attachment B.** The study revealed that the proposed structures would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or the operation of air navigation facilities. Therefore, the criterion is met.

SRC 602.025(e) *Conditions of approval*. The Review Authority shall impose as conditions of approval on an Airport Overlay Zone height variance any condition imposed in the FAA determination.

Finding: This Airport Overlay Zone Height Variance approval is valid, provided the proposed development complies with all conditions imposed in the FAA determination letter dated March 3, 2023. Therefore, the criterion is met.

5. Conclusion

Based upon the requirements of SRC 602.025, the proposed Airport Overlay Zone Height Variance has been reviewed for compliance with the applicable standards and criteria of the Unified Development Code (UDC). The Planning Administrator certifies that the proposed Airport Overlay Zone height variance is in conformance with the UDC, provided compliance occurs with any applicable items noted above.

IT IS HEREBY ORDERED

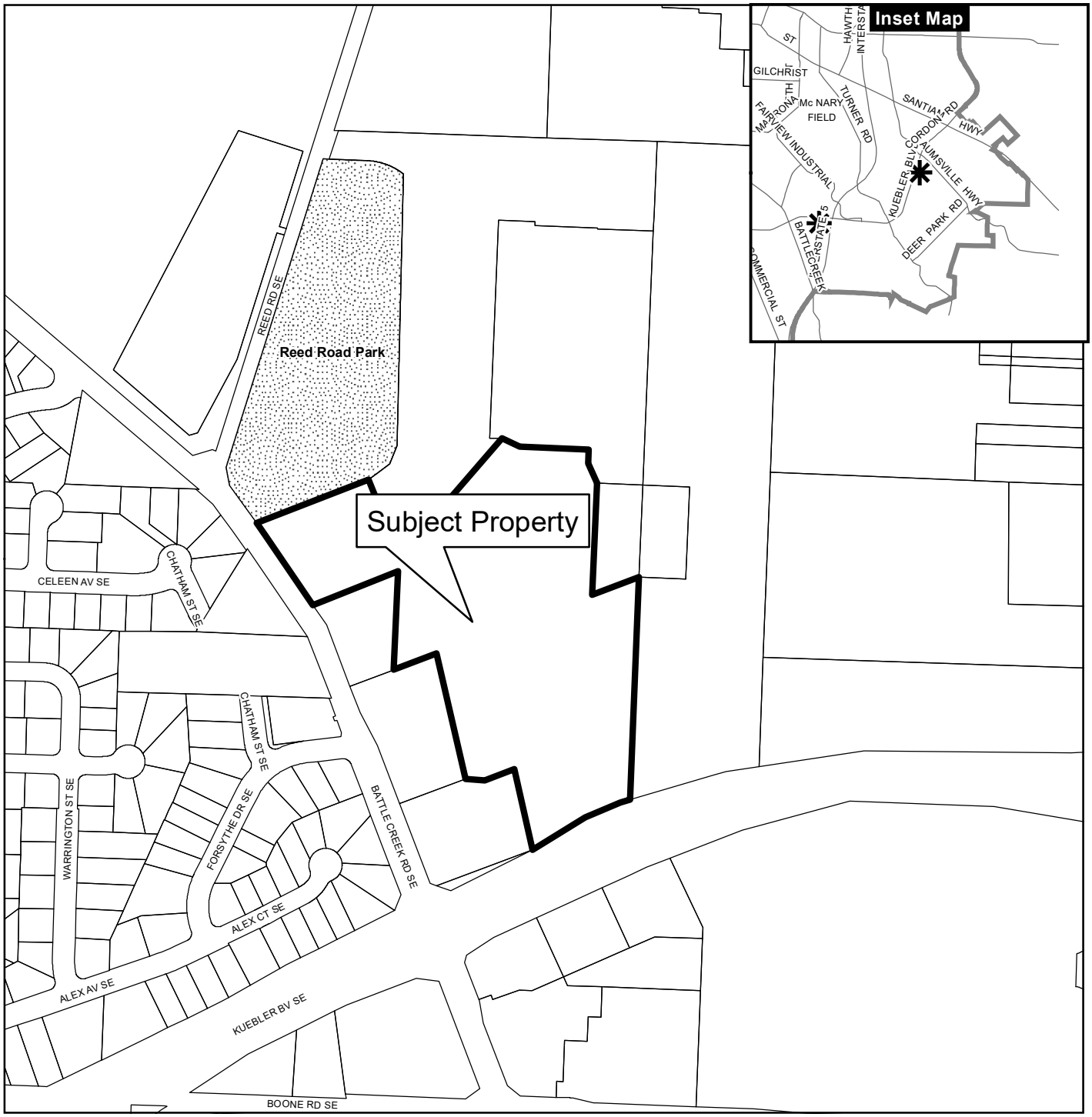
The proposed Airport Overlay Zone Height Variance is consistent with the provisions of SRC Chapter 602 and is hereby **APPROVED.**

Lydia Keller, Planner I,
on behalf of Lisa Anderson-Ogilvie, AICP
Planning Administrator

Attachments:

A. Vicinity Map
B. FAA Findings

Vicinity Map
4700 Battle Creek Road SE



Legend

- Taxlots
- Urban Growth Boundary
- City Limits
- Outside Salem City Limits
- Historic District
- Schools
- Parks

0 100 200 400 Feet

CITY OF Salem AT YOUR SERVICE
Community Development Dept.

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Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
10101 Hillwood Parkway
Fort Worth, TX 76177

Aeronautical Study No.
2022-ANM-8751-OE

Issued Date: 03/30/2023

Todd Boyce
Westwood Homes
12700 NW Cornell Rd
Portland, OR 97229

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ** (CORRECTION)**

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Multi-unit Housing Building 13
Location:	Salem, OR
Latitude:	44-53-11.54N NAD 83
Longitude:	123-00-43.93W
Heights:	368 feet site elevation (SE)
	40 feet above ground level (AGL)
	408 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities. Therefore, pursuant to the authority delegated to me, it is hereby determined that the structure would not be a hazard to air navigation provided the following condition(s) is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

_____ At least 10 days prior to start of construction (7460-2, Part 1)
__X__ Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

See attachment for additional condition(s) or information.

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/ lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 M.

The structure considered under this study lies in proximity to an airport and occupants may be subjected to noise from aircraft operating to and from the airport.

This determination expires on 09/30/2024 unless:

(a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
(b) extended, revised, or terminated by the issuing office.
(c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is subject to review if an interested party files a petition that is received by the FAA on or before April 29, 2023. In the event an interested party files a petition for review, it must contain a full statement of the basis upon which the petition is made. Petitions can be submitted to the Manager of the Rules and Regulations Group via e-mail at OEPetitions@faa.gov, via mail to Federal Aviation Administration, Air Traffic Organization, Rules and Regulations Group, Room 425, 800 Independence Ave, SW, Washington, DC 20591, or via facsimile (202) 267-9328. FAA encourages the use of email to ensure timely processing.

This determination becomes final on May 09, 2023 unless a petition is timely filed. In which case, this determination will not become final pending disposition of the petition. Interested parties will be notified of the grant of any review. For any questions regarding your petition, please contact Rules and Regulations Group via telephone – 202-267-8783.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

This aeronautical study considered and analyzed the impact on existing and proposed arrival, departure, and en route procedures for aircraft operating under both visual flight rules and instrument flight rules; the impact on all existing and planned public-use airports, military airports and aeronautical facilities; and the cumulative impact resulting from the studied structure when combined with the impact of other existing or proposed

structures. The study disclosed that the described structure would have no substantial adverse effect on air navigation.

An account of the study findings, aeronautical objections received by the FAA during the study (if any), and the basis for the FAA's decision in this matter can be found on the following page(s).

If we can be of further assistance, please contact Paul Holmquist, at (206) 231-2990, or paul.holmquist@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2022-ANM-8751-OE.

Signature Control No: 561930403-578506193 (DNH)
Mike Helvey
Manager, Obstruction Evaluation Group

Attachment(s)
Additional Information
Map(s)

Abbreviations

AGL - above ground level	AMSL - above mean sea level	RWY - runway
VFR - visual flight rules	IFR - instrument flight rules	NM - nautical mile
ASN- Aeronautical Study Number	CAT - category aircraft	
MDA - minimum descent altitude	DA - decision altitude	

Part 77 - Title 14 Code of Federal Regulations (CFR) Part 77, Safe, Efficient Use and Preservation of the Navigable Airspace

1. LOCATION OF PROPOSED CONSTRUCTION

19 studies were evaluated by the FAA for a proposed housing project near Mcnary Field Airport (SLE), Salem, OR. All 19 studies were found to exceed Part 77 standards. Of these, the closest study point, ASN 2023-ANM-8748-OE, would be approximately 1.38 NM south southwest of airport reference point for Mcnary Field Airport, Salem, OR. The SLE airport elevation is 213 feet AMSL. Separate determinations for each study can be found at the OE/AAA website (http://oeaaa.faa.gov).

The 19 study locations were assigned the following Aeronautical Study Numbers (ASNs) and are described as follows:

ASN	Structure Name	AGL/AMSL	Latitude / Longitude
2022-ANM-8739-OE	Building 1	20 / 430	44-53-11.91N / 123-00-38.49W
2022-ANM-8740-OE	Building 2	30 / 430	44-53-10.47N / 123-00-38.49W
2022-ANM-8741-OE	Building 3	37 / 430	44-53-08.85N / 123-00-38.74W
2022-ANM-8742-OE	Building 4	27 / 423	44-53-10.14N / 123-00-40.43W
2022-ANM-8743-OE	Building 5	29 / 429	44-53-11.25N / 123-00-40.38W
2022-ANM-8744-OE	Building 6	38 / 428	44-53-12.91N / 123-00-40.96W
2022-ANM-8745-OE	Building 7	35 / 425	44-53-13.88N / 123-00-41.03W
2022-ANM-8746-OE	Building 8	41 / 429	44-53-11.21N / 123-00-41.83W
2022-ANM-8747-OE	Building 9	41 / 421	44-53-12.23N / 123-00-42.13W
2022-ANM-8748-OE	Building 10	51 / 421	44-53-15.27N / 123-00-42.45W
2022-ANM-8749-OE	Building 11	41 / 407	44-53-14.12N / 123-00-43.68W
2022-ANM-8750-OE	Building 12	41 / 405	44-53-12.86N / 123-00-44.13W
2022-ANM-8751-OE	Building 13	40 / 408	44-53-11.54N / 123-00-43.93W
2022-ANM-8752-OE	Building 14	41 / 413	44-53-10.28N / 123-00-43.39W
2022-ANM-8753-OE	Building 15	41 / 423	44-53-09.26N / 123-00-42.18W
2022-ANM-8754-OE	Building 16	40 / 426	44-53-08.31N / 123-00-40.86W
2022-ANM-8755-OE	Building 17	37 / 412	44-53-07.51N / 123-00-42.94W
2022-ANM-8756-OE	Building 18	40 / 430	44-53-07.34N / 123-00-38.34W
2022-ANM-8757-OE	Building 19	40 / 424	44-53-06.14N / 123-00-40.69W

2. OBSTRUCTION STANDARDS EXCEEDED

The structures are identified as an obstruction under the following Part 77 standards:

a. Section 77.19(a): Horizontal Surface-a height exceeding a horizontal plane 150 feet above the established airport elevation. The 19 studies exceed the SLE Horizontal Surface by the following:

ASN	Exceeds by (feet)
2022-ANM-8739-OE:	67
2022-ANM-8740-OE:	67
2022-ANM-8741-OE:	67
2022-ANM-8742-OE:	60
2022-ANM-8743-OE:	66
2022-ANM-8744-OE:	65
2022-ANM-8745-OE:	62
2022-ANM-8746-OE:	66
2022-ANM-8747-OE:	58
2022-ANM-8748-OE:	58
2022-ANM-8749-OE:	44
2022-ANM-8750-OE:	42
2022-ANM-8751-OE:	45
2022-ANM-8752-OE:	50
2022-ANM-8753-OE:	60
2022-ANM-8754-OE:	63
2022-ANM-8755-OE:	49
2022-ANM-8756-OE:	67
2022-ANM-8757-OE:	61

3. EFFECT ON AERONAUTICAL OPERATIONS

a. a. The impact on arrival, departure, and en route procedures for aircraft operating under VFR: The project would penetrate the SLE Horizontal Surface by a maximum of 67 feet where the terrain exceeds by 47 feet.

Effects on the VFR Traffic Pattern Airspace (TPA): This proposed project would exceed the SLE VFR TPA in the Part 77 Conical Surface by a maximum of 32 feet where the terrain also exceeds by 18 feet, as defined in FAA Order 7400.2, 6-3-8, Evaluating Effect on VFR Operations.

There are no effects on any existing or proposed arrival, departure, or en route IFR/VFR minimum flight altitudes.
There are no physical or electromagnetic effects on the operation of air navigation and communications facilities
There are no effects on any airspace and routes used by the military.

b. The impact on arrival, departure, and en route procedures for aircraft operating under IFR: None.

c. The cumulative impact of the proposed structures, when combined with other proposed and existing structures, is not considered to be significant. Study did not disclose any significant adverse effect on existing or proposed public-use or military airports or navigational facilities, nor would the proposals affect the capacity of any known existing or planned public-use or military airport.

The SLE Airport Master Record can be viewed/downloaded at https://adip.faa.gov/agis/public/#/airportData/SLE . It states there are 141 single-engine, 10 multi-engine, 6 jet, 8 helicopter, 19 military, 0 ultra- light

and 2 glider aircraft based there with 39,823 operations for the 12 months ending 31 December 2019 (latest information).

3. CIRCULATION AND COMMENTS RECEIVED

The proposal was not circularized for public aeronautical comment due to an internal FAA evaluation. This does not affect the public's right to petition for review determinations regarding structures, which exceed the subject obstruction standards.

4. DETERMINATION - NO HAZARD TO AIR NAVIGATION

It is determined that the proposed construction would not have a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on any air navigation facility and would not be a hazard to air navigation provided the conditions set forth in this determination are met.

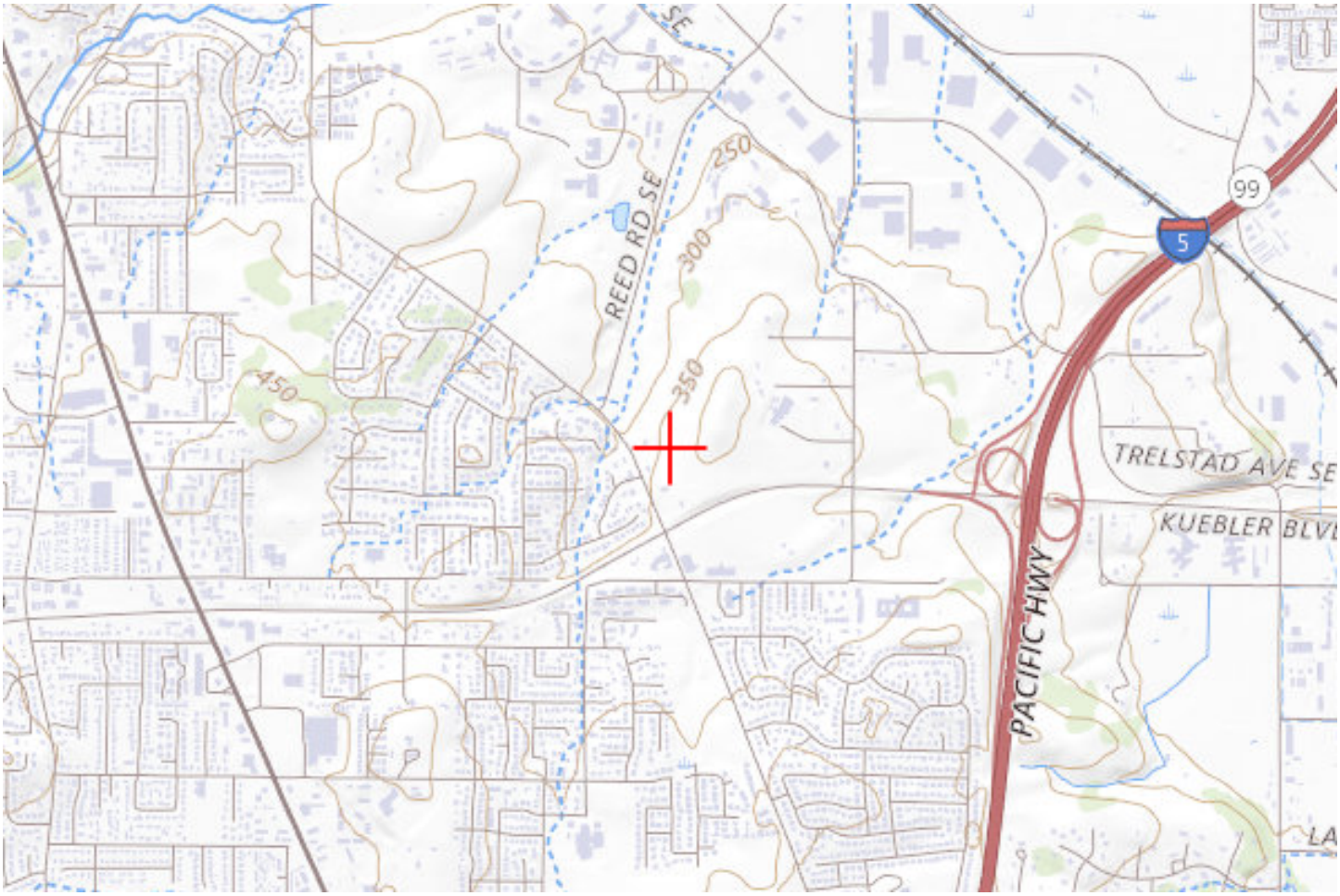
5. BASIS FOR DECISION

Study for possible effect disclosed that the proposed structure would not have a substantial adverse effect on any existing or proposed arrival or departure VFR operation or procedure. The proposed project would exceed the SLE Part 77 Horizontal Surface by a maximum of 67 feet where the terrain exceeds by 47 feet and the VFR TPA in the Part 77 Conical Surface by maximum of 32 feet where the terrain also exceeds by 18 feet. The proposal is located on the back side of sloped terrain where there is higher or equivalent terrain height between the project and the airport. There would be no derogation of the navigable airspace overlying the site. Existing obstacles and terrain control the development of future approach and departure instrument Terminal Procedures at SLE. No other VFR effects were identified and there are no IFR effects. There are no physical or electromagnetic effects on the operation of air navigation and communications facilities and there are no effects on any airspace and routes used by the military. The incorporation of obstruction marking and lighting was considered but not deemed necessary.

6. CONDITIONS

Within five days after the structure reaches its greatest height, proponent is required to file a FAA form 7460-2, Actual Construction notification, at the OE/AAA website (http://oeaaa.faa.gov). This Actual Construction notification will be the source document detailing the site location, site elevation, structure height, and date structure was built for the FAA to map the structure on aeronautical charts and update the national obstruction database.

TOPO Map for ASN 2022-ANM-8751-OE



Sectional Map for ASN 2022-ANM-8751-OE