

Ordinance No. 2014-12-01

An Ordinance Annexing Approximately 27.5 acres to the City (Van Dyke Family Land, LLC.)

The City Council for the City of Banks adopts the following findings:

WHEREAS, Van Dyke Family Land, LLC owns approximately 27.5 acres of land contiguous with the City's current boundary and within the City's Urban Growth Area (the "Annexation Territory" – more specifically described in Exhibit A, attached hereto and incorporated herein by this reference). The owner requested and consented to annexation of the Annexation Territory; and

WHEREAS, to warrant annexation approval, the Annexation Territory must be within the City's Urban Growth Area and contiguous to the city boundary. The annexation applicant must also demonstrate compliance with each of the applicable approval standards set forth in Section 30.02 of the Banks Code of Ordinances ("BCO"), and, pursuant to Charter Section 3, the annexation request must be approved by a simple majority of the electorate voting in an election on the question of annexation; and

WHEREAS, on July 29, 2014, the Banks Planning Commission convened a duly noticed public hearing, took public testimony on the annexation request and recommended approval of the annexation; and

WHEREAS, on August 12, 2014, the City Council convened a duly noticed public hearing on to take public testimony and evaluate the Planning Commission's recommendation, and at the conclusion voted to recommend approval of the annexation subject to the requirement that the annexation requestors and owners enter into the Annexation Agreement set forth in Exhibit B, attached hereto and by this reference incorporated herein; and

WHEREAS, on November 4, 2014 a majority of registered voters in the City of Banks voted to approve the annexation of the VanDyke Family Farm Annexation Territory, and the Washington County Elections Official certified those election results on November 24, 2014.

NOW THEREFORE, based on the foregoing, the Banks City Council ordains as follows:

Section 1 - Annexation. The real property described in Exhibit A, attached hereto and by this reference incorporated herein, comprising approximately 27.5 acres (collectively the "Annexation Territory") is hereby annexed and incorporated into the City of Banks, subject to the terms and conditions of the Annexation Agreement executed between the City and the annexation requestors/owners set forth in Exhibit B, attached hereto and by this reference incorporated herein.

Section 2 – Annexation of public rights-of-way. All federal, state, and local public rights-of-way within or abutting the Annexation Territory are hereby annexed and incorporated into the City of Banks.

Section 3 - Land Use Designations and Zoning. Land within the Annexation Territory is hereby subject to land use planning, regulation and permitting by the City of Banks under its duly adopted Comprehensive Plan and land use regulations, pursuant to which the following zoning designations shall apply:

Map	Tax Lot	Banks Zoning	Density	Area (acres)
2N331	600 (partial)	Single Family Residential (R-5)	8 du/ac	13.23
"	600 (partial)	Low Density Single Family (LDSF)	6 du/ac	14.27

Section 4 – Assessment and Taxation. Land within the Annexation Territory shall be assessed and taxed by the City in the same manner as other similarly situated property within the City as of the effective date of this Ordinance.

Section 5 – Severability. If any portion of this ordinance is found to be invalid or unenforceable for any reason, that finding shall not affect the validity or enforceability of any other provision of this ordinance.

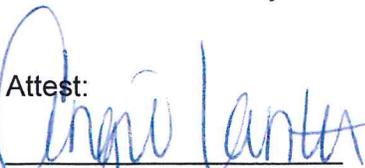
Section 6 – Transmittal. Pursuant to ORS 222.177 and Section 30.06 of the Banks Code of Ordinances, the City Recorder shall:

1. File a certified true copy of this Ordinance with the Oregon Secretary of State and the Washington County Assessor.
2. File with the Oregon Secretary of State an abstract of the November 4, 2014 election results within the City on the VanDyke Family Farm Annexation measure.
3. File with the Oregon Secretary of State a copy of the statement of landowner consent to this annexation.

Section 7 – Effective Date: This ordinance and the annexation it declares shall be effective upon filing with the Secretary of State’s Office in accordance with ORS 222.180.

Brought before Banks City Council and read for the first time December 9, 2014.
Read for the second time and adopted January 13, 2015.


Peter C. Edison, Mayor

Attest:

Angie Lanter, City Recorder

Summary of Votes

Teri Branstitre	Yes/No	Absent
Mark Gregg	Yes/No	
Brian Biehl	Yes/No	
Dan Keller	Yes/No	
Mark Walsh	Yes/No	
Michael Nelson	Yes/No	

EXHIBIT A

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Legal Description for annexation to the City of Banks

Beginning at the SE corner of the NW 1/4 of Section 31, T2N, R3W, W.M. and running thence North 19.80 chains to a stone; thence West 1169 feet to the most Southerly NE corner of the property described in Book 550, Page 486, Washington County Records; thence S 15° 50' E along the southeast line of said property to The City of Banks boundary; thence along City boundary S 32° 18' E to the East/West centerline of section 31; thence East along said line to the place of beginning.

ANNEXATION CERTIFIED

BY VF

FEB 21 2014

WASHINGTON COUNTY A & T
CARTOGRAPHY



Source: Washington County GIS 7.14.14

EXHIBIT B

09-04-14 4:01:39 PM

After Recording, return to:
Banks City Manager
13680 NW Main Street
Banks, OR 97106

Washington County, Oregon
08/21/2014 09:41:00 AM
D-IFFS Cnt=1 Sht=29 RECORDS1
\$25.00 \$5.00 \$11.00 \$20.00 - Total = \$61.00

2014-052585



01966970201400525850050055
I, Richard Hebernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.
Richard Hebernicht
Richard Hebernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



ANNEXATION AGREEMENT

This AGREEMENT is made by and between the CITY OF BANKS, an Oregon municipal corporation, (the "City") and VAN DYKE FAMILY LAND, LLC, an Oregon limited liability corporation ("Van Dyke") this 14 day of August 2014.

WHEREAS, Van Dyke is the applicant for the annexation and re-zoning of approximately 25.7 acres adjacent to the City of Banks (the "Property"), more specifically described in Exhibit A, attached hereto and by this reference incorporated herein, and those applications are known as City files ANX2-14 and ZC2-14; and

WHEREAS, the City has reviewed the application submitted by Van Dyke and concluded that the materials in the record demonstrate that an adequate level of urban services and infrastructure is available, or will be made available in a timely manner to serve the Property; and

WHEREAS, there are several potential sources for water to serve the eventual development of the Property, including the existing City water system or the well currently located on the Property; and

WHEREAS, the annexation approved by the City must be submitted to the voters of the City as required by the Banks City Charter; and

WHEREAS, the City and Van Dyke wish to enter into this Agreement to limit the potential development of the Property until the ultimate source of the water to serve that development is determined;

NOW, THEREFORE, based on the foregoing recitals, the CITY COUNCIL FOR THE CITY OF BANKS and Van Dyke, hereby agree to the following:

- 1. **Development Limitation**. Should the voters of the City of Banks approve the annexation of the Property, development of the Property shall be prohibited until the applicant provides evidence satisfactory to the City of the sources of urban services and infrastructure to be provided to the Property, including a demonstration that the sources will provide adequate levels, as defined in BCO Section 30.02(B), available to serve the

specific development type, size and density proposed for the Property, including public potable water, sanitary sewer, transportation system infrastructure and storm drainage facilities.

2. **Effective Date, Term and Modification.** This Development Agreement shall be effective upon signature by both parties and shall have a perpetual duration, unless modified by the parties as described below, or until satisfaction of the condition identified in paragraph 1 above. This Development Agreement may be modified or terminated sooner than described above only upon the written agreement signed by the authorized representatives of both parties.
3. **Assignment and Transfer.** This Agreement shall be fully assignable and transferable.
4. **Remedies for Breach.** Should either party breach this Agreement, remedies available under Oregon law for breach of contract are available to the parties, including damages and injunctive relief.
5. **Controlling Law and Venue for Disputes.** This Agreement shall be deemed to have been entered into in the State of Oregon and shall be construed and interpreted in accordance with the laws of Oregon. Any litigation or proceedings arising out of or connected with this Agreement shall be heard and decided in Oregon Circuit Court.
6. **Entire Agreement.** The City and Van Dyke acknowledge and agree that no promises or representations have been made which do not appear written herein and that this Agreement contains the entire agreement of the parties as to this Agreement.
7. **Severability Clause.** The parties to this Agreement agree that if any term, provision, covenant, condition or portion of this Agreement is held to be illegal, invalid, void, voidable or unenforceable, the remainder of the provisions shall remain in full force and effect as a separate contract and shall in no way be affected, impaired or invalidated.
8. **Attorney's Fees.** If legal action by either party is brought against the other because of an alleged default under this Agreement, or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs, at trial and on appeal.
9. **Waiver.** No waiver of any provision of this Agreement shall be effective unless it is in a writing signed by party waiving the provision.
10. **Agreement Runs With Title.** This Agreement, and the burdens and benefits it provides, shall be recorded with title to the Property and run with the land. This Agreement shall bind the parties, their heirs, assigns and successors in interest.
11. **No Third-Party Beneficiaries.** All the provisions of this Agreement are intended to bind and benefit only Developer and City, and their respective permitted successors

and assigns. It is not intended that any such provisions benefit, and it shall not be construed that these provisions benefit or are enforceable by, any creditors, contractors or other third parties.

CITY OF BANKS:

[Signature]
Peter Edison, Mayor

8/19/14
Date

VAN DYKE FAMILY LAND, LLC:

[Signature]
Clifford P. Van Dyke,
LLC Member Manager

8-14-14
Date

STATE OF OREGON)
) ss.
County of Washington)

This instrument was personally acknowledged before me on the 19th day of August 2014 by Peter Edison, the Mayor of the City of Banks, who swore or affirmed that he was authorized to execute the foregoing Agreement on behalf of the City of



[Signature]
Notary Public for Oregon,
My Commission Expires March 6, 2018

STATE OF WASHINGTON)
) ss.
County of King)

This instrument was personally acknowledged before me on the 14th day of August 2014 by Clifford P. Van Dyke, Member Manager of the Van Dyke Family Land LLC, who swore or affirmed that he was authorized to execute the foregoing Agreement on behalf of Van Dyke Family Land, LLC.

[Signature]
Notary Public for Washington,
My Commission Expires 07-29-2015



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