

RESOLUTION NO. 835

A RESOLUTION ADOPTING FINDINGS OF FACT AND CONCLUSIONS OF LAW, APPROVING A COMPREHENSIVE PLAN AMENDMENT, AMENDING THE URBAN GROWTH BOUNDARY AND THE ZONING MAP OF THE CITY OF CANBY, CLACKAMAS COUNTY, OREGON, FOR LAND USE PLANNING APPLICATION NO. ZC 03-02/CPA 03-02 REGARDING TAX LOT 800 OF MAP 3-1E-32AA, TAX LOTS 100, 200 AND 1700 OF MAP 3-1E-32AD, TAX LOTS 300 AND 501 OF MAP 3-1E-33BB AND TAX LOT 6600 OF MAP 3-1E-33BC; NORTHWOOD INVESTMENT, APPLICANT.

WHEREAS, the Canby City Council having conducted a public hearing concerning the application of Northwood Investments, entitled Application No. ZC03-02/CPA 03-02, requesting a comprehensive plan and text amendment, an amendment to the Urban Growth Boundary and zone change for approximately 30.19 acres more particularly described as Tax Lot 800 of Map 3-1E-32AA, Tax Lots 100, 200 and 1700 of Map 3-1E-32AD, Tax Lots 300 and 501 of Map 3-1E-33BB and Tax Lot 6600 of Map 3-1E-33BC at its regular meeting of May 21, 2003; and

WHEREAS, after reviewing the evidence and testimony presented at the public hearing on May 21, 2003, the City Council reviewed and approved the proposed Findings of Fact and Conclusions of Law approving the application for the subject property at its meeting on June 18, 2003; a copy of said Findings of Fact and Conclusions of Law are attached hereto and by this reference incorporated herein,

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Canby that the Findings of Fact and Conclusions of Law attached hereto are adopted as the final order of land use application No. ZC 03-02/CPA 03-02, and

BE IT FURTHER RESOLVED that the City of Canby Comprehensive Plan Text and Map shall be amended to include the subject property of the applicant, to wit: Tax Lot 800 of Map 3-1E-32AA, Tax Lots 100, 200 and 1700 of Map 3-1E-32AD, Tax Lots 300 and 501 of Map 3-1E-33BB and Tax Lot 6600 of Map 3-1E-33BC within the Canby Urban Growth Boundary, and

BE IT FURTHER RESOLVED that the zoning designation in the City of Canby Zoning Map shall be amended to change the zone of the subject property of the applicant, to wit: Tax Lot 800 of Map 3-1E-32AA, Tax Lots 100, 200 and 1700 of Map 3-1E-32AD, Tax Lots 300 and 501 of Map 3-1E-33BB and Tax Lot 6600 of Map 3-1E-33BC from a designation as Agricultural (AG) to Low Density Residential (R-1), and the


City staff shall change the Comprehensive Plan land use designation map accordingly.

This resolution shall take effect on June 18, 2003.

ADOPTED this 18th day of June, 2003, by the Canby City Council.


Melody Thompson - Mayor

ATTEST:


Chaunee Seifried, City Recorder, Pro-Tem

BEFORE THE CITY COUNCIL
OF THE CITY OF CANBY

IN THE MATTER OF an Application for Comprehensive Plan)
Text and Map Amendments and Zoning Map Amendments)
In Conjunction with an Amendment to the City of Canby)
Urban Growth Boundary, File No. ZC 03-02/CPA 03-02,)
Northwood Investments, Applicant.)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter came before the Canby Planning Commission on April 14 and April 29, 2003, and before the Canby City Council on May 21, 2003. Having carefully reviewed the application and considered the evidence and testimony presented, the City Council finds as follows:

1. This is an application by Northwood Investments to amend the City of Canby Urban Growth Boundary (UGB) to include the following seven tax lots comprising approximately 30.19 acres: Tax Lot 800 of Map 3-1E-32AA; Tax Lots 100, 200 and 1700 of Map 3-1E-32AD; Tax Lots 300 and 501 of Map 3-1E-33BB; and Tax Lot 6600 of Map 3-1E-33BC. The subject property is located south of NW Territorial Road, north of NW 9th Avenue, west of N. Grant Street and east of N. Birch Street, inside Canby's city limits. The property is plan designated Agriculture (AG) and is zoned Agricultural (AG). Concurrent with its request to expand the UGB to include its property, the applicant is asking the City to change the plan designation of the property to Low Density Residential (LDR) and to rezone the property to Low Density Residential (R-1).

2. Applicable regulations include the Statewide Planning Goals and Sections 16.54, 16.88.180 and 16.88 (General Standards) of the City of Canby Land Development and Planning Ordinance. The major approval criteria are located in Sections 16.88.180 and 16.54.040. The City Council finds and concludes that the application complies with these standards for the reasons that are set out below, in the Northwood Investments application (incorporated herein by this reference), and in the staff report dated April 4, 2003 (reasons in support of application), also incorporated herein by this reference.

a. Section 16.88.180, addressing quasi-judicial land use applications, requires the Planning Commission and City Council to consider (1) the remainder of the City's Comprehensive Plan and other plans and policies that may be affected by the application, and (2) whether all required public facilities and services exist or will be provided concurrent with the anticipated development of the area. Compliance with applicable Comprehensive Plan policies is addressed below and in the application and staff report. As explained below and in these other two documents, all required public facilities exist or will be provided concurrent with the anticipated development in the area.

b. Section 16.54, addressing zone changes, directs the City Council to give special attention to Policy 6 of the land use element and to consider whether all required public facilities or services exist or will be provided concurrent with development to adequately meet the needs of any use or development that would be permitted by the new zoning designation. Land Use

Element Policy 6 does not apply for the reasons stated in the application. And as noted in the staff report, the public service providers have indicated that all required public facilities and services exist or will be provided concurrent with anticipated development of the area.

3. The application to amend the UGB is based on the irrevocable commitment of the subject property to urban uses, rather than on "need" for additional land to accommodate long term urban population and employment growth. As such, it is a departure from the usual type of UGB expansion that demonstrates need for more urban land in addition to compliance with the Goal 14 locational factors.

a. The City Council finds that a demonstration that land is committed to urban development, when supported by substantial evidence in the record, is a basis upon which a city may include land inside its urban growth boundary under Statewide Planning Goal 14, even if that land is not "needed" for housing, employment or livability purposes during the planning period. According to the City Planning Staff, the City Attorney has reviewed the case law cited in the application and agrees that these cases establish precedent for expanding a UGB based on commitment to urban development. Hence, the City Council concludes that it may approve this application even in the absence of a need for more urban land in Canby.

b. As shown on the aerial photograph provided by the applicant, the subject property is an island surrounded by residential development, including subdivisions on lots that range from about 7000 to 10,000 square feet in size. The City Council finds that at no point does this property abut land that is outside the UGB. The City Council further finds that seven streets stub into this property and that Territorial Road borders the property on its north side. It finds that seven water lines and five sanitary sewer lines extend to the borders of the property. Also, a 12 inch transmission water main is located in Territorial Road along the entire frontage. Moreover, the property has access to the full range of urban services, including electricity, natural gas, telephone and cable services and solid waste collection. Two of the eight primary circuits that provide electric power and backup to the City run through the property. Also, the City provides both fire and police service to the property. The City Council concludes from these facts that the property clearly is committed to urban development.

c. The City Council finds that the property is appropriately characterized as infill property because it is surrounded by urban development and has a full range of urban services available to it. As such, the City Council finds that it is sensible to authorize urban development on this property, especially given the presence of key urban public facilities and services at the property. Additionally, the City Council finds that Statewide Planning Goal 14 strongly favors development of infill sites in urban areas prior to development of sites requiring the extension of urban facilities and services onto urbanizable lands. More particularly, it finds that the fourth Goal 14 factor to consider when converting urbanizable land to urban land is "encouragement of development within urban areas before conversion of urbanizable areas." It concludes that approval of the UGB expansion will strongly further the aims and objectives of this Goal 14 conversion factor.

d. The City Council believes the testimony it received from people like former Planning Commissioner Elsie Cutsforth that when the subdivisions surrounding the subject

property were created, the Planning Commission wanted the roads stubbed out and utilities extended to facilitate future urban development of the subject property. The City Council concludes that it was never the City's intent that urban development would terminate at the Northwood property. It agrees with Elsie Cutsforth that had that been the City's intent, these streets would be cul-de-sacs rather than stubbed.

e. The City Council finds that including the Northwood property in the UGB will improve local traffic flow and eliminate illogical development and service patterns. Development of this property will provide a looped water system that would increase the gallons per minute available to fight fires. It would complete the local street system by connecting 10th Avenue (which is a designated neighborhood connector) and 12th Avenue, thus improving neighborhood connectivity and improving emergency vehicle response. The City Council also finds that approval of the application would allow for installation of a water line running north to south that will increase service to all residents north of Knights Bridge Road and south of Territorial Road. From an efficiency standpoint, the City Council finds that this all makes good planning sense.

f. Finally in support of its conclusion that the Northwood property is irrevocably committed to urban uses, the City Council acknowledges the following supporting documents in the record: (1) an *Oregonian* article citing Jim Hinman of the Department of Land Conservation and Development (DLCD) as stating that this application does not violate any statewide planning goals, and (2) an email correspondence in the record from Ron Eber, DLCD Farm & Forest Lands Specialist, saying "If [the Northwood property] isn't committed then I don't know what is." The City Council also finds that the Planning Commission, which had recommended denial, nonetheless concluded that the land is committed to urban uses. The City Council recognizes that DLCD did not take any official position on this application. However, it also recognizes that in 2001, DLCD did not object to Senate Bill 929 (which would have added the subject property to the City's UGB) when the bill was amended to include only the Canby property. The City Council concludes that whatever may have been DLCD's position on this property many years ago, the agency is not opposing this application now, and several of its key people think that the application makes a lot of sense.

4. The City Council heard and read testimony arguing that the application should be denied because the land is not needed for urban development at this time. The City Council also heard and read testimony that because the property consists of outstanding agricultural soils and helps serve the open space needs of City residents, the property should remain outside the UGB until it is needed. It also heard and read arguments to the effect that the City was not strong enough economically at this time to approve the application.

a. The City Council finds that the Planning Commission recommended denial of the application for essentially these reasons. While the Planning Commission generally agreed that the property was a logical place for future growth and was irrevocably committed to urban growth, some Commissioners felt that the timing of this application was premature. Others found that the UGB had an adequate supply of residential land to meet the City's 20 year need for such lands and that this property could continue to be farmed.

b. The City Council agrees with the Planning Commission that the land is not currently "needed" for urban development. However, as previously noted, need is not a required element of a UGB amendment application that is based on commitment to urban uses. According to the City's planning staff and the City Attorney, approval of a UGB amendment application that is based on commitment to urban uses is wholly discretionary with the City Council. Under the factual circumstances of this application, the City Council believes that expanding the UGB to include this land at this time makes good planning sense in terms of providing logical service boundaries. It also makes good planning sense because such action would encourage urban development on infill property that already has services before expanding urban development onto urbanizable land that is not currently serviced and is still capable of being farmed without experiencing conflicts with urban development at anywhere near the level that they exist at the Northwood site. Moreover, the City Council finds that unlike the subject property, many of these outlying properties consist of Class I soils, which are a higher priority for protection under Oregon's land use planning statutes.

c. The City Council finds that the Northwood property is excellent, high value farmland. It contains Class II soils that are recognized as highly productive. At the same time, the City Council finds that all of Canby has developed on excellent agricultural soils, and it finds that the other undeveloped lands inside the UGB have soils that are equally good if not better (Class I). It further finds that if ORS 197.298 applied to this application, the Northwood property would have a higher priority for development than many of the properties already in the UGB. The City Council agrees with the conclusion in Associate Planner Clint Chiavarini's April 24, 2003 memorandum to the Planning Commission (incorporated herein by this reference) that if this standard applied, the subject property would be the highest priority for inclusion in a UGB expansion.

d. Although the subject property has excellent agricultural soils, the City Council finds that significant impediments exist to farming this land that are not present to anywhere near the same degree on other agriculturally zoned lands outside the city limits, including other agriculturally zoned lands already inside the UGB. Although there was evidence on both sides of this issue, the City Council finds more persuasive the testimony of several farmers to the effect that this property cannot be easily or efficiently farmed and that many accepted farming practices in the area cannot be applied to this property due to the surrounding urban development. More particularly, the City Council believes the testimony of Manfred Schosnig, C & S Farms, who has been renting a part of this property from the applicant, that the fence around the property was cut and his tractor was vandalized earlier this year, and it so finds. It believes the testimony from Andrew Hein, Hein Farms, and finds that (1) more than 30 property owners share a common property line with the Northwood property; (2) more than 500 people live, eat and sleep within a short distance of this property; (3) using agricultural chemicals would be an unacceptable risk, given the possibilities of trespass or wind drift; and (4) his insurer, who covers his farming operations, refused to write an agricultural liability policy for this property, based on this information. It also finds that while he was disking the property in the early 1990s, two neighboring property owners threatened legal action against Mr. Hein based on noise and dust claims. Further, it accepts his oral testimony and finds that new federal regulations will soon prohibit the use of some agricultural chemicals within 300 feet of a house, making it very difficult to apply these practices here.

The City Council also believes the testimony of Richard Gingerich, Gingerich Farms, and finds that he would not purchase this 30 acre site because the dense housing development near the site makes it extremely difficult to conduct normal farming operations; because wind makes it difficult to control dust and chemical applications from trespassing onto adjoining properties; and because the surrounding density of housing simply creates too great a risk for a commercial farming operation. And the City Council accepts and finds persuasive comments raised by the owners of Swan Island Dahlias in a letter published in the May 14, 2003 *Canby Herald*, in which they state that it makes much more sense to develop the Northwood property rather than annex agricultural lands outside city limits because the Northwood site is already surrounded by housing and because farming the Northwood site would be very difficult "due to chemical restrictions, dust issues, and noise management in a city setting." Indeed, the City Council finds this testimony to be especially important given comments by several opponents that the subject property is appropriate for growing dahlia bulbs.

The City Council concludes that while the subject property has farmable soils, it cannot be farmed in the same manner, as efficiently, or with the same range and availability of accepted farming practices as other agricultural lands located outside the city limits, due to limitations imposed by the existing surrounding urban-scale residential development. The City Council further concludes that it makes better sense for the City to encourage development of this infill area prior to urbanizing lands on the urban fringe because the existing urbanizable sites have equal or better agricultural soils but not near the scale of conflicting uses that are present at the Northwood site. These conclusions support a decision to amend the UGB to include the Northwood property.

e. The City Council is aware that IFA has offered to lease or purchase the property for continued agricultural use. The evidence in the record indicates that IFA once leased this land but attempted to walk away from the lease prior to its expiration. Moreover, the record shows that in 1984, when the Land Conservation and Development Commission (LCDC) determined that the City's UGB was too large, IFA was leasing this land and did not object to its removal from the UGB. However, according to testimony before the Planning Commission from Gordon Ross, a former Planning Commission chairman, the property owner then leasing this land to IFA was never contacted about this decision. The City Council so finds. The City Council also is puzzled by the fact that at the same time IFA was opposing this application, it was supporting annexation of the Dodd property, which contains similar agricultural soils on the urban fringe, even though IFA currently is leasing a portion of the Dodd property to grow seedling trees. Based on these facts, the City Council finds IFA's testimony to be less persuasive and less reliable than the testimony of farmers like Andy Hein and the owners of Swan Island Dahlias, who have no personal interest in obtaining this land for their own personal gain.

f. While the current recession is creating difficulties for cities and counties throughout Oregon, these economic conditions, which are cyclical, do not support interpretations of the Comprehensive Plan that in effect would mandate a current moratorium on development. The City Council finds that Canby is seeking to attract new economic development, and it finds that people engaged in such development will need places to live. The City Council finds that the subject property would be an excellent location for new residential development, particularly

given that urban services are already there. Also, as noted in the staff report to the Planning Commission, City service providers have expressed their ability to provide urban services to this land. The City Council acknowledges that testimony and so finds. It also acknowledges comments from both School Superintendent Deborah Sommer and former School Superintendent Dick Brown that schools receive money based on the number of students that they have. In her August 28, 2002 letter to City Manager Mark Adcock, Ms. Sommer explained that more students bring in more revenues, which is a positive result of increased growth and one that the District could benefit from at the present time. She added that fewer students or flat growth, such as Canby School District is currently experiencing, means fewer revenues and exacerbates present funding problems. She also identified tools that are available to the District to accommodate new growth should it occur. Mr. Brown, who testified in support of the application, stated that the average family size in the District is just 2.3 people and that schools get revenues from the state based on the number of students they have. The City Council believes the testimony of Ms. Sommer and Mr. Brown and so finds.

5. The City Council heard and read testimony favoring the continued protection of the Northwood property as private open space. The City Council understands how difficult it can be for local residents to observe and experience the conversion of adjoining or nearby open space to urban uses. Because the City of Canby is growing, it must choose between expanding onto unserviced farm lands along the urban fringe or developing infill land that is currently zoned Agricultural but has a full range of urban services available to it. From the standpoint of efficiency and cost, the City Council finds that it makes better sense to develop an area that already has urban services in place before extending such services into new areas. It finds that this application makes good planning sense. Opponents have alleged that failure to preserve the Northwood property as open space violates Comprehensive Plan Policy 8-R. The City Council does not agree, for reasons set out below.

6. The City Council finds that impacts such as the loss of open space, increased traffic, more students in the schools, and visual impacts associated with converting vacant land to housing tend to arise when new residential development is proposed or when an application seeks to change an area's character from rural or urbanizable to urban. However, converting undeveloped lands to urban uses does not in itself destroy the attractiveness or livability of the City. Indeed, the City Council finds that Canby has maintained its attractiveness and livability throughout previous periods of growth over prior decades. The growth that occurred during these periods did not destroy the fabric or character of the City.

The City Council finds that the Northwood site similarly can be developed in a manner that maintains the livable qualities of the City. Indeed, it finds that one of the Northwood partners, Ron Tatone, developed most of the residential areas surrounding the site, and it finds that the people residing in these developments consider Canby livable. The City Council also sees social benefits resulting from approval of the Northwood application, in the form of better roadway connectivity that will help disperse traffic through this area; the addition of at least three acres for parks or other public purposes in an area where park land is badly needed; better emergency service provision to the neighborhood; improved fire response time and fire flow; and improved water service with installation of a water line running north to south and increasing

service to all residents north of Knights Bridge Road and south of Territorial Road. The City Council believes these are all important benefits to the neighborhood and to the City.

7. The City Council finds that there are no significant natural resources on the site or nearby that would be affected by this proposal. From an energy standpoint, the City Council finds that public services can be extended more easily to this property than to other vacant properties inside the UGB because public facilities already are present at many locations surrounding the property. It also finds that street connectivity resulting from the project will reduce the level of out-of-direction travel that is occurring in this area, and it finds that this area is closer to the Canby downtown than many urbanizable areas on the urban fringe, thus conserving energy.

8. The City Council reviewed and considered testimony submitted by 1000 Friends of Oregon and several opponents claiming that ORS 197.298 implicitly overruled the caselaw permitting a city to include land inside its UGB based on commitment to urban uses. It also considered 1000 Friends of Oregon's assertions that this application violates Goal 14 Factor 6 (which requires retention of high value farmland); that the Northwood property is subject to LCDC Goal 3, Agricultural Lands, even though it is not zoned for Exclusive Farm Use (EFU); that the City cannot consider the surrounding urban development in determining whether the site was committed to urban uses; and that the Northwood property in fact is not committed to urban uses.

a. In response to 1000 Friends' comments, the Canby Planning Commission received written testimony from the applicant in the form of a letter from Mark Greenfield to the Canby Planning Commission dated April 23, 2003, and a legal analysis by the City Attorney, John Kelley, dated April 28, 2003. The City Council agrees with the analysis and arguments provided by Attorneys Kelley and Greenfield refuting 1000 Friends' arguments, and it incorporates their documents and analysis by reference herein. It also makes the following additional findings on these issues.

b. ORS 197.298 establishes priorities for land to be included inside urban growth boundaries. The City Council believes that this statute was intended to address how urban growth boundaries expand outward onto rural lands in circumstances where a "need" for more residential land has been identified under ORS 197.296. The record contains evidence from Jon Chandler, a lobbyist who was deeply involved in drafting and lobbying the bills that became ORS 197.296 and 197.298, that supports this conclusion. Mr. Chandler's letter states that the bill that established ORS 197.298 was an attempt to codify Land Conservation and Development Commission practice regarding the treatment of farm land. It adds that there was no discussion that ORS 197.298 would apply independently of ORS 197.296, and it says that the law "most certainly was not designed to address anything like the Canby situation" (i.e., Northwood). The City Council believes Mr. Chandler's testimony and so finds. It concludes that ORS 197.298 was not intended to apply to the unique circumstances present here involving rural land that is an island surrounded by urban land with urban services.

c. Because ORS 197.298 applies when a need for more urban land is identified, and because the Northwood application is not based on need, the City Council concludes that ORS 197.298 does not apply to this application. However, if this statute did apply, it would be met for

several different reasons. First, because there are no urban reserve lands, exception lands or marginal lands adjacent to Canby's UGB, the Northwood property, assuming it is "agricultural land", would be the highest priority for inclusion in a UGB expansion. Second, because the property technically is not "agricultural land as defined" by Goal 3 and as regulated by LCD's rules implementing Goal 3, it more appropriately should be considered and treated as exception or nonresource land. More particularly, the City Council finds that this land is not protected through Exclusive Farm Use (EFU) zoning, which Goal 3 and OAR 660-033-0090 require be applied to agricultural lands. The subject property also is not zoned for a minimum of 80 acres, as required for EFU lands, nor are all the uses allowed outright or conditionally under ORS 215.283 or even under the statutory definition of "farm use" permitted on this site. Third, assuming this were agricultural land, it still could be included inside the urban growth boundary under ORS 197.298(3) on the ground that maximum efficiency of land uses within the Canby UGB requires its inclusion to provide services to higher priority lands, including urbanizable lands already within the UGB. These services include road connectivity, better fire and emergency vehicle service to the area, better fire flow within the area, and the provision of needed park facilities in the area.

d. The City Council agrees with the applicant in its letter dated April 23, 2003, that that the City's Agricultural zone is not an EFU zone of the nature required by Goal 3 and OAR 660, Division 33 for agricultural lands. Accordingly, it finds that the subject property is no longer subject to Goal 3, despite its agricultural designation and zoning. The City Council further finds, as noted in the staff report, that the subject property has more restrictions on it than either the obviously agricultural EFU zoning or the nearby exception land in Clackamas County zoned Rural Residential-Farm Forest 5, a rural residential zone with a five acre minimum lot size. Consequently, with respect to Goal 14 factor 6, the City Council concludes that the subject property is not "agricultural land as defined" by Goal 3 and thus not subject to this factor. It has excellent agricultural soils, but it is not "agricultural land as defined" given the full context of Goal 3 and its implementing rules. However, even if it were agricultural land, the City Council finds that the level of development surrounding this property and the extension of urban services to many locations along the property renders the property appropriate for inclusion inside the urban growth boundary based on commitment to urban uses. It also finds that under the applicable caselaw, it must consider the Goal 14 locational factors as a whole, not just individually as 1000 Friends suggests.

e. The City Council also disagrees with 1000 Friends of Oregon that the City may not consider the surrounding urban development in determining if the land is committed to urban uses. 1000 Friends relies on OAR 660-004-0028(6), but that rule relates to rural nonfarm uses, not urban uses. It provides that nonfarm and nonforest uses permitted in exception areas by a goal exception cannot be used in turn to argue that other land is committed to nonfarm uses. However, the land inside Canby is not rural exception land. It is, instead, urban land.

9. Both the staff report and the application analyze the five Goal 14 locational factors in determining commitment to urban uses. Those analyses, together with the findings set out above, explain how the land is committed considering the orderly and economic provision of public facilities and services (Factor 3); maximum efficiency of land uses within and on the fringe of the existing urban area (Factor 4); economic, social, environmental and energy

consequences (Factor 5); retention of agricultural land as defined (Factor 6); and compatibility of proposed urban uses with nearby agricultural uses (Factor 7). The City Council finds that these analyses, together with the findings above, demonstrate that the Northwood property is, in fact, committed to urban use. Consistent with prior caselaw on this issue, the City Council finds that this discussion demonstrates why including the Northwood property in the UGB avoids illogical development or service patterns, and it finds that this discussion clearly reveals an overall picture showing commitment. For these reasons, the City Council concludes that the applicable Goal 14 locational factors are met.

10. At the hearing and in written testimony, opponents raised numerous allegations of noncompliance with Canby Comprehensive Plan policies. However, the City Council finds that this application complies with the applicable Comprehensive Plan policies, for the reasons set out in the application and the staff report (reasons in support of application), incorporated herein by reference, and for the additional reasons set out below:

a. Initially, the City Council finds that the Canby Comprehensive Plan includes a number of policies that appear to be in conflict. However, it finds that this situation is expressly recognized and addressed in the Comprehensive Plan. The Introduction to the Comprehensive Plan states at page 2: "It is recognized that there will arise unavoidable situations where one Policy appears to conflict with another. An obvious example is found in the City's seemingly conflicting intentions to preserve agricultural land and also to allow for outward growth. The Statewide Planning Goals contain essentially the same conflict, and the justification appears to be the same: either Policy could prevail, depending upon the unique circumstances of the particular situation. For instance, a proposed annexation of farmland may be justified if the evidence presented in favor of such annexation clearly outweighs the merit of retaining the land in agricultural use." The City Council concludes from this language that an apparent conflict with one portion of the Plan does not mean that a proposal necessarily violates the Plan, particularly when the proposal supports other policies in the Plan. The City Council also finds that the Northwood application falls into this circumstance where either of the conflicting policies could prevail. The City Council interprets its Plan as authorizing approval of an application when such circumstances arise, where it concludes that the evidence in favor of the proposal outweighs the evidence against it. Here, for the reasons expressed below, the City Council finds that the evidence in favor of this UGB amendment clearly outweighs the evidence against the amendment.

b. Locational Factors of UGB. Opponent Janet Milne directs the City's attention to page 26 of the Comprehensive Plan, which contains language stating that LCDC staff urged deletion of the Northwood property because it is neither needed for nor committed to urban development. (This plan language also mistakenly identifies IFA as the property owner of this site, when in fact IFA was just the lessee.) The City Council finds that in 1984 when LCDC considered Canby's UGB, the subject property was not entirely surrounded by development. Today, however, with development of Territorial Estates, this land is entirely cut off from adjoining agricultural lands by urban development. It also finds that in 1984, agricultural activities were occurring on the site without significant conflicts with nearby development. Today, however, some of the commercial farmers who have farmed this property, including Swan Island Dahlias and Manfred Schosnig, have identified problems such as trespass,

harassment, vandalism, or difficulties associated with chemical restrictions or dust and noise management in a city setting that make continued agricultural use of this land difficult and impractical. Indeed, Andy Hein testified that his insurer would not cover him for this property because of the surrounding urban scale development. Testimony prepared for LCDC by farmer and long-time farm land protection advocate Cliff Kenagy explains in detail how residential development interferes with and impedes farming practices. The City Council finds that the circumstances Mr. Kenagy addresses apply in particular to the Northwood site because of the residential development surrounding that site. It finds that conditions have changed in this area such that farming this land is no longer as easy or compatible with surrounding uses as it once was.

The City Council also finds that DLCD is no longer contending that the Northwood property is not committed to urban uses. Indeed, comments in the record made by DLCD staff persons Jim Hinman and Ron Eber suggest or state otherwise, and the City Council notes that DLCD did not oppose Senate Bill 929 (2001) when it was amended to include just the Canby site. Accordingly, the City Council concludes that the factual circumstances described on page 26 of the Plan have changed during the intervening 19 years.

c. Janet Milne cites language at page 64 of the Comprehensive Plan stating that bulb and tree farming "seems to be fairly compatible with residential use and, in fact, is contiguous to numerous subdivisions." However, as noted immediately above, problems with trespass and vandalism and threats to persons farming this land have occurred in more recent years, indicating that the neighborhood's tolerance of dust, noise and other farming-associated impacts are changing. Moreover, Andy Hein testified, and the City Council believes, that restrictions on chemical applications near residential areas will make it even harder to farm this property. Swan Island Dahlias also has indicated that it would be very difficult for them to farm this land.

Moreover, while Ms. Milne has accurately quoted from the Plan, so too has the applicant in the conclusion to its application. There, it quotes language from page 21 of the Plan which states: "It is extremely difficult to avoid conflicts between residential development and nearby agricultural operations. Distance is one of the only real 'buffers' which averts such conflicts. * * *. Residential uses, other than farm dwellings, almost always create such conflicts. Most of the land in the City's UGB will be developed residentially, so the potential for conflict is significant." Similarly, the applicant quotes language from page 16 of the Plan which states: "Unfortunately, residential land uses are generally not compatible with agricultural pursuits. Homeowners often complain about the dust or odors produced on nearby farms, and farmers complain about the harassment, trespassing and vandalism which often comes from nearby residents." The City Council finds that regardless of what the circumstances may have been in 1984, the Northwood property now is experiencing the kinds of problems described on pages 16 and 21 of the Plan. Under this circumstance, and under the limitations described by Mr. Hein, the City Council concludes it is not reasonable or fair to require these property owners to continue to engage in agricultural activities for the foreseeable future.

d. Urban Growth Goal 1 is "To preserve and maintain designated agricultural and forest lands by protecting them from urbanization." The City Council finds that it has protected and maintained agricultural land at the Northwood property for nearly 20 years. However, as

noted above, the discussion under this policy reveals that residential uses can conflict with farming practices. For the reasons provided above, the City Council finds that such conflicts have grown to the point where it would not be reasonable for the City to require the property owners to engage in continued agricultural use of this land. In this regard, the City Council cites Urban Growth Goal 2, which is to provide adequate urbanizable land for the growth of the City, within the framework of an efficient system for the transition from rural to urban land use. Because this property has urban services already available, it is the most efficient land in Canby to develop and urbanize. Indeed, the City Council finds that this conclusion was reached even by those Planning Commissioners who recommended denial of this application. On balance, the City Council finds that the evidence weighs more strongly in favor of allowing efficient development on this land rather than keeping it in agricultural use. Further, the City Council finds that by allowing this land to develop, other farm lands inside the UGB can remain in farm use for a longer time. This matters because those other farm lands, consisting of equally good or better agricultural soils, do not have anywhere near the level of conflict associated with the Northwood site. Accordingly, allowing this land to develop first is consistent with the overall intent of Urban Growth Goal 1 because other agricultural lands will be protected longer.

e. Urban Growth Policy 2. Urban Growth Element Policy 2 requires the City to provide opportunities for amendments to the urban growth boundary (subject to the requirements of Goal 14) where warranted by unforeseen changes in circumstances. The Planning Commission found that the application did not meet Urban Growth Element Policy 2 because the proposal did not meet the need requirements of Statewide Planning Goal 14. Janet Milne argues further than any change in circumstances was predictable and therefore not unforeseen.

Initially, the City Council finds that Urban Growth Element Policy 2 does not operate as absolutely or as rigidly as Janet Milne suggests. Its language is not intended to operate as a limitation on applications for urban growth boundary amendments. Indeed, this is clear from the language of Implementing Measure C, under which the City is directed to "evaluate recent trends and consider amendments which may be appropriate." The City Council finds that even where recent trends may have been foreseeable, they can serve as a basis of a UGB expansion under this policy. Stated another way, planning is dynamic rather than static and it is appropriate to revisit situations over time to see how circumstances may have changed.

Accordingly, the City Council finds that Policy 2 covers the Northwood application, since that application identifies recent trends and asks the City to consider amendments that may be appropriate. These recent trends include (1) the development of Territorial Estates, which completely enclosed the Northwood property; (2) the legislature's consideration of SB 929 in 2001, during which DLCD dropped any previous opposition to the inclusion of this land inside the City's urban growth boundary; (3) new incidents of trespass and vandalism on the Northwood property that impede agricultural production and use of a full range of accepted farming practices; and (4) increased difficulty in applying chemical applications, obtaining agricultural liability insurance, and the like.

The City Council believes and finds that the ability to farm this property is more difficult today than was foreseen in the early 1980s when the Comprehensive Plan was adopted, such that requiring now that the land remain in farm use may impose unreasonable limitations on the

economic use of this land. Finally, the City Council finds that a finding of "need" under Factors 1 and 2 of Goal 14 is not required when the subject property is irrevocably committed to urban development under Goal 14 Factors 3-7. The purpose of Policy 2 is to ensure consistency with Goal 14. LUBA, the Oregon appellate courts and DLCD all agree that where a property's commitment to urban uses is shown, it can be added to a UGB consistent with Goal 14 even if there is no "demonstrated need" for that land. Hence, the City Council concludes that Urban Growth Element Policy 2 does not preclude a UGB expansion in this circumstance.

f. Urban Growth Policy 3. This policy requires the City to discourage the urban development of properties until they have been annexed to the City and provided with all necessary urban services. While opponents to this application do not cite this policy, the City Council finds it important in weighing compliance with the overall Comprehensive Plan. The City Council finds that the Northwood site, unlike many other farm properties inside the UGB, is already (1) within the city limits, and (2) provided with all necessary urban services. This makes the Northwood property a higher priority for development over other urbanizable lands inside the UGB. And as noted earlier in these findings, developing the Northwood site prior to annexing other lands and extending services to them is consistent with Goal 14's factors for converting urbanizable land to urban uses.

g. Land Use Goal. The Land Use Goal directs the City to guide development and uses of land so that they are orderly, efficient, aesthetically pleasing and suitably related to one another. The City Council finds that this application is consistent with this goal. Developing the Northwood property is orderly and efficient because public facilities already extend to this land. This fact also supports a determination of compliance with the Public Facilities Goal. Through development review, the City can assure that the development is aesthetically pleasing. Finally, residential development on this site is suitably related to the surrounding properties, which are designated and zoned for residential development. Indeed, residential development on the Northwood property is much more suitably related to surrounding residential development than is agricultural use, for reasons expressed earlier in these findings.

h. Land Use Policy 1. This policy requires the City to "guide the course of growth and development so as to separate conflicting or incompatible uses while grouping compatible uses." Based on the evidence provided by the farmers identified above, guiding the course of growth and development so as to separate conflicting uses supports a decision to use the Northwood property for urban development while protecting for farm use other agricultural lands that are not so constrained. As noted above, the background section of the Urban Growth element recognizes how difficult it is to avoid conflicts between residential developments and nearby agricultural operations. It states that "distance" is one of the only real buffers which averts such conflicts. With virtually no "distance" separating it from residential uses, the Northwood property has been experiencing more and more conflicts. Despite testimony of area neighbors to the contrary, the City Council believes these conflicts will continue to occur and would be even more pronounced if Northwood Investments, as is their right, began engaging in the full range of accepted farming practices rather than utilizing "good neighbor" policies that place the needs of the farm enterprise below the needs of the surrounding residential development. Based on the evidence in the whole record, the City Council concludes that retaining these 31 acres in agriculture in the midst of urban scale residential development does

not make good planning sense. As the owners of Swan Island Dahlias indicate, it makes much better sense to protect the agricultural lands on the urban fringe, where the conflicts with urban development are much less pronounced. The City Council agrees and so finds.

i. Land Use Policy 3. Policy 3 directs the City to discourage any development which will result in overburdening any of Canby's public facilities or services. Although the City Council heard testimony from opponents that development on the Northwood property would have this effect, it does not so find. Instead, it finds that the service providers all have indicated that they can service development on this property. Moreover, the City Council finds that development of the Northwood property would improve water and sanitary sewer service by completing those systems in the northwest quadrant and by improving water flow for fire fighting. It finds that development of the subject property would pay the costs of these extensions and the costs of connecting streets that currently are disconnected, including NW 10th and NW 12th Avenues, thereby improving local traffic circulation in the area. It also finds that the development would contribute significantly to the City in the form of systems development charges, fees, and annual property taxes that help pay for police and fire services, libraries and the like. The City Council heard comments to the effect that residential development does not cover its expenses, but there is no expert testimony in the record supporting that broad statement or indicating that the statement applies to a development like Northwood, which likely would provide higher end houses that contribute more in the way of property taxes while not imposing costs for the extension of services to the site.

j. Land Use Policy 5. Janet Milne argues that this policy requires the City to base zoning and other decisions on the Land Use Map. However, no policy prohibits the City from amending the map. Indeed, the Plan and Zoning Ordinance permit such amendments. Here, the issue is whether the proposed Plan map and zoning map amendments comply with applicable standards. For the reasons set out in these findings, the City Council finds that they do.

k. Environmental Concerns Policy 1-R-A. Policy 1-R-A requires the City to direct urban growth such that viable agricultural uses within the urban growth boundary can continue "as long as it is economically feasible for them to do so." As noted above, the City Council finds there was conflicting testimony on this issue. It heard or read testimony from several area farmers, including Swan Island Dahlias, Hein Farms and Gingerich Farms, that there are too many conflicts associated with this property to warrant any substantial investment in agriculture. It heard or read testimony from Manfred Schosnig, Fred Kahut and Andy Hein describing incidents of trespass, harassment, threats and vandalism at this site. While the City Council also heard testimony from IFA and others that they would like to farm this property, the City Council finds more persuasive the comments of the above-named farmers. Further, by bringing this property inside the UGB, viable agricultural uses on the urban fringe could continue to operate for a longer time, consistent with this policy.

L. Environmental Concerns Policy 7-R. This policy requires the City to improve the overall scenic and aesthetic qualities of the City. Janet Milne argues that this policy requires the Northwood property to remain undeveloped. However, that argument, taken to its logical conclusion, could preclude development on any vacant land. The City Council does not interpret this policy so rigidly. It finds, instead, that this policy applies during site design review for

developments other than single family developments, to encourage development that is sensitive to its surroundings. Accordingly, the policy does not apply here at all. If it did, the inclusion of parkland within the Northwood property, as agreed to by the applicant, would improve the overall scenic and aesthetic qualities of the City, consistent with the policy.

m. Environmental Concerns Policy 8-R. Environmental Concerns Element Policy 8-R provides for the City to "seek to preserve and maintain open space where appropriate and where compatible with other land uses." As reflected by the implementation measures, this policy is intended to apply to development applications rather than UGB expansion applications. Hence, the City Council does not interpret this policy as mandating preservation of all lands that currently serve as open space. Indeed, were that so, it would be impossible for Canby to grow. The City Council finds that this policy can and will be met by ensuring that adequate open space is preserved and maintained at the time a development application for this property is submitted and reviewed. The City Council also finds that the mere fact that open space is compatible with existing residential development does not mean the City must preserve and protect that open space in perpetuity. Policy 8-R calls for the protection of open space "where appropriate." For reasons stated earlier in these findings, the City Council finds that residential development combined with the protection of at least three acres serving park or other public purposes is what is appropriate for the Northwood property.

n. Transportation Policies 1 and 3. Policy 1 requires the City to provide necessary improvements to City streets. The City Council finds that NW 10th is a neighborhood connector and that approval of this application will provide for the connection of NW 10th and also NW 12th. This will improve circulation and connectivity in this area of Canby, consistent with Policy 1. Policy 3 requires the City to "attempt to improve its problem intersections." Problems with the intersection of 99E at Territorial have been identified. The City Council finds that its transportation plan provides for improvements to occur at this intersection within the next few years. Because the City is "attempting to improve" that intersection, Policy 3 is satisfied. The City Council also notes that this policy is directory to the City and does not apply in the context of a UGB amendment application.

o. Economic Element Policy 4. This policy requires Canby to consider agricultural operations which contribute to the local economy as part of the economic base of the community and to seek to maintain these as viable operations. Some opponents have argued that the Northwood application violates this policy and implementation measure 3, which states that agricultural operations, including those inside the incorporated area, will be encouraged to remain in operation for as long as it is economically feasible to do so.

The City Council finds that Policy 4 applies not just to the Northwood property, but to all agricultural lands surrounding the city, including EFU-zoned lands inside the City's UGB. It is the City's policy to protect these highly productive lands from urban encroachment. That stated, the City Council finds that urban development has encroached on the Northwood property to a much greater extent than on the other surrounding agricultural lands, such that the continued viability of this land for farming is questionable. The City Council finds that it makes much more sense to encourage infill-type development of the Northwood property prior to

development of other farm properties within the UGB that do not experience such a high level of conflict.

It pleases the City Council that the Northwood site was able to remain in farm use for many years. However, as noted earlier in these findings, farming has become more difficult there than it was previously, and incidents of conflicts and impediments to farming have increased. Given the totality of the circumstances, the continued viability of the Northwood property as an economic operation worthy of protection is questionable. The City Council finds that it makes much more sense to direct growth to this land while allowing farming to continue on the other high quality agricultural lands inside the UGB that are experiencing fewer conflicts. The City Council concludes that this determination is not in violation of this policy.

p. For a plan amendment application, the City Council's role is to consider the conflicting policies and to weigh not only the evidence in the record but also consider the total weight of the entire Comprehensive Plan as it may apply here. Consistent with this directive, the City Council has considered not only the evidence in the record but also the weight of these conflicting policies. While it acknowledges those policies favoring the continued preservation of agricultural lands (including this property) in farm use, it concludes that the evidence in the record favoring approval of this application is more persuasive and supports the conclusion that the application complies with all applicable standards. The City Council further concludes that in 2003, unlike 1984, it makes much more sense to protect the agricultural lands and farming practices on the urban fringe, where urban/rural conflicts are reduced, rather than protect farming on the Northwood property, where farming practices are compromised and farm/residential conflicts are occurring more frequently. Moreover, it makes better planning and financial sense to urbanize land like the Northwood property, which is essentially infill property, before extending urban services to currently unserved agricultural properties on the urban fringe. Overall, the City Council finds that the weight of its Comprehensive Plan policies provide strong support for this application. While the Plan policies supported protection of this property for farm use 20 years ago, recent trends now make farming much less practicable and viable at this site. It makes much more sense to protect the farms on the urban fringe.

11. Before the Planning Commission, testimony was submitted to the effect that development of the Northwood property would result in traffic volumes that violate accepted road standards. This testimony relied on a report by Clackamas County indicating that by 2018, Knights Bridge Road east of the Molalla River would experience traffic volumes at an unacceptable Level of Service "E".

a. Because the County's traffic report conflicted with conclusions reached by the City's Traffic Consultant (Lancaster Engineering) that the Northwood proposal would not violate traffic standards, both the County and Lancaster Engineering re-examined the situation, and the County performed new traffic counts.

b. As a result of this re-examination, the County determined that its original traffic estimate was too high and that the Lancaster report was more accurate. Accordingly, the City Council finds that Lancaster Engineering's data and conclusions are reliable and that, as

Lancaster determined, approval of this application would not result in traffic exceeding acceptable levels of congestion.

12. As a part of this application, the applicant has made commitments to provide the City with certain benefits. These benefits include (1) provision of at least three acres for park or other public purposes; (2) the waiver of density bonuses if the property develops as a PUD; and (3) waiver of reimbursement of the first \$100,000 of the parks system development charge as applicable. These benefits shall be made a condition of this approval.

13. During this proceeding, comments were made to the effect that there would be value in coordinating future development of this site with city staff and the surrounding property owners. While the applicant testified that it would not accept the neighborhood dictating the nature or shape of future development on its site, the applicant did indicate a willingness to listen to the concerns of the neighborhood regarding how this site develops, and to work with City staff on the future development of this site prior to the filing of a development application. The City Council appreciates this offer and encourages this action.

14. Based on the above findings of fact and conclusions of law, the City Council determines that the Northwood application to amend the UGB and to redesignate and rezone the Northwood property to Low Density Residential complies with all the applicable legal standards. The application is approved.