



## AGENDA

### CANBY CITY COUNCIL REGULAR MEETING

October 19, 2011

7:30 PM

Council Chambers  
155 NW 2<sup>nd</sup> Avenue

*Mayor Randy Carson*

*Council President Walt Daniels*  
*Councilor Richard Ares*  
*Councilor Tim Dale*

*Councilor Traci Hensley*  
*Councilor Brian Hodson*  
*Councilor Greg Parker*

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### WORK SESSION

6:30 P.M.

City Hall Conference Room  
182 N Holly

This Work Session will be attended by the Mayor and City Council to hear an overview of SDC's.

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### CITY COUNCIL REGULAR MEETING

**1. CALL TO ORDER**

A. Pledge of Allegiance and Moment of Silence

**2. COMMUNICATIONS**

**3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS**

*(This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Each citizen will be given 3 minutes to give testimony. Citizens are first required to fill out a testimony/comment card prior to speaking and hand it to the City Recorder. These forms are available by the sign-in podium. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter.)*

**4. MAYOR'S BUSINESS**

**5. COUNCILOR COMMENTS & LIAISON REPORTS**

**6. CONSENT AGENDA**

*(This section allows the City Council to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may be discussed if it is pulled from the consent agenda to New Business.)*

A. Approval of Minutes of the October 5, 2011 City Council Regular Meeting

B. Limited On-Site Liquor License Application for Hot Chicks Bento LLC

Pg. 1

**7. PUBLIC HEARINGS**

- A. Request by ODOT for Noise Variance on Highway 99E Pg. 3
- B. VAC 11-01 - Vacation of Public Right-of-Way and Easements of an Abandoned Portion of S. Walnut Street Pg. 15

**8. RESOLUTIONS & ORDINANCES**

- A. Ord. 1347, Amending the Cable Television Franchise Agreement Between the City of Canby and WaveDivision VII, LLC (**2<sup>nd</sup> Reading**) Pg. 7
- B. Ord. 1349, Amending the Cable Television Franchise Agreement Between the City of Canby and Canby Telephone Association (**2<sup>nd</sup> Reading**) Pg. 12
- C. Ord. 1351, Vacating an Abandoned Portion of S. Walnut Street Public Right-of-Way from its Point of Realignment to its Intersection with SE 4<sup>th</sup> Avenue, and a Small Corner Radius of Public Right-of-Way at the NE Corner of the Intersection of S. Sequoia Parkway and SE 4<sup>th</sup> Avenue Pg. 32
- D. Ord. 1352, Authorizing Contract with Hubbard Chevrolet, Withnell Motor Company, Auto Additions, and Ford Motor Credit Corporation for the Lease/Purchase of One (1) 2012 Chevrolet Tahoe, and One (1) 2012 Dodge Charger with Police Equipment Packages Pg. 37

**9. NEW BUSINESS**

- A. Police Department Accreditation Presentation

**10. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS**

**11. CITIZEN INPUT**

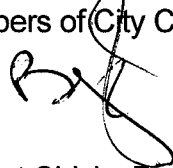
**12. ACTION REVIEW**

**13. EXECUTIVE SESSION: ORS 192.660(2)(h) Pending Litigation**

**14. ADJOURN**

\*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer at 503.266.4021 ext. 233. A copy of this Agenda can be found on the City's web page at [www.ci.canby.or.us](http://www.ci.canby.or.us). City Council and Planning Commission Meetings are broadcast live and can be viewed on OCTS Channel 5. For a schedule of the playback times, please call 503.263.6287.

# Memo

To: Mayor Randy Carson & Members of City Council  
From: Bret J. Smith, Chief of Police   
Date: October 5, 2011  
Re: Liquor License Application / Hot Chicks Bento LLC

I have reviewed the attached liquor license application completed by the applicant, Dena Stein, the owner of Hot Chicks Bento, located at 1109 SW 1<sup>st</sup> Avenue Ste "A", Canby, Oregon 97013.

Additionally, I spoke with the applicant; and we discussed the laws involving the sale of alcoholic beverages. She told me that she and her staff are receiving the OLCC training related to the pertinent laws involving the serving of alcohol and she is also aware of the consequences should there be a failure to comply with the law.

I recommend the Canby City Council approve this application to the Oregon Liquor Control Commission (OLCC).

CC: Kim Scheafer, City Recorder



# OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

paid \$100 ~~283~~  
9/30/11



Application is being made for:

## LICENSE TYPES

- ☐ Full On-Premises Sales (\$402.60/yr)  
☐ Commercial Establishment  
☐ Caterer  
☐ Passenger Carrier  
☐ Other Public Location  
☐ Private Club  
☒ Limited On-Premises Sales (\$202.60/yr)  
☐ Off-Premises Sales (\$100/yr)  
☐ with Fuel Pumps  
☐ Brewery Public House (\$252.60)  
☐ Winery (\$250/yr)  
☐ Other: \_\_\_\_\_

## ACTIONS

- ☐ Change Ownership  
☒ New Outlet  
☐ Greater Privilege  
☐ Additional Privilege  
☐ Other \_\_\_\_\_

## 90-DAY AUTHORITY

☐ Check here if you are applying for a change of ownership at a business that has a current liquor license, or if you are applying for an Off-Premises Sales license and are requesting a 90-Day Temporary Authority

## APPLYING AS:

- ☐ Limited Partnership ☒ Corporation ☐ Limited Liability Company ☐ Individuals

## CITY AND COUNTY USE ONLY

Date application received: 9.30.11

The City Council or County Commission:

CANBY  
(name of city or county)

recommends that this license be:

- ☐ Granted ☐ Denied

By: \_\_\_\_\_  
(signature) (date)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## OLCC USE ONLY

Application Rec'd by: JP

Date: 9-27-11

90-day authority: ☐ Yes ☐ No

1. Entity or Individuals applying for the license: [See SECTION 1 of the Guide]

① Dana L. Stein ③ \_\_\_\_\_  
 ② Hot Chicks Bento LLC ④ \_\_\_\_\_

2. Trade Name (dba): Hot Chicks Bento

3. Business Location: 1109 SW 1st Ave, Ste. A Canby Clack. OR 97013  
 (number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: 1109 SW 1st Ave, Ste. A Canby OR 97013  
 (PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 503-263-2442 503-263-2452  
 (phone) (fax)

6. Is the business at this location currently licensed by OLCC? ☐ Yes ☒ No

7. If yes to whom: \_\_\_\_\_ Type of License: \_\_\_\_\_

8. Former Business Name: \_\_\_\_\_

9. Will you have a manager? ☒ Yes ☐ No Name: \_\_\_\_\_  
 (manager must fill out an Individual History form)

10. What is the local governing body where your business is located? Clackamas County Canby OR  
 (name of city or county)

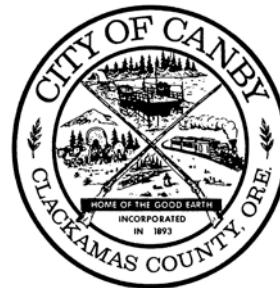
11. Contact person for this application: Dana L. Stein 503-263-2442  
 (name) (phone number(s))  
1109 SW 1st Ave. Ste. A 503-263-2452 hotchicksbento@gmail.com  
 (address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① [Signature] Date 9/26/11 ③ \_\_\_\_\_ Date \_\_\_\_\_  
 ② \_\_\_\_\_ Date \_\_\_\_\_ ④ \_\_\_\_\_ Date \_\_\_\_\_

# MEMORANDUM



**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *Kim Scheafer, CMC, City Recorder*  
**DATE:** *October 10, 2011*  
**THROUGH:** *Greg Ellis, City Administrator*

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Issue: Request for Noise Variance

Synopsis: A request has been received from ODOT for a noise variance in May and June 2012. They will be paving approximately 1.2 miles of Highway 99E from 750' south of Territorial Road to Pine Street. **The request is for 2-3 days of nighttime work in the section that is within the City limits.** ODOT is requesting the variance between the hours of 7 PM and 7 AM Monday through Thursday. ODOT has outlined in their letter the measures that they will take to mitigate noise. They will provide written notice to affected neighbors informing them of the construction schedule along with a nighttime phone number that will reach an on-site representative for questions and complaint investigations.

Per Canby Municipal Code Section 9.48.050B 4, at least 20 days prior to the public hearing a notice was mailed to property owners within 200' of the establishment and posted in various locations around the City. Notice of the public hearing was also published in the *Canby Herald*. Section 9.48.050B allows the Council to approve a variance after certain criteria which would apply to the facts of the requested variance are considered by the Council. In granting a variance, the Council shall consider:

- a. The protection of health, safety and welfare of citizens as well as the feasibility and cost of noise abatement.
- b. The past, present and future patterns of land use changes.
- c. The relative timing of land use changes.
- d. The acoustical nature of the sound emitted.
- e. Whether variance from the provision would produce a benefit to the public.

If, after review of the evidence submitted by the applicant and hearing any testimony from the public, the Council chooses to allow the variance as requested, a motion to grant the variance would be appropriate.

Recommendation: Staff recommends Council approve the Noise Variance request.

Recommended Motion:

***I move to grant a Noise Variance to ODOT in May and June 2012 as outlined in their request letter.***



# Oregon

John A. Kitzhaber, MD, Governor

## Department of Transportation

Region 1 Headquarters  
123 NW Flanders Street  
Portland, Oregon 97209  
(503) 731.8500  
(503) 731.8531

August 25, 2011

Kim Scheafer, City Recorder  
City of Canby  
182 N. Holly Street  
PO Box 930  
Canby, OR 97013

Re: Oregon Department of Transportation, Region 1  
17485 OR99E: MP19.47 - Pine St. (Canby)  
Noise Variance Request

Dear Kim,

I am a project manager for the Oregon Department of Transportation. I am requesting the following matter be brought before the City Council at the council's earliest convenience.

The Oregon Department of Transportation is requesting a variance from the City of Canby code to allow nighttime construction on the OR99E: MP19.47 - Pine St. (Canby) pavement preservation project. This project includes repaving and striping approximately 1.2 miles of Pacific Highway East (99E) from about 750 feet south of Territorial Rd. to Pine St. The nighttime paving operation is estimated to take about one week to complete. This request is for 2-3 days of nighttime work in the section within the city limits. The entire paving and restriping work is estimated to begin in May, 2012 and be completed by June.

The following activities will take place during the project:

Activity	dBA at a distance of 50 feet
➤ Pavement grinding (trucks/grinders)	88
➤ Pavement inlay (trucks/pavers)	89
➤ Installing rumble strips (grinders)	88
➤ Striping (trucks)	88

During construction, ODOT anticipates nighttime single lane closures on Highway 99E.

In order for ODOT to minimize traffic congestion and delays during peak commuter hours and meet the construction schedule for this project, ODOT is requesting a variance between the hours of 7 p.m. and 7 a.m. Monday through Thursday.

The paving operation is continually moving which means noise will not be concentrated in one particular area for any significant length of time. The measures that ODOT and/or the contractor will use to mitigate noise during proposed nighttime construction activities are anticipated to be, but are not limited to, the following:

- Smart alarms shall be used if any vehicles are backing up between 7 p.m. and 10 p.m. After 10 p.m. the contractor will be required to use a "guide person" or "spotter" for the remainder of the night. Reverse alarms will not be permitted during overnight work hours.
- The contractor will be required to provide noise level data for each piece of equipment to be used on the project. Noise assessment must be appropriate for each class of vehicle in accordance with standard DEQ measurement procedures. If equipment does not meet standards, the contractor will be required to retrofit and maintain the equipment to DEQ standards.
- The contractor and ODOT shall have a portable noise meter on the job at all times for noise level spot checks on specific operations. The contractor shall employ an individual trained to use the noise meter and with working knowledge of sound measurements and their meaning and use as applied to any variance given by the local jurisdiction.
- ODOT will provide written notice to affected neighbors informing them of the construction schedule. The notice will include a nighttime phone number that will reach an on-site representative for questions and complaint investigation. Complaints will be investigated and addressed within 24 hours or before the next scheduled night work.

ODOT respectfully requests that City of Canby support our need to schedule night work activities as described above and respond in writing. If you have any questions please feel free to contact me at (503) 731-3289.

Sincerely,

Rick Keene  
ODOT Region 1  
Project Development, Project Manager

CC: Greg Ellis, City Manager

# CITY OF CANBY NOTICE OF PUBLIC HEARING -NOISE VARIANCE

**Date and Time Requested for  
Variance:**

2-3 Days in May and/or June, 2012  
between the hours of 7 p.m. and 7 a.m.  
Monday through Thursday

**Address of Variance:**

Highway 99E (750' South of Territorial Rd.  
to Pine Street)

**Name of Applicant:**

Oregon Department of Transportation

A public hearing conducted by the Canby City Council will be held on Wednesday, October 19, 2011 at 7:30 p.m. in the City Council Chambers located at 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon. The purpose of this hearing is to consider the granting of a Noise Variance to the Oregon Department of Transportation.

The variance is being requested for approximately 2-3 days between May and/or June 2012 between the hours of 7 p.m. and 7 a.m., Monday through Thursday for repaving and striping of approximately 1.2 miles of Highway 99E. ODOT will provide written notice to affected neighbors informing them of the construction schedule.

Dated this 13<sup>th</sup> day of September 2011.

Kimberly Scheafer, CMC  
City Recorder



## **ORDINANCE NO. 1347**

### **AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF CANBY AND WAVEDIVISION VII, LLC AND DECLARING AN EMERGENCY.**

**WHEREAS**, on April 8, 1999, the City of Canby granted a twelve year franchise to North Willamette Telecom, effective May 7, 1999 (the “Franchise”). The Franchise was subsequently assigned to Willamette Broadband, LLC in 2001, and the City approved the transfer to WaveDivision VII, LLC, a Washington limited liability company, doing business as Wave Broadband (“Wave”) in 2007; and

**WHEREAS**, the Franchise was to expire on May 7, 2011, and the parties agreed to extend the term through June 6, 2011, to allow additional time to reach agreement on a longer term extension of the agreement; and

**WHEREAS**, the City and Wave did not intend to allow the franchise to expire without extension, but the City inadvertently did not extend the Franchise while discussions about the longer term extension continued; and

**WHEREAS**, the City and Wave have agreed to extend the term of the Franchise to expire on March 4, 2017, which is consistent with the expiration date of the cable franchise agreement the City granted to a competitive cable service provider in the City, Canby Telephone Association; and

**WHEREAS**, the City and Wave have agreed to amend the Franchise to reflect the new expiration date and to address several other issues; and

**WHEREAS**, the City finds it is in the public interest to amend the Franchise as set forth in this Ordinance, and that such amendment be effective as of June 6, 2011, to ensure that Wave has a continuous franchise from the City; now therefore

#### **THE CITY OF CANBY ORDAINS AS FOLLOWS:**

Section 1. The City of Canby hereby amends the Franchise with Wave as follows, with all other provisions, terms and conditions of the Franchise remaining unchanged and in full force and effect except as expressly stated herein:

- A. All references in the Franchise to “Grantee,” “Franchisee,” or “North Willamette Telecom” shall mean WaveDivision VII, LLC.

2nd Reading

- B. Section 1.1 of the Franchise shall read as follows: “The City of Canby, Oregon (hereafter Grantor) is authorized to and by this Franchise agreement does grant to WaveDivision VII, LLC (hereafter Grantee) a nonexclusive Franchise through March 4, 2017, revocable as provided herein, to construct, operate and maintain a cable communications system in the City.”
- C. The phrase “for a 12-year period” shall be deleted from the first sentence of Section 3.1 of the Franchise.
- D. The first sentence of the first paragraph of Section 3.3 of the Franchise shall be deleted in its entirety and replaced with the following: “Except as otherwise provided herein for revocation, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be through March 4, 2017, at which time the franchise shall expire and be of no force and effect.”
- E. The phrase “twelve (12) year” shall be deleted from the first sentence of the second paragraph and from the last sentence of the last paragraph of Section 3.3 of the Franchise.
- F. The phrase “and continuing throughout its term,” shall be deleted from the first sentence of Section 6.5(c) (i) of the Franchise. After the first sentence of Section 6.5(c)(i), the following sentence shall be added: “No sooner than November 1, 2011, Grantee shall provide two percent (2%) of its gross revenues as support for PEG access capital costs. Grantee shall provide two percent (2%) of its gross revenues through October 31, 2013. Commencing on November 1, 2013 and through the remaining term of the Franchise, Grantee shall provide one-percent (1%) of its gross revenues as support for PEG access capital costs.” After the first paragraph in Section 6.5(c)(i), the following paragraph shall be added: “Notwithstanding the previous paragraph, in the event of a change in federal law that permits the Grantor or its Designated Access Provider to use the support set forth in this Section 6.5(c)(i) for non-capital costs without such support being treated as a franchise fee, Grantee shall, no sooner than November 1, 2013 or within sixty (60) days of the effective date of the change in law, as applicable, provide a total of two percent (2%) of its gross revenues as capital and non-capital support for PEG access through the remaining term of the Franchise.”
- G. The following paragraph shall be added at the end of Section 6.5(c)(ii) of the Franchise: “Commencing on November 1, 2014, Grantor shall cause Canby Telephone Association, a competitive cable service provider in the City, to contribute eight hundred sixty two dollars (\$862.00) per month to Grantor’s Designated Access Provider (the “DAP”) and such amount shall be paid directly to the DAP by Canby Telephone Association. It is Grantee’s intent to enter into an agreement with the DAP pursuant to which the DAP will forward to Grantee all rent contributions paid by Canby Telephone Association through March 4, 2017. Grantor and Grantee agree that this amount represents one half (1/2) of the rent for the portion of the access facility occupied by Grantor’s DAP as of June 6, 2011 (which is approximately eighty-seven

2nd Reading

percent (87%) of the leased space, the remainder of which is used by the Grantee). In the event that the rent for the leased space changes during the term of this Agreement pursuant to the terms of a valid lease agreement between Grantee and the owner of the leased space, then Grantor shall cause Canby Telephone Association to contribute to the DAP one half (1/2) of the adjusted rental amount for the portion of the access facility occupied by the DAP. Grantor and Grantee further agree that if the DAP's proportionate use of the access facility increases or decreases by five percent (5%) or more, the payments required under this Paragraph from Canby Telephone shall be increased or decreased in proportion to the change. Grantor's obligation to require Canby Telephone Association to make the payment set forth in this paragraph shall cease if Canby Telephone Association ceases to provide cable service in the City or if the DAP stops using the access facility.

- H. Section 9.1 of the Franchise shall be deleted in its entirety and replaced with the following: "The parties shall be subject to the provisions of 47 U.S.C. 547 (Section 627 of the Cable Act), as amended from time to time. It is not intended that this Agreement diminish the rights of either Grantor or Grantee under Section 627 of the Cable Act, and any provision of the Agreement that purports to diminish such right shall be deemed superseded by the Cable Act."

Section 2. The amendments to the Franchise set forth in this Ordinance shall take effect as of June 6, 2011, provided that Wave files with the City its written acceptance of the amendments, in the form attached hereto as Exhibit A, by the effective date of this Ordinance. If Wave fails to timely file its written acceptance, this Ordinance shall be null and void and the Franchise will be of no further force or effect.

Section 3. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to ensure uninterrupted cable service, an emergency is hereby declared to exist and this Ordinance shall therefore take effect immediately upon its enactment after final reading.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, October 5, 2011, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, October 19, 2011, commencing at the hour of 7:30 PM in the City Council Chambers located at 155 NW 2<sup>nd</sup> Avenue in Canby, Oregon.

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Kimberly Scheafer, CMC  
City Recorder

2nd Reading

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 19<sup>th</sup> day of October, 2011, by the following vote:

YEAS\_\_\_\_\_

NAYS\_\_\_\_\_

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Randy Carson  
Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder

2nd Reading

## EXHIBIT A

### ACCEPTANCE

City Administrator  
City of Canby  
P.O. Box 930  
Canby, Oregon 97013

The undersigned, WaveDivision VII, LLC, does hereby accept the amendments to its Franchise with the City of Canby as set forth in Ordinance No.1347, approved at first reading on October 5, 2011, and does hereby agree that it will comply with and abide by all of the provisions, terms and conditions of the Franchise as amended, subject to applicable federal, state and local law. This acceptance is conditioned upon passage and approval of Ordinance No. 1347 by the City of Canby at second reading on October 19, 2011.

WAVEDIVISION VII, LLC

BY:



TITLE:

Executive Vice President

DATE:

October 7, 2011

## **ORDINANCE NO. 1349**

### **AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF CANBY AND CANBY TELEPHONE ASSOCIATION AND DECLARING AN EMERGENCY.**

**WHEREAS**, on February 2, 2005, the City of Canby granted a twelve year cable television franchise to Canby Telephone Association, effective March 4, 2005 (the “Franchise”); and

**WHEREAS**, the City of Canby granted a cable television franchise to the predecessor of WaveDivision VII, LLC prior to granting the Franchise, the terms of which are nearly identical to the Franchise; and

**WHEREAS**, the City is considering amending the terms of its cable franchise with WaveDivision VII, LLC, and to ensure compliance with the Cable Act and the rules enacted by the Federal Communications Commission, and to maintain competitive equity between the two cable operators, the City is offering the same substantive amendments to Canby Telephone Association; and

**WHEREAS**, the City finds it is in the public interest to amend the Franchise as set forth in this Ordinance; now therefore,

#### **THE CITY OF CANBY ORDAINS AS FOLLOWS:**

Section 1. The City of Canby hereby amends the Franchise with Canby Telephone Association as follows, with all other provisions, terms and conditions of the Franchise remaining unchanged and in full force and effect except as expressly stated herein:

- A. The phrase “and continuing throughout its term,” shall be deleted from the first sentence of Section 6.5(c)(i) of the Franchise. After the first sentence of Section 6.5(c)(i), the following sentence shall be added: “No sooner than November 1, 2011, Grantee shall provide two percent (2%) of its gross revenues for PEG access capital costs. Grantee shall provide two percent (2%) of its gross revenues through October 31, 2013. Commencing on November 1, 2013 and through the remaining term of the Franchise, Grantee shall provide one-percent (1%) of its gross revenues as support for PEG access capital costs.” After the first paragraph in Section 6.5(c)(i), the following paragraph shall be added: “Notwithstanding the previous paragraph, in the event of a change in federal law that permits the Grantor or its Designated Access Provider to use the support set forth in this Section 6.5(c)(i) for non-capital costs without such support being treated as a franchise fee, Grantee shall, no sooner than November 1,

2nd Reading

- 2013 or within sixty (60) days of the effective date of the change in law, as applicable, provide a total of two percent (2%) of its gross revenues as capital and non-capital support for PEG access through the remaining term of the Franchise.”
- B. Section 6.5(c)(ii) shall be deleted in its entirety and replaced with the following: “Grantee shall help financially support the studio facility by paying \$1,600 per month to the Designated Access Provider (“DAP”) through October 31, 2014. Commencing on November 1, 2014, Grantee shall contribute eight hundred sixty two dollars (\$862.00) per month to the DAP and such amount shall be paid directly to the DAP. Grantee acknowledges and agrees that the DAP will forward this amount to WaveDivision VII, LLC (“Wave”), the incumbent cable operator in the City, which is obligated in its cable franchise with the City to provide the studio facility at Wave’s cost. Grantor and Grantee agree that this amount represents one half (1/2) of the rent for the portion of the access facility occupied by Grantor’s DAP as of June 6, 2011 (which is approximately eighty-seven percent (87%) of the leased space, the remainder of which is used by Wave). In the event that the rent for the leased space changes during the term of this Agreement pursuant to the terms of a valid lease agreement between Wave and the owner of the leased space, Grantee shall contribute to the DAP one half (1/2) of the adjusted rental amount for the portion of the access facility occupied by the DAP. Grantor and Grantee further agree that if the DAP’s proportionate use of the access facility increases or decreases by five percent (5%) or more, the payments required under this paragraph shall be increased or decreased in proportion to the change. Grantee’s obligation to make the payment set forth in this paragraph shall cease if the DAP stops using the access facility. In the event Wave no longer provides cable services in the City, Grantee agrees to assume the obligations currently being funded by Wave within thirty (30) days of written notice from Grantor.”
- C. Section 9.1 shall be deleted in its entirety and replaced with the following: “The parties shall be subject to the provisions of 47 U.S.C. 547 (Section 627 of the Cable Act), as amended from time to time. It is not intended that this Agreement diminish the rights of either Grantor or Grantee under Section 627 of the Cable Act, and any provision of the Agreement that purports to diminish such right shall be deemed superseded by the Cable Act. Notwithstanding the foregoing, Grantee’s Telecommunications Services under Ordinance Number 1053 are not subject to this right of purchase.”

Section 2. Emergency declared. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to ensure uninterrupted cable service, an emergency is hereby declared to exist and this Ordinance shall therefore take effect immediately upon its enactment after final reading, provided that Canby Telephone Association files with the City its written acceptance of the amendments, in the form attached hereto as Exhibit A, by the effective date of this Ordinance. If

2nd Reading

Canby Telephone Association fails to timely file its written acceptance, this Ordinance shall be null and void and the Franchise will be of no further force or effect.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, October 5, 2011, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular council meeting thereof on Wednesday, October 19, 2011, commencing at the hour of 7:30 PM in the City Council Chambers located at 155 NW 2<sup>nd</sup> Avenue in Canby, Oregon.

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Kimberly Scheafer, CMC  
City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 19<sup>th</sup> day of October, 2011 by the following vote:

YEAS\_\_\_\_\_

Nays\_\_\_\_\_

---

Randy Carson  
Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder

2nd Reading



**EXHIBIT A**

**ACCEPTANCE**

City Administrator  
City of Canby  
P.O. Box 930  
Canby, Oregon 97013

The undersigned, Canby Telephone Association, does hereby accept the amendments to its Franchise with the City of Canby as set forth in Ordinance No. 1349, approved at first reading on October 5, 2011, and does hereby agree that it will comply with and abide by all of the provisions, terms and conditions of the Franchise as amended, subject to applicable federal, state and local law. This acceptance is conditioned upon passage and approval of Ordinance No. 1349 by the City of Canby at second reading on October 19, 2011.

CANBY TELEPHONE ASSOCIATION

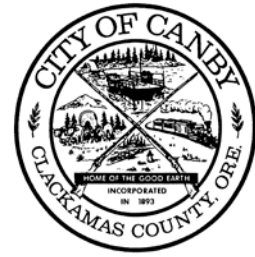
BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

2nd Reading

# MEMORANDUM



**TO:** *Honorable Mayor Carson and City Council*  
**FROM:** *Bryan C. Brown, Planning Director*  
**DATE:** *October 7, 2011*  
**THROUGH:** *Greg Ellis, City Administrator*

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## **Issue/Objective:**

The City of Canby has initiated the necessary proceedings prescribed by State law to vacate the abandoned portions of South Walnut Street and a very small radius area at the NE corner of the intersection of South Sequoia Parkway and SE 4<sup>th</sup> Avenue public rights-of-way no longer needed due to the realignment and construction of a new segment of South Walnut Street within the Pioneer Industrial Park of Canby.. The reservation or creation of new public utility easement(s) within a portion of the right-of-way to be vacated is a necessary part of this application. In a related coordinating but separate process five unused easements on adjacent nearby private property are able to be released.

## **Synopsis:**

As a component of the new street improvements completed under the South Walnut Street Local Improvement District (LID) last year, the street alignment was revised under the direction of the City of Canby. This street realignment not only caused a need for property ownership and boundary fixes, but a need to address vacating abandoned rights-of-way in place of needed utility easements and releasing previously existing utility easements that are no longer needed due to the street realignment.

The street vacation process for a City initiated vacation is prescribed by ORS 271.130. The City Council must pass an ordinance to vacate public rights-of-way. City staff thought it would be useful to combine notification of utility agencies, benefitting property owners, and the City Council of the associated unneeded utility easements and identify where new easements were needed in place of the street vacation with this application. The new utility easements identified as needed with this application need to be reserved for subsequent creation and execution of a deed as a condition of the vacation. The release of the unneeded easements identified with this application will require a subsequent filing of record of an easement release form for each signed by the Mayor.

A city initiated vacation proceeding is allowed without an actual “petition or consent” of all property owners. The City anticipates complete agreement among the benefitting property owners involved and has confirmed with utility providers that the portion of street rights-of-way to be vacated is appropriate as long as the identified easement documents that need to be reserved in place of the vacated right-of-way are created and filed of record.

Staff will be working with our consulting City Engineer, who prepared this application to follow-up upon vacation with creating and filing needed documents for recording the easements to be reserved and filing release forms for those public utility easements no longer needed.

The “S. Walnut Street Vacation” map illustrates the location and extent of street rights-of-way which are a part of this vacation application request. In addition, there are five benefitting property owner maps (involving 4 different property owners and 6 different Tax Lots) prepared to specifically illustrate and describe the street vacation, the necessary easement reservations, and the easements that are able to be released. In addition, a “Post-Vacation Property Configuration” map was prepared to illustrate what would be in place after the vacation is approved, necessary easements are reserved, and unneeded easements are released.

**Recommendation:** *Staff recommends Option #1, for the Council to approve this vacation application and pass an ordinance vacating the public rights-of-way conditioned on the reservation of an easement for the benefit of the public.*

**Rationale:**

**Notice Provided:** This application was routed to applicable agencies for comment on September 14, 2011. Mailed notice of this Vacation application was provided to all property owners within the State Statute defined “affected” area as indicated on the overall S. Walnut Street Vacation application map on September 16, 2011. Legal hearing notice was published in the Canby Herald on two consecutive weeks 14-days prior to the hearing on September 28 and October 5, 2011. Two signs prepared by staff were placed on the subject property within 5-days of the 1<sup>st</sup> Canby Herald notice. The public hearing notice or agenda was posted in 3 of the most public places in Canby prior to this hearing.

**Public Input:** Agency comments were in agreement with the application. Staff only heard from one property owner located in the affected area who asked for an explanation as to the meaning of the defined “affected” area as he confused it with what was being vacated.

**Decision Criteria:**

In general, at the public hearing the Council shall:

- Hear any objections to the application
- Determine whether consent of the affected benefitting owners has been obtained (no defined minimum requisite affected area consent needed for City initiated vacations)
- Confirm that notice has been duly given (indicated above)
- Determine whether public interest will be prejudiced by the vacation of the street
- If in favor, make the determination a matter of record to vacate the street by Ordinance
- The vacation ordinance shall be filed of record with the County Clerk at least 30-days after passage with a map
- The vacation ordinance is also sent to the County Assessor and County Surveyor with the necessary survey/deeds and/or easements documents after recordation of ordinance.

**Options:**

1. Approve this vacation application conditioned on the reservation (creation) of an easement for the benefit of the public.
2. May grant in part, deny in part or as a whole, and/or make reservations as appear to be in the public interest.

**Attachments:**

1. Overall S. Walnut Street Vacation Map and Post-Vacation Configuration Map
2. Application materials including: list of affected property owners, and legal description/maps for all benefitting properties

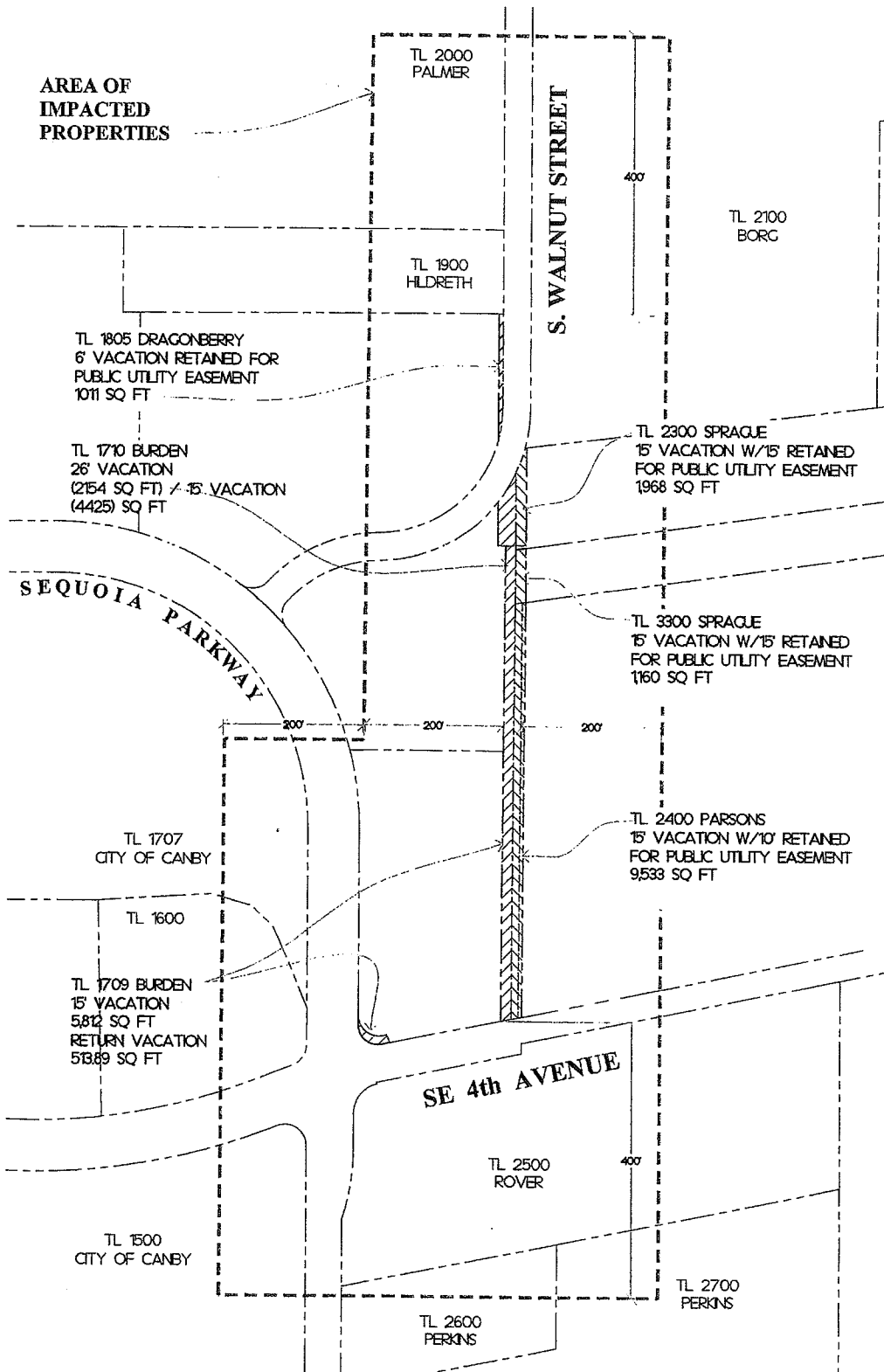
CITY OF CANBY  
SOUTH WALNUT STREET  
RIGHT OF WAY VACATION APPLICATION  
August 2011

Impacted Properties within 200 laterally and 400 feet beyond end of vacation :

Tax Lot	Owner
T3S, R1E, Sec 34, TL 1500	City of Canby
T3S, R1E, Sec 34, TL 1600	Fitzpatrick & Son LLC P.O. Box 158 Dundee, OR 97115
T3S, R1E, Sec 34, TL 1707	City of Canby
T3S, R1E, Sec 34, TL 1709	Burden Family Trusts P.O. Box 729 Canby, OR 97013
T3S, R1E, Sec 34, TL 1710	Burden Family Trusts P.O. Box 729 Canby, OR 97013
T3S, R1E, Sec 34, TL 1805	Dragonberry Real Estate, LLC 11517 SE Highway 212 Clackamas, OR 97015
T3S, R1E, Sec 34, TL 1900	Hildreth, Stanley & Pamela 267 S Walnut Street Canby, OR 97013
T3S, R1E, Sec 34, TL 2000	Palmer Family Properties 211 S Walnut Street Canby, OR 97013
T3S, R1E, Sec 34, TL 2100	Borg Restated Family Trust 23397 S Mulino Road Canby, OR 97013

T3S, R1E, Sec 34, TL 2300	Sprague Joint Venture P.O. Box 848 Canby, OR 97013
T3S, R1E, Sec 34, TL 2400	Parsons Family Trust 23625 S Mulino Road Canby, OR 97013
T3S, R1E, Sec 34, TL 2500	Rover, Jean M. 195 Idylwood Dr, SE Salem, OR 97302
T3S, R1E, Sec 34, TL 2600	Perkins, Leighton & Patricia 446 S Walnut Street Canby, OR 97013
T3S, R1E, Sec 34, TL 2700	Perkins, Leighton & Patricia 446 S Walnut Street Canby, OR 97013
T3S, R1E, Sec 34, TL 3300	Sprague Joint Venture P.O. Box 848 Canby, OR 97013

AREA OF  
IMPACTED  
PROPERTIES



**S. WALNUT STREET  
VACATION APPLICATION  
Canby, Oregon  
AUGUST 2011**



SCALE: 1"=150'

**City of Canby**

**Legal Description of areas to be vacated:**

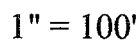
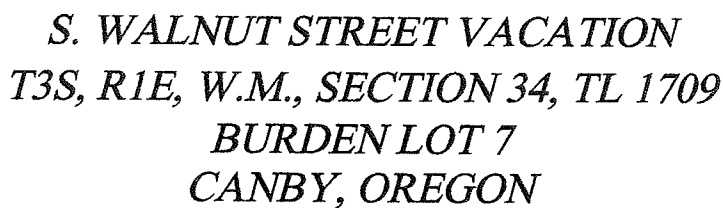
**South Walnut Street Vacation**

- 1. Benefitting Property 1 of 5:** Burden Subdivision Lot 7  
T3S, R1E, Sec 34, TL 1709  
Burden Family Trusts

**Vacated public Right-of-Way description on Sequoia Parkway, and conversion to a Public Utility Easement:** A tract of land situated in the southeast 1/4 of section 34, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, more particularly described as beginning at the north west corner of Lot 7 of the Burden Subdivision, recorded in Plat Book 130, page 015 number 3973, Clackamas County Plat Records, said point being on the easterly Right-of-Way line of Sequoia Parkway, thence southeasterly along the Right-of-Way line on a 437 foot radius curve right a distance of 112.77 to a point of tangency, thence continuing along said Right-of-Way line South 00° 04' 52" West a distance of 270.09 feet to a point of curvature, said point being the True Point of Beginning, thence continuing along the property line along a 30 foot radius curve left a distance of 58.15 to an angle point on the southwestern boundary of said lot 7, thence South 20° 59' 00" East along said lot line a distance of 12.24 feet to a point, said point being 37 feet measured perpendicular to the centerline of NE 4th Avenue, thence South 78° 25' 00" West, parallel and 37 feet measured perpendicular to the centerline of SE 4th Avenue, a distance of 9.31 feet to a point of curvature, thence northwesterly along a 30 foot radius curve right a distance of 53.23 feet, with chord bearing North 50° 45' 04" West and chord length 46.52 feet, thence North 00° 04' 52" East a distance of 11.92 feet to the True Point of Beginning, said vacation containing 514 square feet. Entire vacated area shall become a Public Utility Easement similar to the adjoining easements identified on said Burden plat.

**In addition, Vacated public Right-of-Way description on South Walnut Street and vacation of the existing Public Utility Easement:** A tract of land situated in the southeast 1/4 of section 34, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, more particularly described as the westerly 15 foot of the existing 30-foot South Walnut Street Right-of-Way where parallel and abutting said Lot 7 of the Burden Subdivision, recorded in Plat Book 130, page 015 number 3973, Clackamas County Plat Records, beginning at a point 37 feet measured perpendicular from the centerline of SE 4th Avenue and continuing north, said vacation containing 5,812 square feet. A Public Utility Easement shall be retained from the vacated tract, 6 feet in width parallel and abutting the northern boundary of said Lot 7, and 34 feet in width parallel and abutting the southern boundary of the original said Lot 7 as shown on the Burden plat.

Additionally, the existing 12 foot Public Utility Easement along the eastern boundary of said Lot 7, Burden Subdivision, excepting the area within 49 feet measured perpendicular to the centerline of SE 4th Avenue, and the area within 6 feet of the northern boundary line of said lot 7, shall be vacated and released.





## **City of Canby**

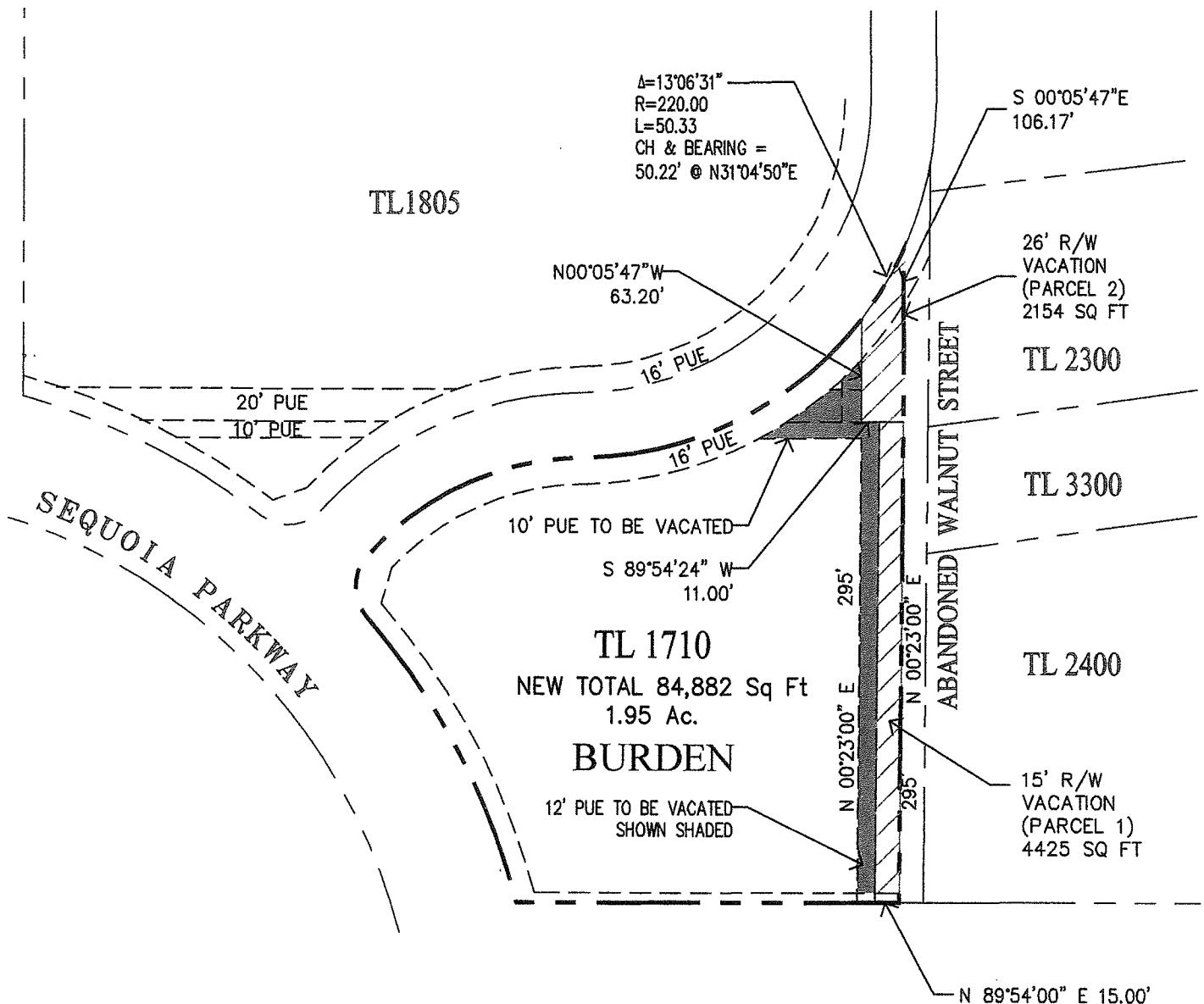
### **South Walnut Street Vacation**

**2. Benefitting Property 2 of 5:** Partition Plat 2010-027, Parcel I  
T3S, R1E, Sec 34, TL 1710  
Burden Family Trusts

**Vacated public Right-of-Way description on South Walnut Street and vacation of the existing Public Utility Easement:** A tract of land situated in the southeast 1/4 of section 34, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, more particularly described as the westerly 15 foot of the existing 30-foot South Walnut Street Right-of-Way where parallel and abutting the southerly 295 feet of the eastern boundary of Parcel I, as shown on Partition Plat 2010-027, Clackamas County Plat records, Clackamas County, Oregon, said vacation containing 4,425 square feet;

In addition, a tract of land situated in the southeast 1/4 of section 34, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, generally described as a 26 foot wide strip of land being the area west of the original centerline of the 30 foot South Walnut Street Right-of-Way where parallel and abutting the eastern boundary of Lot 5 of Struble Estates, recorded in Book 139, page 008 number 4236, Clackamas County Plat Records, Clackamas County, Oregon, and lying southeast of the projected Right-of-Way alignment of the realigned South Walnut Street as shown on the Partition Plat 2010-027, Clackamas County Plat records, Clackamas County, Oregon, more particularly described as follows: Beginning at the most easterly corner of Parcel 1, of said Partition Plat 2010-027, thence South 89° 54' 24" West a distance of 11 feet to the south east corner of Lot 5 in said Struble Estates, thence North 00° 05' 47" West a distance of 63.20 to a point on the southeastern boundary of the South Walnut Street Right-of-Way, thence continuing northeasterly along a 220 foot radius curve left a distance of 50.33 feet more or less, whose chord bears North 31° 04' 50" East with chord length 50.22 feet more or less, to the centerline of the original 30 foot South Walnut Street, thence South 00° 05' 47" East along the centerline of the original South Walnut Street a distance of 106.17 feet more or less to a point on centerline lying North 89° 54' 24" East a distance of 15 feet from the most easterly corner of said Parcel I, thence South 89° 54' 24" West a distance of 15 feet to the point of beginning, said vacation containing 2,154 square feet. A 16 foot strip of land parallel and abutting the new south boundary of South Walnut Street shall be retained as a Public Utility Easement similar to the easements identified on said partition plat 2010-27.

Additionally, multiple easements shall be vacated and released including: the existing 12 foot Public Utility Easement along the eastern boundary of said Lot 8 excepting the 6 feet parallel and abutting the southerly property line; that portion of the 10 foot Public Utility Easement along the northern boundary of said Lot 8 that falls within the boundary of said Parcel 1 in Partition Plat 2010-27 and excepting the area within the 16 foot Public Utility Easement defined on said partition plat; that portion of the 20 foot utility easement along the southern boundary of said Lot 5 of the Struble Estates plat that falls within the boundary of said Parcel 1 in Partition Plat 2010-27 and excepting the area within the 16 foot Public Utility Easement abutting the newly defined roadway on said partition plat; that portion of the 12 foot Public Utility Easement along the eastern boundary of said Lot 5 of the Struble Estates plat that falls within the boundary of said Parcel 1 in Partition Plat 2010-27 and excepting the area within the 16 foot Public Utility Easement defined on said partition plat;



**S. WALNUT STREET VACATION**  
**T3S, R1E, W.M., SECTION 34 TL #1710**  
**PP 2010-27, PARCEL 1**  
**CANBY, OREGON**



1" = 100'

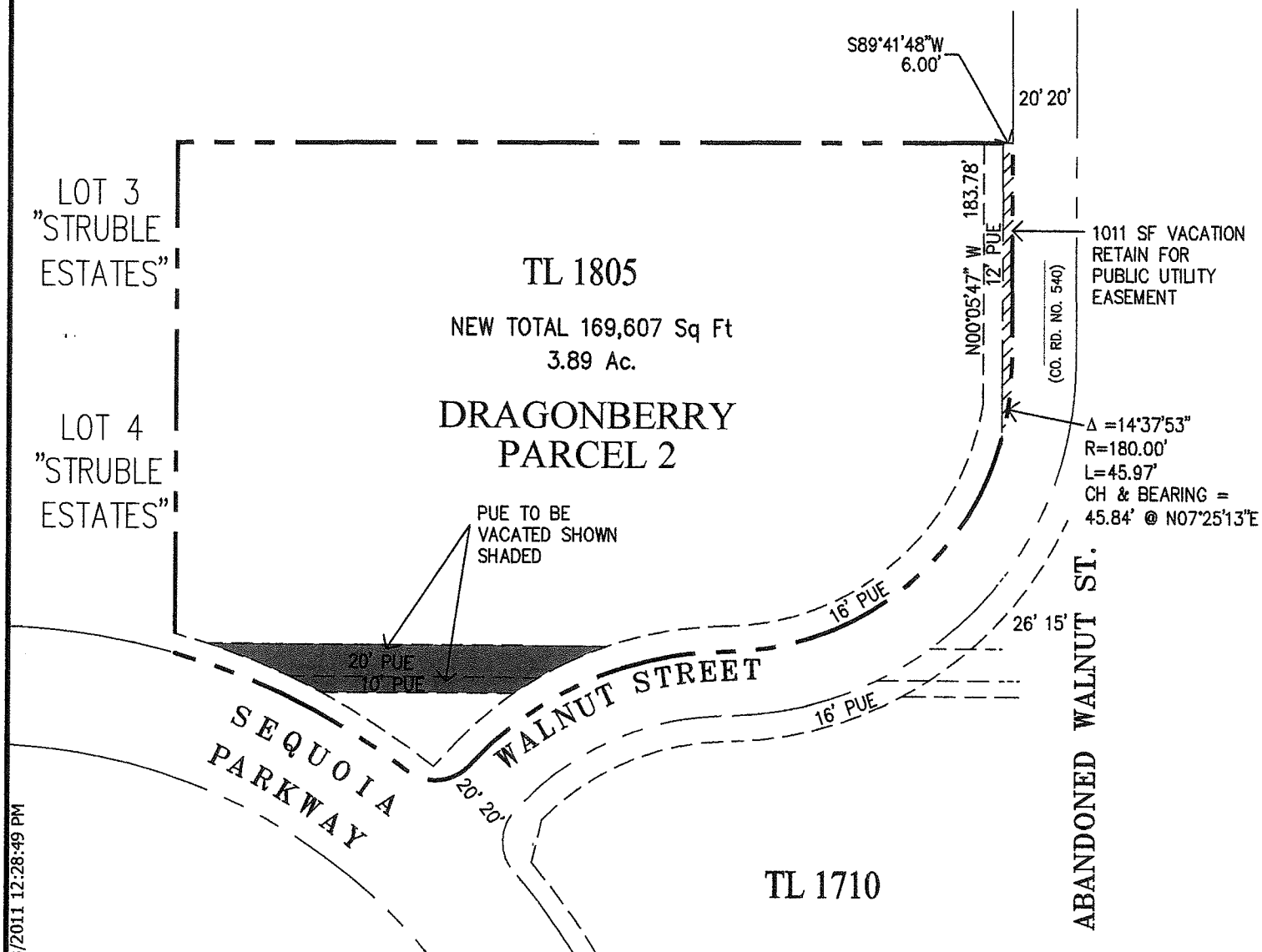
**City of Canby**

**S Walnut Street Vacation**

**3. Benefitting Property 3 of 5:** Partition Plat 2010-027, Parcel II  
T3S, R1E, Sec 34, TL 1805  
Dragonberry Real Estate, LLC

**Vacated public Right-of-Way description on South Walnut Street and conversion to a Public Utility Easement:** A tract of land situated in the southeast 1/4 of section 34, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, more particularly described as a strip of land 6 feet in width parallel and abutting the eastern boundary of Parcel II as shown on the Partition Plat 2010-027, Clackamas County Plat records, Clackamas County, Oregon, and lying north of the projection of the South Walnut Street Right-of-Way as shown on Partition Plat 2010-27, Clackamas County Plat records, Clackamas County, Oregon, continuing the northwesterly right of way line at a radius of 180 feet with a length of 45.97 more or less to a point of tangency on said 6 foot strip of land, said vacation containing 1,011 square feet. Entire vacated area shall become a Public Utility Easement similar to the adjoining easements identified on the Partition Plat.

**Easement Vacations:** Multiple easements shall be vacated and released, including that portion of the 20 foot utility easement along the southern boundary of said Lot 5 of the Struble Estates plat that falls within the boundary of Parcel 2 on Partition Plat 2010-27, excepting the area within the 16 foot Public Utility Easement abutting the new roadway alignment and excepting the 12 foot Public Utility Easement abutting Sequoia Parkway as shown on said partition plat; That portion of the 10 foot public utility easement along the northern boundary of Lot 8 of the Burden Subdivision Plat that falls within the boundary of Parcel 2 on Partition Plat 2010-27, excepting the area within the 16 foot Public Utility Easement abutting the new roadway alignment and excepting the 12 foot Public Utility Easement abutting Sequoia Parkway as shown on said partition plat.



*S. WALNUT STREET VACATION  
T3S, R1E, W.M., SECTION 34 TL #1805  
PP 2010-27, PARCEL 2  
CANBY, OREGON*



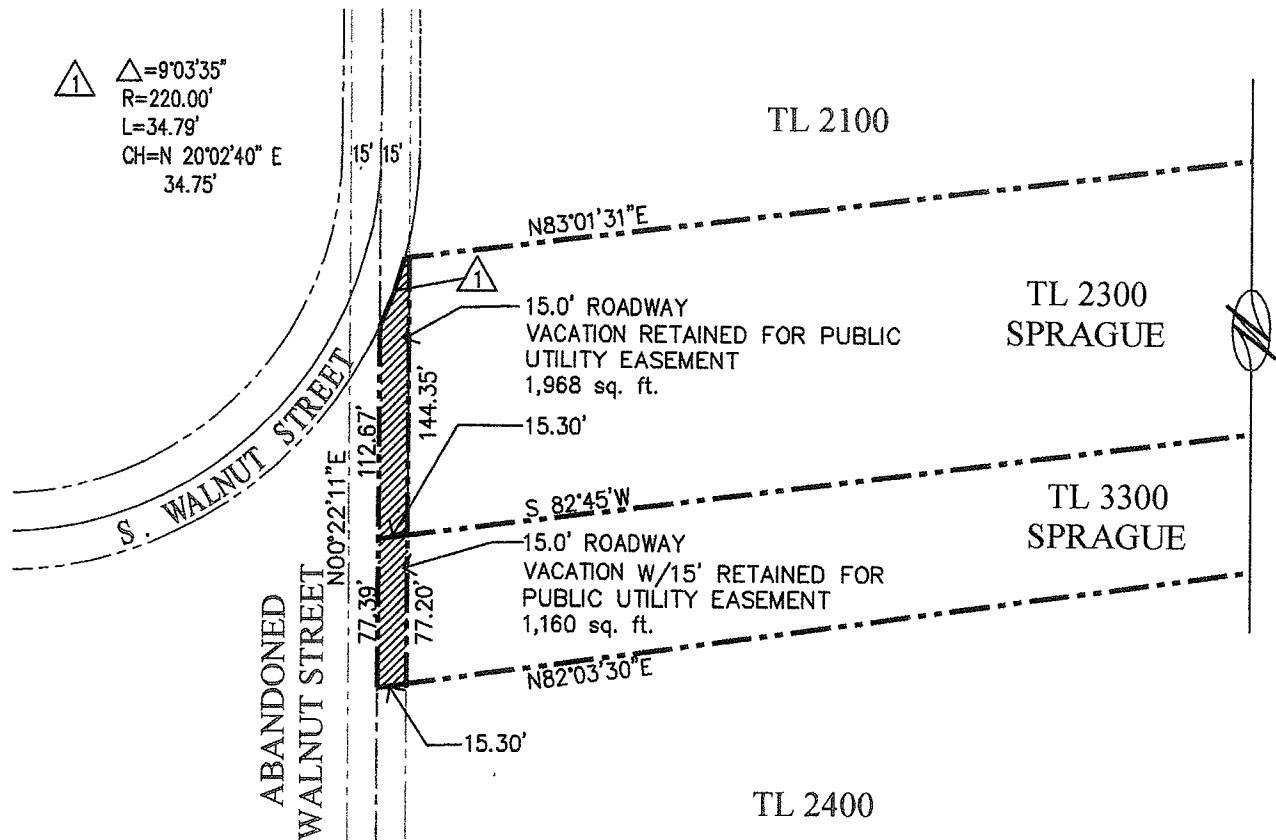
1" = 100'

**City of Canby**

**S Walnut street Vacation**

- 4. Benefitting Property 4 of 5:** Sprague Joint Venture Fee Number 98-24817  
T3S, R1E, Sec 34, TL 2300 and 3300  
Sprague Joint Venture

**Vacated public Right-of-Way description on South Walnut Street and conversion to a Public Utility Easement:** A tract of land situated in the southeast 1/4 of section 34, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, more particularly described as the easterly 15 foot of the existing 30-foot South Walnut Street Right-of-Way where parallel and abutting the western boundary of that tract of land conveyed to the Sprague Joint Venture in Fee Number 98-24817, Clackamas County Deed Records, Clackamas County, Oregon, excepting that area that falls within the projection of the 220 foot radius road right of way line as shown on Partition Plat 2010-027, Clackamas County Plat records, Clackamas County, Oregon as, said vacation containing 3,128 square feet. The entire vacated area shall be retained as a Public Utility Easement.



**S. WALNUT STREET VACATION**  
**RIGHT OF WAY VACATION**  
**T3S, R1E, W.M., SECTION 34**  
**TAX LOTS 2300 AND 3300**  
**CANBY, OREGON**



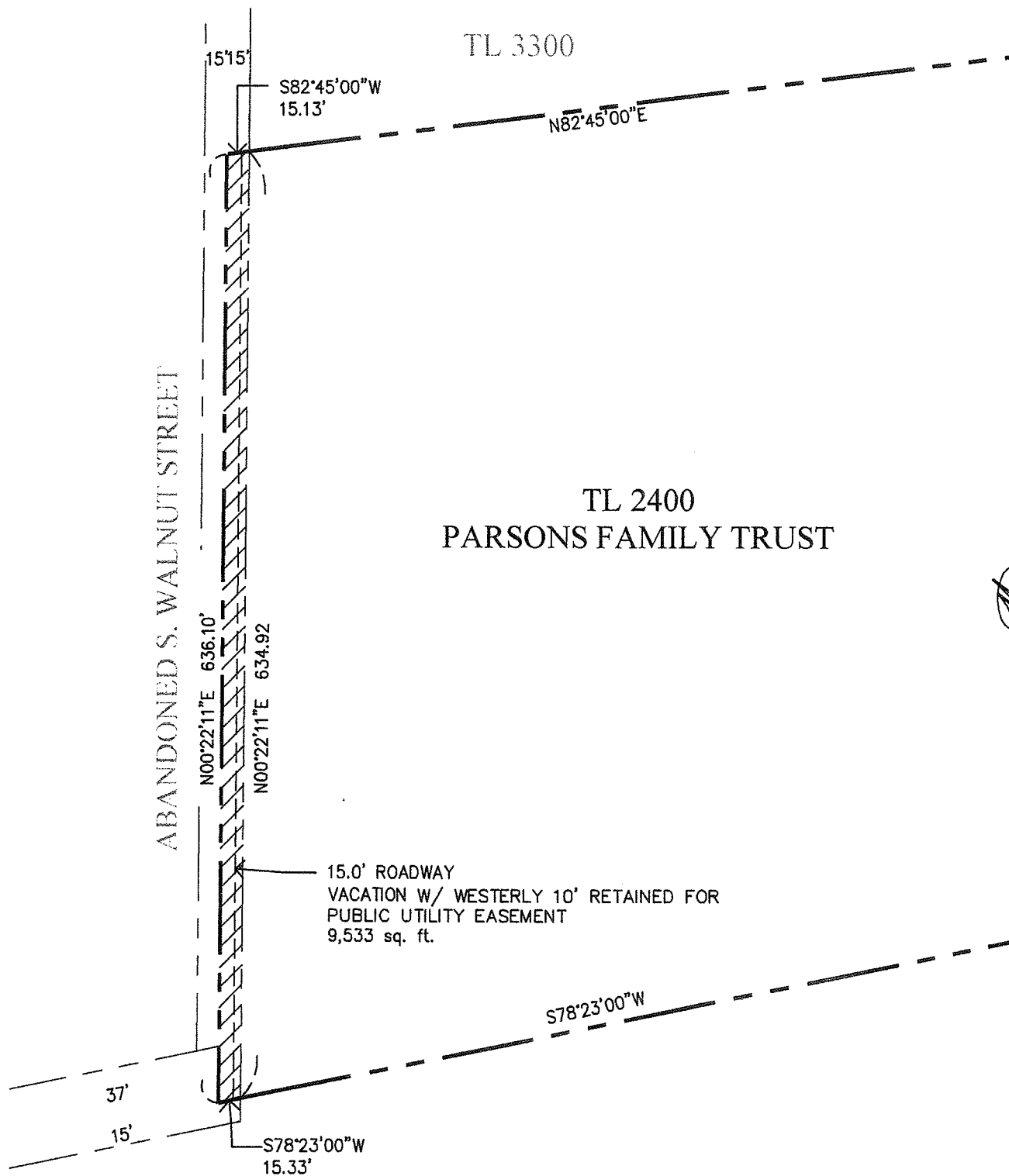
1" = 100'

**City of Canby**

**S Walnut Street Vacation**

**5. Benefitting Property 5 of 5:** Parsons Family Trust Fee Number 007-090352  
T3S, R1E, Sec 34, TL 2400  
Parsons Family Trust

**Vacated Right-of-Way description on South Walnut Street and conversion to a Public Utility Easement:** A tract of land situated in the southeast 1/4 of section 34, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, more particularly described as the easterly 15 foot of the existing 30-foot South Walnut Street Right-of-Way where parallel and abutting the western boundary of that tract of land conveyed to Clifford Parsons, Trustee of the Parsons Family Trust in Fee Number 007-090352, Clackamas County Deed Records, Clackamas County, Oregon, containing 9,533 square feet. The westerly 10 feet of the 15 foot vacated area shall be retained as a Public Utility Easement.



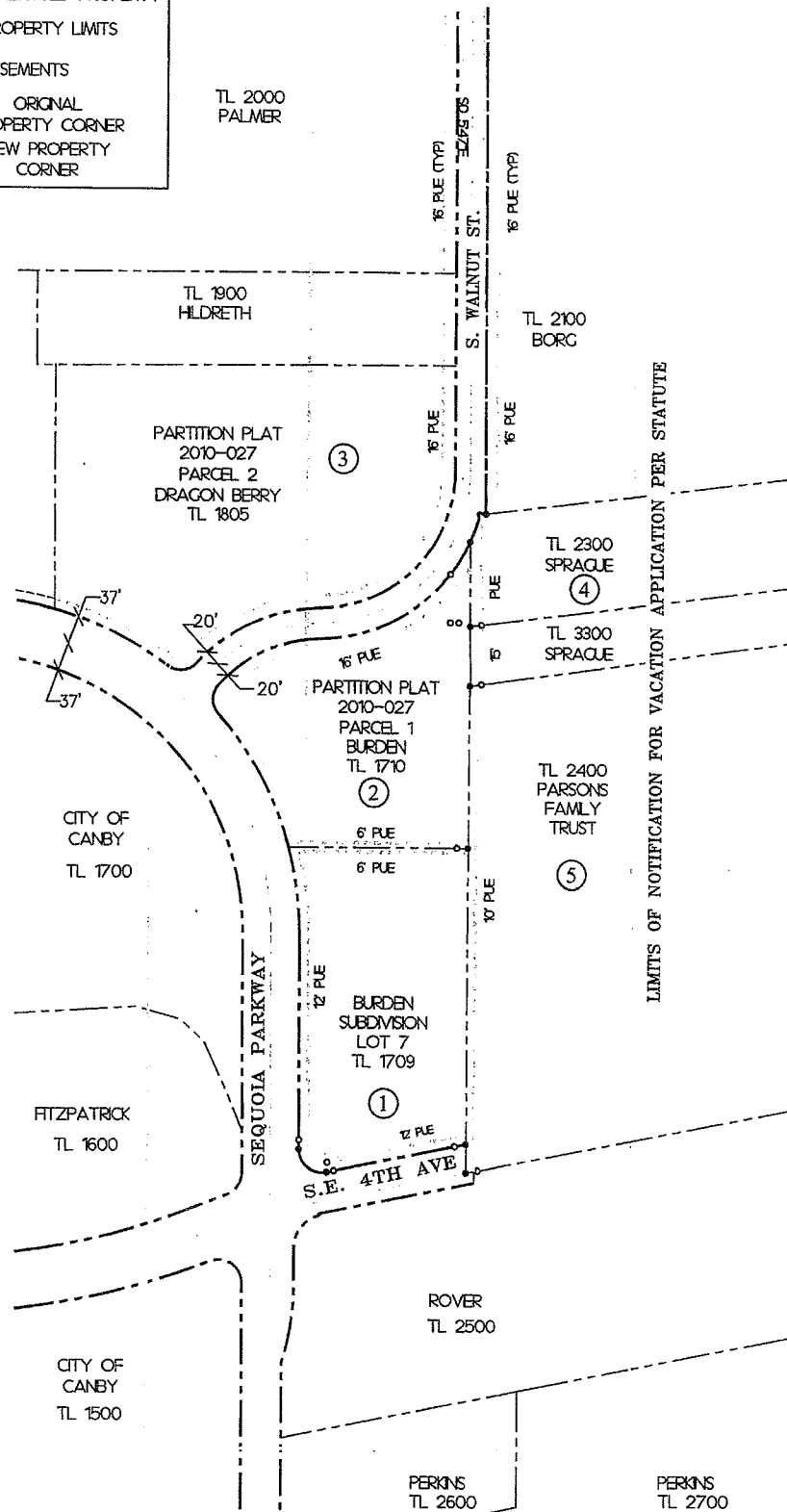
1" = 100'

**S. WALNUT STREET VACATION**  
**T3S, R1E, W.M., SECTION 34 TL #2400**  
**PARSONS FAMILY TRUST**  
**CANBY, OREGON**



# LEGEND

- (#) BENEFITTED PROPERTY
- PROPERTY LIMITS
- EASEMENTS
- ORIGINAL PROPERTY CORNER
- NEW PROPERTY CORNER



## S. WALNUT STREET VACATION APPLICATION POST-VACATION PROPERTY CONFIGURATION Canby, Oregon AUGUST 2011



SCALE 1"=50'

City Council Packet Page 31 of 44

CURRAN-McLEOD, INC.  
CONSULTING ENGINEERS

## **ORDINANCE NO. 1351**

**AN ORDINANCE VACATING AN ABANDONED PORTION OF S WALNUT STREET PUBLIC RIGHT-OF-WAY FROM ITS POINT OF REALIGNMENT TO ITS INTERSECTION WITH SE 4<sup>TH</sup> AVENUE, AND A SMALL CORNER RADIUS OF PUBLIC RIGHT-OF-WAY AT THE NE CORNER OF THE INTERSECTION OF S SEQUOIA PARKWAY AND SE 4<sup>TH</sup> AVENUE.**

**WHEREAS**, the City presently owns the portion of S Walnut Street and the small corner radius at the NE corner of the intersection of S Sequoia Parkway and SE 4th Avenue rights-of-way shown in Exhibit “B” and more particularly described through legal description and drawings in Exhibit “A” for all benefitting properties, both attached heretofore by this reference incorporated herein; and,

**WHEREAS**, the City initiated this vacation of the aforementioned rights-of-way by application on August 23, 2011; and,

**WHEREAS**, the application was reviewed by the Planning Director and found to be complete; and,

**WHEREAS**, the vacation is requested as a component of street improvements completed under a Local Improvement District which realigned S. Walnut Street leaving a portion of right-of-way abandoned and unneeded thus appropriate to return to adjacent property owners; and,

**WHEREAS**, as required by law, a notice of public hearing was published for two (2) consecutive weeks in the Canby Herald newspaper and posted on the property; and,

**WHEREAS**, a public hearing was held on this matter before the Canby City Council on October 19, 2011 and all statutory requirements for the vacation were found to be met; now therefore,

**WHEREAS**, The Canby City Council adopts a condition of approval, which states, the vacation approval is subject to the reservation (creation) of utility easements as required for benefit of the public and the release of easements no longer required.

### **THE CITY OF CANBY ORDAINS AS FOLLOWS:**

1. The public right-of-way as shown in Exhibit “B” and more particularly described by legal description and drawings in Exhibit “A” for all benefitting properties shall be vacated and title to the vacated property shall attach to the appropriate neighboring property described and depicted in Exhibit “B”.
2. The Canby City Council adopts a condition of approval, which states, “the vacation approval is subject to the reservation (creation) of utility easements as

required for benefit of the public and the release of easements no longer required”.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on October 19, 2011, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on November 2, 2011, commencing at the hour of 7:30 P.M. in the City Council Chambers located at 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon

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Kimberly Scheafer, CMC  
City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 2<sup>nd</sup> day of November, 2011, by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

---

Randy Carson  
Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder

**City of Canby**  
**Legal Description for Vacation of South Walnut Street**  
October 2011

*The following description is intended to provide an overall legal description of the vacations resulting from the realignment of South Walnut Street to intersect with Sequoia Parkway and the abandonment of the South Walnut Street connection with SE 4<sup>th</sup> Avenue. The vacation consists of three portions:*

- 1. The first being vacation of a 6 foot strip of excess right-of-way along the eastern boundary of the plat of Struble Estates Number 4236; and*
- 2. The second area being the 30 foot wide abandoned right-of-way between SE 4<sup>th</sup> Avenue and the realigned South Walnut Street;*
- 3. The third is an area of excess ROW at the NE corner of Sequoia Parkway and SE 4<sup>th</sup> Avenue, which was dedicated with the Burden Plat Number 3973.*

**1. VACATION OF THE ABANDONED SOUTH WALNUT STREET**

A tract of land situated in the southeast 1/4 of section 34, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, beginning at the north right of way line of the extension of SE 4<sup>th</sup> Avenue and ending at the southerly line of the realigned S Walnut Street, more particularly described as a strip of land 30 feet in width, 15 feet on either side of the following described centerline: Beginning at a point on the centerline of the existing South Walnut Street, said point being 37 feet north measured perpendicular from the centerline of SE 4<sup>th</sup> Avenue, then continuing North 0° 22' 11" East 411.51 feet along the centerline of South Walnut Street, said centerline being parallel and 15 foot measured perpendicular to the eastern boundary of Lot 7, Burden Subdivision Number 3973, Clackamas County Plat Records, thence continuing North 0° 23' 00" East a distance of 295 feet along the centerline of South Walnut Street, said centerline being parallel and 15 foot measured perpendicular to the eastern boundary of Parcel 1, Partition Plat 2010-027, Clackamas County Plat Records, thence continuing North 0° 05' 47" West a distance of 137.85 feet along the centerline of South Walnut Street, said centerline being parallel and 15 foot measured perpendicular to the eastern boundary of Parcel 2, Partition Plat 2010-027, Clackamas County Plat Records; Excepting the area that lies north of an extension of the 220 foot radius curve left southerly Right-of-Way line of the realigned South Walnut Street line as shown on the Partition Plat 2010-027, Clackamas County Plat Records.

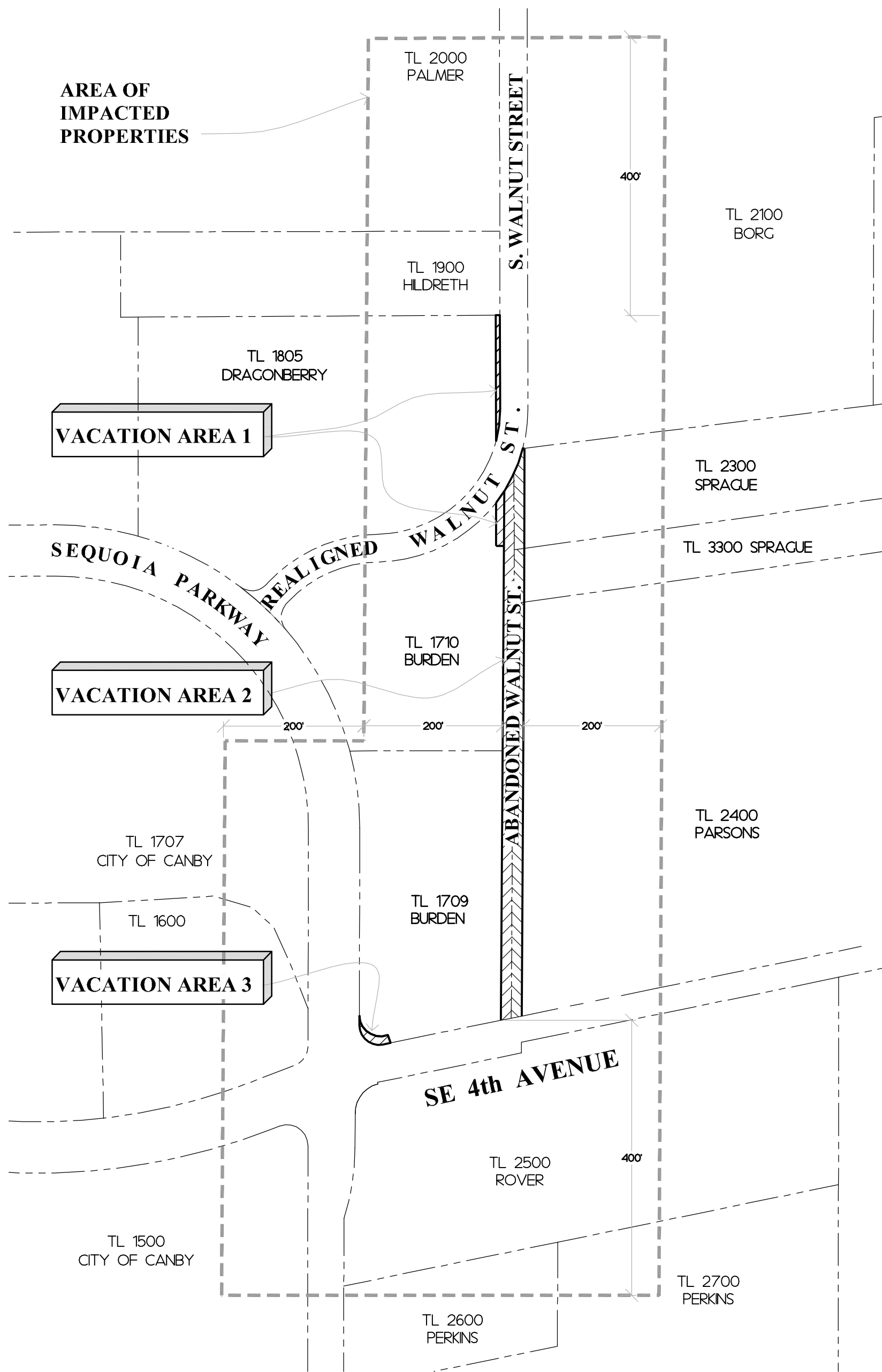
**2. VACATION OF EXCESS RIGHT-OF-WAY ON SOUTH WALNUT STREET**

A tract of land situated in the southeast 1/4 of section 34, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, more particularly described as a strip of land 6 feet in width, parallel and abutting the eastern boundary of Lot 5 Struble Estates Plat Number 4236, Clackamas County Plat Records; Excepting the area that falls within the projection of the realigned South Walnut Street Right-of-Way as shown on Partition Plat 2010-027.

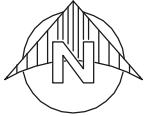
**3. NE CORNER OF SEQUOIA PARKWAY AND SE 4<sup>th</sup> AVENUE VACATION**

A tract of land situated in the southeast 1/4 of section 34, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, more particularly described as beginning at the north west corner of Lot 7 of the Burden Subdivision, recorded in Plat Book 130, page 015 number 3973, Clackamas County Plat Records, said point being on the easterly Right-of-Way line of Sequoia Parkway, thence southeasterly along the Right-of-Way line on a 437 foot radius curve right a distance of 112.77 to a point of tangency, thence continuing along said Right-of-Way line South 00° 04' 52" West a distance of 270.09 feet to a point of curvature, said point being the True Point of Beginning, thence continuing along the property line along a 30 foot radius curve left a distance of 58.15 to an angle point on the southwestern boundary of said lot 7, thence South 20° 59' 00" East along said lot line a distance of 12.24 feet to a point, said point being 37 feet measured perpendicular to the centerline of NE 4th Avenue, thence South 78° 25' 00" West, parallel and 37 feet measured perpendicular to the centerline of SE 4<sup>th</sup> Avenue, a distance of 9.31 feet to a point of curvature, thence northwesterly along a 30 foot radius curve right a distance of 53.23 feet, with chord bearing North 50° 45' 04" West and chord length 46.52 feet, thence North 00° 04' 52" East a distance of 11.92 feet to the True Point of Beginning

*Specific legal descriptions will be prepared for each property for dedication of the vacated areas upon City approval. Additionally, the creation and release of identified easements should be made a condition of approval of the vacation.*



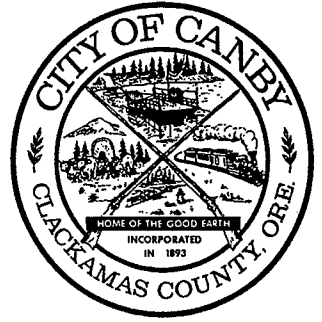
**S. WALNUT STREET  
VACATION APPLICATION  
Canby, Oregon  
AUGUST 2011**



SCALE: 1"=150'

# MEMORANDUM

THIS HAS BEEN REVIEWED  
BY THE FINANCE DIRECTOR  
*Steve Engle*



**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *Lt. Jorge Tro*  
**THROUGH:** *Greg Ellis, City Administrator*  
**DATE:** *October, 2011*

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Issue: Purchase of a 2012 Chevrolet 2WD Tahoe and a 2012 Dodge Charger.

Synopsis: Scheduled replacement of two patrol vehicles.

Recommendation: Staff recommends that the City Council approve Ordinance #1352 allowing the Mayor and City Administrator to execute the appropriate lease/purchase contract with Ford Municipal Finance Program (Bid #70647) to purchase the Tahoe through Hubbard Chevrolet and the Charger through Withnell Motors.

Rationale: The purchase of these vehicles is a continuation of our vehicle replacement plan. Both of these vehicles are replacing existing older police units. The Dodge Charger will be assigned to the Patrol Division. The 2WD Tahoe will be a marked unit assigned to the K9 Division. The Chevrolet Tahoe gives us the ability to transport a prisoner along with the K9 due to its larger interior compartment compared to a standard sedan. The cost of the Tahoe is \$2,905.90 more than the Charger.

Background: Our Fleet Services Supervisor, Joe Witt, obtained the state bid quote of \$50,473.90 from Hubbard Chevrolet and Withnell Motors for both vehicles as listed in the attached ordinance. The necessary police equipment, paint, graphics and outfitting by Auto Additions will be added to the purchase price for a grand total of \$74,473.90 for both vehicles. This cost is financed through the Ford Municipal Finance Program over a four-year period and will be funded from the Fleet Services and Police Vehicle Leasing line items as approved in the 2011/2012 adopted budget.

Chief Bret Smith and I recommend the approval of the attached City Ordinance #1352 as prepared by the City Attorney.



One American Road - MD7500  
Dearborn, Michigan 48126

August 19, 2011

City of Canby, OR  
Attn: Joe Witt

Re: Ford Municipal Finance Program - Quotation for **City of Canby, OR - Bid #70647**

Please review the following information. Rates and payment factors are applicable for total amounts funded from \$25,000 - \$74,999.

**The quote is good until 11/30/2011. Vehicle delivery must take place and all required documentation and payments must be received by Ford Credit by the good thru date. After 11/30/2011, rates and payments are subject to change.**

**A Documentation Fee of \$425 is required per transaction- not per unit, that can be paid at delivery or funded over the term (included below).**

This finance proposal applies to:

<u>Quantity</u>	<u>Description</u>	<u>Price</u>
1	2012 Chevy Tahoe Police Vehicle	\$26,689.90
1	2012 Dodge Charger Police Vehicle	\$23,784.00
1	Outfitting Vehicle	\$24,000.00
<u>Total Amount</u> <u>Funded</u>	<u>Number of</u> <u>Payments</u>	<u>Payment</u> <u>Factor</u>
\$74,898.90	4	0.272623
	<u>Payment Timing</u>	<u>A.P.R.</u>
	Annual in Advance	6.1%
		<u>Payment</u> <u>Amount</u>
		\$20,419.16

- **To calculate Payment Amount, multiply Total Amount Funded by the Payment Factor.**

The Ford Municipal lease-purchase finance plan requires no security deposit, has no prepayment penalty, no mileage penalty, or hidden fees. The program is non-recourse to the dealer, the same as a cash sale from the dealer to the municipal customer. At inception, the new equipment title/registration indicates the municipality as Registered Owner, and designates Ford Motor Credit Company, One American Road – MD7500, Dearborn, MI 48126, as First Lienholder. At term end, the municipality buys the equipment for \$1. The municipality, as Owner of record, is eligible for Ford Governmental Price Concessions or other discounts, to reduce product cost.

**Please note: Ford Credit's financing is subject to:**

- 1) Review and approval of the Municipality's most recent audited financial statement**
- 2) Mutually acceptable documentation.**

If you need additional information, please contact me at **1-800-241-4199, and press 1.** Thank you for your interest in Ford municipal financing.

Sincerely,

James DeYonke  
Marketing Coordinator  
jdeyonke@ford.com



## **ORDINANCE NO. 1352**

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH HUBBARD CHEVROLET OF HUBBARD, OREGON; WITHNELL MOTOR COMPANY OF SALEM, OREGON; AUTO ADDITIONS OF SALEM, OREGON; AND FORD MOTOR CREDIT CORPORATION FOR THE LEASE/PURCHASE OF ONE (1) 2012 CHEVROLET TAHOE AND ONE (1) 2012 DODGE CHARGER WITH POLICE EQUIPMENT PACKAGES FOR THE CANBY POLICE DEPARTMENT; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby wishes to lease/purchase one (1) 2012 Chevrolet Tahoe and one (1) 2012 Dodge Charger vehicle with police equipment packages for the Canby Police Department; and

**WHEREAS**, the cost of the vehicles and equipment will be paid by the Canby Police Department which has budgeted said lease/purchase for the fiscal years 2011-2012 through 2015-2016; and

**WHEREAS**, in accordance with ORS Chapter 279 and Canby Public Purchasing Rules as set forth in Ordinance No. 1170 and Resolution No. 897, Exhibit A, Section 5 G (18), the City wishes to utilize an existing solicitation from another governmental agency; and

**WHEREAS**, the State of Oregon awarded Hubbard Chevrolet of Hubbard, Oregon, a contract to supply Chevrolet vehicles to the State and other public agencies in accordance with Contract #9774 and Hubbard Chevrolet is able to provide one (1) 2012 Chevrolet Tahoe in the amount of \$26,689.90; and

**WHEREAS**, the State of Oregon awarded Withnell Motor Company of Salem, Oregon, a contract to supply Dodge vehicles to the State and other public agencies in accordance with Contract #0442 and Withnell Motor Company is able to provide one (1) 2012 Dodge Charger in the amount of \$23,784.00; and

**WHEREAS**, the State of Oregon awarded Auto Additions of Salem, Oregon, a contract to supply police equipment packages to the State and other public agencies in accordance with Contract #2538 and Auto Additions is able to provide two (2) police equipment packages in the amount of \$24,000.00; and

**WHEREAS**, Hubbard Chevrolet, Withnell Motor Company, and Auto Additions are able to provide one (1) 2012 Chevrolet Tahoe vehicle, one (1) 2012 Dodge Charger

vehicle, and one (1) police equipment package to the City of Canby's Police Department for the total sum of \$74,898.90; and

**WHEREAS**, the City Council meeting and acting as the Contract Review Board for the City of Canby has reviewed this proposed sales price, reviewed the staff report and believes it to be in the best interest of the City to purchase these vehicles from Hubbard Chevrolet and Withnell Motor Company; and

**WHEREAS**, in order to fund the purchase of these vehicles, the City wishes to enter into a lease/purchase agreement with Ford Motor Credit Company under its Municipal Finance Program(Bid #5241013); now therefore

**THE CITY OF CANBY ORDAINS AS FOLLOWS:**

Section 1. The Mayor and City Administrator are hereby authorized and directed to make, execute and declare in the name of the City of Canby and on its behalf, an appropriate contract with Hubbard Chevrolet of Hubbard, Oregon, Withnell Motor Company of Salem, Oregon, and Auto Additions of Salem, Oregon for the total purchase price of \$74,473.90.

Section 2. The Mayor and City Administrator are hereby authorized and directed to make, execute and declare in the name of the City of Canby and on its behalf, an appropriate Municipal Lease Purchase Contract (Bid #5241013) with Ford Motor Credit Company to finance the purchase of the vehicles.

Section 3. In so much as it is in the best interest of the citizens of the City of Canby, Oregon to provide the Police Department with these vehicles without further delay, and to better serve the citizens of Canby, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on October 19, 2011, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on November 2, 2011, commencing at the hour of 7:30 P.M. in the City Council Chambers located at 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon

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Kimberly Scheafer, CMC  
City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 2<sup>nd</sup> day of November, 2011, by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

\_\_\_\_\_  
Randy Carson  
Mayor

**ATTEST:**

\_\_\_\_\_  
Kimberly Scheafer, CMC  
City Recorder

**Management Team Meeting Minutes**  
**October 3, 2011**  
**2:00 PM**  
**City Hall Conference Room**

In attendance: Greg Ellis, Amanda Klock, Eric Laitinen, Bret Smith, Bryan Brown, Penny Hummel, Renate Mengelberg, Sue Engels, Kim Scheafer and Julie Wehling.

Kim Scheafer

- Reviewed Agenda for October 12 Urban Renewal Agency Meeting
- Working with Deputy City Recorder on publishing a monthly E-Newsletter

Amanda Klock

- Flu Clinic will be scheduled within the next few weeks

Bryan Brown

- Recommending postponing the Village on the Lochs conditional use permit and site and design review application

Penny Hummel

- Author William Deresiewicz spoke at the Library on September 27
- Lego night was held last week

Julie Wehling

- Charging a fare for the general public will be discussed at the Transit Advisory Committee meeting next week
- Work with Fleet on getting specs for two new buses

Eric Laitinen

- Pool Levy Committee is gearing up

Darvin Tramel

- Working on updating sewer and stormwater SDC's
- Will be doing an inspection at Johnson Controls
- Working on an environmental survey
- Stormwater Committee will be meeting this month

Renate Mengelberg

- Arranging for City Council to tour Industrial Park on October 11
- First Friday is October 7
- Renate, Annie, and Ami will be attending the Oregon State Main Street Conference in Baker City on October 5-7.
- Pursued two new leads last week
- A Haunted House will be held in Development Services Building storage area on October 31.

2nd Reading

Sue Engels

- Caselle business license and tax modules upgrades will occur the week of November 7
- Out of office November 7-11

Greg Ellis

- Paving project by Wait Park has started
- Looking at extending sidewalks past plumbing store by Fairgrounds
- Talking with Cutsforths about the Development Agreement. Per agreement City needs to pave streets that buses use.
- Rural Development Initiatives leadership training is coming to Canby. Will be paid for by the Ford Family Foundation
- Has jury duty on Friday and will be out of office

Bret Smith

- The Police Department has developed their own newsletter which they post on their web page. Will email it out citywide to staff.
- The Police Department has new letterhead
- Working on traffic related complaints about Johnson Controls' trucks
- Doing presentation on the Police Department Accreditation at the October 19 City Council Meeting

*Minutes taken by Kim Scheafer*

**Management Team Meeting Minutes**  
**October 10, 2011**  
**2:00 PM**  
**City Hall Conference Room**

In attendance: Greg Ellis, Darvin Tramel, Bret Smith, Eric Laitinen, Penny Hummel, Renate Mengelberg, Sue Engels, Kim Scheafer.

Kim Scheafer

- Reviewed Agenda for October 19 City Council Meeting

Greg Ellis

- Wave accepted Ordinance 347
- Paving projects are going well

Penny Hummel

- Master artist and teacher Eva Castellanoz will be talking at the Library on November 1
- Submitted a grant to the Clackamas County Cultural Coalition to fund a reading/discussion series on the book 1776 by David McCullough

Renate Mengelberg

- Laney Fouse started today as the new Planning/Urban Renewal Office Specialist
- Economic Development tour is tomorrow
- Bids are coming back for city property on Sequoia for clearing of stumps and hydro seeding

Darvin Tramel

- Studying information on UIC's
- Will be attending meetings with Oregon Aqua
- Working with Fred Kahut on removal of biosolids
- In mediation with Therma Flite
- Continuing to address odor issues

Eric Laitinen

- No decision has been made yet regarding a grant from a private business for 4<sup>th</sup> grade swimming lessons for Canby students

Sue Engels

- Preparing for auditors. They will be working in the Development Services Building.

Bret Smith

- Building of new Police Station is going well. 200 yard floor pour is scheduled for next week. Project is on budget and looking at possible buybacks.
- Spoke about a complaint that had been received

*Minutes taken by Kim Scheafer*