

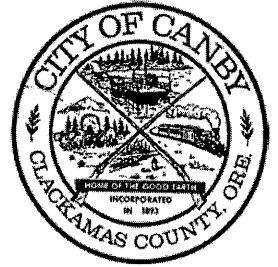
PLANNING COMMISSION AGENDA

May 23, 2005

7:00 PM - Regular Meeting

Canby Adult Center

1250 SW Ivy



I. ROLL CALL

II. CITIZEN INPUT ON NON-AGENDA ITEMS

III. PUBLIC HEARINGS

MOD TO ZC 03-02/CPA 03-02 Northwoods, The applicants are seeking to amend the Urban Growth Boundary of the City of Canby to include 7 tax lots totaling 30.19 acres. The property located south of NW Territorial, north of NW 9th Ave, east of N. Birch St. and west of N. Grant St. is currently inside of the Canby City Limits and has a zoning designation of Agricultural (AG). The applicants are asking for a zone change concurrent with the UGB expansion to rezone the property to R-1, Low Density Residential

MLP 05-04 Caffall Brothers The applicant has withdrawn this application.

IV. NEW BUSINESS

None

V. FINDINGS

Note: these are the final, written versions of previous oral decisions. No public testimony.

SUB 05-05/MLP 05-02 TOFTE V

VI. MINUTES

March 14, 2005

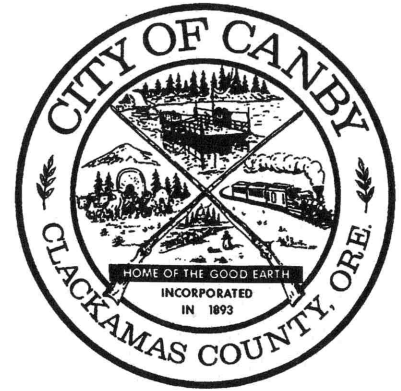
VII. DIRECTORS REPORT

VIII. ADJOURNMENT

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Carla Ahl at 503-266-9404

MEMORANDUM

TO: *Planning Commission*
FROM: *John W.*
DATE: *May 13, 2005*
RE: *May 23, 2005 PC Meeting*

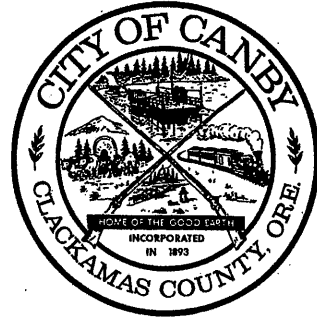


Only one hearing on the 23rd – Northwood. Please note this meeting is **at the Canby Adult Center, 7 PM**. We haven't heard as many people being involved this time around, but in case we have a lot of folks attend as we did last time, we wanted to make sure there was plenty of space.

In the staff report, I tried to simplify the legal jargon and still get the point across. If you have any questions in advance, *please* call me or John Kelley. This is a complicated case with a lot of history and we would like to help you in any way we can to assist you in making your decision. In my mind it all comes down to a fairly simple decision: is the land "irrevocably committed" to urban uses? If it is, the application can be approved (although it doesn't *have to be* approved now). If the land is not irrevocably committed, the application cannot be approved.

We have copies of the full record if you would like to review it. There are lots of letters, background material etc. which you may find useful. Please call Carla to arrange a copy.

Thanks and good luck!



- STAFF REPORT -

APPLICANT:

Northwood Investments
c/o Ron Tatone
1127 NW 12th Avenue
Canby, OR 97013

FILE NO.:

ZC 03-02/CPA 03-02 MODIFIED
(Northwood Investments)

OWNER:

Northwood Investments
1127 NW 12th Avenue
Canby, OR 97013

STAFF:

John R. Williams
Comm. Dev. & Planning Dir.

LEGAL DESCRIPTION:

Tax Lot 800 of Map 3-1E-32AA
Tax Lots 100, 200, 1700 of Map 3-1E-32AD
Tax Lots 300 and 501 of Map 3-1E-33BB
Tax Lot 6600 of Map 3-1E-33BC

DATE OF REPORT:

May 13, 2005

LOCATION:

South of NW Territorial Road, north of NW 9th Ave,
east of N. Birch Street and west of N. Grant Street

DATE OF HEARING:

May 23, 2005

COMP. PLAN DESIGNATION:

Current: Agricultural (AG)
Proposed: Low Density Residential (LDR)

ZONING DESIGNATION:

Current: Agricultural (AG)
Proposed: Low Density Res (R-1)

I. APPLICANTS' REQUEST:

The applicants are seeking to amend the Urban Growth Boundary of the City of Canby to include 7 tax lots totaling 30.19 acres. The property currently is inside of the Canby City Limits and has a zoning designation of Agricultural (AG). The applicants are asking for a zone change concurrent with the UGB expansion to rezone the property to R-1, Low Density Residential.

II. APPLICABLE REGULATIONS

City of Canby General Ordinances:

- 16.54 Amendments to the Zoning Map
- 16.88.180 Comprehensive Plan Amendments
- 16.88 General Standards

III. MAJOR APPROVAL CRITERIA

Section 16.88.180 Comprehensive Plan Amendments

This is a quasi-judicial land use application. The application covers several parcels affecting a limited area. In judging whether a quasi-judicial plan amendment shall be approved, the Planning Commission and City Council shall consider:

- A. The remainder of the Comprehensive Plan of the City, as well as the plans and policies of the county, state or any local school or service districts which may be affected by the amendment;
- B. Whether all required public facilities and services exist, or will be provided concurrent with the anticipated development of the area. (Ord. 740, Section 10.8.80, 1984)

Amendments to the Zoning Map

16.54.040 - Standards and Criteria

In judging whether or not the zoning map should be amended or changed, the Planning Commission and City Council shall consider:

- A. The Comprehensive Plan of the City, giving special attention to Policy 6 of the Land Use Element and implementation measures therefor, and the plans and policies of the County, state and local districts in order to preserve functions and local aspects of land conservation and development;
- B. Whether all required public facilities and services exist or will be provided concurrent with development to adequately meet the needs of any use or development which would be permitted by the new zoning designation.

IV. FINDINGS:

A. Background and Relationships

The property is approximately 30.19 acres in size. It is unclear as to how long the property has been within the City Limits but it preceded the creation of the Canby Interim General Plan of 1976 and creation of the City's Urban Growth Boundary in 1984. The original Draft Urban Growth Boundary (UGB) encompassed all of the land south of NW 22nd Avenue and east of the Molalla River to the current city limits. The Land Conservation and Development Commission (LCDC), when considering the Draft UGB, found that Canby had included too much land inside its UGB and directed the City to remove land. The subject property was removed at that time, presumably because the current owners intended to keep farming the property in the foreseeable future. Of the property removed from the Draft UGB, this was the only property that was already within the City limits.

Up until that point, this property had been anticipated to be developed whenever the property owner decided to stop farming and either sell the land or develop. Thus, each subdivision abutting the property was required to stub out streets and utilities to the property (most recently this happened with Territorial Estates, the subdivision at the southwest corner of N. Holly Street and Territorial Road.) Removal of this property from the UGB has effectively delayed development of this property until such a time as the UGB is expanded to include it.

In 1990 the property was sold to a group of investors who desired to develop the property and applied to include the property in the UGB based on a need for additional land. The City Council found that there was no need at that time and denied the application. In 1993 the owners applied again to include the property in the UGB arguing again that there was not enough land in the UGB. This time the Council agreed, but the decision was appealed to the State Land Use Board of Appeals (LUBA). LUBA found that the City had enough residential land inside the UGB and remanded the decision to the City. The applicant withdrew the application at that time.

In 1999, the City conducted a buildable land inventory and housing needs analysis. The analysis found that, although there were deficiencies in the amount of land zoned for medium and high density land, there was a net surplus of residential land with the current UGB. The City has completed a process to rezone areas of the City in order to meet the land needs specified by the 1999 analysis without expanding the UGB.

In 2003 Northwood submitted another application, based on case law that Urban

Growth Boundaries could be amended to bring in property that was committed to urbanization, even if there was no demonstrated “need” for the land. This application was approved by the Canby City Council 3-2. Neighbors appealed this approval to the Oregon Land Use Board of Appeals (LUBA), which upheld the City’s decision. This was then appealed to the Oregon Court of Appeals, which in 2004 found that the case law relied upon was incorrect and should be overturned. Basically, the Court of Appeals found that the “unneeded but committed” doctrine should only be applied when creating an Urban Growth Boundary, not when amending it. The court went on to say:

“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.”

With this, the City’s decision was reversed and remanded for reconsideration based on the new guidance.

The applicants have chosen to follow the Court’s suggestion and have modified their application to follow LCDC’s process for Goal 14 exceptions. First, they are requesting approval of exceptions to Goals 14 (Urbanization), 11 (Public Facilities and Services), and 3 (Agricultural Lands) to authorize urban uses on rural land, which is allowed when the rural land is irrevocably committed to urban uses. Second, they request a separate Goal 14 exception to expand the Urban Growth Boundary to include the property – the theory being that it would not be sensible to allow urban uses on the rural property without including it in the UGB.

If this property is included in the Urban Growth Boundary a “worst-case” scenario of approximately 145 houses could be built. This includes 22% of the site for right-of-way purposes (25% is the average city-wide for developments since 1988), no land dedicated for parks, and the applicants using lot-size averaging to achieve an average lot size of 7,000 SF. With a 22% right-of-way, a 3 acre park (discussed later), and average lot sizes of 8,500 SF, the number of houses drops to 105. The applicants have stated that this would be closer to the final result. However, the traffic study and other analyses are based on a possible 145 houses.

Since the original application, the City has approved a Comprehensive Plan Text

Amendment that designated the subject parcels as a new “area of special concern.” This designation states the following:

“Area ‘L’ comprises approximately 30 acres of parcels zoned for low density residential development. The parcels have been farmed for many years and were outside the Urban Growth Boundary of the City until 2003. The area presents a unique challenge because it is surrounded by existing neighborhoods that could be impacted by development. In addition, the City has infrastructure requirements that must be addressed, such as parks provision and street design. Therefore, Area “L” should be developed following a comprehensive master plan addressing parks and/or open space provision, street and infrastructure design, public safety facilities, buffering, and other relevant issues. The master plan should integrate reasonable foreseeable uses of adjacent properties. Subdivision of the property should not occur unless such a master plan is approved by the Planning Commission. Creation of the master plan should include input from the public and neighborhood association.

This requirement would only be triggered should the current application be approved.

A note about process on the modified application: We have told the applicants that an entirely new public hearing process is required. New hearings have been scheduled before the Planning Commission and City Council, and we will accept testimony from all interested parties. The hearings have been noticed following the usual procedures. However, the entire record from the previous application will be incorporated into the record of this modified application.

B. Statewide Planning Goals Consistency Analysis

The applicants have submitted a detailed analysis of the Statewide Planning Goals (see pages 14-22 of the applicants’ narrative). This analysis is actually simpler than in 2003. The following is a summary of their argument:

To allow urban uses on rural land, the applicants reference OAR 660-014-0030 (“Rural Lands Irrevocably Committed to Urban Levels of Development”). See page 14 of their application for the text of this code section and the applicable standards. The applicants provide substantial information to justify their belief that the Northwood property meets the standards contained in this section of OAR. However, the 2003 record also contains quite a bit of testimony that the land is not actually committed to urban levels of development. Neighboring

property owners argue that agricultural uses could continue indefinitely due to the large size of the property and quality of the soils. The applicants counter that farming the land is increasingly difficult due to conflicts with surrounding residential uses.

The applicant's argument on the "committed to urban uses" issue also contains detailed information on the existence of street connections, utility services, and surrounding residential development, as in the 2003 application (see pages 15-18 of their application).

There is not as much detail on the proposed exceptions to Goals 11 and 3. These exceptions would follow if the City rules favorably on the Goal 14 exception. If the land is going to be used for urban uses, a Goal 11 exception is needed to extend public services to the site, and a Goal 3 exception may be needed to use agricultural land for urban uses. The applicants contend that Goal 3 may actually not apply in this case since Canby's Agricultural zone is more limiting than the EFU zoning this goal is intended to apply to. Thus, they state that "a Goal 3 exception is requested herein as an exercise of caution."

The final Goal 14 exception also flows from the first decision. The applicants state that "it just makes good planning sense" to include the property within the Urban Growth Boundary if a finding of "irrevocable commitment" is made.

To summarize: the key decision in this modified application is whether the land is irrevocably committed to urban uses. If this decision is made in the affirmative, the requested goal exceptions, Comprehensive Plan amendments, and zoning map amendments may be justified. In 2003, the Planning Commission and City Council both found that this test was met, although the bodies disagreed as to whether this meant the property should be included in the UGB at that time. The Planning Commission voted 3-1 for denial (3-2 in the oral decision) while the Council voted 3-2 to approve. Since both the Council and Commission agreed that the land was committed to urbanization in 2003, staff assumes this finding is still City policy and we base our recommendation for approval of this application on it.

The following sections will analyze the City's criteria for approval of Comprehensive Plan Amendments and Zone Change. Very little of this section has changed; staff will indicate any changes from 2003 with underlined text.

C. Comprehensive Plan Consistency Analysis

NOTE: The Comprehensive Plan contains many goals and policies that do not pertain to this application. Only those goals and policies which apply are

discussed below.

i. CITIZEN INVOLVEMENT ELEMENT

GOAL: TO PROVIDE THE OPPORTUNITY FOR CITIZEN INVOLVEMENT THROUGHOUT THE PLANNING PROCESS

Analysis: The required neighborhood meeting, public notice (postings and mailings) and public hearings provide opportunities for public involvement.

ii. URBAN GROWTH

GOAL: 1) TO PRESERVE AND MAINTAIN DESIGNATED AGRICULTURAL AND FOREST LANDS BY PROTECTING THEM FROM URBANIZATION.

2) TO PROVIDE ADEQUATE URBANIZABLE AREA FOR THE GROWTH OF THE CITY, WITHIN THE FRAMEWORK OF AN EFFICIENT SYSTEM FOR THE TRANSITION FROM RURAL TO URBAN LAND USE.

Policy #1: Canby shall coordinate its growth and development plans with Clackamas County.

Analysis: *The subject property is entirely within the City Limits. Staff spoke with John Borge, a Senior Planner at Clackamas County who had no objections to the proposal.*

Policy #2: Canby shall provide the opportunity for amendments to the urban growth boundary (subject to the requirements of Statewide Planning Goal 14), where warranted by unforeseen changes in circumstances.

Analysis: *The City provides the opportunity to amend the UGB through the process the applicants are currently going through.*

Policy #3: Canby shall discourage the urban development of properties until they have been annexed to the City and provided with all the necessary urban services.

Analysis: *The property is currently within the City Limits. Urban services are available directly adjacent and would be extended as a part of development.*

iii. LAND USE ELEMENT

GOAL: TO GUIDE THE DEVELOPMENT AND USES OF LAND SO THAT THEY ARE ORDERLY, EFFICIENT, AESTHETICALLY PLEASING AND SUITABLY RELATED TO ONE ANOTHER.

Policy #1 Canby shall guide the course of growth and development so as to separate conflicting or incompatible uses, while grouping compatible uses.

Analysis: *The Comprehensive Plan recognizes that residential uses and farm uses are at times incompatible. The development of this property, which is currently surrounded by low density residential uses, would alleviate any present or future incompatibilities. The record of the 2003 contains testimony on both sides of this issue; some neighbors testified that farming uses can continue with no conflicts, but other citizens and the applicants argue that conflicts frequently arise.*

Policy #2 Canby shall encourage a general increase in the intensity and density of permitted development as a means of minimizing urban sprawl.

Analysis: *As this property is currently surrounded by urban uses, development of the property would not contribute to urban sprawl.*

Policy #3 Canby shall discourage any development which will result in overburdening any of the community's public facilities or services.

Analysis: *Request for comments have been sent to all public facility and service providers. Discussions of the positive and negative effects of allowing this application are discussed under the Public Services Element.*

Policy #4 Canby shall limit development in areas identified as having an unacceptable level of risk because of natural hazards

Analysis: *The area is not within an identified hazard area.*

Policy #5 Canby shall utilize the Land Use Map as the basis of zoning and other planning or public facility decisions.

Analysis: *Currently, the land use map shows low density residential zones on the west, south, and east of the property. Property that is outside of the City Limits, but inside the Urban Growth Boundary lie to the north. The Comp Plan designation for the property to the north is for Low Density Residential as well. The applicants' property is currently zoned Agricultural (AG) but the proposed zoning of R-1, Low Density Residential, matches the surrounding areas.*

Policy #6 Canby shall recognize the unique character of certain areas and will utilize the following special requirements, in conjunction with the requirements of the Land Development and Planning Ordinance, in guiding the use and development of these unique areas.

Analysis: *The subject property is an area of special concern, as discussed above. This designation will require a master plan to be approved prior to any development of the property.*

iv. ENVIRONMENTAL CONCERNS

GOALS: TO PREVENT IDENTIFIED NATURAL AND HISTORIC RESOURCES.

TO PREVENT AIR, WATER, LAND, AND NOISE POLLUTION.

**TO PROTECT LIVES AND PROPERTY FROM
NATURAL HAZARDS.**

Policy #1-R-A: Canby shall 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.

Analysis: *This property is not within the Urban Growth Boundary so technically this criteria does not apply. However, this property is currently in agricultural production. The economic feasibility of the property is open to debate.*

Policy #1-R-B: Canby shall encourage the urbanization of the least productive agricultural area within the UGB as a first priority.

Analysis: *This property is still producing agricultural products. Policies #1-R-A and #1-R-B are in conflict with the Urban Growth Element discussed earlier. This conflict is similar to the surrounding annexation proposals. In annexation discussions, one criteria gives preference based on the A-B-C annexation priorities, while another criteria states that smaller, non-farm land be prioritized over larger farm-land. In the case where large farm land is designated as Priority A for annexation, the Planning Commission and City Council have consistently stated that the A-B-C Priority has precedence. In this case, the Commission and Council will need to decide which of these two policies has precedence.*

Policy #7-R: Canby shall seek to improve the overall scenic and aesthetic qualities of the City.

Analysis: *The implementation measures for this policy have to do with enforcement of sign codes, design review standards, and standards for underground utilities. Although this goal may be thought to apply to the subject property for those who live nearby, there is*

no specific directive in the Comprehensive Plan to avoid designating land for development.

Policy #8-R:

Canby shall seek to preserve and maintain open space where appropriate and where compatible with other land uses.

Analysis:

The discussion in the Comprehensive Plan findings that precedes this policy makes direct mention of the property in question: "The most dominant type of open space is created by agricultural use in and around the City...Of all of these, tree farming provides the most unique type of open space. Currently, there are approximately 30 acres of intense tree farming occurring within the City limits. This particular use creates extremely good open space as the operation is extremely tidy, very green, and appears, with the exception of some dust, to be fairly compatible with contiguous residential development. As noted in the Public Facilities and Services Element, this does cause some problems with interconnecting services, but it still provides a valuable open space resource. Since there appears to be a long-term commitment to this type of farming, there is no reason not to take advantage of its existence as open space." However, this property has not been used for tree farming since February, 1998 with the Industrial Forestry Association (IFA) terminated their lease with the property owners citing their "immediate need to reduce cost". Since then it has been leased for a variety of different food crops and flowers.

Still, the implementation measures for this policy refer to reviewing and requiring open space upon development and siting of park facilities. Beth Saul, the Library and Parks Director stated in response to a "request for comments" that a positive effect of this proposal is that "There is a critical need for a park in this area—this would present an opportunity to address this need.". For negatives she stated "open space will be lost, and viewshed of Mt. Hood

may be obliterated by development”.

The applicants have stated in a letter to staff that they intend to dedicated at least three acres for park or other public purposes. This will be addressed by the master plan prior to development.

v. **TRANSPORTATION ELEMENT**

GOAL: TO DEVELOP AND MAINTAIN A TRANSPORTATION SYSTEM WHICH IS SAFE, CONVENIENT AND ECONOMICAL

Policy #1: Canby shall provide the necessary improvement to City streets, and will encourage the County to make the same commitment to local County Roads, in an effort to keep pace with growth.

Analysis: *Development of this property would facilitate the completion of NW 10th Avenue, which is listed in the City’s Transportation System Plan as a 6-10 year project (the highest priority currently assigned to a “Neighborhood Connector” project). This improvement is slated to be paid for entirely by new development. Additionally, development of this property would widen NW Territorial Road along the properties frontage.*

Policy #2: Canby shall work cooperatively with developers to assure that new streets are constructed in a timely fashion to meet the City’s growth needs.

Analysis: *As mentioned above, construction of NW 10th is considered an important future project. It is listed as a 6-10 year project, but since no SDC money is slated to be used to pay for the project, the construction of this street will not take money away from projects with a 1-5 year priority.*

Policy #3: Canby shall attempt to improve its problem intersections, in keeping with its policies for upgrading or new construction of roads.

Analysis: *The traffic study conducted as part of this application did*

not identify any nearby problem intersections that would be directly impacted by this development. Lancaster Engineering has updated their traffic counts from the 2003 application, finding that "the results and conclusions of the original study remain the same." Capacity issues were not really identified in the 2003 application. Instead, the majority of testimony regarding traffic concerned traffic safety issues (such as speeding) on local streets and perception of high traffic levels. Any growth on the north side of town, however, will have at least some effect on the intersection of Territorial and 99E. (See comments below by the Traffic Safety Committee). Since the 2003 review, this intersection has been prioritized for funding by ODOT and a fully signalized intersection will be constructed in 2006. A temporary safety project is in place limiting the most dangerous movements.

Policy #4: Canby shall work to provide an adequate sidewalk and pedestrian pathway system to serve all residents

Analysis: *All new development is required to install sidewalks.*

Policy #6: Canby shall continue in its efforts to assure that all new developments provide adequate access for emergency response vehicles and for the safety and convenience of the general public.

Analysis: *The Fire Marshal responded that development of this property would increase the connectivity of neighborhoods for emergency response and provide a looped water system that would increase the gallons per minute available to fight fires. Adequate water is currently available for this purpose.*

Policy #7: Canby shall provide appropriate facilities for bicycles and, if found to be needed, for other slow moving, energy efficient vehicles.

Analysis: *Streets would consist of "local" streets and "neighborhood connectors," both of which accommodate bikes without dedicated bike paths.*

vi. **PUBLIC FACILITIES AND SERVICES**

GOAL: TO ASSURE THE PROVISION OF A FULL RANGE OF PUBLIC FACILITIES AND SERVICES TO MEET THE NEEDS OF THE RESIDENTS AND PROPERTY OWNERS OF CANBY.

Policy #1: Canby shall work closely and cooperate with all entities and agencies providing public facilities and services.

Analysis: All needed public facility and service providers were sent a "Request for Comments" form. Comments were received as follows:

Fire District: Positive: "Would increase the connectivity of neighborhoods for emergency response [and] provide more of a looped water system for emergency fire flows, which will help increase GPM available to fight fire."

Negative: No Comments

(Adequate public services will become available through the development).

Police: No Comments (adequate public services are available)

Traffic Safety: Positive: "It will connect 10th, 11th, 12th"

Negative: "1) Traffic, Traffic, 2) Territorial and 99E intersection needs to be addressed before any more property is developed in this part of town, 3) Territorial Road between Hawthorne and Birch is too narrow to handle the increase of traffic that would be generated by more homes. This road would have to be widened."

Canby Utility Water: Positive: "any development to this property would allow installation of a 10"-12" water line running north to south and increasing service to all residents north of Knights Bridge road and south of Territorial Road (Douglas line extension)"

Negative: No Comments

(Adequate public services will become available through the development).

Canby Telephone: No Comments (adequate public services will become available through develop)

Public Works: Positive: “removal of 6 dead end streets. A complete street system. Improvements to sanitary sewer. Improvement of traffic flows. More improvements to Territorial Road. Will have control of erosion off this site.”

Negative: “more street inventory, storm system [to maintain]”

(Adequate public services will become available through the development).

Parks and Rec: Positive: “there is a critical need for a park in this area–this would present an opportunity to address this need.”

Negative: “open space will be lost, and viewsheds of Mt. Hood may be obliterated by development.”

(Adequate public services will become available through the development. “We need the park land even if we are not ready to develop it”).

Policy #5: Canby shall assure that adequate sites are provided for public school and recreation facilities:

Analysis: *The applicants have stated they will dedicate at least 3 acres of land for parks or other public purposes. The City has the ability to require more park land if it is deemed necessary to meet our Parks Master Plan standards. This could be done at the time of development should this property be included in the UGB. Park locations would be identified in the required master plan.*

vii. ECONOMIC

GOAL: TO DIVERSIFY AND IMPROVE THE ECONOMY OF THE CITY OF CANBY.

Policy #3: Canby shall encourage economic programs and projects which will lead to an increase in local employment opportunities.

Analysis: *Development of this property would only have a short-term effect on employment associated with construction.*

Policy #4: Canby shall consider agricultural operations which contribute to the local economy as part of the economic base of the community and shall seek to maintain these as viable economic operations.

Analysis: *There is significant testimony in the record regarding the viability of this property as farmland, as noted above. The applicants contend that the property "does contribute in a small way to the local economy" but go on to say "...the property is now disconnected from all other farmland and fully surrounded by urban development. With such residential development surrounding the site, it would be difficult to engage in farming practices that expose adjoining properties to noise, dust, odor, sprays, or other adverse aspects of agriculture...Under the circumstances it makes more sense to convert this land to urban uses rather than other lands less constrained in terms of the range of farming activities available to them and the ability to engage in a full range of accepted farming practices." This policy conflicts with the other elements and policies mentioned earlier that support urbanization of this property. The Planning Commission and City Council need to decide which of these conflicting policies are more important.*

viii. HOUSING

GOAL: TO PROVIDE FOR THE HOUSING NEEDS OF THE CITIZENS OF CANBY.

Policy #2: Canby shall encourage a gradual increase in housing density as a response to the increase in housing costs and the need for more rental housing.

Analysis: *The development of this property and addition of houses in this area would increase the density of the area in general. However, due to the surrounding neighborhoods, Staff does not feel that either medium or high density housing would be appropriate for this area and would adversely effect the established neighborhoods.*

Policy #3: Canby shall coordinate the location of higher density housing with the ability of the City to provide utilities, public facilities and a functional transportation network.

Analysis: *Medium or high density housing are not proposed for this area. Public utilities and services are available to serve the proposed low density residential zoning.*

ix. **ENERGY CONSERVATION**

GOAL: TO CONSERVE ENERGY AND ENCOURAGE THE USE OF RENEWABLE RESOURCES IN PLACE OF NON-RENEWABLE RESOURCES.

Policy #4: Canby shall attempt to reduce wasteful patterns of energy consumption in transportation systems.

Analysis: *Development of this property would connect the existing incomplete street grid and provide a more efficient street network.*

Conclusion Regarding Consistency with the Policies of the Canby Comprehensive Plan:

Staff concludes that, although inclusion of this property in the UGB meets many of the goals and policies set forth in the Comprehensive Plan, there are several conflicting goals and policies as mentioned above. Specifically, the goals of preserving agricultural land and open space for as long as possible (economic and environmental elements) conflicts with several goals regarding grouping of compatible uses and creating efficient networks of urban services (urban growth,

land use, transportation, and economic elements). Therefore, as in 2003 the Planning Commission and the City Council will need to weigh the importance of each of these factors against one another.

As mentioned before, Staff considers this property to be the next logical place to expand the Urban Growth Boundary. Staff believes that a decision to expand the UGB at this time can be successfully argued and defended against any challenges based on the applicant's legal argument.

However, since there is currently not a need for additional land in the UGB, there is nothing in State Law or in the City's Comprehensive Plan that compels the City to add this land at this time. A decision not to include this property in the UGB at this time could also be defended. Although there are many positive effects to urban services, there are no urgent problems or issues that need to be addressed immediately by developing this land.

Consistency with Other Plans

Long range plans, including the Transportation System Plan and water system plan include eventual development of this property. With the exception of the Comprehensive Plan Designation and Zoning maps which this application proposes to change, there is no conflict with other City plans.

Other Applicable Criteria

All public facilities and services necessary either exist or will be provided concurrent with the development of the area.

V. CONCLUSION

Comprehensive Plan Amendment Approval Criteria:

In judging whether a quasi-judicial plan amendment shall be approved, the Planning Commission and City Council shall consider:

- A. The remainder of the Comprehensive Plan of the City, as well as the plans and policies of the county, state or any local school or service districts which may be affected by the amendment;*
- B. Whether all required public facilities and services exist, or will be provided concurrent with the anticipated development of the area. (Ord. 740, Section 10.8.80, 1984)*

As the Planning Commission and City Council are aware, the City is required to review its Comprehensive Plan every 5 to 7 years in a process called "Periodic Review". Typically during Periodic Review, the current UGB is evaluated to determine if 20 years of growth can

be accommodated. The City is currently in the final phases of Periodic Review and will not need to expand the UGB during the current process.

Eventually, Canby will reach a point where the Urban Growth Boundary needs to be expanded. Depending on trends in housing construction and the economy, this could be as soon as 5 years or as far as 15 years into the future. At that time, this property would seem like the most logical area to include in the UGB prior to consideration of other farm land on the City's fringes that are less impacted by neighboring urban development. It would probably be included in the UGB by the City as part of a larger legislative action. The applicants are asking to bring the property in at this time rather than wait an indefinite period of time for the UGB to be expanded as a part of the City's Periodic Review cycle.

Staff agrees with the applicants that this property can satisfy the criteria for an inclusion under a Goal 14. However, Staff also believes that the City is not required to grant the proposed exceptions that will lead to urban development. It becomes a discretionary policy decision of the Planning Commission and City Council as to whether now is the appropriate time to bring this in or whether it should wait to be brought in as a part of some future Periodic Review.

In providing a recommendation for approval of this application, staff relies mainly on the City Council's approval of the original application in 2003 as well as the finding by both the Planning Commission and City Council in 2003 that the land was irrevocably committed to urban uses. Since the current application differs only in legal structure from the 2003 application, staff is not aware of any reasons that this decision needs to be changed. In fact, we are simply two years further on towards the eventual inclusion of this land within the UGB than we were originally.

However, staff also agrees with many of the arguments raised by opponents of this application. The subject property is a large piece of farmland that has been used for farming for many years in substantially its current condition and surroundings. The City has no great need for more land within the UGB (the need condition within City limits is a different matter – there a need can be demonstrated), and public facilities and services will derive no overwhelming benefit from the development of this property.

Stacy Hopkins of the Department of Land Conservation and Development submitted two letters on this application. She states that "DLCD staff has stated in the past that this area should be able to qualify for an exception and that it is committed." However, she leaves it up to the City to make a decision as to whether to make findings in support of this conclusion.

Therefore, as in 2003 the issue before the Planning Commission and City Council is one of timing. Should this property be brought into the UGB at this time or should consideration of

this property for urban development wait until a need for the property is demonstrated? Staff believes whatever the Council decides is defensible before the Land Use Board of Appeals. Since there are good arguments on either side of the issue, bringing the property into the UGB becomes strictly a policy decision on which of the arguments presented in this report take precedence.

Staff finds that based on the comments from public service providers that all required public facilities and services exist or will be provided concurrent with the anticipated development of the area.

Amendments to the Zoning Map Approval Criteria:

In judging whether or not the zoning map should be amended or changed, the Planning Commission and City Council shall consider:

- A. *The Comprehensive Plan of the City, giving special attention to Policy 6 of the Land Use Element and implementation measures therefor, and the plans and policies of the County, state and local districts in order to preserve functions and local aspects of land conservation and development;*
- B. *Whether all required public facilities and services exist or will be provided concurrent with development to adequately meet the needs of any use or development which would be permitted by the new zoning designation.*

When considering the above discussion of the Comprehensive Plan Policies, the applicants' proposed zoning of R-1, Low Density Residential is the most compatible with the surrounding areas which are all zoned Low Density Residential as well.

Again, Staff finds that based on the comments from public service providers that all required public facilities and services exist or will be provided concurrent with the anticipated development of the area.

VI. RECOMMENDATION

Based on the findings adopted by the Planning Commission and City Council in 2003, staff recommends approval of the modified application.

If the Planning Commission and City Council decide not to bring the property into the UGB at this time, staff believes that it should be made clear to neighbors that this property will probably be included in the UGB when a need for the property is demonstrated under Goal 14.

If the Comprehensive Plan Amendment is approved and the property is included in the UGB, the Zone Change request should also be approved to conform with the neighboring zoning.

If the Comprehensive Plan Amendment is denied, the Zone Change request should also be denied since changing the zoning of property outside of the UGB would violate Statewide Planning Goals as well as policies of Canby's Comprehensive Plan.

Exhibits:

1. Applicants' modified narrative (includes maps and certain components of the 2003 record) and May 11, 2005 addendum.
2. May 6, 2005 and May 9, 2005 letters from Stacy Hopkins, DLCD.
3. Traffic Study update from Lancaster Engineering.
4. Request for comment forms (from 2003 application – updated versions will be available for the Planning Commission hearing).
5. Written comments received in response to the 2005 public notice (much more original testimony available in 2003 record).
6. Court of Appeals decision in case of *Milne v. City of Canby*.
7. Neighborhood meeting minutes
8. Record of 2003 public hearing process (not included due to significant length – please call the Planning Department for a copy if desired). This will be formally entered into the record at the May 23 public hearing.

MARK J. GREENFIELD

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Portland, Oregon 97229

Telephone: (503) 227-2979
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May 11, 2005

Mr. John Williams
Community Development and Planning Director
182 N. Holly Street
Canby, Oregon 97013

Subject: Northwood Investments Modified Application for
Comprehensive Plan Text and Map Amendments and Zoning
Map Amendments, Including Exceptions to Goals 3, 11 and 14,
CPA 03-02/ZC 03-02 (On remand from LUBA)

Dear John:

This letter is written on behalf of Northwood Investments in response to copies of two letters to you that I received from Stacy Hopkins, DLCDC Regional Representative. The letters are dated May 6 and May 9, 2005. Please include this letter in the record of the above-described matter.

In her letters, Ms. Hopkins acknowledges that the modified application proposes two exceptions: one to Goals 3, 11 and 14 to authorize urban uses on the Northwood property on the ground that it is committed to urban development, and one to Goal 14 to include the property inside Canby's urban growth boundary. Regarding the first exception, she notes that DLCDC staff previously has stated that this area should be able to qualify for an exception and that DLCDC concurs this land is committed. We agree.

Regarding the second exception, to amend the UGB, Ms. Hopkins advises 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 location factors. Further, local governments may apply the new rule upon its filing with the Secretary of State. On behalf of DLCDC, she then recommends that the City implement the new Division 4 in this matter, "so that the application may be reviewed under the state laws that clearly authorize the request."

Northwood Investments has two responses with regard to DLCDC's comments addressing the second exception. First, we agree with DLCDC that OAR 660-004-0010(1)(c)(B) now explicitly authorizes what Northwood is attempting to do here, which is to take an exception to a portion of Goal 14 to allow the property to be included inside Canby's UGB. As revised, this rule now states in relevant part:

“When a local government changes an established urban growth boundary an exception is not required unless the local government seeks an exception to any of the requirements of Goal 14 or other applicable goals.”

This amended rule will be in effect by the time the City decides this matter. Accordingly, we ask that the amended rule be applied to our application, as it expressly allows what we believe *prior* OAR 660, Division 4 implicitly allowed, which is the ability to take an exception to any provision of Goal 14.¹

Second, because LCDC amended Goal 14 as well as OAR 660, Division 4, we wish to discuss the amended Goal 14.

Initially, it is not clear to us that Northwood needs to address any of the modified Goal 14 UGB amendment factors, including the locational factors, in light of the fact that the land is “committed” to urban development and the very unusual circumstances of this proceeding. In Northwood’s view, the facts that the property is committed to urban development and entirely surrounded by urban development and the urban growth boundary are enough in themselves to justify a UGB amendment to include the site within the boundary. Stated another way, if the land is committed to urban development, and if as such, it can develop with urban uses outside the City’s UGB, then it only makes sense to bring this land inside the UGB.

Accordingly, Northwood believes that the exception it is taking to Goal 14’s UGB amendment provisions justifiably can and should extend to all of the Goal 14 UGB amendment factors. Under the very peculiar facts of this case, it does not make sense to apply any of these factors.

In our modified application, we explain that we are taking exceptions to the provisions in Goal 14 that require a demonstration of “need” for more land inside the UGB. Under the amended Goal 14, a copy of which is attached, these remain factors 1 and 2. The land need provisions in the amended rule also include an unnumbered paragraph directing local governments to demonstrate that needs cannot be reasonably accommodated on land already inside the UGB before expanding an urban growth boundary. While not identified as a separate “factor”, the Northwood exception extends to this provision as well. In taking the exception, Northwood relies on that fact that the property is committed to urban development as demonstrated under OAR 660-014-0030.

¹ In its decision in *Milne v. City of Canby*, the Court of Appeals also appears to acknowledge that exceptions to portions of Goal 14 were permitted under the prior rule. Still, the new rule eliminates any ambiguity on this issue.

Under the amended Goal 14, there are now four, rather than five, "boundary location" factors. In our initial application, we set out reasons explaining how the application complied with the original five location factors. If those factors applied to this modified application, that explanation would remain relevant to a determination of compliance with the four amended factors, and we incorporate it by reference into our modified application.

Also, in the record of the earlier proceeding, we addressed ORS 197.298 and indicated that under that standard, if it applied², the Northwood property would be the highest priority for inclusion inside the UGB. Indeed, it would be difficult to argue otherwise, given that this property is an island of rural land already surrounded by the urban growth boundary. Northwood continues to believe that ORS 197.298 does not apply in this kind of circumstance, where a UGB is being amended on grounds other than "need."

Expanding on the four revised boundary location factors, it is clear that the Northwood property can efficiently accommodate the urban development for which the property is committed, based predominantly on the immediate availability of a full range of urban services to the site, including public sewer and water services, as described in both the original and modified applications. Roads currently stubbed at the property line can be extended into the property, and sewer and water lines that stop at the property line in various locations can be extended into the property easily and efficiently.

The availability of urban services at numerous locations along the property boundary indicates that these services can be provided in an orderly and economic manner. There is no need to extend services long distances to serve this site. Also, this property is already inside Canby's city limits. It does not have to go through annexation proceedings in order to develop. This provides a much greater level of certainty that this property can develop in a timely, efficient and orderly manner.

The environmental, energy, economic and social consequences were addressed and compared in detail in the original application. Generally, the environmental, energy and economic impacts are positive, since (1) there are no inventoried significant natural resources on the property, (2) the property's close proximity to the city center (compared to non-annexed lands inside the UGB) will reduce energy consumption, and (3) the site's value for resource use is limited due to the fact that it is entirely surrounded by urban uses that create conflicts with intensive agricultural activity at this site. As agricultural land, the property is limited in its allowed uses and underutilized.

² ORS 197.298 addresses both need for UGB amendments and locational considerations. The "boundary location" provisions in the amended Goal 14 focus on just the locational priorities. As noted, "need" is not an issue in this matter, because the UGB amendment is based on commitment to urban development.

Mr. John Williams
May 11, 2005
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Socially, Northwood recognized in its prior application that there are neighbors who would like to see this property retained as farm land or open space. Some might lose a view through development. Some also are concerned that more houses means more traffic on roadways. However, these issues are addressed in the City's comprehensive planning of open space, park land and utility issues. Although this will impact some residents that currently live on dead ended roadways adjacent to the site, development of this site will improve traffic circulation in the larger area, which in turn improves police, fire and emergency vehicle response time. It will contribute to the City's need for more parkland as provided by City ordinance, and it will contribute to the City's tax base. Further, through a master planning process now required by the City's ordinances, the resulting development should be a real asset to the City in terms of its overall design and appearance.

Finally, this proposal is compatible with nearby agricultural and forest activities occurring on farm and forest lands outside the UGB because development at this site does not adjoin such activities. Because this property is an island inside the UGB, it is buffered from agricultural and forest lands, minimizing any possibility of incompatibility. Because the proposed use of the land is residential, the property will fit well with the residential uses already surrounding it on all sides. It is also noted that most of the agricultural lands north of the property are located inside the urban growth boundary.

In summary, Northwood does not believe that it makes sense to apply any of the Goal 14 UGB amendment factors under the peculiar circumstances of this case. Accordingly, its Goal 14 exception is to those factors in their entirety. Regarding locational factors, this is not a question of comparing one site to another to determine which works better for urbanization, taking numerous issues into account. Rather, this case involves property that is entirely surrounded by urban development and that logically should become part of the UGB if it is deemed committed to urban development, irrespective of those locational standards. However, if the locational factors did apply, they would be met for the reasons stated.

We look forward to the proceedings before the Planning Commission and City Council on this application.

Very truly yours,


Mark J. Greenfield

cc: Northwood Investments

Administrative Rule Amendments
Draft, Adopted April 28, 2005

OAR 660, DIVISION 004
INTERPRETATION OF GOAL 2 EXCEPTION PROCESS

1 **660-004-0000**

2 **Purpose**

3 (1) The purpose of this rule is to explain the three types of exceptions set forth in
4 Goal 2 "Land Use Planning, Part II, Exceptions". Except as provided for in OAR Chapter
5 660, Division 14, "Application of the Statewide Planning Goals to the Incorporation of
6 New Cities" this Division interprets the exception process as it applies to statewide Goals
7 3 to 19.

8 (2) An exception is a decision to exclude certain land from the requirements of
9 one or more applicable statewide goals in accordance with the process specified in Goal
10 2, Part II, Exceptions. The documentation for an exception must be set forth in a local
11 government's comprehensive plan. Such documentation must support a conclusion that
12 the standards for an exception have been met. The conclusion shall be based on findings
13 of fact supported by substantial evidence in the record of the local proceeding and by a
14 statement of reasons which explain why the proposed use not allowed by the applicable
15 goal should be provided for. The exceptions process is not to be used to indicate that a
16 jurisdiction disagrees with a goal.

17 (3) The intent of the exceptions process is to permit necessary flexibility in the
18 application of the Statewide Planning Goals. The procedural and substantive objectives
19 of the exceptions process are to:

20 (a) Assure that citizens and governmental units have an opportunity to participate
21 in resolving plan conflicts while the exception is being developed and reviewed; and

22 (b) Assure that findings of fact and a statement of reasons supported by
23 substantial evidence justify an exception to a statewide Goal.

24 (4) When taking an exception, a local government may rely on information and
25 documentation prepared by other groups or agencies for the purpose of the exception or
26 for other purposes, as substantial evidence to support its findings of fact. Such
27 information must be either included or properly incorporated by reference into the record
28 of the local exceptions proceeding. Information included by reference must be made
29 available to interested persons for their review prior to the last evidentiary hearing on the
30 exception.

31 Stat. Auth.: ORS 197

32 Stats. Implemented ORS 197.732

33 Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-
34 1984, f. & ef. 2-10-84

35
36 **660-004-0005**

37 **Definitions**

38 For the purpose of this Division, the definitions in ORS 197.015 and the
39 Statewide Planning Goals shall apply. In addition the following definitions shall apply:

40 (1) An "Exception" is a comprehensive plan provision, including an amendment
41 to an acknowledged comprehensive plan, that:

1 (a) Is applicable to specific properties or situations and does not establish a
2 planning or zoning policy of general applicability;

3 (b) Does not comply with some or all goal requirements applicable to the subject
4 properties or situations; and

5 (c) Complies with the provisions of this Division.

6 (2) "Resource Land" is land subject to the statewide Goals listed in OAR 660-
7 004-0010(1)(a) through (g) except subsections (c) and (d).

8 (3) "Nonresource Land" is land not subject to the statewide Goals listed in
9 OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Nothing in these
10 definitions is meant to imply that other goals, particularly Goal 5, do not apply to
11 nonresource land.

12 Stat. Auth.: ORS 197

13 Stats. Implemented ORS 197.015 & ORS 197.732

14 Hist.: LCDC 5-1982, f. & ef 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDD 3-
15 2004, f. & cert. ef. 5-7-04

16
17 **660-004-0010**

18 **Application of the Goal 2 Exception Process to Certain Goals**

19 (1) The exceptions process is not applicable to Statewide Goal 1 "Citizen
20 Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally
21 applicable to all or part of those statewide goals which prescribe or restrict certain uses of
22 resource land or limit the provision of certain public facilities and services. These
23 statewide goals include but are not limited to:

24 (a) Goal 3 "Agricultural Lands," however, an exception to Goal 3 "Agricultural
25 Lands" is not required for any of the farm or nonfarm uses permitted in an exclusive farm
26 use (EFU) zone under ORS Chapter 215 and OAR chapter 660 Division 033,
27 "Agricultural Lands";

28 (b) Goal 4 "Forest Lands" however, an exception to Goal 4 "Forest lands" is not
29 required for any of the forest or nonforest uses permitted in a forest or mixed farm/forest
30 zone under OAR chapter 660, Division 006, "Forest Lands";

31 (c) Goal 14 "Urbanization" except as provided for in ~~paragraphs (1)(c)(A) and~~
32 ~~(B) of this rule, and~~ OAR chapter 660, Div. 014-014-0000 through 660-014-0040:

33 (A) An exception is not required to an applicable goal(s) for the establishment of
34 an urban growth boundary around or including portions of an incorporated city, when
35 resource lands are included within that boundary. Adequate findings on the seven Goal
36 14 factors, accompanied by an explanation of how they were considered and applied
37 during boundary establishment, provide the same information as required by the
38 exceptions process findings;

39 (B) When a local government changes an established urban growth boundary an
40 exception is not required unless the local government seeks an exception to any of
41 the requirements of Goal 14 or other applicable goals. it shall follow the procedures
42 and requirements set forth in Goal 2 "Land Use Planning", Part II, Exceptions. An
43 established urban growth boundary is one which has been acknowledged by the
44 Commission under ORS 197.251, ORS 197.625 or ORS 197.626. Revised findings

1 ~~and reasons in support of an amendment to an established urban growth boundary~~
2 ~~shall demonstrate compliance with the seven factors of Goal 14 and demonstrate~~
3 ~~that the following standards are met:~~

4 ~~(i) Reasons justify why the state policy embodied in the applicable goals~~
5 ~~should not apply (This factor can be satisfied by compliance with the seven factors~~
6 ~~of Goal 14.);~~

7 ~~(ii) Areas which do not require a new exception cannot reasonably~~
8 ~~accommodate the use;~~

9 ~~(iii) The long-term environmental, economic, social and energy consequences~~
10 ~~resulting from the use at the proposed site with measures designed to reduce~~
11 ~~adverse impacts are not significantly more adverse than would typically result from~~
12 ~~the same proposal being located in areas requiring a goal exception other than the~~
13 ~~proposed site; and~~

14 ~~(iv) The proposed uses are compatible with other adjacent uses or will be so~~
15 ~~rendered through measures designed to reduce adverse impacts.~~

16 (d) Goal 11 "Public Facilities and Services";

17 (e) Goal 16 "Estuarine Resources";

18 (f) Goal 17 "Coastal Shorelands"; and

19 (g) Goal 18 "Beaches and Dune".

20 (2) The exceptions process is generally not applicable to those statewide goals
21 which establish planning procedures and standards which do not prescribe or restrict
22 certain uses of resource land or limit the provision of certain public facilities and services
23 because these goals contain general planning guidance or their own procedures for
24 resolving conflicts between competing uses. However, exceptions to these goals,
25 although not required, are possible and exceptions taken to these goals will be reviewed
26 when submitted by a local jurisdiction. These statewide goals are:

27 (a) Goal 5 "Natural Resources";

28 (b) Goal 6 "Air, Water, and Land Resources Quality";

29 (c) Goal 7 "Natural Disasters and Hazards";

30 (d) Goal 8 "Recreational Needs";

31 (e) Goal 9 "Economy of the State";

32 (f) Goal 10 "Housing" except as provided for in OAR 660-008-0035,
33 "Substantive Standards for Taking a Goal 2, Part II Exception Pursuant to
34 ORS 197.303(3);

35 (g) Goal 12 "Transportation" except as provided for by OAR 660-012-0070,
36 "Exceptions for Transportation Improvements on Rural Land";

37 (h) Goal 13 "Energy Conservation";

38 (i) Goal 15 "Willamette Greenway" except as provided for in OAR 660-004-
39 0022(6); and

40 (j) Goal 19 "Ocean Resources".

41 (3) An exception to one goal or goal requirement does not assure compliance with
42 any other applicable goals or goal requirements for the proposed uses at the exception
43 site. Therefore, an exception to exclude certain lands from the requirements of one or

1 more statewide goals or goal requirements does not exempt a local government from the
2 requirements of any other goal(s) for which an exception was not taken.

3 Stat. Auth.: ~~ORS 183~~ & ORS 197

4 Stats. Implemented ORS 197.732

5 Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-
6 1984, f. & ef. 2-10-84; LCDC 3-1984, f. & ef. 3-21-84; LCDC 2-1987, f. & ef.

7 11-10-87; LCDC 3-1988(Temp), f. & cert. ef. 8-5-88; LCDC 6-1988, f. & cert. ef.

8 9-29-88; LCDD 3-2004, f. & cert. ef. 5-7-04

NO CHANGES TO REMAINING RULES UNDER THIS DIVISION

Proposed Amendments to Statewide Planning Goal 14

Draft, Adopted April 28, 2005

(NOTE: New text is underlined and deleted text is in ~~strikethrough~~).

GOAL 14: URBANIZATION

1 To provide for an orderly and efficient transition from rural to urban land use, to
2 accommodate urban population and urban employment inside urban growth
3 boundaries, to ensure efficient use of land, and to provide for livable communities.
4

5 **Part 1: Urban Growth Boundaries**
6

7 Urban growth boundaries shall be established and maintained by cities,
8 counties and regional governments to provide land for urban development needs
9 and to identify and separate urban and urbanizable land from rural land.
10 Establishment and change of urban growth boundaries shall be a cooperative
11 process among cities, counties and, where applicable, regional governments. An
12 urban growth boundary and amendments to the boundary shall be adopted by all
13 cities within the boundary and by the county or counties within which the
14 boundary is located, consistent with intergovernmental agreements, except for the
15 Metro regional urban growth boundary established pursuant to ORS chapter 268,
16 which shall be adopted or amended by the Metropolitan Service District.
17

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18 **Land Need**
19

20 Establishment and change of the urban growth boundaries shall be based
21 ~~upon considerations of~~ on the following factors:

22 (1) Demonstrated need to accommodate long range urban population,
23 growth requirements consistent with LCDC goals a 20-year population forecast
24 coordinated with affected local governments; and

25 (2) The Demonstrated need for land suitable to accommodate housing,
26 employment opportunities, and livability or uses such as public facilities, streets
27 and roads, schools, parks or open space, or any combination of the need
28 categories in this subsection (2).
29

30 In determining need, local government may specify characteristics, such as
31 parcel size, topography or proximity, necessary for land to be suitable for an
32 identified need.
33

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1 Prior to expanding an urban growth boundary, local governments shall
2 demonstrate that needs cannot reasonably be accommodated on land already inside
3 the urban growth boundary.

4
5 **Boundary Location**

6
7 The location of the urban growth boundary and changes to the boundary
8 shall be determined by evaluating alternative boundary locations consistent with
9 ORS 197.298 and with consideration of the following factors:

10 (1) Efficient accommodation of identified land needs (4) Maximum
11 efficiency of land uses within and on the fringe of the existing urban area.

12 (2) Orderly and economic provision of for public facilities and services;

13 (3) Comparative environmental, energy, economic and social consequences;
14 and

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

17 (4)(7) Compatibility of the proposed urban uses with nearby agricultural and
18 forest activities occurring on farm and forest land outside the UGB.

19
20 The results of the above considerations shall be included in the
21 comprehensive plan. In the case of a change of a boundary, a governing body
22 proposing such change in the boundary separating urbanizable lands from rural
23 land shall follow the procedures and requirements as set forth in the Land Use
24 Planning goal (Goal 2) for goal exceptions.

25
26 Any urban growth boundary established prior to January 1, 1975, which
27 includes rural lands that have not been built upon shall be reviewed by the
28 governing body, utilizing the same factors applicable to the establishment or
29 change of urban growth boundaries.

30
31 Establishment and change of the boundaries shall be a cooperative process
32 between a city and county or counties that surround it. (Moved to pg. 1, Lines 10,11)

33
34 **Urbanizable Land**

35
36 Land within urban growth boundaries shall be considered available for urban
37 development consistent with plans for the provision of urban facilities and
38 services. Comprehensive plans and implementing measures shall manage the use
39 and division of urbanizable land to maintain its potential for planned urban

1 development until appropriate public facilities and services are available or
2 planned.

3
4 ~~Land within the boundaries separating urbanizable land from rural land shall~~
5 ~~be considered available over time for urban uses. Conversion of urbanizable land~~
6 ~~to urban uses shall be based on consideration of:~~

- 7 (1) ~~Orderly, economic provision for public facilities and services;~~
8 (2) ~~Availability of sufficient land for the various uses to insure choices in the~~
9 ~~market place;~~
10 (3) ~~LCDC goals or the acknowledged comprehensive plan; and,~~
11 (4) ~~Encouragement of development within urban areas before conversion of~~
12 ~~urbanizable areas.~~

13
14 **Part 2: Unincorporated Communities** *(No change to this part of the goal)*

15
16 In unincorporated communities outside urban growth boundaries counties
17 may approve uses, public facilities and services more intensive than allowed on
18 rural lands by Goal 11 and 14, either by exception to those goals, or as provided by
19 commission rules which ensure such uses do not adversely affect agricultural and
20 forest operations and interfere with the efficient functioning of urban growth
21 boundaries.

22
23 Notwithstanding the other provisions of this goal, the commission may by
24 rule provide that this goal does not prohibit the development and use of one single-
25 family dwelling on a lot or parcel that:

- 26 (a) Was lawfully created;
27 (b) Lies outside any acknowledged urban growth boundary or
28 unincorporated community boundary;
29 (c) Is within an area for which an exception to Statewide Planning Goal 3
30 or 4 has been acknowledged; and
31 (d) Is planned and zoned primarily for residential use.

32
33 **GUIDELINES**

34
35 *The following text would be added as a new Planning Guideline # 4. All other*
36 *guidelines would be unchanged:*

37
38 4. Comprehensive plans and implementing measures for land inside urban
39 growth boundaries should encourage the efficient use of land and the development
40 of livable communities.

Goal Definitions

1 **URBAN LAND.** Land inside an urban growth boundary.

2 ~~Urban areas are those places which must have an incorporated city. Such areas~~
3 ~~may include lands adjacent to and outside the incorporated city and may also:~~

4 ~~(a) Have concentrations of persons who generally reside and work in the~~
5 ~~area, and~~

6 ~~(b) Have supporting public facilities and services.~~

8
9 **URBANIZABLE LAND.** Urban land that, due to the present unavailability of
10 urban facilities and services, or for other reasons, either:

11 (a) Retains the zone designations assigned prior to inclusion in the boundary;

12 or

13 (b) Is subject to interim zone designations intended to maintain the land's
14 potential for planned urban development until appropriate public facilities and
15 services are available or planned.

16
17 ~~Urbanizable lands are those lands within the urban growth boundary and which are~~
18 ~~identified and~~

19 ~~(a) Determined to be necessary and suitable for future urban uses~~

20 ~~(b) Can be served by urban services and facilities,~~

21 ~~(c) Are needed for the expansion of an urban area~~

22
23
24 **RURAL LAND.** ~~Rural lands are those which are~~ Land outside the urban growth
25 boundaryies and are that is:

26 ~~(a) Non-urban agricultural, forest or open space lands or;~~

27 ~~(b) Land Suitable for sparse settlement, small farms or acreage homesites~~
28 ~~with no or hardly any minimal public services, and which are not suitable,~~
29 ~~necessary or intended for urban use; or,~~

30 (c) In unincorporated communities.

NOTE: Goal Definitions are adopted as part of the statewide planning goals under OAR 660, Division 015, and provide definitions for terms used throughout the goals. The three amended definitions above pertain to Goal 14.



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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May 6, 2005

Mr. John Williams
Planning Director
City of Canby
PO Box 930
Canby, OR 97013

RE: CPA 03-02/ZC 03-02, Northwood Investments (DLCD File No: 001-03)

Dear Mr. Williams:

Thank you for the opportunity to review the above mentioned application, which is before the City of Canby on remand from the Oregon Court of Appeals and the Land Use Board of Appeals. Please include this letter into the formal record.

The Department of Land Conservation and Development (the Department) has reviewed this application and the related Court of Appeals decision *Milne v. City of Canby (2004)*. The Court of Appeals decision remanded this matter back to LUBA, which in turn remanded the matter back to the City of Canby, stating in the opinion that "...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." On remand, the applicant has elected to modify its application to include an exception to the Goal 14 need factors.

There is no precedent for Canby's decision on this application. No local government has previously approved an exception to Goal 14 factors, and staff believes that OAR 660-004-0010(1)(c)(as amended in 2004) does not clearly authorize an exception to the Goal 14 need factors to allow a UGB amendment.

However, on April 28, the Land Conservation and Development Commission (the Commission) adopted revisions to OAR 660, Division 004, Interpretation of the Goal 2 Exception Process, along with amendments to Goal 14 and OAR 660, Division 026. The revised OAR 660-004-0010(1)(c)(B) makes it clearer that a local government may seek an exception to any of the Goal 14 requirements, including the need and location factors. Under the Commission's April 28 decision, local governments may apply the amended goal and rules on or after the date of filing, instead of having to wait a year to apply them.

EX. 2 (3 p.)

The Department recommends that the City of Canby and Clackamas County agree to implement the amended Division 004 as soon as it is filed with the Secretary of State, so that the application may be reviewed under the state laws that clearly authorize the request.

If you have further questions, please contact me at 503.731.4065, extension 25.

Regards,



Stacy Hopkins
Regional representative

CC: Lane Shetterly, Rob Hallyburton, Bob Rindy, Gloria Gardiner, Mara Ulloa
(via e-mail)



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

800 NE Oregon Street M/S 18, Suite 1145

Portland, Oregon 97232-2162

Phone: (503) 731-4065

Fax: (503) 731-4068

Web Address: <http://www.lcd.state.or.us>

VIA FAX: 503.266.1574; ORIGINAL TO FOLLOW

May 9, 2005



Mr. John Williams
Planning Director
City of Canby
PO Box 930
Canby, OR 97013

RE: CPA 03-02/ZC 03-02, Northwood Investments (DLCD File No: 001-03)

John,

After putting the letter from DLCD into the mail for you on May 6, I realized it is too general. I wanted to speak directly to the two exceptions proposed in the modified application. Please also enter this letter into the record.

The first exception is for Goal 3, 11 and 14 to allow urban levels of development on rural land. The modified application seeks to qualify for this exception. DLCD staff has stated in the past that this area should be able to qualify for an exception and that it is committed. Ultimately, the City of Canby will make the findings on this.

The second exception seeks to amend the urban growth boundary to include the subject area through an exception to the Goal 14 need factors. It is on this exception that DLCD suggests using the recently adopted, not yet filed, Division 4.

If you have further questions, please contact me at 503.731.4065, extension 25.

Regards,

Stacy Hopkins
Regional representative

CC: Lane Shetterly, Rob Hallyburton, Bob Rindy, Gloria Gardiner, Mara Ulloa
(via e-mail)



May 12, 2005

John Williams
City of Canby
182 N Holly Street
Canby, OR 97013

RE: Northwoods Annexation update

Dear John:

This letter serves to update the traffic study, prepared in April 2003 by Lancaster Engineering, for the Northwoods annexation project.

The traffic counts used in the original traffic study were taken in October 2002 and March 2003. Since the traffic counts were more than one year old, new counts were obtained for the study intersections to update the original study.

All of the City intersections showed a decrease in traffic volumes. The intersections were counted under similar conditions as the original counts; therefore the decrease in volume could be attributed to the daily traffic fluctuations found at all intersections. The Highway 99E intersection showed an increase in volumes. The increase at the Highway 99E intersection was consistent with growth in the City considered in the original traffic study. Since the traffic counts did not show any unusual patterns that could affect the results of the original traffic study, the results and conclusions of the original study remain the same.

A copy of the recent traffic counts has been attached at the end of this letter. If you have any questions, please don't hesitate to call me.

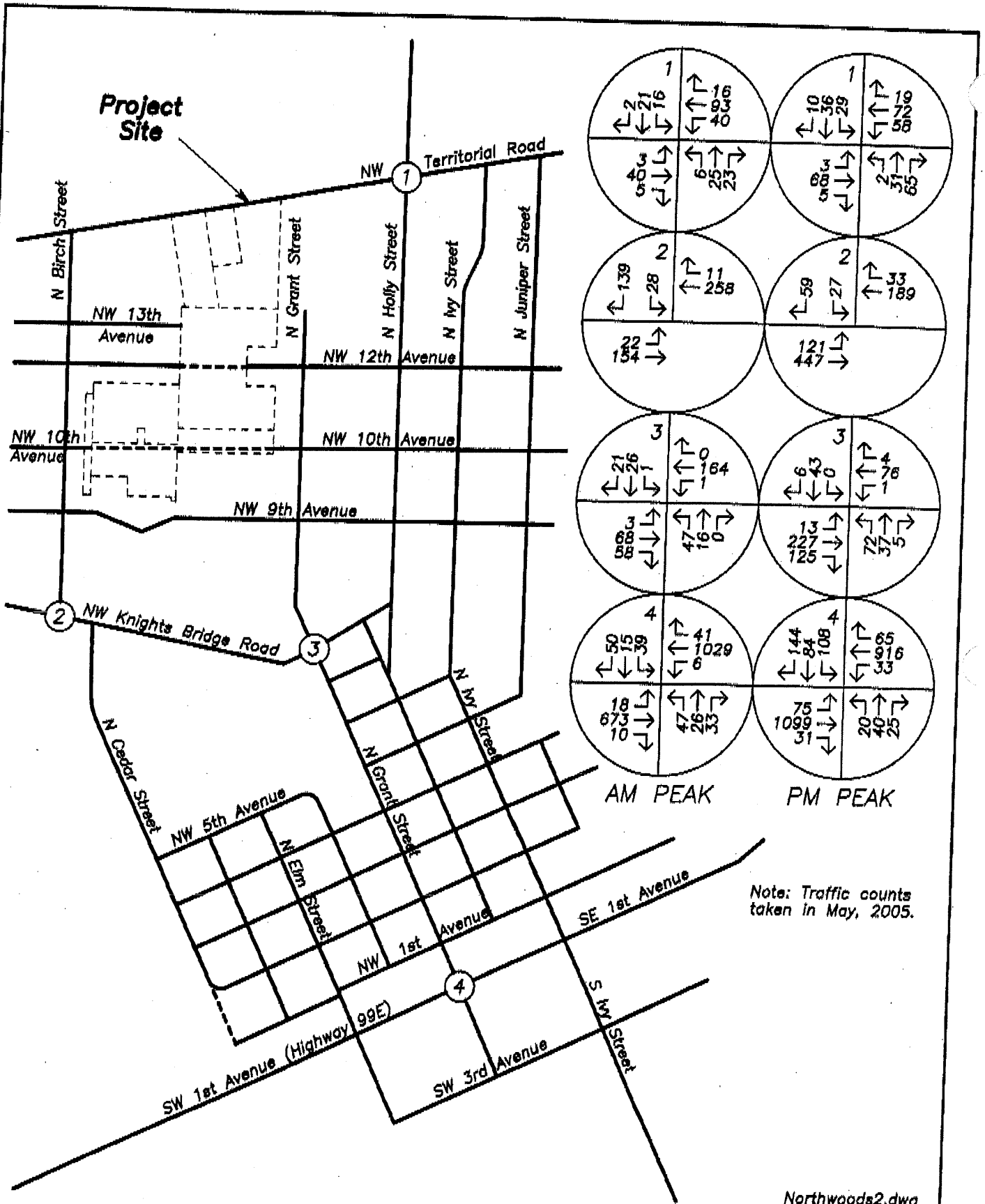
Yours truly,

A handwritten signature in black ink, appearing to read 'Catriona', is written over a horizontal line.

Catriona Sumrain
Engineering Technician

attachment: Existing Traffic Volumes

EX. 3 (2 p.)



Note: Traffic counts taken in May, 2005.

Northwoods2.dwg

Le

TRAFFIC VOLUMES
Existing Conditions
AM & PM Peak Hours



FIGURE
2
PAGE
9

CANBY PLANNING DEPARTMENT
REQUEST FOR COMMENTS

P.O. Box 930, Canby, OR 97013

503-266-9404 FAX 503-266-1574

DATE: March 18, 2003

TO: Fire, Police (incl. Traffic Safety Committee), CUB (Water, Electric), Direct Link, Canby Telephone, NW Natural, Public Works, Curt McLeod, School District, Parks and Rec.

The City has received CPA 03-01/ZC 03-01, an application by Northwood Investments, to bring the 30.19 acre former IFA property into the Urban Growth Boundary and to change its zoning to Low Density Residential. It is already within City Limits with Agricultural zoning. The property is located south of NW Territorial Road, east of N Birch Street, west of N. Grant Street, and north of NW 9th Avenue. (See attached site maps).

The Planning Commission and City Council need to weigh the positive and negative effects of bringing this property into the Urban Growth Boundary. Please review the enclosed application/site map and return your comments to Clint Chiavarini by Tuesday, April 1, 2003. The Planning Commission plans to consider this application on April 14, 2003. Please indicate any conditions of approval you may wish the Commission and City Council to consider if they approve the application. Thank you.

From the standpoint of your agency, please list the positive and negative effects, if any, this proposal will have on your service provision and any conditions that may be needed:

POSITIVE EFFECTS

NEGATIVE EFFECTS

WOULD INCREASE THE CONNECTIVITY OF NEIGHBORHOODS FOR EMERGENCY RESPONSE.

PROVIDE MORE OF A LOOPED WATER SYSTEM FOR EMER. FIRE FLOWS, WHICH WILL HELP INCREASE GPM AVAILABLE TO FIGHT FIRE.

Please check one box:

- Adequate Public Services (of your agency) are available
- Adequate Public Services will become available through the development
- Conditions are needed, as indicated
- Adequate public services are not available and will not become available



Signature: Ron Harbough

Date: 3/24/03

Title: Fire Marshal

Agency: CFD #62

**CANBY PLANNING DEPARTMENT
REQUEST FOR COMMENTS**

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POSITIVE EFFECTS

NEGATIVE EFFECTS

Please check one box:

- Adequate Public Services (of your agency) are available
- Adequate Public Services will become available through the development
- Conditions are needed, as indicated
- Adequate public services are not available and will not become available

Signature: Van Pagan Date: 3-20-03

Title: chief Agency: Police

CANBY PLANNING DEPARTMENT
REQUEST FOR COMMENTS

P.O. Box 930, Canby, OR 97013

503-266-9404

FAX 503-266-1574

DATE: March 18, 2003

TO: Fire, Police (incl. **Traffic Safety Committee**) CUB (Water, Electric), Direct Link, Canby Telephone, NW Natural, Public Works, Curt McLeod, School District, Parks and Rec.

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From the standpoint of your agency, please list the positive and negative effects, if any, this proposal will have on your service provision and any conditions that may be needed:

POSITIVE EFFECTS

NEGATIVE EFFECTS

It will connect 10th, 11th, 12th

*① Traffic, Traffic
② Territorial & 99 intersection needs to be addressed before any more property is developed in this part of town.
3- Territorial Rd between Hawthorn & Birch is too narrow to handle the increase of traffic that would be generated by new homes. This road would have to be widened*

Please check one box:

- Adequate Public Services (of your agency) are available
- Adequate Public Services will become available through the development
- Conditions are needed, as indicated
- Adequate public services are not available and will not become available

Signature: *M. Aileen Elmer*

Date: _____

Title: *Chairman*

Agency: *Traffic Safety Comm.*

CANBY PLANNING DEPARTMENT REQUEST FOR COMMENTS

F.O. Box 930, Canby, OR 97013

503-266-9404

FAX 503-266-1574

DATE: March 18, 2003

TO: Fire, Police (incl. Traffic Safety Committee), **CUB (Water)** Electric), Direct Link, Canby Telephone, NW Natural, Public Works, Curt McLeod, School District, Parks and Rec.

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From the standpoint of your agency, please list the positive and negative effects, if any, this proposal will have on your service provision and any conditions that may be needed:

POSITIVE EFFECTS

NEGATIVE EFFECTS

ANY DEVELOPEMENT TO THIS
PROPERTY WOULD ALLOW INSTALLATION
OF 10"-12" WATER LINE RUNNING
N, TO, S AND INCREASING SERVICE TO
ALL RESIDENTS NORTH OF KNIGHTS
BRIDGE Rd. AND South of TERRITORIAL
Rd. (DOUGLAS LN EXTENSION)

Please check one box:

- Adequate Public Services (of your agency) are available
- Adequate Public Services will become available through the development
- Conditions are needed, as indicated
- Adequate public services are not available and will not become available

Signature: Leoman Water Dept

Date: 3/20/03

Title: LEOMAN WATER DEPT. Agency: CUB

CANBY PLANNING DEPARTMENT REQUEST FOR COMMENTS

P.O. Box 930, Canby, OR 97013

503-266-9404 FAX 503-266-1574

DATE: March 18, 2003

TO: Fire, Police (incl. Traffic Safety Committee), CUB (Water, Electric), Direct Link, Canby Telephone, NW Natural, Public Works, Curt McLeod, School District, Parks and Rec.

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POSITIVE EFFECTS

NEGATIVE EFFECTS

Please check one box:

- Adequate Public Services (of your agency) are available
- Adequate Public Services will become available through the development
- Conditions are needed, as indicated
- Adequate public services are not available and will not become available

Signature: Don Bush

Date: 3-26-03

Title: ENGINEERING MGR.

Agency: C.T.A.

**CANBY PLANNING DEPARTMENT
REQUEST FOR COMMENTS**

P.O. Box 930, Canby, OR 97013

503-266-9404

FAX 503-266-1574

DATE: March 18, 2003

TO: Fire, Police (incl. Traffic Safety Committee), CUB (Water, Electric), Direct Link, Canby Telephone, NW Natural, **Public Works**, Curt McLeod, School District, Parks and Rec.

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From the standpoint of your agency, please list the positive and negative effects, if any, this proposal will have on your service provision and any conditions that may be needed:

POSITIVE EFFECTS

Removal of 6 Dead End St.
A Complete Street System
Improvements to Sanitary System
Improvement of Traffic Flows
More Improvements to Territorial Rd
HAVE CONTROL OF EROSION OFF-
- THIS SITE.

NEGATIVE EFFECTS

More Street Inventory
STORM SYSTEM

Please check one box:

- Adequate Public Services (of your agency) are available
- Adequate Public Services will become available through the development
- Conditions are needed, as indicated
- Adequate public services are not available and will not become available

Signature: Doug Hester

Date: Apr. 1, 2003

Title: P.W. Supervisor

Agency: City of Canby

**CANBY PLANNING DEPARTMENT
REQUEST FOR COMMENTS**

P.O. Box 930, Canby, OR 97013

503-266-9404

FAX 503-266-1574

DATE: March 18, 2003

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From the standpoint of your agency, please list the positive and negative effects, if any, this proposal will have on your service provision and any conditions that may be needed:

POSITIVE EFFECTS

There is a critical need for a park in this area -- this would present an opportunity to address this need -

NEGATIVE EFFECTS

Open space will be lost, and viewsheds of Mt. Hood may be deteriorated by development.

Please check one box:

- Adequate Public Services (of your agency) are available
- Adequate Public Services will become available through the development
- Conditions are needed, as indicated
- Adequate public services are not available and will not become available

We need the park land even if we are not ready to develop it.

Signature: [Signature]

Date: 3/21/03

Title: Library & Parks Dir.

Agency: City of Canby

NORTHWOOD INVESTMENTS

1127 NW 12th Avenue, Canby, OR 97013

April 1, 2003

City of Canby Planning Department
P. O. Box 930
Canby, OR 97013
Attn: Mr. Clint Chiavarini, Associate Planner

RE: Northwood Investments Application

This letter is to follow our discussions Tuesday regarding our partnership's plans for improvements to the Northwood property. Our goals over time are to provide a new neighborhood using new design standards and planning ideas in conjunction with assistance from the Planning Department at the City. This specifically includes the use of open space to benefit the property and community.

Beyond that needed for public right-of-ways, our tentative plans are to provide a minimum of three acres for open space, parks and other separate uses. If the City has designated the area for an additional park, this use will be designed into our project. If this area is not designated for a City park, we anticipate developing open space for park amenities or land for a potential Northside Fire Station Annex or other public use. We anticipate developing the property as a planned unit development to provide community infrastructure beyond the typical public utilities.

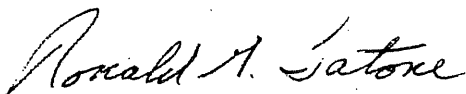
Our partnership is comprised of Canby residents that have a vested interest in providing the highest quality development. We anticipate working closely with the City to incorporate innovative ideas and amenities to benefit the neighborhood and community.

We have not developed a site plan for the property so all options are viable. As a minimum, open space or park lands are needed to provide the type of development we desire. We anticipate these improvements can contribute to the City's inventory to benefit the entire community.

If you have any questions, please feel free to call.

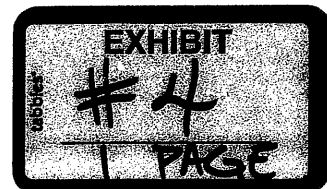
Sincerely,

NORTHWOOD INVESTMENTS



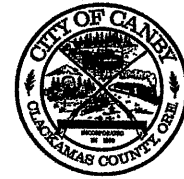
Ronald G. Tatone
General Partner

cc: Mark Greenfield, Esq.
Northwood Partners





CITY OF CANBY
COMMENT FORM



RECEIVED

MAY 06 2005

CITY OF CANBY

If you are not able to attend the meetings noticed on this application, you may submit written comments on this form or in a letter to the Planning Commission or City Council. Please send your comments to the Planning Department, PO Box 930, Canby, OR 97013, or drop them off at City Hall, 182 N. Holly Street. Submitting your comments by May 13 for the Commission or June 27 for the Council will allow your comments to be read and considered in advance by those bodies. However, your comments will be accepted at any time before the conclusion of the public hearings.

APPLICATION: Zone Change and Comprehensive Plan Amendments to bring 30.19 acres into the Urban Growth Boundary and change the zoning from Agricultural (A) to Low Density Residential (R-1). Includes exceptions to Goals 14, 11, and 3 to allow urban uses and an amendment to the City of Canby Urban Growth Boundary.

APPLICANT: Northwood Investments, c/o Ron Tatone

CITY FILE #: Modified application of ZC 03-02/CPA 03-02

COMMENTS: As an active school partner, local business owner and native Canbyian we would like to see annexations for future housing development halted. We understand the financial burden on Mr. Tatone's value of his property which makes it great for him to sale/redevelop his land. We would prefer seeing someone of his stature in this community develop his land into an area that would provide a Boy/Girl Recreation facility that this town needs more than more houses adding stress to the already over crowded schools, stress to the water facility and more.

YOUR NAME: Anonymous

ORGANIZATION/BUSINESS (if any): _____

ADDRESS: _____

PHONE # (optional): _____

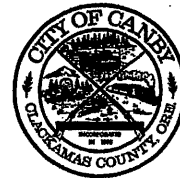
DATE: 5-4-05

Thank You.

Ex. 5 (2 p.)



CITY OF CANBY
COMMENT FORM



RECEIVED
MAY 06 2005

If you are not able to attend the meetings noticed on this application, you may submit written comments on this form or in a letter to the Planning Commission or City Council. Please send your comments to the Planning Department, PO Box 930, Canby, OR 97013, or drop them off at City Hall, 182 N. Holly Street. Submitting your comments by May 13 for the Commission or June 27 for the Council will allow your comments to be read and considered in advance by those bodies. However, your comments will be accepted at any time before the conclusion of the public hearings.

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APPLICANT: Northwood Investments, c/o Ron Tatone

CITY FILE #: Modified application of ZC 03-02/CPA 03-02

COMMENTS: We are against the zone change because it would waste what little agricultural land that remains here. The area schools are already crowded, the city services are already taxed, and the traffic is already heavy to get onto 99E Territorial or the freeway. This would make everything worse in our neighborhood especially for us if NW 12th becomes a through street to Holly.
Thanks for considering our opinion.

YOUR NAME: Bob & Alice Rambo

ORGANIZATION/BUSINESS (if any):

ADDRESS: 355 NW 12th

PHONE # (optional):

DATE: 5/5/05

Thank You.

FILED: September 1, 2004

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JANET MILNE,
PAUL SATTER,
RIVERSIDE NEIGHBORHOOD ASSOCIATION,
and 1000 FRIENDS OF OREGON,

Petitioners - Cross-Respondents,

v.

CITY OF CANBY,

Respondent,

and

NORTHWOOD INVESTMENTS,

Respondent - Cross-Petitioner.

2003-102; A123691

Judicial Review from Land Use Board of Appeals.

Argued and submitted March 29, 2004.

Edward J. Sullivan argued the cause for petitioners - cross-respondents Janet Milne, Paul Satter, and Riverside Neighborhood Association. With him on the opening brief were Carrie A. Richter and Garvey Schubert Barer. Also on the opening brief were Andrew H. Stamp and Martin Bischoff Templeton Langslet & Hoffman LLP for petitioner - cross-respondent 1000 Friends of Oregon. Andrew H. Stamp filed the answering brief for petitioner - cross-respondent 1000 Friends of Oregon.

Mark J. Greenfield argued the cause and filed the brief for respondent - cross-petitioner Northwood Investments.

John H. Kelley, Canby City Attorney, waived appearance for respondent City of Canby.

Before Haselton, Presiding Judge, and Deits, Chief Judge, and Leeson, Judge pro tempore.

DEITS, C. J.

Ex. 6 (isp.)

On petitions, reversed and remanded for reconsideration; cross-petition dismissed as moot.

DEITS, C. J.

The City of Canby (city) amended its urban growth boundary (UGB) to include approximately 30 acres of property that was within the city limits and entirely surrounded by property in the UGB. The city also amended its comprehensive plan and zoning map to redesignate the property from Agriculture to Low Density Residential. LUBA affirmed the city's decisions. *Milne v. City of Canby*, 46 Or LUBA 213 (2004). We reverse and remand.

We take the facts from LUBA's order.

"The subject property is approximately 30 acres in size and lies entirely within the City of Canby city limits. It is an island of land that is excluded from, but entirely encircled by[,] the city's UGB. * * * To the east, west, and south of the property are developed residential subdivisions. A church adjoins the property to the south. To the north are larger residential lots that are developed with residences. There are public facility connections for water and sewer at numerous locations on all sides of the property. * * * The soils on the property are high-value class II soils. The property has been used for many different agricultural purposes over the years, and is currently used for production of row crops and flowers. Prior to the challenged decision, the property was designated Agricultural on both the city's comprehensive plan and zoning maps. The challenged decision changes the comprehensive plan and zoning map designations from Agriculture to Low Density Residential.

* * * * *

"Due to the nature of the parties' arguments, some discussion of the property's planning and zoning history is warranted. In 1982, the subject 30 acres were leased by the Industrial Forestry Association (IFA) as part of a larger 104-acre tree farm operation. When the City of Canby originally requested acknowledgment of its UGB in 1982, the subject property was included within the proposed UGB. The Land Conservation and Development Commission (LCDC) found that the city's proposed UGB included more land than was needed. In response to LCDC's concerns, the city removed all IFA-operated properties from the proposed UGB. IFA did not object to having the property removed from the proposed UGB. Intervenor[, Northwood Investments (Northwood),] purchased the property in 1990 and at that time submitted an application to have the property included within the UGB. That application was denied because the city found that there was no need for additional residential land within the UGB at that time. In 1993, the city approved an application to expand the UGB to include the property, finding that there was a demonstrated need for additional residential land. The city's decision was appealed to LUBA and we remanded the decision, finding that the city failed to demonstrate that there was a need for additional residential land. *Simmitt*

Nurseries v. City of Canby, 27 Or LUBA 468 (1994). After that decision was issued, [Northwood] abandoned its attempt to include the property within the UGB. In 2003, [Northwood] once again applied to have the property included within the UGB. The 2003 application makes no attempt to demonstrate that the 30 acres are needed land for residential use. Instead, the 2003 application takes the position that the 30 acres should be included in the UGB because they are 'committed' to urban uses. The city approved the application[.]"

Milne, 46 Or LUBA at 215-17 (footnotes omitted).

We begin by addressing the jurisdictional issue whether petitioners and cross-petitioner have standing to seek judicial review of LUBA's order. Petitioners on review--Janet Milne, Paul Satter, Riverside Neighborhood Association, and 1000 Friends of Oregon--and cross-petitioner on review--Northwood--have statutory standing because they were all parties before LUBA. See ORS 197.850(1) ("Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830 to 197.845 may seek judicial review of a final order issued in those proceedings."); OAR 661-010-0010(11) (providing that, generally, a party to an appeal to LUBA is "the petitioner, the governing body, and any person who intervenes as provided in OAR 661-010-0050").

That conclusion, however, does not end our inquiry because, even if a party has statutory standing, "the courts *always* must determine that the constitutional requirements of justiciability are satisfied." *Utsey v. Coos County*, 176 Or App 524, 548, 32 P3d 933 (2001), *rev dismissed*, 335 Or 217 (2003) (emphasis in original). Specifically, "the person or persons *invoking the jurisdiction of the court* must establish that a decision would have a practical effect on him or her."⁽¹⁾ *Just v. City of Lebanon (A122517)*, 193 Or App 132, 147, 88 P3d 312, *rev allowed*, 337 Or 247 (2004) (emphasis in original).

Based on our review of the record, we understand that petitioner Satter owns and occupies a property within 200 feet of the subject property. For that reason, it is apparent that a decision in this case to include the subject property within the UGB and to rezone the property from Agricultural to Low Density Residential use has a practical effect on his interests. Because Satter has standing and he and the other petitioners make the same arguments in this review proceeding, it is immaterial whether the other petitioners independently have constitutional standing, and we do not consider that issue further.⁽²⁾ See *id.* at 135 n 2. We also conclude that cross-petitioner Northwood has constitutional standing because it is the applicant and a decision will have a practical effect on its interests. Having determined that Satter and Northwood have standing to invoke the jurisdiction of this court, we turn to the merits of the case.

The dispositive issue on review is whether LUBA erred in concluding that the city could amend its UGB to include the subject property without considering the seven establishment factors listed in Statewide Land Use Planning Goal 14.⁽³⁾ In reaching its conclusion, LUBA reasoned as follows:

"Goal 14 provides that 'establishment and change' of a UGB is to be based upon consideration of seven factors. The seven factors are collectively referred to as the 'establishment' factors. *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 455, 724 P2d 268 (1986). The first two factors are known as the 'need' factors, while the third through seventh factors are known as the 'locational' factors. *Residents of Rosemont v. Metro*, 173 Or App 321, 327, 21 P3d 1108 (2001). Generally, a local government must apply the 'need' factors and establish a need for land before it may amend its UGB to include that land. *Baker v. Marion County*, 120 Or App 50, 54, 852 P2d 254, *rev den*[,] 317 Or 485 (1993). In the present case, however, the city utilized a narrow exception to that general rule for 'unneeded but committed' lands.^[4] Under that exception, in certain limited circumstances, a local government does not have to demonstrate that land is needed under the Goal 14 'need' factors to include that land within a UGB. Petitioners, among other things, challenge the continuing validity of the exception for 'unneeded but committed' lands and its application in the present case.

"The exception for 'unneeded but committed' lands appears to have been first articulated in an LCDC continuance order. That continuance order was recognized and discussed by the Court of Appeals in *City of Salem v. Families for Responsible [Govt]*, 64 Or App 238, 668 P2d 395 (1983), *rev'd and rem'd on other grounds*, 298 Or 574, 694 P2d 965[, *on remand*, 73 Or App 620, 700 P2d 268 (1985)]. In that case, 1000 Friends of Oregon and others appealed LCDC's acknowledg[ment] of the Salem Area Comprehensive Plan, which included the City of Salem's UGB. The Court of Appeals rejected LCDC's approval of several areas for which need had not been demonstrated, but affirmed LCDC's approval of one area of 'unneeded but committed' lands. The court described the exception for 'unneeded but committed' land as follows:

"As a general rule, a local government is not permitted to establish an urban growth boundary containing more land than the locality "needs" for future growth. However, in certain limited circumstances, an urban growth boundary may contain extra land. When existing urban development or existing public facilities have "committed" an "unnecessary" piece of land to urban use, the local government may include that land in the boundary in order to avoid illogical development or service patterns. * * * To justify such a boundary, the local government must demonstrate, through the application of Goal 14's locational factors, that the land in question is in fact "committed" to urban use.' 64 Or App at 243.

"The next case to discuss 'unneeded but committed' lands was *Collins v. LCDC*, 75 Or App 517, 707 P2d 599 (1985). In that case, the court considered an appeal of LCDC's approval of the City of Jacksonville's UGB. The city included additional lands in the UGB under the 'unneeded but committed' exception. Although the court reversed and remanded the decision for

inadequate findings, it did recognize the exception for 'unneeded but committed' lands.

"The first two cases to consider 'unneeded but committed' lands both involved the initial *establishment* of a city's UGB. The first case to extend that exception to a UGB *amendment* was *Halvorson v. Lincoln County*, 14 Or LUBA 26 (1985). In that case, while holding that the county's findings were inadequate to demonstrate the subject lands were committed to urban uses so that they could be included within the UGB of the City of Depoe Bay, LUBA recognized that such a showing would obviate any requirement to consider the 'need' factors of Goal 14.

"While these facts may illustrate the property is not available for resource uses, they fall short of an adequate demonstration the property is committed by "existing urban development or existing public facilities" to urban use, i.e. uses of a kind and intensity characteristic of urban development in the City of Depoe Bay. *City of Salem* * * *. Without such a demonstration, the predicate for adjusting the UGB without consideration of [Goal 14] factors 1 and 2 has not been established.' 14 Or LUBA at 32 (emphasis in original deleted).

"After we remanded the decision, the county once again approved the UGB amendment, the petitioners once again appealed the decision to LUBA, we once again remanded the decision for failing to establish that the subject lands were committed to urban uses, [*Halvorson v. Lincoln County*, 14 Or LUBA 730 (1986),] and the petitioners appealed LUBA's decision to the Court of Appeals. While not finding it necessary to address all of the parties' arguments, the court nonetheless recognized that the 'unneeded but committed' policy could serve to allow an *amendment* of an existing UGB.

"If an area does not qualify for inclusion in an UGB because it does not satisfy the first two -- "need" -- factors of Goal 14, it may still be included if an examination of the remaining five -- "locational" -- factors shows that it is committed to urban uses. * * * The local government must balance those factors in order to determine whether, on the whole, the area is committed. The process is not a mechanical one of adding so many * * * points for one factor and subtracting so many for another. Rather, the overall picture must show commitment.' *Halvorson v. Lincoln County*, 82 Or App 302, 305, 728 P2d 77 (1986).

"In the years since the *Halvorson* opinions, neither the Court of Appeals nor we have discussed the exception for 'unneeded but committed' lands in great detail. One Court of Appeals case and one LUBA case, however, have noted the existence and apparent continued validity of the exception. *See Baker*, 120 Or App at 56 (recognizing the exception but noting that petitioner had not raised that issue below); *Friends of Linn County v. Linn County*, 41 Or LUBA

342, 346-47 (2002) (recognizing the exception but finding that commitment to urban use was not shown).

"Petitioners urge us to overrule or limit the previously discussed cases and hold that the exception for 'unneeded but committed' lands does not apply to UGB *amendments*. According to petitioners, both LUBA and the Court of Appeals 'took a wrong turn' in extending the exception for 'unneeded but committed' lands to decisions to amend a UGB as opposed to decisions to initially establish a UGB. Petitioners are correct that the *City of Salem* and *Collins* cases involved decisions that initially established UGBs. Petitioners are also correct that the extension of the exception for 'unneeded but committed' lands to UGB amendments appears to have occurred without the Court of Appeals or LUBA ever considering the arguments currently made by petitioners.

"While the Court of Appeals may not have considered the precise arguments presented by petitioners in the present case, we do not agree that the language in the court's *Halvorson* opinion recognizing the exception was mere *dicta*. The court clearly believed that the exception for 'unneeded but committed' lands was a valid method of amending a UGB, without regard to the Goal 14 'need' factors. If it had not so believed, the court would have had no reason to consider whether the property was committed to urban uses. We also note that the seven Goal 14 factors apply to both 'establishment and change' of UGBs. We see no reason why the exception for 'unneeded but committed' lands should apply only to decisions that establish a UGB. If the exception for 'unneeded but committed' lands is to be declared invalid or limited, the Court of Appeals is the appropriate body to do so."⁽⁵⁾

Milne, 46 Or LUBA at 219-23 (footnotes and some citations omitted; emphasis, some omissions, and fourth set of brackets in original).

In their first assignment of error on review, petitioners contend that LUBA erred in concluding that the city properly amended its UGB to include the subject property without determining that it had a need for the property, as required by Goal 14. Specifically, petitioners contend that LUBA's decision is inconsistent with the text of Goal 14, which requires that all seven establishment factors be considered when a local government changes a UGB. Additionally, petitioners assert that Goal 14's purpose is to ensure that changes in UGBs are based on need. *See* ___ Or App at ___ n 3 (slip op at 4 n 3). They argue that LUBA's conclusion "undermine[s]" that basic purpose because

"a local government may consciously and deliberately commit land to urban use by surrounding the high-value farmland with urban development creating conflicts with the pre-existing farm use, stub out urban services adjacent to the agricultural lands and then include that agricultural land within the UGB upon a finding that it is committed and regardless of whether that land is needed for urban use."

According to petitioners, the periodic review process or the taking of exceptions to the pertinent goals are mechanisms that allow UGB amendments under the circumstances in this case.

Petitioners acknowledge that, in dispensing with the need requirements of Goal 14, LUBA relied on *Halvorson v. Lincoln County*, 82 Or App 302, 728 P2d 77 (1986), a case in which this court extended the "unneeded but committed" land doctrine to a UGB amendment such as the one in this case. Petitioners contend, however, that *Halvorson* was wrongly decided and should be overruled because it was "a material departure from the original LCDC Continuance Order that is contrary to the language of Goal 14 and previous case law."

Northwood agrees that the city relied on this court's holding in *Halvorson* to amend its UGB without demonstrating that the need factors of Goal 14 had been satisfied. In its answering brief, Northwood argues that petitioners did not raise before the city the issue whether this court incorrectly extended the "unneeded but committed" doctrine to UGB amendments in *Halvorson*. For that reason, Northwood contends that LUBA should not have considered that issue. Northwood also raises that contention in its cross-petition for judicial review. Alternatively, Northwood contends that this court's decision in *Halvorson* was correctly decided and that, based on the holding in that case, the city could amend its UGB to include the subject property without demonstrating that the need factors of Goal 14 had been satisfied. Respondent cautions that we should be

"particularly reluctant not to adhere to the doctrine of *stare decisis* in land use matters involving agency rules because of the opportunities LCDC has, through goal amendment or rulemaking, to overturn an interpretation it deems in conflict with its goals or rules. Here, the 'unneeded but committed' exception has been around for 20 years with no effort by LCDC to eliminate, limit or otherwise amend it. If anything, the contrary has happened with LCDC's adoption of OAR 660-014-0030 and its incorporation of that standard in OAR 660, Division 4 through OAR 660-004-0010(1)(c) and -0022(1)."

In sum, based on its contention that *Halvorson* was correctly decided, Northwood contends that the city's action came within the "unneeded but committed" exception to Goal 14.

As have the parties, we focus our analysis on whether this court's extension of the "unneeded but committed" doctrine to UGB amendments in *Halvorson* is supported by Goal 14 or other pertinent sources of law. Under the doctrine of *stare decisis*, we adhere to our prior decisions "unless error is plainly shown to exist." *Newell v. Weston*, 156 Or App 371, 380, 965 P2d 1039 (1998), *rev den*, 329 Or 318 (1999) (internal quotation marks omitted).

Northwood first asserts that we need not decide whether, in *Halvorson*, this court incorrectly extended the "unneeded but committed" doctrine to UGB amendments because petitioners did not preserve that issue and LUBA should not have considered it. LUBA rejected Northwood's preservation argument, reasoning that, "[w]hile it is true that petitioners did not make the precise legal arguments below that they advance on appeal, they did make the argument that the property could not be included within the UGB under the exception. That

is sufficient to preserve the issue for our review." *Milne*, 46 Or LUBA at 220 n 6. We agree with LUBA's reasoning and do not discuss Northwood's contention further. In light of that disposition, it is unnecessary for us to address Northwood's cross-petition for review, which raises the same preservation issue. Accordingly, we dismiss the cross-petition as moot and turn to the merits of the issue.

We begin with a discussion of the evolution of the "unneeded but committed" doctrine. The parties appear to agree that the genesis of the "unneeded but committed" doctrine was a 1979 LCDC Continuance Order that was issued during the acknowledgment process for the Metropolitan Service District.⁽⁶⁾ An issue before LCDC was whether the district could *establish* a UGB that contained unneeded land. According to LCDC, at that point, it had "not previously interpreted Goal 14 as allowing a vacant land 'surplus' of any kind." Continuance Order at 9. LCDC recognized, however, that Goal 14 "cannot ignore the past" and that "[e]xisting urban development has established an existing urban form which cannot be changed by a wave of a wand or by the drafting of findings." *Id.* at 11. LCDC ultimately concluded that,

"if [the district] finds it impossible because of pre-Goal urban land commitments to establish a year 2000 boundary and simultaneously promote important Goal 14 locational values, the Commission must and will app[r]ove a larger boundary, provided [the district] has also taken all available measures to achieve the purposes of Goal 14 as described in Part II above."

Id. at 11-12.

This court applied the "unneeded but committed" doctrine to the establishment of UGBs in *City of Salem v. Families for Responsible Govt*, 64 Or App 238, 668 P2d 395 (1983), *rev'd and rem'd on other grounds*, 298 Or 574, 694 P2d 965, *on remand*, 73 Or App 620, 700 P2d 268 (1985), and *Collins v. LCDC*, 75 Or App 517, 707 P2d 599 (1985). In *City of Salem*, 1000 Friends argued that "LCDC erred by approving a UGB containing more land than the city needs for future growth, without adopting findings to demonstrate that the excess lands are 'committed' to urban use." 64 Or App at 242. On review, the validity of the "unneeded but committed" doctrine, which we explained as follows, was not at issue:

"As a general rule, a local government is not permitted to establish an urban growth boundary containing more land than the locality 'needs' for future growth. However, in certain limited circumstances, an urban growth boundary may contain extra land. When existing urban development or existing public facilities have 'committed' an 'unnecessary' piece of land to urban use, the local government may include that land in the boundary in order to avoid illogical development or service patterns. * * * Continuance Order, *supra*, at 12. To justify such a boundary, the local government must demonstrate, through the application of Goal 14's locational factors, that the land in question is in fact 'committed' to urban use."

Id. at 243. We applied the doctrine in concluding that LCDC's findings did not support its conclusion that certain areas are committed to urban use.

We again applied the "unneeded but committed" doctrine in *Collins*. The application of the "unneeded but committed" doctrine to the initial establishment of a UGB does not appear to have been challenged in that case. At issue was whether LCDC violated "Goal 14 by approving an urban growth boundary * * * with nearly 700 acres of land that are not needed for projected expansion." *Collins*, 75 Or App at 519. LCDC relied

"on the maps provided by the city, on Goal 14's seven factors for determining the size and location of an UGB and on this court's statement that a locality may include more land than is needed in the UGB '[w]hen existing urban development or existing public facilities have "committed" an "unnecessary" piece of land to urban use * * * in order to avoid illogical development or service patterns.' *City of Salem* * * *."

Collins, 75 Or App at 525 (bracketed material and first omission in original). This court concluded that "[s]ome areas of commitment do not justify inclusion of all of the territory in the UGB." *Id.* at 528 (emphasis in original).

LUBA and this court extended the "unneeded but committed" doctrine to UGB amendments in *Halvorson*, the case on which Northwood relies in this case. In *Halvorson*, the petitioners sought review of a LUBA order concerning a UGB amendment. "LUBA rejected [the] petitioner[s]' claim that the county had failed to show that the land was committed to urban development under the 'locational' factors of Goal 14." *Halvorson*, 82 Or App at 304. The parties agreed that the county could not justify the amendment on the basis of need. *Id.* at 304 n 1. Instead, the petitioners contended that, because there had been no demonstration that the subject property had been committed to urban development, LUBA could not approve the amendment where need had not been demonstrated. This court determined that it was unnecessary for it to resolve the dispute as to whether the property was "committed" because, as LUBA had determined, the cases had to be remanded so that the county could address the economic, social, environmental, and energy consequences of the change.

In *Halvorson*, this court did not address the validity of the "unneeded but committed" doctrine in the context of a UGB amendment. However, as LUBA recognized in its order in this case, this court, in *Halvorson*, "clearly believed that the exception for 'unneeded but committed' lands was a valid method of amending a UGB, without regard to the Goal 14 'need' factors." *Milne*, 46 Or LUBA at 223. Moreover, in refusing to resolve the parties' dispute and affirming LUBA's remand to the county for economic, social, environmental, and energy findings because those findings might bear on the issue of whether the property had been committed for urban uses, we clearly acknowledged that the "unneeded but committed" doctrine applied to that UGB amendment.

This court also acknowledged the "unneeded but committed" doctrine in *Baker v. Marion County*, 120 Or App 50, 852 P2d 254 (1993). In that case, the petitioner sought review of LUBA's order affirming the county's denial of his requested UGB amendment. The petitioner

argued that, even if his proposal was unsupported by a demonstration of Goal 14's need factors, LUBA should have considered Goal 14's locational factors and, under *City of Salem* and *Halvorson*, should have concluded that the land was committed to urban uses. In other words, the petitioner asserted that the county should have amended its UGB because the land was "unneeded but committed." This court concluded that the petitioner had not asserted before LUBA that the "unneeded but committed" doctrine applied, because he had not raised the issue whether the land was committed to urban uses. We concluded:

"[P]etitioner appears to understand *City of Salem* * * * and *Halvorson* * * * as holding that the locational factors must be applied to and can form a basis, irrespective of commitment, for approving a UGB proposal that does not satisfy the need factors. He is not correct. We made it clear in *City of Salem* that, as a rule, a UGB may contain only 'needed' land; the only exception is for land that goes beyond the amount needed but is committed to urban development or use. *City of Salem* and *Halvorson* do not imply that the locational factors can support the inclusion of 'unneeded' land in a UGB unless they show that it is committed."

Baker, 120 Or App at 56 (emphasis in original).

As in *Halvorson*, this court in *Baker* did not address the validity of the "unneeded but committed" doctrine in the context of a UGB amendment. However, we rejected the petitioner's argument that *City of Salem* and *Halvorson* required the approval of a UGB amendment where no need and no commitment are demonstrated but the amendment is supported by the locational factors of Goal 14. Based on our understanding of the "unneeded but committed" doctrine as explained in *City of Salem* and *Halvorson*, this court concluded that, because the petitioner had not raised the issue whether the land was committed to urban uses, he had not preserved the issue whether the "unneeded but committed" doctrine applied.

For those reasons, even though we have not expressly addressed the validity of the "unneeded but committed" doctrine, we have clearly acknowledged its existence and applicability to UGB amendments. Moreover, our understanding of the requirements of the doctrine drove our holdings in *Halvorson* and *Baker*. On further consideration of this issue, which is directly presented to us in this case, we conclude that this court was incorrect in extending the "unneeded but committed" doctrine to UGB amendments. The flaw in our extension of the "unneeded but committed" doctrine to such cases was that it simply was not supported by the language of Goal 14 or LCDC's Continuanance Order.

As we explained above, *see* ___ Or App at ___ (slip op at 11-12), LCDC created the "unneeded but committed" doctrine in the Continuanance Order for cases involving the *establishment* of a UGB. The Continuanance Order reflects LCDC's recognition that, in the context of establishing a boundary, preexisting urban development must be considered. LCDC did not, in that Continuanance Order or any other order of which we are aware, extend the "unneeded but committed" doctrine to cases involving a UGB *amendment*. Further, the text of Goal 14 unambiguously provides that "[e]stablishment and *change* shall" be based on all seven factors (*i.e.*, the two need factors and the five locational factors). *See* ___ Or App at

___ n 3 (quoting text of Goal 14) (emphasis added) (slip op at 4 n 3). Nothing in the text of Goal 14 authorizes the "unneeded but committed" doctrine as a mechanism by which a local government is relieved from the requirement of considering all of the seven Goal 14 factors in a decision to amend an existing UGB. Thus, neither the Continuance Order nor Goal 14 supports our extension of the "unneeded but committed" doctrine to UGB amendments.

Northwood asserts that this court's extension of the "unneeded but committed" doctrine to UGB amendments in *Halvorson* finds "doctrinal support" in the existence of various administrative rules concerning exceptions. See, e.g., OAR 660-004-0010(1)(c)(B); OAR 660-004-0022; OAR 660-014-0030; OAR 660-014-0040.⁽⁷⁾ There are two problems, however, with Northwood's reliance on those administrative rules. First, *Halvorson* and *Baker* purport to be based on our prior case law (e.g., *City of Salem*) that was based on the Continuance Order, rather than on any administrative rule promulgated by LCDC. Second, LCDC has the authority to promulgate rules and land use policies that it considers necessary to carry out ORS chapter 197, governing land use. ORS 197.040; see also ORS 197.736 (authorizing LCDC to amend and adopt rules to implement ORS 197.732, the statute governing goal exceptions). Thus, the rules Northwood cites reflect the exercise of LCDC's policymaking authority to specify the circumstances under which an exception to Goal 14 may be taken. Even if those rules permitted UGB amendments where the property was unneeded, their existence does not authorize this court to create its own "unneeded but committed" doctrine for UGB amendments, as we did in *Halvorson*. This court does not have authority to make such a policy decision. As petitioners indicate, "[a] judicially created exception process should not trump the process created through authorized rule making."

Relatedly, Northwood asserts that LUBA's order may be affirmed on different grounds--that is, compliance with OAR 660-014-0030, one of the rules pertaining to an exception standard.⁽⁸⁾ According to Northwood, "[n]either [it] nor the City directly addressed standards in OAR 660-014-0030 because they were relying on the holding in *Halvorson* and the doctrine of *stare decisis*." However, as Northwood explains, "[a]lthough they do not do so directly, the City's findings address the relevant standards in OAR 660-014-0030(3) and hence provide a separate basis for approval by this Court. If the standards in OAR 660-014-0030(5) should also apply * * *, the findings again are sufficient to show they are met." Northwood concludes that "[t]his court should not penalize [it and the city] for relying on [the court's] holding in *Halvorson*, which is directly on point" and that "[t]his is particularly so where the findings are adequate to show compliance with a standard that clearly leads to the same result."

Northwood does not address whether the requirements from *Outdoor Media Dimensions Inc.* have been satisfied. In particular, it does not explain the reason that the factual record would be materially the same as would have been developed had the issue of compliance with OAR 660-014-0030 been raised before the city. For that reason, we reject Northwood's right-for-the-wrong-reason argument.

Finally, Northwood argues that it and the city

"followed the requirements of Goal 14 and took the exception that Goal 14 requires to change an established UGB. The only thing that they did not do was apply Goal 14 factors 1 and 2 (although they 'considered' these 'factors' and explained why they were inapplicable in the application and findings * * *). Under *Halvorson*, that was not necessary."

Again, Northwood acknowledges that its argument is premised on the assumption that *Halvorson* was correctly decided. Because we have concluded that that premise is incorrect, we reject Northwood's argument that it in fact took an exception to Goal 14.

For all of those 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.

In sum, we conclude that LUBA's decision affirming the city's amendment to its UGB, which was based on *Halvorson*, was unlawful in substance. *See* ORS 197.850(9) (authorizing this court to reverse or remand an order if it finds "[t]he order to be unlawful in substance"). Because of our disposition, it is unnecessary to address the other arguments raised by the parties in petitioners' first assignment of error. It is also unnecessary for us to address petitioners' second assignment of error concerning whether the locational factors of Goal 14 were satisfied.

On petitions, reversed and remanded for reconsideration; cross-petition dismissed as moot.

1. As we have previously explained, under our holding in *Utsey*, this court must determine whether a petitioner has constitutional standing. For that reason, the petitioner must demonstrate his or her constitutional standing. At *this point*, as a prudential matter, a petitioner also should include citations to the portions of the record that support his or her contentions in the statement of the case in the opening brief. LUBA records may be quite lengthy, and citations to the appropriate portions of the record will assist this court in quickly determining whether the petitioner has standing.

We note, however, that a proposed amendment to the Oregon Rules of Appellate Procedure specifies a new procedure for identifying *in the petition for judicial review* evidence in the record that demonstrates a petitioner's constitutional standing and a new procedure for submitting evidence of constitutional standing *with the petition for judicial review*. If adopted, the new rule will be effective in January 2005.

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2. See *deParrie v. State of Oregon*, 133 Or App 613, 617, 893 P2d 541, rev den, 321 Or 560 (1995) (reasoning that, where at least one of the plaintiffs has standing and the legal positions of the other plaintiffs in the same action are exactly the same as the plaintiff with standing, "it is immaterial whether the other plaintiffs independently have standing"); *Thunderbird Motel v. City of Portland*, 40 Or App 697, 704, 596 P2d 994, rev den, 287 Or 409 (1979) (reasoning that, where one or more of the plaintiffs have standing to raise the matters presented on appeal, we will address the merits).

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3. Goal 14 concerns urbanization and provides, in pertinent part:

"Urban growth boundaries shall be established to identify and separate urbanizable land from rural land. Establishment and change of the boundaries shall be based upon considerations of the following 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;

"(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.

"The results of the above considerations shall be included in the comprehensive plan. In the case of a change of a boundary, a governing body proposing such change in the boundary separating urbanizable lands from rural land, shall follow the procedures and requirements as set forth in the Land Use Planning goal (Goal 2) for goal exceptions."

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4. Use of the term "exception" may be confusing in this context because it is a term of art. In *1000 Friends of Oregon v. LCDC (Curry Co.)*, 301 Or 447, 457, 724 P2d 268 (1986), the Supreme Court explained that, "[i]n order to allow land use which any goal would prohibit, a local government must take an 'exception' to that goal." Unlike an "exception," the "unneeded but committed" doctrine allows a local government to demonstrate compliance with Goal 14 without demonstrating that the need factors of the goal have been satisfied. Thus, throughout this opinion, we refer to the "unneeded but committed" doctrine.

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5. By footnote, LUBA also rejected petitioners' argument that this court's decision in *Halvorsonis* factually distinguishable because the land in that case had been committed to urban uses before Goal 14 was promulgated.

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6. Petitioners attached a copy of that order to their briefs to LUBA. Northwood moved to strike the order that was addressed in petitioners' brief. LUBA denied Northwood's motion and took official notice of the order. That ruling has not been challenged on review.

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7. OAR 660-004-0010(1)(c)(B), OAR 660-004-0022, OAR 660-014-0030, and OAR 660-014-0040 were amended effective May 2004. The parties did not inform us that the rules had been amended and have not asserted that those amendments affect the issues in this case. Because the content of the prior and current versions of the rules is irrelevant to our analysis of the issues in this case, we do not address the 2004 amendments.

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8. In *Outdoor Media Dimensions Inc. v. State of Oregon*, 331 Or 634, 659-60, 20 P3d 180 (2001), the Supreme Court explained the right-for-the-wrong-reason doctrine as follows:

"As developed by this court's decisions, the 'right for the wrong reason' principle permits a reviewing court--as a matter of discretion--to affirm the ruling of a lower court on an alternative basis when certain conditions are met. The first condition is that, if the question presented is not purely one of law, then the evidentiary record must be sufficient to support the proffered alternative basis for affirmance. That requires: (1) that the facts of record be sufficient to support the alternative basis for affirmance; (2) that the trial court's ruling be consistent with the view of the evidence under the alternative basis for affirmance; and (3) that the record materially be the same one that would have been developed had the prevailing party raised the alternative basis for affirmance below. In other words, even if the record contains evidence sufficient to support an alternative basis for affirmance, if the losing party might have created a *different* record below had the prevailing party raised that issue, and that record could affect the disposition of the issue, then we will not consider the alternative basis for affirmance. The second condition is that the decision of the lower court must be correct for a reason other than that upon which the lower court relied. Third, and finally, the reasons for the lower court's decision must be either (a) erroneous or (b) in the reviewing court's estimation, unnecessary in light of the alternative basis for affirmance."

(Emphasis in original.)

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**NORTHWOOD INVESTMENT NEIGHBORHOOD
MEETING NOTES
March 23, 2005**

Mark Greenfield, Attorney for Northwood Investments (hereafter "Northwood") opened the meeting at 7:00 PM at the Canby Methodist Church. Present from Northwood were Ron Tatone, Fred Kahut and Curt McLeod, three of the five Northwood owners. Approximately 30 neighbors were present, most of whom were familiar with Northwood's proposal.

Mr. Greenfield described the property and gave a history of the events that have transpired since Northwood last appeared before the City on this matter. He said that the property consists of about 30 acres that is inside Canby's city limits but outside the City's urban growth boundary (UGB). He stated that the property is an island of rural land entirely surrounded by the UGB. He then summarized the history of the application, mentioning the City Council's decision to approve the application, the Land Use Board of Appeals' (LUBA) order affirming the City's action, and the Court of Appeals decision remanding LUBA's order. Mr. Greenfield emphasized language in the Court of Appeals decision, also cited in LUBA's opinion, stating that while Northwood and the City could not rely on the "unneeded but committed" doctrine to justify a UGB expansion, it could reach the same result through other grounds, including an exception to Goal 14.

Mr. Greenfield stated that on remand, Northwood will follow the Court's suggestion and take a Goal 14 exception. He explained that an exception is a provision of law authorized by state statute that allows one to do something that the law otherwise does not permit. An exception to Goal 14 would allow land to be developed with urban uses and come inside the urban growth boundary without a showing of "need" for more land inside the UGB.

Mr. Greenfield explained the two step approach that Northwood is taking. First, it is taking exceptions to Goals 14 (Urbanization), 11 (Public Facilities) and 3 (Agricultural Land) to allow urban development on rural land on the basis that the property is "irrevocably committed" to urban development. He discussed the standards in LCDC's rule that permit Goal 14 exceptions based on commitment to urban development. He said that the facts that the property is inside city limits, surrounded by the UGB, and surrounded by urban scale development and services, all are indicative that the property is committed to urban development.

Second, Northwood is taking a Goal 14 exception to justify bringing the land inside the UGB in the absence of need for more land inside the UGB, based on its commitment to urban development and the fact that it is surrounded by urban land. Mr. Greenfield added that upon being added to the UGB, the property would go through a master planning process prior to its being developed. He showed several different conceptual drawings of what the development might look like. He said that the master planning process would be handled through the City working with the neighborhood.

Questions and Answers:

A question was asked regarding the master plan for schools and facilities. Mr. Greenfield answered that school facilities will be adequate with the recently passed bond measure, and that residents of the new development would pay taxes that contribute to the schools. He mentioned a recent statement by the School Superintendent indicating that adequate school capacity is available for the next five or six years.

Several questions were asked regarding Northwood's timetable for development, the nature of the conceptual drawings, and traffic impacts. Northwood responded that first it needed to get authorization to put urban uses at the site. If that happens, the master planning process would begin, probably later this year or next year. Development would occur in at least two phases, maybe three. If developed, the second phase probably would not begin until the first phase was about 2/3 built out. All of the housing would be low density housing, with total build-out likely to be somewhere from just below 100 units to over 113, depending on which concept plan is chosen.

Regarding the road network serving these houses, some drawings show 10th and 12th Streets being extended. 10th, Grant, Birch, Territorial and Knights Bridge would be the principal roads providing access to and from this area. Two years ago, the question arose whether Territorial Road had adequate capacity to accommodate this development, and Canby went back and looked at the numbers and determined that Territorial did in fact have adequate capacity for this development.

A question was raised regarding green space appearing on the concept plans. Northwood explained that each concept includes land for parks, which is marked in green.

A question arose as to the procedure before the City on remand. Mr. Greenfield explained that because this matter was remanded to the City, what will be coming before the City is the changes made to the application to comply with the remand from LUBA and the Court of Appeals. He said that the record of the previous application will remain in place and that everything else is supplemental testimony. He added that because the decision was remanded for further consideration, and not denied, the neighborhood on remand can address whether Northwood complies with the applicable new standards. However, his opinion is that matters that were previously appealed unsuccessfully cannot be raised again in this remand proceeding.

One area resident indicated that IFA is looking for more property in the Canby area and might be interested in leasing a portion of the Northwood property. Northwood indicated that IFA previously walked away from a lease so Northwood does not care to do business with IFA. Another resident stated that 91 percent of the neighborhood wants the property to remain farm land. Mr. Greenfield replied that Northwood wants to develop the property and that in terms of farmland protection, it makes more sense to protect other agricultural lands that are not surrounded by urban development.

A question was raised about the ability to convert park land to urban development. Mr. Greenfield explained that where property is designated as a park in a comprehensive plan, it can be difficult to change that designation to another use. However, the Northwood property is not a public park. Because it is not publicly owned, it is not protected from development.

A neighbor stated that development is bad for the environment. Mr. Greenfield responded that state laws are written in a way that allows development and that Oregon's land use system is essentially one that manages growth. He added that if state laws were written to prohibit growth, the state might see a measure like Ballot Measure 37 that destroyed all farmland protection.

A question was raised whether Northwood planned to plow the field this year. Northwood responded that it will do whatever is required to comply with city ordinances to keep the weeds or grass down due to fire hazard. Some concerns were raised that mowing should occur at a time when less dust would be stirred up.

One area resident stated that he couldn't understand why there is so much controversy over this proposal, since this is private land and people have a right to develop private land. He said he didn't see the neighborhood lining up at the tax office to pay the taxes on this property. Mr. Greenfield responded that private property owners have the right to ask the City to take actions that would allow their land to develop, and that is what Northwood is doing here.

The meeting ended with a neighbor stating that the land should not be developed because it is outside the urban growth boundary and because Northwood bought it with that knowledge. Northwood replied that it has been 16 years since they bought the land and that many things have happened in that time, including IFA breaking the lease and incidents of trespass and vandalism.

Mr. Greenfield thanked those in attendance for coming to this meeting. He acknowledged that many in the neighborhood do not want to see the area convert from farmland to residential development, and that those people and Northwood will likely continue to go their separate ways when this matter comes back before the City, with Northwood seeking approval of its application and some neighbors opposing it.

The meeting ended around 8:30 PM.

**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**

On Remand from the Oregon Court of Appeals
and Land Use Board of Appeals

February, 2005

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Prepared by:

Northwood Investments

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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.

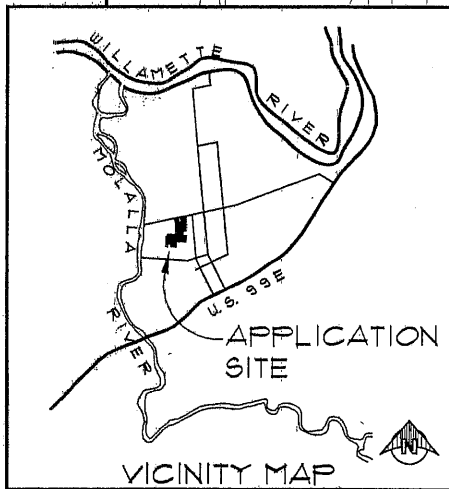
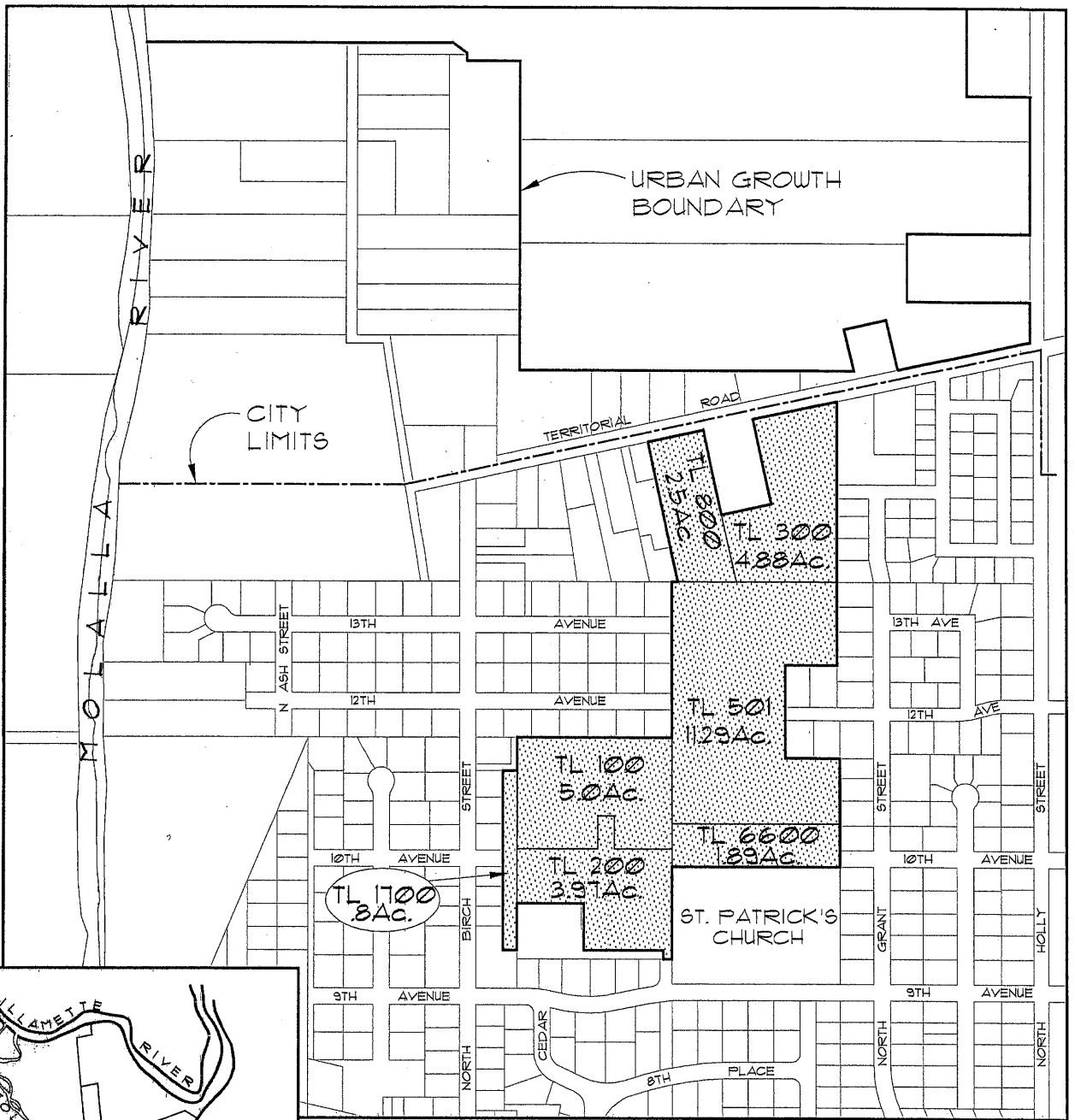
Upon remand from the Land Use Board of Appeals¹, Northwood Investments² modifies its earlier application to request City of Canby approval of the following amendments to the City of Canby Comprehensive Plan text and map and to the City of Canby Zoning Map:

- 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).

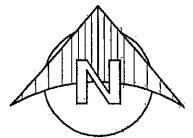
The Northwood property consists of Tax Lot 800 of Tax Map 3-1E-32AA; Tax Lots 100, 200 and 1700 of Tax Map 3-1E-32AD; Tax Lots 300 and 501 of Tax Map 3-1E-33BB; and Tax Lot 6600 of Tax Map 3-1E-33BC. **See Exhibit 1, Site and Vicinity Map.** Authorization of urban uses on this property is appropriate 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.**

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

² 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

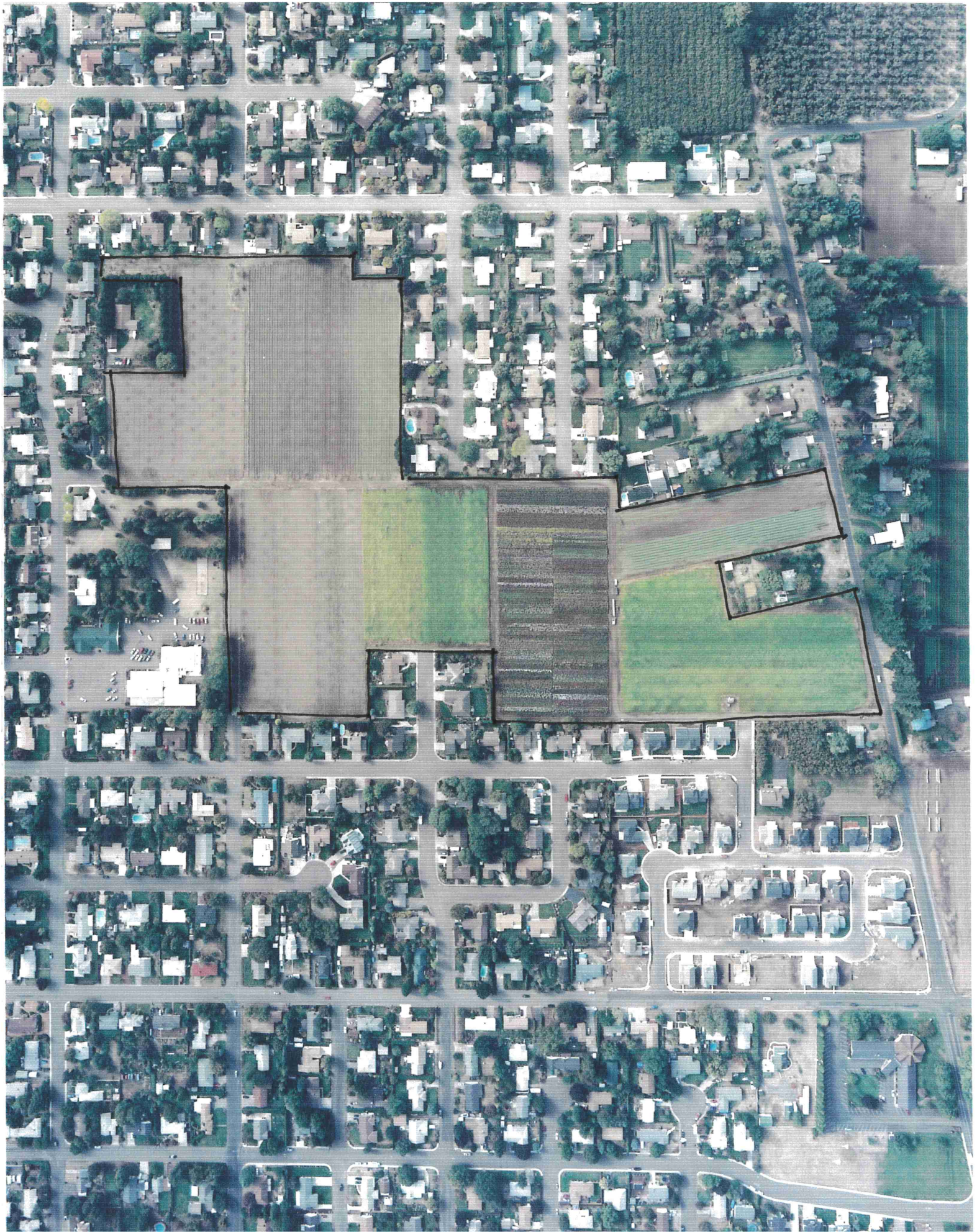


1"=600'±

CITY OF CANBY
COMPREHENSIVE PLAN AMENDMENT

NORTHWOOD INVESTMENTS
CANBY, OREGON 97103

JANUARY 2003





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.

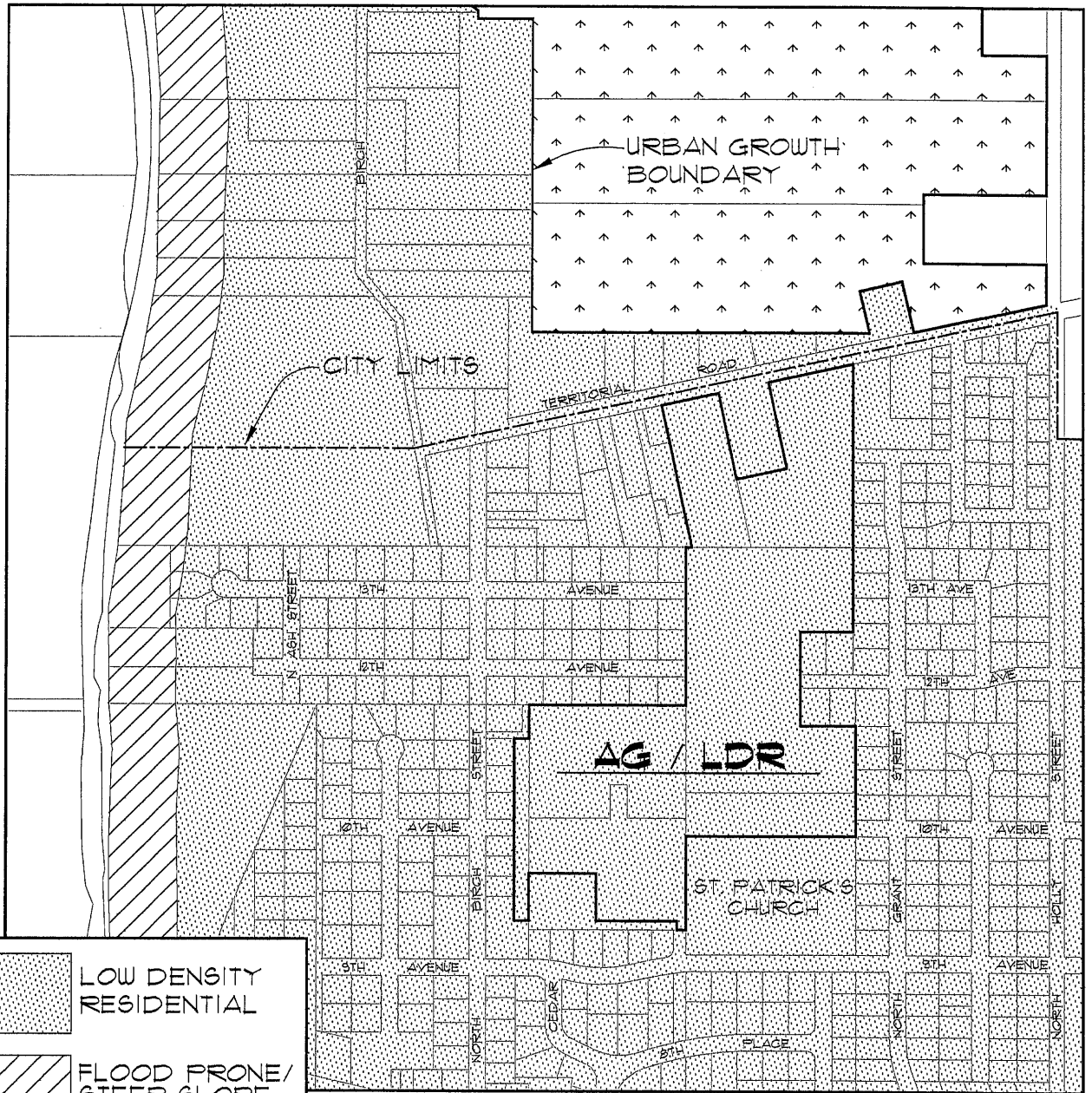
NW Territorial Road is a designated City neighborhood connector. See City of Canby Transportation System Plan, Figure 4-2, Major Street System Map.³ The nearest principal roadways to the west, south and east are, respectively, NW Birch Street, NW 9th Avenue, and NW Grant Street.

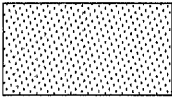


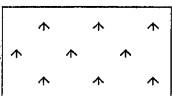
The City's UGB currently follows a line north of a row of houses that are located on the north side of Territorial Road. As a result of development within this boundary, the Northwood property has become a rural "island" of land surrounded by the City's UGB. See Exhibit 2. The property currently is designated 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.

³ This map is appended to this application in Attachment D.



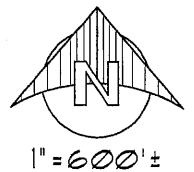
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	FLOOD PRONE/ STEEP SLOPE OVERLAY
	AGRICULTURAL (CITY)
	AGRICULTURAL (COUNTY)

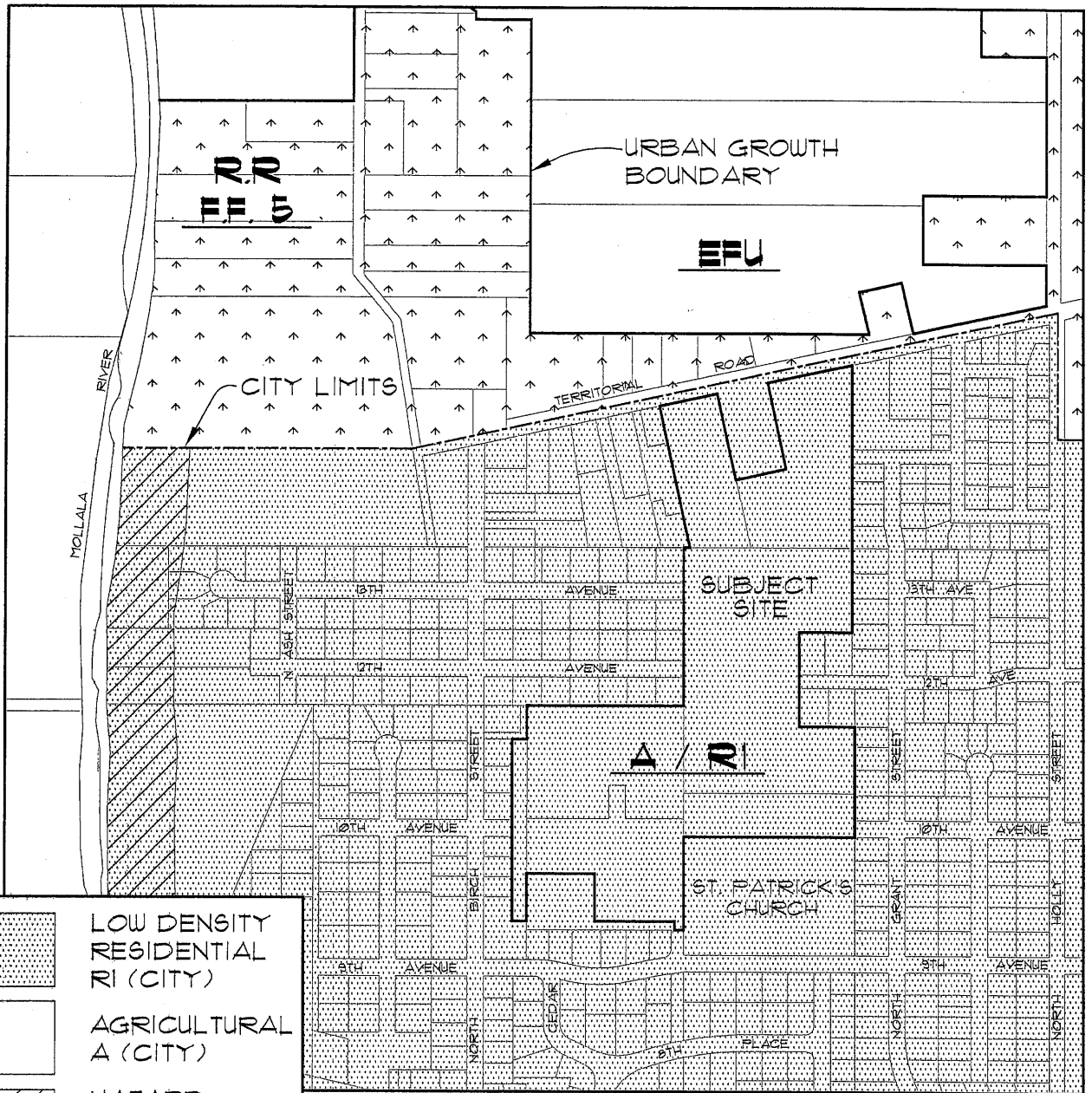
EXISTING and PROPOSED COMPREHENSIVE PLAN DESIGNATIONS

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

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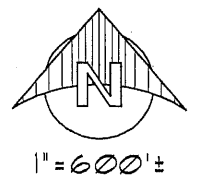
	LOW DENSITY RESIDENTIAL RI (CITY)
	AGRICULTURAL A (CITY)
	HAZARD OVERLAY (CITY)
	COUNTY RR. - FF. 5
	COUNTY EFU

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.⁴

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

⁴ 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).⁴ 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 9th 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 16.04.050⁵ 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 10th Avenue, NW 12th Avenue and NW 13th Avenue, all of which connect to NW Birch Street. On the east side, the stub streets are NW 10th Avenue, NW 12th Avenue, and NW 14th 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 9th 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 10th Avenue as a neighborhood connector. NW 12th Avenue, NW 13th Avenue, NW 14th 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

⁵ 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.

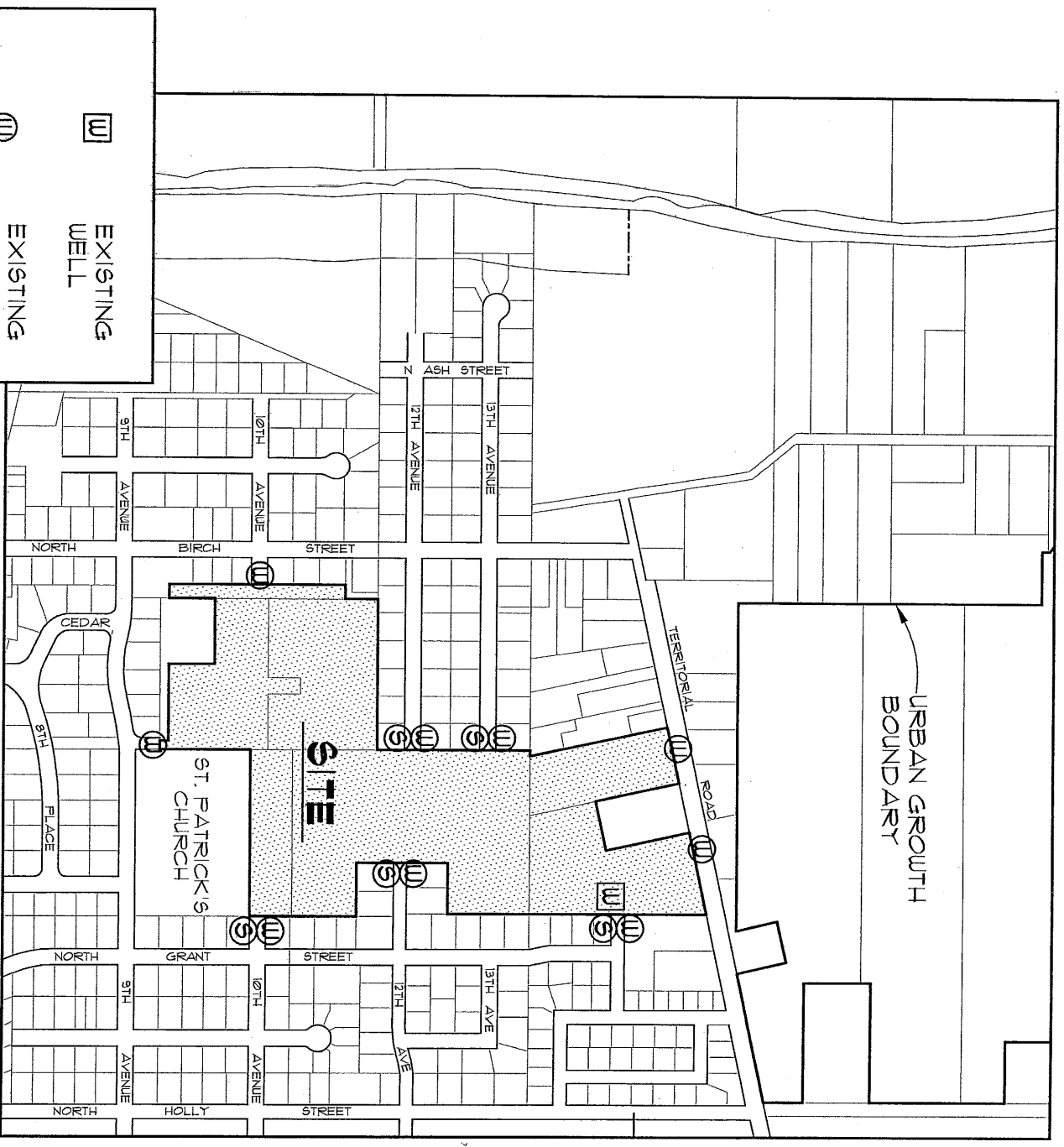
Sanitary sewer collection lines abut the Northwood property at numerous locations along its west, south and east sides. See Exhibit 5. These lines, in conjunction with the extension of the main line in NW Territorial Road, will provide full gravity sanitary sewer service to the property. Along Territorial 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).

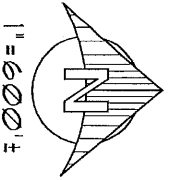
4. Miscellaneous Services.

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 10th 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.



EXISTING WATER and SEWER FACILITIES

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



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 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.⁶ 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 10th 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 10th Avenue, NW 12th Avenue and NW 13th Avenue, all of which connect to NW Birch Street. On the east side, the stub streets are NW 10th Avenue, NW 12th Avenue, and NW 14th 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 9th 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 10th Avenue as a neighborhood connector. NW 12th Avenue, NW 13th Avenue, NW 14th Avenue and NW Douglas Street all are local roads. See Attachment D.

⁶ 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 10th 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.⁷

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;

⁷ 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.⁸

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.

⁸ 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.

IV. Compliance with Other Applicable Criteria.

A. Consistency with Other Statewide Planning Goals.

The other statewide planning goals that are applicable to this application are Goals 1 (Citizen Involvement), 2 (Land Use Planning), 10 (Housing), 11 (Public Facilities and Services), 12 (Transportation) and 13 (Energy Conservation).

Goal 1 requires opportunity for citizens to be involved in all phases of the planning process. Generally, Goal 1 is satisfied when a local government follows the public involvement procedures set out in its acknowledged comprehensive plan and land use regulations. For proposed quasi-judicial comprehensive plan and zoning amendments including goal exceptions, UGB amendments, and plan and zoning map amendments, those procedures include opportunity for public review and comment in proceedings before the Planning Commission and the City Council. Here, consistency with those procedures, together with notice to DLCD as required by ORS 197.610 and 197.732(5), results in compliance with Goal 1.

Goal 2, Part I requires that actions related to land use be consistent with acknowledged comprehensive plans of cities and counties. The proposed amendments' consistency with applicable provisions of the City of Canby's Comprehensive Plan is demonstrated below in Section IV.B of this application.

Goal 2, Part I also requires coordination with affected governments and agencies, evaluation of alternatives, and an adequate factual base. In preparing this application, the applicant contacted DLCD, which informed the applicant that this application makes sense and that it has no objection to this proposal. Also, as a part of the UGB amendment process, service providers will be contacted for their input on the proposal.

Typically, a UGB amendment requires coordination between a city and a county because the property under consideration is unincorporated land. Here, because the Northwood property is incorporated land, *i.e.* it already lies within Canby's city limits, this

need for coordination is less certain. Still, as noted below, the City's Comprehensive Plan requires such coordination, and this can be achieved during the review proceeding when the City mails out notice of the application. The applicant notes that when this matter arose in 1993, Clackamas County submitted a letter stating that it had no objections to the proposed UGB amendment.

Because the Goal 14 exceptions and UGB amendment are based on the Northwood property's irrevocable commitment to urban uses and urban scale development, there is no need for an analysis of alternatives as would normally be required by Goal 2. And this application, together with its supporting documents and evidence submitted in support of the proposed plan amendments, provide an adequate factual base to support the proposed plan amendments. For these reasons, Goal 2, Part I is met.

Goal 2, Part II, which regulates Goal exceptions, is met for the reasons stated above in Section III of this application.

Goal 10 requires local governments to do their fair share to provide for the housing needs of people of all income levels. The designation and zoning of the Northwood property as Low Density Residential (R-1) is consistent with this goal while remaining compatible with surrounding residential development.

Goal 11 requires cities to provide for the timely, orderly and efficient provision of public facilities and services. As noted, sewer and water lines abut the Northwood property at numerous locations, facilitating the timely, orderly and efficient provision of those services to the site. Approval of these exceptions would allow for installation of a water line running north to south that would increase service to all residents north of Knights Bridge Road and south of Territorial Road. It also would allow for a looped water system that would increase the gallons per minute available to fight fires. Also, with adoption of the City's new parks ordinance, development of the site for residential uses would provide additional park area for the City. It also would provide for improved roadway connections that improve police, fire, emergency vehicle and school bus service to the area. Residential development at this location also would contribute revenues to the School District.

The administrative rule implementing **Goal 12** provides that amendments to a comprehensive plan that "significantly affect a transportation facility" must assure that the allowed land uses are consistent with the identified function, capacity and performance standards of the facility. See OAR 6609-012-0060(1). Here, the facility likely to be affected through development of the property is Territorial Road, which is a designated neighborhood connector.

As relevant to this application, an amendment "significantly affects" a transportation facility if it allows types or levels of land uses which would result in levels of travel or access that are inconsistent with the functional classification of the facility, or if it would reduce the performance standards of the facility (i.e., level or service, volume

to capacity ratio) below the minimum acceptable level identified in the city's transportation system plan.

Here, the proposed UGB amendment and plan and zoning map amendments will not "significantly affect" a transportation facility because they will not result in levels of travel or access that are inconsistent with roadway facility functional classifications or that reduce the performance standards of those facilities. Indeed, these amendments will facilitate improvements to existing roadway facilities by improving Territorial Road to meet the standards of a neighborhood connector and by allowing streets like NW 10th and 12th Avenues to be connected through the property, thereby reducing out of direction travel in the area and improving access for local residents and police, fire and emergency service vehicles and school buses. Also, through these connections, NW 10th Avenue can finally achieve its identified function as a neighborhood connector street extending 16 blocks from N Ash Street to N Pine Street.

Goal 13 encourages the development of land in a manner that maximizes the conservation of all forms of energy. The proposed plan and zoning amendments are consistent with Goal 13 because they would provide street connections that eliminate out of direction travel in the area, and because they would allow for future utilization of public facilities that are already located in the area and can serve future development at the site.

B. Consistency with City of Canby Comprehensive Plan Requirements.

In addition to compliance with the statewide planning goals, comprehensive plan and land use regulation amendments also must comply with the unamended Comprehensive Plan provisions.

The City of Canby Comprehensive Plan policies identified below are the policies that are relevant and applicable to the comprehensive plan text and the plan and zoning map amendments identified in this application. No other policies apply. The application must demonstrate compliance with these policies to gain approval.

It is noted that some policies use language that is more aspirational or general in nature, encouraging or supporting an action or result rather than requiring that action or result. Other policies may use language directing the City, as opposed to an applicant, to perform certain actions. Because these policies do not mandate a specific result, and because they often involve actions beyond the applicant's control, these policies are deemed not to constitute applicable review criteria upon which approval or denial of an application is based.

Citizen Involvement Element. The Citizen Involvement Goal is to provide the opportunity for citizen involvement throughout the planning process. For quasi-judicial plan amendment applications, opportunity for citizen involvement is provided through the public notice and hearing process. Because that process will be followed during the City's review of this application, the Citizen Involvement Goal will be met.

Urban Growth Element. The Urban Growth goals are to preserve and maintain designated agricultural and forest lands by protecting them from urbanization, and to provide adequate urbanizable area for the growth of the city. At first blush, this application would appear to be inconsistent with the first goal, since it does not preserve agricultural land from urbanization. However, as explained in the Introduction to the Comprehensive Plan:

"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 example, 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."

Here, the applicant has demonstrated why authorizing urban development on the property and including it inside the UGB outweighs retaining its agricultural designation and keeping it outside the UGB. The applicant also has provided the legal basis for the City to take such action under circumstances where surrounding development irrevocably commits property to urban uses.

The Comprehensive Plan states that Canby's UGB is based upon the orderly provision of public facilities and services. Here, the subject site, more so than any other urbanizable site, facilitates the orderly, efficient and cost effective extension of urban services due to their immediate proximity to the site.

Policy 1 provides for the City to coordinate its growth and development with Clackamas County. The City can and will do so by notifying the County of this proposal and providing the County with an opportunity to offer testimony on the application. Policy 2 directs the City to provide opportunity for amendments to the UGB where warranted by unforeseen changes in circumstances. Given the nature of the circumstance present here, *i.e.* commitment to urban uses, it is unlikely that Policy 2 applies. However, it is noted that urban development in Canby over time has impacted the Northwood property such that the property owner is precluded from engaging in the full range of agricultural activities and accepted farming practices. The property has experienced incidents of trespass and vandalism that impede agricultural production. Surrounding urban scale residential development has created increased difficulty for Northwood and its agricultural lessees in terms of chemical applications, obtaining agricultural liability insurance, and the like. Overall, the ability to farm this property is more difficult now than it was in the early 1980's when the Comprehensive Plan was

adopted. This change in circumstances warrants authorization of urban uses on the property and its inclusion inside the UGB. Indeed, even the state's land use agency, DLCDC, does not object to this proposal.

Policy 3 directs the City to discourage urban development of properties until they have been annexed to the City and provided with all necessary urban services. The Northwood property already is part of the City, so the annexation requirement is met. Moreover, the Northwood property has immediate access to all necessary urban services, including sewer, water, streets, electricity, natural gas, telephone, cable, and police and fire services, due to the build-out of development on the west, south and east sides of the property and the presence of Territorial Road on the north side.

In its discussion of locational factors, the Plan states that the subject site, referred to as the Industrial Forestry Association property, was deleted from the UGB "at the urging of LCDC staff because it is neither 'needed for' nor 'committed to' urban development." Today, as we approach the 20 year anniversary of the original comprehensive plan acknowledgment, LCDC's staff has informed Northwood Investments that it agrees that the applicant's property is committed to urban development and that including this site inside the UGB makes sense.

Land Use Element. The Land Use Element goal is to guide the development and uses of land so that they are orderly, efficient, aesthetically pleasing, and suitably related to one another. This application is consistent with the Land Use Element goal because (1) residential development of the site is consistent and compatible with residential and church development on adjoining properties; and (2) the presence of water, sewer and other services at numerous locations abutting the property supports and facilitates an orderly and efficient form of development at the site. Concerns regarding the aesthetic suitability of future residential development on the site can be determined through the development review process when the property owner applies for development approval. Also, designating and zoning this property for residential development will ensure that development on the site is suitably related to the surrounding residential development.

Policy 1 directs the City to guide the course of growth and development so as to separate conflicting or incompatible uses while grouping compatible uses. However, at pages 16 and 21, the Comprehensive Plan identifies agricultural and urban residential uses as incompatible. Consequently, the current arrangement of land use in the area is not "suitably related to one another." The background section of the Comprehensive Plan 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. These conflicts will continue to occur and would become even more pronounced if Northwood Investments or their lessees, 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 neighborhood. By designating and zoning the property for R-1 low density residential development, future development on this land will be compatible with the adjoining existing uses.

Policy 2 requires the City to encourage a general increase in the intensity and density of permitted development to minimize urban sprawl. The proposed R-1 low density residential zoning provides for residential development at a density or intensity that is consistent with the surrounding developed properties, clearly recognized as urban, and deemed appropriate for single family housing inside urban growth boundaries. In contrast, the density of one dwelling per five acres that is allowed under the currently applied Agriculture zone discourages efficient development and contributes to sprawl.

Because the site is an island surrounded by urban land, its development for low density residential use will not contribute to urban sprawl. Rather, it will be "infill" and will delay the City's need to extend urban services onto agricultural lands at the fringe of its UGB.

Policy 3 discourages development that results in an overburdening of community public services. Residential development of this property will not have that result. To the contrary, the roadway connections supported by this application will improve community public services, in particular police, fire, emergency service and school bus services in the immediate area. Moreover, with the new parks acquisition ordinance, the property will provide additional park space to help meet City needs. In terms of schools, the Canby School District Superintendent wrote to the City prior to the initial application that it can handle additional student growth and that it needs student growth to bring in more revenues. In the Superintendent's words, "No growth actually exacerbates our present funding problems." See Attachment G. Subsequently, in the November 2004 election, city residents passed a bond measure to build a new school.

Policy 4 requires the City to limit development in areas identified as having an unacceptable level of risk due to natural hazards. As previously noted, there are no natural hazards on this site. Policy 5 requires the City to use its Land Use Map as the basis for zoning and other planning decisions. This application would amend the Land Use Map to redesignate the property from Agricultural to Low Density Residential. If this application is approved, it would implement this policy.

Policy 6 is addressed in Section IV.C below, in the analysis of compliance with the City's zoning ordinance.

Environmental Concerns Element. The goals of this element are to protect identified natural and historic properties; to prevent air, water, land and noise pollution; and to protect lives and property from natural hazards. The current application does not involve lands identified as natural or historic resource sites, and it does not contain any hazards to development. Development for uses like residential uses should not bring

the City out of compliance with state or federal air, water, land or noise pollution standards.

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. Because the Northwood property is not yet inside the UGB, this policy does not apply. Still, this application is consistent with that policy. The property's location abutting residential subdivisions and its immediate access to urban services make it more desirable and appropriate than other agricultural lands for residential development. Further, most agricultural uses are no longer viable or practicable on the subject site, and the surrounding development impedes full utilization of accepted farming practices. For example, agricultural uses that create noise, dust or odor would not be compatible with the adjoining residential uses. Several area farmers have indicated that there are too many conflicts with this property to warrant any substantial investment in agriculture. And incidents of trespass, harassment, threats and vandalism have been experienced at the site.

Policy 1-R-B directs the City to encourage urbanization in the least productive agricultural area within the UGB as a first priority. Again, the Northwood property is not yet within the UGB, so this policy might not apply. However, if the UGB is amended to include the subject site, then this site can develop in an efficient and cost effective manner with little loss in terms of agricultural productivity, due to its circumstance of being committed to urban uses and the inability to engage in a full range of accepted farming practices on this property. Also, compared to this property, the agricultural lands surrounding the City are of equal or better productivity in terms of their soils. See Attachment F.

Policy 2-R calls for protection of surface and ground water resources. There are no streams, creeks or watercourses on the Northwood property. The site is approximately 8,000 feet south of the Willamette River and 2,000 feet east of the Molalla River and its development should have no adverse impact on those rivers. There is a well on the site, of high quality and quantity, which could be used in conjunction with a planned development or for other purposes. Overall, residential development on the site is not a threat to the quality or quantity of the City's water resources.

Policy 3-R directs Canby to require that all existing and future development activities comply with air, water and land pollution standards. The current application proposed changes to the plan and zoning designations of the site rather than development of the site. When development is proposed for the property, the City can ensure that this policy is satisfied.

Policy 4-R directs the City to mitigate, wherever possible, noise pollution generated by new developments. Again, this application does not involve a proposal to develop the land. This issue can be addressed when a subdivision or planned development application is submitted to the City. Still, it is noted that future

development of the property for residential uses would generate the same kinds of noise generated by the surrounding residential developments, and as such should not create adverse impacts.

Policy 7-R directs the City to seek to improve the overall scenic and aesthetic qualities of the City. The City can do this by providing park area within the site consistent with its park acquisition ordinance. The scenic and aesthetic qualities of the City also can be addressed at the time the City reviews a development application for the site.

Policy 8-R directs the City to seek to preserve and maintain open space where appropriate and where compatible with other land uses. As is made clear by the measures implementing this policy, this policy is applied during the development review process. Presently, some area neighbors may consider the site to be open space based on the fact it is not currently developed for urban uses. However, this policy does not preclude the property owner from seeking to allow urban development on the property. If the property is proposed for residential development, the City can require that a portion of the site be dedicated for park use as its ordinances so provide. Indeed, the park plan included in the Comprehensive Plan recommends locating a neighborhood park in the northeast portion of this site. Open space through dedicated park area would be appropriate, consistent with this policy.

Transportation Element. The Transportation Element goal is to develop and maintain a transportation system that is safe, convenient and economical. The current transportation in the vicinity of the subject site is neither convenient nor economical because it often requires area residents to engage in out of direction travel.

If this application is approved, then the streets that are currently stubbed at the property line can be extended to provide convenient and economical travel for area residents, consistent with Policy 2. Sidewalks can be provided within the site, consistent with Policy 4. It also should be noted that extending these streets through the property will provide safer and more convenient access for police, fire and emergency services vehicles and for school buses, which is consistent with Policy 6.

Public Facilities and Services Element. The goal of this element is to assure the provision of a full range of public facilities and services to meet the needs of the residents and property owners of Canby. As previously noted, a full range of services are readily available to the Northwood property, due mostly to the presence of development on surrounding lands. Consequently, any future development of this site would comply with this goal.

Economic Element. The goal of this element is to diversify and improve the economy of the City of Canby. While it may be unlikely that the Northwood property would be designated and zoned for commercial or industrial use, the construction of new housing or other structures on the site at some future time would help to contribute to the City's economy.

Policy 4 says that Canby shall consider agricultural operations which contribute to the local economy as part of the economic base of the community and shall seek to maintain these as viable economic operations. The Northwood property has contributed in a small way to the local economy by providing land for dahlia bulb and some row crop production. However, with the development of Territorial Estates, the property is now disconnected from all other farmland and fully surrounded by urban development. With such residential development surrounding the site, it is even more difficult to engage in farming practices that expose adjoining properties to noise, dust, odor, sprays, or other adverse aspects of agriculture. And with the presence of residential development on all sides, the potential for trespass, vandalism or theft increases significantly. Indeed, the property has experienced such activities. Under the circumstances, it makes more sense to convert this land to urban uses rather than other lands less constrained in terms of the range of farming activities available to them and the ability to engage in a full range of accepted farming practices.

Housing Element. The goal of the Housing Element is to provide for the housing needs of the citizens of Canby. Redesignating and rezoning the property Low Density Residential would make this land available for housing and help to provide for the housing needs of Canby residents.

Housing Policies 2 and 3 require a gradual increase in housing density and coordination of higher housing densities with the ability of the City to provide utilities, public facilities and a functional transportation system. These policies are directory to the City and relate to where different intensities of residential development should be allowed. Here, the Low Density Residential designation and R-1 zone are recommended primarily to ensure compatibility with already existing development patterns on the west, south and east sides of the property.

Energy Conservation. The Energy Conservation goal is to conserve energy and encourage the use of renewable resources in place of non-renewable resources. These amendments are consistent with this goal because they would allow urbanization to occur on land that easily can be provided with services from many directions. Because public facilities and services are currently available at the edge of the property, less energy would be expended in their extension onto the site, as opposed to other undeveloped lands. And the connection of streets stubbed at the property line would facilitate more direct travel, which saves energy and time and helps implement Policy 4.

For all of these reasons, this application is consistent with the City of Canby Comprehensive Plan.

C. Consistency with City of Canby Zoning Ordinance Requirements.

Comprehensive Plan Amendments.

Section 16.88.180 of the City of Canby Planning and Development Code sets out five criteria applicable to any legislative plan amendment, and two criteria applicable to any quasi-judicial plan amendment. Because the proposed amendment to the Canby Comprehensive Plan is quasi-judicial, the two criteria in Section 16.88.180(E) apply.

Section 16.88.180(E) provides that in judging whether or not to approve a quasi-judicial plan amendment, the Planning Commission and City Council shall consider two factors. Factor 1 is the remainder of the Comprehensive Plan and plans and policies of the County, State and local districts, in order to preserve functions and local aspects of land conservation and development. Above, the applicant has demonstrated how this proposal is consistent with the unamended portions of the Canby Comprehensive Plan. The applicant also has indicated DLCD support for this proposal, and support also has been shown by City service providers due to improved connectivity. Altogether, this warrants approval of urban uses on this land and its inclusion inside the City's urban growth boundary.

Factor 2 requires consideration whether all required public facilities and services exist, or will be provided concurrent with the anticipated development of the area. As previously noted in this application, there are eight streets at the edge of this property. These streets include sewer and water lines that can be extended onto the subject site. Moreover, electric, gas, telephone and cable services are readily available to the site and can be provided concurrent with development. Police, fire and emergency services already are available to the site, and school service can be provided.

Amendments to Zoning Map.

Chapter 16.54 governs amendments to the zoning map. Section 16.54.010 authorizes the owner of property or his authorized agent to apply for a zoning map amendment. This application is filed by and on behalf of the property owner, Northwood Investments. Northwood Investment's authorized agent in this matter is attorney Mark J. Greenfield, whose address is 495 NW Greenleaf Road, Portland Oregon 97229, telephone 503-227-2979.

Section 16.54.030 requires a public hearing, which will be held as a part of the City's consideration of this application. Section 16.54.040 identifies the standards and criteria that the City must consider when addressing an application for a zoning map amendment. Under Subsection A of this section, the Planning Commission and the City Council must consider the Canby Comprehensive Plan, giving special attention to Land Use Element Policy 6 and its implementation measures, and to the plans and policies of the county, state and local districts to preserve functions and local aspects of land conservation and development.

Subsection A is satisfied because the application is consistent with the Comprehensive Plan for the reasons set out above. Subsection A requires that special attention be given to Land Use Policy 6. That policy recognizes the unique character of certain areas of the City and establishes special requirements for those areas. Since

the original application, the City amended Land Use Policy 6 to include the Northwood property. Under this amendment, master planning efforts are required prior to development of the site. This master planning can and will occur in conjunction with the submittal of a development application.

Subsection B requires consideration of whether all required public facilities and 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 requested new zoning designation. As discussed in detail above, the site is, in essence, an infill site. See Exhibit 2. It is surrounded by urban development that is served with urban facilities and services, including public sewer and water. See Exhibit 5. These services extend right up to the property at many locations. Extension of these services onto the property would be orderly and economical. Moreover, the improvement of Territorial Road and NW 10th Avenue would accomplish the transportation system plan, provide for better circulation in this neighborhood, and help level out traffic volumes on local streets. Previously an application to bring this land inside the UGB received strong support from City service providers. It is expected that City service providers will continue to support this application, as it allows them to handle their duties more efficiently and to better protect the health, safety and welfare of area residents. For these reasons, subsection B is satisfied.

V. Conclusions.

This application proposes to authorize urban development on the Northwood property pursuant to exceptions to Goals 14, 11 and 3 on the ground that the site is committed to urban use. It also proposed to amend Canby's UGB, pursuant to a Goal 14 exception. The existing presence of urban-scale residential subdivisions on the west, south and east sides of the property, together with residential development on the north side of Territorial Road and the extension of streets and urban services to the edge of the site at many locations, indicate that this property is irrevocably committed to urban development. Indeed, it would be difficult to find a surrounding development pattern more incompatible with continued agricultural use and the exercise of a full range of accepted farming practices.

In its Comprehensive Plan, the City of Canby recognizes the importance of compatibility of proposed urban uses with nearby agricultural activities. As stated on page 21:

"It is extremely difficult to avoid conflicts between residential developments 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." (Emphasis added.)

The nature of these conflicts is addressed in more detail on Page 16 of the Comprehensive Plan. There, it is written:

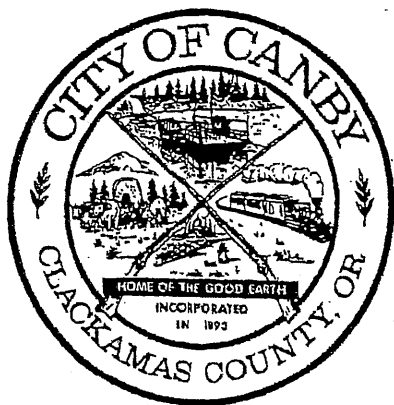
"* * *. Unfortunately, residential land uses are generally not compatible with agricultural pursuits. Homeowners often complain about the dust or odors produced on nearby farms, and farmers complain about the harassment, trespassing and vandalism which often comes from nearby residents. In some cases, courts have even found farms to be 'nuisances' because of their conflicts with nearby residential areas."

With the development of Territorial Estates, the Northwood Investments property is now completely surrounded by residential development. At no point does it adjoin agriculturally designated land. Because of this surrounding development pattern, DLCDC did not object to that portion of Senate Bill 929 relating to this site. And as noted above, while preparing this application, DLCDC informed the applicant that this application makes sense and that the agency does not object to it. In other words, DLCDC agrees that the residential development surrounding this "island" of rural land has committed the property to urban uses, for the very reasons quoted above from the Canby Comprehensive Plan.

For this reason, and for all of the other reasons set out in this application in favor of this UGB amendment, Northwood Investments asks that this application be approved.

- A. June 7, 2002 letter from Mark Adcock, City Administrator, City of Canby, to House Ways and Means Committee, regarding Senate Bill 929





To: Mayor & Council -

City of Canby

Office of the City Administrator
Phone 503-266-4021

June 7, 2001

House Ways and Means Committee
Oregon State Capitol Building
Salem, Oregon 97301

RE: Senate Bill 929

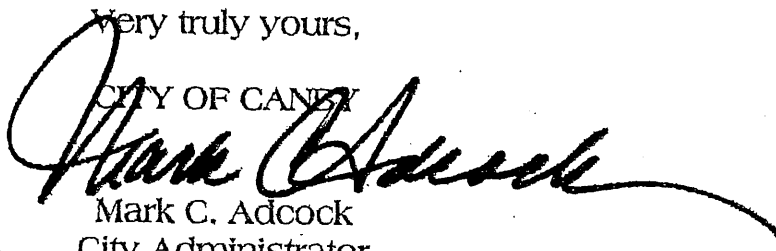
To the Honorable Members of the Committee:

On behalf of the Canby City Council, I am writing to express the Council's support of Senate Bill 929. This bill would require that the City of Canby add approximately 30 acres of land to our Urban Growth Boundary. The land in question is currently within the corporate city limits.

Senate Bill 929 was discussed by the Council at their June 6, 2001 meeting and endorsement and support of the bill, as currently amended was obtained on a vote of 5-0. The Council did feel that it was important to convey to the Committee that the decision to support Senate Bill 929 was made without the benefit of a full public hearing or advance public notice of the Council discussion on this matter.

Please feel free to contact me if you have any questions.

Very truly yours,

CITY OF CANBY

 Mark C. Adcock
 City Administrator

cc: Representative Kurt Schrader



B. Canby Land Development and Planning Ordinance, Sections 16.14.010,
16.14.020 and 16.04.050

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Chapter 16.14
AG. AGRICULTURAL ZONE

Sections:

- 16.14.010 Uses permitted outright.
- 16.14.020 Conditional uses.
- 16.14.030 Development standards.

16.14.010 Uses permitted outright.

Uses permitted outright in the AG. zone shall be as follows:

A. Agriculture, including all accessory structures used for and necessary to the conduct of agricultural activity but excluding commercial processing, sales, manufacturing, or packaging plants, except when used for items grown primarily on the premises;

B. Accessory structures and uses, including those located on a lot which is adjacent to the lot housing the principal use or structure. (Ord 740 section 10.3.17(A), 1984)

16.14.020 Conditional uses.

Conditional uses in the AG. zone shall be as follows:

A. Public building or land use, including public utility;

B. Single-family dwelling; one single-family dwelling per lot. (Ord. 740 section 10.3.17(B), 1984)

16.14.030 Development standards.

The following subsections indicate the required development standards of the AG. zone:

A. Minimum lot area: five acres;

B. Minimum width and frontage: sixty feet; except that the Planning Commission

may approve lots having less frontage, subject to special conditions to assure adequate access;

C. Minimum yard requirements:

1. Street yard, twenty feet,

2. Interior yard, ten feet;

D. Maximum building height: thirty-five feet;

E. Maximum lot coverage: sixty percent;

F. Other regulations: vision clearance distance shall be ten feet from an alley and thirty feet from any other street. (Ord. 740 section 10.3.17 (C), 1984)

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providing and managing access to land development while preserving the regional flow of traffic in terms of safety, capacity, and speed. (Ord. 1043 section 3, 2000)

16.04.040 Accessory structure or use.

Accessory structure or use means a detached structure or use not intended for human habitation, incidental and subordinate to the main use of the property and which is located on the same lot with the main use such as, but not limited to, garage, carport, tool shed, private greenhouse or utility building. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.045 Accessway.

Accessway means a walkway that provides pedestrian and bicycle passage either between streets or from a street to a building or other destination such as a school, park, or transit stop. Accessways generally include a walkway and additional land on either side of the walkway, often in the form of an easement or right-of-way, to provide clearance and separation between the walkway and adjacent uses. Accessways through parking lots are generally physically separated from adjacent vehicle parking or parallel vehicle traffic by curbs or similar devices and include landscaping, trees, and lighting. Where accessways cross driveways, they are generally raised, paved, or marked in a manner that provides convenient access for pedestrians. (Ord. 1043 section 3, 2000)

16.04.050 Agriculture.

Agriculture means the tilling of the soil, the raising of crops, silviculture and horticulture. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.060 Alley.

Alley means a narrow street through a block primarily for vehicular service access to the back or side of properties otherwise

abutting another street. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.061 Antenna.

The specific device used to capture an incoming and/or transmit an outgoing radio-frequency signal. This definition shall include omni-directional (whip) antennas; directional (panel) antennas; parabolic (microwave dish) antennas; and ancillary antennas (i.e., GPS). All other transmitting or receiving equipment not specifically described herein shall be regulated in conformity with the type of antenna described herein which most closely resembles such equipment. (Ord. 981 section 17, 1997)

16.04.063 Application.

Application for a land use permit (site and design review, conditional use permit, annexation, zone change, subdivision, etc.) means a package of information that includes:

- A. The application form filled out and signed by the owner;
- B. Site plan and/or narrative describing the proposal;
- C. List of property owners on mailing labels (1" x 2 5/8"); and
- D. The application fee. (Ord. 981 section 1, 1997)

16.04.064 Attached WTS facility.

An existing pole, tower or other structure capable of accommodating a WTS facility antenna, whether originally intended for such use or not. (Ord. 981 section 17, 1997)

16.04.065 Backhaul network.

The land lines that connect a WTS provider's radio signals to one or more cellular telephone switching offices and/or local or long distance providers, or the public switched telephone network. (Ord. 981 section 17, 1997)

C. ORS 215.283

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management of the farm is or will be required by the farm operator on the farm unit.

(2) As used in this section, "farm unit" means the contiguous and noncontiguous tracts in common ownership used by the farm operator for farm use as defined in ORS 215.203. [2001 c.613 §6]

Note: 215.278 was added to and made a part of ORS chapter 215 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

215.280 [Repealed by 1963 c.619 §16]

215.281 Legislative findings related to dwellings in conjunction with commercial dairy farm. The Legislative Assembly finds that:

(1) Dairies and dairying are an important part of Oregon agriculture and make a significant contribution to the state and local economies;

(2) Dairies require continuous on-site labor to operate the dairy and to protect the significant investment in milking and waste disposal facilities, equipment and livestock necessary to operate a commercial dairy; and

(3) Dairies require more on-site housing than other types of farms because of the year-round labor-intensive nature of a dairy operation and justify different standards for the review of a primary or accessory dwelling customarily provided in conjunction with a commercial dairy farm under ORS 215.213 and 215.283. [2001 c.149 §4]

Note: 215.281 and 215.282 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 215 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

215.282 Dwellings in conjunction with commercial dairy farm; rules. The Land Conservation and Development Commission shall consider the findings of ORS 215.281 and adopt rules that provide standards for the review of a primary or accessory dwelling customarily provided in conjunction with a commercial dairy farm. Notwithstanding any other administrative rule establishing a gross farm income standard, the rules adopted under this section shall allow the siting of a dwelling on a commercial dairy farm prior to the dairy earning any gross farm income. [2001 c.149 §5]

Note: See note under 215.281.

215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties. (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches and cemeteries in conjunction with churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

(e)(A) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator.

(B) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(f) Primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.

(g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(i) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(j) The breeding, kenneling and training of greyhounds for racing.

(k) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(L) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(m) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(n) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(o) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(p) Creation of, restoration of or enhancement of wetlands.

(q) A winery, as described in ORS 215.452.

(r) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(s) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph.

(t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(u) A facility for the processing of farm crops located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

(v) Fire service facilities providing rural fire protection services.

(w) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(x) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(y) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use but not including the processing of farm crops as described in subsection (1)(u) of this section.

(b) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection (1)(g) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10

campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community.

(f) Golf courses.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) Home occupations as provided in ORS 215.448.

(j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to en-

able its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection (1)(s) of this section.

(m) Transmission towers over 200 feet in height.

(n) Dog kennels not described in subsection (1)(j) of this section.

(o) Residential homes as defined in ORS 197.660, in existing dwellings.

(p) The propagation, cultivation, maintenance and harvesting of aquatic or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is re-

quired but not resulting in the creation of new land parcels.

(t) A destination resort which is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(v) Operations for the extraction and bottling of water.

(w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

(x)(A) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary.

(B) As used in this paragraph:

(i) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(ii) "Local historical society" means the local historical society recognized by the county governing body and organized under ORS chapter 65.

(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

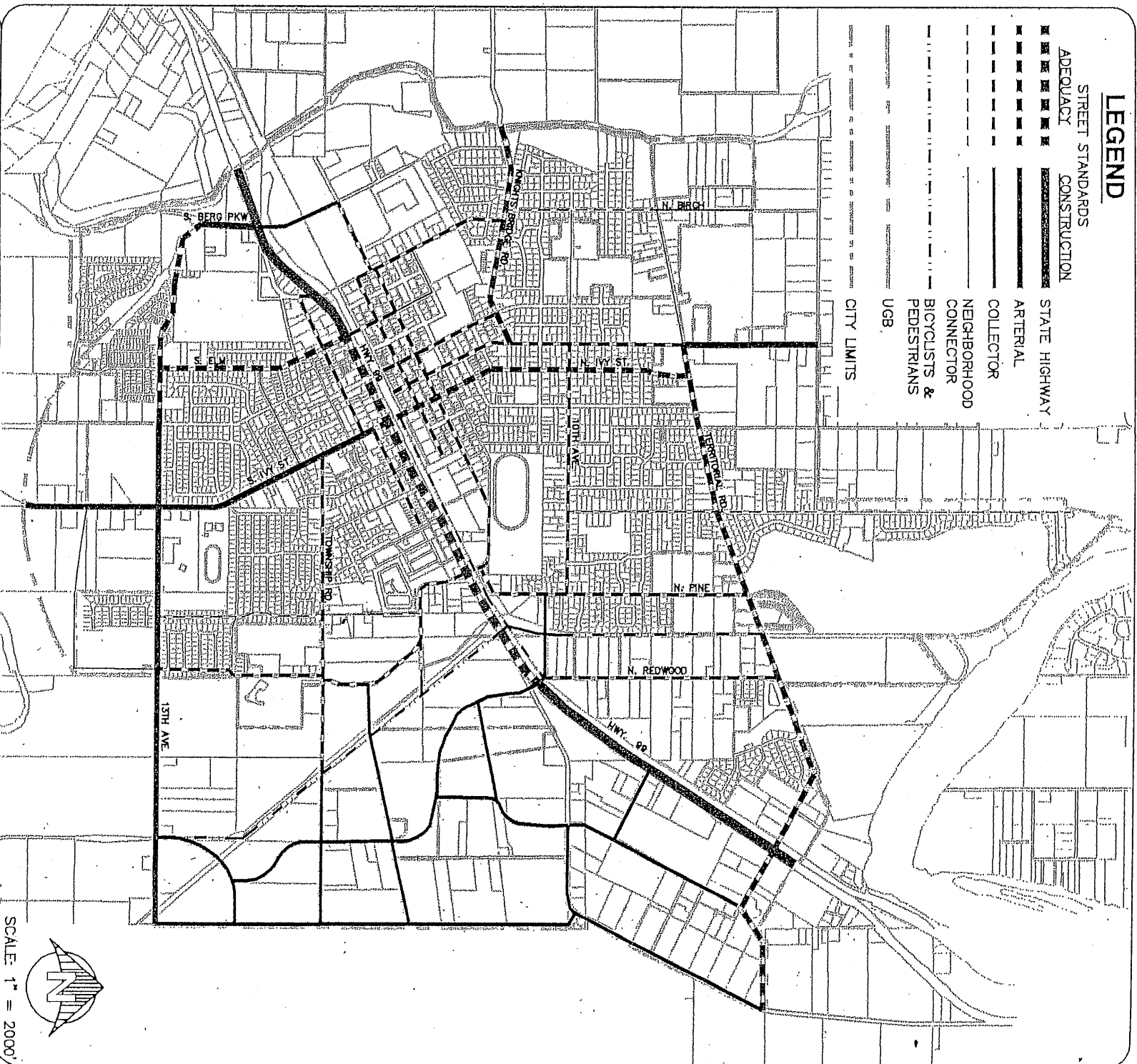
(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993. [1983 c.826 §17; 1985 c.544 §3; 1985 c.583 §2; 1985 c.604 §4; 1985 c.717 §7; 1985 c.811 §7; 1987 c.227 §2; 1987 c.729 §5a; 1987 c.886 §10; 1989 c.224 §27; 1989 c.525 §2; 1989 c.564 §9; 1989 c.648 §61; 1989 c.739 §2; 1989 c.837 §27; 1989 c.861 §2; 1989 c.964 §11; 1991 c.459 §348; 1991 c.950 §1; 1993 c.466 §2; 1993 c.704 §3; 1993 c.792 §14; subsections (3) to (8) renumbered 215.284 in 1993; 1995 c.528 §2; 1997 c.250 §2; 1997 c.276

- D. Canby Transportation System Plan, Major Street System Map (Figure 4-2) and Major Street Improvements (Figure 4-3)

LEGEND

- STREET STANDARDS ADEQUACY**
- STATE HIGHWAY
 - ARTERIAL
 - COLLECTOR
 - NEIGHBORHOOD CONNECTOR
 - BICYCLISTS & PEDESTRIANS
 - UGB
- CONSTRUCTION**
- CITY LIMITS



SCALE: 1" = 2000'



CITY OF CANBY
TRANSPORTATION SYSTEM PLAN

JANUARY 2000

Figure 4-2
City of Canby Transportation System Plan
Major Street System

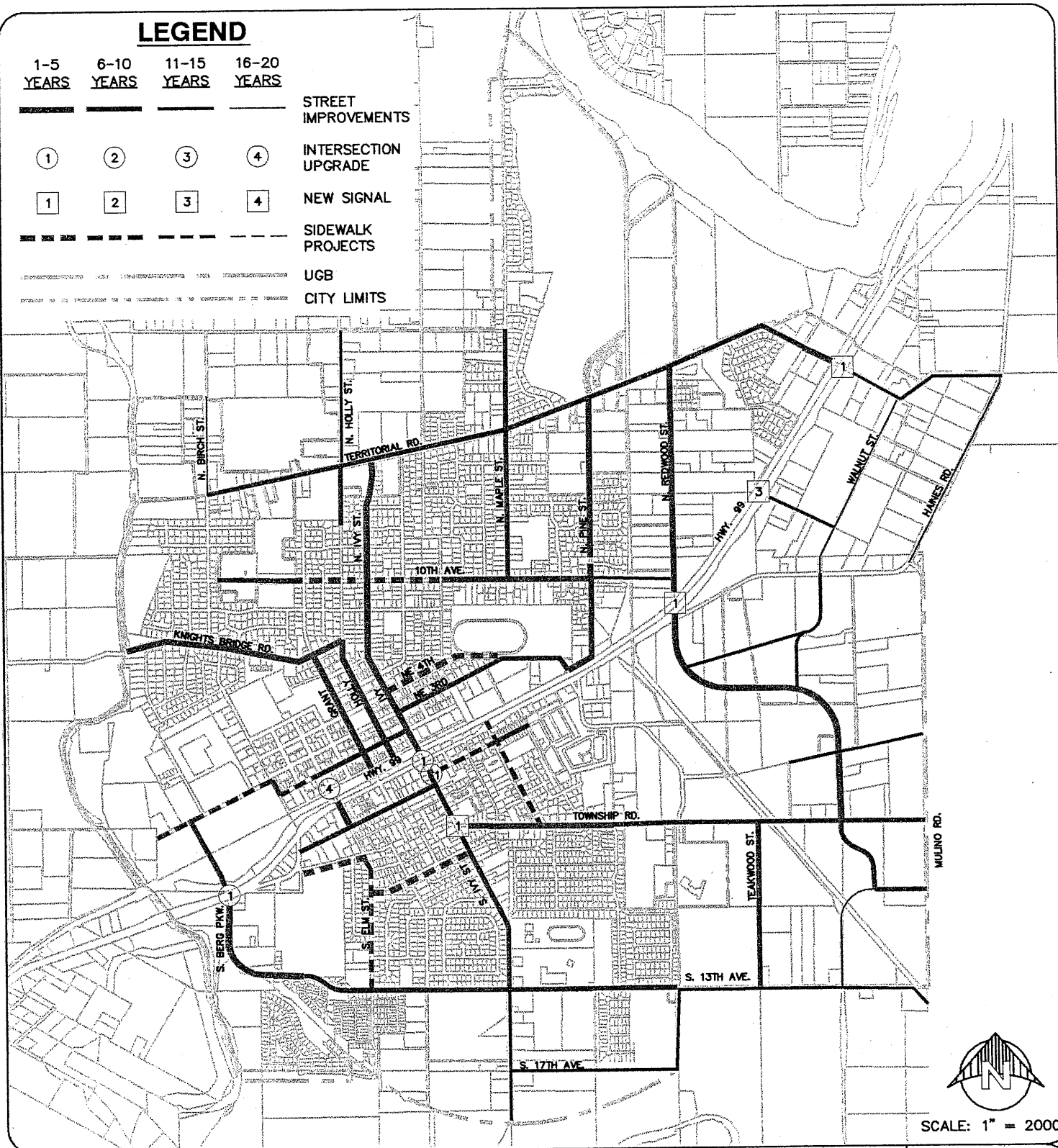




LEGEND

1-5 YEARS 6-10 YEARS 11-15 YEARS 16-20 YEARS

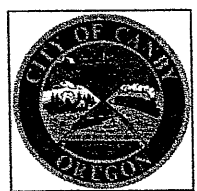
- ① ② ③ ④ STREET IMPROVEMENTS
- ① ② ③ ④ INTERSECTION UPGRADE
- ① ② ③ ④ NEW SIGNAL
- --- --- --- SIDEWALK PROJECTS
- --- --- --- UGB
- --- --- --- CITY LIMITS



CITY OF CANBY
TRANSPORTATION SYSTEM PLAN

JANUARY 2000

Figure 4-3
City of Canby Transportation System Plan
Major Street System

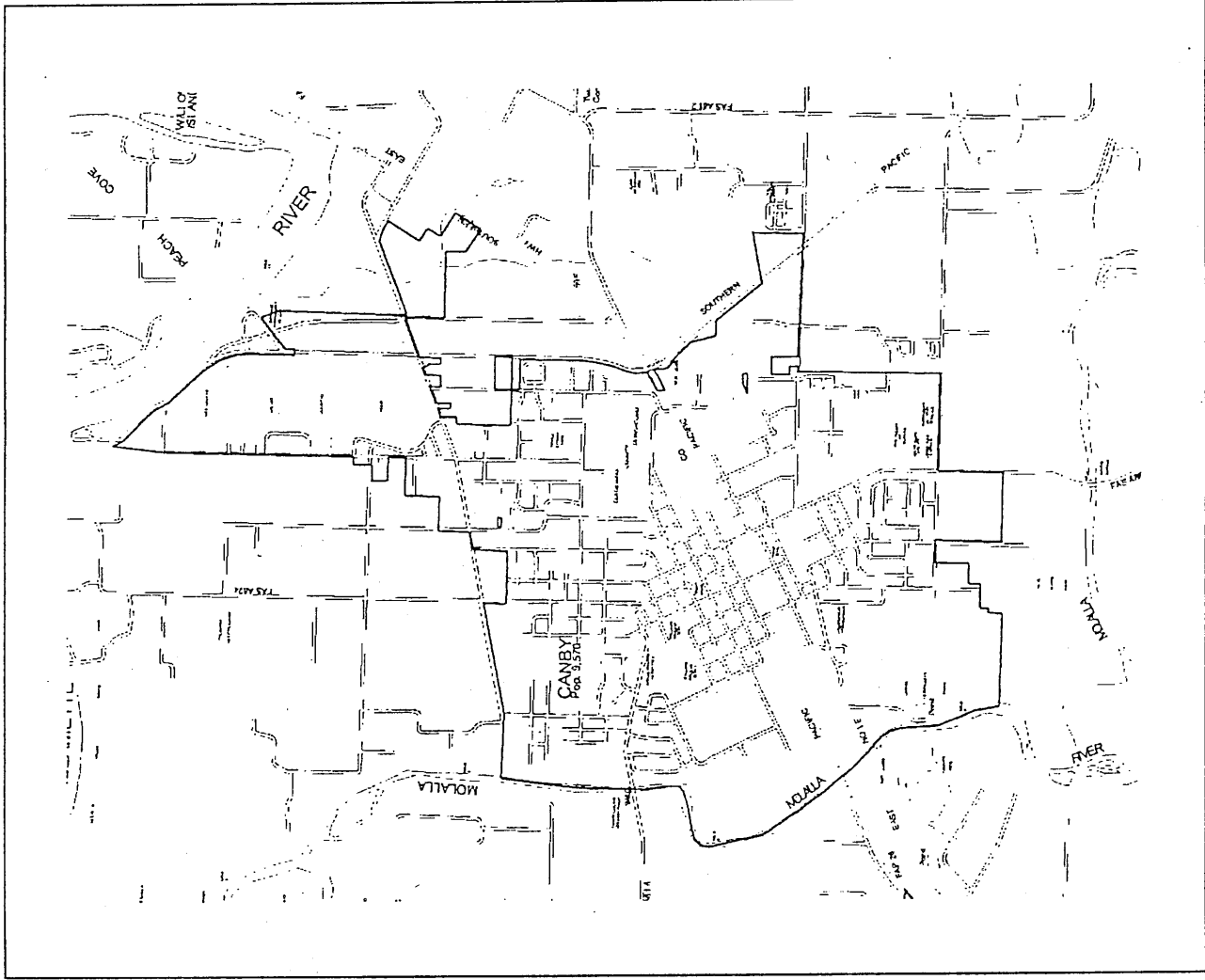




E. Canby Land Needs Study, OTAK (1999), pages 28-29

FINAL REPORT

Canby Land Needs Study



PREPARED BY



Conclusions and Policy Considerations

This section summarizes findings from the City of Canby land needs study. This study has included an updated analysis of residential and commercial/industrial land demand and available supply within the Canby Urban Growth Boundary (UGB).

Draft Findings on the Adequacy of the Canby UGB

The City of Canby land needs analysis has included a very thorough assessment of land supply and demand inside the current UGB boundary. The supply inventory was compiled by the City of Canby using their geographic information systems (GIS) land area data base. The analysis of supply was sorted by comprehensive plan designation, and included a compilation of vacant, underdeveloped, redevelopable and infill parcels.

Residential Land Needs

The housing demand assessment for residential is based on population forecasts that have been formally acknowledged and accepted by the City of Canby and Clackamas County in the Summer/Fall of 1998. Under House Bill 2709 statutory requirements, the past five years of actual development experience has been used as an indicator of future residential land use density projections.

The results of this study indicate there is an adequate supply of residential land within the UGB however, there is a significant oversupply of low density (R-1) land and an undersupply of medium to high density (R-1.5 and R-2) land to meet 20-year land needs. Hence, during the periodic review process, the City should consider development code amendments to ensure that medium and high density development patterns are attained on designated plan areas.

The City of Canby should also consider the possibility of rezoning some low-density residential land to medium- and high-density zones (R-1.5 and R-2). The need to adequately designate and plan future Planned Urban Developments (PUDs) or Specific Development Plan Areas within the UGB can also help address the need for medium- and high-density housing. The potential of "filling in the holes" by amending its UGB to add selected interior parcels (rather than UGB fringe land) to partially meet residential land needs should be considered in addition to selected Comprehensive Plan amendments and zone changes to make way for additional R-1.5 and R-2 development.

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Conclusions and Policy Considerations

Continued

Commercial and Industrial Land Needs

After completing the commercial and industrial demand analysis we have concluded that if all of the lodging demand (4 acres) can be met through MC, M1 or M2 areas, and if PUDs or Specific Plan areas are pursued in R-1 land areas the traditional retail zones (RC, CC, DC and HC) can adequately serve retail land needs without too much intrusion on industrial land areas.

The industrial supply inside the UGB can adequately meet projected industrial land needs. Using employment sector growth projections and recent development density trends as a basis for our draft land needs forecasts, the industrial land base (403 net acres) can adequately meet demand (169.7 net acres) over the planning horizon. While this analysis does not reflect the impact of large (40+ acre) users; it is apparent that even if industrial absorption was twice that assumed, there would be more than adequate supply inside the existing UGB.

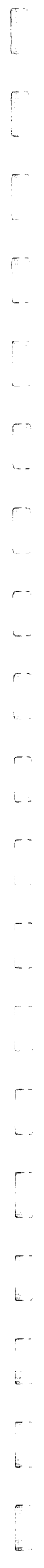
Land Use Plan and Development Code Policy Considerations

During the course of the Canby Land Needs study Otak worked closely with the City of Canby planning staff, DLCD staff along with the CAC to identify potential land use policies for further evaluation and refinement during the periodic review process. These new land use potential policies should be intended to increase the supply of medium- and high-density housing, while preserving buildable lands and agricultural resources, and improving the efficiency of public facilities such as roads and utilities. Potential policy measures and housing prototypes are included in Appendix D.

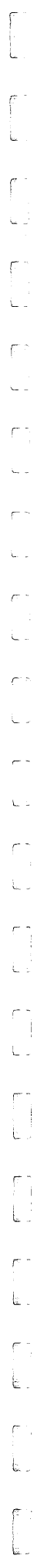
Our review of buildable residential and commercial/industrial land needs and supply inside the Canby UGB reveals the need to reallocate selected land areas to accommodate medium and high density housing demand forecasts. The potential for UGB refinement and Zoning and Development Code Amendments still need to be considered. This may include "filling in some holes" in interior locations, transferring development densities to designated areas inside the UGB, and Comprehensive Plan amendments and zone changes that designate specific development plan locations, or new R-1.5 and R-2 zone districts.

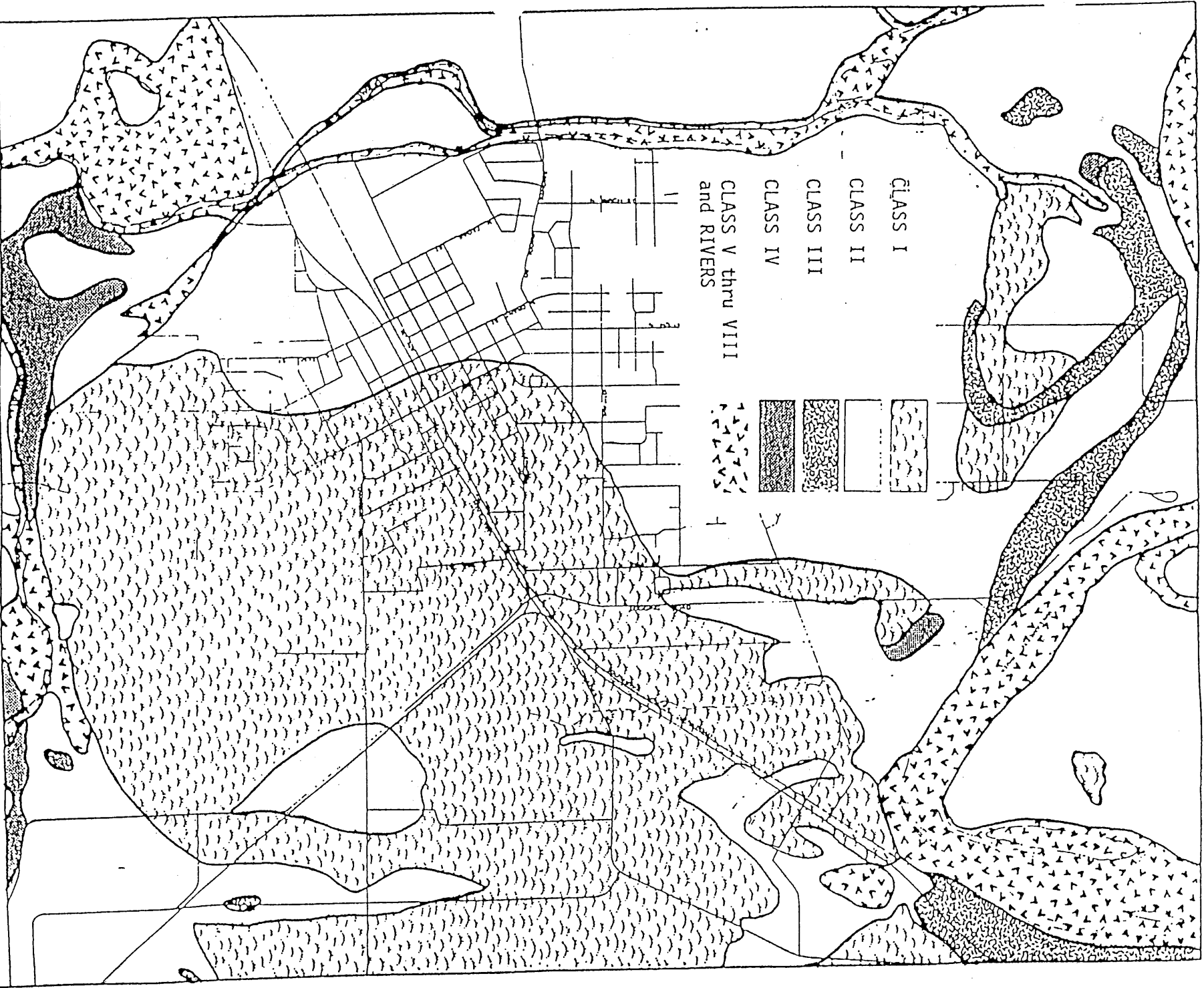
Next Steps

The City of Canby will continue to work closely with local citizens and other interested stakeholders during the periodic review process. The findings and



- F. Canby Comprehensive Plan, Agricultural Soils Capability Map, and Soil Survey of Clackamas County, Oregon (selected pages)





CITY OF GANBY

AGRICULTURAL SOIL CAPABILITIES





Figure 8.—Canderly sandy loam, 0 to 3 percent slopes, is very friable and easily plowed.

contamination of water supplies as a result of seepage from onsite sewage disposal systems.

This map unit is in capability subclass II.

12B—Canderly sandy loam, 3 to 8 percent slopes.

This deep, somewhat excessively drained soil is on terraces. It formed in stratified glaciolacustrine deposits. The vegetation in areas not cultivated is mainly Douglas-fir, Oregon white oak, western hazel, blackberry, and grasses. Elevation is 120 to 250 feet. The average annual precipitation is 40 to 50 inches, the average annual air temperature is 52 to 54 degrees F, and the average frost-free period is 165 to 210 days.

Typically, the surface layer is very dark brown and very dark grayish brown sandy loam about 15 inches thick. The subsoil is dark brown and dark yellowish brown sandy loam about 31 inches thick. The substratum to a depth of 60 inches or more is stratified, dark yellowish brown loamy sand and coarse sandy loam.

Included in this unit are small areas of Aloha and Latourell soils. Included areas make up about 10 percent of the total acreage.

Permeability of this Canderly soil is moderately rapid. Available water capacity is about 5.5 to 7.5 inches. Effective rooting depth is 60 inches or more. Runoff is

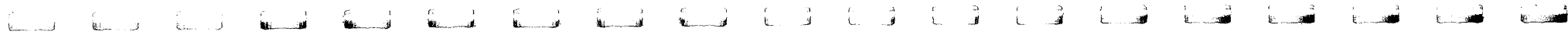
slow, and the hazard of water erosion is slight. This soil is droughty in summer.

Most areas of this unit are used for crops, mainly nursery stock and vegetables. Among the other crops grown are pasture, hay, filberts, small grain, and berries. Some areas are used as homesites and wildlife habitat.

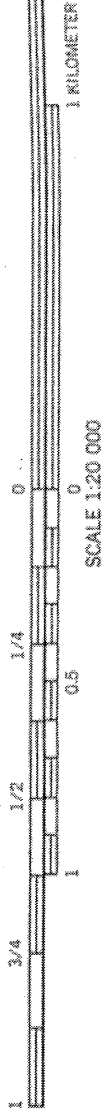
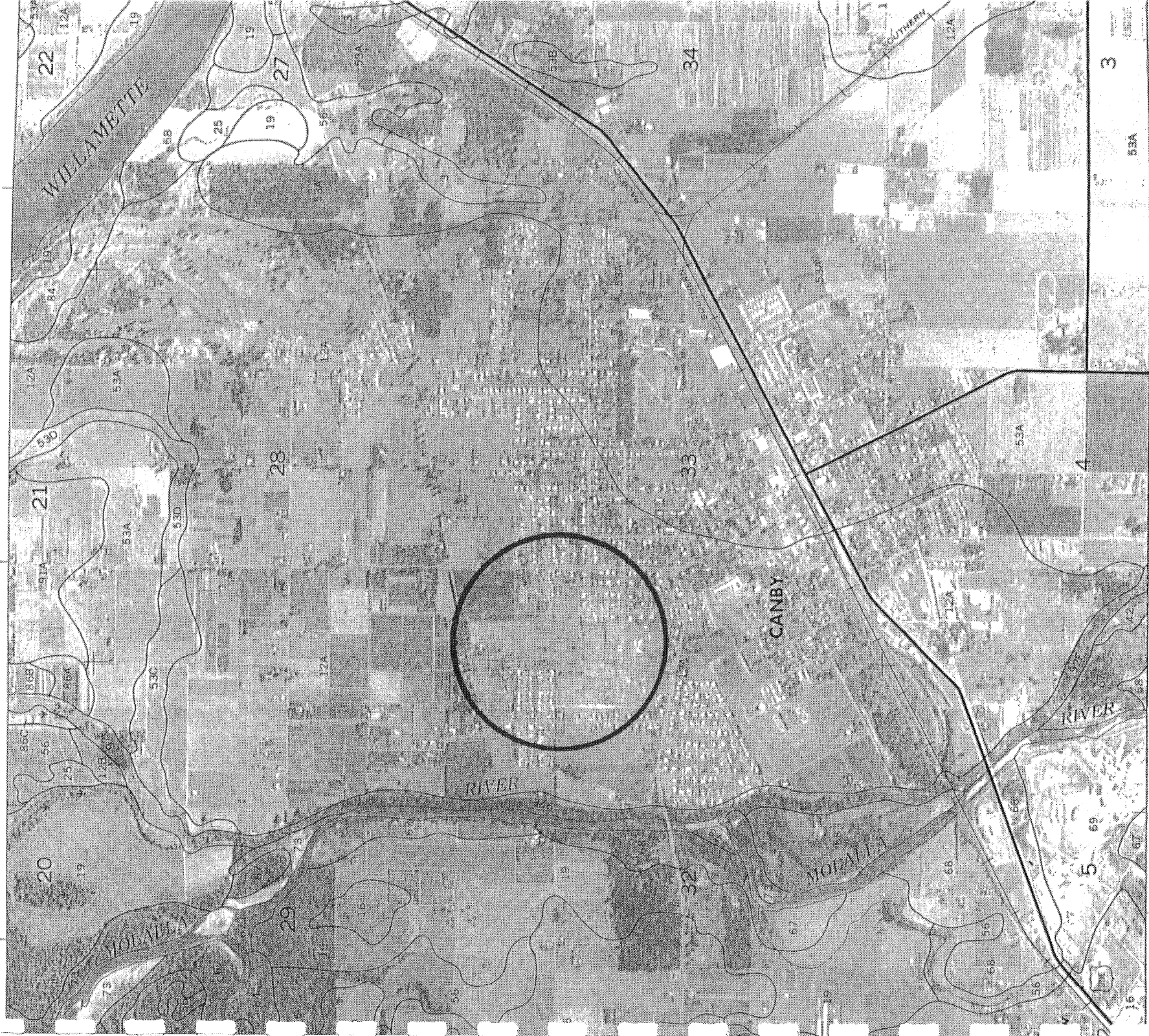
This unit is well suited to cultivated crops. It is limited mainly by droughtiness. In summer, irrigation is needed for maximum production of most crops. Sprinkler irrigation is a suitable method of applying water. Returning all crop residue to the soil and using a cropping system that includes grasses, legumes, or grass-legume mixtures help to maintain fertility and tilth. Grain and grasses respond to nitrogen; legumes respond to phosphorus, boron, sulfur, and lime; and vegetables and berries respond to nitrogen, phosphorus, and potassium. If the soil in this unit is plowed in fall, runoff and erosion can be reduced by fertilizing and seeding to a cover crop.

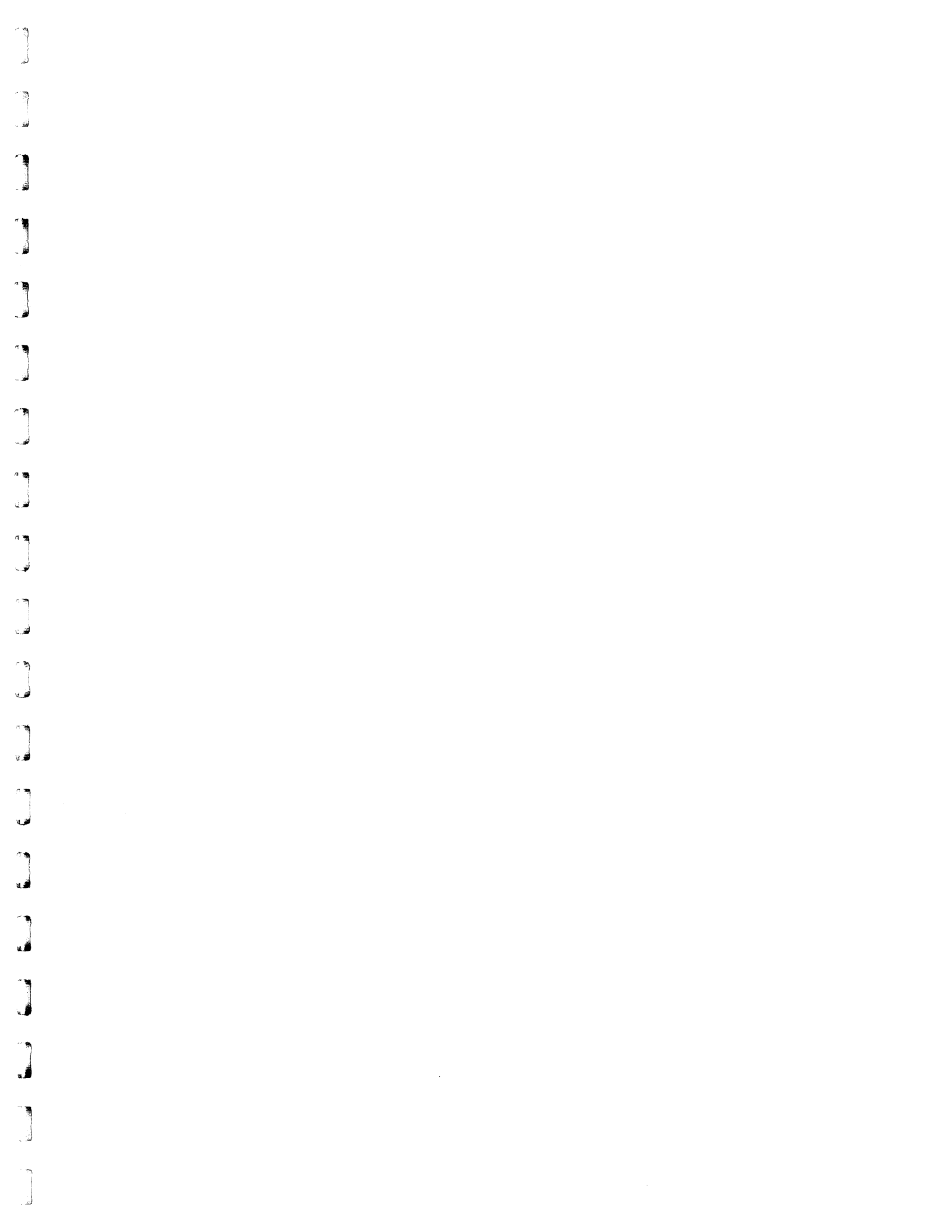
This unit is suited to homesite development. It has few limitations. Preserving the existing plant cover during construction helps to control erosion. In summer, irrigation is needed for lawn grasses, shrubs, vines, shade trees, and ornamental trees.

If the density of housing is moderate to high, community sewage systems are needed to prevent



SOIL SURVEY OF CLACKAMAS COUNTY AREA, OREGON — SHEET NUMBER 27





12A—Canderly sandy loam, 0 to 3 percent slopes.

This deep, somewhat excessively drained soil is on terraces. It formed in stratified glaciolacustrine deposits. The vegetation in areas not cultivated is mainly Douglas-fir, Oregon white oak, western hazel, blackberries, grasses, and weeds. Elevation is 120 to 250 feet. The average annual precipitation is 40 to 50 inches, the average annual air temperature is 52 to 54 degrees F, and the average frost-free period is 165 to 210 days.

Typically, the surface layer is very dark brown and very dark grayish brown sandy loam about 15 inches thick. The subsoil is dark brown and dark yellowish brown sandy loam about 31 inches thick. The substratum to a depth of 60 inches or more is stratified, dark yellowish brown loamy sand and coarse sandy loam.

Included in this unit are small areas of Latourell, Quatama, and Woodburn soils. Included areas make up about 10 percent of the total acreage.

Permeability of this Canderly soil is moderately rapid. Available water capacity is about 5.5 to 7.5 inches. Effective rooting depth is 60 inches or more. Runoff is slow, and the hazard of water erosion is slight. This soil is droughty in summer.

Most areas of this unit are used for crops, mainly nursery stock, berries, flowers, and filberts. Among the other crops grown are potatoes, corn, turnips, squash, tomatoes, and other vegetables. Some areas are used for homesite development, recreation, and wildlife habitat. This unit is subject to increased use as homesites. Where the unit has been used as homesites, as much as 50 percent of the area not covered by buildings or other impervious material has been disturbed. The disturbed areas have been covered by as much as 20 inches of fill material or have had as much as 30 inches of the original profile removed by cutting or grading. The fill material is most commonly from adjacent areas of Canderly soils that have been cut or graded.

This unit is well suited to cultivated crops (fig. 8). It is limited mainly by droughtiness. In summer, irrigation is needed for maximum production of most crops. Sprinkler irrigation is a suitable method of applying water. Because the soil in this unit is droughty, applications of irrigation water should be light and frequent. Returning all crop residue to the soil and using a cropping system that includes grasses, legumes, or grass-legume mixtures help to maintain fertility and tilth. Grain and grasses respond to nitrogen; legumes respond to phosphorus, boron, sulfur, and lime; and vegetables and berries respond to nitrogen, phosphorus, and potassium.

This unit is suited to homesite development. It has few limitations. In summer, irrigation is needed for lawn grasses, shrubs, vines, shade trees, and ornamental trees.

If the density of housing is moderate to high, community sewage systems are needed to prevent

Mark Greenfield

503-242-9001

1 page

Soil Survey Clackamas County Area, Oregon

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roads are constructed. Roads for year-round use need heavy base rock. Roads and landings can be protected from erosion by constructing water bars and by seeding cuts and fills.

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53A—Latourell loam, 0 to 3 percent slopes. This deep, well drained soil is on terraces. It formed in stratified glaciolacustrine deposits. The vegetation in areas not cultivated is mainly Douglas-fir, Oregon white oak, bigleaf maple, western hazel, and grasses. Elevation is 50 to 400 feet. The average annual precipitation is 40 to 60 inches, the average annual air temperature is 52 to 54 degrees F, and the average frost-free period is 165 to 210 days.

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Typically, the surface layer is dark brown loam about 15 inches thick. The subsoil is dark yellowish brown loam about 33 inches thick. The substratum to a depth of 60 inches or more is dark yellowish brown gravelly sandy loam.

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Included in this unit are small areas of Quatama, Aloha, Woodburn, and Willamette soils. Included areas make up about 10 percent of the total acreage.

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Permeability of this Latourell soil is moderate. Available water capacity is about 8 to 12 inches. Effective rooting depth is 60 inches or more. Runoff is slow, and the hazard of water erosion is slight. This soil is droughty in summer.

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Most areas of this unit are used for cultivated crops, mainly winter wheat, sweet corn, beans, alfalfa, and nursery stock. Among the other crops grown are berries, potatoes, hay, and filberts. Some areas are used as homesites and wildlife habitat and for recreational development. This unit is subject to increased use as homesites. Where the unit has been used as homesites, as much as 80 percent of the area not covered by buildings or other impervious material has been disturbed. The disturbed areas have been covered by as much as 20 inches of fill material or have had as much as 30 inches of the original profile removed by cutting and grading. The fill material is most commonly from adjacent areas of Latourell soils that have been cut or graded.

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This unit is suited to cultivated crops. It has few limitations. In summer, irrigation is needed for maximum production of most crops. Sprinkler irrigation is a suitable method of applying water. Returning all crop residue to the soil and using a cropping system that includes grasses, legumes, or grass-legume mixtures help to maintain fertility and tilth. Grain and grasses respond to nitrogen; legumes respond to phosphorus, boron, sulfur,

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and lime; and vegetables and berries respond to nitrogen, phosphorus, and potassium.

This unit is suited to homesite development. The main limitation is low soil strength. Roads and buildings should be designed to offset the limited ability of the soil in this unit to support a load. Preserving the existing plant cover during construction helps to control erosion. In summer, irrigation is needed for lawn grasses, shrubs, vines, shade trees, and ornamental trees.

This map unit is in capability class I.

53B—Latourell loam, 3 to 8 percent slopes. This deep, well drained soil is on terraces. It formed in stratified glaciolacustrine deposits. The vegetation in areas not cultivated is mainly Douglas-fir, Oregon white oak, bigleaf maple, western hazel, and grasses. Elevation is 50 to 400 feet. The average annual precipitation is 40 to 60 inches, the average annual air temperature is 52 to 54 degrees F, and the average frost-free period is 165 to 210 days.

Typically, the surface layer is dark brown loam about 15 inches thick. The subsoil is dark yellowish brown loam about 33 inches thick. The substratum to a depth of 60 inches or more is dark yellowish brown gravelly sandy loam.

Included in this unit are small areas of Quatama, Aloha, Woodburn, and Willamette soils. Included areas make up about 10 percent of the total acreage.

Permeability of this Latourell soil is moderate. Available water capacity is about 8 to 12 inches. Effective rooting depth is 60 inches or more. Runoff is slow, and the hazard of water erosion is slight. This soil is droughty in summer.

Most areas of this unit are used for cultivated crops, mainly winter wheat, sweet corn, beans, alfalfa, and nursery stock. Among the other crops grown are berries, potatoes, hay, and filberts. Some areas are used as homesites and wildlife habitat and for recreational development. This unit is subject to increased use as homesites. Where the unit has been used as homesites, as much as 80 percent of the area not covered by buildings or other impervious material has been disturbed. The disturbed areas have been covered by as much as 20 inches of fill material or have had as much as 30 inches of the original profile removed by cutting and grading. The fill material is most commonly from adjacent areas of Latourell soils that have been cut or graded.

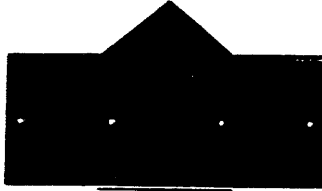
This unit is suited to cultivated crops. It has few limitations. In summer, irrigation is needed for maximum production of most crops. Sprinkler irrigation is a suitable method of applying water. Returning all crop residue to the soil and using a cropping system that includes grasses, legumes, or grass-legume mixtures help to maintain fertility and tilth. Grain and grasses respond to nitrogen; legumes respond to phosphorus, boron, sulfur, and lime; and vegetables and berries respond to



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G. Letter Dated August 28,2002 from Deborah Sommer, Superintendent,
Canby School District to Mark Alcock, Canby City Manager

"A community is known
by the schools it keeps."




1110 S. Ivy Street
Canby, OR 97013-3838
(503) 266-7861
Fax: (503) 266-0022

CANBY
SCHOOL DISTRICT

August 28, 2002

To: Mark Adcock
City Manager, City of Canby

From: Deborah Sommer 
Superintendent, Canby School District

On behalf of the Board of Directors of the Canby School District, I am writing in response to your email of August 12, 2002 in reference to a City Council meeting held on August 7. Apparently there was a request for a meeting with the School Board so that the Council could "sit down with the board to learn, first hand, the board's concerns about school impacts resulting from future annexation of residential development into the City."

We are not able to meet with the City Council at this time due to the rather volatile and uncertain future of school funding for K-12 schools in Oregon for the upcoming schools year. As I recently told parents in a letter going out today, despite the fact that we have 5,200 students arriving in less than a week,

We *do not know* our final operating budget for next year;

We *do not know* the number of teacher/classified staff who may lose their jobs;

We *do not know* the impact on K-12 in terms of further reductions in state funding for schools required by the latest \$482 million budget deficit; and

We *do not know* the outcome of the September 17 election which includes a ballot measure worth \$150 million in replacement revenue to K-12 schools.

Right now, we must focus on our fiscal affairs, and most weeks this fall are full of meetings dedicated to that purpose.

Interestingly enough, however, our fiscal affairs are related to the issue of student enrollment, and I thought I would explain that relationship via a letter as well as provide you, the Council and the Planning Commission with our official position relative to student growth in lieu of a meeting at this time. I would be more than happy to attend a meeting with you or city leaders to further discuss the issue of increased enrollment, but in the meantime, perhaps this information will help.

1. You are already well aware of the fact that we are *legally bound* to serve whatever number of students reside within the boundaries of the Canby School District.
2. Because of this obligation, the school district is *neither pro-growth nor anti-growth*. Expanding or declining student enrollment is an ongoing issue for every school district. Dealing with a fluctuating clientele is part of what we do for work, regardless of the actual numbers.
3. Because we must serve all students, and because student numbers are always in flux, school districts must always be engaged in actively planning to deal with the impact of enrollment on facilities, staffing and budget. *More students bring in more revenues – a positive result of increased growth*, one we could benefit from at the present given our financial outlook. Fewer students or flat growth, such as what we are experiencing in terms of our total district enrollment in Canby right now, means fewer revenues, fewer staff and program reductions. *No growth actually exacerbates our present funding problems*.
4. When student numbers are increasing, districts plan proactively for that growth using the tools available to them for that purpose. Those tools include *boundary shifts, more efficient utilization of existing space, shared facility use across two or more schools to balance numbers at a given grade level, use of portables, double shifting, building new schools or expanding the classroom space of existing ones, and year round school for the purpose of accommodating more students*. These are all proactive and thoughtful responses to overcrowding – one never has a perfect number of students at each grade level or numbers that remain static over time.
5. The Canby School District has utilized each of these available tools with the exception of double shifting or year round school for enrollment purposes. We are nowhere close to having to double shift or run the schools year round in order to accommodate growth.
6. *We do anticipate additional portables, probably at Trost, to better balance the K-5 “in town” enrollment*. Our boundary shift implemented this past year went quite well, but I do not believe we can move the boundaries for Carus/Ninety-One even further in and require students to ride a bus for 45 minutes in order to further shift enrollment out to our rural schools.
7. I do not understand, frankly, what I am told is an issue with some City Council and/or Planning Commission members around the issue of portables. After 30 years in public education, I believe there are only two pertinent issues to be concerned with in terms of whether a student is receiving a quality educational experience: 1) the training and experience of the teacher and 2) the quality of his/her classroom instruction. I have seen wonderful teaching in portable classrooms. Conversely, I have seen poor teaching in facilities that were state of the art. *To use or not use portable classrooms is simply is not an educational issue*.

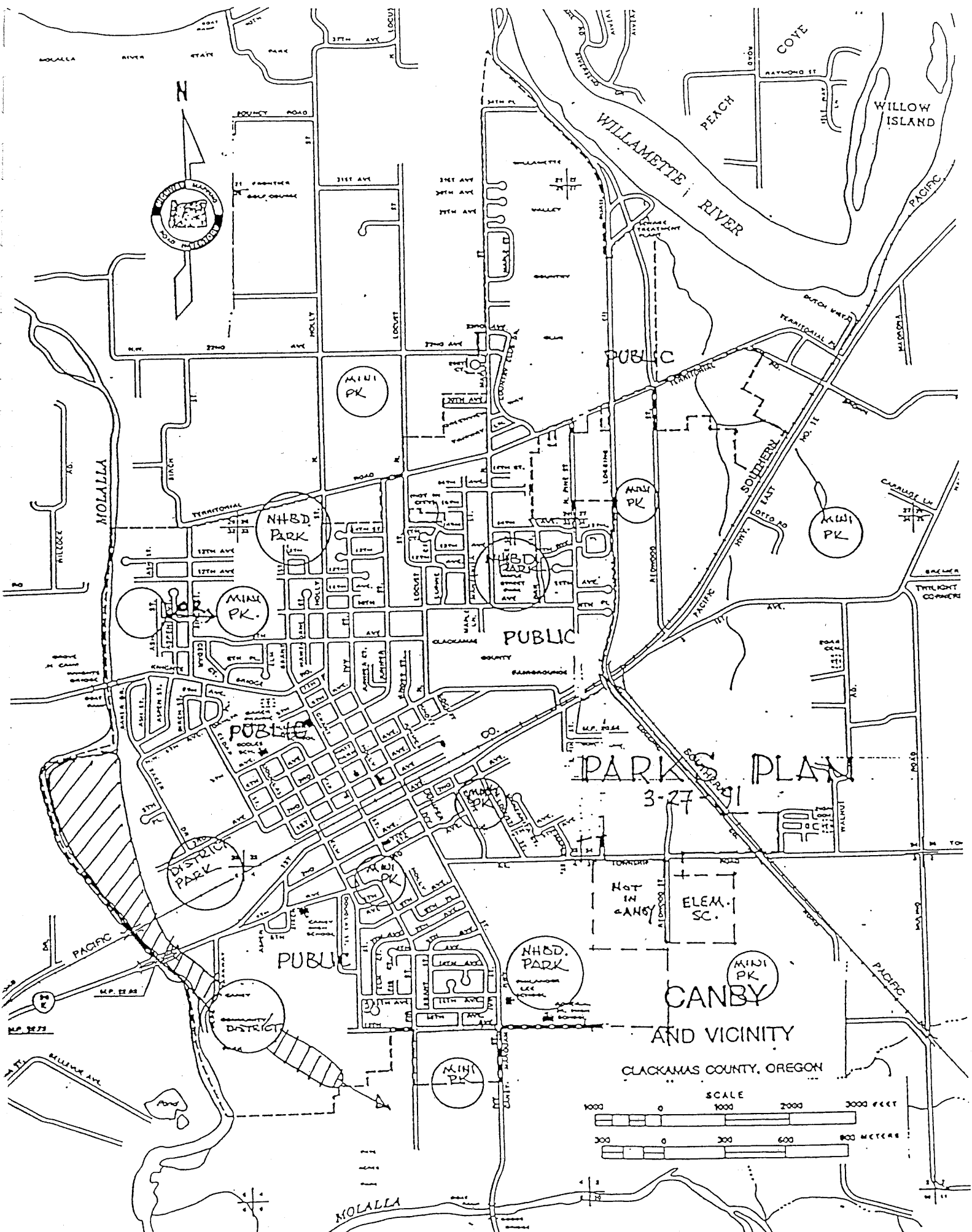
8. If the use of portables is a personal preference or somehow a political issue for some, then I would want it clearly stated that our position is that *we believe that portable classrooms are an effective planning tool that is critical to our ability to move forward with planning for a new bond and planning for future growth.*
9. Specifically, in the case of the Canby School District, we need student growth for three key reasons right now:
 - a. We *need* to pass a bond in this community to build a new school on the 37 acres we purchased with the bond proceeds from May 2000. It is critical that we alleviate the overcrowding that *already exists* at Ackerman. 1100 middle school students enrolled right now moving back and forth across two campuses creates a security/supervision issue that we confront every day.
 - b. We *need* to pass a bond in this community to build a new school that would also contain some office space to house the district office so that we can turn Lee back into a K-5 or a K-6 school. Reopening Lee will alleviate the overcrowding that *already exists* at Trost, Knight and Eccles. At that point, the portables we would utilize in the interim to house in-town elementary students would no longer be needed.
 - c. Finally, we *need* to accommodate additional growth through use of portable classrooms and other options (see #3 above) while an expanding student body is generating enough money to operate the new school when it is built. We need to be setting money aside now, money generated by having more students, to hire the additional staff required.

I hope this information is helpful. In summary, Mark, I believe that it is important for the City Council and Planning Commission to understand the relationship between student enrollment growth, our finances and our future ability to pass a bond to build a new school – a *much more important long term goal to focus on, in my opinion, than the short term accommodations that schools must make due to large enrollment in the interim.* If the Council determines to vote against an annexation request, then it needs to make its decision based on factors other than the perceived negative impact on our schools.

If you would like me to meet with any of your Council or Planning members after sharing this letter with them, please let me know.

C: Board of Directors
Don Staehely, Chief Financial Officer

H. Canby Comprehensive Plan, Park Plan





I. Legal Description of Property

EXHIBIT A
IN THE COUNTY OF CLACKAMAS AND STATE OF OREGON

PARCEL I:

A tract of land situated in the Champing Pendleton D.L.C. No. 58, in Sections 28, 29, 32 and 33, Township 3 South, Range 1 East, of the W.M., described as follows:

Beginning at an iron pipe on the Southerly boundary of Territorial Road at the northeast corner of that tract of land conveyed to Earl Oliver and Sabina Oliver, husband and wife, by Deed recorded November 16, 1951, in Book 450, page 696, Deed Records, said iron pipe being North 8.47 chains, South 89° 29' West 16.35 chains and North 12° 00' West 9.036 chains, from the southeast corner of the Champing Pendleton D.L.C., in Township 3 South, Range 1 East, of the W.M.; thence South 78° 04' West along the southerly line of Territorial Road 187.57 feet to an iron pipe, said point being the northeast corner of a tract of land conveyed to Richard T. Mosier, et ux, by Warranty Deed recorded June 15, 1976, Fee No. 76 19823; thence South 12° 09' East 558.2 feet to the southeast corner of a tract described in Contract of Sale recorded February 28, 1975, Fee No. 75 5066; thence South 89° 29' East to the southeast corner of said Oliver tract; thence North 12° 09' West along the easterly line of said Oliver tract to the point of beginning.

PARCEL II:

Part of the southeast one-quarter of the northeast one-quarter of Section 32, Township 3 South, Range 1 East, of the W.M., described as follows:

Beginning at the southeast corner of a tract of land conveyed to John Mickelsen, et ux, by Warranty Deed recorded January 28, 1957, in Book 521, page 348, Deed Records, said point also being West 1320 feet and South 393.6 feet from the northeast corner of the Wesley Joslin D.L.C.; thence West 166.00 feet; thence North 100.00 feet; thence West 25.00 feet; thence South 100.00 feet; thence West 368.7 feet; thence South 214.7 feet to the northwest corner of a tract of land conveyed to Edward N. Cole, et ux, by Warranty Deed recorded April 24, 1956, in Book 510, page 19, Deed Records; thence East 235.00 feet to the most northerly northeast corner of said Cole tract; thence South 155.00 feet to an interior angle of said Cole tract; thence East to the most easterly northeast corner of said Cole tract; thence South 15 feet to the southerly line of a tract of land conveyed to Earl Oliver, et ux, by Warranty Deed recorded September 26, 1947, in Book 397, page 28, Deed Records; thence East along the south line of said Oliver tract 20 feet to the southeast corner thereof; thence North along the east line of said Oliver tract, 384.7 feet to the place of beginning.



PARCEL III:

A tract of land lying in Section 32, Township 3 South, Range 1 East, more particularly described as follows:

Beginning at a point which bears West 1332 feet from the northeast corner of the Wesley Joslin D.L.C., said point being also the Northeast corner of that certain tract of land described in deed to John P. Tatone in Book 227, page 162; running thence South along the east line of said Section 32 a distance of 393.6 feet; thence West 166.00 feet; thence North 100.00 feet; thence West 25.00 feet; thence South 100.00 feet; thence West 368.7 feet; thence North 393.6 feet; thence East 559.7 feet to the place of beginning.

PARCEL IV:

A tract of land located in Section 33, Township 3 South, Range 1 East, of the W.M., described as follows:

Beginning at the northwest corner of Lot 2, Oliver Addition No. 4; thence South 00° 18' East along the west line of said Lot 2, a distance of 88.18 feet to the southwest corner thereof; thence continuing South 00° 18' East 60.00 feet to the northwest corner of Lot 3, Oliver Addition No. 4, said point also being the northeast corner of that tract of land conveyed to the Archdiocese of Portland in Oregon by Deed recorded May 4, 1953, in Book 468, page 504, Deed Records; thence West along the northerly line of said Archdiocese of Portland in Oregon tract and the westerly extension of the south line of Wait Avenue as it appears in the recorded plat of Canby Acres, 580.00 feet to the west line of that tract of land conveyed to Earl Oliver and Sabina Oliver by Deed recorded May 22, 1950, in Book 431, page 437, Deed Records; thence North along the west line of said Oliver tract, 140.00 feet, more or less, to the northwest corner thereof; thence East along the northerly line of said Oliver tract, 579.50 feet to the place of beginning.

PARCEL V:

Part of the southeast one-quarter of the northeast one-quarter of Section 32, Township 3 South, Range 1 East, of the W.M., described as follows:

Beginning at the northeast corner of Lot 6, Oliver Addition No. 6; thence North 89° 39' East, 59.21 feet to the east line of a tract of land conveyed to Earl Oliver, et ux, by Warranty Deed recorded December 4, 1961, in Book 596, page 3, Deed Records; thence South 0° 09' West along the east line of said Oliver tract to the north line of Lot 1, Block 3, Oliver Addition No. 8; thence West along the north line of said Lot 1 to the east line of Lot 6, Oliver Addition No. 5; thence North along the east line of Lots 6 and 7, Oliver Addition No. 5, to the northeast corner of said Lot 7; thence West along the north line of said Lot 7, a distance of 10 feet to the southeast corner of the plat of Oliver Addition No. 6; thence North along the east line of said Oliver Addition No. 6, a distance of 560.73 feet to the place of beginning.

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PARCEL VI:

Beginning at the most easterly southeast corner of the Champing Pendleton D.L.C. No. 58, in Township 3 South, Range 1 East, of the W.M.; thence South $89^{\circ} 39'$ West along the south boundary of said claim, 1332.55 feet to the southeast corner of that certain tract conveyed to John P. Tatone, et ux, by deed recorded April 25, 1935, in Book 227, page 162, Deed Records; thence North 559.02 feet to an iron pipe at the northeast corner of said Tatone tract; thence North $89^{\circ} 39'$ East along the north boundary of the land conveyed to Arndt Boe by deed recorded in Book 102, page 116, Deed Records to a stone 20 x 6 x 4 inches marked "X" on top, set on the west boundary of the tract conveyed to J. Lee Eckerson by deed recorded January 19, 1921, in Book 161, page 387, Deed Records; thence South 5.05 chains to the southwest corner of the tract conveyed to Peter Kylo by deed recorded September 2, 1923, in Book 172, page 229, Deed Records; thence North $89^{\circ} 39'$ East, 10.90 chains to the east boundary of claim; thence South along the east boundary 3.42 chains to the place of beginning.

ALSO beginning at the northeast corner of the Wesley Joslin D.L.C. in Section 33, Township 3 South, Range 1 East, of the W.M.; thence West 80 rods; thence South 20 rods; thence East 40 rods; thence North 310 feet; thence East 40 rods to the east line of said claim; thence North 20 feet to the place of beginning.

EXCEPT that portion lying east of the west line of Lot 6, Eastwood Annex No. 2 extended South.

ALSO EXCEPT those portions within the boundaries of Eastwood Estates, Eastwood Estates Annex No. 1 and Eastwood Estates Annex.

PARCEL VII:

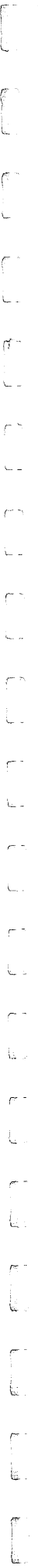
Part of the Champing Pendleton D.L.C. No. 58, in Township 3 South, Range 1 East, of the W.M., described as follows:

Beginning at a point 8.47 chains North and 10.90 chains South $89^{\circ} 29'$ West from the most easterly southeast corner of the Champing Pendleton D.L.C.; thence continuing South $89^{\circ} 29'$ West, 5.45 chains to the southeast corner of that tract conveyed to Earl Oliver and wife by Deed recorded November 16, 1951 in Book 450, page 696, Deed Records; thence Northwesterly along the easterly line of said Oliver tract and an extension thereof, 9.03 chains to the center of the Territorial Road; thence North $79^{\circ} 15'$ East along the center of said road, 7.52 chains to a point due North of the point of beginning; thence South 10.4 chains to the point of beginning.

EXCEPT the following described tract:

Part of the Champing Pendleton D.L.C. No. 58, Township 3 South, Range 1 East, of the W.M., in the City of Canby, described as follows:

Beginning at a point 8.47 chains North and 10.90 chains South $89^{\circ} 29'$ West from the most easterly southeast corner of the Champing Pendleton D.L.C.; thence continuing South $89^{\circ} 29'$ West 5.45 chains to the southeast corner of that tract conveyed to Earl Oliver and wife by Deed recorded November 16, 1951 in Book 450, page 696, Deed Records; thence Northwesterly along the course of the easterly line of said Oliver tract to a point which is 320 feet 6 inches Southeasterly from the northeasterly line of Territorial Road measured along said easterly course and which is the true point of beginning; thence continuing Northwesterly on said westerly course to the center of the Territorial Road; thence North $79^{\circ} 15'$ East along the center of said road 140 feet; thence Southeasterly parallel with said westerly course to a point North $79^{\circ} 15'$ East of the true point of beginning; thence South $79^{\circ} 15'$ West to the true point of beginning. -----



J. Record of Neighborhood Meeting

**MEETING NOTICE TO THE
RIVERSIDE NEIGHBORHOOD RESIDENTS**

TO: Riverside Neighborhood Resident

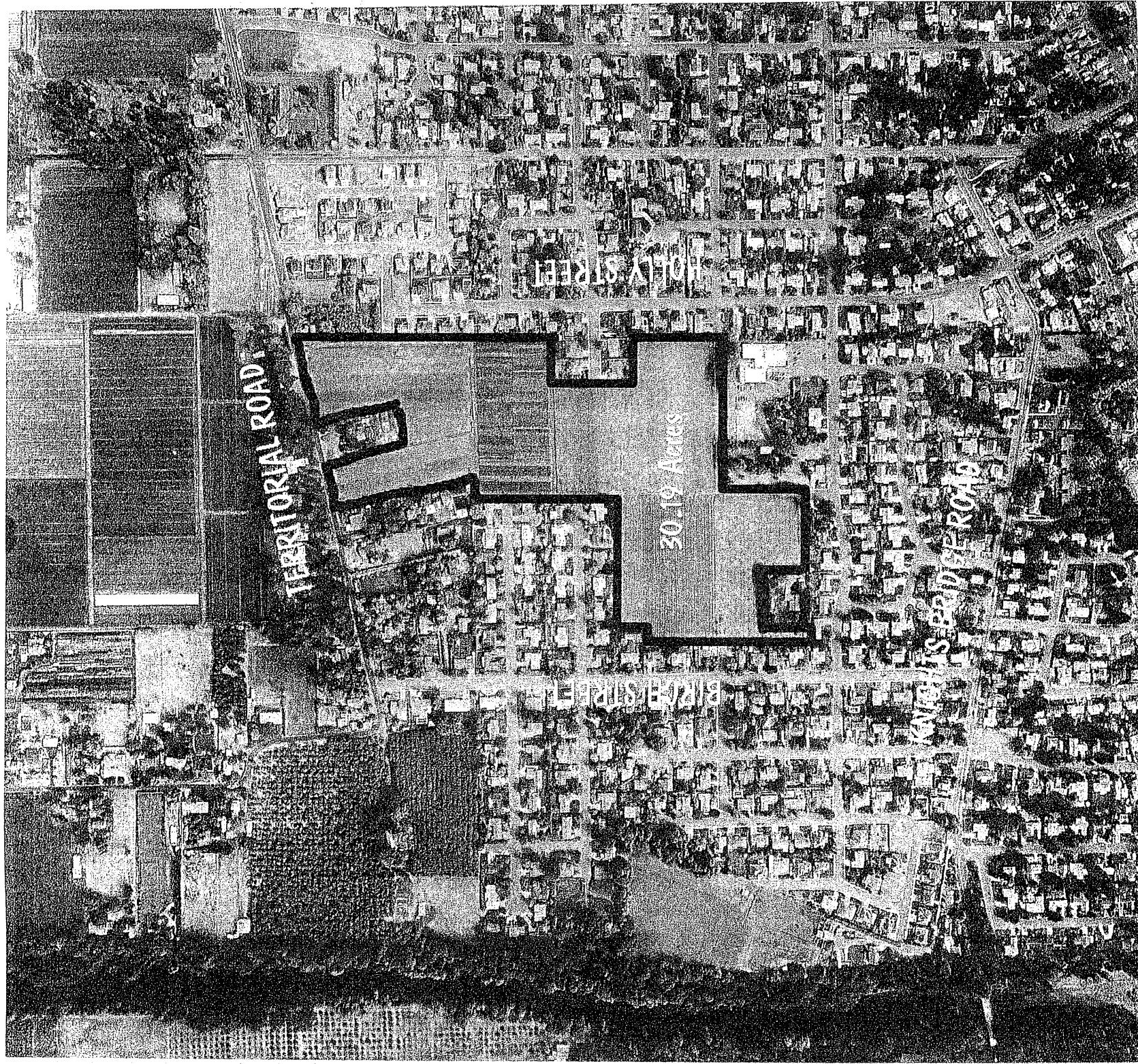
WHAT: Northwood Investments intends to request City of Canby approval of an application that would amend the City's Comprehensive Plan to add 30.19 acres to the Urban Growth Boundary and redesignate and rezone this acreage from Agriculture to Low Density Residential (R-1).

The Northwood Investment property is already located inside the City limits of Canby, but is outside of the Urban Growth Boundary.

WHEN: Thursday, December 12, 2002
at 7:00 PM (Doors open at 6:30)

WHERE: Canby Adult Center
1250 South Ivy Street
Canby, OR 97013

**SITE
IDENTIFICATION and
VICINITY MAP**



**Northwood Investments
1127 NW 12th Avenue
Canby, OR 97013**



**NORTHWOOD INVESTMENT NEIGHBORHOOD
MEETING NOTES
December 12, 2002**

The meeting was opened by Ronald Tatone at 7:00 p.m. on December 12, 2002 at the Canby Senior Center. Mark Greenfield, Attorney for Northwood Investments (hereafter referred to as Northwood) was introduced. Present also from Northwood were Ronald Tatone, Dr. Lynn Kadwell and Lyle Read, three of the owners of Northwood. Approximately 40 neighbors of the Northwood property on Territorial Road were also present.

Mr. Greenfield then gave a history of the approximate 30-acre property owned by Northwood. It was noted this property is in the city limits of Canby and had been for many years before the Comprehensive Plan was completed by the City of Canby and forwarded to the State of Oregon. The state notified Canby they had too much land within the Urban Growth Boundary (hereafter referred to as UGB) and must remove some acreage. The then City Planner called Industrial Forestry Association to find if they had any objection in this land being removed from the UGB, and they indicated they planned to farm or raise small seedlings on the land in the foreseeable future. They did not reveal they were not the owners of this property, but it was owned by Times Mirror, Incorporated. Times Mirror was never contacted about the proposed removal of this land from the UGB. Subsequently the 30 approximate acres were removed from the UGB by the City of Canby, and the land remains so to this time.

After several years, Times Mirror Incorporated began disposing of all its property holdings in Oregon, and this parcel was advertised for sale as farm land. After approximately two years, no sale had been accomplished and the partners of Northwood purchased the property from Times Mirror. This sale was completed in 1990. Northwood applied for a UGB expansion and was denied by the City of Canby.

At a later date Northwood again applied for a UGB expansion, and it was approved by the City of Canby. After approval, Simmitt Nurseries appealed to the State Land Use Board of Appeals, and this Board denied the requested expansion of the boundary on the basis additional land was not needed. Northwood continued to lease the land to IFA. After a few years IFA left the property and Northwood has since rented portions to farming for row crops and a portion to Swan Island Dahlia Farms.

In 2001 an organization known as Orgeonians In Action sponsored a bill with the Oregon Legislature that all land in city limits be automatically in UGB. After revising the bill, it was narrowed down to effectively concern only the 30 acres owned by Northwood in Canby. The Senate Committee hearings were held, and it was unanimously passed by the committee with a Do Pass recommendation to the Senate. At that time the Land Conservation Development Commission had no objection to this bill. The President of the Senate sent it to the Ways and Means Committee and the bill died.

At that time the City of Canby Council wrote a letter to the Senate supporting this bill; the vote of the council being a five in favor, none against. Northwood has always felt this should be handled on a local basis. Northwood has been notified by the Oregonians in Action they intend to file a similar bill with the 2003 Oregon State Legislature.

After the historical overview, Mr. Greenfield explained Northwood was going to file a new application for inclusion of this approximate 30 acres in Canby's UGB on a committed-land basis. The property is totally in the city limits and surrounded on all sides by homes as urban development, the last parcel being developed in 2001-2002. The opinion of Northwood, as explained by Mr. Greenfield, is this property is not suitable for farming in a general sense. Mr. Greenfield then opened the discussion to those present.

Questions and Answers:

A question was asked - Who is Oregonians in Action? It was explained it was a program out of the Portland area interested in property owners' rights. Northwood had not contacted them in advance of their presenting the bill to the State Legislature in 2001. Also Northwood has never given financial support to the organization.

Lloyd Mendenhall asked about the soil designation and its uniqueness. He also asked if the loss of labor impact had been considered. Mr. Greenfield responded that most of Northwest Canby is built on this type of soil. The loss of labor impact was not considered by Northwood for this application.

Deana Parsons stated Canby did not need this additional land for housing nor does Canby need more houses. Mr. Greenfield responded this application was not being submitted on the basis of need but that Northwood feels the land has been committed to urban use instead of farming.

Janet Milne objected to the Class Two soil designation and quoted Mr. Del Hemphill, Soil Scientist from Oregon State University, saying "Irrigation changes the class of soil." Mr. Greenfield responded, "All soil around Canby is classified as One or Two, which is very good."

George Carrey spoke about density and traffic problems it caused. He spoke at length about traffic on North Birch and he thought this proposed change would further impact the problem.

Bob Backstrom spoke also on traffic problems on North Birch and also felt houses on this proposed property would cause further problems.

Paul Satter spoke of traffic problems on Territorial Road and Territorial Road and Highway 99E intersection. He also spoke about another application being made by owners of the "Dodd" property

north of Territorial Road on North Holly. Mr. Greenfield noted Northwood had no contact or communication with owners of this property.

Larry McBride asked about Northwood property being in the city limits and if a vote of the citizens of Canby would be required. Mr. Greenfield responded the property has been in the city limits for several years even before the Canby Comprehensive Plan was filed, thus a vote not being required.

Joyce Satter spoke to the purpose of the meeting. She wanted to know if she would have time for comments and was assured she can speak at this time. She would also be able to speak at a Planning Commission hearing and a City Council hearing after the application has been filed. She noted that the application was not based on need. She noted she does not want more people in Canby and worries there are not enough city services for this area.

Jill Marie Wiles stated there was enough land for a 20-year supply. She questioned the urgency of the request of the property being brought into the UGB. Mr. Greenfield again noted this application was not based on the supply or need but on committed lands.

Janet Milne spoke about growth issues in Canby and also questioned about the application for need. She quoted from Page 16, Canby's Comprehensive Plan about preserving farmland.

Tom McArthur stated he never had a problem with dust from farming practices. He said Times Mirror wanted out of Oregon, thus the land was sold. He also spoke to safety issues at Highway 99E and Territorial Road with what he foresaw as additional traffic. He also felt that the schools, water supply and sewers for the city were inadequate. He questioned, "Why now?"

Tony Cargall said he felt this property will be developed and it seemed logical to him for this application to be approved. He did note he worked in the real estate industry in Canby. He also felt traffic flow would be helped with the extension of streets through this property.

Kelly Stillgan spoke to issues of livability. He lives on North 13th which is a dead-end street. It is a nice quiet neighborhood. He felt the schools were crowded and there is not enough police protection and does not want growth.

Lloyd Mendenhall stated he felt his property would be devalued \$50,000 if this project were approved.

Bob Tice spoke to the issue of the Holly Acres subdivision on the corner of Territorial Road and North Holly. The subdivision was built in the last year with hardly any neighborhood input and no designated open space. Canby Livability Committee spearheaded a drive to purchase one building lot for \$70,000 from the developer that will be used as open space.

Arnold Schwartz spoke in favor of the property being brought into the UGB. He owns land adjacent to the property and feels this land enhances his ability to improve his property in the future.

Joyce Satter is offended by "growth is inevitable". She likes things the way they are and does not want to see growth and stated she likes to see the Dahlia farm growing and likes the "farm dust". She also spoke to the Holly Acre subdivision property and the lack of input by the neighbors. She made it clear she does not trust the owners of Northwood and wants to see this project denied.

Mathilda Deas, from the City of Canby, spoke to the question of density. The State of Oregon has indicated Canby needs several more acres of high density land but would not force high density on this piece of property. She also stated that a local single-family residential lot in Canby is presently a minimum of 6,500 square feet to a maximum of 10,000 square feet.

Ann Hunt spoke to this being valuable soil and would like it to remain a farm.

Janet Milne challenged Northwood to come up with a legacy for their grandchildren. For example, working to put in a sports complex or working with Oregon State University for an experimental farm.

Mark Greenfield asked Mr. Tatone to show on the display map of the area which property he had been involved in. Except for Holly Acres, the Satter property and a small portion of the northwest corner of Northwood properties, Mr. Tatone had been involved in the engineering for another developer or personally developed the rest of the land surrounding Northwood property. He also noted most of the people in attendance in this meeting were living in subdivisions he had made available for them to have homes. Of all these developments, Mr. Tatone has had the best interest of Canby at heart. It was also noted that Northwood had held a meeting with the neighbors before they filed their first request to be included in the UGB. This meeting was not required but they felt this was a way to be good neighbors and take into consideration their concerns.

Mr. Read spoke regarding the lack of trustworthiness. He commented there were some in the room who had lived in Canby longer than he, but he had lived in Canby for 42 years. In that time he was a member of the Founding Committee that built the present Canby medical facilities to bring doctors to town. He was one of eight founders of the Guaranty Bank which is now Key Bank to make available a second bank in Canby. He had a business in Canby for 25 years, was one of eight First Street business people which purchased and deeded to the City of Canby half of the parking lot building behind the present Graham building on Second Street. He felt he has been a good citizen and resented being called untrustworthy.

Dr. Kadwell, long time resident of Canby, indicated that Northwood wished to be good citizens in developing this property as some thing of which Canby could be proud. He felt it would be better for local people to be involved rather than use outsiders who did not have an interest of the city at heart.

Mr. Greenfield made some closing remarks and the meeting adjourned at 9:30 p.m.

Compiled by Lyle Read, Recorder of Minutes

Northwood Investments
NEIGHBORHOOD MEETING SIGN-UP SHEET

December 12, 2002

NAME	ADDRESS	PHONE
Ron Tatone	1127 NW 12 th Ave	503-266-9542
Kelly Stilligan	704 NW 13 th	503-263-8066
GIL + SARAH STENGER	P.O. BOX 752	503-266-1100
Eunice Kuntz	450 N.W. 12 th	503-266-7323
Bob Backstrom	1395 N. Birch	503 266 5771
TAM MACARTHUR	1265 N. GRANT ST.	503-266-2421
Paul & Joyce Satter	407 NW Territorial	503-266-9346
J. SIMUITT	138 NE 22ND AVE	503-266-2904
L. MCBRIDE	136 NE TERRITORIAL RD	503-266-1940
Ann Hunt	756 NW TERRITORIAL RD	503-266-4182
Doug Warner	1255 N Hawthorne	503 263 6149
Ashid Hunt	"	"
Matilda Deas	1205 N. Birch	503 266 3660
NICK NAPIER	735 TERRITORIAL RD	503 266-4184
Lowell Bingham	607 - NW 12 th	607 - NW 12 th
John Dunan	220 S. WALNUT ST	503-266-2124
TIM STUART	1320 N. Holly	503 680 4959
DILLMARE WILES	SAME ↑	263 4747
Tony Cragg	1140 WASH	263-1990

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RIVERSIDE NEIGHBORHOOD ASSOCIATION

Election results – 10-22-02
(All officers hold a two-year term)

Chairman

Paul Satter
407 NW Territorial Rd
Canby, OR 97013
503-266-9346 or Satterfamily@cs.com or paul@pro-lines-sales.com

Vice-Chair

Jan Milne
668 NW 12th
Canby, OR 97013
503-266-5352 or bilne@web-ster.com

Recording Secretary

Sheila Tice
401 NW Territorial Rd
Canby, OR 97013
503-266-6140 or btice@ieee.org

Communications

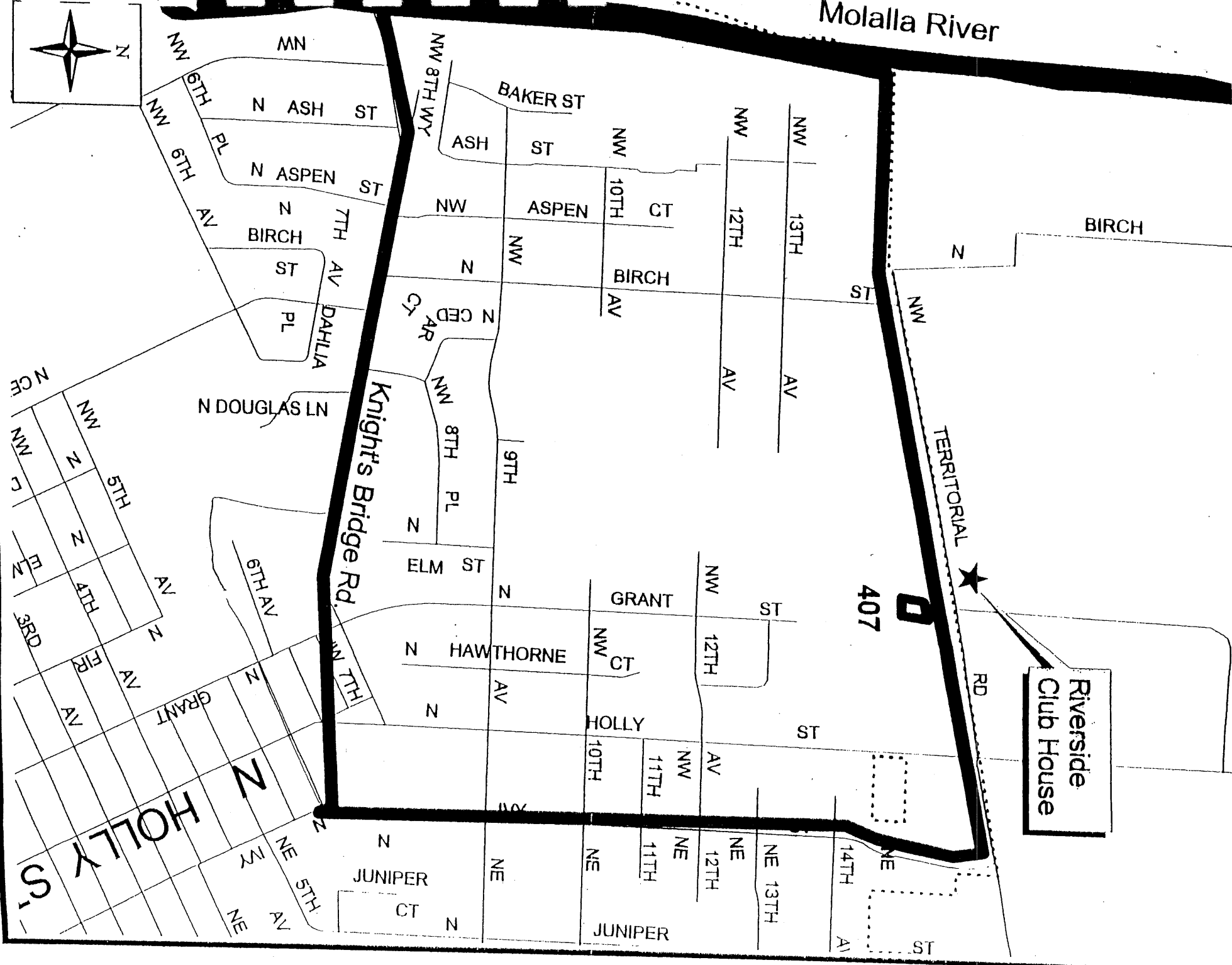
Lloyd Mendenhall 790 NW 10 th Canby, OR 97013 503-263-6937	Dana Tyler 680 th NW 20 th Canby, OR 97013 503-266-3279	Teresa Blackwell 160 NW 13 th Canby, OR 97013 503-266-5362
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Treasurer

Mary Jean Petersen
744 NW 13th Ave
Canby, OR 97013
503-266-5014



Molalla River



NW 8TH WY
MN
N ASH ST
N ASPEN ST
N BIRCH ST
N CEDAR CT
N DOUGLAS LN

BAKER ST
ASH ST
ASPEN ST
BIRCH ST
N CEDAR CT
NW 10TH CT
NW 12TH AV
NW 13TH AV

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NW 5TH
NW 4TH
NW 3RD
N 5TH AV
N 4TH AV
N 3RD AV
N 2ND AV

Knights Bridge Rd

NW 8TH PL
9TH
ELM ST
N HAWTHORNE
HOLLY ST
GRANT ST
NW 12TH
NW 11TH
NW 10TH

407

TERRITORIAL RD

Riverside Club House

HOLLY ST

JUNIPER CT
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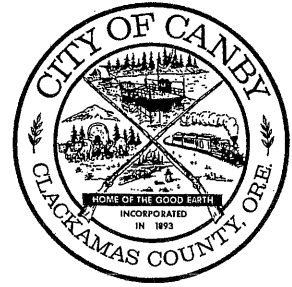
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**BEFORE THE PLANNING COMMISSION
OF THE
CITY OF CANBY**

**A REQUEST FOR APPROVAL TO) FINDINGS, CONCLUSIONS & FINAL ORDER
PARTITION AN EXISTING 5.2) MLP 05-02
ACRE PARCEL INTO TWO PARCELS) (Tofte V)
4.06 AND 1.12 ACRES IN SIZE)**

NATURE OF APPLICATION

The applicant is requesting partitioning of an approximate 5.2 acre parcel into two parcels, 4.06 acres and 1.12 acres in size. The 5.2 acre parcel is located south of SE 13th Avenue, adjacent to the eastern boundary of Tofte Farms multiphase subdivision.

HEARINGS

The Planning Commission held a public hearing and considered this application at its meeting of May 9, 2005.

CRITERIA AND STANDARDS

This is a quasi-judicial land use application. In judging whether a Minor Land Partition should be approved, the Planning Commission must consider the following standards:

- A. Conformance with the text and the applicable maps of the Comprehensive Plan;
- B. Conformance with all other requirements of the Land Development and Planning Ordinance;
- C. The overall design and arrangement of parcels shall be functional and shall adequately provide building sites, utility easements, and access facilities deemed necessary for the development of the subject property without unduly hindering the use or development of the adjacent properties;
- D. In no case shall the use of a private road be approved for the partitioning unless it is found that adequate assurance has been provided for year-round maintenance sufficient to allow for unhindered use by emergency vehicles, and unless it is found that the construction of a street to City standards is not necessary to insure safe and efficient access to the parcels.
- E. It must be demonstrated that all required public facilities and services are available, or will become available through the development, to adequately meet the needs of the proposed land division.

FINDINGS AND REASONS

The Planning Commission deliberated on all testimony presented at the May 9, 2005 public hearing, and incorporates the April 29, 2005 staff report as support for its decision. The Planning Commission accepts the findings in the April 29, 2005 staff report.

CONCLUSION

Based on the staff report and Commission deliberation, the Planning Commission concludes that:

1. The partition request, with appropriate conditions, is considered to be in conformance with the Comprehensive Plan and the Municipal Code.
2. The overall design of the proposed partition will be compatible with the area and will provide adequate building area for the provision of public facilities and services for the lots.
3. With appropriate conditions, the overall design and arrangement of the proposed parcels are functional and will adequately provide building sites, utility easements, and access facilities which are necessary for the development of the subject property without unduly hindering the use or development of adjacent properties.
4. No private roads will be created.
5. All necessary public services will become available through the development of the property, to adequately meet the needs of the proposed land division.

ORDER

IT IS ORDERED BY THE PLANNING COMMISSION of the City of Canby that MLP 05-02 is approved with the following conditions:

For the Final Plat:

1. A final partition plat modified to illustrate the conditions of approval shall be submitted to the City Planner for review and approval. The final partition plat shall reference this land use application: *City of Canby File Number MLP 05-02*
2. The final partition plat shall be a surveyed plat map meeting all of the specifications required by the Clackamas County Surveyor. The partition map shall be recorded with the Clackamas County Surveyor and with the Clackamas County Clerk; a final copy of the signed and recorded map shall be provided to the Canby Planning Department prior to the issuance of building permits
3. All monumentation and recording fees shall be borne by the applicant.
4. Twelve (12) foot utility easements shall be provided along all street lot lines. Ten (10) foot utility easements shall be provided along non-street exterior lot lines unless adjacent lots have recorded utility easements of four (4) or more feet, in which case the non-street exterior lot lines shall have six (6) foot utility easements. All interior lot lines

shall have six (6) foot utility easements.

Notes:

5. A final plat must be recorded with the Clackamas County Surveyor within one (1) year of the preliminary plat approval in accordance with Canby Ordinance 16.68.020. Mylar copies of the final plat must be signed by the City Planning Director prior to recording the plat with Clackamas County.

I CERTIFY THAT THIS ORDER approving MLP 05-02 was presented to and **APPROVED** by the Planning Commission of the City of Canby.

DATED this 23th day of May, 2005.

James R. Brown, Chairman
Canby Planning Commission

Matilda Deas, AICP
Project Planner

ATTEST:

ORAL DECISION – May 9, 2005

AYES: Tessman, Brown, Ewert, Helbling, Lucas, Molamphy

NOES: none

ABSTAIN: none

ABSENT: Manley

WRITTEN DECISION - May 23, 2005

AYES:

NOES:

ABSTAIN:

ABSENT:

MINUTES
CANBY PLANNING COMMISSION

7:00 PM MARCH 14, 2005
City Council Chambers, 155 NW 2nd

I. ROLL CALL

PRESENT: Chairman Jim Brown, Commissioners John Molamphy, Tony Helbling, Geoffrey Manley, Randy Tessman, Dan Ewert, and Barry Lucas.

STAFF: John Williams, Community Development and Planning Director, Carla Ahl, Planning Staff

OTHERS PRESENT: Andrew Rivinas, Lou Bailey, Dr. Mike Harms, Debrah Sommer, Heinz Rudolf, Cat Sumrain, Rod Beck, Pattie Flagg, Jeff Kirkman, David Morehouse, Sandy Ricksiger, Dick Adams, Pattie and Patrick Ryall, Ken Pagano, David Moore, Matt Madeira, Scott Enyart, John Vredenburg, Ahren Spilken, Vicki Pounds, Jennifer and Darrell Nicholson, Robin Perez, Tom and Donna Wolfe, and Don Knight.

II. CITIZEN INPUT

None.

III. PUBLIC HEARINGS

DR 04-09/CUP 05-01 Canby Middle School – This was a continuation of a public hearing from February 28, 2005. It was an application to construct a new middle school on a 37-acre parcel located south of SE Township east of Trost Elementary School. Chairman Brown read the public hearing format. Chairman Brown asked if there was any conflict of interest. There was no conflict, all intended to participate. Chairman Brown asked if there was any ex parte contact. Mr. Manley said Don Stahely talked with him about his concern about ongoing maintenance if they required additional parking, Mr. Lucas received emails from Dave Flagg stating his opinion that the City should pay for extra parking, and Chairman Brown was contacted by the *Oregonian* about questions about the hearing. Chairman Brown said they would view this as a new public hearing, and all could testify.

STAFF REPORT: Mr. Williams said at the last meeting they discussed many issues and concerns from the neighborhood. They outlined five issues to come back. The issues were improved fire and police access, lighting on the Logging Road, an east/west pathway on the south side of the fields, Teakwood Street, and parking. They wanted to keep the discussion on these five issues.

APPLICANT: Debrah Sommer, School Superintendent said she had several concerns about the process. She was unprepared to speak at the last meeting because they thought they had followed the process. On February 10 they had a citizen meeting regarding the proposed school and 40 citizens attended. She thought the traffic study was given little weight, although it said the impact was less for the school than had the neighborhood been allowed to develop as R1. Teakwood had been planned as an arterial.

Ms. Sommer stated they had been working with staff for over one year on this application. She stated there were 257 parking spaces planned not the 150 spaces that were required, and there were also 100 spaces available at Trost School. She explained the School District had no need for the proposed fields since all of the middle school athletic programs had been cut due to budget constraints. She stated that all of the scheduling for the fields were done by either the Canby Kids or the Whiskey Hill Kids. They have created this partnership so there were fields for the kids could play on, it is the same partnership they have with the City of Cangby and the Canby Swim Center. The School District lets the Swim Center use the land for free. The School District was trying to be a good neighbor to the community by providing more soccer, baseball, and softball fields.

Ms. Sommer stated the quote in the *Oregonian* regarding the District being able to pay for the additional parking spaces as a result of selling bonds at a better rate than anticipated, they did sell them at a better rate, but had chose to pass the savings on to the taxpayers. They had worked for over a year to meet and exceed code in all areas and the traffic study supported reduced impact on those living in the immediate proximity of the school. They did not need more parking, they did not need the fields, and they did not have additional money for parking. They were over budget and behind in the timeline. They had a commitment to the community who passed two bonds in five years to build a middle school.

Heinz Rudolf, representative for the applicant, gave a PowerPoint presentation. He showed them a master plan of the site. Regarding improved fire access around the site, they discussed it with the Fire Marshall and he was comfortable with it. It was a 26 foot wide road where a bus and fire truck could pass each other. They also had a turn around of 100 feet. Regarding lighting on the Logging Road for security issues, there was an overgrown area that was outside of the property line. They agreed to grade and clear the area and re-seed it for visibility. They would also have exterior lighting on the building and would have motion sensors. Lighting of the Logging Road was never in the plan and it was not their property. Regarding elimination of pedestrian paths, they were going to move the path and it would be a paved ten foot wide with six foot high fence that would connect to the Logging Road. They preferred the sidewalk on the east side to keep students out of the traffic. As part of the road

improvements on Township, they would have a sidewalk wide enough for a wheel chair that would have access to the Logging Road.

Mr. Rudolf, stated there had always been plans to have a connection from Teakwood to Township. It followed the master plan and two access points were very important in keeping even distribution of traffic. It needed to be designed correctly so it would not become a speedway. The road would be narrowed and surface would be concrete, so people would know they were entering a school zone. 3

Mr. Rudolf addressed the parking issue and explained it would be signed and there would be overflow parking available. They were making dual use of parking and saving money. They had 257 parking spaces on site and using Trost with an improved pedestrian walkway that led to the site, they would have 357 spaces for special events. He researched what events would happen and showed there would be plenty of spaces. The Planning Commission had asked if there were other options, and he discussed them. He thought they could move the soccer field site slightly to the north so they could add a strip of parking if needed. In the rare case they needed more parking, they could park at the play areas which would add 60 more spaces.

Mr. Helbling asked if they took into account the additional parking at Trost if they would have an event at Trost at the same time. Most likely they would have events at both fields at the same time. Mr. Rudolf said that would be a scheduling issue.

Mr. Manley said he was surprised at the width of the sidewalk on Teakwood because most of the sidewalks were 5 to 6 feet in width. It was a bicycle lane requirement, so bicycles could be on the sidewalk.

Mr. Helbling said if they were going to park on one side of the street, were they going to make the street a one way or two way on the remaining drive? Mr. Rudolf said people were only allowed to park there after hours.

Mr. Dan Keizer, Civil Engineer, said it would allow a two way traffic and parking on one side. Mr. Helbling said his concern was kids in the traffic. That was why they were pushing for the sidewalk to stay on the east side so there was no need to cross it.

Cat Sumrain, Traffic Engineer, Lancaster Engineering, said they assumed the initial student body would be 550 students, but the school could accommodate 800 students. There would be additional services on the facility for cafeteria and athletics. There would be one way circulation through the passenger and bus facility and two way through the parking lots. They could also use the 20 mph school sign to slow traffic.

Ms. Sumrain compared the number of trips generated from a school as opposed to putting in the 400 homes as it was zoned currently. Residential development would place more cars on the road. Just before school started was the heaviest impact to the roads, and she took photographs and there was not much traffic at that time. It was a level of service C, and when she added in the school traffic they went to a D, but they used a worse case scenario of both schools starting at the same time. If they were not at the same time, they could still see level C service. The level of service would go up when they built the school because they would take off the impact of 13th and Ivy where Ackerman was. It would be distributed in two intersections.

Police Chief Ken Pagano said there were some issues regarding patrolling and access to the Logging Road and gating the access road at Township. He thought the road should remain open, not gated. He thought there was good access to the Logging Road. Regarding graffiti on the back of the school, it was usually a territorial crime and was not a common or well traveled area to have it happen. The walking path was a good idea.

Mr. Brown said one of the issues was having one access to the back of the Logging Road, and they thought it would be better to have access completely around the building by the Logging Road. Chief Pagano said the more access the better. They would only use the Logging Road as an emergency response and could enter on any side. Mr. Brown asked if lighting on the Logging Road would be beneficial, and Chief Pagano said any lighting would be beneficial but the question was who would put it in and who would pay for it. They did have spotlights on the cars that were patrolling.

Mr. Brown asked if the idea of a future industrial park across the railroad track changed the context? Chief Pagano said he did not think it changed his opinions. They had an industrial area on Redwood near a school now.

Mr. Helbling said they were thinking of making Teakwood through the property a private drive, would the police have jurisdiction in that case? Chief Pagano said anything open to the public they had jurisdiction over. Mr. Helbling asked about enforcement of parking. Chief Pagano said it would be up to the school to enforce it.

PROPONENTS:

Dr. Mike Harms, resident, said he had information from the Tualatin Hills Park and Recreation District. They commissioned a parking study of their facility for their athletic events, and came up with a rule of thumb for parking. The rule was double the number of participants at a field for parking spaces. If games were scheduled close together, they doubled it again. They scheduled games a minimum of half an hour to an hour between games.

Andrew Rivinas, resident said they were referring to the extension of Teakwood as a private drive, and it was School District property and was public property. He supported this project, which was already modified to address their concerns and be a valuable asset to the community. He had been part of the design and development as a citizen member and tremendous effort had gone into it that would meet all needs and requirements. He did not want them to hold up a project that met all current regulation on the basis of what they might like to see different in the future.

Mr. Rivinas stated that facilitating existing resources like local on street parking to accommodate peak demand was an efficient use of resources. He as a taxpayer would be upset that the money they approved for school construction was diverted to parking that would remain empty most of the time because they failed to consider the available street parking that already existed. Regarding changing the character of the neighborhood, it would change no matter what. The school would have a lower impact on traffic than the alternative development plan of hundreds of homes. Regarding the safety of the Logging Road, the project would increase the inventory of playing fields so they could accommodate more young people in positive activities and by keeping those fields busy with activities, they would be flooded with lights and people.

Mr. Rivinas explained there was an urgency to spend the money because they made a commitment that this school would be ready for use at the beginning of the school year in 2006 and the schedule is very tight. The passage of time did many things to the purchasing power of money, and they were losing money to inflation and resources. They needed to move quickly to do the best job they could to get the most value for the taxpayer's money. This was a good project that met all of the requirements and needs of the community. They were trying to catch up to accommodate the growth in school population that resulted in community growth.

Matt Madeira of Canby Kids said it was their responsibility to schedule athletic facilities, games and tournaments so there are no logistic problems. The heaviest use was during tournaments, and they would not schedule multiple tournaments at any facility. They did not schedule Canby Kids athletic events during school hours or at a time when other school events were taking place. He thought there was more than adequate parking.

Lewis Moller, resident of Canby, said they had quite a few people who have commented about Teakwood Street, but this would also affect Redwood. It had always been planned to be a through street, any discouragement of traffic on Teakwood would increase traffic on Redwood. There needed to be a disbursement of traffic, not a concentration of traffic.

Vicki Pounds, resident of, Canby, said she was a soccer coach. They had a large tournament in September that used fifteen fields, and they did use

Trost and they were looking for more fields. They brought in more money for Canby. There was a lot of space at Trost during the tournaments.

John Vredenburg, resident of Canby, president of Canby Youth Soccer, said they worked well with the school to schedule the games. He explained the parking looked good, it was a good site, good for the kids and the two together would work well.

Scott Enyart, resident of Canby, said he was the tournament director for Oregon Youth Soccer. They hosted some events in Canby, and there was adequate parking for this site.

Rich Hein, resident of Canby, president of Canby Jr. Baseball and worked with Canby Youth Football program, said there would be adequate parking for their needs at this facility.

OPPONENTS:

Patti Ryall, resident of Canby, said she thanked the Commission for taking two extra weeks and listening to the citizens in the neighborhood. She was in favor of good programs for kids. She still felt this would impact their neighborhood. Regarding the parking issue, there were a lot of spaces at the school, but people would still park on the street because they were close to the fields. They were homeowners that were trying to keep their neighborhood as it had been. Their property value would go down because of increased traffic. She restated that before they purchased the property, she called the City and School District and was told that their street would not be a major connector for this situation.

Don Knight, resident of Canby, said at the last meeting they stated since the neighborhood was already adjacent to Trost, siting an additional school would not have that large of an effect, but they were concerned about the athletic fields. They did not have anything against the school itself, but the layout of the school and location of athletic fields was a concern. The school and the parking lot diminished the noise, but the fields were going to be closer to the neighborhood and have more impact. If they built an eight or ten foot high berm along the edge, noise would be deflected upward and provide spectator seating for the fields. The traffic study used trips over a 24 hour period, and the traffic was intensified during a two to three hour period during the day.

Aaron Spilker, resident of Canby, said he was in favor of the school. He was against the traffic pattern of Teakwood. He did not think they changed it from the earlier proposal. They were taking the traffic off of 13th and Ivy and putting it down Teakwood which was not designed in width the same as the other roads. There was not sufficient design to handle the amount of traffic coupled

with the fact it would go down SE 11th. It was not designed to handle the traffic flow.

Mr. Manley said Teakwood was designed to be as Redwood, they just did not have the full width because they had not had the development on the other side of Teakwood. It would be developed as the same level of road Redwood was.

Patrick Ryall, Canby, said as to the issue of parking spaces in the school the count included the drop off areas, and there was a concern raised that that area was for fire access. Since scheduling was not done by the schools, if there was overflow parking during simultaneous events in the neighborhood, they would have no recourse. It was true public parking was allowed on public streets, but they were not in an area where people came and went. It would have an adverse affect on the neighborhood. Teakwood would have greater trips, and though it was planned to be a connector, that was before the school was planned. It would fundamentally be different traffic and change the neighborhood. The traffic study did not address the impact on those on SE 11th. No one in his neighborhood had been invited to the planning process for the school. He wanted to keep the speed down on the street, and tournaments that were scheduled one after another would have a big effect on the neighborhood. He was concerned that they had no access to the plans, and the School District had not changed anything to address their concerns.

Darrell Nicholson, resident of 1629 SE 11th Ave, Canby, said they had 23 young kids living on that street and it would not be safe to have the traffic going down that road. They had not addressed the problems of traffic flow. They needed to make it safe for the kids that lived there. He thought they should make it a one way street and have a gate for access. The fields were fine, the issue was the traffic.

Tom Wolfe, resident of Canby, said of all the proponents, none of them lived in the neighborhood that would be affected. He thought they should direct the traffic to a street that was already an arterial. He wanted to know how much extra traffic would come down 11th Avenue as opposed to Teakwood as they thought. He wanted that addressed. Regarding parking, they had a copious amount at Ackerman, but if there would be no parking problems why did those participating in the athletic fields park in Tofte Farms? They would have people parking in the neighborhood where it was closer to the fields. It was not plausible that people would park farther away in the parking spots, especially parking at Trost. At the last meeting, they stated they would have revised plans by the middle of last week and as of that afternoon, there were no plans to review.

Someone from the audience said that instead of making Teakwood a main connector, when the industrial area was built out, have a new street that provided

additional capability that S Redwood and S Ivy did. Mr. Williams said there would be a connection, Sequoia Parkway would connect to 13th.

Darrel Nicholson said the parking requirement was 250, and that would not be enough if they needed the maximum parking of 250 if they had an evening event and a gaming event at the same time. It would be doubled.

REBUTTAL:

Mr. Rudolf said they were told to discuss the issues and come up with drawings, but he did not think they stated they would be available by Wednesday last week. They would work with them and try to come up with solutions to their issues.

Mr. Brown closed the public hearing.

DISCUSSION:

Mr. Brown said he had been on the Planning Commission for almost eight years and there had been a lot of change in the community and they had been through a lot of divisive issues, but he had never been through a process that had given him more chagrin than this application. They had tried to assist the School District, and they were a community that was becoming more fractured and divided. Regarding their code, they had few tools to regulate the planning in the area. One of the best tools was the desire and opportunity to put groups together to work out their differences. He hoped that the two parties would get together, and it did not happen. Many of the issues were specifically answered by the packet they received that day and not at the first public hearing so they could not make an informed decision at the last meeting. Also unfair was that some of the opponents spoke to the architect like he was the adversary, but he was the employee of the School District. They took their responsibility seriously and took both sides into consideration and obeyed their own rules.

Mr. Brown said regarding the conditional use issues, he thought it met all the requirements.

Mr. Molamphy said he missed the last meeting, but he took offense with how he had been talked to. They always tried to do what was best for the community. He thought the school was a good idea, they needed it and the bond was passed. He also thought it met the criteria. It would alter the character of the neighborhood because of the parking and traffic, but they would have that no matter if it was a subdivision or a school. They needed a school.

Mr. Tessman said he thought it met all the criteria. It would change the character of the neighborhood, but he did not think it would be a detriment.

Mr. Lucas said the parking and Teakwood were his issues. It met the conditions. He thought the School District brought back some bonuses. The Teakwood traffic control would slow people down.

Mr. Manley thought it met all the conditions. This would not make it harder for people to live in their homes, they might not have as many parking spaces if they had overflow, but it did not limit the surrounding neighborhood for residential uses.

Mr. Helbling said there would be an affect, but the question was would it preclude the use of the properties as listed in the permitted zone, particularly in SE 11th. He lived in Township Village and there would be a lot of traffic that would come on Township and on 11th.

Mr. Ewert said he had sat on the Planning Commission for 13 years, and he had never been spoken to in this way. They tried to work with the School District on multiple projects. Their job was to plan for the future and to look at both sides. He thought they met the conditional use.

Mr. Brown said regarding site and design review, this body could not decide who paid for what. These were fields for the City, and the City should probably buy and maintain them, but the City could not do that and uses the School District land as recreational property. The code required a certain level of parking, which they could not exceed arbitrarily. The police and fire access representatives said it was adequate. They would eliminate the east/west pedestrian path on the south property line, and they were going to maintain it. There was lighting at the Logging Road, and they included motion detection lighting. Regarding access to Teakwood, the neighbors wanted to prohibit direct vehicle access, but applicant and service providers wanted access.

Mr. Tessman said he would want that access if he had children to take them to school, but the question was increasing traffic and they would have to slow the traffic.

Mr. Brown said there would be curbs on each side and a drive approach to slow it. Their distinction between public and private street was they viewed it as a design standard, not an ownership issue.

Mr. Ewert said any college campus had a similar design, they would be leaving a public street onto a campus. Mr. Brown hoped that there would be discussion with local residents about how it would be accomplished. Mr. Ewert thought in the near future the School District would have to enforce parking regulations. Mr. Molamphy said he liked the design of it and it would slow people down. He thought it should be enforced and controlled.

Mr. Helbling thought there should be a termination at the end of the driveway separated from Teakwood. He thought there should be a turn around at the end of the driveway that would allow some traffic, but also have a crash gate for emergency vehicles. Mr. Tessman said he preferred to have the access open with the grade change for people from that neighborhood to access the school during school hours. Mr. Manley said the emergency service providers said they preferred to have non-gated access.

Mr. Brown said people parked close to where they were going to be, and people would park in the neighborhood. A permit worked well, where people had to have permits on their windows. Mr. Helbling said people were going to park in the neighborhood whether or not there was a street going through because it was closer to walk to the fields from the neighborhood streets than it was from the parking lot. This was not an issue of this application, but was a city issue. If citizens had problems, they could go to the Planning Department or Traffic Safety Committee.

Mr. Helbling said the driveway was a private street, but public tax dollars paid for it, and it was a public facility and it made the fields public and part of the community and they needed to design it that way. They needed to consider the impact of parking on the neighborhood, especially when sports could be reinstated at the middle school in the future. Mr. Tessman said the parking issue should go back to the school and those who have events there, that they tell the parents to park in the parking lot. Mr. Manley thought it would work, but for additional parking, if they didn't have them striped, they got less efficient parking. He thought they should stripe the parallel parking spots with signage no parking during school hours.

Mr. Brown said he thought they might have inadequate parking occasionally. The area west of the soccer fields between Trost and the soccer fields would be for overflow parking. They could not require additional spaces. He hoped they would volunteer some extra spaces, but they had not.

Mr. Lucas said people would park at Trost and in the neighborhood. There were a lot of streets in Canby where kids could not play basketball because of growth. They had a need for the athletic fields in the community. He thought schools and parks would be funded better in the future and they would need them and could not buy them later on.

Mr. Ewert said Teakwood would expand and it could handle more traffic. They had a master plan that would relieve traffic, the only problem was the school was coming before the roads would come. They could not hold the school off until the roads were put in. As far as parking was concerned, the fields were a huge part of the community and he thought there was a negative attitude towards them. He thought they could find additional parking or maybe do permit parking in the neighborhoods. Mr. Lucas said the best thing they heard about

parking that night was from Mr. Harms regarding the Tualatin Recreational District and the scheduling mechanism they used would be a great idea.

Mr. Helbling said parking one way on the driveway might be a solution to limit the traffic. They could have bus access two way at the end of the driveway near Township, but back to the bus turn around have a one way traffic direction going north with sidewalks on the east side. Mr. Brown said Mr. Helbling's idea was to leave the access in place, preclude southbound vehicular movements from the parking lot to Teakwood, only allowing northbound.

Mr. Molamphy said if they made it one way half way, they would create a bottleneck at the parking lot.

Mr. Brown said they did a good job of separating vehicular and pedestrian routes.

Mr. Helbling said they could make it two way down to the southern entrance to the car drop off area.

Mr. Manley said he thought people would go two ways regardless.

Mr. Manley moved to approve DR 04-09/CUP 05-01 with one addition that they stripe the parallel parking spots at the bus turn around and drop off areas so they were easy to identify. Motion seconded by Mr. Molamphy.

Mr. Ewert said there was no mention of any signage in their proposal. The road into the campus should be marked private street, private access only. He wanted jurisdictional signage, way finding signage, parking signage, and speed signage to reflect what they had in their application. He wanted it thoroughly marked.

Mr. Manley agreed to amend the motion to include signage as suggested by Mr. Ewert. Mr. Molamphy seconded.

Mr. Brown said they should remand to the Traffic Safety Committee a review of the parking situation there and meet with the public to figure out where the no parking areas would be. Mr. Ewert thought they should put signage in the neighborhood stating no athletic parking.

The motion passed 7-0.

IV. NEW BUSINESS

Hope Village Design Review – Planning Director John Williams said they

asked the Hope Village folks to come back with revised signage, and they had done that. They were proposing a sign the same as the one existing on Holly Street. It would not be lighted.

Mr. Brown thought they should make it bigger. Mr. Manley thought it looked better.

There was Commission consensus to approve the sign as proposed.

Update on Canby Transit Center plans – Planning Director Williams said the plans for the transit center did not require design review, but Transit Director Margaret Yochem wanted to discuss it with them. Ms. Yochem showed them the new design, which was pre-fabricated restrooms and break room. There was a water feature, the most vandal proof she could find and with no sitting water. There would be two restrooms and a transit driver break room. Mr. Brown asked why the water feature, and Ms. Yochem said the City entered an agreement with the Cutsforth family, and their requests were a clock tower and water feature in memory of Elsie Cutsforth. They put it under the cover because of the cost and liability issues. Mr. Brown thought it took up too much space under the structure where people could be. He thought it could go outside of the structure. Ms. Yochem said it was subject to public input. Mr. Helbling said there were no windows on the breakroom, and Ms. Yochem said they were vented and away from the public and would not have windows. There would be a bicycle rack. It would hopefully be done by June 30.

V. FINDINGS

SUB 05-02 Burden – Mr. Manley moved to approve the findings, conclusion and final order for SUB 05-02 as written. Motion seconded by Mr. Tessman and passed 6-0 with Mr. Molamphy abstaining.

VI. **MINUTES** None.

VII. DIRECTORS REPORT

Planning Director John Williams said there would be three public hearings at the next meeting.

Mr. Brown said he was proud of the Commission for their work and cool heads. Mr. Ewert said what they asked for on the school application, they ultimately got. Mr. Williams said they needed to let staff know what specific information they wanted on applications to perhaps avoid confusion in the future.

VIII. ADJOURNMENT