

PLANNING COMMISSION

Meeting Agenda

Monday, July 8, 2019

7:00 PM

City Council Chambers – 222 NE 2nd Avenue

Commissioner John Savory (Chair)

Commissioner Larry Boatright (Vice Chair)

Commissioner Derrick Mottern

Commissioner Andrey Chernishov

Commissioner J. Ryan Adams

Commissioner Jeff Mills

Commissioner Jennifer Trundy

1. CALL TO ORDER

a. Invocation and Pledge of Allegiance

2. CITIZEN INPUT ON NON-AGENDA ITEMS

(This is an opportunity for audience members to address the Planning Commission on items not on the agenda. Each person will be given 3 minutes to speak. You are first required to fill out a testimony/comment card prior to speaking and hand it to the Recording Secretary. These forms are available by the sign-in podium. Staff and the Planning Commission will make every effort to respond to questions raised during citizen input before tonight's meeting ends or as quickly as possible thereafter.)

3. MINUTES – None

4. NEW BUSINESS – None

5. PUBLIC HEARING

(To testify, please fill out a testimony/comment card and give to the Recording Secretary.)

- a. City staff is requesting to annex all remaining portions of SE Township Rd public right-of-way (ROW), including the portion of ROW that crosses Union Pacific Railroad crossing DOT 760205P, MP 748.30. The public ROW subject to this annexation is located between the western boundary of the Molalla Forest Road and the western boundary of Mulino Road. (ANN 18-06 SE Township Rd Annexation).
- b. City staff is requesting consideration of a legislative text amendment to streamline, clarify, and update numerous sections of the Canby *Land Development and Planning Ordinance* Title 16 Canby Municipal Code (CMC). The text amendment proposal edits and updates 32 chapters and the Table of Contents from Title 16 of the Canby Municipal Code (CMC), and also amends one specific provision of the Canby Comprehensive Plan to delete Area “K” of Policy NO. 6 under Finding NO. 1 of the Buildable Lands Section. **(TA/CPA 19-01 Development & Planning Ord. Title 16 CMC & Canby Comprehensive Plan – Area K).**

6. FINAL DECISIONS (Note: These are final, written versions of previous oral decisions. No public testimony.)

- a. ANN 18-06 SE Township Rd Annexation
- b. **TA/CPA 19-01 Development & Planning Ord. Title 16 CMC & Canby Comprehensive Plan – Area K**

7. ITEMS OF INTEREST/REPORT FROM PLANNING STAFF

- a. Next regularly scheduled Planning Commission meeting – Monday, July 22, 2019

8. ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION

- a. Status Update of HB 2001: Requires the allowance of Duplexes in all residential zoned areas.

9. ADJOURNMENT

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for person with disabilities should be made at least 48 hours before the meeting at 503-266-7001. A copy of this agenda can be found on the City's web page at www.canbyoregon.gov. 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.

PUBLIC HEARING FORMAT

The public hearing will be conducted as follows:

- **STAFF REPORT**
 - **QUESTIONS** (If any, by the Planning Commission or staff)
 - **OPEN PUBLIC HEARING FOR TESTIMONY:**
 - APPLICANT** (Not more than 15 minutes)
 - PROPONENTS** (Persons in favor of application) (Not more than 5 minutes per person)
 - OPPONENTS** (Persons opposed to application) (Not more than 5 minutes per person)
 - NEUTRAL** (Persons with no opinion) (Not more than 5 minutes per person)
 - REBUTTAL** (By applicant, not more than 10 minutes)
 - **CLOSE PUBLIC HEARING** (No further public testimony allowed)
 - **QUESTIONS** (If any by the Planning Commission)
 - **DISCUSSION** (By the Planning Commission)
 - **DECISION** (By the Planning Commission)
- All interested persons in attendance shall be heard on the matter. If you wish to testify on this matter, please be sure to complete a Testimony Card and hand it to the Recording Secretary. When the Chair calls for Proponents, if you favor the application; or Opponents if you are opposed to the application please come forward and take a seat, speak into the microphone so the viewing public may hear you, and state your name, address, and interest in the matter. You may be limited by time for your statement, depending upon how many people wish to testify.

EVERYONE PRESENT IS ENCOURAGED TO TESTIFY, EVEN IF IT IS ONLY TO CONCUR WITH PREVIOUS TESTIMONY. All questions must be directed through the Chair. Any evidence to be considered must be submitted to the hearing body for public access.

Testimony and evidence must be directed toward the applicable review criteria contained in the staff report, the Comprehensive Plan, or other land use regulations which the person believes to apply to the decision.

Failure to raise an issue accompanied by statements or evidence sufficient to afford the decision-maker and interested parties an opportunity to respond to the issue, may preclude appeal to the City Council and the Land Use Board of Appeals based on that issue.

Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the local government to respond to the issue may preclude an action for damages in circuit court.

Before the conclusion of the initial evidentiary hearing, any participant may ask the hearings body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The Planning Commission shall grant such requests by continuing the public hearing or leaving the record open for additional written evidence or testimony. Any such continuance or extension shall be subject to the limitations of the 120-day rule, unless the continuance or extension is requested or agreed to by the applicant.

If additional documents or evidence are provided by any party, the Planning Commission may, if requested, allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any such continuance or extension of the record requested by an applicant shall result in a corresponding extension of the 120-day time period.



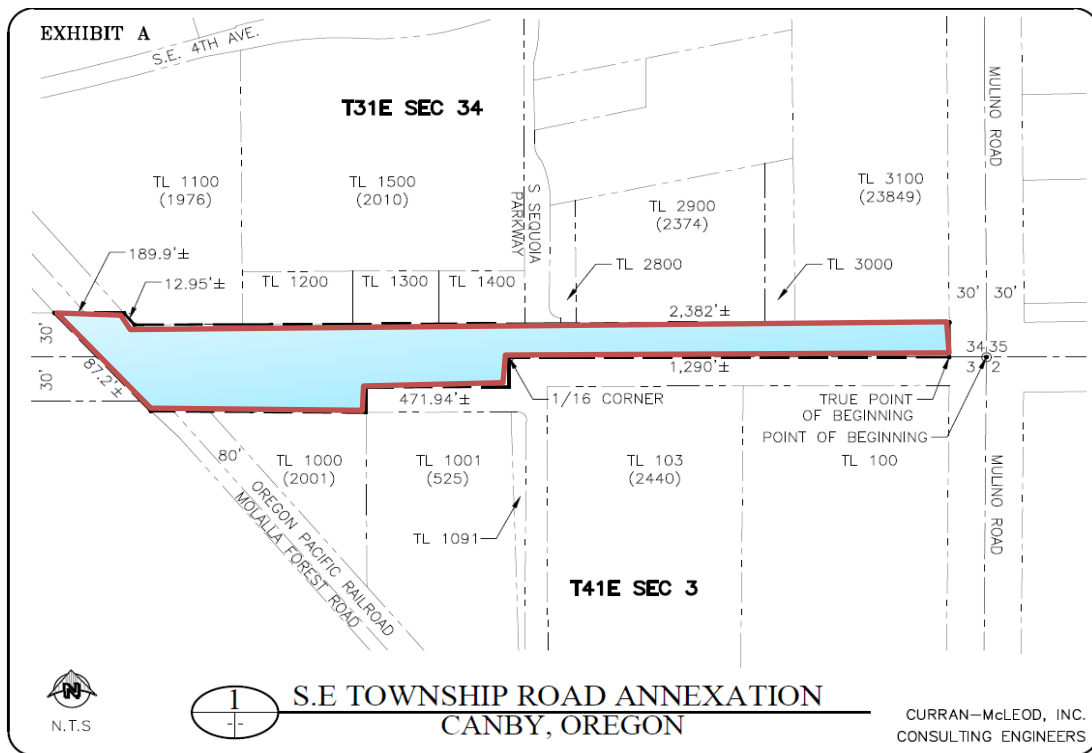
City of Canby

FILE #: ANN 18-06 – SE TOWNSHIP ROAD ANNEXATION From Molalla Forest Road East to Mulino Road

HEARING DATE: July 8, 2019
STAFF REPORT DATE: June 28 2019
TO: Planning Commission
STAFF: Sandy Freund, AICP, Senior Planner

Applicant Request:

This is a request to annex all remaining portions of SE Township Road public right-of-way (ROW), including the portion of ROW that crosses Union Pacific Railroad crossing DOT 760205P, MP 748.30. The public right-of-way subject to this annexation is located between the western boundary of the Molalla Forest Road and the western boundary of Mulino Road.



Staff Recommendation:

Based on the application submitted, the facts, findings, and conclusions of this report, staff recommends that the Planning Commission recommend to the City Council that:

1. ANNEXATION 18-06 be **APPROVED** and,
2. Upon annexation, the public right-of-way will be incorporated into the City of Canby jurisdiction, and be removed from Clackamas County jurisdiction.

Property / Owner Information

Location: SE Township Road, Molalla Forest Road to Mulino Road
Lot Size: 2.4 acres of public right-of-way (ROW)
Zoning: M1 / M2 / Park
Comp Plan: Light Industrial / Heavy Industrial / Park
Tax Lot: Part of 3 1E 34 and 4 1E 3
Owner: Oregon Pacific Railroad, Richard Samuels and Union Pacific Railroad
Applicant: City of Canby

Attachments

- A. Application and Narrative
- B. Site Plan / Map
- C. IGA – Resolution No. 1306

I. Introduction

Over the last 10-30 years the City has approved several annexations along SE Township Road. In particular is the area between Molalla Forest Road and Mulino Road, which included four annexations: Resolution 483 in 1992, Resolution 825 in 2003, Resolution 939 in 2006, and Resolution 955 in 2007. These annexations included developable property, public right-of-way and related frontages. This annexation request does not include developable property, but rather only public right-of-way, totaling approximately 2.32 acres or roughly 110,000 square feet. Specific information is provided below in Section III.

II. Historic Overview

Resolution 483 included 85.3 acres which included frontage between the railroad and the Cemetery on the north side of SE Township, but did not include the SE Township Road right-of-way.

Resolution 825 consisted of 151 acres and included the American Steel frontage, but also did not include the SE Township Road right-of-way abutting the frontage.

Resolution 939, consisting of 73.35 acres included the Weygandt property as well as the SE Township Road right-of-way.

Resolution 955 consisted of 32.62 acres of additional Industrial Park, which included the Parson's property on the north side of SE Township Road abutting Mulino Road, however did not include the SE Township Road right-of-way.

Of the three annexations listed above, only one (Resolution 939) included the annexation of SE Township Road into the City's jurisdiction. With the other three annexations, all or a portion of the public right-of-way of SE Township Road was inadvertently missed.

III. Project Overview & Existing Conditions

This application specifically requests to annex into the City of Canby's jurisdiction all remaining portions of SE Township Road public right-of-way excluded during four previous annexations. The portion to be annexed is located between the western boundary of the Molalla Forest Road and the western boundary of Mulino Road, totaling approximately 2.32 acres or roughly 110,000 square feet. This request also includes the portion of ROW that crosses Union Pacific (UP) railroad crossing DOT 760205P, MP 748.30, frequently used by Oregon Pacific Railroad who actually owns the tracks and signals for said portion of the rail line.

Additionally, by annexing this remaining portion of SE Township Road into the City of Canby's jurisdiction, road maintenance activities will be consistent, as well as reduce confusion for the public as to which jurisdiction is responsible for the condition and maintenance of the road, which primarily serves the residents of Canby.

IV. Applicable Criteria & Findings

Applicable approval criteria used in evaluating this application are listed in the following Chapters from the *City of Canby's Municipal Code* including the *Land Development and Planning Ordinance* (Title 16):

- 16.08: General Provisions
- 16.84: Annexations
- 16.88: General Standards and Procedures
- 16.89: Application and Review Procedures

Section 16.084.04 (A.1-10) of the *City of Canby Land Development and Planning Ordinance*, Title 16, provides the approval criteria applicable to all annexation requests. Because this is an unusual request, in that it does not involve developable land area, but rather only public right-of-way, many of the criteria are not applicable. As a result, applicable criteria will be listed first in this report, followed by the non-applicable criteria summarized as to why it is not applicable.

Applicable Criteria:

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

- 3A. 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.**

Findings:

Potential physical, aesthetic and related social effects: The purpose of the annexation is to remove SE Township Road ROW from Clackamas County jurisdiction and move it into the City of Canby jurisdiction, resulting in a more simplified development review process for future projects. Future development will be required to comply with all City standards and regulations, rather than the County's. Additionally, the jurisdictional change will provide a better funding mechanism for roadway improvements and allow the City to determine the priority of making needed road improvements. Therefore, staff finds this criteria has been met.

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

Findings:

The requested annexation area is included within the City's Urban Growth Boundary. The annexation request is in compliance with all City and County policies. All maintenance and permitting responsibility of the approximate 110,000 square foot portion of SE Township Road has been previously negotiated with Clackamas County and included in an Inter-Governmental Agreement (IGA). The IGA was adopted by the Canby City Council on December 5, 2019 as Resolution No. 1306. Staff finds the referenced IGA includes direction for the transfer of jurisdiction of SE Township Road once annexed into the City's boundary. Therefore, staff finds this criterion has been met.

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

Findings:

Oregon Revised Statutes (ORS) Chapter 222 provides regulations for city boundary changes and other development requirements. Staff concludes that this proposal complies with all applicable provisions of the ORS, Chapter 222. Therefore, staff finds this criterion has been met.

Non-Applicable Criteria:

1A: The City of Canby Annexation Development Map shall determine which properties are required to submit a Development Agreement or Development Concept Plan.

- 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.
- 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 of Canby infrastructure requirements.

Findings:

The public right-of-way, known as SE Township Road, is not located within a Development Concept Plan area or Development Agreement area, and there is no developable land associated with the request. Therefore, staff finds this criteria is not applicable.

2A: 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 development land within the city limits. A supply of development residential land to provide for the anticipated population growth over the following three years is considered to be sufficient.

Findings:

There is no developable land included with this annexation application, therefore the demonstration of need is not applicable. Therefore, staff finds this criteria is not applicable.

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

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

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

Findings for 4A, 5A, and 6A:

The annexation request is for a portion of SE Township Road, a public right-of-way, with no developable properties related to this request. There will be no demand placed upon public utilities or infrastructure. Also, no additional utility improvements will be necessary. Therefore, staff finds these criteria are not applicable.

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

Findings:

No additional facilities are necessary as part of this annexation request, as there is no property being developed, thus no funding is necessary. Therefore, staff finds this criteria is not applicable.

8A. Statement indicating the type and nature of any Comprehensive Plan text or map amendments of Zoning text or map amendments that may be required to complete the proposed development. Proposed zoning must be consistent with zoning identified in any applicable adopted Development Concept Plan.

Findings:

There is no Comprehensive Plan or Zoning text or map amendments associated with this annexation request, as there is no developable land included as part of the annexation request. There is also no related Development Concept Plan applicable. Therefore, staff finds this criteria is not applicable.

V. Public/agency comments

Notice of this application and opportunity to provide comment was mailed to owners of lots within 500 feet of the public right-of-way commonly known as SE Township Road and to all applicable public agencies and City departments on June 26, 2019. Any citizen and agency comments/written testimony received at the time of publication of this staff report will be attached herein, and be presented accordingly.

Staff did receive a phone call from Mr. Bill Brink on June 26, 2019 inquiring about the proposed right-of-way annexation. Mr. Brink's property is Tax Lot 3000, 2522 S Township Road, however in unincorporated Clackamas County. He asked the following questions:

- **Why is SE Township Road being annexed into the City?**
 - *Staff informed Mr. Brink that the annexation of SE Township Road is merely a technicality in order to bring the right-of-way into the City's jurisdiction in its entirety, and that this was the last portion of the road necessitating annexation.*
- **Does the annexation have anything to do with the Columbia bottling distribution warehouse project?**
 - *No, this annexation is not because of the Columbia bottling distribution warehouse project.*
- **If sidewalk improvements were constructed in the future, would he have to pay for them?**
 - *The costs of sidewalk improvements would not require Mr. Brink to pay for any portion that would be along his property frontage. The only way that could be a possibility in the future was if a Local Improvement District (LID) were formed to construct sidewalks along SE Township Road. And, in order to form an LID, it would take 50% approval of the affected property owners to agree to join an LID, as well as City Council approval. Currently there are no plans for sidewalks or an LID.*

- **If his well or septic failed, would he be required to annex into the City in order to hook-up to city water and sewer?**
 - *The annexation of SE Township Road in no way impacts the future annexation of Mr. Brink's property into the City, whether or not the well or septic should fail.*
 - *If Mr. Brink's septic, well, or both failed, it would be up to Clackamas County as to next steps for replacement and/or connection to city services, as the Brink's property is outside of the City's jurisdiction and is in unincorporated Clackamas County. If Mr. Brink's building were within 100 feet of existing city sewer lines, then he may need to connect to city sewer service, which would be a gravity flow system, and if the City determines they would be willing to extend service outside city limits. If the City agreed to an extraterritorial extension, Mr. Brink would likely be given time to complete an annexation within a reasonable time frame after making the connection.*

Staff has not received any other public comment regarding this annexation request.

Summary:

Because this annexation application is intended to correct the omission of this portion of SE Township Road from the previously approved annexations referenced on page 2, and there is no developable land related to the proposed annexation, staff concludes this annexation request is a technical formality which must be completed prior to the City taking over jurisdictional responsibility of SE Township Road.

Future road maintenance, improvements, construction and reconstruction (including Capital improvements); repairs of related facilities within the roadway, including but not limited to storm water drainage facilities, traffic control devices, street lights and roadside barriers will become the responsibility of the City of Canby, as well as all other responsibilities currently under the purview of Clackamas County in accordance with ORS 368 and IGA Resolution No. 1306 as agreed upon between the two jurisdictions. Lastly, because this annexation request does not provide additional developable lands or impacts on utility demands, a neighborhood meeting was not held regarding this technical annexation.

CITY OF CANBY

SE Township Road Annexation Application

Molalla Forest Road East to Mulino Road

**Applicant: City of Canby
Planning Department
222 NE 2nd Avenue,
Canby, OR 97013**

**Owners: Public Right-of-Way
and
Richard Samuels
Oregon Pacific Railroad
9001 SE McBrod Ave
Milwaukie, OR 97222**

December 2018

CURRAN-McLEOD, INC., CONSULTING ENGINEERS
Portland, Oregon

City of Canby
SE Township Road Annexation Application

December 2018

INTRODUCTION

The City of Canby has approved multiple annexations along SE Township Road over the past three decades. Of special interests are the annexations approved along SE Township Road between the Molalla Forest Road and Mulino Road, which included the following:

Resolution 483 in 1991:

85.3 ac which includes the frontage between the railroad and the Cemetery on the north side of Township, but did not include the Township Road right-of-way;

Resolution 825 in 2003:

151 ac which included the American Steel frontage but again did not include the Township Road right-of-way abutting the frontage;

Resolution 939 in 2006:

73.35 ac which included the Weygandt property and also included annexation of the Township Road right-of-way abutting the property.

Resolution 955 in 2007:

32.62 ac of additional Industrial Park that included the Parson's property on the north side abutting Mulino Road, but did not include any right-of-way.

In each annexation excepting that in Resolution 939, all or portions of the public right-of-way of SE Township Road were inadvertently omitted. This current application is requesting approval of an annexation to the City of Canby of all remaining SE Township Road public right-of-way, located between the western boundary of the Molalla Forest Road and the western boundary of Mulino Road.

This is an unusual annexation application which does not include any developable property, and very few of the approval criteria are applicable. The approval criteria listed in the Canby Municipal Code were evaluated and approved at the time of each individual annexation of the parcels abutting the right-of-way, as listed above. Based on the absence of developable property, and each abutting property having demonstrated compliance with the approval criteria at the time of the original annexation applications, this current application to annex SE Township Road should be approved.

OWNERSHIP

The area to be annexed includes public right-of-way and a crossing of the Oregon Pacific Railroad. All OPRR improvements, including the tracks and signals, are owned by the Oregon Pacific Railroad. The land is provided by the Union Pacific Railroad to the OPRR without charge. As a result of the minor percentage of the annexation land in the railroad crossing (0.19 acres or approximately 8% of the annexation) and the timeline required to secure a signature from the Union Pacific Railroad, the OPRR only is included as a property owner and has signed in support of this annexation application.

Consent to annex this area is requested and approved by the City of Canby, who represents 92% of the area to be annexed.

AREA DESCRIPTION

This annexation is limited to the public right-of-way and railroad crossing. Within the City limits, this right-of-way abuts M-1 light and M-2 heavy industrial zoned land, and the Zion Memorial Cemetery, which is zoned as Park land. This right of way also fronts on several properties that are currently outside of the City limits, which have Land Use Designation LI Light Industrial.

The right-of-way annexation required along SE Township Road varies in width from the western boundary of the Molalla Forest Road to the western boundary of Mulino Road. The north half of the right-of-way to be annexed is 30 feet in width across the Forest Road and railroad property. From the railroad crossing east, the north half annexation is 20 feet in width for the remaining distance to Mulino Road.

The south half of the right-of-way to be annexed is 37 feet in width across the Forest Road and railroad and the across the frontage of BBC Steel. Continuing east, the adjacent American Steel property requires an annexation of 20 feet in width from the east boundary of the BBC Steel property to the sixteenth corner. East of sixteenth corner to Mulino Road, the right-of-way was previously annexed by Resolution 939, so no additional area is needed.

The total area of the proposed annexation is approximately 2.32 acres.

SE Township Road is a fully functioning collector street in the City's Transportation System Plan. The street frontage is only partially developed with curbs and sidewalks. The majority of the street in this reach has no curb or sidewalk, but will ultimately be fully developed. There is no other intended use for this requested annexation area other than to function as a collector street.

FACILITIES AND SERVICES

No developable property is included in this annexation request, so no public facilities are required.

NEIGHBORHOOD INVOLVEMENT

We anticipate that neighborhood meetings were previously held for each of the annexations referenced above. As a result, and due to the fact that there is no additional developable property included in this application, the Canby Planning Department has determined that a neighborhood meeting is not warranted for this application.

APPLICATION FEES

In that fees were collected for each of the annexations referenced above, the Canby Planning Department has proposed to waive any fee for this application.

CMC 16.84.040 STANDARDS AND CRITERIA

A.1.a. DA Area: This area included in the annexation request is not located within a Development Agreement area.

A.1.b. DCP Area: This area included in the annexation request is not located in a Development Concept Plan area.

A.2. Need for Additional Property: As there is no developable land included with this application, the demonstration of need would not be applicable.

A.3. Potential Physical, Aesthetic and Related Social Effects: The purpose of this annexation is to incorporate the public right-of-way into the jurisdiction of the City of Canby and remove it from the jurisdiction of Clackamas County. This will result in simplifying development approvals. Future development will follow the City of Canby's standards as opposed to the Clackamas County standards. This jurisdictional change will provide a better funding mechanism for roadway improvements and allow the City to determine the priority of making needed improvements.

A.4. Availability of Public Services: As there are no developable properties included in the annexation request, there is no demand placed on any public utilities.

A.5. Increased Utility Demands: This annexation will not increase the demand for any public utilities.

A.6. Additional Utility Facilities Required: No additional utility improvements are required to serve this annexation.

A.7. Funding for Additional Utility Facilities: No additional funding is required for utility facilities with this annexation.

A.8. Comp Plan and Zoning Amendments: There are no requested comprehensive plan amendments associated with this annexation request. Once annexed, the area should be designated with zoning to match the adjoining properties.

A.9. Compliance with City Requirements: This annexation request is in compliance with all City and County policies and has been previously negotiated with Clackamas County and included in an Inter Governmental Agreement. The requested annexation area is included within the City's Urban Growth Boundary.

A.10. Compliance with ORS 222: This application is in compliance with the State statute, and the City of Canby will be able to comply with the requirements mandated on the City without exception.

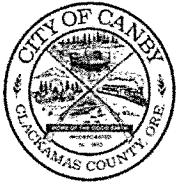
CONCLUSION

This application is intended to correct an omission in several prior annexations. The evaluation criteria contained in CMC 16.84.040 had previously been applied to each annexation abutting this public right-of-way, and each has been previously approved. Approval of this current annexation request does not provide any additional developable lands and will have no impact on utility demands. This application satisfies all applicable evaluation criteria.

The neighborhood meeting and any application fees are requested to be waived. A legal description, sketch and list of all property owner's name and addresses within 500 feet of the annexation property are attached with this application narrative.

Attachments:

- Annexation Application
- List of property owners and addresses within 500 feet
- Legal Description of the annexation



City of Canby
 Planning Department
 222 NE 2nd Avenue
 PO Box 930
 Canby, OR 97013
 (503) 266-7001

LAND USE APPLICATION

ANNEXATION Process Type IV

APPLICANT INFORMATION: (Check ONE box below for designated contact person regarding this application)

Applicant Name: City of Canby Phone: (503) 266-7001
 Address: 222 NE 2nd Avenue Email: _____
 City/State: Canby, OR Zip: 97013

Representative Name: Bryan Brown, Planning Director Phone: (503) 266-0702
 Address: 222 NE 2nd Avenue Email: BrownB@CanbyOregon.gov
 City/State: Canby, OR Zip: 97013

Property Owner Name: Richard Samuels, OPRR Phone: (503) 659-5452
 Signature: _____
 Address: 9001 SE McBrod Avenue Email: RASOPR@GMail.com
 City/State: Milwaukie, OR Zip: 97222

Property Owner Name: _____ Phone: _____
 Signature: _____
 Address: _____ Email: _____
 City/State: _____ Zip: _____

NOTE: Property owners or contract purchasers are required to authorize the filing of this application and must sign above

- ① All property owners represent they have full legal capacity to and hereby do authorize the filing of this application and certify that the information and exhibits herewith submitted are true and correct.
- ② All property owners understand that they must meet all applicable Canby Municipal Code (CMC) regulations.
- ③ All property owners hereby grant consent to the City of Canby and its officers, agents, employees, and/or independent contractors to enter the property identified herein to conduct any and all inspections that are considered appropriate by the City to process this application.

PROPERTY & PROJECT INFORMATION:

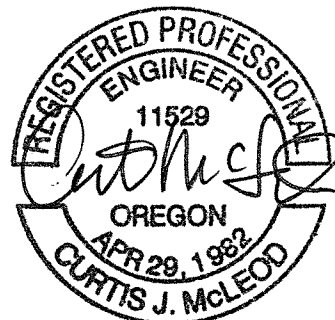
<u>SE Township Rd, Forest Road to Mulino Road</u>	<u>2.4 ac</u>	<u>Part of 3 1E 34 and 4 1E 3</u>
Street Address or Location of Subject Property	Total Size of Property	Assessor Tax Lot Numbers
<u>Public Street - No Structures</u>	<u>M1/M2/Park</u>	<u>LI / HI / Public</u>
Existing Use, Structures, Other Improvements on Site	Zoning	Comp Plan Designation
<u>Public Street - No Proposed Development</u>		
Describe the Proposed Development or Use of Subject Property		

STAFF USE ONLY				
FILE #	DATE RECEIVED	RECEIVED BY	RECEIPT #	DATE APP COMPLETE

City of Canby
SE Township Road Right-of-Way Annexation Legal Description
December 2018

This description is for the annexation of SE Township Road Right-of-Way from the Western boundary of the Oregon Pacific Railroad to the western Right-of-Way line of Mulino Road, as described following and shown on the attached sketch labeled Exhibit A:

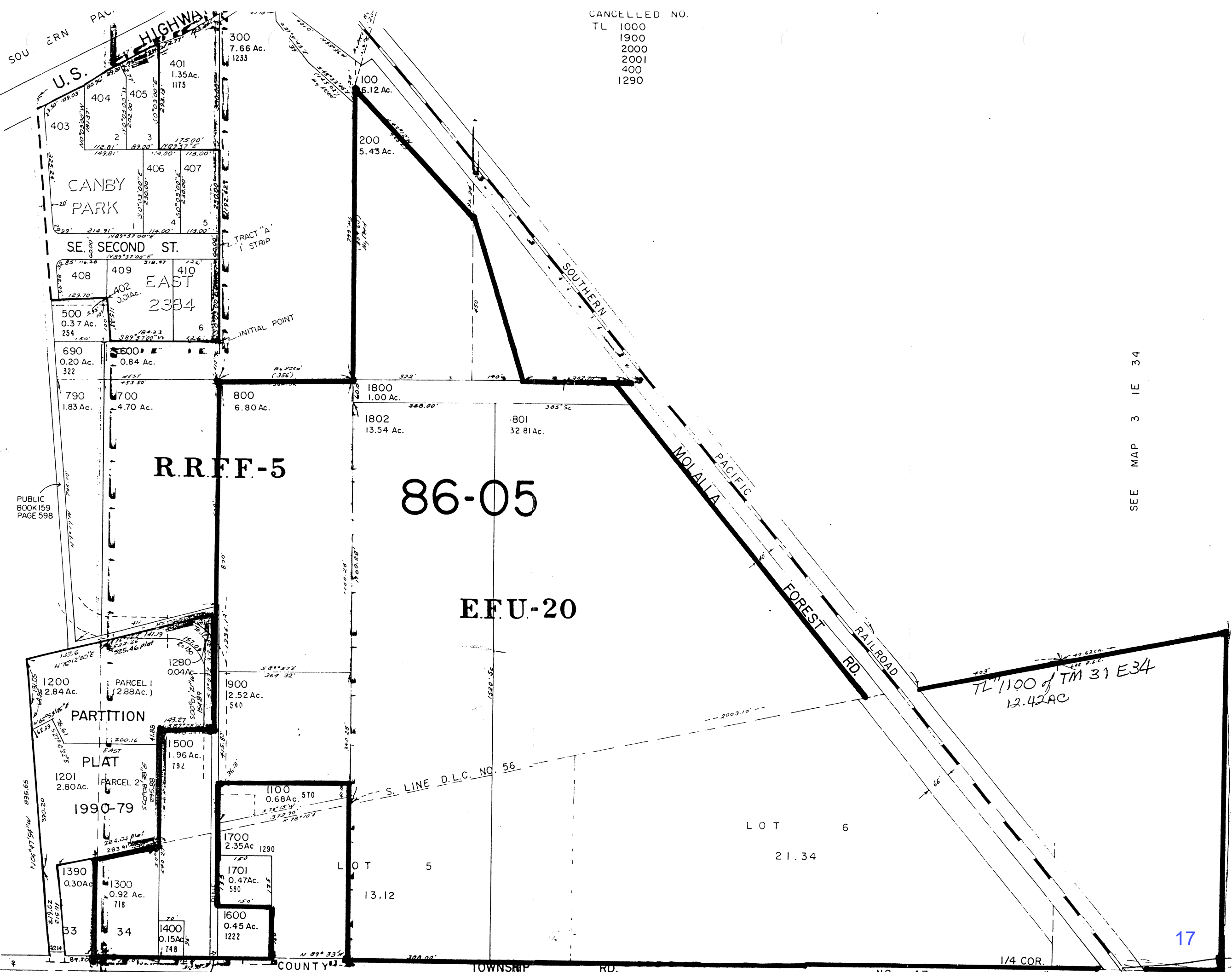
Beginning at the Northeast corner of Section 3, Township 4 South, Range 1 East, of the Willamette Meridian, said point being on the centerline of SE Township Road and centerline of S Mulino Road; thence Westerly along the North line of said Section 3, a distance of 30 feet to the True Point of Beginning; thence continuing Westerly along the North line of said Section 3, which is also the centerline of SE Township Road, a distance of 1,290 feet more or less to the one-sixteenth corner; thence Southerly at right angles to the North line of said Section 3, a distance of 20 feet along the West line of the East one-half of the Northeast one quarter of said Section 3, to the Northeast corner of that tract of land conveyed to American Steel, L.L.C. in Fee Number 2007-083231 Clackamas County Deed Records; thence Westerly along a line measured 20 feet South of and parallel the North line of said Section 3, said line also being the North boundary of said American Steel, L.L.C. tract, a distance of 471.94 feet more or less to the Northwest corner of said American Steel L.L.C. tract; thence South, at right angles to the North line of said Section 3, a distance of 17 feet along the West line of said American Steel L.L.C. tract to a point; thence Westerly, along a line parallel and 37 feet south of the North line of said Section 3, a distance of 682.64 feet more or less to a point on the Southwestern Right-of-Way line of the Oregon Pacific Railroad; thence Northwesterly along said Southwestern Railroad Right-of-Way line a distance of 87.22 feet more or less to a point being 30 feet measured perpendicular and North of the North line of said Section 3; thence Easterly, along a line parallel and 30 feet North of the North line of said Section 3, a distance of 104 feet more or less to a point on the Northeastern right-of-way line of said Oregon Pacific Railroad; thence Southeasterly along said Northeastern Railroad Right-of-way line a distance of 12.95 feet more or less to a point on the North Right-of-Way line of SE Township Road, said point being 20 feet measured perpendicular to the North line of said Section 3; thence Easterly along a line parallel and 20 feet North of the North line of said Section 3, a distance of 2,382 feet more or less to the Western Right-of-Way line of Mulino Road; Thence Southerly along the alignment of said Western Right-of-Way line of S Mulino Road, a distance of 20 feet to the True Point of Beginning.



EXP 12/2018

CANCELLED NO.
TL 1000
1900
2000
2001
400
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86-02



SEE MAP 3 IE 33DA

PUBLIC BOOK 159 PAGE 598

SEE MAP 3 IE 33DU

SEE MAP 3 IE 34

RESOLUTION NO. 1306

A RESOLUTION REQUESTING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CANBY AND CLACKAMAS COUNTY RELATED TO ROAD MAINTENANCE AND PERMITTING AUTHORITY OF TOWNSHIP ROAD

WHEREAS, Chapter 190 authorizes local governments to enter into intergovernmental agreements for the performance of any or all functions and activities that a local government, its officers or agencies, have the authority to perform, including the authority to perform as the “Road Authority” related to maintenance and permitting responsibilities for roads; and

WHEREAS, Township Road is a County Road, as defined in ORS 368.001, lying outside, but adjacent to the boundaries of the City.; and

WHEREAS, the Parties agree that the City is best suited to assume primary responsibility for maintenance and permitting of Township Road, approximately 110,000 square feet in area, as more particularly depicted in Exhibit “A” which is attached hereto and incorporated herein (“Township.”).

WHEREAS, transfer of responsibility with regards to Township will lead to efficient and consistent road maintenance activities and reduce any confusion on the part of the public as to which Party is responsible for the condition and maintenance of Township, which primarily serves the residents of the City; and

WHEREAS, the Parties acknowledge that jurisdiction of Township should transfer to the City once annexed into the City’s boundary, and that this Agreement will no longer be necessary once Township is annexed into the City and jurisdiction over Township has been transferred; and

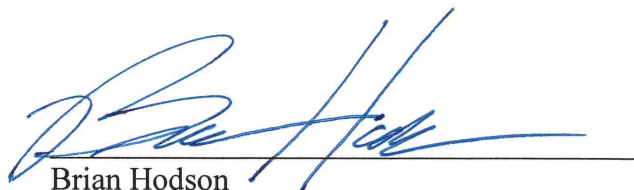
WHEREAS, it is the intent of the Parties that the County transfer as much of its responsibility under ORS 368 with regards to Township as may be allowed under state law in order to grant the City control of Township prior to the annexation and jurisdictional transfer of Township.

NOW, THEREFORE, BE IT RESOLVED by the Canby City Council, as follows:

The City agrees to assume responsibility for Road Authority activities (as outlined in Section 3) for Township and shall be surrendered to the City pursuant to the terms and conditions of the Agreement. The portion of Township subject to the Agreement is approximately 110,000 square feet in area, as more particularly depicted and specifically described in Exhibit “A”. The City agrees to assume responsibility from the date that the County concludes its hearing and decision on the matter by approval of the **INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CANBY AND CLACKAMAS COUNTY RELATED TO ROAD MAINTENANCE AND PERMITTING AUTHORITY OF TOWNSHIP ROAD**, Exhibit “A”.

This resolution will take effect on December 5, 2018.

ADOPTED this 5th day of December 2018 by the Canby City Council.



Brian Hodson
Mayor

ATTEST:



Kimberly Scheafer, MMC
City Recorder

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CANBY AND
CLACKAMAS COUNTY RELATED TO ROAD MAINTENANCE AND PERMITTING
AUTHORITY OF TOWNSHIP ROAD**

This agreement (the "Agreement") is made on the date all required signatures have been obtained, between the City of Canby ("CITY"), a political subdivision of the State of Oregon, and Clackamas County ("COUNTY"), a political subdivision of the State of Oregon, pursuant to ORS Chapter 190 (Intergovernmental Cooperation), collectively referred to as the "PARITES" and each a "PARTY."

RECITALS

WHEREAS, ORS Chapter 190 authorizes local governments to enter into intergovernmental agreements for the performance of any or all functions and activities that a local government, its officers or agencies, have the authority to perform, including the authority to perform as the "Road Authority" related to maintenance and permitting responsibilities for roads;

WHEREAS, Township Road is a County Road, as defined in ORS 368.001, lying outside, but adjacent to the boundaries of the City.

WHEREAS, the Parties agree that the City is best suited to assume primary responsibility for maintenance and permitting of Township Road, approximately 110,000 square feet in area, as more particularly depicted on Exhibit "A" which is attached hereto and incorporated herein ("Township").

WHEREAS, transfer of responsibility with regards to Township will lead to efficient and consistent road maintenance activities and reduce any confusion on the part of the public as to which Party is responsible for the condition and maintenance of Township, which primarily serves the residents of the City;

WHEREAS, the Parties acknowledge that jurisdiction of Township should transfer to the City once annexed into the City's boundary, and that this Agreement will no longer be necessary once Township is annexed into the City and jurisdiction over Township has been transferred; and

WHEREAS, it is the intent of the Parties that the County transfer as much of its responsibility under ORS 368 with regards to Township as may be allowed under state law in order to grant the City control of Township prior to the annexation and jurisdictional transfer of Township.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** This Agreement shall be effective upon execution, and shall expire automatically at the time Township has been annexed into the City and the City assumes jurisdiction of Township pursuant to ORS 368 and/or ORS 373.

2. **Transfer of Authority.**

A. Responsibility for Road Authority activities (as outlined in Section 3) for Township shall be surrendered to the City pursuant to the terms and conditions of this Agreement. The portion of Township subject to this Agreement is approximately 110,000 square feet in area, as more particularly depicted on Exhibit "A" and more specifically described as follows:

All that portion of Township Road, County Road No. 47, Department of Transportation and Development maintenance No. 31021; Situated in the southwest 1/4 of Section 34, T. 3S., R. 1E., W.M. and the northeast 1/4 of Section 03, T. 4S., R. 1E., W.M., as depicted on Exhibit A, attached hereto, lying west of and between the westerly right of way line of Mulino Road (mile point 1.60) and westerly right of way line of the Molalla Forest Highway (mile point 2.07), being a total of approximately 2,550 feet long, varying in width.

Containing 110,000 square feet, more or less.

B. To facilitate the performance of responsibilities under this Agreement, the City hereby accepts responsibility for Road Authority activities (as outlined in Section 3) for Township, as described herein.

C. The City shall be solely responsible for all costs associated with the Road Authority activities assumed by the City through this Agreement.

3. **Road Authority Obligations.** For purposes of this Agreement, the Road Authority activities include, but are not necessarily limited to, the following:

A. Construction and reconstruction (including capital improvements);

B. Improvement or repair, and maintenance;

C. Maintenance and repair of related facilities within the roadway, including but not limited to storm water drainage facilities, traffic control devices, street lights and roadside barriers;

D. Timely elimination or mitigation of known hazards to the road users;

E. Issuance of permits for work or the establishment of roadway standards on Township; and

F. All other responsibilities the County may have under ORS 368 with regards to Township which may be assumed by the City under state law.

4. **Maintenance Standard.** Any maintenance on Township required by this Agreement shall be carried out in a manner that is similar to other roads with similar features, function, and characteristics under the City's jurisdiction.

5. **Termination.**

- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. Either the County or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County may terminate this Agreement in the event the County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either this Agreement is prohibited or the County is prohibited from paying for such work from the planned funding source.
- D. The County or the City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- E. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- F. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. **Indemnification.**

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.


- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

7. General Provisions

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. County, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.

- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of this Agreement. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** City and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- K. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.

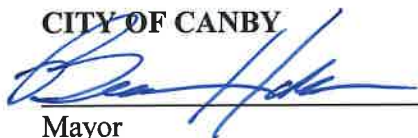
- L. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- M. **Force Majeure.** Neither City nor County shall be held responsible for delay or default caused by events outside of the City or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. Each Party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- N. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

CLACKAMAS COUNTY


Chair
1-24-19

Date
Kevin Mogg B.I.

Recording Secretary

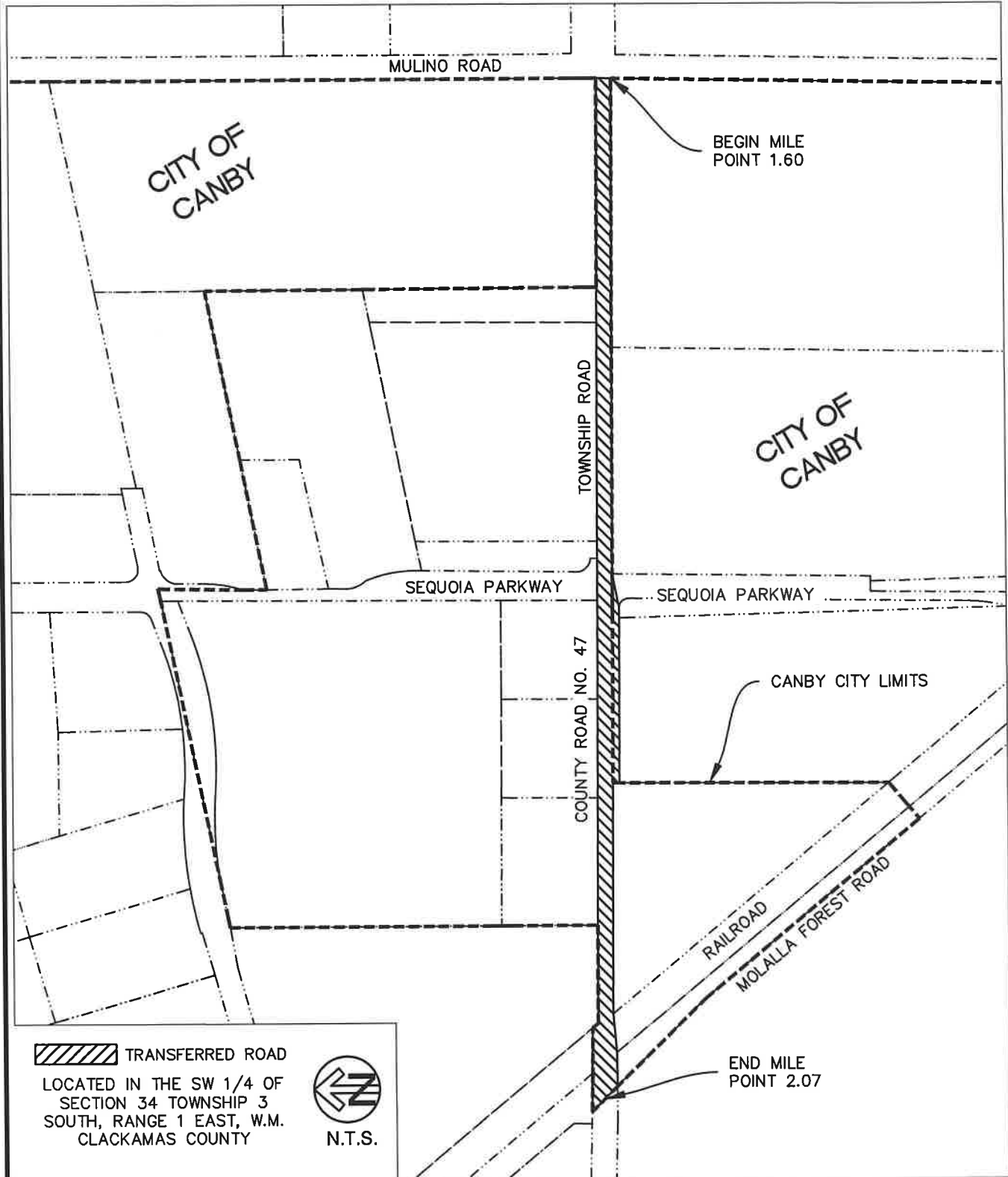
CITY OF CANBY



Mayor
December 5, 2018

Date
Kimberly Schoeffel

Recording Secretary
City Recorder

EXHIBIT "A"



 TRANSFERRED ROAD
 LOCATED IN THE SW 1/4 OF
 SECTION 34 TOWNSHIP 3
 SOUTH, RANGE 1 EAST, W.M.
 CLACKAMAS COUNTY



DEPARTMENT OF TRANSPORTATION
 AND DEVELOPMENT
 150 BEAVERCREEK ROAD
 OREGON CITY, OR 97045



BY: R. MAXWELL DATE: 11/2/2018
 TRANSFER OF ROAD AUTHORITY
 TOWNSHIP ROAD
 COUNTY ROAD NO. 47

SHEET
 1 OF 1