

AMENDED AGENDA

CANBY CITY COUNCIL REGULAR MEETING

February 17, 2010

7:30 PM

Council Chambers

155 NW 2nd Avenue

Mayor Melody Thompson

Council President Walt Daniels

Councilor Richard Ares

Councilor Robert Bitter

Councilor John Henri

Councilor Brian Hodson

Councilor Jason Padden

CITY COUNCIL REGULAR MEETING

1. CALL TO ORDER

A. Pledge of Allegiance and Moment of Silence

B. Iwo Jima Remembrance Day Proclamation

Pg. 1

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 January 27, 2010 City Council Work Session

B. Approval of Minutes of the February 3, 2010 City Council Work Session and Regular Meeting

C. Change of Ownership Liquor License App. for Canby Grand Central Station Pg. 2

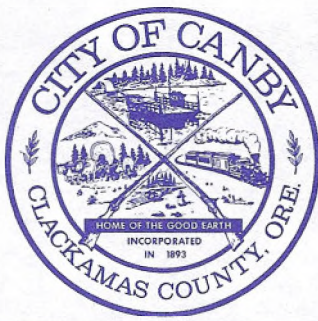
7. RESOLUTIONS & ORDINANCES

A. Res. 1052, Approving Annexation of 4.77 Acres of Land, of Which 4.62 Acres Shall be Zoned R-1(Low Density Residential), and 0.15 Acre Shall Be Zoned R-1.5 (Medium Density Residential), Pending Annexation Approval by the Canby Electorate; and Approving a Development Agreement By and Between the City of Canby and Norman E. Beck and Jenny L. Beck, Property Owners, For 4.62 Acres of the Land

Pg. 4

- B. Ord. 1326, Authorizing Mayor and City Administrator to Obligate Funds for the Reconstruction of Knights Bridge Road in the Amount of \$585,502.00 (2nd Reading) Pg. 6
- 8. NEW BUSINESS**
 - A. Annexation (ANN 09-01 Beck) 4.77 Acres Pg. 8
 - B. Discussion Regarding Historic Review Board Pg. 62
 - C. Request for Assistance to Examine Klamath Tribe Restoration Act Pg. 64
- 9. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS**
 - A. Decorum in Council Meetings Pg. 94
- 10. CITIZEN INPUT**
- 11. ACTION REVIEW**
- 12. EXECUTIVE SESSION: ORS 192.660(2)(h) Pending Litigation**
- 13. 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. 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.



Office of the Mayor

Proclamation

Iwo Jima Remembrance Day

WHEREAS, on February 23, 1945, this country's Armed Forces were engaged in one of the most strategic and bloodiest battles of World War II - the battle for Iwo Jima; and

WHEREAS, the Canby-Aurora Veterans of Foreign Wars Post and Auxiliary 6057 of the United States have deemed it fitting to erect a flagpole at the Canby Adult Center in remembrance of those who took part in this great battle; and

WHEREAS, each year the members of the Canby-Aurora Veterans of Foreign Wars Post 6057, their Auxiliary, and their fellow veterans organizations and service organizations i.e. Boy Scouts, Girl Scouts, Campfire, etc. conduct a ceremony to rededicate this memorial and replace the flags on the flagpole; and

WHEREAS, the flagpole located at the Canby Adult Center is the only memorial in the City of Canby dedicated to our veterans who made such significant personal sacrifices during World War II in defense of this great nation; and

WHEREAS, this year will be the 15th anniversary of the annual flag raising ceremony.

NOW, THEREFORE, I, Melody Thompson, by virtue of the authority vested in me as the Mayor of the City of Canby, do hereby proclaim February 20, 2010 as

Iwo Jima Remembrance Day

and call upon individuals, schools, churches, organizations and business establishments in the City of Canby to proudly remember the sacrifices made by servicemen who fought so gallantly in this bloody and decisive battle. I further call upon all members of this community to join in commemorating this great event with the rededication of the flagpole at the Adult Center on February 20 at 10:00 A.M. to celebrate the 65th anniversary of the end of World War II.

Given unto my hand this 17th day of February 2010 in the City of Canby, Oregon.

Melody Thompson
Mayor

Memo

To: Mayor Thompson & Members of City Council
From: Bret J. Smith, Chief of Police
CC: Kim Scheafer, General Administration
Date: February 8, 2010
Re: Liquor License Application / Canby Grand Central Station, LLC

I have reviewed the attached liquor license application completed by the applicant, Laurance Lee, for Canby Grand Central Station, located at 113 N. Elm Street, Canby, Oregon.

I met with Samih Sadaka, manager of Canby Grand Central Station, on February 8, 2010. We discussed laws involving the sale of alcoholic beverages. Mr. Sadaka told me that he would be working closely with OLCC as it relates to training for his employees on pertinent laws involving alcohol related violations and crimes.

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



OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

RECEIVED

FEB 02 2010

CITY OF CANBY

\$75

2/2/10 VC

PLEASE PRINT OR TYPE

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 *renew*

*P10150
L128044*

FOR CITY AND COUNTY USE ONLY
The city council or county commission:

(name of city or county)

recommends that this license be:

Granted ☐ Denied ☐

By: _____
(signature) (date)

Name: _____

Title: _____

OLCC USE ONLY

Application Rec'd by: *EM*

Date: *1-29-10*

90-day authority: ☐ Yes ☐ No

Applying as:

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

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

① *Laurance Lee* ③ _____

② *Canby Grand Central Station LLC* ④ _____

2. Trade Name (dba): *Canby Grand Central Station*

3. Business Location: *113 N. Elm St Canby Clackamas Oregon 97013*
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: *Same as above*
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: _____
(phone) (fax)

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

7. If yes to whom *Couches lounge Steakhouse + Grill LLC* Type of License: *Full on Premises*

8. Former Business Name: *Couches lounge Steak + Grill*

9. Will you have a manager? ☒ Yes ☐ No Name: *Samih Sadaka*
(manager must fill out an individual history form)

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

11. Contact person for this application: *Laurance Lee*
(name) (phone number(s)) (e-mail address)

(address) (fax number)

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 *Laurance Lee* Date *1-15-10* ③ _____ Date _____

② _____ Date _____ ④ _____ Date _____

1-800-452-OLCC (6522)
www.oregon.gov/olcc

(rev. 12/07)

RESOLUTION NO. 1052

A RESOLUTION APPROVING ANNEXATION OF 4.77 ACRES OF LAND, OF WHICH 4.62 ACRES SHALL BE ZONED R-1 (LOW DENSITY RESIDENTIAL), AND 0.15 ACRE SHALL BE ZONED R-1.5 (MEDIUM DENSITY RESIDENTIAL), PENDING ANNEXATION APPROVAL BY THE CANBY ELECTORATE; AND APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF CANBY AND NORMAN E. BECK AND JENNY L. BECK, PROPERTY OWNERS, FOR 4.62 ACRES OF THE LAND.

WHEREAS, Norman E. Beck and Jenny L. Beck, husband and wife, hereinafter referred to as "BECK", own 4.62 acres of real property commonly described as 1732 N. Pine Street, Canby, OR 97013, and more particularly described in Exhibit A to the Development Agreement; and

WHEREAS, the property described in Exhibit A to the Development Agreement is located within the boundaries of a designated "Development Agreement Area", as shown in Figure 16.84.040 of the Canby Municipal Code, and therefore in accordance with Canby Municipal Code 16.84.040(A)(1)(a), a Development Agreement is a necessary criteria to approve an annexation request; and

WHEREAS, Norman and Jenny Beck have submitted an application to the City of Canby requesting annexation of 4.77 acres of land, and requesting that the easterly 4.62 acres be zoned R-1 (Low Density Residential) and the westerly 0.15 acre be zoned R-1.5 (Medium Density Residential); and

WHEREAS, the Canby Planning Commission held a public hearing on November 23, 2009, concerning execution of a Development Agreement by and between the City of Canby and BECK for 4.62 acres, and concerning annexation and zoning for 4.77 acres; after which Planning Commission recommended to the City Council that the Development Agreement be approved, that the Annexation be approved, and that the zoning of the property upon annexation be designated as requested; and

WHEREAS, the City Council received a record of the Planning Commission's public hearing, together with Commission's recommendation of approval on February 17, 2010, and based on the findings and conclusions detailed in the December 14, 2009 Planning Commission 'Findings, Conclusions & Order', attached hereto this Resolution as Attachment 1, the City Council voted to approve the Development Agreement, to approve the annexation request and refer the question of annexation to the voters of Canby, and upon annexation to zone the property as requested;

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Canby, as follows:

1. The City Council hereby approves the Development Agreement by and between the City of Canby and BECK, an as-yet-unexecuted copy of which is attached hereto this Resolution as Attachment 2.

2. The Interim City Administrator is hereby authorized and directed to sign the Development Agreement. The City Recorder and City Attorney are hereby authorized to do all other necessary and proper acts to facilitate execution of the Development Agreement. And BECK is hereby authorized to record the signed Development Agreement with the official records of Clackamas County within seven (7) calendar days from today.

3. The City Council hereby approves Annexation application no. ANN-09-01 for submission to the Canby electorate for vote; a legal description of the property to be annexed is attached hereto this Resolution as Attachment 3.

4. Upon annexation, the zoning of the 4.77 acres of annexed land shall be designated as follows: The westerly 20-foot-wide half of N. Pine Street (approx. 6.598 sq. feet) shall be zoned Medium Density Residential, and the remainder of the annexed property (approx. 4.62 acres) shall be zoned Low Density Residential.

5. This Resolution shall take effect immediately.

ADOPTED this 17th day of February, 2010, by the Canby City Council.

Melody Thompson - Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

ORDINANCE NO. 1326

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO OBLIGATE FUNDS FOR THE RECONSTRUCTION OF KNIGHTS BRIDGE ROAD IN THE AMOUNT OF \$585,502.00; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby has heretofore entered into an agreement with the Oregon Department of Transportation (ODOT) in anticipation of securing financial assistance for the reconstruction of Knights Bridge Road; and

WHEREAS, the City of Canby executed Intergovernmental Agreement (IGA) Number 25513 with ODOT on April 24, 2009; and

WHEREAS, in accordance with the terms of the IGA AGENCY OBLIGATIONS, and ODOT remittance letter to the City of Canby dated January 7, 2010, the City is obligated to remit an advance deposit to cover the cost of construction in the amount of \$585,502.00; and

WHEREAS, the Canby City Council met on Wednesday, February 3, 2010 to review the obligations of the IGA; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and/or City Administrator are hereby authorized and directed to make an advance deposit to the Oregon Department of Transportation in the name of the City of Canby and on its behalf, for the construction deposit on the Knights Bridge Road Reconstruction project, in the amount of \$585,502.00.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, 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 therefore on Wednesday, February 3, 2010; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, February 17, 2010, after the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2nd Avenue, Canby, Oregon.

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 17th day of February 2010, by the following vote:

YEAS _____

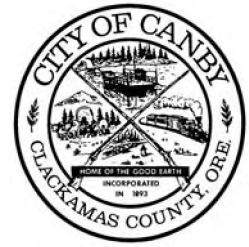
NAYS _____

Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

2nd Reading



M E M O R A N D U M

TO: *Honorable Mayor Thompson and City Council*
FROM: *Bryan Brown, Planning Director*
Melissa Hardy, Associate Planner
THROUGH: *Amanda Klock, Interim City Administrator*
DATE: *February 17, 2010*
RE: *Annexation Application (ANN 09-01)*

Summary:

Norman and Jenny Beck have submitted an annexation application. The applicant is requesting:

- (1) Annexation of 4.77 acres of land, which is located south of N.E. Territorial Road and north of N. Plum Court, and includes property addressed as 1732 N. Pine Street (*see Exhibits A and C of Attachment 3*);
- (2) Approval of a development agreement for 4.62 acres of the land (*see Exhibit B of Attachment 3*); and
- (3) If annexed, that the zoning be changed from Clackamas County RRFF-5 to City of Canby R-1 (Low Density Residential) for 4.62 acres of the land and to City of Canby R-1.5 (Medium Density Residential) for the remaining 0.15 acre (*see Exhibit G of Attachment 3*).

The proposed annexation includes approximately 4.47 acres of developable land, and approximately 0.3 acre of land located under the abutting 40-foot-wide N. Pine Street right-of-way. The Becks own the easterly 20 feet of land under the right-of-way, while the westerly 20 feet is owned by Mr. Holmes. It should be noted here that Mr. Holmes is not a co-applicant in the annexation application or development agreement application, but the westerly 20-foot portion of land under the right-of-way that he owns, is part of the annexation application. City staff asked the Beck's to include his 20 feet in the annexation application, because it was not annexed when the rest of Mr. Holmes land west of the right-of-way line was annexed into the city.

The applicant's property is located inside one of the Development Agreement Areas shown in Figure 16.84.040 of the Canby Municipal Code (CMC), which means that a development agreement must be approved by City Council and recorded on the property title before the Council can grant a change in zoning. Therefore, the applicants have worked with city staff in drafting a proposed development agreement to meet the development agreement approval criteria in CMC 16.84.040.A.1.a, for their 4.62 acre portion of the property (all of the land located east of the centerline of the N. Pine Street right-of-way). The westerly 20 feet of land under the right-of-way is not part of the proposed development agreement, because it is not owned or controlled by the applicants, and it is under an existing street right-of-way, so city staff felt that it should not be part of the development agreement.

The zoning proposed for the land is consistent with the existing comprehensive plan land use designations for the property. The comprehensive plan land use map designates land on the east side of N. Pine Street for Low Density Residential use, and land on the west side of N. Pine Street for Medium Density Residential use, with the centerline of N. Pine Street as the dividing line between the two designations. Therefore, the applicant is requesting that the easterly 4.62

acres of land be zoned R-1 (Low Density Residential) and the westerly 0.15 acre of land (which is the westerly 20-foot portion of land under the right-of-way) be zoned R-1.5 (Medium Density Residential) if the property is annexed into the City.

Planning Commission Recommendation:

The Planning Commission held a public hearing on November 23, 2009, concerning this application. Based on all the information presented at the public hearing, including the November 16, 2009 staff report (*see Attachment 3*), testimony by Pat Sisul for the applicant (*see Attachment 2*), and one written public comment (*see Attachment 4*), the Planning Commission found that, with one condition of approval, the annexation application meets all of the approval criteria set forth in CMC 16.84.040.A, found that the development agreement proposal meets all of the approval criteria set forth in CMC 16.84.040.A.1.a, and furthermore found that the zoning map amendment meets all of the approval criteria set forth in CMC 16.54.040 (*see Attachment 1 – Planning Commission Findings & Recommendation*).

Therefore, the Planning Commission has forwarded the following recommendation of APPROVAL to City Council:

1. The Development Agreement in Exhibit B to the November 16, 2009 Planning Commission staff report should be approved, executed, and recorded; and
2. Annexation ANN-09-01 in Exhibit C to the November 16, 2009 Planning Commission staff report should be approved for submission to the electorate for vote; and
3. The zoning of the property upon annexation should be designated as follows: The westerly 20-foot-wide half of the N. Pine Street right-of-way (approx. 6,598 sq. feet) shall be zoned Medium Density Residential, and the remainder of the annexed property (approx. 4.62 acres) shall be zoned Low Density Residential; and
4. Annexation approval should include a Condition, consistent with recital 1.C of the Development Agreement, that Beck shall have 7 calendar days from the date the Council approves the Development Agreement, Annexation, and Zone Change, to record the Development Agreement; and failure to record the Development Agreement within the time specified will result in removal of the annexation application from the ballot for consideration by the electors.

Upon receipt of this Planning Commission recommendation, the City Council may vote to either approve or deny the application based upon the record of the Planning Commission's public hearing; -OR- the City Council may choose to conduct a second public hearing to receive additional testimony on the application before rendering a decision.

Recommended Council Motion:

If the City Council chooses not to conduct a 2nd public hearing, and to approve the application based on the findings from the 1st public hearing, the following motion of approval is appropriate:

"I move, based upon findings of approval in Attachment 1 to the Council staff report, that City Council approve the Development Agreement in Exhibit B of Attachment 3 to the Council staff report, and direct that the Agreement be executed and recorded by the annexation applicant within 7 calendar days from today; and ...

That City Council approve annexation ANN-09-01, as detailed in Exhibit C of Attachment 3 to the Council staff report, and direct the City Recorder to return to Council with a Resolution authorizing city staff to forward the question of annexation to the Canby voters in the November 2010 general election; and ...

This annexation approval includes a Condition that the annexation applicant (Beck) shall have 7 calendar days from today to execute and record the Council-approved Development Agreement, and failure to record the Development Agreement within this time period will result in removal of the annexation application from the ballot for consideration by the electors; and...

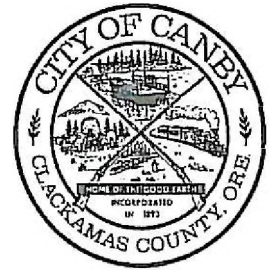
The zoning of the property upon annexation shall be designated as follows: The westerly 20-foot-wide half of the N. Pine Street right-of-way (approx. 6,598 sq. feet) shall be zoned Medium Density Residential, and the remainder of the annexed property (approx. 4.62 acres) shall be zoned Low Density Residential.”

Alternative:

1. As an alternative to the Planning Commission recommendation, the City Council may choose to deny the annexation application based upon modified findings, in which case the annexation will not be submitted to the voters of Canby.

Attachments:

1. Planning Commission Findings & Recommendation
2. Minutes from Nov 23, 2009, Planning Commission Meeting
3. Planning Commission Staff Report and Exhibits
4. Public Comment Received To Date



**BEFORE THE PLANNING COMMISSION
OF THE
CITY OF CANBY**

**A REQUEST FOR APPROVAL OF A) FINDINGS, CONCLUSIONS & ORDER
DEVELOPMENT AGREEMENT FOR) ANN 09-01
4.62 ACRES OF LAND; AND A REQUEST)
TO ANNEX 4.77 ACRES OF LAND; AND A)
REQUEST TO CHANGE THE ZONING)
FROM CLACKAMAS COUNTY RRFF-5)
TO CITY OF CANBY R-1 FOR 4.62 ACRES)
OF THE LAND, AND TO CITY OF CANBY)
R-1.5 FOR THE REMAINING 0.15 ACRE)**

NATURE OF APPLICATION:

The applicant is proposing to annex approximately 4.77 acres into the City of Canby. The application includes the following requests: (1) Approval of a development agreement for 4.62 acres of land; (2) Annexation of 4.77 acres of land; and (3) If annexed, change the zoning from Clackamas County RRFF-5 to City of Canby R-1 (Low Density Residential) for 4.62 acres of the land, and to City of Canby R-1.5 (Medium Density Residential) for the remaining 0.15 acre.

HEARING:

The Planning Commission held a public hearing to consider the application on November 23, 2009.

CRITERIA AND STANDARDS:

1. In judging whether or not an Annexation Development Agreement shall be approved, CMC Section 16.84.040.A.1.a sets forth the approval criteria that the Planning Commission and City Council must use to evaluate the development agreement, as follows:

16.84.040.A.1.a A Development Agreement (DA) binding for all properties located within the boundaries of a designated DA area as shown on the City of Canby Annexation Development Map. The terms of the Development Agreement may include, but are not limited to:

1. Timing of the submittal of an application for zoning
2. Dedication of land for future public facilities including park and open space land
3. Construction of public improvements

**Findings, Conclusion and Order
ANN 09-01
Page 1 of 5**

4. Waiver of compensation claims
 5. Waiver of nexus or rough proportionality objections to future exactions
 6. Other commitments deemed valuable to the City of Canby
2. In judging whether or not an Annexation Application shall be approved, and subsequently forwarded to the voters of Canby as a ballot measure so that a final decision may be reached during an election, CMC Section 16.84.040.A (1 through 10) sets forth the approval criteria that the Planning Commission and City Council must use to evaluate the annexation application, as follows:
- 16.84.040.A.1 - For newly annexed properties that are within the boundaries of a DA area as designated on the City of Canby Annexation Development Map: A Development Agreement shall be recorded as a covenant running with the land, binding on the landowner's successors in interest prior to the City Council granting a change in zoning classification.
- 16.84.040.A.2 - Analysis of the need for additional property within the city limits shall be provided. The analysis shall include the amount of developable land (within the same class of zoning – low density residential, light industrial, etc.) currently within the city limits; the approximate rate of development of those lands; and how the proposed annexation will affect the supply of developable land within the city limits. A supply of developable residential land to provide for the anticipated population growth over the following three years is considered to be sufficient.
- 16.84.040.A.3 - Statement of potential physical, aesthetic and related social effects of the proposed development on the community as a whole and on the neighborhood of which it will become a part; and proposed actions to mitigate identified concerns, if any. A neighborhood meeting is required as per Table 16.89.020 of the City of Canby Land Development and Planning Ordinance.
- 16.84.040.A.4 - Statement of availability, capacity and status of existing water, sewer, drainage, transportation, park and school facilities.
- 16.84.040.A.5 - Statement of increased demand for such facilities to be generated by the proposed development, if any, at this time.
- 16.84.040.A.6 - Statement of additional facilities, if any, required to meet the increased demand and any proposed phasing of such facilities in accordance with projected demand.
- 16.84.040.A.7 - Statement outlining method and source of financing required to provide additional facilities, if any.
- 16.84.040.A.8 - Statement indicating the type and nature of any comprehensive plan text or map amendments or zoning text or map amendments that may be required to complete the proposed development.
- 16.84.040.A.9 - Compliance with other applicable city ordinances or policies.
- 16.84.040.A.10 - Compliance of the application with the applicable sections of Oregon Revised Statutes Chapter 222.
3. In determining what the Zoning Designation shall be for newly annexed land, CMC Section 16.08.040 states that zoning of newly annexed areas shall be considered by the Planning Commission in its review and by the Council in conducting its public hearing for the annexation.

CMC Section 16.54.040 sets forth the approval criteria that the Planning Commission and City Council must use to evaluate amending the zoning map, as follows:

16.54.040.A - The Comprehensive Plan of the city, giving special attention to Policy 6 of the land use element and implementation measures therefore, and the plans and policies of the county, state and local districts in order to preserve functions and local aspects of land conservation and development.

16.54.040.B - Whether all required public facilities and services exist or will be provided concurrent with development to adequately meet the needs of any use or development which would be permitted by the new zoning designation.

FINDINGS AND REASONS:

The Planning Commission held a public hearing on November 23, 2009, during which the November 16, 2009, staff report, including all attachments, and a powerpoint presentation was presented by staff. Staff recommended that Planning Commission forward a recommendation of approval to City Council for the proposed annexation, development agreement, and zoning designations.

Applicant Testimony: Oral testimony was received from Pat Sisul of Sisul Engineering, who said he was speaking on behalf of the applicant. Mr. Sisul provided additional testimony concerning the applicant's analysis of developable land in the city and how the annexation would affect that supply. He said that based on the number of permits issued between 2004 and 2008, 499 building permits had been issued with a high of 201 in 2006 and a low of 15 in 2008. He also cited a study done by Portland State University for the school district that concluded between 1996 and 2008 the average number of single family permits was 106 per year. Based on the information he concluded the current available land fell under a 3-year buildable supply, and that if the land was annexed it would be late 2011 before the land would be available to develop.

Proponent Testimony: No oral testimony was received. Written testimony was received from JoAnn Hamilton-Scott, who stated she felt that the applicant should be allowed to do what they want with the subject property.

Opponent Testimony: No oral testimony was received. No written testimony was received.

Neutral Testimony: No oral testimony was received. No written testimony was received.

The Planning Commission considered the findings detailed in the November 16, 2009, staff report and the powerpoint presented by staff, and made the additional finding that Mr. Sisul has given an accurate evaluation of buildable lands, and that annexation of this land will result in less than a 3-year's supply of buildable lands; and based on all these findings, the Planning Commission recommended that City Council should approve the proposed annexation, development agreement, and zoning designations, with one condition of approval, as reflected in the written Order below.

CONCLUSION:

The Planning Commission of the City of Canby concludes that, based on the findings and conclusions contained in the November 16, 2009 Staff Report, together with the additional findings detailed above in 'Findings and Reasons', that the Planning Commission should recommend to City

Council that annexation application ANN 09-01 be approved as detailed in the Recommendation below.


RECOMMENDATION:

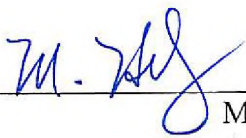
IT IS RECOMMENDED BY THE PLANNING COMMISSION of the City of Canby that the City Council **APPROVE** annexation application **ANN 09-01** as follows:

1. The Development Agreement in Exhibit B to the November 16, 2009 staff report should be approved, executed, and recorded; and
2. Annexation 09-01 in Exhibit C to the November 16, 2009 staff report should be approved for submission to the electorate for vote; and
3. The zoning of the property upon annexation should be designated as follows: The westerly 20-foot-wide half of N. Pine Street (approx. 6,598 sq. feet) shall be zoned Medium Density Residential, and the remainder of the annexed property (approx. 4.62 acres) shall be zoned Low Density Residential; and
4. Approval should include a Condition, consistent with recital 1.C of the Development Agreement, that Beck shall have 7 calendar days from the date the Council approves the Development Agreement, Annexation, and Zone Change, to record the Development Agreement; and failure to record the Development Agreement within the time specified will result in removal of the annexation application from the ballot for consideration by the electors.

I CERTIFY THAT THIS ORDER recommending **APPROVAL** of ANN 09-01 to the City Council was presented to and **APPROVED** by the Planning Commission of the City of Canby.

DATED this 14th day of December, 2009.



Daniel K. Ewert, Chairman
Canby Planning Commission

Melissa Hardy
Associate Planner

ATTEST:

ORAL DECISION – November 23, 2009

AYES: Ewert, Joyce, Kocher, Milne, Slagle and Taylor
NOES: None
ABSTAIN: None
ABSENT: None

WRITTEN DECISION – December 14, 2009

AYES: Ewert, Joyce, Kocher, Milne, Slagle and Taylor
NOES: None
ABSTAIN: None
ABSENT: None

MINUTES
CANBY PLANNING COMMISSION
7:00 PM – November 23, 2009
City Council Chambers – 155 NW 2nd Avenue

PRESENT: Chair Dan Ewert, Vice Chair Jan Milne, Commissioners Sean Joyce, Chuck Kocher, Misty Slagle and Jared Taylor

ABSENT: None

STAFF: Bryan Brown, Planning Director; Melissa Hardy, Associate Planner; and Jill Thorn, Planning Staff

OTHERS PRESENT: Pat Sisul, Norm Beck, City Councilor Brian Hodson

1. CALL TO ORDER

2. CITIZEN INPUT **None**

3. PUBLIC HEARINGS

a. Annexation – (1) Annex 4.77 acres of land; and (2) Change the zoning from Clackamas County RRFF-5 to City of Canby R-1 (Low Density Residential); and (3) Approve a development agreement for 4.62 acres. 1732 N Pine Street – ANN 09-01.

Chair Ewert read the public hearing format. When asked if any Commissioner had a conflict of interest, none was expressed. When asked if any Commissioner had ex-parte contact, none was stated. No questions were asked of the Commissioners.

Melissa Hardy, Associate Planner presented the November 16, 2009 staff report for the record. She also stated that since the staff report had been issued one additional comment was received from JoAnn Hamilton-Scott and gave members of the Commission and the applicant a copy.

Commissioner Milne asked why the westerly portion of the street was being included in the annexation.

Ms Hardy stated the property directly across Pine Street had been annexed last year, but the street was not included and staff felt it appropriate to include that on this annexation so that there would be no island portions of the road.

Commissioner Milne asked if it wasn't automatic to include the roads in annexations.

Ms Hardy stated the Engineering Department didn't recommend to include it.

Mr. Brown stated the legal description submitted by the applicant had not included it.

Commissioner Ewert asked what our reserve for low density residential (R1) land was at this time.

Ms Hardy stated there was no recent study.

Chair Ewert asked if that meant we did not know what our reserve is.

Mr. Hardy said that was correct, but the applicant had done his own analysis and was suggesting that the annexed land would create a two month supply.

Mr. Brown stated that in terms of a rate of consumption based on building permits issued from 1969 until this year he felt that 75 to 80 single family permits were issued on average each year with 250 being the highest number and 3 for this year being the lowest.

Commissioner Milne stated she thought that when the Northwoods Subdivision application was heard before the Commission there had been a study on how much land was available in Canby for single family homes.

Mr. Brown stated he was not aware of the study.

Commissioner Ewert asked about Item D under Other Considerations in the Development Agreement; why it was in the agreement and what the process would be.

Ms Hardy stated that the attorneys had inserted that item and if there would be any modifications, there would be a public hearing before the City Council.

Applicant: **Pat Sisul** of Sisul Engineering representing Norm Beck – stated this site had been before the Planning Commission in 2006, but was defeated by the voters by 250 votes. He said it had taken six or seven months to work through the development agreement process. He said Ms Hardy had done a good job explaining the process.

Mr. Sisul stated that the neighbors had indicated they wanted low density residential (R1) at the neighborhood meeting.

He said that based on the number of permits issued between 2004 and 2008, 499 building permits had been issued with a high of 201 in 2006 and a low of 15 in 2008. He also cited a study done by Portland State University for the school district that concluded that between 1996 and 2008 the average number of single family permits was 106 per year. Based on the information he concluded the current available land fell under a 3-year buildable supply.

Mr. Sisul stated the applicant was planning on a November 2010 election and it would be late 2011 before the land would be available to develop.

Commissioner Taylor asked if there was a preference for the park land dedication.

Mr. Sisul responded his preference was not to dedicate land, but it was the City's choice.

Ms Hardy stated the Molalla Forest Trail area was close by and that could serve this area, but the decision for dedication or SDC's would be made at the time of development.

Commissioner Joyce asked why the annexation had not passed the last time.

Mr. Sisul said he felt it was because of school over-crowding.

Proponents: None

Opponents: None

Neutral: None

Rebuttal: None

Chair Ewert closed the public hearing.

Commissioner Milne stated she felt the application met the criteria and she didn't see any red flags. She felt Mr. Sisul had given an accurate evaluation of the buildable lands.

Commissioner Ewert stated this site had been looked at in 2006 and felt this was a win-win for the City; that Pine Street will be built out and as soon as the economy rebounds this was a good jumping point.

Commissioner Milne moved to approve the Development Agreement in Exhibit B should be approved, executed, and recorded; and Annexation 09-01 in Exhibit C should be approved for submission to the electorate for vote; and the zoning of the property upon annexation shall be designated as follows: the westerly 20-foot-wide half of N. Pine Street (approx. 6,598 sq. feet) shall be zoned Medium Density Residential, and the remainder of the annexed property (approx. 4.62 acres) shall be zoned Low Density Residential; and approval shall include a Condition, consistent with recital 1.C of the Development Agreement, that Beck shall have 7 calendar days from the date the Council approves the Development Agreement, Annexation, and Zone Change, to record the Development Agreement; and failure to record the Development Agreement within the time specified will result in removal of the annexation application from the ballot for consideration by the electors. It was seconded by Commissioner Taylor. The motion passed 6-0.

4. NEW BUSINESS None

5. FINAL DECISIONS None

6. MINUTES

November 9, 2009 - Commissioner Milne moved to approve minutes of November 9, 2009 with corrections on pages 2 and 4 to add the words "square feet" after 1,000. Motion seconded by Commissioner Slagle and passed 6-0.

7. ITEMS OF INTEREST FROM STAFF Commissioner Ewert asked if it was possible to have a buildable lands study done to help the Commission on future annexation applications.

Commissioner Ewert asked for an update on activity in the Industrial Park.

Ms Hardy said the applicants of the subdivision and minor land partition that had been approved had requested an extension to complete improvements to the sites.

Mr. Brown said the Walnut Street extension contract had been approved and a spring construction was planned.

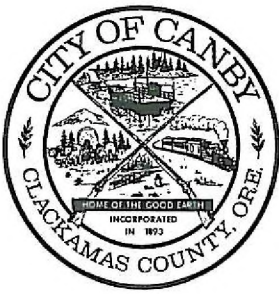
8. ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION

Mr.

Brown said the buildable land supply or land needs study has been recommended by Matilda Deas, Project Planner is needed for an update of the Comprehensive Plan.

Mr. Brown stated the customer service survey was complete and generally the results were favorable. He said a copy would be sent to the Commissioners.

9. ADJOURNMENT



STAFF REPORT

APPLICANT:

Norman and Jenny Beck
P.O. Box 638
Wilsonville, OR 97070

FILE NO.:

ANN 09-01

OWNER:

Norman and Jenny Beck
P.O. Box 638
Wilsonville, OR 97070

STAFF:

Melissa Hardy
Associate Planner

Thomas Holmes

P.O. Box 111
Canby, OR 97013

LEGAL DESCRIPTION:

A portion of Lot 77, Canby Gardens Plat No. 230, consisting of approximately 4.47 acres; together with an approximately 0.3 acre portion of N. Pine Street

DATE OF REPORT:

November 16, 2009

LOCATION:

The land is located south of N.E. Territorial Road and north of N. Plum Court, and includes property addressed as 1732 N. Pine Street

DATE OF HEARING:

November 23, 2009

COMP. PLAN DESIGNATION:

Low Density Residential (LDR) and
Medium Density Residential (MDR)

ZONING DESIGNATION:

Clackamas County Rural Residential
Farm/Forest 5-Acre District (RRFF-5)

I. APPLICANT'S REQUEST:

The applicant is requesting: (1) Approval of a development agreement for 4.62 acres of land, (2) Annexation of 4.77 acres of land, and (3) If annexed, change the zoning from Clackamas County RRFF-5 to City of Canby R-1 (Low Density Residential) for 4.62 acres of the land and to City of Canby R-1.5 (Medium Density Residential) for the remaining 0.15 acres.

II. APPLICABLE REGULATIONS:**Canby Municipal Code (CMC) Title 16:**

- 16.54 Amendments to Zoning Map
- 16.84 Annexations

CMC Section 16.84.040.A.1.a sets forth the approval criteria that the Planning Commission and City Council use to review an annexation development agreement, as follows:

16.84.040.A.1.a A Development Agreement (DA) binding for all properties located within the boundaries of a designated DA area as shown on the City of Canby Annexation Development Map. The terms of the Development Agreement may include, but are not limited to:

1. Timing of the submittal of an application for zoning
2. Dedication of land for future public facilities including park and open space land
3. Construction of public improvements
4. Waiver of compensation claims
5. Waiver of nexus or rough proportionality objections to future exactions
6. Other commitments deemed valuable to the City of Canby

Staff recommends Planning Commission find that the proposed Development Agreement (*see Exhibit B*) is in compliance with Criteria 16.84.040.A.1.a, and that Planning Commission recommend to City Council that they approve the Development Agreement, based on the following:

Recital 1.A states that the Council shall review the applicant's request for zoning designation at the same time the Council reviews the Development Agreement application and Annexation application.

Recital 1.D states that when the land is developed, Beck will satisfy the CMC requirement for parkland dedication by either paying the systems development charge or dedicating actual parkland, whichever the City decides is more appropriate at the time of development.

Recital 1.E states that when the land is developed, Beck will construct an extension of 17th Avenue, and will also provide a connection with N. Plum Court if the City determines appropriate.

Recital 1.G states that Beck waives compensation or waiver of land use regulations, resulting from annexation and the concurrent zone change approval.

Recital 1.H states that future exactions will be limited to an amount necessary to serve the development of the property.

The remaining recitals in the Development Agreement detail other commitments deemed valuable to the City.

IV. ANNEXATION ANALYSIS (FINDINGS):

CMC Section 16.84.040.A (1 through 10) sets forth the approval criteria that the Planning Commission and City Council must use to evaluate an annexation application. Staff recommends that Planning Commission find that the proposed annexation (*see Exhibit C*) is in compliance with all approval criteria, and that Planning Commission recommend to City Council that they approve the Annexation Application, based on the following:

Criteria 16.84.040.A.1 For newly annexed properties that are within the boundaries of a DA area as designated on the City of Canby Annexation Development Map: A Development Agreement shall be recorded as a covenant running with the land, binding on the landowner's successors in interest prior to the City Council granting a change in zoning classification.

Staff comments: This annexation applicant has submitted a proposed development agreement for concurrent review and approval (*see Exhibit B*). In order to ensure that this annexation meets Criteria A.1, approval shall be conditioned upon the applicant having a Development Agreement, approved and fully executed with all signatures, recorded against the title of the land identified in Exhibit A of the Development Agreement, within seven (7) calendar days from the date the City Council approves the Development Agreement.

Criteria 16.84.040.A.2 *Analysis of the need for additional property within the city limits shall be provided. The analysis shall include the amount of developable land (within the same class of zoning – low density residential, light industrial, etc.) Currently within the city limits; the approximate rate of development of those lands; and how the proposed annexation will affect the supply of developable land within the city limits. A supply of developable residential land to provide for the anticipated population growth over the following three years is considered to be sufficient.*

The applicant's submittal includes an analysis of the need for additional property within the city limits (*see Exhibit D*). The applicant states that "need" was discussed with relation to the "Land Use Element" of the Comprehensive Plan. The annexation would add 4.47 (*correction 4.77*) acres to the City's supply of available, buildable land, approximately a two months' supply. The development process, from land acquisition to annexation to subdivision application to completion of public facilities improvements, can take well over a year. The estimated supply of land may vary, depending on rate of growth and difficulties involved in the development process, such as obtaining financing, designing and constructing public improvements, and so on. The proposed annexation would add approximately two months' supply of buildable land in the R-1 zone (based on projections of annual need for dwellings) that would become part of the available land supply within the City for use in 2010 through 2011, given the time involved in converting raw land to suitable lots ready for building permits.

Additional Staff Comments: The City of Canby Comprehensive Plan projection for number of dwelling units to be constructed on lands that are inside the city limits and that are designated Low Density Residential is 101 units during the planning period of 1984 to 2000. The Comprehensive Plan has not been updated to include any development projections for any subsequent period of time.

According to a Land Needs Study performed for the City of Canby in 1999, there was 193 acres of undeveloped land designated for Low Density Residential (LDR) development, and since then approximately 64 acres of LDR land has been annexed into the City, and approximately 68 acres of LDR land has been subdivided and subsequently built upon. That leaves approximately 189 acres of LDR land that is considered available for development, which if you estimate that the City issues on average about 80 building permits for dwelling units per year, then Canby has about an 8 year supply of buildable low density residential land.

Criteria 16.84.040.A.3 *Statement of potential physical, aesthetic and related social effects of the proposed development on the community as a whole and on the neighborhood of which it will become a part; and proposed actions to mitigate identified concerns, if any. A neighborhood meeting is required as per Table 16.89.020 of the City of Canby Land Development and Planning Ordinance.*

The applicant's submittal includes a statement of potential physical, aesthetic and related social effects, and proposed actions to mitigate identified concerns (*see Exhibit D*). The applicant states that the site is within the City's UGB, and is expected to develop according to the Comprehensive Plan designations. Some residents on adjacent properties may experience a loss of open space. However, vacant and undeveloped land within an UGB is expected to be utilized to accomplish the community's goals as expressed in the Comprehensive Plan. Therefore, the aesthetic and social impacts of development of the annexation site should be within the anticipated range of impacts associated with continuing growth within the City.

Additional Staff Comments: The applicant held a neighborhood meeting (*see Exhibit H*). The proposed annexation consists of 4.77 acres. The land is located inside the Canby Urban Growth Boundary, and the city limits abuts the property to the north, east, and west. According to the applicant's submittals, the property is currently developed with a single-family dwelling and four accessory structures (sheds). All of the land, with the exception of the westerly 20 foot-wide portion of the N. Pine Street right-of-way, is designated for Low Density Residential development in the City's Comprehensive Plan (the westerly 20 feet of N. Pine Street is designated Medium Density Residential). Therefore, the applicant is requesting that the easterly 4.62 acres be zoned Low Density Residential (R-1) and the westerly 0.15 acres be zoned Medium Density Residential (R-1.5) if annexed, both in conformance with the existing Canby Comprehensive Plan land use designations.

The City of Canby Comprehensive Plan's adopted methodology for forecasting the residential development potential of lands designated Low Density Residential is to subtract 20 percent of the land for public rights-of-way and easements, then subtract 5 percent of the remaining land area for an assumed vacancy rate, then multiply the remaining acreage by 6.8 dwelling units per acre for mobile/modular type construction and 4.7 dwelling units per acre for standard type construction. Using this methodology and the higher density assumption of mobile/modular type construction, the assumed residential development potential of 4.62 acres is 24 dwelling units ($4.62 - 0.924 = 3.696 - 0.185 = 3.511 \times 6.8 = 23.87$). Depending upon how the property is actually developed, more or less dwelling units may result. Since the westerly 0.15 acre of land is located within the N. Pine Street right-of-way, the development potential for that portion of the property is zero.

The Canby Comprehensive Plan does not identify any historic resources or significant wetlands on the subject property.

Criteria 16.84.040.A.4 Statement of availability, capacity and status of existing water, sewer, drainage, transportation, park and school facilities.

The applicant's submittal includes a statement of availability, capacity and status of existing water, sewer, drainage, transportation, park and school facilities (*see Exhibit D*). Public facilities and services are available or can be made available, as previously discussed. Public water and sanitary sewer are available in N. Pine Street and drainage facilities are available through a connection to the North Redwood Storm Drain, Advanced Financing District, located in the Logging Road Trail. Public streets in the vicinity of the site generally have adequate capacity as stated by the City's Traffic Engineer during review of the site. Public park facilities located near the site include the Logging Road Trail (adjacent to the site), the Eco Natural Area, the 19th Avenue Loop Natural Area and Maple Street Park. Following the opening of Baker Prairie

Middle School and the re-opening of Lee School as an elementary school in the fall of 2006 the school district has adequate capacity to serve additional students.

Additional Staff Comments: The annexation application was forwarded to all public facility and service providers. All respondents to date indicated that adequate public facilities are available or will become available through development of the property (*see Exhibit E*). A traffic impact study was prepared to determine potential impacts of the proposed annexation on transportation facilities (*see Exhibit F*). The study did not identify any significant impacts caused by trip generation, and furthermore found that aligning the 17th Avenue street extension with the existing 17th Avenue alignment west of the property conforms with the City's access spacing requirement of 150 feet on a collector street, and provides for adequate site distance.

Criteria 16.84.040.A.5 *Statement of increased demand for such facilities to be generated by the proposed development, if any, at this time.*

The applicant's submittal includes a statement of increased demand for facilities (*see Exhibit D*). Annexation by itself will not generate an increased demand on public services. One home exists on site and has been located on the site for several decades. Development of the property into multiple lots and multiple homes would increase the demand for City facilities. The site is within the City's UGB and is expected to develop according to its Comprehensive Plan designation; therefore increases in demand for public services should be within the range of impacts anticipated by the adopted Comprehensive Plan. The applicant has been advised that the City has adequate services to serve the site.

Additional Staff Comments: The annexation application was forwarded to all public facility and service providers. All respondents to date indicated that adequate public facilities are available or will become available through development of the property (*see Exhibit E*).

Criteria 16.84.040.A.6 *Statement of additional facilities, if any, required to meet the increased demand and any proposed phasing of such facilities in accordance with projected demand.*

The applicant's submittal includes a statement regarding additional facilities required to meet the increased demand (*see Exhibit D*). Annexation of the property will not increase the demand for public services, however subdivision of the property into multiple lots would increase demand for public water, sewer, drainage, streets, emergency services, parks and schools. Public utilities needed to serve the development of the property would be provided by the development through construction of new public facilities by the developer at the time of subdivision.

Additional Staff Comments: The annexation application was forwarded to all public facility and service providers. All respondents to date indicated that adequate public facilities are available or will become available through development of the property (*see Exhibit E*). No respondents indicated a need for phasing of public facilities.

Criteria 16.84.040.A.7 *Statement outlining method and source of financing required to provide additional facilities, if any.*

The applicant's submittal includes a statement concerning financing additional facilities (*see Exhibit D*). Public facilities to serve the development will be provided by the development

through construction of new facilities by the developer (water, sewer, drainage, streets) through the payment of advanced financing district fees by the developer (drainage), and through the payment of SDC fees (water, wastewater, transportation, storm and parks) by homebuilders building homes within the development. Homebuilders will also pay the construction excise tax for the school district.

Additional Staff Comments: Systems development charges are collected by the City each time a building permit is issued.

Criteria 16.84.040.A.8 *Statement indicating the type and nature of any comprehensive plan text or map amendments or zoning text or map amendments that may be required to complete the proposed development.*

The applicant's submittal states that the proposed use of the site is consistent with the adopted Comprehensive Plan Map designation and the text contained in the City's Land Development and Planning Ordinance. No text or map amendments are anticipated to be needed for development of the site.

Additional Staff Comments: The applicant is requesting if the property is annexed, that the easterly 4.62 acres be zoned Low Density Residential (R-1), and that the westerly 0.15 acres be zoned Medium Density Residential (R-1.5). Therefore, if the annexation and zoning are approved, the Zoning Map of the City of Canby will need to be amended to indicate the zoning for the subject land as R-1 and R-1.5 accordingly. The R-1.5 zoning is only for the westerly 20 feet of land in the N. Pine Street right-of-way, which matches the zoning of the abutting Holmes property.

Criteria 16.84.040.A.9 *Compliance with other applicable city ordinances or policies.*

The applicant's submittal states that the application complies with other city ordinances or policies, or can be made to comply through the development process.

Additional Staff Comments: Upon annexation the property will be subject to all city ordinances and policies.

Criteria 16.84.040.A.10 *Compliance of the application with the applicable sections of Oregon Revised Statutes Chapter 222.*

The applicant's submittal states that the applicant expects to comply with the provisions of state law.

Additional Staff Comments: The annexation application must comply with all applicable sections of Oregon Revised Statutes Chapter 222. The applicant submitted a signed annexation petition and represented to the City that consent to annex has been given by owners who represent more than half the owners of land in the territory, and who also own more than half the land and real property in the territory, therefore representing a triple majority. An election in the territory to be annexed is therefore not required by state law.

V. ZONING MAP AMENDMENT ANALYSIS (FINDINGS):

CMC Section 16.08.040 states that zoning of newly annexed areas shall be considered by the Planning Commission in its review and by the Council in conducting its public hearing for the annexation. CMC Section 16.54.040 sets forth approval criteria for an amendment to the zoning map. Staff recommends that Planning Commission find that the applicant's request to zone the property Low Density Residential (R-1) and Medium Density Residential (R-1.5) is in compliance with the two zoning approval criteria as follows, and that Planning Commission recommend to City Council that the zoning of the property, if annexed be designated as R-1 and R-1.5:

Criteria 16.54.040.A The Comprehensive Plan of the city, giving special attention to Policy 6 of the land use element and implementation measures therefore, and the plans and policies of the county, state and local districts in order to preserve functions and local aspects of land conservation and development.

Policy No. 5 of the Canby Comprehensive Plan directs that the comprehensive plan land use map shall be utilized as the basis of zoning decisions. (see Exhibit G to view an excerpt of the Canby Comprehensive Plan land use map) The bulk of the subject property is designated as Low Density Residential (LDR) on the comprehensive plan land use map. However, the westerly 40 feet of the property (13,196 square feet) is located within the N. Pine Street right-of-way, and the land use map designates the centerline of N. Pine Street as the boundary between the LDR land use designation and the neighboring Medium Density Residential (MDR) designation. Therefore, of the 40 feet of property located in the Pine Street right-of-way, the easterly 20 feet of land is designated as LDR and the westerly 20 feet of land is designated as MDR. Therefore, in conformance with Comprehensive Plan Policy No. 5 the appropriate zoning designation for the westerly 20-foot-wide half of N. Pine Street (approx. 6,598 square feet) is Medium Density Residential (R-1.5), and the appropriate zoning designation for the remainder of the annexed property (approx. 4.62 acres), including the easterly 20-foot-wide half of N. Pine Street, is Low Density Residential (R-1).

Policy No. 6 of the Canby Comprehensive Plan identifies specific locations, called "Areas of Special Concern", where the unique character of the area should be considered when reviewing a zoning designation request. The subject property is not located in any of the "Areas of Special Concern".

The request to designate the easterly 4.62 acres of land as Low Density Residential (R-1) zoning, and the westerly 6,598 square feet of land as Medium Density Residential (R-1.5) zoning, is in conformance with the Canby Comprehensive Plan, and with the plans and policies of the county, state and local districts, and best preserves functions and local aspects of land conservation and development.

Criteria 16.54.040.B Whether all required public facilities and services exist or will be provided concurrent with development to adequately meet the needs of any use or development which would be permitted by the new zoning designation.

The application was forwarded to all public facility and service providers. All respondents to date indicated that adequate public facilities are available or will become available through development of the property (see Exhibit E). Therefore, all required public facilities and services

exist or will be provided concurrent with development to adequately meet the needs of any use or development which would be permitted by the new zoning designation.

VI. PUBLIC INPUT RECEIVED:

Neighborhood Meeting – The applicant held a neighborhood meeting on February 18, 2009. Per the applicant's meeting notes (*see Exhibit H*), questions received during the meeting concerned zoning and future development of the property. Comments received from the Chairman of the Northeast Canby Neighborhood Association concerned zoning and the development agreement requirement.

Staff Response to neighborhood comments:

- *What is the City's long range plan for Territorial Road?* ... N.E. Territorial Road is identified as an "arterial" in the Transportation System Plan.
- *What guarantee do the neighbors have that the property would not be developed as high density?* ... The most appropriate zoning designation for the property, per the Canby Comprehensive Plan, is Low Density Residential for the easterly 4.62 acres, and Medium Density Residential for the westerly 6,598 square feet in the west half of the N. Pine Street right-of-way, and therefore that is the zoning that is recommended by City staff, which does not permit high density residential development. A Comprehensive Plan amendment would be required to change the zoning to something else.
- *What is the zoning of the Willamette Grove Apartments and the Holmes property?* ... The land where the apartments are located is zoned High Density Residential, and the property owned by Holmes on the west side of N. Pine Street is zoned Medium Density Residential.
- *Is it odd to have high density adjacent to low density without stepping down to medium density in between?* ... Low-, Medium-, and High-Density Residential zones are all considered to be compatible and similar use categories, because the nature of development allowed in all three zones is primarily residential. Therefore, it is not considered unusual at all to locate a high density residential zone next to a low density residential zone.
- *Will the project improve Pine Street across only the property frontage or across both properties on that side of the street that are in the County?* ... No street improvements are required when land is annexed. However, if land is developed after it is annexed into the City, then the City requires all streets abutting the property to be brought up to City street improvement standards. Off-site street improvements are only required when it is determined that the impacts generated by a development are so significant as to warrant mitigation that may include appropriate off-site improvements (when nexus and rough proportionality are demonstrated).
- *Will sanitary sewer and water have to be extended in front of both county parcels, or only the parcel owned by the applicant?* ... Canby Utility Board and the City of Canby Public Works Department and City Engineer determine what type of sewer and water line improvements must be made at the time of development.
- *Is it odd to have an offset intersection?* ... City staff have required that the applicant include in the Development Agreement that an extension of 17th Avenue be constructed in alignment with the existing 17th Avenue alignment to the west. The exact location of the 17th Avenue extension will be subject to approval by Canby's City Engineer and Transportation Engineer.
- *Is a traffic study required?* ... Yes, a traffic study is required for an annexation application. A traffic study was prepared for this annexation application (*see Exhibit F*).

- *What did the traffic study say last time? ...* The current traffic study is the appropriate traffic study to review in reference to this annexation application.
- *The City passed an ordinance last summer requiring master plans and development agreements; Does it apply to this property? ...* Yes, the subject property is required to have a development agreement approved and recorded before it can be annexed into the City.
- *Will we get to see what is in the DA before the election? ...* There will be two public hearings where the Development Agreement will be reviewed by the Planning Commission and then by the City Council, and the Development Agreement is available at the Canby Planning Department upon request. Anyone can attend the public hearings and/or submit written comments to the Commission or Council regarding the development agreement.
- *What is the width of a public street? ...* The width of public streets vary, depending upon the type and location of the street. N. Pine Street is an existing collector street, and is therefore required to be 60-feet wide to meet the adequacy standards in the Canby Transportation System Plan.
- *Would the street along the apartment site be built right next to the fence? ...* The City would need to review and approve any proposed street improvements at the time of development. It is not known at this time where specific street improvements would be required when this land is developed.
- *Is the one access plan acceptable to the Fire Department? ...* As in the answer to the previous question, the City would need to review and approve any proposed street improvements at the time of development. It is not known at this time where specific street improvements would be required when this land is developed.
- *What is the size of the cul-de-sac? ...* The City Engineer and Transportation Engineer, together with the Canby Public Works Department reviews proposed street improvements for conformance with the City's street improvement specifications and Transportation System Plan. In most cases a cul-de-sac is most likely going to be considered a local street, and is therefore required to be 40 feet wide per the Canby Transportation System Plan.

Public Comments – Notices were mailed to residents and owners of property within 500 feet of the subject property, and no comments have been received yet as of the date this staff report was prepared. Any comments received by the City before the public hearing will be brought to the public hearing and distributed to the Planning Commission at that time.

VII. CONCLUSION:

Staff concludes, as detailed herein this staff report, including all attachments hereto, (1) that the proposed development agreement meets the approval criteria set forth in CMC Section 16.84.040.A.1.a; (2) that the proposed annexation meets the approval criteria set forth in CMC 16.84.040.A; and (3) that the zoning of the property, if annexed, should be R-1 and R-1.5 pursuant to the approval criteria set forth in CMC 16.54.040.

VIII. RECOMMENDATION:

Based upon the findings contained in this report, including all attachments hereto, and without the benefit of a public hearing, staff recommends that the Planning Commission recommend to City Council that:

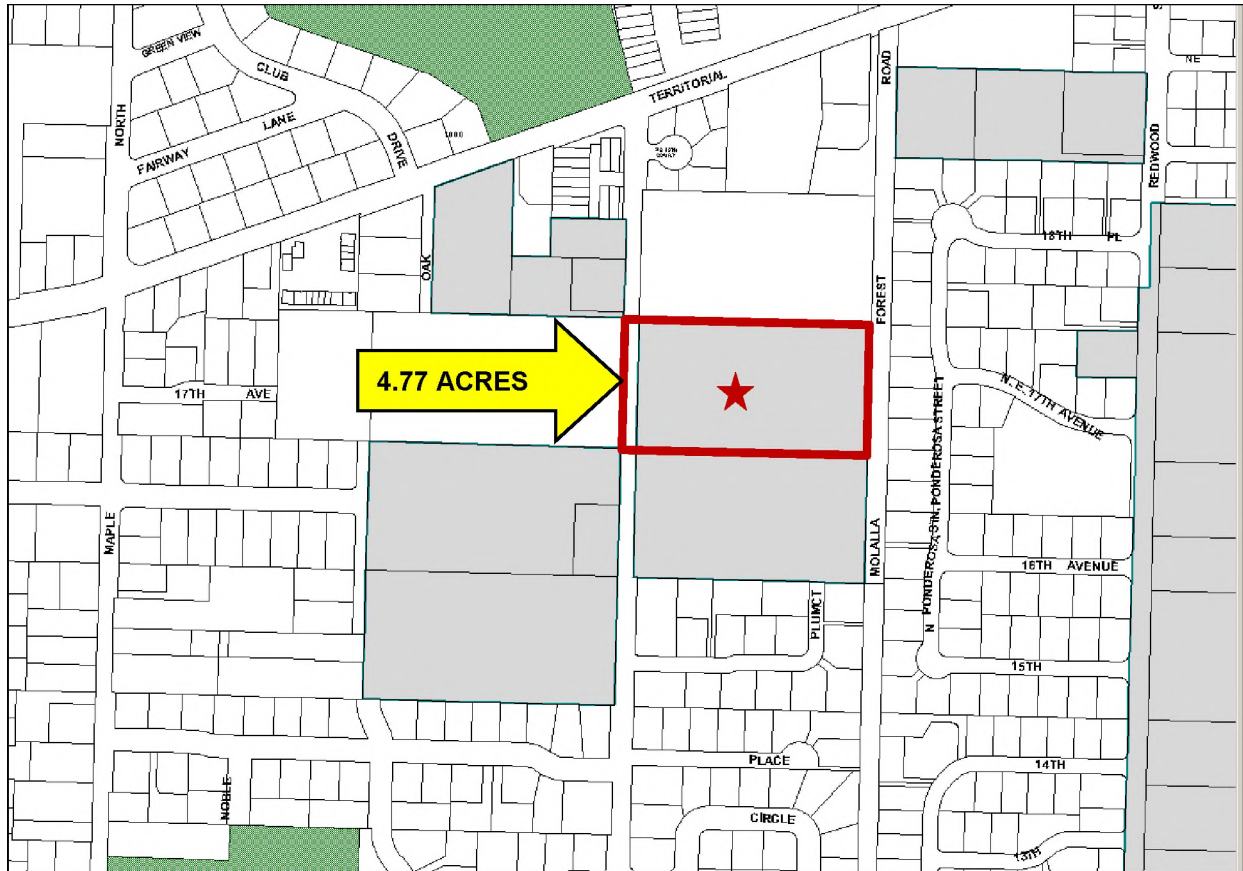
1. The Development Agreement (*Exhibit B*) should be approved, executed, and recorded; and

2. ANN 09-01 (*Exhibit C*) should be approved for submission to the electorate for vote; and
3. The zoning of the property upon annexation shall be designated as follows: The westerly 20-foot-wide half of N. Pine Street (approx. 6,598 square feet) shall be zoned Medium Density Residential (R-1.5), and the remainder of the annexed property (approx. 4.62 acres) shall be zoned Low Density Residential (R-1); and
4. The foregoing approvals should include a CONDITION, consistent with recital 1.C of the Development Agreement, that Beck shall have seven (7) calendar days from the date the City Council approves the Development Agreement, the Annexation, and the Zone Change, to record the Development Agreement; And failure to record the Development Agreement within the time specified will result in removal of the annexation application from the ballot for consideration by the electors.

Exhibits:

- A. Vicinity Map
- B. Proposed Development Agreement
- C. Proposed Annexation
- D. Applicant's Submittal
- E. Service Provider Comments
- F. Traffic Impact Study
- G. Comprehensive Plan Land Use Map
- H. Neighborhood Meeting Notes

VICINITY MAP



Location: south of N.E. Territorial Road and north of N. Plum Court, including property addressed as 1732 N. Pine Street

PROPOSED DEVELOPMENT AGREEMENT

Development Agreement is inserted into the following 8 pages.

AFTER RECORDING RETURN TO:
City of Canby
P O Box 930
Canby OR 97013

UNTIL REQUESTED OTHERWISE,
SEND TAX STATEMENTS TO:
Norman E. Beck
P O Box 638
Wilsonville OR 97070

DEVELOPMENT AGREEMENT (ANNEXATION)

RECITALS:

1. Norman E. Beck and Jenny L. Beck, husband and wife, hereinafter referred to as "BECK", own real property commonly described as 1732 N. Pine Street, Canby, OR 97013 and more particularly described in the attached Exhibit A.
2. The City of Canby, hereinafter referred to as "CANBY", is an Oregon municipal corporation.
3. The property described in Exhibit A is located within the boundaries of a designated annexation "Development Agreement Area" as shown on the City of Canby Annexation Development Map (Figure 16.84.040).
4. Canby procedures for annexation specify the Planning Commission shall conduct a public hearing to review any proposed annexations and determine the appropriate zoning designation upon annexation. The Planning Commission shall furnish its recommendation concerning annexation and assigned zoning to the City Council. The City Council will authorize an election for annexation when it is determined the applicable standards and criteria of Canby Municipal Code 16.84.040 are met and will determine appropriate zoning for the property based on the criteria set forth in the Canby Municipal Code 16.54.040. Thereafter the annexation may only be approved by a majority vote among the electorate of Canby.
5. The purpose of this Annexation Development Agreement is to satisfy the requirements of Canby Municipal Code 16.84.040 including providing adequate public information and information evaluating the physical, environmental, and related social effects of a proposed annexation. The proposed annexation does not require the statutory development agreement of ORS 94.504 et seq.

NOW, THEREFORE, it is hereby agreed:

- I. CANBY MUNICIPAL CODE 16.84.040 APPLICABLE PROVISIONS.

A. Timing of the submittal of an application for zoning. Concurrent with review of this Agreement, the Council shall consider BECK'S annexation application and request that, upon approval of the annexation by the voters, the property described in Exhibit A shall be zoned R-1. This approach will insure that the development agreement as well as the annexation and zone change approvals are consistent with City Code 16.84.

B. Scope of annexation request. In addition to the property described as Exhibit A, BECK's annexation application shall include the entire area of N. Pine Street, County Road No. 2580 adjacent to the Beck property as described in Exhibit B. One half of the area or twenty (20) feet of the area described in Exhibit B is owned by BECK. The other half is a portion of lot 61 of the plat of "Canby Gardens" (plat no. 230) located in the Southeast one-quarter of Section 28, Township 3 South, Range 1 East, of the Willamette Meridian, Clackamas County, Oregon, and owned by Thomas Holmes, hereinafter referred to as HOLMES. BECK agrees to join that portion of HOLMES property identified in Exhibit B within the annexation request. Upon annexation, BECK and HOLMES shall dedicate street right-of-way up to forty (40) feet for N. Pine Street to meet the standards of the City of Canby with future land use actions on the property as part of the development approval process.

C. Timing for Recording. BECK shall have seven (7) calendar days from the date the City Council takes final action approving this Agreement, the annexation and zone change requests to record this Agreement. Failure to record this agreement within the time specified will result in removal of the annexation application from the ballot for consideration by the electors. A condition of approval will be attached to the annexation and zone change approval imposing this same requirement.

D. Dedication of land for future public facilities including park and open space land. At the time of development, and at the discretion of the City of Canby, BECK agrees to satisfy CANBY's parkland dedication obligation based on the standards and regulations currently in place through:

1. Payment of City's park system development charge; or
2. Actual parkland dedication of land adjacent to other parkland and contiguous to the Molalla River Forest Road.

E. Construction of public improvements. At the time of development, City required public improvements will be built to Canby Municipal Code specifications by BECK. BECK agrees to provide an extension of 17th Avenue, in alignment with the existing segment west of Pine Street, east through the property and, if decided by the City at the time of tentative plat design approval, to provide a logical connection of the 17th Avenue extension to the south to connect with the extension of North Plum Court.

F. Utility availability. BECK agrees to ensure that utilities and infrastructure are available to serve the property described in Exhibit A at densities currently authorized in the R-1 zone. To the extent that additional utility or service infrastructure is required to serve the property when developed, BECK agrees to provide those utilities and services

in a way that is commensurate with the impacts from development and consistent with the City's Code. BECK also agrees to allow connection to BECK's constructed public facilities by adjacent property owners.

G. Waiver of compensation claims. BECK waives compensation or waiver of land use regulations as provided in ORS 195.300 and 195.336, as well as Measure 49, resulting from annexation and the concurrent zone change approval.

H. Rough proportionality of future exactions. To the extent that this agreement identifies specific park dedication, right-of-way dedication, utility or service obligations, these obligations are necessary and will be limited to an amount necessary to serve this development based on the proposed development application as well as on the uses and densities permitted in the R-1 zone.

I. Other commitments deemed valuable to the City of Canby. BECK agrees development will meet the requirements of the adopted CANBY Municipal Code in effect at the time of development.

II. OTHER CONSIDERATIONS.

A. Duration. This Agreement shall be effective upon CANBY, acting by and through its city council, approving this Agreement and upon its recording with the Clackamas County Recording Office. As used herein, "approval" means the granting of the approval and the expiration of the period of appeal, or if appeal is filed, the resolution of that appeal. This Agreement shall continue in effect for a period of eight (8) years after its effective date unless cancelled as provided in Section II, C below.

B. Recording. Within seven (7) calendar days after taking effect, BECK shall record this agreement with the Clackamas County Recorder's Office and provide a copy of the recorded agreement to the City Attorney.

C. Cancellation. In the event a majority of the city electorate denies the annexation, BECK may request the cancellation of this Development Agreement. BECK and CANBY agree to cooperate to prepare and record a mutually agreeable document to rescind this Development Agreement. Upon rescission, this Development Agreement shall be null and void without further legal effect.

D. Modification. This Agreement may be modified or amended upon the mutual consent of BECK and CANBY.

Dated this _____ day of _____, 2009.

Norman E. Beck

Jenny L. Beck

CITY OF CANBY, OREGON

By: _____

Amanda Klock, Interim City Administrator

Dated: _____

APPROVED AS TO FORM:

By: _____

Dated: _____

APPROVED BY ACTION OF CITY COUNCIL ON _____, 2009.

CITY COUNCIL RESOLUTION NO.: _____.

STATE OF OREGON)

) ss.

County of Clackamas) _____, 2009

Personally appeared before me, NORMAN E. BECK, and acknowledged the foregoing instrument to be his voluntary act and deed.

Notary Public for Oregon

My Commission Expires: _____

STATE OF OREGON)

) ss.

County of Clackamas) _____, 2009

Personally appeared before me, JENNY L. BECK, and acknowledged the foregoing instrument to be her voluntary act and deed.

Notary Public for Oregon

My Commission Expires: _____

STATE OF OREGON)

) ss.

County of Clackamas)

_____, 2009

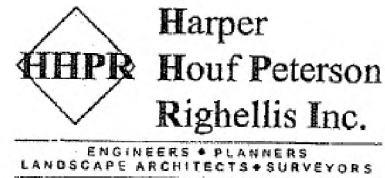
Personally appeared before me, AMANDA KLOCK, as the Interim City Administrator of the City of Canby, Oregon.

Notary Public for Oregon

My Commission Expires: _____

PDX_DOCS:437228.3 [36434-00200]
09/4/09

EXHIBIT A



LEGAL DESCRIPTION FOR DEVELOPMENT AGREEMENT (BECK)

April 30, 2009

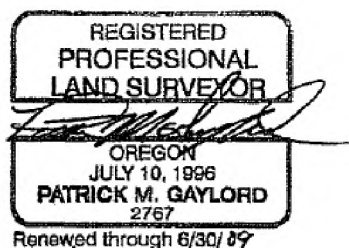
A PORTION OF LOT 77, CANBY GARDENS, PLAT NO. 230, IN THE SOUTHWEST ONE QUARTER OF SECTION 27, T3S, R1E, W.M., CITY OF CANBY, STATE OF OREGON MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT A POINT IN THE SOUTH LINE OF LOT 77, CANBY GARDENS AND THE WEST RIGHT-OF-WAY LINE OF THE MOLALLA FOREST ROAD, 50 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 77; THENCE ALONG THE SOUTH LINE OF THE SAID LOT, NORTH 89°55'49" WEST 589.90 FEET TO A POINT IN THE EAST RIGHT OF WAY LINE OF NORTH PINE STREET, COUNTY ROAD NO. 2580; THENCE ALONG THE SAID RIGHT OF WAY LINE, NORTH 00°01'58" WEST 329.97 FEET TO A POINT IN THE NORTH LINE OF LOT 77; THENCE ALONG THE SAID NORTH LINE, SOUTH 89°55'41" EAST 589.99 FEET TO A POINT IN THE SAID WEST RIGHT-OF-WAY OF THE MOLALLA FOREST ROAD; THENCE ALONG THE SAID WEST RIGHT OF WAY LINE, SOUTH 00°01'00" EAST 329.95 FEET TO THE POINT OF BEGINNING. CONTAINING 4.47 ACRES MORE OR LESS.

TOGETHER WITH THE EAST ONE HALF OF NORTH PINE STREET, COUNTY ROAD NO. 2580, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF LOT 77, CANBY GARDENS AND THE WEST RIGHT-OF-WAY LINE OF THE MOLALLA FOREST ROAD, 50 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 77; THENCE ALONG THE SOUTH LINE OF THE SAID LOT, NORTH 89°55'49" WEST 589.90 FEET TO A POINT IN THE EAST RIGHT OF WAY LINE OF NORTH PINE STREET, COUNTY ROAD NO. 2580 AND THE TRUE POINT OF BEGINNING; THENCE NORTH 89°55'49" WEST 20.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 77, BEING ALSO A POINT IN THE CENTERLINE OF NORTH PINE STREET; THENCE ALONG THE WEST LINE OF THE SAID LOT AND THE SAID STREET CENTERLINE, NORTH 00°01'58" WEST 329.97 FEET TO THE NORTHWEST CORNER OF THE SAID LOT; THENCE ALONG THE NORTH LINE OF SAID LOT 77, SOUTH 89°55'41" EAST 20.00 FEET TO THE NORTHWEST CORNER OF THE HEREIN ABOVE DESCRIBED TRACT OF LAND; THENCE LEAVING THE NORTH LINE OF LOT 77 ALONG THE EAST RIGHT-OF-WAY LINE OF NORTH PINE STREET SOUTH 00°01'58" EAST 329.97 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 0.15 ACRES MORE OR LESS.

THE COMBINED AREAS TALLING 4.62 ACRES MORE OR LESS.



ZTec Engineers, Inc.

Civil ♦ Structural ♦ Surveying

John Middleton, P.E.

Ron Sellards, P.E.

Chris Fischborn, PLS

3737 SE 8th Ave.

Portland, OR 97202

(503)235-8795

fax. 233-7889

email chris@ztecengineers.com

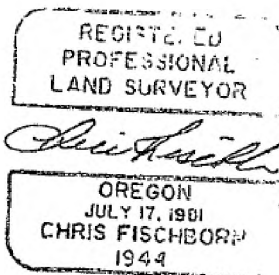
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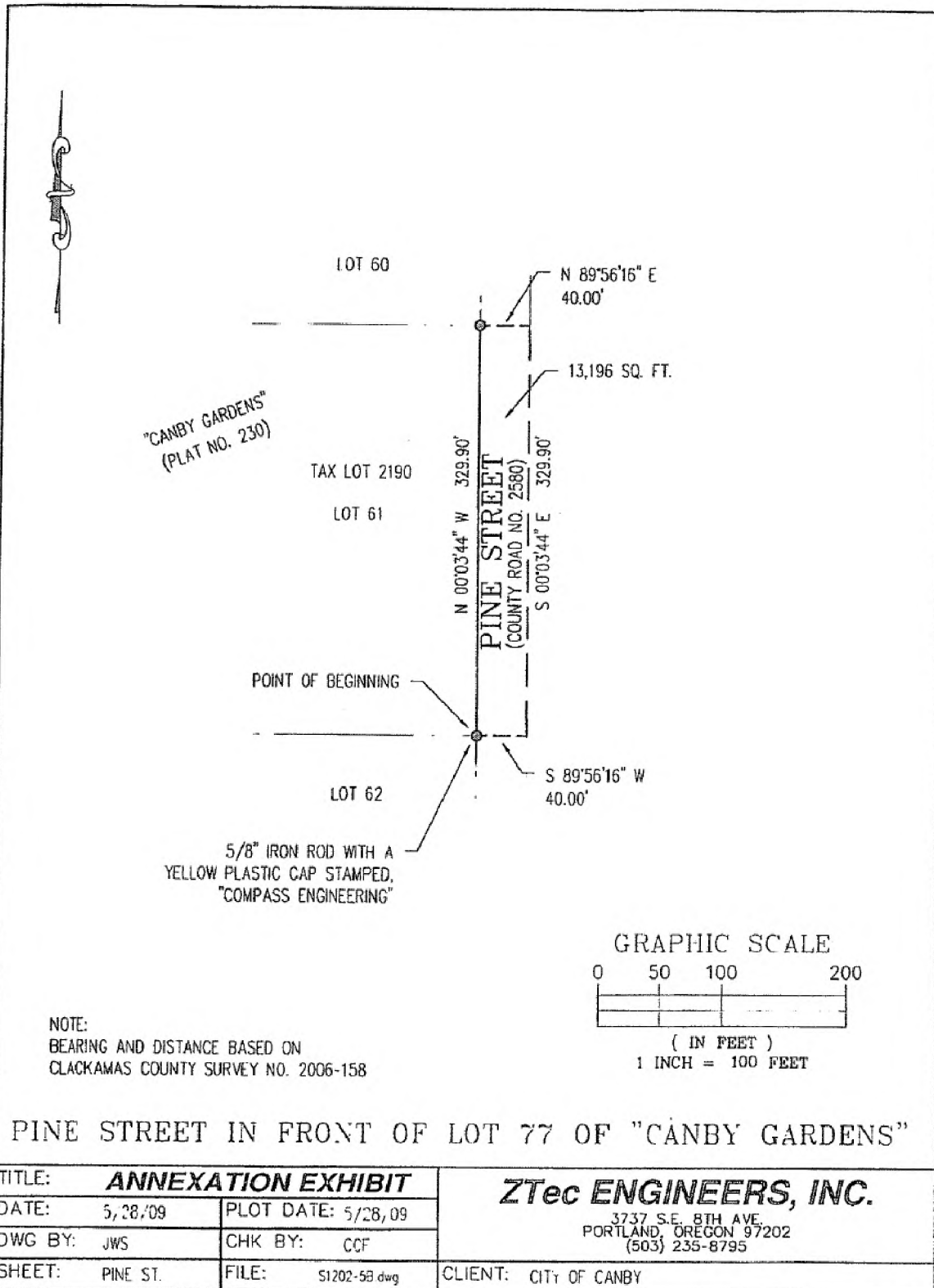
PINE STREET IN FRONT OF LOT 77 OF "CANBY GARDENS"

A tract of land being a portion of Pine street (County Road No. 2580), located in the Southeast one-quarter of Section 27, Township 3 South, Range 1 East, of the Willamette Meridian, Clackamas County, Oregon. Said tract of land being more particularly described as follows:

Beginning at a 5/8 inch iron rod with a yellow plastic cap stamped, "Compass Engineering," found at the intersection of the South line of said lot 61 with the West right-of-way line of said Pine street; thence North 00°03'44" West, along said West right-of-way line, a distance of 329.90 feet to a 5/8 inch iron rod with a yellow plastic cap stamped, "Compass Engineering," found at a point on the North line of said lot 61; thence North 89°56'16" East, at a right angle to said West right-of-way line, a distance of 40.00 feet to the point of the East right-of-way line of said Pine street; thence South 00°03'44" East, along said East right-of-way line, a distance of 329.90 feet to a point; thence South 89°56'16" West, at a right angle to said West right-of-way line, a distance of 40.00 feet to the true point of beginning of the tract of land herein described.

Said tract of land contains an area of 13.196 square feet more or less.





PROPOSED ANNEXATION

SISUL ENGINEERING

A Division of Sisul Enterprises, Inc.

375 PORTLAND AVENUE, GLADSTONE, OREGON 97027

(503) 657-0188

FAX (503) 657-5779

LEGAL DESCRIPTION FOR ANNEXATION

AUGUST 25, 2009

A PORTION OF LOT 77, CANBY GARDENS, PLAT NO. 230, IN THE SOUTHWEST ONE QUARTER OF SECTION 27, T3S, R1E, W.M., CLACKAMAS COUNTY, STATE OF OREGON. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF LOT 77, CANBY GARDENS AND THE WEST RIGHT-OF-WAY LINE OF THE MOLALLA FOREST ROAD, A DISTANCE OF 50 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 77; THENCE ALONG THE SOUTH LINE OF THE SAID LOT, NORTH 89°55'49" WEST, A DISTANCE OF 589.90 FEET TO A POINT IN THE EAST RIGHT-OF-WAY LINE OF NORTH PINE STREET, COUNTY ROAD NO. 2580; THENCE ALONG THE SAID EAST RIGHT-OF-WAY LINE, NORTH 00°01'58" WEST, A DISTANCE OF 329.97 FEET TO A POINT IN THE NORTH LINE OF LOT 77; THENCE ALONG THE SAID NORTH LINE, SOUTH 89°55'41" EAST, DISTANCE OF 589.99 FEET TO A POINT IN THE SAID WEST RIGHT-OF-WAY LINE OF THE MOLALLA FOREST ROAD; THENCE ALONG THE SAID WEST RIGHT-OF-WAY LINE, SOUTH 00°01'00" EAST, A DISTANCE OF 329.95 FEET TO THE POINT OF BEGINNING.

CONTAINING 4.47 ACRES MORE OR LESS.

TOGETHER WITH A TRACT OF LAND BEING A PORTION OF NORTH PINE STREET, COUNTY ROAD NO. 2580, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF LOT 77, CANBY GARDENS AND THE WEST RIGHT-OF-WAY LINE OF THE MOLALLA FOREST ROAD, A DISTANCE OF 50 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 77; THENCE ALONG THE SOUTH LINE OF THE SAID LOT, NORTH 89°55'49" WEST, A DISTANCE OF 589.90 FEET TO A POINT IN THE EAST RIGHT-OF-WAY LINE OF NORTH PINE STREET, COUNTY ROAD NO. 2580 AND THE TRUE POINT OF BEGINNING; THENCE NORTH 89°58'02" WEST, AT A RIGHT ANGLE TO SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 40.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF NORTH PINE STREET; THENCE ALONG THE WEST RIGHT-OF-WAY LINE OF NORTH PINE STREET NORTH 00°01'58" WEST, A DISTANCE OF 329.97 FEET TO A POINT; THENCE SOUTH 89°58'02" EAST, AT A RIGHT ANGLE TO SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 40.00 FEET TO A POINT IN THE NORTH LINE OF SAID LOT 77; THENCE LEAVING THE NORTH LINE OF SAID LOT 77 ALONG THE EAST RIGHT-OF-WAY LINE OF NORTH PINE STREET SOUTH 00°01'58" EAST, A DISTANCE OF 329.97 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 0.30 ACRES MORE OR LESS.

THE COMBINED AREAS TALLING 4.77 ACRES MORE OR LESS.

APPLICANT'S SUBMITTAL

ANNEXATION CRITERIA

(Canby Municipal Code Section 16.84.040)

A. The following criteria shall apply to all annexation requests.

- 1. The City of Canby Annexation Development Map shall determine which properties are required to submit either (see Figure 16.84.040):*
 - a. A Development Agreement (DA) binding for all properties located within the boundaries of the designated DA area as shown on the City of Canby Annexation Development Map. The terms of the Development Agreement may include, but are not limited to:*
 - 1. Timing of the submittal of an application for zoning.*
 - 2. Dedication of land for future public facilities including park and open space.*
 - 3. Construction of public improvements.*
 - 4. Waiver of compensation claims.*
 - 5. Waiver of nexus or rough proportionality objections to future exactions.*
 - 6. Other commitments deemed valuable to the City of Canby.*

For newly annexed properties that are within the boundaries of a DA area as designated on the City of Canby Annexation Development Map: A Development Agreement shall be recorded as a covenant running with the land, binding on the landowner's successors in interest prior to the City Council granting a change in zoning classification.

Response: The site is within a Development Agreement area identified on the City of Canby Annexation Development Map. This DA area includes two properties, the tax lot being proposed for annexation, Tax Lot 2500, and the adjacent parcel to the south, Tax Lot 2600. A Development Agreement is being prepared between the two land owners and will be submitted as an Addendum to the application.

- b. A development Concept Plan (DCP) binding for all properties located within the boundaries of a designated DCP area as shown on the City of Canby Annexation Development Map. A Development Concept Plan shall address City infrastructure requirements including:*
 - 1. Water*
 - 2. Sewer*
 - 3. Stormwater*
 - 4. Access*
 - 5. Internal Circulation*
 - 6. Street Standards*
 - 7. Fire Department requirements*
 - 8. Parks and open space*

For newly annexed properties that are within the boundaries of a DCP area as designated on the City of Canby Annexation Development Map: A Development Concept Plan shall be adopted by the City Council prior to granting a change in zoning classification.

Response: The site is not within a Development Concept Plan area as shown on the City of Canby Annexation Development Map. The provisions of this section do not apply to this application.

2. Analysis of the "need" for additional property within the city limits shall be provided.

Response: "Need" was discussed with relation to the "Land Use Element" of the Comprehensive Plan. The annexation would add 4.47 acres to the City's supply of available, buildable land, approximately a two months' supply. The development process, from land acquisition to annexation to subdivision application to completion of public facilities improvements, can take well over a year. The estimated supply of land may vary, depending on rate of growth and difficulties involved in the development process, such as obtaining financing, designing and constructing public improvements, and so on. The proposed annexation would add approximately two months' supply of buildable land in the R-1 zone (based on projections of annual need for dwellings) that would become part of the available land supply within the City for use in 2010 through 2011, given the time involved in converting raw land to suitable lots ready for building permits.

3. Statement of potential physical, aesthetic and related social effects of the proposed development on the community as a whole and on the neighborhood of which it will become a part; and proposed actions to mitigate proposed concerns, if any.

Response: The site is within the City's UGB, and is expected to develop according to the Comprehensive Plan designations. Some residents on adjacent properties may experience a loss of open space. However, vacant and undeveloped land within an UGB is expected to be utilized to accomplish the community's goals as expressed in the Comprehensive Plan. Therefore, the aesthetic and social impacts of development of the annexation site should be within the anticipated range of impacts associated with continuing growth within the City.

4. Statement of availability, capacity and status of existing water, sewer, drainage, transportation, park and school facilities.

Response: Public facilities and services are available or can be made available, as previously discussed. Public water and sanitary sewer are available in N. Pine Street and drainage facilities are available through a connection to the North Redwood Storm Drain, Advanced Financing District, located in the Logging Road Trail. Public streets in the vicinity of the site generally have adequate capacity as stated by the City's Traffic Engineer during review of the site. Public park facilities located near the site include the Logging Road Trail (adjacent to the site), the Eco Natural Area, the 19th Avenue Loop Natural Area and Maple Street Park. Following the opening of Baker Prairie Middle

School and the re-opening of Lee School as an elementary school in the fall of 2006 the school district has adequate capacity to serve additional students.

5. Statement of increased demand for such facilities to be generated by the proposed development, if any, at this time.

Response: Annexation by itself will not generate an increased demand on public services. One home exists on site and has been located on the site for several decades. Development of the property into multiple lots and multiple homes would increase the demand for City facilities. The site is within the City's UGB and is expected to develop according to its Comprehensive Plan designation; therefore increases in demand for public services should be within the range of impacts anticipated by the adopted Comprehensive Plan. The applicant has been advised that the City has adequate services to serve the site.

6. Statement of additional facilities, if any, required to meet the increased demand and any proposed phasing of such facilities in accordance with projected demand.

Response: Annexation of the property will not increase the demand for public services, however, subdivision of the property multiple lots would increase demand for public water, sewer, drainage, streets, emergency services, parks and schools. Public utilities needed to serve the development of the property would be provided by the development through construction of new public facilities by the developer at the time of subdivision.

7. Statement outlining method and source of financing required to provide additional service, if any.

Response: Public facilities to serve the development will be provided by the development through construction of new facilities by the developer (water, sewer, drainage, streets) through the payment of advanced financing district fees by the developer (drainage), and through the payment of SDC fees (water, wastewater, transportation, storm and parks) by homebuilders building homes within the development. Homebuilders will also pay the construction excise tax for the school district.

8. Statement indicating the type and nature of any Comprehensive Plan text or map amendments or Zoning text or map amendments that may be required to complete the proposed development.

Response: The proposed use of the site is consistent with the adopted Comprehensive Plan Map designation and the text contained in the City's Land Development and Planning Ordinance. No text or map amendments are anticipated to be needed for development of the site.

9. Compliance with other applicable city ordinances or policies.

Response: The application complies with other city ordinances or policies, or can be made to comply through the development process.

10. Compliance with applicable sections of ORS 222.

Response: The applicant expects to comply with these provisions of state law.

Conclusion: The criteria of Section 16.84.040 are satisfied, as demonstrated by the foregoing narrative.

Conclusion

The foregoing narrative describes a proposal for annexation of 4.47 Acres. The annexation supports the City's goals and policies and satisfies applicable criteria identified in the City's Comprehensive Plan and Land Development and Planning Code. Therefore, the proposed annexation should be approved and forwarded to the voters.

SERVICE PROVIDER COMMENTS

CANBY PLANNING DEPARTMENT REQUEST FOR COMMENTS

P.O. Box 930, Canby, OR 97013

[503] 266-7001

FAX 266-1574

DATE: October 09, 2009

TO: ☐ FIRE ☐ CANBY POST OFFICE
☐ POLICE ☐ CLACKAMAS COUNTY ASSESSOR
☐ PUBLIC WORKS ☐ CLACKAMAS COUNTY 911
☐ CANBY ELECTRIC ☐ CLACKAMAS COUNTY TRANSPORTATION
☐ CANBY WATER ☐ TRAFFIC SAFETY COMMITTEE
☐ WWTP - Darwin Trammel ☐ CLACKAMAS COUNTY
☐ WWTP - Jeff Crowther ☐ CANBY SCHOOL DISTRICT
☒ CITY ENGINEER ☐ OREGON DEPT. TRANSPORTATION
☐ CTA ☐ ODOT/REGION 1/DIST 2B
☐ NW NATURAL ☐ STATE OF OREGON/REVENUE
☐ WILLAMETTE BROADBAND ☐ CANBY BUSINESS REVITALIZATION
☐ CANBY DISPOSAL ☐ PARKS AND RECREATION
☐ CITY ATTORNEY ☐ CITY TRANSPORTATION ENGINEER
☐ BIKE AND PEDESTRIAN COMM ☐ BUILDING OFFICIAL
☐ PGE ☐ OTHER _____
☐ CANBY AREA TRANSIT ☐ OTHER _____

The City has received ANN 09-01, an application from Norman and Jenny Beck requesting to annex 4.77 acres into the City of Canby, and requesting to change the zoning thereof from Clackamas County RRFF-5 to City of Canby R-1 (Low Density Residential). The property is located south of N.E. Territorial Road and north of N. Plum Court, and includes land identified by Clackamas County Assessor Map & Tax Lot No. 31E27C-02500 together with a tract of land lying within the boundaries of a portion of N. Pine Street.

Please review the enclosed application and return comments to Melissa Hardy by **Friday, October 23, 2009**. Thank you.

Comments or Proposed Conditions:

PINE STREET R.O.W. ANNEXATION PROCEDURE WAS
COORDINATED LAST JULY. ADEQUACY
PINE STREET SHALL BE IMPROVED TO COLLECTOR STREET STANDARDS
WITH PARKING ON ONE SIDE, R.O.W. DEDICATION (10') WILL BE
REQUIRED ALONG ENTIRE SITE FRONTAGE.
Please check one box and sign below:

- ☒ Adequate Public Services (of your agency) are available
☐ Adequate Public Services will become available through the development
☐ Conditions are needed, as indicated
☐ Adequate public services are not available and will not become available

Signature: [Signature] Date: 10/16/2009

Title: Project Engineer Agency: Curran-McLeod, Inc



**CANBY PLANNING DEPARTMENT
REQUEST FOR COMMENTS**

P.O. Box 930, Canby, OR 97013

[503] 266-7001

FAX 266-1574

DATE: October 09, 2009

TO:

<input type="checkbox"/> FIRE	<input type="checkbox"/> CANBY POST OFFICE
<input type="checkbox"/> POLICE	<input type="checkbox"/> CLACKAMAS COUNTY ASSESSOR
<input type="checkbox"/> PUBLIC WORKS	<input type="checkbox"/> CLACKAMAS COUNTY 911
<input type="checkbox"/> CANBY ELECTRIC	<input type="checkbox"/> CLACKAMAS COUNTY TRANSPORTATION
<input type="checkbox"/> CANBY WATER	<input type="checkbox"/> TRAFFIC SAFETY COMMITTEE
<input type="checkbox"/> WWTP - Darwin Trammel	<input type="checkbox"/> CLACKAMAS COUNTY
<input type="checkbox"/> WWTP - Jeff Crowther	<input type="checkbox"/> CANBY SCHOOL DISTRICT
<input type="checkbox"/> CITY ENGINEER	<input type="checkbox"/> OREGON DEPT. TRANSPORTATION
<input type="checkbox"/> CTA	<input type="checkbox"/> ODOT/REGION 1/DIST 2B
<input type="checkbox"/> NW NATURAL	<input type="checkbox"/> STATE OF OREGON/REVENUE
<input type="checkbox"/> WILLAMETTE BROADBAND	<input type="checkbox"/> CANBY BUSINESS REVITALIZATION
<input type="checkbox"/> CANBY DISPOSAL	<input type="checkbox"/> PARKS AND RECREATION
<input type="checkbox"/> CITY ATTORNEY	<input type="checkbox"/> CITY TRANSPORTATION ENGINEER
<input type="checkbox"/> BIKE AND PEDESTRIAN COMM	<input type="checkbox"/> BUILDING OFFICIAL
<input type="checkbox"/> PGE	<input type="checkbox"/> OTHER _____
<input type="checkbox"/> CANBY AREA TRANSIT	<input type="checkbox"/> OTHER _____

The City has received ANN 09-01, an application from Norman and Jenny Beck requesting to annex 4.77 acres into the City of Canby, and requesting to change the zoning thereof from Clackamas County RRFF-5 to City of Canby R-1 (Low Density Residential). The property is located south of N.E. Territorial Road and north of N. Plum Court, and includes land identified by Clackamas County Assessor Map & Tax Lot No. 31E27C-02500 together with a tract of land lying within the boundaries of a portion of N. Pine Street.

Please review the enclosed application and return comments to Melissa Hardy by **Friday, October 23, 2009**. Thank you.

Comments or Proposed Conditions:

Please check one box and sign below:

- ☐ Adequate Public Services (of your agency) are available
- ☒ Adequate Public Services will become available through the development
- ☐ Conditions are needed, as indicated
- ☐ Adequate public services are not available and will not become available

Signature: Darwin Trammel **Date:** 10/23/09

Title: Wastewater Supervisor **Agency:** WWTP

CANBY PLANNING DEPARTMENT REQUEST FOR COMMENTS

P.O. Box 930, Canby, OR 97013

[503] 266-7001

FAX 266-1574

DATE: October 09, 2009

TO:

<input type="checkbox"/> FIRE	<input type="checkbox"/> CANBY POST OFFICE
<input type="checkbox"/> POLICE	<input type="checkbox"/> CLACKAMAS COUNTY ASSESSOR
<input type="checkbox"/> PUBLIC WORKS	<input type="checkbox"/> CLACKAMAS COUNTY 911
<input type="checkbox"/> CANBY ELECTRIC	<input type="checkbox"/> CLACKAMAS COUNTY TRANSPORTATION
<input type="checkbox"/> CANBY WATER	<input type="checkbox"/> TRAFFIC SAFETY COMMITTEE
<input type="checkbox"/> WWTP - Darvin Trammel	<input type="checkbox"/> CLACKAMAS COUNTY
<input type="checkbox"/> WWTP - Jeff Crowther	<input type="checkbox"/> CANBY SCHOOL DISTRICT
<input type="checkbox"/> CITY ENGINEER	<input type="checkbox"/> OREGON DEPT. TRANSPORTATION
<input type="checkbox"/> CTA	<input type="checkbox"/> ODOT/REGION 1/DIST 2B
<input type="checkbox"/> NW NATURAL	<input type="checkbox"/> STATE OF OREGON/REVENUE
<input type="checkbox"/> WILLAMETTE BROADBAND	<input type="checkbox"/> CANBY BUSINESS REVITALIZATION
<input type="checkbox"/> CANBY DISPOSAL	<input type="checkbox"/> PARKS AND RECREATION
<input type="checkbox"/> CITY ATTORNEY	<input type="checkbox"/> CITY TRANSPORTATION ENGINEER
<input type="checkbox"/> BIKE AND PEDESTRIAN COMM	<input type="checkbox"/> BUILDING OFFICIAL
<input type="checkbox"/> PGE	<input type="checkbox"/> OTHER _____
<input type="checkbox"/> CANBY AREA TRANSIT	<input type="checkbox"/> OTHER _____

The City has received ANN 09-01, an application from Norman and Jenny Beck requesting to annex 4.77 acres into the City of Canby, and requesting to change the zoning thereof from Clackamas County RRFF-5 to City of Canby R-1 (Low Density Residential). The property is located south of N.E. Territorial Road and north of N. Plum Court, and includes land identified by Clackamas County Assessor Map & Tax Lot No. 31E27C-02500 together with a tract of land lying within the boundaries of a portion of N. Pine Street.

Please review the enclosed application and return comments to Melissa Hardy by **Friday, October 23, 2009**. Thank you.

Comments or Proposed Conditions:Please check one box and sign below:

- ☐ Adequate Public Services (of your agency) are available
- ☒ Adequate Public Services will become available through the development
- ☐ Conditions are needed, as indicated
- ☐ Adequate public services are not available and will not become available

Signature:  Date: 10/15/09Title: W. K. Depp, Foreman Agency: Canby Utility

CANBY PLANNING DEPARTMENT REQUEST FOR COMMENTS

P.O. Box 930, Canby, OR 97013

[503] 266-7001

FAX 266-1574

DATE: October 09, 2009

TO:

<input type="checkbox"/> FIRE	<input type="checkbox"/> CANBY POST OFFICE
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Comments or Proposed Conditions:

the canby utility annexation policy will apply to this
project

Please check one box and sign below:

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- ☒ Adequate Public Services will become available through the development
- ☐ Conditions are needed, as indicated
- ☐ Adequate public services are not available and will not become available

Signature: [Signature] Date: 10-21-09

Title: Line Foreman Agency: Canby Utility Elect

CANBY PLANNING DEPARTMENT REQUEST FOR COMMENTS

P.O. Box 930, Canby, OR 97013

[503] 266-7001

FAX 266-1574

DATE: October 09, 2009

- TO:
- | | |
|---|--|
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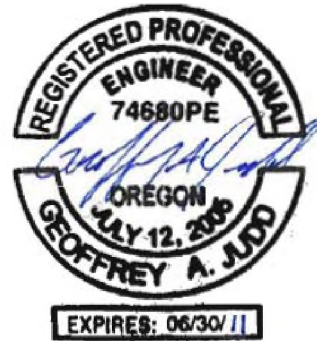
Signature: Melissa Hardy Date: 10-15-09

Title: President Agency: Canby Disposal Co.

TRAFFIC IMPACT STUDY

TECHNICAL MEMORANDUM

TO: Melissa Hardy, City of Canby
FROM: Catriona Sumrain, TOPS *CS*
DATE: June 4, 2009
SUBJECT: Traffic Report
Beck Annexation



321 SW 4th Ave., Suite 400
Portland, Oregon 97204
phone: 503.248.0313
fax: 503.248.9251
lancasterengineering.com

INTRODUCTION

This memo is written to provide the results of a traffic analysis to examine the impacts of annexing a property into Canby City Limits. The property is located at 1732 N Pine Street, which is on the east side of N Pine Street and south of NE Territorial Road. A traffic study had been prepared by Lancaster Engineering on January 6, 2006 and examined the impacts of annexation.

The site is approximately 4.47 acres and is planned for R-1 (Low-Density Residential) zoning upon annexation. The site could be developed with up to 23 homes under the future zoning designation. Figure 1 in the technical appendix is the vicinity map of the site.

A development agreement is underway for the annexation. Although a final agreement has not yet been reached, it is likely the agreement will include the condition that future access to the site be located in alignment with the future extension of NE 17th Avenue.

PREVIOUS TRAFFIC IMPACT STUDY

The results and conclusions of the previous traffic study showed that the operational impacts of the annexation were minimal. The level of service at N Pine Street and NE Territorial Road was projected to be A with the proposed annexation.

The previous study further concluded that access location was a greater concern, particularly with regard to possible access to the property opposite the site and existing access to the north.

TRIP GENERATION

Annexation of the property would allow development to occur under the City's R-1 zoning designation. Since there is no development plan associated with an annexation, a reasonable worst-case scenario was assumed.

To estimate the number of trips that will be generated by proposed annexation, trip rates from *ITE TRIP GENERATION* were used. Land-use code 210, *Single-Family Detached Housing*,



Melissa Hardy
June 4, 2009
Page 2 of 3

was used. The trip rates are based on number of dwelling units and were calculated for a worst-case development of 23 homes.

The results of the trip generation calculations show that the proposed annexation will generate up to 17 trips during the morning peak hour. Of these, 4 trips will be entering the site and 13 trips will be exiting the site. During the evening peak hour, up to 23 trips will be generated, with 14 trips entering the site and 9 trips exiting the site. During the weekday, up to 220 trips are expected, with half entering and half exiting the site.

TRIP GENERATION SUMMARY											
LAND USE	SIZE	VAR	AM PEAK HOUR			PM PEAK HOUR			WEEKDAY		
			In	Out	Total	In	Out	Total	In	Out	Total
SFD	23 d.u.		4	13	17	14	9	23	110	110	220

Because a residential development is typically an origin or destination for trips, no reduction was taken for pass-by trips. Also, no reduction was made for transit use.

Figures 2 and 3 in the technical appendix show the expected trip distribution and assignment for the site.

SITE ACCESS

It is likely that the development agreement will stipulate site access located in alignment with the existing segment of NE 17th Avenue. This would place site access approximately 95 feet north of the southern property line. It was this location that was examined for safety and access. Figure 4 in the technical appendix shows the location of existing access points as well as the approximate spacing distance of future site access.

N Pine Street is classified as a Collector. Minimum access spacing for a Collector is 150 feet. If the site access is placed in alignment with NE 17th Avenue, there will be approximately 205 feet between the site access and the closest driveway to the north and about 315 feet to the closest driveway to the south. Both driveways are located on the west side of N Pine Street.

The closest driveway to the north serves a home located on a flagpole-shaped lot. If there will be any development on this lot, it is possible that access would still be to N Pine Street. Assuming a full-width access at this location leads to a future access spacing of about 185 feet.

It is unlikely that if the nearby properties are also annexed and developed future street access would be located at the current driveways. For this reason, measurements were also taken to the Willamette Grove apartment driveway and an assumed location for NE 16th Avenue. Aligning site access with NE 17th Avenue results in an access spacing of about 295 feet to the Willamette Grove apartment driveway to the north and about 235 feet to "NE 16th Avenue" to the south.



Melissa Hardy
June 4, 2009
Page 3 of 3

Placing site access in alignment with NE 17th Avenue conforms to the City's access spacing requirements if no additional access is allowed onto N Pine Street. In addition, this access location allows for further annexation of nearby properties without unduly restricting future development of those properties.

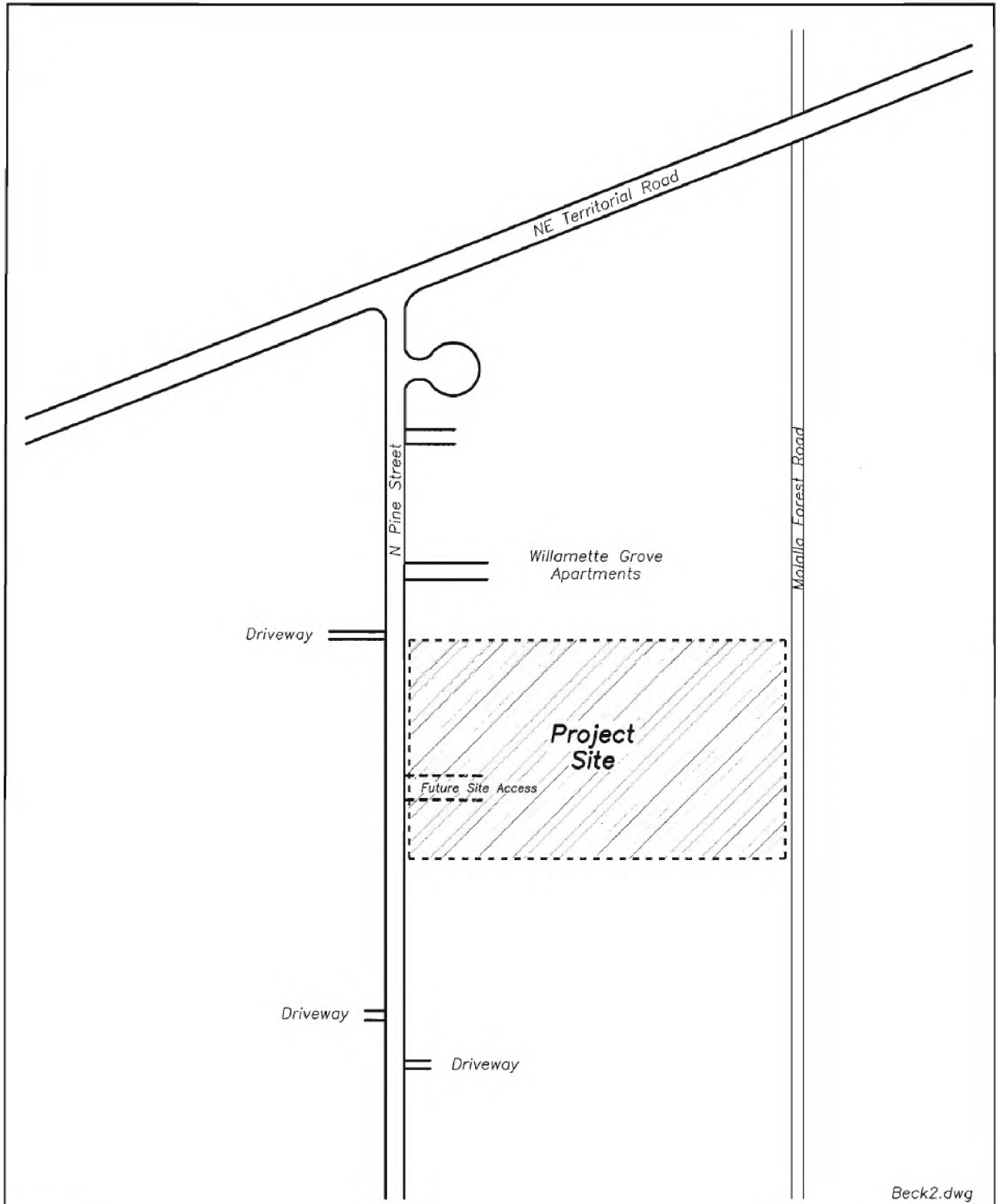
Sight distance was examined at the site access location. In accordance with guidelines in *A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS AND STREETS*, published in 2004 by the American Association of State Highway and Transportation Officials (AASHTO), sight distance was examined at a point 15 from the edge of the roadway, assuming a 38-foot curb-to-curb width and based on a driver's eye height of 3.5 feet with an oncoming driver's eye height of 3.5 feet. The posted speed on N Pine Street is 25 mph, requiring a minimum of 280 feet of sight distance in either direction.

N Pine Street is straight and level and there are no obstructions to the sight distance in either direction. Sight distance will be adequate at an access location aligned with NE 17th Avenue.

TRANSPORTATION PLANNING RULE

Because the site is proposed for annexation, the provisions in the Transportation Planning Rule (OAR 660-012-0060) apply.

The previous traffic impact analysis showed that the annexation would not significantly affect the transportation system. Since traffic volumes have not changed substantially since the previous traffic study, a new analysis would report similar results. The annexation would not significantly affect the transportation system. The proposed annexation meets the requirements of the Transportation Planning Rule.

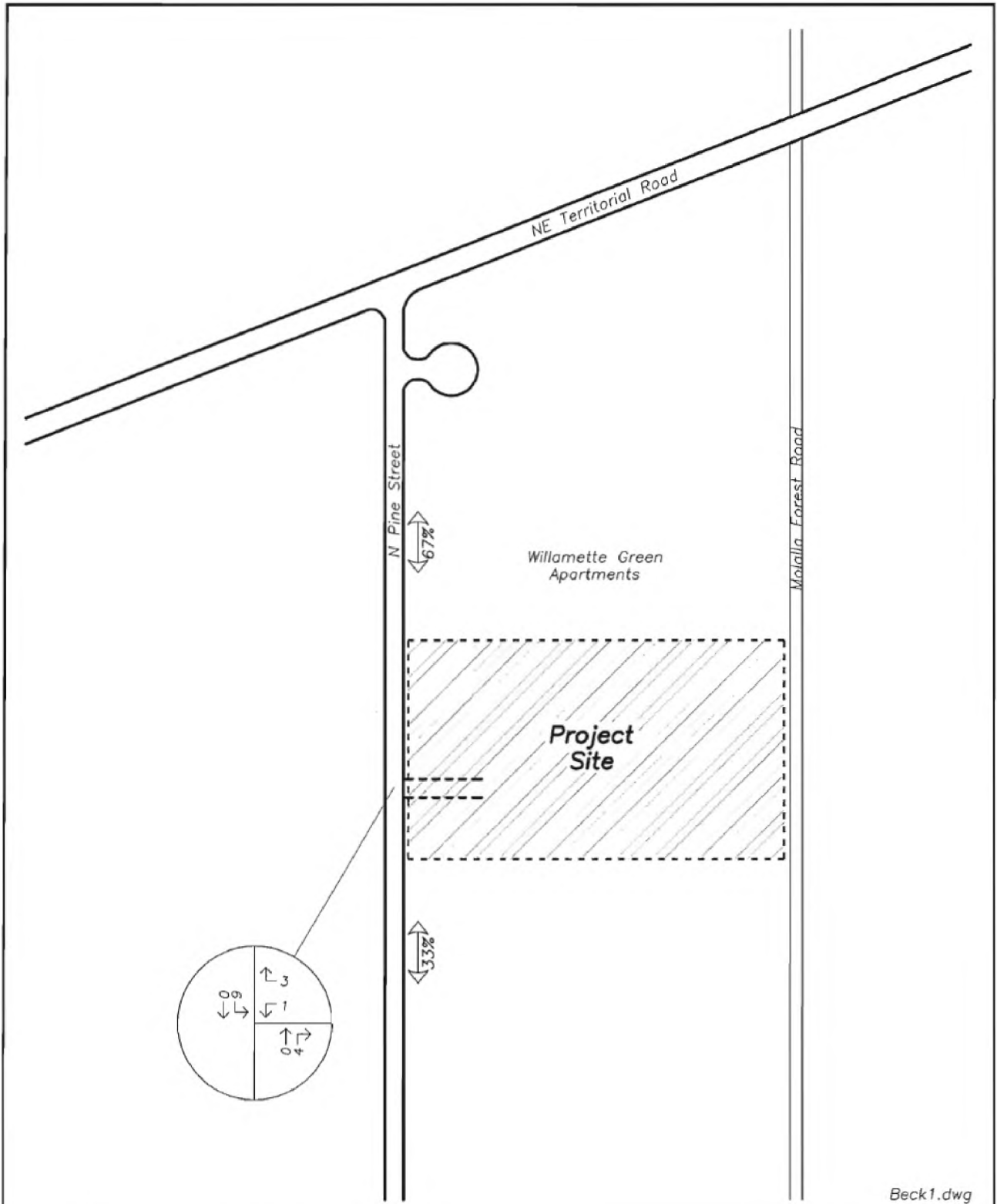


VICINITY MAP



FIGURE
1

APPENDIX



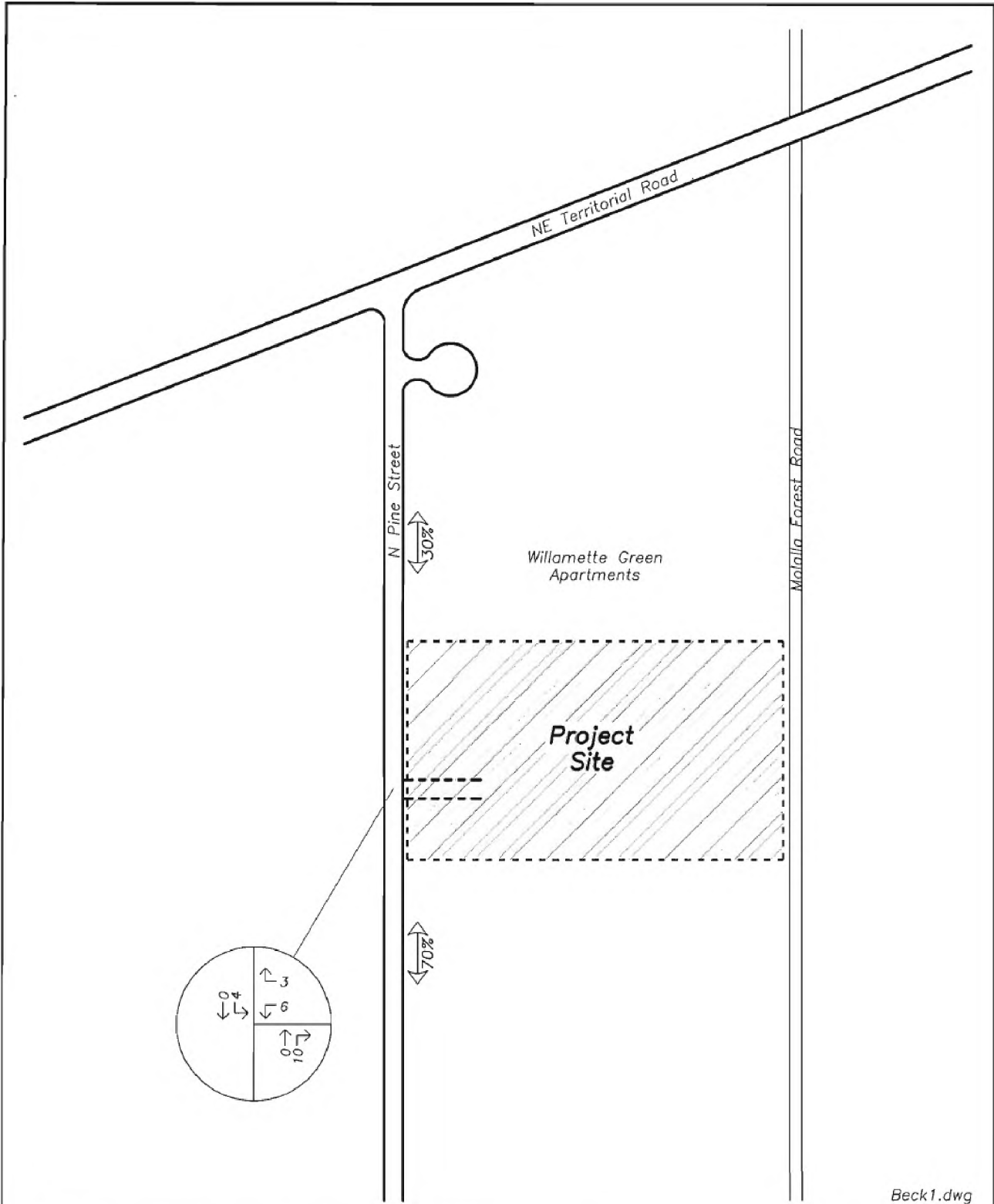
Beck1.dwg



SITE-GENERATED TRAFFIC
Proposed Development Plan
AM Peak Hour



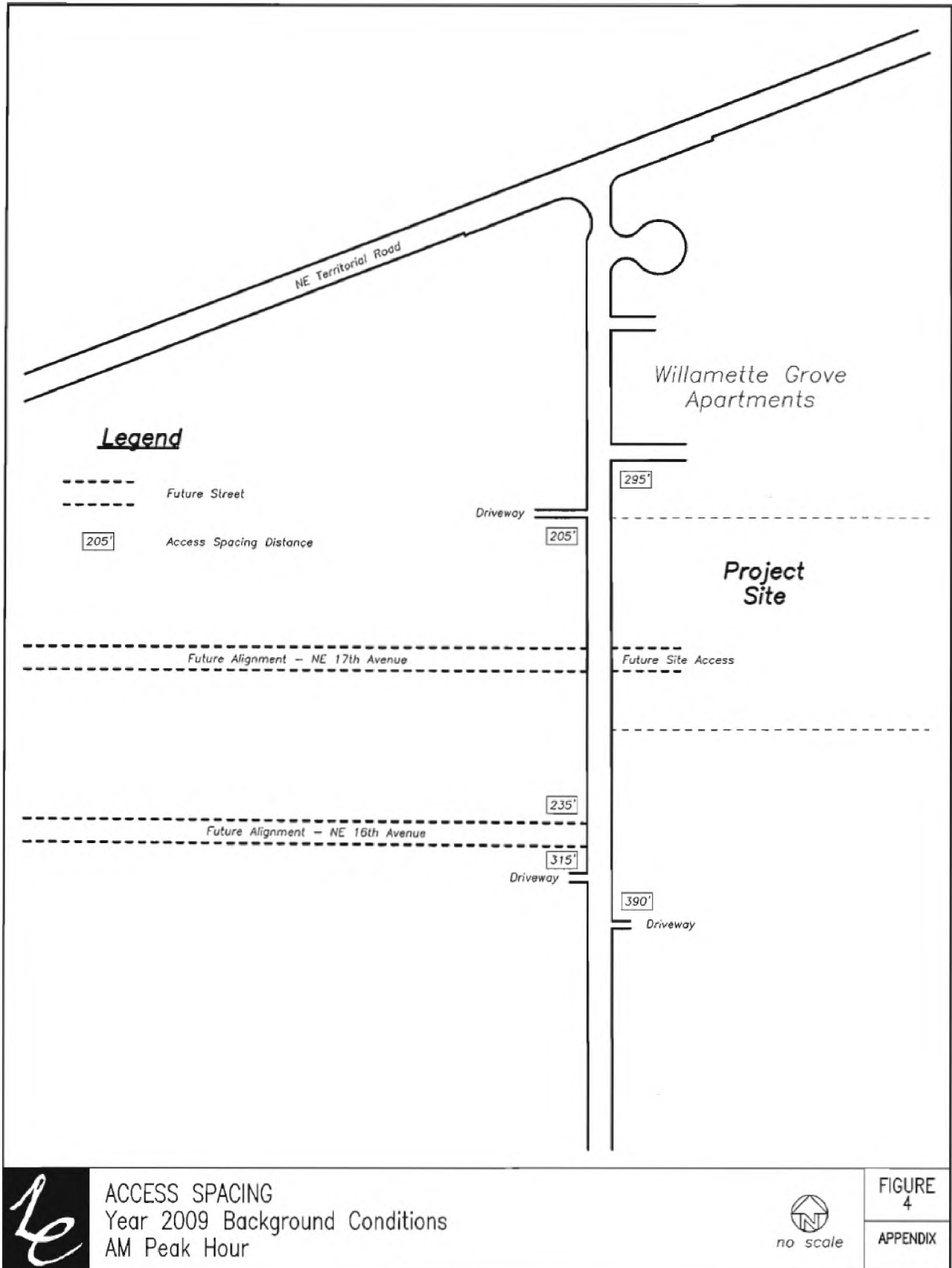
FIGURE
2
APPENDIX



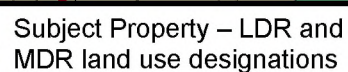
SITE-GENERATED TRAFFIC
Proposed Development Plan
PM Peak Hour



FIGURE
3
APPENDIX



(Excerpt)



NEIGHBORHOOD MEETING NOTES

Beck Pine Street Annexation - Neighborhood Meeting
Regularly scheduled NECNA meeting, February 19, 2009, 7:00 pm
Willamette Green Clubhouse

A list of meeting attendees provided by the NECNA is attached.

The presentation began at approximately 7:05 PM.

The applicant's representative, Pat Sisul of Sisul Engineering provided maps of the site and the general area and described the proposed annexation and the General Land Use plans. Two plans were provided, Plan 1, which is the same General Land Use Plan provided when the parcel was proposed for annexation in 2006 which features a single connection from the site to Pine Street and Plan 2, which featured two connections to Pine Street and a slightly different lot arrangement. The site is zoned R-1, which allows for minimum lot sizes of 7,000 sf and with either plan 19 lots could be created on the 4.5 acre property.

Pat Sisul explained that this neighborhood meeting was the first opportunity for neighbors of the development to ask questions and offer comments. A pre-application meeting was going to be held with the City in the next week and an application had to be submitted to the City by the end of February in order to make the November election. A Planning Commission hearing and a City Council hearing will likely be held in April and May.

Below are some of the questions asked during the meeting:

- What guarantee do the neighbors have that the property would not be developed as high density? *The site is identified in the City's Comprehensive Plan as Low Density Residential and will come into the City with R-1 zoning. In order to change the zoning, the applicant would have to go through a Comprehensive Plan adjustment and a zone change, which are not easy processes to go through. We doubt there would be any support from the City for such a change. The applicant indicated that he had no intentions of developing the site as anything other than low density residential.*
- What is zoning of the Willamette Grove Apartments and the Holmes property? *The apartments are zoned R-2, the Holmes property is either R-1.5 or R-2.*
- Is it odd to have high density adjacent to low density without stepping down to medium density in between? *It's not uncommon, but each city is different in their approach. It looks as though the City of Canby chose to locate high density zoning along the Territorial Road corridor, likely because there is a transit line on that street. Higher density is typically located near transit of commercial areas.*
- Will the project improve Pine Street across only the property frontage or across both properties on that side of the street that are in the County? *Likely only along the property frontage.*
- Will sanitary sewer and water have to be extended in front of both County parcels, or only the parcel owned by the applicant? *Likely only the parcel owned by the applicant, however, we have not yet had the pre-application meeting with the City, so we do not know for sure. If*

the applicant was required to extend waterline or sewer beyond his site, then he would be able to create an Advanced Financing District to collect fees for the additional footage from the people fronting the line at the time that they make connection to it.

- *Is it odd to have an offset intersection? (in reference to the alignment of the applicant's 18th Avenue and 18th Avenue alignment on the Holmes property) Yes that would be untypical. We've heard that there was a reason why the Holmes property located their access where it is shown on their concept plan. Their alignment is centered on the property line common to the Becks' property and the apartment site. We cannot align with that street without a dedication from the apartment site, an unlikely scenario. The City traffic engineer is aware of the issue and the City will have to direct an outcome as subdivisions are approved.*
- *Is a traffic study required? An update of the earlier study is being done.*
- *What did the traffic study say last time? The traffic study identified no concerns in the immediate area of the site. The City's traffic engineer has informed me that nothing has changed in the vicinity of the site that would alter the report from 2005/2006.*
- *The City passed an ordinance last summer requiring master plans and development agreements; does it apply to this property? Yes, this property is required to enter into a Development Agreement. This will be the first annexation that has to enter into a DA, and we're not sure who writes it or when it has to be written. We should get answers at our pre-app meeting next week.*
- *Will we get to see what is in the DA before the election? We anticipate so. The preliminary indication from the City Staff is that they feel that the DA needs to be prepared before the application goes before the City Council for recommendation to the voters. This would be several months prior to the election.*
- *What is the width of a public street? 40 feet of right of way, 36 feet from curb to curb. Sidewalks are in an easement behind the right-of-way.*
- *Would the street along the apartment site be built right next to the fence? That is how we have it shown. If the City required a sidewalk along that side of the street the street would have to be moved off the fence in order to accommodate it, but we don't know whether a sidewalk along the apartment complex side of 18th Avenue would be required. This would be answered when a subdivision application was submitted.*
- *Is the one access plan acceptable to the Fire Department? The Fire Department will allow one access to serve up to 25 homes, although more can be served if fire sprinkler systems are installed. City Code will allow one access for up to 30 homes. Nineteen homes are likely.*
- *What is the size of the cul-de-sac? We've shown a half street and a half cul-de-sac. The curb to curb width on the cul-de-sac has to be 96 feet for the fire department to use it as a turnaround.*
- *Norm Beck indicated that they intended to bring the property into the City, but had no immediate plans to develop it. We have a Master Plan for the site only because the City requires that a plan be submitted with the application.*
- *There were no objections offered. A vote was taken and Plan A was preferred to Plan B.*

The presentation was ended at approximately 7:55 PM. The regular meeting continued.

Notes prepared by
Patrick A. Sisul, Sisul Engineering

NECNA Meeting 18th February 2009

We discussed the annexation request with mister Beck and his representative mister Pat Sisul. We have no objection to this request if the following issues are adhered to.

#1 There is a binding development agreement.

#2 There is no change in zoning. Currently listed as low density residential R-1 Mr Beck stated he has no intensions of asking for a change.

#3 All other City codes are followed.

There were also discussions as to why some proposed streets on opposite sides accessing Pine do not align with each other. The street in question is N E 18th Ave on Mr Tom Holmes proposed development and N E 18th on the Beck property. It was pointed out that past developments is preventing future alignment. This is another example of a need for Master Plans. I am also submitting a land use plan provided by Mr Sisul. Our group voted this as the most desirable.

Leonard Walker Chairman NECNA





CITY OF CANBY - COMMENT FORM

If you are not able to attend the Planning Commission hearing and/or City Council hearing, you may submit written comments on this form or in a letter to the City of Canby Planning Department.

By mail: Planning Department, PO Box 930, Canby, OR 97013
In person: Planning Department at 170 NW Second Avenue
E-mail: Hardym@ci.canby.or.us

Written comments for Planning Commission are due by 7 PM on Nov 23, 2009;
Written comments for City Council are due by 7:30 PM on February 17, 2010.

APPLICATION: Annexation, Zoning, and Development Agreement

APPLICANT: Norman and Jenny Beck

CITY FILE #: ANN 09-01

COMMENTS:

*I think the Beck's should be allowed to do what
They want with their inherited piece of property.*

YOUR NAME: *JoAnn C. Scott*

ORGANIZATION or BUSINESS (if any):

ADDRESS: *1467 N. Pine - Canby -*

PHONE # (optional):

DATE: *Nov. 20 - 09*



M E M O R A N D U M

TO: *Honorable Mayor Thompson and City Council*

FROM: *Amanda Klock, Interim City Administrator*

DATE: *February 17, 2010*

PREPARED BY: *Bryan Brown, Planning Director on 2.04.10*

ISSUE: *Consideration of Maintaining a Historic Review Board*

Synopsis:

The Council recently asked staff the question as to whether there were any necessary reasons to maintain the Historic Review Board. The appointment of members to this Board has lapsed due to either an apparent lack of interest or possibly a lack of coordination and outreach efforts to educate citizenry to the community benefits of an active historic preservation program. Canby worked hard in 2002/2003 to adopt a historic preservation ordinance and to apply and successfully obtain Certified Local Government (CLG) designation through the Oregon State Historic Preservation Office (SHPO) a partner in promoting the protection of our historic cultural resources through the National Trust for Historic Preservation. Establishment of a Historic Review Board along with adoption of a local preservation ordinance is two key requirements necessary to maintain CLG status. The State has been able to provide a variety of support to CLG's including an annual non-competitive grant to promote work towards each local community's preservation goals. A likely top need within Canby is to educate the public of the benefits of a preservation program so that garnering interest in participation on a Historic Resource Board is not a problem in the future. Staff would suggest that the Council consider providing support to an outreach effort to garner new membership to the Historic Review Board to gage support for a continuing local historic preservation program at the CLG level. It is understood that such programs are completely voluntary and should be driven by community interest. Alternatives to having our own Historic Review Board are indeed limited for the application of the existing preservation ordinance provisions and there application to actual properties can be quit divisive when not supported by the community or handled by knowledgeable staff and Board members.

Recommendation:

That the City Council considers supporting an outreach effort to garner new membership to the Historic Review Board to gage whether enough support exists for a continuing local historic preservation program at the CLG level. This may entail staff arranging to have State SHPO staff attend an advertised local educational program to answer common questions and garner support for our current ordinance protections and serving on the Historic Review Board.

Rationale:

A lot of work went into getting Canby set up to qualify as a CLG and in a position to accept an annual matching grant from SHPO to meet desired preservation objectives. An active Board however is needed to maintain our CLG status to obtain a matching grant and to help identify what the community's preservation objectives are. A possible concern is that a certain level of

City support is necessary to match in order to obtain a grant award. The ordinance put in place was required to meet SHPO's standards to promote preservation of identified landmarks.

The City is embarking on joining and embracing the Main Street program to assist with economic revitalization of our Downtown area. The four point proven system includes preservation as a key cornerstone where you celebrate, promote, and recognize the unique existing historic character of each local Main Street and build upon that for success. Canby may be sending the wrong message and weakening the Main Street program if we were to abandon our Historic Review Board and preservation ordinance.

Background:

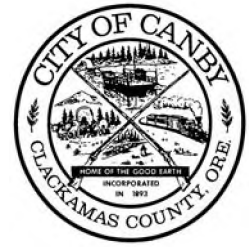
The Canby Historic Review Board is authorized within Section 16.110.025 of the CMC along with the purpose, duties, and procedures set up to safeguard the city's historic and cultural heritage through preservation provisions for identified structures, sites, objects and districts of cultural interest. Section 16.38 of the CMC establishes a Historical Protection Overlay Zone (A) which is essentially applied to those specific properties determined to have community significance and have been established as historic landmarks.

In regard to providing support to the Historic Review Board, staff is the first to caution about the dangers of over obligating limited staff with unnecessary Boards that exist on a regular and permanent basis. Often ad-hoc committee assigned to complete a defined project is a better way to go to when trying to accomplish a specific project. Boards are often necessary and can be particularly important when their role is clearly laid out as is the case with the Historic Review Board within the historic preservation ordinance. However, it is very rare for actual ordinance regulatory provisions to arise since there are only four properties currently listed as historic landmarks. The promotion of an expansion of such a list is of course one of the jobs of such a Board. Surveying and inventories of possible properties for inclusion is often a key activity of such Boards. This may have a positive influence in relation to the revitalization of the Downtown area.

Historic Preservation is both an art and science, promoted by enthusiasts with an intrinsic interest in our cultural heritage. A City is rarely successful in forcing preservation issues, but can be a force for providing an opportunity to raise awareness of the importance that preserving our past can have in improving our quality of life.

Alternative:

1. Consider eliminating the Historic Review Board and either modifying or eliminating the accompanying preservation ordinance. This may be considered appropriate after nearly 7 years of relative silence about the inactivity of the Historic Review Board and lack of situations which call the ordinance provisions into play. An active committed group of enthusiasts is often needed to promote a successful preservation program. Staff is aware of possible alternative arrangements to our own Historic Review Board but SHPO staff does not appear to be supportive of those options which we have discussed with them. Eliminating our Historic Review Board is likely to result in losing our CLG status. We can continue to run a historic preservation program without State support and CLG status but there are many other benefits of being a part of the State program besides the annual grant associated with CLG status.



M E M O R A N D U M

TO: *Honorable Mayor Thompson and City Council*
FROM: *Amanda Klock, Interim City Administrator*
DATE: *February 17, 2010*
PREPARED BY: *Bryan Brown, Planning Director on 2.03.10*

ISSUE: *Inquiry Into the 1999 Klamath Tribe Restoration Act as it pertains to Use of Langdon Farms Golf Club*

Synopsis:

Local government members, including the City of Canby, of the French Prairie Forum are very concerned about the potential use of the 1999 Klamath Tribe Restoration Act that may allow the US Dept. of Interior, Bureau of Indian Affairs to take any land any where into trust on behalf of the Klamath Tribe. The potential is imminent that the act will be employed to site development (likely a casino) on property where the Langdon Farms Golf Club is located. It is requested by the French Prairie Forum membership that the City Council take action to urge our U.S. Senator and Oregon Governor to look into this matter.

Recommendation:

That the City Council support and authorize sending the attached letter asking our Senator to look into this matter on behalf of your constituents and the surrounding local governments.

Rationale:

This request is supported on several different levels. The most obvious has been concern that the interpretation of the Klamath Tribe Restoration Act being pursued by the Langdon Farms property owners serves as a means to evade both state law and local ordinances pertaining to land-use issues. If approved by the BIA it gives the Klamath Tribe a mechanism to take lands into trust far away from the site of their former reservation. Of greatest concern is that development may be allowed within an expected rural reserve designated area as the Metro Reserves process nears a final conclusion. Recent events indicate that the type of development that may be proposed is more certain to be a casino and the resulting impact of such on the existing congested traffic on I-5 in around the Wilsonville and Boones Bridge area is of prime concern to all within the area. This is an issue relevant to all local governments as the Act could be used to site development most anywhere.

Background:

Mark Ottenad, Public/Government Affairs Director with the City of Wilsonville has taken the most active and coordinating role with regard to this issue. I have included his e-mail soliciting support from local officials of the French Prairie Forum as attachment #1. He has provided a collection of news worthy briefing materials that can assist you to more fully understand this evolving issue and these materials are listed below as attachments #3-13. In following the lead of the City of Wilsonville, staff has drafted a letter for the Mayor to sign which is indicated in attachment #2.

Attachments:

- #1: *E-mail from Mark Ottenad Soliciting Support*
- #2: *Letter for the Mayor of Canby to Sign*
- #3: *Article - Landowners, Clackamas County Square off over Development (12.17.2009)*
- #4: *Op Ed – Roll up the Welcome Mat (Sept. 22, 2009)*
- #5: *Article – Klamath Tribes seek 385 acres near Wilsonville (9.21.2009)*
- #6: *Article – Maletis in new Negotiations with Klamath Tribe over Land (8.10.2009)*
- #7: *Article – Is there a big casino in French Prairie’s Future? (8.24.2008)*
- #8: *Article – Fight brews over Rich Farmland (8.15.2008)*
- #9: *Article – Seeing Green (6.25.2008)*
- #10: *Public Law 99-398 – Aug.27, 1986 Klamath Indian Tribe Restoration Act*
- #11: *Klamath Tribes of Oregon, Fee to Trust Application for Aurora Property*
- #12: *Map of French Prairie Region and Langdon Farms*
- #13: *A Klamath Tribes “Mega Casino” Siting Proposal for Langdon Farms*

Alternatives:

1. Do not support sending the attached letter. Perhaps you do not consider this matter a concern to the City of Canby, do not necessarily support the direction the Metro reserves designation process is taking with regard to the Langdon Farms property, or believe a casino or other major industrial or commercial development would be appropriate in this area.
2. Wait to sign a common letter by all jurisdictions to make a greater statement. Staff believes you should do both if a common letter can be successfully routed around.

Bryan Brown

From: Ottenad, Mark [ottenad@ci.wilsonville.or.us]
Sent: Tuesday, February 02, 2010 5:00 PM
To: clehan@co.clackamas.or.us; dcowan@co.clackamas.or.us; Elissa Gertler (elissager@co.clackamas.or.us); pmilne@co.marion.or.us; Jolene Kelley (JKelley@co.marion.or.us); jbintermodal@hotmail.com; NKGemini@centurytel.net; Melody Thompson; Bryan Brown; Catherine Comer; donaldcity@wbcable.net; donaldcity@wbcable.net; angwheatcroft@msn.com; tylersmithis@wbcable.net; vlnogle@cityofhubbard.org; kathryn.figley@ci.woodburn.or.us; scott.derickson@ci.woodburn.or.us
Cc: Mayor Tim Knapp; greg@theleocompany.com
Subject: Draft Ltr to Sen Merkley, re Klamath Tribe Act & French Prairie Land-Use
Attachments: Ltr Sample from Gov't to Sen Merkley re Klamath Tribes Restoration Act 01_2010.doc; Ltr from Mayor to Sen Merkley re Klamath Tribes Restoration Act 01_04_2010 FINAL.pdf; Briefing Materials, re Langdon Farms and Klamath Tribe 01_2010.pdf

Dear officials of the French Prairie Forum,

At the December and January meetings of the French Prairie Forum, members indicated a keen interest in the issue pertaining to the potential use by the owners of the Langdon Farms Golf Club of the 1999 Klamath Tribe Restoration Act as a means to evade both state law and local ordinances pertaining to land-use issues.

At our meeting, we discussed that as a first step the local jurisdictions would send a letter of inquiry to US Senator Jeff Merkley with a copy to Governor Kulongoski. The letter would ask the Senator to look into the matter of the Klamath Tribe Restoration Act, which has unique wording that some interpret as allowing the US Dept. of Interior, Bureau of Indian Affairs (BIA), to take any land anywhere into trust on behalf of the Klamath Tribe.

The implication is that any developer could employ the Klamath Tribe to use the Act as a means to site any kind of development anywhere, thereby making the issue one relevant to all local governments and not just those that happen to be located closest to Langdon Farms – Wilsonville, Aurora and Clackamas County.

Former Congresswoman Elizabeth Furse, who both lobbied on behalf of the Klamath Tribe prior to going to Congress and actively supported the Act in Congress, has said unequivocally that the Act was intended to help restore the Klamath Tribe to primarily former reservation lands along the Southern Oregon/Northern California border, location of the Tribe's ancestral lands, and to further the Tribe's economic development through use of these lands. The Act was never intended to provide a mechanism whereby the Klamath Tribe could take lands into trust over 200 miles away from the site of the former reservation or anywhere in the Willamette Valley, which composed the ancestral lands of the Grand Ronde Tribes.

The letter is one of asking the Senator to look into the matter. The letter is not an advocacy letter; rather, it raises the issues of concern and requests that the Senator look into the matter. As one French Prairie official indicated, sending this letter is a low-cost, responsible action on behalf of your constituents and local government jurisdiction.

Please find attached:

- 1) draft letter for your potential use; the few portions in all-capitals could be changed to your jurisdiction and leadership; feel free to modify as you see fit.
- 2) scan of the letter sent by the City of Wilsonville to Senator Merkley.
- 3) packet of briefing materials pertaining to the Langdon Farms Golf Club and Klamath Tribe Restoration Act land-use controversy

Because the Portland Metro Urban/Rural Reserves process is getting close to reaching a conclusion where the Clackamas County portion of French Prairie maybe designated a Rural Reserve, we understand that a formal submittal by the Klamath Tribe on behalf of Langdon Farms to the BIA could come at any time. Therefore, time is of the essence that the local governments of French Prairie act to raise awareness of the issue before the Senator and Governor, both of whom carry the most influence in this process.

Please send your letter to:

The Honorable Jeff Merkley, U.S. Senator

121 SW Salmon Street, Suite 1400
Portland, OR, 97204

With a copy to:

The Honorable Kulongoski, Governor
160 State Capitol
900 Court Street
Salem, Oregon 97301

If possible, please send a copy to me via email or mail; contact info below.

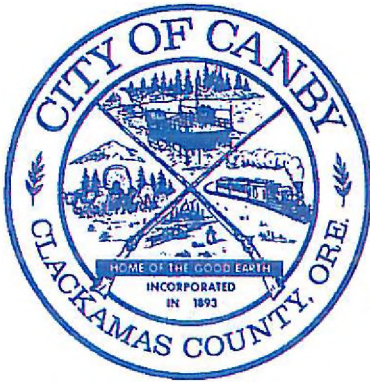
Commissioner Milne has also suggested that a letter commonly signed by all jurisdictions would be powerful, and I will work on seeing if we can also make this happen.

Please feel free to contact me with any questions or concerns. Thank you for your time and consideration.

- Mark

Mark C. Ottenad
Public/Government Affairs Director
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville, OR 97070
General: 503-682-1011
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Web: www.ci.wilsonville.or.us

DISCLOSURE NOTICE: Messages to and from this E-mail address may be subject to the Oregon Public Records Law.



City of Canby

Administration

February 17, 2010

The Honorable Jeff Merkley,
U.S. Senator
121 SW Salmon Street, Suite 1400
Portland, OR, 97204

RE: Request for Assistance to Examine Klamath Tribe Restoration Act

Dear Senator Merkley:

I am writing to you on behalf of the residents and businesses of Canby to request your assistance regarding questions that have arisen about the reach and use of the Klamath Indian Tribe Restoration Act, PL 99-398 (Act), and potential unintended consequences.

Media reports have indicated that Chris and Tom Maletis, owners of Langdon Farms Golf Club, located in the prime French Prairie farmlands of unincorporated Clackamas County, seek to utilize the federal Act in order to convert exclusive farm use (EFU) lands to commercial or industrial development that would otherwise be prohibited by Oregon land-use laws and local county zoning ordinances. We understand that the Klamath Tribe has been advised that the Act allows the US Department of the Interior Bureau of Indian Affairs (BIA) to take into trust for the tribe lands that are located anywhere.

If this interpretation of the Act were to be upheld, serious consequences could ensue for many jurisdictions—at the local, state and federal levels—and possibly not just throughout Oregon but in other states and territories as well. Using the example of the Maletis brothers, one could assume that other developers could employ the Klamath Tribe to use the Act as a tool to circumvent federal, state and local laws and ordinances to allow inappropriate developments that would otherwise not be allowed by law.

Our understanding of the Act is that it was intended to help restore the Klamath Tribe to primarily former reservation lands along the Southern Oregon/Northern California border, location of the Tribe's ancestral lands, and to further the Tribe's economic development through use of these lands. Furthermore, we understand that the Act was never intended to provide a mechanism whereby the Klamath Tribe could take lands into trust over 200 miles away from the site of the former reservation or anywhere in the Willamette Valley, which composed the ancestral lands of the Grand Ronde Tribes.

Page 2
February 17, 2010

This is a matter of grave importance for governments, businesses and other tribes. We would greatly appreciate your assistance in looking into this matter of how the BIA interprets the Act and if any remedies by Congress might be appropriate. Thank you for your time.

Sincerely,

Melody Thompson
Mayor

cc: Governor Ted Kulongoski, Office of the Governor, State of Oregon

Landowners, Clackamas County square off over development

The Oregonian

By Dana Tims, The Oregonian

December 17, 2009

http://www.oregonlive.com/clackamascounty/index.ssf/2009/12/post_6.html

French Prairie landowners south of the Willamette River blasted Clackamas County's commissioners Thursday for approving a resolution saying the area should remain an agricultural bastion.

"We're talking about key employment lands and all the county commissioners can think about are their own political careers," said Chris Maletis, an owner of Langdon Farms Golf Club near Wilsonville. "This is really politics at its saddest moment."

Maletis has been in talks with the Klamath Tribes about the possibility of developing 385 acres of land adjacent to Interstate 5. Potential uses for the land could include large-scale trucking and warehouse facilities.

While Maletis declined to say where his discussions with the Klamaths currently stand, others in the area said the tribes could file an application with the federal Bureau of Indian Affairs within two months.

Such an application would trigger a lengthy and complicated process that, if successful, could direct the federal Interior secretary to accept the property in trust for the benefit of the tribes.

Legal experts have said it could take the courts years to determine whether the Klamaths, who are generally based in Southern Oregon, have the right to take off-reservation lands in the northern Willamette Valley into trust.

Clackamas County commissioners, meanwhile, said their unanimously approved resolution wasn't drafted to specifically target either Maletis or the Klamaths.

Instead, they said, it's intended to serve as a long-term policy statement in case the metrowide process now under way to designate where growth should and shouldn't occur over the next 50 years ultimately falls apart or is successfully challenged in court.

"What we are saying is, these lands should remain rural, no matter who else is involved," Commissioner Charlotte Lehan said. "If we are interested in preserving productive, foundation farmland in the region, that effort should start with French Prairie."

French Prairie, which includes Champoeg State Park and the towns of Aurora, Donald and Gervais, got its name from the French trappers who retired there

starting in the 1820s. It was a prime destination for wagon trains traversing the Oregon Trail and remains among the most productive agricultural areas in the state.

Maletis and his brother, Tom, argue that with a shortage of land that can be developed to produce jobs in the region, developing just the northern-most slice of the area makes good economic sense.

"You've already got the Aurora Airport and a state highway running right through this area," Chris Maletis said. "To call this area pristine and untouched is just laughable."

At the very least, Maletis said, regional officials should declare the area undesignated, rather than zone it for exclusive future rural or urban use.

Ben Williams, a member of the Friends of French Prairie advocacy group, said developing such a small portion of the area can't pencil out financially.

"There is absolutely no way a development can pay for the water, sewer service and roads it needs unless it's at least 3,000 to 4,000 acres in size," Williams said. "That's why, for us, any development in French Prairie likely means that the entire area will eventually have to go that way."

If the metro planning effort now under way ultimately excludes French Prairie from future urban development, Williams said he fully expects the Maletis brothers to override that by entering into a development pact with the Klamaths.

Joseph Kirk, Klamath tribal chairman, declined to comment on the tribes' current or long-term plans for the area.

-- Dana Tims

Roll up the welcome mat

By The Oregonian Editorial Board



September 22, 2009

There are plenty of Willamette Valley communities that would warmly greet the Klamath tribes if they came to town to develop manufacturing, retail shopping or a medical center to create jobs and care for tribal members.

But if the tribes insist on running over and around Oregon land-use restrictions and paving over 385 acres of rural farmland on what is known as French Prairie near Wilsonville, then the people of the Willamette Valley should roll up the welcome mat and challenge the development.

The Klamath tribes claim that they have no plans for a casino at the site, which fronts Interstate 5 about 15 miles south of Portland. But three years ago the tribes floated the idea of building a casino on the property. And whether or not a casino is in the tribes' initial plans, the willingness of the Klamaths to ignore local and state rules and restrictions on urban development raises a red flag.

So does a report in Monday's Wall Street Journal revealing that the Obama administration may decide to make it easier for tribes to build casinos on land far from their reservations. The Journal reported that the Interior Department is reconsidering a Bush administration rule requiring that off-reservation casinos be within commuting distance of reservations.

There are already more than 400 tribal casinos nationwide, and at least 50 more applications for new off-reservation casinos pending before the Bureau of Indian Affairs. We've argued in favor of only one of the off-reservation casinos, a proposal by the Warm Springs tribes to build in the Columbia River Gorge.

In our view the Warm Springs is a unique case. The Warm Springs own 40 acres of land near Hood River that they acquired long before the 1988 Indian Gaming Regulatory Act. After many legal experts, including advisors to Gov. Ted Kulongoski, concluded that the tribes had the legal power to build a casino on the Hood River property -- in an important stretch of the scenic gorge -- we reluctantly supported allowing a casino in an alternative site, an industrial area inside the urban growth boundary of Cascade Locks.

The Klamath tribes have no such claim or history with the French Prairie property. They do, however, have a powerful legal tool that may allow them to purchase the land and move it into federal trust, which would take it off the tax rolls and give the tribes the right to develop it. The language in the original federal act that restored the Klamath tribes states that the interior secretary "shall" accept real property in trust for the benefit of the tribes.

It's hard to believe that the original act was meant to allow the Klamath tribes to buy land several hundred miles from their reservation, ignore local and state restrictions and shatter a metrowide planning process that has put areas south of the Willamette River off-limits to urban development. As a spokesperson for the Grand Ronde tribes put it, the Klamath tribes' plan is a "prime example of reservation shopping gone overboard."

The chairman of the Klamath tribes, Joseph Kirk, points out that tribes all over the country are trying to buy land closer to metropolitan areas, hoping to launch successful

development ventures. Kirk said, "We want to look at something that will provide economic benefits for the tribe and help the greater community as well."

Again, there are plenty of places in the valley, inside of urban growth areas, where the tribes would be more than welcome to build retail shopping or a medical center. If all the tribes want is a place to do business, they can do that without destroying rural Willamette Valley farmland and triggering a rash of urbanization between Portland and Salem.

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Klamath Tribes seek 385 acres near Wilsonville

By Dana Tims, The Oregonian
September 21, 2009



[View full size](#) Thomas Boyd/The Oregonian

Tom and Chris Maletis are negotiating with the Klamath Tribes to develop commercial ventures on and around their Langdon Farms Golf Club south of the Willamette River near Wilsonville. The Klamaths' say they have treaty rights to develop off-reservation.

The Klamath Tribes have revived a controversial plan to acquire 385 acres along Interstate 5 near Wilsonville -- one of the largest available tracts in the Portland area -- for undisclosed commercial development.

Tribal leaders say they have no plans for a casino but could use the site for manufacturing, retail or services, while providing jobs for the 500 Klamaths who live in the Willamette Valley.

"Those Klamath peoples who live in the Willamette Valley today have just as much a right as anyone else to a sustainable livelihood and a sustainable homeland," Chairman Joseph Kirk wrote in a letter to tribal members.

What are trust lands?

Native American trust lands are areas that the United States holds title in trust for the benefit of a federally recognized Native American tribe. The land might be located on or off a reservation. Off-reservation activities require an express federal exemption to deny state taxing power. Native American-law experts say the Klamath Tribes face a high bar in persuading the federal government to take the Wilsonville-area land into trust, considering the distance from the tribe's reservation in southern Oregon.

The proposal, which could face years of administrative scrutiny and possible court challenges, already is drawing withering blasts from other Oregon tribes.

"This is a prime example of reservation shopping gone overboard," said Siobhan Taylor, public affairs director for the Confederated Tribes of the Grand Ronde, headquartered about 25 miles west of Salem. "If you look at the history of the Klamaths, they have traditionally been located in Southern Oregon. It's really a stretch for them to come up to the Wilsonville area."

The proposed venture also is eliciting complaints from land-use advocates, who say allowing significant commercial activity in the so-called French Prairie near Aurora would open the flood gates for non-stop development south to Salem.

The Klamath Tribes brush aside the criticism, saying that tribes all over the country are trying to buy land closer to metropolitan areas, hoping to launch successful economic development ventures.

"This is a complicated legal issue, but we believe we are well within our rights to proceed there," Kirk said. "We want to look at something that will provide economic benefits for the tribe and help the greater community, as well."

Asked whether the project amounts to an end-run of a metro-wide planning process, which recently declared areas south of the Willamette River as off-limits to urban development, Kirk said, "Yes, but it gets into a situation where business is business. We all look at rules of what we can and can't do and what we might do. Right now, we're looking at what we might do."

Kirk said the Klamath Tribes have no intention of building a casino on the land, an idea which had been floated in the past. In a recent letter to tribe members, he talked of working with the Siletz and Grand Ronde tribes to provide services to tribal members living in the upper Willamette Valley.

Additional uses for the property, he wrote, could include a centralized food services facility, a village shopping center, sustainable manufacturing and commercial projects and an outpatient medical clinic.

The targeted land has long been owned by brothers Chris and Tom Maletis. Their Langdon Farms Golf Club sits at the center of the proposed development.

Chris Maletis confirmed that he and his brother are talking with the Klamath Tribes, but he declined to say where negotiations stand.

He defended the need for commercial development south of the river, despite Clackamas County's recent decision to reserve lands in the area for rural purposes.

"Currently, we do not have large parcels of employment land that are strategically located to accommodate future growth," he said. "This is and always has been a piece of property that meets the region's needs for significant employment lands."

Ben Williams, president of Friends of French Prairie land-use group, disputed Maletis' assertion that I-5, the golf course and nearby Aurora State Airport already make lands south of the river effectively urban.

"From the outset, the Maletis' have had one thing in mind and that's to make as much money through development on this land as possible," he said. "If this isn't an end-run around Oregon's land use laws, I've never seen one in my life."

Kirk said the next step entails preparing a detailed business plan for the property. The federal Bureau of Indian Affairs requires such a plan before determining whether to take lands into trust for qualifying tribes.

Tribes nationwide have had difficulty in recent years taking off-reservation lands into trust, said Matthew L.M. Fletcher, an associate professor of indigenous law at the Michigan State University College of Law. During the eight years of the Bush administration, he said, only one tribe managed to accomplish the feat.

In the Klamaths' case, the tribe may eventually prevail, due to language in its restoration act stating that the federal Interior secretary "shall" accept real property in trust for the benefit of the Tribes, he said.

That language is different from restoration acts applying to other Oregon tribes, which must go through more complicated "fee to trust" transfers.

But given recent case histories around the country, Fletcher said, the Klamaths may still need nearly a decade to clear the many procedural and legal hurdles in the way.

"If they have a mandatory trust acquisition statute, it will get done," he said. "But even though I don't know all the politics there, it's amazing what you can do to slow things down."

-- **Dana Tims**

Maletis in new negotiations with Klamath Tribe over land

By: Pat Johnson
Wilsonville Spokesman
Published: 8/10/2009 4:34:04 PM

A recently-released confidential document outlines a proposed development agreement between the Maletis family and the Klamath Tribes and sheds light on how the golf course owners could develop their 385 acres in French Prairie.

Tom and Chris Maletis, the two brothers who own Langdon Farms Golf Course and surrounding property, confirmed this week they are continuing to negotiate with the Klamath Tribe about developing their property south of the Willamette River.

The Spokesman obtained the document when it was sent as an anonymous fax with the title "Confidential Term Sheet." It was dated May 24, 2009. The fax had no cover sheet, and was sent from a print shop in downtown Klamath Falls.

When contacted about the document, Chris Maletis expressed shock that the term sheet was made public. A draft of a memorandum of understanding, it is not signed by either tribal officials or the Maletis brothers.

"The reason I pay my attorneys is to make sure I don't get myself into trouble. I am going to have you talk with them," Chris Maletis said late Friday afternoon.

Mark Cushing, attorney for the Maletis family, confirmed the term sheet was authentic, and said negotiations with the Klamath Tribes have been ongoing, even as late as last week.

Joe Kirk, chairman of the Klamath Tribes tribal council, also confirmed that negotiations were "active."

"It's an authentic document," Cushing said of the term sheet. "It's not a document anyone has signed and there has been no agreement on a term sheet. By its terms it's a confidential document. (But) whoever sent it to you didn't treat it that way."

Kirk said Monday he wouldn't comment on the contents of the term sheet, or the negotiations with the Maletis family, but added the tribe is interested in the property because many tribal members live in the Salem and Portland area.

"With our restoration agreement, we're looking at economic development," Kirk said. "If we restrict that to Klamath County, it's financially hurting. You have to look beyond those borders as to what opportunities might exist."

The term sheet outlines how an agreement would allow the Maletis family to develop the property in partnership with the Klamath Tribes. According to the draft agreement, the property would be placed into trust through the Bureau of Indian Affairs to the Klamath Tribes. Then the tribes would lease the property to a tribal entity for 50 years. That tribal entity would then sublease the property for 50 years to a joint limited liability company. The LLC would have co-owners with the Maletises owning 75-percent of the company and the tribes owning the remainder. The tribes would have equal voting rights on decisions and projects for the property.

Cushing was adamant that no agreement has been reached between the two parties and nothing has been signed. He stressed there are no plans for a casino on the property, by the Maletis family or the Klamath Tribes.

"It is the height of nay-saying for anyone to imply that the only economic activity a tribe can engage in is gaming," Cushing said. "Our discussions, which are active, involve only non-gaming and are very sophisticated development that would be very green and the type of development the region would be proud of and a significant jobs generator both for non-tribal members and tribe members that live in the Salem and Portland area."

The term sheet's release comes on the heels of the Clackamas County Policy Advisory Committee recommendation that the French Prairie area and, specifically the Maletis property, should be studied for a rural reserve designation, meaning the two men wouldn't be able to develop the property for at least 40 years.

"(The PAC recommendation) doesn't have any impact on the business discussions with the tribe," Cushing said. "The PAC is an advisory body, and they did not make a serious or any way in-depth analysis of the Langdon Farms property for the urban reserves. And apparently just defaulted it into the rural reserve category ... We are not assuming that the Clackamas County Commission doing its job as it's chartered to do is going to treat that advisory recommendation as binding or even remotely conclusive for evaluating this for the regional considerations the urban, rural reserves process is expecting out of this. We were disappointed, but not surprised."

Greg Argel, reality officer with the Bureau of Indian Affairs, said Monday if the land is put into trust for the Klamath Tribe, it wouldn't have to follow local or state land-use laws. He also said any development on the property, after it was placed in trust, wouldn't be subject to county or local property taxes. Under the Indian Gaming Regulatory Act a casino cannot be placed on the property without the approval of the governor.

"If they wanted to do gaming, the governor would have to give approval," Argel said. Cushing would not give a timeline on when he thought the Maletis brothers would have an agreement with the tribe.

When asked if he felt the draft agreement was released because of the rural reserve recommendation and the upcoming public hearings, Cushing said he didn't feel anyone with the tribe is paying close attention to the process.

The Clackamas County Planning Commission has scheduled a public hearing on the urban-rural reserves process for 6:30 p.m. Aug. 10 in Oregon City.

"I don't know who sent it, and the Maletis brothers don't have any idea who sent it," Cushing said. "We are not going to conduct our negotiations in public or through the media. I don't know why, I would doubt that person who sent it from Klamath Falls had in mind anything to do with the upcoming hearing."

Kirk said while some tribal members are watching the reserves process, he isn't.

Is there a big casino in French Prairie's future?

by Dana Tims, The Oregonian

A megacasino just south of the Willamette River on Oregon's historic French Prairie is either in the works or completely off the table, depending on who is doing the talking.

A series of letters and meetings regarding potential commercial and industrial development in the area has land-use advocates concerned that the rural landscape stretching from Wilsonville south to Salem could, sooner rather than later, be altered forever.

A megacasino just south of the Willamette River on Oregon's historic French Prairie is either in the works or completely off the table, depending on who is doing the talking.

A series of letters and meetings regarding potential commercial and industrial development in the area has land-use advocates concerned that the rural landscape stretching from Wilsonville south to Salem could, sooner rather than later, be altered forever.

"If you are looking at either a 400-acre trucking distribution center or a huge casino there, the options are between horrendous and outrageous," said Ben Williams, spokesman for Friends of French Prairie, which opposes large-scale industrial development south of the Willamette. "Pick your poison, it's either cyanide or arsenic."

Chris Maletis, who with his brother, Tom, owns much of the land in question, said Williams' group and others are using scare tactics when they claim the Klamath Tribes are trying to gain approval to build a huge casino and related facilities in northern French Prairie.

"I don't know how many times we have to tell them that there is absolutely nothing related to a casino being planned for this area," Maletis said. "They are throwing up nothing but a smoke screen and they know it."

Maletis acknowledged, however, that the Chiloquin-based Klamath are working to acquire as trust land acreage near his Langdon Farms Golf Course for eventual conversion to commercial and perhaps industrial uses.

"We're definitely in discussions," he said. "Just where those will lead, we're not sure yet."

Although interpretations differ, the tribes are relying on federal legislation, the Klamath Indian Tribe Restoration Act of 1986, to make the case that they can take the Maletises' property "into trust" and use it for economic development purposes.

Opponents of the move have scheduled a Thursday town hall meeting at the Hubbard Fire Hall to discuss what they are calling "a casino at Langdon Farms."

This is hardly the first time that controversy has attended efforts to extend development south of the Willamette River past Wilsonville.

Many trace the seeds of Oregon's statewide land-use planning system to Wilsonville's residential Charbonneau district. When key legislators saw hundreds of houses being built south of the river in the late 1960s and early 1970s, they moved quickly to enact sweeping laws aimed at protecting prime farm and forestland -- such as the agricultural tracts stretching across French Prairie -- from wholesale development.

Apart from any deal the Klamath and the Maletis brothers may be trying to work out, French Prairie is the focus of other contentious planning efforts as well.

The "core four" of Washington, Clackamas and Multnomah counties and the Metro regional government are studying where to designate lands for future development. French Prairie may or may not ultimately be included in areas needed to accommodate houses and jobs for the estimated 2 million people projected to move to the metro area by 2060.

That planning process isn't expected to be completed for another six months.

In the meantime, all attention is now being devoted to what the Klamath may or may not do in the area, which remains widely regarded as the heart of Oregon's agricultural industry.

In May, after a meeting between tribal representatives and the federal Bureau of Indian Affairs, BIA officials sent a letter spelling out what the tribe needed to do to take the land around Langdon Farms into trust.

The letter alarmed Williams and others because it promised an expedited process and seemed to indicate the tribe might have little problem taking land that is 200 miles from the Klamath reservation into trust.

Mike Kohlhoff, Wilsonville city attorney, followed up with a letter of his own. His nine-page legal opinion asserted that the BIA's interpretation of the federal regulations vastly overstated what the tribes could actually do.

Wilsonville Mayor Charlotte Lehan, long an opponent of development south of the river, agreed.

"If they could just buy land anywhere and have it be tribal land," she said, "why not just go right into the heart of Portland and buy the convention center?"

Tribal Chairman Joseph Kirk has sent a letter to the Bureau of Indian Affairs expressly stating that, whatever else the tribe may have in mind for the property, it does not intend to build a casino there.

"There's some conjecture on our part, sure," Friends of French Prairie's Williams said. "It may be a big if, but if profit's the motive, you can make a lot more money short and long term with a casino than with a bunch of concrete tilt-up buildings."

— Dana Tims; danatims@news.oregonian.com

Fight brews over rich farmland

Owners want to sell strip near Portland urban area to tribe

Mitch Lies, Capital Press
Friday, August 15, 2008

Senate Bill 1011 passed by the 2007 Oregon Legislature could provide an extended stay to a protracted land-use war over a strip of land in the north Willamette Valley.

The area in question - land just south of where the Willamette River intersects Interstate 5 - is one of a handful of areas government officials are considering designating a rural reserve.

As stipulated in SB1011, designating land a rural reserve puts it off limits to industrial, commercial and residential development for 40 to 50 years.

Before that happens, however, owners of a golf course in the area appear to be waging one last attempt to develop the strip.

And farm preservationists are digging in once again.

Former beer distributors Chris and Tom Maletis, who own Langdon Farms Golf Club in Aurora and have options on other land just south of Wilsonville, are in line to sell their property to the Klamath Tribes of Oregon. The sale apparently is contingent upon the tribes' ability to acquire "trust" designation for the land.

As trust land - a designation only the Bureau of Indian Affairs can provide - it would be outside the jurisdiction of Oregon land-use laws.

City of Wilsonville lobbyist Greg Leo believes the land in question - which makes up the northern portion of a French Prairie area rich in agricultural and cultural heritage - is a natural for inclusion into the state's first rural reserves.

"This is some of the best farmland in Oregon, and we need to protect it," he said. "We believe this rightly should be named a rural reserve."

But the area also is a natural for industrial development. It is flat, making it easy to develop. And its proximity to Interstate 5 makes it an ideal site for a warehouse and distribution center.

The battle over the area's future use is compounded by the fact the land sits just south of the Portland Metro area's urban growth boundary. As Portland expands, it is only natural to assume the land eventually will be swallowed up in Portland's growth.

Leo said the Maletis brothers have been behind several attempts to bring the land into the Portland Metro UGB and that they were behind a 2006 effort by the Klamath Tribes to change the status of the land to "trust lands for the purposes of building a casino."

The Bureau of Indian Affairs rejected the Klamath Tribes' 2006 proposal in part because

the site was outside normal commuting distance from tribal lands - a guideline the BIA uses when determining whether to allow a tribe to situate a casino off a reservation.

Langdon Farms is more than 150 miles from the tribes' Klamath-Mo-Ya Casino, near Chiloquin, in south-central Oregon.

The tribes now are talking with the Bureau of Indian Affairs about converting the land from "fee" lands to the "trust" lands designation, which would open it up for a warehouse-distribution facility.

As fee land - the designation the land would obtain if the tribes purchased it today - the land is subject to Oregon land-use laws and not eligible for urbanization.

The Bureau of Indian Affairs' Northwest Realty Office, in a letter dated May 1, 2008, offered to provide the tribes "technical assistance in identifying possible barriers" to its application.

The office further wrote it is "committed to working with the Klamath Tribes and the Bureau of Land Management in order to become joint problem solvers of issues that may arise in the course of this project."

In scaling down their request - from a casino, which would heavily impact traffic and city services, to a warehouse - the tribes have removed a stumbling block that arose in 2006. A warehouse-distribution facility would have a smaller impact on surrounding communities and doesn't require backing from cities adjacent to the project.

But other obstacles remain, including the land's substantial distance from the tribes' reservation and the impending rural reserve designation, which has put added pressure on the tribes to close the deal.

Leo said he believes the Bureau of Indian Affairs ultimately will reject the tribes' application, and, by late next year, the strip he calls "the Gaza strip" of land-use wars in Oregon will be designated a rural reserve.

"If this land is designated rural reserve, I think farmers can farm with confidence and make the investment necessary to keep this highly productive agricultural land for years to come," Leo said.

"The whole idea is to give farmers certainty that this land will remain farmable," he said. "That is the outcome we were looking for in Senate Bill 1011."

In the meantime, Friends of French Prairie, a group formed to preserve the agricultural and cultural heritage of the area, continue to educate the public on the farm value of the land by hosting booths at fairs and talking to civic groups.

The group also in recent months has backed Wilsonville Mayor Charlotte Lehan in her run for Clackamas County commissioner.

Lehan - a vocal supporter of the group's cause - could provide a crucial vote when county commissioners consider whether to designate the area a rural reserve - a vote likely to occur in 2009.

Lehan's opponent, business consultant Dave Mowry, has not publicly taken a stand on the issue.

Staff writer Mitch Lies is based in Salem. E-mail: mlies@capitalpress.com.

Seeing Green

Wednesday, June 25, 2008



The Klamath Tribe and golf course owners seek a windfall from a loophole.

BY NIGEL JAQUISS

A high-stakes land war is breaking out over a prime parcel of Willamette Valley land, and a distant Native American tribe is making a unique argument in hopes of winning the battle.



On the same side as the Klamath tribe from southwest Oregon is a pair of wealthy local former beer distributors. They're pitted against the city of Wilsonville and local residents anxious to keep the surrounding French Prairie areas of Clackamas and Marion counties rural.

At stake: whether the Wilsonville-Salem corridor along Interstate 5 will be open for development. Or will the intersection of I-5 and the Willamette River remain the natural geographic boundary for the Portland metro area's line on development—the urban growth boundary?

The Klamaths are relying on federal legislation called the Klamath Indian Tribe Restoration Act of 1986 to argue that they can take the Willamette Valley land "into trust" or make it part of their reservation about 200 miles from their Klamath County home. Since the Klamaths are legally a sovereign nation, they are exempt from state land-use laws.

But Wilsonville Mayor Charlotte Lehan says the tribe's plan depends on a narrow—and novel—interpretation of the Restoration Act.

"They are trying to shoehorn in off one provision that does not appear to consider the context of the full act," says Lehan, who opposes development south of the Willamette.

The 400 acres in question, which includes the Langdon Farms golf course next to I-5 in Aurora and surrounding parcels, is owned by brothers Chris and Tom Maletis. The brothers sold their interest eight years ago in Maletis Beverage, Portland's biggest beer distributor, and bought Langdon Farms for \$10 million. Since then, they have contended that their land, sandwiched between I-5 and the Aurora airport, would be far more valuable as a warehousing and distribution center.

In 2004, the Maletises employed the powerful consulting firm Goldschmidt Imeson Carter to help get their land brought into the Metro urban growth boundary. That result would have multiplied the land's value and let them switch their focus from tee times to trucking. But under enormous pressure from Maletis opponents, Metro ultimately chose to leave the land outside the UGB.

The stakes escalated last year, when the Legislature modified the process by which Metro brings land inside the boundary. The new system allows for the designation of urban and rural reserves and effectively locks up those lands under such a designation for 40 to 50 years.

Such protection is certainly the hope of Lehan and a group called "Friends of French Prairie," which wants to ensure protection of a wide swath of rich agricultural land. They were dismayed to learn recently that the Maletises had entered talks to develop the land with the Klamaths.

"We do not support development south of the Willamette River," Lehan tells WW. "What you see here is a group trying to make an end run around Oregon's land-use laws."

A couple of years ago, the Klamaths considered trying to locate a tribal casino at Langdon Farms, which is less than 20 miles from downtown Portland. That idea is apparently now dead. Instead, the Klamaths are working to buy the Maletises' land and develop the brothers' vision of a warehousing and distribution site.

"The Klamath Tribes appreciate the willingness of the Bureau of Indian Affairs to expedite the transfer from fee to trust of lands soon to be acquired by the Tribes in Aurora, Oregon," wrote Klamath chairman Joseph Kirk in a recent undated letter to the BIA provided to WW by a Maletis representative.

"The property offers the Tribes several business and employment opportunities, and other development opportunities," Kirk writes. "A question has arisen as to whether the Tribes intend to use that property for gaming. While that was our intent earlier, it is no longer part of our plans."

On June 20, Wilsonville City Attorney Michael Kohlhoff sent a nine-page letter to the BIA seeking to block the Maletis-Klamath plan.

"The intent of the Restoration Act and that of the Tribe was to restore the historic use and economic development of the reservation lands within Klamath County," Kohlhoff wrote. "'Anywhere' approval for the Langdon Farms French Prairie lands is not supported by the Act."

FACT: *Senate Bill 1011 in 2007 expanded the process by which Metro brings land into the UGB. Now, decisions about urban and rural reserves will be made by the "core four" representatives of Multnomah, Clackamas and Washington counties and Metro before being approved by the Metro Council.*

Find this story at www.wweek.com/editorial/3433/11153

Public Law 99-398
99th Congress

An Act

To provide for the restoration of the Federal trust relationship with, and Federal services and assistance to, the Klamath Tribe of Indians and the individual members thereof consisting of the Klamath and Modoc Tribes and the Yahcooskin Band of Snake Indians, and for other purposes

Aug. 27, 1986
[H.R. 3554]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Klamath Indian Tribe Restoration Act".

Klamath Indian
Tribe
Restoration Act
Oregon.
25 USC 566 note.

SEC. 2. RESTORATION OF FEDERAL RECOGNITION, RIGHTS, AND PRIVILEGES.

25 USC 566.

(a) **FEDERAL RECOGNITION.**—Notwithstanding any provision of law, Federal recognition is hereby extended to the tribe and to members of the tribe. Except as otherwise provided in this Act, all laws and regulations of the United States of general application to Indians or nations, tribes, or bands of Indians which are not inconsistent with any specific provision of this Act shall be applicable to the tribe and its members.

(b) **RESTORATION OF RIGHTS AND PRIVILEGES.**—All rights and privileges of the tribe and the members of the tribe under any Federal treaty, Executive order, agreement, or statute, or any other Federal authority, which may have been diminished or lost under the Act entitled "An Act to provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual members thereof, and for other purposes", approved August 13, 1954 (25 U.S.C. 564 et seq.), are restored, and the provisions of such Act, to the extent that they are inconsistent with this Act, shall be inapplicable to the tribe and to members of the tribe after the date of the enactment of this Act.

(c) **FEDERAL SERVICES AND BENEFITS.**—Notwithstanding any other provision of law, the tribe and its members shall be eligible, on and after the date of the enactment of this Act, for all Federal services and benefits furnished to federally recognized Indian tribes or their members without regard to the existence of a reservation for the tribe. In the case of Federal services available to members of federally recognized Indian tribes residing on or near a reservation, members of the tribe residing in Klamath County shall be deemed to be residing in or near a reservation. Any member residing in Klamath County shall continue to be eligible to receive any such Federal service notwithstanding the establishment of a reservation for the tribe in the future. Notwithstanding any other provision of law, the tribe shall be considered an Indian tribe for the purpose of the "Indian Tribal Government Tax Status Act" (Sec. 7871, I.R.C. 1954).

26 USC 7871.

- (d) **CERTAIN RIGHTS NOT ALTERED.**—Nothing in this Act shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes already levied.
- Oklahoma.
25 USC 861a. (e) This Act does not apply to the members of the Modoc Indian Tribe of Oklahoma as recognized under section 2(a) of the Act of May 15, 1978 (92 Stat. 246) and the Klamath Tribe of Indians does not (except for the purposes set out in section 2(a)(1) of that Act) include the members of the Modoc Indian Tribe of Oklahoma.
- 25 USC 566a. **SEC. 3. TRIBE CONSTITUTION AND BYLAWS.**
- The tribe's Constitution and Bylaws shall remain in full force and effect and nothing in this Act shall affect the power of the General Council to take any action under the Constitution and Bylaws.
- 25 USC 566b. **SEC. 4. CONSERVATION AND DEVELOPMENT OF LANDS.**
- (a) **IN GENERAL.**—Notwithstanding the tribe's previous rejection of the Act of June 18, 1934 (25 U.S.C. 461 et seq.), upon written request of the General Council, the Secretary of the Interior shall conduct a special election pursuant to section 18 of such Act to determine if such Act should be applicable to the tribe.
- 25 USC 478. (b) **ADOPTION OF CONSTITUTION.**—Upon written request of the General Council, the Secretary shall conduct an election pursuant to section 16 of the Act approved on June 18, 1934 (43 Stat. 987; 25 U.S.C. 476), for the purpose of adopting a new constitution for the tribe.
- 25 USC 566c. **SEC. 5. HUNTING, FISHING, TRAPPING, AND WATER RIGHTS.**
- Nothing in this Act shall affect in any manner any hunting, fishing, trapping, gathering, or water right of the tribe and its members.
- Taxes.
25 USC 566d. **SEC. 6. TRANSFER OF LAND TO BE HELD IN TRUST.**
- The Secretary shall accept real property for the benefit of the tribe if conveyed or otherwise transferred to the Secretary. Such property shall be subject to all valid existing rights including liens, outstanding taxes (local and State), and mortgages. Subject to the conditions imposed by this section, the land transferred shall be taken in the name of the United States in trust for the tribe and shall be part of their reservation. The transfer of real property authorized by this section shall be exempt from all local, State, and Federal taxation as of the date of transfer.
- 25 USC 566e. **SEC. 7. CRIMINAL AND CIVIL JURISDICTION.**
- The State shall exercise criminal and civil jurisdiction within the boundaries of the reservation, in accordance with section 1162 of title 18, United States Code, and section 1360 of title 28, United States Code, respectively.
- 25 USC 566f. **SEC. 8. ECONOMIC DEVELOPMENT.**
- (a) **PLAN FOR ECONOMIC SELF-SUFFICIENCY.**—The Secretary shall—
- (1)(A) enter into negotiations with the Executive Committee of the General Council with respect to establishing a plan for economic development for the tribe; and
- (B) in accordance with this section and not later than two years after the date of the enactment of this Act, develop such a plan.
- (2) Upon the approval of such plan by the General Council (and after consultation with the State and local officials pursu-
- State and local governments.

ant to subsection (b)), the Secretary shall submit such plan to the Congress.

(b) **CONSULTATION WITH STATE AND LOCAL OFFICIALS REQUIRED.**—To assure that legitimate State and local interests are not prejudiced by the proposed economic self-sufficiency plan, the Secretary shall notify and consult with the appropriate officials of the State and all appropriate local governmental officials in the State. The Secretary shall provide complete information on the proposed plan to such officials, including the restrictions on such proposed plan imposed by subsection (c). During any consultation by the Secretary under this subsection, the Secretary shall provide such information as the Secretary may possess, and shall request comments and additional information on the extent of any State or local service to the tribe.

(c) **RESTRICTIONS TO BE CONTAINED IN PLAN.**—Any plan developed by the Secretary under subsection (a) shall provide that—

(1) any real property transferred by the tribe or any member to the Secretary shall be taken and held in the name of the United States for the benefit of the tribe;

(2) any real property taken in trust by the Secretary pursuant to such plan shall be subject to—

(A) all legal rights and interests in such land existing at the time of the acquisition of such land by the Secretary, including any lien, mortgage, or previously levied and outstanding State or local tax; and

(B) foreclosure or sale in accordance with the laws of the State pursuant to the terms of any valid obligation in existence at the time of the acquisition of such land by the Secretary; and

(3) any real property transferred pursuant to such plan shall be exempt from Federal, State, and local taxation of any kind.

(d) **APPENDIX TO PLAN SUBMITTED TO THE CONGRESS.**—The Secretary shall append to the plan submitted to the Congress under subsection (a) a detailed statement—

(1) naming each individual and official consulted in accordance with subsection (b);

(2) summarizing the testimony received by the Secretary pursuant to any such consultation; and

(3) including any written comments or reports submitted to the Secretary by any party named in paragraph (1).

SEC. 9. DEFINITIONS.

25 USC 566g.

For the purposes of this Act the following definitions apply:

(1) The term "tribe" means the Klamath Tribe consisting of the Klamath and Modoc Tribes of Oregon and the Yahooskin Band of Snake Indians.

(2) The term "member" means those persons eligible for enrollment under the Constitution and Bylaws of the Klamath Tribe.

(3) The term "Secretary" means the Secretary of the Interior or his designated representative.

(4) The term "State" means the State of Oregon.

(5) The term "Constitution and Bylaws" means the Constitution and Bylaws of the Klamath Tribe of Indians in effect on the date of the enactment of this Act.

(6) The term "General Council" means the governing body of the tribe under the Constitution and Bylaws.

100 STAT. 852

PUBLIC LAW 99-398—AUG. 27, 1986

25 USC 566h

SEC. 10. REGULATIONS.

The Secretary may make such rules and regulations as are necessary to carry out the purposes of this Act.

Approved August 27, 1986.

LEGISLATIVE HISTORY—H.R. 3554:

HOUSE REPORTS: No. 99-630 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD, Vol. 132 (1986):

June 16, considered and passed House.

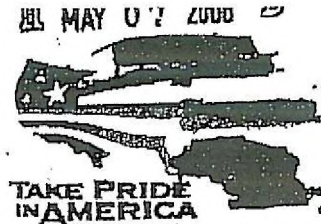
Aug. 15, considered and passed Senate.



OF NEPA REVIEW FOR
Northwest Realty Officer

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Northwest Regional Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169
MAY 1 2008



RECEIVED
MAY 07 2008

KLAMATH TRIBES
TRIBAL COUNCIL

The Honorable Joseph Kirk
Chairman, Klamath Tribes of Oregon
Post Office Box 436
Chiloquin, Oregon 97624

RE: The Klamath Tribes of Oregon, Fee to Trust application for Aurora property.

Dear Mr. Kirk:

Thank you for initiating the meeting between your representatives, Jeff Mitchell, Clayton Chocktoot and Will Hatcher, and our Realty staff regarding your fee to trust application for the Aurora property in Clackamas County. After reviewing the written materials and questions provided by the Klamath Tribes, our staff can offer the following assistance in order to expedite this project.

First, our staff can provide technical assistance in identifying possible barriers on the Preliminary Title Report and research ways to resolve those barriers. Second, we can provide a working outline of necessary steps that you will need to address so that we can expedite matters on our part. Finally, we are committed to working with the Klamath Tribes and the Bureau of Land Management in order to become joint problem solvers of issues that may arise in the course of this project.

You requested that the Bureau of Indian Affairs provide guidance on the most appropriate law in which to authorize the fee to trust transaction. Please refer to 25 CFR §151.3(a) (3), and §151.11. Since the Aurora acquisition appears to be an off-reservation acquisition, Section 5 of the Indian Reorganization Act of 1934 (48 Stat. 984, 25 USC § 465) could be used as the statutory authority. The off-reservation fee to trust process under this authority invites more public involvement, especially regarding the National Environmental Policy Act (NEPA) requirements. Additionally, when off-reservation land is to be taken into trust for economic development there will be greater scrutiny of the justification of the anticipated benefits and greater weight to local concerns when such land is far away from the existing reservation.

Alternatively, when land is taken into trust under The Klamath Indian Tribe Restoration Act, Section 6, 25 USC 566d, a mandatory statute, certain provisions of 25 CFR Part 151 do not apply. The notice and comment to state and local governments provision, §151.11 (d), and compliance with the NEPA is not required. However, the language in 566d states that land taken into trust "shall" be part of the Klamath reservation. You have indicated that you do not intend that the Aurora property to be considered part of your reservation. The question remains whether the 566d authority is appropriate for the trust acquisition of such property. The answer can only be resolved by those in our administration who have the authority to make such determinations

and we are now in the process of obtaining an answer. Since 566d has not been clarified as to a "distance" requirement, there is no point in excluding the possibility of this statutory authority at this time.

In the meantime, please consider forwarding a copy of your preliminary title report and other materials for us to review so that we can be apprised of the scope of work ahead of us.

We recommend that you submit your application as soon as possible. Although your resolution requesting that the land be taken into trust should cite the specific statutory authority mandating the acquisition, you can also add, "...in the alternative, Section 5 of the Indian Reorganization Act of 1934 (48 Stat. 984, 25 USC § 465)." Your tribal resolution must include:

- A citation to the statutory authority for the acquisition;
- A request for the acquisition;
- A description of the property indicating if the surface, sub-surface or both is part of the application;
- The identity of the person who has authority to sign the conveyance document on behalf of the tribe;
- A statement of whether the proposed use is non-gaming, gaming, or gaming related.

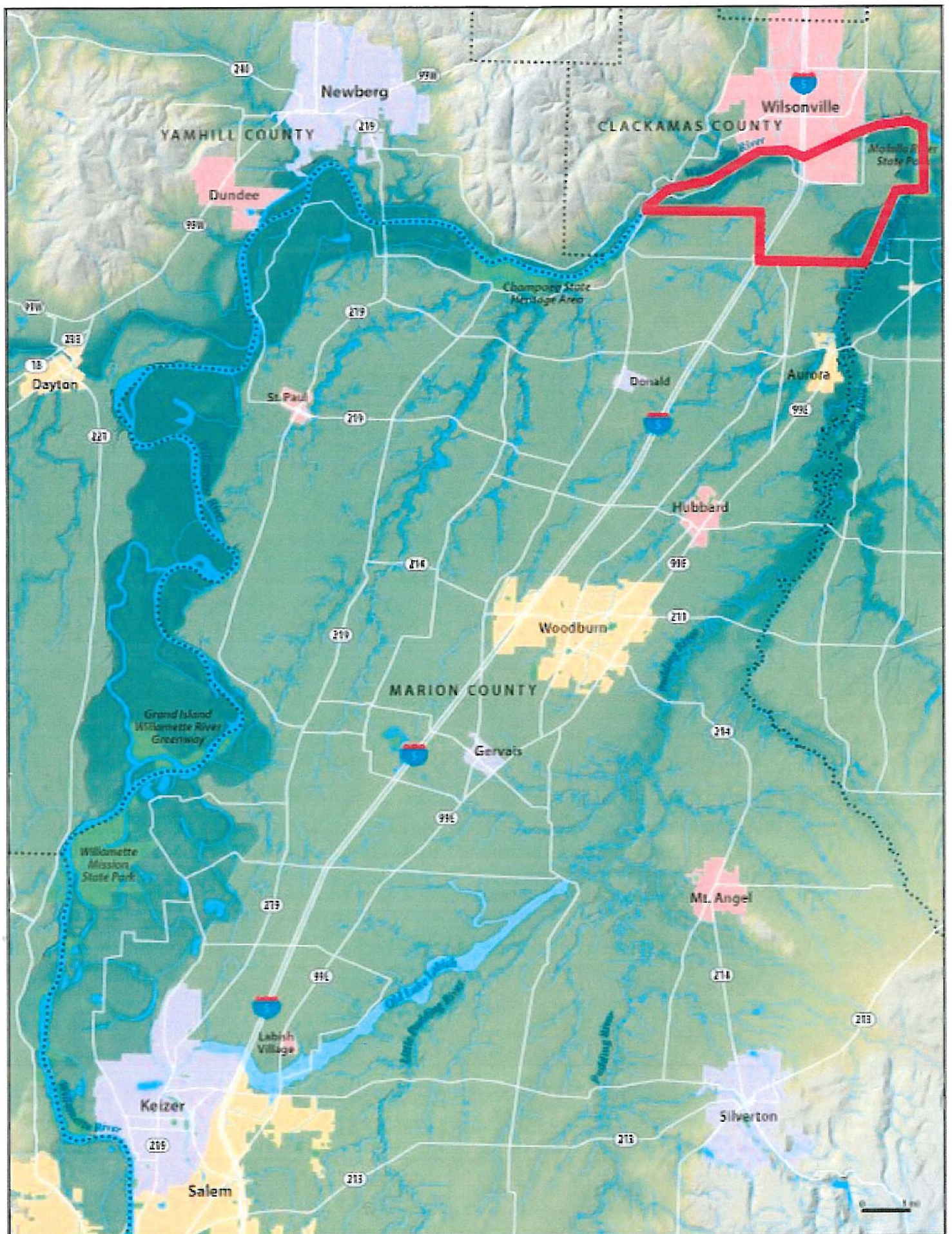
If you have any questions please contact Greg Argel, Northwest Regional Realty Officer at (503) 231-6787 or Alida Gulley at (503) 231-2237.

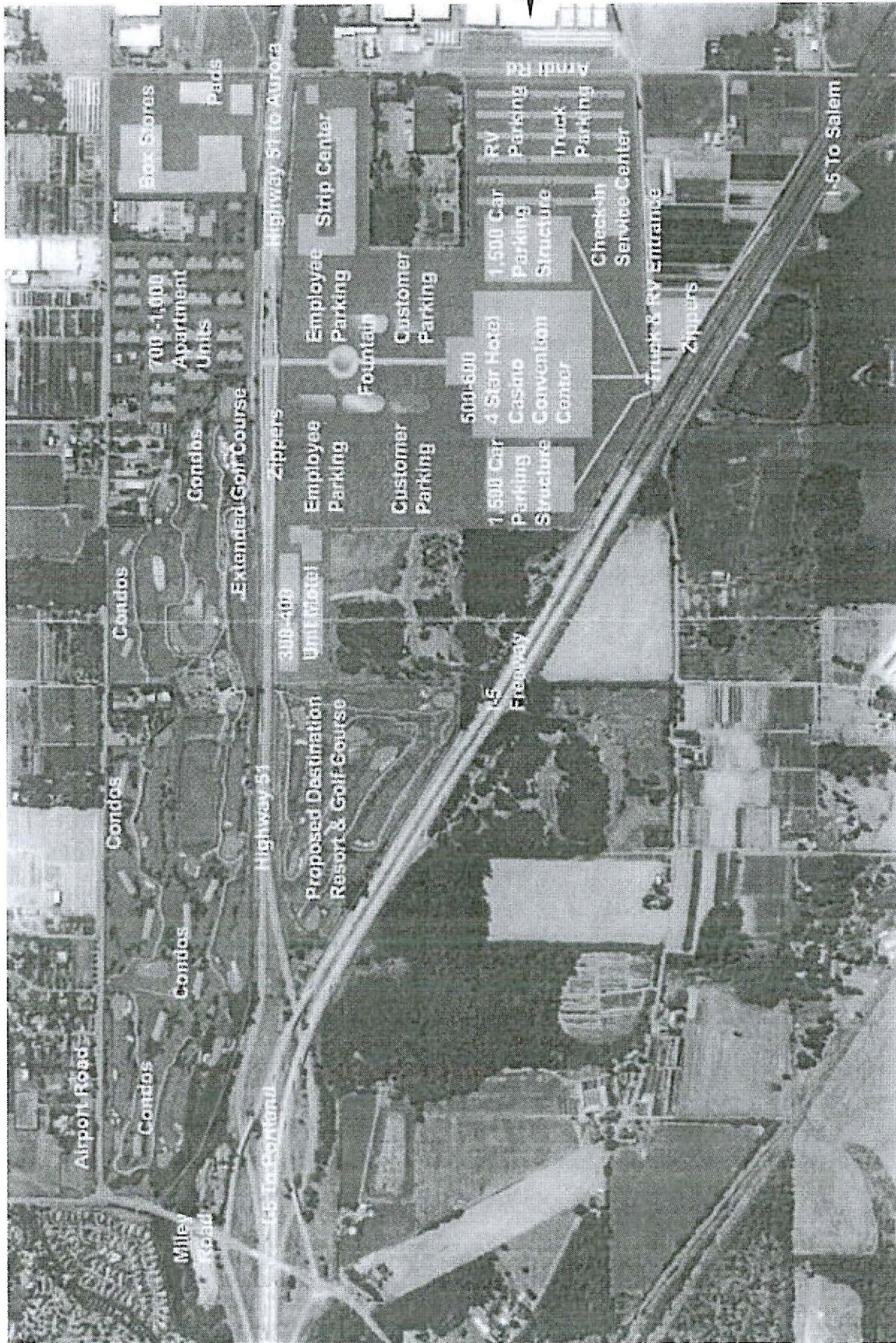
Sincerely,

Scott L. Chi (Acting)

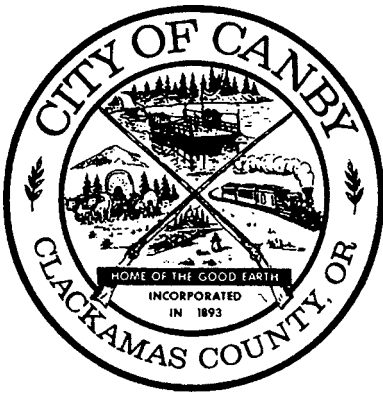
Northwest Regional Director

Aikin





One of the many development proposals for Langdon Farms & environs, just south of the Boone Bridge over the Willamette River



City of Canby

Office of the City Attorney

February 8, 2010

Memo to: Mayor/City Council

From: John H. Kelley, City Attorney

Re: Rules regarding behavior at Council Meetings

A recent case decided in the U.S. Court of Appeals (9th Circuit), entitled Norse vs. City of Santa Cruz, discussed the issue of the power of the City Council to eject someone from a public meeting who was being disruptive during the meeting. The Court's opinion found that because the City had rules in its policies allowing the Chief of Police (or representative) to remove anyone who "interrupts and refuses to keep quiet or take a seat when ordered to do so by the presiding officer or otherwise disrupts the proceedings of the Council", the law recognized great discretion to presiding officers in enforcing reasonable rules for the orderly conduct of meetings.

The Court went on to say that the government officials performing discretionary duties, such as the interpretation and enforcement of rules during public meetings are entitled to qualified immunity where they reasonably believe their actions to be lawful. The Court dismissed the claim for civil rights violation brought by the person ejected from the Santa Cruz Council meeting.

One of the keys to the decision to uphold the Council action was the fact that there are rules in place in the form of policy adopted by the Santa Cruz Council advising the public that the Council has the power to remove disorderly people from their meetings. Canby does not have such rules in place.

I am bringing this to your attention to trigger a discussion of whether you wish to adopt some policy rules regarding decorum in council meetings. I have attached a copy of the policy that the federal court approved in the Santa Cruz case. If you think this is something we should have in our policies, I can prepare it for adoption at the next council meeting.



Councilmembers' Handbook

Originally Adopted by Resolution No. NS-13,283 – February 13, 1979

Revised by Resolution No. NS-14,769 – March 23, 1982

Revised by Resolution No. NS-16,526 – September 10, 1985

Revised by Resolution No. NS-24,070 – November 17, 1998

Current Version Revised by Resolution No. NS-26,837 – March 22, 2005

Prepared by the City Clerk's Department

Decorum in Council Meetings

Requirements

While the Council is in session, all persons shall preserve order and decorum. Any person making personal, impertinent, or slanderous remarks, or becoming boisterous shall be barred by the presiding officer from further attendance at said meeting unless permission for continued attendance is granted by a majority vote of the Council.

Every member of the public and every Councilmember desiring to speak shall address the presiding officer, and upon recognition by the presiding officer, shall confine comments to the question under debate, avoiding all indecorous language and references to personalities and abiding by the following rules of civil debate.

- (1) We may disagree, but we will be respectful of one another
- (2) All comments will be directed to the issue at hand
- (3) Personal attacks should be avoided

Enforcement

The chief of police (or representative) shall act as ex-officio sergeant-at-arms of the Council. The police chief shall carry out all orders and instructions of the presiding officer for the purpose of maintaining order and decorum in the Council Chambers.

Upon instructions of the presiding officer it shall be the duty of the sergeant-at-arms or any police officer present to eject from the Council Chambers any person in the audience who uses boisterous or profane language, or language tending to bring the Council or any Councilmember into contempt, or any person who interrupts and refuses to keep quiet or take a seat when ordered to do so by the presiding officer or otherwise disrupts the proceedings of the Council.