

## ORDINANCE NO. 1184

**AN ORDINANCE ADOPTING FINDINGS OF FACT AND CONCLUSIONS OF LAW, APPROVING A COMPREHENSIVE PLAN AMENDMENT INCLUDING STATEWIDE PLANNING GOAL EXCEPTIONS, AND AMENDING THE URBAN GROWTH BOUNDARY 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 INVESTMENTS, APPLICANT.**

WHEREAS, Northwood Investments owns approximately 30.19 acres of property south of Territorial Road, more particularly described as Tax Lot 800 of Tax Map 3-1E-32AA; Tax Lots 100, 200 and 1700 of Tax Map 3-1E-32AD; Tax Lots 300 and 501 of Tax Map 3-1E-33BB; and Tax Lot 6600 of Tax Map 3-1E-33BC (“the subject property”), that is inside Canby’s city limits and encircled by the City’s Urban Growth Boundary (“UGB”) but is outside the UGB; and

WHEREAS, in 2003, the Canby City Council approved an application by Northwood Investments, entitled Application No. ZC 03-02/CPA 03-02, requesting a comprehensive plan and text amendment, an amendment to the UGB and a zone change for the subject property; and

WHEREAS, in 2003, the Canby City Council’s decision was appealed to the Land Use Board of Appeals (“LUBA”), which affirmed the City’s action, and then to the Oregon Court of Appeals, which in 2004 reversed and remanded LUBA’s decision but explained that the City might attain the same result using different legal standards, such as an exception to Statewide Planning Goal 14, Urbanization; and

WHEREAS, following LUBA’s remand of this matter back to the City, Northwood Investments submitted a modified application requesting a Comprehensive Plan text amendment adopting exceptions to Statewide Planning Goals 14, 11 (Public Facilities and Services) and 3 (Agricultural Lands) to allow urban low density residential development and supporting urban public facilities and services on the subject property, which is currently designated and zoned by the City for Agricultural uses; and

WHEREAS, Northwood Investments’ modified application also requested that the Comprehensive Plan and Zoning Map designations for the subject property be amended from Agriculture to Low Density Residential; and

WHEREAS, Northwood Investments’ modified application further requested a Comprehensive Plan text amendment adopting exceptions to Statewide Planning Goal 14 to amend the Canby UGB to include the subject property, together with a Comprehensive Plan Map amendment delineating a new UGB that includes the subject property; and

WHEREAS, OAR 660-014-0030 authorizes local governments to allow urban scale development and uses on rural land upon determination that the property is irrevocably committed to urban development; and

WHEREAS, OAR 660-004-0010(1)(c) authorizes local governments to take exceptions to any of the requirements of Goal 14; and

WHEREAS, Northwood Investments is requesting approval of exceptions to Goal 14, Factors 1 and 2, so that the subject property can be included inside Canby's UGB in the absence of need for more urban land in Canby; and

WHEREAS, following public notice as required by law, a public hearing was conducted by the Canby Planning Commission on May 23, 2005, that resulted in a recommendation to the Canby City Council to approve Northwood Investments' modified application; and

WHEREAS, following public notice as required by law, the Canby City Council held a public hearing on July 6, 2005, at which it considered Northwood Investments' modified application and the recommendation of the Planning Commission and considered the record of the Planning Commission hearing as well as the record of the initial proceedings in this matter; and

WHEREAS, after concluding its review and discussion on this matter, the City Council reviewed proposed Findings of Fact and Conclusions of Law approving the application for the subject property at its meeting on August 3, 2005; and

WHEREAS, the Canby City Council, after concluding its review and discussion on this matter and by motion duly made and seconded, voted to adopt Ordinance No. 1183 amending the Comprehensive plan to include goal exceptions taken pursuant to OAR 660-014-0030 and amending the Comprehensive Plan Designation Map and the Zoning Map to change the comprehensive plan and zoning designations for the subject property from Agriculture to Low Density Residential; and

WHEREAS, the Canby City Council also voted to approve the goal exceptions taken pursuant to OAR 660-004-0010.

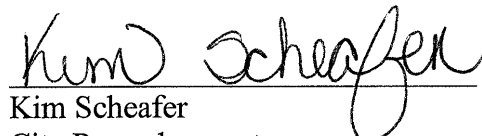
**NOW, THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:**

Section 1. The City of Canby Comprehensive Plan is amended to include exceptions to Statewide Planning Goal 14 to include inside the City of Canby Urban Growth Boundary the subject property of the applicant, to wit: Tax Lot 800 of Tax Map 3-1E-32AA; Tax Lots 100, 200 and 1700 of Tax Map 3-1E-32AD; Tax Lots 300 and 501 of Tax Map 3-1E-33BB; and Tax Lot 6600 of Tax Map 3-1E-33BC, as indicated in Exhibit "A" attached hereto and by this reference incorporated herein.

Section 2. The City of Canby Comprehensive Plan Designation Map shall be amended to indicate that the subject property of the applicant, to wit: Tax Lot 800 of Tax Map 3-1E-32AA; Tax Lots 100, 200 and 1700 of Tax Map 3-1E-32AD; Tax Lots 300 and 501 of Tax Map 3-1E-33BB; and Tax Lot 6600 of Tax Map 3-1E-33BC, is included inside the Urban Growth Boundary of the City of Canby.

Section 3. In support of this Ordinance and its decision in land use application ZC 03-02/CPA 03-02, the Canby City Council adopts the Findings of Fact and Conclusions of Law as indicated in Exhibit "B" attached hereto and by this reference incorporated herein.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on August 3, 2005, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on August 17, 2005, commencing at the hour of 7:30 PM in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.

  
Kim Scheafer  
City Recorder pro-tem

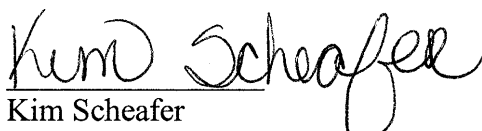
PASSED on second and final reading by the Canby City Council at a regular meeting thereof of the 17th day of August, 2005, by the following vote:

YEAS 4

NAYS 1

  
Melody Thompson, Mayor

ATTEST:

  
Kim Scheafer  
City Recorder pro-tem

**Modified Application for Comprehensive Plan Text and Map Amendments and Zoning Map Amendments, Including Exceptions to Goals 14, 11 and 3, to Allow Urban Uses and an Amendment to the City of Canby Urban Growth Boundary**

Northwood Investments, Applicant

On Remand from the Land Use Board of Appeals

**I. Introduction.**

**A. Description of the Modified Application.**

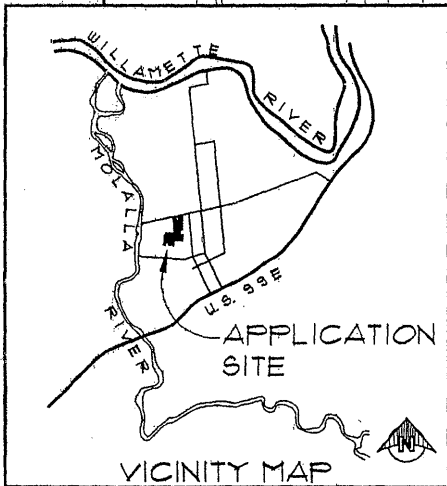
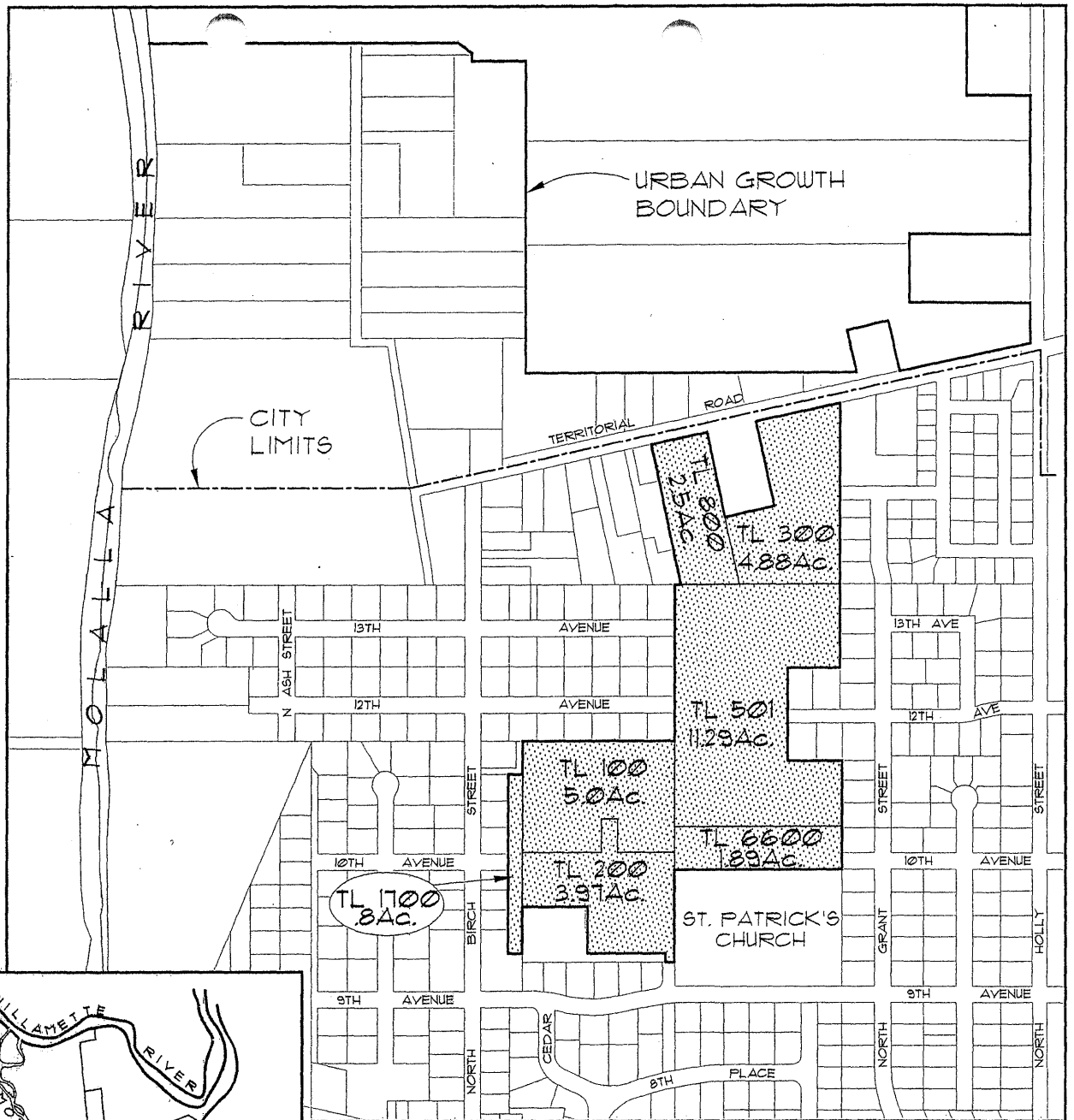
Upon remand from the Land Use Board of Appeals<sup>1</sup>, Northwood Investments<sup>2</sup> modifies its earlier application to request City of Canby approval of the following amendments to the City of Canby Comprehensive Plan text and map and to the City of Canby Zoning Map:

- A Comprehensive Plan text amendment adopting exceptions to Statewide Planning Goals 14, 11 and 3 to allow urban scale development and supporting urban services on the subject 30.19-acre parcel owned by Northwood Investments ("the Northwood property");
- A Comprehensive Plan text amendment adopting exceptions to Goal 14 to amend the Canby Urban Growth Boundary (UGB) to include the Northwood property;
- Comprehensive Plan map amendments changing the plan designation of the Northwood property from Agriculture to Low Density Residential and delineating a new UGB that includes the Northwood property; and
- A Zoning Map amendment changing the zoning designation of the Northwood property from Agricultural (A) to Low Density Residential (R-1).

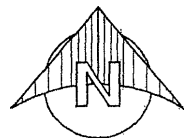
The Northwood property consists of Tax Lot 800 of Tax Map 3-1E-32AA; Tax Lots 100, 200 and 1700 of Tax Map 3-1E-32AD; Tax Lots 300 and 501 of Tax Map 3-1E-33BB; and Tax Lot 6600 of Tax Map 3-1E-33BC. **See Exhibit 1, Site and Vicinity Map.** Authorization of urban uses on this property is appropriate and justified on the ground that the extension of urban services to and the development of subdivisions, residences and a church on immediately surrounding and nearby properties renders this property *irrevocably committed* to urban land uses. **See Exhibit 2, Aerial Photograph.**

<sup>1</sup> *Milne v. City of Canby*, LUBA 2003-102 (January 26, 2005).

<sup>2</sup> Northwood Investments is a partnership whose membership includes the following five individuals with long-standing ties to the Canby area: Ron Tatone, Lyle Read, Fred Kahut, Dr. Lynn Kadwell, and Curt McLeod.



# SITE IDENTIFICATION and VICINITY MAP



1" = 600' ±

CITY OF CANBY  
COMPREHENSIVE PLAN AMENDMENT

NORTHWOOD INVESTMENTS  
CANBY, OREGON 97103

JANUARY 2003

EXHIBIT 1



Because the Northwood property is irrevocably committed to urban land uses, and because the existing City of Canby UGB entirely encircles the property, inclusion of this property inside Canby's urban growth boundary also is appropriate and justified.

The Northwood property lies entirely within the City of Canby city limits. It is also an island of land that is excluded from, but entirely encircled by, the City's UGB. See Exhibit 1. To the east, west and south of the property are developed residential subdivisions located on lands that are designated Low Density Residential and zoned R-1. **See Exhibit 3, Existing and Proposed Comprehensive Plan Designations; and Exhibit 4, Existing and Proposed Zoning Designations.** A church adjoins the property to the south. To the north, across NW Territorial Road, are larger residential lots that are developed with residences.

NW Territorial Road is a designated City neighborhood connector. See City of Canby Transportation System Plan, Figure 4-2, Major Street System Map.<sup>3</sup> The nearest principal roadways to the west, south and east are, respectively, NW Birch Street, NW 9<sup>th</sup> Avenue, and NW Grant Street.

The City's UGB currently follows a line north of a row of houses that are located on the north side of Territorial Road. As a result of development within this boundary, the Northwood property has become a rural "island" of land surrounded by the City's UGB. See Exhibit 2. The property currently is designated and zoned for agricultural use and has been recently used to grow dahlia bulbs and row crops like parsnips and radishes. However, the surrounding urban-density residential development severely restricts the types of agricultural uses and farm practices that can occur on this property.

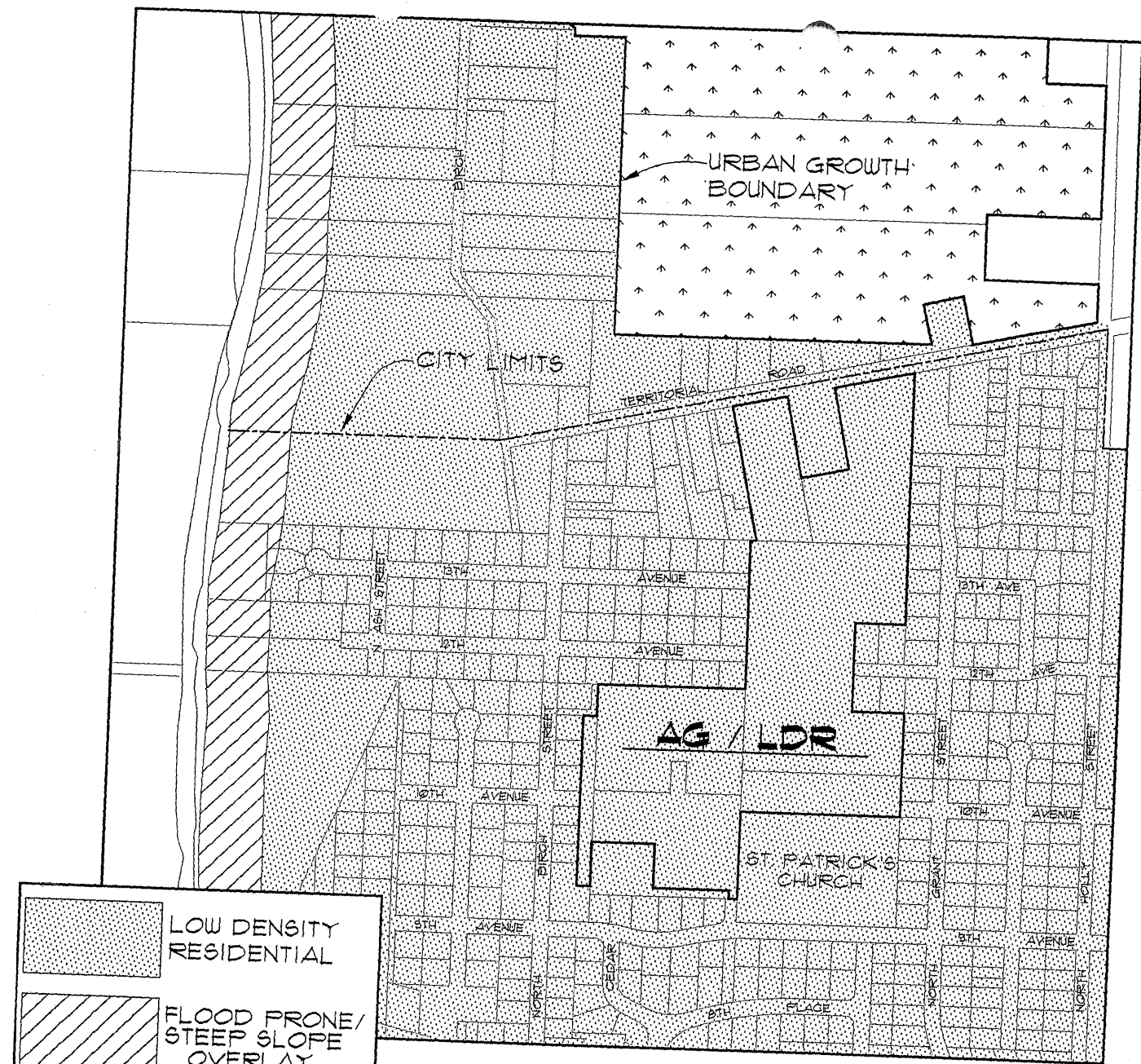
#### **B. Land Use History and Discussion of the *Milne* Decision.**

The original Canby Interim General Plan of 1976 proposed the subject 30+ acre site for low density residential development. However, in 1984, during the acknowledgment process with the Land Conservation and Development Commission (LCDC), it was determined that the proposed UGB (which then included this site) contained more land than was needed to accommodate anticipated population growth and development over a 20 year period. As part of its process of downwardly adjusting the UGB, the City removed the Northwood property from the UGB, even though it was located within Canby's city limits. The City's decision to remove the subject site was facilitated by the tenant on the property, Industrial Forestry Association, who did not object to its removal from the UGB. At that time, the Northwood property was owned by the Times Mirror Land and Timber Company, an Oregon corporation. Industrial Forestry Association leased the property from Times Mirror and used it, in conjunction with other property that it owned, to grow seedlings for reforestation purposes. The City believed at that time that a tree farm could continue on the property. Hence, the City designated and zoned the land for agricultural uses.

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<sup>3</sup> This map is appended to this application in Attachment D.





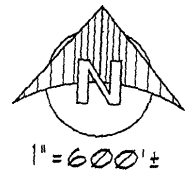
	LOW DENSITY RESIDENTIAL
	FLOOD PRONE / STEEP SLOPE OVERLAY
	AGRICULTURAL (CITY)
	AGRICULTURAL (COUNTY)

# EXISTING and PROPOSED COMPREHENSIVE PLAN DESIGNATIONS

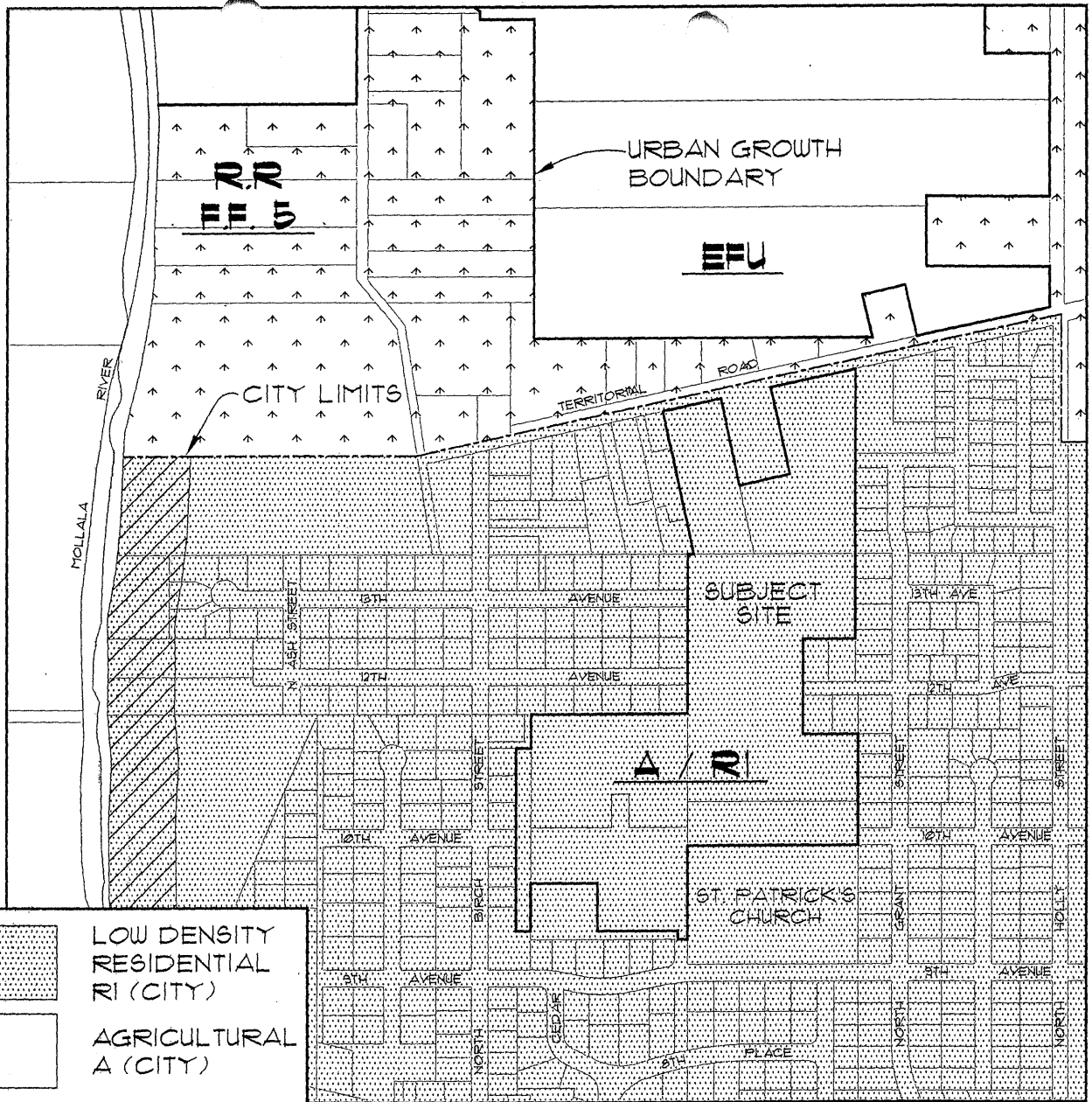
CITY OF CANBY - U.G.B. AMENDMENT / COMPREHENSIVE PLAN AMENDMENT / ZONE CHANGE

NORTHWOOD INVESTMENTS  
CANBY, OREGON 97103

JANUARY 2003



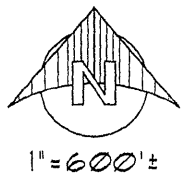




	LOW DENSITY RESIDENTIAL RI (CITY)
	AGRICULTURAL A (CITY)
	HAZARD OVERLAY (CITY)
	COUNTY RR - FF. 5
	COUNTY EFU

# EXISTING and PROPOSED ZONING DESIGNATIONS

CITY OF CANBY - U.G.B. AMENDMENT /  
 COMPREHENSIVE PLAN AMENDMENT / ZONE CHANGE  
 NORTHWOOD INVESTMENTS  
 CANBY, OREGON 97103  
 JANUARY 2003



In 1989, Times Mirror sold the Northwood property to Northwood Investments. This was part of a larger effort by Times Mirror to liquidate properties it owned in the Pacific Northwest. At about that same time, Northwood Investments filed an application with the City requesting that the UGB be amended to include the subject site. On June 1, 1990, the City Council denied that application, finding that the City's UGB already contained more vacant land than was needed to meet projected residential needs for the planning period, such that need for more land was not demonstrated.

In 1993, Northwood Investments reapplied to the City to amend the UGB to include the subject 30.19 acre parcel. Once again, the applicant argued that the current UGB did not contain sufficient residential land to meet the residential needs of the projected population. This time, the City Council agreed that a bigger UGB was needed, and it approved the application. However, on appeal by a local nursery, the Land Use Board of Appeals (LUBA) ruled that the City already had enough land planned for low, medium and high density residential development to satisfy its planned-for population. Concluding that the findings did not demonstrate a need for additional residential land, LUBA remanded the matter back to the City. After that, no further action was taken on the application.

In 2001 the organization Oregonians in Action (OIA) proposed legislation (Senate Bill 929) that would have required certain cities to expand their UGBs to include certain identified properties. The proposed legislation included the Northwood Investments property in Canby. Although Northwood Investments did not take a formal position in support of OIA's initially proposed bill, it nonetheless felt there was substantial justification to include its property inside Canby's UGB, and towards that end it consulted with the City, State Representative Kurt Schrader and the Department of Land Conservation and Development (DLCD) as well as with OIA.

During these discussions DLCD Policy/Legislative Coordinator Bob Rindy told Northwood Investments that DLCD was familiar with their Canby property and that DLCD agreed that the property should be included within the City's UGB. Up until this time DLCD had opposed SB 929, but Mr. Rindy said DLCD would shift to a neutral position on the bill if it was amended to include only the Northwood Investment property in Canby. Also during this process, the Canby City Council voted 5-0 to support SB 929 and its provision requiring the City of Canby to add this 30+ acre property to its urban growth boundary. A copy of the June 7, 2001 letter by Mark C. Adcock, City Administrator, advising the House Ways and Means Committee of the City's position, is appended to this application as Attachment A. Senate Bill 929 ultimately died before the Joint Ways and Means Committee in the final days of the 2001 legislative session. However, the position taken by DLCD spoke strongly to the merits of bringing this land inside the UGB.

In 2003, Northwood Investments filed a new application to bring its property inside the UGB. This time, however, Northwood did not assert that the property was "needed" for urban development. Instead, it based its proposal on a doctrine articulated by both the Oregon Court of Appeals and LUBA whereby a city may amend its UGB to

include land that is “unneeded but committed” to urban development. See *Halvorson v. Lincoln County*, 82 Or App 302 (1986); *Baker v. Marion County*, 120 Or App 50 (1993); see also *Friends of Linn County v. Linn County*, 41 Or LUBA 342 (2002). In its application, Northwood addressed compliance with the five locational factors of Goal 14 and with the procedures of Goal 2, Part II. However, Northwood did not address the two “need” factors in Goal 14, nor did it ask the City to take an exception to Goal 14.

The City approved the proposed UGB amendment, which was then appealed to LUBA on various grounds, including alleged violations of state statutes and Goal 14 and violations of City comprehensive plan policies. On appeal, LUBA upheld the City’s decision. *Milne v. City of Canby*, 46 Or LUBA 213 (2003). LUBA found no statutory or goal violations. It found that the Court of Appeals had expressly upheld the “unneeded but committed” doctrine as it relates to UGB amendments in its *Halvorson* and *Baker* decisions. It also found no violations of the relevant City of Canby Comprehensive Plan policies.

The petitioners then took their challenge to the Court of Appeals, which reversed and remanded LUBA’s decision. *Milne v. City of Canby*, 195 Or App 1 (2004). The Court acknowledged its role in articulating the “unneeded but committed” doctrine that Northwood had relied on before the City of Canby. In its words, “we have clearly acknowledged its existence and applicability to UGB amendments.” *Milne* at 15-16. However, the Court determined that in doing so, the Court of Appeals acted incorrectly. It explained that it inappropriately extended the doctrine to UGB *expansions*, when it should have limited that doctrine only to the initial *establishment* of a UGB.

The Court then considered whether this application could be approved by other means. While declining to do so on its own initiative, the Court concluded that the City might grant the proposed amendment on other grounds:

“For all of these reasons, we conclude that this court’s decisions in *Halvorson* and *Baker* must be overruled to the extent that the court indicated that the ‘unneeded but committed’ doctrine applied to UGB amendments. This does not necessarily mean, however, that the city may not convert the disputed property here from rural to urbanizable land without demonstrating that all seven factors of Goal 14 (i.e., the two need factors and the five locational factors) are satisfied. In the absence of a change in the governing law, it is possible that the city may use existing mechanisms for amending a UGB – that is, take an exception to Goal 14 as authorized by LCDC or use the periodic review process in which all of the goals and areas of jurisdiction are considered.” *Milne* at 18-19 (emphasis added).

### C. Differences between the Modified Application and the Initially Submitted Application.

This modified application is similar to the initially submitted application in that it does not rely on a demonstration of "need" to amend the UGB. However, unlike the originally submitted application, this modified application no longer relies on the "unneeded but committed" doctrine. This is because the Oregon Court of Appeals ruled that the "unneeded but committed" doctrine is not available to UGB *amendments*. Instead, this application follows the Court's suggestion in *Milne* that this UGB amendment may be achieved by other mechanisms. The mechanism followed here is that set out by LCDC in its administrative rules governing Goal 14 exceptions.<sup>4</sup>

This modified application follows a two-step approach. The first step seeks approval of exceptions to Goals 14, 11 and 3 to authorize urban uses on the Northwood property independent of a UGB amendment. OAR 660-014-0030 sets out standards under which urban uses may be established on rural land where it is demonstrated that the subject rural land is irrevocably committed to urban uses. The second step seeks approval of a separate Goal 14 exception to expand Canby's UGB to include the Northwood property absent a demonstration of "need" under Goal 14 factors 1 and 2. This exception flows from the standards in OAR 660, Division 14 and the location of the Northwood property entirely within Canby's existing UGB.

The first Goal 14 exception is required because the proposed uses, by their nature, are urban in scale and intensity, and absent an exception, Goal 14 prohibits urban uses outside of urban growth boundaries or unincorporated communities. The second Goal 14 exception is required because absent an exception, Goal 14 requires a demonstration of "need" to bring property inside an urban growth boundary.

This modified application also requires an exception to Goal 11 (Public Facilities and Services) because the proposed urban uses require urban scale public facilities, including city sewer and water services, and absent an exception, Goal 11 prohibits the provision of urban facilities and services outside of urban growth boundaries.

LCDC has adopted several rules governing exceptions to statewide planning goals, including OAR 660-004-0000 et seq; OAR 660-012-0070; and OAR 660-014-0030 and -0040. Where exceptions are taken to allow new urban scale development (other than transportation facilities) on rural lands, OAR 660, Division 14 applies. And where, as here, the exception is based on irrevocable commitment to urban levels of development, the provisions in OAR 660-014-0030 apply. These standards are addressed in detail below.

As asserted in the initial proceeding, it is not clear that the Northwood property is subject to Goal 3 (Agricultural Lands), given that this property lacks the protections of

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<sup>4</sup> An exception is a decision to exclude certain land from the requirements of one or more applicable statewide planning goals. See ORS 197.732(8).<sup>4</sup> The purpose of the exceptions process generally is to permit necessary flexibility in the application of the statewide goals. See OAR 660-004-0000(3).

exclusive farm use zoning that are otherwise required by state law to apply to such lands. Nonetheless, given its City agricultural designation and zoning, a Goal 3 exception is requested herein as an exercise of caution. While requesting this exception, the applicant does not concede that Goal 3 applies. However, if it applies, a Goal 3 exception would be required because the proposed uses are urban, non-agricultural uses and absent an exception, Goal 3 requires that agricultural land be preserved and protected for farm uses.

## **II. General Information.**

### **A. Vicinity Conditions.**

#### **1. Locational and Land Characteristics.**

The Northwood property is located inside the city limits of Canby but outside its urban growth boundary. The property is bordered on the north by Territorial Road. To the west, south and east, the property abuts residential subdivisions and a church, with the nearest through streets being NW Birch Street, NW 9<sup>th</sup> Avenue and NW Grant Street. See Exhibit 1.

The property is generally flat and easily developable. There are no watercourses, significant Goal 5 resources, or identified areas subject to natural hazards on the site that would impede development of the site.

#### **2. Surrounding Land Uses.**

The Northwood property is surrounded on all sides by development. See Exhibit 2. Residential subdivisions abut the property to the west, south and east. A Catholic Church also borders the south side of the property. Average lots sizes within the residential developments range from 7,000 square feet for the newest development located on the northeast side of the site ("Territorial Estates") to 10,000 square feet for the older subdivisions on the east, south, southwest and west sides. Immediately north of the property is Territorial Road and, north of the road, individual developed lots in residential use. *All of these developed areas lie within the City's existing UGB.*

### 3. Comprehensive Plan Designations and Zoning.

The City of Canby Comprehensive Plan Map and Zoning Map respectively designate and zone the Northwood property "Agricultural". See Exhibits 3 and 4. Uses permitted outright in the AG zone include only (1) agriculture, and (2) accessory structures and uses. City of Canby Land Development and Planning Ordinance (LDPO) Section 16.14.010. Uses permitted conditionally in the zone are (1) public building or land use, including public utility; and (2) one single family dwelling per lot. LDPO 16.14.020. The minimum lot area allowed by the zone is five acres.

Although the Northwood property is designated and zoned agricultural, the property (1) is not zoned for "exclusive farm use" (EFU) in the manner provided for by Statewide Planning Goal 3 (Agricultural Lands), Goal 3's implementing rules and ORS 215.283, and (2) is not available for most of the many uses that are statutorily permitted in EFU zones under ORS 215.283. Compare LDPO Sections 16.14.010 and 16.14.020 with ORS 215.283, appended to this application as Attachments B and C. Furthermore, the full range of "farm uses" that are permitted to occur on agricultural lands zoned EFU are not permitted to occur on this land. For example, ORS 215.203(2)(a) allows EFU-zoned lands to be used for the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products. These lands also may be used for stabling or training equines. In Canby, however, the definition of "agriculture" in LDPO Section 16.04.050<sup>5</sup> limits "farm use" to "tilling of the soil, the raising of crops, silviculture and horticulture." In summary, the AG zoning applied to this property is far more restrictive than the zoning applied to farm lands that fall under Goal 3's protection.

### 4. Accessibility.

The Northwood property is accessible from all directions. See Exhibits 1 and 2. Three streets stub into the property on the west side, and three more streets stub into it on the east side. The streets on the west side are NW 10<sup>th</sup> Avenue, NW 12<sup>th</sup> Avenue and NW 13<sup>th</sup> Avenue, all of which connect to NW Birch Street. On the east side, the stub streets are NW 10<sup>th</sup> Avenue, NW 12<sup>th</sup> Avenue, and NW 14<sup>th</sup> Avenue, all of which connect to NW Grant Street. On the south, the property is directly accessible via NW Douglas Street, which connects into NW 9<sup>th</sup> Avenue. Territorial Road abuts the property to the north. Territorial Road is a designated neighborhood connector at this location. The City's Major Street System Map in Figure 4-2 of the TSP also identifies NW 10<sup>th</sup> Avenue as a neighborhood connector. NW 12<sup>th</sup> Avenue, NW 13<sup>th</sup> Avenue, NW 14<sup>th</sup> Avenue and NW Douglas Street all are local roads. See Attachment D.

#### B. Facilities and Services.

While public facilities are not currently located within the Northwood property, they adjoin the property at multiple locations. Allowing urban development on the property and including it inside the UGB would eliminate discontinuous streets and

<sup>5</sup> See attachment B.

services and support the more orderly and efficient provision of public facilities and services.

**1. Water.**

Water mains abut the Northwood property at numerous locations on all sides. These include a 12-inch transmission main located in Territorial Road along the entire frontage. **See Exhibit 5, Existing Sewer and Water Facilities.** These facilities can be extended onto the Northwood property to serve future development on the property. The site also includes a vertical well 300 feet in depth with a sustained yield in excess of 600 gallons per minute. Canby Utility is the water services provider in the area.

**2. Sanitary Sewer.**

Sanitary sewer collection lines abut the Northwood property at numerous locations along its west, south and east sides. See Exhibit 5. These lines, in conjunction with the extension of the main line in NW Territorial Road, will provide full gravity sanitary sewer service to the property. Along Territorial Road, the existing sewer line at Hawthorne must be extended west to serve this site and the remaining lands north and west of the site currently within the UGB. Except for the Territorial Road line, the existing sewer lines are 8 inches in diameter and have invert elevations near elevation 150 feet U.S.G.S. datum. The City of Canby Public Works Department is the provider of sanitary sewer services to the area.

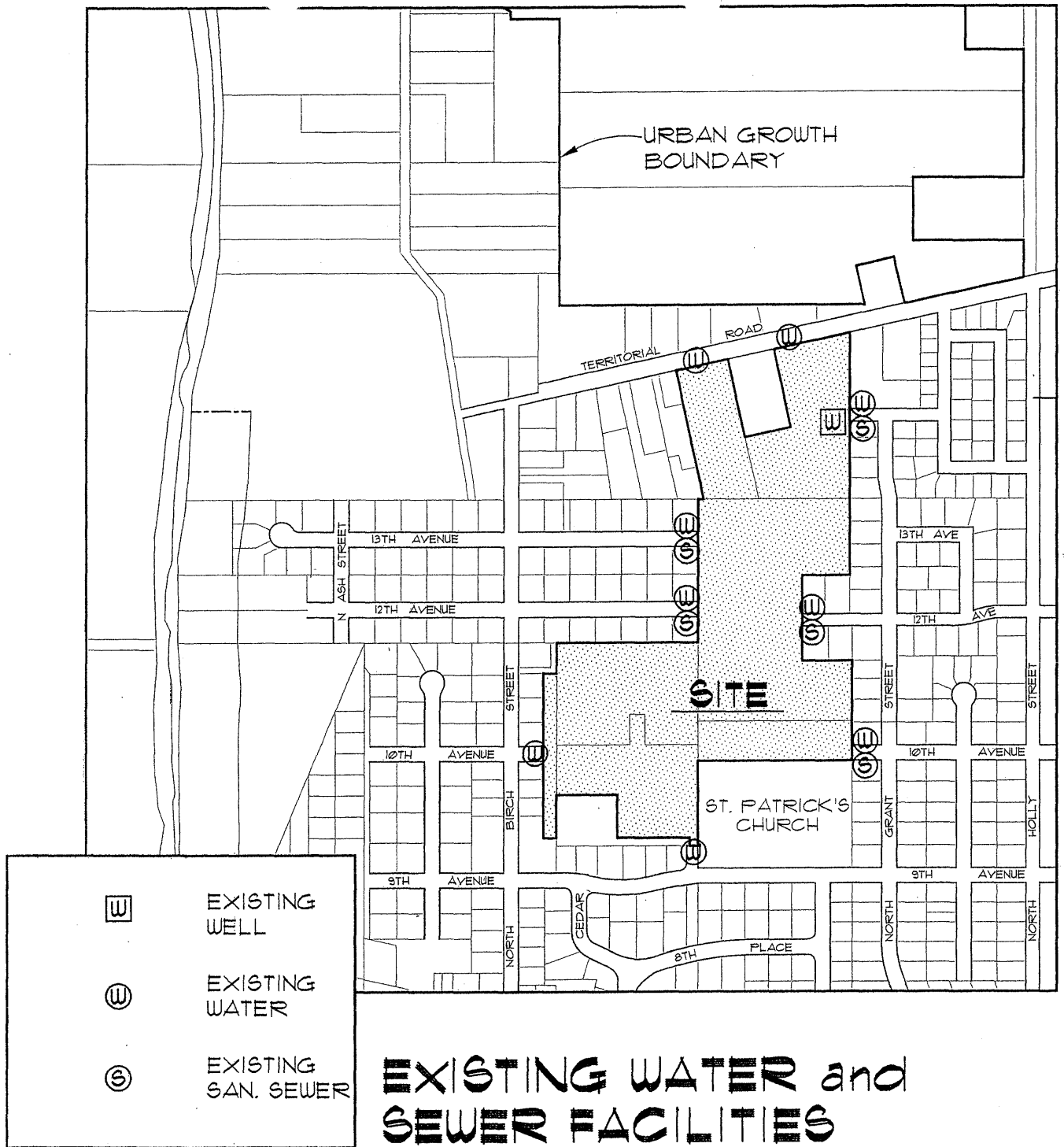
**3. Police and Fire Protection.**

Because the Northwood property lies within the city limits of the City of Canby, police and fire services are provided respectively by the Canby Police Department and by Canby Fire District No. 62 (which serves the city as a whole).

**4. Miscellaneous Services.**

Because the Northwood property is surrounded by urban development, it 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 of Canby run through the property between the east and west stubs of NW 10<sup>th</sup> Avenue. The schools serving the area are Howard Eccles Elementary School; Ackerman Middle School; and Canby Union High School. While overcrowding currently exists at Ackerman, Canby School District Superintendent Deborah Sommer stated that the District needs student growth to provide additional revenues that help pay for new schools. See Attachment G. Furthermore, in November, 2004, City residents approved a bond measure to construct a new school.





### III. Compliance with Goal Exception Criteria.

#### A. Exceptions to Allow Urban Uses on Rural Land.

This modified application initially seeks approval of goal exceptions to Goals 14, 11 and 3 to authorize urban uses on rural land. As noted above, the applicable rule is OAR 660-014-0030, entitled "Rural Lands Irrevocably Committed to Urban Levels of Development", which provides:

"(1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that is not appropriate to apply Goal 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.

"(2) A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban uses of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.

"(3) A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:

"(a) Size and extent of commercial and industrial uses;

"(b) Location, number and density of residential dwellings;

"(c) Location of urban facilities and services, including at least public water and sewer facilities; and

"(d) Parcel sizes and ownership patterns.

"(4) A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported

by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.

"(5) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities."

## **B Compliance with OAR 660-014-0030.**

This exception is taken for the Northwood property, which as previously noted is an approximately 30-acre island of rural land entirely encircled by urban development and the City of Canby's urban growth boundary. The Northwood property is clearly delineated in Exhibits 1-5.

### **1. Existing Development and Service Patterns.**

There are no commercial or industrial uses surrounding the Northwood property. The absence of such uses, together with the facts immediately following, supports the conclusion that the property is irrevocably committed to residential uses. In particular, were industrial uses present in the immediate vicinity, they could interfere with residential uses in the area.

As the aerial photograph (Exhibit 2) indicates, the Northwood property is surrounded on all sides by residential development. Residential subdivisions abut the property to the west, south and east. While to the north there are residences on individual lots. A Catholic Church also borders the south side of the property. Such a use is common in residential areas and compatible with residential development.

Average lots sizes within the abutting residential subdivisions range from 7,000 square feet for the newest development located on the northeast side of the site ("Territorial Estates") to 10,000 square feet for the older subdivisions on the east, south, southwest and west sides. Because residential lots of this size are common in cities throughout Oregon, these lot sizes are indicative of urban scale residential development. Immediately north of the property is Territorial Road and, north of the road, individual developed lots in residential use. These lots range in size from about one-quarter acre to two-thirds acre in size. Such lot sizes also are common inside urban growth boundaries and indicative of urban-scale development.

Approximately 55 single family dwellings, plus the Catholic Church, immediately abut the Northwood property to the north, east, south and west. This includes five dwellings on individual lots located north of Territorial Road. See Exhibit 2. And approximately 250 properties qualified for mailed written notice of Northwood's initial application by being located within 500 feet of the Northwood property, as indicated in

City-generated notice documents.<sup>6</sup> Of these properties, nearly all are in subdivisions and occupied by single family residences. This volume of residential development in very close proximity to the Northwood property is clearly indicative of urban uses and urban level development.

Because nearly all of the surrounding land is subdivided, the ownership pattern is diverse. As evidenced by the City's public notice list, residential dwellings within 200 feet of the Northwood property are generally under separate ownership, including the lots north of Territorial Road.

Urban levels of public facilities and services surround the Northwood property on all sides. Water mains abut the Northwood property at numerous locations on all sides of the property, including a 12-inch transmission main in Territorial Road. See Exhibit 5. Canby Utility is the water services provider in the area. Likewise, sanitary sewer collection lines also abut the property at numerous locations along its west, south and east sides. See Exhibit 5. These lines, in conjunction with the extension of the main line in NW Territorial Road, will provide full gravity sanitary sewer service to the property. Along Territorial Road, the existing sewer line at Hawthorne can be extended west to serve the site. Except for the Territorial Road line, the existing sewer lines are 8 inches in diameter and have invert elevations near elevation 150 feet U.S.G.S. datum. The City of Canby Public Works Department is the provider of sanitary sewer services to the area.

Because the Northwood property lies within the city limits of the City of Canby, fire service is provided by Canby Fire District No. 62 (which also serves the remainder of Canby), and police service is provided by the Canby Police Department. And because the property is surrounded by urban development, it 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 of Canby run through the property between the east and west stubs of NW 10<sup>th</sup> Avenue. The schools serving the area are Howard Eccles Elementary School; Ackerman Middle School; and Canby Union High School.

The Northwood property also has ready access from all directions. Three streets stub into the property on the west side, and three more streets stub into it on the east side. The streets on the west side are NW 10<sup>th</sup> Avenue, NW 12<sup>th</sup> Avenue and NW 13<sup>th</sup> Avenue, all of which connect to NW Birch Street. On the east side, the stub streets are NW 10<sup>th</sup> Avenue, NW 12<sup>th</sup> Avenue, and NW 14<sup>th</sup> Avenue, all of which connect to NW Grant Street. On the south, the property is directly accessible via NW Douglas Street, which connects into NW 9<sup>th</sup> Avenue. Territorial Road abuts the property to the north. See Exhibits 1 and 2. Territorial Road is a designated neighborhood connector at this location. The City's Major Street System Map in Figure 4-2 of the TSP also identifies NW 10<sup>th</sup> Avenue as a neighborhood connector. NW 12<sup>th</sup> Avenue, NW 13<sup>th</sup> Avenue, NW 14<sup>th</sup> Avenue and NW Douglas Street all are local roads. See Attachment D.

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<sup>6</sup> See LUBA record at 733-755 and map at page 754.

## 2. The Northwood Property is Committed to Urban Residential Use.

The facts set forth immediately above clearly demonstrate the Northwood property's commitment to urban uses and urban level residential use. Indeed, it is not unreasonable to characterize the property as urban infill property, given that:

- The property is located entirely within the city limits of the City of Canby.
- The property is entirely encircled by Canby's UGB. Indeed, at no point does the property abut land that is outside the UGB. This is indicative of commitment to urban uses and urban development.
- The property is entirely encircled by lots that have been developed for residential or church use. Typical lot sizes range between 7,000 -10,000 square feet. Developed lots of these sizes are indicative of urban uses and urban development.
- Surrounding properties are held in widely diverse ownerships. A diverse ownership pattern for small, urban-scale lots is indicative of urban uses and urban development.
- The Northwood property has immediate access at numerous locations on all sides of the property to a full range of key urban services, including urban water and sewer service. Eight water lines and five sanitary sewer lines extend to the borders of the property. Immediate access to city sewer and water at many different locations on all sides of the property, together with access to telephone, electricity, natural gas, cable services and solid waste collection services, is indicative of urban uses and urban development.
- Seven residential streets stub out at the property line on the east, south or west sides of the property, and Territorial Road fronts the property's north boundary. The presence of local or neighborhood streets serving urban development on all sides of the property is indicative of urban uses and urban level development. Further, the presence and lengths of stubbed streets is indicative of an intent to extend urban services and urban development onto the Northwood property. Indeed, the transportation plan designates NW 10<sup>th</sup> between Grant and Birch as a neighborhood connector.
- The Northwood property receives fire and police services from the City rather than from a rural service district or the County sheriff. Obtaining services from a city rather than from a county or from service districts is indicative of urban uses and urban development.

Simply stated, the pattern of development surrounding the Northwood property, combined with the immediate proximity of urban services, commits this rural property to urban uses and urban development. Indeed, it is noteworthy that while the Canby Planning Commission voted to deny the initial application for a UGB amendment (which was based on the "unneeded but committed" doctrine), it nonetheless found that the Northwood property was irrevocably committed to urban development. See Planning Commission Findings, Conclusion & Order dated May 12, 2004, at page 2.

Under this modified application, the relevant issue factually is whether the Northwood property is irrevocably committed to urban development. If it is so determined, then the standards in OAR 660-014-0030 are satisfied. Based on the facts and reasons set out above, the Northwood property clearly is irrevocably committed to urban uses and urban development. For these reasons, exceptions to Goals 14, 11 and 3 are justified.<sup>7</sup>

These exceptions justify the proposed plan amendment to authorize urban development on and the extension of urban sewer and water services onto the Northwood property. They also justify approval of (1) the proposed Comprehensive Plan map amendment changing the plan designation of the Northwood property from Agricultural to Low Density Residential, and (2) the proposed Zoning map amendment changing the zoning designation of the Northwood property from Agricultural (A) to Low Density Residential (R-1). However, an additional exception will be needed to bring the Northwood property inside Canby's urban growth boundary. That exception is set out below.

### **C. Exception to Include the Northwood Property in Canby's UGB.**

Statewide Planning Goal 14, Urbanization, directs cities to provide for an orderly and efficient transition from rural to urban land use by establishing urban growth boundaries. In most instances, the establishment or change of UGBs is based upon consideration of the following seven factors:

"(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;

"(2) Need for housing, employment opportunities and livability;

"(3) Orderly and economic provision for public facilities and services;

"(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;

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<sup>7</sup> OAR 660-014-0030 applies to rural lands, which include rural resource lands like agricultural or forest lands. As such, it authorizes an exception to Goal 3. Further, because OAR 660-014-0030 authorizes urban scale development (based in large measure on the presence of urban levels of facilities and services), and because Goal 11 (1) directs local governments to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development, and (2) provides that urban development be guided and supported by types and levels of urban public facilities and services appropriate for the needs and requirements of the urban areas to be served, OAR 660-014-0030 also inherently if not expressly authorizes exceptions to Goal 11. See also OAR 660-014-0040(2), which states that a Goal 14 exception taken to allow new urban development on rural lands can serve as well as an exception to Goals 3, 4 and 11.

"(5) Environmental, energy, economic and social consequences;

"(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,

"(7) Compatibility of the proposed urban uses with nearby agricultural activities."

However, in *Milne*, the Court of Appeals stated that a UGB amendment might happen through other methods, including the taking of an exception to Goal 14 as authorized by LCDC. This modified application requests such an exception to include the Northwood property in the Canby UGB. The exception is necessary in the absence of demonstrating "need" for additional urban land under Goal 14 factors 1 and 2.

In taking this exception to amend the UGB, the applicant relies upon and incorporates herein by this reference the exception to allow urban uses on the Northwood property, set out in Sections III.A and B of this modified application. That exception demonstrates why the Northwood property is irrevocably committed to urban uses and urban development, and it justifies plan and zoning map amendments to redesignate and rezone the Northwood property for urban scale development.

Also in taking this exception, Northwood relies on its demonstration of compliance with Factors 3-7 of Goal 14 as set out in its original application, and it incorporates that analysis by reference herein. See original application at pages 16-21. While the continued relevance of that analysis is uncertain given the independent determination that the land is committed to urban development, it may be necessary that Northwood address those factors.<sup>8</sup>

The only remaining consideration is whether the property, now recognized as urban or urbanizable land available for urban development, should be brought into Canby's urban growth boundary. The facts that justify the finding of "irrevocable commitment" to urban uses and development also justify a decision to amend the UGB to include this property. Indeed, it just makes good planning sense to do so. With this goal exception, the Northwood property becomes urban or urbanizable land. As such, it shares the same characteristic as all of the lands that surround it. The property should go inside the urban growth boundary because (1) the purpose of a UGB is to separate urban and urbanizable land from rural land, and (2) with the exception, there is no longer any rural land to be separated from the urban/urbanizable land. As previously noted, the property has been a rural "island" entirely surrounded by the UGB. With this exception, the island disappears. As such, no planning purpose is served by excluding this land from the UGB, and its inclusion in the UGB violates no goal.

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<sup>8</sup> The original application remains part of the record of this remand proceeding.



As stated above, this property is appropriately characterized as urban infill property because it is surrounded by urban development and has a full range of urban services available to it. For this reason, and because the facts show that the land is irrevocably committed to urban uses and urban development, it is sensible to include the land inside the City's UGB. Indeed, Goal 14 strongly favors development of infill sites in urban areas prior to development of sites requiring the extension of public facilities and services onto urbanizable land. Given these facts, retaining this land as "rural" land would simply preserve a fiction. If urban-scale development is permitted on the property, urban services can be extended to the property, and the property is contiguous to the existing UGB, then the property can and should be recognized as urban or urbanizable and included to the UGB.

BEFORE THE CITY COUNCIL  
OF THE CITY OF CANBY

IN THE MATTER OF a Modified Application for )	Exhibit "B"
Comprehensive Plan Text and Map Amendments, )	
including Exceptions to Goals 14, 11 and 3, to )	
Authorize Urban Uses on Rural Lands and Include )	FINDINGS OF FACT AND
Seven Tax Lots Within the Urban Growth )	CONCLUSIONS OF LAW
Boundary, and for Zoning Amendments to Change )	
the Current Zoning from Agricultural (AG) to Low )	On Remand from Land
Density Residential (R-1), Northwood Investments, )	Use Board of Appeals
Applicant, CPA 03-02/ZC 03-02 )	

Following remand by the Land Use Board of Appeals (LUBA) in accordance with a decision by the Oregon Court of Appeals in *Milne v. City of Canby*, 195 Or App 1 (2004), this matter came again before the City of Canby for decision-making. Following public notice that the City had received a modified application from Northwood in this matter, including exceptions to Statewide Planning Goals 14, 11 and 3, public hearings were held before the Canby Planning Commission on May 23, 2005, and before the Canby City Council on July 6, 2005. Having carefully considered the decisions on appeal, the applicant's modified application to conform to those decisions, and the testimony and evidence entered into the hearing record, the Canby City Council makes and adopts the following findings of fact and conclusions of law in support of its decisions on this application on remand.

1. This matter is before the City Council on remand from LUBA in *Milne v. City of Canby*. The applicant, Northwood Investments, is seeking comprehensive plan text and map amendments and zoning map amendments to allow urban development and urban uses on approximately 30.19 acres of property, and to include the property inside the City of Canby Urban Growth Boundary (UGB). The application includes two separate exceptions, one to Statewide Planning Goals 14, 11 and 3 to authorize urban development on the subject property, and the other to Goal 14 to include the property inside the UGB.
  
2. The following seven tax lots comprise the subject property: 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 property is located south of NW Territorial Road, north of NW 9<sup>th</sup> Avenue, west of N. Grant Street and east of N. Birch Street, inside Canby's city limits. Although outside the City's UGB, the property is entirely encircled by the UGB. The property is plan-designated "Agriculture" and is zoned "Agricultural".
  
3. This application initially came before the City Council in 2003 in the form of an application for a UGB amendment and for amendments to the comprehensive plan and zoning designations for the Northwood property. As initially presented, the application did not include goal exceptions. In Resolution No. 835, adopted on June 18, 2003, the

City Council approved the application, including the UGB amendment, based on the “unneeded but committed” doctrine, enunciated in Oregon Court of Appeals and LUBA decisions, which allowed cities to amend their UGBs to include land not otherwise “needed” for urban development if the subject property was “irrevocably committed” to urban development. *See, e.g., Halvorson v. Lincoln County*, 82 Or App 302 (1986). Consistent with that doctrine, the City Council found that the property was irrevocably committed to urban uses and development.

4. Following the City Council’s 2003 decision, opponents of Northwood’s application appealed Resolution No. 835 to LUBA on various grounds, including alleged violations of state statutes, statewide planning goals and City of Canby Comprehensive Plan policies. On appeal, LUBA affirmed the City’s decision. *Milne v. City of Canby*, 46 Or LUBA 213 (2003). LUBA found no statutory or goal violations, and it found that reliance on the “unneeded but committed” doctrine was consistent with Oregon Court of Appeals caselaw. LUBA also found no violations of the City of Canby Comprehensive Plan policies relevant to the inclusion of this property in the City’s UGB and its conversion to urban uses.

5. Following issuance of LUBA’s decision, opponents of the application appealed to the Oregon Court of Appeals, which reversed and remanded LUBA’s decision. *Milne v. City of Canby*, 195 Or App 1 (2004). In its decision, the Court noted its prior decisions acknowledging the existence of the “unneeded but committed” doctrine and its application of that doctrine to UGB amendments. The Court then overturned its previous case law, holding that it had inappropriately extended the unneeded but committed doctrine to UGB expansions when it should have limited that doctrine only to the initial establishment of UGBs.

6. Upon determining that the “unneeded but committed” doctrine was not available to Northwood or the City as a means to amend the City’s UGB, the Oregon Court of Appeals then considered whether Northwood’s application could be approved by other means not involving a demonstration of “need” for the subject property. While declining to approve the application on its own initiative, the Court concluded that other grounds did exist whereby the City of Canby might grant the proposed UGB amendment:

“For all of these reasons, we conclude that this court’s decisions in *Halvorson* and *Baker* must be overruled to the extent that the court indicated that the ‘unneeded but committed’ doctrine applied to UGB amendments. This does not necessarily mean, however, that the city may not convert the disputed property here from rural to urbanizable land without demonstrating that all seven factors of Goal 14 (*i.e.*, the two need factors and the five locational factors) are satisfied. In the absence of a change in the governing law, it is possible that the city may use existing mechanisms for amending a UGB – that is, take an exception to Goal 14 as authorized by LCDC or use the periodic review process in which all of the goals and areas of jurisdiction are considered.” 195 Or App at 18-19 (emphasis added).

Because the Court indicated that the proposed amendment might be granted on other grounds also not requiring a demonstration of need, LUBA remanded the decision back to the City for further consideration. *Milne v. City of Canby*, LUBA No. 2003-103 (January 26, 2005).

7. In reliance upon the above-quoted language in the Oregon Court of Appeals' decision, Northwood Investments, on remand, modified its application to take exceptions to Goal 14. As modified, Northwood's application included two exceptions: (1) an exception to Goals 14, 11 and 3 to authorize urban uses and urban scale public facilities and services on the Northwood property independent of a UGB amendment, as provided for under OAR 660-014-0030, and (2) a separate exception to Goal 14 "need" factors 1 and 2 to expand Canby's UGB to include the Northwood property. The application continued to seek plan and zoning map amendments changing the plan designation from Agriculture (AG) to Low Density Residential (LDR) and the zoning designation from Agricultural (AG) to Low Density Residential (R-1).

8. The City Council finds that its proceedings on remand from LUBA in this matter are part of the same proceedings as the earlier proceedings on Northwood's application in 2003. It finds that the record of its 2003 proceeding is part of the record in the current proceeding on remand. The City Council also finds that the purpose of a remand is to allow for correction of errors in the earlier application or decision, rather than to revisit old, resolved issues. Here, the applicant has modified its application to be consistent with the direction from the Oregon Court of Appeals and LUBA. The City Council finds that in this remand proceeding, any party may raise any issue relating to the modified application, to the new criteria applicable to the modified application, and to the new evidence and testimony submitted addressing the new criteria.

9. As noted, Northwood is requesting exceptions to Goals 14, 11 and 3 to allow urban scale development and urban uses on its property. If the exceptions are approved, urban development then would be permitted at the site, whether or not the City expanded its UGB to include the subject property. Northwood asserts that its property is "irrevocably committed" to urban scale residential development. The City Council finds that ORS 197.732(1)(b) and Goal 2, Part II(b) authorize local governments to allow exceptions to one or more goals, including Goal 14, if the land subject to the exception "is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable." Here, Northwood's basis for seeking these exceptions is OAR 660-014-0030, an LCDC rule that provides that a conclusion, supported by facts and reasons, that rural land is "irrevocably committed to urban levels of development" can satisfy the Goal 2 exceptions process standard. Under that rule, if a conclusion that land is irrevocably committed to urban levels of development is supported, then the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.

10. The City Council finds that an irrevocably committed exception to Goal 14 is required for the Northwood property because the Northwood property is rural land located outside Canby's UGB and Goal 14 otherwise prohibits urban scale uses to be located outside of UGBs or unincorporated communities. The City Council finds also that a Goal 11 exception is required for this property because urban scale residential development on the Northwood property would require urban public facilities and services, including urban sewer and water services, and Goal 11 otherwise prohibits the extension or provision of urban scale public facilities and services to rural lands.

11. A Goal 3 exception is required whenever agricultural land is proposed to be used for non-agricultural uses not otherwise permitted by statute or LCDC rule in exclusive farm use zones. While the Northwood property is plan designated and zoned for agricultural use, it is not clear to the City Council that a Goal 3 exception is required, because the City's Agricultural zone is not an exclusive farm use (EFU) zone of the nature required by Goal 3 and OAR 660, Division 33 to protect agricultural lands. By its terms, the City's Agricultural zone is more akin to a rural residential or small lot farming zone for which counties typically take goal exceptions. However, no prior exception was ever taken for this property. Among other things, the City's Agricultural zone (1) does not allow a full range of farm uses; (2) does not permit the full range of non-farm uses identified in ORS 215.283; and (3) permits dwellings on small lots. For these reasons, the City Council believes, finds and concludes that a Goal 3 exception is not required and that Northwood's request for a Goal 3 exception is likely surplussage. Nonetheless, because Northwood's property is zoned Agricultural and has agricultural soils, and because the legal question of whether a Goal 3 exception is required is uncertain, the Canby City Council, in an exercise of caution, nonetheless takes and approves a Goal 3 exception for this property and incorporates that exception into its comprehensive plan together with the Goal 14 and Goal 11 exceptions taken herein. For reasons explained in more detail elsewhere in these findings, the City Council finds and concludes that existing adjacent uses and other relevant factors make it impracticable to continue preserving this particular agriculturally-zoned land for farm use.

12. The City Council finds that in determining whether the Northwood property is irrevocably committed to urban residential development, its primary focus is on the nature and scale of development on adjacent properties as opposed to the subject property. In this way, an "irrevocably committed" exception differs from a "physically developed" exception, for which the focus is development on the subject property itself. *See, e.g.,* ORS 197.732(1)(a). As LUBA explained in *Pekarek v. Wallowa County*, 36 Or LUBA 494 (1999), committed exceptions are based on facts illustrating how past development has cast a mold for future uses. The key issue is whether such development on adjacent lands makes uses allowed by the applicable goal "impracticable."

13. OAR 660-012-0030(3) sets out the criteria upon which a local government must determine whether land is irrevocably committed to urban levels of development. Those criteria include: (1) size and extent of commercial and industrial uses; (2) location, number and density of residential dwellings; (3) location of urban facilities and services, including at least public water and sewer facilities; and (4) parcel sizes and ownership

patterns. For the reasons set out below and in Northwood's modified application on remand dated February, 2005, incorporated herein by this reference, the City Council finds that the Northwood property is irrevocably committed to urban levels of development.

14. The City Council finds that the Northwood property is surrounded by urban scale residential development and a church. There are no commercial or industrial uses in the area abutting the Northwood property. The City Council concludes that the absence of commercial and industrial uses in the surrounding area is indicative that the area is occupied by, and dedicated to, residential activity, and that this does not detract from a justification and conclusion that the Northwood property is irrevocably committed to urban residential development and uses. *See, e.g.,* DLCDC Order 001643 (Umatilla County) dated December 1, 2004.

15. The aerial photograph contained in Northwood's modified application shows that the Northwood property is surrounded on all sides by residential development. Except for the residential development on the north side, this development has the appearance of subdivisions extending well beyond the Northwood property. The City Council finds that the houses surrounding the property are on lots typically ranging between 7,000 to 10,000 square feet in size. North of Territorial Road, the houses are on lots ranging in size from about one-quarter acre to two-thirds acre. The City Council further finds that the houses surrounding the site number in the hundreds. It finds that approximately 250 properties qualified for mailed written notice of Northwood's initial application by being located within 500 feet of the Northwood property, as indicated in City-generated notice documents. The City Council concludes from these facts that the Northwood property is wholly surrounded by land uses, a development pattern and lot sizes that are clearly urban in their nature and scale, indicating the property's irrevocable commitment to urban uses and development.

16. The City Council finds that the parcel sizes and ownership patterns of the properties surrounding the Northwood property are indicative of urban scale uses and development. Because nearly all of the surrounding land is subdivided, the ownership pattern is diverse. As evidenced by the City's public notice list, residential dwellings surrounding the Northwood property are generally under separate ownerships, including the lots north of Territorial Road. The lot sizes, mostly ranging between 7,000 to 10,000 feet, are typical of single family lots in cities and reflect an urban residential development pattern.

17. The City Council finds that the Northwood property has immediate access at numerous locations on all sides of the property to a full range of key urban services, including urban water and sewer service. It finds that eight water lines and five sanitary sewer lines extend to the borders of the property, giving the property immediate access to these services. *See* modified application, Exhibit 5. It finds that the property has access to a full range of urban services including telephone, electricity, natural gas, cable, solid waste collection services and schools. It finds that two of the eight primary circuits that provide electric power and backup to the City run through the Northwood property. It

also finds that the Northwood site already receives fire and police services from the City rather than from a rural fire district or the County sheriff. The City Council believes and finds that all of these facts are indicative of the Northwood property's irrevocable commitment to urban development and uses.

18. The City Council finds that the Northwood property has ready access from all directions. Three streets stub into the property on the west side, and three more streets stub into it on the east side. On the south, the property is accessible via NW Douglas Street. Territorial Road, a designated neighborhood connector, abuts the property to the north. The City Council finds that the presence of local and neighborhood streets serving development on all sides of the property is indicative of the property's irrevocable commitment to urban uses and urban development. Indeed, in its initial findings in this matter, the City Council stated that it believed the testimony of 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 still so believes, and it concludes that it was never the City's intent that urban development would terminate at the Northwood property. Had that been the City's intent, these streets would be cul-de-sacs rather than stubbed.

19. The City Council finds that the evidence Northwood Investments and other proponents have presented is substantial evidence to support Northwood's assertion that the subject property is irrevocably committed to urban residential development. It finds that its conclusion that the property is irrevocably committed to urban development is based on all of the factors listed in subsection (3) of that rule. As described in the preceding paragraphs, each of those factors points to this land being irrevocably committed to urban residential development. The City Council finds as well that rural scale activities are no longer practicable at the Northwood site. The City Council recognizes that many neighbors would like to see the Northwood property remain zoned for agricultural use, but it finds that farming the Northwood site is no longer practicable. In reaching this conclusion, the City Council relies both on the findings set out below and on the findings it adopted in 2003 in this matter, which it incorporates herein by this reference. Those findings concluded that the property can no longer 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.

20. Regarding the impracticability of farming the Northwood site, the City Council continues to find particularly persuasive the testimony offered in the initial proceeding from Andrew Hein, Richard Gingerich and the owners of Swan Island Dahlias, all of whom are engaged in commercial farming operations in the area. These people testified that the surrounding urban scale development next to the site makes it extremely difficult and impracticable to conduct normal farming operations at the Northwood site. Among the problems they and others identified were (1) incidents of trespass and vandalism at the site, including cutting the fence and vandalizing a tractor in 2003; (2) an inability to control dust and chemical application from trespassing onto adjoining properties; (3) an inability to obtain liability insurance to farm this property; and (4) complaints from



neighbors about dust, noise, etc. The City Council finds this testimony credible and concludes from it that continued agricultural activity at this site is impracticable.

21. At the hearing on remand, the City Council heard new testimony to the effect that farming this property is impracticable. This testimony further supports the City Council's conclusion that continued agricultural activity at this site is impracticable. Nicholas Gitts, an owner of Swan Island Dahlias, testified that restrictions on spraying are getting tougher and that because houses surround the Northwood property on all sides, only a very small portion of the 30-acre site would not be subject to the spraying restrictions. Mr. Gitts also testified that when he had previously rented land on the Northwood site for farming, he received complaints from neighbors about the noise and dust. From his experiences, he concluded that the Northwood site is a very difficult layout for farming. Andrew Hein testified that he too used to farm part of the Northwood site, but he declined an opportunity to buy the land because of the conflicts with adjoining residential uses. He said that he has a pesticide operator's license and that under that license he might be able to spray about two of the 30 acres at issue. He said that farmers must notify affected property owners when they intend to spray and also post notices on this. With so many surrounding properties, this is impracticable at the Northwood site. The City Council finds this testimony to be credible and believes it supports its conclusion that agricultural uses and practices on the Northwood site are no longer practicable.

22. The City Council received written and oral testimony from Dave Stearns, IFA Nurseries, to the effect that the Northwood property is farmable and that he is willing to buy and/or lease portions of the property immediately. Before the Planning Commission, Mr. Stearns testified that IFA would pay \$50,000 per acre or \$369,000 for 7.38 acres of the Northwood property near Territorial Road. Before the City Council, he added that IFA would stipulate that after farming this acreage for 20 years, it would donate the land to the City of Canby for uses like a park or botanical garden to honor the City's agricultural heritage. Also before the City Council, Mr. Stearns presented a copy of a check he was prepared to give Northwood as a down payment for the purchase.

23. In its initial findings in this proceeding, the City Council acknowledged an earlier IFA offer to purchase or lease the Northwood property for continued agricultural use. However, it noted then, as it does now, that IFA once leased this property but it walked away from that lease prior to its expiration. As it did before, the City Council finds IFA's testimony to be less reliable and persuasive than that of commercial farmers like Andy Hein, Richard Gingerich and Nicholas Gitts. This finding results in part from the history between IFA and the applicant and in part from some actions IFA has taken in this proceeding and in other proceedings involving urbanization of agricultural lands. For instance, the City Council finds that IFA's offers have been timed to coincide with the scheduling of Planning Commission and City Council hearings on this matter. This creates the appearance that IFA is negotiating through the City in a public hearings process rather than directly with the applicant. Also, the City Council finds it unusual that IFA would offer far more for Northwood's property than the market value of agricultural land in the area, which ranges between about \$4,000 to \$12,000 per acre. Third, the City Council finds it unusual that IFA would offer land to the City for park and

open space purposes that it does not currently own and is unlikely to ever own. This offer clearly is made in an effort to influence the City Council to deny the application in favor of an alternate deal, but IFA is in no position to carry out an alternate deal. Fourth, the City Council finds it unusual that while IFA has been taking such a strong position against the Northwood application, speaking passionately about the need to protect high quality agricultural lands, IFA also was supporting City annexation of the Dodd property, an approximately 20-acre parcel in farm use that is located outside the city limits of Canby, has as good or better farm soils, is much more on the fringe of City urban development, and is not surrounded by urban scale residential development. Indeed, at the time IFA supported the Dodd annexation, IFA was leasing a portion of the Dodd property to grow seedling trees. In light of all of these facts, the City Council cannot dismiss the possibility that IFA may be holding a grudge against Northwood because Northwood engaged legal services to collect the outstanding lease payment when IFA broke its lease in 1998. But still, assuming no improper motives, the City Council is not persuaded that IFA could farm the Northwood property without creating conflicts, despite Mr. Stearns testimony to the contrary. As before, it finds more reliable 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.

24. Although the Agricultural zoning permits residences on minimum five acre lots, the City Council finds that rural scale residential use of the Northwood property is impracticable and imprudent, especially given the immediate availability of public services and this property's commitment to urban development. Indeed, it finds that a five acre rural residential development pattern at a location entirely encircled by the urban growth boundary would likely impede if not preclude future development of this site in a manner that uses urban land efficiently and makes maximum efficiency of available public facilities and services and the City's investment in those facilities and services. Such a development pattern is not in the City's long term interests. Further, an inefficient development pattern on the Northwood property could adversely impact the efficient extension of public facilities and services to other undeveloped lands that are located in this quadrant of the UGB.

25. From the above findings and reasons, the City Council concludes that the Northwood property is irrevocably committed to urban residential uses and that continued rural and agricultural use of the land is impracticable. The City Council is aware that the property contains excellent agricultural soils that could support small scale farming. However, farming of the nature and scale that Goal 3 and the EFU zoning statutes seek to protect is no longer practicable at this site because of the surrounding urban scale development pattern and newer restrictions on agricultural practices. The City Council finds that farming this land would create conflicts in terms of dust, noise, and drifting spray. Despite assurances of some area neighbors to the contrary, the City Council finds it is more likely than not that at least some people in the neighborhood would complain about farming practices at the site, including dust and noise resulting from farming activities during night hours and spray drift, if spraying can occur at all. It finds it more likely than not that farming operations at this site would be the subject of trespass or vandalism. It also finds very persuasive Mr. Hein's testimony that he could

not get his insurer to cover this property because of the nature and scale of the surrounding development. All of these results impede agricultural activities. The City Council concludes that these impacts are clear indications that continued farming of this land is impracticable.

26. Northwood also is seeking a separate Goal 14 exception to bring its land inside Canby's UGB. In support of this Goal 14 exception, Northwood relies on the facts that (1) the site is irrevocably committed to urban development, as explained and justified in the exceptions described above, and (2) the site is entirely encircled by Canby's UGB. As Northwood has explained, the purpose of a UGB is to separate urban and urbanizable lands from rural lands. If the Northwood property is deemed committed to urban development and redesignated and rezoned for urban uses, then the Northwood property would become urbanizable land that is entirely surrounded by urban land, and no Goal 14 purpose would be served by excluding the site from Canby's UGB, since the purpose of urban growth boundaries is to separate urban and urbanizable lands from rural lands.

27. OAR 660-004-0010(1) provides that the exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land. Those goals include Goal 14, Urbanization. Recently, LCDC amended OAR 660-004-0010(1)(c) to state explicitly what had been implicit in the rule with regard to Goal 14. OAR 660-004-0010(1)(c)(C) now provides: "When a local government changes an established urban growth boundary applying Goal 14 as amended April 28, 2005, a goal exception is not required unless the local government seeks an exception to any of the requirements of Goal 14 or other applicable goals." (Emphasis added.) This amendment makes clear that an exception can be taken to any requirement of Goal 14.

28. In letters dated May 6 and May 9, 2005, Stacy Hopkins, Regional Representative, Department of Land Conservation and Development, advised the City that on April 28, 2005, LCDC amended Goal 14 and OAR 660, Division 4 (interpreting the goal exception process) to make it clearer that a local government may seek an exception to any of the Goal 14 requirements, including need and locational factors. Further, local governments may apply the new rule upon its filing with the Secretary of State. On behalf of DLCD, she recommended that the City implement the new Division 4 in this manner in this proceeding. Subsequent to her letter, but prior to the City Council's decision in this matter, the new rule was filed with the Secretary of State and took effect.

29. Consistent with Stacy Hopkins' letters, Northwood also has requested that the City apply the amended Goal 14 and revised OAR 660-004-0010(1)(c) to its application for an exception to bring its property inside the UGB. In a letter dated May 11, 2005, from Mark Greenfield to John Williams, Northwood explained how its application is consistent with Goal 14 and the rule as amended. The City Council agrees with and adopts the analysis in that letter, which it incorporates it herein by this reference as part of its findings in this matter. Consistent with the requests by the applicant and DLCD, the City Council is applying the amended rule, as that rule had taken effect by the time of the City Council proceeding. In so doing, the City Council finds, as both DLCD and

Northwood have stated, that with respect to this Goal 14 exception, the new rule only clarifies what the prior rule had already allowed.

30. In Mr. Greenfield's May 11, 2005 letter, Northwood questions whether it needs to address any of the Goal 14 UGB amendment factors in light of the fact that the property is committed to urban development and entirely surrounded by urban uses. In its view, the facts that the property is (1) committed to urban development pursuant to the analysis under OAR 660-014-0030, and (2) entirely surrounded by urban development and the UGB, are enough in themselves to justify a UGB amendment to include this site within the boundary. The City Council believes that given the unusual circumstances of this case, it could justify an exception to all of the Goal 14 UGB amendment factors rather than simply an exception to the need factors in order to bring the Northwood property inside Canby's UGB. However, because Northwood's initial and modified applications and May 11, 2005 letter, together with the testimony and evidence that Northwood has presented, clearly demonstrate compliance with the Goal 14 locational factors, both in their original form and as amended in 2005, the City Council, in an exercise of caution, expressly finds that an exception to the Goal 14 locational factors is unnecessary and that the application complies with those factors.

31. Northwood's modified application addresses compliance with other applicable statewide planning goals and with City of Canby Comprehensive Plan and Zoning Ordinance requirements, including the requirements applicable to quasi-judicial plan amendments and to zoning map amendments. The City Council finds that Northwood's modified application complies with these requirements for the reasons set out in Northwood's February, 2005 modified application, incorporated herein by this reference. The City Council also finds that in its initial (2003) findings in this matter, it identified the applicable legal standards and determined that all applicable statewide goals and City land use review criteria were satisfied. It also finds that the findings it adopted on these issues were challenged at LUBA, and that LUBA affirmed the City's decision in this regard. In this remand proceeding, the City Council continues to rely on its earlier findings and reasons identifying and determining compliance with these other legal standards, and it incorporates them by reference herein. Indeed, the City Council readopts and relies on all of the findings and reasons it initially adopted in this proceeding, except to the extent that those findings or reasons are inconsistent with the Court of Appeals' decision in the *Milne* case or with Northwood's application as modified. The City Council finds that City service providers have continued to express their ability to provide urban services to this land, and it finds from an updated traffic study that the results and conclusions of the original traffic study remain the same, *i.e.* that development of the Northwood property would not result in traffic exceeding acceptable levels of congestion. It also finds that since the initial application was considered, the intersection of Territorial and 99E has been prioritized for funding by ODOT and a fully signalized intersection will be constructed in 2006.

32. Subsequent to its initial decision in this proceeding, the City Council amended the Canby Comprehensive Plan to require that development on the Northwood site go through a master planning process as an "area of special concern". The master planning

process would occur prior to development, and it would involve input from City staff as well as input from the neighborhood. The City Council believes and finds that application of the master planning process to this property will help to alleviate neighborhood concerns over the future development of this property.

33. In its earlier decision, the City Council imposed a condition of approval requiring Northwood to dedicate acreage for park land and limiting reimbursement of the parks systems development charge. Subsequent to that decision, the City Council adopted an ordinance that establishes standards and a process for parks acquisition and provides funding for parks acquisition. Accordingly, the City Council now amends the prior condition to require, instead, that any development of the Northwood property comply with the new ordinance addressing park acquisition.

34. Based on the above findings of fact and conclusions of law, the City Council determines that the Northwood applications to amend the City of Canby Comprehensive Plan to allow urban development on the Northwood property and to redesignate and rezone the Northwood property to Low Density Residential complies with all the applicable legal standards, and it approves these applications. Also based on the above findings of fact and conclusions of law, the City Council determines that the Northwood application to amend the Canby UGB to include the Northwood property complies with all applicable legal standards, and it approves this application as well.