



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office Fax: (503) 378-5518

Third Floor/Measure 37 Fax: (503) 378-5318

Web Address: <http://www.oregon.gov/LCD>

NOTICE OF ADOPTED AMENDMENT

December 28, 2006

TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Ontario Plan Amendment
DLCD File Number 003-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: December 6, 2006

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Darren Nichols, DLCD Regional Representative
Grant Young, City Of Ontario

<paa> ya



2 Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

DATE
STAMP
DEPT OF
NOV 20 2006
LAND CONSERVATION
AND DEVELOPMENT
For DLCD Use Only

Jurisdiction: City of Ontario Local file number: 2006-05-11AZ

Date of Adoption: 11/6/2006 Date Mailed: 11/15/2006

Date original Notice of Proposed Amendment was mailed to DLCD: 08/28/2006

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: Annexation/Rezone

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".
Annexation of 4.46 Acres of UGA Residential Property; and, assignment of City Single Family Residential Zone

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".
Same

Plan Map Changed from: NA to: NA

Zone Map Changed from: UGA-R to: CITY RS-50

Location: 18S, 47E, 05C; #700 Acres Involved: 4.46

Specify Density: Previous: 5 ACRES New: 5000 SQUARE FEET

Applicable Statewide Planning Goals: NA

Was an Exception Adopted? YES NO

DLCD File No.: 003-06 (15527)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

Affected State or Federal Agencies, Local Governments or Special Districts:

Malheur County; Ontario Rural Fire; Ontario Rural Road

Local Contact: **Grant Young** Phone: **(541) 881-3222** Extension: _____

Address: **444 SW 4th Ave** City: **Ontario, OR**

Zip Code + 4: **97914-** Email Address: *grant.young@ontarioregion.org*

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:
**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**
2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **maru.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

**BEFORE THE CITY COUNCIL
CITY OF ONTARIO, OREGON**

In the matter of Land Use Action #2006-05-11AZ, a)
Request for annexation and rezone as filed by Charles and)
Jean Oakes

**FINAL ORDER
And Findings of Fact**

ORDER in the **APPROVAL** of Land Use Action **2006-05-11AZ**, filed by Charles and Jean Oakes for the annexation, and rezone of 4.46 Acres of Land designated as Assessor's Map #18S4705C; Tax Lot #700, City of Ontario, Oregon, located in the southwest corner of the intersection of West Idaho Avenue and North Dorian Drive and consists of a single, discrete parcel; said application filed as provided for in the Ontario Municipal Code.

WHEREAS:

This matter came before the Ontario City Council as an application for annexation and rezone of property in accordance with the City of Ontario Municipal Code. The application sought approval for the annexation and rezone of a parcel of land contiguous to the City Limits of the City of Ontario.

Hearings were held before the City Council on October 16, 2006, and on November 6, 2006, as matters duly set upon the agendas of its regular meetings after giving public notice to affected property owners, agencies, the local newspaper and electronic media, and otherwise as set forth in Sections 10B-03 and 10B-45.

At the initial public hearing on said application evidence and testimony was presented by the Planning and Zoning Administrator in the form of a staff report and exhibits. The hearing was conducted according to the rules of procedure and conduct of hearings on annexations, and on land use matters, as set forth in the Ontario Municipal Code. The City Council did receive oral testimony at the hearing concerning this application.

At the conclusion of the initial public hearing the City Council, after consideration and discussion of the evidence and testimony, upon a motion duly made and seconded, voted to approve the request as set forth above and proposed in Application #2006-05-11AZ based on decision criteria, findings of fact and conclusions of law as set forth in this order and in Exhibit 1 attached hereto and included herein by this reference.

At the November 6, 2006, public hearing the City Council, after giving public notice as required for a public meeting, did adopt Ordinance #2585-2006 on the second and final reading as a part of the Consent Agenda.

FINDINGS OF FACT:

- 1) The City Council adopts the findings and conclusion in the Staff Report as the basis for

this decision; and

- 2) The City Council accepts and adopts the oral and written submittals of testimony of the October 16, 2006, hearing as additional basis for this decision.

CONCLUSIONS OF LAW

1. The burden of proof is upon the applicant in proving the proposal fully complies with applicable Code criteria, Oregon State Statutes and Oregon Administrative Rules.
2. The City Council finds that Exhibit 1, Staff Report, and evidence and testimony presented at the hearings, address relevant comprehensive plan policies, standards of the Municipal Code, and Oregon State Statute and Administrative Rules sufficiently to support the burden of proof needed to approve the request for annexation and rezone.
3. The City Council finds that the applicant has met the burden of proof to support approval of the proposed application.

NOW THEREFORE LET IT HEREBY BE ORDERED that application #2006-05-11AZ, for the annexation, and rezone of property designated as Assessor's Map #18S4705C; Tax Lot #700, City of Ontario, Oregon, filed by Charles and Jean Oakes be **APPROVED**:

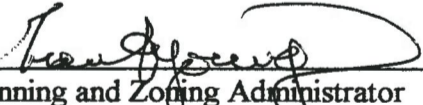
Based upon the above, the City of Ontario City Council has concluded that Application #2006-05-11AZ, meets the standards set forth in the applicable sections of the Ontario City Code and therefore complies with the purposes of the Code.

This order in **APPROVAL** of Application #2006-05-11AZ reviewed and approved by the City Council on this 6th day of November, 2006.

FOR THE CITY OF ONTARIO:



Mayor



Planning and Zoning Administrator

ONTARIO CITY COUNCIL – REPORT AND DECISION
Monday, November 6, 2006

TO: Mayor and City Council

THRU: Scott Trainor, City Manager

FROM: Grant Young, Planning and Zoning Administrator

SUBJECT: ACTION 2006-05-11AZ: A request for Annexation and Rezone of a parcel of land located in the southwest corner of the intersection of West Idaho Avenue and North Dorian Drive and designated as Assessor's Map #18S4705C; Tax Lot #700. If approved, this action will result in the Annexation of 4.46 acres of land into the City of Ontario; and, the rezoning of the subject property from Urban Growth Area Residential (UGA-R) to the City Single-Family Residence (RS-50) Zone. The applicants and property owners are Charles and Jean Oakes. **ORDINANCE #2585-2006, Final Reading**

REPORT DATE: Monday, November 7, 2006

I. SUMMARY & BACKGROUND:

Attached document(s):

- Exhibit "A" Assessor's Map of subject property
- Exhibit "B" Consent form
- Exhibit "C" Legal description and map of subject annexation/rezone
- Exhibit "D" Development Agreement
- Exhibit "E" Ordinance #2585-2006

Approximately two years ago, due to an emergency situation, the applicants requested and received approval for, connection to City sewer service for the subject property which is located within the Urban Growth Area, outside the City Limits. The approval was conditional in that annexation into the City was required, which is consistent with the City's policy to connect only to properties that are within City Limits. This application, if approved, will fulfill that condition, being a request specifically for annexation and rezone of 4.46 acres of property described in Section I above. The subject property is currently zoned Urban Growth Area Residential (UGA-R), and consists of one tax lot which is designated as Assessor's Map #18S4705C; Tax Lot #700.

II. PREVIOUS COUNCIL ACTION:

As previously noted, the Council authorized provision of City sewer to this property.

The Planning Commission heard this matter at their regular October meeting and forwarded it to the Council with **no recommendation**. The Planning Commission was uncomfortable, after applicant testimony in opposition to the annexation/rezone, in making a recommendation one way or the other without knowledge of whether or not there was a City Ordinance or regulation that required properties outside of the City Limits to annex upon connection to City Sewer.

Staff has researched that issue and found the applicable regulation, which is set forth with findings in Section III below.

III. APPLICABLE ORDINANCE & COMPREHENSIVE PLAN CRITERIA AND STANDARDS:

The proposed development must comply with applicable provisions of the OCC (City of Ontario Zoning Ordinance as set forth in the Ontario City Code), and the City of Ontario Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the Zoning Ordinance it is considered to be consistent with the Comprehensive Plan.

The proposed development must comply with applicable provisions of the OCC (City of Ontario

A. Rezone

1. *Section 10B-20-30 REQUIRED FINDINGS, DECISION CRITERIA. In preparing findings to support a quasi-judicial zoning map amendment decision, the following findings shall be addressed except when alternatives are set forth or where a required findings clearly does not apply to the current action.*
 - a. *The zoning map amendment is in conformance with statewide planning goals and guidelines.*
 - b. *The zoning map amendment is in conformity with the acknowledged comprehensive plan.*
 - c. *The applicant has demonstrated a mistake or error in the original zone designation or the applicant has demonstrated a change in physical, social or market conditions generally effecting the area which make the proposed change appropriate.*
 - d. *A public need is demonstrated for this zoning at this location and is not the granting of a special privilege for a single property or small group of properties.*
 - e. *The property effected by the change is adequate in size and shape to facilitate its use and development as permitted under the new zoning*

classification.

- f. The property effected by the proposed change of zone is properly related to streets and public facilities and with services adequate to meet the demands of the uses allowed in the new zone.*
- g. The proposed zoning map change will not result in adverse effects upon surrounding properties or surrounding uses from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land.*

Findings of fact:

- a. The City of Ontario Municipal Code Implements policies contained in the City of Ontario Comprehensive Plan, which conforms to the Statewide Planning Goals; if a proposed rezone meets all criteria and standards contained in the OMC, the request will be consistent with Comprehensive Plan Policies and therefore conform to the Statewide Planning Goals.
- b. The subject property is currently zoned UGA-R and the request is to rezone to the companion City Residential Zone that is the same zone as adjacent and nearby property. The requested zone allows basically the same use as the UGA zone, and is reflected in the Comprehensive Plan. No Comprehensive Plan amendment is necessary for this rezone; therefore, the proposal is consistent with, and conforms to, the Comprehensive Plan.
- c. The applicant has requested annexation into the City of Ontario concurrent with the request for rezone; a City Zone must be applied to the property once within City Limits. The existing zone is not a mistake, and there is no need to demonstrate a change in conditions in the surrounding area; the change in zone is necessary and appropriate.
- d. This request is legally necessary due to the annexation of the property; granting of this request is not a special privilege and no public need has to be demonstrated.
- e. The subject property is adequate in size and shape to be rezoned from UGA residential zoning to City residential zoning.
- f. The property owner proposes no development at this time; the property is well above the minimum required for division and development, and could be subdivided or partitioned and further developed. City Water and Sewer are available on and within the boundary of the property. City fire and police services will be available upon annexation.

Development agreements for the dedication of right-of-way for planned streets; improvement of all streets to City standards, including curb, gutter and sidewalks; establishment of stormwater management systems to contain all stormwater onsite; and installation or payment of the appropriate share of existing, sewer and water; and, for

installation of fire hydrants to City standards have been finalized between the applicant and the City and are included as Exhibit "D" to this report.

- g. Uses allowed by the current zone is basically identical to the proposed zone. No significant difference in allowed uses will occur as a result of the rezone. Requirements in the OMC applicable to uses in the RS-50 zone will ensure that impacts from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land are minimized.

Conclusion: The proposed rezone is consistent with all applicable criteria and standards.

B. Annexation:

1. *Title 8-7-5 (M) No Sewer Connection Outside City. There shall be no properties outside the City connected to the City sewer lines, except by special permission of the Council.*
2. *10B-45-10 INITIATION OF ACTION. When a person, authorized by statute, wishes to extend the city's boundaries, an application on forms supplied by the city shall be filed with the Planning Director and which include: annexation consent forms, by the property owners, and by tenants if required by law or court decision; request for a change in zoning map designation, or plan change if required; request for other quasi-judicial action if required; fees, and other exhibits and requirements for a quasi-judicial action as set forth in this Title. All land use actions associated with the annexation shall be consolidated, as feasible, and one fee paid.*
3. *Oregon Revised Statute 222.125: Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.*

Findings:

1. Information from Section II above is herein included by this reference. Approximately two years ago, due to an emergency situation, the applicants requested and received approval for, connection to City sewer service for the subject property which is located within the Urban Growth Area, outside the City Limits, in the southwest corner of the intersection of North Dorian and West Idaho. That approval was by the City Council and was conditional, with annexation into the City required by the Council, which is consistent with the regulation set forth in Title 8 of the OMC as set forth above. This application, if

approved, is necessary for compliance with Code and will fulfill the condition, being a request specifically for annexation and rezone of 4.46 acres of property described in Section I above. The subject property is currently zoned Urban Growth Area Residential (UGA-R), and consists of one tax lot which is designated as Assessor's Map #18S4705C; Tax Lot #700.

2. The applicants have paid the fees and provided the proper application with signatures, including those "electors" residing on the subject property.
3. The property is annexable because it lies inside the Urban Growth Boundary and is contiguous with current city limits.
4. The property is currently zoned for Residential use in the Urban Growth Area; the requested zone, City Single-Family Residential (RS-50), is consistent with contiguous property.
5. Findings from preceding sections of this report are herein included by this reference. A change to the comprehensive plan map or text is not necessary to annex the property; however, the annexation of the property must be consistent with all applicable Comprehensive Plan Policies. Section 10D-100-15-40 of the OMC contains a Goal 11, Public Facilities, policy that states:

Development proposals for industrial or commercial uses shall include descriptions of water and sewer requirements. Provisions for financing shall be developed in accordance with the city's ordinances and policies.

As noted in a preceding section of this report, the subject property is connected to City Sewer and the owners have signed a development agreement with regards to streets, curb-sidewalk-gutter, water, sewer and fire/life safety needs, stormwater, etc; therefore, annexation is consistent with the noted Goal 11 Comprehensive Plan Policy.

6. Annexation would benefit the city by increasing tax revenue, and, by providing more potentially developable residential land.

Conclusion: The subject property must be annexed to be in compliance with City Code and to fulfill a condition of approval imposed by the City Council at the time the applicants requested connection to City sewer. All criteria and standards applicable to a request for annexation have been met; The property may be annexed.

IV. STAFF RECOMMENDATION:

Staff recommends that the Council approve the requested annexation and rezone, with the conditions set forth in Section VI below.

V. PROPOSED MOTIONS:

1. Approval of Request:

I move that the City Council approve the request for annexation and rezone as set forth in Land Use Action #2006-05-11AZ, based on the information, findings of fact and conclusions in Sections I through IV above, subject to the conditions of approval set forth in Section VI below.

2. Adoption:

I move that the City Council adopt **ORDINANCE #2585-2006; AN ORDINANCE PROCLAIMING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF ONTARIO; AND WITHDRAWING SAID TERRITORY FROM THE ONTARIO RURAL FIRE PROTECTION DISTRICT; AND WITHDRAWING SAID TERRITORY FROM THE ONTARIO RURAL ROAD ASSESSMENT DISTRICT NO. 3**, on first reading by Title only.

VI. CONDITIONS OF APPROVAL:

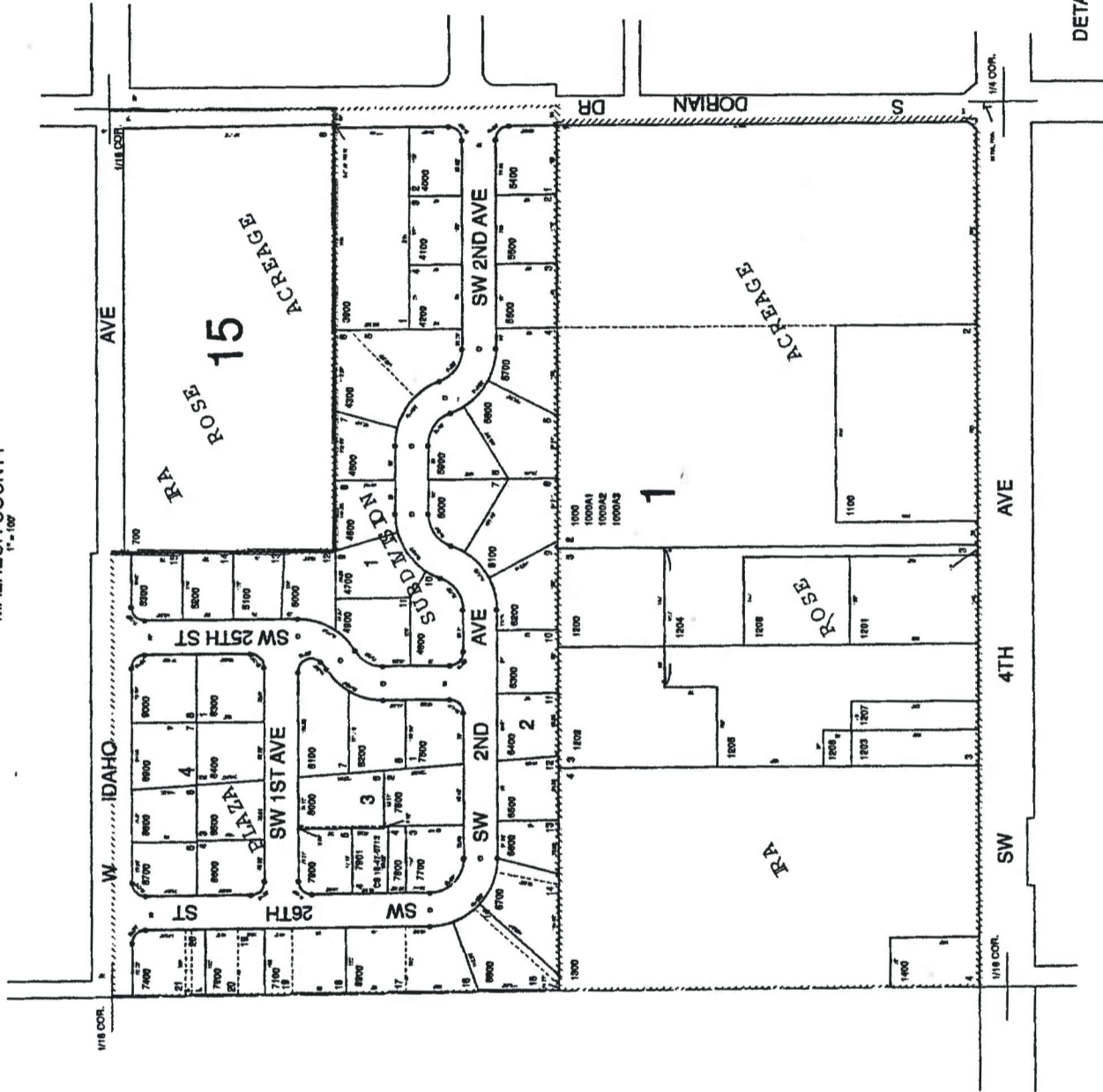
1. The approval of the annexation and rezone granted herein is valid for a period of one year from the date the decision of the Council is final; that final decision date shall be the date of expiration of the 21-day period for appeal to LUBA as required by Oregon Revised Statute and as noted in the Notice of Decision for this request.

18S 47E 05C
DETAIL MAP NO. 2

DETAIL MAP NO. 2
SW1/4 SECTION 05 T.18S. R.47E. W.M.
MALHEUR COUNTY
1" = 100'



THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY



Printed on May 09, 2005
18S 47E 05C
DETAIL MAP NO. 2

EXHIBIT A



CONSENT TO ANNEXATION

KNOWN ALL MEN BY THESE PRESENT that we, the undersigned, being owners, contract purchasers, mortgagees, or security holders upon a portion of land described below and which is proposed to be annexed to the City of Ontario, do hereby give our irrevocable consent that such land be annexed to the City of Ontario, and that our consent may be filed with the City Council of Ontario Oregon and that no election shall be held in said territory or notices posted therein. This consent is given pursuant to ORS SECTION 222.170.

Township 18 South, Range 47 E.W.M.:
Tract 8 of the IRE ROSE ACREAGE, located in the E1/2 of
the SW1/4 of Section 5.

Tax Lot 700 Map No. 1847C Code 15

Public Legal Description

Charles Oakes _____
[Signature] _____

Date: 4-5-06

The above signatures on the original consents were filed in the office of the City Recorder in accordance with State Statute. The above parties are all the property owners within the territory to be annexed.

City Recorder

EXHIBIT C

Annexation Description of Lands to
The
CITY OF ONTARIO

The N1/2NE1/4SE1/4SW1/4 and the south 20 feet of the S1/2SE1/4NE1/4SW1/4 of Section 5, Twp. 18 S., R. 47 E. W.M., Malheur County, Oregon being;

Tract 8 of the IRA ROSE ACREAGE Subdivision within said Section 5 along with all the Platted Road being 40 feet wide lying adjacent to and northerly of said Tract 8, and the West one half (1/2) of the Platted Road being 25 feet wide lying adjacent to and easterly of said Tract 8, more particularly described as follows:

Beginning at the NE corner of said N1/2NE1/4SE1/4SW1/4;
thence South coincident with the East line of said N1/2NE1/4SE1/4SW1/4 to the SE corner of said N1/2NE1/4SE1/4SW1/4 and the extension of the South line of said Tract 8;
thence West coincident with said South line to the SW corner of said N1/2NE1/4SE1/4SW1/4 also being the SW corner of said Tract 8;
thence North coincident with the West line of said N1/2NE1/4SE1/4SW1/4 and Tract 8 to the NW corner of said N1/2NE1/4SE1/4SW1/4;
thence continuing North 20.00 feet to a point on the North Right of Way of the Road Platted in said IRE ROSE ACREAGE;
thence East coincident with said North Right of Way to a point on the East line of said S1/2SE1/4NE1/4SW1/4;
thence South coincident with said East line, 20.00 feet, more or less to the Point of Beginning.

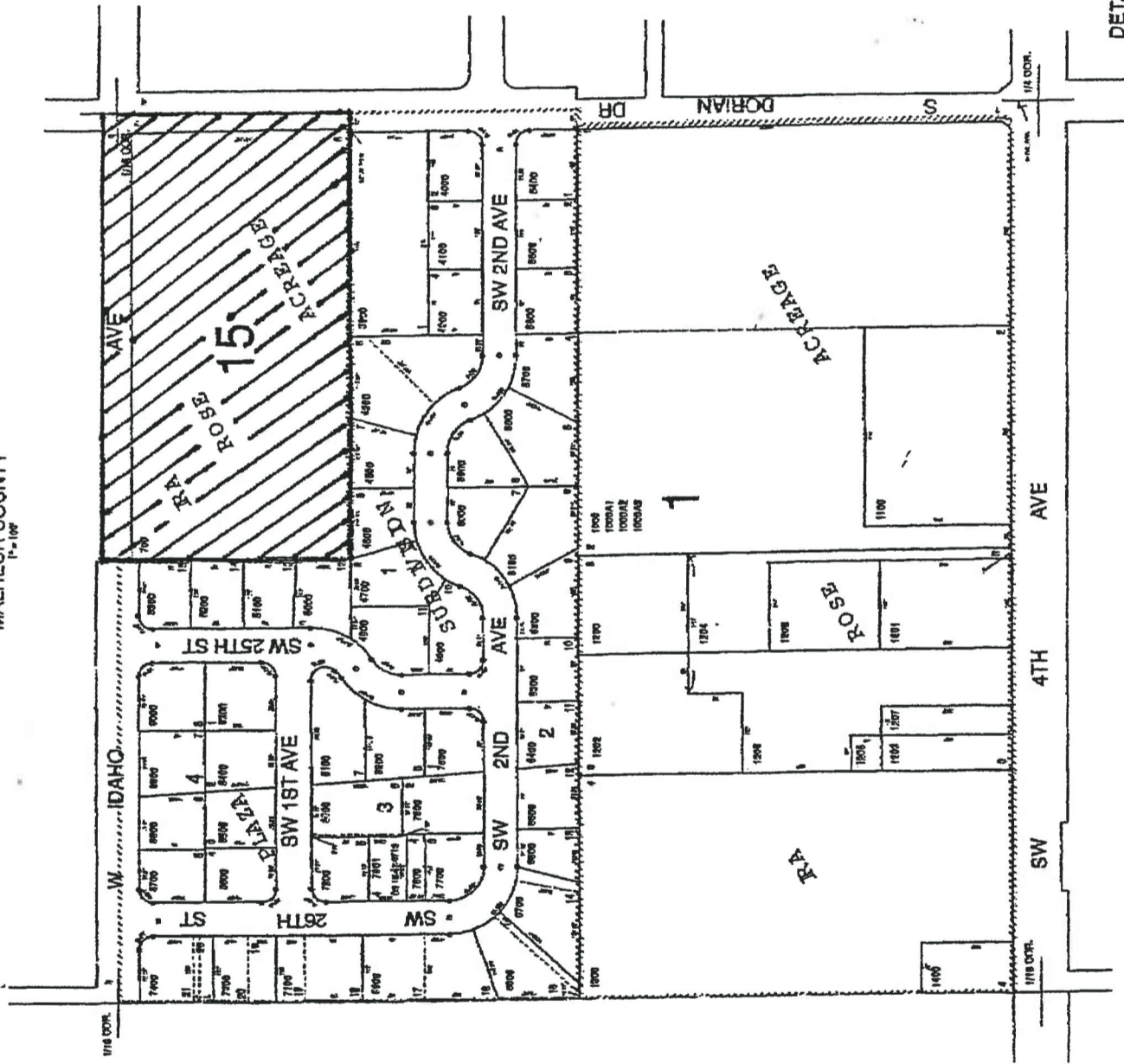
Exhibit "A" Annexation Map City of Ontario

18S 47E 05C
DETAIL MAP NO. 2

DETAIL MAP NO. 2
SW1/4 SECTION 05 T.18S. R.47E. W.M.
MALHEUR COUNTY
1" = 100'



PREPARED FOR
PURPOSES ONLY



18S 47E 05C
DETAIL MAP NO. 2

EXHIBIT D

RECORDER'S INFORMATION:

After Recording Return To:

City of Ontario
Community Planning Department
444 SW 4th Street
Ontario, OR 97914

**RESTRICTIVE COVENANT
DEFERRED IMPROVEMENT AGREEMENT
(Right of Way Improvements)**

This agreement is between the CITY OF ONTARIO, hereinafter referred to as "City", and Charles & Jean Oakes, P.O Box 1047, Ontario, Oregon 97914, hereinafter referred to as "Owner".

WHEREAS, Owner is the legal owner of the following described real property ("Property"):

In Township 18 South, Range 47 East W. M., Tract 8 of the IRE ROSE ACREAGE, located in the E ½ of the SW ¼ of Section 5, In the City of Ontario, Malheur County Oregon; and more particularly described as Malheur County Assessor's Map #18S4705C; Tax Lot #700; located at 33 South Dorian Drive, Ontario, Oregon, 97914

WHEREAS, Owner desires to develop the Property, which will contribute to the need for, as well as benefit from, the following improvements:

Construction of right-of-way improvements including grading, pavement, alleys, gutters, pathways, curbs, sidewalks, storm drains, water mains, sanitary sewer mains, illumination, traffic control devices and all other improvements necessary to bring the streets and public utilities into compliance with the City's applicable standards, specifically, **West Idaho Avenue and Dorian Drive as per the City of Ontario Municipal Code Chapter 10C-25 Transportation Standards;** and

WHEREAS, a condition of the Owner's land use approval from City for development of the

RESTRICTIVE COVENANT DEFERRED IMPROVEMENT AGREEMENT (Right of Way Improvements)

Page 1 of 7

769004/d2/15Aug06/jab

Property, **Land Use Action #2006-05-11AZ**, is Owner's agreement to participate in the cost of said future improvements;

NOW THEREFORE, it is agreed as follows:

1. Deferral of Improvements. City and Owner agree that the Improvements set out above may be deferred as provided for in this Agreement. Owner agrees Owner has a current obligation to construct the Improvements described in the Recitals above. Owner and City have elected the obligation to defer construction of the Improvements under the terms of this Agreement.

2. Binding on Successors in Interest. This Agreement is an instrument affecting the title and possession of the Property described above. All the terms and conditions herein imposed shall run with the land and shall be binding upon and inure to the benefit of the successors in interest of Owner. Upon any sale or division of the Property described above, the terms of this Agreement shall apply separately to each parcel and the Owner of each parcel shall succeed to the obligations imposed on Owner by this Agreement.

3. Nature of Obligation.

3.1 City and Owner agree that the Improvements set forth in the Recitals above may be deferred because immediate installation of such Improvements is not deemed practical at this time due to the project's incremental relationship to the intended holistic design function of said Improvements; however, Owner is not required to connect to the City water system upon annexation; however, owner shall pay \$10.00 per month base rate with a \$2.00 per month consumption fee and the 17% UCF fee. The owner also agrees to be subject to future water fee increases proportionate to any fee increases for property that is connected to the City Water system.

3.2 Owner agrees to construct the Improvements described above in the manner set forth in this Agreement and in compliance with all requirements of the Land Development Code as applicable to new development requiring development permit approval.

3.3 When the City Manager, or his designate, determines that the reason(s) for the deferment no longer exist(s), he shall notify Owner, in writing, of terms for performance of the work. The notice shall be mailed to the current owner or owners of the land as shown on the latest adopted County Assessment Roll. All or any portion of said Improvement may be required by City at any time. Each Owner shall participate on a pro rata basis of the cost of installation of the Improvements.

4. Performance of the Work. Owner agrees to the performance of the work to construct the Improvements deferred hereby, by conformance with one of the following options at

RESTRICTIVE COVENANT DEFERRED IMPROVEMENT AGREEMENT (Right of Way Improvements)

Page 2 of 7

769004/d2/15Aug06/jab

the election of City:

4.1 Work Performed by Owner. Owner is responsible for performance of the work to construct the Improvements and obtaining contractors therefore. Owner shall cause satisfactory plans and specifications for the Improvements to be prepared and to submit said plans and specifications to the City Manager, or his designate, for approval prior to commencement of the work to be done. Such work shall be done in accordance with City standards in effect at the time the Improvement plans are submitted for approval. Owner agrees to make payments required by the City including, but not limited to engineering, deposits, permit fees and inspection fees. Owner shall notify the City Manager, or his designate, at least 48 hours prior to the start of work.

Prior to approval of Improvement plans by the City, Owner may be required to execute and deliver to the City, a performance bond in an amount and form acceptable to the City, to be released by the City in whole or in part upon the City's final acceptance of the work performed.

If Owner disagrees with the requirements set forth for installation of Improvements as provided in this Section, he shall, within 30 days of the date the notice from the City Manager was mailed, request a review of the requirements by the City Council. The decision of this Council shall be final and binding upon both the City and the Owner.

If City elects to have Owner construct the Improvements, Owner shall complete construction within one year of the date of City's notice demanding Owner construct the Improvements.

4.2 Construction as Local Improvement to be Assessed Against Property. Owner's signature hereon shall be equivalent to a petition for establishment of a Local Improvement District. If Owner does not complete the Improvements himself under provisions of Paragraph 4.1 above, the City may do the work as a local improvement project following the procedures established by Ordinance for such projects and assess the cost against the Property specially benefited. Permission to enter onto the Property of the Owner is granted to the City or its contractor as may be necessary to construct such Improvements.

In the event and at such time as the City initiates the formation of a Local Improvement District (LID) for the funding and construction of the Improvements designated above, Owner hereby waives any and all right to remonstrate against formation of a Local Improvement District (LID) by the City for the purpose of improving **West Idaho Avenue and Dorian Drive as per the City of Ontario Municipal Code Chapter 10C-25 Transportation Standards**; and assessing the proportionate cost to benefited properties pursuant to the City's right-of-way improvement regulations in effect at the time of such improvement.

The phrase "right to remonstrate against the formation of an LID" refers solely to a property owner's right under the City Code to be counted as part of an extraordinary majority of property owners that can, in certain circumstances, suspend proceedings on formation of an LID for six months. The waiver of this right does not limit or otherwise restrict the ability of a property owner bound by this covenant to appear at any of the required public hearings and testify regarding formation of the LID, whether the boundaries include all benefited property, the equity of the assessment formula, the scope and nature of the project or of the final assessment, or any other issue regarding the LID.

City agrees that a LID assessment levied against Owner's Property shall not exceed the benefit conferred upon the Property.

4.3 Election of Option for Improvement. The City shall have the right to elect whether the work is performed by Owner or whether the Improvements are constructed as part of an LID.

5. Temporary Facilities. Owner agrees to allow any necessary temporary facilities, access road or other required improvements determined by City to be appropriate pending final construction of the Improvements described in the Recitals. Further, City agrees to assume responsibility for the proper functioning of temporary facilities, to submit plans to the appropriate City agency for review if required, and to maintain said improvements and facilities in a manner which will preclude any hazard to life or health or damage to adjoining property.

6. Hold Harmless. In the event the Owner constructs the Improvements pursuant to Section 4.1 above, Owner agrees to hold harmless, indemnify and defend City from and against any and all claims, costs, expenses (including attorney fees), losses, damages, fines, charges, actions, or liabilities of any description arising out of or in any way connected with (1) any matter arising out of or associated with the deferred Improvements addressed in this Agreement; and (2) Owner's conduct with respect to the Property; and (3) Any condition of the Property related to the Improvements deferred herein. In the event of any litigation or proceeding brought against City arising out of or in any way connected with any of the above events or claims, Owner shall provide City with legal counsel reasonably satisfactory to City.

7. Default Remedies. In the event Owner fails to complete the work described in this Agreement within the time period provided above, the City shall be entitled to enforce Owner's obligation by all means available under Ontario City Code, or as otherwise provided by law or equity, including a suit in equity for specific performance.

8. Miscellaneous Provisions.

8.1 Nothing contained in this Agreement shall be construed to be a waiver of RESTRICTIVE COVENANT DEFERRED IMPROVEMENT AGREEMENT (Right of Way Improvements)

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any applicable Federal, State or local building statutes, rules, regulations, ordinances, codes or standards or a waiver of any zoning restrictions or required improvements as set forth in the Ontario Municipal Code.

8.2 Should it become necessary for either party to institute action to enforce the terms and provisions of this Agreement, the prevailing party shall pay the other party reasonable costs, including attorney fees incurred in the preparation and prosecution of any judicial proceeding or in any appeal therefrom.

8.3 Any required notices under the terms and conditions of this Agreement shall be delivered by addressing said notice and placing it in the United States mail, postage paid, to the following addresses:

City: City Manager
City of Ontario
444 SW 4th Street
Ontario, OR 97914

Owner: Charles & Jean L. Oakes
P.O. Box 1047
Ontario, OR 97914

Such notice, if mailed within the State of Oregon, shall be deemed delivered on the date postmarked. If mailed from or to a point outside the State of Oregon, such notice shall be deemed delivered upon the fifth day following the date postmarked.

8.4 This Agreement contains the entire agreement of the parties and supercedes all prior oral or written agreements.

8.5 If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability shall not effect any other provision of this Agreement, and such other provisions shall be construed as if the invalid, illegal or unenforceable provision had never been contained in this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed this 17th day of August, 2006.

CITY OF ONTARIO

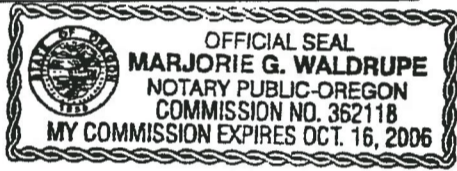
OWNER (Charles Oakes)

Charles Oakes

By:
Title:

State of Oregon)
)ss.
County of Malheur)

The foregoing instrument was acknowledged before me this 17th day of August, 2006 by Charles Oakes.



Marjorie S. Waldrup
Notary Public for Oregon
My Commission Expires:

State of Oregon)
)ss.
County of Malheur)

The foregoing instrument was acknowledged before me this ____ day of August, 2006 by _____ in his/her capacity as _____ for the City of Ontario.

Notary Public for Oregon
My Commission Expires:

CITY OF ONTARIO

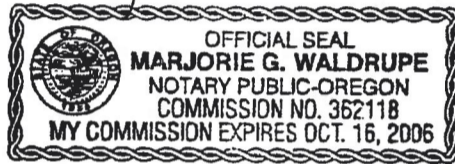
OWNER (Jean Oakes)

Scott Trainer
By: Scott Trainer
Title: City Manager

Jean Lindley Oakes

State of Oregon)
)ss.
County of Malheur)

The foregoing instrument was acknowledged before me this 21st day of August, 2006 by Jean Lindley Oakes.



Marjorie G. Waldrup
Notary Public for Oregon
My Commission Expires:

State of Oregon)
)ss.
County of Malheur)

The foregoing instrument was acknowledged before me this ____ day of August, 2006 by _____ in his/her capacity as _____ for the City of Ontario.

Notary Public for Oregon
My Commission Expires:

EXHIBIT A
(Real Property Description)

In Township 18 South, Range 47 East W. M., Tract 8 of the IRE ROSE ACREAGE, located in the E ½ of the SW ¼ of Section 5, In the City of Ontario, Malheur County Oregon; and more particularly described as Malheur County Assessor's Map #18S4705C; Tax Lot #700; located at 33 South Dorian Drive, Ontario, Oregon, 97914

After recording, return to:
City Recorder
City of Ontario
444 SW 4th Street
Ontario OR 97914

- 8279
INSTRUMENT NO. 2006
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EXHIBIT E
Inst. No. 2006-8279
I certify that the within instrument of
writing was received for record on
the 9 day of Nov, 2006
at 2:12 O'clock P.M. FEE 0
STATE OF OREGON, County of Malheur
DEBORAH R. DeLONG
County Clerk

By: Sheni Childs Deputy

ORDINANCE NO. 2585-2006

AN ORDINANCE PROCLAIMING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF ONTARIO; AND WITHDRAWING SAID TERRITORY FROM THE ONTARIO RURAL FIRE PROTECTION DISTRICT; AND WITHDRAWING SAID TERRITORY FROM THE ONTARIO RURAL ROAD ASSESSMENT DISTRICT NO. 3

- WHEREAS certain territory within the City's Urban growth area was connected to City sanitary sewer service pursuant to Title 8-7-5 (M) of the Ontario Municipal Code, by special permission of the City Council; and
- WHEREAS the special permission of the City Council for that connection was conditioned upon the property annexing into the City; and
- WHEREAS the proceedings and the condition are a matter of record; and
- WHEREAS there has been submitted to the City of Ontario a written request for annexation to the City signed by 100% of the owners of land within the affected territory to be annexed; and
- WHEREAS, All of the owners of land in that territory have consented in writing to the annexation of their land in the territory and have filed a statement of their consent with the legislative body of the City; and
- WHEREAS, The City Charter does not expressly require the City to submit a proposal of annexation of territory to the electors of the City; and
- WHEREAS, The City desires to withdraw the land to be annexed from the ONTARIO RURAL FIRE PROTECTION DISTRICT 7-302 and the ONTARIO RURAL ROAD ASSESSMENT DISTRICT NO. 3 pursuant to ORS 222.120(5) and has received assent from the Districts to do so;

NOW THEREFORE, THE CITY OF ONTARIO ORDAINS AS FOLLOWS:

1. Annexation Area. The following contiguous territory be and the same is hereby annexed: The property mapped and legally described in the attached Exhibits "A" and "B" respectively.
2. Withdrawing above described area from Ontario Rural Fire Protection District 7-302. The Common Council of the City of Ontario deems it in the best interest of the public of the City of Ontario and hereby declares that the real property described hereinabove is withdrawn from the Ontario Rural fire Protection District No. 7-302 on the effective date of this annexation pursuant to ORS 222.120(5).

3. Withdrawing above described area from the Ontario Rural Road Assessment District No. 3.
The Common Council of the City of Ontario deems it in the best interest of the public of the City of Ontario and hereby declares that the real property described hereinabove is withdrawn from the Ontario Rural Road Assessment District No. 3 on the effective date of this annexation pursuant to ORS Sections 222.120(5) and 222.510.
4. Record. The City Planner shall submit to the Oregon Secretary of State (1) a copy of this Ordinance, (2) a copy of the statement of consent of the landowner in the territory annexed; and (3) Shall send a description by metes and bounds, or legal subdivision, and a map depicting the new boundaries of the City within 10 days of the effective date of annexation to the Malheur County Assessor, Malheur County Clerk and the State Department of Revenue.

PASSED AND ADOPTED by the Common Council of the City of Ontario this 6 day of November, 2005 by the following vote:

AYES: Cummings, Allen, Gaskill, Cammack, Cheatham, Jacobs

NAYS: None

ABSENT: Mosier

APPROVED by the Mayor this 6 day of November, 2006.

ATTEST:

LeRoy Cammack
LeRoy Cammack, Mayor

Tori Barnett
Tori Barnett, City Recorder

Exhibit "A" Annexation Map City of Ontario

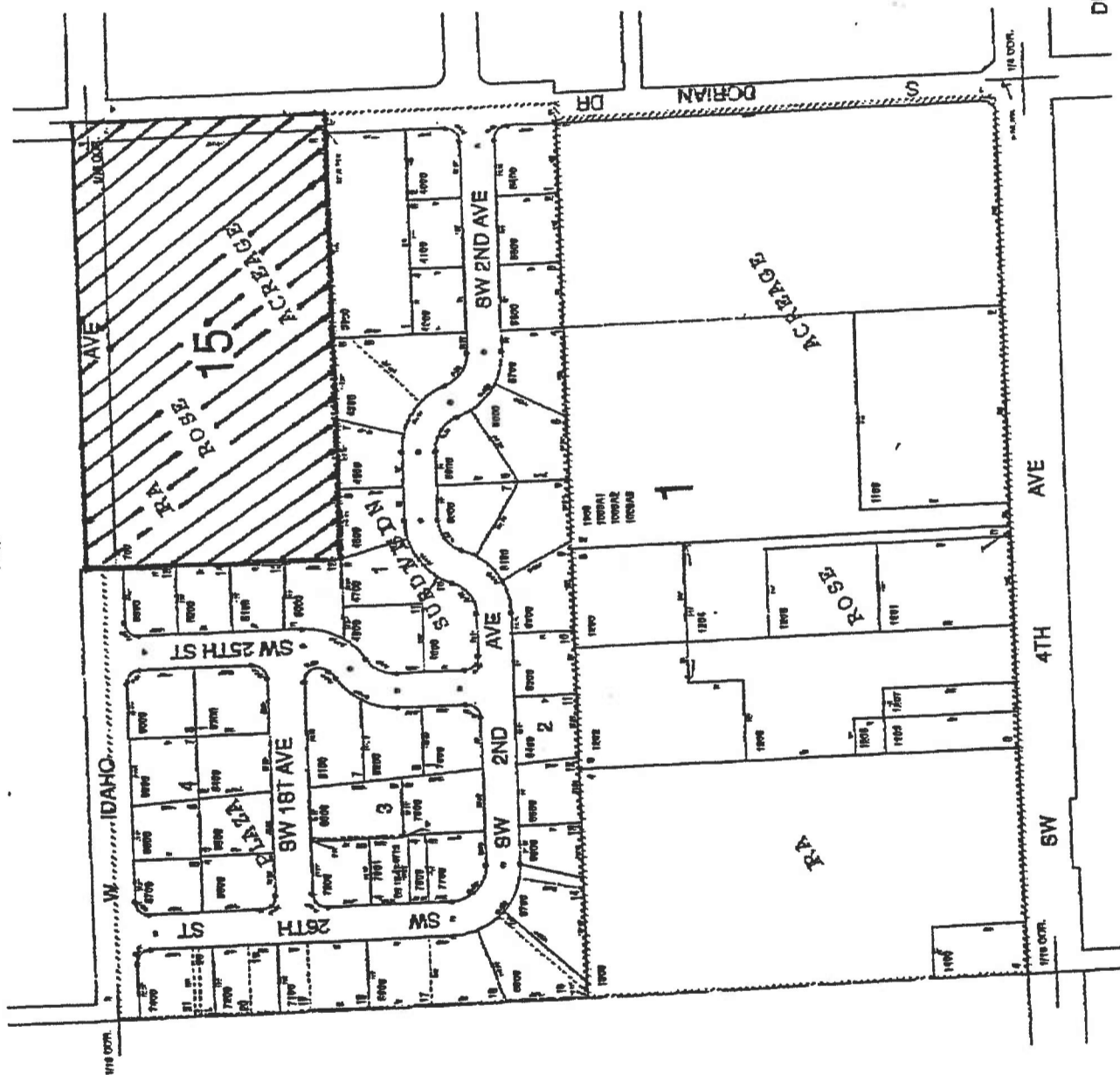
INSTRUMENT NO. 2006-8279
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18S 47E 05C
DETAIL MAP NO. 2

DETAIL MAP NO. 2
SW 1/4 SECTION 06 T.18S, R.47E, W.M.
MALHEUR COUNTY



PREPARED FOR
PUBLIC USE ONLY



18S 47E 05C
DETAIL MAP NO. 2

Annexation Description of Lands to
The
CITY OF ONTARIO

-8279
INSTRUMENT NO. 2006
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The N1/2NE1/4SE1/4SW1/4 and the south 20 feet of the S1/2SE1/4NE1/4SW1/4 of Section 5, Twp. 18 S., R. 47 E. W.M., Malheur County, Oregon being;

Tract 8 of the IRA ROSE ACREAGE Subdivision within said Section 5 along with all the Platted Road being 40 feet wide lying adjacent to and northerly of said Tract 8, and the West one half (1/2) of the Platted Road being 25 feet wide lying adjacent to and easterly of said Tract 8, more particularly described as follows:

Beginning at the NE corner of said N1/2NE1/4SE1/4SW1/4;
thence South coincident with the East line of said N1/2NE1/4SE1/4SW1/4 to the SE corner of said N1/2NE1/4SE1/4SW1/4 and the extension of the South line of said Tract 8;
thence West coincident with said South line to the SW corner of said N1/2NE1/4SE1/4SW1/4 also being the SW corner of said Tract 8;
thence North coincident with the West line of said N1/2NE1/4SE1/4SW1/4 and Tract 8 to the NW corner of said N1/2NE1/4SE1/4SW1/4;
thence continuing North 20.00 feet to a point on the North Right of Way of the Road Platted in said IRA ROSE ACREAGE;
thence East coincident with said North Right of Way to a point on the East line of said S1/2SE1/4NE1/4SW1/4;
thence South coincident with said East line, 20.00 feet, more or less to the Point of Beginning.